



SELECT COMMITTEE ON THE LICENSING ACT 2003

Written Evidence

Contents

Access Association – written evidence (LIC0055)	7
Action with Communities in Rural England – written evidence (LIC0059).....	11
Admiral Taverns – written evidence (LIC0124)	16
Alcohol Concern – written evidence (LIC0085)	24
Alcohol Focus Scotland – written evidence (LIC0127)	33
Alcohol Health Alliance UK – written evidence (LIC0078)	41
Alcohol Research UK – written evidence (LIC0022)	52
Ashford Borough Council – written evidence (LIC0016).....	64
Association of Convenience Stores – written evidence (LIC0086).....	69
Association of Directors of Public Health – written evidence (LIC0064)	96
Association of Licensed Multiple Retailers – written evidence (LIC0150).....	107
Attitude is Everything – written evidence (LIC0091)	125
Avon and Somerset Constabulary – written evidence (LIC0081).....	131
Balance North East Alcohol Office – written evidence (LIC0023)	135
Keith Barker-Main – written evidence (LIC0001)	147
Bath City Centre Action Group – written evidence (LIC0036).....	148
Jez Bayes – written evidence (LIC0015)	154
Beds & Bars – written evidence (LIC0114).....	163
Berkshire Licensing Liaison Group – written evidence (LIC0122)	172
Bilton Hall Amateur Boxing Club – written evidence (LIC0012).....	177
Birmingham City Council Licensing and Environmental Health – written evidence (LIC0141)	178
Breckland Council – written evidence (LIC0120).....	188
Brighton and Hove Council – written evidence (LIC0017).....	191
British Beer & Pub Association – written evidence (LIC0111).....	195
British Beer & Pub Association – supplementary written evidence (LIC0159)	212
British Hospitality Association – written evidence (LIC0149)	213
British Medical Association – written evidence (LIC0041)	217

British Retail Consortium – written evidence (LIC0167).....	222
Broxtowe Borough Council – written evidence (LIC0138).....	226
Councillor Jonny Bucknell – written evidence (LIC0152).....	233
Business in Licensing – written evidence (LIC0140).....	234
Cambridge City Council – written evidence (LIC0108).....	239
Cambridgeshire County Council Public Health Directorate – written evidence (LIC0123).....	242
Campaign for Real Ale – written evidence (LIC0121).....	251
Cardiff County Council – written evidence (LIC0082).....	269
Central Bedfordshire Licensing Committee – written evidence (LIC0142).....	270
Central England Trading Standards – written evidence (LIC0021).....	272
Champs Public Health Collaborative – written evidence (LIC0038).....	275
Chelston Cockington and Livermead Community Partnership – written evidence (LIC0009).....	280
Cheshire Constabulary – written evidence (LIC0043).....	281
Cheshire East Council – written evidence (LIC0039).....	282
Citizens Advice Westminster – written evidence (LIC0132).....	290
Citizens Advice Westminster – supplementary written evidence (LIC0161).....	301
City of London Corporation – written evidence (LIC0154).....	303
City of Wolverhampton Council – written evidence (LIC0095).....	305
Clifton Down Community Association – written evidence (LIC0079).....	311
Cornwall Council Licensing Authority – written evidence (LIC0069).....	316
Covent Garden Community Association – written evidence (LIC0118).....	323
Reba Danson – written evidence (LIC0125).....	335
Deltic Group – written evidence (LIC0163).....	344
Derbyshire Police – written evidence (LIC0028).....	348
Devon Licensing Officers Group – written evidence (LIC0075).....	352
Durham Constabulary – written evidence (LIC0045).....	359
Ealing Civic Society – written evidence (LIC0129).....	368
Equity – written evidence (LIC0071).....	374
Fabric Life Limited – written evidence (LIC0157).....	380
Faculty of Occupational Medicine & Society of Occupational Medicine – written evidence (LIC0143).....	395
Federation of Bath Residents’ Associations – written evidence (LIC0031).....	397
Federation of Wholesale Distributors – written evidence (LIC0061).....	404
Matthew France –written evidence (LIC0089).....	409

Marie-Claire Frankie, National Association of Licensing and Enforcement Officers – supplementary written evidence (LIC0158)	411
Councillor Bill Gifford – written evidence (LIC0113).....	412
Gloucestershire Licensing Officer’s Group – written evidence (LIC0101)	413
Gerald Gouriet QC – written evidence (LIC0056).....	416
Gerald Gouriet QC – supplementary written evidence (LIC0165)	422
Greater Manchester Combined Authority – written evidence (LIC0103)	426
Clive Grunshaw – written evidence (LIC0147).....	440
Harmood, Clarence, Hartland Residents Association – written evidence (LIC0033)	443
Harmood, Clarence, Hartland Residents Association – supplementary written evidence (LIC0169)	447
Healthier Futures – written evidence (LIC0097)	450
Heart of London Business Alliance – written evidence (LIC0128).....	461
Henrietta Park Residents’ Association – written evidence (LIC0109).....	465
Hinckley & Bosworth Borough Council – written evidence (LIC0049).....	469
Home Office – written evidence (LIC0155).....	477
Home Office – supplementary written evidence (LIC0063)	485
Home Office – supplementary written evidence (LIC0164)	490
Home Office – supplementary written evidence (LIC0175)	492
Institute of Alcohol Studies – written evidence (LIC0047)	500
Institute of Licensing – written evidence (LIC0126).....	512
Jet2.com – written evidence (LIC0156).....	533
John Gaunt & Partners – written evidence (LIC0054).....	537
John Gaunt & Partners – supplementary written evidence (LIC0171)	543
Joshua Simons & Associates Ltd – written evidence (LIC0133).....	545
Kent Police – written evidence (LIC0083)	547
Kingscliffe Society – written evidence (LIC0146).....	551
Kuit Steinart Levy LLP – written evidence (LIC0098).....	555
Kurnia Licensing Consultants Limited – written evidence (LIC0162)	560
Lancashire Constabulary – written evidence (LIC0139).....	564
Christopher Lear – written evidence (LIC0003).....	573
Leeds City Council – written evidence (LIC0034)	574
Leicester, Leicestershire and Rutland Licensing Forum – written evidence (LIC0013)	582
Professor Roy Light – supplementary written evidence (LIC0168)	588
Little Theatre Guild of Great Britain – written evidence (LIC0065)	594

Local Government Association – written evidence (LIC0099)	597
Local Government Association – supplementary written evidence (LIC0062)	612
London Borough of Hackney – written evidence (LIC0136)	616
London Borough of Havering – written evidence (LIC0068)	624
London Borough of Hounslow – written evidence (LIC0025)	628
London Borough of Lambeth – written evidence (LIC0134)	639
London Borough of Newham – written evidence (LIC0044)	646
Malcolm McKessar – written evidence (LIC0011)	651
Mayor of London – written evidence (LIC0173)	654
Medway Public Health – written evidence (LIC0066)	662
Middlesbrough Council – written evidence (LIC0073)	667
Mill Hill Park Residents’ Association – written evidence (LIC0080)	675
James Mooney – written evidence (LIC0008)	679
Ian Mowbray – written evidence (LIC0006)	682
Music Venue Trust – written evidence (LIC0058)	684
Music Venue Trust, UK Live Music Group and Musicians’ Union – supplementary written evidence (LIC0174)	688
National Association of Licensing and Enforcement Officers – written evidence (LIC0148)	690
National Federation of Retail Newsagents – written evidence (LIC0107)	697
National Organisation of Residents Associations – written evidence (LIC0024)	701
National Organisation of Residents’ Associations – supplementary written evidence (LIC0160)	707
National Police Chiefs’ Council – written evidence (LIC0115)	710
National Police Chiefs’ Council – supplementary written evidence (LIC0166)	720
Night Time Industries Association – written evidence (LIC0100)	723
Office of the Police and Crime Commissioner for Devon and Cornwall – written evidence (LIC0153)	733
Paddington Waterways and Maida Vale Society – written evidence (LIC0144)	739
Pinsent Masons LLP – written evidence (LIC0074)	741
Plymouth City Council – written evidence (LIC0048)	749
Michael Pollard – written evidence (LIC0002)	759
Poppleston Allen – written evidence (LIC0105)	761
Punch Taverns – written evidence (LIC0087)	768
Royal Borough of Greenwich – written evidence (LIC0176)	778

Sainsbury's – written evidence (LIC0046).....	782
Sainsbury's – supplementary written evidence (LIC0170)	795
Sandwell Metropolitan Borough Council – written evidence (LIC0026)	797
John Saunders – written evidence (LIC0067)	802
Scarborough Borough Council – written evidence (LIC0014).....	804
Scarborough Borough Council Licensing Committee – written evidence (LIC0145)	810
Scotch Whisky Association – written evidence (LIC0092)	814
Scottish Health Action on Alcohol Problems – written evidence (LIC0032).....	820
Sedgemoor District Council – written evidence (LIC0007)	829
Sedgemoor District Council Licensing and General Purposes Committee – written evidence (LIC0076)	831
Sefton Metropolitan Borough Council – written evidence (LIC0084)	838
Stuart Seydel – written evidence (LIC0005)	840
Caroline Sharkey – written evidence (LIC0119)	843
Abigail Shepherd – written evidence (LIC0070)	846
James Sloan – written evidence (LIC0020)	848
Society of Independent Brewers – written evidence (LIC0093).....	852
Soho Society – written evidence (LIC0050)	857
South Derbyshire District Council – written evidence (LIC0151)	861
South Holland District Council – written evidence (LIC0116)	863
South Somerset District Council – written evidence (LIC0019).....	866
South Tyneside Council – written evidence (LIC0027).....	870
South Wales Police – written evidence (LIC0072).....	882
St Austell Town Council – written evidence (LIC0051)	888
St Edmundsbury Borough and Forest Heath District Councils – written evidence (LIC0060)	890
St Peter's Residents' Association – written evidence (LIC0104)	894
Staffordshire Police – written evidence (LIC0037).....	898
Councillor Clive Stevens – written evidence (LIC0077).....	901
Suffolk Coastal District Council and Waveney District Council – written evidence (LIC0029)	904
Sunderland Health and Wellbeing Board – written evidence (LIC0110).....	910
Sussex Police – written evidence (LIC0042).....	924
Sustainable Acoustics – supplementary written evidence (LIC0172)	933
Telford and Wrekin Council – written evidence (LIC0057).....	938

Thomas and Thomas Partners – written evidence (LIC0131).....	941
TLT Solicitors – written evidence (LIC0112).....	945
UK Health Forum – written evidence (LIC0035).....	958
UK Music – written evidence (LIC0096).....	961
University of Westminster – written evidence (LIC0137).....	970
Watford Borough Council – written evidence (LIC0106).....	973
Waverley Borough Council – written evidence (LIC0117).....	977
Welsh Government – written evidence (LIC0102).....	979
West Midlands Neighbouring Authority Working Group (Licensing) – written evidence (LIC0052).....	983
Westminster City Council – written evidence (LIC0090).....	988
Wine and Spirit Trade Association – written evidence (LIC0130).....	1002
Wirral Council – written evidence (LIC0053).....	1018
Emily Wolfe and Simon Margetts – written evidence (LIC0018).....	1027
Emily Wolfe – written evidence (LIC0030).....	1030
James Wood – written evidence (LIC0010).....	1031
Worcestershire County Council – written evidence (LIC0040).....	1032
Working Men’s Club and Institute Union Limited – written evidence (LIC0088).....	1038

Access Association – written evidence (LIC0055)

Question 1.

Are the existing four licensing objectives the right ones for licensing authorities to promote? Should the protection of health and wellbeing be an additional objective?

The Access Association feels that the existing four licensing objectives, of prevention of crime and disorder, public safety, prevention of public nuisance and protection of children from harm, are inadequate for ensuring that all members of the public - including disabled people - have equality of opportunity in terms of accessing the licensable activities in question.

Currently, under the Equality Act 2010, if a disabled person cannot access goods, facilities or services due to his or her disability, it is the individual disabled person's responsibility to 'take action' against the service provider acting in a discriminatory manner. The Access Association has questioned this approach in the past, including via evidence submitted to the House of Lords Select Committee investigating the effectiveness of the Equality Act 2010 (in 2015). It is considered unacceptable that, under existing Equality Act provisions, and away from any Building Control or Planning requirements, disabled people are themselves effectively responsible for removing barriers to inclusion that they may experience in life. Disabled people should not have to spend their time and resources taking legal cases against service providers who may be acting in a discriminatory manner - disabled people should be able to get on with their life like anyone else in society.

It is felt that society has a vital part to play in creating a barrier-free country in which everyone has the opportunity to participate fully and equally, should they choose to do so. The Licensing Act and the mechanisms through which it operates present an ideal opportunity to create accessible and inclusive licensed premises and activities which will, in turn, offer consumers and members of the public, in particular disabled people, greater freedom of choice. The Licensing Act and its processes already exist, and could be added to / amended in the form of an additional objective to achieve a more inclusive, barrier-free environment for disabled people.

The question asks whether an additional objective / heading of 'protection of health and wellbeing' should be added to the Licensing Act. Access and Inclusion could possibly come under such a heading, but there are concerns with such an approach. If access and inclusion requirements were placed under this objective, there are concerns that these requirements could be overlooked and missed. It is felt that access and inclusion do not necessarily fit under this heading.

One example of such an approach, where a subject does not quite fit under a specific objective, is that of 'public safety'. It could be argued that access and inclusion for disabled people should already be 'covered' by the objective of public safety i.e. disabled people are members of the public and they should be able to use a premises safely. However, this link

has not been made. Many Access Association members work within local authorities who have licensing powers, and have, in the past, made this argument. Yet, other than in the field of marriage licensing (in some cases), it has not been successfully argued that access and inclusion for disabled people should be assessed / considered under the heading of ‘public safety’.

Unless very prescriptive additional guidance is provided, it is unlikely that access and inclusion could effectively be assessed under any of the existing objectives. With very prescriptive guidance, access and inclusion could be covered by the additional objective of ‘protection of health and wellbeing’, or by a separate ‘access and inclusion’ objective.

The Access Association feels that a basic level of access and inclusion should be an objective of the Licensing Act.

This basic level would need to be governed / defined by the phrase / concept of ‘reasonable provision’, (as per other equality related legislation), to take into account the wide range of existing buildings / premises which are licensed. It is felt, however, that ‘reasonable provision’ does need to be defined to have any meaning, and should be defined, as a minimum, as:

- a) People being able to gain access to the premises, including people who require level access
- b) People being able to exit the premises in an emergency evacuation situation, including people who require level access
- c) Suitable toilet provision, including an accessible toilet
- d) The ability for all users to access the service and be served.

‘Reasonable provision’ in terms of the above suggested minimum standard would need to be defined on a case by case basis, taking into account the size and scale of the premises in question.

Licensing authority Officers would need to be responsible for assessing ‘access and inclusion’. This could be easily achieved with training and adequate guidance documentation, or, where licensing authorities are based in a local authority, with the involvement of an Access Officer, (which many of the Access Association’s members are employed as). Access Officers and other access professionals could provide advice and guidance on the subject.

The Licensing Act could potentially make a huge difference in terms of access and inclusion for disabled people in this country, and the Access Association feels that this opportunity should be pursued under the aim of offering greater freedom of choice to consumers, particularly disabled people, who, it could be argued, are failed by the Act in its current form.

The Access Association would be happy to present evidence in person, and assist further, if the Committee requires further information on the issues highlighted above.

2. Should the policies of licensing authorities do more to facilitate the enjoyment by the public of all licensable activities? Should access to and enjoyment of licensable activities by the public, including community activities, be an additional licensing objective? Should there be any other additional objectives?

The Access Association feels that licensing authorities should be required to do more to facilitate the enjoyment, by the public, (particularly disabled people), of all licensable activities. They should allow older and disabled people to enjoy, and participate in, activities on an equal standing with others; activities need to be accessible, and a basic, minimum level of access and inclusion needs to be provided.

The existing four licensing objectives of prevention of crime and disorder, public safety, prevention of public nuisance and protection of children from harm, are inadequate in ensuring that all members of the public, including disabled people, have equality of opportunity in terms of accessing the licensable activities in question. Currently, under the Equality Act 2010, if a disabled person cannot access goods, facilities or services due to his or her disability, it is the individual disabled person's responsibility to 'take action' against the service provider acting in a discriminatory manner. The Access Association has questioned this approach in the past, including via evidence submitted to the House of Lords Select Committee investigating the effectiveness of the Equality Act 2010 (in 2015). It is considered unacceptable that, under existing Equality Act provisions, and away from any Building Control or Planning requirements, disabled people are themselves effectively responsible for removing barriers to their inclusion that they may experience in life. Disabled people should not have to spend their time and resources taking legal cases against service providers who may be acting in a discriminatory manner. Disabled people should be able to get on with their life, like anyone else in society.

It is felt that society has a vital part to play in creating a barrier-free country in which everyone has the opportunity to participate fully and equally, should they choose to do so. The Licensing Act and the mechanisms through which it operates present an ideal opportunity to create accessible and inclusive licensed premises and activities, which will, in turn, offer consumers and members of the public, in particular disabled people, greater freedom of choice. The Licensing Act and its processes already exist, and could be added to / amended in the form of an additional objective to achieve a more inclusive, barrier-free environment for disabled people.

Unless very prescriptive additional guidance is provided, it is unlikely that access and inclusion can be effectively assessed under any of the existing objectives. With very prescriptive guidance, access and inclusion could be covered by the additional objective of 'protection of health and wellbeing' (see response to question 1.), or by a separate 'access

and inclusion’ objective, with the latter being preferable, to avoid any mis-interpretation or dilution of the key issue, i.e. ensuring access and equality for disabled people.

The Access Association feels that a basic level of access and inclusion should be an objective of the Licensing Act.

This basic level would need to be governed / defined by the phrase / concept of ‘reasonable provision’, (as per other equality related legislation), to take into account the wide range of existing buildings / premises which are licensed. It is felt, however, that ‘reasonable provision’ does need to be defined to have any meaning, and should be defined, as a minimum, as:

- a) People being able to gain access to the premises, including people who require level access
- b) People being able to exit the premises in an emergency evacuation situation, including people who require level access
- c) Suitable toilet provision, including an accessible toilet
- d) The ability for all users to access the service and be served.

‘Reasonable provision’, in terms of the above suggested minimum standard, would need to be defined on a case by case basis, taking into account the size and scale of the premises in question.

Licensing authority Officers would need to be responsible for assessing ‘access and inclusion’. This could be easily achieved with training and adequate guidance documentation, or, where licensing authorities are based in a local authority, with the involvement of an Access Officer, (which many of the Access Association’s members are employed as). Access Officers and other access professionals could provide advice and guidance on the subject.

Access to, and enjoyment of, licensable activities by the public, including community activities, should be an additional licensing objective, but it is felt that specific reference to access and inclusion should be made.

The Licensing Act could potentially make a huge difference in terms of access and inclusion for disabled people in this country, and the Access Association feels that this opportunity should be pursued under the aim of offering greater freedom of choice to consumers, particularly disabled people, who, it could be argued, are failed by the Act in its current form.

The Access Association would be happy to present evidence in person and assist further, should the Committee require any further information on the issues highlighted above.

31 August 2016

Action with Communities in Rural England – written evidence (LIC0059)

ACRE is the national charity supporting rural community action through its founder members, the Rural Community Councils (RCCs) across England. The 38 RCCs are independent local development agencies, based at county level, addressing social, economic and environmental challenges in rural areas. They provide help, support and advice for community led action in rural areas throughout England. Our vision – to be the voice of rural communities – is supported by the wealth of evidence and intelligence on rural matters that we collect from our members.

ACRE delivers the national information and advice service for 10,000 village halls across rural England through its Network of 38 RCCs and co-ordinates the National Village and Community Hall Network.

Public Call for Evidence

Village hall charities are low risk venues providing entertainment (fetes, live music, theatre and social activity for the local community). Alcohol is made available as ancillary to the activities where requested. As far as we are aware, they do not cause local licensing and police authorities' significant problems. In effect they are self-policing as local people value and respect the communities they live in and village halls provide activities to create a more cohesive community. The Government statement in the introduction to this Call for Evidence is not relevant to village hall charities.

ACRE produced an Information Sheet, Entertainment in village halls, which helps hall committees understand the legislation requirements and changes.

The introduction of the Licensing Act 2003 in 2005 caused an upheaval for the 10,000 village hall charities and similar rural community buildings across England. By 2009, 75% of village halls held a Premises Licence approximately a third of those included alcohol on the licence (we suspect this may now be reduced). Hall management committees were expected to meet the same criteria as pubs and clubs who had paid staff and access to legal advice.

ACRE welcomed the opportunity, offered by the Department for Culture Media and Sport and latterly the Home Office, to input to working groups, consultations and local authority guidance when the Regulations for the 2003 Act were being put in place. The introduction of the Legislative Reform (Supervision of Alcohol Sales in Church and Village Halls) Order 2009, the Live Music Act 2012 and the Deregulation Act 2015 has lessened the burdens of compliance, but in turn complicated the situation for many hall management committees as they try to understand the changes for village hall charities.

However, the above workload and associated cost to input to the Regulations and subsequent changes could have been avoided if Government had understand the organisations and situations likely to be impacted on by the legislation and sought a dialogue and suggestions so as to avoid unforeseen consequences. Government should

respond to well-presented and evidenced cases from representative Networks and not regard it as lobbying (as is sometimes the case). Putting evidence and cases together creates work for under resourced organisations and volunteers and for civil servants charged with compiling responses but it avoids work to make changes once the Act is in place. See **Appendix for additional information.**

Licensing objectives

1. The intentions of the four licensing objectives are clear and can be enforced using other legislation that enables authorities to take appropriate action should it be necessary to do so. We believe that the protection of health and wellbeing would be difficult to introduce as an objective, especially to regulate for and be harder to enforce.
2. Local licensing policies are the appropriate vehicle to encourage and facilitate licensable activity for the public and in communities. In rural communities Town and Parish Councils are well placed to assist in putting those policies into practice. Access and enjoyment of licensable activities does not need to be a licensing objective. The four as set out in the 2003 Act are appropriate.

The balance between rights and responsibilities

3. ACRE was pleased at the success of the Live Music Act 2012. In 2009 92% of village halls responding to our research had live music on their Premises Licence. Music is an important element of entertainment in rural communities and village halls are often the place where young people begin their musical careers and learn their trade. Touring musicians and artists are a regular feature in village halls' calendars. For the majority of village halls the audience limit of 200 was appropriate but the increase to 500 enables larger community events. The Late Night Levy and Early Morning Restriction Orders have not impacted on village halls as far as we are aware although we would envisage there may be some impact on urban community centres, which often have the functions as village halls?
4. We have been informed that Planning and Licensing Departments do not always share information effectively. Two of ACRE's local advisers in the West Midlands conclude that licensing authorities are passive and, so long as village halls don't appear to have problems or ask any questions, they leave them alone!

Comments from hall committees:

- A. A village hall committee member in the Stockton on Tees area told us *"The Licensing Act 2003 is fairly clear and straightforward. However amendments*

to it make the present position difficult to understand and, if it is further amended, that difficulty will be still greater” He went on to say “It is quite difficult to get to see an officer and then they do not seem to know that permission is not needed at (say) a wedding reception when alcohol is given as part of the wedding breakfast. The officer I managed to see thought it was needed until I got him to check with his legal department”

- B. *“Our Village Hall has had a licence for several years. It was exceptionally hard filling in the forms but Leeds County Council was very helpful. The forms cover everything from village halls to strip clubs so there is a lot of extraneous form filling. The cost of announcing the licence application in the media is horrendous and Leeds allowed us to make the announcement in our village magazine which was free. We have experienced no problems with VH users or with neighbours but we are very conscious of the fact that we do have neighbours. We feel that a streamlined form for village halls would have helped a lot but it is important that H&S guidelines are followed.”*
- C. *“We have just applied for a full premises licence from Scarborough Borough Council who was in fact very helpful but it is an expensive process for an establishment which is a charity run by volunteers who depend on fundraising in a small village for their income. We were also somewhat confused by conflicting advice given us about no longer needing a full licence and applying for a CAN instead. Scarborough Borough Council told us that this was not possible so we ended up going for the full one.”*

Licensing and local strategy

5. Our knowledge in this area is limited. We are aware that the 2003 Act has encouraged licensing authorities to consider and regularly review their policies with regard to entertainment and licensing. In addition discussions took place in relation to supermarkets and the regulation of the cost of alcohol and sales to those underage.
6. Licensing and planning policy should be integrated more closely.

Crime, disorder and public safety

7. In our opinion the knowledge of licensing and police authorities varies and they are not always aware of licensing legislation outside of that relating to Pubs, Clubs and larger commercial venues. ACRE’s adviser in Durham has worked with the local licensing officer to produce factsheets to assist village halls and communities to understand their responsibilities and liabilities and they have been helpful and proactive. In contrast a Community Centre, albeit in London, had problems with the local police regarding an event that was allegedly being held without appropriate licences. ACRE and Community Matters (now disbanded) obtained a Barrister’s opinion to support other

guidance material that had been provided by the Centre and ourselves and rejected by the police. All parties were very grateful to the Barrister for the pro bono work he carried out to assist and prove the police were incorrect in their assessment of the situation.

8. Not applicable

Licensing procedure

9. We agree that licensing procedure has become increasingly complex to explain to village hall committees due to the changes over the last 10 years and because committee members do not always pass on relevant information to new members. However, ACRE and its Network of Advisers do not receive complaints and queries on a regular basis and licensing officers do not report any significant problems with village hall premises.

Attempting to simplify the procedure might inadvertently make it more complicated.

10. Not applicable

Sale of alcohol for consumption at home (the off trade)

11. Not applicable

Pricing

12. Not applicable

Fees and costs associated with the Licensing Act 2003

13. It is usually the unintended consequences of a change that have an impact. Locally set fees will remove the [exemption from fees](#) for a Premises Licence where alcohol is not included in a village hall's licence. Where alcohol is included village halls pay the same fees as other premises licensed for the provision of alcohol, which are aligned with rateable value. However, it is not now necessary for all village halls to hold a Premises Licence following the Deregulation Act 2015 so the loss of this exemption may not have such an impact as it would have done previously. Nonetheless its removal must be carefully considered.

During 2014 ACRE submitted a response to the Home Office consultation making a case against locally set fees. This was supported by circa 50 village hall management committees. The ACRE response, can be made available, but it highlighted the following main points:

- Village halls and similar licensed premises in rural areas with low key activity would inevitably be subsidising the costs of policing and enforcement in nearby towns and cities. We suggested that where a

village hall has a negative impact on the environment due to its low key activity and alcohol sale fees should be set accordingly.

- There would be disparities between village halls bordering each other but in different local authority areas.
- There were no clear criteria for how local authorities would set their fees and suggested fee levels would have meant a significant increase.
- The suggested cap of £100 for a Temporary Event Notice (TEN) was considered much too high. The current cost of a TEN is £21 (although we recognise that this fee has been in place since 2005 with no increase).

The impact assessment contained in the consultation didn't appear to take into account the impact on village halls that would chose to retain their Premises Licence. At that time ACRE had concerns that the Government had taken the view that because of the pending deregulation and possible implementation of the Community Ancillary Sellers Notice (CAN) the burden had been lifted from community premises. We did not have any evidence that village halls were intending to rescind their Premises Licences.

We still have no further information about the implementation of the CAN and the possibilities for village halls to use it so our comments in that consultation response still stand.

International comparisons

14. Not applicable

31 August 2016

Admiral Taverns – written evidence (LIC0124)

Introduction

Admiral Taverns is one of the leading tenanted pub companies in the United Kingdom. We currently have circa 900 tenanted pubs across England, Wales and Scotland.

Our main aim in writing this response is to ensure that the committee is aware of the numerous legislative changes in this area which we believe have imposed unnecessary administrative burden and strain on what are essentially small businesses.

As a member of the BBPA we support the majority of the findings of the BBPA response and highlight the 23 changes the BBPA list to the licensing regime since 2005. With the best will and intent in the world, this sheer volume of change is causing problems and additional cost for these small businesses as they try to comply with them.

We also believe there are a number of areas whereby both the regulations and enforcement practices can be simplified to the benefit of businesses (and in many cases licensing authorities). Despite a number of deregulation drives from various governments since 2005, a number of unnecessary and costly processes in licensing law have yet to be removed or simplified.

Consultation questions

1. Are the four licensing objectives the right ones for licensing authorities to promote? Should the protection of health and well-being be a licensing objective?

We believe that the current licensing objectives are the right ones for the industry to work within and towards, we do not believe that health and well-being should be considered as a licensing objective.

The problem with using health and well-being is that it can become subjective and focusses on 'areas' and not the actions of individual premises. A licensed premises that operates responsibly in an area of cheap, loss leading alcohol in the on-trade can be held accountable for data to which it does not contribute. Similarly, the 'last pub' rule prior to a visit to A&E does not always take account where the alcohol has been purchased. Under the Act individual premises should be assessed on their respective merits and actions.

We believe that the best way of ensuring good practice and local responsibility is by supporting locally led schemes such as Pub Watch or Best Bar none which are great examples of the on-trade taking responsibility and coming together to improve the night time economy of an area.

We also believe that the vast majority of alcohol related problems are created away from the on-trade where there is a trained Designated Premises Supervisor to supervise responsible drinking and the age of the individuals consuming alcohol again supported by

the excellent Challenge 21 schemes prevalent in the on-trade. There are no such controls in the off-trade once alcohol has left the premises.

Should the policies of licensing authorities do more to facilitate the enjoyment by the public of all licensable activities? Should access to and enjoyment of licensable activities by the public, including community activities, be an additional licensing objective?

We do not believe that there should be any more changes to the licensing objectives. We do, however, believe that there is currently an in-balance between the enjoyment of licensable activities by the community at large and the sometimes unreasonable wishes and expectations of perhaps one neighbour in a locality.

There is always a balance to be struck in these situations but it seems at times that the over-sensitive wishes of the minority at times can impair quality community led family time for the majority. An example of this may be the use of a beer garden by families on a weekend afternoon which is threatened and/or restricted by one neighbour's complaint despite them moving next to the pub.

Should there be any other additional objectives?

No.

Has the Live Music Act 2012 done enough to relax the provisions of the Licensing Act 2003 where they imposed unnecessarily strict requirements?

Yes, we believe the Live Music Act was an excellent piece of deregulation that simplified the provision of Live Music in licensed premises while retaining a balance for the views of local residents with the 11pm curfew.

It is a simple and easy to understand piece of legislation which became essential to tidy up the hole left in the Licensing Act by the failure to replace the two in a bar rule of the 1964 Licensing Act. The Live Music Act also removed the unnecessary administrative burden of small businesses having to undergo potentially costly variations to allow their businesses to commission entertainment they had historically always been entitled to hold.

The right to hold live music in community pubs without varying the premises licence is essential in allowing these small businesses to maximise their revenues and run their businesses their way for the wishes and needs of their community as well as creating opportunities for local musicians to play without restriction and develop their hobbies and skills.

Are the introductions of late night levies and Early Morning Restriction Orders effective, and if not, what alternatives are there? Does the Licensing Act now achieve the right balance between the rights of those who wish to sell alcohol and provide entertainment and the rights of those who wish to object?

We do not believe the Late Night Levies (LNLs) or Early Morning Restriction Orders (EMROs) are effective, nor do we believe they are fair and/or necessary.

The LNLs fail to allocate responsibility for poorly managed premises and impose a disproportionate cost burden on well-run small businesses for what may be a desire to have just an extra half hour's trading time beyond midnight.

LNLs are simply another direct tax on small local businesses who have little choice but to pay approximately £700 or risk losing trade and regular custom by cutting back their hours. By comparison to the cost of a premises licence on many small pubs of £180 that cost is disproportionate. There will also be instances where licensees have paid perhaps £2,000 on council fees and solicitors and newspaper fees for a variation which they are now having to pay an additional £700 a year to supplement.

Moreover, many pubs with extended hours do not use them regularly and may be in breach of the LNL hours only once a month for a special event, and yet they are still required to pay the full levy.

Local pubs have been constantly hit in recent years with the impact of the smoking ban, excessive rises in utility costs, increases in the national minimum wage and the impact of un-checked low-cost alcohol sales in the off-trade which has changed drinking habits and created the pre-loading culture which can take trade from licensed premises into the off-trade and yet it is the on-trade that is largely accountable for the cost of the LNLs.

A restriction in the hours of responsibly run licensed pubs will also have an impact on the wider late-night economy of taxi drivers, take-away shops and restaurants.

As stated earlier, we believe the correct solution to creating a vibrant and safe night economy is to allow local people to provide local solutions such as BID schemes, Better Bar None, Pubwatch etc. This seems to be the way that sensible Local Authorities are starting to think and it is noticeable that Cheltenham, one of the first proponents of the LNL scheme have now moved towards recommending a BID which allows any monies generated from all businesses in the area to be allocated to that area as the BID believes is necessary such as taxi marshalls.

Do all the responsible authorities (such as Planning, and Health & Safety), who all have other regulatory powers, engage effectively in the licensing regime, and if not, what could be done? Do other stakeholders, including local communities, engage effectively in the licensing regime, and if not, what could be done?

Our experience is that the police, EHO and council licensing authorities actively engage in the licensing regime. They are generally sensible to work with, helpful and use consultation and advice as a forerunner to any enforcement action which we believe is the intention of the Act. This usually resolves issues where there is a will of all parties to work to resolution.

The other authorities usually add little to the process and with good reason as generally most pub related issues do not require their presence or feedback. Occasionally we find that representations are made 'for the sake of it' which add little to the real issue and simply waste time at hearings from resolving the matter satisfactorily.

We find the methods of some trading standards teams on test purchases questionable in sending in 17 year olds with beards and suits with adults as would be partners to trick the seller that the individual is 21, if that individual looks over 21 then to fine and prosecute seems unfair to us.

We generally have good relations with the police we deal with but find that Chief Inspector led initiatives can cloud the conditions that the situation at a premises really warrants while the acceptance of blanket conditions in areas or a threat of licence review should not be happening as this is a waste of everybody's time.

We support the BBPA view that there should be an open consultation and review of the section 182 guidance to make totally clear the roles and responsibilities of responsible authorities. The section 182 guidance is, in our opinion, the key document that should be referred to in ensuring consistency in application of licensing law in England and Wales, and should be promoted as such instead of being used sporadically in certain areas.

Where licensing authorities or the police go outside the scope of what was intended from the 2003 Act, challenging such instances through the Magistrates Court, or even at a review hearing, is complex and costly even for large pub operators – let alone small businesses. A revision and promotion of the section 182 guidance would, in our view, rectify these issues within the original intentions of the Licensing Act.

Licensing is only one part of the strategy that local government has to shape its communities. The Government states that the Act “is being used effectively in conjunction with other interventions as part of a coherent national and local strategy.” Do you agree?

Properly used the Act is effective as it should encourage dialogue between licensees, pubcos and the responsible authorities to adapt pro-active strategies like Pubwatch to work on prevention of problems as opposed to heavy handed reactive enforcement.

We believe more focus and support should be given to locally led initiatives and business and licensee groups empowered to improve the area they live and operate in.

Should licensing policy and planning policy be integrated more closely to shape local areas and address the proliferation of licensed premises? How could it be done?

We do not believe there is a proliferation of licensed premises nor do we believe that a set number of licensed premises in an area is automatically a bad thing for the locality. We are constantly told that pub numbers are reducing every week and the truth as with most things lies somewhere in the middle. There is always a need for responsibly managed, innovative, vibrant pubs, bars and restaurants and ultimately the local market will dictate its own supply and demand requirements.

We also believe that such high quality outlets have real community benefits both economically and socially and should be encouraged.

With regard to the integration of planning and licensing, both are complex systems. The section 182 guidance to the Licensing Act allows for the creation of Cumulative Impact

Policies (CIPs) with plans in place to put these on a statutory footing. These CIPs should be the exception rather than the norm as they restrict development and initiative and can allow stale ideas to become un-challenged.

Are the subsequent amendments made by policing legislation achieving their objectives? Do they give the police the powers they need to prevent crime and disorder and promote the licensing objectives generally? Are police adequately trained to use their powers effectively and appropriately?

LNLs and EMROs have not been effective as commented on earlier.

We believe the police have all the powers they need to prevent crime and disorder and to promote the licensing objectives. Generally speaking these powers are used sensibly but there will always be some exceptions. We would always encourage active consultation from all the responsible authorities prior to enforcement save for the most exceptionally serious incidents where emergency powers are required.

Should sales of alcohol airside at international airports continue to be exempt from the application of the Act? Should sales on other forms of transport continue to be exempt?

We believe alcohol should always be sold and consumed in a safe and responsible manner. Beyond that we have no comment as this is not an area of expertise for our business.

The Act was intended to simplify licensing procedure; instead it has become increasingly complex. What could be done to simplify the procedure?

We agree that the Act and licensing regime has become increasingly complex since 2005 with some good and bad additions to the legislation. What must always be remembered when making legislative changes is that we are dealing with small businesses as the end users of this legislation.

We believe there are areas that could be simplified saving both time and cost for all parties.

The requirement to advertise in a local newspaper as well as provide on-site notices is out-dated. Many councils actually write to residents in the immediate locality and this would be cheaper and have more impact than a small advert in a paper that many may no longer read. Moreover, the cost of these adverts is in some areas outrageous with licensees forced (yes forced as there is no alternative) to pay £700 or £800 for an advert as opposed to £150 or £200 in other parts of the country for exactly the same ad. It is extortionate and as local newspapers get bought up this price control practice is spreading. If newspaper advertisement is to continue then pricing recommendations and controls should be introduced.

We believe it would be of more benefit, cheaper and gain more traction to post a letter to the immediate neighbours within a 100 square yards area as well as the on-site notice.

With regard to the circulation of forms to the nine responsible authorities, the Act requires that all authorities receive a copy of all licence applications. This includes copies of any

plans etc. accompanying the application. Where an applicant makes their application electronically, the Licensing Authority is responsible for the distribution of the application to each of the responsible authorities. However, where an applicant makes a paper based application in the traditional way, they are responsible for sending eight copies of their application to the various responsible authorities and the Licensing Authority, which incurs an average cost of £70 to £80. It would be helpful if this process could be streamlined, with the Licensing Authority taking overall responsibility for the distribution of all applications to responsible authorities, the vast majority of which are within the local authority itself, as is currently the case with electronic applications.

Minor Variations were a welcome introduction to the licensing system in 2009, as before this even minor changes to the premises licence such as removing redundant conditions or small alterations to the fabric of a pub required a full variation with the significant cost it attracts. However, every local authority interprets the definition of ‘minor’ differently and one authority may accept an application as a minor but another council will reject the same minor variation which means re-submitting the application as full application and this increases costs and impacts on timescales. For example, a minor variation will take on average 10 working days, with a full variation there is a 28 day representation period. A minor variation application costs £89 with no requirement for advertisement in the local press. A full variation costs between £190 and £315 (depending on the fee banding of the premises) and there are subsequent costs associated with advertising the application in the press as outlined above. A real-life example can be seen with one member brewery reporting that one licensing authority rejecting a minor variation for a new window and removal of a lobby in a specific pub – with the application costs increasing from £89 to £438.48. This compared with a licensing authority in the neighbouring county allowing a similar refurbishment to take place only with a plan change required, attracting a fee of only £10.50 for essentially the same change to the pub.

With regard to representations made under the Act, there is inconsistency between licensing authorities as to when they representations are filed against premises licence applications by the licensing authority (or other responsible authorities). Last minute representations do not then enable negotiation without the need for a hearing to determine the application, even if there is no reason given for a representation being filed and is clearly a ‘holding’ representation. There is also inconsistency as to when licensing authorities notify the applicant of representations to an application. Some authorities will provide details of representations as soon as they are received, whilst others will wait until the representation period has ended which leaves no time for negotiation and leads to an automatic hearing.

Blanket or unnecessary conditions added to premises licences have been an issue with the licensing regime since 2005. We are told by the BBPA submission of examples from BBPA members of police and licensing authorities filing representations with blanket conditions which can be irrelevant, costly and demonstrating that applications are not being dealt with on an individual basis, which is the purpose of the Act. Conditions can be challenged and

dropped, but only after a costly licensing hearing for the premises licence applicant. The section 182 guidance does set out what should be expected in terms of licence conditions, but this is not always followed. Examples reported to the BBPA of unreasonable or unenforceable conditions where no evidence is presented for their application include:

- Polycarbonate or plastic drinking vessels
- expensive CCTV systems
- the provision of lollipops
- membership of voluntary bodies (e.g. Pubwatch schemes)
- requirement for the Designated Premises Supervisor to be on site at all times
- duplicating existing legislation (e.g. health and safety, disability law)
- restrictions on opening hours
- minimum pricing/price controls
- mandatory door staff

There have also been reported issues with payments and poor processes within certain local authorities, using antiquated system that lead to missed or duplicate payments. We would urge a fully electronic payment process for all licences and fees under the Act. This is also true of online applications – in particular since 2009 an EU directive stipulates that all local authorities should have an online application facility for all licences and permits they issue. To date, there are around 80 local authorities that still do not have them. This is an administrative burden on both fronts (service of manual applications and requesting cheques which must be received by local authority before the pub site can legally trade).

What could be done to improve the appeal procedure, including listing and costs? Should appeal decisions be reported to promote consistency? Is there a case for a further appeal to the Crown Court? Is there a role for formal mediation in the appeal process?

A review of the section 182 guidance and a reinforcement of the principles therein would bring clarity in order to prevent appeals.

We have found most Councils are sensible in negotiating ways of avoiding or controlling appeals to prevent unnecessary costs, however, we have a number of examples where Councils have stubbornly and foolishly failed to engage in discussions during the appeal process only to lose and meet costly legal fees we have incurred at the tax payer's expense. There should be an obligation on all parties in such processes to be encouraged to settle the costs consequences of the appeal process through mediation or other and at an early stage in that process to prevent legal fees incurred becoming a barrier to resolution.

Given the increase in off-trade sales, including online sales, is there a case for reform of the licensing regime applying to the off-trade? How effectively does the regime control

supermarkets and large retailers, under-age sales, and delivery services? Should the law be amended to allow licensing authorities more specific control over off-trade sales of “super-strength” alcohol?

We believe the focus of Government and the responsible authorities is on controlling the on-trade because that is easier to do and to be seen to do.

The only real control that could be effective in the off-trade is price control or minimum pricing as that is the only way to stop cheap alcohol being consumed in un-controlled environments. However, we do not believe there is any appetite to achieve this.

Should alcohol pricing and taxation be used as a form of control, and if so, how? Should the Government introduce minimum unit pricing in England? Does the evidence that MUP would be effective need to be “conclusive” before MUP could be introduced, or can the effect of MUP be gauged only after its introduction?

We do not see the relevance regarding pricing and taxation in an evaluation of licensing law as opposed to a separate question which is the future of the community pub.

The beer and pub sector is committed to reducing the harmful use of alcohol. However, pricing and taxation are blunt instruments to achieve this, penalising those on low incomes and responsible drinkers. The BBPA supports a tax system and policy measures that encourage the production and consumption of lower-alcohol drinks. Along with targeted interventions, local community partnerships, greater education and awareness and support for pubs where alcohol is consumed in a managed and safe environment, this is our preferred approach to fostering a culture of responsible drinking in the UK

Do licence fees need to be set at national level? Should London, and the other major cities to which the Government proposes to devolve greater powers, have the power to set their own licence fees?

We believe that the fees system should remain as current with fees set nationally and banded based on Non-Domestic Rateable Value. We believe there should be an inflationary adjustment every 5 years to ensure that local authorities costs are protected.

Is there a correlation between the strictness of the regulatory regime in other countries and the level of alcohol abuse? Are there aspects of the licensing laws of other countries, and other UK jurisdictions, that might usefully be considered for England and Wales?

No comment.

2 September 2016

Alcohol Concern – written evidence (LIC0085)

Licensing objectives

1. Are the existing four licensing objectives the right ones for licensing authorities to promote? Should the protection of health and wellbeing be an additional objective?

1.1 The current licensing objectives cover important areas impacted by licensing and the consumption of alcohol. However, the absence of public health as a fifth licensing objective has acted as a constraint on using licensing to proactively address health outcomes, where health concerns are on a lesser footing to the existing licensing objectives.

1.2 Research from the Institute of Alcohol Studies suggests that the majority of police representatives, licensing teams and committees and representatives from regulatory services are in favour of a fifth licensing objective around public health.¹ So too are Public Health England, Public Health Wales and the Local Government Association. Further, the LGA has found that 9 out of 10 Directors of Public Health report that there is demand for a health objective.²

1.3 A key lesson from Scotland, where the protection of public health is a licensing objective, is the need for good quality public health data, to map local trends (such as NHS data and statistics on ambulance call-outs) on a ward-by-ward basis. Local authorities will be able to best use this data to inform their licensing decisions if protecting public health is a specific objective.

2. Should the policies of licensing authorities do more to facilitate the enjoyment by the public of all licensable activities? Should access to and enjoyment of licensable activities by the public, including community activities, be an additional licensing objective? Should there be any other additional objectives?

2.1 The Section 182 Guidance should make it clearer that the Act, as administrative law, is to be promoted with a view to the wider public interest, not just the night time economy. This does not always happen in practice,³ and there are many examples of licensed premises, particularly in saturated areas, undermining the local public good. A greater focus on this, both within individual decisions and licensing policies, would help to ensure that decisions are made in a sustainable way and do not undermine the local public good.

¹ Foster. J. and Charalambides. L. (2016) *The Licensing Act (2003): its uses and abuses 10 years on*, London, Institute of Alcohol Studies.

² Local Government Association (Jan 2016) *LGA Survey: Public Health and the Licensing Process*, LGA, online, available from <http://www.local.gov.uk/documents/10180/11493/research+-+health+-+LGA+survey+-+Public+Health+and+the+Licensing+Process+Findings+2+feb+2016/8758dd6d-da38-4221-b23e-b56790fb6e66>

³ *op. cit.* Foster. J., Charalambides. L. (2016), Chapter 4.

2.2 The Equality Act 2010 already places obligations on local authorities to ensure access to licensed venues, and is referenced in the Section 182 Guidance. This could be made more prominent, but there is no need to duplicate the Equality Act within the 2003 Licensing Act.

3. Has the Live Music Act 2012 done enough to relax the provisions of the Licensing Act 2003 where they imposed unnecessarily strict requirements? Are the introductions of late night levies and Early Morning Restriction Orders effective, and if not, what alternatives are there? Does the Licensing Act now achieve the right balance between the rights of those who wish to sell alcohol and provide entertainment and the rights of those who wish to object?

3.1 To date, no Early Morning Restriction Orders (EMROs) have been adopted. The closest we have come to an EMRO is in Blackpool, which despite being labelled the UK's stag and hen capital and consequently suffers considerable levels of binge drinking,⁴ was refused by the licensing committee. Reasons included the potential economic impact on the area (which is not a licensing condition) and that the EMRO was deemed unlikely to have an impact on addressing violent crime. It is our view that greater weight would have likely been placed on valid public health concerns caused by excessive drinking had this been a specific licensing objective as recommended above.

3.2 Alcohol industry representatives have strongly fought EMRO proposals, and this has highlighted the imbalance in resources between the industry and local authorities. Prior to the Blackpool decision, Kate Nicholls, strategic affairs director for the Association of Licensed Multiple Retailers (ALMR) stated that the ALMR would “challenge each and every EMRO proposal that comes forward – we have a fighting fund to do just that... We warn the local licensing authority to proceed with caution.”⁵

3.3 The impact of Late Night Levies has not been formally evaluated, but anecdotal evidence indicates that the levy has encouraged at least some premises to close earlier rather than having to pay, thereby reducing the availability of alcohol in the early hours. The requirement that the levy must be applied across the local authority area to all licensed premises has meant that only a handful of (predominantly urban) local authorities have adopted it to date.

4. Do all the responsible authorities (such as Planning, and Health & Safety), who all have other regulatory powers, engage effectively in the licensing regime, and if not, what could be done? Do other stakeholders, including local communities, engage effectively in the licensing regime, and if not, what could be done?

⁴ Public Health England presentation to Alcohol Concern Cymru's 2014 annual conference. Presentation slides available on request.

⁵ Pescod, A. (14 February 2013) *Blackpool pubs and clubs face early morning restriction which could 'devastate' town*, Morning Advertiser, online, available from <http://www.morningadvertiser.co.uk/Operators/Other-operators/Exclusive-Blackpool-pubs-and-clubs-face-early-morning-restriction-order-which-could-devastate-town> [Accessed 25/08/2016].

4.1 In general it is uncommon for all of the responsible authorities to engage in licensing, and the process would undoubtedly benefit from better involvement, particularly from planning and child protection. In many areas public health bodies would like to engage more but find the lack of a specific objective to be problematic.

Licensing and local strategy

5. Licensing is only one part of the strategy that local government has to shape its communities. The Government states that the Act “is being used effectively in conjunction with other interventions as part of a coherent national and local strategy.” Do you agree?

5.1 The development of the Licensing Act in recent years has included a welcome shift towards crime and disorder issues, with the Modern Crime Prevention Strategy continuing this trend. However, the elephant in the room is the increased affordability of alcohol, driven primarily by the off-trade, which has fuelled alcohol-related harms, and there remains an unwillingness to adopt meaningful policies that address this.

5.2 At a local level the Act can be used in an effective strategic way, using Statement’s of Licensing Policy (SLP) to set out a clear and positive view as to what the public good in relation to licensing requires in an area. Some are also well coordinated with other local strategies, such as the planning strategy, the corporate strategy, or the health and wellbeing strategy.

6. Should licensing policy and planning policy be integrated more closely to shape local areas and address the proliferation of licensed premises? How could it be done?

6.1 Yes, the two should be better integrated, although while this approach may help, it would not necessarily make a significant impact on the proliferation of licensed premises. Another key factor for this is the decision making process and the way in which the locality and evidence are considered.

Crime, disorder and public safety

7. Are the subsequent amendments made by policing legislation achieving their objects? Do they give the police the powers they need to prevent crime and disorder and promote the licensing objectives generally? Are police adequately trained to use their powers effectively and appropriately?

7.1 Numerous pieces of policing legislation have been introduced post 2003 Act. These include the Violent Crime Reduction Act 2006 (introducing drink banning orders); the Police and Crime Act 2009 (mandatory conditions relating to irresponsible drinks promotions and age verification policies); the Police Reform and Social Responsibility Act 2011 (EMROs and LNL); and the Anti-social Behaviour, Crime and Policing Act 2014 (giving police powers to prohibit drinking in public places and confiscate alcohol).

7.2 Strengthening policing powers to address issues caused by excess drinking are welcome, but has arguably been at the expense of directly addressing the shortcomings of the Licensing Act, in particular the reactive approach to the licensing objectives taken by

responsible authorities. Promoting the prevention of crime and disorder should involve examining factors that may lead to crime, and so potentially undermine the objectives. This is a proactive and forward looking view which means that problems are considered and addressed before they are developed, based on the likely future impact of a new license. However, many local authorities do not ‘promote the prevention’, but instead wait for a problem to arise before then trying to manage it. Changing this view would make a significant difference to the way in which the Act is used.

Licensing procedure

8. The Act was intended to simplify licensing procedure; instead it has become increasingly complex. What could be done to simplify the procedure?

8.1 The Act does represent a significant simplification when compared to the previous licensing regime in a number of ways, as it combined alcohol and entertainment, and has greatly clarified the issue around granting closing times. There is a consensus that the Act has also enabled better joint working, both between the regulatory bodies, and between these bodies and the licensed trade.

8.2 In general the alterations to the Act have addressed deficiencies and problems. Some areas within the Act were originally too focused on tourism and the sociable benefits of licensing, while paying too little attention to the problems that can arise. Alcohol is regulated for a reason and it is a mistake to assume that licensing can automatically be simplified without producing knock on problems.

8.3 It is arguable that many of the simplest sections within the Act are the most problematic to administer and enforce, particularly Temporary Event Notices (TENs). These result in significant shortfalls for local authorities; they cost £21 but Westminster Council report that they cost at least £120 to process. Their overly light touch approach has effectively resulted in them working as a loop hole, allowing existing premises to extend their hours with limited oversight. This makes the more regulated elements of the licensing regime harder to enforce.

8.4 As mentioned in previous answers, rather than contemplating additional changes to the Act, a more productive approach would be to ensure that local authorities use the Act, as it is, to its full potential. One key issue here relates to fees, and the system could arguably be both simplified and strengthened for local authorities if they were all able to fund their licensing operations adequately. A second issue relates to the decision making process and the way in which misconceptions about this often favour the licensed trade.⁶ Clarifying these misunderstandings would greatly improve and simplify the process, and could help to address the often wide variations in the application of the Act.

⁶ *op. cit.* Foster. J. and Charalambides. L. (2016), Chapter 14.

9. Should sales of alcohol airside at international airports continue to be exempt from the application of the Act? Should sales on other forms of transport continue to be exempt?

9.1 That sale of alcohol airside at international airports is governed by lease agreements with the airport owners rather than the Licensing Act is odd. It is assumed that a licence is not required by airport bars and restaurants because drinkers won't hang around long enough on the premises to cause problems – however, passengers are usually encouraged by airlines to arrive early prior to their flight, and typically spend significant periods of time waiting for their flights, especially when they are delays. Indeed, an Alcohol Concern survey of holidaymakers found that nearly 1 in 5 said they began their holiday drinking at the airport.⁷ Some passengers will also have pre-loaded before they have arrived at the airport.

9.2 There are potentially serious consequences here. According to the Civil Aviation Authority, almost a quarter of incidents of passenger disruption are attributed to people who arrived at the aeroplane drunk. Some airlines have already taken action, such as Jet2.com which recently announced that sales of alcohol before 8am on board its aircrafts will be discontinued, in a bid to tackle disruptive and abusive behaviour.⁸ However, they are relatively powerless to prevent big drinking at the airport bars beforehand.

9.3 Moreover, test purchase exercises undertaken by police have found that underage sales of alcohol may be higher at airport premises.⁹ There are examples of awareness raising initiatives by the police – for example, Sussex Police at Gatwick airport urging retailers to be vigilant about who they are selling alcohol to, but police powers would undoubtedly be strengthened if they had the ability to prosecute under the Act.¹⁰

9.4 Regarding other forms of transport, the sale and consumption of alcohol on trains can cause specific problems, and can effectively result in additional preloading or on-route loading. In some areas large groups frequently buy large amounts of alcohol from the off-trade, and drink this on the train while traveling to their destination on a Friday or Saturday night. They then arrive in an intoxicated state, causing significant problems. Reportedly this is a particular problem on the east coast mainline, with groups traveling between cities such as Newcastle and York, amongst others.

9.5 Alcohol Concern recommends that controls on alcohol consumption on trains need to be considered in the context of the resources available to implement them. This should

⁷ Research undertaken by Alcohol Concern Cymru in 2014, full results available on request.

⁸ See

http://www.jet2.com/News/Jet2_com_Leads_Travel_Industry_by_Banning_Early_Morning_Sale_of_Alcohol [Accessed 25/08/2016].

⁹ See for example <http://www.telegraph.co.uk/travel/travelnews/8061829/Departure-lounge-pubs-able-to-sell-alcohol-to-under-age-teenagers.html> [Accessed 25/08/2016].

¹⁰ See <http://www.sussex.police.uk/news/police-increasing-patrols-to-target-disruptive-passengers-at-gatwick-airport> [Accessed 25/08/2016].

involve discussions with train operators, local police forces and British Transport Police, and transport workers' unions about the implication for their staff/members.¹¹

10. What could be done to improve the appeal procedure, including listing and costs? Should appeal decisions be reported to promote consistency? Is there a case for a further appeal to the Crown Court? Is there a role for formal mediation in the appeal process?

10.1 The better reporting of appeal decisions would be beneficial, and this could be aided by updating the Section 182 Guidance with case law developments so that it better reflects the practical application of the Act. There is a case for exploring the use of mediation, but local authorities should not be pushed towards unnecessary compromising when they have a clear duty to uphold and promote the licensing objectives in the interests of the local community.

10.2 An important point to make here involves the general quality of licensing decisions. The higher the quality of the original decision, the less likely it is to go to appeal, and if this does happen, the higher the chances of the original decision being upheld. Key factors include ensuring that it is reasonable, based upon relevant local evidence and transparent in its inference and conclusions. Decisions do not have to be absolute and evidenced definitively however, but based on the balance of probabilities. The more that these principles are stressed and explained in the guidance the more likely it is that the act will be applied in a clear and accurate manner.

Sale of alcohol for consumption at home (the off-trade)

Given the increase in off-trade sales, including online sales, is there a case for reform of the licensing regime applying to the off-trade? How effectively does the regime control supermarkets and large retailers, under-age sales, and delivery services? Should the law be amended to allow licensing authorities more specific control over off-trade sales of "super-strength" alcohol?

11.1 The number of off-licence premises has nearly doubled, from 24,000 in 1953 to more than 45,000 today.¹² This has contributed to issues around pre-loading, home drinking and the availability of cheap alcohol on the high street.

11.2 Such issues are arguably best dealt with elsewhere through measures such as minimum pricing (which would have minimal impact on the on-trade) and curtailing irresponsible marketing, but there is also scope for the Licensing Act to be used more effectively. In Scotland, for example, early evidence indicates a ban on multi-buy sales and blanket restriction on off-trade hours from 10am and 10pm has been effective.

11.3 Challenge 21/25 initiatives led by national supermarkets have contributed to the enforcement of the law relating to sales to minors, where test purchasing schemes now

¹¹ See Alcohol Concern Cymru (2010) *Off the rails? Alcohol and public transport in Wales*, London, Alcohol Concern.

¹² Alcohol Concern Cymru (2012) *Full to the Brim? Outlet density and alcohol-related harm*, London, Alcohol Concern.

suggest higher compliance in the off-trade compared to the on-trade. However, the issue ‘proxy sales’ (alcohol purchased by adults for minors) remains difficult to address, and research from Alcohol Concern has shown that minors may also be accessing alcohol through online purchases.¹³

Pricing

Should alcohol pricing and taxation be used as a form of control, and if so, how? Should the Government introduce minimum unit pricing in England? Does the evidence that MUP would be effective need to be “conclusive” before MUP could be introduced, or can the effect of MUP be gauged only after its introduction?

12.1 Numerous studies conducted in both developed and developing countries have shown that alcohol prices have an effect not only on rates of alcohol consumption but also on alcohol-related harm, including mortality rates, crime and traffic accidents.¹⁴ All groups of drinkers respond to changes in alcohol prices, including young people and heavy drinkers.¹⁵ Currently, it is possible to purchase alcohol for as little as 15.5p per unit, meaning that 14 units - the upper weekly limit of what the UK Chief Medical Officer guidelines suggests represent low risk drinking - can be purchased for just £2.17.¹⁶

12.2 Action is urgently needed to effectively control the price of alcohol, and Alcohol Concern strongly contends that the best way to achieve this is to set a minimum unit price below which drinks cannot be sold in the retail market. Minimum unit pricing (MUP) at the suggested price of 50ppu would have a minimal impact on the on-trade, where prices tend to be significantly higher than this, but it would impact most dramatically on the cheapest alcohol in the off-trade.

12.3 The Ban on Below Cost Sales (BBCS) already sets a precedent for a floor price for alcohol, and one which has not been challenged by the licensed trade. However, the current level at which the BBCS is set (a sum of the duty plus VAT for each alcoholic product) is so low as to be almost totally ineffective. It was estimated that on its introduction only 0.7% of alcohol units sold fell below the ban’s threshold, and only 1.0% of units consumed by harmful drinkers. As mentioned above, the floor price for strong white cider at 7.5% is 5p per unit. In contrast, MUP set at a unit price of 45p would affect 23.3% of alcohol units sold, and 30.5% of units sold to harmful drinkers.¹⁷ Since its introduction alcohol duties have been cut, further reducing the effectiveness of the BBCS.

12.4 The effectiveness of MUP would be aided by higher alcohol taxes. Successive cuts and freezes to duty since 2012 have meant that beer duty is now 14% lower than in 2012,

¹³ Alcohol Concern Cymru (2013) *On your doorstep: Underage access to alcohol via home delivery services*, London, Alcohol Concern.

¹⁴ Babor, T. et al. (2010) *Alcohol: No Ordinary Commodity*, Oxford, Oxford University Press, p124.

¹⁵ *ibid.*

¹⁶ Alcohol Concern Cymru (2016) *Cheap booze on our streets*, London, Alcohol Concern.

¹⁷ Brennan, A., Meng, Y., Holmes, J., Hill-McManus, D., and Meier, P.S. (2014) *Potential benefits of minimum unit pricing for alcohol versus a ban on below cost selling in England 2014: modelling study*, BMJ, 349:g5452.

while cider and spirits duty have each fallen by 6%.¹⁸ Raising the price of alcohol through real terms increases in duty is necessary to reverse these dangerous trends.

12.5 For both of these policies, their full impact can only be gauged properly after implementation, if efforts are taken to do so. Yet the weight and creditability of the evidence used to introduce them is much stronger than other policies adopted by the Home Office, such as increased partnership working with the alcohol industry.

Fees and costs associated with the Licensing Act 2003

Do licence fees need to be set at national level? Should London, and the other major cities to which the Government proposes to devolve greater powers, have the power to set their own licence fees?

13.1 The Government should commit to localise licensing fees. Under the Licensing Act 2003 local authorities are only permitted to levy fixed national licensing fees, based on the non domestic rateable value of the licensed premises. These fees fail to adequately cover the actual costs to local authorities of dealing with license applications - the Local Government Association calculates that local authorities have subsidised the alcohol industry by £183 million since 2005.¹⁹

13.2 Locally set fees would enable local authorities to recover what they consider all reasonable costs associated with their licensing functions, including the cost of determining and issuing premises licences, as well as associated functions such as inspections and enforcement.

International comparisons

Is there a correlation between the strictness of the regulatory regime in other countries and the level of alcohol abuse? Are there aspects of the licensing laws of other countries, and other UK jurisdictions, that might usefully be considered for England and Wales?

14.1 Within developed countries, those which experience greater alcohol related harms tend to have a stricter regulatory response. The 2003 Licensing Act attempted to simplify and deregulate licensing but has had to be toughened up in certain areas as a result of this having been taken too far.

14.2 As well as the differences already mentioned in this evidence submission, licensing legislation in Scotland also requires licensing boards to consider whether there is an overprovision of licensed premises, or types of licensed premises in a part of, or all of, their area. A licensing board must refuse new premises licences or extra capacity in areas it deems to be overprovided; or where it considers that any additional licensed premises or capacity would result in overprovision.

¹⁸ Institute of Alcohol Studies (2016), *Budget 2016 analysis*.

¹⁹ LGA media release (27 February 2015) *LGA responds to Government decision to reject locally-set licensing fees*, referenced in Foster. J. and Charalambides. L., (2016).

14.3 Evidence from Australia also lends support for the introduction of a workable EMRO. In Newcastle, Australia, it was found that bringing forward closing times from 5am to 3am resulted in 37% reduction in assaults.²⁰

14.4 Risk based licensing, which is used in various forms in Canada, Australia and New Zealand, also has interesting elements. This approach broadly links licensing fees and regulatory strength to the type of premises and its operating schedule. Types of premises, such as restaurants, bars or clubs, are ranked by their potential risk, and pay a different base rate depending on this. Hours of operation can also be linked to the fee, with some states in Australia charging incremental amounts for every hour that a premise opens after midnight. Compliance history can also have an impact on fee level.²¹

14.5 This approach encourages premises to operate in a less risky manner, while ensuring that those who generate the greatest impact also pay accordingly. If local authorities in England and Wales had the ability to set their own fees some may try and copy elements of this approach.

2 September 2016

²⁰ Kypri. K., Jones. C., McElduff. P. and Barker. D. (2011) *Effects of restricting pub closing times on night-time assaults in an Australian city*, *Addiction*, 106(2), pp303-310.

²¹ See appendix to Foster. J. and Charalambides. L. (2016)

Alcohol Focus Scotland – written evidence (LIC0127)

ABOUT US

Alcohol Focus Scotland (AFS) is Scotland’s national alcohol charity working to reduce the harm caused by alcohol. We advocate for evidence-based policy interventions to reduce the burden of alcohol-related harm and work to provide accurate and accessible information about alcohol to policy-makers, practitioners, the media, and the general public.

GENERAL COMMENT

AFS welcomes the opportunity to respond to this call for evidence. As Scotland’s national alcohol charity, we have tailored our response to highlight those areas where we believe learning from Scotland can be best applied, to help inform the development of improved licensing policy and practice elsewhere in the UK.

In recent years there has been policy divergence between Scotland and England with resulting implications for licensing legislation. In particular, Scotland is now working towards a population-based approach to alcohol policy development, which provides an impetus and context for the use of licensing legislation as a contributory measure to manage the availability of alcohol. Conversely, policy making in England and Wales continues to emphasise market autonomy and voluntary partnership with industry. As such, elements of the Scottish licensing system would appear to position Scotland more favourably with regards to changing drinking behaviours.

SPECIFIC COMMENT

Licensing objectives

1. Are the existing four licensing objectives the right ones for licensing authorities to promote? Should the protection of health and wellbeing be an additional objective?

The existing four licensing objectives all relate to important aspects of the public interest and should continue to be promoted by licensing authorities. However, without the inclusion of a health objective, they do not go nearly far enough to ensure that licensing decisions promote the best interests of local people and communities, or that they are informed by evidence of the impact of alcohol on the health of those communities.

The lack of a health licensing objective gives rise to a number of human rights concerns, which could potentially be challenged with regard to the UK’s international human rights obligations. Health is now recognised as both a fundamental human right in and of itself and a necessary element for the realisation of other human rights. The right to health finds legal expression in a number of key international instruments to which the UK is signatory, including the International Covenant on Economic, Social and Cultural Rights (ICESCR). In ratifying this Covenant, the UK has made a commitment, binding in international law, to abide by the terms of the Covenant. This requires government, Parliament and the courts to

make efforts to ensure the fullest possible compliance with the terms of the ICESCR (including through legislative measures).

General Comment 14 of the ICESCR lends specific support to an understanding that the right to health includes an obligation to regulate unhealthy products. It outlines the state's duty to protect people from an infringement of their right to health by third parties, including corporations. If products are being consumed in a manner hazardous to health, an obligation is placed on the state to intervene to protect the right to health e.g. by developing a policy response to reduce the detrimental effects of alcohol to health by altering the market or consumption patterns.

In addition, General Comment 14 also supports the argument that states have an obligation to regulate unhealthy products in order to fulfil the right to health. Fulfilment of the right to health requires states to take positive measures *'that enable and assist individuals and communities to enjoy their right to health'*.²² This could be interpreted as including the obligation to create an enabling environment for healthier lifestyle choices.

In licensing legislation, one of the main differences between Scotland and England is the inclusion of a fifth licensing objective in Scottish legislation – namely, to protect and improve public health. This objective was introduced by the Licensing (Scotland) Act 2005 and means licensing boards must seek to promote this objective in licensing policy, and can refuse licenses where granting them would be inconsistent with this objective.

In addition, the Licensing (Scotland) Act 2005 permits licensing authorities to take into account an 'over-provision' of licensed outlets in general, or licensed outlets of a particular type, in a given locality, in order to tackle problems caused by a proliferation of licensed outlets (including negative impacts on health). Where over-provision is held to apply, there is a rebuttable presumption that additional licences may not be granted, though each application must still be considered on its own merits. In England and Wales, the underlying assumption is that it is for the market, not licensing authorities, to determine the number of licensed outlets in a given area. The only provision for licensing authorities to control the numbers of outlets is in the context of special policies to tackle the 'cumulative impact' of concentrations of licensed premises in specific localities, normally the main entertainment zones of towns and cities.

While there is still much that remains to be achieved in Scotland, we have identified a number of improvements since the provisions of the Licensing (Scotland) Act 2005 came into effect in 2009. This has included increased engagement and participation of public health partners in the licensing process, and an increasing use of health evidence to inform Statements of Licensing Policy. Increased engagement with public health has also raised confidence among some licensing officers in using overprovision to tackle harm. AFS

²² CESCR General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12), Adopted at the Twenty-second Session of the Committee on Economic, Social and Cultural Rights, on 11 August 2000

believes that UK legislation could much better serve local communities if it incorporated similar public health and overprovision elements to that of Scotland.

2. Should the policies of licensing authorities do more to facilitate the enjoyment by the public of all licensable activities? Should access to and enjoyment of licensable activities by the public, including community activities, be an additional licensing objective? Should there be any other additional objectives?

If any additional licensing objective is to be created, this should first and foremost be a health-related objective for the reasons stated above.

The balance between rights and responsibilities

3. Has the Live Music Act 2012 done enough to relax the provisions of the Licensing Act 2003 where they imposed unnecessarily strict requirements? Are the introductions of late night levies and Early Morning Restriction Orders effective, and if not, what alternatives are there? Does the Licensing Act now achieve the right balance between the rights of those who wish to sell alcohol and provide entertainment and the rights of those who wish to object?

No comment.

4. Do all the responsible authorities (such as Planning, and Health & Safety), who all have other regulatory powers, engage effectively in the licensing regime, and if not, what could be done? Do other stakeholders, including local communities, engage effectively in the licensing regime, and if not, what could be done?

Delivering long-term sustainable change in relation to alcohol will require that all partners work together in a joined-up and strategic way. There has been some progress in this regard in Scotland, with guidance for Licensing Boards and local authorities making clear that statements of licensing policy should provide clear indications of how the Licensing Boards will take into account other matters relating to alcohol, for example: local crime prevention, community safety strategies, health, planning, and equality schemes.

Local licensing boards have a duty to take account of the experiences of the people affected by their policies and decisions, but the bureaucracy of the licensing system can make it difficult for local residents and community groups to feed in their views. As such, AFS recently developed a toolkit resource to help people raise concerns about the impact of alcohol in their local community; explaining how the licensing process works in Scotland and providing practical tips for people who want to get involved. The toolkit has been very well received and provides a good model for encouraging community involvement in alcohol licensing decisions, which could be replicated elsewhere. We have had contact with some local authorities in England who were interested in adapting the toolkit for their own purposes, and we would encourage local authorities to develop and promote such a resource.

Licensing and local strategy

5. Licensing is only one part of the strategy that local government has to shape its communities. The Government states that the Act “is being used effectively in conjunction with other interventions as part of a coherent national and local strategy.” Do you agree?

There are aspects of the existing Act which AFS believes could be used to great effect to ensure a co-ordinated and strategic approach to licensing at both national and local levels. For example, experience in Scotland has shown that Statements of Licensing Policy can provide a valuable tool in helping to make licensing decisions more strategic, while there is scope to align licensing policy with local/national priorities and performance monitoring mechanisms. However, the extent to which this occurs in practice in Scotland can vary greatly between local authority areas, and it is AFS’s understanding that similar inconsistencies exist between local authority areas elsewhere in the UK.

There is no recognised national policy driver for alcohol licensing in Scotland at present, rather policy is developed at local level resulting in variation across the country. A national strategy on reducing availability would provide the impetus to review and potentially revise the focus and aim of licensing policy and practice. AFS has identified that existing provisions in the Licensing (Scotland) Act 2005 could also be strengthened by the formulation of a national licensing policy that local licensing boards are required to have regard to when drawing up their own local policies. This could underpin a national policy on reducing availability and provide a driver for the licensing system which is currently lacking. This is something which could also be considered by the UK Government.

In addition, many key aspects of the UK Alcohol Strategy 2012 remain unfulfilled, including commitments to: end the availability of cheap alcohol and irresponsible promotions; introduce a minimum unit price; give stronger powers to control the density of licensed premises and make health a licensing objective for this purpose. Attention must be refocused on these commitments, at a national level, to support the efforts of community partners at local level.

6. Should licensing policy and planning policy be integrated more closely to shape local areas and address the proliferation of licensed premises? How could it be done?

No comments

Crime, disorder and public safety

7. Are the subsequent amendments made by policing legislation achieving their objects? Do they give the police the powers they need to prevent crime and disorder and promote the licensing objectives generally? Are police adequately trained to use their powers effectively and appropriately?

No comments

8. Should sales of alcohol airside at international airports continue to be exempt from the application of the Act? Should sales on other forms of transport continue to be exempt?

In July 2012, ScotRail banned the consumption and carrying of alcohol on its trains between 9pm and 10am. It also refuses travel to people who are not considered fit to do so due to the effects of alcohol. This ban was introduced in response to concerns about anti-social behaviour and low-level crime. Since this time, ScotRail and British Transport Police have identified consecutive annual falls in crime on Scottish railways, and reported that the vast majority of rail customers have welcomed the ban.²³ This demonstrates that restrictions on alcohol sales/consumption within transport settings can deliver significant benefits, which AFS believes could be better supported through the application of licensing legislation. It may therefore be beneficial to reconsider the current exemptions.

Licensing procedure

9. The Act was intended to simplify licensing procedure; instead it has become increasingly complex. What could be done to simplify the procedure?

No comments

10. What could be done to improve the appeal procedure, including listing and costs? Should appeal decisions be reported to promote consistency? Is there a case for a further appeal to the Crown Court? Is there a role for formal mediation in the appeal process?

No comments

Sale of alcohol for consumption at home (the off-trade)

11. Given the increase in off-trade sales, including online sales, is there a case for reform of the licensing regime applying to the off-trade? How effectively does the regime control supermarkets and large retailers, under-age sales, and delivery services? Should the law be amended to allow licensing authorities more specific control over off-trade sales of “super-strength” alcohol?

In recognition of the fact that the vast majority of alcohol consumed in Scotland is purchased at off-sales, a range of measures were introduced by the Alcohol etc. (Scotland) Act 2010 to help regulate the off-trade: a ban on multi-buy promotions; restricting alcohol products to one part of a store; and restricting off-trade hours to 10am until 10pm.

Researchers at NHS Health Scotland and the University of Glasgow found that the 2010 Act was associated with a 4% drop in the amount of wine sold in Scotland’s supermarkets and off-licences, equivalent to almost 4.5 million bottles. The 2010 Act was also associated with an 8.5% decline in the amount of pre-mixed alcohol drinks (including alcopops) sold in Scotland.²⁴ Similar declines were not observed in England & Wales, and the possible impacts of other factors, such as changes in income and alcohol prices, were taken into account. This indicates that the effects were associated with the Alcohol etc. (Scotland) Act

²³ Rail Technology Magazine, Alcohol ban ‘is working’ – ScotRail, on 23/01/2014, available at:

<http://www.railtechnologymagazine.com/Railway-safety-and-crime/Page-1/alcohol-ban-is-working-scotrail>

²⁴ Robinson M, Geue C, Lewsey J, Mackay D and McCartney G. The impact of the Alcohol Act on off-trade alcohol sales in Scotland, NHS Health Scotland, 2013

and not some other factor. A recent report of the Monitoring and Evaluating Scotland's Alcohol Strategy (MESAS) programme also concluded that the 2010 Act had removed the financial incentive to buy more alcohol than intended, and was associated with a decrease in alcohol consumption.²⁵ It stands to reason that similar measures, if implemented, could have comparable results elsewhere in the UK.

Other mechanisms for reducing accessibility should also be considered, such as separate alcohol check-outs and banning the sale of alcohol at self-service check-outs. In addition, creating health promoting communities requires the encouragement of alternative business models that rely less on the sale of health-damaging products. Some of the measures suggested above will contribute to this but could be strengthened by the introduction of financial disincentives for businesses to sell alcohol e.g. by introducing a Public Health Levy or providing less favourable business rates.

Pricing

12. Should alcohol pricing and taxation be used as a form of control, and if so, how? Should the Government introduce minimum unit pricing in England? Does the evidence that MUP would be effective need to be “conclusive” before MUP could be introduced, or can the effect of MUP be gauged only after its introduction?

Increasing price, reducing availability and restricting marketing have been identified as the 'three best buys' of alcohol policy by the World Health Organisation (WHO). Controlling and reducing the availability of alcohol is also intrinsically linked with price and marketing, as increased availability increases marketing opportunity and drives down price in a competitive business environment.

The Alcohol (Minimum Pricing) (Scotland) Act 2012 was passed in June 2012, but has not yet been implemented in Scotland due to a legal challenge led by the Scotch Whisky Association. This may have greatly undermined the potential of measures such as bans on multi-buy promotions as retailers are still able to reduce prices, and highlights the importance of addressing marketing, price and availability together as a comprehensive package of measures to address alcohol related harm.

There is good evidence to show that the positive effects of existing legislation would be enhanced by minimum unit pricing, which is a targeted way of preventing the sale of cheap, high strength alcohol. Research by the University of Sheffield found that introducing a 50p minimum unit price (in England) would lead to 15,000 fewer alcohol-related deaths and 480,000 fewer alcohol-related hospital admissions over the first ten years of the policy. They

²⁵ Monitoring and Evaluating Scotland's Alcohol Strategy, Final Annual Report, NHS Health Scotland. March 2016

also found that this pricing would lead to a £1.6bn saving over that period in direct costs to the health service and a £9.7bn saving across all other outcomes, for example crime.²⁶

The Alcohol (Minimum Pricing) (Scotland) Act 2012 includes a 'sunset clause' requiring that the legislation ceases after six years of implementation unless the parliament approves an extension, coinciding with a 'review clause' which requires that a report reviewing the impact of MUP be presented to the Scottish Parliament. Similar clauses could be included in UK legislation, to allow for the effects of MUP to be reviewed after implementation.

Alcohol taxation set at an appropriate level would complement minimum unit pricing by helping to regulate the overall affordability of alcohol and consequently curbing alcohol consumption and harm. As such, consideration should be given reintroducing the duty escalator and increasing alcohol duty rates, especially cider and perry duty rates. Evidence strongly indicates that taxation and minimum pricing together can deliver greater health and social benefits than taxation alone.

Fees and costs associated with the Licensing Act 2003

13. Do licence fees need to be set at national level? Should London, and the other major cities to which the Government proposes to devolve greater powers, have the power to set their own licence fees?

In Scotland, the annual license fee payable is determined by the Licensing Board but must not exceed limits set out in The Licensing (Fees) (Scotland) Regulations 2007. While licensing fees are charged by local authorities to recoup the cost of administering the licensing system, a lack of resources is often offered by way of explanation for a lack of progressive action at a local level. As such, AFS believes that licensing fees should be applied in relation to the volume of alcohol sold, with licensed premises being required to provide annual information on the volume of alcohol sold by beverage type as a condition of their licence.

International comparisons

14. Is there a correlation between the strictness of the regulatory regime in other countries and the level of alcohol abuse? Are there aspects of the licensing laws of other countries, and other UK jurisdictions, that might usefully be considered for England and Wales?

International evidence clearly indicates that increasing price, reducing availability and restricting marketing are amongst the most effective policy measures to reduce alcohol consumption and harm in a population. As stated above, they are identified as the 'three best buys' of alcohol policy by the World Health Organisation (WHO). The Scottish Government's alcohol strategy Changing Scotland's Relationship with Alcohol: A Framework

²⁶ R1. Purshouse RC, Meier PS, Brennan A, Taylor KB & Rafia R. (2010). 'Estimated effect of alcohol pricing policies on health and health economic outcomes in England: an epidemiological model', *The Lancet*, 375 (9723), pp.1355-64.

for Action is internationally recognised as being one of the most forward-thinking and ambitious responses to alcohol-related harm. It gives the 'three best buys' central prominence, and measures introduced to support the strategy, particularly minimum unit pricing, are considered bold with the potential to have a far-reaching impact on alcohol-related ill health and mortality.

Throughout this response we have highlighted aspects of Scotland's approach which we believe might usefully be considered for England and Wales. While there is much that remains to be done, Scotland appears to be leading the way in driving evidence-based policy, underpinned by legislative framing of alcohol as a 'whole-population issue', requiring a public health approach to reduce alcohol-related harms by reducing overall consumption. In particular, England and Wales may stand to benefit from the introduction of MUP, a public health objective and greater restrictions on the off-trade (including reducing the hours during which alcohol can be sold).

2 September 2016

Alcohol Health Alliance UK – written evidence (LIC0078)

Licensing objectives

1. Are the existing four licensing objectives the right ones for licensing authorities to promote? Should the protection of health and wellbeing be an additional objective?

The current four licensing objectives cover important areas impacted by licensing and the consumption of alcohol, but the effectiveness of the Act is hampered by the lack of a health objective. This would allow all of the responsible authorities within the Act to better address the undoubted health impacts that alcohol can, and does have on local communities.

Evidence suggests that the addition of a health and wellbeing objective would represent an evolution and not a revolution within licensing.²⁷ It would make amends for a clear legislative gap within the Act and allow for the more even application of the current four objectives. Some local authorities already address some more proximal health issues related to licensing using the current four objectives, demonstrating that it can be done, albeit with limitations. The addition of a specific objective would aid this further and do a significant amount to encourage other local authorities to take this approach. The LGA has found that 9 out of 10 Directors of Public Health report that there is demand for a health objective.²⁸

If any local authorities have specific examples that would support this point please add them here.

2. Should the policies of licensing authorities do more to facilitate the enjoyment by the public of all licensable activities? Should access to and enjoyment of licensable activities by the public, including community activities, be an additional licensing objective? Should there be any other additional objectives?

The Section 182 Guidance should be far clearer about the fact that the Act, as administrative law, is to be promoted with a view to the wider public interest, not just the night time economy. This does not always happen in practice,²⁹ and there are many examples of licensed premises, particularly in saturated areas, undermining the local public good. A greater focus on this both within individual decisions, and licensing policies, would help to ensure that decisions are made in a sustainable way and that they do not undermine the local public good.

The Equality Act 2010 already places obligations on local authorities to ensure access to licenced venues, and is referenced in the Section 182 Guidance. This could be made more prominent, but there is no need to duplicate the Equality Act within the 2003 Licensing Act.

²⁷ Foster. J., Charalambides. L., (2016) [The Licensing Act \(2003\): its uses and abuses 10 years on](#). Institute of Alcohol Studies. In particular see [here](#).

²⁸ LGA Survey (Jan 2016) [Public Health and the Licensing Process](#)

²⁹ Foster. J., Charalambides. L., (2016) [The Licensing Act \(2003\): its uses and abuses 10 years on](#). Institute of Alcohol Studies. Chapter 4.

The balance between rights and responsibilities

3. *Has the Live Music Act 2012 done enough to relax the provisions of the Licensing Act 2003 where they imposed unnecessarily strict requirements? Are the introductions of late night levies and Early Morning Restriction Orders effective, and if not, what alternatives are there? Does the Licensing Act now achieve the right balance between the rights of those who wish to sell alcohol and provide entertainment and the rights of those who wish to object?*

The lack of a workable Early Morning Restriction Order is a clear strategic failing within the Act. Many local authorities and police forces would like to be able to use this tool, and restricting excessively late closing times is known to significantly reduce alcohol related crimes and associated police costs.³⁰ Late night levies are currently far too inflexible and so have only been practical in limited locations. Recent Home Office plans to address this problem are very welcome.

It is difficult to assess the overall balance of the Act because of the large variations in the way that it is implemented. In some areas local authorities do not operate on a level playing field with the licenced trade, who at times have access to more specialist legal advice, and local authorities can run the risk of significant costs if taken to appeal. This is not always a problem, but can at times result in the balance falling too favourably towards the licenced trade.

4. *Do all the responsible authorities (such as Planning, and Health & Safety), who all have other regulatory powers, engage effectively in the licensing regime, and if not, what could be done? Do other stakeholders, including local communities, engage effectively in the licensing regime, and if not, what could be done?*

In general it is uncommon for all of the responsible authorities to engage in licensing, and the process would benefit from better involvement, particularly from planning and child protection. In many areas public health bodies would like to engage more but find the lack of a specific objective to be problematic.

Licensing and local strategy

5. *Licensing is only one part of the strategy that local government has to shape its communities. The Government states that the Act “is being used effectively in conjunction with other interventions as part of a coherent national and local strategy.” Do you agree?*

The development of the Act in recent years has included a welcome shift towards crime and disorder issues, with the Modern Crime Prevention Strategy continuing this trend. However, far more could have been done to encourage responsible authorities to use the Act better as it is. This is a strategic approach, and other notable failings include the EMRO, the

³⁰ Foster. J., Charalambides. L., (2016) [The Licensing Act \(2003\): its uses and abuses 10 years on](#). Institute of Alcohol Studies. Page 127

inflexible way in which the LNL was introduced and the lack of any meaningful policies to address the impact of very cheap alcohol.

At a local level the Act can be used in an effective strategic way, using Statement's of Licensing Policy (SLP) to set out a clear and positive view as to what the public good in relation to licensing requires in an area. Some are also well coordinated with other local strategies, such as the planning strategy, the corporate strategy, or the health and wellbeing strategy.

This is not necessarily common though, and many SLPs are quite minimal and do not set out a vision as to what the public good may require from licensing. This is one reason why the Act is often used in a reactive and unresponsive manner, waiting for problems to arise and only then trying to address them.

6. *Should licensing policy and planning policy be integrated more closely to shape local areas and address the proliferation of licensed premises? How could it be done?*

Yes, the two should be better integrated, although while this approach may help, it would not necessarily make a significant impact on the proliferation of licensed premises. Another key factor for this is the decision making process and the way in which the locality and evidence are considered.

Crime, disorder and public safety

7. *Are the subsequent amendments made by policing legislation achieving their objects? Do they give the police the powers they need to prevent crime and disorder and promote the licensing objectives generally? Are police adequately trained to use their powers effectively and appropriately?*

Amongst others, the Police Reform and Social Responsibility Act (2011) made the following changes:

It made local authority licensing teams a responsible authority in their own right: This has been very beneficial, and many local authorities use this well to uphold their SLP.

Health bodies a responsible authority: this was a welcome step in the right direction, but health is hampered by not having a specific objective.

Lowered evidential threshold to appropriate rather than necessary: this has had a minimal impact and many lawyers view the change as making no practical difference. There are significant misunderstandings about the evidential threshold used within decision making under the Act. As administrative law, decisions do not ask for certainty, or evidence to prove something definitely would or would not happen, it asks for decisions and evidence on the balance of probabilities. This is often misunderstood, something which greatly helps the

licensed trade, who are keen to up the evidential threshold as this makes it harder to identify that premises is linked to a problem.³¹

Changing the local residents' vicinity test: this has been very beneficial.

Regarding police powers to prevent crime and disorder, the changes, which include additional powers of entry for the police, have helped in this way. However, the biggest obstacle to the promotion of the objectives is the fact that many responsible authorities do not actively 'promote' them, but take quite a reactive approach.

Promoting the prevention of crime and disorder should involve looking at factors that may lead to crime, and so to undermining the objectives. This is a proactive and forward looking view which means that problems should be addressed before they are developed, based on the likely future impact of a new license.

However, many local authorities do not 'promote the prevention', but take the view that you have to wait for a problem to arise, and to undermine the objectives, before then trying to manage it down. Changing this view would make a significant difference to the way in which the Act is used.

Licensing procedure

8. The Act was intended to simplify licensing procedure; instead it has become increasingly complex. What could be done to simplify the procedure?

The Act does represent a significant simplification when compared to the previous licensing regime in a number of ways, as it combined alcohol and entertainment, and has greatly clarified the issue around granting closing times. There is a consensus that the Act has also enabled better joint working, both between the regulatory bodies, and between these bodies and the licensed trade.

In general the alterations to the Act have addressed deficiencies and problems. Some areas within the Act were originally too focused on tourism and the sociable benefits of licensing, while paying too little attention to the problems that can arise. Alcohol is regulated for a reason and it is a mistake to assume that licensing can automatically be simplified without producing knock on problems.

It is arguable that many of the simplest sections within the Act are the most problematic to administer and enforce, particularly Temporary Event Notices (TENs). These result in significant shortfalls for local authorities; they cost £21 but Westminster Council report that they cost at least £120 to process. Their overly light touch approach has effectively resulted in them working as a loop hole, allowing existing premises to extend their hours with limited oversight. This makes the more regulated elements of the licensing regime harder to enforce.

³¹ Foster. J., Charalambides. L., (2016) [The Licensing Act \(2003\): its uses and abuses 10 years on](#). Institute of Alcohol Studies. In particular see [here](#).

As mentioned in previous answers, rather than contemplating additional changes to the Act, a more productive approach would be to ensure that local authorities use the Act, as it is, to its full potential. One key issue here relates to fees, and the system could arguably be both simplified and strengthened for local authorities if they were all able to fund their licensing operations adequately. A second issue relates to the decision making process and the way in which misconceptions about this often favour the licensed trade.³² Clarifying these misunderstandings would greatly improve and simplify the process, and could help to address the often wide variations in the application of the Act.

9. *Should sales of alcohol airside at international airports continue to be exempt from the application of the Act? Should sales on other forms of transport continue to be exempt?*

It seems odd that the Act does not apply airside at airports as the promotion of the objectives is just as relevant in this location. In fact there are potentially additional risks related to passengers being temporally displaced and confined within aircraft. Indeed, recent figures showed that 422 people were held on suspicion of being drunk at an airport or on a plane in the last two years.³³

Regarding other forms of transport, the sale and consumption of alcohol on trains can cause specific problems, and can effectively result in additional preloading or on-route loading. In some areas large groups frequently buy large amounts of alcohol from the off-trade, and drink this on the train while travelling to their destination on a Friday or Saturday night. They then arrive in a very intoxicated state, causing significant problems. Reportedly this is a particular problem on the east coast mainline, with groups travelling between cities such as Newcastle and York, amongst others.

10. *What could be done to improve the appeal procedure, including listing and costs? Should appeal decisions be reported to promote consistency? Is there a case for a further appeal to the Crown Court? Is there a role for formal mediation in the appeal process?*

The better reporting of appeal decisions would be beneficial, and this could be aided by updating the Section 182 Guidance with case law developments so that it better reflects the practical application of the Act.

There is a case for exploring the use of mediation, but local authorities should not be pushed towards unnecessary compromising when they have a clear duty to uphold and promote the licensing objectives in the interests of the local community.

An important point to make here involves the general quality of licensing decisions. The higher the quality of the original decision, the less likely it is to go to appeal, and if this does happen, the higher the chances of the original decision being upheld. Key factors include ensuring that it is reasonable, based upon relevant local evidence and transparent in its

³² Foster, J., Charalambides, L., (2016) [The Licensing Act \(2003\): its uses and abuses 10 years on](#). Institute of Alcohol Studies. See chapter 14.

³³ [Airport alcohol sales to be 'examined' by Lord Ahmad](#). BBC news

inference and conclusions. Decisions do not have to be absolute and evidenced definitively however, but based on the balance of probabilities. The more that these principles are stressed and explained in the guidance the more likely it is that the act will be applied in a clear and accurate manner.

Sale of alcohol for consumption at home (the off-trade)

11. Given the increase in off-trade sales, including online sales, is there a case for reform of the licensing regime applying to the off-trade? How effectively does the regime control supermarkets and large retailers, under-age sales, and delivery services? Should the law be amended to allow licensing authorities more specific control over off-trade sales of “super-strength” alcohol?

The 2003 Licensing Act is poorly equipped to deal with the off-trade, which has grown twice as fast as the on-trade in the last 10 years. In Scotland their licensing Act has been rebalanced in order to better take account of the fact that the vast majority of alcohol is consumed at home. This has seen the introduction of a ban on multi-buys, restricting alcohol related products to one part of a store, the restriction of off-trade hours to 10am until 10pm, and their legislation for minimum unit pricing, although this has not yet been implemented.

Research into the impact of these restrictions has found broadly positive, if slightly mixed, results. A study by NHS Scotland using sales data found that there has been a 2.6% decrease in the amount of alcohol sold in Scotland per adult as a result of the multi-buy ban, including a 4% drop in wine sold and an 8.5% decline in pre-mixed alcohol drinks (including alcopops). However, other research found that the ban had changed shopping habits, causing people to buy fewer products per shopping trip, but to buy beer and cider more frequently, leaving the overall amount bought unchanged. This second study however used a panel survey method, which is known to be less accurate than sales data (which was the basis of the first piece of research).

While there is still debate about this issue, both sets of researchers suggested that the effectiveness of the ban had been undermined by retailers reducing prices, something which Minimum Unit Pricing (MUP) would have prevented if it had been implemented in Scotland. A loophole in the multi-buy ban allowing the discounting of single items is also thought to have weakened the ban, with retailers switching from offering promotions such as ‘3 for the price of 2’ to only discounting individual bottles.

While these impacts in Scotland are moderate, they are significant, and it should be remembered that they represent only one strand of a broader alcohol strategy. This comparison also highlights the fact that pricing policies will probably have a bigger impact on supermarket alcohol sales than licensing on its own. Against this, the 2003 Licensing Act has very limited ability to impact upon alcohol sales in supermarkets, where alcohol promotions are routinely found in all parts of the store, with heavy discounting and price promotions.

Home delivery services are also difficult to regulate under the Act. Some local authorities have produced additional guidance and conditions for operators to ensure that they comply with the Act, particularly regarding sale to minors and sales to drunks. However, this is hard to enforce. While off-trade hours in Scotland are limited to 10am – 10pm, Scottish hours for home delivery services are slightly different; where they are only prohibited between midnight and 6am. This does, however, still allow for greater limits on home delivery during the period which could potentially be the most problematic.

Pricing

12. Should alcohol pricing and taxation be used as a form of control, and if so, how? Should the Government introduce minimum unit pricing in England? Does the evidence that MUP would be effective need to be “conclusive” before MUP could be introduced, or can the effect of MUP be gauged only after its introduction

Consumption can and should be regulated by price, and alongside licensing price is a key tool for limiting alcohol related harms, There is clear and consistent evidence that price is a key variable and directly influences alcohol related harms – for example, research has shown that in England and Wales the real price of beer has a direct impact on A&E attendance rates.³⁴ Decreases in alcohol taxes in Finland in 2004, for example, led to a 10% increase in overall consumption and a 46% increase in liver disease deaths.³⁵ As a result, alcohol taxes are recommended by international bodies such as the World Health Organization³⁶ and the Organisation for Economic Co-operation and Development³⁷ as among the ‘best buys’ in public health.

Alcohol is 54% more affordable today than in 1980.³⁸ Successive cuts and freezes to duty since 2012 have exacerbated this problem: beer duty is now 14% lower than in 2012, while cider and spirits duty have each fallen by 6%.³⁹ Raising the price of alcohol through real terms increases in duty is necessary to reverse these dangerous trends.

However, it is not just the level, but also the structure of alcohol taxes that matters. Because of anomalies in the duty system, 7.5% ABV ciders attract the lowest duty per unit of any product: 5p per unit, compared to 18p per unit for a beer of equivalent strength. This has given rise to a market for industrial ‘white’ ciders: sold in 3 litre plastic bottles and closely

³⁴ Matthews. K., Shepherd. J., Sivarajasingham. V. (2006), Violence-related injury and the price of beer in England and Wales. *Applied Economics*, p. 668

³⁵ Mäkelä, P. and Österberg, P. (2009) *Weakening of one more alcohol control pillar: a review of the effects of the alcohol tax cuts in Finland in 2004*, Society for the Study of Addiction, 104, pp554-563.

³⁶ World Health Organization (2011), *From Burden to “Best Buys”*: Reducing the Economic Impact of Non-Communicable Diseases in Low- and Middle-Income Countries

³⁷ Sassi, F. et al (2013) *The Role of Fiscal Policies in Health Promotion*, *OECD Health Working Papers*, No 66, OECD Publishing.

³⁸ Health & Social Care Information Centre (2015), *Statistics on Alcohol England*, 2015.

³⁹ Institute of Alcohol Studies (2016), *Budget 2016 analysis*.

linked to harmful, dependent and underage drinking.⁴⁰ Tax policy could be used to have a more targeted focus on such products through narrower bands - at present ciders between 1.2% and 7.5% ABV are taxed at the same rate.

MUP is not a silver bullet, and a combination of tax and MUP would be the optimal approach. This would ensure that the cheapest alcohol, which disproportionately causes the greatest harms, increased in price, while ensuring that the Treasury benefited from this rather than the alcohol producers.

MUP at the suggested price of 50ppu would have a minimal impact on the on-trade, where prices tend to be significantly higher than this, but it would impact most dramatically on the cheapest alcohol in the off-trade. The Ban on Below Cost Sales (BBCS) already sets a precedent for a floor price for alcohol, and one which has not been challenged by the licensed trade. However, the current level at which the BBCS is set (a sum of the duty plus VAT for each alcoholic product) is so low as to be almost totally ineffective. It was estimated that on its introduction only 0.7% of alcohol units sold fell below the ban's threshold, and only 1.0% of units consumed by harmful drinkers. As mentioned above, the floor price for strong white cider at 7.5% is 5p per unit. In contrast, MUP set at a unit price of 45p would affect 23.3% of alcohol units sold, and 30.5% of units sold to harmful drinkers.⁴¹ Since its introduction alcohol duties have been cut, further reducing the effectiveness of the BBCS.

Regarding the question of being able to conclusively predict MUP's impact, the evidence for MUP is very strong, and far stronger than for other policies implemented by the Home Office. For example, the Modern Crime Prevention Strategy places a significant focus on partnership working with the trade, when there is not a single piece of academic, peer reviewed evidence that this has a significant impact on crime and disorder. While the licenced trade has carried out some internal evaluations, these tend to be of a very poor quality.

In contrast the evidence, both modelled and from Canada where they have similar minimum prices, that MUP would be effective is very strong.⁴² While the Scottish court case regarding the legality of MUP is ongoing, at present the courts have accepted that it would be reasonable, based on the evidence available and the modelling, to judge that MUP may be an effective policy. On this basis they are satisfied with the policy as a relevant response to the health issue which it seeks to address.

⁴⁰ Black, H. et al (2014) *White Cider Consumption and Heavy Drinkers: A Low-Cost Option but an Unknown price*. Alcohol and Alcoholism 49:6, pp675-80; Alcohol Concern (2015). *Alcohol brands consumed by young people in treatment 2015*.

⁴¹ Brennan, A., Meng, Y., Holmes, J., Hill-McManus, D., Meier, PS., (2014) '[Potential benefits of minimum unit pricing for alcohol versus a ban on below cost selling in England 2014: modelling study.](#)' BMJ

⁴² Stockwell, T., Zhao, J., Marzell, M., Gruenewald, P. J., Macdonald, S., Ponicki, W. R., & Martin, G. (2015). Relationships Between Minimum Alcohol Pricing and Crime During the Partial Privatization of a Canadian Government Alcohol Monopoly. *Journal of Studies on Alcohol and Drugs*, (July), 628–634. <http://doi.org/10.15288/jsad.2015.76.628>

It is worth pointing however that the Scottish MUP legislation includes a sunset clause. If, after 6 years there is evidence that MUP is having unintended consequences, the legislation can be repealed. This seems sensible.

At present the Home Office have provided only poor evidence that partnership working with the trade is an effective policy to reduce alcohol related harms, and no public estimates as to how many crimes this policy will prevent over the next few years. In contrast the evidence for MUP, produced on the same terms as that currently accepted by the Scottish Courts, suggests that MUP set at a rate of 45ppu would reduce alcohol-related crimes by 34,200 incidents per year after 10 years. It would also reduce alcohol-related deaths by 642 per year after 10 years.⁴³

For both of these policies their full impact can only be gauged properly after implementation, if efforts are taken to do so. Yet the contrast between the weight and creditability of the evidence used to introduce them is stark, and a lack of evidence has not prevented the Home Office from introducing certain policies seen in a favourable light.

Fees and costs associated with the Licensing Act 2003

13. Do licence fees need to be set at national level? Should London, and the other major cities to which the Government proposes to devolve greater powers, have the power to set their own licence fees?

Licensing fees should not be set at a national level, and all local authorities should be able to set their own fees in a way that reflects their local costs. This already happens within taxi and street trading legislation, and alcohol licensing should be no different. This was legislated for in the Police Reform and Social Responsibility Bill 2011, but has never been enacted. At present some local authorities see significant shortfalls in the revenue they receive from licensing fees, meaning that they have to subsidise their licensing operation out of general funds. With the reductions in local government funding in recent years this has become increasingly difficult.

Local authorities with the biggest fees shortfall are often those more likely to struggle to oversee the Act.⁴⁴ The Local Government Association (LGA) estimate that alcohol licensing cost local authorities approximately £183 million in the 10 years since the Act was introduced, which works out at £1.5 million of taxpayers' money per month being used to subsidise the licensed trade.⁴⁵

International comparisons

⁴³ Brennan. A., Meng. Y., Holmes. J., Hill-McManus. D., Meier. PS., (2014) '[Potential benefits of minimum unit pricing for alcohol versus a ban on below cost selling in England 2014: modelling study.](#)' BMJ

⁴⁴ Foster. J., Charalambides. L., (2016) '[The Licensing Act \(2003\): its uses and abuses 10 years on.](#)' Institute of Alcohol Studies. See chapter 12

⁴⁵ Local Government Association (Feb 2015) '[LGA responds to Government decision to reject locally-set licensing fees](#)

14. Is there a correlation between the strictness of the regulatory regime in other countries and the level of alcohol abuse? Are there aspects of the licensing laws of other countries, and other UK jurisdictions, that might usefully be considered for England and Wales?

Within developed countries, those which experience greater alcohol related harms tend to have a stricter regulatory response. The 2003 Licensing Act attempted to simplify and deregulate licensing but has had to be toughened up in certain areas as a result of this having been taken too far.

This evidence submission has covered a number of policies from Scotland which would be beneficial for those with an interest in reducing alcohol related harms. These include MUP, a health objective and greater restrictions on the off-trade.

Evidence from Australia also lends support for the introduction of a workable EMRO. In Newcastle, Australia, it was found that bringing forward closing times from 5am to 3am resulted in 37% reduction in assaults.⁴⁶ After one year, similar opening restrictions in the Kings Cross area of Sydney resulted in a 21% reduction in sexual assaults, a 43% reduction in assaults causing grievous bodily harm, a 50% reduction in assaults causing actual bodily harm and a 57% reduction in robberies.⁴⁷

Commenting on this, Police Superintendent Mick Fitzgerald, Kings Cross local area commander, stated that ‘the man hours saved and the way we are able to reallocate our resources has been phenomenal.’⁴⁸ While the closure of several clubs in Kings Cross were attributed to measures, a variety of other businesses have been seen to enter the market, including antiques dealers, ice-cream vendors, chemists, restaurants, hairdressers and yoga studios, as well as a number of new bars.⁴⁹ There is also evidence that, while there has been a reduction in land value of a some commercial property, large increases have been observed in both mixed-use and residential property in the Kings Cross region.⁵⁰, ⁵¹

Risk based licensing, which is used in various forms in Canada, Australia and New Zealand, also has interesting elements. This approach broadly links licensing fees and regulatory strength to the type of premises and it’s operating schedule. Types of premises, such as restaurants, bars or clubs, are ranked by their potential risk, and pay a different base rate depending on this. Hours of operation can also be linked to the fee, with some states in

⁴⁶ Kypril, K., Jones, C., McElduff, P., Barker, D., (2011) [Effects of restricting pub closing times on night-time assaults in an Australian city](#). Addiction.

⁴⁷ In addition to moving closing times forward from 5 am to 3 am, a 1 am lockout was introduced, meaning that people could continue to drink alcohol on the premises until the 3am close, but no new patrons could be admitted after 1 am. This became known as the ‘one-way door’ policy.

⁴⁸ Australian Daily Telegraph (April 1st, 2015) [Cross clean-up is a victory for Sydney](#)

⁴⁹ <https://twitter.com/2011Residents>

⁵⁰ Land & Property Information. (n.p.). *Potts Point/Kings Cross Report Land Value Review – Report for Land Valuation Advisory Group*. NSW Government.

⁵¹ Nicholls, S. (2016, 22 May). Lockout laws hit values in Kings Cross’ ‘golden mile’. *The Sydney Morning Herald*. Retrieved from: <http://www.smh.com.au/nsw/lock-out-laws-hit-land-values-on-kings-cross-golden-mile-20160522-gp0ych.html>

Australia charging incremental amounts for every hour that a premises opens after midnight. Compliance history can also have an impact on feel level.

This approach encourages premises to operate in a less risky manner, while ensuring that those who generate the greatest impact also pay accordingly. If local authorities in England and Wales had the ability to set their own fees some may try and copy elements of this approach.⁵²

1 September 2016

⁵² See the appendix to Foster. J., Charalambides. L., (2016) [The Licensing Act \(2003\): its uses and abuses 10 years on](#). Institute of Alcohol Studies.

Alcohol Research UK – written evidence (LIC0022)

This response is provided on behalf of Alcohol Research UK. It also builds on insights from the National Licensing and Public Health Network, which Alcohol Research UK co-chair alongside Public Health England. The comments, however, do not represent the collective views of the Network.

Licensing Objectives

1.1 Many regional public health teams have identified the lack of a licensing objective to protect public health as a barrier to their effective functioning as a Responsible Authority under the current Licensing Act (Martineau et al., 2013; Local Government Association, 2016). Public health approaches to both evidence and policy do not always sit easily in a licensing context and this has created challenges for those seeking to establish public health as an actor (Nicholls, 2015; Phillips and Green, 2015; Carbery, 2014). Nevertheless, public health engagement with licensing in Scotland has improved and increased (Mahon and Nicholls, 2014; Alcohol Focus Scotland, 2016). In England and Wales an increasing proportion of public health teams are contributing constructively to licensing activity (e.g. Public Health Liverpool, 2013; Local Government Association, 2014a: 20-24; Lambeth and Southwark Councils, 2015: 32; Dobson and Swindells, 2015; Nicholls, 2015: appendix; Public Health England, 2014). A number of local areas in England have formally piloted methods for improving public health engagement, including Local Alcohol Action Areas in 2014-5 and, more recently, a multi-site PHE-led pilot of an 'analytical support package' for seven public health teams engaging in licensing (Mooney et al., forthcoming).

1.2 As described by the Local Government Association 'licensing is not an end in itself. It exists to mitigate the risks of unfettered access to certain types of goods or activity; its primary purpose is to prevent the harm or detriment that could arise from them' (emphasis added; 2014b, 12). Given this, the establishment of 'positive' licensing objectives – i.e. positive outcomes that an objective should promote (such as economic benefits or access to activities) rather than potential harms it should mitigate (such as crime and disorder) – is problematic. The fifth objective in Scottish licensing law is worded positively as supporting 'the *promotion* and protection of public health' [emphasis added], which may account for some of the difficulties in operationalising the objective identified in early evaluations (MacGregor et al., 2013; Mahon and Nicholls, 2014). **We would support the introduction of a health-oriented licensing objective, but with careful consideration given to the wording in order to ensure it is aligned to both the intended outcomes and broader licensing practice.**

1.3. A key difficulty in operationalising a public health licensing objective remains attributing area or population-level harms to individual outlets (McGowan and Findlay, 2012; Foster and Charalambides, 2016). However, an objective to protect public health would also better enable health data and intelligence to inform strategic planning and the development of cumulative impact policies as well as representations on individual premises where

appropriate. Recent work in this area also shows that while data collection and linkage is a major challenge for public health teams, the kind of linked health data they can produce - if focused at the local level - has the potential to play an important and constructive role in licensing. There is clearly mistrust in sections of the alcohol industry and among some licensing lawyers, who see any public health involvement as seeking 'a reduction in consumption generally by the population' through a blanket approach to reducing outlet numbers (Popleston Allen, 2014). Addressing such anxieties, while establishing practical and realistic goals for public health in the licensing environment, has been the focus of much work within the National Licensing and Public Health Network (Nicholls, 2016).

Rights and responsibilities

2.1. Discussions within the National Licensing and Public Health network suggest that responsible authorities generally have differing levels of engagement, with police and trading standards, for instance, often being more actively involved than children's services. Levels of public engagement vary across the country, with some evidence of improvement and good practice such as the Westminster Licensing Advice Project (Foster and Charalambides, 2016: 115). In many instances, licensing information is hard to access via council websites - although examples of good practice include the Lambeth Licensed Premises Map (<http://apps.lambeth.gov.uk/Licensed-Premises-Map/>). Public representations are difficult without an understanding of the role of the licensing objectives in decision-making. **The creation of standard templates for representations on licensing applications / variations, made easily available on council websites, would support improved public engagement.**

2.2. The Licensing (Scotland) Act 2005 created a statutory requirement for the creation of local licensing forums to review the operations of the licensing system and make recommendations to the local board (details here: <http://www.gov.scot/Publications/2007/04/13093458/16>). Evaluation evidence suggests these have not always been successful (MacGregor et al., 2013). However, the principle of establishing forums through which a range of stakeholders can actively contribute to licensing processes is one the committee may wish to consider.

2.3. Shortly after the introduction of Early Morning Restriction Orders (EMRO), the Association of Licensed Multiple Retailers set up a fighting fund to challenge any council that proposed introducing an EMRO (Pescod, 2012). Following successful high-profile challenges in Hartlepool and Blackpool, no further EMROs were introduced. This experience demonstrated the extent to which trade actions at local level can derail policies established by central government, and follows an established historical trend (Nicholls, 2015; Centre for History in Public Health, 2014).

2.4 Currently seven Late Night Levies (LNLs) have been introduced with plans for new LNLs in some other authorities including Camden. A number of trade bodies argue that Business Improvement Districts and voluntary schemes such as Best Bar None offer a more attractive alternative to LNLs (e.g. CAMRA and BBPA, 2015). There has not currently been a full

evaluation of the Late Night Levy, while schemes such as Best Bar None and Purple Flag have largely undergone internal (and stakeholder-funded) evaluations only. **There is a pressing need for robust independent evaluations of industry-led voluntary schemes - especially as they are regularly presented as alternatives to existing or potential legislation.**

Local strategy

3.1 The Statement of Licensing Policy (SLP) is a key element of local licensing and planning strategy. However, there is a wide variation across the country in both the form such policies take and the extent to which they are informed by public and stakeholder consultation. Reviews of SLPs (e.g. Alcohol Focus Scotland, 2016; Hecht et al., 2014) provide useful comparisons and identify areas of good, and poor, practice. **Local authorities should be encouraged to promote substantial stakeholder engagement when developing their SLPs, and to have regard to the existing evidence-base on good practice across the country.** The specific function of the SLP in licensing decision-making should also be made clear. Currently, licensing committees are required to 'have regard to' their SLP but the precise legal implications remain unclear and Home Office guidance states that appeal courts are 'entitled to depart' from the SLP 'if it is considered justified to do so because of the individual circumstances of the case' (Home Office, 2013: 82).

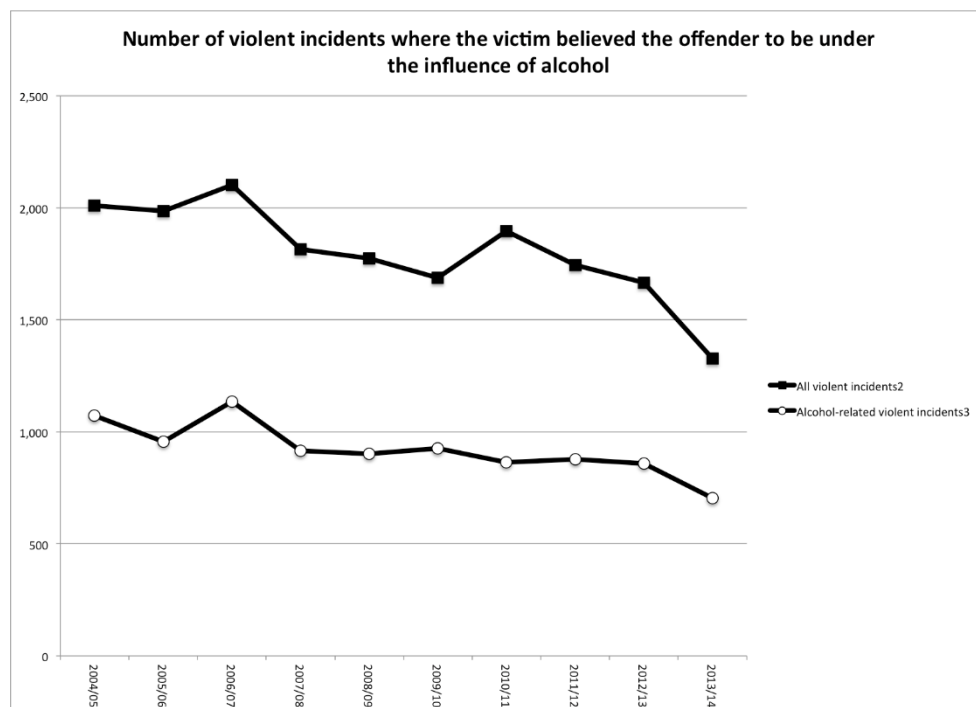
3.2 Cumulative impact policies (CIPs) have become much more widespread in recent years, as have 'overprovision' policies in Scotland - some of which cover entire licensing board areas (Alcohol Focus Scotland, 2016; Grace et al., 2016). However, their specific effect on licensing decision-making is still unclear, with the most recent data suggesting 86% of applications in CIP areas are granted compared to 91% in other areas - though there are various reporting issues with this data as it is unable to measure the number of applications not submitted as a result of a CIP (Home Office, 2015; Smith, 2015). Recent evaluations suggest that CIPs are more often employed to 'placeshape' through encouraging and discouraging particular types of outlet, rather than limiting or reducing the number of outlets as a whole (Grace, et al. 2016).

Crime and disorder

4.1 The broad conclusion from most evaluations of the Licensing Act is that the impact on overall levels of crime and disorder has been limited (e.g. Humphreys and Eisner, 2014; Foster and Charalambides, 2016). Only a small number of studies have shown an overall increase in either crime or A&E admissions post-implementation (e.g. Newton et al., 2007; see Humphreys et al., 2013 for an overview). One recent study has suggested that the Act is associated with a decrease in road traffic accidents (Green et al., 2014).

4.2 It has been suggested that the Act may have actively *reduced* crime and disorder (Snowdon, 2015); however, this claim is impossible to substantiate since the period has coincided with broader reductions in both violent crime and alcohol consumption that preceded implementation of the Act. At the same time, while overall rates of violent crime are declining the proportion that is alcohol-related remains at around 53% (Office for

National Statistics, 2015). Overall, the consequences of the Act in regard to crime rates bore out neither the predictions of those who claimed it would increase crime, nor those who claimed it would lead to a more 'continental' drinking culture (Humphreys et al., 2013; Humphreys and Eisner, 2014; Foster and Charalambides, 2016).



(Source: Office for National Statistics)

4.3 In assessing the effects of the Act it is important to note that general trends mask regional and local variations (Fratorelli, 2010; Humphreys and Eisner, 2010). Local authorities have implemented provisions of the Act differently - for instance, in the development and use of cumulative impact areas, and recent research suggests the 'intensity' of implementation can have a measurable impact on health and crime indicators (Grace et al., 2016; De Vocht et al, 2016a and b). In this context, the failure of Government to establish robust systems for monitoring the impact of the Act undermined our subsequent ability to judge where, and how, it has been successful (Hadfield, 2007). Furthermore, it has been suggested that weaknesses in the design of subsequent evaluations may have masked more detrimental outcomes (Stockwell and Chikritzhs, 2009; Hadfield and Measham, 2010). By comparison, the Scottish Government set up Monitoring and Evaluation Scotland's Alcohol Strategy under the auspices of NHS Health Scotland, which has produced extensive data and analysis over a number of years allowing for a more robust evaluation of alcohol policy in Scotland (Beeston et al., 2016).

4.4 The lack of consistent licensing data at local authority level is a serious barrier to effective research and evaluation (Humphreys and Smith, 2013; Fone et al., 2016), and this issue has been taken up directly with the Home Office via the National Licensing and Public Health Network. **More support is needed to ensure local authorities produce consistent,**

reliable licensing data that is accessible to researchers and comparable across different areas.

4.5 The Act appears to have shifted crime and disorder later into the night, thereby creating logistical difficulties for the police (Hough and Hunter, 2008; Foster and Charalambides, 2016). Although the average increase in opening hours has been small, the Act further entrenched a trend towards later opening in town and city-centre bars that had been developing throughout the 1990s (Hadfield, 2006). The shift towards later closing may also have contributed to the rise in 'pre-loading', with nights out starting later following pre-drinks at home; however, this has not been tested and it may equally be the case that cheap off-sales alcohol has driven the trend (Foster and Ferguson, 2014).

4.6 The sale of alcohol to drunk customers is prohibited under Sections 141 and 142. Prosecutions for this offence are notoriously low and responsibility for tackling the issue has largely been 'outsourced' to the alcohol industry through schemes such as Best Bar None and Purple Flag, few of which have undergone robust independent evaluation (Nicholls and Morris, 2014; Hughes et al., 2014; Hadfield and Measham, 2015).

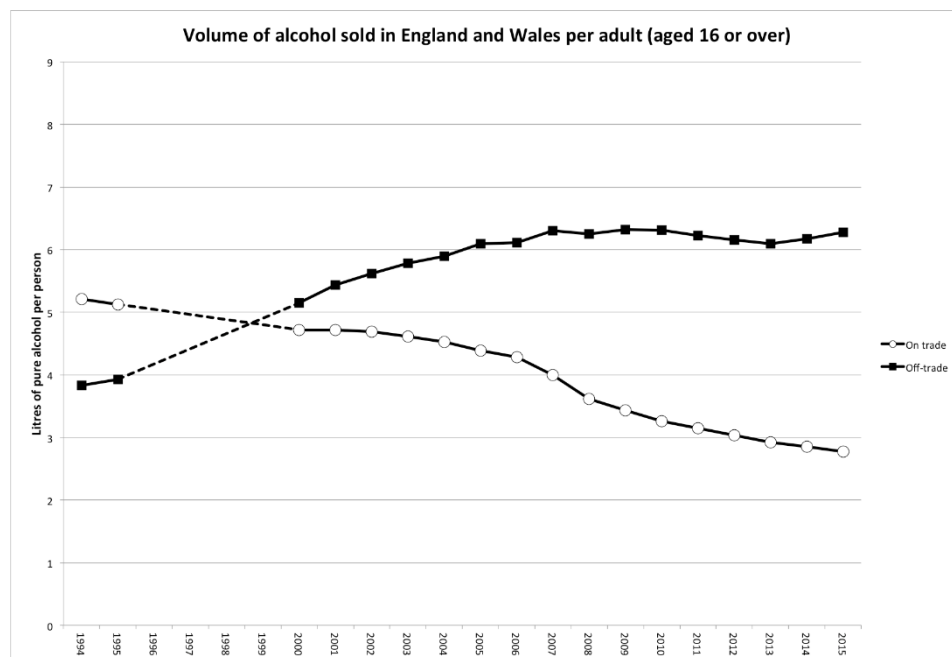
4.7 However, evidence from other countries suggests that combined enforcement, community action and system-change approaches can be effective in reducing public drunkenness (Nicholls and Morris, 2014.). **Following our 2014 report *One Too Many, we would recommend the introduction of a new mandatory licensing condition requiring all outlets to produce a written policy on dealing with drunk customers (Nicholls and Morris, 2014; also supported in Foster and Charalambides, 2016).*** This would bring sales to drunk customers into line with sales to underage customers and would provide additional leverage for licensing authorities to promote and measure good practice. The adoption of written policies on sales to drunk customers forms part of the criteria for Best Bar None and so is acceptable in principle from a trade perspective. Placing this on a statutory footing would help ensure that it becomes a mainstream principle of licensing.

4.8 Alcohol licensing at airports should be brought into line with standard alcohol retail.

There is no clear reason for the anomalous exemption of airports from licensing regulation. As public spaces, they present the same potential risks as other retail outlets – and, indeed, some additional risks. Although the absolute number of alcohol-related incidents in airports and on planes is low compared to traveller numbers, they have the potential to be particularly disruptive and dangerous.

Off-trade

5.1 UK licensing has its roots in a system designed when consumption was, in most cases, physically proximate to both sale and consequent disorder. The alcohol market today is very different: now just below 70% of all alcohol is sold through the off-trade, usually for consumption in the home (NHS Health Scotland, 2016; British Beer and Pub Association, 2015). Furthermore, the rise of pre- and post-loading means that the alcohol purchased in one location may be consumed in another, with subsequent problems occurring in yet another location.



(Source: Nielsen / CGA via NHS Health Scotland, 2016)

5.2 Home consumption also contributes significantly to alcohol-related harms. There is some UK-based evidence that high densities of off-sales outlets are associated with increased alcohol-related harms, including mortality (Richardson et al., 2015; Fone et al., 2016). However, current research on outlet density tends to be cross-sectional and international evidence is mixed in terms of design, analysis and reported effects (Holmes et al., 2014). This association is also confounded by the fact that alcohol-related health harms tend to be many times higher in deprived neighbourhoods than among affluent consumers (Bellis et al., 2016). Nevertheless, it is also often (though not always) the case that higher densities of off-sales are found in deprived areas than elsewhere (Ellaway et al., 2010). The lack of a public health licensing objective means that taking these associations into account in licensing decision-making is hindered.

5.3 Potential methods for improving control of off-sales under the current licensing regime include:

- **Allowing retail capacity to be a consideration in estimates of cumulative impact.**
This may require the mandating of sales data.
- **Supporting local authorities in establishing cumulative impact policies that account fully for off-sales and their potential health impacts.**

- **Preventing new off-sales applicants from applying for variations to operating hours within a set period of time following grant of licence.**
- **Requiring special licences for home delivery of alcohol that include formal training of those delivering the alcohol to prevent sales to underage or drunk customers.**
- **Reversing the rebuttable presumption that a licence will be granted in the case of home delivery operators.**

5.4 Introducing *statutory* restrictions on the sale of super-strength alcohol would require legislation that avoided challenges on the ground of restricting competition. This may be difficult to achieve, given the stringent limitations set out by the Competition and Markets Authority (Competition and Markets Authority, 2015). Furthermore, the primary problem is alcohol that is *both* cheap and high strength, and tackling this is best achieved through linking price to strength more effectively through either taxation reform or minimum unit pricing (MUP).

Pricing

6.1 The evidence regarding MUP is extensive, and will be familiar to the Committee. As regards the specific remit of this inquiry, it is not clear that a discussion of minimum pricing falls within a consideration of the 2003 Licensing Act. Although the Minimum Pricing (Scotland) Act proposes introducing MUP through a mandatory licensing condition, pricing policy is distinct from licensing policy. **Nonetheless, we would support the principle of introducing a minimum price per unit of alcohol as a means of tackling the harms caused by cheap, high-strength alcohol.** In addition to the extensive modelling produced by the Sheffield Alcohol Research Group, we would draw the committee's attention to recent evidence from Scotland suggesting that a very significant proportion of the cheapest and strongest alcohol (especially vodka and white cider) is consumed by people with severe alcohol problems (Chick et al., 2015).

Fees and costs

7.1 The 'localist' principles of current licensing legislation are undermined by the continued inability of local areas to set licensing fees in order to facilitate full cost recovery (Local Government Association, 2014b). The Local Government Association estimates that local authorities 'are diverting at least £1.5 million a month' to cover the costs of licensing (Local Government Association, 2015: 18). **We would support the LGA in calling for locally-set fees to be established to remedy this.**

International comparisons

8.1 A number of states and territories in Australia provide potentially useful comparisons to the UK, and the Committee may wish to explore these further. New South Wales introduced a mandatory 2am 'lock-out', a ban on 'shots' after midnight and required breaks in alcohol service in 2008. Evaluations of the policy suggest it is associated with declines in violence and disorder, though it remains uncertain how much such shifts are attributable to other confounding factors (Mendendez et al., 2015; Shepherd and Page, 2015; Humphreys,

2015). In Victoria and a number of other states and territories, licensing committees are required to consider the potential harms a new outlet may cause in all decisions. This so-called 'harm-minimisation' principle, although inconsistently applied in many cases, presents an alternative framework that the Committee may wish to consider in more depth (Davoren and O'Brien, 2014; Manton and Zajdow, 2014).

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24 August 2016

Ashford Borough Council – written evidence (LIC0016)

I refer to the recent call for evidence as part of the Select Committee on the Licensing Act 2003.

Please find below responses to questions on behalf of Ashford Borough Council’s Licensing Team.

Licensing objectives

1. *Are the existing four licensing objectives the right ones for licensing authorities to promote? Should the protection of health and wellbeing be an additional objective?*

1.1 Ashford Borough Council is of the opinion that the current licensing objectives are the correct ones to promote, and cover the main issues that arise from licensable activities.

1.2 We acknowledge the impact on health from physical, emotional, mental, social, and environmental experiences and conditions. The addition of the Protection of Health and is an objective in which Licensing Team support in principle. However we have some concerns about how it should be applied in a simple and consistent manner to avoid complexity and misuse.

1.3 This element may need more detailed clarification on what matters could be considered necessary for the purpose of conditions, or appropriate for the purposes of refusing an application for a premises which may be considered to be detrimental to public health.

2. *Should the policies of licensing authorities do more to facilitate the enjoyment by the public of all licensable activities? Should access to and enjoyment of licensable activities by the public, including community activities, be an additional licensing objective? Should there be any other additional objectives?*

2.1 At current our policies promote public events by waiving relevant application fees for open public events.

2.2 We do not feel that an increase via this objectives would provide a benefit, but would instead increase confusion and complexity of the licensing process

The balance between rights and responsibilities

3. *Has the Live Music Act 2012 done enough to relax the provisions of the Licensing Act 2003 where they imposed unnecessarily strict requirements? Are the introductions of late night levies and Early Morning Restriction Orders effective, and if not, what alternatives are there? Does the Licensing Act now achieve the*

right balance between the rights of those who wish to sell alcohol and provide entertainment and the rights of those who wish to object?

- 3.1 We believe that the Live Music Act has done more than enough to relax the provisions of the Act, if anything we are of the opinion that recent deregulation has created confusion amongst applicants as to what is regulated and what is not. Within the Ashford Borough we do not see that the benefit has outweighed the potential negatives, considering most premises have not changed their practices since the deregulation came into effect.
- 3.2 Ashford Borough Council have not introduced any late night levies or early morning restriction orders, and are therefore unable to submit evidence in relation to this part of the question.
- 3.3 We agree that there is a reasonable balance between those who wish to object and those who wish to sell alcohol and provide entertainment.
- 4. *Do all the responsible authorities (such as Planning, and Health & Safety), who all have other regulatory powers, engage effectively in the licensing regime, and if not, what could be done? Do other stakeholders, including local communities, engage effectively in the licensing regime, and if not, what could be done?***
- 4.1 At current, and as the Licensing Team, we do not feel that some of the responsible authorities effectively engage in the licensing regime, in particular Social Services and Trading Standards (both a County function) appear to have minimal involvement and do not appear on face value to pro-actively become involved in the consultation process. It may be that a compulsory requirement to review applications and provide comment, regardless of objection, on each responsible authority may increase pro-activity in this area.
- 4.2 With respects to other stakeholders including local communities, we feel the applicant notice and website notices are sufficient for the purposes of the Act. We do however feel that the requirement to advertise in the local paper is out of date, and that only a limited number of the population will purchase, and read the notifications within the local papers. Over time we consider newspaper notifications will become less relevant.
- 4.3 Longer term, with increasing more Council's creating resident 'logins' to access their council tax account, check bin days, etc. it may be possible that such systems could be used to alert residents to applications within a certain proximity to their property. Such systems appear however to vary between authorities at current, but longer term may be a viable and effective way of engaging the community beyond that of notices at the premises, website, and in the papers.

Licensing and local strategy

5. *Licensing is only one part of the strategy that local government has to shape its communities. The Government states that the Act “is being used effectively in conjunction with other interventions as part of a coherent national and local strategy.” Do you agree?*

5.1 In short, Ashford Borough Council find that the Act is used effectively, and this is demonstrated by the low number of complaints concerning licensed premises, and low numbers of license reviews within the Borough. In the last three years we have seen three license reviews.

6. *Should licensing policy and planning policy be integrated more closely to shape local areas and address the proliferation of licensed premises? How could it be done?*

6.1 We do not currently consider there is any issue within Ashford with respects to the proliferation of licensed premises, however we do agree in principle that Licensing and Planning Policy should be interlinked. However we do acknowledge that these two regulatory regimes are different in nature, and there are a number of complexities in linking the two processes.

Licensing procedure

9. *The Act was intended to simplify licensing procedure; instead it has become increasingly complex. What could be done to simplify the procedure?*

9.1 Ashford Borough Council’s Licensing Team are of the opinion that some of the deregulation with respects to entertainment, have increased complexity by introducing a system of partial deregulation that has, in this borough, not seen any major changes in the promotion of entertainment as intended. Most applicants are increasingly confused by the deregulation as to when entertainment is, and is not licensable.

9.2 We are of the opinion that the application forms are relatively simple however many applicants do not understand the licensing process, may be unaware of the possible assistance that an agent can provide, and, may not willing to pay for advice from an agent.

9.3 It may be that the application forms could be redesigned to be user-led, or indeed interactive online forms could help to ‘walk’ applicants through the completion process in a more intuitive manner.

9.4 As such Ashford Borough Council does incur cost in providing advice to applicants to ensure that their applications meet a basic standard.

9.5 One measure where we feel that the licensing procedure could be simplified is to remove the need for industry to send paper applications to all responsible bodies,

and instead place this responsibility on the Licensing Authority as part of the application process, much like with respects to electronically submitted applications.

10. *What could be done to improve the appeal procedure, including listing and costs? Should appeal decisions be reported to promote consistency? Is there a case for a further appeal to the Crown Court? Is there a role for formal mediation in the appeal process?*

10.1 With respects to appeals, Ashford Borough Council have not been in the position in recent years to have experienced a Licensing Act appeal, and as such have no specific comments to make

10.2 We do however agree that the outcome of pertinent cases should be reported to promote consistency, and for that purpose we feel that the Institute of Licensing fulfil this role well where notified of relevant cases.

10.3 With regard to mediation, we do not feel that this would be appropriate to the appeals process, and do not see how formal mediation between the decision of the Councils Licensing Sub-Committee and the licensee will work post committee hearing. Mediation in one form or another is usually applied before a hearing and through the legal process, and we do not feel that further formal mediation would serve a useful purpose in this case.

Sale of alcohol for consumption at home (the off-trade)

11. *Given the increase in off-trade sales, including online sales, is there a case for reform of the licensing regime applying to the off-trade? How effectively does the regime control supermarkets and large retailers, under-age sales, and delivery services? Should the law be amended to allow licensing authorities more specific control over off-trade sales of “super-strength” alcohol?*

11.1 In the case of off-sales, we have no evidence to support a reform of the off-trade

11.2 We consider through inspection and complaints that the large retailers and supermarkets are generally controlled well, and although they make up a larger proportion of sales, most concern relates to the smaller ‘convenience’ retailer with respects to underage sales and the selling of individual cans of strong cider/lager.

11.3 We are of the opinion that proxy-sales, for example a parent purchasing alcohol for their teenage child, could never be effectively controlled through the Act.

11.4 With respects to ‘super-strength’ alcohol, we believe that more specific control should be applied to the supply of ‘super-strength’ alcohol commonly associated with heavy drinking and street drinking. We also believe that in order to prevent further complexity to the Act that these controls need to be implemented nationally.

This may best work by setting a national standard that may be adopted by Local Authorities where they consider this applicable to their area.

Pricing

12. Should alcohol pricing and taxation be used as a form of control, and if so, how? Should the Government introduce minimum unit pricing in England? Does the evidence that MUP would be effective need to be “conclusive” before MUP could be introduced, or can the effect of MUP be gauged only after its introduction?

12.1 We are of the opinion that taxation and pricing should be used as a form of control, however we do not feel that this alone would be sufficient. Pricing alone may only affect those with less disposable income, and may not tackle issues for the more affluent.

12.2 With respects to evidence, we do not feel that conclusive evidence prior to introduction would be possible. Limited comparisons may however be drawn from prior increases in cigarette duties.

Fees and costs associated with the Licensing Act 2003

13. Do licence fees need to be set at national level? Should London, and the other major cities to which the Government proposes to devolve greater powers, have the power to set their own licence fees?

13.1 With respects to fee setting, we are of the opinion that it should be for local authorities to set application fees locally, with national maximums being set, similar to that of the Gambling Act fees.

13.2 This would enable more effective cost recovery and prevent the subsidising of the Licensing Act as reported in the recent LGA and CIPFA report on the costs of administering the Act.

13.3 We also suggest that rather than each Council embarking on the process of proposing, consulting, and, setting local application fees annually this is changed to allow fee setting every three years, or suitable time period, in order to save costs.

13.4 A nationally set maximum application fee would also encourage more inefficient Councils to streamline processes to ensure cost recovery occurs.

17 August 2016

Association of Convenience Stores – written evidence (LIC0086)

Executive Summary

- The Licensing Act 2003 is currently working well despite significant ongoing changes to Act, mandatory conditions and guidance to local authorities. Local authorities and licensees would both benefit from a pause in further changes to the legislation.
- The Licensing Act objectives have helped to deliver a reduction in alcohol-related harm. The current licensing objectives do not need to be revised or added to.
- We do not support the introduction of health as a licensing objective. There is no evidence to link alcohol related health harms to an individual premises, which means the licensing system is not an appropriate mechanism to address health issues.
- Alcohol consumption and alcohol related harm is in long term decline. The proportion of people who drank in the last week fell from 64% in 2005 to 58% in 2013⁵³ and the proportion of young people that had binged in the last week has fallen from 29% in 2005 to 18% in 2013.
- There has not been a significant increase in the number off-trade premises since the introduction of the Licensing Act. The number of off-trade premises has remained stable per capita for over twenty years.
- The Licensing Act applies equally to on-trade and off-trade premises.
- Attempts to link alcohol related harm in the night time economy to the off-trade are unfounded. ‘Pre-loading’ is not as common as it is perceived, with only one third of UK adults having pre-loaded in the past year.
- The Licensing Act could be improved by reducing regulatory burdens on licensees such as:
 - removing the requirement for licensees to display a statutory notice in a local newspaper when applying for an alcohol licence or major variation;
 - creating a central online platform to manage licensing applications;
 - ensuring licensing conditions are based on recent, local, relevant evidence;
 - removing the requirement for forecourt retailers to prove the primary use of their business as retail.

Introduction

1. ACS (the Association of Convenience Stores) is a trade association, representing the 51,524 convenience stores including the Co-Op, Costcutter, Spar UK and thousands of

⁵³ ONS: Opinions and Lifestyle Survey, Adult Drinking Habits in GB 2013

independent stores employing 407,000 people⁵⁴. For more information on ACS, please see Annex A

2. Convenience stores provide a range of products and services, including Post Offices, bill payment services, and ATMs to local communities. Alcohol is an important product category for convenience retailers, with 88%⁵⁵ of stores holding an alcohol licence, and an average of 13.8% of store sales represented by alcohol⁵⁶.

3. Convenience stores have a role to play in addressing alcohol-related harm and are taking action to reduce underage sales and promote responsible retailing. We acknowledge that there is more work to be done to reduce alcohol-related harm. ACS will continue to work with convenience retailers to promote responsible retailing and encourage retailer engagement with local partnerships.

Are the existing four licensing objectives the right ones for licensing authorities to promote? Should the protection of health and wellbeing be an additional objective?

4. Since the introduction of the Licensing Act in 2005, alcohol harm and consumption statistics have been on a downward trend. While we believe the Licensing Act has played a positive role in encouraging these trends, the main drivers of which are consumer awareness of alcohol health harms, younger people drinking less, and industry action to reduce access to young people accessing alcohol. The following data shows the progress that has been made under the Licensing Act;

- The proportion of people who drank in the last week fell from 64% in 2005 to 58% in 2013⁵⁷, while binge drinking has also fallen, with the proportion of young people that had binged in the last week falling from 29 per cent in 2005 to 18 per cent in 2013⁵⁸.
- The Home Office Crime Survey for England and Wales has demonstrated that the prevention of public nuisance objective has also been effective. The overall level of perceived anti-social behaviour among adults (including perceptions of drunk and rowdy behaviour in their local area) has fallen from 17% in 2004/05 to 11% in 2014/15⁵⁹.
- The effect of the protection of children from harm objective means that now less than one in ten pupils (8%) had consumed alcohol in the last week in 2014. This continues the downward trend since 2003, when a quarter (25%) of pupils had drunk alcohol in the last week⁶⁰. Moreover, the number of

⁵⁴ ACS Local Shop Report 2015

⁵⁵ ACS Local Shop Report 2015

⁵⁶ ACS Local Shop Report 2015

⁵⁷ ONS: Opinions and Lifestyle Survey, Adult Drinking Habits in GB 2013

⁵⁸ HSCIC: Statistics on Alcohol, England 2015

⁵⁹ [Home Office: Post-legislative scrutiny of the Licensing Act 2003](#)

⁶⁰ HSCIC: Smoking Drinking and Drug Use 2014

penalty notices for disorder issued for the sale of alcohol to a person under 18 fell from 2,058 in 2005 to 568 in 2015⁶¹.

Health as a Licensing Objective

5. ACS does not agree that health and wellbeing should be an additional licensing objective. There is also no causal link between the availability of alcohol and alcohol-related harm⁶². It would be incredibly challenging for the licensing authority to identify whether an individual premises' licence or their licensing conditions promote health as a licensing objective. Using local, relevant evidence to consider an individual premises' licence application or licensing conditions is fundamental to the Licensing Act 2003, and it is not possible to do this in relation to health and wellbeing.

6. Evidence presenting long term alcohol-associated health harms in a community, such as liver cirrhosis, cannot justify preventing a new shop or pub from receiving a licence. The long term alcohol related harms that exist in that area can be attributed to drinking behaviours from many years previous in different locations and are not a reflection of current local circumstances. Similar problems exist in relation to short term health harms such as alcohol related A&E admissions. There is no criteria that health services can use to understand an individual's drinking habits that directly result in an alcohol related injury and link it back to premises' where the incident occurred.

7. The Scottish alcohol licensing system includes health as a licensing objective, but its effectiveness has been limited as local authorities do not have evidence to restrict licences based on health harms. Health as a licensing objective in Scotland has resulted in 'overprovision' policies where licensing boards can block any new licensing application. Licensing authorities have to present evidence that consumers had purchased the majority of their alcohol from the licensed premises in their area and also show a clear causal link between the number of premises and health harms. The Scottish Government have identified that it is "almost impossible to relate public health data to individual premises."⁶³ This challenge is supported by the fact that only 10 local authorities of 32 have implemented overprovision pledges and many of these have been subjected to challenges.

8. Limiting licences only deters new stores from opening and protects businesses which operate irresponsibly. ACS believes that to prevent alcohol-related harm, there must be a focus on the quality and compliance of retailers in the market and not on the volume. For reference, please see Annex C for a video case study of the impact that overprovision policies have on retailers' investment decisions in Scotland.

Should the policies of licensing authorities do more to facilitate the enjoyment by the public of all licensable activities? Should access to and enjoyment of licensable activities

⁶¹ [Home Office: Post-legislative scrutiny of the Licensing Act 2003](#)

⁶² Alcohol Concern's/ University of West England Report: [One on Every Corner](#) states in its methodological qualification that it does not prove a cause and effect of alcohol harm and availability. Also lack of reliable health data and exclusion of regions undermines the report's assertions.

⁶³ Scottish Government: Further Options for Alcohol Licensing – Consultation Paper

by the public, including community activities, be an additional licensing objective? Should there be any other additional objectives?

9. As stated above, ACS believes the current licensing objectives work to promote to responsible drinking and reduce alcohol-related harm.

Has the Live Music Act 2012 done enough to relax the provisions of the Licensing Act 2003 where they imposed unnecessarily strict requirements? Are the introductions of late night levies and Early Morning Restriction Orders effective, and if not, what alternatives are there? Does the Licensing Act now achieve the right balance between the rights of those who wish to sell alcohol and provide entertainment and the rights of those who wish to object?

10. Early Morning Restriction Orders (EMRO) and late night levies were introduced through more recent legislation which amended the Licensing Act 2003. It is important to note that these powers apply to off-trade and on-trade premises. Both EMROs and levies apply to a specific area which means if a convenience store operates in the affected area, they will also be subject to the EMRO or levy. As such, convenience stores are burdened financially either by paying the levy or having to close their store.

11. EMRO and late night levies have not been effective in addressing alcohol-related harm, which is evident by their limited use by local authorities. As of May 2016, only seven licensing authorities had decided to introduce a late night levy and no local authorities have decided to introduce an EMRO in their area.⁶⁴ The Home Office is currently reviewing the late night levy, as confirmed in the Modern Crime Prevention Strategy. The review will aim to make the levy “fairer to business and more transparent”⁶⁵.

12. The Licensing Act provides the right balance between business and local authority interests. However, the use of qualitative data is preferred by licensing authorities, which includes the views of the local residents. Licensing authorities place a disproportionate weight on this data compared to quantitative data. We would welcome clarification from the Home Office through the section 182 guidance that representations deemed relevant are equally weighted when local authorities are considering licence applications. For example, a business organisation representing numerous businesses may submit significant amounts of quantitative data to a licensing committee but this is given less weight than a small number of local resident’s objections.

Do all the responsible authorities (such as Planning, and Health & Safety), who all have other regulatory powers, engage effectively in the licensing regime, and if not, what could be done? Do other stakeholders, including local communities, engage effectively in the licensing regime, and if not, what could be done?

13. ACS believes the responsible authorities are effectively engaging in the licensing regime.

⁶⁴ Home Office: Memorandum to the House of Lords Select Committee

⁶⁵ Home Office: Modern Crime Prevention Strategy

Licensing is only one part of the strategy that local government has to shape its communities. The Government states that the Act “is being used effectively in conjunction with other interventions as part of a coherent national and local strategy.” Do you agree?

14. ACS agrees that the Licensing Act is being used effectively with other interventions. There is an increasing amount of power being devolved to local authorities that empower local authorities to make robust local planning, economic development and public health strategies. Licensing authorities consult with a wide range of responsible authorities including licensing authorities, police, the local fire and rescue authority, relevant enforcing authority under the Health and Safety at Work etc Act 1974, environmental health offices, the local planning authority, bodies which are responsible for protecting children from harm, health boards, and the local weights and measures authority. These bodies represent various interests across the community.

15. ACS welcomed the focus in the Home Office’s Modern Crime Prevention Strategy on local partnership working in communities to address alcohol related harm through the launch of additional Local Alcohol Action Areas (LAAAs). The new programme of LAAAs will “strengthen the capacity and capability of local areas to build effective partnerships”⁶⁶. ACS is committed to supporting the development of the new LAAAs, which will incorporate the work of Community Alcohol Partnerships (CAP). The alcohol retailing and manufacturing industry funds Community Alcohol Partnerships⁶⁷, which are locally based projects that tackle underage sales and anti-social behaviour by bringing retailers, schools, local police and local authorities together.

Should licensing policy and planning policy be integrated more closely to shape local areas and address the proliferation of licensed premises? How could it be done?

16. We do not believe that licensing policy and planning policy should be further integrated. The planning system already supports the aims of the Licensing Act by consulting extensively on the development of local and neighbourhood plans. ACS supports the development of robust evidence led local plans with a clear development strategy for retail and hospitality premises. As such, we do not believe that additional regulatory powers are required to link the Licensing Act and planning powers.

17. We do not support the assertion in the consultation question that there has been a significant proliferation in licensed premises. The number of off-licences per capita has remained incredibly stable: in 1992, there were 0.91 off-licences per 1000 people, and in 2014, there were also 0.91 off-licences per 1000 people⁶⁸.

Cumulative Impact Policies

⁶⁶ Home Office: Modern Crime Prevention Strategy 2016

⁶⁷ There are currently over 100 CAP schemes in operation which have been developed over 9 years. There are quantifiable benefits from CAPs showing a reduction in anti-social behaviour and underage sales. Some of the successes of CAP include: a 41% decrease in anti-social-behaviour in Hayling Island, an 18% reduction in alcohol-related crime in East Edinburgh, and a 61% decrease in crime and disorder reports linked to street drinking in Great Yarmouth CAP area compared to a 25% decrease across the rest of Norfolk.

⁶⁸ ONS Population Estimates 2016 cross referenced with Home Office Alcohol and Late Night Refreshment Licensing 2014

18. The licensing system already has the power to block new licences in a particular area by introducing a cumulative impact policy (CIP). Cumulative impact policies were designed to deal with alcohol related harm in the night time economy as a way to prevent the saturation of people in a single location at closing time, which could contribute to crime and anti-social behaviour.

19. The Home Office's recently published Modern Crime Prevention Strategy⁶⁹ committed to giving CIPs statutory status. This will be achieved through amending the Policing and Crime Bill in the House of Lords. If CIPs are given statutory status, primary legislation must stipulate a robust process for the introduction of a CIP at local level. All evidence that is used to justify a CIP must be the latest information and based on police crime data, sunset clauses should also be applied at a local level to CIPs to ensure that they meet their objectives.

20. We are concerned about the impact that planning restrictions and CIPs may have on investment in local communities. Convenience stores would be disproportionately impacted as alcohol is only one aspect of a store's sales mix and therefore the restriction of licences also makes it harder for businesses to offer other services including fresh food, banking, Post Offices, and payment services. Limiting the number of off-licences in an area also acts as a disincentive for new store openings and will mean more empty units on the high street and more under invested stores. Currently vacancy rates on UK high streets remain high at 12.4%⁷⁰.

21. The effects of restricting the number of alcohol licences is apparent in the areas in Scotland where overprovision has been introduced. Where overprovision has been introduced in an area, small businesses are most affected. Evidence submitted by the Scottish Licensed Trade Association (SLTA) to the Air Weapons and Licensing (Scotland) Act suggests that a two tier licensing system has developed. This is where large operators are less likely to be challenged because of local authorities fear of legal action, while small independent retailers are more likely to be challenged because they are less likely to appeal the refusal. This is a worrying development and a significant barrier to small business' growth.

Crime, disorder and public safety

Are the subsequent amendments made by policing legislation achieving their objects? Do they give the police the powers they need to prevent crime and disorder and promote the licensing objectives generally? Are police adequately trained to use their powers effectively and appropriately?

22. We believe that the police have the powers they need to promote the prevention of crime and disorder licensing objective in the Licensing Act. The chief of police is a responsible authority, which means that they must be fully notified of applications and are entitled to make representations to the licensing authority in relation to the application for

⁶⁹ [Home Office: Modern Crime Prevention Strategy](#)

⁷⁰ [Local Data Company: Shop Vacancy Rates](#)

the grant, variation of review of a premise licence. The police can make an application for summary review of an alcohol licence if they are found in breach of their prevention of crime and disorder objective. The police also have the power to enter and search a premise where they have reason to believe that an offence under the Licensing Act has been or is about to be committed⁷¹.

23. The Home Office's Modern Crime Prevention Strategy outlines a number of new powers which will equip "local authorities and the police with the right powers to take action when partnership working breaks down and problems escalate"⁷². The Home Office plans to consult on these powers, which include putting cumulative impact policies on a statutory footing and consulting on group review intervention powers (GRIPs). GRIPs would enable licensing authorities to consider the licensing conditions of a group of premises to address problems in a specific location. The development of GRIPs powers demonstrates how the Licensing Act can be amended to address challenges as they emerge.

Tackling Alcohol Duty Fraud

24. We believe the police and other enforcement bodies, including trading standards, should focus on tackling the non-duty paid and illicit alcohol trade. The Licensing Act 2003 provides licensing authorities with powers to remove alcohol licences from retailers who participate in the sale of non-duty paid alcohol, however this power is not often used. Research from Portsmouth Council has shown a strong correlation between retail premises selling non-duty paid alcohol at low costs and breaching other licensing conditions. Therefore, tackling the illicit alcohol market will not only reduce alcohol-related harm caused by counterfeit and non-duty paid alcohol but also reduce associated alcohol-related harm, for example, underage sales.

25. Since figures were recorded (2008-09), there has been a steady increase in the tax gaps rate for alcohol. In 2008-09, the alcohol tax gap cost the Exchequer was an estimated £830m and this has since increased by 31% to £1.2 billion by 2013-14⁷³. Illicit alcohol undercuts legitimate retailers and drives footfall away from their stores. In a survey of independent convenience retailers, 67% agreed that retailers that are found selling illicit alcohol or tobacco should have their alcohol licence removed⁷⁴. ACS supports the introduction of tougher penalties for retailers that engage in the illicit market and greater funding for police, HMRC and trading standards to tackle this issue.

Should sales of alcohol airside at international airports continue to be exempt from the application of the Act? Should sales on other forms of transport continue to be exempt?

26. Convenience stores are not typically located in airports, however, of those that are, they tend to be located landside. As such, this question does not apply.

⁷¹ [Home Office: Powers of Entry Code of Practice](#)

⁷² Home Office: Modern Crime Prevention Strategy 2016

⁷³ [HMRC Measuring Tax Gaps 2015](#)

⁷⁴ ACS Voice of Local Shops Survey August 2016

Licensing procedure

The Act was intended to simplify licensing procedure; instead it has become increasingly complex. What could be done to simplify the procedure?

27. ACS has listed recommendations below which would simplify the licensing procedure:

Alcohol Licensing: Advertising in Local Newspapers

28. Section 182 guidance which supports the Licensing Act 2003, states that all licensees must display a statutory notice in local newspapers when they apply for an alcohol licence or a significant variation to their existing licence⁷⁵. The reason for this is to ensure that the local community is informed about a new licensing application and have the opportunity to either object or endorse the application.

29. We completely support the need to communicate licensing applications to the local community, however, we have consistently called on the Government remove the requirement for licences to be advertised in local papers. This is because retailers must pay for the statutory notices to go into the local paper. This represents a significant cost for individual retailers, with a typical alcohol licence advertisement costing £183⁷⁶.

Licensing Applications

30. Licensing applications for new premises have become increasingly difficult for retailers to manage. Many retailers now seek professional support from licensing lawyers or consultants to make these applications. Applications are often difficult for retailers that trade across different local authority boundaries as each local authority takes a slightly different approach to their application process. For instance, some local authorities will not accept electronic copies of licensing applications and others will only accept online applications. Online versions of applications will also differ from the postal version, featuring additional questions, which can be confusing as well as more time consuming. Where applications prove difficult, it is often hard to find a single point of contact at the council to discuss issues with the application.

31. It would be extremely beneficial if the Government considered the introduction of one online platform to manage alcohol licensing applications or a pro forma application form that all local authorities could use. It would also be beneficial if licensing authorities accepted postal applications in email form. This would put businesses and local authorities on a level playing field, with a clear understanding of the evidence required, the format of the information and the timeframes to work to.

Licensing Conditions

⁷⁵ There is also a requirement on licensees to promote the new licence application or variation outside the prospective premises for 28 days.

⁷⁶ This figure represents an average price based on an advertising agency, prices ranged for newspaper advertising from £80 to £500. Further details are available on request.

32. Licensing conditions are added to premises licence applications to account for unique local circumstances and ensure that the licensing objectives are upheld. For example, a licensing condition could be added to restrict trading hours at a premises or dictate the level of training or number of designated supervisors that must be in the store. The Licensing Act 2003 permits licensing conditions to be local, relevant, evidence based, business specific, and not standardised. However, retailers often report highly restrictive licensing conditions being applied to their licence. In a survey of independent retailers, 40% believed alcohol licensing conditions had become more restrictive over the last five years⁷⁷. Local authorities attempt to apply conditions across all premises in a formulaic way which does not match individual circumstances of the business or the local area.

33. A recent licensing application for a convenience stores in London was requested to include 32 licensing conditions. The conditions would restrict the licensing hours of the business significantly, impacting on the size, strength, packaging and location of alcohol products being sold. The convenience store decided to challenge the application of these conditions and found that the police and local authority had little evidence to support the application of the conditions. This is an all too familiar story across the country and either indicates a lack of understanding of the Licensing Act at local authority and police force level, or an intentional attempt to restrict businesses trading by overloading them with licensing conditions.

Fuel Retailers and Alcohol Licensing

34. It is more expensive and time consuming for petrol forecourt retailers to secure alcohol licences because they have to prove the primacy of their business is a convenience store rather than ‘petrol retailing’⁷⁸. To secure the licence, forecourt retailers have to invest in producing an argument to show their primary use and include this as part of their licensing application.

35. 38% of customers⁷⁹ currently drive to convenience stores and a much higher proportion of shoppers drive to supermarkets. Therefore, it is strange that there is an additional burden placed on forecourt retailers to determine the purpose of their business based on the mode of transport the customer uses to visit their store. This is an outdated part of the legislation that should be reviewed and removed to reduce the premium licensing cost for forecourt retailers.

What could be done to improve the appeal procedure, including listing and costs? Should appeal decisions be reported to promote consistency? Is there a case for a further appeal to the Crown Court? Is there a role for formal mediation in the appeal process?

36. ACS would welcome clarity around the service of the Notice of Decision (sometimes referred to as the Notice of Determination). Currently, there is no regulated process, which can lead to confusion to when licensing conditions or suspensions apply, especially so if the

⁷⁷ ACS Voice of Local Shops Survey August 2016

⁷⁸ Defined in section 176 of the Licensing Act 2003

⁷⁹ ACS Local Shop Report 2015

licensee contends that the notice was not received. Notices of Decision could be sent to the licensee, Solicitor, premises, or the correspondence address of the registered office. We would welcome clarity around the process of the issue of Notices of Decision to prevent confusion.

37. Appeal costs place financial burdens on retailers. While £400 is an expensive fee to register an appeal, it is especially so for a small independent business. Moreover, licensees do not have the right of audience before the Magistrates' Court unless their agent that they use to represent them is a Solicitor or Barrister. As such, licensees are required to hire a Solicitor or Barrister to represent them, which increases the financial burden on the business. Smaller retailers anecdotally report that there are few appeals made now as the costs are so high.

38. We believe there is a case for further appeal to the Crown Court. Currently, the appeals process only allows appeals to proceed to the Crown Court on a point of law, not on the basis of a decision. The option should be available for licensees to use if their appeal has been rejected at Magistrate's court.

39. Formal mediation does have a role in the appeals process. Some licensing authorities have been open to informal mediation and as such some appeals have been avoided by the licensee agreeing to changes to conditions with the Responsible Authorities. However, many licensing authorities do not conduct mediation, believing that the only way to change the decision of a hearing is by way of appeal. If licensing authorities were required to mediate or allow mediation to occur, this would create a fairer process.

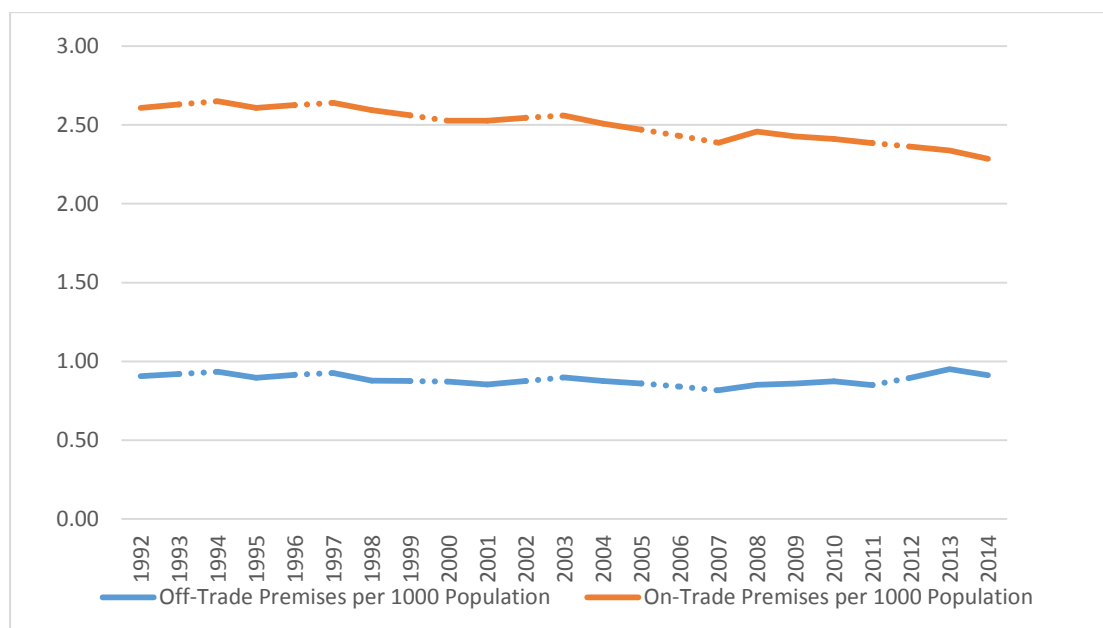
Given the increase in off-trade sales, including online sales, is there a case for reform of the licensing regime applying to the off-trade? How effectively does the regime control supermarkets and large retailers, under-age sales, and delivery services? Should the law be amended to allow licensing authorities more specific control over off-trade sales of "super-strength" alcohol?

Number of Off-Licences

40. The number of off-licences has not increased dramatically over recent years, but has only followed the rise in population. This stability is evident when looking specifically at the off-trade: in 1992, there were 0.91 off-licences per 1000 people, and in 2014, there were also 0.91 off-licences per 1000 people⁸⁰.

⁸⁰ ONS Population Estimates 2016 cross referenced with Home Office Alcohol and Late Night Refreshment Licensing 2014

Association of Convenience Stores – written evidence (LIC0086)



(Source: ONS Population Estimates cross referenced with Home Office Alcohol and Late Night Refreshment Licensing reports and Department for Culture, Media and Sport Alcohol, Entertainment and Late Night Refreshment Licensing Statistical Bulletins – Please note that the dotted line represents data not available)

41. According to the most recent ‘Alcohol and Late Night Refreshment Licensing’ report in 2014, the number of off-licences fell from 2013 to 2014 by 3%⁸¹, and we await the publication of future statistics on the number of premises licences from the Home Office.

42. Over recent years there has been a change in the make-up of the off-trade, with the number of specialist off-licences falling by 11% between 2008 and 2016⁸². Consumers have shifted away from shopping in traditional off-licences, which typically only sell alcohol products, to convenience stores, which provide a wider range of products and services.

43. House of Lords Licensing Act 2003 Committee members have raised concerns about the increase in off-trade premises and pre-loading during oral evidence⁸³. Polling conducted by YouGov in 2015⁸⁴ suggests that pre-loading is not as common as it is often perceived, with only 35% of 2,000 UK adults stating that they have pre-loaded in the past year. The majority of those who pre-load do so less than once a month. It is important to note that while respondents found pre-loading cheaper than the night time economy, 42% said that the alcohol they consumed before a night out was only a minority of the alcohol they drank that same night.

24 Hour Licensing

⁸¹ Home Office: Alcohol and Late Night Refreshment Licensing Report 2014

⁸² IGD Grocery Market Structure 2008-2016

⁸³ [House of Lords Licensing Act 2003 Committee: Oral Evidence 5 July 2016](#)

⁸⁴ Wine and Spirits Trade Association YouGov Polling 2015

44. Prior to the introduction of the Licensing Act 2003, there was concern that the Act would create a 24-hour drinking culture as premises would be allowed to apply for 24-hour alcohol licences. However, this concern has not materialised, with only a minority of premises (4%) holding a 24-hour licence.

45. The majority of the 7,438 premises which hold a 24-hour licence are hotel bars (48%), while only 13% of 24-hour licences being held by convenience stores⁸⁵. It is important to note these statistics only represent the number of premises who successfully applied for a 24-hour licence, and not the number of premises that sell alcohol 24-hours.

46. According to the ACS Local Shop Report 2016, 3.5% of independent retailers are open 24-hours in England and Wales, this falls to 2.4% when calculating the number of independent retailers who are open 24-hours also hold an alcohol licence. The majority of 24-hour licences are found in urban areas⁸⁶.

Licensing Act 2003 and the Off-Trade

47. The Licensing Act does not take two different approaches to regulation based on whether the licensee is selling alcohol for consumption on the premises or if they are selling alcohol for consumption off the premises. The Licensing Act 2003 applies equally to off-trade and on-trade premises. As such, the penalties and enforcement action also apply equally to both on-trade and off-trade premises.

48. It is evident that the Licensing Act has kept pace with changes both in the on-trade and off-trade market. Of the 27 major changes to the Act since 2005, identified in Annex A, only one does not apply to the off-trade. For example, changes included introducing a new mandatory condition which bans the sale of alcohol below the cost of duty plus VAT, the introduction of late night levies, and strengthening the fine for selling alcohol to children. It is important to note that the most recent mandatory condition mainly affects the off-trade.

49. The Licensing Act allows licensing authorities to impose specific licensing conditions on premises as long as they are appropriate to promoting the licensing objectives. This allows licensing authorities, in principle, to tailor additional licensing conditions to the individual premise based on local evidence. For example, if there was a high level of crime in a town centre, the licensing authority may impose a condition on a licensee located in the town centre to ensure that there is CCTV operating in-store. It is licensing authorities' discretion whether to further regulate a premise through licensing conditions.

50. In practice, licensing authorities take a formulaic approach to licensing conditions, applying a selection of conditions to all of the off trade premises in the area. This goes against one of the key principles of the Act which requires conditions to be tailored to individual premises. This can often lead to off-trade premises having to challenge the application of licensing conditions. A recent licensing application⁸⁷ for a convenience stores

⁸⁵ Home Office: Alcohol and Late Night Refreshment Licensing Report 2014

⁸⁶ ACS Local Shop Report 2016

⁸⁷ Contact the ACS team to see the application

in London was requested to include 32 licensing conditions. The conditions would restrict the licensing hours of the business significantly, impacting on the size, strength, packaging and location of alcohol products being sold. The convenience store decided to challenge the application of these conditions and found that the police and local authority had little evidence to support the application of the conditions.

Preventing Underage Sales

51. There are extensive sanctions for selling to underage persons in the Licensing Act 2003 which apply equally to the off-trade as well as the on-trade. Selling alcohol to someone under 18 can lead to an on the spot fine of £90, a caution that appears on their criminal record or formal prosecution including an unlimited fine. If a retailer or an on-trade premise has been found to be persistently selling alcohol to under 18s, they face an immediate closure order for between 48 hours and 336 hours (14 days), or an unlimited fine. Their alcohol licence is also at risk.

52. The industry has taken proactive action to prevent young people from accessing alcohol. The off-trade has led the way in the introduction of age verification schemes such as ‘Challenge 25’ and partnership schemes including Community Alcohol Partnerships. This has helped to significantly reduce the number of underage people purchasing alcohol. HSCIC data suggests that now the most common way pupils (11-15 year olds) obtained alcohol was from parents (17%), friends (15%) or taking it from home with permission (11%) rather than a shop or supermarket⁸⁸. The number of pupils who had obtained (or tried to obtain) alcohol declined from 49% in 2004 to 28% in 2014⁸⁹.

53. As outlined above, retailers have been heavily engaged with a number of age verification schemes including ‘Challenge 25’⁹⁰ which has reduced underage access to alcohol. Polling of ACS members in 2012 showed that 70% of retailers had an age verification policy in store and it was found that more than a quarter of retailers refused age restricted sales more than ten times a week⁹¹. Serve Legal, an independent test purchasing company, found in 2015 that convenience stores had an 83% pass rate⁹², an increase of 18% since 2008.

54. The industry has also taken proactive action to promote responsible retailing amongst the off-trade. Most notably, the industry set up the Retail of Alcohol Standards Group (RASG)⁹³, Proof of Age Standards Scheme (PASS)⁹⁴, and Community Alcohol Partnerships (CAP).

“Super Strength” Alcohol

⁸⁸ HSCIC: Smoking, Drinking and Drug Use Among Young People in England 2014

⁸⁹ HSCIC: Smoking, Drinking and Drug Use Among Young People in England 2014

⁹⁰ ‘Challenge 25’ ensures that anyone that looks under 25 is challenged for proof of age. It is made up of several components including training, display of signage, staff support, record keeping and guidance and clarity on acceptable forms of ID.

⁹¹ ACS Voice of Local Shops May 2012

⁹² Serve Legal, Independent Test Purchasing Key Trends 2015

⁹³ The Retail of Alcohol Standards Group is a committee of high street off-trade alcohol retailers who meet to exchange best practice in the responsible retailing of alcohol. The group produced [best practice guidance](#) for the sale of alcohol in England and Wales.

⁹⁴ The Proof of Age Standards Schemes (PASS) was set up to provide retailers reassurance about which cards can be accepted as valid proof of age.

55. We recognise concerns about the problem of street drinkers and the high strength alcohol products associated with this. Convenience stores have a role to play in preventing this form of alcohol harm, and almost half (41%) of convenience stores do not stock high strength lager and ciders in their stores⁹⁵.

56. Local initiatives to tackle street drinking have the potential to make the local area safer, and to reduce alcohol harm, however, there has been great variance between the quality and approach of different schemes. The most effective schemes work with a range of partners including; retailers, police, local charities and health agencies to tackle the problem. Ipswich and Portsmouth are excellent examples of best practice of these schemes. However, schemes also have the potential to place retailers at risk of breaching competition law, and if conducted in the wrong way, they can be burdensome for retailers without tackling the problems they were designed to address.

57. ACS has produced guidance for retailers in consultation with the Competition and Markets Authority, which sets out the competition risks associated with engaging with an initiative and provides retailers with a framework to assess the quality and effectiveness of an initiative before deciding whether to engage. ACS' guidance on 'Reducing the Strength' schemes can be found in Annex D. We have advised our members to assess each individual scheme on its merits and be mindful of certain practices that put them in breach of competition law, or because they are unconvinced that the schemes are tackling street drinking in an effective and holistic way supported by strong evidence.

Pricing

Should alcohol pricing and taxation be used as a form of control, and if so, how? Should the Government introduce minimum unit pricing in England? Does the evidence that MUP would be effective need to be "conclusive" before MUP could be introduced, or can the effect of MUP be gauged only after its introduction?

58. ACS is not convinced that the introduction of Minimum Unit Pricing (MUP) will have a significant impact on alcohol related harm. We believe that tackling alcohol related harm is more complex than the introduction of an increase in price. Instead, tackling alcohol-related harm must be done in partnership with all stakeholders to instigate long term change in drinking behaviours.

Fees and costs associated with the Licensing Act 2003

Do licence fees need to be set at national level? Should London, and the other major cities to which the Government proposes to devolve greater powers, have the power to set their own licence fees?

59. ACS supports licensing fees being set at national level. Fees as set out in the 2003 Licensing Act were designed to recover licensing authorities' costs of administrating,

⁹⁵ ACS Voice of Local Shops Survey February 2014

inspecting and enforcing the new regime. This principle has remained consistent throughout licensing, and ACS supports its continuation.

60. The restructure of Licensing fees proposed by the Home Office in 2014⁹⁶ would lead to a significant change in the burden of fees in particular shifting costs burdens from big to small premises, and from existing businesses to new businesses. This has the potential to impose significant harm on small businesses in particular and will create barriers to entry into the market.

61. Our proposal is for the Home Office to consider far less disruptive options, in particular, to consider the retention of the existing centrally prescribed fee structures based on National Non-Domestic Rateable value (NNDR) bands. We accept that fee income for licensing authorities has to be reviewed to reflect real-term increases in cost and local authority efficiencies in the licensing administration.

International comparisons

Is there a correlation between the strictness of the regulatory regime in other countries and the level of alcohol abuse? Are there aspects of the licensing laws of other countries, and other UK jurisdictions, that might usefully be considered for England and Wales?

62. Scotland has led a stricter licensing regime, implementing a number of changes to the Licensing Act (Scotland) 2005 since its introduction, most notably the Alcohol (etc) (Scotland) Act 2010, which imposed a minimum price for packages containing more than one alcoholic product, restricted drinks promotions which encouraged consumers to buy larger quantities, and restricted the location of alcohol to one area in-store. These legislative controls burdened retailers operationally. Convenience retailers have very limited space in-store to promote, place, and advertise the products they sell regardless of any restrictions. Despite additional licensing controls in Scotland, 20% more alcohol was sold per adult in Scotland than England and Wales in 2015⁹⁷.

ANNEX A

⁹⁶ [Fees Under the Licensing Act Consultation February 2014](#)

⁹⁷ [NHS Health Scotland: Alcohol Consumption and Price in Scotland 2015](#)

ABOUT ACS

The Association of Convenience Stores lobbies on behalf of over 50,000 convenience stores across mainland UK on public policy issues that affect their businesses. ACS' membership is comprised of a diverse group of retailers, from small independent family businesses running a single store to large multiple convenience retailers running thousands of stores.

Convenience stores trade in a wide variety of locations, meeting the needs of customers from all backgrounds. These locations range from city centres and high streets, suburban areas such as estates and secondary parades, rural villages and isolated areas, as well as on petrol forecourts and at travel points such as airports and train stations.



WHO WE REPRESENT

INDEPENDENT RETAILERS



ACS represents 22,315 independent retailers, polling them quarterly to hear their views and experiences which are used to feed in to Government policy discussions. These stores are not affiliated to any group, and are often family businesses with low staff and property costs. Independent forecourt operators are included in this category.

SYMBOL GROUPS AND FRANCHISES



ACS represents 17,330 retailers affiliated with symbol groups. Symbol groups like SPAR, Nisa, Costcutter, Londis, Premier and others provide independent retailers with stock agreements, wholesale deliveries, logistical support and marketing benefits. Symbol group forecourt operators and franchise providers like One Stop are also included in this category.

MULTIPLE AND CO-OPERATIVE BUSINESSES



ACS represents 11,879 stores that are owned by multiple and co-operative retailers. These businesses include the Co-Operative, regional co-operative societies, McColls, Conviviality Retail and others. Unlike symbol group stores, these stores are owned and run centrally by the business. Forecourt multiples and commission operated stores are included in this category.

THE CONVENIENCE SECTOR



In 2015, the total value of sales in the convenience sector was £37.7bn. The average spend in a typical convenience store transaction is £6.45.



There are 51,524 convenience stores in mainland UK. 75% of stores are operated by independent retailers, either unaffiliated or as part of a symbol group.



The convenience sector provides flexible employment for over 407,000 people. 26% of independent/symbol stores employ family members only.



25% of shop owners work more than 70 hours per week, while 20% take no holiday throughout the year. 71% of business owners are first time investors in the sector.



Convenience stores and Post Offices poll as the two services that have the most positive impact on their local area according to consumers and local councillors. 83% of independent/symbol retailers have engaged in some form of community activity over the last year.



Between February 2015 and February 2016, the convenience sector invested over £596m in stores. The most popular form of investment in stores is refrigeration.

OUR RESEARCH

ACS polls the views and experiences of the convenience sector regularly to provide up-to-date, robust information on the pressures being faced by retailers of all sizes and ownership types. Our research includes the following regular surveys:

ACS VOICE OF LOCAL SHOPS SURVEY

Regular quarterly survey of over 1200 retailers, split evenly between independent retailers, symbol group retailers and forecourt retailers. The survey consists of tracker questions and a number of questions that differ each time to help inform ACS' policy work.

ACS INVESTMENT TRACKER

Regular quarterly survey of over 1200 independent and symbol retailers which is combined with responses from multiple businesses representing 3,970 stores.

ACS LOCAL SHOP REPORT

Annual survey of over 2200 independent, symbol and forecourt retailers combined with responses from multiple businesses representing 4,999 stores. The Local Shop Report also draws on data from him! research and consulting, IGD, Nielsen and William Reed Business Media.

BESPOKE POLLING ON POLICY ISSUES

ACS conducts bespoke polling of its members on a range of policy issues, from crime and responsible retailing to low pay and taxation. This polling is conducted with retailers from all areas of the convenience sector.

ANNEX B

Amendment to Licensing Act	Impact on Off-Trade
<p>A licence holder would be guilty of an offence if, on 3 or more different occasions within a period of 3 consecutive months, alcohol is unlawfully sold on the same premises to an individual under the age of 18. <i>Violent Crime Reduction Act 2006</i></p>	<p>The premises licence holder, guilty of this offence would be liable to a fine not exceeding £10,000. In addition, the court may order the licence to be suspended for a period not exceeding 48 hours.</p>
<p>Local authorities would have the power to designate an area as an alcohol disorder zone. The local authority may then impose charges on licensed premises in the zone. There was an exemption for premises which the principal use was not the sale of alcohol. This provision has been repealed in the Police Reform and Social Responsibility Act. <i>Violent Crime Reduction Act 2006</i></p>	<p>This provision would have further burdened retailers by imposing additional charges on off-trade premises in certain areas.</p>
<p>Mandatory licensing conditions to be implemented. <i>Policing and Crime Act 2009</i></p>	<p>Licensed premises had to abide by mandatory conditions including:</p> <ul style="list-style-type: none"> • banned irresponsible promotions • customers to have access to free tap water • required an age verification policy to be in place to prevent underage sales • ensure customers have the opportunity to choose small measures of beers, ciders, spirits and wine. <p>Of those conditions, only the requirement for an age verification policy applies to the off-trade.</p>
<p>Tightens selling alcohol to children provisions in the Violent Crime Reduction Act 2006. A licence holder would be guilty of an offence if, on 2 or more different occasions within a period of 3 consecutive months, alcohol is unlawfully sold on the same premises to an individual under the age of 18. <i>Policing and Crime Act 2009</i></p>	<p>The premises licence holder, guilty of this offence would be liable to a fine not exceeding £10,000. In addition, the court may order the licence to be suspended for a period not exceeding 3 months.</p>
<p>Introduction of Early Morning Restriction Orders (EMRO). EMROs</p>	<p>If a licensing authority introduces an EMRO, it will apply to premises licences, club premises</p>

<p>enable licensing authorities to restrict the sale of alcohol in the whole or part of an area for any specified period between 3am and 6am, if they consider this is appropriate for the promotion of licensing objectives. <i>Crime and Security Act 2010</i></p>	<p>certificates and temporary event notices that operate within the specified EMRO period. Off-trade premises would be affected as well as on-trade premises.</p>
<p>The late night levy would enable licensing authorities to raise a contribution from late-opening alcohol suppliers towards policing the night time economy. <i>Police Reform and Social Responsibility Act 2011</i></p>	<p>All licensed premises which are authorised to supply/sell alcohol in the levy area will be affected. As well as on-trade premises, the levy also applies to off-trade premises which operate between midnight to 6am. This provision burdens retailers by imposing additional charges on off-trade premises in certain areas.</p>
<p>Introduction of extended Early Morning Restriction Orders. These orders work in the same way as previously, however licensing authorities can restrict the sale of alcohol between midnight and 6am. <i>Police Reform and Social Responsibility Act 2011</i></p>	<p>If a licensing authority introduces an EMRO, it will apply to premises licences, club premises certificates and temporary event notices that operate within the specified EMRO period. Off-trade premises would be affected as well as on-trade premises.</p>
<p>Reduction in evidential burden for licensing decisions <i>Police Reform and Social Responsibility Act 2011</i></p>	<p>The wording will be amended throughout the Licensing Act 2003 to lower the evidential threshold which licensing authorities must meet when making licensing decisions by requiring that they make decisions which are ‘appropriate’ rather than necessary for the promotion of the licensing objectives. This would, for example, give licensing authorities greater power to tackle irresponsible premises. This applies to both on-trade and off-trade premises.</p>
<p>Changes to Temporary Event Notice (TEN) procedure including:</p> <ul style="list-style-type: none"> • extend the right to object to a TEN • Allow police and environmental health officers to object • Allow local authorities to apply existing licence conditions to a TEN if there are objections <p><i>Police Reform and Social Responsibility Act 2011</i></p>	<p>Only impacts retailers who intend to hold an event, involving less than 500 people, at which one or more licensable activity will take place that are not authorised by an existing premise licence or club premises certificate. Limited impact for off-trade retailers.</p>

<p>The offence of persistently selling alcohol to children strengthened. <i>Police Reform and Social Responsibility Act 2011</i></p>	<p>The maximum fine for a premise holder committing the offence of persistently selling alcohol to children increased from £10,000 to £20,000. The period during which the sale of alcohol may be prohibited by a closure notice was extended to range from a minimum of 48 hours to a maximum of 336 hours (14 days) – <i>previously a maximum of 48 hours.</i></p>
<p>Licensing authorities become responsible authorities. This enables licensing authorities to respond quickly to tackle irresponsible licensed premises. <i>Police Reform and Social Responsibility Act 2011</i></p>	<p>Licensing authorities will also now have the power to:</p> <ul style="list-style-type: none"> • Making relevant representations relating to new licence applications and licence variations. • Requesting that the licensing authority review an existing licence. • <u>Making representations regarding the potential cumulative impact of an application in an area where there is a special policy in place regarding cumulative impact.</u> <p>This provision affects off-trade premises. The view of the licensing authorities affects all premises licence applications and holders. The power to make representations of cumulative impact of a premise licence application is specifically concerning for off-trade premises as it caps the number of licensed premises and blocks investment from local shops.</p>
<p>Health bodies to become responsible authorities. Responsible authorities are able to make relevant representations regarding new licence applications and request reviews of existing licences <i>Police Reform and Social Responsibility Act 2011</i></p>	<p>This provision affects off-trade premises. Making local health bodies responsible authorities attempts to link health harms with the sale of alcohol, rather than the consumption of alcohol. There is no causal link between density of premises and the hours of sale with alcohol-related health harms. Health bodies making representations to licensing hearings could lead to additional licensing conditions or the licence being revoked. This is concerning for both on-trade and off-trade premises.</p>
<p>Removal of vicinity test. This allows local residents who live outside the vicinity of the licensed premise will be allowed to make representations.</p>	<p>Applies to both on-trade and off-trade premises, either with regard to variations in licence or new licence applications. Has the potential to add</p>

<p><i>Police Reform and Social Responsibility Act 2011</i></p>	<p>additional barrier to opening or investment of stores.</p>
<p>Level five fines for offences including the sale of alcohol to children to become unlimited fines. (which apply to the sale of alcohol to children) become unlimited. Legal Aid, Sentencing and Punishment of Offenders Act 2012</p>	<p>The fine for a premise selling alcohol to children increased from a level 5 fine (£5,000) to an unlimited fine. This affects both on-trade and off-trade premises.</p>
<p>Removal of requirement to renew personal licences <i>Deregulation Act 2014</i></p>	<p>This provisions removes the requirement for ALL personal licence holders to renew their licence every 10 years. While a deregulatory measure, personal licence holders from the on-trade and the off-trade which held a personal licence which expired in early 2015 had to renew their licence to prove due diligence.</p>
<p>Deregulation of minimum age of sale for liqueur confectionery <i>Deregulation Act 2014</i></p>	<p>This measure only affects off-trade premises. Retailers may sell liqueur confectionery to under-16s, however many national retailers have chosen to keep the age limit as the provision did not affect regulation in Scotland.</p>
<p>Revision of Mandatory Licensing Conditions. Previous mandatory conditions were replaced. New condition <i>Licensing Act 2003 (Mandatory Conditions) Order 2014</i></p>	<p>The revised mandatory licensing conditions tightened the previous conditions. Revised mandatory conditions include:</p> <ul style="list-style-type: none"> • ban on promotions extended • customers to have access to free tap water • required an age verification policy to be in place to prevent underage sales • ensured that customers have the opportunity to choose small measures of beers, ciders, spirits and wine. <p>New conditions that mainly affected the off-trade sector included:</p> <ul style="list-style-type: none"> • ban the sale of alcohol below the cost of duty plus VAT.
<p>Immigration Act offences (including employing illegal workers) have been added to the list of relevant offences. <i>Immigration Act 2016</i></p>	<p>The Licensing Act enables a criminal court to order the forfeiture or suspension of a personal licence where the licensee has been convicted before the court of a relevant offence. If the personal licence is suspended or revoked, the licensee will be prevented from selling alcohol. This affects personal licence holders from on-trade and off-trade premises.</p>

<p>Strengthening the Immigration Act using the licensing system. <i>Immigration Act 2016</i></p>	<p>Only individuals who are entitled to work in the UK may be a holder of a premise or personal licence. Making an offence under the Immigration Act 2016 could also lead to licensees personal and premise licences being suspended or revoked. These provisions affect on-trade and off-trade premises.</p>
<p>Cumulative Impact Policies (CIPs) to be placed on a statutory footing <i>Modern Crime Prevention Strategy 2016</i></p>	<p>Currently cumulative impact policies are only referred to in section 182 guidance. Making CIPs statutory will strengthen the ability of licensing authorities to control the availability of alcohol as well as providing clarity on how CIPs should be used. CIPs affect premises in both the on-trade and the off-trade.</p>
<p>Review of Late Night Levy <i>Modern Crime Prevention Strategy 2016</i></p>	<p>All licensed premises which are authorised to supply/sell alcohol in the levy area will be affected. As well as on-trade premises, the levy also applies to off-trade premises which operate between midnight to 6am. This provision burdens retailers by imposing additional charges on off-trade premises in certain areas. The Home Office Modern Crime Prevention Strategy outlined plans to improve the late night levy by reviewing its flexibility and transparency. The strategy also proposes to give Police and Crime Commissioners the right to request that local authorities consult on introducing a levy.</p>
<p>Proposals to introduce Group Review Intervention Powers (GRIPs) <i>Modern Crime Prevention Strategy 2016</i></p>	<p>GRIPs would enable licensing authorities to consider the licensing conditions of a group of premises to address problems in a specific location. Licensing conditions are meant to be tailored to individual premises. Proposals to implement group conditions would place additional burdens of both on and off trade premises in a specific area.</p>
<p>Removal of Parliamentary Scrutiny of Section 182 Guidance <i>Policing and Crime Bill 2016</i></p>	<p>This provision would remove the Parliamentary procedure. The guidance would take effect as soon as it is published. The section 182 guidance has been cited as “<i>the key document on which local authorities rely, in their role as licencing authorities</i>” to uphold licensing objectives.</p>

	Section 182 guidance must be accountable as the content affects all licence holders.
Powdered alcohol to be included within the definition of alcohol (with regard to the Licensing Act) <i>Policing and Crime Bill 2016</i>	This will primarily affect off-trade premises who could potentially sell powdered alcohol. Off-trade premises will need to be aware that the sale of powdered alcohol will fall under the Licensing Act.
Give licensing suspension powers <i>Policing and Crime Bill 2016</i>	The Bill would give licensing authorities the power to revoke or suspend a personal licence when someone is convicted of a relevant offence. Currently a personal licence may be suspended or forfeited by a court on conviction for a relevant offence. This affects both on-trade and off-trade premises as it will make the process to suspend or revoke an alcohol licence quicker and easier.
Sexual, violent, fraud, terrorism and Psychoactive Substance Act offences added to the list of relevant offences <i>Policing and Crime Bill 2016</i>	The Licensing Act enables a criminal court to order the forfeiture or suspension of a personal licence where the licensee has been convicted before the court of a relevant offence. If the personal licence is suspended or revoked, the licensee will be prevented from selling alcohol. This affects personal licence holders from on-trade and off-trade premises.

ANNEX C

Case Study: Shaun Marwaha, Convenience Retailers, ScotFresh, Scotland

[Video Case Study](#)

“I run eight stores in the central belt of Scotland under my own Scotfresh brand, I have three more stores in the pipeline and I am hoping to be operating fifteen stores by summer 2016. My eight stores employ 125 staff, and as well as being an important employer we play a crucial role in the neighbourhoods we serve. I have invested several hundred thousand pounds re-fitting and developing my stores, with high standards and new features being introduced like kitchens in every store to offer hot food.

Some councils in Scotland have adopted over-provision policies which restrict the number of alcohol outlets in areas within that licensing board area. I have found that this brings significant uncertainty, which in turn increases the cost of property I am seeking to rent or buy, because any deal is conditional on me gaining an alcohol licence which may not be possible if quotas have been reached. I now tend not to invest in areas which have over-provision policies in place, because the costs, bureaucracy and uncertainty involved make

those investments unattractive. This means that as well as limiting my business opportunities, these areas do not benefit from the jobs I can create, the quality of the offer I can make for the community, and the business rates and other taxes I would pay.

I am very happy to meet high standards to gain a licence, and I have a strong track record on staff training and responsible retailing. However, it is damaging to my business, and other businesses who are looking to invest and grow, to place arbitrary limits on the number of outlets that can sell alcohol. It is also galling to see outlets with licences selling duty fraud product or otherwise behaving irresponsibly, while businesses like mine are effectively blocked from entering the local market.”

ANNEX D

Retailer Guidance: ‘Reducing the Strength’ Initiatives

Local initiatives to tackle street drinking have the potential to make the local area safer, and to reduce alcohol harm. However, they also have the potential to place retailers at risk of breaching competition law, and if conducted in the wrong way, initiatives can be burdensome for retailers without tackling the problems they were designed to address.

This guidance is designed to help retailers of alcohol manage their relationship with local authorities and to understand the competition risks of working with local authorities to deliver local initiatives, commonly known as ‘Reducing the Strength’.

What is a ‘Reducing the Strength’ initiative?

‘Reducing the Strength’ local initiatives are led by local authorities designed to tackle alcohol related harm associated with street drinking. As well as other measures to tackle street drinking, these initiatives attempt to remove high-strength alcohol products from sale through changes to a premise licences or more often through voluntary agreements with a retailer.

Most ‘Reducing the Strength’ initiatives target beers and ciders above 6.5% ABV, and many are located in areas that have significant problems with street drinking.

Why do we need guidance?

Retailers need to be able to make informed judgments about the quality of a local initiatives and approach of the local authority running it before they can commit to participating.

Retailers need to be aware of the significant competition risks they could be exposed to by engaging with a badly managed ‘Reducing the Strength’ initiatives and the penalties associated with breaching competition law.

COMPETITION RISKS

Competition law attempts to prevent businesses from working together to fix prices, trading conditions or share commercially sensitive information that will disadvantage consumers or

give them an advantage over other competitors. There is potential for businesses to breach competition law under a ‘Reducing the Strength’ initiative by:

- *Sharing their business strategy by agreeing with other retailers, at a meeting, through bilateral conversations, not to sell certain products or to sell them at an agreed price*

Example: A local authority holds a meeting of local retailers and outlines their desire for all retailers to voluntarily not sell any beer above an ABV of 6.5% by a set date. They ask all the retailers in the meeting to agree to sign up to the initiative in the room with other retailers. If you find yourself in this situation you should call an end to the meeting and leave.

- *Agreeing to participate in a ‘Reducing the Strength’ initiative based on information that other retailers will participate, either directly or indirectly.*

Example: A local authority officer visits a local convenience store and shows them a list of retailers that have agreed to sign up to the local authority’s ‘Reducing the Strength’ initiative. On the basis of seeing the list the retailer decides to sign up to the initiative.

The fact that an agreement is sanctioned by the government (national or local), or that discussions take place in the presence of Government Officials does not prevent a retailer from breaching competition law.

The Competition and Markets Authority (CMA) are the UK’s leading competition and consumer body and has produce clear guidance on ‘Local Authority Initiatives and Competition Law’ which can be accessed [here](#).

DO’S AND DON’TS

Key do’s:

- Do consider the competition law implications of a local authority’s proposals at an early stage;
- Do remember that despite the fact than an agreement is sanctioned by a local authority, or that the discussion takes place in the presence of authority officials, does not prevent it from breaching competition law;
- Do ask the local authority if they adhere to the Local Government Association Guidance [document](#); “*Reducing the Strength Guidance for councils considering setting up a scheme*”;
- Do seek independent legal advice where necessary. ACS provides a legal support helpline for members, for more information visit ACS’ website [here](#).

Key don’ts:

- Don’t ask or agree an approach with another retailer about supporting a ‘Reducing the Strength’ initiative;

Association of Convenience Stores – written evidence (LIC0086)

- Don't share sensitive commercial information (e.g. prices, costs, volume, future commercial strategies) with other retailers;
- Don't meet up with other retailers before you have made a decision on whether to take part in an initiative, even if a local authority asks you to do so to discuss your involvement with a local initiative.

ENFORCEMENT ACTION

Licensing conditions attempting to restrict the sale of higher-strength beers and ciders would require clear evidence specifically linking the sale of certain higher-strength beers and ciders at that premises to the breach of one of the licensing objectives, for example prevention of crime and disorder.

Attempts to introduce generalised or blanket licensing conditions could exceed current licensing powers and licensees would be well within their rights to challenge such a condition both before and at a licensing review.

Please remember that 'Reducing the Strength' initiatives are voluntary. If you encounter pressure or threats of further licensing conditions, enforcement action or naming and shaming, please contact your trade association or the ACS [helpline if you are a convenience store](#), for further legal advice or licensing support.

QUALITY OF INITIATIVE

The quality of 'Reducing the Strength' initiatives can vary greatly from one local authority to another. The core principles of good 'Reducing the Strength' initiatives include using an inclusive approach and targeted action to address defined health harms in particular areas.

There are a number of factors you should consider and questions you should pose to local authorities to identify the quality of a 'Reducing the Strength' initiative. Please see the list below for potential questions to ask your local authority:

- Has the local authority defined the problem?
 - Is there evidence of a high number of street drinkers in your area?
 - Where do the street drinkers congregate?
- What products are covered by the initiative?
 - Does this match the products street drinkers use?
 - How long will you have to prepare to comply with an initiative? For example, do you need time to sell through existing stock?
- What other partners are involved?
 - Have the police and local authorities been invited to join?
 - What support is being provided to street drinkers?

- How is the initiative to be evaluated?
 - What impact has been made on the problem identified, and over what time is this being measured?
- Is there clarity on what can be achieved through intervention?
 - Is it designed to run in perpetuity or is there a time limit or a point where it has been deemed to have succeeded (impact on problem) or have failed?
- Who owns the initiative?
 - Is there a board or committee, or consultative mechanism in which you can get involved?
 - Is this governance mechanism compliant with competition law?
- How will the initiative communicate with participating retailers, other businesses, and the wider community?

ALTERNATIVE APPROACHES

Please be aware that there may be alternative approaches that the local authority and police can take:

1. Focus on Duty Fraud: It may be that a retailer feels the issues faced in the local area are related to duty fraud. There have been examples of links between street drinking, problem premises, and duty fraud product. Dealing in duty fraud product is an offence which should result in the removal of an alcohol licence.

[Tackling Duty Fraud Guide](#)

2. Community Alcohol Partnerships: If the initiative appears to relate to under-age drinking rather than street drinking, CAPs are an established and effective way of tackling this problem.

[CAP Website](#)

[Setting up CAP](#)

3. Refusal to Serve Schemes: Particularly where there are a small number of street drinkers being targeted with this scheme, it may be more effective to focus on not serving those individuals rather than removing products for all customers. These schemes are challenging, and require engagement from local groups which help street drinkers, and they are a credible alternative to investigate.

TRADE ASSOCIATIONS

ACS (the Association of Convenience Stores) is the voice of over 33,500 local shops, supporting our members through effective lobbying, comprehensive advice and innovative networking opportunities.

Association of Convenience Stores – written evidence (LIC0086)

The Wine and Spirit Trade Association (WSTA) is the voice of the wine and spirit industry in the UK, representing over 340 companies producing, importing and selling wines and spirits.

Please note: this document constitutes guidance only. Seek legal advice as appropriate.

2 September 2016

Association of Directors of Public Health – written evidence (LIC0064)

Q1: Are the existing four licensing objectives the right ones for licensing authorities to promote? Should the protection of health and wellbeing be an additional objective?

While we welcome the four licencing objectives:

1. The prevention of crime and disorder,
2. Public safety
3. Prevention of public nuisance
4. The protection of children from harm

We would strongly recommend the inclusion of a fifth licencing objective, as in Scottish legislation:

5. Protecting and improving public health

The LGA has found that 9 out of 10 Directors of Public Health report that there is demand for a health objective.⁹⁸

Q2: Should the policies of licensing authorities do more to facilitate the enjoyment by the public of all licensable activities? Should access to and enjoyment of licensable activities by the public, including community activities, be an additional licensing objective? Should there be any other additional objectives?

The Section 182 Guidance although it makes reference to how the legislation also supports a number of other key aims and purposes, namely:

- Protecting the public and local residents from crime, anti-social behaviour and noise nuisance caused by irresponsible licensed premises;
- Giving the police and licensing authorities the powers they need to effectively manage and police the night-time economy and take action against those premises that are causing problems;
- Recognising the important role which pubs and other licensed premises play in our local communities by minimising the regulatory burden on business, encouraging innovation and supporting responsible premises;
- Providing a regulatory framework for alcohol which reflects the needs of local communities and empowers local authorities to make and enforce decisions about the most appropriate licensing strategies for their local area; and
- Encouraging greater community involvement in licensing decisions and giving local residents the opportunity to have their say regarding licensing decisions that may affect them.

⁹⁸ LGA Survey (Jan 2016) [Public Health and the Licensing Process](#)

However, we feel that this Guidance may be interpreted with a focus on the night time economy and that there should be far clearer or explicit about the fact that the Act, as administrative law, is to be promoted with a view to the wider public interest and those of local communities and local people.

Q3: Has the Live Music Act 2012 done enough to relax the provisions of the Licensing Act 2003 where they imposed unnecessarily strict requirements? Are the introductions of late night levies and Early Morning Restriction Orders effective, and if not, what alternatives are there? Does the Licensing Act now achieve the right balance between the rights of those who wish to sell alcohol and provide entertainment and the rights of those who wish to object?

It is difficult to assess the overall balance of the Act because of the large variations in the way that it is implemented. In some areas local authorities do not operate on a level playing field with the licenced trade, who at times have access to more specialist legal advice, and local authorities can run the risk of significant costs if taken to appeal. This is not always a problem, but can at times result in the balance falling too favourably towards the licenced trade.

Q4: Do all the responsible authorities (such as Planning, and Health & Safety), who all have other regulatory powers, engage effectively in the licensing regime, and if not, what could be done? Do other stakeholders, including local communities, engage effectively in the licensing regime, and if not, what could be done?

There is a wide variation about how all of the responsible authorities engage in licensing. In some areas, Public Health within Local Authorities, are actively involved with examples of Licencing “triaging” tools being used. For example, the London Borough of Croydon developed a local based version of a licencing tool developed by the GLA and working closely with the Metropolitan police, London Ambulance Service and local A&E using principles developed from the “Shepherd” model in Cardiff⁹⁹ ¹⁰⁰. However, as there are inconsistencies, some processes would benefit from better involvement from a range of stakeholders including planning, child protection and public health.

Q5: Licensing is only one part of the strategy that local government has to shape its communities. The Government states that the Act “is being used effectively in conjunction with other interventions as part of a coherent national and local strategy.” Do you agree?

The development of the Act in recent years has included a welcome shift towards crime and disorder issues, with the Modern Crime Prevention Strategy continuing this trend. However, the Act is often used in a reactive and unresponsive manner, waiting for problems to arise and only then trying to address them, and far more could have been done to encourage responsible authorities to use the Act better. This is a strategic approach, and other notable

⁹⁹ <http://www.cardiff.ac.uk/research/impact-and-innovation/research-impact/reducing-violent-crime>

¹⁰⁰ A full description of the Cardiff Model is available here: <http://tinyurl.com/65uvl4>

failings include the EMRO, the inflexible way in which the LNL was introduced and the lack of any meaningful policies to address the impact of very cheap alcohol.

At a local level the Act can be used in an effective strategic way, using Statements of Licensing Policy (SLP) to set out a clear and positive view as to what the public good in relation to licensing requires in an area. Some are also well coordinated with other local strategies, such as the planning strategy, the corporate strategy, or the health and wellbeing strategy. This is not necessarily common though, and many SLPs are quite minimal and do not set out a vision as to what the public good may require from licensing.

Q6: Should licensing policy and planning policy be integrated more closely to shape local areas and address the proliferation of licensed premises? How could it be done?

Yes, the two should be better integrated, looking at the wider community and the impact on both the individuals and communities living in the area as well as the wider night time economy. In our 2016 survey of Directors of Public Health in the UK, 70% of respondents said that amending licensing legislation to empower local authorities to control the total availability of alcohol was in their top 5 priorities. The impact on the wider economy around the impact of wider health and wellbeing issues of alcohol; short, medium and long term should also be considered. A simple way to ensure that there is join up is to make sure that the licencing policy is a subset of the planning policy, or the other way around.

Q7: Are the subsequent amendments made by policing legislation achieving their objects? Do they give the police the powers they need to prevent crime and disorder and promote the licensing objectives generally? Are police adequately trained to use their powers effectively and appropriately?

Under the Police Reform and Social Responsibility Act (2011), the Government amended licensing legislation to give health authorities a statutory role in the licensing process. Under the Health and Social Care Act 2012, changes to NHS and public health structures, responsibility for engagement in licensing will fall to the Director of Public Health (DPH) or delegated individuals.¹⁰¹

It made local authority licensing teams a responsible authority in their own right: This has been very beneficial, and many local authorities use this well to uphold their SLP.

Health bodies, now part of the Local Authority with the local public health function, along with the Director of Public Health, being returned to Local Authorities, as a responsible authority: this was a welcome step in the right direction, but health is hampered by not having a specific objective and since April 2013, when the Health and Social Act 2012 was enacted, there is now a varied interpretation across England which means that this is not as strong or influential as it could be if there was clarity about a specific role around health expertise in the local licensing practices.

¹⁰¹ See Home Office, 'Additional guidance for health bodies on exercising new functions under the Licensing Act, 2003' <http://tinyurl.com/ayrpouu>

Q8: The Act was intended to simplify licensing procedure; instead it has become increasingly complex. What could be done to simplify the procedure?

The Act does represent a significant simplification when compared to the previous licensing regime in a number of ways, as it combined alcohol and entertainment, and has greatly clarified the issue around granting closing times. There is a consensus that the Act has also enabled better joint working, both between the regulatory bodies, and between these bodies and the licensed trade.

In general, the alterations to the Act have addressed deficiencies and problems. Some areas within the Act were originally too focused on tourism and the sociable benefits of licensing, while paying too little attention to the problems that can arise. Alcohol is regulated for a reason and it is a mistake to assume that licensing can automatically be simplified without producing knock on problems.

It is arguable that many of the simplest sections within the Act are the most problematic to administer and enforce, particularly Temporary Event Notices (TENs). These result in significant shortfalls for local authorities; they cost £21 but Westminster Council report that they cost at least £120 to process. Their overly light touch approach has effectively resulted in them working as a loop hole, allowing existing premises to extend their hours with limited oversight. This makes the more regulated elements of the licensing regime harder to enforce.

As mentioned in previous answers, rather than contemplating additional changes to the Act, a more productive approach would be to ensure that local authorities use the Act, as it is, to its full potential. One key issue here relates to fees, and the system could arguably be both simplified and strengthened for local authorities if they were all able to fund their licensing operations adequately. A second issue relates to the decision making process and the way in which misconceptions about this often favour the licensed trade.¹⁰² Clarifying these misunderstandings would greatly improve and simplify the process, and could help to address the often wide variations in the application of the Act.

Q9: Should sales of alcohol airside at international airports continue to be exempt from the application of the Act? Should sales on other forms of transport continue to be exempt?

It seems odd that the Act does not apply airside at airports as the promotion of the objectives is just as relevant in this location. In fact, there are potentially additional risks related to passengers being temporally displaced and confined within aircraft. Indeed, recent figures showed that 422 people were held on suspicion of being drunk at an airport or on a plane in the last two years.¹⁰³

¹⁰² Foster. J., Charalambides. L., (2016) [The Licensing Act \(2003\): its uses and abuses 10 years on](#). Institute of Alcohol Studies. See chapter 14.

¹⁰³ [Airport alcohol sales to be 'examined' by Lord Ahmad](#). BBC news

Regarding other forms of transport, the sale and consumption of alcohol on trains can cause specific problems, and can effectively result in additional preloading or on-route loading. In some areas large groups frequently buy large amounts of alcohol from the off-trade, and drink this on the train while traveling to their destination on a Friday or Saturday night. They then arrive in a very intoxicated state, causing significant problems. Reportedly this is a particular problem on the east coast mainline, with groups traveling between cities such as Newcastle and York, as well as railway staff on trains to seaside destinations during Bank holiday e.g. Nottingham to Skegness. It should be noted that the train drivers and railway staff are required to be alcohol free during work time or they risk dismissal.

Q10: What could be done to improve the appeal procedure, including listing and costs? Should appeal decisions be reported to promote consistency? Is there a case for a further appeal to the Crown Court? Is there a role for formal mediation in the appeal process?

The better reporting of appeal decisions would be beneficial, and this could be aided by updating the Section 182 Guidance with case law developments so that it better reflects the practical application of the Act.

There is a case for exploring the use of mediation, but local authorities should not be pushed towards unnecessary compromising when they have a clear duty to uphold and promote the licensing objectives in the interests of the local community.

An important point to make here involves the general quality of licensing decisions. The higher the quality of the original decision, the less likely it is to go to appeal, and if this does happen, the higher the chances of the original decision being upheld. Key factors include ensuring that it is reasonable, based upon relevant local evidence and transparent in its inference and conclusions. Decisions do not have to be absolute and evidenced definitively however, but based on the balance of probabilities. The more that these principles are stressed and explained in the guidance the more likely it is that the act will be applied in a clear and accurate manner.

Q11: Given the increase in off-trade sales, including online sales, is there a case for reform of the licensing regime applying to the off-trade? How effectively does the regime control supermarkets and large retailers, under-age sales, and delivery services? Should the law be amended to allow licensing authorities more specific control over off-trade sales of “super-strength” alcohol?

The 2003 Licensing Act is poorly equipped to deal with the off-trade, which has grown twice as fast as the on-trade in the last 10 years. In Scotland their licensing Act has been rebalanced in order to better take account of the fact that the vast majority of alcohol is consumed at home. This has seen the introduction of a ban on multi-buys, restricting alcohol related products to one part of a store, the restriction of off-trade hours to 10am until 10pm, and their legislation for minimum unit pricing, although this has not yet been implemented.

Research into the impact of these restrictions has found broadly positive, if slightly mixed, results. A study by NHS Scotland using sales data found that there has been a 2.6% decrease in the amount of alcohol sold in Scotland per adult as a result of the multi-buy ban, including a 4% drop in wine sold and an 8.5% decline in pre-mixed alcohol drinks (including alcopops). However, other research found that the ban had changed shopping habits, causing people to buy fewer products per shopping trip, but to buy beer and cider more frequently, leaving the overall amount bought unchanged. This second study however used a panel survey method, which is known to be less accurate than sales data (which was the basis of the first piece of research).

While there is still debate about this issue, both sets of researchers suggested that the effectiveness of the ban had been undermined by retailers reducing prices, something which Minimum Unit Pricing (MUP) would have prevented if it had been implemented in Scotland. A loophole in the multi-buy ban allowing the discounting of single items is also thought to have weakened the ban, with retailers switching from offering promotions such as '3 for the price of 2' to only discounting individual bottles.

While these impacts in Scotland are moderate, they are significant, and it should be remembered that they represent only one strand of a broader alcohol strategy. This comparison also highlights the fact that pricing policies will probably have a bigger impact on supermarket alcohol sales than licensing on its own. Against this, the 2003 Licensing Act has very limited ability to impact upon alcohol sales in supermarkets, where alcohol promotions are routinely found in all parts of the store, with heavy discounting and price promotions.

Home delivery services are also difficult to regulate under the Act. Some local authorities have produced additional guidance and conditions for operators to ensure that they comply with the Act, particularly regarding sale to minors and sales to drunks. However, this is hard to enforce. While off-trade hours in Scotland are limited to 10am – 10pm, Scottish hours for home delivery services are slightly different; where they are only prohibited between midnight and 6am. This does, however, still allow for greater limits on home delivery during the period which could potentially be the most problematic.

Q12: Should alcohol pricing and taxation be used as a form of control, and if so, how? Should the Government introduce minimum unit pricing in England? Does the evidence that MUP would be effective need to be “conclusive” before MUP could be introduced, or can the effect of MUP be gauged only after its introduction

There is significant evidence that raising the minimum unit price for alcohol would have a major impact upon the levels of consumption, and thus reduce the levels of harm. Alcohol is 61% more affordable than it was in 19804, and international studies have demonstrated that there is a clear link between affordability and consumption. The simplest way to reduce

demand for alcohol is to put the price up¹⁰⁴. Consumption can and should be regulated by price, and alongside licensing price is a key tool for limiting alcohol related harms.

There is clear and consistent evidence that price is a key variable and directly influences alcohol related harms – for example, research has shown that in England and Wales the real price of beer has a direct impact on A&E attendance rates.¹⁰⁵ Decreases in alcohol taxes in Finland in 2004, for example, led to a 10% increase in overall consumption and a 46% increase in liver disease deaths.¹⁰⁶ As a result, alcohol taxes are recommended by international bodies such as the World Health Organization¹⁰⁷ and the Organisation for Economic Co-operation and Development¹⁰⁸ as among the ‘best buys’ in public health. It is really a case of simple economics around the impact on health, crime and disorder and other negative impacts of alcohol availability and affordability always has the impact to increase all.

Scrapping the alcohol duty escalator has allowed cheap alcohol to become more affordable to heavy drinkers while at the same time unfairly increasing the burden on the public purse, with an estimated cost to the taxpayer of over £1.2 billion over four years. The need for duty on alcohol to compensate for the burden of alcohol related harm to societies has been accepted in the UK and elsewhere for centuries – the duty escalator was appropriate and fair. In our 2016 survey, 81% of Directors of Public Health in the UK said that reinstating the tax escalator on all tobacco products and alcohol (at 5% and 2% pa ahead of inflation respectively) was an important policy priority.

Alcohol is 54% more affordable today than in 1980.¹⁰⁹ Successive cuts and freezes to duty since 2012 have exacerbated this problem: beer duty is now 14% lower than in 2012, while cider and spirits duty have each fallen by 6%.¹¹⁰ Raising the price of alcohol through real terms increases in duty is necessary to reverse these dangerous trends.

However, it is not just the level, but also the structure of alcohol taxes that matters. Because of anomalies in the duty system, 7.5% ABV ciders attract the lowest duty per unit of any product: 5p per unit, compared to 18p per unit for a beer of equivalent strength. This has given rise to a market for industrial ‘white’ ciders: sold in 3 litre plastic bottles and closely

¹⁰⁴ University of Stirling, Health First: an evidence-based alcohol strategy for the UK

<https://www.stir.ac.uk/media/schools/management/documents/Alcoholstrategy-updated.pdf>

¹⁰⁵ Matthews. K., Shepherd. J., Sivarajasingham. V. (2006), Violence-related injury and the price of beer in England and Wales. *Applied Economics*, p. 668

¹⁰⁶ Mäkelä, P. and Österberg, P. (2009) *Weakening of one more alcohol control pillar: a review of the effects of the alcohol tax cuts in Finland in 2004*, *Society for the Study of Addiction*, 104, pp554-563.

¹⁰⁷ World Health Organization (2011), *From Burden to “Best Buys”: Reducing the Economic Impact of Non-Communicable Diseases in Low- and Middle-Income Countries*

¹⁰⁸ Sassi, F. et al (2013) *The Role of Fiscal Policies in Health Promotion*, *OECD Health Working Papers*, No 66, OECD Publishing.

¹⁰⁹ Health & Social Care Information Centre (2015), *Statistics on Alcohol England*, 2015.

¹¹⁰ Institute of Alcohol Studies (2016), *Budget 2016 analysis*.

linked to harmful, dependent and underage drinking.¹¹¹ Tax policy could be used to have a more targeted focus on such products through narrower bands - at present ciders between 1.2% and 7.5% ABV are taxed at the same rate.

In our 2016 survey of Directors of Public Health in the UK, 75% of Directors of Public Health said that introducing a minimum unit price, of 50p per unit, for all alcohol sold in England, was in their top 5 priorities. MUP is not a silver bullet, and a combination of tax and MUP would be the optimal approach. This would ensure that the cheapest alcohol, which disproportionately causes the greatest harms, increased in price, while ensuring that the Treasury benefited from this rather than the alcohol producers.

MUP at the suggested price of 50ppu would have a minimal impact on the on-trade, where prices tend to be significantly higher than this, but it would impact most dramatically on the cheapest alcohol in the off-trade. The Ban on Below Cost Sales (BBCS) already sets a precedent for a floor price for alcohol, and one which has not been challenged by the licensed trade. However, the current level at which the BBCS is set (a sum of the duty plus VAT for each alcoholic product) is so low as to be almost totally ineffective. It was estimated that on its introduction only 0.7% of alcohol units sold fell below the ban's threshold, and only 1.0% of units consumed by harmful drinkers. As mentioned above, the floor price for strong white cider at 7.5% is 5p per unit. In contrast, MUP set at a unit price of 45p would affect 23.3% of alcohol units sold, and 30.5% of units sold to harmful drinkers.¹¹² Since its introduction alcohol duties have been cut, further reducing the effectiveness of the BBCS.

Regarding the question of being able to conclusively predict MUP's impact, the evidence for MUP is very strong, and far stronger than for other policies implemented by the Home Office. For example, the Modern Crime Prevention Strategy places a significant focus on partnership working with the trade, when there is not a single piece of academic, peer reviewed evidence that this has a significant impact on crime and disorder. While the licenced trade has carried out some internal evaluations, these tend to be of a very poor quality.

In contrast the evidence, both modelled and from Canada where they have similar minimum prices, that MUP would be effective is very strong.¹¹³ While the Scottish court case regarding the legality of MUP is ongoing, at present the courts have accepted that it would be reasonable, based on the evidence available and the modelling, to judge that MUP may

¹¹¹ Black, H. et al (2014) *White Cider Consumption and Heavy Drinkers: A Low-Cost Option but an Unknown price*. Alcohol and Alcoholism 49:6, pp675-80; Alcohol Concern (2015). *Alcohol brands consumed by young people in treatment 2015*.

¹¹² Brennan, A., Meng, Y., Holmes, J., Hill-McManus, D., Meier, PS., (2014) '[Potential benefits of minimum unit pricing for alcohol versus a ban on below cost selling in England 2014: modelling study.](#)' BMJ

¹¹³ Stockwell, T., Zhao, J., Marzell, M., Gruenewald, P. J., Macdonald, S., Ponicki, W. R., & Martin, G. (2015). Relationships Between Minimum Alcohol Pricing and Crime During the Partial Privatization of a Canadian Government Alcohol Monopoly. *Journal of Studies on Alcohol and Drugs*, (July), 628–634. <http://doi.org/10.15288/jsad.2015.76.628>

be an effective policy. On this basis they are satisfied with the policy as a relevant response to the health issue which it seeks to address.

It is worth pointing however that the Scottish MUP legislation includes a sunset clause. If, after 6 years there is evidence that MUP is having unintended consequences, the legislation can be repealed. This seems sensible.

At present the Home Office have provided only poor evidence that partnership working with the trade is an effective policy to reduce alcohol related harms, and no public estimates as to how many crimes this policy will prevent over the next few years. In contrast the evidence for MUP, produced on the same terms as that currently accepted by the Scottish Courts, suggests that MUP set at a rate of 45ppu would reduce alcohol-related crimes by 34,200 incidents per year after 10 years. It would also reduce alcohol-related deaths by 642 per year after 10 years.¹¹⁴

For both of these policies their full impact can only be gauged properly after implementation, if efforts are taken to do so. Yet the contrast between the weight and creditability of the evidence used to introduce them is stark, and a lack of evidence has not prevented the Home Office from introducing certain policies seen in a favourable light.

Q13: Do licence fees need to be set at national level? Should London, and the other major cities to which the Government proposes to devolve greater powers, have the power to set their own licence fees?

Licensing fees should not be set at a national level, and all local authorities should be able to set their own fees in a way that reflects their local costs. This already happens within taxi and street trading legislation, and alcohol licensing should be no different. This was legislated for in the Police Reform and Social Responsibility Bill 2011, but has never been enacted. At present some local authorities see significant shortfalls in the revenue they receive from licensing fees, meaning that they have to subsidise their licensing operation out of general funds. With the reductions in local government funding in recent years this has become increasingly difficult.

Local authorities with the biggest fees shortfall are often those more likely to struggle to oversee the Act.¹¹⁵ The Local Government Association (LGA) estimate that alcohol licensing cost local authorities approximately £183 million in the 10 years since the Act was introduced, which works out at £1.5 million of taxpayers' money per month being used to subsidise the licensed trade.¹¹⁶

Q14: Is there a correlation between the strictness of the regulatory regime in other countries and the level of alcohol abuse? Are there aspects of the licensing laws of other

¹¹⁴ Brennan. A., Meng. Y., Holmes. J., Hill-McManus. D., Meier. PS., (2014) [‘Potential benefits of minimum unit pricing for alcohol versus a ban on below cost selling in England 2014: modelling study.’](#) BMJ

¹¹⁵ Foster. J., Charalambides. L., (2016) [The Licensing Act \(2003\): its uses and abuses 10 years on.](#) Institute of Alcohol Studies. See chapter 12

¹¹⁶ *Local Government Association (Feb 2015)* [LGA responds to Government decision to reject locally-set licensing fees](#)

countries, and other UK jurisdictions, that might usefully be considered for England and Wales?

Within developed countries, those which experience greater alcohol related harms tend to have a stricter regulatory response. The 2003 Licensing Act attempted to simplify and deregulate licensing but has had to be toughened up in certain areas as a result of this having been taken too far.

This evidence submission has covered a number of policies from Scotland which would be beneficial for those with an interest in reducing alcohol related harms. These include MUP, a health objective and greater restrictions on the off-trade.

Evidence from Australia also lends support for the introduction of a workable EMRO. In Newcastle, Australia, it was found that bringing forward closing times from 5am to 3am resulted in 37% reduction in assaults.¹¹⁷ After one year, similar opening restrictions in the Kings Cross area of Sydney resulted in a 21% reduction in sexual assaults, a 43% reduction in assaults causing grievous bodily harm, a 50% reduction in assaults causing actual bodily harm and a 57% reduction in robberies.¹¹⁸

Commenting on this, Police Superintendent Mick Fitzgerald, Kings Cross local area commander, stated that ‘the man hours saved and the way we are able to reallocate our resources has been phenomenal.’¹¹⁹ While the closure of several clubs in Kings Cross were attributed to measures, a variety of other businesses have been seen to enter the market, including antiques dealers, ice-cream vendors, chemists, restaurants, hairdressers and yoga studios, as well as a number of new bars.¹²⁰ There is also evidence that, while there has been a reduction in land value of some commercial property, large increases have been observed in both mixed-use and residential property in the Kings Cross region.^{121, 122}

Risk based licensing, which is used in various forms in Canada, Australia and New Zealand, also has interesting elements. This approach broadly links licensing fees and regulatory strength to the type of premises and its operating schedule. Types of premises, such as restaurants, bars or clubs, are ranked by their potential risk, and pay a different base rate depending on this. Hours of operation can also be linked to the fee, with some states in

¹¹⁷ Kypril, K., Jones, C., McElduff, P., Barker, D., (2011) [Effects of restricting pub closing times on night-time assaults in an Australian city](#). Addiction.

¹¹⁸ In addition to moving closing times forward from 5 am to 3 am, a 1 am lockout was introduced, meaning that people could continue to drink alcohol on the premises until the 3am close, but no new patrons could be admitted after 1 am. This became known as the ‘one-way door’ policy.

¹¹⁹ Australian Daily Telegraph (April 1st, 2015) [Cross clean-up is a victory for Sydney](#)

¹²⁰ <https://twitter.com/2011Residents>

¹²¹ Land & Property Information. (n.p.). *Potts Point/Kings Cross Report Land Value Review – Report for Land Valuation Advisory Group*. NSW Government.

¹²² Nicholls, S. (2016, 22 May). Lockout laws hit values in Kings Cross’ ‘golden mile’. *The Sydney Morning Herald*. Retrieved from: <http://www.smh.com.au/nsw/lock-out-laws-hit-land-values-on-kings-cross-golden-mile-20160522-gp0ych.html>

Australia charging incremental amounts for every hour that a premises opens after midnight. Compliance history can also have an impact on feel level.¹²³

This approach encourages premises to operate in a less risky manner, while ensuring that those who generate the greatest impact also pay accordingly. If local authorities in England and Wales had the ability to set their own fees some may try and copy elements of this approach

1 September 2016

¹²³ See the appendix to Foster. J., Charalambides. L., (2016) [The Licensing Act \(2003\): its uses and abuses 10 years on](#). Institute of Alcohol Studies.

Association of Licensed Multiple Retailers – written evidence (LIC0150)

1.0 Executive Summary

1.1 The Licensing Act 2003 ('the Act') has been a powerful catalyst for innovation across the licensed hospitality sector. Prior to the Act, premises were fixed in their operating style – drinking, eating or entertainment – and subsequently these elements have blended resulting in diversification and investment in venues and high streets which are less focused on the sale of alcohol.

1.2 The Act sought to provide freedom and flexibility for pubs, restaurants, nightclubs and music venues to better meet the needs of consumers and it has allowed businesses to present a food, drink and entertainment offer which attracts a broader range of the public at different times during the day, evening and into the night delivering a more diverse and vibrant night time economy as a result

1.3 The Act empowered local councils, police and, for the first time, local residents and, in the short term at least, helped reduce red tape that permitted businesses to innovate and flourish.

1.4 However, successive reforms since its implementation have added new controls and powers, primarily on the on trade which are in danger of undermining the original objectives of the Act and ignoring the benefits of the successful partnerships we have built with local communities.

1.5 The original ambition held by the Government in 2003 to balance the different needs of industry, law enforcement and local authorities and, most importantly, meet the changing needs of British consumers, with the Act has been lost. Indeed, in seeking to rebalance the Act in 2010, the Government has achieved the exact opposite.

1.6 Instead of continually adding to the policy and regulatory infrastructure that supports and relates to the Act, we would like **a moratorium on further additions and amendments to the Act**. Instead we ask that decision makers at a national and local level **refocus on recovering the important balance that the Act was designed to promote** and recommend:

- Recognising the cumulative regulatory and legislative burden that businesses are now operating under **and taking forward outstanding BRDO recommendations on the extension of the Primary Authority scheme to alcohol and licensing policy**.
- **Revisiting the recommendations that our industry has made on request to successive tourism, hospitality and gambling red tape challenges**. These have never been taken forward while the imposition of greater controls on our costs and licence to operate have continued apace.

- Re-evaluating our industry given the efforts it makes to provide a positive contribution to local economies and communities at all times of the day and night. **We would like to see the current requirement for all regulators have regard to economic growth in individual licensing and planning decisions properly implemented - it is not always incorporated into local authority policy and, at present, receives minimal enforcement.**

1.11 Only then will the Act realise its original intentions to provide the industry “*with greater freedom and flexibility within sensible boundaries with tough and uncompromising powers for the police, courts and licensing authorities to deal with any individuals or businesses failing to be socially responsible and abusing these freedoms*”, according to the Home Secretary in his foreword to the consultation on the Act. The Home Secretary also went on to say “*A sector of the economy which is this important and which has so great an impact, deserves as good a system of regulation as we can provide*”.

2.0 Introduction

2.1 When the Licensing Act 2003 (‘the Act’) was passed the Government issued guidance regarding its implementation. It said that

“Through the legislation, we hope that local people and visitors to this country will have better opportunities to enjoy their leisure time safely while on, or arriving at or leaving a huge range of venues”

And

“Our intention is to encourage and improve good operating practice, promote partnership and to drive out inconsistencies and poor practice.”

2.4 The ALMR supported these ambitions then as it does today and this timely inquiry allows us to address something that is something often overlooked or missing from the ongoing debate around licensing; namely to reconfirm the original objectives of the Act and assess how well they have been met. It affords us the opportunity to remind ourselves what the purpose of licensing is; what it can and cannot achieve; whether the initial impact assessments were accurate and what happens when they are not.

2.5 As the only national trade body dedicated solely to representing the needs and concerns of the broad range of licensed hospitality operators we have been actively involved in the discussion around licensing before the Act; during the Act and post the Act. We have sat on Government working groups on the implementation of licensing reforms since 1999 and our CEO chaired the working group on personal licences.

2.6 Our current membership of pub, club, bar and casual dining operators run 23,500 outlets and employ over 750,000 employees. Together they account for almost all managed pubs and bars in the UK as well as leading casual dining chains and nightclubs – the latter two having experienced profound changes in their sector since the Act was implemented in 2005.

2.7 These businesses face higher than average compliance and taxation costs and struggle with ever increasing levels of red tape. Half of our members are small independent companies operating 50 outlets or fewer under their own branding, predominantly suburban community outlets. These are valuable social and economic assets – community hubs and employers, tourist attractions and significant revenue generators – as well as providing a well regulated and controlled environment for people to eat and drink responsibly and socially.

2.8 We are pleased to draw on the experience of the industry to inform our submission to this inquiry.

3.0 Background

3.1 In passing the Act in 2003, the Government recognized that some licensing decisions in the past had been unfocused and led to disproportionate standard conditions and routine inspections which *“hindered the development of business and local communities without any positive gain for society”*.

3.2 This is true. Prior to the Act you had to go to court every three years to be certified as a fit and proper person to hold a licence; there was no effective check on your operations nor was there an ability to take away the licence and no scope for neighbours to express any concerns (or praise) they had regarding how well the community relations were managed. Government also determined at the time that the rules governing the admission of children to licensed premises were obscure and deeply confusing and the controls on under age sales in the off-trade were inadequate.

3.3 In terms of red tape the number of forms required for a diverse, multi-faceted business was reduced from 200 to 20, the plethora of licensing authorities businesses needed to deal with—and the fees they had to pay to them—was consolidated into one.

3.4 Recent official reviews of the impact of the Act have shown that it has successfully delivered against the statutory licensing objectives. The Home Office for example, acknowledges in its post-legislative scrutiny of the Licensing Act 2003 presented to Parliament in June 2016 that while the number of licensed premises have increased, alcohol related crime has not risen in parallel and over the last 10 years the number of penalty notices issued for drunk and disorderly behaviour has halved. The proportion of adults who visited a pub or bar and felt unsafe has fallen by a third from 10% to 7% over the last 10 years and the number of penalty notices and prosecutions for the sale of alcohol to a person under 18 has fallen considerably.

3.5 However, the Government also modernized the legislation in 2003 to explicitly support a number of key aims and purposes which were of *‘vital importance and should be principal aims for all involved in licensing work.’* These included:

- *The introduction of better and more proportionate regulation to give business greater freedom and flexibility to meet their customer’s expectations;*

- *Greater choice for consumers, including tourists, about where, when and how they spend their leisure time;*
- *The encouragement of more family friendly premises where younger children can be free to go with the family;*
- *The further development within communities of our rich culture of live music, dancing theatre, both in rural areas and in our towns and cities;*
- *The regeneration of areas that need the increased investment and employment opportunities that a thriving and safe night-time economy can bring; and*
- *The necessary protection of local residents whose lives can be blighted by disturbance and anti-social behaviour associated with the conduct of some people visiting places of entertainment*

3.6 If we look at how the industry has fared against these principles over the decade or so since the implementation of the Act it presents a mixed picture. While there are certainly more premises for both tourists and families to visit and enjoy, the sector is not currently benefiting from better and more proportionate regulation to allow it to continue meet their customers' expectations.

3.7 To understand the impact of the Act in this regard we need to place it in its wider social and economic context.

3.8 The Act swept standard permitted hours for the sale of alcohol along with controls on opening hours. Under the earlier framework, even if they weren't selling alcohol, unless special permissions or circumstances applied, a pub or bar could not physically open before 11am or after 11pm without breaking the law. The Act allowed pubs to open before 11am and hence serve coffee and breakfast attracting a broader clientele. It also allowed restaurants and pubs to trade later without the requirement to provide music and dancing and as a result, there has been significant diversification in the late night economy diluting the previous focus on alcohol and entertainment with beneficial impacts on public order and delivery of public policy.

3.9 The smoking ban then came into effect in Scotland in March 2006 and the rest of England and Wales in 2007. Ever since then food has been regarded as integral to business success by many operators in the licensed hospitality sector. Before the Act you had a separate restaurant licence which meant that you could not have a drink unless you were eating a full meal. This prohibited more flexible casual dining and maintained segregation between eating and drinking establishments.

3.10 With these barriers lowered, a panoply of different business models attracted families and a more mixed demographic into licensed premises. Our café society did emerge but not in the way that many predicted. However, instead of many pubs and bars morphing into French style café bistros, it was coffee shops and the evolution of dining concepts like

Bills or Carluccios that sprung up in our towns and high streets. This in turn also has had a moderating and positive social effect on alcohol consumption, behaviour and public order.

3.11 However, while many food-led licensed businesses thrived during this period, the relaxation on opening hours proved challenging for night clubs with many pubs, bars and restaurants able to stay open later. These market pressures were not helped by an increasingly unsupportive outlook among police and local authorities with pubs and clubs routinely blamed for anti-social behaviour. Established venues now found themselves at odds with residents, battling against noise complaints and fighting unreasonable planning laws. As a consequence the number of nightclubs has halved in our towns and cities across the country over the last 10 years. This has a knock on effect to the rest of the sector as, ultimately, cafes, restaurants and pubs which trade earlier in the day and evening depend on a dynamic and successful late night economy.

3.12 The Act also removed restrictions regarding the sale of alcohol in the off-trade. Prior to the introduction of the Act, no supermarket or off-licence could sell alcohol beyond 11pm, sales had to be made from a separate area of the store and restrictions were placed on sales of wholesale quantities. Their removal meant it was commercially viable to use alcohol as a footfall driver and significant loss leading on the category first emerged in 2006, the year after the Act took effect.

3.13 Around the same time the credit crunch, economic downturn and the smoking ban created a legislative incentive for consumers to drink at home, and a series of legislative burdens in the intervening years have significantly increased the operating costs and price of drinking in the on-trade.

3.14 The net effect has been that on-trade prices have increased by around 40% since the introduction of the Act, whilst supermarket prices have declined in real terms and around two-thirds of alcohol sold is now consumed at home. This rises to over 70% in Scotland and London.

3.15 Consequently, even though the sector has witnessed substantial change and evolution in its retailing practices and dynamic innovation in its offer, policy makers and regulators continue to fail to recognise this. As such, there is a legislative and regulatory drag on the sector which has resulted in operating costs tied to legislation reaching their highest levels to date. Top-down controls on the on-trade are still seen as the key means for addressing public policy objectives; with the overall reputation of the sector viewed by many politicians through the single prisms of crime and health harm.

3.16 As a consequence the Act is currently failing to achieve the difficult but necessary balances set out by Ministers when they published the legislation back in 2003.

4.0 Licensing objectives

Are the existing four licensing objectives the right ones for licensing authorities to promote? Should the protection of health and wellbeing be an additional objective?

4.1 The ALMR believes that the existing four licensing objectives the right ones for licensing authorities to promote.

4.2 However, these four conditions must relate to the licensed premises in question – the licensing regime can only regulate specific licensable activities in specific licensed premises. The regulations must not burden licensees with the responsibility of realising these objectives in local communities more broadly or society in general. Licensed hospitality businesses can play their role, in common with all businesses, in combating broader social challenges but the sector cannot be liable for causing or solving all of society's ills.

4.3 As such the granting and renewal of the licence to trade is made on the basis of a proportionate assessment of the licensee's ability to govern what happens in and around their premises on matters that they can reasonably foresee and influence.

4.4 The protection of health and wellbeing should not be an additional objective because this is a complex long term issue which can be determined by behaviours which have no bearing on retail practice in the on-trade. It does not take account of where the alcohol was purchased, at what price it was purchased and where and how it was consumed. As such the protection of health and wellbeing must rest at a broader local authority level. Public health is now a responsible authority and has a consideration in cumulative impact assessments – that is as far as it can and should go.

Should the policies of licensing authorities do more to facilitate the enjoyment by the public of all licensable activities? Should access to and enjoyment of licensable activities by the public, including community activities, be an additional licensing objective? Should there be any other additional objectives?

4.5 No. Access to and enjoyment of licensable activities by the public, including community activities, should not be an additional licensing objective. There should not be any other additional objectives.

4.6 The Act already currently requires the licensing authority to have regard to a whole range of other strategies, policies and legislation and take them into account in developing their statement of licensing policy. This would include health, economic interest, community activities, planning (and the requirement to plan positively for pubs and hospitality amenity). This ensure that a whole range of issues can be taken into consideration even though they are not appropriate for use in an individual case, which have to be about the control of licensable activities carried out on specific licensed premises only. This is often less than perfect and local authorities and licensing authorities can and should do more to ensure that policy is properly integrated.

5.0 The balance between rights and responsibilities

5.1 The Guidance issued under the Act in 2003 noted that the new legislation provided *"industry with greater freedom and flexibility to meet the needs of consumers but balances*

that with clear responsibilities for the industry and strong powers for the police to control any disorderly premises and for licensing authorities to protect residences from disturbance.”

5.2 The ALMR has always supported firm action being taken against businesses which fail to demonstrate responsible retailing or act outside the licensing regime. Swift and decisive action is undoubtedly required to tackle problem premises.

5.3 We believe that successive rebalancing of the Licensing Act have given police and local authorities the necessary powers to do this and that they should be encouraged to use those which already exist before additional powers are granted.

5.4 Moreover, it is vital to ensure that these powers are considered in the round and in the context of changes to drinking habits and town centre usage. All too often, new powers are envisaged for the night time economy or late night drinking. With two-thirds of alcohol consumed at home, a top down approach to control on-trade activity will not necessarily deliver the public policy objective.

5.5 More broadly we would like the Government to recognize the cumulative regulatory and legislative burden businesses are now operating under and taking forward outstanding BRDO recommendations on the extension of the Primary Authority scheme to alcohol.

Are the introductions of late night levies effective, and if not, what alternatives are there?

5.6 The ALMR has actively responded to all local authority consultations proposing the introduction of late night levies. So far seven local authorities have introduced a levy and thirteen have rejected them; even some of those local authorities who have introduced a levy are now considering whether to remove it.

5.7 The relatively small number of local authorities choosing to introduce a levy should not, in itself, be seen as an indication of failure, ineffectiveness or the need for reform. Rather it is an indication of success that the industry is taking its responsibilities seriously and existing enforcement powers are working against those few who do not.

5.8 The introduction of a late night levy is a significant and additional tax on business but its use is highly discretionary. There need be no evidence to justify its introduction – just a requirement that it be “desirable”, no published accounts and no requirement to spend the money in the area where it was raised or even tell the levy payers what it has been spent on and how much has been spent. No hearing need be held and there is no right of appeal against a decision to impose a levy and it can be imposed in perpetuity.

5.9 We note that the Government is currently reviewing the Late Night Levy as part of the Modern Crime Strategy and believe that the procedure that local authorities undertake when deciding whether or not to impose one could be improved.

5.10 In fact, we are very concerned that the Government is proposing to relax controls and requirements around the levy without a full public consultation or providing an impact assessment. We will be challenging suggestions that the levy can apply to a smaller area and fewer types of premises. This will in effect make it an additional tax on city centre pubs, bars

and nightclubs that will go to fund police work more broadly across a borough with no guarantee it will be spent in the area in which it was raised.

5.11 We would welcome a proper consultation that looked at the introduction of the levy in the round. At present, there are no evidential or detailed procedural requirements set out in regulation, meaning that in some instances, decisions about a levy have been taken without the full engagement of affected businesses. There is, moreover, no mechanism for a hearing or appeal. However, this current exercise is simply about making it easier to apply and target premises with the levy as it stands.

5.12 In terms of an alternative approach, the current Prime Minister indicated her support for partnership working in her foreward to the Alcohol Strategy as Home Secretary in 2013:

5.13 “Rather than use the sledgehammer of national legislation, which often misses its target, our immediate priority is to engage the industry – and of course, its customers – to follow practices that help everyone who likes a drink to consume alcohol responsibly. So we have challenged industry to go further in a number of areas. Best Bar None, PubWatch, Community Alcohol Partnerships and Purple Flag are good examples of what can be achieved by that method”

5.14 Our members already work closely with the police and local authorities to ‘detoxify’ the public’s perception and experience of town centres by reducing alcohol related crime and disorder at night in the locality through such initiatives.

5.15 ALMR members have been actively involved in LAAA pilots in Exeter, Nottingham and Camden as well as engaging with other local authorities and police on initiatives flowing out of them across the country; most notably Best Bar None, Pubwatch and Club Host but also supporting BIDs, Purple Flag, safe space initiatives and Street Pastors where appropriate. It is clear that the place-based approach works; identifying targeted interventions to address specific local concerns and working to align enforcement and operational objectives.

5.16 We would note, however, that retailer engagement in voluntary partnership initiatives is not without cost and goodwill can be rapidly eroded where this is dismissed or replaced by a punitive approach. Already, many retailers in Camden are questioning their support for BIDs and the safer space scheme applauded by Government as a result of the Council’s decision to impose a late night levy. Similarly, consultations in Brighton, Liverpool and Tower Hamlets have served to frustrate and cut across putative partnership working.

5.17 Consequently, we urge licensing authorities to follow the government’s own guidance which states that it should only be used a last resort when all other options have failed. We also urge Ministers to proceed with caution in respect of any policy reforms that seek to enhance or further enforce the levy.

Do all the responsible authorities (such as Planning, and Health & Safety), who all have other regulatory powers, engage effectively in the licensing regime, and if not, what

could be done? Do other stakeholders, including local communities, engage effectively in the licensing regime, and if not, what could be done? Does the Licensing Act now achieve the right balance between the rights of those who wish to sell alcohol and provide entertainment and the rights of those who wish to object?

5.18 Our experience suggests that this varies across the country. Some responsible authorities are very good and proactive and others are less so. It depends on their ability and resources available to join up and make connections between different officers within the Council. This might be improved if it was for the licensing authority rather than the applicant to copy and circulate applications.

5.19 With regard to local communities, it occurs to us that representatives often only seek to engage when they oppose a development or wish to share a grievance, thus reflecting the views of a vocal minority. Until you have a clear statement in guidance or in legislation that positive representations are permissible and may be taken as evidence, there is little chance of greater engagement. At present councils only encourage and solicit negative comments.

5.20 As the current guidance is silent on whether positive representations are allowable many licensing authorities think that they cannot accept them or discount them in their decision making. For example, representations Camden Council received not to introduce a late night levy at the beginning of the year were not properly taken into account by members of the council. Also Islington Council consulted with residents about the problems of late night venues rather than asking those who visited them what they would like to see, such as the 150,000 people who petitioned the council not to revoke the licence of the world-famous 'Fabric' nightclub in September this year.

5.21 We would like to see local authorities and regulators solicit and have regard to the positive representations made on behalf of businesses in the licensed hospitality sector. The Greater London Assembly is one of the few administrations to economically model the economic benefits of the sector finding it returned £8.00 to the London economy for every £1.00 spent.

6.0 Licensing and local strategy

Licensing is only one part of the strategy that local government has to shape its communities. The Government states that the Act "is being used effectively in conjunction with other interventions as part of a coherent national and local strategy." Do you agree?

6.1 The ALMR agrees that the Act should be used in conjunction with other interventions as part of a coherent national and local strategy and while that is the case at a national level, at a local and regulatory enforcement level, it is all too often seen as the primary tool for addressing broader issues of public concern.

6.2 For example we have seen the LGA calling for licensing to be used to require calorie labelling, or the display of posters or the other campaigns it is working on. The police have

said that they wanted licensing conditions to be imposed to require accommodation providers to undergo training on child sexual exploitation.

6.4 There is a clear need for Government to reconfirm that the licensing regime can only be used to regulate the provision of licensable activities on licensed premises and to overhaul Guidance to give direction on this and the integration of licensing and other policies. Greater central direction in this area would be welcomed.

6.5 We also call on the Government to recognise the cumulative regulatory and legislative burden businesses are now operating under and taking forward outstanding BRDO recommendations on the extension of the Primary Authority scheme to alcohol policy and licensing.

6.6 We would also like to see the Government revisit the recommendations that our industry has made on request to successive tourism, hospitality and gambling red tape challenges. These have never been taken forward while the imposition of greater controls on our costs and licence to operate, has continued apace.

Should licensing policy and planning policy be integrated more closely to shape local areas and address the proliferation of licensed premises? How could it be done?

6.7 The ALMR agrees that licensing policy and planning policy be integrated more closely but notes that the Act rightly makes clear that planning has primacy. It is the principle mechanism for controlling proliferation and need. We agree with this approach and there should not be two different controls – one for licensing and one for planning.

6.8 We would like to see the current requirement for all regulators to have regard to economic growth in policy setting and decision making to be extended to licensing and planning .

7.0 Crime, disorder and public safety

Are the subsequent amendments made by policing legislation achieving their objects? Do they give the police the powers they need to prevent crime and disorder and promote the licensing objectives generally? Are police adequately trained to use their powers effectively and appropriately?

7.1 The ALMR considers that successive amendments made by policing legislation to the Act and how it operates have had a distorting effect on a licensing regime which is designed to be permissive and provide progressive businesses with a licence to operate.

7.2 From the ALMR's perspective the police are provided with the powers they need to prevent crime and disorder and promote the licensing objectives generally. However, they receive very little guidance from the Government as to how they should interpret these new powers and apply them effectively and appropriately. This leads to confusion, with different messages in different forces and patently wrong information being used in dealings with licensees as to what the powers allow the police to do.

7.3 This is particularly the case with regard to summary reviews (introduced with no consultation limited parliamentary debate) and new police closure powers. In respect of the latter, we have found that operators and enforcers are discussing a concern or incident which has arisen - even in the best run premises, issues will arise – and operators are threatened with review or closure if they do not comply with perceived best practice.

7.4 Statutory Guidance makes no reference to summary review powers and provides only limited direction on closure powers; in both cases, there is a reluctance to give direction to the police. Guidance should make clear that this is not how the Act and powers are designed to work. In addition, there is need for revision in respect of summary review powers where recent legal cases have clouded operational understanding.

7.5 Greater direction and guidance could also be given to local authorities and the police in their use and assessment of crime statistics. At present, little distinction is made between volume crime (for example, mobile phone theft and fraud) and crime which is genuinely alcohol-related. Indeed, there is no definition of alcohol-related crime at a national level and we believe it would be helpful for Guidance to give a steer on this.

7.6 Whilst volume crime is important, it gives a false perspective on the size, scale and nature of the local problems and can hinder interventions to address alcohol-related issues. It would be helpful if this was considered separately from alcohol-related matters. The former should be considered as business crime and only the latter tackled through the licensing regime. Moreover, direction in guidance should be given to ensuring that overall alcohol-related crime is considered in the context of capacity, footfall or visitor numbers.

Should sales of alcohol airside at international airports continue to be exempt from the application of the Act? Should sales on other forms of transport continue to be exempt?

7.7 The ALMR believes that sales of alcohol airside at international airports should no longer be exempt from the application of the Act. The original exemption was only introduced because of practicalities relating to enforcement airside rather than any regulatory or policy concerns relating to its sale.

7.8 If we remind ourselves of the principal aims that governed the implementation of the Act (above) bringing the sale of alcohol within the Act would allow operators to develop their business models (for example to provide gaming machines) and provide greater choice for consumers, including tourists, about where, when and how they spend their leisure time. More importantly, with no licence for alcohol sales, other operators who do not have the experience and training in alcohol retailing eg. coffee shops and quick service restaurants are unregulated.

7.9 In July 2016 the ALMR joined forces with key stakeholders to develop the voluntary code of practice which among other things covers the retailing of alcohol in airports to ensure passengers receive consistent messaging and advice about the responsible consumption of alcohol while flying and good practice is disseminated.

8.0 Licensing procedure

The Act was intended to simplify licensing procedure; instead it has become increasingly complex. What could be done to simplify the procedure?

8.1 The ALMR considers that the key issue to address is the multitude of different procedures and rules in place for what are essentially similar functions – and some are in statute and some in Guidance.

8.2 For example, there is a quite rigid evidential requirement for Cumulative Impact Policies (CIPs) written out in guidance (noting that this was introduced despite never having been debated in the House and is about to be made statute without detailed public consultation and limited parliamentary scrutiny); a different evidence requirement for EMROs; and no evidence requirement for a levy – just a statement that it is desirable.

8.3 The ALMR would like to see some judicial parameters established on natural justice points to be abided by in hearings. Looking at the three measures above, you have to have a hearing before you can introduce some of them and not others. Some local authorities will have an open meeting of the licensing committee to discuss important issues such as new taxes being imposed and will allow representations to be made, others will not. There are also some who will allow you to cross examine or test the evidence and assertions made and others who will not. In other hearings, local authorities will allow all residents to speak and comment on what businesses have said but not allow a right of reply.

8.4 Given this it would help if there was national training for councillors sitting on licensing committees some of whom are more keen to use the decision making process to simply make political points. Given that licensing will always be, however, an administrative function rather than a judicial function at local authority level we would also support the right of appeal to a Crown Court on licensing decisions - in line with judicial principles.

8.5 Separately, the ALMR considers that the review procedure currently operates like a conveyor belt – once you have started the process, you have to go to a full hearing. So, for example, the police may seek a review because there have been a number of disturbances at the premises and they believe the door policy is not being applied. You could then meet them and agree all additional measures and controls which satisfy them but the review would still then continue to a hearing. The issue with this is that as the review process continues, other stakeholders unrelated to the original matter that triggered the review can comment and you can open up the whole licence to scrutiny.

8.6 We would ask if there any room for a preliminary hearing which could deal with what is at dispute. If a statement of agreed facts and issues could be prepared, then this would save time in terms of statements, which often deal with agreed facts and issues, and concentrate on the matters in dispute. We also believe there is a role for mediation in an appeal process, as long as it does not make appeals more lengthy and costly.

8.7 Another issue of real concern is around summary review powers, where there is very poorly drafted police guidance and a real lack of certainty as to how it should operate. The

Home Office suggested in responding to its consultation on rebalancing the Act in 2011 that greater weight should be given to police evidence, request and recommendations. However, no regulations or guidance to this effect was ever adopted and it has become the convention that the perspective of the police has to be taken at face value and certainly unchallenged.

8.8 Finally, we note that due to recent changes in legislation, interim measures which are imposed on businesses at licensing reviews now stay in place until they are successfully overturned at appeal. Previously, measures were not imposed until after appeal stage. We consider this a barrier to appeal, particularly if the interim measure is to close the business thus depriving it of the ability to trade to fund its appeal.

8.9 In terms of simplifying the procedure there are a number of reforms that could be easily implemented including:

- The forms for both Temporary Event Notices and all of the application forms could be made a lot simpler and shorter;
- The rules surrounding gaming machine permits issued as part of the premises license could be simplified;
- The requirement to place a notice in a printed newspaper could be dropped. We understand that only once in ten years has anybody made a representation as a result of a notice in a newspaper;
- Licensing Authorities could adopt a common platform to accept electronic applications. Some use their own system and portals, others use GOV.UK's, some use their own forms and others use the standard forms. We note that some still will not accept electronic applications, and a number of them, whilst accepting electronic applications, will not accept (or cannot accept) electronic payment by credit or debit card.

9.0 Sale of alcohol for consumption at home (the off-trade)

Given the increase in off-trade sales, including online sales, is there a case for reform of the licensing regime applying to the off-trade? How effectively does the regime control supermarkets and large retailers, under-age sales, and delivery services?

9.1 The 2003 Licensing Act overturned the previous restrictions on off-licence sales and subjected them to very different treatment and conditions than pubs and bars.

- There is an in-built presumption of grant of hours – a supermarket does not have to justify that its hours will not harm the licensing objectives in the same way a bar does – which means a supermarket almost automatically is allowed to sell alcohol at any time of the day or night that it is open
- There is no automatic control over siting of alcohol in the store, whereas a pub or bar has to provide a plan which identifies point of sale and the position of the bar –

interestingly, it is an actual variation of the licence if a pub wants to change that or even alter the bar shape or size

- The definition of wholesale quantities was swept away and supermarkets were allowed to sell in bulk and singly as part of the same shopping experience. It normalised the idea of buying large quantities as part of a normal shop.

9.2 An examination of consumption patterns also suggests a clear correlation between the introduction of the Licensing Act and people spending less times in pubs and bars and purchasing less alcohol to consume in a supervised environment.

9.3 A snapshot survey of our late night members conducted recently reported customers coming out later in the evening, staying for a shorter period of time in licensed retail premises and drinking less. At the introduction of the Licensing Act, nightclub operators were reporting peak entry to premises at around 10-11pm, with customers remaining in the venue for 4 hours and buying 2.3 drinks. Today, those operators are reporting peak entry has slipped from 12-1am, with customers remaining in the venue 2 hours and an average purchase of 1.8 drinks.

9.4 This is reinforced by Galaxy research carried out by CGA amongst 3,000 18-24 year olds. This shows that the prevalence of pre-loading has increased significantly over the last three years, with 83% of 18-24 year olds admitting to pre-loading on supermarket alcohol, up from just 53% in 2009. It has also changed the nature of their evening out, with the typical pre-loader visiting on average 1.9 venues and tending to going straight to their last venue rather than going out for a meal and drinks beforehand. Consumption of shots and shooters, which has increased 121% year on year is also likely to be attributable to increased pre-loading, with short drinks appealing to those who have already drunk at home.

9.5 Although the Act does apply to both the on-trade and the off-trade there appears to still be confusion and lack of certainty regarding how to exercise these powers with respect to supermarkets and off-licenses. We do not want to see additional regulatory burdens imposed on the off-trade. Rather than licensing authorities and responsible authorities being reminded about the existing powers at their disposal that should be used at their discretion. Too often licensing and regulatory authorities appear to believe that the best way to tackle broader social ills and challenges is through the imposition of more controls on the on-trade. We would like to see revisions to Government Guidance to Licensing Authorities to clarify that off and on trade premises should be treated equally in the application of law and impose conditions where they see it appropriate to do so.

10.0 Fees and costs associated with the Licensing Act 2003

Do licence fees need to be set at national level? Should London, and the other major cities to which the Government proposes to devolve greater powers, have the power to set their own licence fees?

10.1 The ALMR considers that national operators need consistency and certainty to aid business planning and investment decisions and only a national fee structure can deliver that. We do not support the devolution of licensing fees to a city level.

10.2 The Government ruled out introducing locally-set licensing fees in February 2015 although it left the door open to reconsider the matter should local government provide evidence that the national fee level was insufficient to cover their costs administering the licensing regime.

10.3 The ALMR would like to ensure that any review of costs by the Government should not just look at costs to local authorities but also overall costs incurred by operators in the course of obtaining and operating their licence (for example, business rates, BIDs, levies etc.) as well as the hidden costs of application.

10.4 On the latter these costs often add up quickly to considerable sums (for example, advertising in local newspapers (£400), physical certified photocopies to all responsible authorities (£200-250), common anniversary date for payment of annual fees, lack of true electronic application and payment system, no direct debits. Many of these burdens could be simply addressed through technological solutions.

11.0 Conclusion

11.1 The 2003 Licensing Act has helped shaped the licensed hospitality sector we see today. The introduction of a single premises licence allowing a range of different activities to be provided helped foster the growth of a vibrant and diverse eating and drinking out sector in our high streets and local communities.

11.2 However, the operation of the Act in practice has not been without its challenges. It has failed to deliver in full its promise of financial savings and reduced bureaucracy. Various reforms and additions to the original Licensing Act of 2003 have made licensing procedure more complex with a lack of consistency across various elements including EMROs, CIPS and Late Night Levies.

11.3 Furthermore, the Act is not being used effectively in conjunction with other policy and regulatory interventions as part of a coherent national and local strategy. Too often the licensing regime is seen as a panacea to tackle broader problems in local communities and society.

11.4 Consequently, operating costs associated with legislation now stand at a record high of 5.5% of turnover. This seriously affects a business's chances of succeeding and, in an increasingly competitive marketplace, the margin between success and failure for high street operators is thin.

11.5 The original focus on achieving a difficult balance between the needs of industry, law enforcement and local authorities that the Government originally sought to achieve with the Act has been lost.

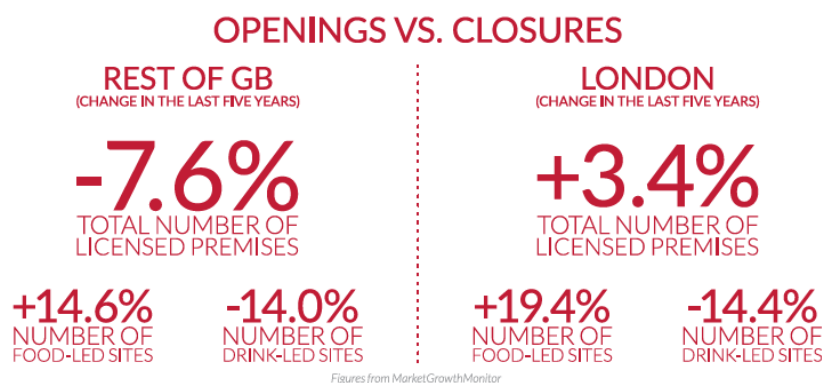
11.6 Instead of continually adding to the policy and regulatory infrastructure that supports and relates to the Act, we would like a moratorium on further additions and amendments to the Act. Instead we ask that decision makers at a national and local level refocus on recovering the important balance that the Act was designed to promote via the recommendations outlined in our submission.

11.7 Only then will the Act realise its original intentions to deliver for both the general public and the consumer through encouraging and improving good operating practice, promoting partnership and driving out unjustified inconsistencies and poor practice.

APPENDICES

Appendix 1: Decline in outlets

These figures show the importance of looking beyond London to understand how well the on trade is navigating a challenging social, economic and regulatory environment over the past five years since the Government consulted on rebalancing the Act in 2011.

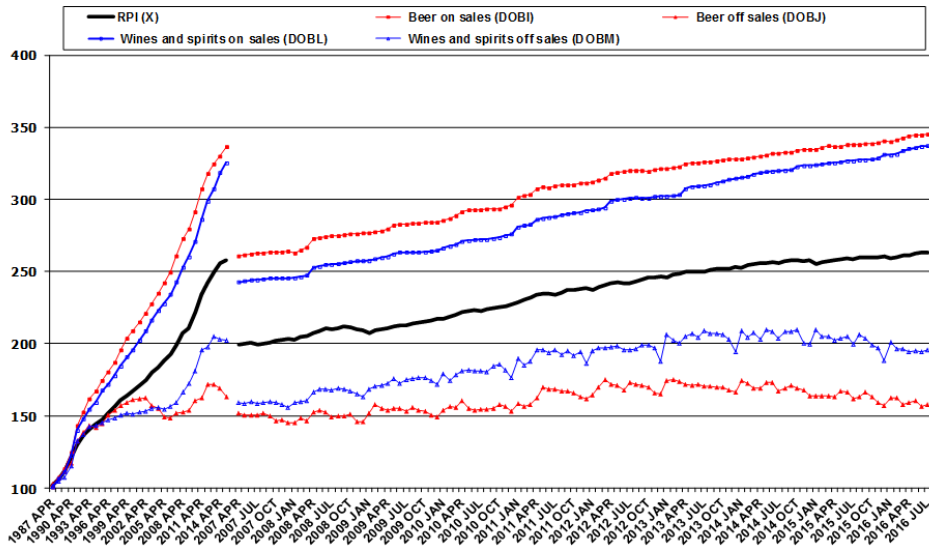


Source: ALMR Future Shock Report 2016

Appendix 2: On versus off trade price inflation

This graph demonstrates how the on trade prices have increased by around 40% since the introduction of the Licensing Act 2003, whilst supermarket prices have declined in real terms

Association of Licensed Multiple Retailers – written evidence (LIC0150)

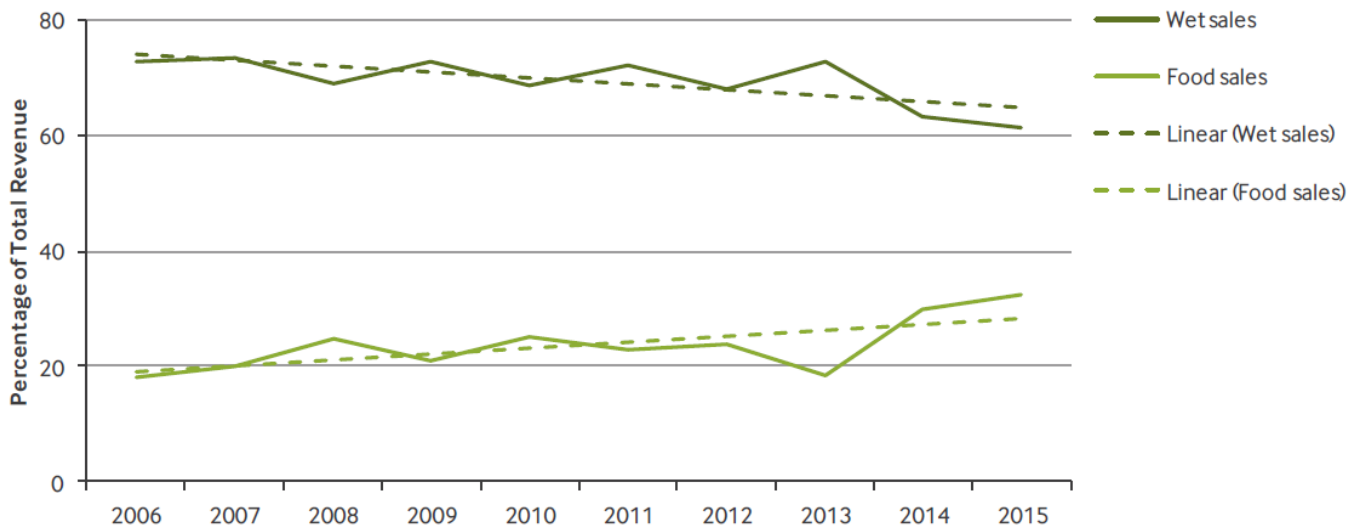


Source: ONS August 2016

Graph: CGA Peach / CGA Strategy

Appendix 3: Long Term Trends in Food and Wet Sales

This chart from the latest 2016 ALMR Christie & Co Benchmarking Survey shows a record proportion of turnover derived from food, at just under 30%, with wet led sales dropped dramatically to under two thirds of turnover (63%). And that is across all market segments.

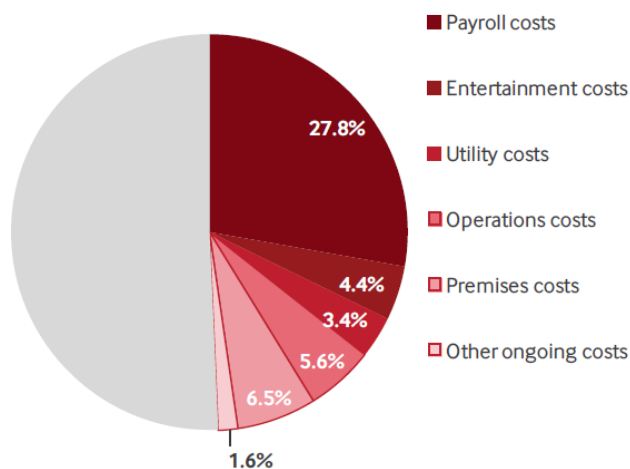


Source: The ALMR Christie & Co Benchmarking Survey 2016

Appendix 4: Operating Costs as a percentage of turnover

This chart demonstrates that operating costs now stand at a record 49.6% of turnover. Payroll costs are the largest segment but operations costs (the segment most affected by

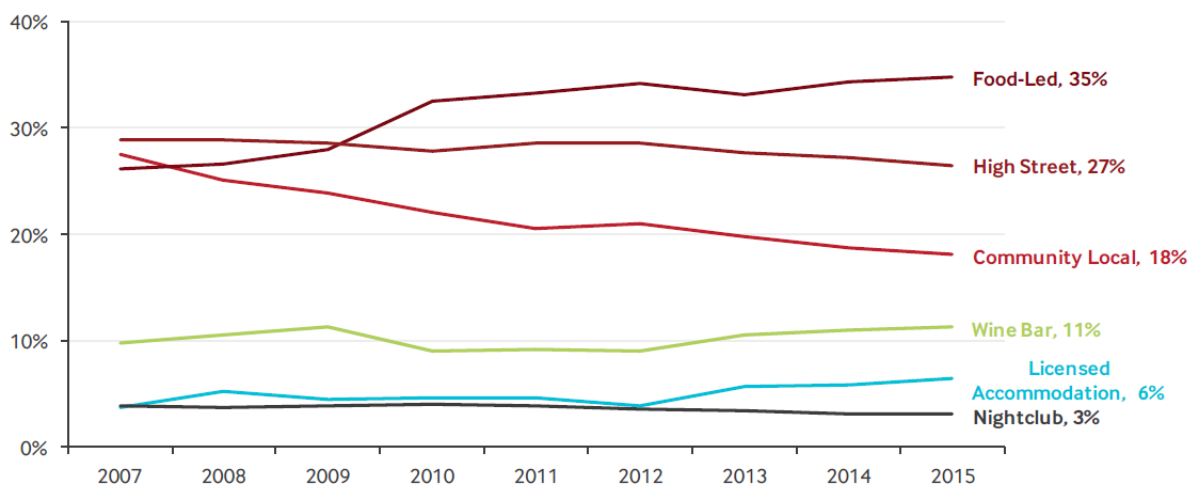
legislation) now stand at 5.6% of turnover down marginally on last year’s survey but still 0.5ppts above the levels seen in 2011, when the market returned to growth.



Source: The ALMR Christie & Co Benchmarking Survey 2016

Appendix 5: Different types of managed licensed outlets in England & Wales

This chart shows the sustained growth in food-led outlets in the years following the introduction of the Licensing Act in 2005. With a single licensing regime encompassing different types of business, operators have been able to innovate and in doing so attract families and a more mixed demographic into licensed premises. This in turn has a moderating and positive social effect on alcohol consumption, behaviour and public order.



Source: The ALMR Christie & Co Benchmarking Survey 2016

8 September 2016

Attitude is Everything – written evidence (LIC0091)

Introduction

Attitude is Everything improves Deaf and disabled people's access to live music by working in partnership with audiences, artists and the music industry. Having begun as a pilot project in 2000, we are now a fully independent charity and part of Arts Council England's National Portfolio of Organisations. All of our guidance is informed by the feedback provided by hundreds of Deaf and disabled mystery shoppers who attend gigs and festivals across the UK on our behalf on a continuous basis.

We encourage events producers to implement best practice reasonable adjustments in order to provide a fair and equal service to their Deaf and disabled customers using a Charter of Best Practice with Bronze, Silver and Gold awards. The ethos of the Charter is that Deaf and disabled people should be as independent as they want to be at live music events and over 100 venues and festivals have signed up to date. This Charter was originally created in response to the lack of practical guidance on how the music industry should implement the then Disability Discrimination Act 1995. From the outset, our organisation sought to formulate best practice approaches to meeting legal obligations based on the lived experience and opinions of Deaf and disabled people.

We also:

- deliver event industry-specific Disability Equality Training, and have trained over 5000 people.
- provide a consultancy service for large infrastructure projects and commercial festivals.
- recruit Deaf and disabled volunteers for Glastonbury, Latitude, Reading and Leeds festivals.
- produce 'Club Attitude' on a yearly basis to showcase best practice within a music venue.
- work with a variety of industry umbrella bodies to influence venues and festivals across the UK.
- produce a State of Access Report every two years highlighting current trends and issues within the music industry and setting out objectives for positive change.

Licensing Objectives

2. Should the policies of licensing authorities do more to facilitate the enjoyment by the public of all licensable activities? Should access to and enjoyment of licensable activities by the public, including community activities, be an additional licensing objective? Should there be any other additional objectives?

1. As an organisation concerned with the promotion of access to live music for Deaf and disabled people, we would welcome the addition of a fifth objective related to the public accessing licensable activities if it was linked to the concept of 'equality'. A fifth 'equality' objective was proposed by Marie-Claire Frankie, licensing solicitor at Sheffield Council and representative of the National Association of Licensing and Enforcement Officers in her oral evidence given to the House of Lords Select Committee on the Equality Act¹²⁴.
2. Currently, licensing officers can offer limited advice if they witness a physical barrier to accessibility during a visit to a music venue, and ask that it be rectified, but they have no powers to actively encourage issues to be addressed via the licensing process. This input is also limited to what is seen by any visiting officer, and does not extend to any other barriers that might not be readily apparent or manifested in a lack of suitable online access information or a lack of appropriate policies concerning stewarding or ticketing, for example.
3. New build venues are subject to the planning process and requirements to implement basic physical accessibility according to building regulations. Old and existing venues that transferred over before the Licensing Act are free of this requirement, and currently the licensing process offers no mechanisms by which a license can be revoked or have conditions added when it comes to a failure to provide basic access for disabled people, that is, provide reasonable adjustments according to the Equality Act 2010.
4. It is our understanding that there is currently no universal guidance provided to licensing officers regarding what may or may not constitute a barrier to accessibility in the context of a licensable premises, and no structures in place to ensure a consistent approach is taken across the UK.
5. A new objective covering equality could enable licensing officers to request changes to a venue, for example for an accessible toilet to be cleared of unnecessary obstructions, and then act if this request was not acted upon by taking the issue before the committee to review the license and add conditions to it if necessary.
6. Attitude is Everything does not advocate a harsh licensing regime, or the enforced closure of currently physically inaccessible music venues. We understand that there is some nervousness about the implementation of accessibility as a condition of license, with this topic provoking fears that venues might be forced to close due to an inability to make a spaces physically accessible, for example. However, we do feel that given that very few external bodies interact with venues, there is an opportunity for the licensing process to take a greater role in promoting and encouraging best practice where it is possible to implement it.

¹²⁴ <http://www.parliament.uk/documents/lords-committees/equality-act/equality-act-and-disability-committee-evidence.pdf>

7. The findings of the House of Lords Select Committee on the Equality Act¹²⁵ reflected a consensus that the Act is currently not enforced effectively, resulting in the widespread failure of service providers to anticipate the access requirements of Deaf and disabled people and make reasonable adjustments. In terms of the music industry, the only people involved in visiting UK music venues on a regular basis to help to promote compliance with the Equality Act are ourselves and our volunteer mystery shoppers, who provide feedback for us to share and act upon. Despite our ever-expanding working relationships and industry reach, this still only equates to a fraction of the UK live music industry.

8. In addition to this, there are a currently unquantifiable number of licensing officers apparently informally flagging up issues during premises visits, and some local authorities partnering with local organisations on this front, but again we currently have no means by which to gauge the extent or success of this. For example, Southwark Council's Statement of Licensing Policy 2015 – 2020¹²⁶ states:

While access for people with disabilities is not one of the four licensing objectives, this council expects that responsible licensees will comply with the requirements of the Equality Act 2010. As such the licensing service will work closely with the Southwark Disablement Association (SDA) to ensure that disabled people are not treated less favourably than other people for a reason related to their disability. As part of this arrangement this authority will inform the SDA of new licence applications and will support the SDA and licensees in improving access to services. The SDA can provide advice to any licensee on reasonable adjustments – contact details are provided in section 12 of this policy.

9. It would be essential for any move to better link licensing with the enforcement of the Equality Act to involve the establishment of clear parameters regarding what licensing officers should inspect, what venues might be required to submit, and what guidance should be given. It would be essential to have universal guidelines on what might be reasonable to expect a venue to do if it had insurmountable barriers to access (i.e. a small grassroots basement venue accessed via a flight of stairs), as well as how a venue with basic physical access in place could be encouraged to capitalise and expand upon this.

10. We would happily participate in any developments in this field, given that we have worked for 16 years in developing an extensive body of best practice guidance for the live music industry. We have produced and published multiple publications including a comprehensive 'Charter Toolkit' that covers all aspects of making music venues and outdoor events accessible in line with established best practice.

11. We have also recently developed the 'Attitude Champion' model that enables an umbrella body such as a multi-venue festival to support partner venues (including those that are fundamentally physically inaccessible) to make simple, reasonable changes. This approach to determining what any venue could achieve could very much feed into the

¹²⁵ <http://www.publications.parliament.uk/pa/ld201516/ldselect/ldseqact/117/11702.htm>

¹²⁶ <http://modern.gov.southwark.gov.uk/documents/s57948/Appendix%20A%20-%20Draft%20Licensing%20Policy%202015-20.pdf>

creation of a more robust mechanism via which potential barriers could be identified and rectified during the licensing process.

The balance between rights and responsibilities

4. Do all the responsible authorities (such as Planning, and Health & Safety), who all have other regulatory powers, engage effectively in the licensing regime, and if not, what can be done? Do other stakeholders, including in the licensing regime, and if not, what could be done? Do other stakeholders, including local communities, engage effectively in the licensing regime, and if not, what could be done?

12. Outdoor festivals are subject to having their sites signed-off by Health and Safety and Local Authority personnel before the public are allowed access. In the case of accessible viewing platforms at stages being fit for purpose as reasonable adjustments, it would be massively beneficial if these structures were subject to rigorous signing-off as part of the licensing process, encompassing not only health and safety but the ability for the structure to provide adequate accessible viewing and thus assist the festival organisers in meeting their duties under the Equality Act 2010. On many occasions, Attitude is Everything has witnessed viewing platforms being signed-off by Health and Safety whilst either being too low and thus failing to provide a reasonable adjustment for people requiring seated viewing, or with an overly-steep ramp that is unsafe for independent use. We would strongly support the implementation of a mandatory ‘reasonable adjustment check’ to sit alongside health and safety checks in this context.

13. In a similar way, we often find venues with facilities such as ‘accessible’ toilets that do not meet basic Part M guidance, and again a system to better ensure that these facilities are signed off and checked on a regular basis would be very beneficial. It often is the case that once an accessible toilet has been installed, no further rigorous checking is carried out. Any change to usage or fixtures and fittings can quickly render a toilet inaccessible without anyone in the venue realising. This is particularly an issue at smaller venues where there is unlikely to be a designated access officer or indeed anyone tasked to oversee this aspect of the business.

International comparisons

14. Is there a correlation between the strictness of the regulatory regime in other countries and the level of alcohol abuse? Are there aspects of the licensing laws of other countries, and other UK jurisdictions, that might usefully be considered for England and Wales?

Attitude is Everything – written evidence (LIC0091)

14. In Scotland the Barred! Campaign ¹²⁷, which focused on pubs, led to a draft amendment of the Licensing (Scotland) Act 2005 being added to Part 9 Section 179 of the Criminal Justice and Licensing (Scotland) Act 2010 ¹²⁸. This took the following form:

179 Premises licence applications: statements about disabled access etc.

(1) Section 20 of the 2005 Act (application for premises licence) is amended as follows.

(2) In subsection (2)(b)—

(a) the word “and” immediately following sub-paragraph (ii) is repealed, and

(b) after that sub-paragraph, insert—

“(iia) a disabled access and facilities statement, and”.

(3) After subsection (5), insert—

“(6) A “disabled access and facilities statement” is a statement, in the prescribed form, containing information about—

(a) provision made for access to the subject premises by disabled persons,

(b) facilities provided on the subject premises for use by disabled persons, and

(c) any other provision made on or in connection with the subject premises for disabled persons.

[F1(7)In subsection (6), “disabled person” is to be interpreted in accordance with section 6 of the Equality Act 2010 (c.15).”.]

However, this remains prospective and to date has yet to be added to the Licensing (Scotland) Act 2005. As it has not come into force, there is no evidence on how this may have impacted accessibility in real terms.

15. Explanatory notes¹²⁹ published in 2010 explained the proposed requirement:

Applicants for a premises licence to provide a “disabled access and facilities statement”, in a form set out by Scottish Ministers, to the Licensing Board along with the licence application.

That statement is to contain information about disabled access to the subject premises and the facilities or any other provision available to aid the use of the premises by disabled people.

Failure to provide this statement is not a ground for refusing an application. Rather, it would mean the premises licence application would be incomplete. The application could not

¹²⁷ <http://www.capability-scotland.org.uk/what-can-i-do-for-capability/policy-campaigns/current-policy-campaign-and-research-work/barred!/>

¹²⁸ <http://www.legislation.gov.uk/asp/2010/13/section/179?timeline=true>

¹²⁹ <http://www.legislation.gov.uk/asp/2010/13/notes/division/2/9?view=plain>

therefore be considered by the Licensing Board as it would not be a valid application under section 20(2).

16. Attitude is Everything followed this development closely and went on to explore the topic of access as a condition of licensing via a now defunct coalition, which DCMS asked us to lead, called 'Beyond The Ramps'. A move towards this was also a key recommendation in our 2011 State of Access Report¹³⁰. We continue to inform DCMS about licensing and have been invited to attend Matt Hancock MP's roundtable meeting "Social Mobility and Diversity" on 27th September 2016.

17. If this amendment had come into force, it might have had limited impact given that it was focussed purely on the production of an access statement and did not delve into other areas such as the issue of avoidable physical barriers within premises being logged and rectified via the licensing process, for example. However, if the provision of public access information was to become a condition of the licensing process for music venues in England and Wales, it might positively impact the current failure of many venues to provide even the most basic information for Deaf and disabled people.

18. In our most recent State of Access Report¹³¹, published in February 2016, we found that 1/3 of venues and festivals provide no access information for Deaf and disabled customers, 2/3 of small venues provide no information, and less than 1/5 of websites with some content regarding access provide fully comprehensive information to enable customers to make properly informed decisions about attending.

19. We are seeking to do our part to rectify this via a campaign called Access Starts Online. This enables us to award a digital 'stamp of approval' to venues and festivals that voluntarily ensure that online access information meets minimum standards as set out in a best practice guide. We are targeting those venues and festivals that we currently work with, and have partnered with the Association of Independent Festivals and Independent Venue Week to promote the campaign to those networks.

20. We are firmly of the opinion that a licensing requirement for live music venues to have comprehensive access information and accessible ticketing would be a fantastic first step in England and across the UK.

2 September 2016

¹³⁰ <http://www.attitudeiseverything.org.uk/resources/publications/state-of-access-report/>

¹³¹ <http://www.attitudeiseverything.org.uk/resources/publications/state-of-access-report-2016>

Avon and Somerset Constabulary – written evidence (LIC0081)

Avon and Somerset Constabulary response - informed by our specialist Licensing teams

1. Are the existing four licensing objectives the right ones for licensing authorities to promote? Should the protection of health & wellbeing be an additional objective?

We believe that the existing four licensing objectives are right and we support the addition of Health & Wellbeing as the 5th Licensing Objective. Nationally the HSCIC report suggests that more than a million admissions were alcohol related in the year 2014-2015. It could really improve the operational delivery of licensing decisions by enabling Regulatory Bodies to provide relevant and effective representations on the basis of Health & Wellbeing when considering new applications or triggering a review of an existing licence.

Evidence suggests that little is forthcoming from consultations relating to applications for premises licences coupled with the challenge of consistently gleaning data from relevant bodies. Premises granted licences where meaningful and timely data would have challenged otherwise.

Scotland have 'Health & Wellbeing' as a 5th Objective – *Protecting and improving Public Health* (2005) and we believe that we owe it to our communities to help and provide a safer, healthier environment.

2. Should the policies of licensing authorities do more to facilitate the enjoyment by the public of all licensable activities? Should access to and enjoyment of licensable activities by the public, including community activities, be an additional licensing objective? Should there be any other additional objectives?

We consider that it is for the trade and event organisers to effectively promote and advertise events and to encourage enjoyment of licensable activities. The Licensing Authority has a responsibility of enforcing the legislation, in partnership with other responsible authorities and ensuring that the licensing objectives are promoted so a balance between rights and responsibilities.

3. Has the Live Music Act 2012 done enough to relax the provisions of the Licensing Act 2003 where they imposed unnecessarily strict requirements? Are the introductions of late night levies and Early Morning Restriction Orders effective, and if not, what alternatives are there? Does the Licensing Act now achieve the right balance between the rights of those who wish to sell alcohol and provide entertainment and the right of those who wish to object?

Our Licensing officers believe that the Live Music Act has relaxed the Licensing Act and given rise to an increase in noise related matters. One example of the de-regulation is that the playing of recorded and live music are no longer licensable activities between the hours of 08.00 and 23.00 where the sale/supply of alcohol for consumption on the premises is authorised by the licence already in place. This includes premises where the original

premises licence application attracted significant objections and, as a result, either a) specific conditions mitigating noise nuisance from the premises (for example) were agreed between Regulatory bodies and the applicant or b) a hearing of the Licensing & General Purposes Sub-Committee attached such conditions. The result of the Live Music Act is that these carefully introduced conditions, for very good reason at the time, no longer apply to the hours referred to above and are therefore unenforceable. There have been complaints from the public regarding premises that are incredulous that the conditions imposed on premises, at hearings they themselves attended as objectors, are no longer enforceable within the Act. This has attracted criticism of the Licensing Teams who are perceived to be allowing this to continue.

Broadly speaking, it seems that there is now a balance between the rights of those seeking to sell alcohol and entertainment and the rights of those who wish to object. However, the deregulation has made it harder for residents being disturbed to see effective action as a result of their complaints. The Review process is there but, in practice, is only really effective with a level of evidence that shows issues over a period of time and is often difficult to collate due to insufficient recording. The only method of removing deregulation from a premises licence and bringing conditions back into force between 08.00 and 23.00 hrs is by sub-Committee resolution at a Review hearing.

It seems to be a general opinion that the new Act is too broad and open ended. If there are to be broader freedoms for the leisure industry then there should be more precise regulations for the Licencing Authorities to work with, i.e. an expiry date for Personal Licence holders.

6. Should licensing policy and planning policy be integrated more closely to shape local areas and address the proliferation of licensed premises? How could it be done?

An amendment would be welcomed so new applications premises licences can only be submitted once the appropriate planning permission has been granted.

10. What could be done to improve the appeal procedure, including listing and costs? Should appeal decisions be reported to promote consistency? Is there a case for a further appeal to the Crown Court? Is there a role for formal mediation in the appeal process?

It is felt that greater emphasis should be on ensuring that decisions are correct in the first place rather than necessarily changing the process for appeals. Sub-Committee decisions seem to vary extensively across different Licensing Committees.

The current appeal process is clear and there is no real need to introduce either a further step (Crown) or a formal mediation process. If decisions are clear and informed, there should be nothing to fear from the appeal process.

There are financial implications where local authorities and / or Police may have costs awarded against them, especially in the Crown Court. This may influence decisions.

11. Given the increase in off-trade sales, including online sales, is there a case for reform of the licensing regime applying to the off-trade? How effectively does the regime control supermarkets and large retailers, under-age sales, and delivery services? Should the law be amended to allow licensing authorities more specific control over off-trade sales of “super strength” alcohol?

We believe that it is the time to reform this. We would welcome a legislative amendment to allow licensing authorities more specific control over off-trade sales of all alcohol, not just super-strength alcohol. We need the ‘Challenge 25’ in practice in all premises that sell alcohol.

12. Should alcohol pricing and taxation be used as a form of control, and if so, how? Should the Government introduce minimum unit pricing in England? Does the evidence that MUP would be effective need to be “conclusive” before MUP could be introduced, or can the effect of MUP be gauged only after its introduction?

A sensible unit pricing would be beneficial. The current calculation system is complex, unclear and MUP far too low.

14. Is there a correlation between the strictness of the regulatory regime in other countries and the level of alcohol abuse? Are there aspects of the licensing laws of other countries, and other UK jurisdictions, that might usefully be considered for England and Wales?

It seems that we have a problem with “binge drinking”, although this has been in decline with pre-loading on the increase. There is no evidence of a Continental drinking culture having developed since the Act’s introduction. It’s also fair to say that it’s impossible to address these issues within the Licensing Act alone considering that there are over-riding social issues at play. Scotland appears to be significantly ahead of England & Wales in terms of sensible licensing provision including:-

- A renewal process for Personal Licences
- A training requirement for Personal Licence holders every 5 years
- The power to revoke, suspend or endorse a Personal Licence where notice of relevant convictions have been received
- Minimum Unit Pricing
- More specific guidelines on what constitutes irresponsible drinks promotions. Scottish legislation specifies buy one - get one free or three for two offers as irresponsible

15. Personal Licences

Recent changes in legislation have removed the need for a Personal Licence to be renewed. Although there is still a requirement for a Personal Licence holder to declare a change of address or any relevant convictions, the licence is literally for life, with no requirement for refresher training.

Avon and Somerset Constabulary – written evidence (LIC0081)

Scotland's provision seems to be a more balanced approach.

The proposals contained within the Police & Crime Bill to devolve power to suspend and revoke personal licences to licensing authorities would be welcomed.

We believe that there should be an expiry date for Personal Licence holders and a further course and fee.

2 September 2016

Balance North East Alcohol Office – written evidence (LIC0023)

Balance is the North East of England’s alcohol office, the first of its kind in the UK. It aims to encourage people in the North East to reduce how much alcohol they drink so they can live healthier lives in safer communities. In this context, Balance has a key role around licensing and availability and works with partners across the region to encourage evidence based policy development.

LICENSING OBJECTIVES

1. *Are the existing four licensing objectives the right ones for licensing authorities to promote? Should the protection of health and wellbeing be an additional objective?*

The four existing licensing objectives allow responsible authorities to make representations in a number of different ways, but Balance believes that the introduction of an additional ‘health and well-being’ objective would enhance the opportunities for Public Health partners to participate in the licensing process. A range of health data sources, from alcohol-related hospital admissions statistics, to ambulance data, demonstrate that alcohol has a huge impact upon health and it is clear that factors linked to health and well-being should be taken into account as part of the licensing process.

At the same time, the overall emphasis of the Licensing Act, built upon the ‘presumption to grant’ makes it hugely difficult to challenge individual license applications. Although we believe the introduction of a ‘health and well-being’ objective would be beneficial – not least in terms of reinforcing the fact that health and well-being are important considerations in the licensing process – it is unlikely that it would enable ‘responsible authorities’ to control outlet density in a more proactive or decisive way. In our view, the existing Licensing Act requires a fundamental overhaul, which would give ‘responsible authorities’ the powers to decide when and where alcohol could be sold, based upon clear objectives, including the protection of health and well-being.

As it stands, the evidence suggests that the addition of a health and wellbeing objective would represent an evolution and not a revolution within licensing.¹³² It would make amends for a clear legislative gap within the Act and allow local authorities to highlight health and well-being concerns in a more specific way, rather than trying to address them under one of the existing four objectives. It would also potentially encourage Public Health partners to take a more active role in the licensing process, by raising the profile of representations linked to health and well-being. In this context, a Local Government Association survey found that 9 out of 10 Directors of Public Health agreed that there was demand for a health objective.¹³³

¹³² Foster. J., Charalambides. L., (2016) [The Licensing Act \(2003\): its uses and abuses 10 years on](#). Institute of Alcohol Studies. In particular see [here](#).

¹³³ LGA Survey (Jan 2016) [Public Health and the Licensing Process](#)

2. *Should the policies of licensing authorities do more to facilitate the enjoyment by the public of all licensable activities? Should access to and enjoyment of licensable activities by the public, including community activities, be an additional licensing objective? Should there be any other additional objectives?*

We do not feel that there should be an additional licensing objective linked to access to and enjoyment of licensable activities by the public. From an alcohol perspective, it is clear that communities across the North East feel that they already have more than enough access to licensed premises; a recent Balance survey showed that 95% of North East residents agreed that there were enough or too many places selling alcohol.¹³⁴

Based on several thousand interviews, Balance’s annual Public Perceptions Survey provides a compelling insight into public opinion in the North East. The findings from recent questionnaires demonstrate that people across the region are overwhelmingly opposed to the explosion of availability and that communities need a greater voice in local licensing decisions. Key findings were as follows:

- 55% of respondents supported restricting alcohol sales in off-licenses and supermarkets to between 10am-10pm, compared to only 18% who backed a more flexible approach;¹³⁵
- Two thirds of North Easterners felt that “the drunken behaviour of others” put them off a night out in our town and city centres;¹³⁶
- Almost 3/4s of North Easterners agreed that pub and club closing times should be between 11pm to midnight;¹³⁷
- 95% of North Easterners felt that it was unacceptable to sell alcohol in a soft play area; 84% opposed sales in a hair salon; and 77% in a garage forecourt – all locations in which alcohol is currently available in the North East.¹³⁸

Taking this into account, we believe that we urgently need a licensing system which listens to local communities, protects our health and well-being and fosters vibrant and diverse local economies. This means that more powers should be given to local people to decide when and where alcohol is sold, rather than introducing new objectives, which would potentially support the further expansion of outlet density within our local communities.

THE BALANCE BETWEEN RIGHTS AND RESPONSIBILITIES

3. *Has the Live Music Act 2012 done enough to relax the provisions of the Licensing Act 2003 where they imposed unnecessarily strict requirements? Are the introductions of late night levies and Early Morning Restriction Orders effective, and if not, what alternatives are there? Does the Licensing Act now achieve the*

¹³⁴ Balance, Public Perceptions Survey 2015

¹³⁵ Balance, Public Perceptions Survey 2015

¹³⁶ Balance, Public Perceptions Survey 2015

¹³⁷ Balance, Public Perceptions Survey 2014

¹³⁸ Balance, Public Perceptions Survey 2013

right balance between the rights of those who wish to sell alcohol and provide entertainment and the rights of those who wish to object?

The lack of a workable Early Morning Restriction Order is a clear strategic failing within the Act. Many local authorities and police forces would like to be able to use this tool, and restricting excessively late closing times is known to significantly reduce alcohol related crimes and associated police costs.¹³⁹ For example, a modest reduction in trading hours in Newcastle (NSW, Australia) in 2008 was shown by independent evaluation to have had convincing and compelling benefits:

- an internationally unprecedented 37% fall in alcohol-related non domestic assaults;
- a 50% reduction in night time street crime; and
- a 26% reduction in related hospital ED admissions.¹⁴⁰

On the contrary, as experience from localities such as Blackpool and Hartlepool has shown, it is currently almost impossible to curb opening hours through the introduction of EMROs, which are far too inflexible and open to industry challenge.

In addition, it is clear that Late Night Levies do not meet the needs of diverse local economies. Whilst experience from the North East has shown that Late Night Levies can be beneficial in the context of large, vibrant, night-time economies, they are simply not suitable for less well-developed or more diverse authorities, particularly where there is a split between urban and rural communities. With this in mind, it would be helpful to introduce a more flexible version of the Late Night Levy, which would allow responsible authorities to apply the levy to particular geographical localities, rather than the local authority as a whole.

Taking all of this into account, the evidence suggests that both EMROs and Late Night Levies need rebalancing in favour of local authorities and communities, to ensure that they can be implemented and targeted more effectively.

4. Do all the responsible authorities (such as Planning, and Health & Safety), who all have other regulatory powers, engage effectively in the licensing regime, and if not, what could be done? Do other stakeholders, including local communities, engage effectively in the licensing regime, and if not, what could be done?

Experience from partners across the North East suggests that it is challenging to ensure consistent engagement from all of the responsible authorities in the licensing process, with involvement from planning and child protection / safeguarding particularly patchy. In some areas, public health colleagues would welcome the opportunity to engage more actively in the licensing process, but capacity remains an issue, alongside the absence of a health and well-being objective.

¹³⁹ Foster. J., Charalambides. L., (2016) [The Licensing Act \(2003\): its uses and abuses 10 years on](#). Institute of Alcohol Studies. Page 127

¹⁴⁰ Kyprilou. K., Jones. C., McElduff. P., Barker. D., (2011) [Effects of restricting pub closing times on night-time assaults in an Australian city](#). Addiction.

It has also been indicated that planning and licensing processes should be more aligned, with the view that applicants should not be granted a license, until they have got planning permission to open for the hours stated on a licensing application.

LICENSING AND LOCAL STRATEGY

- 5. *Licensing is only one part of the strategy that local government has to shape its communities. The Government states that the Act “is being used effectively in conjunction with other interventions as part of a coherent national and local strategy.” Do you agree?***

The development of the Licensing Act in recent years has included a shift towards crime and disorder issues, with the Modern Crime Prevention Strategy continuing this trend. However, from a wider perspective, the Government has failed to introduce a coherent and evidence based approach to alcohol harm reduction at a national level, particularly through the lack of any meaningful policy to address the impact of cheap, strong alcohol.

At a local level in the North East, several authorities have developed strong approaches to alcohol harm reduction, using the Statement of Licensing Policy (SLP) to set a clear and positive vision for the development of the night time economy, with health and well-being (in addition to the four existing licensing objectives) at the heart of the local strategy.

At the same time, it is clear that there are tensions between licensing authorities and counterparts in economic development / planning departments and it would be helpful if the Government provided more national leadership and powers to reflect the adverse harms that alcohol can have upon our local communities, as well as the economic benefits.

- 6. *Should licensing policy and planning policy be integrated more closely to shape local areas and address the proliferation of licensed premises? How could it be done?***

Yes, we believe that licensing and planning policies should be better integrated, although it would not necessarily make a significant impact on the proliferation of licensed premises, which is facilitated by the ‘presumption to grant’ in the Licensing Act 2003.

CRIME, DISORDER AND PUBLIC SAFETY

- 7. *Are the subsequent amendments made by policing legislation achieving their objects? Do they give the police the powers they need to prevent crime and disorder and promote the licensing objectives generally? Are police adequately trained to use their powers effectively and appropriately?***

Amongst others, the Police Reform and Social Responsibility Act (2011) made the following changes:

- It made local authority licensing teams a responsible authority in their own right: This has been very beneficial, and many local authorities use this well to uphold the local Statement of Licensing Policy.

- Health bodies were designated a responsible authority: this was a welcome step in the right direction, but health is hampered by not having a specific objective.

Regarding police powers to prevent crime and disorder, the changes, which include additional powers of entry for the police, have been largely positive and have allowed police colleagues more flexibility in achieving their objectives. However, feedback from local partners suggests that as it stands, there is insufficient training to ensure that powers are used to their full potential. With this in mind, it has been suggested that the National College of Policing should be encouraged to create and implement a standardised training package as soon as possible.

LICENSING PROCEDURE

8. *The Act was intended to simplify licensing procedure; instead it has become increasingly complex. What could be done to simplify the procedure?*

In many ways, the current Licensing Act has simplified the licensing regime, particularly by combining alcohol and entertainment issues. There is also a consensus that the Act has fostered more effective partnership working, both between individual regulatory bodies, and with the licensed trade. In general, the alterations to the Act have addressed deficiencies and problems. Some areas within the Act were originally too focused on tourism and the sociable benefits of licensing, while paying too little attention to the problems that can arise. However, the ‘presumption to grant’ licenses remains a huge challenge, putting far too much power in the hands of the industry, whilst limiting the ability of responsible authorities to control when and where alcohol is sold at a local level.

It is arguable that some of the simplest sections within the Act are the most problematic to administer and enforce, particularly Temporary Event Notices (TENs). These result in significant financial shortfalls for local authorities; they cost £21 for applicants, but vastly more to administer and process. Their overly light touch approach has effectively resulted in TENs working as a loop hole, allowing existing premises to extend their hours with limited oversight. This makes the more regulated elements of the licensing regime harder to enforce.

9. *Should sales of alcohol airside at international airports continue to be exempt from the application of the Act? Should sales on other forms of transport continue to be exempt?*

It is a real anomaly that the Licensing Act does not apply airside at international airports, as the promotion of licensing objectives is just as relevant in these locations. In fact there are potentially additional risks related to passengers being drunk and unruly within this context. Indeed, recent figures showed that 422 people were held on suspicion of being drunk at an airport or on a plane in the last two years.¹⁴¹ With this in mind, it would make absolute

¹⁴¹ [Airport alcohol sales to be 'examined' by Lord Ahmad](#). BBC news

sense to bring sales of alcohol airside under the jurisdiction of the responsible authorities in the licensing process.

Regarding other forms of transport, the sale and consumption of alcohol on trains can cause specific problems, often resulting in additional preloading or on-route drinking. In some areas, large groups have been known to buy excessive amounts of alcohol from the off-trade, drinking on trains while traveling to their destination on a Friday or Saturday night. They then arrive in a very intoxicated state, causing significant problems from a crime and disorder and health perspective. Colleagues have noted that this is a particular problem on the east coast mainline, with large groups of revellers (often hen and stag parties) traveling between cities such as Newcastle and York, consuming large quantities of alcohol and disturbing services for other passengers.

Again, it would be helpful to regulate the sale of alcohol on trains and other forms of transport, much more effectively, with the Government prescribing certain conditions, whilst allowing some local flexibility to tackle particularly problematic routes.

10. *What could be done to improve the appeal procedure, including listing and costs? Should appeal decisions be reported to promote consistency? Is there a case for a further appeal to the Crown Court? Is there a role for formal mediation in the appeal process?*

According to partners across the North East, the appeals procedure is open to abuse, with significant room for improvement. For example, when a licensing committee orders a license revocation, the premises in question can continue trading, pending the result of an appeal to Magistrates – a process which can last six months or more after the initial committee hearing.

In effect, this enables poorly run premises and / or unscrupulous license holders to use the appeals process as a ‘stay of execution’, with many continuing to pose challenges to local partners and communities in the meantime. With this in mind, we believe that there should be a process of interim revocation, pending appeal, which would effectively implement an immediate ban on the sale of alcohol. This would admittedly necessitate a speeding up of the appeals process; but more importantly, it would protect local communities from further problems during the appeal period and militate against the abuse of the overall system.

The better reporting of appeal decisions would also be beneficial, and this could be aided by updating the Section 182 Guidance with case law developments so that it adequately reflects the practical application of the Act. There is a case for exploring the use of mediation, but local authorities should not be pushed towards unnecessary compromise, when they have a clear duty to uphold and promote the licensing objectives in the interests of the local community.

SALE OF ALCOHOL FOR CONSUMPTION AT HOME (THE OFF-TRADE)

11. *Given the increase in off-trade sales, including online sales, is there a case for reform of the licensing regime applying to the off-trade? How effectively does the*

regime control supermarkets and large retailers, under-age sales, and delivery services? Should the law be amended to allow licensing authorities more specific control over off-trade sales of “super-strength” alcohol?

The context in which we consume alcohol has changed significantly over recent years, with massive shifts in levels of consumption, availability and pricing. Since the 1950s, the average annual intake of alcohol per adult in the UK has risen from five litres to 9.65 litres in 2012/13 and this is largely attributable to wider availability. Whereas in the past, alcohol sales were confined to off-licenses, pubs and clubs, today alcohol is available 24/7, 365 days of the year, in locations as diverse as petrol stations and soft play areas and via services such as ‘Dial-a-Drink’, which deliver alcohol straight to your front door. At the same time, alcohol has become much more affordable, costing 61% less in real terms than in 1980. These shifts have contributed to a striking increase in alcohol-related harms across the North East, which suffers from some of the highest rates of alcohol-related hospital admissions, mortality and morbidity.

In the North East and across England as a whole, we are increasingly choosing to drink at home. This is explained, at least in part, by the disparity in price between the on and off-licensed trades; alcohol bought from off-licenses now costs on average one third of the cost of alcohol bought from the on-trade. Since 1992, the volume of alcohol drinks consumed in the home has increased from 527ml per person per week to 706ml in 2008, whilst the amount of alcohol sold by the on-trade has dropped by 40% between 2001 and 2008.¹⁴² The number of UK off-licenses has increased by 25% in the past 30 years, fuelled by the expansion of supermarkets and convenience off-shoots (Tesco Metros, Sainsburys Locals etc.) leading to an increasingly competitive alcohol-market place, with alcohol frequently sold at pocket money prices. Off-licensed sales are also the predominant direct and indirect source of access to alcohol for under-18s, with growing international evidence linking off-license density with a range of negative alcohol-related consequences.

At the same time, the Licensing Act 2003 is poorly equipped to deal with the off-trade and more needs to be done to regulate and reform this area of the licensing regime. In this context, there is much that we could learn from Scotland; for example, the Scottish Licensing Act has been rebalanced to acknowledge the fact that the vast majority of alcohol is consumed at home. This has seen the introduction of a ban on multi-buys, restricting alcohol related products to one part of a store, the restriction of off-trade hours to 10am until 10pm, and the proposed introduction of minimum unit pricing (although is yet to be implemented, pending legal challenge by the alcohol industry).

Research into the impact of these restrictions has found broadly positive results. For example, a study by NHS Scotland using sales data found that there has been a 2.6% decrease in the amount of alcohol sold in Scotland per adult as a result of the multi-buy ban, including a 4% drop in wine sold and an 8.5% decline in pre-mixed alcohol drinks (including alcopops). In addition, as part of a wider evidence-based alcohol policy, with greater pricing

¹⁴² British Beer and Pub Association Statistical Handbook, BBPA 2011

restrictions - ideally a Minimum Unit Price – there is strong evidence to indicate that the impact on a range of metrics (alcohol-related hospital admissions, alcohol-related crime etc.) would be hugely positive.

Home delivery services are also difficult to regulate under the Act. Some local authorities have produced additional guidance and conditions for operators to ensure that they comply with the Act, particularly regarding sale to minors and sales to drunks; although this can be challenging to enforce. While off-trade hours in Scotland are limited to 10am – 10pm, Scottish hours for home delivery services are slightly different, with a ban between midnight and 6am. This does however still allow for greater limits on home delivery during the period which could potentially be the most problematic.

PRICING

12. *Should alcohol pricing and taxation be used as a form of control, and if so, how? Should the Government introduce minimum unit pricing in England? Does the evidence that MUP would be effective need to be “conclusive” before MUP could be introduced, or can the effect of MUP be gauged only after its introduction*

There is no single solution to tackling alcohol-related harm and Balance believes that we need a package of measures to limit the affordability, availability and promotion of alcohol. However, all of the independent evidence tells us that getting rid of the cheapest, strongest alcohol would have the most impact as it is typically consumed by young people and those drinking at harmful levels.

There is a large and significant body of international evidence which demonstrates that the price and affordability of alcohol is the key factor in driving consumption. In the 2009 Global Strategy, the World Health Organisation recommends introducing pricing policies to reduce alcohol-related harm and recognises the option to “establish minimum prices for alcohol where applicable” as an appropriate action.

Furthermore, Minimum Unit Price is already working in several countries, including Canada. Figures from British Columbia indicate that a 10% increase in average minimum price would result in a fall in consumption of 8%¹⁴³; a 9% reduction in alcohol specific hospital admissions¹⁴⁴; a 32% reduction in wholly alcohol caused deaths¹⁴⁵; and a 10% fall in violent crime.¹⁴⁶ In addition, research commissioned by the UK Government revealed that the

¹⁴³ Stockwell, T., et al. (2012), [The Raising of Minimum Alcohol Prices in Saskatchewan, Canada: Impacts on Consumption and Implications for Public Health](#). American Journal of Public Health

¹⁴⁴ Stockwell, T., et al. (2013), Minimum alcohol prices and outlet densities in British Columbia, Canada: Estimated impacts on alcohol attributable hospital admissions. American Journal of Public Health

¹⁴⁵ Zhao, J., et al. (2013), [The relationship between changes to minimum alcohol price, outlet densities and alcohol-related death in British Columbia, 2002-2009](#). Addiction.

¹⁴⁶ Stockwell, T., et al. currently unpublished research on the effects of minimum pricing on crime in Canadian provinces

introduction of MUP would be significantly more effective than banning below-cost sales.¹⁴⁷

According to this work:

- After 10 years, a ban on below cost sales would save 14 lives, compared to 960 lives saved with the introduction of MUP at 50p;
- In the first year of implementation, a ban on below cost sales would reduce crimes by 900, whilst an MUP at 50p would result in a fall of 50,700 crimes.
- After 10 years, a ban on below cost sales would save an estimated £77m, whilst the equivalent figure for MUP at 50p is £5.1 billion.¹⁴⁸

From a North East perspective, the cheapest, strongest alcohol is responsible for some of the greatest problems in our local communities. Although more affluent groups of the population tend to drink at higher levels, the people in our most deprived communities suffer from the worst alcohol-related harms - harmful drinkers on the lowest incomes spend on average almost £2700 a year on alcohol, with 41% of the alcohol they consume purchased for less than 45 pence per unit.¹⁴⁹ These are the people who end up in hospital time and time again and die prematurely, whilst their families pay the price of cheap alcohol.

Alcohol is 54% more affordable today than in 1980.¹⁵⁰ Successive cuts and freezes to duty since 2012 have exacerbated this problem: beer duty is now 14% lower than in 2012, while cider and spirits duty have each fallen by 6%.¹⁵¹ Raising the price of alcohol through real terms increases in duty is necessary to reverse these dangerous trends.

However, it is not just the level, but also the structure of alcohol taxes that matters. Because of anomalies in the duty system, 7.5% ABV ciders attract the lowest duty per unit of any product: 5p per unit, compared to 18p per unit for a beer of equivalent strength. This has given rise to a market for industrial 'white' ciders: sold in 3 litre plastic bottles and closely linked to harmful, dependent and underage drinking.¹⁵² Tax policy could be used to have a more targeted focus on such products through narrower bands - at present ciders between 1.2% and 7.5% ABV are taxed at the same rate.

MUP is not a silver bullet, and a combination of tax and MUP would be the optimal approach. This would ensure that the cheapest alcohol, which disproportionately causes the

¹⁴⁷ University of Sheffield (2013), [Modelled income group-specific impacts of alcohol minimum unit pricing in England 2014/15](#)

¹⁴⁸ Brennan, A., Meng, Y., Holmes, J., Hill-McManus, D. and Meier, P. (2014) 'Potential benefits of minimum unit pricing for alcohol versus a ban on below cost selling in England 2014: modelling study', *BMJ*,

¹⁴⁹ Effects of minimum unit pricing for alcohol on different income and socioeconomic groups: a modelling study Holmes et al May 2014

¹⁵⁰ Health & Social Care Information Centre (2015), *Statistics on Alcohol England, 2015*.

¹⁵¹ Institute of Alcohol Studies (2016), *Budget 2016 analysis*.

¹⁵² Black, H. et al (2014) *White Cider Consumption and Heavy Drinkers: A Low-Cost Option but an Unknown price*. *Alcohol and Alcoholism* 49:6, pp675-80; Alcohol Concern (2015). *Alcohol brands consumed by young people in treatment 2015*.

greatest harms, increased in price, while ensuring that the Treasury benefited from this rather than the alcohol producers.

MUP at the suggested price of 50p per unit would have a minimal impact on the on-trade, where prices tend to be significantly higher than this, but it would impact most dramatically on the cheapest alcohol in the off-trade.

Regarding the question of being able to conclusively predict MUP's impact, the evidence for MUP is very strong, and far stronger than for other policies implemented by the Home Office. For example, the Modern Crime Prevention Strategy places a significant focus on partnership working with the trade, when there is not a single piece of academic, peer reviewed evidence that this has a significant impact on crime and disorder. While the licenced trade has carried out some internal evaluations, these tend to be of a very poor quality. In contrast the evidence, both modelled and from Canada where they have similar minimum prices, that MUP would be effective, is very strong.¹⁵³

FEES AND COSTS ASSOCIATED WITH THE LICENSING ACT 2003

13. *Do licence fees need to be set at national level? Should London and the other major cities to which the Government proposes to devolve greater powers, have the power to set their own licence fees?*

At present some local authorities see significant shortfalls in the revenue they receive from licensing fees, meaning that they have to subsidise their licensing operation out of general funds. With the reductions in local government funding in recent years this has become increasingly difficult.

Local authorities with the biggest fees shortfall are often those more likely to struggle to oversee the Act.¹⁵⁴ The Local Government Association (LGA) estimates that alcohol licensing cost local authorities approximately £183 million in the 10 years since the Act was introduced, which works out at £1.5 million of taxpayers' money per month being used to subsidise the licensed trade.¹⁵⁵

International comparisons

14. *Is there a correlation between the strictness of the regulatory regime in other countries and the level of alcohol abuse? Are there aspects of the licensing laws of other countries, and other UK jurisdictions, that might usefully be considered for England and Wales?*

¹⁵³ Stockwell, T., Zhao, J., Marzell, M., Gruenewald, P. J., Macdonald, S., Ponicki, W. R., & Martin, G. (2015). Relationships Between Minimum Alcohol Pricing and Crime During the Partial Privatization of a Canadian Government Alcohol Monopoly. *Journal of Studies on Alcohol and Drugs*, (July), 628–634. <http://doi.org/10.15288/jsad.2015.76.628>

¹⁵⁴ Foster, J., Charalambides, L., (2016) [The Licensing Act \(2003\): its uses and abuses 10 years on](#). Institute of Alcohol Studies. See chapter 12

¹⁵⁵ *Local Government Association (Feb 2015)* [LGA responds to Government decision to reject locally-set licensing fees](#)

Within developed countries, those which experience greater alcohol related harms tend to have a stricter regulatory response. The 2003 Licensing Act attempted to simplify and deregulate licensing but the ‘presumption to grant’ has played into the hands of the industry and prevented responsible authorities from actively and decisively deciding when and where alcohol can be sold at a local level.

This evidence submission has covered a number of policies from Scotland which would be beneficial for those with an interest in reducing alcohol related harms. These include MUP, a health and well-being objective and greater restrictions on the off-trade.

Evidence from Australia also lends support to the introduction of a workable EMRO. In Newcastle, Australia, it was found that bringing forward closing times from 5am to 3am resulted in 37% reduction in assaults.¹⁵⁶ After one year, similar opening restrictions in the Kings Cross area of Sydney resulted in a 21% reduction in sexual assaults, a 43% reduction in assaults causing grievous bodily harm, a 50% reduction in assaults causing actual bodily harm and a 57% reduction in robberies.¹⁵⁷

Commenting on this, Police Superintendent Mick Fitzgerald, Kings Cross local area commander, stated that ‘the man hours saved and the way we are able to reallocate our resources has been phenomenal.’¹⁵⁸ While the closure of several clubs in Kings Cross were attributed to measures, a variety of other businesses have been seen to enter the market, including antiques dealers, ice-cream vendors, chemists, restaurants, hairdressers and yoga studios, as well as a number of new bars.¹⁵⁹ There is also evidence that, while there has been a reduction in land value of some commercial property, large increases have been observed in both mixed-use and residential property in the Kings Cross region.^{160, 161}

Risk-based licensing, which is used in various forms in Canada, Australia and New Zealand, also has interesting elements. This approach broadly links licensing fees and regulatory strength to the type of premises and the operating schedule. Types of premises, such as restaurants, bars or clubs, are ranked by their potential risk, and pay a different base rate depending on the outcome of the risk assessment. Hours of operation can also be linked to

¹⁵⁶ Kypril, K., Jones, C., McElduff, P., Barker, D., (2011) [Effects of restricting pub closing times on night-time assaults in an Australian city](#). Addiction.

¹⁵⁷ In addition to moving closing times forward from 5 am to 3 am, a 1 am lockout was introduced, meaning that people could continue to drink alcohol on the premises until the 3am close, but no new patrons could be admitted after 1 am. This became known as the ‘one-way door’ policy.

¹⁵⁸ Australian Daily Telegraph (April 1st, 2015) [Cross clean-up is a victory for Sydney](#)

¹⁵⁹ <https://twitter.com/2011Residents>

¹⁶⁰ Land & Property Information. (n.p.). *Potts Point/Kings Cross Report Land Value Review – Report for Land Valuation Advisory Group*. NSW Government.

¹⁶¹ Nicholls, S. (2016, 22 May). Lockout laws hit values in Kings Cross’ ‘golden mile’. *The Sydney Morning Herald*. Retrieved from: <http://www.smh.com.au/nsw/lock-out-laws-hit-land-values-on-kings-cross-golden-mile-20160522-gp0ych.html>

the fee, with some states in Australia charging incremental amounts for every hour that a venue opens after midnight. Compliance history can also have an impact on feel level.¹⁶²

24 August 2016

¹⁶² See the appendix to Foster. J., Charalambides. L., (2016) [The Licensing Act \(2003\): its uses and abuses 10 years on](#). Institute of Alcohol Studies.

Keith Barker-Main – written evidence (LIC0001)

I am a journalist with over fifteen years experience within the drinks industry sector.

I view the relaxation of licensing laws to have been a largely positive development. The daytime and nighttime economies of London and other cities have benefitted from landlords' ability to trade at times that suit both businesses and their clientele.

This has a positive effect on the economy - particularly germane as London and other UK cities face up to the economic uncertainty and fallout from Brexit. Tourists and locals spend more and by and large consume alcohol more responsibly than before. Longer trading hours counter the temptation to sink copious amounts of alcohol as 'calling time' approaches. Much better catering options across the industry encourage the consumption of meals with drinks: 'cafe culture' as it was intended.

The thrust of government policy in tackling anti-social drinking - an important issue - should focus, less on licensed premises, more on the sale of cheap spirits, ciders and fortified wines - "loss leaders" - punned by supermarket chains and often used for 'pre-loading' consumption at home or in city streets by younger consumers.

Irresponsible price promotions in licensed premises are another area to look at. Bear in mind, however, that margins are tight across the hospitality industry and any recommendations must strike a balance between businesses' ability to operate profitably and health and public order concerns. Any local problems should be controlled on a local basis. A one-size-fits-all solution - as in Lambeth council's unpopular and unhelpful initiative, since dropped, to impose a blanket evening curfew in the Lavender Hill area - should not be pursued as this discriminates against those who exercise moderation and self-restraint while responsibly embracing our vibrant cafe culture.

1 July 2016

Bath City Centre Action Group – written evidence (LIC0036)

Licensing objectives

1. Are the existing four licensing objectives the right ones for licensing authorities to promote? Should the protection of health and wellbeing be an additional objective?

While the existing objectives are fine as far as they go they do not allow a proper consideration of the impact that granting a licensing application may have on the quality of life in the neighbourhood.

They also fail to address questions of cumulative impact. Cumulative impact takes two forms:

1. Introducing new premises into areas that already have a number of licensed venues. Banes council who struggle with balancing the large number of people who live and stay in the city centre with the demands of the night time economy have had to create the rather contrived mechanism of a local cumulative impact policy and cumulative impact zone. This should be addressed within the objectives of the licensing Acts.

2. Mission creep by applicants. A typical example was two residential houses in a purely residential neighbourhood being bought and converted into a B&B. The owners then applied for an alcohol license offering many reassurances and conditions to limit the sale of alcohol to in-house residents. Successive applications have by small steps extended this to having a bar open to the public, vertical drinking, an outdoor drinking area of some size and off sales.

2. Should the policies of licensing authorities do more to facilitate the enjoyment by the public of all licensable activities? Should access to and enjoyment of licensable activities by the public, including community activities, be an additional licensing objective? Should there be any other additional objectives? The balance between rights and responsibilities.

The enjoyment by the public of all licensable activities has not been an issue

3. Has the Live Music Act 2012 done enough to relax the provisions of the Licensing Act 2003 where they imposed unnecessarily strict requirements? Are the introductions of late night levies and Early Morning Restriction Orders effective, and if not, what alternatives are there? Does the Licensing Act now achieve the right balance between the rights of those who wish to sell alcohol and provide entertainment and the rights of those who wish to object?

The issue with the Live Music Act 2012 was that it was a one size fits all deregulation regime which allows little discretion for local authorities to adapt its provisions to local situations. In situations where people live near licensed premises, this Act has left them defenceless in the face of premises exploiting the opportunities the Act creates for boosting their

commercial offer. The limitations imposed by the act are hard and expensive to police, who will go and count how many people are in a crowded pub, and the legislation on noise nuisance is often inadequate to deal with the real world situations that arise.

It is perhaps worth noting at this point that licensing reviews have proved to be a largely useless in practice for defending the rights of residents and indeed other businesses. It is a little disturbing that your question talks about “those who wish to object” rather than those who live and work in affected areas.

4. Do all the responsible authorities (such as Planning, and Health & Safety), who all have other regulatory powers, engage effectively in the licensing regime, and if not, what could be done? Do other stakeholders, including local communities, engage effectively in the licensing regime, and if not, what could be done?

If you take an area like Bath you will find that most licensed premises are or have been in a position where their planning conditions are in conflict with their licensing conditions. The artificial barriers created by the legislation between planning and licensing should be removed. This would allow both planning and licensing authorities to hear and consider all the evidence of the impact or potential impact that a premises will have on its environment.

Similarly, the constraint on licensing authorities not to impose conditions on things which are subject to other legislative regimes should be removed allowing the licensing authority to effectively coordinate the work of all agencies in relation to licensed premises.

Licensing and local strategy

5. Licensing is only one part of the strategy that local government has to shape its communities. The Government states that the Act “is being used effectively in conjunction with other interventions as part of a coherent national and local strategy.” Do you agree?

No, see 1 & 4 above

6. Should licensing policy and planning policy be integrated more closely to shape local areas and address the proliferation of licensed premises? How could it be done?

Yes, see 4 above

Crime, disorder and public safety

7. Are the subsequent amendments made by policing legislation achieving their objects? Do they give the police the powers they need to prevent crime and disorder and promote the licensing objectives generally? Are police adequately trained to use their powers effectively and appropriately?

The new policing legislation has certainly created improvements and had given officers far more options which they seem keen to exploit. However, it is still early days.

The new legislation still leaves gaps the most obvious example being the lack of any effective control over “Party Houses” which can cause endless misery for their neighbours and blight communities.

8. Should sales of alcohol airside at international airports continue to be exempt from the application of the Act? Should sales on other forms of transport continue to be exempt?

No comment

Licensing procedure

9. The Act was intended to simplify licensing procedure; instead, it has become increasingly complex. What could be done to simplify the procedure?

Give licensing authorities more discretion to create or adapt the procedure to reflect local conditions and the nature of applications they are receiving.

10. What could be done to improve the appeal procedure, including listing and costs? Should appeal decisions be reported to promote consistency? Is there a case for a further appeal to the Crown Court? Is there a role for formal mediation in the appeal process? Sale of alcohol for consumption at home (the off-trade)

We have an example in Bath of a premises which used the appeal process to resist decisions of the licensing authority, and the planning authority, for 10 years. This is unacceptable and led to housing units actually being vacated because the premises involved made living in them intolerable. None of the substantive appeal issues was upheld and the premises could legally trade in defiance of the local authority’s decisions.

The fear of the cost of being appealed is clearly having an influence on licensing committee decisions and the way in which they are being implemented. Local residents are often effectively locked out of the appeals processes. The idea of formal mediation would certainly be worth considering as a way of addressing this.

11. Given the increase in off-trade sales, including online sales, is there a case for reform of the licensing regime applying to the off-trade? How effectively does the regime control supermarkets and large retailers, under-age sales, and delivery services? Should the law be amended to allow licensing authorities more specific control over off-trade sales of “super-strength” alcohol?

Licensed premises regularly report pre-loading and the smuggling of alcohol into their premises as a major factor impacting their ability to control drink fuel disorder and trade profitably.

Retailers, in particular, the major supermarkets often promote cheap drink offers and create products which in practice make drink smuggling easier.

Under the current legislation it is virtually impossible to object to a new off-license even where it is in close proximity to numbers of licensed venues and areas known for high levels of drink-fuelled disorder – see attached exchange with Banes licensing department.

12. Should alcohol pricing and taxation be used as a form of control, and if so, how? Should the Government introduce minimum unit pricing in England? Does the evidence that MUP would be effective need to be “conclusive” before MUP could be introduced, or can the effect of MUP be gauged only after its introduction?

No comment

Fees and costs associated with the Licensing Act 2003

13. Do licence fees need to be set at national level? Should London, and the other major cities to which the Government proposes to devolve greater powers, have the power to set their own licence fees?

No comment

International comparisons

14. Is there a correlation between the strictness of the regulatory regime in other countries and the level of alcohol abuse? Are there aspects of the licensing laws of other countries, and other UK jurisdictions, that might usefully be considered for England and Wales?

No comment

15. Additional comments

Consideration should be given to giving licenses to applicants rather than premises. Applications and conditions which may give little cause for concern by one applicant may be inappropriate if the premises are sold to a different operator with a different business model. Also because licenses have a commercial value there are numerous examples of applicants asking for hours they do not intend to use because they will add value to the building when it is sold.

Where applicants make assertions before licensing committees which are clearly influential in the decision to grant or are intended to be influential these assertions can often not be turned into conditions for a variety of largely technical reasons. In these cases, the assertions themselves should be recorded and be made available at subsequent applications or reviews.

The assumption to grant built into the 2003 Act was justified on the basis that the review procedure would be a powerful tool in correcting any mistakes. In practice, this has proved not to be the case. Licensing Committees who might have been quite comfortable with refusing a new application are very reluctant to close premises that are already operational and providing employment. The review procedure is also complex and difficult for ordinary residents to use. An example of the reluctance to withdraw licenses can be seen BANEs with the outcome of a review on a nightclub where undercover police had been sold Class A drugs on numerous occasions by a drugs operation that involved the premises management and the committee was shown some 15 minutes of CCTV footage of customers coming out

of the building so drunk they were unable to stand, customers vomiting and defecating outside the premises, customers fighting, customers trying drunkenly to force entry into neighbouring premises. While conditions were imposed the premises were allowed to continue their operations uninterrupted.

Attachment 1

These premises are, as we understand it, within the cumulative impact zone

George Street is a focus late night drinking and regularly feature high on the police lists of reported crime and disorder.

Many agencies and organisations, including local licensees, have worked hard and with some success to improve the management of the night time economy.

Licensees in this area struggle with two problems which we would contend would be made worse if this application was granted.

The first of these is the problem of preloading. This is where late night revellers consume the cheaper alcohol available from off-licenses immediately prior to visiting George Street clubs and bars.

The second of these is the problem of customers smuggling alcohol purchased from off-licenses into licensed premises.

This premises a located only some 20 metres from George Street and within less than minute walking distance of one of the largest of the licensed premises in that street.

An off-license in this location operating until 10pm will, we contend, inevitably lead to more drunkenness and undermine the licensing objectives.

We, therefore, are requesting that the licensing committee restrict the opening hours to 6pm when they are much less likely to impact late night drinking on George Street,

Attachment 2

The reasons for your representation being regarded as invalid were:-

- 1) A concern that a person or persons may pre-load from Darcy's is irrelevant as, what a person or persons do with their purchased alcohol cannot be the responsibility of the seller.
- 2) A concern of a person or persons smuggling their purchased alcohol into a licenced premises, again cannot be the responsibility of the seller.
- 3) You make reference to Prevention of crime and disorder and Public Nuisance in your representation. However you do not give any valid reasons, or examples of why you believe

that this crime and disorder and public nuisance would develop. If the applied for licence was granted.

The three points above are the reasons why your representation was deemed to be invalid.

You also make reference to the premises being in the cumulative impact zone, as the premises are applying for off sales only. The cumulative impact area has no bearing on this application.

30 August 2016

Jez Bayes – written evidence (LIC0015)

Response by Jez Bayes

Cornwall Alcohol Strategy Lead

Safer Cornwall Partnership

Cornwall Council Public Health

Licensing objectives

1. Are the existing four licensing objectives the right ones for licensing authorities to promote? Should the protection of health and wellbeing be an additional objective?

The current 4 Licensing Objectives, as outlined in the Licensing Act (<http://www.legislation.gov.uk/ukpga/2003/17>) and the detailed guidance (<https://www.gov.uk/guidance/alcohol-licensing>) are:

- (a) the prevention of crime and disorder;
- (b) public safety;
- (c) the prevention of public nuisance; and
- (d) the protection of children from harm.

These 4 objectives are now so embedded in current Licensing practice that I would suggest that to consider fundamental changes would be disruptive to the operation of Licensed business, Local Authority Licensing Teams, and Police Licensing Departments.

It can be argued that Health and Wellbeing can be seen as an active aspect of all 4 existing Objectives (especially Public Safety):

- (a) Prevention of Crime and Disorder would incorporate **preventing violent incidents**, which have a detrimental impact on the health of individuals, as well as creating unnecessary burden on health services.
- (b) Public Safety is a general ‘catch all’ objective, which can already include prevention of such **irresponsible promotions and practices in alcohol sales and consumption** that would damage the health of the consumer, and is already applied to the general conduct of alcohol retail.
- (c) Prevention of Public Nuisance covers **the impact of alcohol consumption on the health and wellbeing of local residents**, as well as implying keeping an individual’s and a group’s alcohol consumption below the level at which behaviour is impacted beyond reasonable control. This would also serve to **limit the impact on an individual’s level of intoxication and the immediate risk to their health.**

Jez Bayes – written evidence (LIC0015)

- (d) Protection of Children from Harm includes maintaining adequate measures to **prevent under-age drinking**.

As such, it doesn't appear to me that wholesale changes are needed to these 4 Licensing Objectives.

The only argument for a minor alteration would seem to be to reinforce the status of Public Health as a Responsible Authority. In 2011 the 2003 Act was amended to include the (now defunct) "primary care trust (PCT) or local health board (LHB)" as a Responsible Authority.

The rationale for this was published here:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/98129/local-health-bodies.pdf

and was explained like this:

"What does health have to do with licensed premises?"

Drunkenness can lead to accidents and injuries, which cause A&E attendances. These incidents are often traceable to individual premises and fall under the 'Public Safety' objective in the Licensing Act.

There is some evidence that the density of premises and the hours of sale in an area can also influence the local population's alcohol consumption and the level of alcohol-related ill health, over time."

Since then Public Health Departments, now under the Local Authority, have had the responsibility to assess all License applications, amendments and reviews, and submit contributions to hearings. They can even start proceedings where the evidence warrants it.

However, at present they have no history or culture of contributing to Licensing processes, and are not yet taken seriously in many places, due to the lack of a track record of regularly contributing to Licensing cases.

In order to encourage this to happen, I would suggest maintaining the existing 4 Objectives, but amending them in this way:

- (a) the prevention of crime and disorder;
- (b) public safety **and wellbeing**; (or 'public safety, health and wellbeing' to make it even clearer)
- (c) the prevention of public nuisance; and
- (d) the protection of children from harm.

This should allow Public Health to begin to be taken seriously in accessing relevant health data (as piloted in the recent PHE HaLO project) and applying it to the impact of Licenced Premises to their local context, customers and the residential population with whom they share their locality.

2. Should the policies of licensing authorities do more to facilitate the enjoyment by the public of all licensable activities? Should access to and enjoyment of licensable activities by the public, including community activities, be an additional licensing objective? Should there be any other additional objectives?

No.

The LOs are open and wide ranging enough, and Licensed activities are seen in enough different contexts, with Licensing Committees supportive enough, to enable varied community activities and applications of the Licensing Act to flourish as things stand.

The balance between rights and responsibilities

3. Has the Live Music Act 2012 done enough to relax the provisions of the Licensing Act 2003 where they imposed unnecessarily strict requirements? Are the introductions of late night levies and Early Morning Restriction Orders effective, and if not, what alternatives are there? Does the Licensing Act now achieve the right balance between the rights of those who wish to sell alcohol and provide entertainment and the rights of those who wish to object?

The Live Music Act and relevant aspects of Licensing practice are not being applied in a restrictive way in Cornwall, and so no change is needed.

LNLs and EMROs are ineffective, due to the large scale of the Cornwall Licensing Authority area. This incorporates such a wide array of different types of premises, that to catch all in the same process would be inappropriate. This is partially addressed through town BIDs, although these are more business oriented than geared towards Community Safety in Cornwall.

In the Modern Crime Prevention Strategy (<https://goo.gl/OqvVIU>) there is the suggestion of new more local legislation to address these issues, such as “a group review intervention power (GRIP) to enable licensing authorities to consider the licensing conditions of a group of premises to address problems in a specific location. This will enhance licensing authorities’ ability to manage the night time economy in their area, for example by requiring better security at premises, or measures to reduce the risk of alcohol related violence.”

This, in addition to the improvements to Cumulative Impact Policies, with a health element incorporated into the evidence for reviewing and updating CIP/CIZs, would allow for entertainment to form a healthy part of Licensed practices, while clearly defining limits in order to protect local residents and allow them to easily understand their rights to object.

4. Do all the responsible authorities (such as Planning, and Health & Safety), who all have other regulatory powers, engage effectively in the licensing regime, and if not, what could

Jez Bayes – written evidence (LIC0015)

be done? Do other stakeholders, including local communities, engage effectively in the licensing regime, and if not, what could be done?

Other RAs participate as capacity allows.

More steps could be taken to ensure that Planning and Licensing Conditions have to be consistent in each case, which could include joint review processes for premises in applications, amendment or review hearings.

Local Communities need to have easy access to web based information and submission forms, even if they are unable to attend hearings.

Licensing and local strategy

5. Licensing is only one part of the strategy that local government has to shape its communities. The Government states that the Act “is being used effectively in conjunction with other interventions as part of a coherent national and local strategy.” Do you agree?

Largely, Yes, but with the need to factor in the amendments suggested for questions 1 and 3 above.

6. Should licensing policy and planning policy be integrated more closely to shape local areas and address the proliferation of licensed premises? How could it be done?

Yes.

Where a premises is subject to both Planning and Licensing processes and conditions, there should be joint hearings, so that all affected parties and the responsible elected members can understand the considerations of both aspects before agreeing a single coherent outcome and/or set of conditions.

Crime, disorder and public safety

7. Are the subsequent amendments made by policing legislation achieving their objects? Do they give the police the powers they need to prevent crime and disorder and promote the licensing objectives generally? Are police adequately trained to use their powers effectively and appropriately?

Yes, although this is more of a matter for comment from Police colleagues who will be more aware of the restrictions of current legislation.

Police in most cases work in conjunction with partner Responsible Authorities in calling Reviews, and this should be seen as best practice in all cases.

8. Should sales of alcohol airside at international airports continue to be exempt from the application of the Act? Should sales on other forms of transport continue to be exempt?

No.

There is no logical reason for this, and alcohol related disorder in the confines of public transport settings can cause massive disruption and public safety issues for staff and public. People who currently use alcohol to address anxiety will need to take other measures after seeking valid health advice.

Licensing procedure

9. The Act was intended to simplify licensing procedure; instead it has become increasingly complex. What could be done to simplify the procedure?

This is a matter for the informed expert comments of LA Licensing Department colleagues, but the Cornwall ‘Rewiring’ process (<http://goo.gl/jbWJpt>) will be a helpful context for learning how processes can be simplified.

10. What could be done to improve the appeal procedure, including listing and costs? Should appeal decisions be reported to promote consistency? Is there a case for a further appeal to the Crown Court? Is there a role for formal mediation in the appeal process?

This is a matter for comment from the LA Licensing and Legal Departments.

Sale of alcohol for consumption at home (the off-trade)

11. Given the increase in off-trade sales, including online sales, is there a case for reform of the licensing regime applying to the off-trade? How effectively does the regime control supermarkets and large retailers, under-age sales, and delivery services? Should the law be amended to allow licensing authorities more specific control over off-trade sales of “super-strength” alcohol?

“Is there a case for reform of the licensing regime applying to the off-trade?”

Yes.

“How effectively does the regime control supermarkets and large retailers, under-age sales, and delivery services?”

Online and supermarket shopping deliveries have created largely unnoticed and unmonitorable inconsistencies in Licensing processes:

e.g. Do Supermarket delivery drivers ask for proof of age when delivering online home shopping orders that contain alcohol?

Jez Bayes – written evidence (LIC0015)

If the person receiving the delivery is underage, would the driver withhold the full delivery, or just the alcohol, or deliver anyway?

As this now accounts for such a large amount of home consumed alcohol, with the proportion of alcohol at home now forming a huge proportion of all alcohol consumed (<http://bmcmmedicine.biomedcentral.com/articles/10.1186/s12916-015-0337-0>) this is an area that needs to be addressed.

“Should the law be amended to allow licensing authorities more specific control over off-trade sales of “super-strength” alcohol?”

Defining legislation by the strength of alcohol will be fraught with problems and complexities, as super strength lager or cider will have a much lower strength than traditional spirits.

Off Sales including Supermarkets and their pricing and promotions policies are in need of a thorough independent review by a committee consisting of academic researchers, public health, DoH/NHS, alcohol awareness and lobby groups, and trade responsibility representatives such as Drinkaware or The Portman Group. They should be tasked with a full set of proposals as soon as possible, as home drinking amongst the middle aged is one of the main contributors to alcohol related hospital admissions, which places a great social and economic burden on families, the community and the NHS.

Pricing

12. Should alcohol pricing and taxation be used as a form of control, and if so, how? Should the Government introduce minimum unit pricing in England? Does the evidence that MUP would be effective need to be “conclusive” before MUP could be introduced, or can the effect of MUP be gauged only after its introduction?¹

Should alcohol pricing and taxation be used as a form of control, and if so, how?

Yes.

Research has repeatedly underlined price as the most effective measure in controlling harmful alcohol consumption.

This is underlined by the World Health Organization:

http://www.euro.who.int/_data/assets/pdf_file/0012/43320/E92820.pdf (2009)

“Of all alcohol policy measures, the evidence is perhaps strongest for the impact of alcohol prices on alcohol consumption and alcohol-related harm.”

It is also backed up by the Sheffield University compilation of over 100 studies worldwide:

http://www.shef.ac.uk/polopoly_fs/1.95617!/file/PartA.pdf

It has been researched as making a measurable impact on alcohol consumption and alcohol related hospital admissions, especially amongst vulnerable and economically deprived groups: <http://www.uvic.ca/research/centres/carbc/assets/docs/report-minimum-price-and-hospital-admission.pdf> (March 2016).

That pricing is the most effective governmental lever on alcohol related harm is now an almost undisputed academic conclusion.

The progress of this policy in the life of the Coalition Government was mainly affected by political and market influence, as revealed in the BMJ report into the Minimum Unit Pricing, which concluded that these strong influences silenced the evidence based Public Health input.

The full report from the BMJ (a journal that doesn't normally see the need for investigative journalism but made an exception in this case) can be found here:

<http://www.bmj.com/content/348/bmj.f7646>

How?

With the legal challenges and delays caused by the MUP process in Scotland and the EU, my preferred option would be better use of ABV% related taxation, which would generate funding for public schemes to address alcohol related issues rather than creating the inflated profits for producers that MUP invited.

It would also be more flexible, with regular budgetary monitoring and adjustments dependant on its impact on consumption, and the industry's pricing behaviour.

However, either improved ABV% related tax, or monitored and flexible MUP would be better than our current lack of genuine price policy and control.

Does the evidence that MUP would be effective need to be "conclusive" before MUP could be introduced, or can the effect of MUP be gauged only after its introduction?

The policy would obviously need to be monitored after its introduction, in order to fine tune its impact, but **its effectiveness is already fairly certain**, and is repeatedly backed up by academic research:

[http://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(13\)62417-4/abstract?cc=y](http://www.thelancet.com/journals/lancet/article/PIIS0140-6736(13)62417-4/abstract?cc=y)

Fees and costs associated with the Licensing Act 2003

13. Do licence fees need to be set at national level? Should London, and the other major cities to which the Government proposes to devolve greater powers, have the power to set their own licence fees?

This is a matter for comment from the LA Licensing and Legal Departments.

International comparisons

14. Is there a correlation between the strictness of the regulatory regime in other countries and the level of alcohol abuse? Are there aspects of the licensing laws of other countries, and other UK jurisdictions, that might usefully be considered for England and Wales?

Yes.

See aforementioned research into alcohol pricing in British Columbia:

<http://www.uvic.ca/research/centres/carbc/assets/docs/report-minimum-price-and-hospital-admission.pdf>

Also see the WHO Global Report on Alcohol:

http://www.who.int/substance_abuse/publications/global_alcohol_report/msb_gsr_2014_1.pdf

Quotes:

“Strategies regulating availability of alcohol are very cost-effective policy options to reduce the harmful use of alcohol. Examples of evidence-based strategies to reduce the availability of alcohol include regulating the density of alcohol outlets (Campbell et al., 2009), limiting the days and hours when alcohol sales are permitted (see Box 21; Hahn et al., 2010; Middleton et al., 2010), and national minimum legal age at which alcohol can be purchased or consumed (Elder et al., 2007).”

“Peru: a subnational example of regulating the hours during which alcohol can be sold

In January 2007, a local ban in the district municipality of La Victoria in Lima on the sale of alcohol from Sundays to Wednesdays up to midnight and from Thursdays to Sundays up to 03:00 was established. A comparison of data from this district with those from a district without a ban two years after the enactment of the ban showed that violent incidents had decreased by almost half in La Victoria and this was correlated with the number of hours during which it was permitted to sell alcohol. Homicides and suicides also decreased in La Victoria.

In December 2011, a similar ban was established in the entire Metropolitan area of Lima. Concurrently, the national police began an intensive action campaign for zero tolerance to driving under the influence of alcohol. A year later, the number of violent deaths had decreased by 11%, homicides by 19%, and the number of victims of alcohol-attributable traffic crashes by 28%.”

Amongst other measures, this report recommends:

- regulating the number and location of on-premise and off-premise alcohol outlets, expressed as efforts to **reduce alcohol outlet density**;

Jez Bayes – written evidence (LIC0015)

- tighter regulation of the days and hours of retail sales, even setting alcohol free days in specific areas;
- setting policies regarding drinking in public places.

12 August 2016

Beds & Bars – written evidence (LIC0114)

About Beds & Bars

Beds and Bars is a leading operator of tourist accommodation and entertainment venues. With backpacker hostels, bars and traditional British pubs, in 10 cities in the UK and seven countries in Europe. The diversity of our offer mirrors the diversity of our customers. At the core of what we do are the four cornerstones of the experience we strive to deliver - one that is Safe, Secure, Fun and Value for money. The management team has over 65-years of experience in operating licensed premises. Beds and Bars has a long history of working with charities, to support good causes whenever and wherever we can.

We are currently working with the following charities: **The Team Margot Foundation**, campaigning for more potential bone marrow and stem cell donors to be swabbed and registered, in the fight against blood disorders such as Leukaemia, **PubAid**, founded by: Keith Knowles (CEO and Founder, Beds and Bars), Tim Sykes (Chairman, Beds and Bars) and Des O'Flanagan (Ex S&N MD). Working with business leaders from across the sector, the objective of PubAid is to showcase the great charity work carried out each year, by UK pubs. **The Bridge Walk**, founded by Keith Knowles, with invites given to heads of industry to join him on a charity fundraiser walk in London. This walk crosses some of the city's most iconic bridges and raises thousands of pounds for the good cause chosen by the participants. [Beds & Bars awarded Investors in People Platinum accreditation](#), Beds and Bars have become one of only seven companies in the UK to achieve the newly introduced Platinum Standard set out by the new Investors in People framework. Beds and Bars (then Interpub) first attained IIP status in 1998 when Franca Knowles started the initiative within the company.

Given the breadth of the Beds and Bars business, we feel that we are ideally placed to respond to the call for information in relation to the Licensing Act 2003.

St Christopher's

St Christopher's Inns is the Beds and Bars brand of backpacker hostels. Over the last two-decades we have taken the original model of 50-beds above a pub and evolved it into a concept that involves bespoke buildings with more than 500-beds in the UK.

All of our sites are centrally located with easy access to public transport and popular attractions. In London for example, customers have a choice of hostels, located in Shepherd's Bush, Hammersmith, Camden, Greenwich and London Bridge. You can also find these businesses in London, Bath and Newquay and in Scotland, in Edinburgh. In Europe we operate hostels in Paris, Barcelona, Berlin, Amsterdam, Prague, Bruges.

Alongside the hostels, Beds and Bars operate a range of alcohol and entertainment premises:

Belushi's

Belushi's bars are hybrid bars, being a sports bar and restaurant with an international food menu, and big screen TVs throughout the day and in the evenings we host DJs, big-match sports parties and international celebrations that span everything from Australia Day to New Year's Eve.

Interpub.

Interpub is our original traditional pub arm of the business, running unique gastro, traditional and modern pubs across the United Kingdom.

Questions

Licensing objectives

1. Are the existing four licensing objectives the right ones for licensing authorities to promote? Should the protection of health and wellbeing be an additional objective?

The Licensing Act works best when local authorities feel empowered to balance the needs of business development, against the interests of local residents and the neighbourhoods in which they live. The licensing objectives are fundamental to this principle and the foundation for all decisions made by local licensing authorities. It is essential that it therefore reflects both parts of this remit.

We feel that 3 of the current 4 objectives promote these aims in a positive and constructive way. However, the public safety objective does not sit quite so easily and is arguably no longer as relevant or necessary to the objectives as may have first appeared when the legislation was first drafted.. The Regulatory Reform (Fire Safety) Order 2005 expressly removed the fire safety aspects of public safety from the objective and Health and Safety legislation creates a blanket framework under which premises are responsible for customers and staff welfare. This legislation, along with a number of others (Building regulations etc) appear to us to adequately cover the safety objective.

It is not our view that 'Health' should be introduced as a licensing objective and neither should health boards be a responsible authority. The notion of 'wellbeing' has a much wider context whereas 'Health' has a restrictive definition and implies a causal link between premises providing licensable activities and the choices that individuals make that may be considered 'unhealthy'. To try to regulate a whole industry to prevent the minority from doing themselves and others harm, misses the point. The health of individuals is a matter of education and if needed assistance/ punishment on a case-by-case basis. The Licensing Act is not a tool that is capable of achieving this. We feel that the UK regulators sometimes miss the very great contribution pubs, bars, restaurants and nightclubs, make to society, whether through jobs, investment or even simply the socialising that is enjoyed by millions on a weekly or not daily basis. Adding health, alone, without regard to culture, community and or well being is too narrow a development of this important area of regulation.

2. Should the policies of licensing authorities do more to facilitate the enjoyment by the public of all licensable activities? Should access to and enjoyment of licensable activities

by the public, including community activities, be an additional licensing objective? Should there be any other additional objectives?

Given that the Licensing Act and the Local Authority remit is to strike a balance between competing interests, at a basic level, of residents and licensed businesses, we feel that the 4 licensing objectives should recognise this balance rather than focus purely on 'prevention' and 'protection'. As an example, one of the competing interests that is not currently reflected in the licensing objectives, but plays a major part in licensing hearings is the need for growth, change and business development within the local market. A more balanced 4 licensing objectives would present greater clarity to all parties engaged in the licensing process, without removing or diluting the protections that the objectives are there to uphold. We would propose the following 4 Licensing objectives offer that greater balance:

- Prevention of Crime and Disorder
- Prevention of Public Nuisance
- Protection of Children from Harm
- Promotion of Culture, Community and Wellbeing

The balance between rights and responsibilities

3. Has the Live Music Act 2012 done enough to relax the provisions of the Licensing Act 2003 where they imposed unnecessarily strict requirements? Are the introductions of late night levies and Early Morning Restriction Orders effective, and if not, what alternatives are there? Does the Licensing Act now achieve the right balance between the rights of those who wish to sell alcohol and provide entertainment and the rights of those who wish to object?

The reality is that given the mixed nature of our businesses, we had already applied for regulated entertainment wherever it was required for each premises. The Live Music Act has therefore not been as important to us as it has no doubt been to other businesses, as we generally already have the permissions in place before de-regulation came into effect.

The exemption that applies to live music outside (especially where pub gardens are not licensed, but where live music can provide live music under the workplace exemption) have proven to be of use in allowing for one off events, albeit there is still a problem with interpretation and what should be considered to be a public nuisance. We think a better definition in the Guidance, of what should and should not be a public nuisance would assist. For instance, it would assist to refer specifically to the frequency and times of events with live music as being a defining factor in deciding whether a public nuisance has been caused.

4. Do all the responsible authorities (such as Planning, and Health & Safety), who all have other regulatory powers, engage effectively in the licensing regime, and if not, what could be done? Do other stakeholders, including local communities, engage effectively in the licensing regime, and if not, what could be done?

The reality is that some officers engage more than others and some categories of responsible authority have more of a direct interest in licensing than others. With the exception of the health boards (as stated above), we think it is only right that the other responsible authorities are notified of applications. Our experience is that residents and others do engage in the licensing process.

Licensing and local strategy

5. Licensing is only one part of the strategy that local government has to shape its communities. The Government states that the Act “is being used effectively in conjunction with other interventions as part of a coherent national and local strategy.” Do you agree?

There is a marked difference from local authority to local authority as to the nature type and tone of dialogue we "enjoy" with our local officers. The police, as an example, engage positively and proactively in Bath. However in different parts of the country, where interaction may be with several officers from the same licensing department, can highlight the very different views the officers appear to have about the same premises.

On a national level, it would assist if officers were trained and given guidance as to what powers they have and when they should be used, as this would allow operators who have premises in a number of different local authority areas, to provide consistency of training to staff, and allow us a better sense of when managers and premises are delivering the exceptionally high standards we demand, and when they are not. Consistency is not the only request we have of officers, but a little more consistency would be welcome.

Licensing needs to be more closely integrated into local authority area regeneration and business strategies as officers and councillors alike are sometimes unaware of where licensing sits within a bigger picture of their areas.

Ensuring that local councillors receive appropriate and sufficient training in the law and what is being requested of them when they come to determine licensing applications does seem worthy of comment and development. We are concerned, particularly when we talk to our friends and peers who manage premises all around the British Isles, that some councillors in some parts of the country appear to make and or base their decisions on an unduly protective assessment of the (negative) impact of the premises on those living in the vicinity. That the premises makes a positive contribution to the lives of those who live and work in the vicinity does not seem to us to be a consideration.

6. Should licensing policy and planning policy be integrated more closely to shape local areas and address the proliferation of licensed premises? How could it be done?

It is rare to see planning representations in licence applications. This is because of the difference in the regimes and the understanding that they should not overlap. We have experienced frustrations with an authority who appear to us to use planning in a much more restrictive manner than their licensing counterparts.

More and more conditions appear on planning decisions that we would normally expect to see on premises licences. This can cause confusion and needs clarifying (potentially via better guidance to planning officers).

7. Are the subsequent amendments made by policing legislation achieving their objects? Do they give the police the powers they need to prevent crime and disorder and promote the licensing objectives generally? Are police adequately trained to use their powers effectively and appropriately?

Anything that can simplify the police powers they have, has to be commended. The new powers under the Anti Social Behaviour, Crime and Policing Act 2014 are an example of a simplification that we are slowly seeing being used by police.

The review process is an integral part of the intervention strategy envisaged under the Licensing Act. In the most part it is a vital and useful means by which residents and the responsible authorities can hold premises to account. However, better guidance needs to be given to officers either bringing or supporting reviews. In particular there needs to be assistance provided in relation to the evidence submitted to support representations or review applications to ensure that it is clear when evidence is of allegations, 'intelligence' or actual offences. In addition, guidance needs to be given as to when prosecution should be sought rather than review, for instance when the aim of the action is to seek punishment rather than promote the licensing objectives.

We have experienced one disappointing review, where our sense of the matter was that a manager's failure to respond positively to an officer's engagement, essentially exposed the entire business to risk of revocation.

8. Should sales of alcohol airside at international airports continue to be exempt from the application of the Act? Should sales on other forms of transport continue to be exempt?

We have no comment to make in relation to this question, this is not part of our business.

Licensing procedure

9. The Act was intended to simplify licensing procedure; instead it has become increasingly complex. What could be done to simplify the procedure?

We would applaud any attempts to simplify procedure in such a way as to reduce costs to applicants and the administrative burden to local authorities. An example of simplified procedure that we think would have a positive effect on licensing is taken from our Scottish experiences:

- **DPS/DPM "Immediate Effect" provisions.** Under the Scottish 2005 Act, when a DPS leaves a premises (referred to as a Designated Premises Manager (DPM) north of the border), notice must be given with 7 days of this event, and in turn a new DPS must be named within 6 weeks. The premises is allowed to trade in the interim period. Under the 2003 Act there is no similar provision meaning when a DPS leaves a premises, that business might have to close down, temporarily, creating

considerable disruption for business and the public. A period of grace such as that adopted in Scotland would be most welcome

We also think that the following might assist in simplifying the process or clarify matters of concern:

- Right for personal licence holders to have a new personal licence issued without an expiry date (on payment of a small administration fee). If the Personal licence is a licence with value, which we believe it is, then Licensing authorities ought to extend the licence the courtesy in ensuring that the licence remains current (following the decision to abandon 10 yearly review, last year). We applaud the decision to permit Personal licences to be maintained as part of the licensing regime. If the sale of alcohol is to be respected as a legitimate profession, and perhaps before that, as a legitimate occupation, if the atmosphere around alcohol sales and the tone around the way it is regulated is to improve, as we believe acknowledging training and standards is a significant step. As Chief Executive I am extremely proud to have held a Justices licences and or a Personal licence since I was 18. If alcohol is to be sold responsibly, recognising those that sell it, through the personal licence and the training (and perhaps expertise) this implies is also important.
- Removal of requirement to advertise in the local press. This appears antiquated and unnecessary and is expensive. In an increasingly online world there must be equally transparent methods to ensure community awareness, without this requirement remaining.
- Representations received in relation to applications to be made available to the applicants within a specified time of receipt by the licensing authority (we suggest 3 working days). This allows for negotiations to be entered into and should assist in preventing unnecessary hearings.

10. What could be done to improve the appeal procedure, including listing and costs? Should appeal decisions be reported to promote consistency? Is there a case for a further appeal to the Crown Court? Is there a role for formal mediation in the appeal process?

We agree that an appeal to the Crown Court would be of benefit to the licensing procedure not least this will assist in building a recognised body of case laws for both applicants and councillors, as well as ensuring that licensing decisions which can concern significant investments, large numbers of jobs, and of course have significant impact on local business' and residents, are very carefully considered. Although not all of our concerns about the transfer from Magistrates Courts to Local Councillors have come to pass, having an opportunity to appear before the senior courts, perhaps in exceptional and limited circumstances, could and should be an option for premises and authorities alike.

Although Beds and Bars have never faced a summary review, we do think that a right of immediate appeal needs to be given to premises licence holders, in relation to a determination by the licensing sub-committee to re-impose interim steps, during any appeal

period. The effect of suspension of a licence throughout a drawn-out appeal, following the conclusion of the final review, could destroy an otherwise legitimate business, before the review was able to be heard.

Sale of alcohol for consumption at home (the off-trade)

11. Given the increase in off-trade sales, including online sales, is there a case for reform of the licensing regime applying to the off-trade? How effectively does the regime control supermarkets and large retailers, under-age sales, and delivery services? Should the law be amended to allow licensing authorities more specific control over off-trade sales of “super-strength” alcohol?

Whilst not strictly relevant, there is a misunderstanding by a number of councils and their officers as to what constitutes an 'off sale'. This is a matter that needs clarifying to ensure officers stop considering customers taking a drink outside a premises (for instance onto the pavement immediately to the front of a premises or into a garden that is not shown on a plan) as an 'off sale'. We feel that there is a disproportionate amount of “blame” placed on on-licensed premises when it comes to the negative effects of licensable activities. This needs to be addressed in order to educate parties on the issues surrounding pre-loading and the burden this places on on-licensed premises.

Pricing

12. Should alcohol pricing and taxation be used as a form of control, and if so, how? Should the Government introduce minimum unit pricing in England? Does the evidence that MUP would be effective need to be “conclusive” before MUP could be introduced, or can the effect of MUP be gauged only after its introduction?

We are not a retailer who trades in significant discounted products and so this is not a particular concern to our business.

Fees and costs associated with the Licensing Act 2003

13. Do licence fees need to be set at national level? Should London, and the other major cities to which the Government proposes to devolve greater powers, have the power to set their own licence fees?

Nationally set fees allows for a better understanding of the likely costs to a business such as ours, of changes within our estate in the short to medium-term. Allowing each authority to charge their own fees would add to our administrative costs and would create uncertainty. We are bound to accept that we are also concerned that fees would then significantly escalate, unnecessarily so in our view.

International comparisons

14. Is there a correlation between the strictness of the regulatory regime in other countries and the level of alcohol abuse? Are there aspects of the licensing laws of other

countries, and other UK jurisdictions, that might usefully be considered for England and Wales?

As mentioned above we operate businesses in Edinburgh, Paris, Barcelona, Berlin, Amsterdam, Prague, Bruges, as well as in a number of cities in England.

Our experience of operating across different regulatory regimes is variable.

The primary point of difference that we feel we observe with our European operations and counterparts here, is that whereas the hospitality industry is broadly acknowledged as making a positive contribution to society, life and culture in Europe, it is not our sense that those that regulate licensed premises in the UK, share that positive view.

In a number of our businesses in the UK we have been challenged by officers, and occasionally councillors, where it has not been our view that the challenge is proportionate, or fair. That is not to say that we are perfect and no doubt from time to time enforcement and regulation ensures that our business remains "on track", but the tone that we find with the regulatory officers and the licensing regime in the UK, in general, does to our mind invite the conclusion that officers rather disapprove of alcohol and those who sell it. From our perspective the officers and the regulators appear to presume that we are doing something wrong, that needs close control, rather than something positive that needs occasional correction or realignment. The benefits of employment, training, investment in property appear barely recognised.

We entirely accept that there are premises that from time to time fail to adequately and appropriately promote the licensing objectives, some in such a way that criminal penalties and/or revocation of the licence is a perfectly legitimate and justifiable outcome. However we believe that the vast majority of premises selling alcohol are doing so in a positive manner engaging with society in as hospitable an safe and secure manner as can reasonably be expected. The attitude and approach of those regulating alcohol sales seems to us fails to recognise the many positive and beneficial outcomes that socialising in licensed premises brings not just to individuals, but to society as a whole.

We have always been embraced warmly in the European cities into which we have expanded and we feel keenly aware of the tonal difference between the dialogue we have with European officers (which is broadly positive and certainly does not imply that we are doing anything inappropriate or wrong) and those in the UK.

That is not to suggest that the licensing regimes in Europe are lax or easy. Far from it. In Paris the licence holder is an individual who is a director of the business. In our case Luke Knowles our EU Operations Director holds the licence. This involves attending a two day licensing course with an exam in similar order (although extended) to the obtaining of ALPCH and personal licence in England and Wales. The licence holder is not obliged to be at the premises and no other members of staff are obliged to have a licence, although as a business we tend to put our managers and deputy managers through the appropriate course, so that they are familiar with the legislation and this best ensures compliance.

Beds & Bars – written evidence (LIC0114)

The licensing regime is such that there is a quota system that we understand is not dissimilar to Ireland and/or Northern Ireland (although we do not trade in these countries). It appears to us that in Paris if not France (we only operate in Paris in France) is treated as though there is a cumulative impact policy area covering the whole of the city (perhaps the country).

Our premises in Paris has the benefit of a late licence (free from obligations on the service of food) but, much like the old public entertainment licence system that preceded the existing Licensing Act 2003, we are obliged to renew that licence regularly (six monthly).

Dialogue with officers is broadly positive, on application for renewal direct dialogue with the local Police Commissioner is expected/anticipated.

We have not found ourselves the subject of any formal enforcement activity and so cannot comment upon the review (or equivalent) protocols and procedures in France, but our understanding of the local marketplace suggests that premises that "step out of line" are likely to face sanction/revocation (certainly they appear to find themselves closed) more regularly than seems to us to be the case in England and Wales.

In Spain (we currently trade in Barcelona) a similar quota system applies. The single point of difference that we observe about the Spanish licensing system is that it appears that premises are anticipated to fall into specific categories (bar, restaurant, hotel etc). Licences are likely to follow a set format applicable to the type of operation. This has seemed to us to be somewhat inflexible and antiquated. As a back-packing hostel with associated bar (our business model) does not fall easily into these Spanish categorisations. We are advised that reform is mooted but we have had to adopt some quite unusual practices (a large socialising space in which alcohol is not permitted) to accommodate the legislation (and our guests).

2 September 2016

Berkshire Licensing Liaison Group – written evidence (LIC0122)

This is the response of the Berkshire Licensing Liaison Group – the core members of which are as follows:

- Bracknell Forest Borough Council
- Reading Borough Council
- Royal Borough of Windsor & Maidenhead
- Slough Borough Council
- West Berkshire District Council
- Wokingham District Council
- Thames Valley Police

Licensing objectives

1. Are the existing four licensing objectives the right ones for licensing authorities to promote? Should the protection of health and wellbeing be an additional objective?

It might be possible for the protection of health and wellbeing to merge with the public safety objective? As this could cover a multitude of aspects of both physical and mental health, guidance would be required to explain what could be taken into consideration.

Unfortunately since PH became a responsible authority there has been very little in the way of responses from them to any type of application, so it is unclear whether they would have the resource or ability to respond should protection of health and wellbeing become a licensing objective.

2. Should the policies of licensing authorities do more to facilitate the enjoyment by the public of all licensable activities? Should access to and enjoyment of licensable activities by the public, including community activities, be an additional licensing objective? Should there be any other additional objectives?

We are of the opinion that our main agenda has to be public protection rather than enjoyment of the activities. Deregulations have already changed the Act to the extent that most community events aren't in need of a licence for entertainment.

The balance between rights and responsibilities

3. Has the Live Music Act 2012 done enough to relax the provisions of the Licensing Act 2003 where they imposed unnecessarily strict requirements? Are the introductions of late night levies and Early Morning Restriction Orders effective, and if not, what alternatives are there? Does the Licensing Act now achieve the right balance between the rights of those who wish to sell alcohol and provide entertainment and the rights of those who wish to object?

The Live Music Act has gone far enough – this has caused some issues with alleged noise nuisance from school events, etc.

We are not of the view that LNLs and EMROs are appropriate for our area, but have seen that the BID process is growing in popularity so perhaps each type of tool has its place.

4. Do all the responsible authorities (such as Planning, and Health & Safety), who all have other regulatory powers, engage effectively in the licensing regime, and if not, what could be done? Do other stakeholders, including local communities, engage effectively in the licensing regime, and if not, what could be done?

Some do, some don't. There is little input from Planning at some local authorities, and same for Public Health. EH and TS tend to be fairly well involved and there are some examples of good joint working to advise businesses at the point of application.

Licensing authorities can and do work with their colleagues in Trading Standards in respect of the Primary Authority scheme.

Licensing should be able to object to TENs, in particular for premises where there is a history of non-compliance or where there are valid concerns about a specific event.

Licensing and local strategy

5. Licensing is only one part of the strategy that local government has to shape its communities. The Government states that the Act "is being used effectively in conjunction with other interventions as part of a coherent national and local strategy." Do you agree?

We are of the view that Planning is the main strategy to shape the landscape – Licensing is simply ensuring licensable activities take place appropriately to ensure promotion of the licensing objectives. There are examples of good work with Communities teams to ensure a diverse range of events.

6. Should licensing policy and planning policy be integrated more closely to shape local areas and address the proliferation of licensed premises? How could it be done?

We do not see how licensing policy and planning policy can be more integrated as they are distinct regimes. However CIZ can assist in ensuring that a town can be designed as the local authority sees fit

Crime, disorder and public safety

7. Are the subsequent amendments made by policing legislation achieving their objects? Do they give the police the powers they need to prevent crime and disorder and promote the licensing objectives generally? Are police adequately trained to use their powers effectively and appropriately?

We have no problem with our local police licensing officers who do a great job, despite ever dwindling resources and lack of capacity which can have an impact. However we do have concerns that some neighbourhood officers lack knowledge of the Licensing Act and it has been known for officers to try to use Licensing authorities and TVP licensing officers to address other issues that are not within the Act or our remit.

8. Should sales of alcohol airside at international airports continue to be exempt from the application of the Act? Should sales on other forms of transport continue to be exempt?

We cannot see a good reason why they are exempt. There may be difficulties in licensing moving transport, but not at terminals/transport hubs.

Licensing procedure

9. The Act was intended to simplify licensing procedure; instead it has become increasingly complex. What could be done to simplify the procedure?

Deregulation has made the entire system more complicated; the Act is now too complex for some local authority officers to understand, let alone applicants.

Application forms should be amended – especially the online forms, to ensure they are as simple as possible.

If the application is amended in the middle of the process (such as to add additional agreed conditions) there should be no need to ratify these at a sub-Committee hearing – so conditional withdrawal of representations should be permitted.

We would also recommend removal of the newspaper advert for new and variation licence applications. These are not useful to members of the public. The need for a notice at the premises should remain and there is always the ability for a local authority to do their own notification should they feel it appropriate.

10. What could be done to improve the appeal procedure, including listing and costs? Should appeal decisions be reported to promote consistency? Is there a case for a further appeal to the Crown Court? Is there a role for formal mediation in the appeal process?

Formal mediation can be useful and should be the first port of call – sometimes this can narrow the issues to be considered. Once an appeal has been lodged, good mediation is a useful tool, enabling both sides to come to an agreement, as long as the grounds for the appeal are not too complex and the decision being appealed was not grossly disproportionate. If agreement can be reached then this can be dealt with by way of a consent order or remit the matter back to the Licensing Panel or Sub Committee which reduces costs for all parties involved.

The current delay in getting a court date can mean the position changes significantly by the time of the hearing.

Appeal decisions should not be automatically reported as each matter needs to be dealt with on its own merits and a consent order may stipulate that there should not be any press coverage.

There should not be any further appeal to the Crown Court as that involves extra costs and work for all parties involved.

Sale of alcohol for consumption at home (the off-trade)

11. Given the increase in off-trade sales, including online sales, is there a case for reform of the licensing regime applying to the off-trade? How effectively does the regime control supermarkets and large retailers, under-age sales, and delivery services? Should the law be amended to allow licensing authorities more specific control over off-trade sales of “super-strength” alcohol?

Delivery services that purchase from licensed shops and then deliver to residences are not currently adequately covered by the legislation.

Underage sales is adequately policed – the powers are there although resources are becoming more scarce – although having said that, prosecution is too slow and cumbersome to deal with the offence. On some occasions now, matters are dealt with by way of a simple caution or fee paid training.

We are of the view that people will drink strong alcohol if they want to do so. Why target off-sales separately?

Pricing

12. Should alcohol pricing and taxation be used as a form of control, and if so, how? Should the Government introduce minimum unit pricing in England? Does the evidence that MUP would be effective need to be “conclusive” before MUP could be introduced, or can the effect of MUP be gauged only after its introduction?

We do not believe this will have a significant impact and feel the mandatory conditions are sufficient. There is no need for further control which would place additional burdens on already stretched service areas.

Fees and costs associated with the Licensing Act 2003

13. Do licence fees need to be set at national level? Should London, and the other major cities to which the Government proposes to devolve greater powers, have the power to set their own licence fees?

No – the costs everywhere are different and should be set locally – perhaps with a cap. This is not just a matter which affects cities. The LGA/CIPFA survey has showed that our costs are not being fully covered and therefore the taxpayer is subsidising the system.

For TENs, for example, where there is a need for a hearing, this is likely to cost the local authority circa £2000. The £21 doesn't really cover it. TENs ought to be reconsidered as a 499-attendee weekend-long music festival is likely to cause issues and therefore proceed to a hearing to consider objections from EH/Police – we cannot believe that this is really what the TEN process was intended to cover.

Other comments

Berkshire Licensing Liaison Group – written evidence (LIC0122)

Personal licences are a massive issue for local authorities. A central database is a necessity. Also, Courts have no idea of their powers and the number of revocations is pitifully low.

We do not believe that the courts have not been correctly trained, if at all, on the Licensing Act so they are reliant on having a clerk who may or may not understand the system.

2 September 2016

Bilton Hall Amateur Boxing Club – written evidence (LIC0012)

Unlicensed Boxing Events

I would like to see councils to be made aware of unlicensed boxing events.

Licenses appear to be issued for boxing at venues but councils are not made aware of the persons or organisations running these events

These are gaining in popularity in South Tyneside and Tyne Tees and Wear area but are not governed by any regulating body for the strict safety measures that are used by either England boxing for Amateurs or the British boxing board of control for professional.

The events may be called White Collar, Charity, or whatever but are basically unlicensed and usually without insurance and safety measures adhered to by the two named governing bodies.

If participants want to take part in boxing they should go to either an Amateur or professional body that are governed by strict rules and safety measures.

It may be only a matter of time before we have a severe injury or death from a participant in one of these events, similar to what has happened in other parts of the country (Nottingham 2015) and could the council be responsible for issuing the licence?

11 August 2016

Birmingham City Council Licensing and Environmental Health – written evidence (LIC0141)

1. Are the existing four licensing objectives the right ones for licensing authorities to promote? Should the protection of health and wellbeing be an additional objective?
 - A. We agree that the four licensing objectives are the right ones to promote, but we would like to see the protection of health and wellbeing as a fifth objective.

Health and wellbeing is already a licensing objective in Scotland. If it were a licensing objective in England it would enable us to take account of the impact that the sale of alcohol has on the NHS accident and emergency services where hospital admissions can be related to particular premises or even groups of premises. There are practical difficulties with trying to relate hospital admissions to particular premises because being able to link an admission to a specific premise depends on very accurate data being kept by hospitals. The priority for accident and emergency departments is to deal with patients, not keep statistical information. It is also recognised that the fact that a patient may have been taken to hospital from or near a particular premises does not mean that those premises were responsible for selling the bulk of the alcohol that led the person to require help, whether through illness or because of fights that occur as a result of drunkenness.

Nevertheless, we think that licensing authorities should be able to take account of accident and emergency data and indeed general statistical data about the prevalence of drinking in an area and general alcohol related admissions caused by illnesses such as liver disease or heart disease. This data should be able to be used when we formulate our Statement of Licensing Policy in ways that are similar to those now permitted under the Gambling Act to map areas of gambling related harm. It would be particularly beneficial in terms of evidence to support special policy areas (or Cumulative Impact Areas). This might be relevant to Night Time Economy areas or areas where there is a proliferation of off-licences where street drinking is a problem, for instance.

2. Should the policies of licensing authorities do more to facilitate the enjoyment by the public of all licensable activities? Should access to and enjoyment of licensable activities by the public, including community activities, be an additional licensing objective? Should there be any other additional objectives?
 - A. As a licensing authority we would not wish to create artificial barriers to the public's enjoyment of licensed events, particularly small scale community events. Guidance to local authorities in respect of community events has already been relaxed. If the enjoyment of licensable activities became a licensing objective it would potentially come into conflict with the four existing objectives which would inevitably have to take precedence. We could not risk such an objective undermining the existing objectives. It is difficult to imagine how a licensing authority could promote the

proposed objective in the light of our overriding responsibility under the Licensing Act which is to protect the safety of the public.

The balance between rights and responsibilities

3. Has the Live Music Act 2012 done enough to relax the provisions of the Licensing Act 2003 where they imposed unnecessarily strict requirements? Are the introductions of late night levies and Early Morning Restriction Orders effective, and if not, what alternatives are there? Does the Licensing Act now achieve the right balance between the rights of those who wish to sell alcohol and provide entertainment and the rights of those who wish to object?

- A. There are serious concerns that the LMA12 has gone beyond what was intended and tipped the balance more to those who wish to sell alcohol, e.g:
 - a. A premises which sells alcohol can still have live and recorded music, but due to the relaxations need not flag this upon the application, and therefore will operate without any controls.
 - b. Conditions which are relevant to safeguarding public nuisance e.g. keeping windows and doors closed, installation of limiters, etc., can, up to 23.00 hrs, be ignored, because the provision of live and recorded music before 23:00hrs is deregulated.
 - c. The above two points are examples which causes more effort for the Responsible Authority, this effort being reactive where complaints are received and hence more involved than proactive action to avoid these problems. This can also create unnecessary disruption for local residents.

We would not support further relaxation of the Licensing act to accommodate live music.

In Birmingham we have not made use of the Late Night Levy after taking the following into account:

The responsibility for collecting the Levy would be the local authority's. After deducting the cost of collection we must give 70% to the police and we retain 30%.

The intention of the levy is to pay for additional policing of the night time economy, however there is no obligation upon police forces to spend the levy on the night time economy or within the area for which it was collected. Levy collected in Birmingham could, for instance, be spent anywhere in the West Midlands. The police could in fact spend it on anything of their choosing. The 30% allocated to the local authority would have to be spent on tackling alcohol related crime and disorder and services connected to the management of the night time economy (e.g. taxi marshal schemes).

The power to introduce a Levy rests with the Licensing Committee.

Reasons why we have not considered implementing the Levy

Birmingham's Licensing and Public Protection Committee considered the Levy in a report in September 2012 immediately prior to the legislation being enacted. The Committee did not express an appetite for introducing the Levy. Some of the reasons against a Levy in Birmingham are:

- The economic impact that an additional levy would have on businesses that are trading in already difficult circumstances.
- The likelihood that businesses would reduce their trading hours to avoid the levy, resulting in a city centre that would 'shut' after midnight. To avoid the levy they would have to vary their licences. The legislation permits them to make a free variation. The variations would have to be made by the Licensing service without any income for the work.
- The economic impact on businesses that support the night time economy e.g. drinks suppliers, taxi and private hire firms, late night food businesses.
- The possibility that licensed premises would move from Birmingham into neighbouring authorities where the levy might not be applied.
- Premises in Business Improvement Districts (BIDs) would be eligible for an exemption from the levy (at the discretion of the local authority). Licensed premises within BIDs already have to pay a BID levy and would be against having to pay another levy on top.
- Given that BIDs would probably be exempted and all the main night time economy areas in Birmingham are part of a BID, the vast majority of premises that actually create the need for policing at night would not be paying the levy.
- The local authority has to designate the entire city as a Levy area. It can not choose particular areas within its boundary. Therefore the premises that would be affected by the Levy would in the main be suburban pubs that don't make a call on police resources. They would be paying to police the city centre whose premises would be exempt.
- It is possible that the cost of collecting the Levy would be greater than the revenue it would deliver given the number of exempt premises under the legislation.
- Licensing, the Police and other Responsible Authorities (Environmental Health, Trading Standards, Planning, Fire Service etc.) work well together to address premises that cause trouble. There are already sufficient tools at our disposal to deal with any issues that arise using existing powers.
- There is a reputational aspect to this. Given that few have so far gone ahead with the Levy, if we were to apply it here we would be saying that the night time economy in Birmingham was out of control, which is not the case.

- Officers from Licensing consulted with Police Licensing Officers and the Force Solicitor prior to the implementation of the legislation in 2011. West Midlands Police was not seeking the introduction of the Levy and that remains their position.

We believe that EMROs are a draconian measure and would blight a locality, identifying it as a place where crime and disorder were out of control. There are sufficient tools in the Licensing Act to deal with problem premises without resorting to having to apply early closing times to a group of premises.

In terms of the balance between the rights of those who wish to sell alcohol and provide entertainment and the rights of those who wish to object, the balance still seems to be in favour of those wishing to sell alcohol. The Licensing Act still works on a presumption that a licence will be granted and it is for the objector to demonstrate reasons why the licence should not be granted. Frequently objectors' grounds for objection do not fall under one of the 4 licensing objectives, and yet are not unreasonable. This often arises where city centre living comes up against the night time economy.

Local authorities are encouraged to use space in city centres for residential accommodation, especially apartments. Residents may object to the granting of new licences for bars, clubs and restaurants nearby, because of the impact the premises will have on their quality of life, or the impact that large numbers of customers will have on local parking and the consequential increase in numbers of taxis that will be attracted to the area. They face the difficult task of trying to prove what might happen in the future without being able to provide factual evidence to support their objection. It is often impossible to provide factual evidence because licensed premises have not been in existence up to that point.

Licensing committees should have the ability to consider a broader range of factors than purely those related to the licensing objectives and they should be allowed to give greater credence to residents' and objectors' concerns about what will happen in the future. Currently such concerns might be dealt with through conditions being attached to a licence, whereas what objectors really want is for the licence not to be granted.

4. Do all the responsible authorities (such as Planning, and Health & Safety), who all have other regulatory powers, engage effectively in the licensing regime, and if not, what could be done? Do other stakeholders, including local communities, engage effectively in the licensing regime, and if not, what could be done?

- A. We are not convinced that all responsible authorities necessarily maximise their role within the licensing regime. Inevitably this will vary between different local authorities, but it can be due to competing priorities and how responsible authorities perceive their principal duties. Licensing services can improve integration between responsible authorities through offering training to ensure that they understand how the legislation works and what powers are available to them.

We find that local communities do not engage with the licensing regime unless and until there is a specific issue concerning a premises in their area that directly affects them. We

have experienced very low response rates when consulting with the public on matters such as special policy areas which do not relate to particular premises.

Part of the problem is connected to the way that premises are required to advertise applications for the grant or variation of a licence through the blue notice and newspaper advertisement scheme. Notices are often overlooked by the general public and Licensing is expected to maintain neutrality by not encouraging objections. In planning legislation people living close to a site where planning permission has been requested are written to and told of the application and their right to object. This is not reflected in licensing legislation. One possibility would be to replicate something similar whereby either the licensing authority wrote to people in the vicinity to advise them of the application or if there was a requirement on the applicant to notify people living nearby. There would be issues to resolve around identifying the physical distance within which people should be notified, but presumably these are matters that have already been addressed in planning law.

Licensing and local strategy

5. Licensing is only one part of the strategy that local government has to shape its communities. The Government states that the Act “is being used effectively in conjunction with other interventions as part of a coherent national and local strategy.” Do you agree?

- A. It is our view that licensing and planning policy should be properly harmonised to avoid discrepancies between planning consents and premises licences. It would be advantageous if it were a requirement of the licensing process to demonstrate that planning consent is in place for the activity and times being applied for. But over and above this there is scope for closer integration of the licensing and the planning regimes. The two are entirely separate and there is no overarching framework that integrates the authority’s licensing and planning policies. The ‘coherent national and local strategy’ does not exist.

6. Should licensing policy and planning policy be integrated more closely to shape local areas and address the proliferation of licensed premises? How could it be done?

- A. Local areas could be shaped more effectively if local authorities were empowered to set limits on the number of licensed premises in a given geographical area. This is not currently permitted apart from Special Policy areas, but even these cannot set a limit on new premises. They merely have the effect of requiring the applicant to demonstrate that the premises will not have an adverse impact on the licensing objectives. Unless the local authority can specifically place a limit on number of premises it will never be able to shape localities. An example might be the proliferation of off-licences or fast food takeaways (with late night refreshment licences) in suburban high streets. The local authority has very limited ability to shape the look and feel of the high street, but a cap on numbers of licensed premises would help to give the local authority that ability.

Crime, disorder and public safety

7. Are the subsequent amendments made by policing legislation achieving their objects? Do they give the police the powers they need to prevent crime and disorder and promote the licensing objectives generally? Are police adequately trained to use their powers effectively and appropriately?

- A. The police powers appear to be adequate to close premises when necessary and we have held hearings where these powers have been used effectively. Generally speaking the police have sufficient powers to promote the licensing objectives, but our experience is that the knowledge of how to use these powers is focussed in the hands of a very small number of specialist police licensing officers. It would be preferable if there was a greater awareness amongst the general neighbourhood police teams of their powers.

8. Should sales of alcohol airside at international airports continue to be exempt from the application of the Act? Should sales on other forms of transport continue to be exempt?

- A. We do not have an airport or port within our local authority's geographical boundary and cannot comment on this question.

Licensing procedure

9. The Act was intended to simplify licensing procedure; instead it has become increasingly complex. What could be done to simplify the procedure?

- A. It would be advantageous if all applications for premises licences and TENs were served on the Licensing Authority and not to the individual Responsible Authorities, in a manner similar to the Planning Portal. The Licensing Authority would then distribute the applications to relevant RA's, thereby ensuring all documents are correctly served and saving some effort for the applicant, although the additional cost should be borne by the applicant. This cost may be reduced if all applications had to be served electronically, including TENs.

10. What could be done to improve the appeal procedure, including listing and costs? Should appeal decisions be reported to promote consistency? Is there a case for a further appeal to the Crown Court? Is there a role for formal mediation in the appeal process?

- A. At a practical level, we find that applicants whose applications are refused or who object to conditions that have been applied to their licence will attempt to negotiate with licensing officers to try to arrive at a different decision after a licensing committee or sub committee has heard a case. An officer cannot enter into such negotiations unless he or she has been delegated with the authority to make an alternative arrangement. It is very unlikely that an officer would be given such delegated authority because it would completely undermine the authority of the sub committee.

In practice, we have had occasions when, following legal advice, we have been advised that a prospective appeal would be successful and have agreed to a consent order to resolve a case before it reaches court. Therefore there is a method by which cases can be mediated, but it is not prescribed or documented anywhere.

Issues arise where the Licensing Authority becomes the respondent to an appeal as a result of a decision to refuse a licence application (for instance) based on the evidence of a particular responsible authority (e.g. the police), but it is the Licensing Authority that bears the risk of the appeal once at court, including costs. There should be a way by which the costs can be shared between the Licensing Authority and the responsible authority where a decision has been made based on the responsible authority's evidence.

We do not consider that an appeal route to the Crown Court is necessary.

Sale of alcohol for consumption at home (the off-trade)

11. Given the increase in off-trade sales, including online sales, is there a case for reform of the licensing regime applying to the off-trade? How effectively does the regime control supermarkets and large retailers, under-age sales, and delivery services? Should the law be amended to allow licensing authorities more specific control over off-trade sales of “super-strength” alcohol?

- A. The off-trade is where the growth appears to be in terms of new licences, but generally we find that supermarkets and larger retailers are well managed and cause least problems. Most problems associated to off-sales are connected to small corner shop type outlets, whether through sales of alcohol and cigarettes to minors or through the sale of alcohol to street drinkers. Super strength alcohol sales are problematic. We would welcome a simpler process by which we can prevent the sale of super strength alcohol, particularly individual cans or bottles, without having to go through a full review process, which is currently the case.

We do not find there to be a problem with delivery services.

Pricing

12. Should alcohol pricing and taxation be used as a form of control, and if so, how? Should the Government introduce minimum unit pricing in England? Does the evidence that MUP would be effective need to be “conclusive” before MUP could be introduced, or can the effect of MUP be gauged only after its introduction?¹

- A. This question is largely one relating to aspects of public health and a separate response is being submitted to the consultation by Birmingham's Public Health service that will address this question. It is already illegal to sell alcohol below the permitted price, but it is not apparent that this has had any effect on sales of alcohol or alcohol related harm.

Fees and costs associated with the Licensing Act 2003

13. Do licence fees need to be set at national level? Should London, and the other major cities to which the Government proposes to devolve greater powers, have the power to set their own licence fees?

A. We are very firmly of the view that licence fees should be determined locally.

The Licensing Act 2003 sets a fee structure for local authorities, which specifies the circumstances in which a fee may be charged. The Licensing Act 2003 (Fees) Regulations 2005 prescribe the amount that an authority may charge. The fees have never reflected the true cost of administering licences.

The Government has not allowed any fee increase since 2005, therefore income has not kept pace with the rising cost of administering licences, contributing to financial pressures. In 2011 the Police Reform and Social Responsibility Act gave the Home Secretary a power to allow local authorities to set local licensing fees. In 2014 the Home Office consulted on proposals to allow local fee setting. No changes were made as a result of this consultation and the fees remain at the 2005 level.

A worked example of the estimated actual cost of the Licensing Act 2003 Fees is shown below. Whilst it must be remembered that these figures do not include any proposal regarding annual fees, which would potentially mitigate against some of these fees, the figures provided show the stark contrast between the Statutory Fees and the cost to the service. For example – a Temporary Event Notice is currently £21. When the amount of officer time and other factors are considered, the true cost is estimated at £400. This is almost 20 times more than the statutory fee.

The consequence of not being able to charge the true cost of the licence fee is that Birmingham City Council is asked to subsidise the cost of the licensing service, which should be self-financing and paid for by licence holders.

LICENSING ACT 2003 - PRESCRIBED FEES & Suggested Costs

**Birmingham
City Council**

Application Fee			
Rateable Value	Premises Value	Current	Suggested cost
A	No rateable value up to £4,300	£100	£1687
B	£4,301 to £33,000	£190	
C	£33,001 to £87,000	£315	
D	£87,001 to £125,000	£450	
E	£125,001 and above	£635	
D primarily alcohol	2 x multiplier	£900	

E primarily alcohol	3 x multiplier	£1,905	
Annual Charge			
Rateable Value	Premises Value	Current	Suggested cost
A	No rateable value up to £4,300	£70	Not available
B	£4,301 to £33,000	£180	
C	£33,001 to £87,000	£295	
D	£87,001 to £125,000	£320	
E	£125,001 and above	£350	
D primarily alcohol	2 x multiplier	£640	
E primarily alcohol	3 x multiplier	£1,050	
Other Fees			Suggested cost
Personal Licence (grant)		£37	£332
Temporary Event Notice (TEN)		£21	£400
Theft/loss of premises licence/club certificate, summary, personal licence or TEN		£10.50	£68
Provisional Statement		£315	Not available
Change of name, address, club rules		£10.50	£68
Personal Licence Change of details.		£10.50	£68
Variation of DPS		£23	£448
Transfer of premises licence		£23	£396
Interim Authority Notice		£23	Not available
Right of Freeholder notification		£21	£72
Minor Variation		£89	£213
Variation to include alternative condition (no DPS)		£23	£448

International comparisons

14. Is there a correlation between the strictness of the regulatory regime in other countries and the level of alcohol abuse? Are there aspects of the licensing laws of other countries, and other UK jurisdictions, that might usefully be considered for England and Wales?

A. We are unable to comment on this question.

6 September 2016

Breckland Council – written evidence (LIC0120)

1. It is considered that the existing four licensing objectives work well.

There is general agreement that there should be a fifth objective for the protection of health and wellbeing, and this should be a key principle for licensees to uphold. For example premises could take more responsibility for preventing sales to persons with alcohol addiction using self exclusion schemes similar to those in relation to gambling.

The protection of health and wellbeing is in line with the councils priorities and should be a consideration for the licensing authority when making licensing decisions. However it is recognised that there is currently a lack of engagement with public health and difficulties in relating general public health data to a specific premises or area. If the protection of health and wellbeing does become a fifth licensing objective we would need more detailed information to be made available from public health bodies, hospitals and ambulance trusts to enable problems to be linked to particular premises.

2. It is agreed that the statement of licensing principles could be used more effectively at a local level to facilitate the enjoyment of and access to licensable activities. This could link in more effectively with activities to support growth within the local economy.

Breckland Council are very proactive in relation to supporting and providing advice for events in the local area through the multi-agency Safety Advisory Group, and are careful to support organisers to enable events to go ahead in a safe and enjoyable manner. It is not felt that there is any evidence to support the need to include this as an additional licensing objective.

3. The Council has not introduced a late night levy or Early Morning Restriction Order as it has not felt that these methods would add value or address concerns within the local authority area.

4. The licensing authority does not have consistent and effective engagement with all responsible authorities. Representations are most frequently received by police, and environmental health, and occasionally trading standards. Planning, fire authority, public health and children's safeguarding do not engage effectively as responsible authorities and when discussion has taken place regarding this, the feedback has generally been that they do not feel able to make a representation on the existing licensing objectives and/or in relation to a particular premises. The current mechanism of serving documentation on these responsible authorities appears to be ineffective, other than to notify them of the application for their own information purposes.

5. It is considered that the Act is not being used effectively in conjunction with other interventions as part of a coherent local and national strategy. For example there is greater scope for licensing to join up with strategies addressing crime and disorder.

6. It is felt that licensing and planning policy could be more closely integrated to shape local areas and address problems such as the proliferation of licensed premises. It is felt that a preventative strategy would be useful. In particular it is felt that consideration should be given to re-introducing the requirement of “need” in relation to licensing applications and the suitability of the premises under planning considerations.

7. Breckland Council has very good links with the Norfolk Police Licensing Team and considers the officers to be capable and pro-active. However it is recognised that where a county wide police licensing team is in place, service levels may vary as their resources will be directed by intelligence and risk.

8. We do not have any information to inform discussion on this point.

9. It is considered by officers and members that in general most licensing processes are not overly complex, and where numerous checks are in place this is considered to be necessary and proportionate to the risk. It may be useful to standardise the layout and information requested on all application forms, for example the inclusion of dates of birth for individual applicants would be of use, particularly with the forthcoming right to work checks. It would also be useful if future revisions of licensing procedures take into account the increase in digital processes. For example we are currently moving over to online applications for the Licensing Act 2003.

10. In relation to appeals, we have found conflict with the legality of the business to continue with the licensable activity, despite revocation of the licence by the licensing panel, until an appeal decision is made or has been withdrawn. Whilst recognising the right of appeal we consider there may be some circumstances in relation to serious crime and disorder where the licensable activity cannot continue until the appeal has been concluded and the outcome is known. This is further supported by the length of time that some appeals will take to get to magistrates court and consideration could be given to a fast track process in these circumstances.

We consider that it would be useful for licensing appeal decisions to be reported to promote consistency and inform others of outcomes, although quite clearly every case will be heard on its own merits. We do not consider there is any basis for further appeal to the Crown Court.

Mediation is a useful tool within licensing however we do not consider that there is a role for formal mediation during the appeal process. This could potentially undermine the decisions made by elected members on the licensing panel and could be difficult to manage in practice as a fair mediation process should include all interested parties.

11. It is felt that voluntary schemes to control high strength alcohol and pricing can be effective and more should be done to support and promote these.

There is general concern over the existing regime for personal licence holders, the information on them is likely to be out of date. A central database would be helpful, as well as incorporating a test of suitability to hold a personal licence. Greater emphasis should be

placed in the courts for requiring personal licence holders to declare this, and for notification to be provided to licensing authorities in all relevant cases and in a timely manner.

12. We do not have any information or evidence to inform discussion on this point

13. It is considered that licence fees should be set locally to enable full cost recovery by the local authority. Local authorities have proven that they can adequately set fees in other areas of licensing, and it is not acceptable that the local community is effectively paying where current statutory fees do not recover the cost for delivering the licensing service.

14. We do not have any information or evidence to inform discussion on this point.

2 September 2016

Brighton and Hove Council – written evidence (LIC0017)

Licensing objectives

1. Are the existing four licensing objectives the right ones for licensing authorities to promote? Should the protection of health and wellbeing be an additional objective?

Brighton & Hove City Council (BHCC) has previously lobbied for and would support Prevention of health harm being a material consideration in the Licensing Act 2003 - alcohol related hospital admissions is a public health priority locally. The Director of Public Health (DPH) is a responsible authority under the Act so it is confusing that public health is not a licensing consideration. Although Licensing Act precludes basing representations on public health grounds the DPH at BHCC plays an important role in licensing chairing the Alcohol Programme Board, which oversees the city's strategy on alcohol. The DPH and Licensing Authority have incorporated health both at policy level and operationally. The Licensing Authority uses licensing mapping within a "Public Health Framework for Assessing Alcohol Licensing" document to underpin policy and individual application determinations. Please let us know if you would like a copy of this document.

2. Should the policies of licensing authorities do more to facilitate the enjoyment by the public of all licensable activities? Should access to and enjoyment of licensable activities by the public, including community activities, be an additional licensing objective? Should there be any other additional objectives?

BHCC Statement of Licensing Policy (SoLP) actively encourages and supports culture and tourism and have licensed our outside spaces (parks and beaches) for regulated entertainment.

Consumption of alcohol within a licensed premises has the potential to reduce the health harms associated with unsupervised 'pre-loading' or drinking at home.

The balance between rights and responsibilities

3. Has the Live Music Act 2012 done enough to relax the provisions of the Licensing Act 2003 where they imposed unnecessarily strict requirements? Are the introductions of late night levies and Early Morning Restriction Orders effective, and if not, what alternatives are there? Does the Licensing Act now achieve the right balance between the rights of those who wish to sell alcohol and provide entertainment and the rights of those who wish to object?

The Live Music Act 2012, and more recently the Deregulation Act 2015, have deregulated regulated entertainment between 8am and 11pm for audiences up to 500 people. Therefore, we do not consider provisions need to be further relaxed. BHCC have formed a Live Music Policy panel due to concern regarding closure of live music venues because of

over regulation. The Live Music Policy panel recommends forming a Night Time Economy (NTE) partnership to oversee the city's strategy to the NTE.

BHCC welcome Licensing authorities able to charge a late-night levy to pay for policing the night-time economy and other services related to the consequences of alcohol on the night-time economy such as taxi marshalling or street wardens. We would like this to be set and collected centrally not locally because of the political and financial risks for a city with local economy based on leisure. We've had difficulty funding taxi marshals and precluded from using taxi licensing income. However, elected members have concerns about the current LNL scheme including; the financial split (70% going to the Police), the costs of administering the levy, geographical fairness, and the amount of revenue that it would raise.

BHCC has deferred any decision on whether to consult on the Late Night Levy (LNL) until proposed Government changes to legislation are confirmed. The Chief Executive recently wrote to the Home Office Minister of State (Minister for Policing, Crime and Criminal Justice and Victims) and the Local Government Association requesting that, in the spirit of devolution, a proportion of revenue raised from alcohol taxation should be granted directly to local Police and Crime Commissioners and Directors of Public Health, to contribute towards the extra costs of policing and targeted support services in the night-time economy, and other preventive programmes for tackling alcohol-related harm.

4. Do all the responsible authorities (such as Planning, and Health & Safety), who all have other regulatory powers, engage effectively in the licensing regime, and if not, what could be done? Do other stakeholders, including local communities, engage effectively in the licensing regime, and if not, what could be done?

Majority of responsible authorities do effectively engage, in particular the police and environmental health. BHCC would support greater engagement by Planning in licensing process. S182 Licensing Guidance advises that licensing and planning are separate regimes. BHCC engages with local residents, community groups and business via regular Licensing Strategy Groups and Local Action Team meetings.

Licensing and local strategy

5. Licensing is only one part of the strategy that local government has to shape its communities. The Government states that the Act "is being used effectively in conjunction with other interventions as part of a coherent national and local strategy." Do you agree?

Yes

6. Should licensing policy and planning policy be integrated more closely to shape local areas and address the proliferation of licensed premises? How could it be done? Yes, could require planning permission to be in place prior to licensing application.

Crime, disorder and public safety

7. Are the subsequent amendments made by policing legislation achieving their objects?

Yes

Do they give the police the powers they need to prevent crime and disorder and promote the licensing objectives generally? Yes Are police adequately trained to use their powers effectively and appropriately? More training always desirable.

Should sales of alcohol airside at international airports continue to be exempt from the application of the Act? Better to include within the licensing scheme to give more control over consumption. **Should sales on other forms of transport continue to be exempt?** Preferable to include within the Licensing scheme.

Licensing procedure

8. The Act was intended to simplify licensing procedure; instead it has become increasingly complex. What could be done to simplify the procedure? No comment

9. What could be done to improve the appeal procedure, including listing and costs?

Should appeal decisions be reported to promote consistency? Is there a case for a further appeal to the Crown Court? Is there a role for formal mediation in the appeal process?

One of the flaws of the system is that the panel decision could be right/justified but the appellant can produce new evidence to show an improvement and it's effectively a fresh hearing, so if the problems no longer exist the appeal could stand.

Speed up the appeal process.

Sale of alcohol for consumption at home (the off-trade)

10. Given the increase in off-trade sales, including online sales, is there a case for reform of the licensing regime applying to the off-trade? How effectively does the regime control supermarkets and large retailers, under-age sales, and delivery services? Should the law be amended to allow licensing authorities more specific control over off-trade sales of "super-strength" alcohol?

The cause and effect of alcohol purchase by off sales, the consumption, any nuisance or disorder arising from that consumption and the resulting detritus in the street and environment are lost. The causality of alcohol sale, consumption, nuisance and impact is difficult to link back to the place where alcohol is purchased and consumed.

BHCC would welcome reducing the availability of cheap off sales, particularly the cheap "super strength" beers and ciders. BHCC run a successful voluntary scheme where off

licences agree to stop selling cheap “super strength” beers and ciders. Putting this on a legal footing would provide legal clarification.

Pricing

11. Should alcohol pricing and taxation be used as a form of control, and if so, how?

Should the Government introduce minimum unit pricing in England? Does the evidence that MUP would be effective need to be “conclusive” before MUP could be introduced, or can the effect of MUP be gauged only after its introduction?¹⁶³

BHCC has previously lobbied for minimum unit pricing.

There is a strong body of evidence to support the effectiveness of this approach in having a positive impact on alcohol harms.

Fees and costs associated with the Licensing Act 2003

12. Do licence fees need to be set at national level? Should London, and the other major cities to which the Government proposes to devolve greater powers, have the power to set their own licence fees?

Setting fees nationally provides clarification and avoids potential political and financial risks in a city with local economy based on leisure. Higher fees to reflect cost of administration and enforcement would be welcome.

International comparisons

13. Is there a correlation between the strictness of the regulatory regime in other countries and the level of alcohol abuse? Are there aspects of the licensing laws of other countries, and other UK jurisdictions, that might usefully be considered for England and Wales? No comment

18 August 2016

¹⁶³ The sub judice rule, referred to on the following page, means that witnesses should not comment on the latest stages of *Scotch Whisky Association and others v The Lord Advocate and the Advocate General for Scotland*, currently before the Inner House of the Court of Session. Comment on earlier stages of the proceedings, up to and including the judgment of the Court of Justice of the European Union, is permissible.

British Beer & Pub Association – written evidence (LIC0111)

Introduction

The British Beer & Pub Association (BBPA) is the leading organisation representing the brewing and pub sector and we welcome the opportunity to submit evidence to the committee.

Our members include international brewers, regional and family brewers with pub estates and independent pub operating companies. Between them they produce 90% of the beer brewed in the UK and own around 20,000 pubs. A full list of our members can be found [here](#). We also operate a licensee forum, which is a consultative group of over 200 individual licensees spread throughout the UK.

The BBPA and our members have been involved with the Licensing Act 2003 dating from the original Home Office white paper '*Time for Reform*' published in 2000. The BBPA was a member of the original Home Office and then DCMS industry advisory group when the Licensing Act and associated guidance was being developed and finalised, and the Association remains an industry consultee by Government on licensing issues.

Executive Summary

- Our primary issue regarding the Licensing Act 2003 is to highlight to the committee the sheer number of changes, additions and amendments to the Act, since its introduction in November 2005.
- We calculate there have been at least 23 significant legislative changes to the licensing regime since 2005 (see full list at Annex A) via both primary and secondary legislation, which in our view has not helped the system 'bed in' and has led to a lack of clarity for both operators of licensed premises and enforcement agencies and added additional cost to business.
- We would urge the committee to recommend a moratorium on further legislative changes to the licensing system during the current Parliament.
- We also believe there are a number of areas whereby both the regulations and enforcement practice can be simplified to the benefit of businesses (and in many cases licensing authorities).
- Areas that should be considered for deregulation or improved guidance include local newspaper advertising, inconstant licensing enforcement decisions, unnecessary or unenforceable conditions, antiquated payment processes for fees and increased flexibility on payment dates for fees.
- Despite a number of deregulation drives from various governments since 2005, a number of unnecessary and costly processes in licensing law have yet to be removed or simplified.

- Partnership working between all parties in the licensing regime, via schemes such as Pubwatch etc., is the most effective way of dealing with issues and promoting good practice.

Current structure of the sector

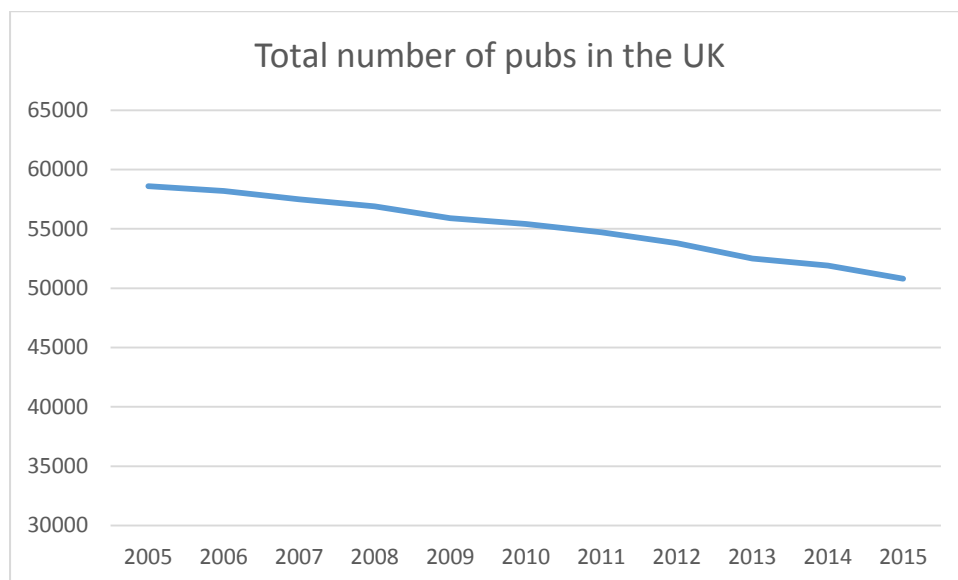


Fig 1 – Total number of pubs in the UK, 2005-present (Source: BBPA)

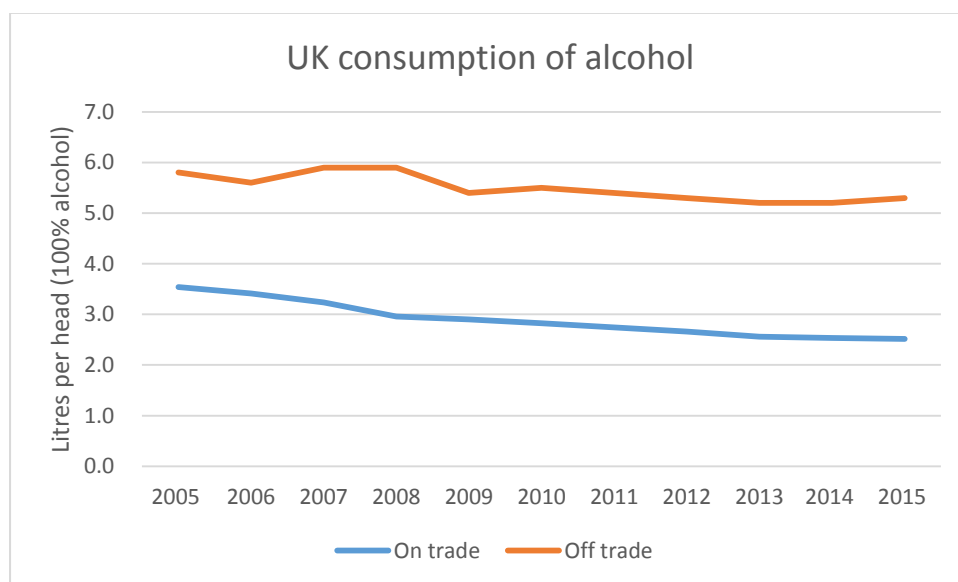


Fig 2 – UK alcohol consumption 2005-present, split by on-sales and off-sales (Sources: HMRC, National Statistics, Nielsen, CGA, BBPA)

The latest statistics published by the Home Office show there were 155,567 premises licences authorised to sell alcohol in force as at 31 March 2014. Of these licences 22% are authorised for on-sales only, 31% for off-sales only and 47% for both on and off sales. The number of premises licences with alcohol permissions across all three of these categories has declined, compared to the previous reported year.

With regard to 24-hour licences, Home Office statistics show that there are 8,200 licences (5% of the total) with permission to sell alcohol 24 hours a day. Of these, 3,900 are hotel bars, 2,200 are supermarkets and stores, 1,200 other premises types and 1,000 pubs, bars or nightclubs. Research by DCMS after the Act came into force showed that on average, on-licensed premises opened only 21 minutes later than under previous licensing regimes.

Consultation questions

1. Are the four licensing objectives the right ones for licensing authorities to promote? Should the protection of health and well-being be a licensing objective?

1.1. The BBPA is of the opinion that the protection of health and wellbeing should not be considered as a licensing objective and that the Act should retain the four current objectives with no additions.

1.2. A key challenge in regard to the application of a health and well-being objective is the frequent inability to apply general health indicators or principles to individual premises. Such problems have been identified in Scotland¹⁶⁴, where public health is already a licensing objective, and the reality has been an ineffective application of the objective. Indeed, routine health-related data is rarely collected in a way that can be solely attributable to an individual premises and more general health data such as alcohol-related hospital admissions. This is significant because under the Act, each premises should be considered individually against the licensing objectives and any lack of accuracy in doing this may lead to undue action being taken against a premises. Government rejected public health as a licensing objective (in this case for cumulative impact policies), in a previous consultation held in 2010.

1.3. It is also the case that many best practice schemes and responsibility campaigns exist, especially in the on-trade, and contribute significantly to the creation of a responsible drinking environment. Pubwatch, for example, is vital in tackling alcohol related violence and strong licensee-police partnerships at a local level, Best Bar None promotes responsible management and operation of alcohol licensed premises, and the Challenge 21 campaign protects against underage sales. The contribution of partnership schemes is proven, for example, by the key findings from a 2012 Leeds Metropolitan University study¹⁶⁵ which

¹⁶⁴ LGA and Alcohol Research UK briefing, 2013 - http://www.local.gov.uk/c/document_library/get_file?uuid=a9c78d54-db3f-4d8f-bef2-d915dc8db1d5&groupId=10180

¹⁶⁵ National Pubwatch <http://www.nationalpubwatch.org.uk/news/home-office-praises-national-pubwatch/>

reported that the vast majority of local authorities (76%), police (70%) and licensees (70%) surveyed believe Pubwatch to be contributing to a safer drinking environment in the areas in which they operate. Councils (71%) and Police (67%) also pointed to a decrease in anti-social behaviour in the wider localities as a result of effective schemes and closer partnership working.

1.4. There is a possibility that any local health and well-being concerns surrounding alcohol may result from irresponsible consumption outside of the responsible environments created by licensed premises. Further, the positive impact of such schemes, entered into voluntarily by many alcohol licensed premises, on wider health and well-being concerns should not be underestimated. Encouraging local participation in this way is likely to be a better alternative than the addition of health and well-being as a licensing objective; which is neither practical nor fair.

2. Should the policies of licensing authorities do more to facilitate the enjoyment by the public of all licensable activities? Should access to and enjoyment of licensable activities by the public, including community activities, be an additional licensing objective?

2.1. As above, we believe that the current four licensing objectives are well-understood and we do not wish to see further changes to the licensing regime. Whilst we are supportive of recognition of the positive benefits of licensed activities, and pubs in particular, this can be achieved by fair and balanced enforcement of the current system. This would be more beneficial to licensed premises, and their customers, than introducing a change to the licensing objectives.

3. Should there be any other additional objectives?

3.1. No. We believe the current objectives are sufficient and have been proven to work in practice. We are not aware of compelling evidence to introduce further objectives, and if this is to be considered in future it must be recognised this would have a significant impact on the licensing system and would require extensive consultation and work on an impact assessment. We refer to our earlier comments regarding fair and balanced enforcement of the current Act, and no further legislative changes, as the best way forward for the licensing regime.

3.2. However, if there were to be an additional licensing objective added at some point in the future it should be around supporting economic growth. Whilst we believe the current four objectives work well, an additional objective such as this could provide a useful check and balance for local authorities, particularly with regard to successful and vibrant high street – although as above, our preference is for a full moratorium on further legislative changes during the current parliament.

4. Has the Live Music Act 2012 done enough to relax the provisions of the Licensing Act 2003 where they imposed unnecessarily strict requirements?

4.1. The BBPA is a strong supporter of the Live Music Act 2012, and believe this is an important piece of deregulation that allows pubs, their customers and musicians to benefit whilst also taking into account the views of local residents. We are supportive of the current 8am to 11pm suspension of conditions and 500 person audience limit.

4.2. The original Licensing Act 2003 provisions regarding live music were rightly criticised as disproportionately burdensome, especially to pubs that wished to hold small-scale live music events. Under the Licensing Act 1964, the ‘two in a bar rule’ allowed up to two musicians to perform in a pub without the need for specific permissions over and above their alcohol licence. The 2003 Act removed this exemption, meaning that any performance of live music in a premises would require specific permission and often additional licence conditions – even if events were irregular and small scale. In effect, pubs were deterred from hosting musicians whereas previously they may have done so. The Live Music Act addresses these concerns.

4.3. No evidence has been presented to suggest that since the implementation of the Live Music Act, live music events in pubs have adversely affected the public or led to a rise in related noise complaints to local authorities through the implementation of this proposed exemption. Even if minor exceptions to this occur, it is balanced by the benefit the Act provides to pubs, the community and musicians by increasing freedom to venues wishing to hold small live music events. Research carried out by PRS for Music found that pubs that provide music take on average 44% more money than pubs without music, rising to 60% more at the weekend. Live music was found to be the greatest draw with one in four publicans reported increases in takings of between 25%-50% on nights when they have live music compared to other nights. Community pubs are often marginal businesses with many cost pressures, so the option to hold live music events without the need for specific conditions or a variation of licence benefits pubs, their communities and musicians.

5. Are the introductions of late night levies and Early Morning Restriction Orders effective, and if not, what alternatives are there? Does the Licensing Act now achieve the right balance between the rights of those who wish to sell alcohol and provide entertainment and the rights of those who wish to object?

5.1. The BBPA does not support the use of Late Night Levies (LNL) as an intervention from local authorities. LNLs increase the regulatory burden on responsible premises and in effect acts as a direct tax on local business regardless of whether they are responsibly managed or not. Pubs are already highly regulated businesses, continually absorbing the cost and social impact of new legal provisions. The BBPA has always supported the five principles of better regulation (proportionality, accountability, consistency, transparency and targeting) and has

continually highlighted to Government that all regulation relating to the sector must be necessary, well-evidenced and proportionate. The vast majority of pubs are small businesses, and they have faced a huge amount of new legislation over recent years including the compulsory introduction of the National Living Wage and pension auto-enrolment for all employees.

5.2. Further, the majority of pubs open into the evening and some even later, forming an important part of the wider late-night economy. Some pubs choose to take advantage of longer opening hours at weekends or for special occasions. Yet many local authorities and police acknowledge that where problems exist, it is not caused by the majority of licensed premises, especially traditional public houses or pubs offering late night entertainment to adults in a well-managed and responsible environment. This undermines one of the principles of the Licensing Act which was to allow local authorities to decide whether to allow flexible opening times dependent on the premises in question. In effect, levies are a step backwards to the previous 1964 Licensing Act by effectively forcing pubs en-masse to limit their hours to a specific opening time, or be taxed to be able to open later (a similar criticism of the old Public Entertainment Licence system).

5.3. Despite this, there remains a responsibility for all stakeholders to ensure a safe and well-managed night-time economy for all to enjoy, and the pub sector is fully engaged through a wide variety of partnership working schemes which are leading the way in the good management of public spaces. These schemes include, but are not limited to, Pubwatch, Best Bar None, Business Improvement Districts (BIDs) and Purple Flag. We believe that such partnerships can be hugely effective in tackling problems in the night-time economy, with closer working between venues, councils and the police. Indeed, Cheltenham Borough Council has recently scrapped the Levy in favour of a BID. A BID scheme is fairer as it spreads the burden between businesses of all kinds and provides for more a targeted and business-led allocation of funds. Cheltenham's willingness to implement a BID and to consult on the removal of a Levy is hopefully illustrative of a wider acceptance that local businesses are no longer viewed as the problem, but instead the solution to the problem, and a number of local councils have recognised partnership working as the way forward:

- A 2013 report by Bristol City Council's Licensing Policy Scrutiny Board concluded that a BID scheme would provide for more targeted spending of funds and include businesses and stakeholders in efforts to manage the night time economy.
- In October 2012 Havant Borough Council's Licensing Committee rejected a levy, citing falling levels of alcohol crime and disorder which the police had partly attributed to the successful local Pubwatch scheme.
- Weymouth & Portland Borough Council Licensing Committee rejected a levy in 2015, due to a lack of evidence to support the scheme. In a report providing evidence to the council, Dorset police highlighted that a BID was already in place and it was supporting the local Best Bar None

5.4. In practice the Levy has already proved inflexible and unworkable. The Levy can only be charged between the hours of 12am and 6am. This has led to a vast number of local

businesses enacting minor variations to scale back opening hours. Furthermore, legislation dictates that only 30% of Levy revenue can be allocated to local councils, with at least 70% allocated to police. A combination of the two aforementioned factors has led several councils to reject the Levy on the grounds that net revenue from the Levy will be insignificant when factoring in administration and implementation costs. Cheltenham Borough Council raised less than 39% of the £199,000 figure that had been predicted in the first year.

5.5. Please see the BBPA-CAMRA report on alternatives to the Late Night Levy for a full analysis of current schemes and alternative partnership schemes¹⁶⁶.

5.6. Under the Home Office Modern Crime Prevention Strategy, there is a suggestion that local authorities and the police should have more flexibility to introduce a Late Night Levy. This might vary the percentages available to police and local authorities and remove the current criteria that Late Night Levies can only be based on a whole local authority area and not a portion of it e.g. a town centre. BBPA is against making Late Night Levies easier to impose and enforce. LNLs are a tax on premises – and especially in the case of pubs who pay much more in taxation than most other businesses, this is unfair and likely to lead to more closures in the on-trade.

6. Do all the responsible authorities (such as Planning, and Health & Safety), who all have other regulatory powers, engage effectively in the licensing regime, and if not, what could be done? Do other stakeholders, including local communities, engage effectively in the licensing regime, and if not, what could be done?

6.1. There are currently nine responsible authorities, which has increased from seven when the Act first came in. These are police, planning, environmental health, fire, NHS primary care trust/health board, health and safety, child protection, trading standards and the licensing authority itself. From our members' experience, the input of responsible authorities into the licensing process is varied and inconsistent. Members report that some (mainly child protection and health and safety) rarely, if ever, become involved in the licensing regime.

6.2. Others such as police do engage in the licensing regime – and again, in some areas this is consistent with good joined-up working between licensing authorities, police and businesses. In other areas, police enforcement of licensing can be very problematic and heavy-handed. With regard to trading standards, there is engagement in the licensing regime in effect of test purchase operations – often in conjunction with the police or licensing authority. Environmental Health Officer engagement has been reported often in respect of noise issues, which can be dealt with both under the Licensing Act and the Environmental Protection Act 1990.

¹⁶⁶ <http://s3.amazonaws.com/bbpa-prod/attachments/documents/uploads/24046/original/Late%20Night%20Levy%20Report%20March%202016.pdf?1460975810>

6.3. There are also issues with police insisting on conditions, in some cases blanket conditions applying to a number of premises, that are wholly unreasonable and outside the scope of the Act. See our answer to question 10 for more detail. The introduction of Police and Crime commissioners from 2012 onwards has led to a politicisation of some licensing decisions – such as pressure to introduce Early Morning Restriction Orders or Late Night Levies which has added a new dimension to the licensing regime.

6.4. Our view is that there should be an open consultation and review of the section 182 guidance to make totally clear the roles and responsibilities of responsible authorities. Instead of constant additions to the licensing regime, which is the prime cause of uncertainty for both businesses and enforcers and therefore bad enforcement practice – we would recommend a public consultation on the section 182 guidance and the support of Government to make this statutory guidance work better in terms of enforcement of the Licensing Act 2003. Previous revisions to the section 182 guidance have been done outside of open consultation and this should be rectified going forward. The section 182 guidance is, in our opinion, the key document that should be referred to in ensuring consistency in application of licensing law in England and Wales, and should be promoted as such.

6.5. Where licensing authorities or the police go outside the scope of what was intended from the 2003 Act, challenging such instances through the Magistrates Court, or even at a review hearing, is complex and costly even for large pub operators – let alone small businesses. A revision and promotion of the section 182 guidance would, in our view, rectify these issues within the original intentions of the Licensing Act.

7. Should licensing policy and planning policy be integrated more closely to shape local areas and address the proliferation of licensed premises? How could it be done?

7.1. We would challenge the perception that there is a proliferation of licensed premises (see information in introduction) or that a number of licensed premises in an area is automatically a negative development for the locality. Well managed and vibrant pubs, bars and restaurants do have significant economic and social benefits and many create healthy and sustainable town centres. With regard to the integration of planning and licensing, both are complex systems. The section 182 guidance to the Licensing Act allows for the creation of Cumulative Impact Policies (CIPs) with plans in place to put these on a statutory footing, which we support in principle but careful consideration must be given how this is drafted in legislation.

7.2. With regard to planning, there has been a recent DCLG technical consultation on implementation of new planning changes to which the BBPA responded setting out our views on a more responsive and flexible system which would benefit pubs which is available on request.

7.3. With changes to local planning to encourage new housing, there is a danger that existing or new A3 (pubs) premises will be disadvantaged by accusations of noise. The BBPA

supports the nationwide introduction of a requirement for developers to include noise and soundproofing in developments which include A3, whether existing or planned. This would stop new purchasers from buying a property and then complaining about noise when they knew from the start that their property was near to planned, or existing A3 use. Developers should be required to find an occupier for planned A3 use before all new housing is sold. Some local authorities have strong policies in this area, but many do not.

8. Are the subsequent amendments made by policing legislation achieving their objectives? Do they give the police the powers they need to prevent crime and disorder and promote the licensing objectives generally? Are police adequately trained to use their powers effectively and appropriately?

8.1. Please refer to the answer to question 5 regarding the effectiveness of powers introduced under policing legislation, namely Late Night Levies and Early Morning Restriction Orders. It should be noted that there are currently no EMROs in place, despite high-profile and expensive attempts by some areas to introduce them which ultimately failed.

8.2. With regard to police enforcement practice, we have received reports from our members regarding misinterpretation of the Act in some areas. It is now a statutory duty for regulators to account for impact on business when considering regulatory activity, however the police are not included in this and we believe it would be a positive step to engage the police in the effective better regulation work currently being carried out by BEIS and Regulatory Delivery, with the potential to use Primary Authority in licensing enforcement.

9. Should sales of alcohol airside at international airports continue to be exempt from the application of the Act? Should sales on other forms of transport continue to be exempt?

9.1. The BBPA notes the recent voluntary aviation industry code of practice on disruptive passengers, drawn up by the British Air Transport Association and other signatories. We support the voluntary code and are of the opinion that those licensed to serve alcohol airside should abide by the principles of the Licensing Act 2003. We are particularly supportive of best practice around service of alcohol to drunk people and also best practice on underage sales, of which the latter is not currently mentioned in the voluntary code.

10. The Act was intended to simplify licensing procedure; instead it has become increasingly complex. What could be done to simplify the procedure?

10.1. We agree that the Act and licensing regime itself has become increasingly complex since 2005, please see Annex A for a list of changes and new procedures introduced during that time. We believe there are a number of areas whereby both the regulations and

enforcement practice can be simplified to the benefit of businesses and in many cases licensing authorities.

10.2. The 2003 Act requires applicants for a Premises Licence to advertise in a local newspaper as well as provide on-site notices. This requirement is for both a new licence and alterations to an existing licence. The requirement to advertise in a local newspaper is bureaucratic, unnecessary and ineffective in eliciting responses for residents. Indeed a survey by a national firm of licensing solicitors showed that of some 8,000 premises licence applications lodged under the Licensing Act 2003 requiring public notice, they are not aware of any application which has attracted a representation because of the newspaper advertisement. It is our view that the requirement to advertise in newspapers should be removed and it should be sufficient for owners/applicants to place notices outside their premises. In addition many local authorities already place information on their websites and could be encouraged to notify local resident's groups where such groups exist. BBPA and the LGA have worked together to gather evidence for the removal of this unnecessary cost burden. The cumulative cost to the industry is estimated to be £7 to £8 million a year.

10.3. With regard to the circulation of forms to the nine responsible authorities, the Act requires that all authorities receive a copy of all licence applications. This includes copies of any plans etc. accompanying the application. Where an applicant makes their application electronically, the Licensing Authority is responsible for the distribution of the application to each of the responsible authorities. However, where an applicant makes a paper based application in the traditional way, they are responsible for sending eight copies of their application to the various responsible authorities and the Licensing Authority, which incurs an average cost of £70 to £80. It would be helpful if this process could be streamlined, with the Licensing Authority taking overall responsibility for the distribution of all applications to responsible authorities, the vast majority of which are within the local authority itself, as is currently the case with electronic applications. All local authorities should accept on-line applications and payments.

10.4. Minor Variations were a welcome introduction to the licensing system in 2009, as before this, even minor changes to the premises licence such as removing redundant conditions or small alterations to the fabric of a pub, required a full variation with the significant cost it attracts. However, every local authority interprets the definition of 'minor' differently and one authority may accept an application as a minor, but another council will reject the same minor variation which means re-submitting the application as full application and this increases costs and impacts on timescales. For example, a minor variation will take on average 10 working days, with a full variation there is a 28 day representation period. A minor variation application costs £89 with no requirement for advertisement in the local press. A full variation costs between £100 and £635 (depending on the fee banding of the premises, and up to £1905 if the Band E multiplier is used) and there are subsequent costs associated with advertising the application in the press as outlined above. A real-life example can be seen with one member brewery reporting that one licensing authority rejecting a minor variation for a new window and removal of a lobby

in a specific pub – with the application costs increasing from £89 to £438.48. This compared with a licensing authority in the neighbouring county allowing a similar refurbishment to take place only with a plan change required, attracting a fee of only £10.50 for essentially the same change to the pub.

10.5. With regard to representations made under the Act, there is inconsistency between licensing authorities as to when they representations are filed against premises licence applications by the licensing authority (or other responsible authorities). Last minute representations do not then enable negotiation without the need for a hearing to determine the application, even if there is no reason given for a representation being filed and is clearly a ‘holding’ representation. There is also inconsistency as to when licensing authorities notify the applicant of representations to an application. Some authorities will provide details of representations as soon as they are received, whilst others will wait until the representation period has ended which leaves no time for negotiation and leads to an automatic hearing.

10.6. Blanket or unnecessary conditions added to premises licences have been an issue with the licensing regime since 2005. We have examples from our members of police and licensing authorities filing representations with blanket conditions which can be irrelevant, costly and demonstrating that applications are not being dealt with on an individual basis, which is the purpose of the Act. Conditions can be challenged and dropped, but only after a costly licensing hearing for the premises licence applicant. The section 182 guidance does set out what should be expected in terms of licence conditions, but this is not always followed. Examples reported to the BBPA of unreasonable or unenforceable conditions where no evidence is presented for their application include:

- Polycarbonate or plastic drinking vessels after 19.00
- expensive CCTV systems (for pubs with no history of disorder)
- the provision of lollipops for customers leaving the premises
- membership of voluntary bodies (e.g. pubwatch schemes)
- no candles or naked flames without written permission from the licensing authority
- requirement for the Designated Premises Supervisor to be on site at all times
- all alcohol to be served in toughened glass, and cannot be removed from the premises
- duplicating existing legislation (e.g. health and safety, disability law)
- restrictions on opening hours
- minimum pricing/price controls
- mandatory door staff

10.7. Some of the above conditions may be appropriate for certain premises in certain situations – such as plastic glasses for sporting events or outside the premises – but the fact is they should not be added to licences as standard as these are legal obligations on the premises that they must comply with. For example, with pubwatch as a condition of licence the licensee is automatically in breach if the pubwatch disbands (a factor completely outside

of their control). A match being struck inside a pub (to light a log fire for example) with the candle condition listed above would place them in breach for having a naked flame without prior written approval – aside from the fact the condition is extremely onerous in itself. Conditions should always be relevant, proportionate and enforceable.

10.8. When the first licences were granted in November 2005, and new licences granted in the early days of the licensing regime, conditions such as the above were added. There is the option (from 2009) of a minor variation to remove inappropriate or unenforceable conditions from licences, but as outlined in this response there is inconsistent use of what is defined as ‘minor’ which varies between licensing authorities. Therefore, to remove such conditions a full variation of the licence has to take place which leads to added cost and red tape to remove poorly worded conditions. Consideration should be given to a conditions ‘amnesty’ to highlight poorly worded conditions on licenses, and if agreed between the licensing authority and pub operator one minor variation process and payment should be used to clean up unenforceable conditions from licences. Such a conditions ‘amnesty’ should be included in the section 182 guidance, to stress that old/badly worded/unnecessary conditions should be removed and authorities should not demand new ones as a matter of course.

10.9. There have also been reported issues with payments and poor processes within certain local authorities, using antiquated system that lead to missed or duplicate payments. Some local authorities refuse to provide facilities for paying by Direct Debit. We would urge a fully electronic payment process for all licences and fees under the Act. This is also true of online applications – in particular since 2009 an EU directive stipulates that all local authorities should have an online application facility for all licences and permits they issue. To date, there are around 80 local authorities that still do not have them. This is an administrative burden on both fronts (service of manual applications and requesting cheques which must be received by local authority before the pub site can legally trade).

10.10. There was a Coalition Government commitment in their response to the fees consultation (published in February 2015) regarding fee payment dates for licensed premises. The commitment stated:

“The Government has decided not to impose a single payment date (for fee payments). Nevertheless, the Government sees merit in allowing licence holders who wish to nominate a date of their choice to do so by notifying the relevant licensing authority. This would remove a significant administrative burden from businesses that hold multiple licences without enforcing change on those who do not want it.”

“This measure will require a change to the Licensing Act 2003 and the Government will explore the legislative options with a view to implementation when possible. As with any legislative change, this will involve discussion with colleagues in local government and the licensed trade.”¹⁶⁷

¹⁶⁷ <https://www.gov.uk/government/consultations/locally-set-licensing-fees>

We would very much support the current Government taking forward this important piece of de-regulation as a matter of urgency.

11. What could be done to improve the appeal procedure, including listing and costs? Should appeal decisions be reported to promote consistency? Is there a case for a further appeal to the Crown Court? Is there a role for formal mediation in the appeal process?

11.1. Currently, there is a right to appeal from local authorities to the Magistrates for a full re-hearing. Whilst the procedures for this process could be simplified (often complicated skeleton arguments are required, which take up time), the industry still supports appeals to the Magistrates Courts for a number of reasons, which include protection of the right of appeal to a fully independent court provided by the Magistrates (in cases where local interests may overshadow independent decisions. Local authorities in some cases may wish to defer to the independence of the Magistrates, for similar reasons.

11.2. Many local authorities offer mediation between parties and this is something which the industry welcomes. It reduces costs on both sides, and in our view more local authorities should be encouraged to offer mediation.

11.3. We are unsure as to the merits of a further appeal to the Crown Court. Appeals to the Crown Court can be extremely costly and at present given the high workload of criminal cases in the Crown Court system such appeals would no doubt take an extremely long time to be resolved.

12. Given the increase in off-trade sales, including online sales, is there a case for reform of the licensing regime applying to the off-trade? How effectively does the regime control supermarkets and large retailers, under-age sales, and delivery services? Should the law be amended to allow licensing authorities more specific control over off-trade sales of “super-strength” alcohol?

12.1. The BBPA is opposed to controls on higher strength alcohol as we believe that there are adequate controls in place to consider each premises licence on an individual basis. Blanket approaches to control so called ‘super-strength’ products are ineffective in tackling complex alcohol-related issues and are in stark contrast to the collaborative and locally targeted initiatives that are broadly considered by the majority of stakeholders as the preferred approach.

12.2. The point is illustrated by recent evaluations of ‘reduce the strength’ schemes. A number of local councils have adopted such schemes, whereby alcohol retailers within a certain locality are asked to abide by a condition to ban ‘super-strength’ beers and ciders above a certain strength. Research conducted on this topic by the London School of Hygiene

and Tropical Medicine and Camden/Islington Public Health¹⁶⁸, as well as Alcohol Research UK¹⁶⁹ has indicated that bans on higher strength beer and cider prove ineffective as problem drinkers will simply purchase alcohol from alternative premises that are not restricted by the condition. Further, a OnePoll survey of drug and alcohol workers in 2010 highlighted an overwhelming view from specialists that if the price of an abused substance increases or supply decreases, then misuse continues through switching to an alternative product or committing crime. A blanket approach, therefore, does not target the underlying causes of the problem and bans similar to the one described above will punish responsible drinkers who purchase premium and specialist beers that are not associated with harmful consumption. We also have concerns about such bans on products being applied to licences via conditions, or in licensing policies. In our view this is a misuse of licensing powers.

13. Should alcohol pricing and taxation be used as a form of control, and if so, how? Should the Government introduce minimum unit pricing in England? Does the evidence that MUP would be effective need to be “conclusive” before MUP could be introduced, or can the effect of MUP be gauged only after its introduction?

13.1. We do not see the relevance regarding pricing and taxation in an evaluation of licensing law. Taxation and pricing are very separate mechanisms to the licensing regime, and should not in our view be conflated.

13.2. The beer and pub sector is committed to reducing the harmful use of alcohol. However, pricing and taxation are blunt instruments to achieve this, penalising those on low incomes and responsible drinkers. The BBPA supports a tax system and policy measures that encourage the production and consumption of lower-alcohol drinks. This also helps an important British manufacturing industry where 82% of the beer drunk in the UK is produced in the UK. Along with targeted interventions, local community partnerships, greater education and awareness and support for pubs where alcohol is consumed in a managed and safe environment, this is our preferred approach to fostering a culture of responsible drinking in the UK

14. Do licence fees need to be set at national level? Should London, and the other major cities to which the Government proposes to devolve greater powers, have the power to set their own licence fees?

14.1. The BBPA recognises the fact that the Licensing Act 2003 (Fees) Regulations have not changed in any way since 2005, including the amount charged for applications etc. under

¹⁶⁸ Colin Sumpter et al. 2016. Reducing the strength: a mixed methods evaluation of alcohol retailers' willingness to voluntarily reduce the availability of low cost, high strength beers and ciders in two UK local authorities. BMC Public Health.

¹⁶⁹ C. Hatworth, J. Hatworth. 2016. Evaluation of the Super Strength Free Scheme in East Newcastle Upon Tyne. Barefoot Research and Evaluation. Alcohol Research UK.

the Act. In 2014, the Government consulted on an alternative system of fees related to the Licensing Act which proposed devolving fee setting to individual licensing authorities and changing the basis for charging away from banding based on National Non-Domestic Rateable Value (NNDR). We did not agree with this proposal, and are of the view that the fees system should remain in its current structure with fees set nationally – albeit with a reasonable adjustment for inflation since 2005 if required. Our reasons for this are set out below.

14.2. The use of NNDR as the basis for setting fee levels was the preferred method supported by the BBPA when the fee regulations were introduced in 2005. The system is well-understood by licensed premises and the NNDR is the fairest existing way to make an assessment on the ability of premises to pay fees. This is particularly true of the pub sector where rateable values are linked to the turnover of the business. NNDR has the added benefit of already being calculated by the Valuation Office Agency, resulting in a simple and clear definition as to which band premises fall into, rather than the Licensing Authority having to carry out their own exercise to determine the fee level for each type of premises.

14.3. It should also be noted that the last time fees were looked at, the conclusion was that the means of allocating fee levels under the Licensing Act 2003 should remain NNDR rating bandings. The 2007 Elton Report was carried out by an independent review panel and carried out robust and detailed surveys of local authorities and fee payers.

14.4. With regard to a higher NNDR being related to higher costs to the licensing authority, whilst we believe that higher turnover premises do not necessarily lead to higher levels of enforcement activity, in many cases larger premises do require larger numbers of conditions and have the potential for more issues as compared to premises such as community pubs. Often the larger a premises is the more impact it will have on its locality, and so costs of variations and new licences are likely to be higher. As such, the use of bandings based on NNDR is broadly fair and ensures those smaller businesses that would not be able to pay higher fees (and often will have lower enforcement costs associated with them) are not unfairly penalised.

14.5. Any alternative fees system, including to cities or specific regional areas must be a system retaining the current banding system, but introducing the option for local authorities to set each band locally with a maximum cap. This would prevent those premises in the lower bands from being disproportionately affected by any rises, and allow local authorities the ability to charge higher fees to those in the higher bands. We would also suggest a multiplier for bands D and E based on terminal hour with the ability to include or exclude certain types of premises, as this would provide a non-subjective way for local authorities to charge premises that may have higher enforcement costs.

14.6. We are aware that the LGA is in favour of fee increases for Temporary Event Notices. For pubs, TENS are often the only way to deal with an unexpected request for later hours for weddings, birthdays etc. In the round the fees charged for enforcement for pubs which

require very little, if any enforcement, on a risk-based assessment should be reflected in the cost of a TEN.

ANNEX A – MAJOR CHANGES TO THE LICENSING REGIME SINCE 2005

2005

- Licensing Act 2003 comes into effect

2006/7

- Summary reviews process

2007

Violent Crime Reduction Act 2006:

- Alcohol Disorder Zones (later repealed and replaced with Late Night Levy)
- ‘Three strikes’ for underage sales

2009

- Minor Variation process introduced

2010

Policing and Crime Act 2009

- Mandatory Conditions:
 - Promotions ban
 - Free tap water
 - Age verification policy
 - Smaller drinks measures

Crime and Security Act 2010

- Original Early Morning Restriction Orders (EMROs)

2012

Police Reform and Social Responsibility Act 2011

- Introduction of Late Night Levy
- Extended EMROs
- Reduction in evidential burden for licensing decisions
- Changes to TENs procedure
- Doubling of fine for persistent alcohol sales
- Licensing Authorities become responsible authorities
- Health bodies become responsible authorities
- Removal of vicinity test

2014

- Revised Mandatory Conditions
- Removal of requirement to renew Personal Licences
- The off-trade added to Cumulative Impact Policies
- Ban on the sale of alcohol below duty plus VAT

Antisocial Behaviour Crime and Policing Act 2014

- Closure notices/orders

2015

- Level five fines became unlimited
- Changes to relevant offences and immigration amendments

2016

- Proposals to place Cumulative Impact Policies on a statutory footing
- Proposed changes to the operation of the Late Night Levy
- Proposals on Group Review Intervention Powers
- Removal of Parliamentary scrutiny of Section 182 guidance
- Immigration Act (changes to personal/premises licence revocation procedure) due to come into force in 2017

2 September 2016

British Beer & Pub Association – supplementary written evidence (LIC0159)

I am very grateful for the opportunity last week, to give oral evidence to the House of Lords Committee undertaking an Inquiry into the Licensing Act 2003. One of the issues raised was taxation by strength and I promised to write to the Committee to explain why the British Beer & Pub Association would be opposed to this.

There is a misconception that the fairest way to tax different drinks would be to base tax solely on alcohol content (*equivalence*). However, this is not a logical tax policy because it does not:

- take account of the different composition and characteristics of drinks
- recognise the different cost structures of different industries, the wider economic impact and different predominant circumstances of consumption
- result in “equal treatment” of different alcohol beverages and particularly disadvantages low-strength fermented beverages in terms of cost to the consumer
- take account of the different health and social dimensions between products

Because of these factors, nearly all countries apply a higher rate of tax for spirits per unit of alcohol than for beer and other fermented beverages. However, in the UK the ratio of beer duty to spirits duty has been significantly reduced over the past two decades making spirits progressively cheaper relative to beer. In the UK, high strength ciders and spirits are now the cheapest forms of alcohol available to the consumer. This is primarily due to the tax system.

How beer is disadvantaged compared to spirits under the current tax system has been highlighted in studies by PriceWaterhouse Coopers¹⁷⁰ and Oxford Economics¹⁷¹. Both studies calculated that the cost of producing alcohol in the form of beer was three to four times higher than producing spirits and that this difference was significantly greater than the higher rate of duty charged on spirits (1.4 times)

In summary, if drinks were competing solely on the basis of alcohol content then beer would not be produced. As a relatively low alcohol drink, beer has higher production, distribution and retailing costs per unit or litre of alcohol than the majority of other alcoholic drinks as well as the technical services costs associated with draught sales. On this basis alone we strongly oppose equivalent taxation based solely on alcohol content across all drinks.

25 October 2016

¹⁷⁰ Price WaterhouseCoopers(2009). Comparable cost analysis for the European alcoholic beverage sector

¹⁷¹ Oxford Economics (2007). The impact of excise duties on the beer and spirits markets

British Hospitality Association — written evidence (LIC0149)

This submission is made on behalf of the British Hospitality Association (BHA), a representative body for the UK hospitality and tourism industry comprising of some 45,000 member-establishments, including hotels, serviced apartments, private rental scheme, private members' clubs, self-catering accommodation, restaurants, food service management companies, attractions, sport stadiums, and other leisure outlets located in urban and rural areas all across the UK.

The hospitality and tourism industry is a wide and diverse collection of businesses where hotels, restaurants, pub and bars all play an important part in both the national and local economy.

Our businesses are a major draw for overseas visitors and form part of our valuable cultural heritage as well forming part of the modern entertainment experience. The vast majority of hospitality businesses are licensed under the Licensing Act 2003 (hereafter 'the Act'), and have a duty, therefore, to ensure the responsible sale of alcohol.

Licensing objectives

Are the existing four licensing objectives the right ones for licensing authorities to promote? Should the protection of health and wellbeing be an additional objective?

Should the policies of licensing authorities do more to facilitate the enjoyment by the public of all licensable activities? Should access to and enjoyment of licensable activities by the public, including community activities, be an additional licensing objective? Should there be any other additional objectives?

The British Hospitality Associations supports the four current objectives of the Act to protect society from the unwanted, anti-social effects of alcohol consumption. We would not support the extension of the objectives of the Act.

The industry is engaged at all levels to promote the responsible consumption of alcohol to reduce the medical and social harms that can result. Hospitality and tourism businesses can and do play a role in helping address other social issues but cannot be made legally responsible for solving those issues.

Unlike the four objectives set out for the Act the decision of an individual as regards their own health involves a strong element of personal responsibility, and this should not become the responsibility of licence holders. Extension of the scope of the Act through additional regulation to the licensing regime will however increase burden on licence holders without addressing the other ways in which alcohol can be purchased and consumed. The protection of public health must be addressed within a broader framework at a local authority level.

The balance between rights and responsibilities

Has the Live Music Act 2012 done enough to relax the provisions of the Licensing Act 2003 where they imposed unnecessarily strict requirements? Are the introductions of late night levies and Early Morning Restriction Orders effective, and if not, what alternatives are there? Does the Licensing Act now achieve the right balance between the rights of those who wish to sell alcohol and provide entertainment and the rights of those who wish to object?

Do all the responsible authorities (such as Planning, and Health & Safety), who all have other regulatory powers, engage effectively in the licensing regime, and if not, what could be done? Do other stakeholders, including local communities, engage effectively in the licensing regime, and if not, what could be done?

The British Hospitality Association would highlight the difference in the way the Act treats the workplace exemption for external drinking areas with regards to recorded as opposed to live music. This is a confusing distinction for licence holders and it is hard to understand why the same music, played at the same level, would be treated differently depending upon whether it is live or recorded.

The Act was intended to provide a balance between increasing the freedom of consumers against the responsibility of the industry and improved police powers to tackle any anti-social behaviour and protect local neighbourhoods. The industry supports firm and quick action against any ‘problem establishments’ who do not obey the licensing regime. Before any further extension of powers is considered there should be a clear understanding as to whether local authorities or the police are making use of the powers they already have to enforce licence terms.

It is important when considering granting new powers to enforcement authorities that they reflect social and other developments since 2003. The popularity of at-home drinking means that alcohol-related problems in local neighbourhoods cannot be addressed from increased focus on licensed premises. Indeed, ‘pre-loading’ of alcohol presents a huge challenge for licence holders in managing customers who arrive having consumed a substantial amount of alcohol. As can be expected, BHA members have reported that individuals who have pre-loaded on cheaper alcohol elsewhere can cause a variety of anti-social problems within their premises, which in turn creates issues with the local authorities.

Licensing and local strategy

Licensing is only one part of the strategy that local government has to shape its communities. The Government states that the Act “is being used effectively in conjunction with other interventions as part of a coherent national and local strategy.” Do you agree?

Should licensing policy and planning policy be integrated more closely to shape local areas and address the proliferation of licensed premises? How could it be done?

The Act should operate as one part of a comprehensive and co-ordinated approach allied with other mechanisms available to national, local government and law enforcement. In public policy focus on the scope of the Act is often at the expense of shaping and delivering

a broader strategy which addresses the multitude of issues of public concern regarding alcohol.

Licensed hospitality and tourism businesses make a significant contribution both as community assets and part of attractive destinations for both domestic and overseas visitors. This needs to be recognised and valued by Government, especially when additional regulatory requirements for licensee holders are under consideration.

The British Hospitality Association has supported the call for the extension of the Primary Authority scheme to alcohol policy and licensing. In the industry submission to the Tourism Council in February 2016 it was noted that:

“Some local authorities are excellent and experienced in their work on licensing, but some are not... [with] inconsistent enforcing of the Licensing Act across different local authority areas. It is proposed that Primary Authority is extended to the Licensing Act 2003, in terms of allowing businesses to choose a primary authority licensing partner to give assured advice on conditions, operating practices and mediate in cases of inconsistent or unfair enforcement. Local authorities would retain local discretion in the face of local circumstances, but the Primary Authority would be available to advise and mediate as necessary.”

We would encourage Government to take forward outstanding recommendations by Regulatory Delivery (formerly BRDO) on the extension of the Primary Authority scheme to alcohol policy and licensing. Extension of Primary Authority would reduce costs of business and achieve more consistency and better enforcement practice.

Licensing procedure

Given the increase in off-trade sales, including online sales, is there a case for reform of the licensing regime applying to the off-trade? How effectively does the regime control supermarkets and large retailers, under-age sales, and delivery services? Should the law be amended to allow licensing authorities more specific control over off-trade sales of “super-strength” alcohol?

Alcohol consumption has declined consistently over the past thirteen years. In addition to the Act, which removed previous restrictions on off-trade sales, social and technological changes has seen a decline in the amount of time people spend drinking in licensed establishments. Technology has increased the number of home entertainment options and the development of social media is changing the way in which young people communicate and meet for social activity.

The incentive to ‘pre-load’ increases as the price difference widens between alcohol bought from retail distributors to those in licensed establishments, which in turn encourages drinking prior to going out. The British Hospitality Association would like authorities to make full use of powers they already have at their disposal to control the off-trade, before consideration of the granting of new powers or adding further regulation.

Fees and costs associated with the Licensing Act 2003

Do licence fees need to be set at national level? Should London, and the other major cities to which the Government proposes to devolve greater powers, have the power to set their own licence fees?

Setting licence fees at a national level aids hospitality and businesses by providing consistency and the BHA would not support locally-set fees. There should be consideration of the cost on business operators, as well as the costs incurred by local authorities, in setting licence fees.

In some cases efficiencies can be made such as the requirement that licence applications are advertised in local newspapers. Considering the substantive change and opportunity in technology and online solutions, more effective and cost-effective solutions could be supported here.

11 September 2016

British Medical Association – written evidence (LIC0041)

About the BMA

The British Medical Association (BMA) is a professional association and independent trade union, representing doctors and medical students from all branches of medicine across the UK and supporting them to deliver the highest standards of patient care. We have a membership of over 170,000, which continues to grow each year.

Doctors are increasingly seeing the devastating impact of alcohol on the health and wellbeing of their patients and, as such, we welcome the opportunity to submit evidence to the Lords Committee on the Licensing Act 2003. We have a long history of supporting actions to reduce alcohol related harm and we believe that measures should be introduced that reduce the affordability and availability of alcohol, whilst also restricting the way it is promoted.

The BMA is a member of the Alcohol Health Alliance UK (AHA) an alliance of more than 40 non-governmental organisations which work together to promote evidence-based policies to reduce the damage caused by alcohol misuse. Members of the AHA include medical royal colleges, charities, patient representatives and alcohol health campaigners.

Executive summary

- Our members witness first-hand the harmful effects of excessive consumption of alcohol, which is a contributing factor in millions of hospital admissions and thousands of deaths each year.¹⁷²
- Alcohol misuse is causally linked to over 60 different medical conditions including liver damage, brain damage, poisoning, stroke, abdominal disorders and certain cancers.
- Fifty per cent of the UK population regularly drink at least once a week, and 10 per cent do so on five or more days a week.¹⁷³ Data shows that 2.5 million people drink over the CMO recommended limit of 14 units a week, on a single day.¹⁷⁴
- We support the introduction of measures that reduce the affordability and availability of alcohol, including a review of licensing legislation and a reduction in licensing hours.
- We believe local authorities should establish public health as an additional licensing objective.
- The BMA supports the introduction of a minimum price per alcohol unit of no less than 50 pence per unit in the UK.

¹⁷² Office for National Statistics (2013) Opinion and Lifestyles Survey, adult drinking habits in Great Britain, 2013. Newport: Office for National Statistics.

¹⁷³ Health and Social Care Information Centre (2016) Statistics on alcohol: England 2016. Leeds: Health and Social Care Information Centre.

¹⁷⁴ Health and Social Care Information Centre (2016) Statistics on alcohol: England 2016. Leeds: Health and Social Care Information Centre.

- Increasing the duty on alcohol significantly above the rate of inflation would raise the real price of alcohol products so that their affordability declines over time.
- The alcohol industry has a vested interest in the development of control policies: it is essential that alcohol policies are developed independently of them to avoid a fundamental conflict of interest.

Licensing objectives

Are the four licensing objectives the right ones for licensing authorities to promote? Should the protection of health and wellbeing be an additional objective?

1. The BMA believes ‘public health’ should be established as a fifth licensing objective, as is already the case in Scotland. This is vital given that the main drivers of alcohol consumption are affordability and availability: the cheaper alcohol is to buy, and the easier it is to access, the more likely consumers are to purchase and drink it to excess. Decisions on licensing are rarely made from a public health perspective with the wider impact of granting a licence to sell alcohol not factoring in the harms to health that this would cause.
2. There is established comprehensive evidence that increasing licensing hours results in increased consumption.¹⁷⁵ The impact of 24 hour drinking licences in England and Wales was rationalised as reducing the ‘rapid drinking leading up to, and the street ‘melees’ following a uniform closing time’.¹⁷⁶ While there is a need to complete further reviews of the effect of licensing hours in the UK, there is limited international data that show that increasing licensing hours and therefore availability decreases the risk of alcohol-related injury and general harm.
3. The BMA believes further action ought to be taken to ensure that licensing legislation (which regulates the overall number, type, trading hours and operating conditions of all premises licensed to sell alcohol) is strictly enforced. There is strong evidence that increased opening hours and a high density of outlets are associated with increased alcohol consumption and alcohol-related problems.^{177, 178}

Pricing

Should alcohol pricing and taxation be used as a form of control, and if so, how? Should the Government introduce minimum unit pricing in England? Does the evidence that MUP

¹⁷⁵ Babor T, Caetano R, Casswell S et al. (2010) Alcohol: No ordinary commodity. Oxford: Oxford University Press.

¹⁷⁶ Hough M, Hunter G, Jacobson J et al (2008) The impact of the Licensing Act 2003 on levels of crime and disorder: an evaluation. Research report 4. London: Home Office.

¹⁷⁷ Babor T, Caetano R, Casswell S et al. (2010) Alcohol: No ordinary commodity. Oxford: Oxford University Press.

¹⁷⁸ Rahn RA, Kuzara JL, Elder R et al (2010) Effectiveness of policies restricting hours of alcohol sales in preventing excessive alcohol consumption and related harms. American Journal of Preventive Medicine 39(6): 590-604.

would be effective need to be “conclusive” before MUP could be introduced, or can the effect of MUP to gauged only after its introduction?

4. There is strong and consistent evidence from the University of Sheffield and others, that increases in the price of alcohol are associated with reduced consumption and alcohol-related harm at a population level, with heavy drinkers and young drinkers being known to be especially responsive to price¹⁷⁹. This demonstrates that in order to reduce the affordability of alcohol, it is important to adopt policies at both a population-level and those which target specific groups. The alcohol industry markets products at the lower end of the market that are likely to encourage consumption and undermine the effectiveness of tax based control measures. Raising the floor price on alcohol would reduce the impact of increasingly cheap alcohol.
5. We would like to see the introduction of a minimum price per alcohol unit and we support the introduction of a minimum price of no less than 50 pence per unit in the UK. Modelling by the University of Sheffield – on the impact of a 50p minimum unit price in England and Scotland – has found significant benefits in terms of reducing average alcohol consumption per drinker, which would lead to reductions in alcohol-related deaths and chronic disease, as well as fewer hospital admissions, crimes and violent crimes, and days absent from work.¹⁸⁰ The same modelling shows that a minimum unit price would specifically target harmful drinkers on the lowest income thus there would be noticeable benefits in reducing health inequalities.
6. NICE (National Institute for Health and Care Excellence) highlight the added benefits of a minimum price to healthcare providers, arguing it would ‘...encourage producers to reduce the strength of their products’. They estimate that a 50p minimum price per unit would reduce the cost of alcohol-related problems by £9.7 billion.¹⁸¹ Public focus groups conducted by the AHA have shown that support for a minimum unit price has remained steady at 53% in 2015, and that opposition has decreased.¹⁸²

Raising alcohol duty above inflation

7. While minimum unit pricing targets specific heavy, price sensitive drinkers, raising overall duty on alcohol can be equally effective at a population level. Successive

¹⁷⁹ Booth A, Meier P, Stockwell T et al (2008) Independent review of the effects of alcohol pricing and promotion. Part A: Systematic Reviews Sheffield: School of Health and Related Research, University of Sheffield

¹⁸⁰ Meng, Y. et al. (2012) Model-based appraisal of alcohol minimum pricing and off-licensed trade discount bans in Scotland using the Sheffield Alcohol Policy Model (v.2): Second update based on newly available data, Sheffield: University of Sheffield

http://www.sheffield.ac.uk/polopoly_fs/1.150021!/file/scotlandupdatejan2012.pdf

¹⁸¹ https://www.nice.org.uk/guidance/ph24#_blank (accessed on 10 June 2016).

¹⁸² Alcohol Health Alliance (2016) 2015 UK alcohol behaviour and attitudes survey. London: Alcohol Health Alliance.

governments have taken the decision to slow down the rate of increase of alcohol duty relative to inflation. In the 2014 Budget, the Government announced that it would scrap the duty escalator entirely, freezing duty rates on spirits and ordinary cider and cutting the rate on beer by 1p. The duty on beer was cut further in the 2015 budget. This has compounded an existing trend of alcohol becoming more affordable. We believe that increasing duty significantly above the rate of inflation would have the effect of raising the real price of alcohol products so that their affordability declines over time.

8. The alcohol duty escalator was originally devised to address the imbalance of rising household incomes and stagnant alcohol cost. The escalator had some success in increasing price relative to income by raising the floor price below which alcohol cannot be sold. Abolishing it will have the counter-effect, increasing the number of below cost sales. The Treasury estimate that abolishing the escalator will result in a rise in overall alcohol consumption by 0.8% with beer consumption rising by 1.5% in the first year.¹⁸³ This is supported by recent industry modelling that shows that abolishing the escalator will result in a much slower decrease in consumption, maintaining the burden on public health, society and the public purse.¹⁸⁴

Balance between the rights and responsibilities of both the industry and the public

9. As well as seeking to influence the behaviour of individuals through marketing, the alcohol industry also seeks to influence politicians, policy makers and other key decision makers. A key strategy employed by the industry in recent years has been to partner with Government in order to ensure that the industry is seen as a part of the policy process. As well as being seen as a voice of expertise and influence in the process, the industry has been able to position itself in delivering regulatory and governance functions.¹⁸⁵
10. We believe that any emphasis on partnership with the alcohol industry and self-regulation has, at its heart, a fundamental conflict of interest that does not adequately address individual and public health. The alcohol industry has a vested interest in the development of control policies and so it is essential that alcohol policies are developed independently of them. We are concerned that the greater the emphasis on partnership with industry, the more likely it is that policy makers

¹⁸³

http://customs.hmrc.gov.uk/channelsPortalWebApp/channelsPortalWebApp.portal?_nfpb=true&_pageLabel=pageLibrary_ShowContent&id=HMCE_CL_000207& (accessed on 10 June 2016).

¹⁸⁴ Centre for Economic and Business Research (2015) *Scrapping the beer duty escalator – benefits to consumers, pubs and brewers: a report for the Campaign for Real Ale*. London: Centre for Economic and Business Research.

¹⁸⁵ Adams P, Buetow S and Rossen F (2010) Vested interests in addiction research and policy: poisonous partnerships – health sector buy-in to arrangements with government and consumption industries. *Addiction* 105: 585-590.

will veer toward the use of ineffective policies and self-regulation. It is, therefore, important that Government does not seek to partnership with the industry and takes decisions on policy independently from industry.

31 August 2016

British Retail Consortium – written evidence (LIC0167)

Introduction

- 1.1. The British Retail Consortium (BRC) is the trade association for the entire retail industry. Our members account for 80% of all UK retail sales. Diverse and exciting, our industry spans large multiples, independents, high streets and out of town, from online to bricks, selling goods across all sectors from clothing, footwear, food and homeware to electricals, health & beauty, jewellery and everything in between, to increasingly discerning consumers.
- 1.2. Our members are key businesses in local communities and understand the need for a balanced licensing regime that supports business growth, including those in the night time economy, whilst respecting the rights of local residents. Overall, we feel that balance is achieved and fosters the right culture of engagement between licencees, licensing authorities and relevant stakeholders. Any evolution of the regime must maintain the correct balance, not become unnecessarily onerous or restrictive and be fair to all parties.
- 1.3. The BRC has a large number of food members, both supermarkets and in the Informal Eating Out Sector (IEO). This review is highly relevant to their businesses as both require licenses under the Act to sell alcohol or provide late night refreshment. The BRC's food retail members account for over 90% of grocery sales, of which alcohol sales are an important element. This submission reinforces the points which have made by other retail organisations that adding health and wellbeing as a licensing objective is unnecessary. A position which equally applies to our members offering late night refreshment in the IEO sector and which is specifically covered in the submission.
- 1.4. Our members in the IEO sector, in particular McDonald's and KFC, operate restaurants, cafes and hot food takeaways which trade in hot food and non-alcoholic drinks between the hours of 11pm and 5am for which they require a licence.
- 1.5. These members have significant and varied experience on the licensing process within the context of late night refreshment licences which places them in a position to take a unique and credible perspective on the licensing regime.
- 1.6. The overnight economy is a very important to the UK and the entertainment, food and drink sectors contribute £30bn to the UK economy every year from overnight trade – nearly 6% of UK GDP. Within this, IEO is worth £20bn to the economy and 499,510 people are employed in this sector across the country in overnight trade.

- 1.7. This sector also provides a valuable service giving people up and down the country access to hot food and non-alcoholic drinks when they need it. This includes shift workers, emergency service workers, and others that require a hot meal between the hours of 11pm and 5am.
- 1.8. This is a crucial aspect of the UK economy and serves a wide range of communities up and down the country. It is important that the licensing regime is designed to be reasonable and to strike a balance between supporting the overnight economy while protecting the rights of local residents and business.
- 1.9. We have only responded to question 1 of the call for evidence, as this is the area where we can offer the most useful expertise and guidance.

2. Licensing Objectives question 1: *Are the existing four licensing objectives the right ones for licensing authorities to promote? Should the protection of health and wellbeing be an additional objective?*

- 2.1. We believe the four existing licensing objectives are appropriate for licensing authorities to promote and would not support health of wellbeing as an additional objective for a number of reasons and cover these below, both in terms of late night refreshment licences and alcohol licensing.
- 2.2. Businesses which trade in food and non-alcoholic drinks do so throughout the day without the requirement for a licence and only require a late night refreshment licence if they wish to trade between the hours of 11pm and 5am.
- 2.3. Within the context of late night refreshment licences, this is rightly intended to make certain that issues such as noise and disturbance for residents are properly considered, while ensuring that applicants are not unreasonably restricted and the overnight economy is allowed to operate in a responsible manner.
- 2.4. The aim and spirit of the legislation is not to restrict the consumption of food and non-alcoholic drinks. Decisions on where premises selling certain types of food and drink should be located are made through the planning process. The regulation of development in this way ensures that the location of different types of businesses is taken into account. As this is regulated through the planning process, there is no requirement to duplicate this regulation through the licensing regime.
- 2.5. If the ‘promotion of health and wellbeing’ were to be adopted as an additional licensing objective, this could have an adverse impact on the overnight economy within the context of late night refreshment licences and would not meet the aims of the Licensing Act 2003, for a number of reasons.

- 2.6. Firstly, these same premises trade in hot food and non-alcoholic drinks throughout the hours of 5am to 11pm without requiring a licence. The logic of licensing these premises through the night is to ensure residents are not disturbed overnight. If ‘health and wellbeing’ was included as a licensing objective for late night refreshment licences, this would represent an unnecessary restriction which would not align with the Licensing Act 2003 aims and would not be effective and appropriate for promoting the health and wellbeing of local communities.
- 2.7. Secondly, it would place a responsibility on applicants to demonstrate that their proposals will not have an adverse impact on health and wellbeing. The objective would be open to interpretation and it is likely to lead to the types of products sold in these premises being considered as part of the process. This would not only be unnecessary, but it would also make the process more onerous for applications and would represent a considerable restriction on applicants and the overnight economy. This would affect all businesses seeking these licences and would mean in practice that an industry wide limitation and additional cost would be introduced.
- 2.8. Thirdly, including the ‘promotion of health and wellbeing’ would be the object of vast amounts of subjectivity when licensing authorities and licensing committees consider applications. This would present a challenge for the businesses we represent as the reality of this subjectivity is that it would lead to significant inconsistencies across the country with different approaches taken by different licensing authorities. This would lead to further restrictions on the overnight economy. This would be as a result of a new licensing objective which would not, in our view, meaningfully contribute to the aim of preventing noise and disturbance for local residents. Within the context of late night refreshment licences, this aim is sufficiently promoted through the current licensing objectives.
- 2.9. As such, we do not believe that the ‘promotion of health and wellbeing’ should be considered as an additional licensing objective. It is our view, based on discussions with our members, including McDonald’s and KFC, that the current licensing objectives are sufficient in ensuring the Licensing Act 2003 achieves its aim, within the context of the late night refreshment licences. The additional objective would represent a significant additional restriction on businesses. This would make the process more onerous and would hamper the economic growth of the overnight economy and the associated employment benefits, as well as the provision of hot food and non-alcoholic drinks for those who need it overnight.
- 2.10. We share the same concerns in terms of alcohol licensing. We do not see how it would be possible to link health and wellbeing as an objective to the operation of a particular shop. Our members sell alcohol for consumption

away from their stores, possibly in another licensing area, particularly with the growth in internet sales, so we do not understand how it would be possible to link health data such as hospital admissions in a locality back to a particular premises

2.11. Further to the above, if it is impossible for a licensing authority to determine how to use and apply relevant health data we do not understand how any business would be in a position to interpret data to challenge a decision based on the proposed licensing objective.

2.12. We also have a concern that implementing this objective would lead licensing authorities to operate a blanket ban to new entrants based on the density of alcohol licences already operating. We feel this is perverse as it would deny entry to retailers who may well be more progressive and engaged in health initiatives, such as the Drinkaware campaign, than existing retailers.

2.13. Rather than pursue a fifth objective which will be difficult to operate and is unlikely to achieve an overall improvement in public health, we would suggest an increased focus at a local level to tackle those retailers who are not operating at the highest standards. Firstly, by making the most of existing conditions already available to licensing officers and secondly to encourage membership of effective local schemes such as the Community Alcohol Partnerships (CAPs) which have been very effective at driving best practice in local areas.

9 September 2016

Broxtowe Borough Council – written evidence (LIC0138)

Question 1

Are the existing four licensing objectives the right ones for licensing authorities to promote? Should the protection of health and wellbeing be an additional objective?

1. The existing four objectives are the correct ones for licensing authorities to promote. They enable responsible authorities and licensing authorities to focus on the important issues of the Act. They give a framework within which to administer, regulate and enforce licensing matters.

They also give focus to “other persons” who may wish to make representations in respect of premises

2. Currently health bodies are able to make representations as other persons in respect of health issues for all of the current licensing objectives where a link can be made to an individual premises. Health and well being issues are already being addressed.
3. The protection of health and well being should not become an additional objective. Health bodies became responsible authorities in 2011 and immediately thought that they could change the licensing world. They thought that they had a silver bullet with which to cure all society’s ills. It took a great deal of work to manage expectations and point them in the right direction. Health bodies have the ability to contribute to licensing policies and help shape the policies to include some health matters. However as any relevant representations must relate to individual premises, it is difficult for health statistics and information to be considered at that stage as it tends to be of a more general nature.

Question 2

Should the policies of licensing authorities do more to facilitate the enjoyment by the public of all licensable activities? Should access to and enjoyment of licensable activities by the public, including community activities, be an additional licensing objective? Should there be any other additional objectives?

4. The licensing policy should set out how licensing authorities intend to exercise their functions under the Act. However they recognise that licensed premises are a major contributor to the Borough, attracting tourists and visitors and making for vibrant towns and communities. They also recognise the problems that can be caused if licensed activities are not properly managed and premises well run and that good management of the entertainment, alcohol and late night refreshment industries (and of the street environment within which it operates) is essential to the continued success of the licensed economy. This I believe is the correct balance for the policy and facilitation of enjoyment of licensable activities.

5. Many community events are no longer regulated by the Licensing Act following recent deregulation and therefore do not require the attention of a further licensable activity. Partnership working and cooperation with all parties will be more effective in enabling access and enjoyment of licensable activities.
6. The current objectives are tried and tested. They create an effective framework for the Licensing Act. There is no current need for additional objectives.

The balance between rights and responsibilities

Question 3

Has the Live Music Act 2012 done enough to relax the provisions of the Licensing Act 2003 where they imposed unnecessarily strict requirements? Are the introductions of late night levies and Early Morning Restriction Orders effective, and if not, what alternatives are there? Does the Licensing Act now achieve the right balance between the rights of those who wish to sell alcohol and provide entertainment and the rights of those who wish to object?

7. The Live Music Act 2012 has done more than enough to relax provisions. Allowing an audience of 500 to attend a live music event with no potential conditions needs careful management. The major issue with premises under the Act is currently noise.
8. The introduction of late night levies and EMROs is not effective and is demonstrated by the lack of take up with only 6/7 late night levies adopted cross the country and no EMROs. Introduction of them is long winded and complicated. The benefits are hard to realise and they do not appropriately address issues.
9. Levies can only be introduced after midnight but all licensed premises contribute to the late night economy and the inherent issues prior to that time. A fairer system would follow Business Improvement District (BID) schemes whereby all premises would be involved in shaping and promoting the night time economy and contributing to the process. The levy process also does not sell itself to licensing authorities with the funding split.
10. EMROs are also a long, drawn out process when action may be needed in a more prompt manner. If premises are causing problems, reviews would deal effectively with the matter. The proposed “Group Review Intervention Powers” may well assist in dealing with matters effectively.
11. The Statement of Licensing Policy if linked to the authorities place shaping and planning policies may well assist in creating a safe and secure evening and night time economy. Linking up with best practice schemes such as “Best Bar None” and “Purple Flag” may also assist.
12. The advent of the Licensing Act 2003 allows much more intervention from the public and authorities than the 1964 Act when they had very little opportunity to interact with the licensing process. The checks and balances of the application and

administration processes allow for reasoned decision making and effective engagement.

Question 4

Do all the responsible authorities (such as Planning, and Health & Safety), who all have other regulatory powers, engage effectively in the licensing regime, and if not, what could be done? Do other stakeholders, including local communities, engage effectively in the licensing regime, and if not, what could be done?

13. Police, Environmental Health tend to be the more engaged partners. Trading Standards do engage but are more effective in unitary authorities within more joined up services. The Fire Service seems to be sidelined by the Regulatory Fire Order which does not seem to allow them to engage with the Act to deal with fire safety issues.
14. On a more positive note, the Act has engendered a spirit of partnership working within the licensing regime. Certainly in Nottinghamshire, the Nottinghamshire Authorities Licensing Group (NALG) works very well across the county bring all the responsible authorities and interested parties together on a regular basis to resolve licensing matters in a consistent and effective manner. More could be done to encourage such groups.
15. Community engagement tends to be driven by contentious applications or issues.

Licensing and local strategy

Question 5

Licensing is only one part of the strategy that local government has to shape its communities. The Government states that the Act “is being used effectively in conjunction with other interventions as part of a coherent national and local strategy.” Do you agree?

16. No. Local and National strategies are not linked generally. National is more about the bigger picture where local strategies focus on locally relevant issues. More consultation is needed from Central Government to link strategies. The Modern Crime Prevention Strategy may assist. Time will tell.

Question 6

Should licensing policy and planning policy be integrated more closely to shape local areas and address the proliferation of licensed premises? How could it be done?

17. Yes. Currently there is no link between planning and licensing. There needs to be more coherent decision making policy linking planning conditions to licensing applications and decisions. It seems strange that a licence can be granted for more hours than planning permission allows. There should be legislative links ensuring consistency, not least to avoid confusion for applicants.

Crime, disorder and public safety

Question 7

Are the subsequent amendments made by policing legislation achieving their objects? Do they give the police the powers they need to prevent crime and disorder and promote the licensing objectives generally? Are police adequately trained to use their powers effectively and appropriately?

18. The Police have all the powers they need to effectively engage with the Act. Regrettably the powers may not be used in the spirit of the law on occasion
19. There does not appear to be a properly researched, developed and rolled out consistent training programme for police officers in terms of licensing. All too often when officers appear to have a grasp of licensing matters they are moved or promoted to other areas. The days of the Licensing Sergeant appear to be long gone.

Question 8

Should sales of alcohol airside at international airports continue to be exempt from the application of the Act? Should sales on other forms of transport continue to be exempt?

20. Without major legislative changes, enforcement will be a major issue. However, despite some rare headline news there does not appear to be a major issue. Responsibility rests with the airport authorities and premises operators to ensure matters are properly dealt with.
21. Current exemptions on other forms of transport appear to be sufficient.

Licensing procedure

Question 9

The Act was intended to simplify licensing procedure; instead it has become increasingly complex. What could be done to simplify the procedure?

22. A more simplified application process would be of benefit. The current form is long and complicated. The process of serving applications could be simplified by requiring licensing authorities to circulate applications to responsible authorities where necessary and notices to those who are unable to engage. Publishing notices in newspapers is a burden not required. Most objections to premises licences are generated by the notice displayed at the premises for the duration of the consultation period.
23. There are a number of other amendments which could be usefully made and the LGA has done a lot of work with “Rewiring Licensing” which we would refer the Committee to.
24. Barely a year goes by without some sort of piecemeal change to licensing legislation. Perhaps a period of consolidation and consideration is now due.

25. We would suggest that the Community and Ancillary Sales legislation be removed and exemptions given to the various bodies on a “de minimus” basis rather than the convoluted proposed process.
26. A major concern is the issue of ghost premises. A number of premises remain on licensing authority registers because there is no facility to remove them (for a number of reasons). The Home Office needs to address the matter as a matter of urgency to ensure that licensing statistics are accurate.

Question 10

What could be done to improve the appeal procedure, including listing and costs? Should appeal decisions be reported to promote consistency? Is there a case for a further appeal to the Crown Court? Is there a role for formal mediation in the appeal process?

27. The current appeals system works well. What needs clarifying is how committee decisions are dealt with during the appeal period. Decisions should be properly published to promote consistency as currently magistrate’s decisions are inconsistent and underreported.
28. Mediation should certainly be a formal part of the appeals process. Whilst my authority has not yet had a review or appeal under the Act, we actively encourage mediation as a part of the initial consultation process and of any problems arising from premises. We have been able to resolve most issues to everyone’s satisfaction. Investment in such action saves time and money in the long run and helps develop a better relationship in the process

Sale of alcohol for consumption at home (the off-trade)

Question 11

Given the increase in off-trade sales, including online sales, is there a case for reform of the licensing regime applying to the off-trade? How effectively does the regime control supermarkets and large retailers, under-age sales, and delivery services? Should the law be amended to allow licensing authorities more specific control over off-trade sales of “super-strength” alcohol?

29. There are many controls that can be used to manage the “off-trade” effectively. The Licensing Act does not need further complication by creating a two tier system. Funding for enforcement action for both on and off trade would assist in ensuring the current regime is effective. Issues arising from consumption are more effectively dealt with through other channels such as health.
30. Since 2003 figures suggest that matters are improving, with alcohol related crime, alcohol consumption and alcohol harm falling rather than increasing.
31. The law should not be amended to cover “super-strength” alcohol. Local schemes are more effective and are better able to target the offending products such as

cheap strong cider which has never seen an apple or an orchard. Many specialist craft ales and beers have high strengths and would potentially be caught by more specific controls.

Pricing

Question 12

Should alcohol pricing and taxation be used as a form of control, and if so, how? Should the Government introduce minimum unit pricing in England? Does the evidence that MUP would be effective need to be “conclusive” before MUP could be introduced, or can the effect of MUP be gauged only after its introduction?

32. What is being controlled? If this is a health issue or to reduce consumption further, it is not a licensing matter. If it is to reduce alcohol related harms and issues in the night time economy, it is a very blunt instrument. If taxation can be used to target the harmful high strength products that may be a way forward.
33. The current “Duty plus VAT” pricing is ineffective, catching very few products. MUP will only affect the off trade generally and the rationale for MUP will need to be identified before any questions can be asked.

Fees and costs associated with the Licensing Act 2003

Question 13

Do licence fees need to be set at national level? Should London and the other major cities to which the Government proposes to devolve greater powers, have the power to set their own licence fees?

34. Fees should be set locally by all licensing authorities in the same manner as the Gambling Act to enable full cost recovery. However strict guidelines should be in place to advise licensing authorities on the fee setting process. It will be key that licensing authorities are able to include enforcement as a part of the fee.

International comparisons

Question 14

Is there a correlation between the strictness of the regulatory regime in other countries and the level of alcohol abuse? Are there aspects of the licensing laws of other countries, and other UK jurisdictions, that might usefully be considered for England and Wales?

35. We are unable to comment on the regulatory regimes on other countries but would suggest that properly trained managers and staff of licensed premises would be an advantage. The current personal licence is not an effective method of authority or delegation in the licensed trade.

Making the role of DPS a properly responsible person under the Act in the same way that a licensee was under the 1964 Act will assist in ensuring that there is a proper point of contact responsible for compliance at the premises.

2 September 2016

Councillor Jonny Bucknell – written evidence (LIC0152)

I am a Conservative councillor on the labour run borough of Camden and sit on a licensing committee.

The idea of 24 hours licensing was an excellent principle to get away from the draconian idea that every citizen had to finish drinking at 11pm and be in bed by midnight unless they went to an overpriced night club dominated by young people.

Where it went wrong was the caveats put in place to prevent excesses.

The worst aspect is the special policy area. These were intended to limit areas which had so many late night pubs and bars that they were uncontrollable.

What has happened in area of Camden is that they have been put in on a whim as a result of a few complaints from residents who should have moved to the countryside. The whole of Camden Town's licensing policy is effectively determined by a handful of local elderly residents who are understandably dismayed by the change in the area.

The special policy areas are crippling and represent anti- competitive practice. Once they are in it is virtually impossible to obtain any more licenses or extensions.

Special policy areas should come under an annual review with the local licensing committee having to justify their existence and be subject to appeal.

All licenses and extensions should be subject to automatic grant for a 6 month pilot. This would be subject to the normal review procedure. After 6 months there should be a full hearing to establish if the premises has complied with the aims of the licensing act.

The Home Office should set down strict conditions for the granting of a license. This should be based on the premise that no license should be refused unless there are overwhelming reasons.

The licensing of SEV's being subject to an annual review is draconian and costly for the operator. One SEV in Camden has changed to a night club as a result of over-zealous legislation. These should be the same as any other license and allowed to run on until reviewed.

The licensing police should operate under strict guidelines set down by the Home Office. I have seen their policies change from an 'anything goes' regime to being draconian.

Overall, licensing should never have been devolved to local authorities from the Magistrates. Local authorities are too prone to the whims and vendettas of councillors. Licensing should revert back to the magistrates.

9 September 2016

Business in Licensing – written evidence (LIC0140)

We are pleased to be able to contribute to this consultation, and congratulate the committee on affording industry with a much needed opportunity to discuss the future of this piece of legislation.

Business in Licensing (BIL) is a specialist membership organisation focussed on the formation of a better regulatory regime for licensed goods and services in the United Kingdom. Our membership is largely composed of leading lawyers representing the largest hospitality providers in the country, which equips our group with a unique combination of ground level insight derived from industry, and technical legal knowledge on how regulation can be compiled and improved. Several of these members - including TLT and John Gaunt & Partners - have decided to submit evidence to this consultation independently as well as to contribute to the formation of a BIL submission. As such this submission is intended to be read alongside these, rather than independently.

This unique composition of licensing legal expertise means that we are not an interest group or trade association representing any particular agenda, but a group with experience in the full breadth of the licensed industries, able to take a holistic view on optimising regulation and supporting effective policy making, rather than being bound to lobbying on behalf of any particular sectional interest.

We seek to adopt a neutral, practical and solution-focussed approach, and to ensure that the broadest possible range of concerns are taken into account when reforms to legislation or regulation are posited. As the typical users of the regulatory process, lawyers are able to offer an invaluable perspective on how to rationalise legislative focus, and the purpose of BIL is to make this skill centre available to policy makers. As such we are currently involved in projects with the Department for Business, Energy and Industrial Strategy, as well as our routine work with DCMS and the Home Office.

The formation of this Select Committee is decidedly welcome news to BIL and its membership, and we look forward to cooperating with its work as much as possible.

Licensing objectives

1. *Are the existing four licensing objectives the right ones for licensing authorities to promote? Should the protection of health and wellbeing be an additional objective?*

- It is our opinion that the four current licensing objectives are the right ones, and that 'Health and wellbeing' would be far too broad an objective to be helpful in an individual licence application. For example, how would an interested party establish that the grant of a new licence will harm public health and well-being? Reliance on hospital and ambulance data is far from reliable and so difficult to tie this data in with the place of sale, and indeed many would disagree on the influence of alcohol on 'wellbeing'. Greatest concern would be

that in practice this would likely become a ‘guilty until proven innocent’ hurdle, impossible for any applicant to conclusively overcome.

Fundamentally, licensing will not prove a useful avenue through which to promote health and wellbeing, as it relates principally to the right of a vender to sell alcohol, rather than to the way it is consumed. Altering the latter would see benefits to health and wellbeing, but these are better achieved through public education than through amending the licensing process.

2. *Should the policies of licensing authorities do more to facilitate the enjoyment by the public of all licensable activities? Should access to and enjoyment of licensable activities by the public, including community activities, be an additional licensing objective? Should there be any other additional objectives?*

- ‘Enjoyment’ may prove a problematic objective in application, not least because what is ‘enjoyable’ for one group may not be for another. Overall, we believe that improvement to the public experience of licensed activities will come from improving the pursuit of the current objectives, rather than the creation of new ones.

The balance between rights and responsibilities

3. *Has the Live Music Act 2012 done enough to relax the provisions of the Licensing Act 2003 where they imposed unnecessarily strict requirements? Are the introductions of late night levies and Early Morning Restriction Orders effective, and if not, what alternatives are there? Does the Licensing Act now achieve the right balance between the rights of those who wish to sell alcohol and provide entertainment and the rights of those who wish to object?*

- EMRO’s do not seem to be working as intended, as evidenced in their minimal take-up, and there are good opportunities to object to the issuing of a license by traditional means. If anything, in practice the application is likely to be disadvantaged in many such proceedings, rather than enjoying a natural privilege requiring redress.
- Neither are LNLs effective, and in practice amount to an additional tax and burden on all licensed businesses in an area, rather than targeting those most responsible for town centre late night issues. For example, one authority sought to bring in a levy on any premises open after 1am which meant that the majority of vertical drinking establishments in the town centre did not pay, but the small 24 hour shop outside the town centre was hit with a levy in excess of £1500. An alternative might be to periodically review licence fees across the board.

Crime, disorder and public safety

7. *Are the subsequent amendments made by policing legislation achieving their objects? Do they give the police the powers they need to prevent crime and disorder and promote the licensing objectives generally? Are police adequately trained to use their powers effectively and appropriately?*

- Similarly to our comments above, we do not believe that outcomes will be improved by the creation of new legislative objectives or powers, and this is true for policing powers as well. The biggest single thing that could be done to improve enforcement would be the inclusion of specific training modules on licensing for police training programmes.

There is considerable inconsistency in patterns of enforcement across authorities, which could be rendered more consistent with more intelligent and targeted use of police resources that would be possible with a greater level of expertise and sensitivity to the realities of licensed businesses. There would also likely be a positive knock on effect on disagreements with police over applications.

Licensing procedure

9. *The Act was intended to simplify licensing procedure; instead it has become increasingly complex. What could be done to simplify the procedure?*

- It is certainly true that licensing has become too complex and full of regulation. One of the most overdue reforms would be to the formats of the application procedure itself, with the creation of a single digital form that would be uniform across all authorities, rather than the inconsistent and paper based system in operation at present. Likewise the requirement for all applications to be advertised in a newspaper is an outdated way to achieve the original objective of public information, resulting in unnecessary costs upon business with no obvious utility.

Other suggestions from members include:

- Abolishing s.57 notices, which are currently ineffective.
- The introduction of a 'slip rule' so that a minor indiscretion does not invalidate an application.
- The removal of time limits imposed on parties at hearings which results in unfair hearings and more appeals.
- The introduction of a grace period on the change of a DPS. The DPS is simply a named person for contact purposes, and a temporary absence should not result in an inability to operate as the licence holder remains responsible.

10. *What could be done to improve the appeal procedure, including listing and costs? Should appeal decisions be reported to promote consistency? Is there a case for a further appeal to the Crown Court? Is there a role for formal mediation in the appeal process?*

- The process is already cumbersome and prohibitively expensive to all but the large operators. Directions would be better agreed in correspondence and the court date arranged via the court office rather than parties taking up valuable court time, as attendance at a directions hearing can often take several hours. The use of skeleton

arguments should be the preserve of complex cases with genuine legal arguments, as their inappropriate overuse adds to the cost of proceedings.

Sale of alcohol for consumption at home (the off-trade)

11. *Given the increase in off-trade sales, including online sales, is there a case for reform of the licensing regime applying to the off-trade? How effectively does the regime control super- markets and large retailers, under-age sales, and delivery services? Should the law be amended to allow licensing authorities more specific control over off-trade sales of “super-strength” alcohol?*

- Existing powers are sufficient for officers to use in the incidence of retailers operating in contradiction to the licensing objectives. The 2003 Act has already increased the regulation of off-sales by the introduction of licence conditions, and the proper use of conditions is the effective way to ensure that off licences promote the existing licensing objectives. Licensing Authorities already impose “super strength” conditions and should do so where it is appropriate to the area and based on representations from officers. There is no need to in- crease regulation here.

Pricing

12. *Should alcohol pricing and taxation be used as a form of control, and if so, how? Should the Government introduce minimum unit pricing in England? Does the evidence that MUP would be effective need to be “conclusive” before MUP could be introduced, or can the effect of MUP be gauged only after its introduction?*

- The effectiveness of MUP depends upon the degree of the increase, rather than its introduction per se. A small increase will mean additional costs with no meaningful change in in consumption patterns. On the other hand a substantial rise would be inconsistent in its effect on consumers - hitting the poorest disproportionately hard - with a damaging effect on employment levels in the industry. Most importantly, the most vulnerable to addictive use would be the least affected, due to the price inelasticity of their demand. Those whose behaviour would be most likely to change are those who attitude towards alcohol is already most measured.

Fees and costing associated with the Licensing Act 2003

13. *Do licence fees need to be set at national level? Should London, and the other major cities to which the Government proposes to devolve greater powers, have the power to set their own licence fees?*

- Fees do need to be set nationally to provide clarity and consistency for businesses, devolution of this power would result in minimal real benefit to the authorities or their communities while creating unnecessary complication for operators.

2 September 2016

Cambridge City Council – written evidence (LIC0108)

Licensing Objectives

1. *Are the existing four licensing objectives the right ones for licensing authorities to promote? Should the protection of health and wellbeing be an additional objective?*

Very rarely have conditions under public safety. This is usually covered by prevention of crime and disorder or prevention of public nuisance. Most that are offered by applicants are already covered by Health and Safety legislation or fire safety legislation.

We believe the protection of health and wellbeing should be an objective, to allow control over prevention and reducing harm to individuals. This would be a good objective if we were trying to gather evidence for cumulative Impact areas

2. *Should the policies of licensing authorities do more to facilitate the enjoyment by the public of all licensable activities? Should access to and enjoyment of licensable activities by the public, including community activities, be additional licensing objective? Should there be any other additional objectives?*

Licensing authorities are responsible for public safety and to ensure that all licensing objectives and conditions are met, with the provision to enforce when necessary. We do not believe that the licensing authorities are responsible for the public to enjoy themselves

The balance between rights and responsibilities

3. *Has the Live Music Act 2012 done enough to relax the provisions of the Licensing Act 2003 where they imposed unnecessarily strict requirements? Are the introductions of late night levies and Early Morning Restriction Orders effective, and if not, what alternatives are there? Does the Licensing Act now achieve the right balance between the rights of those who wish to sell alcohol and provide entertainment and the rights of those who wish to object?*

The Live Music Act 2012 has made it far too complicated with a number of different variables allowing events to slip through. We believe late night levies and EMRO are ineffective and there are alternatives already in place to cover this such as Business Improvement Districts and Businesses against crime groups. The process is fair and balanced, however potential objectors are unaware of the process for a review.

4. *Do all responsible authorities (such as planning, and Health and Safety), who all have other regulatory powers, engage effectively in the licensing regime, and if not, what could be done? Do other stakeholders, including communities, engage effectively in the licensing regime, and if not, what could be done?*

The police and Environmental Health engage effectively, but there is very little engagement from the other regulatory authorities. Local communities and Councillors engage however there could be wider advertising of applications to allow the wider community to respond, as does happen with planning applications.

Licensing and local strategy

5. *Licensing is only on part of the strategy that local government has to shape its communities. The Government states the Act “is being used effectively in conjunction with other interventions as part of a coherent national and local strategy.” Do you agree?*

6. *Should licensing policy and planning policy be integrated more closely to shape local areas and address the proliferation of licensed premises? How could it be done?*

The strategies need to be more cohesive, such as licensing and planning. Currently there too may conflict s between planning and Licensing whereas you may be issued a licence to have a pub but you may not have planning permission to have a pub. Cumulative Impact is not cohesive and again is not linked to the local plan.

Crime, disorder and public safety

7. *Are the subsequent amendments made by policing legislation achieving their objects? Do they give the police powers they need to prevent crime and disorder and promote the licensing objectives generally? Are police adequately trained to use their powers effectively and appropriately?*

Need to be clearer guidance on who should be enforcing police or Local Authorities. Clearer and more effective ways to enforce is needed and reviews should be used much more as a sanction. Very few police are trained in dealing with licensing and the resource is limited to a few officers.

8. *Should sales of alcohol airside at international airports continue to be exempt from the application of the Act? Should sales on other forms of transport continue to be exempt?*

No

Licensing Procedure

9. *The Act was intended to simplify licensing procedure; instead it has become increasingly complex. What could be done to simplify the procedure?*

Simplify the definition of regulated entertainment and simplify the Temporary Events Notices procedure. There is an opportunity to clarify the procedure for amending applications once conditions have been agreed. There is confusion with the current wording of the legislation

10. *What could be done to improve the appeal procedure, including listing and costs? Should appeal decisions be reported to promote consistency? Is here a case for a further appeal to the Crown Court? Is there a role for formal mediation in the appeal process?*

Sale of alcohol for consumption at home (the off-trade)

11. *Given the increase in off-trade sales, including online sales, is there a case for reform of the licensing regime applying to the off-trade? How effectively does the regime control supermarkets and large retailers, under-age sales, and delivery services? Should the law be amended to allow licensing authorities more specific control over off-trade sales of “super-strength” alcohol?*

Delivery of alcohol is becoming very popular with restaurants and pubs. There needs to be a big emphasis on checking ID when delivers are made. When is the point of sale? Is it when order and payment is made over the phone or on internet or is it at the point of delivery. It is the same person accepting the delivery the same person who made the order? There could be a mandatory condition for this type of transaction.

We believe there should be much tighter control over off sales such as having a requirement to belong to a scheme set up by the licensing authority such as “off watch” this would then allow tighter controls on the super strength sales.

Pricing

12. *Should alcohol pricing and taxation be used as a form of control, and if so, how? Should the Government introduce minimum unit pricing in England? Does the evidence that MUP would be effective need to be “conclusive” before MUP could be introduced, or can the effect of MUP be gauged only after its introduction?*

Fees and costs associated with the Licensing Act 2003

13. *Do licence fees need to be set at national level? Should London, and other major cities to which the Government proposes to devolve greater powers, have the power to set their own licence fee?*

We believe all Licensing Authorities should have the power to set their own fees, this will allow charging for compliance and enforcement as well as the administration.

International comparisons

14. *Is there a correlation between the strictness of the regulatory regime in other countries and the level of alcohol abuse? Are there aspects of the licensing laws of other countries, and other UK jurisdictions, that might usefully be considered for England and Wales?*

2 September 2016

Cambridgeshire County Council Public Health Directorate – written evidence (LIC0123)

Q1. Are the existing four licensing objectives the right ones for licensing authorities to promote? Should the protection of health and wellbeing be an additional objective?

Cambridgeshire Public Health Directorate Response

- 1.1 The promotion of health and wellbeing should be an additional objective and it is a concern that this proposal suggested nationally in 2013 has not yet been formerly introduced.
- 1.2 Alcohol related harms result from a broad range of social, economic and political determinants that are affected by policies made in non-health sectors. Individual-level interventions, despite good evidence for the effectiveness of brief interventions in reducing alcohol consumption are unlikely to be sufficient in isolation to reduce the 31% of women & 44% of men in England who drink more than the recommend weekly alcohol limits (2013 Boniface et al European Journal of Public Health). Alcohol related harms can be tackled through licensing planning and local partnerships and the introduction of a health licensing objective is key to achieving this.
- 1.3 Currently public health can respond as a responsible authority to licensing applications, but any evidence submitted must be related to one of the existing non-health related licensing objectives if it is to be considered. The introduction of a public health objective (preferably one that promotes Health & Wellbeing) would allow more scope for the use of health data in licensing decision-making.
- 1.4 Addressing alcohol related health harms is constrained by the absence of specific legal health & wellbeing licensing objective. Alcohol licensing legislation needs to address population health, where evidence that an area has higher than average rates of alcohol-related mortality or disease can be used. Often areas of health inequalities, which experience high rates of alcohol related mortality, are also associated with high alcohol outlet density. For example in Cambridgeshire a male in our most deprived district (Fenland), can expect to live around 4 years less than our least deprived district (South Cambs). In Cambridgeshire's most deprived town (Wisbech) a Cumulative Impact Zone has been set up as the increased number of alcohol outlets is impacting negatively on the quality of life in the area. There are a total of 23 off sales outlets in the small CIZ area and new off sales licenses are requested at a frequency of one every 2-3 months. Providing evidence linking local contexts to alcohol harm will support appropriate licensing policy statements e.g. justifying how alcohol outlet density influences drinking behaviour. Adding a health and wellbeing objective would help to make a stronger case to prevent saturation of premises in areas particularly impacted by alcohol.

Q2. Should the policies of licensing authorities do more to facilitate the enjoyment by the public of all licensable activities? Should access to and enjoyment of licensable activities by the public, including community activities, be an additional licensing objective? Should there be any other additional objectives?

Cambridgeshire Public Health Directorate Response

2.1 We would strongly oppose such an objective.

The current provisions via temporary licenses, allows for discretion to be applied by licensing authorities, to allow responsible sales of alcohol at public events including community activities. There are generally a good range of premises available selling alcohol and any objective promoting enjoyment could serve to exacerbate problems of anti-social behaviour and alcohol related crime. An ONS study in 13/14 found out of 1,327,000 violent incidents 53% or 704,000 were alcohol related. Between 22.00 and 06.00, 83% of violent incidents are alcohol related. Such an objective may be well intentioned by may only serve to exacerbate the negative consequences.

The balance between rights and responsibilities

Q3. Has the Live Music Act 2012 done enough to relax the provisions of the Licensing Act 2003 where they imposed unnecessarily strict requirements? Are the introductions of late night levies and Early Morning Restriction Orders effective, and if not, what alternatives are there? Does the Licensing Act now achieve the right balance between the rights of those who wish to sell alcohol and provide entertainment and the rights of those who wish to object?

Cambridgeshire Public Health Directorate Response

3.1 It is inappropriate to assess the effectiveness of the introduction of Late Night Levies and Early Morning Restriction Orders (EMRO) as part of the licensing policy as there has not been sufficient implementation of these special policies to ascertain their effectiveness. The discretionary powers afforded to licensing committees and officers means that the application of laws and guidance can vary widely. In licensing policy local implementation determines what effect national policy will have, Nicholls (2015) notes the consequences of localism of alcohol licensing policy, whilst providing the opportunity to test and develop new policies they provide opportunities to challenge and derail national legislation. This has been evident in the introduction of EMRO's where two cases have provided the opportunity for high-profile challenges by the trade funding high cost legal expenses. Consequently there is a reluctance of other local authorities to propose EMRO's particularly when local authorities are experiencing significant budget pressures, councils are less likely to introduce restrictive policies that may face legal challenges.

For special policies like EMRO to be assessed on their effectiveness then pilot sites need to be established nationally that are not subject to legal challenge from the alcohol industry and clear outcomes can be evaluated.

3.2 The Licensing Act has not achieved a correct balance between the rights of those who wish to sell alcohol and those who wish to object. Licensing committees are directed to accept applications automatically unless a representation is submitted from a “responsible authority” e.g. police, trading standards etc. Representations have to show that the proposed license threatens to undermine the four licensing objectives. Although in 2011 local public health teams were added to the list of responsible authorities this was without the introduction of a public health and wellbeing objective which means that licensing decisions are framed around non-health arguments and processes. Under a Health & Wellbeing licensing objective, providing evidence linking local contexts to alcohol harm will support appropriate licensing policy statements e.g. justifying how alcohol outlet density influences drinking behaviour. Representation made are subject to the licensing authorities discretion in deciding to grant or impose conditions which means the application of laws and guidance can vary widely. National guidance needs to be stronger in regards to supporting licensing committees to understand the impact of alcohol health related harms.

Q4. Do all the responsible authorities (such as Planning, and Health & Safety), who all have other regulatory powers, engage effectively in the licensing regime, and if not, what could be done? Do other stakeholders, including local communities, engage effectively in the licensing regime, and if not, what could be done?

Cambridgeshire Public Health Directorate Response

4.1. Stakeholders and local communities rarely engage in the licensing regime although statutory partners may not have explored the potential fully for doing so. Local communities are not classified as a “responsible authority” which could be worth considering reviewing. There are a couple of potential barriers that could be looked at. Firstly the relatively short timescales from applications being made to hearings taking place which may limit such engagement. Second the complex nature of the Licensing process to the general public, could easy readily available literature be produced nationally to promote such engagement?

4.2 In principle there are opportunities for collaboration across local government and planning is a good example. New alcohol outlets must hold planning permission in addition to alcohol license. The legal framework governing planning is broad enough to include the goal of health promotion. Where licensing and planning conditions differ premises must comply with both, for example whichever specifies the earliest closing time must be observed. There is scope for addressing long term population health impacts by controlling local alcohol availability through local development frameworks.

However the practice of making this happen is complex as planning system is based on the use of classes e.g. restaurants and cafes which sell food and drink for consumption on the

premises are Class A3. It is not possible to object to an application for an A3 use on the grounds of alcohol alone as this would prevent all A3 users on that site, whether they sell alcohol or not. Consideration to splitting A3 with a separate category for the licensing element should be given.

A District Councils Local Plan could introduce a policy restricting the use of a premises for alcohol sales but it would be difficult to introduce a blanket nature of the use of classes, a policy could be introduced limiting the building or outlet within a set distance of a concern (similar ethos to restricting fast food outlets within a set distance of a school). District councils would need to be clear on defining that concern e.g. outlet density or reaching a saturation point. The use of District Local Plan could be facilitated by a separate alcohol licensing category.

Licensing and local strategy

Q5. Licensing is only one part of the strategy that local government has to shape its communities. The Government states that the Act “is being used effectively in conjunction with other interventions as part of a coherent national and local strategy.” Do you agree?

Cambridgeshire Public Health Directorate Response

5.1. The Licensing Act 2003 is one part of the strategy that local government has to shape communities. However it is according to the UK Government’s 2012 Alcohol Strategy “vital that licensing authorities are able to take health-related harms into consideration in decision on cumulative impact policies”. This policy contained a proposal to introduce public health as a licensing objective. Inclusion of health and wellbeing as an additional objective would facilitate a greater conjunction between licensing and local and national strategies to improve health and wellbeing.

Q6. Should licensing policy and planning policy be integrated more closely to shape local areas and address the proliferation of licensed premises? How could it be done?

Cambridgeshire Public Health Directorate Response

6.1. Yes this would be worth exploring.

Some deprived areas have high streets populated with off licenses, fast food outlets and betting shops with other units often empty. It is often argued that supply meets demand but in a way supply can serve to establish and entrench poorer lifestyles and behaviours.

(see also 4.2)

In contrast to licensing, the legal framework governing planning is broad enough to include the goal of health promotion. There is precedence for using spatial planning to improve health through regulating the concentration and proximity of take away food outlets

(Martineau et al 2013 – London Borough of Barking & Dagenham). As well as preventing saturation of certain premises could planning permission be restricted in areas to promote more positive developments? This could equally apply to more prosperous inner city areas which have a proliferation of bars and clubs which may result in older people and families staying away during evenings.

Crime, disorder and public safety

Q7. Are the subsequent amendments made by policing legislation achieving their objects? Do they give the police the powers they need to prevent crime and disorder and promote the licensing objectives generally? Are police adequately trained to use their powers effectively and appropriately?

Cambridgeshire Public Health Directorate Response

7.1. No comments.

Q8. Should sales of alcohol airside at international airports continue to be exempt from the application of the Act? Should sales on other forms of transport continue to be exempt?

Cambridgeshire Public Health Directorate Response

8.1. No comments. We don't have any major international airports in Cambridgeshire.

Licensing procedure

Q9. The Act was intended to simplify licensing procedure; instead it has become increasingly complex. What could be done to simplify the procedure?

Cambridgeshire Public Health Directorate Response

9.1. The current procedures are fit for purpose. However the concern we have is that when under special policies e.g. cumulative impact policy, responsible authorities like Public Health can make a representation, there is an expectation that officers will present the representation at hearings. This can be quite a burden in respects to scarce public health staff resource, especially if there are 3-4 applications per month that require reviewing. It would be helpful in terms of maximising efficient use of staff time, if the written evidence within the representation would be sufficient, unless there are special circumstances.

See also 4.1 more easy-read literature could be made available for the general public.

Q10. What could be done to improve the appeal procedure, including listing and costs? Should appeal decisions be reported to promote consistency? Is there a case for a further appeal to the Crown Court? Is there a role for formal mediation in the appeal process?

Cambridgeshire Public Health Response

10.1. The appeals procedure seems fit for purpose. We would not support a further appeal to the Crown Court as it would increase costs and time taken to process applications. Further involvement of the Crown Court could result in significant financial costs incurred to the public sector agencies which are currently working with reduced budgets, larger corporate retailers could exploit this position.

Sale of alcohol for consumption at home (the off-trade)

Q11. Given the increase in off-trade sales, including online sales, is there a case for reform of the licensing regime applying to the off-trade? How effectively does the regime control supermarkets and large retailers, under-age sales, and delivery services? Should the law be amended to allow licensing authorities more specific control over off-trade sales of “super-strength” alcohol?

Cambridgeshire Public Health Directorate Response

11.1. See also 1.2 there is definitely an issue in certain parts of Cambridgeshire with a Proliferation of off sales, there are also companies who deliver to any address 24 hours a day, which all serves to increase alcohol availability. The current regime makes it difficult to challenge larger retailers as they can afford to employ legal experts, making it more challenging to put in representations. Super strength products tend to be created for and marketed towards those who already misuse alcohol. In response to this local authorities across the county have been devising schemes to try and restrict the sales of high strength products in an attempt to mitigate harm. Locally Suffolk partners have led in this work:

<http://www.suffolk.police.uk/safetyadvice/personalsafety/alcoholawareness/reducingthestrength.aspx>

The Reduce the Strength programme in Suffolk has resulted in a reduction in street drinking and levels of anti-social behaviour. Some local authorities have been concerned about possible legal challenges from drinks companies. If the law is changed to give greater control to licensing authorities it is likely that a greater number would look to restrict sales of these products, so as to prevent harm. Therefore we support the suggestion of giving more specific controls.

Pricing

Q12. Should alcohol pricing and taxation be used as a form of control, and if so, how? Should the Government introduce minimum unit pricing in England? Does the evidence that MUP would be effective need to be “conclusive” before MUP could be introduced, or can the effect of MUP be gauged only after its introduction?

Cambridgeshire Public Health Directorate Response

12.1 We would support the introduction of minimum unit pricing. There is already evidence from other countries that increasing price reduces demand. It will not be possible to determine the impact fully in England until such a policy is implemented but given the estimated costs of £21bn in health care, crime and lost productivity costs from excessive alcohol use, measures to reduce consumption should be promoted.

12.2 Minimum Pricing UK Policy Context Background

In the UK Alcohol Strategy 2012, the government committed to introducing a minimum unit price for alcohol, to consult on proposals to ban off-trade multi-buy promotions and introduce a cumulative health impact licensing objective for local alcohol policy (Scally G 2013). Later that year, the Home Office released a consultation recommending a minimum unit price of 45p. Pricing policies received media attention and debate where concern over the fairness of policies on the “majority who enjoy” and drink responsibly and if this is an infringement of individual rights. This may have affected the UK policy direction as in 2013 the Home Office announced it would be a mistake to implement minimum pricing at this stage in the absence of empirical and conclusive evidence. Minimum pricing has been abandoned for England for alternative pricing regulation – banning the sale of alcohol “below cost”. This ban came into force in England and Wales in May 2014.

Scotland’s Implementation of Minimum Pricing

In 2009 the Scottish national alcohol strategy had committed the Scottish Government to a minimum price per unit of alcohol which became law in the form of the Alcohol Minimum Pricing Scotland Act 2012. In 2012 60% of the volume of alcohol sold in Scotland in the off-trade was sold below 50p per unit, the recommended minimum price for Scotland was to be set at 50p. However the law is still facing legal challenges:

- Minimum pricing contravenes UK devolution and/or European Union free trade laws.
- May 2013 legal challenge from the Scotch Whisky Association and Sprit Trade Association – failed in the Scottish Courts but is still under appeal.
- European Level – detailed opinion of the European Commission on the Scottish proposals suggested that they may constitute a disproportionate restriction on free trade and competition.
- December 2015 – European Court of Justice ruled

“the court states that it is ultimately for the national court to determine whether measures other than that provided for by the Scottish Legislation, such as increased taxation on

alcoholic drinks, are capable of protecting human life and health as effectively as the current legislation, while being less restrictive of trade in those products within the EU.”

- Scottish Government – remains certain that minimum pricing is the right measure for Scotland.
- Court of Session Edinburgh – is now required to examine the evidence whether improvements in public health could be achieved by other means i.e. increasing tax rates.

Minimum pricing effectiveness

Policies that increase retail prices are regarded internationally as among the most effective options from various interventions. NICE (2014) reported on a Lancet study of which the results showed that minimum pricing would have the greatest impact on people whose drinking is considered to be harmful, which was defined as consumption over 50 units per week for men and more than 35 units per week for women. Around three-quarters of the total reduction in alcohol consumption from minimum pricing would occur among such drinkers, leading to an estimated 860 fewer alcohol related deaths per year, and a reduction of 29,900 hospital admissions per year. The effect of minimum pricing around moderate drinkers was found to be very small. The group most affected by minimum pricing was found to be harmful drinkers on low incomes, reducing their alcohol intake by an estimated 300 units per year, with reductions in mortality much greater than for drinkers in any other group. The differential effect arose because minimum price policies target cheap alcohol products, which make up higher proportion of the average selection of alcohol purchases for heavier drinkers than those of moderate drinkers.

Fees and costs associated with the Licensing Act 2003

Q13. Do licence fees need to be set at national level? Should London, and the other major cities to which the Government proposes to devolve greater powers, have the power to set their own licence fees?

Cambridgeshire Public Health Directorate Response

13.1. No comment

International comparisons

Q14. Is there a correlation between the strictness of the regulatory regime in other countries and the level of alcohol abuse? Are there aspects of the licensing laws of other countries, and other UK jurisdictions, that might usefully be considered for England and Wales?

Cambridgeshire Public Health Directorate Response

14.1 – A comprehensive study was undertaken in Australia:

<http://ndri.curtin.edu.au/local/docs/pdf/publications/R207.pdf>

This study found strong support for the following measures; pricing, hours of operation and minimum drinking age where changes could be positively correlated with decreasing impact/consumption.

The institute of Alcohol Studies gives a useful overview of the different measures/approaches in the UK context.

<http://www.ias.org.uk/Alcohol-knowledge-centre/Availability-and-licensing/Factsheets/Licensing-legislation-and-alcohol-availability.aspx>

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2 September 2016

Campaign for Real Ale – written evidence (LIC0121)

1. Executive Summary

Thank you for providing the opportunity to submit written evidence to the House of Lords Select Committee on the Licensing Act 2003.

CAMRA, the Campaign for Real Ale, is a UK consumer organisation representing over 181,000 individual consumers on matters relating to beer and pubs. We are an independent, voluntary organisation campaigning for real ale, community pubs and consumer rights.

Please find attached our response to the Call for Evidence, expanding on points from the following summary:

- CAMRA opposes the introduction of a licensing objective specifically based upon health and wellbeing and instead would support the addition of an objective encouraging ‘public access to, and responsible enjoyment of, licensable activities that enhance community life.’
- CAMRA is calling for the abolition of late night levies, Early Morning Restriction Orders and Cumulative Impact Policies.
- Better coordination should be encouraged between the planning and licensing regimes, including a statement of how the relationship between the two will work within each council’s Licensing Policy.
- The process of surrendering a premises licence should be amended so that a new licensee is able to reactivate the old premises licence rather than applying for a new premises licence. This simplification of the licensing regime is needed to ensure that community pubs can more easily reopen after extended periods of closure.
- CAMRA opposes mandatory bans on the sale of high strength beers in the off-trade as this reduces consumer choice, restricts innovation by brewers and discriminates against some high quality beer.
- CAMRA opposes any increase in license fees and the proposal that licensing fees should be set at a local level. The setting of fees on a national basis helps ensure that the licensing regime is fairly applied throughout England and Wales and licensing costs do not become a burden for small businesses such as community pubs and clubs.
- CAMRA believes that pubs with a rateable value below £12,000 should be exempt from annual licensing fees. This could be partially funded by extending the annual fee multiplier (currently in place for large bars and pubs) to the off-trade, in particular to those supermarkets which sell very high volumes of alcohol.

- The Temporary Events Notice system should be further extended, to allow up to 20 notices per premises per year with a maximum attendance of 999 people, which is necessary to take into account large scale community events such as beer festivals.

Licensing objectives

Are the existing four licensing objectives the right ones for licensing authorities to promote? Should the protection of health and wellbeing be an additional objective?

CAMRA does not support the addition of the protection of health and wellbeing as a licensing objective. Health authorities are existing stakeholders in the licensing regime and the appropriate tools are already in place for local authorities to address alcohol-related health issues within the Act as it currently exists.

Scotland's decision to introduce a fifth licensing objective for 'promoting and improving public health' through the Licensing (Scotland) Act 2005 is not regarded as a widespread success. The following evidence indicates that the objective is difficult to understand and to apply:

- A 2011 report, supported by the Scottish Centre for Social Research (SCRC), evaluated the effect of the Act and found that 'LSOs [Licensing Standards Officers] and licensing board respondents felt that the 'promoting and improving public health' objective was the one that had been the least successfully addressed locally'. The report cited a number of reasons for this including the difficulties defining and measuring the wider scope of the objective and the inadequacies of the local data available from which to monitor success¹⁸⁶.
- The final SCRC report, two years later, stated that 'one of the most consistent findings throughout the three years of the evaluation was that the public health objective was viewed as being especially problematical, and it was the objective that Boards, Forums and LSOs in areas across Scotland were struggling to address¹⁸⁷'. Owing to poor links between licensing and health officials, health professionals did not understand the licensing system and vice versa. It is important to note from this that officers in a council's licensing department may lack the detailed knowledge of public health issues to apply a health objective properly. Furthermore, the report acknowledged that the Act failed to achieve the aim of increasing the cost of alcohol in the off-trade.

¹⁸⁶ An evaluation of the implementation of the objectives of the Licensing (Scotland) Act 2005: First interim report summary, June 2011 [http://www.healthscotland.com/uploads/documents/16165-Licensing%20\(Scotland\)%20Act%202005ImplementationEvaluationSummaryOne.pdf](http://www.healthscotland.com/uploads/documents/16165-Licensing%20(Scotland)%20Act%202005ImplementationEvaluationSummaryOne.pdf)

¹⁸⁷ An evaluation of the implementation of, and compliance with, the objectives of the Licensing (Scotland) Act 2005: Final Report, May 2013 <http://www.healthscotland.com/uploads/documents/21321-RE024%20Licensing%20Act%20Evaluation%20Final%20Report.pdf>

- Monitoring and Evaluating Scotland’s Alcohol Strategy (MESAS), a programme run by NHS Health Scotland for the Scottish Government to assess the effects of a range of legislation on public health, reported that ‘understanding and addressing the public health objective has been challenging for Licensing Boards¹⁸⁸’.

The final SCRC report, two years later, stated that ‘one of the most consistent findings throughout the three years of the evaluation was that the public health objective was viewed as being especially problematical, and it was the objective that Boards, Forums and LSOs in areas across Scotland were struggling to address^[1]’. Due to poor links between licensing and health officials, health professionals did not understand the licensing system and vice versa. It is important to note from this that officers in a council’s licensing department may lack the detailed knowledge of public health issues to apply a health objective properly. Furthermore, the report acknowledged that the Act failed to achieve the aim of increasing the cost of alcohol in the off-trade.

It is now clear that it is proving difficult to implement the public health objective, due to a lack of specialist health knowledge in licensing departments, and health professionals lacking the expertise and access to detailed data that would be necessary to assess whether proposed new licensed premises would pose significant risks to public health.

Further to this, a health-related licensing objective is not an appropriate mechanism for assessing applications for new licences as it is impossible to identify and target specific premises that could cause alcohol-related harm to health before they are open and trading.

Should the policies of licensing authorities do more to facilitate the enjoyment by the public of all licensable activities? Should access to and enjoyment of licensable activities by the public, including community activities, be an additional licensing objective? Should there be any other additional objectives?

CAMRA supports the introduction of a licensing objective based on public enjoyment of, and access to, licensed activities. CAMRA would recommend that the wording of the objective be ‘public access to, and responsible enjoyment of, licensable activities that enhance community life.’

Pubs are at the heart of the community. Research commissioned by CAMRA and carried out by Oxford University¹⁸⁹ has found that people who identify as having a ‘local’ pub have more close friends and feel more engaged with their local community. This confirms the importance of many pubs as community facilities, the enjoyment of which should be supported and promoted by licensing authorities through a national licensing objective.

¹⁸⁸ Monitoring and Evaluating Scotland’s Alcohol Strategy (MESAS): Third Annual Report, December 2013
<http://www.healthscotland.com/uploads/documents/22621-MESAS%203rd%20Annual%20Report%20Executive%20Summary.pdf>

¹⁸⁹ ‘Friends on Tap: the role of pubs at the heart of the community’ by Professor Robin Dunbar (2016)
<http://www.camra.org.uk/documents/10180/36197/Friends+on+Tap>

Whilst pubs have always served local residents and so are regarded as community facilities in their own right, in recent years there has been a growing trend of pubs diversifying and offering more varied community services to local residents. This further evidences the value of pubs to their communities and their importance in the licensed trade.

Some examples of pubs providing extensive community services are:

- The Cholmeley Arms, Burton-le-Coggles, Lincolnshire, which provides a village farm shop;
- The Black Swan, Ravenstonedale, Cumbria, which has a village shop and provides lunch meals to a local primary school;
- The Chequers, Feltwell, Norfolk, which also functions as a community cinema and hosts a senior citizens' lunch club;
- The Bell, Wortwell, Norfolk, which has a community shop, cafe and also houses the village defibrillator;
- The King's Arms, Stainton, Cumbria, which is also a Post Office;
- The George & Dragon, Hudswell, North Yorkshire, which has a village shop, library and allotments. It is also owned by the local community.

Licensing authorities should encourage a variety of licensed premises within an authority area to cater for the needs of local communities. Well run community pubs and clubs cater for the needs of local people, and provide a welcoming and enjoyable atmosphere and programme of events for those who use them.

Many pubs also make a valuable contribution to community life through their architectural merits and heritage value. CAMRA compiles a *National Inventory of Historic Pub Interiors*, which lists pubs that are considered to have traditional interiors of national and regional importance which can be accessed at: <http://www.heritagepubs.org.uk/>. CAMRA would like local authorities to do more through licensing policies and decisions to preserve pubs with valuable heritage features. A new licensing objective around the responsible enjoyment by the public of licensable activities would enable local authorities to have regard to historic pubs through the licensing system.

It is important to differentiate between the contributions made by pubs to a community and those made by clusters of late night bars and nightclubs that may cause antisocial behaviour and disrupt community life. This should be recognised through this additional objective in the Licensing Act by making direct reference to “responsible” enjoyment and the requirement to “enhance community life”

The balance between rights and responsibilities

Has the Live Music Act 2012 done enough to relax the provisions of the Licensing Act 2003 where they imposed unnecessarily strict requirements? Are the introductions of late night

levies and Early Morning Restriction Orders effective, and if not, what alternatives are there? Does the Licensing Act now achieve the right balance between the rights of those who wish to sell alcohol and provide entertainment and the rights of those who wish to object?

Live Music Act 2012

CAMRA welcomes the introduction of the Live Music Act, and the greater facilitation of small scale music events that are important to many pubs. The financial importance of the provision of live music in pubs should not be underestimated, and is also further evidence of a service that pubs provide to local communities.

In 2011 CGA Strategy conducted research for PRS for Music, which found that pubs without featured music are three times more likely to close than those with featured music, and that on average music venues take £306 per day more in wet sales¹⁹⁰ when providing entertainment.

The changes made through the Live Music Act have not only facilitated greater provision of live music in pubs, but also ensured that a more diverse range of venues can now offer live music, increasing the range of experiences that are available to local communities through the licensed trade. Smaller licensed venues being free to provide small live music events without the need to apply for changes to their premises licence has undoubtedly boosted the commercial viability of many pubs.

Late Night Levies

The introduction of late night levies by local councils is strongly opposed by CAMRA owing to the extra cost this places on community pubs, many of which already face significant financial pressures. This restricts consumer choice and damages the diversity of premises on offer in a licensing authority area. Further to this, CAMRA believes that extra costs should be imposed only on licensed premises found to be individually responsible for alcohol-related disorder, rather than as a blanket charge for all premises.

Many community pubs with licensed hours that fall within the hours of a levy will vary their licensed hours to avoid the extra fee, reducing the availability of such premises after midnight and reducing overall levy revenue. The disproportionate effect that the imposition of a levy has on smaller, community-focused venues as opposed to nightclubs and large bars undermines the balance that the Licensing Act seeks to achieve between the interests of the larger licensed trade and local communities.

A report¹⁹¹ released by CAMRA and the British Beer and Pub Association earlier this year highlighted the threat that late night levies can pose to community pubs. Instead, CAMRA

¹⁹⁰ <https://www.prsformusic.com/SiteCollectionDocuments/PPS%20Studies/CGA%20Summary%20for%20web%20FINAL.pdf>

¹⁹¹ 'Supporting a safer night time economy: alternatives to the Late Night Levy' British Beer and Pub Association and CAMRA (April 2016) <http://www.camra.org.uk/documents/10180/0/Late+Night+Levy+Report.pdf>

believes that the benefits of partnership working between local licensed premises, the licensing authority and police is the most successful and cohesive approach to managing the late night economy. These exist through Best Bar None, Pub Watches and Purple Flag schemes, which are adopted across the country.

There are currently eight late night levies in place across England; none have been implemented by Welsh licensing authorities. Common issues cited with the implementation of the levy are the inequality between estimated and actual income, the inflexibility of the legislation not allowing the targeting of ‘problem’ areas, and the lack of recognition given to existing effective local partnership schemes or Business Improvement Districts (BIDs). Cheltenham City Council announced in February of this year that they would be scrapping their levy in favour of a BID scheme¹⁹², providing further evidence for the benefits of partnership working over the imposition of a levy on local businesses.

Case studies of Councils that have rejected the introduction of a levy:

- Bristol City Council, 2013 - Concluded that a BID scheme would provide for more targeted spending of funds and would include businesses and stakeholders in efforts to manage the late night economy;
- Leeds City Council, 2013 - A report by the Scrutiny Board¹⁹³ labelled the legislation ‘fundamentally flawed’, particularly in terms of flexibility and unfair costs for some licensed premises. A BID scheme has since been implemented;
- Norwich City Council, 2012 - The Licensing Committee rejected the idea of a levy due to limited revenue return following the time and cost of implementation. The estimated income before administrative fees was just £35,000;
- Royal Borough of Windsor and Maidenhead, 2014 - Concluded that the legislation was not suitable for the area. This decision was made following a meeting in which concerns were raised that alcohol related crime was not an issue across the whole local authority area, and that businesses in Maidenhead would be burdened by the costs, whilst the levy funds would most likely be spent in Windsor;
- Monmouthshire County Council, 2013, - The Council’s Regeneration and Culture Directorate recommended that ‘a new levy could be judged as inappropriate by many and not sympathetic to supporting local businesses’¹⁹⁴;

¹⁹² <http://www.morningadvertiser.co.uk/Legal/Licensing-law/Cheltenham-late-night-levy-to-be-scrapped-after-scheme-flops>

¹⁹³ <http://democracy.leeds.gov.uk/documents/s106406/Late%20night%20levy%20Appx%20Scrutiny%20Board%20report%2021%2011%2013.pdf>

¹⁹⁴ <http://www.monmouthshire.gov.uk/app/uploads/sites/11/2014/01/9c-Late-Night-Levy.pdf>

- Tameside Metropolitan Borough Council, 2014 - Rejected a levy following public consultation in 2014 due to businesses already struggling in the area¹⁹⁵;
- Havant Borough Council, 2012 - The Licensing Committee rejected a levy, citing falling levels of alcohol related crime and disorder which the police had partly attributed to the successful local PubWatch scheme¹⁹⁶;
- Weymouth and Portland Borough Council, 2015 - A report providing evidence to the Council included a statement from Dorset police highlighting that a BID was already in place and it was supporting the local Best Bar None scheme;
- Warwick District Council, 2015 - Produced a report which recommended that a levy not be introduced due to limited revenue return following the time and cost of implementation¹⁹⁷;
- London Borough of Redbridge, 2015 - The Council's Statement of Licensing Policy¹⁹⁸ from 2015 states explicitly that the Council are not considering implementing a levy as it would apply across the whole Local Authority area, and not target premises that are contributing to crime and disorder.

So far, no conclusive evidence exists that late night levies are an effective tool for managing the late night economy, while the benefits of partnership working and BID schemes have been well documented. During the process of setting up a BID, licensees must all agree to pay fees towards the scheme, engaging them in the process rather than the local authority imposing a levy on them without consent from all businesses.

CAMRA is calling for the abolition of the late night levy and better promotion at both a national and licensing authority level of partnership schemes such as PubWatch, Best Bar None, Purple Flag and Business Improvement Districts, which encourage participation and input from the licensed trade rather than imposing a blanket tax on all late night premises.

Early Morning Restriction Orders

CAMRA considers Early Morning Restriction Orders ineffective, and supports the removal of this power. No licensing authority has implemented one since the measure was introduced, proving there is no appetite for their use.

Cumulative Impact Policies

¹⁹⁵ <http://www.popall.co.uk/news-publications/news/2014/tameside-metropolitan-borough-council-reject-late-night-levy.aspx>

¹⁹⁶ <http://havant.moderngov.co.uk/documents/s3298/Late%20Night%20Levy.pdf>

¹⁹⁷ <http://www.kenilworthweeklynews.co.uk/news/local-news/late-night-charges-unlikely-for-pubs-in-warwick-district-1-7064009>

¹⁹⁸ http://www2.redbridge.gov.uk/cms/business_and_consumers/licensing_and_street_trading/alcohol_entertainment_and_lnr/statement_of_licensing_policy.aspx

The use of cumulative impact policies by licensing authorities is opposed by CAMRA as the measure unfairly penalises prospective licensees and operators, rather than working with the established partnerships to tackle problems with existing premises. New applications for premises licences or for variations should be dealt with on their individual merits alone, and not restricted due to other ‘problem’ premises in the local area. Such policies can contribute to the negative image of particular areas, and prevent new, more responsible premises from contributing to the local economy and regeneration of an area.

Do all the responsible authorities (such as Planning, and Health & Safety), who all have other regulatory powers, engage effectively in the licensing regime, and if not, what could be done? Do other stakeholders, including local communities, engage effectively in the licensing regime, and if not, what could be done?

CAMRA estimates that a net 21 pubs close each week¹⁹⁹, which is partly due to weaknesses in the planning system. We believe that the planning system should better support the licensed trade to protect pubs against unwanted development behind the backs of the local community.

Currently, pubs can be converted into other uses, such as supermarkets and estate agents, without planning permission, which is required for conversion to housing. A report by Fleurets highlighted that as many as half of the pubs sold in 2015 were converted to another use.²⁰⁰ This undermines pub sites allocated on the Local Plan and denies members of the local community a right to consultation. Without appropriate consultation, this can have a negative impact on the public engaging with the council’s consultations in future applications and undermine the council’s efforts to ensure that licensed premises reflect community needs.

CAMRA campaigns for the General Permitted Development Order to be amended so that any development involving a pub site requires an application to be made for planning permission.

Now increasingly providing important community facilities and diversified services including community shops, post offices and libraries, these premises are bringing a welcome variety to the licensed trade. A licensing objective reflecting the importance of a premises’ enhancement to community life would recognise the importance of good community pubs, encourage local communities to engage positively in the licensing process and provide clear and positive guidance for the licensing team in regulating its areas.

Licensing and local strategy

¹⁹⁹ CGA Strategy, July 2016

²⁰⁰ http://www.fleurets.com/market-intelligence/media/survey_of_pub_prices_dec_15.pdf

Licensing is only one part of the strategy that local government has to shape its communities. The Government states that the Act “is being used effectively in conjunction with other interventions as part of a coherent national and local strategy.” Do you agree?

The licensing objectives set out in the Act are with the view to protect communities. However, without a fifth objective seeking proactively to enhance community life, the current objectives fail to meet wider local and national strategies that aim better to benefit and empower communities. Introducing this objective would be in line with other government policy that seeks to encourage communities to register important buildings as Assets of Community Value, as well as recognising and investing in the growth of local co-operative models such as community owned pubs through the recently announced DCLG Community Pub Business Support Programme.

It is important for a coherent local strategy that planning departments contribute to licence applications in order to make applicants and decision makers aware of any impact licences will have on developed properties surrounding the premises or developments for which permission may have been granted.

Should licensing policy and planning policy be integrated more closely to shape local areas and address the proliferation of licensed premises? How could it be done?

Because of the impact that disjointed approaches from different local government departments can have on communities and on licensed premises, we would urge closer cooperation between planning and licensing regimes at a local level. This should include clear and consistent delegation of powers to officers to help resolve cases where separate departments’ positions on applications differ. The decision making process should be set out in each council’s Licensing Policy.

In cases where licences are considered by Committee, additional conditions should be imposed to reflect and promote the importance of the objectives. Officers’ reports on applications should refer to the planning department for comment on the area surrounding the premises to contextualise the application, and highlight any impact the licence will have on other properties or developments at the time of application.

There should also be greater communication between licensing and planning departments when considering planning applications for developments adjacent to, or near, licensed premises. Despite the amendment to the Planning Bill in 2016 to provide an ‘Agent of Change’ principle, there is still concern that pubs can be affected by noise complaints from residents of new developments next to or near existing pubs. High profile cases where such concerns have been raised include the George Tavern, Tower Hamlets, an iconic music pub and community venue whose late night licence is under threat due to plans to develop flats on adjacent land²⁰¹, and also the 100 year old Prince of Wales in Moseley, Birmingham, a

²⁰¹ <http://www.standard.co.uk/news/london/the-george-tavern-iconic-music-pub-set-for-fresh-court-battle-in-development-row-a3206866.html>

pub with an award winning licensee who fears that approved plans for flats next to his pub could lead to closure if residents submit noise complaints²⁰².

In both the planning and licensing regimes' approach to granting licences, CAMRA would like to see recognition that many pubs are community facilities which provide features that are unique from other licensed premises, such as village shops, post offices and libraries, and which play a vital role in community cohesion. At a local planning authority level, and in line with paragraph 70 of the National Planning Policy Framework²⁰³, pubs are increasingly being granted robust protection in Local Plans. We believe that a fifth objective recognising premises that enhance community life would support the retention of community pubs and clubs.

Contrary to issues around the proliferation of other types of licensed premises, well run community pubs and clubs can encourage moderate, responsible and social drinking and can have a positive influence on neighbouring premises. CAMRA acknowledges the potential impact on anti-social behaviour and disruption to community life that could occur as a consequence of a disproportionate number of late night bars and nightclubs, and supports the spreading of late night licences across public houses throughout a licensing authority area.

Crime, disorder and public safety

Are the subsequent amendments made by policing legislation achieving their objects? Do they give the police the powers they need to prevent crime and disorder and promote the licensing objectives generally? Are police adequately trained to use their powers effectively and appropriately?

It is in the consumer interest that licensed premises are well run and safe environments. Existing legislation provides a whole range of measures that can be taken by the police to mitigate the risk of disorder and antisocial behaviour. These measures appear both reasonable and proportionate

Should sales of alcohol airside at international airports continue to be exempt from the application of the Act? Should sales on other forms of transport continue to be exempt?

As a consumer organisation, CAMRA believes that the importance of choice and availability should be balanced with public safety. We are not aware of a body of evidence that would support the removal of these exemptions.

Licensing procedure

²⁰² <http://www.itv.com/news/central/2016-08-16/landlord-fears-development-cause-lead-to-pub-closure/>

²⁰³ National Planning Policy Framework, (2012), pg 17
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/6077/2116950.pdf

The Act was intended to simplify licensing procedure; instead it has become increasingly complex. What could be done to simplify the procedure?

CAMRA believes that licensing authorities should take licensing decisions with regards to the current licensing objectives, and the following criteria:

- the suitability of the applicant;
- the suitability of the premises;
- the likelihood of nuisance to neighbours;
- whether granting the application will provide a wider choice for the consumer.

In addition to this, and in the interests of preventing further complication of the licensing regime, the protection of health and wellbeing should not be included as an additional objective in the Act as this will further increase administrative costs borne by local authorities, and is an unnecessary measure considering the involvement that health authorities and health and wellbeing boards already have in the licensing regime and in the promoting the existing licensing objectives.

Further simplification can be achieved by allowing premises licences that have been surrendered or lapsed to be reinstated by a new licensee even where that pub has been closed for an extended period. Currently premises licences can only be transferred within strict time limits. CAMRA would urge reform of this process so that licensees looking to reopen pubs that have been closed for an extended period of time can do so as soon as possible, and at no further delay to the local consumers who would frequent the business.

What could be done to improve the appeal procedure, including listing and costs? Should appeal decisions be reported to promote consistency? Is there a case for a further appeal to the Crown Court? Is there a role for formal mediation in the appeal process?

The Licensing Act provides important powers to local government and allows communities and local stakeholders to engage with local licensing issues, however the Act must be consistently applied in the interests of the national licensed trade. We would support further measures to ensure this, as well as the maintenance of nationally set licence fees.

CAMRA supports the process of a further appeal to Crown Court, as well as a role for formal mediation during this process. Often, licensing departments and hearing panels revoke or reduce licences owing to temporary issues, and with limited information on the impact a decision will have on a pub. This could otherwise be remedied by imposing relevant conditions and close monitoring from the council (and if necessary, the police). A disproportionate decision can significantly affect the trade of a pub for months while it gathers evidence that it is capable of tackling a perceived problem. Mediation, or an extension in the appeal process, would allow greater flexibility in reaching a decision that suits all parties and would not result in a pub becoming unviable.

Sale of alcohol for consumption at home (the off-trade)

Given the increase in off-trade sales, including online sales, is there a case for reform of the licensing regime applying to the off-trade? How effectively does the regime control supermarkets and large retailers, under-age sales, and delivery services? Should the law be amended to allow licensing authorities more specific control over off-trade sales of “super-strength” alcohol?

Licensing in the off-trade

CAMRA believes that the best place for alcohol to be consumed is in the pub, where not only the sale but also the consumption of alcohol is supervised. However, CAMRA is concerned that supermarket alcohol loss leaders are driving consumption away from well run community pubs and towards drinking at home, contributing to the closure of many community pubs. For this reason, the practice of below-cost selling of alcohol in the off-trade is opposed by CAMRA.

As discussed in Section 8 ‘Pricing’, CAMRA supports the extension of the annual premises fee multiplier to off-sales licences so that supermarkets pay the same annual licensing fees as pubs and bars with the same rateable values. Irresponsible price promotions and below cost sales in the off-trade have contributed to more beer being sold by the off-trade than by the on trade.²⁰⁴

High strength beers

CAMRA is concerned about the introduction by some licensing authorities of mandatory bans on the sale of high strength beers. A blanket ban on the sale of high strength beers runs serious risk of breaching competition law. This risk is particularly severe when the pricing of products is discussed. Such an approach also restricts consumer choice and innovation in the beer market.

It is discriminatory that higher strength cider and beer products are subject to local bans when no issue has been taken with the sale of low cost spirits and wines, which are far higher in alcoholic strength. Of particular concern to CAMRA are mandatory licensing conditions which set a very low ABV% point to be considered ‘super strength’. As the strength of beers has increased over time, bans that limit beers with as low ABV as 5-6% can severely impact on consumer choice.

Examples of bans on the sale of high strength beers and ciders include:

- Bedford City Council - beers and ciders with an ABV of above 6.5% cannot be sold in any off licences in the restricted alcohol zone in the city centre; further model licensing conditions restrict the sale of beers or ciders above 5.5% ABV, to be considered ‘super strength’;

²⁰⁴ British Beer and Pub Association Statistical Handbook, 2015, pg14

- City of London Council - reserves the right to impose conditions to restrict the sale of beer and cider above 5.5% ABV, and to restrict the sale of single cans or bottles of beer²⁰⁵;
- Worthing and Adur Councils - reserve a right to impose conditions on new applications when requested by police to restrict the sale of any beers, lagers or ciders over 6% ABV²⁰⁶.
- London Borough of Islington - runs a best practice scheme which involves off-licences committing to not selling beer and ciders above 6.5% ABV. Membership of the best practice schemes can qualify premises for a 30% reduction on the Borough's Late Night Levy annual fee²⁰⁷.

Balance between the on-trade and off trade

The Act places a higher restrictive burden on the on-trade compared to the off-trade, which has subsequently contributed to the overtaking of beer sales in the off-trade by beer sales in the on-trade in 2014.²⁰⁸ CAMRA believe that any further restrictions on the on-trade supposedly aimed at tackling alcohol abuse could have potentially devastating consequences.

Of particular concern is the administrative and financial burden that the pub sector already faces, helping to contribute to 21 net pub closures a week in the UK²⁰⁹. Further restrictions on the on-trade could irreversibly damage the sector and further tip the balance to the off-trade – where consumption is unregulated and therefore health risks to the consumer are greater.

Pricing

Should alcohol pricing and taxation be used as a form of control, and if so, how? Should the Government introduce minimum unit pricing in England? Does the evidence that MUP would be effective need to be “conclusive” before MUP could be introduced, or can the effect of MUP be gauged only after its introduction?

Increases in taxation applied to the on-trade would unduly penalise the vast majority who drink and enjoy pubs responsibly as well as undermining community life. A minimum unit

²⁰⁵ <http://www.cityoflondon.gov.uk/business/licensing/alcohol-and-entertainment/Pages/Licensing-policy.aspx>

²⁰⁶ <http://www.adur-worthing.gov.uk/media/media,98561,en.pdf>

²⁰⁷ <http://www.islington.gov.uk/services/business/licensing/regulations/licences/Pages/late-night-premises-best-practice-scheme.aspx?extra=17>

²⁰⁸ British Beer and Pub Association Statistical Handbook, 2015, pg14

²⁰⁹ CGA Strategy, July 2016

pricing would potentially benefit the large supermarkets and the off-trade by further increasing their profits.

CAMRA would instead suggest an end to the current exemption to the licensing fee multiplier enjoyed by the off-trade including supermarkets. This would result in the annual alcohol licensing fee charged to the largest supermarkets increasing from £350 to £1,050, which is the same fee currently paid by the largest pubs. It is also inequitable that pubs with high rateable values are required to pay a multiplier of standard licensing fees whilst supermarkets with the same rateable values are not.

To reduce the burden of annual premises licence fee costs to smaller pubs and clubs, CAMRA believes that the Government should introduce an exemption from the annual fee to all holders of licences for pubs and clubs with a rateable value below £12,000. Based on existing rateable values it is estimated that around 16,000 pubs would benefit from such an exemption. An exemption from licensing fees would save these pubs either £70 or £180 annually. The proposed exemption threshold is in line with the changes to Small Business Rate Relief next year which means that businesses with a rateable value below £12,000 in England will be exempt from the payment of business rates. This could be partially funded by extending the annual charge multiplier for rateable bands D and E, which is currently in place for on-trade licences only, to premises licensed for off-trade sales as well.

Fees and costs associated with the Licensing Act 2003

Do licence fees need to be set at national level? Should London, and the other major cities to which the Government proposes to devolve greater powers, have the power to set their own licence fees?

CAMRA strongly opposes any fee increases for the on-trade, as this would be damaging to the viability of many pubs. Additional costs associated with licensing beyond the current tax and regulatory burden that pubs face could contribute to further pub closures, currently estimated to be 21 per week²¹⁰, causing the loss of variety of premises within the licensed trade and therefore restricting consumer choice.

A study into the effect of the Licensing (Scotland) Act 2005 (which increased fees for liquor licences) found that when interviewing Licensing Standards Officers and board representatives, some reported that that the cost of licensing fees had driven some small businesses to withdraw from licensed sales²¹¹. An increase in licensing fees in England and Wales must be avoided to prevent the closure of small, responsibly run local businesses, the loss of which would impact the hardest on the local community.

²¹⁰ CGA Strategy, July 2016

²¹¹ [An evaluation of the implementation of the objectives of the Licensing \(Scotland\) Act 2005: first interim report summary.](#)

MacGregor A., Sharp C., Mabelis J. et al. NHS Health Scotland, 2011.

Additionally, licence fees should be set at a national level to ensure fair and equal application and so as not to disadvantage licensees unfairly in different parts of England and Wales.

International comparisons

Is there a correlation between the strictness of the regulatory regime in other countries and the level of alcohol abuse? Are there aspects of the licensing laws of other countries, and other UK jurisdictions, that might usefully be considered for England and Wales?

Draconian restrictions on licensing hours can encourage binge drinking and increase consumption of cheap alcohol brought from the off-trade. Modest deregulation in the Nordic countries, where alcohol policy is amongst the most restrictive in the world, has proved that increasing the availability of alcohol has had little overall effect on alcohol related crime. An experiment where alcohol retail shops were opened on Saturdays in a city in Sweden (where previously they had been shut), recorded an increase in alcohol sales but no increase in assaults.²¹²

The scrapping of permitted hours under the Licensing Act 2003 has ended the set ‘kicking out time’ caused by the previous regime. Instead, local authorities have been provided with the power to stagger licensed hours as suited to ease the burden on transport and other public services. Since the Act came into force there has been a fall in arrests for drunkenness offences, partly attributable to the effects of greater flexibility on licensed hours meaning staggered ‘kicking out’ times for pubs and clubs. Arrests for ‘drunk and disorderly’ offences have decreased greatly since the Act came into force, as shown in the graph below²¹³, this is in line with licensing objectives for the prevention of crime and disorder, public safety, and

²¹² <http://www.ncbi.nlm.nih.gov/pubmed/12817829>

²¹³ Figures taken from the BBPA Statistical Handbook 2015, source quoted as Ministry of Justice

the prevention of public nuisance.

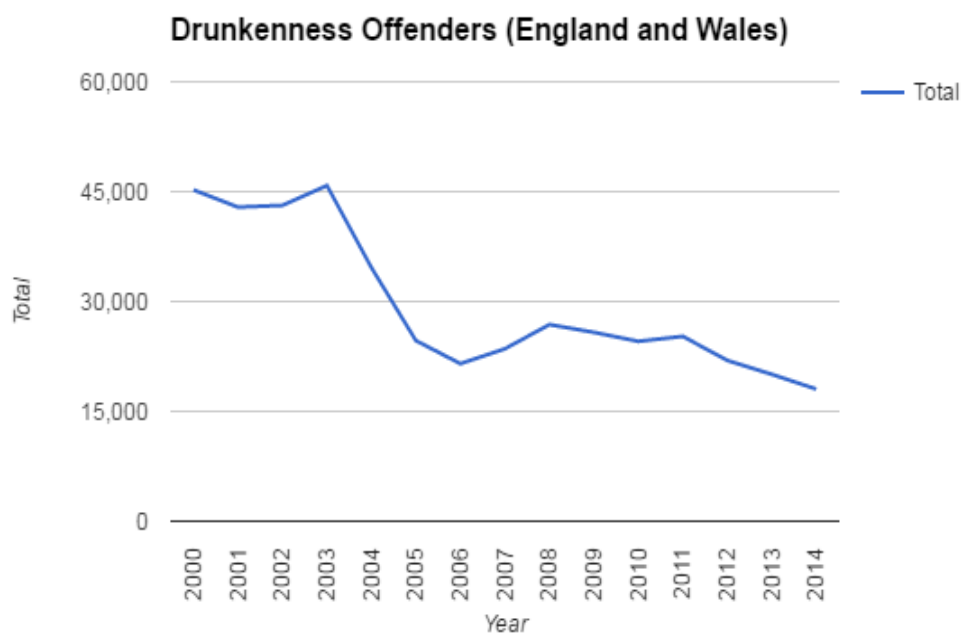


Figure 1. Total Drunkenness Offenders In England and Wales 2000-2014 (Source: BBPA Statistical Handbook)

The proliferation of 24-hour licences, which was feared by many before the introduction of the Act, never happened. In 2014 there were just over 7,400 24 hour premises licences in England and Wales, with 75% being held by hotels and supermarkets/stores; only 831 24-hour licences were held by pubs, clubs and bars²¹⁴. Furthermore, a regional report on the effects of the Licensing Act found that while many premises had extended their licensable hours, they were not using the full range of hours on a regular basis, and were taking advantage of the added flexibility to ‘play it by ear’ as to when to close²¹⁵.

²¹⁴ <https://www.gov.uk/government/publications/alcohol-and-late-night-refreshment-licensing-england-and-wales-31-march-2013/alcohol-and-late-night-refreshment-licensing-england-and-wales-31-march-2013>

²¹⁵ <http://socialwelfare.bl.uk/subject-areas/government-issues/legislation/homeoffice/141713horr05.pdf>

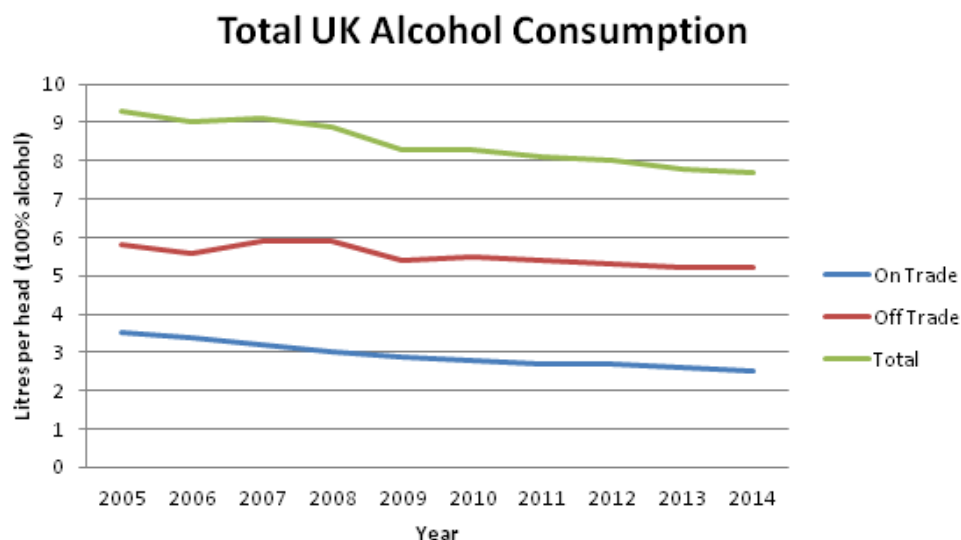


Figure 2: Total UK Alcohol Consumption, litres per head of 100% alcohol, 2005-2014 (Source: BBPA Statistical Handbook)

Additionally, since the Act came into force in 2005, total annual alcohol consumption per head has fallen by over one litre in the UK, and consumption in the on-trade has fallen every year. This is a clear indicator of reduction in alcohol-related harm, and the Office for National Statistics reported in 2013 that the number of 16-24 year olds reporting that they did not drink at all had increased by over 40% between 2005 and 2013²¹⁶.

Overall, the system brought in by the Licensing Act works well, and provides the balance between rights and responsibilities that the Act sought to achieve. Alcohol harm has decreased since the Act came into force, and predictions by opponents of the Act of 24 hour drinking and rises in crime have not materialised, with the opposite being observed. There is greater consumer choice through more flexible opening times, increased freedom for smaller venues to host live entertainment, and greater community engagement with the licensing regime. Whilst some changes should be made to ensure fairness, greater consumer choice and a better balance between the on- and off-trade, the Act has been a success and helped foster a safer, more diverse and inclusive night time economy and overall licensed trade.

Other policy issues

Temporary Event Notices (TENs)

Although we welcomed the extension of TENs rules in January this year, CAMRA believes that restrictions on TENs should be further relaxed to allow up to 999 people to be present

²¹⁶ <http://www.ons.gov.uk/peoplepopulationandcommunity/healthandsocialcare/healthandlifeexpectancies/compendium/opinionsandlifestylesurvey/2015-03-19/adultdrinkinghabitsingreatbritain2013>

at any one time, and that Notices should be available for up to five days, with a maximum of 20 notices to be issued per premises each year.

The current TENs system does not take into account community events such as CAMRA's beer festivals, which are organised across the country by 160 volunteer groups and, owing to capacity demands, are often held in premises not usually licensed to serve alcohol. Beer festivals are important community events that promote locally produced beer and help support smaller brewers and raise money for charities, as well as giving attendees the chance to sample beers that they may not find in their local pubs.

2 September 2016

Cardiff County Council – written evidence (LIC0082)

There are a number of businesses operating in the Cardiff area that misuse the umbrella of limited liability companies to avoid paying business rates. Usually the businesses are pub, clubs and restaurants, all of which need a license issued by the local authority to trade.

Currently there is no connection with the issue of a license and payment of business rates. Licensing and business rates are governed by two separate pieces of legislation, and providing the licensee complies with the licensing regulations, the Council is unable to do anything, other than grant a license, regardless of any outstanding business rates.

Legislation for business rates is limited to seizing goods, or winding the company up. In reality, goods in these types of businesses are usually in the name of a different company, and winding up of the company would cost the council £2,000 and be very unlikely to recoup any money.

In order to prevent the misuse as outlined above Cardiff County Council would welcome a change to the licensing act, which would give the Council the power to either suspend or cancel a license where there are outstanding business rates.

Example.

There are two gentlemen who run a number of bars/night clubs in the City that have been involved in 60 limited liability companies over the past 10 years. All of these companies have failed owing the Council in excess of £500+ in non payment of business rates.

The Council has used all available recovery methods, over a number of years, to try to collect business rates but to no avail. As the pub, club, businesses are a close knit community, this practice has now begun to spread to other licensed premises around the city area, with an increase in the loss to the Council and the public purse.

Cases have been reported to Companies House, The Insolvency Service, and HMRC, and whilst everyone is aware of the issues, no-one has yet been able to find a solution.

I am also aware that other authorities in England and Wales suffer with the same issue; the non payment of business rates for licensed premises multiplied across the country must be in hundreds of millions of pounds, at a time when the public spending is being severely cut and needs every penny!.

A change to the licensing act to make payment of business rates mandatory, or suspension/loss of the license would follow, would stop this malpractice immediately.

2 September 2016

Central Bedfordshire Licensing Committee – written evidence (LIC0142)

I write both as the Chairman of Central Bedfordshire Licensing Committee and as a Ward Councillor representing at least one village that is very adversely affected by the introduction of late night (or more realistically early morning) drinking.

Central Bedfordshire is largely a rural community; we do have a number of towns of some size but in terms of policing we are dominated by the demands of the major towns of Luton and Bedford. This police resource constraint is pivotal to my concerns with late night trading.

When we receive a late night licence application from any drinking establishment in our authority we naturally feel the need to recognise the demands of the nearby residents who may be adversely affected by a late night closure. However, unless the police predict that a serious policing problem will be created by granting a late night closure then we find it difficult to accommodate the concerns of our residents, that is if no crime or transgression has been committed then how might we reasonably refuse such an application.

In theory we have the ability to look back at any licence then granted and revoke that licence if our public protection staff or perhaps police have records of unacceptable behaviour such as a brawl or unreasonable noise. The reality of our position is that such behaviour is of a grey definition that is such complaints are hard to prove.

Customers of a late night establishment might as an instance quite legally close their facility at two in the morning per the licence conditions of that establishment. However, it is not unknown for their clients to be somewhat inebriated. They are then capable of making a significant amount of noise as they leave the premises. This behaviour occasionally breaks down to open arguments or other disputes that are enacted at past two in the morning waking up and otherwise disturbing our residents. There are other issues caused by these late night closures. In an ideal world each village that hosts such an establishment would have police on hand to witness and control this behaviour. The reality for us as a rural community is that the police are generally very busy dealing with far more serious events than low level bad behaviour, that is it is difficult to demand police presence at three in the morning for a minor affray if our only available police are dealing with a stabbing incident in one of the major towns. It is credible that our residents may lodge their complaints with the Public Protection department of our council but not unreasonably our officers are unlikely to drive out to witness bad behaviour in the early hours of a Sunday morning. In the event that a problem is ongoing and serious then a resident may take the time and trouble to call the police as an emergency call, however, as described the police; under these circumstances, are unlikely to visit the affected village immediately meaning several hours may go by before that village gets a police visit by which time the aggressive customers will likely have moved on suggesting perhaps that there never was a problem to begin with. This may seem to be the end of the problem but for the affected residents this means another sleepless night.

I have suggested that this is an issue specific to our rural villages, this is not where the problem ends as even our larger towns i.e. Leighton Buzzard, Dunstable, Houghton Regis and Biggleswade, cannot always rely on an intensive police presence. I would not here criticise Bedfordshire Police, it is just that their resources are necessarily taken up by other commitments.

Whilst; as Chairman of a Licensing Committee, I would not condone illegal actions I will say that the earlier policy of a 10:30 drinking halt with an 11:00pm closure was in some ways preferable. I am aware that it was not unknown for landlords to permit a degree of past hours drinking; the so called “lock out” which whilst being illegal did mean that the landlord was likely to restrict this “privilege” to those customers who could be relied upon to leave when done in a quiet and peaceful way so as not to prejudice the landlords licence. As I say; I would not condone this illegality but seemingly it did work.

I would ask therefore that the committee consider reversing the movement toward late night closures and reverting to a national closure at a reasonable hour unless perhaps the police are available to regulate the activity as perhaps they are in major towns. I recognise that this may seem regressive but do not believe that the so called continental drinking approach has really benefitted the residents of Central Bedfordshire.

I would imagine that the response from public houses that currently enjoy a late night closure is that any change in the law back to an earlier era will inevitably mean a serious loss of trade. I do not myself believe this to be a real issue. I suspect that the landlords of many public houses struggle to find the staff and resources to man their facility at two in the morning and likely they do not then make a huge profit on the exercise but that they feel pressurised into late night opening by the competition trade from other nearby establishments.

I look forward to the debate in the House of Lords and would hope that a measure of sense be bought to this issue.

5 September 2016

Central England Trading Standards – written evidence (LIC0021)

This response has been prepared by the Central England Trading Standards (CenTSA) Age Restricted Sales group on behalf of the 14 local authorities in the CenTSA region (Birmingham, Coventry, Dudley, Herefordshire, Sandwell, Shropshire, Solihull, Staffordshire, City of Stoke on Trent, Telford and Wrekin, Walsall, Warwickshire, Wolverhampton and Worcestershire. CenTSA are committed to ensuring effective partnership working between local authorities across Central England to achieve measurable improvements in Trading Standards for all those who may benefit.

Trading Standards Services, within local authorities are responsible for a wide range of laws governing services and goods that are bought, hired and sold. Our officers give advice, investigate complaints, undertake inspections and test and sample products and services.

Independently we work to protect our residents and businesses, but as a partnership CenTSA encourages and builds on the strengths of each authority, sharing best practice and improving service delivery region wide.

Strong links between the Trading Standards services within our regions are vital in providing the best service possible to the people and businesses of the Midlands

The following comments are submitted for consideration by House of Lords Licensing Act 2003 Committee:-

1. We are concerned about a legal loophole within the Licensing Act. Following a revocation of a premise licence, the premises license holder would start a 'tactical' appeal. This permits the premises to carry on selling alcohol until such appeal is heard and a decision made. In the meantime, the current premises licence holder would transfer the business onto a friend or family member into order to transfer or apply for a new premise licence under a new name or company. If the application is successful then the defendant would withdraw the appeal and the premises would continue to sell alcohol without the imposition of the decision made by the Licensing Committee. The tactical appeal process circumvents the decision of a local authority licensing committee, and undermines the promotion of the four licensing objectives.
2. We are starting to see an increase in the online supermarket grocery service including the late night and 24 hour alcohol home delivery service. The relevant law relating to home delivery of alcohol is rather unclear and difficult to enforce. With reference to *S.151, A person who works on relevant premise in any capacity...commits an offence if he knowingly delivers to an individual aged under 18 alcohol sold on the premise. But it does not apply where alcohol is delivered at a place where the buyer or, as the case may be, person supplied lives or works.* To illustrate, when a child answers the door and signs for the delivery of his parent's order at home, no offence has been committed under S.151. The Government should review the efficacy of current licensing law relating to home delivery of

alcohol, in terms of whether it adequately protects children from alcohol related harm.

3. Licensing officers have no power to seize alcohol or evidence of the sale of alcohol found on sale at unlicensed premise to show the legislative breach prior to a decision by a local authority on whether criminal proceedings should be instigated.
4. Minimum pricing legislation has set the level at a price point of just the duty and vat cost. Concern is that the level does not take into consideration the cost of manufacture including the receptacle and contents. Due to the low level set officers have found bottles of wine being sold at 2 for £5 which provides only a 4p margin for the contents and receptacle. A higher level of minimum price would dissuade counterfeit and duty evaded alcoholic products from sale along with the consumption by young people and excessive consumption.
5. The act requires a printed notice to be placed in a local newspaper that represents the highest cost of the application process for many. Whilst authorities persuade applicants to make applications via the internet, the legislation does not such notices being published on the internet at a centralised website with the retention of a printed notice at the premises for local residents to be alerted to the application. Additionally, this is a burden to business and small administration or typographical errors may result in a business having to start the application process again. Any notice should be in plain English for the average reader to understand the implication of the notice.
6. The premises licence application does not require the applicant to verify their identity by requiring a date of birth and national insurance number whereas a temporary event notice includes a requirement for this information.
7. All licences and temporary event notices are not held on a national database for administrators or employers to verify that a licence has been granted. Compare this with national databases for energy performance certificates, gas fitters etc. and this again appears to be an anomaly and a barrier to verification by all interested parties. An organisation such as the [National Anti-Fraud Network](#) who undertake the application process for Regulation of Investigatory Powers Act 2000 on behalf of local authorities may be best suited to offer such a scheme if it were only open to enforcing authorities. It is understood local authority may be given the power to suspend a licence. If such a provision is provided than again local authority licensing officers will need a central database on which they can record and check for any decisions of a Licensing Committee or alleged offence. Additionally, access to the Police National Computer for previous convictions would be needed to make informed decisions.
8. It is of concern to officers that a licence cannot be refused where a business owes a local authority unpaid business rates.

9. Consideration should be given to bringing tobacco products and e-cigarettes within the control of the Act. Local authority Trading Standards sections along with other enforcement agencies are fighting a battle against the sale of illicit tobacco products which include counterfeits, duty and VAT evaded imported items and products called cheap whites which are cigarettes manufactured with the intent on exporting illegally to other countries through a smuggling network. See <http://www.irishtimes.com/news/politics/sale-of-cigarettes-from-vending-machines-set-to-be-banned-1.2757326> as the government in Eire are establishing a bill to bring in this measure.
10. Local authority Trading Standards sections are nominated as a responsible authority but due to reducing resources within local authorities such work can be a burden. Consideration should be given to allocating part of the licence application fee to each responsible authority for their consideration and work in assessing any new premises licence application and any reviews instigated by the a Responsible Authority in light of any investigation into criminal activity.
11. Enforcement authorities are concerned that the Designated Premises Supervisor (DPS) is permitted by the Act to have little presence at licensed premises. Some large companies have this position as an Area Manager who could be at a remote store when an incident occurs. Although such officers of a company have the authority within the company to control the shops and staff members, there is some doubt that they can have a knowledge of the day to day activities within the shops. Smaller retail premises are visited and the DPS are found to reside in another part of the country. Consideration should be given to amending the requirements and definitions for a DPS so that there is an obligation for them to have a significant proportion of their working time within the premises for which they are a DPS.

23 August 2016

Champs Public Health Collaborative – written evidence (LIC0038)

Response from the Cheshire & Merseyside Directors of Public Health via the Champs Collaborative

Q1: Are the existing four licensing objectives the right ones for licensing authorities to promote? Should the protection of health and wellbeing be an additional objective?

1. The Cheshire & Merseyside Directors of Public Health (CMDsPH) would welcome a fifth licensing objective centred around the protection of health and wellbeing. We believe that it would be a vital tool in reducing the harm to the health of the region's 2.4 million people caused by the misuse of alcohol. Furthermore, a recent public opinion survey conducted by Healthier Futures and the Alcohol Health Alliance, found that 55% of people surveyed expressed support for the inclusion of health as a licensing objective, with only 11% objecting.
2. Although there are opportunities to consider health impacts under the current arrangement, the practice of relating every piece of evidence back to individual premises (even if the application is for new premises) often negates the health evidence that is submitted. Very often health evidence can only be produced at a wider area level and cannot be linked to single premises.
3. Additionally without an objective for health and well-being, protection of health can only be considered as a supplementary factor in influencing licensing decisions. In essence this means that Public Health is dependent on its Responsible Authority partners raising a representation against one of the four existing licensing objectives before it (Public Health) can add its own evidence.
4. If introduced, any guidance on what would be allowed in sub-committee decision making would need to be very clear. It should include more data based at smaller geographical outputs (LSOA, post code areas, A&E data for a post code etc) then the known health impact in relatively small areas could be taken into consideration.
5. Strong guidance for applicants outlining how they would show that they have considered the relevant health issues in the area that they want to operate would also be necessary. Currently, an applicant can apply for a licence and have it granted without ever having visited the area in which the premises are located.

Q6: Should licensing policy and planning policy be integrated more closely to shape local areas and address the proliferation of licensed premises? How could it be done?

1. We recognise that it would be advantageous for the licensing and planning processes to be allowed to overlap more flexibly to ensure that alcohol licence applicants know that they may need planning permission or that the building they intend to operate in has specific planning restrictions attached to it, currently this is not always the case.

2. However, we don't believe that the utilisation of planning policies to control numbers of licensed premises would produce robust outcomes. This is due to weaker enforcement capabilities for transgressions of planning applications; a lack of control within the planning system over change of use of premises within planning 'classes'; and, planning will only provide controls over new premises in new locations rather than existing premises.
3. To be an effective tool, to be used in conjunction with licensing policies, controlling the availability and supply of alcohol within areas, new specific 'classes' of premises would have to be created relating to individual types of on- and off- sales premises. In addition, the use of supplementary planning documents for licensed premises, related to CIP areas, that includes limits on numbers of premises where there are high rates of alcohol harm, would enable a more joined up process between local planning authorities and licensing authority decisions. This would be expected to create a more efficient and effective application process.

Q11: Given the increase in off-trade sales, including online sales, is there a case for reform of the licensing regime applying to the off-trade? How effectively does the regime control supermarkets and large retailers, under-age sales, and delivery services? Should the law be amended to allow licensing authorities more specific control over off-trade sales of "super-strength" alcohol?

1. Across Cheshire and Merseyside, as with the rest of the country, we have witnessed the consistent rise of sales of alcohol by the off-trade, driven by deep discounting by supermarkets. Two thirds (67%) of sales are now made by the off-trade. This expanded availability combined with the fact that alcohol is now 60% more affordable than in 1980 it is little wonder that in our area a recent alcohol pricing survey found cider products available for the equivalent of 18p per unit of alcohol. This combination of cheap products and consumption away from supervised licensed on-premises presents a clear danger to public health as people are likely to drink more alcohol through estimated 'home drinking' measures, and drink more as alcohol is so incredibly affordable.
2. It is clear to us that tackling off-sales is critical to improving the public's health. We would like to see a reduction in the quantity of alcohol consumed in the home by closing the affordability gap between on- and off-sales alcohol, and by the reduction in availability of alcohol through tougher licensing regimes. We know that the tougher the licensing arrangements, the better the alcohol-related health outcomes in a local area.
3. The LA2003 is more weighted to on-sales and there is no reference to cumulative impact policy within it. An obvious imbalance in the licensing regime is that the mandatory condition preventing irresponsible promotions is only applicable to on-trade premises. This condition should be applied to all licensed premises.

Promotions tend to encourage bulk-purchasing of alcohol at very low prices. Inevitably this leads to greater alcohol-related harms.

4. The current legislation means that a licence is granted unless there are representations against it, and, sufficient evidence to stop it being granted. Therefore, unless there is a Cumulative Impact Policy (CIP) in place more than one off-licence can open in a small area even if alcohol health harms are high (as you can't link health harms to new premises). This means that in some deprived areas there are a high number of off-licences selling alcohol from early in the morning to late at night and the only way to have any control is to bring these licences into review if they breach a licensing condition. If the law stated that a new applicant or a variation applicant had to show how their business would help the local area and how they have taken into consideration local issues (crime / health etc) then this would give more power to local authorities to prevent over proliferation and inappropriate licences being granted as a matter of course. Take away the need for an area to have a CIP and put the onus back onto all applicants to show how their business will improve an area or provide a needed service, or make clear the claim in the Modern Crime Prevention Strategy that CIPs are to become statutory.
5. 24hour licensing has given every applicant the opportunity to open and sell alcohol all day but this hasn't meant that there are lots of 24 hour licences. What it does mean is that off-sales are available very early in the morning at corner shops / supermarkets and petrol stations and also that the night time economy has pushed into the early hours 5-6am. There should be a period of time across England that alcohol cannot be sold such as 3am-10am for on-licences and 10pm-10am for off-licences. This would reduce crime and assault in the early hours thus reducing the burden on police and A&E depts. It would also mean that dependant drinkers could not access alcohol first thing in the morning.
6. The LA2003 does not have specific "controls" for supermarkets and large retailers and these organisations usually have solicitors in place to negotiate on their behalf. In some areas we have had some success negotiating with large chains around reducing licensed hours early in the morning in areas of high alcohol harm. This success however is based on goodwill and does not guarantee a consistent approach. In other areas, while some supermarket chains have agreed to conditions on morning sales of alcohol, others have steadfastly refused to agree to the voluntary conditions, making it unworkable. It has however highlighted that large chains (and individual premises) don't routinely look into the areas they are moving into from a health or crime perspective, even though the Statement of Licensing Policy (SOLP) states that they should. More power needs to be given to the adherence to SOLPs by licence applicants.
7. Currently in Wirral there is a voluntary Reducing the Strength campaign that has been successful in removing from sale super strength alcohol in Birkenhead and surrounding areas (although there are two large chains that still sell it, therefore it is

still causing problems). In Liverpool a REST (Rehabilitation, Education, Support, Treatment) Centre is operated over the summer months to tackle the alcohol consumption and wider health needs of street drinkers. A voluntary agreement is in place with the 11 local off-licenses within a 1KM radius of the facility. On inspecting the alcohol that the street drinkers bring to the Centre whilst it is clear the voluntary agreement is being observed it has a limited impact as it is not stopping the street drinkers purchasing super strong own brand alcohol from supermarkets located further away from the REST Centre site. Voluntary agreements are inconsistent and limited in their impact. If the legislation supported this work then that could only be beneficial to the health of our most deprived communities and would more than likely reduce crime in those areas also.

Q12: Should alcohol pricing and taxation be used as a form of control, and if so, how? Should the Government introduce minimum unit pricing in England? Does the evidence that MUP would be effective need to be “conclusive” before MUP could be introduced, or can the effect of MUP be gauged only after its introduction?

1. Across Cheshire and Merseyside we can see that cheap alcohol products is driving health and social inequalities which disproportionately affect the poorest in society.
2. Cheap cider is a particular concern as it is generally sold in large containers at a very low cost per unit of alcohol – as previously mentioned, cider was recently discovered for as little as 18p per unit in off-licenses in our area.
3. We recognise that the tax system perversely incentivises cheap cider products due to the way duties on cider are calculated on a ‘stepped’ basis, rather than a graduated tax reflecting the quantity of alcohol within each product (as with beer and spirit duties).
4. We collectively support the introduction of a minimum unit price for alcohol, and we do not believe that further evidence is required before introducing a MUP. There is ample evidence from researchers at Sheffield University and Canada to show that MUP would reduce alcohol harms in our most affected communities.
5. Sheffield University researchers have modelled the effects of MUP in England. they estimate that a 50p MUP would target the youngest and heaviest drinkers and, that in England, it would: save the economy £5.1 billion, mostly due to fewer crimes and increased productivity; reduce hospital admissions by 35,000; cut 50,700 crimes; save almost 1,000 lives each year. Given the time at which a 50p minimum unit price of was modelled we would however recommend further analysis to consider what 50p would now convert to in 2016.
6. Dr Arianna Andreangeli conducted a study on the following theme, Making markets work in the interest of public health: the case of the Alcohol (Minimum Pricing) (Scotland) Act 2012. The study looked at Canada as an example of where minimum pricing is in place in some provinces and the evidence shows that minimum unit

pricing may well be the most effective tool to address health-related and social ills arising from alcohol consumption. Evidence from British Columbia between 1989 and 2009 showed that a 10% increase in floor price of a single type of liquor could lead to a cut in demand by between 14.6% and 16.1%, if the same increase was applied across the whole range of alcoholic drinks the study indicated a loss of demand of 3.4%. Heavier drinkers are more likely to be affected by minimum pricing as the “cheapest options” for them became unavailable and thus led to a 22% reduction in demand.

7. The Government should introduce it in England based on this evidence and then over a 5-10 year period monitor and assess the effects it has on alcohol related harm across England, along with the effects it has on moderate drinking habits.
<http://www.clie.law.ed.ac.uk/2016/07/06/between-the-needs-of-public-health-and-free-markets-the-scottish-minimum-alcohol-pricing-saga-nears-the-end-what-now/>
8. Another study carried out by a team from Cardiff University found that reforming the current alcohol taxation system (1% above inflation increase in alcohol duty) would be more effective than MUP at reducing violence-related injury. The study states that any such policy would need to increase the price of alcohol in both on and off licensed premises and that the additional tax revenue of about £1 billion a year could be used to offset the cost of alcohol-related harm to the NHS.
<http://www.cardiff.ac.uk/news/view/380146-small-rise-in-booze-duty-could-cut-violence-related-hospital-emergency-visits-by-6,000-a-year>
9. Taxation of cider products, in particular, should be reformed to ensure that each unit of alcohol is taxed, as with beer duty, rather than the current stepped duty bands which help create super-cheap cider products due to very low per unit equivalent duty rates. Indeed the recent survey of people living in Merseyside found that 51% of people agree that drink prices should reflect the alcoholic strength.

30 August 2016

Chelston Cockington and Livermead Community Partnership – written evidence (LIC0009)

I would like to submit the following representation on behalf of the Chelston, Cockington and Livermead Community Partnership a voluntary organisation whose role is to engage with and empower our community to improve their quality of life.

The problem with the current arrangements is that it automatically allows live and other music to be played outside (provided the Premises Licence includes an outside area) for up to 500 people between 08.00 and 23.00 365 days a year without restriction or control by the local Licensing authority.

This can have a large negative impact on the quality of life of surrounding residential houses and can spoil their home environment for many people. We would like to see this element amended to exclude outside music and to make sure any outside live or recorded music is under the normal Premises Licence application procedure.

Another problem with the implementation of the Act is the apparent presumption in favour of 24 hour off sales at petrol filling stations, particularly those located within communities. We would like to see a condition that makes the assessment on the quality of life of the community to be a mandatory element of the process.

Leon Butler

Chair Chelston Cockington and Livermead Community Partnership

9 August 2016

Cheshire Constabulary – written evidence (LIC0043)

“Response on behalf of Supt. Martin Cleworth, in relation to a call for evidence by the Select Committee on the Licensing Act 2003”

1. In my professional opinion and experience the provisions of the Licensing Act 2003 have not delivered the expected benefits: there does not appear to have been a discernible cultural shift away from binge drinking to a moderated form of alcohol consumption, as is evident in other European Countries, and the relaxation of the regime has led to a clear lowering of management standards, and standards of behaviour within town centres operating a night time economy. Conversely there is an apparent unwillingness of the part of Licensing Authorities to robustly deal with any premises brought to their attention: in the Constabulary’s experience the commercial interests of the respective operators are consistently favoured by the Licensing Authorities, at the expense of policing concerns about public safety.
2. A continuing trend of heavy drinking during later opening hours, combined with increased drug use within premises has not led to a reduction in public space violence, that requires extensive resourcing in town centres across the County, particularly at weekends, nor has the 2003 regime positively contributed to making Night Time Economies safer. There continue to be numerous arrests and prosecutions that stem from alcohol use/abuse within licensed premises (and alcohol use/abuse in general) that place a financial burden upon the Constabulary to police”.

31 August 2016

Cheshire East Council – written evidence (LIC0039)

Q1: Are the existing four licensing objectives the right ones for licensing authorities to promote? Should the protection of health and wellbeing be an additional objective?

1.1 Cheshire East Council is of the view that a fifth licensing objective centred around the protection of health and wellbeing should be introduced. We believe that it would be a vital tool in reducing the harm to the health of our residents caused by the misuse of alcohol. A recent public opinion survey conducted by Healthier Futures and the Alcohol Health Alliance, found that 55% of people surveyed expressed support for the inclusion of health as a licensing objective, with only 11% objecting.

1.2 Previously the Government has regarded introducing such an additional objective as being ‘disproportionate given the evidence base and anticipated larger costs to business’. It would appear to fail to consider the burdens on the health service and the tax payer of dealing with the ill health impacts of excessive drinking, either one off injuries from a fall for example, or the long term effects of consumption over time.

1.3 The Home Office’s Impact Assessment (dated 18/09/2012) on the inclusion of a health objective in the Licensing Act 2003 related specifically to cumulative impact, identified the benefits of having this additional objective.

1.4 Although there are opportunities to consider health impacts under the current arrangement, the practice of relating every piece of evidence back to individual premises (even if the application is for new premises) often negates the health evidence that is submitted. Very often health evidence can only be produced at a wider area level and cannot be linked to single premises.

1.5 If introduced, any guidance on what would be allowed in sub-committee decision making would need to be very clear. It should include more data based at smaller geographical outputs (LSOA, post code areas, A&E data for a post code etc) then the known health impact in relatively small areas could be taken into consideration.

1.6 Strong guidance for applicants outlining how they would show that they have considered the relevant health issues in the area that they want to operate would also be necessary. Currently, an applicant can apply for a licence and have it granted without ever having visited the area in which the premises are located.

Q2 Should the policies of licensing authorities do more to facilitate the enjoyment by the public of all licensable activities? Should access to and enjoyment of licensable activities by the public, including community activities, be an additional licensing objective? Should there be any other additional objectives?

2.1 The Council’s view is that this is not a necessary requirement. Individuals are capable of making a choice as to whether or not they wish to enjoy a licensable activity. Defining

enjoyment would be challenging as one persons view of what is enjoyable is very different from another's.

Q3 Has the Live Music Act 2012 done enough to relax the provisions of the Licensing Act 2003 where they imposed unnecessarily strict requirements? Are the introductions of late night levies and Early Morning Restriction Orders effective, and if not, what alternatives are there? Does the Licensing Act now achieve the right balance between the rights of those who wish to sell alcohol and provide entertainment and the rights of those who wish to object?

3.1 There has been very limited use of Early Morning Restriction Orders or Late Night Levies by Local Authorities. The Cheshire Licensing Committee established a sub group to consider the use of such tools there were conclusions were:

- i. That the levels of crime and disorder within Cheshire East that are linked to alcohol consumption were not seen as significant.*
- ii. That the alcohol related crime statistic from Cheshire Police do not show if the issues that have been linked to crime an disorder are directly attributable to licensed premises or take place in other settings for examples parks or homes). This means that the 'on' and 'off' licensed trades would be taxed to pay for problems that may be linked to the more general availability of low cost alcohol.*
- iii. The limited health data that is available is evidentially weak and does not demonstrate a link between where alcohol is purchased and the health harm that it causes.*
- iv. The net income raised would be split 70% to the Police and 30% to the Council. The Council would have no control over where the money raised would be spent (the money raised could be spent outside the Borough or to supplement non alcohol related initiatives). This could create reputational risk.*
- v. The LNL can only be implemented Borough wide and may therefore have a disproportionate effect on areas with little or no late night crime and disorder linked to alcohol consumption.*
- vi. Any EMROs would close the premises, captured within that area, at a certain time and the financial risk to the late night economy and associated businesses may be prohibitive.*
- vii. If problems exist then powers that are already available are not been fully used and all options to tackle issues should be used prior to the consideration of a LNL or EMRO. The Working Group felt that any action should be targeted.*

3.2 These powers include:

- a. The consideration of Cumulative Impact or Stress Areas (create the presumption that applications in these areas will be refused unless the application can justify the granting)*

b. Reviewing the licenses of problem premises (with the ultimate sanction being to revoke the licence)

c. Promoting the Council’s enforcement agenda by prosecuting irresponsible operators

3.3 Ultimately, the Working Group considered the LNL and EMRO to be a disproportionate way to tackle the identified issues and that the tools outlined above should be utilised first and are likely to be sufficient to deal with any problems.

3.4 Members were also interested in the possibility of a Minimum Unit Price (MUP) for alcohol. They recognised the work being done by the Council’s Public Health Team in relation to this. The Council should therefore continue to support the implementation of a MUP either pan regionally or nationally. However, the legality of such a step is still subject to ruling from the European Court of Justice which is considering a challenge to the scheme implemented in Scotland.

3.5 Members also recognised the work being done to implement a Cheshire East Alcohol Strategy, which is currently subject to consultation. This Strategy also identifies problem areas and how the Council can use existing powers to tackle any issues.

3.6 If the Council was minded to implement a LNL or EMRO, additional resources to both the Licensing Team and Legal Team to deal with the consultation, implementation and maintenance would need to be identified. This would reduce the amount of net income achieved by implementing the LNL and would create a budgetary pressure in respect of the EMROs (which does not raise any income).

3.7 So it would appear that there are too many barriers to make Late Night Levies or EMROs useful tools in the fight to reduce alcohol harm and a rethink is required in relation to appropriate tools for use by local authorities.

Q4 Do all the responsible authorities (such as Planning, and Health & Safety), who all have other regulatory powers, engage effectively in the licensing regime, and if not, what could be done? Do other stakeholders, including local communities, engage effectively in the licensing regime, and if not, what could be done?

4.1 There will be local authorities where all responsible authorities engage effectively with the licensing regime. However in other areas lack of capacity makes this prohibitive. My personal experience is that the number of licensing applications received makes it impossible to effectively review each individual application (as the member of the Public Health team receiving the applications). I simply do not have the time and can only try to spot those that look like they are highest risk (an inexact process). There are successes, revoking a licence following a Police request for a review as a result of a series of incidents in a local licensed premise. But these are few and far between, and that is inevitably due to the capacity within the system to gather the necessary evidence and follow the appropriate processes to a point of being able to get a review undertaken.

4.2 The licensing regime is regarded as an area of specialist expertise and, because of this, can be seen as remote from other business within the Council and indeed the local communities. The capacity within the licensing team is limited and only able to manage the volume of business that they have in hand. They do not have the spare capacity to promote their work, engage with other parts of the Council or our residents, much as they might like to do so.

Q5 Licensing is only one part of the strategy that local government has to shape its communities. The Government states that the Act “is being used effectively in conjunction with other interventions as part of a coherent national and local strategy.” Do you agree?

5.1 No comment

Q6: Should licensing policy and planning policy be integrated more closely to shape local areas and address the proliferation of licensed premises? How could it be done?

6.1 We recognise that it would be advantageous for the licensing and planning processes to be allowed to overlap more flexibly to ensure that alcohol licence applicants know that they may need planning permission or that the building they intend to operate in has specific planning restrictions attached to it, currently this is not always the case.

6.2 However, we don't believe that the utilisation of planning policies to control numbers of licensed premises would produce robust outcomes. This is due to weaker enforcement capabilities for transgressions of planning applications; a lack of control within the planning system over change of use of premises within planning 'classes'; and, planning will only provide controls over new premises in new locations rather than existing premises.

6.3 To be an effective tool, to be used in conjunction with licensing policies, controlling the availability and supply of alcohol within areas, new specific 'classes' of premises would have to be created relating to individual types of on- and off- sales premises. In addition, the use of supplementary planning documents for licensed premises, related to CIP areas, that includes limits on numbers of premises where there are high rates of alcohol harm, would enable a more joined up process between local planning authorities and licensing authority decisions. This would be expected to create a more efficient and effective application process.

7. Are the subsequent amendments made by policing legislation achieving their objects? Do they give the police the powers they need to prevent crime and disorder and promote the licensing objectives generally? Are police adequately trained to use their powers effectively and appropriately?

7.1 No comment

8. Should sales of alcohol airside at international airports continue to be exempt from the application of the Act? Should sales on other forms of transport continue to be exempt?

8.1 No Comment

9. The Act was intended to simplify licensing procedure; instead it has become increasingly complex. What could be done to simplify the procedure?

9.1 No comment

Q10. What could be done to improve the appeal procedure, including listing and costs? Should appeal decisions be reported to promote consistency? Is there a case for a further appeal to the Crown Court? Is there a role for formal mediation in the appeal process?

10.1 No comment

Q11: Given the increase in off-trade sales, including online sales, is there a case for reform of the licensing regime applying to the off-trade? How effectively does the regime control supermarkets and large retailers, under-age sales, and delivery services? Should the law be amended to allow licensing authorities more specific control over off-trade sales of “super-strength” alcohol?

11.1 Across Cheshire East, as with the rest of the country, we have witnessed the consistent rise of sales of alcohol by the off-trade, driven by deep discounting by supermarkets. Nationally, two thirds (67%) of sales are now made by the off-trade. This expanded availability combined with the fact that alcohol is now 60% more affordable than in 1980 it is little wonder that in our area a recent alcohol pricing survey found cider products available for the equivalent of 18p per unit of alcohol. This combination of cheap products and consumption away from supervised licensed on-premises presents a clear danger to public health as people are likely to drink more alcohol through estimated ‘home drinking’ measures, and drink more as alcohol is so incredibly affordable.

11.2 It is clear to us that tackling off-sales is critical to improving the public’s health. We would like to see a reduction in the quantity of alcohol consumed in the home by closing the affordability gap between on- and off-sales alcohol, and by the reduction in availability of alcohol through tougher licensing regimes. We know that the tougher the licensing arrangements, the better the alcohol-related health outcomes in a local area.

11.3 The LA2003 is more weighted to on-sales and there is no reference to cumulative impact policy within it. An obvious imbalance in the licensing regime is that the mandatory condition preventing irresponsible promotions is only applicable to on-trade premises. This condition should be applied to all licensed premises. Promotions tend to encourage bulk-purchasing of alcohol at very low prices. Inevitably this leads to greater alcohol-related harms.

11.4 The current legislation means that a licence is granted unless there are representations against it, and, sufficient evidence to stop it being granted. Therefore, unless there is a Cumulative Impact Policy (CIP) in place more than one off-licence can open in a small area even if alcohol health harms are high (as you can’t link health harms to new premises). This means that in some deprived areas there are a high number of off-licences selling alcohol from early in the morning to late at night and the only way to have any control is to bring these licences into review if they breach a licensing condition. If the law stated that a new

applicant or a variation applicant had to show how their business would help the local area and how they have taken into consideration local issues (crime / health etc) then this would give more power to local authorities to prevent over proliferation and inappropriate licences being granted as a matter of course. Take away the need for an area to have a CIP and put the onus back onto all applicants to show how their business will improve an area or provide a needed service, or make clear the claim in the Modern Crime Prevention Strategy that CIPs are to become statutory.

11.5 24hour licensing has given every applicant the opportunity to open and sell alcohol all day but this hasn't meant that there are lots of 24 hour licences. What it does mean is that off-sales are available very early in the morning at corner shops / supermarkets and petrol stations and also that the night time economy has pushed into the early hours 5-6am. There should be a period of time across England that alcohol cannot be sold such as 3am-10am for on-licences and 10pm-10am for off-licences. This would reduce crime and assault in the early hours thus reducing the burden on police and A&E depts. It would also mean that dependant drinkers could not access alcohol first thing in the morning.

11.6 The LA2003 does not have specific "controls" for supermarkets and large retailers and these organisations usually have solicitors in place to negotiate on their behalf. Large chains (and individual premises) don't routinely look into the area's they are moving into from a health or crime perspective, even though the Statement of Licensing Policy (SOLP) states that they should. More power needs to be given to the adherence to SOLPs by licence applicants.

Q12: Should alcohol pricing and taxation be used as a form of control, and if so, how? Should the Government introduce minimum unit pricing in England? Does the evidence that MUP would be effective need to be "conclusive" before MUP could be introduced, or can the effect of MUP be gauged only after its introduction?

12.1 Across Cheshire East we can see that cheap alcohol products is driving health and social inequalities which disproportionately affect the poorest in society.

12.2 Cheap cider is a particular concern as it is generally sold in large containers at a very low cost per unit of alcohol.

12.3 We recognise that the tax system perversely incentivises cheap cider products due to the way duties on cider are calculated on a 'stepped' basis, rather than a graduated tax reflecting the quantity of alcohol within each product (as with beer and spirit duties).

12.4 We support the introduction of a minimum unit price for alcohol, and we do not believe that further evidence is required before introducing a MUP. There is ample evidence from researchers at Sheffield University and Canada to show that MUP would reduce alcohol harms in our most affected communities.

12.5 Sheffield University researchers have modelled the effects of MUP in England. they estimate that a 50p MUP would target the youngest and heaviest drinkers and, that in England, it would: save the economy £5.1 billion, mostly due to fewer crimes and increased

productivity; reduce hospital admissions by 35,000; cut 50,700 crimes; save almost 1,000 lives each year.

12.6 Dr Arianna Andreangeli conducted a study on the following theme, Making markets work in the interest of public health: the case of the Alcohol (Minimum Pricing) (Scotland) Act 2012. The study looked at Canada as an example of where minimum pricing is in place in some provinces and the evidence shows that minimum unit pricing may well be the most effective tool to address health-related and social ills arising from alcohol consumption. Evidence from British Columbia between 1989 and 2009 showed that a 10% increase in floor price of a single type of liquor could lead to a cut in demand by between 14.6% and 16.1%, if the same increase was applied across the whole range of alcoholic drinks the study indicated a loss of demand of 3.4%. Heavier drinkers are more likely to be affected by minimum pricing as the “cheapest options” for them became unavailable and thus led to a 22% reduction in demand.

12.7 The Government should introduce it in England based on this evidence and then over a 5-10 year period monitor and assess the effects it has on alcohol related harm across England, along with the effects it has on moderate drinking habits.

<http://www.clie.law.ed.ac.uk/2016/07/06/between-the-needs-of-public-health-and-free-markets-the-scottish-minimum-alcohol-pricing-saga-nears-the-end-what-now/>

12.8 Another study carried out by a team from Cardiff University found that reforming the current alcohol taxation system (1% above inflation increase in alcohol duty) would be more effective than MUP at reducing violence-related injury. The study states that any such policy would need to increase the price of alcohol in both on and off licensed premises and that the additional tax revenue of about £1 billion a year could be used to offset the cost of alcohol-related harm to the NHS.

<http://www.cardiff.ac.uk/news/view/380146-small-rise-in-booze-duty-could-cut-violence-related-hospital-emergency-visits-by-6,000-a-year>

12.9 Taxation of cider products, in particular, should be reformed to ensure that each unit of alcohol is taxed, as with beer duty, rather than the current stepped duty bands which help create super-cheap cider products due to very low per unit equivalent duty rates. Indeed the recent survey of people living in Merseyside found that 51% of people agree that drink prices should reflect the alcoholic strength.

Q13. Do licence fees need to be set at national level? Should London, and the other major cities to which the Government proposes to devolve greater powers, have the power to set their own licence fees?

13.1 No comment

Q14. Is there a correlation between the strictness of the regulatory regime in other countries and the level of alcohol abuse? Are there aspects of the licensing laws of other

countries, and other UK jurisdictions, that might usefully be considered for England and Wales?

14.1 No Comment

30 August 2016

Citizens Advice Westminster – written evidence (LIC0132)

Introduction

The Licensing Advice Project (“the Project”) is provided by Citizens Advice Westminster and funded by Westminster City Council.

The Project provides free, independent and confidential information, assistance, advice and representation to residents of the City of Westminster (including residents’ associations and amenity societies) and businesses in respect of their rights and responsibilities under three licensing regimes:

- Licensing Act 2003 (“the Act”)
- Gambling Act 2005
- Local Government (Miscellaneous Provisions) Act 1982

An important part of the service is representing residents at licence hearings, and negotiating with applicants’ representatives prior to or at hearings, and ensuring that residents can play a full role in the hearing.

The Project is the only service of its kind in the country. It was set up shortly before the Act came fully in to force in 2005. Westminster City Council had identified a need to provide an independent source of expert advice and assistance to its residents, in order to assist them in engaging effectively with the new licensing regime which gave those rights and responsibilities.

The twin aims of the Citizens Advice service nationwide are:

- To provide the advice people need for the problems they face.
- To improve the policies and practices that affect people’s lives.

The Project therefore focuses not only on casework, but also on wider issues in licensing law, for example responding to consultations at both local and national level.

This response is based on our experience of advising, assisting and representing residents at licence hearings, on feedback we have from residents and amenity societies in the course of our work, and feedback specifically solicited as part of this Call for Evidence.

Summary

0.1 The role of residents under Licensing Act 2003 (“the Act”) is a vital check and balance in the otherwise permissive nature of the legislation. This is clear from the s182 Guidance (as amended) states that one of the key aims and purposes of the legislation is to encourage ‘greater community involvement in licensing decisions and giving local

residents the opportunity to have their say regarding licensing decisions that may affect them.’ (Para 1.5)

0.2 Our view is that the Act does provide a framework in which the right balance can be struck. Whether or not the right balance is in fact struck on a day to day basis is dependent on numerous factors; effective engagement by residents being one. We believe that the Act provides important rights for residents, but not necessarily the wherewithal with which to exercise these rights effectively.

0.3 Significant barriers still exist which inhibit the appropriate balance being struck.

0.4 We strongly believe that residents have an important role to play, and that more should be done to ensure that those who wish to can engage effectively with the process.

Licensing objectives

1. Are the existing four licensing objectives the right ones for licensing authorities to promote? Should the protection of health and wellbeing be an additional objective?

1.1 Our view, which is also informed by feedback from some City of Westminster amenity societies, is that the four licensing objectives are indeed the right objectives. There is some support for the inclusion of ‘protection of health and wellbeing’ as an additional objective but, while supporting the principle that it can be appropriate to take these matters into consideration, we retain reservations as to the subjective nature of the concept. We feel that it would be difficult, although by no means impossible, to give a sufficiently clear definition of what the concept includes.

1.2 Some residents feel that their health and well-being is being put at risk, particularly due to the proliferation of licensed premises.

2. Should the policies of licensing authorities do more to facilitate the enjoyment by the public of all licensable activities? Should access to and enjoyment of licensable activities by the public, including community activities, be an additional licensing objective? Should there be any other additional objectives?

2.1 We do not feel that this is something which would assist or positively augment the licensing process.

2.2 A licensing authority already has the ability to set out ways in which it will seek to facilitate the enjoyment by the public of all licensable activities.

2.3 Whilst recognising the primacy of the 4 licensing objectives, the Guidance makes it clear that the legislation also supports a number of other ‘key aims and purposes’ which are ‘vitally important and should be principal aims for everyone involved in licensing work. They include: ‘recognising the important role which

pubs and other licensed premises play in our local communities by minimising the regulatory burden on business, encouraging innovation and supporting responsible premises’.

2.4 The s182 Guidance makes it clear that licensing authorities are free to add to the recommended core content of a licensing policy. For instance, para 13.18 of the Guidance states that ‘Statements of licensing policy should set out the extent to which the licensing authority intends to facilitate a broad range of entertainment provision for enjoyment by a wide cross-section of society.’

2.5 By way of example, City of Westminster’s Statement of Licensing Policy (SLP) 2016 sets out its vision at para 2.3.3: ‘The council wishes to see a less alcohol led and a more diverse range and variety of entertainment available later at night, and will allow for greater flexibility to those premises that add a more varied offer of entertainment and cultural activity. The council wishes to encourage a wider range of people to frequent the West End, both so that they can enjoy what it has to offer and because a wider range of age groups can act to curb anti-social behaviour.’

2.6 We feel that the existing objectives engage the right issues which ought to be considered, but that a ‘health and well-being’ objective may be helpful as an additional objective, subject to our comments above.

The balance between rights and responsibilities

3. Has the Live Music Act 2012 done enough to relax the provisions of the Licensing Act 2003 where they imposed unnecessarily strict requirements? Are the introductions of late night levies and Early Morning Restriction Orders effective, and if not, what alternatives are there? Does the Licensing Act now achieve the right balance between the rights of those who wish to sell alcohol and provide entertainment and the rights of those who wish to object?

3.1 We consider that the Live Music Act 2012 has gone far enough. Many forms of regulated entertainment do not now require a licence and cannot be controlled by conditions unless such conditions have been imposed as a result of a review of the premises licence. We are aware that some residents would argue that the Act did not impose ‘unnecessarily strict requirements’ in the first place, particularly since the enactment of the Live Music Act 2012 but before further deregulation.

3.2 Our view on the levy is that not enough authorities have implemented one for long enough to gauge accurately its effect. However, a more targeted version of the levy, along the lines of a ‘polluter pays’ principle, may be an alternative which more local authorities would be minded to consider.

3.3 The introduction of the power to implement an EMRO has not been effective.

- 3.4** A consultation in 2010 on rebalancing the Act asked the question ‘How can licensing authorities encourage greater community and local resident involvement?’ It is a quandary which has yet to be fully resolved.
- 3.5** Whether the Act now achieves the right balance between the rights of the trade and the rights of objectors is a difficult question to which to give a concise answer. Our view is that the Act as it now stands does so more effectively than as originally enacted; principally due to passage of time and experience, and the changes implemented by subsequent legislation. Lack of resources for licensing authorities has been and continues to be a barrier in some circumstances.
- 3.6** Accordingly, we believe that the Act does provide a framework in which the right balance can be struck. We believe that the Act provides important rights for residents, but not necessarily the wherewithal with which to exercise these rights effectively.
- 3.7** There will no doubt be responses to this question on both sides of the fence. Para 133 of the Memorandum to the Select Committee notes that criticisms were raised during the 2010 consultation that removing the ‘vicinity’ test could lead to an increase in frivolous and vexatious representations. On the other hand, and in a neat encapsulation of the sometimes polarising nature of these issues, many welcomed a greater community involvement.
- 3.8** Similarly, a recent study by the Institute of Alcohol Studies (IAS) received responses on both sides of the ‘balance’ debate. Some of the trade participants saw too much engagement as problematic for business. One view was that it is too easy to object.
- 3.9** Our view is that there are issues which can tip the balance in favour of industry. For example, there can be a clear disparity in the resources of the parties, both financial, practical (e.g. time) and in expertise. Nuances of practice can be confusing to residents, for example repeat applications, ‘shadow’ licence applications, and their rights on appeals (particularly on an appeal by a licence holder from a review initiated by residents). Some residents react with surprise when we advise them that if no representations are received in respect of an application for a licence, it must be granted subject only to conditions consistent with the Operating Schedule (if any).
- 3.10** Organisations such as residents associations and amenity societies are usually voluntary, and roles unpaid. The volunteers care deeply about the areas in which they live and wish to see the correct balance struck between the wishes of residents and the equally legitimate wishes of the licensed trade. One amenity society states that ‘We believe that we have achieved a balance in our area of London but this has been at the cost of a very significant level of effort and has been achieved despite rather than because of the Act and Guidance.’

3.11 It is perhaps noteworthy, particularly when considering if residents have too much power or influence, to consider the information at Annex A of the Memorandum to the House of Lords Select Committee. Table A2 shows that 97% of new premises licence applications and variation applications in the year to 31 March 2014 were granted. Only 3% were refused. These figures are consistent going back to 2008.

3.12 A point we often make to residents and at Licensing Sub-Committee hearings is that contested applications are almost never about a simple ‘grant as applied for’ or ‘refuse entirely’. There are many areas for negotiation and measures and compromises that can address objectors’ concerns. It is this, we suggest, where the informed and effective engagement of residents can be of great benefit both to them and to the process in general. Licensing can appear to be a minefield of jargon and procedure. Relatively benign proposals can appear out of context on the bare pages of an application. An understanding of the process, the terminology and the practice can assist all parties.

4. Do all the responsible authorities (such as Planning, and Health & Safety), who all have other regulatory powers, engage effectively in the licensing regime, and if not, what could be done? Do other stakeholders, including local communities, engage effectively in the licensing regime, and if not, what could be done?

4.1 Some responsible authorities engage very effectively. Our experience of the work of police, the licensing authority and Environmental Health is positive.

4.2 Other responsible authorities do not participate to a great extent, but perhaps through no fault of their own. For instance, although the local Public Health department is a responsible authority, ‘promotion of public health’ is not itself a licensing objective.

4.3 It is vitally important to the democratic nature of the licensing process that residents are empowered and informed.

4.4 The recent IAS study found that the view of interviewees was, generally, that accessibility to the process had increased, although significant practical barriers were identified. There are a number of ways in which effective engagement can be encouraged. Some of these are noted in the following paragraphs.

4.5 The extent of engagement of local communities varies. There are helpful initiatives and ways in which authorities seek to involve local residents. Whether in fact there is *effective* engagement depends on many factors e.g. whether an authority has a practice of notifying residents in the vicinity of applications; whether residents can sign up to weekly notifications; whether good advice is accessible to residents; when hearings take place; whether residents have access

to advice or assistance prior to or at hearings; the extent to which residents are aware of their rights and responsibilities.

- 4.6** Improvements in technology and the development of social media have made it potentially easier for residents to become involved. Some authorities send notification letters to residents within a certain vicinity of the application premises. Easily accessible lists of pending applications on a Council websites, or readily available information publications keeping interested residents updated, are vital.
- 4.7** Acceptance of representations via email and systems such as Public Access make it easier on a practical level and less time-consuming for residents to participate. It seems somewhat anachronistic that, according to Regulations, a representation sent by email should be followed by a hard copy.
- 4.8** An easily accessible and navigable online Licensing Register can be a mine of information which can assist residents in putting forward their views effectively.
- 4.9** Clear guidance on the statutory requirements, and the easy availability of application documents and licences is also helpful. Residents can then address the specifics of an application rather than the generalities which may appear on the blue notice in the window.
- 4.10** There are other difficulties. For instance the nature of the evidence required of residents is sometimes misunderstood, which can contribute to tilting the balance away from residents. Representations are sometimes not made or withdrawn because the objector is fearful of intimidation. Representations are sometimes not made or withdrawn because the objector does not want his or her contact details and home address made public.
- 4.11** Licence hearings in particular can still be regarded as ‘daunting and challenging’ which weights the system against resident, according to one amenity society. This is surprising given the clear direction that the ‘hearing’ should really take the form of a discussion led by the licensing authority. Our experience of licence hearings is positive, in a large part due to the opportunity which residents are afforded to be represented and/or speak for themselves, and be part of the discussions which frequently result in changes to the application or suggested compromises during the hearing itself.
- 4.12** Residents who have made representations on ostensibly very similar grounds can nevertheless often have slightly different perspectives which can be teased out by sensible questioning or affording them the opportunity to speak. The nuances of each resident’s concern can be highly relevant when considering the local context, which is where residents’ ‘expertise’ lies. On a more practical level, a resident who feels that they have not been given a fair chance to express their concerns is not likely to give up their time to attend another hearing.

- 4.13** We explain to residents what the hearing process entails. We always encourage residents to speak at hearings even if we are representing them, as we feel that it is an important part of the process for a Licensing Sub-Committee to hear, however briefly, from those affected by the proposals.

Licensing and local strategy

- 5. Licensing is only one part of the strategy that local government has to shape its communities. The Government states that the Act “is being used effectively in conjunction with other interventions as part of a coherent national and local strategy.” Do you agree?**

5.1 No comment to make.

- 6. Should licensing policy and planning policy be integrated more closely to shape local areas and address the proliferation of licensed premises? How could it be done?**

6.1 We are frequently asked to explain to residents why an application for a licence can be granted in the absence of planning permission, or where there is a breach of planning control. It is not unusual to see representations which have as their main focus the contention that a licence cannot or should not be granted for these reasons.

6.2 An applicant would make a submission that the absence of planning permission is not a relevant factor. Of course, the reverse is also true- the presence of planning consent should also not be relevant. Nevertheless, we have had feedback from residents who feel that the licensing and planning regimes are being ‘played off’ against each other.

6.3 There is certainly an argument for a more ‘joined-up’ approach. The difficulty is that the regimes, although clearly sharing common elements, are separate. There are significant differences.

Crime, disorder and public safety

- 7. Are the subsequent amendments made by policing legislation achieving their objects? Do they give the police the powers they need to prevent crime and disorder and promote the licensing objectives generally? Are police adequately trained to use their powers effectively and appropriately?**

7.1 The closure powers in the Act and in other legislation and the introduction of s53A ‘summary’ reviews do give the police wide-ranging powers.

7.2 As with various aspects of the other powers available to bodies and individuals under the Act, whether the police are adequately trained and resourced in order to utilise these powers proportionately and effectively is another matter, and one on which we are not able to comment.

8. Should sales of alcohol airside at international airports continue to be exempt from the application of the Act? Should sales on other forms of transport continue to be exempt?

8.1 No comment to make.

Licensing procedure

9. The Act was intended to simplify licensing procedure; instead it has become increasingly complex. What could be done to simplify the procedure?

9.1 We agree that parts of the Act are very technical and complex, and not easy for the lay person to understand. However, we do not agree that it has become increasingly complex in general, with the exception of regulated entertainment and s53A reviews. In fact, certain changes such as the abolition of the 'vicinity' test have made it less complex.

9.2 There are of course various nuances which have developed since the Act came in to force, based on everyday practice and procedure. One example is 'shadow' licences.

9.3 It is natural that as the Act has been in force for 10 years, parties have looked to interpret provisions the Act in different ways. Case law has honed some areas of doubt and challenge arising from the blank canvas of the Act in 2005. In this way the Act is now more complex inasmuch as a sound working knowledge of the case law is necessary, but this is a natural result of the balance which the Act requires a licensing authority to strike, and the inevitable tensions which this causes between the equally legitimate aims of the different stakeholders.

9.4 The most complex parts of the Act in our view are those relating to regulated entertainment - the amendments to which were put forward in order to 'cut red-tape' - and the s53A 'summary' review procedure. The latter is in the process of being rectified.

9.5 It is very difficult for residents to know what regulated entertainment is licensable, when it is licensable, where it is licensable, and when and in what circumstances conditions on licence apply or do not apply. We often have to explain this at length.

9.6 We would also reiterate our previous comments regarding licence hearings, and the importance to the decision making progress of residents who are well-informed about their rights and responsibilities.

10. What could be done to improve the appeal procedure, including listing and costs? Should appeal decisions be reported to promote consistency? Is there a case for a further appeal to the Crown Court? Is there a role for formal mediation in the appeal process?

10.1 It is vital that the views of residents are taken fully in to account on appeals, particularly on appeals arising from a review instigated by residents, to prevent them feeling disenfranchised.

10.2 There is no automatic right to be joined as a party to the appeal and in any event, possible adverse costs orders are discouraging.

10.3 Dissemination of decided cases in the higher courts is extremely useful. The Institute of Licensing has an online facility where many can be viewed. Perhaps the Government could have a central register of case law from the higher courts?

10.4 Reporting of Magistrates' Court decisions could be useful in promoting consistency although a decision is not binding.

10.5 We do not see a need for a further appeal to the Crown Court.

10.6 We believe that there is a role for mediation in the appeal process. Our experience is that matters can progress swiftly following mediation between parties at the application stage, and there is no reason why this should not be the case on appeal, particularly when there are costs implications.

Sale of alcohol for consumption at home (the off-trade)

11. Given the increase in off-trade sales, including online sales, is there a case for reform of the licensing regime applying to the off-trade? How effectively does the regime control supermarkets and large retailers, under-age sales, and delivery services? Should the law be amended to allow licensing authorities more specific control over off-trade sales of "super-strength" alcohol?

11.1 Issues such as pre-loading and post-loading can lead to the on-trade bearing the brunt of disproportionate regulation where the burden should perhaps be with the off-trade.

11.2 The regime does control supermarkets etc effectively, particularly where conditions can be imposed on licences to address concerns. We have some concerns however that the regime may not afford sufficient regulation of

delivery services of alcohol where an order is taken and processed by a third party platform, but appropriated to the contract at the premises (e.g. a restaurant), and then delivered by a third party contractor on behalf of the platform but not employed by them. Given that under s151 of the Act it is not an offence to deliver alcohol to a person under 18 if the delivery takes place to the buyer's home, the holder of the premises licence in these circumstances must be able to either carry out age verification or satisfy themselves that age verification has been carried out.

- 11.3** It is common for conditions to be added to premises licences restricting sales of 'super strength' alcohol, although some argue that such conditions may not be lawful. Street-drinking is often of great concern. One amenity society states that it is linked to the availability of super-strength alcohol, and the 'associated problems of litter, public urination and general anti-social behaviour.'

Pricing

- 12. Should alcohol pricing and taxation be used as a form of control, and if so, how? Should the Government introduce minimum unit pricing in England? Does the evidence that MUP would be effective need to be "conclusive" before MUP could be introduced, or can the effect of MUP be gauged only after its introduction?**

12.1 No comment to make.

Fees and costs associated with the Licensing Act 2003

- 13. Do licence fees need to be set at national level? Should London, and the other major cities to which the Government proposes to devolve greater powers, have the power to set their own licence fees?**

13.1 Yes. The challenges faced by licensing authorities differ from one area to another in nature and extent. As one amenity society states, '...although the Act has provides tougher powers...it has not provided the resources to allow these to be exercised.

13.2 There is a strong argument that fees should reflect as closely as possible the actual costs incurred by a licensing authority of exercising its functions under the Act in the manner which the legislation envisages.

International comparisons

- 14. Is there a correlation between the strictness of the regulatory regime in other countries and the level of alcohol abuse? Are there aspects of the licensing laws of other countries, and other UK jurisdictions, that might usefully be considered for England and Wales?**

14.1 No comment to make.

2 September 2016

Citizens Advice Westminster – supplementary written evidence (LIC0161)

Introduction

The Licensing Advice Project (“the Project”) is provided by Citizens Advice Westminster and funded by Westminster City Council.

On 2 September 2016 we submitted a written response to the ‘Call for Evidence’ issued by the Select Committee.

On 11 October 2016 we attended the meeting of the Select Committee. Three other witnesses attended the meeting: Dr Alan Shrank, Councillor Carol Davies, and Patricia Thomas.

We would like to thank the Select Committee for inviting us to attend the meeting and to respond to the questions put to us.

We have read the transcript of the meeting. The purpose of this submission is to clarify and/or expand on a number of the matters which arose during the course of the meeting.

Q72

We would like to emphasise that our views of the hearing process are based largely on our experiences in Westminster, where we represent residents and aim to facilitate their effective participation in the process. Anecdotally, practice varies in different parts of the country. Our positive experiences in Westminster may well be very different to the experiences of others in different parts of the country.

We have found that it can be extremely beneficial for residents to be fully engaged and involved at a licence hearing. We addressed this in our written response to the Call for Evidence at paras 4.11 - 4.13 and in our response to this question at the meeting.

We believe that more widespread knowledge of the rights and responsibilities of residents can lead to decisions (and decision notices) which better reflect the views of objectors.

Q74

We did not have an opportunity to respond to Lord Smith of Hindhead’s question.

We accept absolutely that the reason why some residents do not participate is not solely because of lack of awareness or knowledge. As Lord Smith said, some residents will simply not be interested in these issues and will not share the concerns expressed.

However, our experience is that residents often state that they find the process stacked in favour of an applicant and that this either discourages them from participating or prevents them from feeling like they are doing so effectively. We have feedback that some residents are not aware of their rights to become involved in applications for licences or resolving

problems by mediation or review, and are reluctant to become involved in a process which they know nothing about, or to attend a hearing, without appropriate assistance and advice.

We believe that providing residents with information about their rights under the Act enables more people to make better informed choices.

Q75

We are aware that there are a great many TENs in Westminster each year, the vast majority of which are for commercial operations. However, the licensing authority in Westminster would be much better placed than us to speak to these numbers and the impact of TENs, and if the TENs process is being abused.

Picking up on the points made by Dr Shrank, the view we set out was that the TENs process could be open to ‘abuse’, in the sense of TENs being used to e.g. override licence conditions in a way which adversely impacts on residents, who are not entitled to object to a TEN. There is of course nothing unlawful in using a TEN in this way.

Although we do not see the process being abused in this way, we should emphasise that we do not have a great deal of experience of the TENs process because we advise residents, and residents are not entitled to object to TENs. We have however had experience of licence reviews where nuisance arising from TENs has been one of the reasons for the review.

Conclusion

We would like to thank you again for affording us the opportunity to attend the Select Committee meeting to give oral evidence, and to provide these additional comments.

We look forward to reading the Select Committee’s conclusions in due course.

2 November 2016

City of London Corporation – written evidence (LIC0154)

Introduction

1. The City of London Corporation is a licensing authority under the terms of the Licensing Act 2003, overseeing over 700 licensed premises in the City of London, and welcomes the opportunity to contribute to the Committee's inquiry.

Licensing objectives

2. The City Corporation believes there is merit in adding the protection of health and wellbeing as a licensing objective. While the Act is adequate to control most issues relating to the supply of alcohol and the provision of licensable activities, it is apparent that negative outcomes arising from the supply of alcohol can affect the health and wellbeing of individuals. With the introduction of Primary Care Trusts and Local Health Boards as responsible authorities in 2011, the safety of the public within the night time economy is already taken into consideration for new and existing licence applications. The introduction of the protection of health and wellbeing as a licensing objective would help further to formalise this relationship.
3. The City Corporation does not believe that access to and enjoyment of licensable activities by the public should be an additional licensing objective. Licensing objectives are intended to protect individuals, not to secure their enjoyment. However, if the aims of the objective were to safeguard licensed premises, and to forge greater links with planning legislation, there would be some merit in exploring the possibilities of the proposal.

Licensing and local strategy

4. Licensing and planning policies should be more integrated. However, the way in which this should be achieved is far more difficult to answer. The City Corporation has taken steps over the past two years to integrate these two areas, and its licensing and planning services do now work more closely together. It is likely that integrating planning and licensing policies in a uniform manner nationally would require legislative change.

Fees and costs associated with the Licensing Act 2003

5. The City Corporation has long argued for local licence fees. As current fees are linked to the rateable value of the premises, and many of the properties in the City are at the higher end of the rateable value scale, income received from licence renewals almost covers the Corporation's licensing costs.
6. However, the disparity between Band A and Band E fees is too great. Administering the licence renewal of a Band E premises, including all associated compliance and enforcement expenditure, does not cost five times as much as administering the

licence renewal of a Band A premises. Locally set fees would allow licensing authorities to spread the cost of administering and enforcing the Licensing Act more evenly between all premises, with a slightly higher fee for the lower band premises and a slightly lower fee for the higher band premises.

30 September 2016

City of Wolverhampton Council – written evidence (LIC0095)

On behalf of: Licensing Services, Public Health, Environmental Health, Trading Standards, Planning departments.

This is a collective response from the services stated above.

SELECT COMMITTEE ON THE LICENSING ACT 2003

Licensing objectives

1. Are the existing four licensing objectives the right ones for licensing authorities to promote? Should the protection of health and wellbeing be an additional objective?

We believe that a health and well-being objective should be included. The instrumental role of Public Health has been recognised and evidenced through the changes made in 2011 which resulted in Directors of Public Health being assembled as one of the Responsible Authorities. Whilst in Wolverhampton Public Health is well embedded in the licensing regime and welcomed as an equal partner, it is plausible that this may not be replicated throughout England and Wales due to the absence of a health and well-being related objective. Such an objective will place more emphasis on licensing regimes to consider the medium and long term health impact of alcohol such as alcohol related hospital admissions and alcohol related mortality rates.

However, whilst the aforementioned objective would be welcome we recognise the difficulties Public Health teams face in providing meaningful evidence within the licencing arena. Responsible Authorities are generally in a position to provide premises or street specific data, which enable direct correlation with a licensing application, review or variation. The approach taken by Public Health, however, is population wide and not case specific. Optimistically, there has been recent movement to make available more robust A & E data and newly sourced ambulance data, the latter being on a trial basis. This data will strengthen the offer of Public Health teams to influencing the licencing process.

Notwithstanding data and evidence concerns, adding a health and wellbeing objective will certainly provide added leverage for licensing regimes to place more obligations on applicants. For example applicants could be requested to demonstrate how they are promoting public health, how aware they are of alcohol related health issues facing the city, their awareness of support services should they have customers who require support and intervention, and whether they have information available within the premises which promote safe drinking. These are just a few examples that could be considered with the aim of using the objective to communicate clearly to applicants their role in combatting harmful drinking.

With regards to other kinds of premises, there are cases where the Planning Inspectorate have suggested that a planning condition could be used to restrict the hours of operation of a hot food takeaway where it is necessary to mitigate the impact on health. However,

without a specific health objective, it is not certain how far a health based restriction on a licensable activity might be justified under the Licensing Act. Therefore, if a health and well-being objective can be brought into the licensing objectives, a licence to sell unhealthy late night takeaway food could be refused or restricted, for example. A further discussion on the links between planning and licensing can be found under question 6.

Betting shop licenses are granted on a set of very permissive licensing objectives, based on the objectives of the Gambling Act. They do not provide councils with much scope to decline applications. Therefore, licensing conditions should be changed to reflect the longer term health impact of establishments and the financial impact that they have on deprived communities, rather than the presumption on short-term requirements being met.

Unfortunately, broad-based evidence on the long-term cumulative health effects of licensed premises/developments does not translate easily into a calculation of the specific benefits and cost savings in an area where a license/development is proposed. Evidence is emerging on the spatial impact of clustering of betting shops on problem gamblers (due to the explosion in Fixed Odds Betting Terminal promotion and subsequent use in these premises), for example. However such evidence can be difficult to use to counter the location-specific and carefully-costed arguments put forward by developers/applicants. Until the burden of proof is shifted to being the responsibility of the applicant – i.e. that they have to prove that an extra licence will not be detrimental to public health through a Health Impact Assessment or other health screening tool – any integration will have little effect.

2. Should the policies of licensing authorities do more to facilitate the enjoyment by the public of all licensable activities? Should access to and enjoyment of licensable activities by the public, including community activities, be an additional licensing objective? Should there be any other additional objectives?

Whilst we agree that Statements of Licensing Policy should recognise the importance of access and enjoyment of licensable activities, it was not necessary for this to become a specific licensing objective in its own right.

It is felt that the current application of the Licensing Act 2003 was permissive in nature and in the absence of relevant representations relating to the promotion of the licensing objectives, applications are granted in line with the wishes of the applicant.

Members felt that some additional paragraphs on the benefits of facilitating access to licensable activities within the section 182 guidance would be sufficient to ensure that licensing authorities had regard to this point.

The balance between rights and responsibilities

3. Has the Live Music Act 2012 done enough to relax the provisions of the Licensing Act 2003 where they imposed unnecessarily strict requirements? Are the introductions of late night levies and Early Morning Restriction Orders effective, and if not, what alternatives are

there? Does the Licensing Act now achieve the right balance between the rights of those who wish to sell alcohol and provide entertainment and the rights of those who wish to object?

We feel that the Live Music Act 2012 has done enough to relax the provisions of the Licensing Act 2003, but that perhaps there was not enough awareness amongst licence holders and the general public about the changes the relaxations introduced by the Act.

We feel that late night levies and EMROs were not proving to be effective, as demonstrated by the small number of authorities that had chosen to introduce them.

We feel that the Licensing Act 2003 does not achieve the right balance between the rights of those who wish to sell alcohol and provide entertainment and the rights of those who wish to object. However again we feel there is insufficient public awareness of the application and licence review process and how the community can become engaged with licensing matters in their local area.

4. Do all the responsible authorities (such as Planning, and Health & Safety), who all have other regulatory powers, engage effectively in the licensing regime, and if not, what could be done? Do other stakeholders, including local communities, engage effectively in the licensing regime, and if not, what could be done?

Responsible Authorities within Wolverhampton do engage together effectively in the Licensing regime through regular Responsible Authority Forums. There are few areas that have this forum in place which could be relating to the lack of guidance through S182. Clear guidance on how responsible authorities could adopt this process could identify an increase in engagement and identify how other stakeholders could be engaged.

In relation to Planning Departments, it was felt that when they did become engaged with the process, their representations were often relating to the absence of appropriate planning permission, which the Act and guidance do not allow licensing authorities to consider when making licensing determinations.

Greater public awareness of the licensing regime and how it operates would improve engagement further.

Licensing and local strategy

5. Licensing is only one part of the strategy that local government has to shape its communities. The Government states that the Act “is being used effectively in conjunction with other interventions as part of a coherent national and local strategy.” Do you agree?

We agree that the Act is being used effectively in conjunction with other interventions as part of a coherent national and local strategy.

6. Should licensing policy and planning policy be integrated more closely to shape local areas and address the proliferation of licensed premises? How could it be done?

Yes. Integration could help to create a healthier environment by placing stronger restrictions on the licensing of premises for uses such as hot food takeaways, off-licenses, Sexual Entertainment Venues, certain types of A2 shops/cafes (dessert shops, shisha cafes), payday lenders and betting shops, and encouraging a spatial dimension to licensing policy. This is so that the cumulative impact of such premises on population health and wellbeing can be addressed. Currently, the difference between planning and licensing objectives create a fragmented and confusing system racked with inconsistencies.

The strength of integrating licensing objectives with planning policy would enable a more holistic approach. This would allow an opportunity to drive forward strategic health goals across sectors including planning, trading standards, police and community safety. This collaborative approach would seek to reduce alcohol related harm, financial crises brought about by payday lenders/bookmakers, health harms from SEVs (such as transmission of sexually transmitted infections, risks of exploitation).

Crime, disorder and public safety

7. Are the subsequent amendments made by policing legislation achieving their objects? Do they give the police the powers they need to prevent crime and disorder and promote the licensing objectives generally? Are police adequately trained to use their powers effectively and appropriately?

There is a specialist Licensing Team within Wolverhampton (West Midlands) Police to deal with Licensing matters. West Midlands Police will be responding to this section separately as part of the consultation.

8. Should sales of alcohol airside at international airports continue to be exempt from the application of the Act? Should sales on other forms of transport continue to be exempt?

Unable to comment on this as currently there are no airports within Wolverhampton boundary.

Licensing procedure

9. The Act was intended to simplify licensing procedure; instead it has become increasingly complex. What could be done to simplify the procedure?

An area that could be simplified is the application forms. It is felt that there was scope for the form for a new and variations to premises licence to be significantly shorter. Members also wanted to point out that the online application forms provided on Gov.uk were still not compliant with the forms prescribed by regulations made under the Licensing Act 2003.

10. What could be done to improve the appeal procedure, including listing and costs? Should appeal decisions be reported to promote consistency? Is there a case for a further appeal to the Crown Court? Is there a role for formal mediation in the appeal process?

We feel that there should be statutory time limits on appeals being heard as there are with Sub-Committee hearings. Proceedings as in some cases, the delay in the decision taking effect could have a serious adverse effect on the licensing objectives.

We feel that there was already a role for mediation in the appeal process and that many appeals were already being disposed of by way of negotiation and consent order.

Sale of alcohol for consumption at home (the off-trade)

11. Given the increase in off-trade sales, including online sales, is there a case for reform of the licensing regime applying to the off-trade? How effectively does the regime control supermarkets and large retailers, under-age sales, and delivery services? Should the law be amended to allow licensing authorities more specific control over off-trade sales of “super-strength” alcohol?

We feel age verification policies are used well. Locally, all new applicants are proactively encouraged to adopt best practice schemes such as challenge 21 and challenge 25. Trading Standards promote Challenge 25 and regularly carry out test purchases using apprentices and work experience volunteers. As part of Challenge 25 checks are made to ensure that traders ask for identification and also actively check the ID. Additionally, Trading Standards complete several surveys each year targeting traders where intelligence is received regarding underage sales. These are targeted using young people to attempt test purchases.

We also promote NO ID NO SALE. Information packs and advice letters are given to traders.

In Wolverhampton all applicants are requested to adhere to best practice and not sell beer or cider above 6.5% strength, which is generally received well and not contested. However providing licencing authorities with specific control and power will add weight to the role of the Responsible Authorities and prevent the sale of super strength drinks.

Taking the above into consideration we do not feel there is a need for a wholesome reform of the Licensing Act, however some adjustments as outlined would strengthen the position of licensing authorities to deliver against the objectives.

Age verification policies and control on super strength alone, as well as other mandatory conditions, are unlikely to control the upward trajectory in alcohol sales and consumption, further work around pricing needs to be developed.

Pricing

12. Should alcohol pricing and taxation be used as a form of control, and if so, how? Should the Government introduce minimum unit pricing in England? Does the evidence that MUP would be effective need to be “conclusive” before MUP could be introduced, or can the effect of MUP be gauged only after its introduction?

Alcohol pricing and taxation will reduce alcohol related harm. The challenge is to set a price for alcohol which is optimal for society. This is so that the increased price reduces harm, but

without penalising sensible drinkers and the economy. The evidence for MUP is already conclusive where other countries have taken this approach.

Fees and costs associated with the Licensing Act 2003

13. Do licence fees need to be set at national level? Should London, and the other major cities to which the Government proposes to devolve greater powers, have the power to set their own licence fees?

Fees should continue to be set at a national level but desperately need to be increased as they have not been subject to any increase since February 2005.

The licensing fees should be subject to review by Government on a regular basis and are increased in line with inflation at the very least.

It would be beneficial to Licensing Authorities that a premises licence suspended for non-payment of an annual fee should lapse if the annual fee remains unpaid after 12 months similar to the Gambling Act 2005.

International comparisons

14. Is there a correlation between the strictness of the regulatory regime in other countries and the level of alcohol abuse? Are there aspects of the licensing laws of other countries, and other UK jurisdictions, that might usefully be considered for England and Wales?

The availability of a product can promote behaviour changes. The changes to opening times of pubs and night clubs have resulted in a change in behaviour, as the availability of alcohol drives alcohol consumption. More stringent controls could be introduced to reduce the availability of alcohol which could result in the consumption being reduced.

2 September 2016

Clifton Down Community Association – written evidence (LIC0079)

This is a response to the Select Committee's call for evidence from Clifton Down Community Association, a residents' association with about 360 members from 230 households in the eastern part of Clifton, Bristol.

Our area includes Whiteladies Road, a suburban arterial road with a high concentration of licensed premises in close proximity to residential streets. Part of Whiteladies Road has been designated as a cumulative impact area.

Some licensed premises closed during the last recession, and the CIA has been helpful in enabling further late licences to be resisted, but residents still experience problems associated with late-night drinking, including noise, vomiting, vandalism, and other anti-social behaviour.

Our general view is that the current licensing regime continues to favour the operators of licensed premises at the expense of residents affected by their activities. We would particularly like to see the removal of the presumption that an application is to be granted if no objection is received. We would also like councils, when considering an application for the grant or variation of a premises licence, to be able to take into account the amenity of those living and working in the area in question, as can be done when considering the opening hours of premises under a planning application.

We would respond to the specific questions asked as follows.

Licensing objectives

1. Are the existing four licensing objectives the right ones for licensing authorities to promote? Should the protection of health and wellbeing be an additional objective?

1.1 We agree with the submission of NORA (the National Organisation of Residents Associations) that the third licensing objective – the prevention of public nuisance – has proved inadequate to protect the amenity of local residents affected by anti-social behaviour (noise, urinating, vomiting, littering and general rowdiness) caused by late-night drinking.

1.2 Our experience is that licences are often granted even where such anti-social behaviour is evidenced (and even more would be if it were not for cumulative impact areas).

1.3 We would support NORA's suggested objective of the 'prevention of loss of amenity of the environment' as an additional licensing objective.

1.4 Adding the protection of health and wellbeing as a further objective may be helpful if this could be used to protect residents from having their sleep disturbed by noise from late-night drinkers.

2. Should the policies of licensing authorities do more to facilitate the enjoyment by the public of all licensable activities? Should access to and enjoyment of licensable activities by the public, including community activities, be an additional licensing objective? Should there be any other additional objectives?

2.1 We would not support access to and enjoyment of licensable activities by the public as an additional licensing objective. The operation of the licensing regime under the 2003 Act already favours applicants over residents (since a council must grant an application if no objections are received), and we would like this presumption to be abolished.

2.2 We would support the protection of the amenity of residents as an additional objective, as already mentioned in response to question 1 above.

The balance between rights and responsibilities

3. Has the Live Music Act 2012 done enough to relax the provisions of the Licensing Act 2003 where they imposed unnecessarily strict requirements? Are the introductions of late night levies and Early Morning Restriction Orders effective, and if not, what alternatives are there? Does the Licensing Act now achieve the right balance between the rights of those who wish to sell alcohol and provide entertainment and the rights of those who wish to object?

3.1 Our experience is that the provisions relating to live music have been relaxed too much, in relation to amplified music, causing disturbance to residents; and that late-night levies and EMROs are seldom effective (because councils are unwilling to use them).

4. Do all the responsible authorities (such as Planning, and Health & Safety), who all have other regulatory powers, engage effectively in the licensing regime, and if not, what could be done? Do other stakeholders, including local communities, engage effectively in the licensing regime, and if not, what could be done?

4.1 The planning and licensing regimes are not well integrated. We have seen several cases of applicants for licences requesting hours outside those granted in the planning permission for the premises (and vice versa), and it seems wrong that licensing committees cannot take planning considerations into account.

4.2 Our experience is that the noise control department of Bristol City Council have been helpful. We wonder whether they could be given more power to help speed up the revoking of licences when necessary.

4.3 Local communities engage well, in our experience, but the fact that a council must grant a licence unless an objection is made is burdensome for community groups, since they have to monitor all applications made so that they can be sure to object to an application that might cause nuisance to residents. In Bristol, there is no system by which residents can sign up to be notified automatically by email when a licensing application is made in their area, so one has to check the council's website proactively for new applications weekly.

Licensing and local strategy

5. Licensing is only one part of the strategy that local government has to shape its communities. The Government states that the Act ‘is being used effectively in conjunction with other interventions as part of a coherent national and local strategy’. Do you agree?

5.1 We are not aware of other interventions that are used protect the amenity of residents from late-night drinking and anti-social behaviour.

6. Should licensing policy and planning policy be integrated more closely to shape local areas and address the proliferation of licensed premises? How could it be done?

6.1 Yes, as mentioned above in response to question 4. It should not be possible for an applicant to request, or for a council to grant, licensing hours that are longer than the hours of operation permitted by the relevant planning consent. As NORA has suggested, licensing committees should be able to consider the general effect on the environment, as is the case when planning applications are decided.

Crime, disorder and public safety

7. Are the subsequent amendments made by policing legislation achieving their objects? Do they give the police the powers they need to prevent crime and disorder and promote the licensing objectives generally? Are police adequately trained to use their powers effectively and appropriately?

7.1 Our experience is that the police are often helpful in opposing licence applications, but their resources for dealing with public nuisance and anti-social behaviour are limited.

8. Should sales of alcohol airside at international airports continue to be exempt from the application of the Act? Should sales on other forms of transport continue to be exempt?

8.1 We see no reason to change these exemptions.

Licensing procedure

9. The Act was intended to simplify licensing procedure; instead it has become increasingly complex. What could be done to simplify the procedure?

9.1 Here in Bristol, the licensing procedure is still largely conducted on paper. Only brief details of applications are available on line; to see the full application one has to attend the council office in person during working hours. Notices of hearings are sent out by letter, as are decision notices (many months after the hearing).

9.2 It would be much better if licensing applications could be dealt with in the same way as planning applications, with all documents available on line, and with an option for residents to be notified automatically by email if an application is made in their area. It would also be helpful if the current licensing position of all premises could be made available on line, in the same way that the current planning position is.

10. What could be done to improve the appeal procedure, including listing and costs? Should appeal decisions be reported to promote consistency? Is there a case for a further appeal to the Crown Court? Is there a role for formal mediation in the appeal process?

10.1 We have no experience of the appeal procedure, but would support retention of the ability of an interested party to appeal a council's decision (in this respect, the licensing regime is better than the planning regime).

Sale of alcohol for consumption at home (the off-trade)

11. Given the increase in off-trade sales, including online sales, is there a case for reform of the licensing regime applying to the off-trade? How effectively does the regime control supermarkets and large retailers, under-age sales, and delivery services? Should the law be amended to allow licensing authorities more specific control over off-trade sales of "super-strength" alcohol?

11.1 We would support greater control over off-sales, especially late at night.

Pricing

12. Should alcohol pricing and taxation be used as a form of control, and if so, how? Should the Government introduce minimum unit pricing in England? Does the evidence that MUP would be effective need to be 'conclusive' before MUP could be introduced, or can the effect of MUP be gauged only after its introduction?

12.1 We would support minimum unit pricing as a way of preventing irresponsible promotions of alcohol that encourage binge drinking.

Fees and costs associated with the Licensing Act 2003

13. Do licence fees need to be set at national level? Should London and the other major cities to which the Government proposes to devolve greater powers, have the power to set their own licence fees?

13.1 In Bristol, the licensing office appears to be under-resourced, especially as regards enforcement and the lack of investment in appropriate IT. As NORA has suggested, the licensing fees should be sufficient to cover the costs of the licensing regime, especially in these times of reduced local authority funding. The fees should also be sufficient to cover the costs of introducing an effective online system of applications, as suggested above (which would be likely to save money in the longer term).

International comparisons

14. Is there a correlation between the strictness of the regulatory regime in other countries and the level of alcohol abuse? Are there aspects of the licensing laws of other countries, and other UK jurisdictions, that might usefully be considered for England and Wales?

14.1 We have little experience of the regimes in other countries, but agree that they should be investigated in case there are aspects that we could learn from.

1 September 2016

Cornwall Council Licensing Authority – written evidence (LIC0069)

Please find below response on behalf of Cornwall Council Licensing Authority, which integrates the views of all services with an interest in licensing.

Licensing objectives

1. Are the existing four licensing objectives the right ones for licensing authorities to promote? Should the protection of health and wellbeing be an additional objective?

We do not consider an additional objective is necessary as we are of the view that Public Health can contribute to the licensing process under current arrangements. Having said that, we are aware, in order for health harms to be considered as part of a premises application, they have to be attributable to that premises, unless in a cumulative impact area, where it can relate to a group of premises in a particular area.

We support the Cornwall Alcohol Strategy Lead's suggestion that the wording of the 'public safety' objective could be amended to 'public safety and wellbeing' or to make it even clearer, 'public safety, health and wellbeing'.

In addition, the Fire Authority has raised concerns that fire safety matters have to be raised through the public safety objective and it is not very effective. The Fire Safety Order relates to buildings so if they get a large outdoor gathering it is difficult to use their legislation. They therefore suggest a 'health, safety and wellbeing' objective to address this issue.

2. Should the policies of licensing authorities do more to facilitate the enjoyment by the public of all licensable activities? Should access to and enjoyment of licensable activities by the public, including community activities, be an additional licensing objective? Should there be any other additional objectives?

We support the principle that the enjoyment by the public of licensable activities should be encouraged but only in such a way that they do not impact negatively on other people. A balance needs to be drawn and the council believes that at present is about right and therefore we do not consider there are any further measures required to address this. Many community events no longer require licensing following recent deregulation.

The balance between rights and responsibilities

3. Has the Live Music Act 2012 done enough to relax the provisions of the Licensing Act 2003 where they imposed unnecessarily strict requirements? Are the introductions of late night levies and Early Morning Restriction Orders effective, and if not, what alternatives are there? Does the Licensing Act now achieve the right balance between the rights of those who wish to sell alcohol and provide entertainment and the rights of those who wish to object?

Our colleagues in Environmental Protection consider that the relaxations in the Live Music Act have gone far enough; noise nuisances are occurring in existing licensed premises up to 11pm and in some cases, action is required to be taken through the review process to reinstate the noise nuisance conditions and/or remove the exemption.

The late night levy does not seem to have worked nationally in the way intended. It is too complicated, too rigid and it is unacceptable that most of the income raised would go to the police but not necessarily be ploughed back into addressing the costs arising from late night activities. The principle is right but it should be much easier for a local authority and the police to agree and implement a system suitable for their area.

Also Early Morning Restriction Orders are not used in Cornwall; issues in particular towns are addressed through cumulative impact policies, of which we have 4 in Cornwall. It is pleasing to note that through the Government's Modern Crime Prevention Strategy, it is intended that cumulative impact policies will be on a statutory footing in the future. The proposed 'Group Review Intervention Powers' which will enable licensing authorities to consider conditions for a group of premises to address problems in a specific location may also be a preferred alternative to an EMRO.

With regard to achieving the right balance between those applying and those who wish to object, we feel that all Responsible Authorities should be able to object to TENs and that TENs should be publicly available for comment. Obviously this could impact on the timescales involved as at the present time there is very little time for objections, modifications, hearings etc. It is felt that TENs are not always used for the purpose they were intended and are abused by some licensees, for example, regular extension of hours rather than submitting a variation application.

In addition, with regard to TENs, as well as all Responsible Authorities being able to respond to TENs, they should be able to attach conditions where necessary. At the present time only conditions can be added if there is an existing Premises Licence. Therefore a TEN for a premises where there is no premises licence either has to be accepted as it is without any conditions or refused entirely.

4. Do all the responsible authorities (such as Planning, and Health & Safety), who all have other regulatory powers, engage effectively in the licensing regime, and if not, what could be done? Do other stakeholders, including local communities, engage effectively in the licensing regime, and if not, what could be done?

We find that there is least involvement from those Responsible Authorities who have their own regulatory powers, e.g. Planning, Health & Safety and the Fire Authority.

This can occasionally cause irregularities, e.g. if a licence is issued for a terminal hour of 1am but there is a planning restriction requiring the premises to close at midnight. An improvement may be if businesses were told which consent to obtain first and for there to be more clarity on the types of controls, such as trading hours, which should come under

one of them and which takes legal precedence if there is a conflict (the most recent or one particular consent)?

In addition, to improve the situation, the planning and licensing forms could be synchronised; perhaps the statutory licensing application forms could be amended to include questions relating to planning permission, health & safety risk assessments and Fire regulatory requirements. This may highlight these additional requirements to the applicant and also highlight to the relevant Responsible Authorities to follow up if necessary.

Staff shortages have resulted in different services within local government attaching different priorities to licensing issues and we are aware that Planning may not have the resources to scrutinise licensing applications thoroughly.

Town and Parish Councils should also be included as a Responsible Authority under the Act. We also consider the Government should raise awareness for business umbrella sectors such as Chamber of Commerce and BIDs to engage in the licensing process.

Licensing and local strategy

5. Licensing is only one part of the strategy that local government has to shape its communities. The Government states that the Act “is being used effectively in conjunction with other interventions as part of a coherent national and local strategy.” Do you agree?

The Government need to be at least coherent as they expect local authorities to be; we understand that different Government departments are now responsible for different areas of licensing, for example, Home Office are responsible for alcohol, DCMS are responsible for entertainment and the Department of Health are involved from the Public Health aspect.

It is considered local strategies are more appropriate than national strategies in connection with licensing and suggest the Government should consider giving more powers to local authorities to determine their own strategies.

6. Should licensing policy and planning policy be integrated more closely to shape local areas and address the proliferation of licensed premises? How could it be done?

Yes, Licensing and Planning should be jointly looking at issues affecting the community. In particular, in order to achieve consistent decisions in cases where a premises is subject to both Licensing and Planning processes there should be harmony between both regimes. It would be useful if Planning considered Licensing’s cumulative impact policies in their plans and their Neighbourhood Plans should integrate into Licensing Policy.

Crime, disorder and public safety

7. Are the subsequent amendments made by policing legislation achieving their objects? Do they give the police the powers they need to prevent crime and disorder and promote the licensing objectives generally? Are police adequately trained to use their powers effectively and appropriately?

This is a matter for comment from the Police.

8. Should sales of alcohol airside at international airports continue to be exempt from the application of the Act? Should sales on other forms of transport continue to be exempt?

No, airports should be licensed the same as anywhere else, as alcohol related disorder can occur just as in other premises; disruption has been caused with intoxicated passengers boarding aeroplanes.

In addition, the sale of alcohol on trains should not be exempt; again alcohol related disorder does occur with intoxicated passengers.

Licensing procedure

9. The Act was intended to simplify licensing procedure; instead it has become increasingly complex. What could be done to simplify the procedure?

Regulated entertainment should also include Sex Cinemas, Sexual Entertainment Venues and Hypnotism within the Licensing Act. There could be mandatory conditions relating to the particular activity. Including these other areas of entertainment would also provide consistent rights of appeal. Sexual entertainment is currently referred to as ‘relevant entertainment’ under the Local Government (Miscellaneous Provisions) Act 1982 as opposed to ‘regulated entertainment’ under the Licensing Act. Applicants, or the public, of course, do not know the difference between relevant entertainment and regulated entertainment.

We would refer you to our report to Government, [Cornwall's Licensing Reform Pilot](#), which outlines Cornwall's work to test the LGA's Rewiring Licensing proposals and to reform Cornwall's Licensing Service.

With regard to Temporary Event Notices (TENs), we have concerns regarding the limits imposed in relation to associates, relatives etc as this sometimes causes problems in assessing limits. We feel limits on premises is required, but not necessarily on individuals who are personal licence holders.

We have also experienced problems with the TENs system occasionally being abused by event organisers, i.e. multiple TENs being submitted, each for 499 people, on adjoining pieces of land. This in effect authorises a much larger event than the TENs system was intended for. This can happen as premises can be split into separate sections and are then classed as different premises – perhaps the definition of ‘premises’ should be more clearly defined to prevent this loophole.

In order to simplify the TENs procedure for some event organisers, it is suggested that a TEN should be able to include more than one event date providing all the other information is the same. This would reduce paperwork and the burden on notice givers having to complete identical information several times.

With regard to Designated Premises Supervisor (DPS), we suggest the wording of the mandatory condition is amended to make it clear that the DPS should be the person who is in day to day control of the premises and responsible for authorising the sales of alcohol.

We have experienced problems when a DPS is named on a premises licence, yet they are no longer engaged or employed at the premises.

In order to keep track of Personal Licence Holders we would like to see a national database introduced as was intended when the Act came in. At the present time we are not able to adequately check on the status of personal licence holders and if a personal licence was revoked by a Magistrates Court in a different local authority, we would not be aware and could still be named as a DPS on a premises licence in our area.

With regard to Transfers, we would suggest that an application to Transfer a premises licence is not able to be accepted if there is Review of the Premises Licence pending. We have experienced occasions when a Review application has been submitted and prior to the Review Hearing, an application is received to transfer the licence.

With regard to Community and Ancillary Sellers Notices (CANs), for which a Commencement Order is awaited, we are of the view that other ancillary sellers should have been included, i.e. hairdressers and florists, within the definition of ancillary seller and not just small accommodation providers.

In order to reduce the number of sub-committee hearings, we have already introduced a 'Hearing by Documentation' procedure which is used in cases where, following mediation, all parties have reached an agreement on a premises licence application and agree to dispense with a full hearing. However, this could be taken a step further and delegation given to officers to grant premises licences where all parties have reached an agreement, rather than holding a hearing of any type.

Finally, we would suggest once a premises licence is suspended for non-payment of annual fee, that after a period of say 2 years, that licence then lapses rather than remaining suspended indefinitely.

10. What could be done to improve the appeal procedure, including listing and costs? Should appeal decisions be reported to promote consistency? Is there a case for a further appeal to the Crown Court? Is there a role for formal mediation in the appeal process?

Courts should be given specific guidance regarding costs. At present the Courts are guided by case law which, in terms of costs, is not consistent. This often results in costs being awarded against the Council when they lose, but not being awarded to the Council when they win. Whilst we appreciate that each case needs to be considered on its merits, there appears to be sympathy for a losing appellant, but no real regard for the cost to the Council of them defending their decision. The Council is in a difficult position with appeals as sometimes both sides can be unhappy with the decision reached. The difficult position the Council is placed in should be reflected in terms of costs.

It is for the Council to report appeal decisions, or the appellant if they choose to do so. The issue of 'consistency' is interesting as we are told that each application should be considered on its own merits. There is no benefit in 'all' decisions being reported.

No, there is not a case for a further appeal to the Crown Court. This would merely increase the costs burden on Councils. It would also increase the costs burden on the Courts. There is already a way in which the Magistrates decision can be challenged and I see no benefit in changing this.

With regard to mediation, this is already done where parties are willing to discuss matters. Further, we are unsure how a 'formal' process would work in practice. If a premises is applying for later hours and this is refused due to objections, then the stage for mediation is during the application process, not after the decision has been made. Once the decision has been made then the applicant and objectors can still discuss matters and this already happens in some cases. We see no benefit in making this a requirement. It would simply add to the timescale and also the costs burden on the Council.

Sale of alcohol for consumption at home (the off-trade)

11. Given the increase in off-trade sales, including online sales, is there a case for reform of the licensing regime applying to the off-trade? How effectively does the regime control supermarkets and large retailers, under-age sales, and delivery services? Should the law be amended to allow licensing authorities more specific control over off-trade sales of "super-strength" alcohol?

There are problems in several towns in Cornwall with anti-social behaviour, people drinking in parks and begging, activities which intimidate other people who come into town centres. Often these people have mental issues. We believe that cheap easily accessible alcohol in supermarkets and the like contributes heavily to this.

With regard to super-strength alcohol, we have worked with local businesses in specific problem areas to implement a voluntary scheme to prevent super-strength alcohol being sold, although have experienced some problems with national chains being reluctant to join a voluntary scheme. We would like the power to be given to Licensing Authorities to bring in an Order in areas where it is necessary to make this mandatory rather than voluntary. It could also be considered as part of a cumulative impact area with premises in a certain area having conditions to prevent the sales of specific alcohol products.

Delivery services should have special consideration as we are not satisfied with current controls to prevent deliveries of alcohol to children.

Pricing

12. Should alcohol pricing and taxation be used as a form of control, and if so, how? Should the Government introduce minimum unit pricing in England? Does the evidence that MUP would be effective need to be "conclusive" before MUP could be introduced, or can the effect of MUP be gauged only after its introduction?

We support the Cornwall Alcohol Strategy Lead's response in relation to pricing and agree MUP should be introduced and should be based on ABV%.

Fees and costs associated with the Licensing Act 2003

13. Do licence fees need to be set at national level? Should London, and the other major cities to which the Government proposes to devolve greater powers, have the power to set their own licence fees?

Cornwall Council is one of the largest unitary authorities in England. There are approximately 3000 licensed premises in Cornwall. We deal with over 2000 TENs each year as well as approximately 1500 other applications under the Licensing Act each year.

We responded to the fees survey with the view that we should be able to set our own locally set fees based on full cost recovery as existing application fees do not cover the cost of dealing with the applications.

All Licensing Authorities, including all rural areas, should have the power to set their own licence fees.

As part of the Cornwall Devolution Deal, we may ask for freedoms and flexibilities to pilot potential changes to legislation and/or policy in order to benefit businesses and the Council.

International comparisons

14. Is there a correlation between the strictness of the regulatory regime in other countries and the level of alcohol abuse? Are there aspects of the licensing laws of other countries, and other UK jurisdictions, that might usefully be considered for England and Wales?

Although a 5th objective has recently been introduced in Scotland, ‘to protect and improve health’, as stated in question 1, we are of the view that Public Health can contribute to the licensing process under current arrangements.

We do not intend to comment on other countries’ regulatory regimes without being fully aware of their licensing systems to compare.

1 September 2016

Covent Garden Community Association – written evidence (LIC0118)

Written Submission to the Select Committee on the Licensing Act 2003

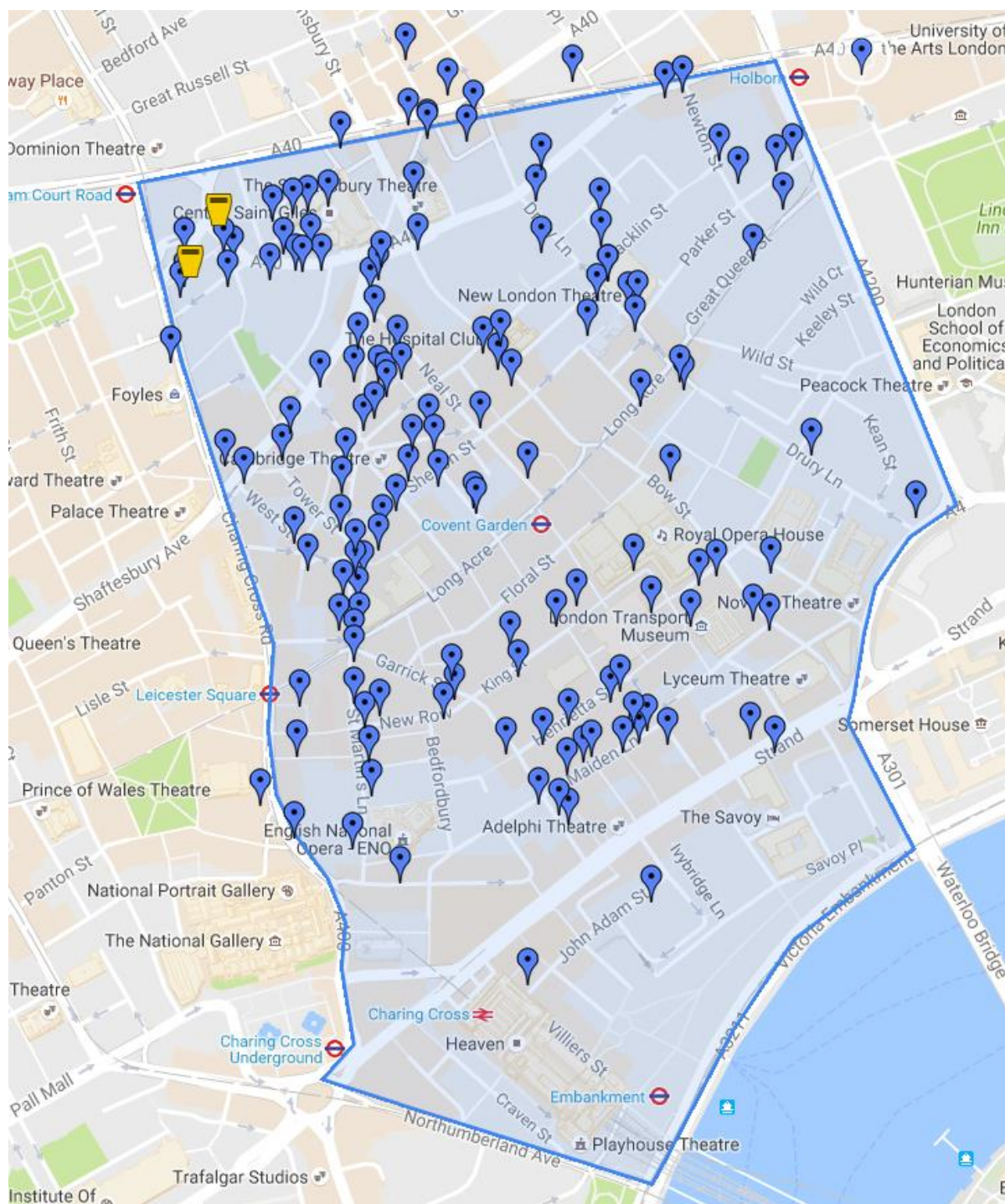
We attach our written submission to the Select Committee regarding the Licensing Act 2003. We are submitting this as a Community Group which has been engaged in the Licensing Regime since it came into force. The CGCA is recognised by both Camden and Westminster as the Amenity Society for the Covent Garden area (defined as the area bounded by High Holborn, New Oxford Street, Charing Cross Road, St. Martin's Place, Northumberland Avenue, Victoria Embankment, Lancaster Place, Aldwych and Kingsway) and so represents the interests of those who live and work in this area.

During the period since the Act came into force we have made more than 300 representations regarding licence applications and appeared before more than 50 Licensing Panels across 2 Local Councils. We represent residents living in one of the areas of the UK with the highest numbers of existing licences and we currently see between 2 and 5 licence applications each month which require our comments. Because of this we believe that we are well placed to give an "Interested Parties" perspective on the operation of the Licensing Act 2003. A map showing our area of interest and the locations of licensed premises in this area for which we have commented on applications is attached.

As our response is in excess of the 6 page limit we have as requested, provided a summary of our comments.

We would welcome the opportunity to present our submission in person or to answer any questions raised by the Committee.

License Applications within CGCA Area Jan 2010-July 2016



Map Data © 2016 Google

Summary of Submission by CGCA

1. We believe that we have achieved a balance in our area of London but this has been at the cost of a very significant level of effort and has been achieved despite rather than because of the Act and Guidance.

2. The impact of licensed premises in the West End is already having a significant impact on the health of residents and so we would welcome the addition of a health and wellbeing licensing objective.
3. Some of the changes to the legislation (such as the Late Night levy) have been poorly designed. The principle in balancing rights and responsibilities should be “the polluter pays”. This includes the need for the licensing fee to pay for the cost of enforcement against all of the negative consequences of licensable activities.
4. The lack of enforcement against anti-social behaviour on the street is the biggest reason for the perception that the balance of the Act is against the residents who live near licensed premises. The number of premises has proliferated, as the request for evidence makes clear. In many cases the residents were here first.
5. We believe that to maintain the balance between right and responsibilities over the long term there are still some modifications required with the legislation. These are in the areas of how to control changes in the style of premises, the way capacity is defined and TENS.
6. Licensing and Planning should stay separate regimes at the National Level. However there may be scope for Neighbourhood Plans to address Licensing issues as well.
7. Overall the Act has allowed some progress to be made compared to what was there before but it should be regarded as a work in progress.

0. *The objective of the Act is stated as follows:*

“Our approach is to provide greater freedom and flexibility for the hospitality and leisure industry. This will allow it to offer consumers greater freedom of choice. But these broader freedoms are carefully and necessarily balanced by tougher powers for the police, the courts and the licensing authority to deal in an uncompromising way with anyone trying to exploit these greater freedoms against the interest of the public in general.”

Has the Act achieved these objectives?

- 0.1. The Act has introduced flexibility and freedom of choice but at the expense of the interests of residents living in the vicinity of licensed premises. This is because although the Act provides tougher powers for the various authorities it has not provided the resources to allow these to be exercised. As a result Licenses are granted because local authorities are reluctant to risk losing an appeal hearing. There are no resources available to carry out the evidence gathering required to mount a review and customers leaving licensed premises can commit crime and behave in an anti-social manner in the knowledge that they are very unlikely to feel any repercussions
- 0.2. We have found that the balance can be improved if we put significant effort into influencing local licensing policy and into educating applicant’s representatives

(usually lawyers) and Councillors about what activities, times and conditions are likely to allow the balance between business and the communities to be maintained. However this balance is achieved despite the Act and Guidance rather than as a result of it.

- 0.3. We believe that after more than 10 years' work we have achieved a balance in our area of London that is broadly workable for all parties. We believe that it is still necessary for the legislation or guidance to be adjusted to make this easier to maintain.
- 0.4. We are also concerned about the impact of other changes in the environment on the ability of the Act to maintain the necessary balance. For example to introduction of the Night Tube in London may well have a very detrimental impact on the residential communities in the West End if the result is to encourage people to stay later and so allow the noise and anti-social behaviour to extend even further into the morning. This change, which is not controlled by the Licensing regime, could be a disaster for our area in terms of maintaining the balance we have managed to achieve so far. We believe that the ability to review licences based on their cumulative impact in an area needs to be considered as an option to address this type of issue.

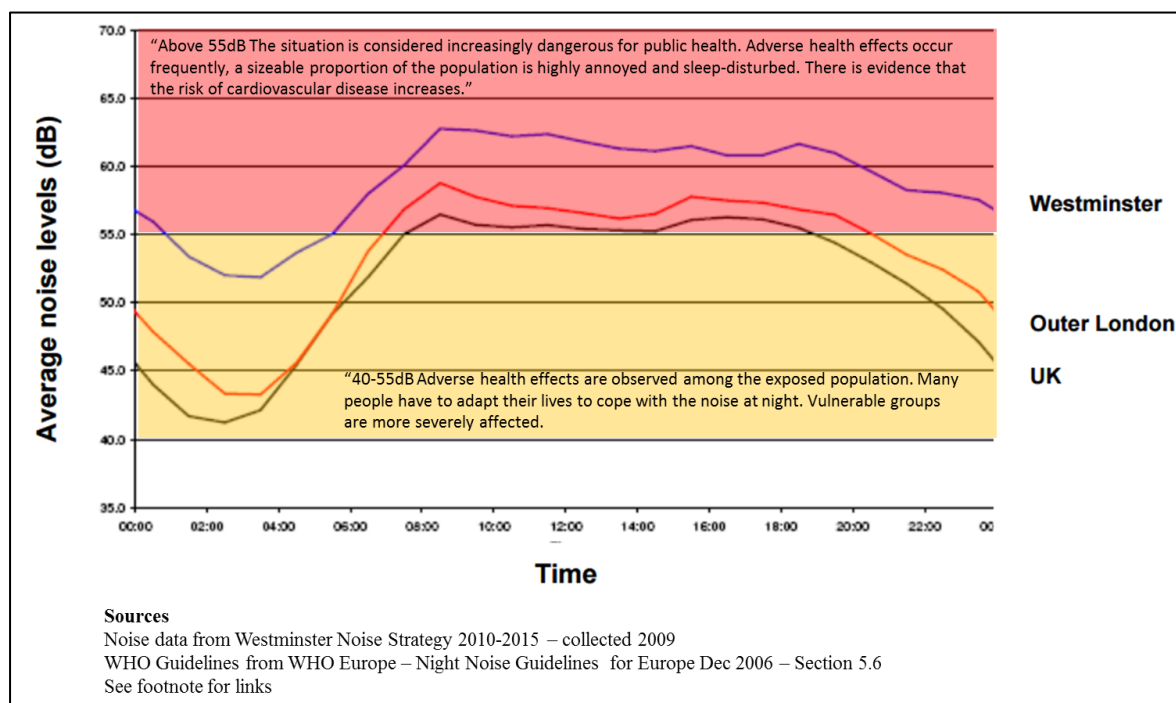
Our comments on the specific questions asked are given below.

Licensing objectives

1. *Are the existing four licensing objectives the right ones for licensing authorities to promote? Should the protection of health and wellbeing be an additional objective?*
 - 1.1. The existing 4 objectives are all appropriate ones to continue to be promoted. A health and well-being objective will also be helpful because it would support efforts to move away from alcohol led licenses and so help address the issue of the easy availability of low cost alcohol.
 - 1.2. We would also point out that the grant of licenses not only has an impact the health and wellbeing of customers but also of the residents living in the area. This is because of the impact of the premises themselves and of the people arriving and leaving on noise levels in the street. These people add to the general ambient noise level, which in urban centres such as the West End is already above WHO guideline levels, as well as causing noise peaks which are known to cause disturbed sleep.
 - 1.3. The graph below illustrates this point. Data sources for this are shown in the footnote²¹⁷. Noise is sufficient to be dangerous for public health during all but 5

²¹⁷ Data sources for graph
WHO Europe – Night Noise Guidelines for Europe 2009 – [LINK](#)
Westminster Noise Strategy 2010-2015 - [LINK](#)

hours of a 24 hour period. This means that the impact of noise associated with licensed premises is having a detrimental impact on health. A licensing objective related to health and wellbeing would assist in addressing this point.



2. *Should the policies of licensing authorities do more to facilitate the enjoyment by the public of all licensable activities? Should access to and enjoyment of licensable activities by the public, including community activities, be an additional licensing objective? Should there be any other additional objectives?*

1.4. As we understand the current system the grant of a licence allows an activity to happen within certain times and with certain conditions. However the licence and condition need to promote the licensing objectives. We do not see how an objective such as “facilitate enjoyment” can be shown to be achieved, at least not without coming into conflict with the other objectives in a way which makes the system less clear. We would ask the Select Committee what issue is actually being addressed by such an objective.

1.5. We cannot suggest any other additional objectives.

The balance between rights and responsibilities

2. *Has the Live Music Act 2012 done enough to relax the provisions of the Licensing Act 2003 where they imposed unnecessarily strict requirements? Are the introductions of late night levies and Early Morning Restriction Orders effective, and if not, what alternatives are there? Does the Licensing Act now achieve the right balance between the rights of those who wish to sell alcohol and provide entertainment and the rights of those who wish to object?*

Live Music

- 2.1. We believe that the Live Music Act 2012 is sufficient on its own. Our view is that the barrier to having live music in licensed premises is now the balance between supply and demand rather than licensing restrictions. Licence holders do not put on live music because it costs much more than playing recorded music and their customers are not asking for it in sufficient numbers to justify these additional costs.

EMRO/LNL

- 2.2. We cannot comment on the use of EMRO's but we do have a comment on the LNL. Our view is that the Late Night Levy is a poorly designed tool to achieve the stated objective. This is for the following reasons.

- 2.2.1. There is no ability for the Licensing Authority to target the levy in problem areas or types of premises. This means that bars and restaurants of the same rateable value pay the same levy, no matter where they are situated. There is not even an option for the levy to exist only in a Cumulative Impact Special Policy Area which exists precisely because of problems in managing the late night economy for which the Levy should supply resources.
- 2.2.2. A better designed LNL would allow the Licensing Authority to institute the levy only within a Cumulative Impact area and only on premises which were likely to have a negative impact, such as bars, clubs and off-licenses and not on restaurants. This would be a "polluter pays" system which would be much more appropriate than the current situation which is effectively an additional tax paid by premises indiscriminately.

Balance

- 2.3. We believe that the Act broadly balances rights and responsibilities. However can often be difficult for this balance to be maintained through time as licences are transferred and changes occur in the nature of premises. There is a need for some amendments and clarifications to be made either in the Act or Statutory Guidance to ensure that balance is maintained. These are in the following areas.

Change in the Nature of the Premises

- 2.3.1. A licence application gives a list of activities, times and conditions, which end up on the licence (perhaps amended by the Licensing Authority). Applicants also describe the premises, usually in glowing terms, as well as presenting menus and images which give an impression of an immaculate high class establishment. However these descriptions are not reflected in the licence conditions. When later a licence is transferred to another Licensee the style of the premises can change substantially, with a corresponding impact on the Licensing Objectives. However as long as the conditions agreed at the time of the original licence are adhered to there may be no need for any form of Variation application to be made. However the new operation has a very different impact on the Licensing Objectives compared to the old one.
- 2.3.2. There should be within the Act the ability of the Licensing Authority to restrict the use of the Licence to a specific operator or to put other restrictions which will ensure that any change in the style of the premises compared to that to which the licence was granted requires a variation application to be made. It should not just be when a change in layout, times, activities or conditions is needed.
- 2.3.3. This change would also benefit Licensees. Currently representations are made against licences because of the concern that the nature of the premises can change in the future. If applicants could offer a condition that they will maintain the style of operation on which their application is based then these representations may not be necessary.

Definition of Capacity

- 2.3.4. An associated issue is the definition of the capacity of premises. This is usually taken to mean the number of people that the premises can safely hold at any one time (e.g. the “Fire Safety Capacity”). This is an appropriate interpretation when considering the Health and Safety licensing objective. However another definition of capacity would be the number of people who can use the premises. The larger the number of people who use the premises the larger the impact is likely to be on public nuisance associated with the use.
- 2.3.5. As an example of this consider 2 premises offering late night refreshment. One is a sit down restaurant with 100 chairs and a dwell time of 60 minutes. The other is a fast food restaurant with 100 chairs and a dwell time of 15 minutes. The fast food restaurant will serve 400 people per hour compared to 100 people at the sit down restaurant. Both have the same capacity in terms of

seating. However the fast food restaurant has a much larger impact on the area.

- 2.3.6. We have had an example of exactly this where a fast food restaurant took over a traditional restaurant licence and applied for a layout variation. The Interested Parties persuaded the Licensing Authority that the change in layout would allow an increase in throughput capacity, and this increase would have an impact on the licensing objectives. The decision was appealed and the Licensing Authority view was upheld. However if both definitions of capacity were included in the Act it would have been better balanced.

TENS

We believe that TENS continue to be an area in which the Act needs work. This is because they are too often used as a way for licence holders to operate in a way in which has an impact on the licensing objectives without being properly held to account. The reason is that Interested Parties are not able to make representations regarding TENS and Licensing Authorities do not have the resources to respond to all TENS applications within 3 days and so many TENS are granted even though they will harm the Licensing objectives. Licensing Authorities also do not have the resources to monitor the impact of the TENS that they grant.

- 2.3.7. We believe that the original intention of TENS was to allow unlicensed premises to carry out licensable activities and we have no objection to this. However TENS are often used by licensed premises to substantially extend their hours over a significant number of weekend days with a detrimental impact on people living in the area.

4. *Do all the responsible authorities (such as Planning, and Health & Safety), who all have other regulatory powers, engage effectively in the licensing regime, and if not, what could be done? Do other stakeholders, including local communities, engage effectively in the licensing regime, and if not, what could be done?*

- 4.1. Our experience is that some RA's do engage in the process (EH and Community Safety for example) but others, especially Planning, do not. We would expect that Planning would object, for example, to any Licence application which would permit an activity at premises where there is no planning permission for that activity. This is not the case. Even if an Interested Party brings this issue up the standard response is for it to be ignored as these are separate regimes. As a result Planning are not engaged in the Licensing process.
- 4.2. As a local community group we do engage in the licensing regime. However this requires a significant amount of effort and resource from volunteers and not all

communities will have people able to give time and expertise in this way. Our view is that in many communities the balance is stacked in favour of applicants who employ lawyers who can “run rings round” local community representatives and also, in many cases, the RA’s.

- 4.3. Westminster Council’s approach has been to support the Citizen’s Advice Bureau to provide expertise to assist residents. This has been very successful because it gives residents access to an experienced lawyer who understands the Act, Guidance and Policy and can advise how best to reach a suitable compromise with an applicant or, if needed, present the case at a hearing. The CGCA provides similar support but using unqualified volunteers. We believe that there should be a requirement for local authorities to fund or provide this type of support to residents who wish to engage in the process.

Licensing and local strategy

5. *Licensing is only one part of the strategy that local government has to shape its communities. The Government states that the Act “is being used effectively in conjunction with other interventions as part of a coherent national and local strategy.” Do you agree?*

- 5.1. We absolutely do not agree. No-one has been able to state for us a national and local strategy of any sort, let alone a coherent one.

6. *Should licensing policy and planning policy be integrated more closely to shape local areas and address the proliferation of licensed premises? How could it be done?*

- 6.1. We believe that this is a good idea in theory and we have some experience of Supplementary Planning Guidance being used to try and do this. However we believe that Licensing objectives and NPPF Planning Objectives are now in conflict with each other and that integrating them would require significant change in both. We do not believe the gain would be worth it at the national level.

- 6.2. At the local level there is perhaps scope for Neighbourhood Plans to include a Licensing Policy statement that can be a material consideration in the Licensing system. This could assist local communities to shape their areas more effectively.

Crime, disorder and public safety

7. *Are the subsequent amendments made by policing legislation achieving their objects? Do they give the police the powers they need to prevent crime and disorder and promote the licensing objectives generally? Are police adequately trained to use their powers effectively and appropriately?*

7.1. Our observation is that crime and disorder associated with licensed premises is not being prevented and so we assume the Police have either insufficient power or insufficient resources or insufficient will to deal with it.

7.2. We would also observe that in our area the Police are not able to “promote the licensing objectives generally”. They take no action to support the public nuisance objective and do not regard any of the objectives other than crime and disorder as relevant to them. We assume that this is driven by a lack of resources and a focus on other priorities.

8. *Should sales of alcohol airside at international airports continue to be exempt from the application of the Act? Should sales on other forms of transport continue to be exempt?*

8.1. No comment

Licensing procedure

9. *The Act was intended to simplify licensing procedure; instead it has become increasingly complex. What could be done to simplify the procedure?*

9.1. No comment

10. *What could be done to improve the appeal procedure, including listing and costs? Should appeal decisions be reported to promote consistency? Is there a case for a further appeal to the Crown Court? Is there a role for formal mediation in the appeal process?*

10.1. We believe that it is important that Appeal decisions are reported to promote consistency. We also believe that mediation should be included in the process. However would also ask that it is recognised that whilst appeals against decisions of the Licensing Authority are usually made by applicants the Interested Parties who made representations are also parties to it and should be informed about and involved in any formal mediation process.

Sale of alcohol for consumption at home (the off-trade)

11. *Given the increase in off-trade sales, including online sales, is there a case for reform of the licensing regime applying to the off-trade? How effectively does the regime control supermarkets and large retailers, under-age sales, and delivery services? Should the law be amended to allow licensing authorities more specific control over off-trade sales of “super-strength” alcohol?*

- 11.1. We believe that off-sales are a confusing area. Off-sales intended for consumption at home are a very different issue from other sorts of off-sales. Any off-sale that allows alcohol to be sold for consumption in the vicinity of the point of sale will have an impact on the licensing objectives. Hence people buying alcohol in a supermarket and taking it to a local park for consumption should still be controlled by the licensing regime. This is not currently the case.
- 11.2. We believe that there is a case for a reform to the regime which, perhaps, loosens the control for home delivery services and tightens it for retail off-sales.

Pricing

12. Should alcohol pricing and taxation be used as a form of control, and if so, how? Should the Government introduce minimum unit pricing in England? Does the evidence that MUP would be effective need to be “conclusive” before MUP could be introduced, or can the effect of MUP be gauged only after its introduction?

- 12.1. No comment

Fees and costs associated with the Licensing Act 2003

13. Do licence fees need to be set at national level? Should London, and the other major cities to which the Government proposes to devolve greater powers, have the power to set their own licence fees?

- 13.1. No, fees should be set locally based on the costs both of administering the regime **and** of enforcing it. Enforcement costs which should be covered include both the cost of enforcing against breaches of the Act and enforcing against other breaches of legislation, criminal and civil, which are associated with licensable activities.
- 13.2. There should also be the option for local authorities to set different fee levels for different types of premises in order to be closer to a polluter pays model where the premises which cause the largest costs in terms of enforcement (at the premises and in the area) pay a higher fee.

International comparisons

14. Is there a correlation between the strictness of the regulatory regime in other countries and the level of alcohol abuse? Are there aspects of the licensing laws of other countries, and other UK jurisdictions, that might usefully be considered for England and Wales?

- 14.1. Our comment on this point is that it is dangerous to look at Licensing Law from other countries in isolation from all of the other elements of legislation that

are in place. For example in countries where street urination results in immediate arrest they can perhaps be less restrictive on times for the sale of alcohol. The legislative environment needs to be seen as a whole.

2 September 2016

Reba Danson – written evidence (LIC0125)

Licensing Manager at the Deltic Group

Are the existing four licensing objectives the right ones for licensing authorities to promote? Should the protection of health and wellbeing be an additional objective?

Licensing objectives

I believe the existing licensing conditions are sufficient.

I would not support adding 'health' to the licensing objectives on the following grounds:

- 1) Firstly, the Government has a duty to advise me – except Government advice is too often influenced and driven by corrupt lobbyists and advisors with conflicts of interest. Government advice is, at times, later proven to be absolutely false and perpetuating the health problem or risks. (e.g. sun screen, obesity, statins, sugar, coronary heart disease, limitations on eggs, fat, dietary cholesterol etc).

Also, the Government condescends to the public with diluted and partial truths (e.g. cholesterol, carbohydrates, eggs) because it is incapable of honestly communicating on complex issues, to such a level that it cannot be trusted to provide good advice.

If the Government cannot be trusted to provide good advice in one respect, why should it be accepted as an authority in any other sphere?

- 2) Why should the Government assume it knows more about what is right for me and my health than I do? In many respects following Government advice is the worst thing one could do. The scientific evidence is clear (reference Robert Lustig) and conveniently overlooked because the acknowledgement and acceptance of new information is too difficult to manage.
- 3) The positive or neutral aspects of alcohol consumption are almost entirely overlooked. The majority of the population are sociable extroverts and the social, recreational and leisure aspects of the late night entertainment industry are largely ignored. The minority that abuse alcohol and consume it to excess do so at the expense of the majority that enjoy what the industry provides without any negative impact.
- 4) Also, adding 'health' would be a duplication of current existing conditions. At this time, there is guidance in the act with regards to drinks promotions, vertical drinking establishments and special policies concerning high concentration of licensed premises. None of them directly references 'health' but each of them does have an underlying impact in terms of applying parameters that restrict unhealthy practices so further restrictions are unnecessary.
- 5) The Licensing Act is intended to be 'permissive' which means each individual should have the freedom to purchase and consume alcohol according to their own desires so

long as doing so does not negatively impact others by undermining the licensing objectives (e.g. causing a disturbance) or committing criminal offences (e.g. being drunk and disorderly). The aim of replicating/emulating the French 'cafe culture' could be viewed as a means of eradicating the late night economy by bringing people out earlier in the evening.

- 6) Unfortunately the idea that 'time' is unimportant is a misconception. The percentage of the population that enjoys and takes part in the 'late night' part of the economy will not go away.

It simply doesn't work like that. We have an increasingly 24 hr lifestyle, which has been driven by 24 hr opening of shops and other services. Recent years has seen an increase in shift workers as economic demands and transport have created longer hours and later (and earlier) shifts. It is inconsistent to be actively encouraging and accommodating a 24hr lifestyle for some industries and not others. It cannot be OK for Tesco's and not ok for other premises.

Rather than impose more restrictions I would suggest that a more open-minded attitude is needed to accommodate the very broad range of needs of the public in relation to the leisure options available. Constricting the options available to the public simply concentrates the problems and makes the management, monitoring and reporting more difficult as, in recent years, with the closure of many licensed premises the incidence of domestic violence has increased from excessive consumption inside dwellings.

Finally, and I believe most importantly, is the fact that substance abuse, whether that be drugs, drink or any other, is related directly to quality of life.

Consumption of alcohol is said to have reduced, however, as Lord Brooke said, alcohol admissions have risen from 493,760 to 1,059,000 in 12 years.

It doesn't take too much imagination to see how the relationship between reduced wages, longer hours, a more congested country, disproportionate increase in the cost of living with the rich getting richer, the poor getting poorer and the poorer percentage growing exponentially, could explain those figures.

Drinking out is expensive – therefore the poorer are more likely to purchase alcohol from supermarkets and off-licences and pre-load and consume alcohol at home.

Violent crime is reducing on the high street and increasing in homes – in the guise of domestic violence – is it any wonder there are greater hospital admissions and alcohol problems. People drinking on the high street have the moderation of licensed premises and the controls of cost. Those controls are completely absent in the home, thereby facilitating great consumption and ultimately fuelling increases in such conditions as obesity, cirrhosis etc.

Should the policies of licensing authorities do more to facilitate the enjoyment by the public of all licensable activities? Should access to and enjoyment of licensable activities

by the public, including community activities, be an additional licensing objective? Should there be any other additional objectives?

No, I don't believe it should.

Certain facilities like doctors, hospitals, open spaces, health facilities like leisure centres and schools should of course be accessible to all.

If people want access to certain recreational facilities they have the option of seeking them out or living in close proximity to them.

All too often there is an assumption that what's right for the majority is right for everyone. That is simply not the case. Diversity is not just about people. The introduction of a requirement that everyone must have access to something (e.g. fast broadband) simply creates the need for that provision to be measured, league tables produced and a working group etc to be monitoring the provision – at the cost of the tax payer.

Has the Live Music Act 2012 done enough to relax the provisions of the Licensing Act 2003 where they imposed unnecessarily strict requirements?

Yes.

Does the Licensing Act now achieve the right balance between the rights of those who wish to sell alcohol and provide entertainment and the rights of those who wish to object?

Balance between rights/responsibilities

Councillors: Unfortunately, I believe the balance between rights and responsibilities is something the Guidance and licensing process fails woefully to address.

My experience of dealing with the balance of rights and responsibilities as a Licensing Officer for various local authorities is that the needs of residents and local communities, even in circumstances where representations are not received, are often favoured over the needs of business, with conditions often being added to licences based on 'perceived' fears, rather than evidence.

I believe this is rooted in the fact that premises licence holders are not voters so Councillors, who seek re-election, have a vested interest in supporting residents and officers over businesses.

Councillors also often appear to want to be seen to support Police and other officers, therefore even if a review is brought on weak and minimal evidence, Councillors are unlikely ever to simply dismiss an application as unwarranted, favouring the imposition of restrictions to 'save face', knowing the licence-holder is not in a position to challenge without incurring risks and costs. Businesses are beholden to the authorities, fearful of a review, and therefore less able to exercise their rights.

Financial burden: residents may bring a review at the cost of the tax payer, while premises licence holders are required to pay the full cost of representation at a hearing and the escalation of costs at the Magistrates, should and appeal be necessary.

Residents vs businesses: all too often there is a conflict between the needs of residents and the needs of businesses, which could largely be avoided by more effective town planning, partnership working with the trade and more assertive, realistic and common sense interpretation of the legislation. While the test is subjective, there appears to me to be a failure to properly define and consistently apply the word 'reasonable'.

Often a resident chooses to live in a busy town centre/high street where they have the convenience of walking into the centre, good transport links, a close train station and a vibrant and bubbly late night economy, only to later decide that they desire the 'quiet life'. It is unreasonable for that same person, who chose to have all those benefits at their doorstep, to suddenly experience a change of heart and, instead of relocating to a place that now suits their 'updated' needs, expect the premises in the proximity of their dwelling to alter their business or behaviours to accommodate the person. Too often the licensing authority fails to spell out to the person that they have choices and just as it was their choice to live there, it is now their choice to move to a place that now better suits their needs.

Are the introductions of late night levies and Early Morning Restriction Orders effective, and if not, what alternatives are there?

Late Night Levies/EMROs:

I believe late night levies or early morning restriction orders as they are largely used as an income stream to cover the costs for provisions that are already covered funded by tax or fee payers - in particular policing. We all pay taxes and businesses pay both rates and licence fees.

The provision exists for problems to be addressed, however, the process of investigating and prosecuting offenders is time-consuming and arduous – often involving late night visits and lengthy observations in order to identify the problem premises. It is a lengthy and costly evidence gathering process but a fair approach should ensure that well-run, problem free premises are not financially penalised for the offences of their competitors.

There are sufficient provisions for dealing with 'problem premises' (e.g. engagement, intervention, enforcement, reviews) without the need to burden licence holders that provide a service to the public without causing problems. Late night levies and EMROs are really a way of just applying a blanket 'catch all' approach rather than providing an effective and site specific licensing and police service.

There is also a significant and consistent failure by many authorities to actively and positively engage with those who are pro-active in the licensing process (police, trading standards, licensing authority and to a lesser extent EHO). Often responsible authorities concentrate on their own specific statutory powers without collaborating with other

authorities to adopt a holistic approach to finding a long-term solution, including partnership working with the trade to resolve cumulative impact issues.

Licensing/local strategy

Licensing is only one part of the strategy that local government has to shape its communities. The Government states that the Act “is being used effectively in conjunction with other interventions as part of a coherent national and local strategy.” Do you agree?

I don't believe it is. Too many responsible authorities AND residents attempt to use the licensing act to achieve outcomes that should be pursued by other means regulated by other legislation.

Planning decisions are made with little or insufficient regard to the long-term implications.

Environmental Health Officers attempt to push noise complaints to the Licensing Officers to use the Licensing Act as a resolution because an environmental approach takes longer, is more work and more expensive. The fear generated by threatening action/a review under the licensing act, which can destroy a business overnight, gets attention and remedial action more swiftly than by other means.

6. Should licensing policy and planning policy be integrated more closely to shape local areas and address the proliferation of licensed premises? How could it be done?

Yes – improved communication is required. A more joined up approach would be desirable in relation to addressing planning applications based on local needs of interested parties with an open, accountable and transparent process.

Crime, disorder etc. Are the subsequent amendments made by policing legislation achieving their objects? Do they give the police the powers they need to prevent crime and disorder and promote the licensing objectives generally? Are police adequately trained to use their powers effectively and appropriately?

Current procedures within the act are sufficient, alongside the introduction of the 2014 'ASB' act.

From the perspective of someone who, as a Local Government Licensing Officer dealing with various Police officers/forces at all levels, I would say that the level of training Police receive is inconsistent at best, and insufficient at worst. Licensing Police staff, both warranted officers and civilians, often fall in two categories: those that use licensing as stepping stone to other, more salubrious, avenues of police work and those that have 'done their time' and want to tick over until their second retirement. There are of course exceptions and in those cases Licensing requirements are effective and fairly applied, however this is very much the exception and not the rule.

In general Police Officers do not receive sufficient training - often being undertaken through IT distance learning without a quality assurance knowledge test. While a lot of police forces have appointed licensing officers, a number have merged the role with others tasks,

therefore diluting their ability to address licensing matters. Additionally, some forces have deleted the post and given it to unskilled staff alongside their other roles.

Licensing is a complicated area of law. As it affects the entire community, the cost and provision of other services and the development of late night activities and entertainment available to the public, it should be maintained and developed as such.

Combining the role and responsibilities of licensing officers by placing upon them additional role responsibilities (e.g. gaming, betting, taxi licensing, scrap metal licensing and partnership initiatives) only serves to reduce their capacity to effectively do the job. This, through the reduction of officers, in turn leads to the closure of premises as Police choose enforcement action, the outcome or cost of which puts premises out of business, rather than having the manpower and desire to maintain a healthy licensed economy.

Should sales of alcohol airside at international airports continue to be exempt from the application of the Act? Should sales on other forms of transport continue to be exempt?

The only argument I can see for them remaining exempt is that ultimately the captain of an aircraft retains the right to decide who remains in the cabin. If a person is excessively intoxicated then the flight should, and I believe would, be refused.

That said, I think the emphasis is not about the availability of alcohol but the training, responsibility and diligence of staff in identifying potential problems and preventing or minimising them.

Unfortunately, the opportunity to take advantage of ‘duty free’ products directly contradicts the principle of regulated sales, thereby making any type of regulation unworkable in practice.

Licensing procedure

The Act was intended to simplify licensing procedure; instead it has become increasingly complex. What could be done to simplify the procedure?

To me the procedure is simple enough, but there is a need to reduce the periods required for consultation to allow businesses to develop.

Also, the procedure is over-complicated by politics and the lack of collaboration between agencies e.g. Trading Standards bring a prosecution without sharing the information with Licensing or Police so the opportunity to revoke a personal licence holder’s licence is missed as this can only be affected by a magistrate at the time of a conviction.

The Police often try to use the licensing act as a stick with which to beat and threaten licence-holders rather than working collaboratively to help them improve their business e.g. removing support for ‘Pubwatch’ while expecting licence-holders to convene and collaborate but without the key information provided by Police.

At force level, the withdrawal of resources for any licensing matters leads to incidents and review with the emphasis appearing to be on closing premises down rather than

maintaining good relations on a regular basis so issues can be more easily remedied with less costly measures.

What could be done to improve the appeal procedure, including listing and costs? Should appeal decisions be reported to promote consistency? Is there a case for a further appeal to the Crown Court? Is there a role for formal mediation in the appeal process?

The figures from 2013/14 showing that there were 111 appeals out of 21,000 applications and 117 out of 830 appeals against review decision, says more about the fact the licence holder faces the risk of costs while the costs to the authorities are born by the taxpayer.

The 'reasonable expectation' of a fair hearing simply doesn't exist without the licensee incurring enormous, and often economically crippling, Costs.

Where appeals are against the decision of the authority, the police rarely get involved – my own experience is that of virtually bullying the Police into co-operating with me as a Licensing Officer.

I believe that a mediation step should be involved prior to any review process with time limits for appeals being adhered to with a legal requirement for mediation.

My experience is that in the majority of cases the licence holder is keen to engage and offer measures to mitigate problems, however, residents are often dissatisfied with a compromise and expect to have the support and full force of the authorities at their disposal, with the aim of extinguishing the licensed operation.

The authorities fail when they do not address this imbalance and assist with establishing realistic expectations within a community.

Referring to my answer in 'Balance of rights and responsibilities' I will reiterate that the balance is too often in favour of residents, even when evidence is non-existent and not be genuinely objective. A mediation process may not eradicate the issue entirely, but the process, which I have previously been involved in sheds a more realistic light on the situation and curtails the likelihood of officers or ward councillors leading residents to believe they are right and the licensee is always at fault. The sharing of perspectives and effective communication is the only way to reach mutual understanding and common ground.

Off sales: there are two specific issues with off-licensed premises:

Firstly, off-licences in parades of shops are often owned by people who live in other districts and therefore they reap the reward of selling cheap high-strength alcohol, often to recognised street-drinkers, while suffering none of the consequences of their sales. They have the luxury of driving home at the end of the night, leaving behind the loitering individuals; drunks, criminals, drug users etc. to intimidate and disrupt the neighbourhood. The imposition of DP 13s have, in some areas, had a positive impact, however, the failure of licensing authorities to actively challenge DPS appointments of family members 'in name

only' and the lack of 'community' means that off-licences are rarely the subject of any enforcement action of any description.

Coincidentally this is the same situation as airports where airport outlets sell the alcohol, which is then consumed to excess in the departure lounge or restaurants, knowing that they will not be held responsible for the ensuing ASB or crime and disorder problems.

Secondly, is the issue of the enormous volume of alcohol sold via supermarkets in single sales. Supermarkets facilitate pre-loading and binge-drinking in a way that is not tolerated anywhere else. I appreciate the difficulty in addressing this but it seems society accepts the blatant abuse of alcohol, so long as it's sold by a supermarket or off licence, while vilifying on-licensed premises.

Re: supermarkets: it would not be unreasonable for licence fees to be based on overall floor space of the licensed premises - the larger the premises the more they pay.

There is an underlying attitude of circumventing the law simply by virtue of the size and the power of supermarket's legal teams. A licensing authority is unlikely to ever visit a Tesco with a calculator to examine the minimum pricing unit they operate at.

This leads some to feel that supermarkets have a bullying approach towards licensing authorities and will use their paying power to challenge decisions - therefore cap of costs and times for applications and appeals should be in place.

Super strength beers – this is a complex problem, however, I have only known it to be addressed by virtue of pressure by Police and Licensing upon the licensee to voluntarily accept a restriction and accommodate the request by submitting a minor variation to formalise a restriction on high-strength beer. Too often the approach is reactive to a problem, which is very time consuming and costly and a common approach would be welcomed.

Pricing:

The pricing of on-licensed sales is the focus of continual scrutiny and regulation through the accessibility of premises by Licensing and Police Officers and the forums available for discussion – Pubwatch. The Government could, if it wanted to, reduce a whole raft of alcohol-related problems by introducing better regulation of off-licensed trade.

Multi buys, lower prices and bulk sales all contribute to the ever-increasing number of NHS health cases (e.g. stroke, heart disease, liver disease diabetes, etc) and the incidence of domestic violence-related crimes committed away from the high street.

As mentioned earlier, it is too easy to use the licensing act to clamp down on responsible retailers while completely ignoring the root cause of many of the problems, caused by pre-loading and binge drinking, that modern day society and the late night economy currently faces.

Fees

Reba Danson – written evidence (LIC0125)

I firmly believe that no aspect of licensing should be a postcode lottery.

Licensing fees, along with the interpretation of the act and the application of the guidance, should be consistent. It is not appropriate for an operator running businesses the length and breadth of the UK to endure uncertainty and inconsistency in interpretation of the guidance in relation to a licensable activity being permissible in one place and restricted in another.

Fees and benchmarks should ideally be set nationally and within a set parameter, with guidance that the upper level has to be justified due to locality requirements

International comparisons

14. No view

2 September 2016

Deltic Group – written evidence (LIC0163)

1. Are the existing four licensing objectives the right ones for licensing authorities to promote? Should the protection of health and wellbeing be an additional objective?

Deltic believes that the existing licensing conditions are sufficient. We would not support adding “health” to the licensing objectives.

The positive aspects of late night entertainment venues to the economy and to society are often understated. The sector provides jobs as well as social, recreational and leisure opportunities and forms a crucial part of the vibrancy of our towns and communities.

We would suggest that “health” would be a duplication of current existing conditions. We are well trained in our retail responsibility and comply with the guidance in the Act with regards to drinks promotions, vertical drinking establishments to restrict unhealthy and unsociable practices so further restrictions, in our view, are unnecessary.

The Licensing Act is intended to be permissive which means that each individual should have the freedom to purchase and consume alcohol according to their own desires so long as doing so does not negatively impact others by undermining the licensing objectives (e.g. causing a disturbance) or committing criminal offences (e.g. being drunk and disorderly). With an increasingly 24 hour lifestyle, the shift in working patterns, we would encourage an open minded attitude to accommodate the very broad range of needs of the public in relation to leisure options available.

2. Should the policies of licensing authorities do more to facilitate the enjoyment by the public of all licensable activities? Should access to and enjoyment of licensable activities by the public, including community activities, be an additional licensing objective? Should there be any other additional objectives?

No, we don't believe it should. Certain facilities like doctors, hospitals, open spaces, health facilities and schools should be accessible to all. If people want access to certain recreational facilities they have the option of seeking them out or living in close proximity to them. The introduction of a requirement that everyone must have access to something (e.g. fast broadband) simply creates the need for that provision to be measured. We live in a diverse society and all people are different.

3. Has the Live Music Act 2012 done enough to relax the provisions of the Licensing Act 2003 where they imposed unnecessarily strict requirements?

Yes.

4. Does the Licensing Act now achieve the right balance between the rights of those who wish to sell alcohol and provide entertainment and the rights of those who wish to object?

Let us look at this in 3 parts.

Balance between rights and responsibilities

This will always be a challenge to listen to residents, support Police, work within budgets and to support business and the economy. By the same time, it is near impossible to please all of the people all of the time. We are considerate neighbours and have in place various measures to ensure that noise of our clubs and bars is limited and have effective dispersal policies to ensure protection of the community and our customers. Having said that, we are very aware of the power of the licencing authorities to impose review or change to conditions that may make a club unviable commercially. This would then lead to job loss, a hole in the recreational facilities provided and other potential crime and disorder because young people have nowhere to go to listen to music and be with their friends.

Financial burden

Any licence review is costly for both the operator and the tax payer!

Residents v businesses

This is challenging as quite often more effective town planning, working in partnership and a realistic approach could achieve a better outcome. We listen to the residents in towns where we operate and provide a hotline, patrol the wider community and really try hard to put effective measures in place. It is worth saying though, that living in the city centre will also mean a certain level of noise or disturbance and that should be recognised before a new neighbour completes on their townhouse for all the convenience of city centre living, near the station and which might be near part of a thriving late night entertainment zone!

5. Are the introductions of late night levies and Early Morning Restriction Orders effective, and if not, what alternatives are there?

Late Night Levies/EMROs:

Our view is that there are sufficient provisions for dealing with “problem premises” without the need to burden licence holders with a blanket approach. We need a collaborative approach between the trading standards, the police, the licensing authority and the EHO to find a longer term solution to resolve cumulative impact issues.

6. Licensing/local strategy

Licensing is only one part of the strategy that local government has to shape its communities. The Government states that the Act “is being used effectively in conjunction with other interventions as part of a coherent national and local strategy.” Do you agree?

To reiterate above, we would like to see a more collaborative approach from the authorities and proper scrutiny of the longer term implications of decision making.

7. Should licensing policy and planning policy be integrated more closely to shape local areas and address the proliferation of licensed premises? How could it be done?

Yes – improved communication is required. A more joined up approach would be desirable in relation to addressing planning applications based on local needs of interested parties with an open, accountable and transparent process.

8. Crime, disorder etc. Are the subsequent amendments made by policing legislation achieving their objects? Do they give the police the powers they need to prevent crime and disorder and promote the licensing objectives generally? Are police adequately trained to use their powers effectively and appropriately?

Our view is that current procedures within the Act are sufficient, alongside the introduction of the 2014 ASB Act.

We are not sure that we can comment on whether the police are adequately trained or not.

9. Should sales of alcohol airside at international airports continue to be exempt from the application of the Act? Should sales on other forms of transport continue to be exempt?

Is this about the availability of alcohol or the training, responsibility and diligence of staff in identifying potential problems and preventing or minimising them?

10. Licensing procedure

The Act was intended to simplify licensing procedure; instead it has become increasingly complex. What could be done to simplify the procedure?

To us the procedure is simple enough, but there is a need to reduce the periods required for consultation to allow businesses to develop.

The withdrawal of resources for licensing matters has impacted incident levels and meant that business resources are being used to support patrolling of streets, for example.

11. What could be done to improve the appeal procedure, including listing and costs? Should appeal decisions be reported to promote consistency? Is there a case for a further appeal to the Crown Court? Is there a role for formal mediation in the appeal process?

Costs of a review process are huge, for any size of business and of course, the licence holder faces the risk of costs. It would make sense to include a mediation process prior to any review to minimise costs and business interruption. As licence holder, we are always keen to engage and offer measures to mitigate any problems as the impact of a review on trade is huge and residents' complaints can be raised with the sole aim of extinguishing the operation rather than compromising. It is so important to get that balance of rights and responsibilities. The sharing of perspectives and effective communication is the only way to reach mutual understanding and common ground.

The issues for the on trade compound the issues for the off trade: preloading drinks bought from supermarkets means that all incidents sit with the on trade end of night location.

Licensing fees, along with the interpretation of the act and the application of the guidance, should be consistent. It is not appropriate for an operator running businesses the length and

Deltic Group – written evidence (LIC0163)

breadth of the UK to endure uncertainty and inconsistency in interpretation of the guidance in relation to a licensable activity being permissible in one place and restricted in another.

Fees and benchmarks should ideally be set nationally and within a set parameter, with guidance that the upper level has to be justified due to locality requirements.

12. International comparisons

No view.

7 November 2016

Derbyshire Police – written evidence (LIC0028)

Licensing Objectives

It is not necessary to have an objective of “public safety”. This mainly covers areas such as fire safety; electrical tests and food safety etc. and these are covered under their own legislation. It is unnecessary duplication.

Health & Wellbeing objective. Whilst there is a massive problem with over consumption and the direct cause this has on health, I do not see how an objective can be specific when writing conditions for a premises licence. However, it is right that Health are a responsible authority and are able to call for a review of a premises licence or add weight to one already called for by another responsible authority. I am not convinced that as an objective it is one that can be adhered to. I am aware that mention has been made that if there was a Health and Wellbeing objective; councils would be able to use this as a tool when considering a licence application by way of data from alcohol related hospital admissions and population health data and refuse to grant a licence on this basis. There is still a long way to go in getting this data from hospitals, and an even longer way to get some council’s to use this information to refuse a licence. This data is best used when considering areas of cumulative impact or similar.

The overall emphasis of the “presumption to grant” a licence is an area that needs to be addressed.

With regard to a further objective in respect of community activities, it is making things far too complicated. Licensing Policies are rarely looked at by applicants and are only ever really referred to by solicitors at a licensing hearing.

The balance between rights and responsibilities

The live music act has been pitched just right with the times so it not necessary to change this in any way.

Late night levies and early morning restrictions are not effective. Late night levies are viewed as further tax on business’s, and any revenue from those where they have been introduced can be difficult as 30% is to go towards local councils with 70% for the Police. The 30% is often too low when councils look at administration costs. This figure is often not enough to be effective in reducing crime in the night time economy and I am not convinced that this extra funding is used to directly police the night time economy which is the reason it was brought in. Night time economy can be managed by effective partnership working such as pub watch, CAPS (community alcohol partnerships), purple flag and other crime reduction schemes where there is a will to do this.

The introduction of early morning restriction orders in theory should be easy to introduce but for some reason are not. I believe that this is seen as a draconian measure, however an

introduction of reduced hours in areas where there are clear problems related to the night time economy is bound to have compelling benefits.

EMROs and Late Night Levy are not a one size fits all solution and should be re-addressed to fit in with diverse local economies to ensure they can be targeted more effectively.

In conclusion, partnership working and voluntary crime reduction schemes appear to be the favoured measure to reduce crime in the night time economy. However, this relies on the goodwill from the licensed trade with stability from staff, not the revolving door approach that is all too common, and stability and retention of staff within the responsible authorities involved.

I believe the balance of rights is favoured towards those selling alcohol and providing entertainment.

Not all responsible authorities engage effectively in the licensing regime. Those that do engage are authorities where licensing is a primary role. This can be fixed by having licensing as a primary role within authorities and not as an “add on” which is too often the case. Most authorities, such as environmental health, planning and health will default to using their own regulatory powers before the using the licensing act. If we are serious about reducing alcohol related harm then this is an area that needs addressing.

Local communities do not always engage in the licensing regime as they expect the responsible authorities to take the lead. Those that do are advised about their options and will submit objections/attend hearings and through experience I know they are listened to by a licensing panel. However, communities are not always aware of a licence application – for example an application for a music festival was advertised in a remote area where the public would not normally travel, and the advert was submitted in a newspaper that did not cover the community in which the festival was to take place – in this case, residents who wanted to make representation were not able to as they missed the deadline and the festival licence was granted. The licensing authority should have challenged the applicant and insisted it be re-advertised correctly. We are 11 years on now since the introduction of the licensing act and its many changes and the general public really do not have a clue about the workings of it unless it directly affects them.

Licensing & Local strategy

“The act is being used effectively in conjunction with interventions as part of a coherent national and local strategy” There are far too many “strategies” and “policies” from too many partners for it to be effective.

Licensing and planning should work more closely together. However, this is not done and there are many examples of applicants of a premises licence obtaining hours that are not in line with restrictions of hours given by planners. Both authorities receive the same premises licence applications at the same time yet there are still disparities as the two do not consult each other. Again, licensing is not the primary role for the planners. There is

obviously a concern otherwise the question would not have been asked. I believe that anyone applying for a premises licence must have had planning approved first.

Crime, Disorder and Public Safety

There are a number of changes to police legislation that can deal with licensing issues however; they are not used effectively due to a lack of knowledge and training. The role of the licensing officer is specialised and this is not recognised. Many police officers are under the impression that since the introduction of the 2003 licensing act, the police role is merely an administrative function and as such are not giving it much weight.

The sale of alcohol at airports most definitely should not be exempt. They must adhere to the same rules and regulations as any other business that offers the sale of alcohol to the public. No other licensed premises would be allowed to sell alcohol unregulated as airports are. This would reduce the numbers of drunken customers boarding aeroplanes and being abusive in the airport terminals. Border Force officers deal with many drunken holiday makers that go unreported and I know that we are unaware of the true scale of the problem.

With regard to other forms of transport – all premises (whether that be train, plane or boat) that sell alcohol to the public should be licensed under the licensing act 2003.

Licensing Procedure

Having worked with both the 1964, and 2003 Licensing acts, I would have favoured it staying within the remit of the Magistrates Court and they would have been given the powers to use a range of measures to use with problems licences that came before them as the licensing authority do now. By giving it to local councils, it has become too political with councils being frightened of making a tough decision for fear of an appeal against them by big brewing companies etc. On two occasions I have had councillors state they have agreed with the police, however, sided with the pub company for fear of an appeal. This was not what the act was about. Too many solicitors are able to confound panels with loopholes within the act. I would favour a return to the Courts as decisions need to be made independently of any political interference.

There is no control of the supermarkets in respect of off sales at low prices including delivery services. There needs to be legislative reform that tackles this area of licensing. It cannot be right that a sale of alcohol can be made over the telephone and then delivery be made by a third party e.g. - parcel force. The responsibility over the sale cannot end at the putting down of the telephone. It is a huge area in the sale of alcohol that is not been given due attention as it is too difficult.

Pricing

There should be a minimum pricing of alcohol as per the report carried out by Jonathon Shepherd CBE and the links between alcohol, pricing and violence (i) The Government

Derbyshire Police – written evidence (LIC0028)

should introduce this measure straight away and hold its nerve against those that oppose the scheme.

Fees and costs associated with the licensing act 2003

No comment

International Comparisons

No comment

- (i) Preventing violence related injuries in England & Wales: a panel studying examining the impact of on-trade and off-trade alcohol prices.

26 August 2016

Devon Licensing Officers Group – written evidence (LIC0075)

1. Are the existing four licensing objectives the right ones for licensing authorities to promote? Should the protection of health and wellbeing be an additional objective?

There was a general consensus that the four objectives were the correct ones to promote.

Whilst it was noted that it was the wish of some Licensing Committees to see public health added as an additional licensing objective, there was a level of member concern about this particularly without a sufficiently robust definition and supporting guidance.

In terms of potential benefits, one Licensing Committee with issues in its area surrounding alcohol consumption by street attached persons, believed that there may be some value for them in public health being added as an objective. By way of example it was perceived that high strength alcohol could then be restricted from sale at certain off licensed premises. Another authority explained that they had successfully introduced a voluntary scheme to tackle similar issues and thus the addition of an objective was not necessarily regarded as the sole method of solving issues surrounding street drinking.

When discussing the potential introduction of public health as an objective there were comments such as ‘Where do you draw the line’. An example being provided when seeking to determine a licence application for a late night refreshment premises solely serving food stuffs of high fat and salt content - at what point would a representation be accepted on public health grounds based upon the food stuffs served, if at all?

Discussion surrounded the fact that whilst Public Health is a Responsible Authority, by and large there was extremely limited involvement across the whole county in terms of this body making any representations. There had been one notable contact with respect of an issue surrounding drugs at a festival event, but other than that involvement had been constrained by the lack of an objective surrounding public health.

Conversation pursued around whether in light of this, the service of applications on Public Health was at this point an unnecessary burden on applicants and Public Health, and the process was an over complication when there were limited grounds on which a representation could be placed.

In summary whilst there were certain perceived benefits in the introduction of public health as an objective, extremely careful consideration would be needed to solely allow tailored, evidence based and proportionate representations to be considered. In the absence of well drafted legislation and guidance, the ‘flood gates could be opened for the public to place representation’ in inappropriate circumstances. This would in turn burden authorities in dealing with these representations and have the potential to substantially increase the number of hearings, which are in turn costly.

It was queried whether there could be some merit in solely allowing a Responsible Authority (rather than the public) to make a representation based upon a newly introduced public health objective?

2. Should the policies of licensing authorities do more to facilitate the enjoyment by the public of all licensable activities? Should access to and enjoyment of licensable activities by the public, including community activities, be an additional licensing objective? Should there be any other additional objectives?

Discussion surrounded whether it was the role of a Licensing Authority to facilitate public enjoyment of licensable activities, which it was doubted. The converse of this would be an authority taking enforcement action against a licence just because people were not enjoying it. This would not be proportionate.

It was said that policies could potentially do more to address positive representations being received. However it was cited that it was difficult to word a positive representation in line with the licensing objectives.

No additional objectives were suggested.

3. Has the Live Music Act 2012 done enough to relax the provisions of the Licensing Act 2003 where they imposed unnecessarily strict requirements? Are the introductions of late night levies and Early Morning Restriction Orders effective, and if not, what alternatives are there? Does the Licensing Act now achieve the right balance between the rights of those who wish to sell alcohol and provide entertainment and the rights of those who wish to object?

In many respects rather than doing enough to relax provisions, it was believed that in some instances the Live Music Act and The Legislative Reform (Entertainment Licensing) Order 2014 had done too much to remove requirements.

Whilst the deregulation surrounding live and recorded music for a set capacity of persons and hours is deemed more appropriate for fixed venues such as pubs, and clubs, with sound attenuation measures etc. in place, some of the more recent issues experienced (often in rural authorities) related to outdoor events.

There was cited to be an emerging trend for events branded as small ‘festivals’ run under the benefit of a TEN for alcohol, and having no restrictions in terms of live or recorded music up until 11.00pm. The Live Music Act 2012 provides a restriction in respect of ‘workplaces’ however the definition of a workplace is particularly broad. There is a serious concern over whether temporary outdoor venues should have been included in the latest round of deregulation.

In certain authority areas sensitivity has arisen whereby fields can be used up to 15 times per annum over a substantial period for festival type events. Whilst noise may not be deemed a statutory nuisance, noise combined with low level anti-social behaviour can still

be impactful on communities, and there have already been expressions of public frustration in respect of these events.

Whilst the above was cited as the main concern, a number of examples were provided by authorities in terms of fixed venues, with Premises Licences being reviewed in light of complaints. Reviews had been largely sought in order to re-apply proportionate conditions which had been removed by the deregulation measures, e.g. doors and windows being kept closed. In these cases the process was deemed burdensome when the conditions were appropriate in the first instance.

A complication of the latest round of deregulation has been a lack of understanding by all parties of the situation. Particularly when conditions left on a licence, accessible by way of public register, are redundant at certain times.

The group was not best placed to discuss the effectiveness of LNLs or EMROs with none of the authorities having applied either of these in their areas. In light of the nature of provisions, they were not perceived to be a benefit across the county. Some officers cited issues surrounding common issues with the legislation, for example debt payment issues in respect of the LNL which may reduce the potential uptake of such options.

The balance was generally perceived to be correct other than for the issues surrounding outdoor events and removal of proportionate conditions on Premises Licences as discussed above.

4. Do all the responsible authorities (such as Planning, and Health & Safety), who all have other regulatory powers, engage effectively in the licensing regime, and if not, what could be done? Do other stakeholders, including local communities, engage effectively in the licensing regime, and if not, what could be done?

There was a general consensus that Responsible Authorities such as Planning and Health and Safety do not have a large amount of contact with Licensing Authorities, particularly in terms of making representations under the Act.

It was cited that the fact that the Health and Safety at Work Etc. Act 1974 includes overarching provisions in terms of employees and the public (s2 and s3), often regulators believe that their legislation will provide a sufficient level of control and that the addition of conditions would be duplicitous. This is still an area where further guidance would be welcomed as there may be occasion where better and more tailored control could be provided via the Licensing Act.

It was acknowledged that due to dwindling resources, local authority based Responsible Authorities are increasingly struggling to engage in the licensing regime. Pressures are particularly apparent for TENs which have a short timescale for response.

In terms of local communities, there is a limited engagement. On occasions when there have been issues, for example in a situation where TENs are submitted for outdoor events over which sensitivity has been raised, communities can feel thwarted that they are unable to

influence to process as they would like to do so. One authority suggested that a two tier system for TENS would be more appropriate with those events over 300 persons triggering an increased level of consultation, and conditions being able to be placed as part of the process.

It was noted that some authorities write to near neighbours surrounding applications (not in Devon), however this process was thought to not be without its dangers, and in any event there are insufficient resources to do so. A couple of authorities as part of the group now consult parish and town councils. This had been positively received, however unless a legislative change is made this further fuels inequality between the approaches of local authorities.

5. Licensing is only one part of the strategy that local government has to shape its communities. The Government states that the Act “is being used effectively in conjunction with other interventions as part of a coherent national and local strategy.” Do you agree?

The group generally agreed with this statement.

6. Should licensing policy and planning policy be integrated more closely to shape local areas and address the proliferation of licensed premises? How could it be done?

It was cited that integration of licensing and planning policies was useful in certain circumstances and there was clear benefit in involvement of a Licensing Authority with local plans. For example it was deemed useful to examine the position and number of late night takeaways so as to ensure the effective removal of patrons out of the night time economy after other licensed premises had closed.

Some Devon authorities (e.g. Exeter City Council and Torbay Council) have in place Cumulative Impact Policies to restrict the proliferation of licensed premises in certain areas. A discussion surrounded the fact that a requirement for pre-licence planning permission could amend this position, however there was a potential to hinder business by increasing waiting times if making planning permission a pre-requisite for a licence.

Concern was raised in respect of duplicity of conditions from a planning and licensing perspective. Frequently these can be worded differently. A good example was cited of a restriction on patrons utilising an outside terrace area up until different times in the evening. This is not only confusing for the public, but creates enforcement difficulties. A suggestion of the group is that a licence condition should not go beyond a planning condition and vice versa, depending on which control was in place initially.

7. Are the subsequent amendments made by policing legislation achieving their objects? Do they give the police the powers they need to prevent crime and disorder and promote the licensing objectives generally? Are police adequately trained to use their powers effectively and appropriately?

In general it was felt that the police were using their powers effectively, although it was raised that sometimes local police officers were not as well-trained on licensing matters as

other areas. In particular, confusion had sometimes occurred due to the recent de-regulation changes where entertainment had been stopped because not specified on a licence, but was now de-regulated due to Live Music Act 2012 and subsequent amendments.

A more detailed response to this question in relation to Devon is being made separately by Devon and Cornwall Police.

8. Should sales of alcohol airside at international airports continue to be exempt from the application of the Act? Should sales on other forms of transport continue to be exempt?

Whilst it was acknowledged that there were likely to be few impacts on local residents from licensed premises at international airports, there are risks that are somewhat exacerbated by individuals flying thereafter in close confinement and in a situation for which public safety is paramount.

The general perception was why the situation should be any different to a non-airside premises, however discussion surrounded the difficulty with gaining access to such sites, and rights of entry to undertake unannounced inspections etc.

There were said to be implications with regard gaming machines if changes were made to the present system. Currently without the ability for operators to utilise a licensed premises gaming machine notification or permit, the only way to facilitate the use of machines airside is via a Family Entertainment Centre or Adult Gaming Centre Premises Licence.

9. The Act was intended to simplify licensing procedure; instead it has become increasingly complex. What could be done to simplify the procedure?

Examples discussed included:

To prevent any further changes being made as with the introduction of the Live Music Act, which removed clarity with licence conditions.

Remove the requirement to advertise Premises Licence of Club Premises Certificate grant or variation applications in the newspaper.

Reduce the length of application forms, particularly for grant and variation.

Discussion surrounded the potential implementation of set national conditions for different types of premises bearing in mind the disparity in application of conditions and lack of consistency nationwide. Albeit it was held that this would remove the principle of conditioning on merit, and it was believed that improved guidance could likely resolve this position. Attempts by the Institute of Licensing to produce such guidance were noted to have been recently thwarted but this is something that members believe would be of significant value.

10. What could be done to improve the appeal procedure, including listing and costs? Should appeal decisions be reported to promote consistency? Is there a case for a further appeal to the Crown Court? Is there a role for formal mediation in the appeal process?

There were no suggestions as to how to improve the appeal procedure but members were in favour of the reporting of appeal decisions for reasons of consistency.

Given that a decision is only binding if made at Crown Court, there were perceived benefits in a further appeal. There were comments as to whether this could be burdensome on the Crown Court system given their constraints, however it was thought that there were unlikely to be substantial number of such appeals in any event.

11. Given the increase in off-trade sales, including online sales, is there a case for reform of the licensing regime applying to the off-trade? How effectively does the regime control supermarkets and large retailers, under-age sales, and delivery services? Should the law be amended to allow licensing authorities more specific control over off-trade sales of “super-strength” alcohol?

There were no substantial concerns which were indicative of the need for a wholesale reform of the licensing regime applying to the off trade. It was held that this worked generally well on the whole albeit that it was noted that alcohol was still abundant and displaced over supermarkets and large retailers, with large discount style displays often positioned in shop entrances. This is something that members believed should be restricted. In contrast to smoking, alcohol sales and marketing was held to be still behind the times given alcohol is also a Group 1 carcinogen, and has a myriad of other impacts on society.

The one area which was believed to be more in need of closer examination surrounded delivery services, which had become more common place since the Act was implemented. It was cited that the legislation was particularly difficult to relate to third party deliveries, and examples were provided of situations where the Licensing Act was circumvented with alcohol being appropriated to contracts outside the UK (thereby falling outside the regime), when the effects of consumption clearly fell on the UK.

Members believed that further surveys were required in relation to super-strength alcohol in order for valid opinions to be formed, however where voluntary schemes had been initiated these were reported positively.

12. Should alcohol pricing and taxation be used as a form of control, and if so, how? Should the Government introduce minimum unit pricing in England? Does the evidence that MUP would be effective need to be “conclusive” before MUP could be introduced, or can the effect of MUP be gauged only after its introduction?

It was cited that alcohol pricing and taxation could be the only potential way to improve the situation with pre-loading but there was still a concern that this would penalise responsible drinkers, (albeit that the levels of alcohol consumption deemed safe are increasingly lower and therefore the introduction of MUP is becoming more proportionate). Some believed that considering younger people are staying at home longer that MUP would not dissuade people purchasing alcohol at higher prices. All believed that further studies were required to gain a clearer idea of whether such a policy would benefit the night time economy, and

health of the population. There was a suggestion that increased pricing of alcohol could bring with it an increased level of crime and disorder (e.g. through increased thefts).

13. Do licence fees need to be set at national level? Should London, and the other major cities to which the Government proposes to devolve greater powers, have the power to set their own licence fees?

The general consensus was that fees should be locally set, with one of the opinion that there should be an option of either statutory set or locally set fees.

14. Is there a correlation between the strictness of the regulatory regime in other countries and the level of alcohol abuse? Are there aspects of the licensing laws of other countries, and other UK jurisdictions, that might usefully be considered for England and Wales?

Whilst members had no direct experience in respect of licensing regimes from other countries, conversation did surround the fact that legislation in places such as New Zealand and Australia appeared stricter, with examples provided whereby there was no consideration of premises after a certain time, and increased numbers of inspections being undertaken. Examination of these regimes and their benefits would clearly be of value.

1 September 2016

Durham Constabulary – written evidence (LIC0045)

LICENSING OBJECTIVES

- 1. Are the existing four licensing objectives the right ones for licensing authorities to promote? Should the protection of health and wellbeing be an additional objective?***

Durham Constabulary would fully support the introduction of a health and wellbeing objective.

The four existing licensing objectives allow responsible authorities to make representations in a number of different ways, the introduction of an additional ‘health and well-being’ objective would enhance the opportunities for Public Health partners to participate in the licensing process. A range of health data sources, from alcohol-related hospital admissions statistics, to ambulance data are already used in compiling evidence and information in review hearings and it is clear that factors linked to health and well-being should be taken into account as part of the licensing process. The licensing act should state unambiguously that the necessary cognisance should be given to input from any of the responsible authorities.

This would represent an evolution and not a revolution within licensing. It would close a legislative gap within the Act and allow local authorities to highlight health and well-being concerns in a more specific way, rather than trying to address them under one of the existing four objectives. It would enhance the opportunity for Public Health to participate in the licensing process. It would ensure that alcohol, which we know leads to significant public harm and this would close the gap that local authorities face in highlighting such harms in the existing objectives.

The current overall emphasis of the Licensing Act is the ‘presumption to grant’ a licence which makes it hugely difficult to challenge individual license applications. In our view, the existing Licensing Act requires a fundamental overhaul, which would give ‘responsible authorities’ the powers to decide when and where alcohol could be sold, based upon clear objectives, including the protection of health and well-being.

Should the policies of licensing authorities do more to facilitate the enjoyment by the public of all licensable activities? Should access to and enjoyment of licensable activities by the public, including community activities, be an additional licensing objective? Should there be any other additional objectives?

We do not feel that there should be an additional licensing objective linked to access to and enjoyment of licensable activities by the public. Local communities already feel that they have more than enough access to licensed premises; a recent Balance North East survey showed that 95% of North East residents agreed that there were enough or too many places selling alcohol.

- 55% of respondents supported restricting alcohol sales in off-licenses and supermarkets to between 10am-10pm, compared to only 18% who backed a more flexible approach;²¹⁸
- Two thirds of North Easterners felt that “the drunken behaviour of others” put them off a night out in our town and city centres;²¹⁹
- Almost 3/4s of North Easterners agreed that pub and club closing times should be between 11pm to midnight;²²⁰
- 95% of North Easterners felt that it was unacceptable to sell alcohol in a soft play area; 84% opposed sales in a hair salon; and 77% in a garage forecourt – all locations in which alcohol is currently available in the North East.²²¹

We believe that a licensing system should protect and listen to the concerns of local communities and foster vibrant and diverse local economies. More powers should be given to local people to decide when and where alcohol is sold, rather than introducing new objectives.

THE BALANCE BETWEEN RIGHTS AND RESPONSIBILITIES

2. *Has the Live Music Act 2012 done enough to relax the provisions of the Licensing Act 2003 where they imposed unnecessarily strict requirements? Are the introductions of late night levies and Early Morning Restriction Orders effective, and if not, what alternatives are there? Does the Licensing Act now achieve the right balance between the rights of those who wish to sell alcohol and provide entertainment and the rights of those who wish to object?*

Durham Constabulary believes that the Live Music Act does appear to have brought the right balance between provision and regulation and there has been no significant impact on crime and disorder or public nuisance as a result. We would suggest that the balance is now right and would advise caution of any further de-regulation was considered.

The lack of any Early Morning Restriction Orders is a clear failing of the Act. Many local authorities and police forces would like to be able to use this tool, and restricting excessively late closing times is known to significantly reduce alcohol related crimes and associated police costs. For example, a modest reduction in trading hours in Newcastle (NSW, Australia) in 2008 was shown by independent evaluation to have had convincing and compelling benefits:

- an internationally unprecedented 37% fall in alcohol-related non domestic assaults;
- a 50% reduction in night time street crime; and
- a 26% reduction in related hospital ED admissions.

²¹⁸ Balance Public Perceptions Survey 2015

²¹⁹ Balance Public Perceptions Survey 2015

²²⁰ Balance Public Perceptions Survey 2014

²²¹ Balance Public Perceptions Survey 2013

Other police force areas such as Lancashire and Cleveland has shown, it is currently almost impossible to curb opening hours through the introduction of EMROs, which are far too inflexible and open to significant and sustained industry challenge. EMRO's have been considered in Durham Constabulary but due to the issues seen elsewhere they have not been progressed with.

It is evident that the Late Night Levy does not meet the needs of diverse local economies. They appear to be more suited to large, vibrant, night-time economies in city centres than to areas such as Durham Constabulary which has a more rural geography. It would therefore be helpful to introduce a more flexible version of the Late Night Levy, which would allow the levy to apply to a particular localities, rather than Local Authority wide.

EMROs and Late Night Levies need rebalancing in favour of local authorities and communities, to ensure that they can be implemented and targeted more effectively.

3. ***Do all the responsible authorities (such as Planning, and Health & Safety), who all have other regulatory powers, engage effectively in the licensing regime, and if not, what could be done? Do other stakeholders, including local communities, engage effectively in the licensing regime, and if not, what could be done?***
4. Planning and licensing processes should be more aligned, with the view that applicants should not be granted a license, until they have got planning permission to open for the hours stated on a licensing application. (Highlighted in question 5 below).

Locally, Public health colleagues would welcome the opportunity to engage more actively in the licensing process, but resources and capacity restrict their ability to do so. The introduction of a health and well-being objective may aid this position.

Local communities often feel their concerns are not heard due to licensing act giving the presumption to grant an application.

LICENSING AND LOCAL STRATEGY

5. ***Licensing is only one part of the strategy that local government has to shape its communities. The Government states that the Act "is being used effectively in conjunction with other interventions as part of a coherent national and local strategy." Do you agree?***

The Licensing Act has created a shift towards crime and disorder issues, with the Modern Crime Prevention Strategy continuing this trend. However, from a wider alcohol harm perspective, there has been no introduction of a coherent and evidence based approach to alcohol harm reduction at a national level, particularly through the lack of meaningful policy to address the impact of cheap, strong alcohol.

Locally we have developed strong approaches to alcohol harm reduction together with partners, with the local authorities Statement of Licensing Policy (SLP) and Alcohol Harm Reduction Strategies setting a clear and positive vision for the development of the night time economy, with health and well-being (in addition to the four existing licensing objectives) at the heart of local strategies.

There is however conflict between licensing authorities and counterparts in economic development / planning departments and the provision of more national leadership and powers to reflect the adverse harms that alcohol can have upon our local communities, as well as the economic benefits would be beneficial.

6. *Should licensing policy and planning policy be integrated more closely to shape local areas and address the proliferation of licensed premises? How could it be done?*

Yes, Durham Constabulary believes that licensing and planning policies should be better integrated, although it would not necessarily make a significant impact on the proliferation of licensed premises, which is facilitated by the ‘presumption to grant’ in the Licensing Act 2003.

With Durham Constabulary there are examples of fast food outlets having late night refreshment licences until 5.00am but planning permission to only open till 11.00pm and unwillingness within planning to enforce their legislation. The fact that whether premises may or may not require planning permission to operate is not taken into consideration by licensing committees when considering an application.

The planning and licensing processes should be more aligned, with the view that applicants should not be granted a licence until they have planning permission for the opening hours stipulated on their application

CRIME, DISORDER AND PUBLIC SAFETY

7. *Are the subsequent amendments made by policing legislation achieving their objects? Do they give the police the powers they need to prevent crime and disorder and promote the licensing objectives generally? Are police adequately trained to use their powers effectively and appropriately?*

Police powers to prevent crime and disorder, the changes, which include additional powers of entry for the police, have been largely positive; however the amendments do not go far enough. Locally Durham Constabulary utilises Police Community Support Officers in the role of licensing officers, a specific power entry which can be delegated by Chief Officers allowing entry for PCSO’s to carry out licensing visits would be an advantage to the those Forces that choose to use police staff in that role and allow more flexibility in achieving objectives.

There is insufficient training to ensure that powers are used to their full potential. There is no internal training that is given to equip licensing officers for the role. However with this in mind, it has been suggested that the College of Policing should be encouraged to create and implement a standardised training package as soon as possible to ensure consistency in the delivery of licensing functions across all Forces.

LICENSING PROCEDURE

8. *The Act was intended to simplify licensing procedure; instead it has become increasingly complex. What could be done to simplify the procedure?*

The Licensing Act has simplified the licensing procedure. The Act also assisted in creating effective partnership working, both between individual regulatory bodies, and with the licensed trade. In general, the alterations to the Act have addressed deficiencies and problems. However, the ‘presumption to grant’ licenses remains a huge challenge, limiting the ability of responsible authorities and communities to control when and where alcohol is sold at a local level.

8. *Should sales of alcohol airside at international airports continue to be exempt from the application of the Act? Should sales on other forms of transport continue to be exempt?*

The promotion of the licensing objectives is as relevant at airports and on trains as in any other location. In fact there are potentially additional risks related to passengers being drunk and unruly on these forms of transport. Indeed, recent figures showed that 422 people were held on suspicion of being drunk at an airport or on a plane in the last two years.²²² With this in mind, it would make absolute sense to bring sales of alcohol airside under the jurisdiction of the responsible authorities in the licensing process.

Regarding other forms of transport, the sale and consumption of alcohol on trains can cause specific problems, often resulting in additional preloading or on-route drinking. In some areas, large groups have been known to buy excessive amounts of alcohol from the off-trade, drinking on trains while traveling to their destination on a Friday or Saturday night. They then arrive in a very intoxicated state, causing significant problems from a crime and disorder perspective. Locally we have noted that this is a particular problem on the East Coast mainline, with large groups of revellers (often hen and stag parties) traveling between cities such as Newcastle, Durham and York, consuming large quantities of alcohol and disturbing other passengers.

It would be helpful to regulate the sale of alcohol on trains and other forms of transport, much more effectively, whilst allowing some local flexibility to tackle particularly problematic routes.

²²² [Airport alcohol sales to be 'examined' by Lord Ahmad](#). BBC news

9. *What could be done to improve the appeal procedure, including listing and costs? Should appeal decisions be reported to promote consistency? Is there a case for a further appeal to the Crown Court? Is there a role for formal mediation in the appeal process?*

The appeals procedure is open to abuse, with significant room for improvement. For example, when a licensing committee orders a license revocation, the premises in question can continue trading, pending the result of an appeal to Magistrates – a process which can last six months or more after the initial committee hearing.

This enables poorly run premises and / or unscrupulous license holders to use the appeals process as a ‘stay of execution’, with many continuing to pose challenges to local partners and communities in the meantime. With this in mind, Durham Constabulary believes that there should be a process of interim revocation, pending appeal, which would effectively implement an immediate ban on the sale of alcohol. This would admittedly necessitate a speeding up of the appeals process; but more importantly, it would protect local communities from further problems during the appeal period and guard against the abuse of the overall system.

SALE OF ALCOHOL FOR CONSUMPTION AT HOME (THE OFF-TRADE)

10. *Given the increase in off-trade sales, including online sales, is there a case for reform of the licensing regime applying to the off-trade? How effectively does the regime control supermarkets and large retailers, under-age sales, and delivery services? Should the law be amended to allow licensing authorities more specific control over off-trade sales of “super-strength” alcohol?*

Durham Constabulary has seen a huge increase in pre-loading in the years since the introduction of the 2003 Licensing Act. This is due to an increased drinking at home fuelled by, at least in part, the disparity in price between the on and off-licensed trades and the increased availability; alcohol has never been so available with increasing number of off-licences which can now include garage forecourt shops and expansion of major supermarkets into smaller convenience stores such as Tesco Metros, Sainsbury’s Locals etc.). Off-licensed sales are also the predominant direct and indirect source of access to alcohol for under-18s.

At the same time, the Licensing Act 2003 is poorly equipped to deal with the off-trade and more needs to be done to regulate and reform this area of the licensing regime. Introduction of a ban on multi-buys, restricting the area within a store where alcohol can be sold, the restriction of off-trade hours to 10am until 10pm, and the proposed introduction of minimum unit pricing could all be beneficial

Home delivery services such as ‘24/7 dial a drink.’ are also difficult to regulate under the Act. Locally, guidance and conditions for operators to ensure that they comply with the Act has been offered, particularly regarding sale to minors and sales to drunks; although this can

be challenging to enforce. Limited hours for home delivery of alcohol would be a welcome introduction.

PRICING

11. *Should alcohol pricing and taxation be used as a form of control, and if so, how? Should the Government introduce minimum unit pricing in England? Does the evidence that MUP would be effective need to be “conclusive” before MUP could be introduced, or can the effect of MUP be gauged only after its introduction*

There is no single solution to tackling alcohol-related harm and a package of measures to limit the affordability, availability and promotion of alcohol is what is required. However, all of the independent evidence shows us that getting rid of the cheapest, strongest alcohol would have the most impact as it is typically consumed by young people and those drinking at harmful levels.

There is a large and significant body of international evidence which demonstrates that the price and affordability of alcohol is the key factor in driving consumption. In the 2009 Global Strategy, the World Health Organisation recommends introducing pricing policies to reduce alcohol-related harm and recognises the option to “establish minimum prices for alcohol where applicable” as an appropriate action.

Furthermore, Minimum Unit Price is already working in several countries, including Canada. Figures from British Columbia indicate that a 10% increase in average minimum price would result in a fall in consumption of 8%²²³; a 9% reduction in alcohol specific hospital admissions²²⁴; a 32% reduction in wholly alcohol caused deaths²²⁵; and a 10% fall in violent crime.²²⁶ In addition, research commissioned by the UK Government revealed that the introduction of MUP would be significantly more effective than banning below-cost sales.²²⁷ According to this work:

- After 10 years, a ban on below cost sales would save 14 lives, compared to 960 lives saved with the introduction of MUP at 50p;
- In the first year of implementation, a ban on below cost sales would reduce crimes by 900, whilst an MUP at 50p would result in a fall of 50,700 crimes.

²²³ Stockwell, T., et al. (2012), [The Raising of Minimum Alcohol Prices in Saskatchewan, Canada: Impacts on Consumption and Implications for Public Health](#). American Journal of Public Health

²²⁴ Stockwell, T., et al. (2013), Minimum alcohol prices and outlet densities in British Columbia, Canada: Estimated impacts on alcohol attributable hospital admissions. American Journal of Public Health

²²⁵ Zhao, J., et al. (2013), [The relationship between changes to minimum alcohol price, outlet densities and alcohol-related death in British Columbia, 2002-2009](#). Addiction.

²²⁶ Stockwell, T., et al. currently unpublished research on the effects of minimum pricing on crime in Canadian provinces

²²⁷ University of Sheffield (2013), [Modelled income group-specific impacts of alcohol minimum unit pricing in England 2014/15](#)

- After 10 years, a ban on below cost sales would save an estimated £77m, whilst the equivalent figure for MUP at 50p is £5.1 billion.²²⁸

From a local perspective the cheapest, strongest alcohol is responsible for some of the greatest problems in our local communities. The people in our most deprived communities suffer from the worst alcohol-related.

MUP is not a silver bullet, and a combination of tax and MUP would be the optimal approach. This would ensure that the cheapest alcohol, which disproportionately causes the greatest harms, increased in price, while ensuring that the Treasury benefited from this rather than the alcohol producers.

Durham Constabulary fully supports the introduction of MUP at the suggested price of 50p per unit, this would have a minimal impact on the on-trade, where prices tend to be significantly higher than this, but it would impact most dramatically on the cheapest alcohol in the off-trade.

Regarding the question of being able to conclusively predict MUP's impact, the evidence for MUP is very strong, taking Canada as the example where they have similar minimum prices, that MUP would be effective. To wait for conclusive evidence that MUP works risks further increasing the impact cheap alcohol is currently having on individuals and communities.

FEES AND COSTS ASSOCIATED WITH THE LICENSING ACT 2003

- 12. *Do licence fees need to be set at national level? Should London and the other major cities to which the Government proposes to devolve greater powers, have the power to set their own licence fees?***

This is a matter for local authorities and Durham Constabulary has no specific views in regards to the setting of licence fees.

International comparisons

- 13. *Is there a correlation between the strictness of the regulatory regime in other countries and the level of alcohol abuse? Are there aspects of the licensing laws of other countries, and other UK jurisdictions, that might usefully be considered for England and Wales?***

Within developed countries, those which experience greater alcohol related harms tend to have a stricter regulatory response. The 2003 Licensing Act attempted to simplify and deregulate licensing but the 'presumption to grant' has played into the hands of the industry and prevented responsible authorities from actively and decisively deciding when and where alcohol can be sold at a local level.

Evidence from Australia lends support to the introduction of a workable EMRO. In Newcastle, Australia, it was found that bringing forward closing times from 5am to 3am

²²⁸ Brennan, A., Meng, Y., Holmes, J., Hill-McManus, D. and Meier, P. (2014) 'Potential benefits of minimum unit pricing for alcohol versus a ban on below cost selling in England 2014: modelling study', BMJ,

resulted in 37% reduction in assaults.²²⁹ After one year, similar opening restrictions in the Kings Cross area of Sydney resulted in a 21% reduction in sexual assaults, a 43% reduction in assaults causing grievous bodily harm, a 50% reduction in assaults causing actual bodily harm and a 57% reduction in robberies.²³⁰

Commenting on this, Police Superintendent Mick Fitzgerald, Kings Cross, Australia, local area commander, stated that ‘the man hours saved and the way we are able to reallocate our resources has been phenomenal.’²³¹ While the closure of several clubs in Kings Cross were attributed to measures, a variety of other businesses have been seen to enter the market, including antiques dealers, ice-cream vendors, chemists, restaurants, hairdressers and yoga studios, as well as a number of new bars.²³² There is also evidence that, while there has been a reduction in land value of a some commercial property, large increases have been observed in both mixed-use and residential property in the Kings Cross region.^{233, 234}

Risk-based licensing, which is used in various forms in Canada, Australia and New Zealand, also has interesting elements. This approach broadly links licensing fees and regulatory strength to the type of premises and the operating schedule. Types of premises, such as restaurants, bars or clubs, are ranked by their potential risk, and pay a different base rate depending on the outcome of the risk assessment. Hours of operation can also be linked to the fee, with some states in Australia charging incremental amounts for every hour that a venue opens after midnight. Compliance history can also have an impact on fee level.²³⁵

31 August 2016

²²⁹ Kypri. K., Jones. C., McElduff. P., Barker. D., (2011) [Effects of restricting pub closing times on night-time assaults in an Australian city](#). Addiction.

²³⁰ In addition to moving closing times forward from 5 am to 3 am, a 1 am lockout was introduced, meaning that people could continue to drink alcohol on the premises until the 3am close, but no new patrons could be admitted after 1 am. This became known as the ‘one-way door’ policy.

²³¹ Australian Daily Telegraph (April 1st, 2015) [Cross clean-up is a victory for Sydney](#)

²³² <https://twitter.com/2011Residents>

²³³ Land & Property Information. (n.p.). *Potts Point/Kings Cross Report Land Value Review – Report for Land Valuation Advisory Group*. NSW Government.

²³⁴ Nicholls, S. (2016, 22 May). Lockout laws hit values in Kings Cross’ ‘golden mile’. *The Sydney Morning Herald*. Retrieved from: <http://www.smh.com.au/nsw/lock-out-laws-hit-land-values-on-kings-cross-golden-mile-20160522-gp0ych.html>

²³⁵ See the appendix to Foster. J., Charalambides. L., (2016) [The Licensing Act \(2003\): its uses and abuses 10 years on](#). Institute of Alcohol Studies.

Ealing Civic Society – written evidence (LIC0129)

Background

1. Ealing Civic Society was formed nearly 50 years ago in response to a threat from redevelopment of Ealing town centre in the 1960s. Its main purpose is to protect the best of Ealing's historic past and promote good new development. More recently, one of the threats to the town centre has been from the proliferation of licensed premises and it campaigned when the Licensing Act 2003 was first enacted for a special area policy to apply in Ealing town centre. This was successfully achieved and subsequently extended to Acton and Southall town centres. As a result, some of the worst excesses of the night economy, particularly from pubs and clubs, have been reined back and new applications, particularly for off-licences, have been successfully resisted on the grounds that they would have added to the existing cumulative impact of the licensed premises in the town centre.

Representation to the Committee

2. We propose to comment on the following areas of concern:

- Adding health to the licensing objectives
- Operation of the cumulative impact policy
- Relationship between licensing and planning regimes
- Proliferation of off licences
- Threats to the local amenities
- Time limitation on licences
- Mandatory conditions
- Temporary Event Notices
- Appeals.

All comments relate only to premises licences for sale of alcohol, regulated entertainment and late night refreshment rather than other licence types to which different criteria may apply.

Adding health to the licensing objectives

3. Currently a major cause of death and disability in our society is chronic diseases, often associated with lifestyle factors such as smoking, diet and alcohol use. Alcohol sales per adult in England and Wales in 2015 amounted to around 17.5 units/week. Although

consumption was increasing until around 2005 it has shown a slight dip in recent years although there is a suggestion that it may be on the increase again.

Problem alcohol use extends across all ages and all social groups and is linked to a range of health, social and economic harms. It affects individuals, families, communities and costs the country billions of pounds each year. Long-term, daily drinking substantially increases the risk of developing chronic alcohol-related health conditions, such as cirrhosis of the liver. Less frequent drinking which involves consuming a large volume of alcohol on each drinking occasion ('binge drinking') can also lead to adverse health consequences. These include alcohol poisoning and a substantially increased risk of accidental injury and/or of being involved in a crime. This type of drinking is associated with anti-social behaviour and public disorder.

In the same way that action has been taken to make the public aware of the dangers of smoking there would be a duty to promote public health by seeking to prevent children from harming themselves by underage drinking from access to alcohol in the home and all people through binge drinking. Measures aimed at reducing alcohol-related public disorder would also promote public health in that they would lessen the risk of alcohol-related violence and injury.

4. **In summary**, since alcohol licensing is in a position to provide an effective public health function we recommend that the improvement of public health should be an explicit fifth licensing objective.

Operation of the cumulative impact policy

5. This has generally been working well in the centre of Ealing when the licensing subcommittee has chosen to do so, i.e. has asked the applicant to demonstrate that the proposed variation sought to the licence would not add to the cumulative impact of existing licensed premises. However, in our experience, there has been patchy operation of this policy which has been dependent upon the extent to which subcommittees have been prepared to press for information from the applicant. Also, they have been very reliant upon the evidence from police: if there is no objection from the police authorities then usually the panel will grant the licence application regardless of the views of local residents. However, there is one major problem with the operation of the policy: if no one objects to the application the licence is automatically granted whether or not the applicant can demonstrate that granting of the licence would not add to the cumulative impact. We **recommend** that where an application is made in the special area a hearing should automatically be held at which the applicant has to justify to the subcommittee that granting the licence would not add to the cumulative impact.

6. We consider that the Council has been slow to act when declaring special area policies. Instead of taking a proactive approach anticipating the gradual accumulation of licensed premises, particularly off-licences in convenience stores (see below), it tends to wait for problems to arise and accumulate before taking action. Although there is provision through regular reviews of licensing policy provided under the Act for councils to be proactive in this regard, ours seems reluctant to take advantage of it. We therefore **recommend** that

government should encourage local authorities to be more proactive than they are at present in taking initiatives in relation to licensing policy, in particular declaring special areas and to use provisions under the planning regime to discourage proliferation of licensed premises in specific areas which may be regarded as being vulnerable, for example as a result of close proximity to residential areas or to schools.

Relationship between planning and licensing regimes

7. We are concerned that these regimes are not properly joined up within local authorities. In Ealing, despite concerted attempts to try to get the licensing and planning departments to communicate with each other, it has been very difficult to obtain comments from the planning department on licensing applications. On occasions, where information has been provided by the planning department, inconsistencies between hours granted for planning and licensing have emerged sometimes with no clear outcome. For example, a licensing subcommittee may grant extension of hours beyond those which the premises are permitted to open under planning conditions. The applicant is then invited to seek a change of the latter conditions. We believe this is illogical and instead the licensing subcommittee should adhere to the planning consent. We therefore **recommend** that any planning conditions applying to the premises should take precedence over any subsequent licensing conditions that may be granted.

Proliferation of off-licences

8. In recent years there has been a proliferation of applications from convenience stores and “local” supermarkets in Ealing town centre seeking long hours of opening for the off sale of alcohol, opening early in the morning and ending after midnight up to the early hours of the morning. This is often accompanied by an application for late-night refreshment from 11 PM. This has been an area of concern, particularly in the special area of the centre of Ealing where a cumulative impact policy applies. We believe that this has led to more “pre-loading” of alcohol before people visit nightclubs and other establishments operating into the early hours of the morning. This type of alcohol consumption can lead to unpleasant antisocial behaviour in the streets of the town centre effectively making it “off-limits” for local residents, the number of which is rapidly increasing as a result of redevelopment of town centre sites for residential purposes in anticipation of the arrival of Crossrail in 2019.

Threat to local amenity

9. The proliferation of licensed premises can lead to threats to local amenity arising from antisocial behaviour or criminal activity. One of the common defences given by individual applicants is that they have a right to run their business and their own premises will be very well-run and any threat to local amenity must come from other, less well-run

establishments. This can be countered in special areas where they have to prove that they would not be adding to the cumulative impact of licensed premises but outside such areas there is no similar effective mechanism. We believe that greater regard should be given to impact on local amenity by new licence applications or significant variations to existing licences even outside special areas. Accordingly, we **recommend** that new applicants or those seeking significant variation in their existing licences should have to demonstrate that they would not cause any threat to the local amenity as a result of the operation of the premises.

Should licences be more specific? e.g. time limited, tied to particular licensee or type of business

10. Licences are currently linked to the premises and continue in perpetuity (unless surrendered or revoked). They may be varied, the designated premises supervisor (DPS) may be changed, or they may be transferred to a new licensee. Of these changes, only a significant variation is subject to public advertisement and consultation; minor variations are considered by the Licensing Authority (LA) and only the police can object to a change of DPS or a transfer, and on limited grounds. So effectively, once premises have a licence, they always have one unless a review is triggered. In reality, reviews are few and triggers have to be relatively serious misdemeanours – a lot of low level poor behaviour goes unnoticed or unchallenged. Provided that the use of premises remains in the same planning use class, or is a permitted change, and that the conditions of the licence are supposedly adhered to, the licence remains, although the type, character and operation of the premises may change considerably. For example, a well-run wine bar/deli used by and sensitive to the concerns of local residents could change to a rowdy vertical drinking pub, or a quiet restaurant change to a noisy bar/restaurant, in either case attracting a non-local and different clientele.

11. These problems could be overcome by issuing licences for a fixed period and requiring reapplication when the term expires (as is required for sex establishments). Renewal would provide the opportunity for interested parties to submit comments on the operation of the premises to date and to challenge the renewal if concerns were raised. Similarly, any significant change to a business – transfer to a new operator or a change of business type of any form – would require a reapplication and the new business would be subject to the same consultation as a new licence application. A variant approach to this, to ensure that inappropriate operations do not ‘slip through the net’ would be to allow the imposition of licence conditions tying the licence to a specific operator or business type – akin to a little used provision of the planning regime under which conditions may be attached to a consent. It is appreciated that any of these proposed changes would create a significant workload burden on the LA which would need to be funded, which would in turn impose a cost burden on the premises; however, this is not an unreasonable demand as the licensed premises are benefitting from the licence. The knowledge that their business is effectively under regular scrutiny would act as an incentive to the business to comply with licensing objectives and conditions.

12. **In summary**, we consider that licences should be issued for fixed periods and would need to be reapplied for on expiry of this period or if there were to be significant change to the business.

Should an authority be able to define mandatory conditions for some/all licences?

13. It is not currently allowable for an LA to propose that a predetermined set of conditions must be applied to all licences, so for example, it is not possible to require all premises to comply with a ban on sales of ‘low cost high strength’ bottles and cans, or to prohibit the sales of single cans. This is particularly a problem if no representations against an application are received as no conditions may be attached to the granted licence, even if other premises in an area with a particular problem have such conditions. We suggest that an LA should be able to specify that no licence, contested or not, would be granted unless certain conditions were attached. These could vary by premises type to for example differentiate between supermarkets and convenience stores. If this is considered to be anti-competitive such conditions could be mandated in a special policy area to respond to the particular problems and characteristics of the area. **In summary**, we recommend that LAs should have the power to define mandatory conditions for licences either throughout their area or, if this is seen to be anti-competitive, in special policy areas.

Temporary event notices (TENs)

14. TENs are widely used to circumvent restrictions and conditions imposed for good reason as part of the licensing process. For example, they may allow premises to regularly operate for longer hours than allowed by their licence or one for which a permanent licence has been refused or not applied for to be used for licensable activities. There is no public consultation and the presumption is that a TEN applied for will be granted, unless blocked by the police, which must be done on specific grounds. They may also be applied for at reasonably short notice, which contributes to events taking place of which the public has no prior awareness. We have examples of how this has been ‘abused’; for example, a club in London W13 which had had operational hours restricted following a licence review regularly applied for TENs to run events into the early hours at weekends causing nuisance to neighbours. We consider that TENs should not be used to regularly or repeatedly override conditions, including hours of operation/sale. **In summary**, we believe that TENs have been subject to abuse and need tightening to ensure that existing conditions cannot easily be circumvented by their use.

Appeals

15. When a licence is suspended or revoked, the licensee has 21 days to appeal the decision. During this period and once the appeal is lodged, they may continue to trade without sanction. It may take several months for an appeal to reach hearing at the Magistrates’

Court, particularly if delaying tactics are used by the licensee; meanwhile trading continues. In some cases, a licensee, perhaps aware that they are likely to lose their appeal, will withdraw it on the day of the hearing, so having gained a maximum period of extended trading (and thus income generation) without sanction. Note that this system is in distinct contrast to employment law, where if an employee is dismissed having gone through a formal disciplinary process, although they may appeal, they remain dismissed until the appeal is determined. As a review hearing has determined on the basis of evidence presented to it that suspension or revocation is an appropriate and necessary step to take, this should have immediate effect and trading not be resumed unless an appeal is upheld and the original decision overturned. Apart from preventing continued operation of problematic premises, this should have the effect of speeding up and reducing the cost of the appeal process as it would be in the interest of the licensee to reach a rapid conclusion. If such change is not made, then under current practice, any licensee withdrawing an appeal at the last minute should receive a financial penalty related to the financial benefit they have gained from continued trading.

16. A related question is whether the current appeal process is fit for process. As mentioned above, there are certainly long delays before appeals are heard. When all licences were issued by magistrates, they had a body of knowledge and experience of licensing legislation. Under the current Act, with licences now issued by the LA, this knowledge and experience has passed to the LA officers and the councillors on the licensing panel. With relatively few appeals, magistrates are not likely to have a great deal of appeal experience, and there is no specialist panel of magistrates dealing with licensing appeals as there is dealing with, for example, children and families. A specialist local panel should be established for this function.

17. **In summary**, we consider that immediate financial sanctions should be introduced to prevent appellants exploiting delays in the legal process to gain extended periods of trading, suspension/revocation should have immediate effect and consideration should be given to setting up specialist local panels, possibly of magistrates, to deal with appeals.

2 September 2016

Equity – written evidence (LIC0071)

Equity is the trade union representing over 40,000 actors, performers and other creative professionals working in the UK. This includes many thousands of individuals who work in forms of live entertainment which take place in venues regulated by the Licensing Act 2003, including singers, variety artists, dancers, Punch and Judy acts, comedians and circus artists.

Equity followed the development and implementation of the Act very closely and was one of the key stakeholders that provided input before and during the parliamentary process. We have also has worked with the Department of Culture, Media and Sport as well as Arts Council England, local authorities and industry bodies on appropriate licensing rules and guidance.

After the new licensing regime came into force in November 2005 performers, and especially those working as variety artists, began to raise major concerns about the negative impact the Act was having on their working lives and called on Equity to campaign for changes to be made. Together with the Musicians Union, Equity made a number of representations to DCMS, Government Ministers and parliamentarians and provided evidence to the Culture, Media and Sport Select Committee Inquiry into the Act in 2008. In October 2009 members of Equity and the Musicians Union demonstrated in Parliament Square in advance of a Westminster Hall debate in Parliament on the Licensing Act and in the following year the Live Music Bill was introduced, finally passing with support from the Coalition Government in 2012. Further deregulation enabling other forms of entertainment and music for audiences of up to 500 followed in 2013.

Equity members were heartened by the passage of the Live Music Act and subsequent deregulation of live entertainment however the sector continues to face challenges, most notably the decline in venues such as pubs and clubs following the reduction in consumer spending during and following the recession in 2008 and the squeeze on local authority finances which has resulted in cuts to the provision of live entertainment in the UK's regions.

Equity welcomes this Inquiry and would welcome any opportunity to provide further oral evidence on outstanding issues arising from the licensing regime and other methods of regulation that have a bearing on the opportunities to promote live entertainment.

Licensing objectives

1. Are the existing four licensing objectives the right ones for licensing authorities to promote? Should the protection of health and wellbeing be an additional objective?

The four original licensing objectives remain important however Equity has consistently argued that on the whole they are not relatable the provision of entertainment. They are much more closely related to the issues associated with the supply of alcohol. For live entertainment, we have always argued that there are sufficient powers and safeguards

provided by alternative legislative sources to ensure public order, health and safety compliance and proper regulation without licensing requirements.

Equity remains of the view that it was unfortunate that the licensing regime for entertainment was consolidated into the 2003 Act, along with the rules covering the sales and supply of alcohol and the sale of late night refreshment. We believe that this approach was unhelpful because many of the local authorities who were required to implement the Act were understandably focussed on the impact of these changes on late-night drinking and potential public order problems.

Regarding the potential to add a new objective concerning the protection of health and wellbeing it must be noted that substantial benefits to individual and collective wellbeing could be considered to have arisen following the deregulation of entertainment post 2013. The March 2013 DCMS impact assessment on the proposal to exempt regulated entertainment from the provisions of the Licensing Act 2003 stated that a key non monetised benefit would be that “Individuals gain increased opportunity for engagement with culture and can derive substantial wellbeing benefits”²³⁶.

2. Should the policies of licensing authorities do more to facilitate the enjoyment by the public of all licensable activities? Should access to and enjoyment of licensable activities by the public, including community activities, be an additional licensing objective? Should there be any other additional objectives?

We believe there is scope for the local authorities to do more to facilitate the enjoyment by the public of live entertainment covered and not covered by licensing regulation. Removing additional barriers to the provision of live entertainment including restrictions placed by some local authorities on Punch and Judy shows and hypnotists are two areas in particular that should be addressed.

Recently Barry Town Council decided to ban Punch and Judy shows starting with an event in June 2016 aimed at families as it considered that it would be at odds with their standpoint on domestic violence. Other councils had also considered implementing such policies in the past against this long-established and much loved traditional entertainment.

Research undertaken by Equity has also revealed that there was a wide variation in the licensing fees charged by local authorities to hypnotists to perform shows. In many cases permits to perform were granted free of charge, many others charged between £80 and £150 and some such as Westminster charged over £800.

We also agree that access to and enjoyment of licensable activities should become an additional licensing objective. Codifying such an objective could provide a boost for the creative industries at local level where funding cuts for the arts are having and will continue to have an impact on access to cultural activity. According to a recent report published by Arts Council England and the New Local Government Network, since 2010 local authority

²³⁶https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/252147/Impact_Assessment.docx.pdf

investment in arts and culture has declined by 17%, or £236m, and will fall even further in the coming five years.²³⁷

The balance between rights and responsibilities

3. Has the Live Music Act 2012 done enough to relax the provisions of the Licensing Act 2003 where they imposed unnecessarily strict requirements? Are the introductions of late night levies and Early Morning Restriction Orders effective, and if not, what alternatives are there? Does the Licensing Act now achieve the right balance between the rights of those who wish to sell alcohol and provide entertainment and the rights of those who wish to object?

The Live Music Act and subsequent deregulation of live entertainment activities for audiences of up to 500 were an appropriate response to the challenges faced by local venues following the introduction of the Licensing Act 2003. Local venues across the UK create employment for performers at all stages of their careers, reinvigorate communities and contribute towards regeneration.

Live entertainment which takes place in large and small venues provides an opportunity for young artists to gain exposure and sustains the careers of many well established performers. As mentioned elsewhere in this response, given the reductions in Government funding for the subsidised sectors of the arts, it is vital that growth in other sectors of the entertainment industry is encouraged.

4. Do all the responsible authorities (such as Planning, and Health & Safety), who all have other regulatory powers, engage effectively in the licensing regime, and if not, what could be done? Do other stakeholders, including local communities, engage effectively in the licensing regime, and if not, what could be done?

Live music and entertainment are an essential part of culture in the UK and we believe that local venues including pubs, clubs and other establishments should be protected as cultural institutions for the benefit of all. Equity members have been active in local campaigns to designate pubs and other buildings as assets of community value and we believe that local authorities could be more proactive in using their powers to protect these workplaces.

With regard to other stakeholders - in 2014 Equity launched the Live Entertainment Works! Campaign as a means of engaging our members at local level in the union's efforts to promote live entertainment post the deregulation of licensable activities that took place in 2012 and 2013: <http://www.equity.org.uk/campaigns/live-entertainment-works/>. The Campaign reached out to local venues and sought to explain the changes to the licensing regime. It also encouraged venues to create more employment opportunities for

²³⁷ Funding Arts and Culture in a Time of Austerity
[http://www.artscouncil.org.uk/sites/default/files/download-file/Funding%20Arts%20and%20Culture%20in%20a%20time%20of%20Austerity%20\(Adrian%20Harvey\).pdf](http://www.artscouncil.org.uk/sites/default/files/download-file/Funding%20Arts%20and%20Culture%20in%20a%20time%20of%20Austerity%20(Adrian%20Harvey).pdf)

entertainment workers in light of the regulatory changes. To date over 100 venues have signed up to the campaign.

Licensing and local strategy

5. Licensing is only one part of the strategy that local government has to shape its communities. The Government states that the Act “is being used effectively in conjunction with other interventions as part of a coherent national and local strategy.” Do you agree?

For some time Equity members have reported wide variation in the current application of regulation by different authorities, which leads to higher costs and a great deal of uncertainty for event and entertainment organisers and performers. One example is the rise in the number of local authorities introducing street entertainment policies which are punitive to buskers and other entertainers.

When local authorities introduce such policies they are effectively re-imposing costly and bureaucratic burdens on performers, who are generally low paid workers. Fees levied on performers under these policies can be up to £100 per year. For low paid workers in the entertainment industry such fees, particularly if they are applied by several local authorities where street entertainment is popular, has a damaging effect on livelihoods. This undoes much of this good work that has been achieved through changes to the licensing regime. It also closes down vital opportunities for young entertainers to gain exposure and experience at the start of their careers.

We note there are examples of good practice in Liverpool and York where local authorities have worked with performers, businesses, residents and the police to come up policies and guidelines to assist all parties. There are also several schemes in London such as in Covent Garden and with Busk in London which work well. On the negative side there are ongoing issues with potential Public Space Protection Order implementation in Newcastle, Oxford and Birmingham and others in the pipeline against buskers and street performers.

We have argued that sufficient protections are already available to local authorities to control noise pollution and that these should be explored before licensing and permitted hours policies for street entertainment are introduced. Specifically the Environmental Protection Act 1990 and the Noise and Statutory Nuisance Act 1993 enable local authorities to tackle this issue.

6. Should licensing policy and planning policy be integrated more closely to shape local areas and address the proliferation of licensed premises? How could it be done?

In 2015 Equity members called on the Government to introduce an ‘Agent of Change Principle’ into law, similar to that which exists in Victoria, Australia. Under this planning principle, if an entertainment venue is in place before a development is undertaken, the developer is responsible for properly soundproofing the new properties, and the venue bears no responsibility, other than to continue to operate within the terms of their existing licence. Equally, if a new venue opens in a residential area, the venue is responsible for the cost.

In March this year the Government made important changes to planning guidance on noise with a view to highlighting the potential impact of new residential developments on live entertainment venues. This was an important step towards rebalancing the need to provide new housing while also protecting existing live entertainment venues.

Crime, disorder and public safety

7. Are the subsequent amendments made by policing legislation achieving their objects? Do they give the police the powers they need to prevent crime and disorder and promote the licensing objectives generally? Are police adequately trained to use their powers effectively and appropriately?

We do not have comments on this question.

8. Should sales of alcohol airside at international airports continue to be exempt from the application of the Act? Should sales on other forms of transport continue to be exempt?

We do not have comments on this question.

Licensing procedure

9. The Act was intended to simplify licensing procedure; instead it has become increasingly complex. What could be done to simplify the procedure?

The application form for a premises licence is currently around 19 pages long and the parts covering entertainment such as plays, live music, dance and recorded music involve providing quite detailed information about what the premises intends to do on what days of the week and at what times. At the time of applying for a premises licence the premises may not have decided exactly what they intend to do with that level of detail. Now that the Live Music Act means that many of these entertainment activities do not require a licence between set hours to a small enough audience this part of the form could probably be simplified for smaller lower risk premises.

10. What could be done to improve the appeal procedure, including listing and costs? Should appeal decisions be reported to promote consistency? Is there a case for a further appeal to the Crown Court? Is there a role for formal mediation in the appeal process?

We do not have comments on this question

Sale of alcohol for consumption at home (the off-trade)

11. Given the increase in off-trade sales, including online sales, is there a case for reform of the licensing regime applying to the off-trade? How effectively does the regime control supermarkets and large retailers, under-age sales, and delivery services? Should the law be amended to allow licensing authorities more specific control over off-trade sales of “super-strength” alcohol?

We do not have comments on this question.

Pricing

12. Should alcohol pricing and taxation be used as a form of control, and if so, how? Should the Government introduce minimum unit pricing in England? Does the evidence that MUP would be effective need to be “conclusive” before MUP could be introduced, or can the effect of MUP be gauged only after its introduction?

Equity is in favour of Minimum Unit Pricing. The restrictions brought about by the introduction of the Licensing Act had been one contributing factor to the decline in live entertainment taking place in pubs and clubs post 2003 however the situation was then further exacerbated by competition from supermarkets selling cut price alcohol and the reduction in consumer spending post 2008. Camra estimates that the number of pubs in the UK fell by 1,444 in 2015 despite an overall decline in pub closures compared to previous years. This indicates that further interventions are perhaps necessary in order to safeguard these establishments.

Even where pubs and clubs have been able to survive, many have been forced to reduce the amount of live entertainment that they are able to host. Equity members across the UK are also reporting that the fees offered to performers engaged in live entertainment have been squeezed in recent year or that slots which were previously used to showcase professional performances have been given over to open mic nights and other forms of no-pay work.

Fees and costs associated with the Licensing Act 2003

13. Do licence fees need to be set at national level? Should London, and the other major cities to which the Government proposes to devolve greater powers, have the power to set their own licence fees?

When the Licensing Act 2003 was introduced Equity supported the idea of licensing fees being set centrally as this ensured more consistency across the country as there was previously a wide disparity of fees charged by different authorities. This made it very difficult for entertainers in certain regions due to these fees. We would prefer a national system to continue.

International comparisons

14. Is there a correlation between the strictness of the regulatory regime in other countries and the level of alcohol abuse? Are there aspects of the licensing laws of other countries, and other UK jurisdictions, that might usefully be considered for England and Wales?

We do not have comments on this question.

1 September 2016

Fabric Life Limited – written evidence (LIC0157)

SAVING NIGHTLIFE

Introduction

Fabric is a nightclub which has traded out of basement premises in Charterhouse Street, opposite Smithfield Market in the London Borough of Islington since 1999. It was fitted out at an initial cost of £7m and employs 250 staff at an annual cost of £2.5m, together with a further £1.7m pa paid to the emerging and well-known artists performing there. It has a worldwide reputation for electronic dance music, and is a prime reason for visiting London for many coming from across the UK and abroad.

In June and August 2016, two teenage boys tragically died of overdoses of Ecstasy in the club, despite Fabric's protective measures including search procedures, on-site surveillance and a renowned medical response team. The Metropolitan Police started summary review proceedings which led ultimately to revocation by the London Borough of Islington's Licensing Sub-Committee on 6th September 2016. Fabric has lodged an appeal which is due to be heard by the Magistrates' Court in the week commencing 28th November 2016. In the meantime, Fabric has to remain shut because of interim steps of closure imposed by the Council, which under the current law continue to bite pending the appeal.

These submissions cannot and do not deal with whether revocation was an appropriate sanction since that is to be determined by the Court. Nevertheless, from Fabric's contacts and conversations with a large number of night time operators, it has become clear that there is a common theme, namely that venues are being peremptorily shut down because of the criminal conduct of third parties rather than any misconduct on the part of the premises management itself. The outcome will be to deter investment in the night time economy. The assumption of long-term property obligations, the injection of large amounts of capital and the conclusion of long-term employment and supplier contracts is unenticing when the business can be shut down overnight following an incident over which the management may have no control.

The twelve recommendations in this evidence represent a better way to achieve the twin aims of public safety and a healthy night time economy.

Gary Kilbey

Managing Director

Fabric Life Limited

Executive summary

Police use of licensing powers is placing the night time economy at risk by shutting licensed venues, harming secondary suppliers which are dependent on such venues and deterring further investment.

It is fundamental to the survival of the night time economy that no venue should be closed or threatened with closure because of crime occurring without management fault. Further, closure should be a last resort. No venue should be closed unless the fault cannot be put right.

In order to save nightlife, the following recommendations are made:

Recommendation 1

The Licensing Act 2003 should be amended so that the ability to apply for summary review and therefore interim steps be confined to cases of serious violent crime involving either the use of weapons or for which a person who has attained the age of twenty-one and has no previous convictions could reasonably be expected to be sentenced to imprisonment for a term of three years or more.

Recommendation 2

The jurisdiction of the licensing authority to close premises as an interim measure should then carry the commensurate restriction that it should not be exercised unless the authority is satisfied that the serious crime (as defined) occurred and that an interim closure is necessary to protect the public from such crime.

Recommendation 3

The same approach should then be explained clearly in section 182 Guidance.

Recommendation 4

The section 182 Guidance should be revised to make it clear that, in the event of Police concern about the management of the venue, Police and premises management should meet in order to prepare a documented, agreed action plan. It is only where the venue does not comply with the action plan that the police should bring reviews, and particularly summary reviews, except in the most exceptional cases.

Recommendation 5

The Guidance should contain commensurate advice that licensing authorities should take into account whether an action plan has been agreed and whether the licensee has complied with its terms. Except in the most exceptional cases, premises should not be closed, whether by way of interim steps or otherwise, unless there has been an action plan and the licensee has failed to comply with its terms.

Recommendation 6

Paragraph 9.12 of the section 182 Guidance should be amended so as to remove the presumption in favour of Police representations. Police evidence should be judged on its merits, and should have no greater inherent status than the evidence of any other responsible authority or other person.

Recommendation 7

A licence review based on the prevention of crime and disorder should focus on the measures which have been taken, and which ought to be taken, by management to prevent crime and disorder. Premises should not be closed because of the criminal acts of members of the public where management is taking proper steps to prevent crime.

Recommendation 8

The guidance should be amended to advise licensing authorities, in fixing the appropriate level of their regulatory intervention, to take account of the direct and indirect benefits of the licence, rather than merely negative impacts.

Recommendation 9

The section 182 guidance should make it clear that closure of venues should be a last resort. Venues should not be closed unless no step short of closure would be practicable or effective.

Recommendation 10

The Licensing Act 2003 should be amended to provide that the licensing authority making a final determination on a summary review application should also direct the timing of its implementation, which direction should be subject to reconsideration, on an urgent basis if requested, by the court which is seized of an appeal against the determination.

Recommendation 11

The section 91 Guidance should be amended to state that before any closure notice is issued, and before any application for closure is brought before the Court, there ought to be an agreed, documented action plan between the Police and the licensed venue. No closure notice should be issued unless and until the management has failed to comply with the terms of the action plan, except in the most exceptional circumstances. In any event, a closure notice should be a last resort where no lesser measure will be practicable or effective to prevent a particular risk from materialising.

Recommendation 12

Those who commit offences of violence and disorder, whether inside or outside licensed premises, should be held fully accountable for their own actions. In making decisions whether to prosecute, and in sentencing, the threat posed both to other individuals, to the business of the licensed premises and the livelihood of their staff, and to the wider health and reputation of the night time economy, should all be taken into account. Police should prioritise deterrence and individual responsibility over pursuit of the licensee, particularly where the licensee is managing the premises responsibly.

The problem

The number of nightclubs has nearly halved in the last decade.²³⁸ There are many causes of this decline, including market changes, town centre development and changes to licensing laws permitting competing premises to operate later.

However, there is an increasing perception in the night time industry that Police are seeking a diminution in the number of venues, and particularly nightclubs, not because closure of the venues is genuinely necessary but as an answer to their diminishing resources. Further, this perception is leading, and will continue to lead, to an unwillingness to invest, and reinvest, in nightclubs so hastening their demise.

Over the last decade both violent crime and alcohol-related violent crime has reduced. This is a welcome trend to which, no doubt, the widespread installation of CCTV in licensed venues and the employment of licensed security staff has contributed.

The night time industry was therefore concerned to read a speech delivered by the Commissioner for the Metropolitan Police at the Royal Society of Arts calling for fewer licensed premises. He stated:

And we need to make sure there is good control of the supply of alcohol. This means licence numbers, density and licensee-regulation being a priority for local authorities, however much they would like to develop local economies. We know that many injuries occur inside or outside licensed premises, and if we can close down the repeat offenders, we will. But do we really need as many licensed premises chasing limited business? The system needs reform and we have to police it better.

This statement, which has never been publicly retracted, amounted to call for fewer licensed premises. The fact is that now more alcohol is bought from the off-trade than the on-trade, and nightclubs are some of the most regulated environments in the public or private realm. It is therefore a likely deterrent to responsible long term investors in our night time economy to learn that the UK's most senior police officer is set on reducing the number of licensed premises. Moreover, the policy, which has never been published for consideration or debate, is based not on the management standards of the premises but on offences by third parties, regardless of the fault of the venue.

Criminal offences and injuries happen in all manner of environments: supermarkets, motorways, police stations, music festivals, prisons, beaches and football grounds. Yet the outcome is never to close down the establishment concerned. Rather it is to absorb the lessons and improve the management standards and safety of the venue concerned. Yet, seemingly uniquely, licensed premises, including nightclubs, are threatened with police closure because of the unlawful acts of third parties. This is a discriminatory approach which now requires urgent reconsideration. There is simply no good reason for threatening the existence of a good operator because of the acts of a criminal minority.

²³⁸ Association of Licensed Multiple Retailers: number of nightclubs in UK fell from 3,144 to 1,733 between 2005 and 2015.

Furthermore, the closure of a club is usually economically disastrous. Clubs tend to be large town centre premises with significant ongoing property and employment liabilities. Even a temporary closure is sufficient to put the club out of business and its employees out of work. The losses to the community extend more widely, in that so many other businesses and supply lines depend on the existence of the club, including other town centre premises, services such as taxis and door supervision, and secondary suppliers of goods and services to the club. There is also, of course, a loss of cultural value, since clubs are associated not only with developments in music, but also fashion, media and technology. This reduces the cultural capacity of communities and reduces the tourist draw of the United Kingdom as a whole.

Therefore, it is of cardinal importance that the licensing system is structured to make it clear that the job of licensing is enforcing proper standards: well-run clubs should not face closure. Furthermore, shutting a business, destroying the investment and losing the jobs, should only ever happen where there is no genuine alternative. Where management practices can be improved, there is no reason to shut the business down.

While there will be cases in which such consequences are justified in order to protect legitimate public interests, it is obviously a matter of utmost concern that these powers should only be exercised only where there is no lesser intervention which would assist in achieving the regulatory goal. Closure should be a last resort.

The principal issues arise with summary review applications since in such cases interim steps can be applied for and granted in a manner which carries an immediate and ruinous economic effect. However, there are also issues with the way the system of ordinary review under the Licensing Act 2003 is structured and also the system of closure under the Anti-Social Behaviour, Crime and Policing Act 2014. However, all the remedial steps below can be taken with only minor changes to law and guidance. As appears below, all of them can easily be completed within the current Parliamentary session. Moreover, none of them imply any significant weakening of the system of public protection afforded under current legislative structures.

There is at present an important opportunity for making revisions to the law and guidance and to restore the trust of nightclub owners in the licensing system. The Policing and Crime Bill, which contains revisions to the Licensing Act 2003 in respect of summary reviews, is proceeding through Parliament, and we also understand that the statutory guidance under section 182 of the Act is under review. All the changes we are requesting, therefore, ought to be capable of rapid absorption into our national regulatory structure.

1. Power to apply for interim steps

When the Police apply for summary review of a licence, they have power to apply to the council for “interim steps”, including immediate closure of the venue, if in their opinion the

venue is “associated with serious crime or serious disorder”.²³⁹ When this law was passed, it was thought that that basically meant use of guns or knives. This is still reflected in the Home Office non-statutory Guidance on Summary Review.²⁴⁰ But the Police are using the power to shut venues in a much wider range of cases, which is potentially ruinous for the venues concerned since all their costs continue while their income is suddenly stopped.

Part of the issue concerns the circumstances in which the Police are empowered to apply for summary review. Section 53A of the Licensing Act 2003 bases the jurisdiction on “serious crime or serious disorder”. Serious disorder is not defined at all, and so there is a strong element of subjectivity, when since the matter is jurisdictional there should preferably be none. Even serious crime is loosely defined by reference to the definition in section 81 of the Regulation of Investigatory Powers Act 2000, which includes cases where the offence or one of the offences that is or would be constituted by the conduct is an offence for which a person who has attained the age of twenty-one and has no previous convictions could reasonably be expected to be sentenced to imprisonment for a term of three years or more; or where the conduct involves the use of violence, results in substantial financial gain or is conducted by a large number of persons in pursuit of a common purpose. Clearly, this goes very much further than guns or knives, or even crimes of violence.

It must be recalled that the ability to apply for summary review and obtain an order for preemptory closure as an interim step comes in advance of service of the evidence, let alone proof of the facts. This should be confined to the most extreme cases. While one can see an argument for such closure where there is a significant risk of death or serious injury if it is not closed, the statutory provisions go very much wider than that.

Recommendation 1

The Licensing Act 2003 should be amended so that the ability to apply for summary review and therefore interim steps be confined to cases of serious violent crime involving either the use of weapons or for which a person who has attained the age of twenty-one and has no previous convictions could reasonably be expected to be sentenced to imprisonment for a term of three years or more.

Recommendation 2

The jurisdiction of the licensing authority to close premises as an interim measure should then carry the commensurate restriction that it should not be exercised unless the authority is satisfied that the serious crime (as defined) occurred and that an interim closure is necessary to protect the public from such crime.

Recommendation 3

The same approach should then be explained clearly in section 182 Guidance.

²³⁹ Section 53A Licensing Act 2003.

²⁴⁰ 2012, para 1.3.

As to this, it is clearly inadequate that the explanation for the use of these draconian powers is contained only in non-statutory guidance, as at present.

2. Action planning

The Police are given the power by section 53A of the Act to apply for interim steps without giving any notice to the licensee. What is perhaps more significant is that the Police may invoke these powers without any previous dialogue with the premises. But dialogue is essential so that venues are given to the opportunity to improve. There should be partnership between venues and the police. But this is often lacking either. Sometimes this is because of simple lack of guidance, training or expertise in partnership among local police officers, who are therefore uncertain how to execute what is a delicate balance between partnership and regulation. Sometimes it is because, as they put it, they have orders from “above.”

The Enforcement Concordat: Good Practice Guide for England and Wales sets out as principles of good enforcement that there should be engagement with business, that compliance failures should be discussed, that clear advice should be confirmed in writing. Specifically, the Concordat expresses the principle that prevention is better than cure, and that regulators should work with business to advise on and assist with compliance. Further, advice is to be put clearly and simply and confirmed in writing on request, explaining why any remedial work is necessary and over what timescale, and making sure that legal requirements are clearly distinguished from best practice advice. Furthermore, before formal enforcement action is taken, officers will provide an opportunity to discuss the circumstances of the case and if possible resolve points of difference.

In similar vein, the Regulators’ Code which was laid before Parliament in accordance with section 23 of the Legislative and Regulatory Reform Act 2006, provides that regulators should provide advice and guidance that is focused on assisting those they regulate to understand and meet their responsibilities. When providing advice and guidance, legal requirements should be distinguished from suggested good practice. Further, regulators should seek to create an environment in which those they regulate have confidence in the advice they receive and feel able to seek advice without fear of triggering enforcement action.

Whether or not these documents apply directly to the Police is not relevant. Their underlying principles reflect basic requirements of proportionality and common sense. There ought to be a proper partnership between police and the industry. This is reflected in paragraph 8.40 of the section 182 Guidance. Yet it is not clearly reflected in the circumstances and manner in which the Police are now using summary review and other enforcement powers.

In general, if the Police have a concern that premises are failing to take proper steps to promote the licensing objectives, they ought to be asked to meet with the Police in order to

agree an action plan. The action plan should be documented, agreed and signed. It is generally only if and when the licensee fails to carry out the specific steps required in the action plan that enforcement action should follow.

The current situation is that operators are concerned that they could be taken to review and even shut down without having been given a proper chance to improve, and that the Police agenda has become one of closure rather than helping venues into compliance. This is easy to resolve.

Recommendation 4

The section 182 Guidance should be revised to make it clear that, in the event of Police concern about the management of the venue, Police and premises management should meet in order to prepare a documented, agreed action plan. It is only where the venue does not comply with the action plan that the police should bring reviews, and particularly summary reviews, except in the most exceptional cases.

Recommendation 5

The Guidance should contain commensurate advice that licensing authorities should take into account whether an action plan has been agreed and whether the licensee has complied with its terms. Except in the most exceptional cases, premises should not be closed, whether by way of interim steps or otherwise, unless there has been an action plan and the licensee has failed to comply with its terms.

3. Status of police representations

When the police make representations to the licensing authority, including applications for suspension or revocation on review and summary review applications, national guidance says that they are the main sources of advice on crime and disorder, and there is effectively a presumption that their advice should be followed.²⁴¹ This special status is not given to any other responsible authority or indeed any other party making representations to a licensing authority.

It is difficult to rationalise this inherent weighting in favour of Police advice, and it is not clear that it is even wanted, or indeed needed, by the Police. There have been cases where Police representations are based on fatally flawed material, e.g. statistical material relating to offences unrelated to the premises concerned. In other cases, Police statistical evidence regarding crime and disorder pays inadequate regard to the size of the venue, its throughput or the dwell time which, when analysed properly, reveals that the venue's record of crime and disorder is statistically modest. In some cases, the Police recommendation is based on a view of management conduct which can only be properly rebutted by reference to detailed consideration of crime reports or other data. However, by

²⁴¹ Paragraph 2.1 and 9.12.

the time a full and proper analysis has been achieved, the venue has been closed and irremediable economic and reputational damage has been done. In fact, such analysis is sometimes unachievable until the appeal stage when Court directions compel a more thorough analysis than was presented to the licensing authority at the stage when it closed the venue, which may have been at the outset of a summary review applications.

No doubt there are cases where a Police recommendation to close premises is based on a thorough and transparent assessment of the available evidence, and it is plain that it is necessary to close the premises, even as an interim measure. However there is no justification for judging the Police recommendation, and the evidence upon which it is based, other than in a fair, objective manner, just as all other evidence placed before the licensing authority is judged.

Recommendation 6

Paragraph 9.12 of the section 182 Guidance should be amended so as to remove the presumption in favour of Police representations. Police evidence should be judged on its merits, and should have no greater inherent status than the evidence of any other responsible authority or other person.

4. Importance of good management

While police advice is given special status at hearings, evidence from the venue about its good management can sometimes be ignored. This particularly happens when the review is triggered by crimes committed on the premises by members of the public. The guidance effectively says that even if the venue is blameless, the council can still shut the venue to prevent further crime.²⁴²

The logic of this approach would require the closure of every supermarket, prison and motorway in the country, because of the crimes being committed there, including shoplifting, assault and speeding. Of course nobody would sensibly contemplate this. Yet licensing authorities are frequently asked to close licensed premises because of crimes being committed there, regardless of the quality of management controls.

It cannot be rationally suggested that closing well-run licensed premises will serve to reduce the overall level of crime in the community. Whether the crime concerned involves property theft, violence or drugs, the effect of closure will simply be to remove the conduct to a different possibly less regulated, environment. But the price of closure will be the loss of a well-run commercial premises, with the loss of investment, jobs and connected economic activity which that entails.

It is surely a benefit to the community to have properly-operated premises in its midst. The purpose of the licensing system should be to promote management standards. It is not to

²⁴² Paragraph 11.26.

hold licensed premises to a standard which is ultimately unattainable since it involves the prevention of crimes by members of the public, something which the Police themselves are able to attain in society as a whole.

The closure of venues on the basis of third party crime is not only unpalatable to the industry and the customers whom they serve. It is deeply unjust. It involves turning licensed operators into guarantors of their customers' behaviour, and holding them to account for all such behaviour, regardless of the quality of their management.

The licensing system should therefore be predicated on an approach which recognises that its basis and justification is that the privilege of a licence should extend to those who run their venues to proper standards. Those standards might well be subject to evolution in the light of experience. But if they are maintained, and if operators continue to work in partnership with the Police to promote the crime prevention objective, they should not be threatened with loss of their licence because of the criminal acts of third parties.

The tendency to apply to review and revoke licences regardless of the quality of management produces its own distortions. Operators may be deterred from reporting crime to Police on the simple basis that any such reports may be held against them in a future review of their licence. Their failure to report crime may then be held against them in any event. The upshot of this is a breakdown of trust between Police and operators, and a world in which the premises reporting the least crime are the worst operators and vice versa. If the licensing system were framed and operated in a more logical and competent manner, the reporting of crime would not be a black mark but a sign of good operation. The overall volume of crime would be a matter for analysis and problem solving between the operator and Police.

It should be recalled that prevention of crime is also a matter for the Police. The Police also have a duty to prevent crime and catch criminals. Trying to close venues where crime occurs is a poor substitute for their public role.

Recommendation 7

A licence review based on the prevention of crime and disorder should focus on the measures which have been taken, and which ought to be taken, by management to prevent crime and disorder. Premises should not be closed because of the criminal acts of members of the public where management is taking proper steps to prevent crime.

5. Positive contribution of the venue

In licensing hearings, the focus tends to be entirely negative, about prevention of harm to the statutory licensing objectives. The effect of that is that even if there is little risk of harm to the licensing objectives, there is no countervailing consideration to place in the balance.

Thus, no attention is paid to positive aspects of venues such as cultural provision, employment, tourism or regeneration.

By way of contrast, the planning system does allow for the positive aspects of proposals to be brought into consideration, alongside the negative. The licensing system is largely deaf to the benefits.

Consideration of the national guidance, for example at paragraphs 2.16, 9.43 and 10.10 reveals that whereas the licensing authority is to ensure that the burdens which it imposes on premises do not go too far, there is no exhortation to finding the balance between the benefit which the premises brings and the burden which it is proposed to impose. This is a major lacuna in the guidance.

The lacuna can, however, be remedied by a simple variation to the guidance. The Act itself does not require that the benefits of a licence be ignored. It simply requires that any regulatory intervention is appropriate to the promotion of the licensing objectives. Nothing in the Act prevents the authority, in fixing the level of intervention, taking account of the positive aspects of the premises. Were this not so, no licence could ever be granted, since there will always be a greater risk to the licensing objectives by granting a licence than refusing it.

Therefore, to vary the guidance to ask licensing authorities to take into consideration the benefits of the operation and give such benefits appropriate weight is doing no more than enshrining an approach to licensing which is likely to be occurring already, albeit without full acknowledgment.

Recommendation 8

The section 182 guidance should be amended to advise licensing authorities, in fixing the appropriate level of their regulatory intervention, to take account of the direct and indirect benefits of the licence, rather than merely negative impacts.

6. Closure a last resort

Closing a venue permanently, losing the investment, the jobs and the cultural contribution, should only happen as a last resort. There is no reason based on fairness, reasonableness or proportionality which would justify closing licensed premises unless there is genuinely no other alternative.

But this is not what the Home Secretary's Guidance says. In fact it says the contrary.²⁴³ Licensing authorities are not obliged to ensure that a step short of closure would attain the desired regulatory aim before imposing closure as a regulatory response.

²⁴³ Paragraph 9.43 states: "Determination of whether an action or step is appropriate for the promotion of the licensing objectives requires an assessment of what action or step would be suitable to achieve that end. While this does not therefore require a licensing authority to decide that no lesser step will achieve the aim, the authority should aim to consider the potential burden that the condition would impose on the premises licence holder (such as the financial burden due to restrictions on licensable activities) as well as the potential benefit in terms of the promotion of the licensing objectives. However, it is imperative that the authority ensures that the

It is hard to understand why this is so. There is no good reason to close venues unless it is clear that nothing less will do. The ability of licensing authorities to close venues even where this is not actually necessary is a major deterrent to responsible investors risking their capital in the night time economy.

Recommendation 9

The section 182 guidance should make it clear that closure of venues should be a last resort. Venues should not be closed unless no step short of closure would be practicable or effective.

7. Interim steps pending appeal

At present, there is significant debate as to whether, once the council makes its final decision on a summary review application, interim steps stay in place until any appeal is heard. The debate has been occasioned because of the poor drafting of section 53C(2)(c) of the Licensing Act 2003.

The issue has not been authoritatively determined in the High Court, but different courts and commentators have expressed different views including a) that interim steps do and do not continue to have effect, b) that interim steps can and cannot be revisited more than once by licensing authorities pending final determination, c) that interim steps can and cannot be varied at the same time that the final review determination is made, and d) that interim steps can be varied by the licensing authority even following its final determination and when the its final decision has been appealed to the magistrates' court. Plainly, there needs to be an amendment to the Licensing Act 2003 to resolve these many issues.

The Act suffers from a serious illogicality in that, on the current state of the law, the final determination of the licensing authority, arrived at after full consideration of the evidence, has no effect pending the appeal. All the debate has concerned whether the interim steps should have effect pending appeal. There is no rational reason for that position. If any decision is to have effect pending appeal, it should surely be the final determination and not an interim assessment based on a necessarily incomplete view of the matter, now superseded by the final determination. The illogicality can work both ways, sometimes to the advantage of the licensee and sometimes to the advantage of the Police. Either way, there is illogicality.

The rational response to this situation would be to provide that the licensing authority, when making its final determination, can specify the time at which it is to have effect, including immediately. This is precisely the position under the Gambling Act 2005.²⁴⁴

factors which form the basis of its determination are limited to consideration of the promotion of the objectives and nothing outside those parameters.”

²⁴⁴ Section 202(2).

In such circumstances, the interim steps can and should simply fall away: they will have served their purpose.

Then, if and when the licensee lodges an appeal against the final determination, the Court then becomes seized of the matter and should then have jurisdiction to vary the licensing authority's direction as to whether the final determination should continue to bite pending the appeal. This can be done on paper, at a brief hearing or otherwise as the Court directs.

The Policing and Crime Bill attempts a solution to the difficulties described here, which is now contained in clause 119 of the Bill. The solution, however, is unnecessarily cumbersome, costly and duplicative. It involves the licensing authority, at the same time as finally determining the summary review application, making a determination regarding the interim steps. This is quite unnecessary. It is sufficient for the authority, having determined the appropriate disposal, to determine the timing of its implementation.

Then, it provides for an appeal against the interim steps. However, this may involve lodging two appeals when one will do, and relies on a listing of the appeal within 28 days of commencement, which will be extremely difficult to achieve in some Courts.

Recommendation 10

The Licensing Act 2003 should be amended to provide that the licensing authority making a final determination on a summary review application should also direct the timing of its implementation, which direction should be subject to reconsideration, on an urgent basis if requested, by the court which is seized of an appeal against the determination.

8. Closure powers

The Police were given power in section 76 of the Anti-Social Behaviour, Crime and Policing Act 2014 to issue a closure notice if satisfied on reasonable grounds that the use of premises has resulted or (if the notice is not issued) is likely soon to result in nuisance to members of the public, or that there has been or (if the notice is not issued) is likely soon to be disorder near those premises associated with the use of the premises and that the notice is necessary to prevent the nuisance or disorder from continuing or recurring.

This then triggers an application to the court which is given jurisdiction under section 80 to close the premises for up to 3 months if satisfied that a person has engaged, or (if the order is not made) is likely to engage, in disorderly, offensive or criminal behaviour on the premises, or that the use of the premises has resulted, or (if the order is not made) is likely to result, in serious nuisance to members of the public, or that there has been, or (if the order is not made) is likely to be, disorder near those premises associated with the use of those premises, and that the order is necessary to prevent the behaviour, nuisance or disorder from continuing, recurring or occurring.

The court's decision may then trigger a review application under the Licensing Act 2003 which may itself result in revocation of the licence.

This entire chain reaction may be triggered and pursued even where no offence has been committed or was ever likely to be committed, and regardless of whether the issues concerned were the fault of the management of the venue or were remediable through partnership action between the Police and the management.

This is the antithesis of the kind of partnership action referred to in the section 182 guidance, and a quite unnecessary threat to the economic base of licensed premises.

These hugely draconian powers originated with a power to close crack dens. But they can now be used to bring a long-established, compliant venue to its knees on short notice because of a single unanticipated incident.

Section 91 of the Act provides for the publication of Guidance as to the use of these powers. The Guidance ought to be amended so as to bring it into line with the statutory guidance for summary review powers. Well-managed venues should not be facing closure because of crimes committed by third parties. No other kind of business is subject to such sudden closure. Licensed venues should not be the only one.

Recommendation 11

The section 91 Guidance should be amended to state that before any closure notice is issued, and before any application for closure is brought before the Court, there ought to be an agreed, documented action plan between the Police and the licensed venue. No closure notice should be issued unless and until the management has failed to comply with the terms of the action plan, except in the most exceptional circumstances. In any event, a closure notice should be a last resort where no lesser measure will be practicable or effective to prevent a particular risk from materialising.

9. Individual responsibility

The main function of licensing is to compel the responsible management of premises in order to promote the licensing objectives.

Most crimes happen in licensed premises without fault on the part of the licensee, for example assaults or thefts. Yet such incidents may lead to the closure of the premises concerned, the loss of the goodwill, the investment and sometimes the lease itself, and the jobs provided by the venue. This is wholly unfair.

At the heart of this debate, the role of the actual criminal is often forgotten. Anybody who is a guest in licensed premises and abuses the hospitality of the host through committing crime or disorder should be held individually responsible for their actions, for by their actions, as the law is currently being applied, they threaten the entire economic base of the business. If they commit their offence once they have elected to become intoxicated, that should be treated as aggravation and not mitigation, even for first offences.

Through concerted State action, behaviour, once thought inevitable can be changed. Examples include drink driving, driving without seatbelts and football hooliganism.

The direction of policy should be to harden public attitudes towards alcohol-induced crime and disorder in the night time economy, and to target the regulatory response at the actual offender. Therefore, Government policy, channelled through the justice system, education and social messaging, should be should make it clear that committing crime in licensed premises, and particularly when intoxicated, is unacceptable, and the system will be structured to highlight the individual responsibility and accountability of visitors to the night time economy for their actions.

Recommendation 12

Those who commit offences of violence and disorder in or in the vicinity of licensed premises, should be held fully accountable for their own actions. In making decisions whether to prosecute, and in sentencing, the threat posed both to other individuals, to the business of the licensed premises and the livelihood of their staff, and to the wider health and reputation of the night time economy, should all be taken into account. Police should prioritise deterrence and individual responsibility over pursuit of the licensee, particularly where the licensee is managing the premises responsibly.

11 October 2016

Faculty of Occupational Medicine & Society of Occupational Medicine – written evidence (LIC0143)

1. Are the existing four licensing objectives the right ones for licensing authorities to promote? Should the protection of health and wellbeing be an additional objective?

The Faculty of Occupational Medicine & Society of Occupational Medicine fully support the inclusion of a fifth licensing objective of 'the protection of health and wellbeing'.

We note the impact alcohol has on health at work. £7.3bn is lost annually in the UK in lost productivity and more needs to be done to tackle the impact alcohol has on the UK workforce. We have a drinking culture that needs to be challenged.

Around 2.5 million people in Great Britain consume more than the new weekly recommended limit for alcohol in a single day

In one study the majority of employers (77%) interviewed identified alcohol as a major threat to employee wellbeing and a factor encouraging sickness absence (2007 report commissioned by Norwich Union Healthcare).

In addition to the impact of alcohol intake, disruption of sleep and to circadian patterns must carry a risk that people carry forward into the workplace and leisure activities. The working population is especially relevant for the following reasons within the OMC report:

- Alcohol consumption in the UK remains at a high level (9.8L/adult/year pure alcohol - the same as in 1990).
- Among adults working full time, drinking behaviour is related directly to earnings from employment and household income.
- Individuals in employment are more likely to drink frequently compared to those who are unemployed.
- Surveys of employers and business across the UK have found that many employees are affected by alcohol consumption during working hours.
- A 2007 survey found a third of employees admitting to attending work with a hangover.
- 15 per cent reported having been drunk at work.

References

£7.3bn lost productivity is from: Lister G (2007) Evaluating social marketing for health – the need for consensus. Proceedings of the National Social Marketing Centre, 24-25 September, Oxford.

Faculty of Occupational Medicine & Society of Occupational Medicine – written evidence (LIC0143)

77% is from: PruHealth press release (30.11.06) 200,000 Hungover workers on any given day. Effects of 'Booze Britain' hit the workplace.

Around 2.5 million people consume more than the new weekly recommended limit for alcohol in a single day is from: [Adult drinking habits in Great Britain](#) (2014)

Ends

The Faculty of Occupational Medicine is the professional and educational body for occupational medicine in the United Kingdom.

It seeks to ensure the highest standards in the practice of occupational medicine, overseeing the continuing professional development and revalidation of its members. It is also focused on promoting and supporting health at work, with its mission statement being 'to drive improvement in the health of the working age population.

The Society of Occupational Medicine is the UK organisation for all doctors and other healthcare professionals working in or with an interest in occupational health.

It is concerned with the protection of the health of people in the workplace, the prevention of occupational injuries and disease and related environmental issues.

6 September 2016

Federation of Bath Residents' Associations – written evidence (LIC0031)

Licensing objectives

1. Are the existing four licensing objectives the right ones for licensing authorities to promote? Should the protection of health and wellbeing be an additional objective?

No.

The key fault in the 2003 Licensing Act is the conflict between planning legislation, which is concerned with the protection of the amenity of the environment, and the licensing legislation, which is governed by the licensing objective of preventing public nuisance, a much narrower criterion.

In terms of protecting the amenities of urban residents, the third licensing objective – the prevention of public nuisance - has proved inadequate. Licensing Authorities have taken the legal view that evidence in support of likely damage has to be hard. This means that, unless the public nuisance already exists, any concerns about future likely loss of amenity and breach of the prevention of public nuisance are rejected. Accordingly new premises licences and extensions of hours are almost invariably granted against the wishes of fearful residents.

It is hard to see how the members of Licensing Committees can ensure that a premises licence has a positive effect on 'health and well-being' either of the customers or the community. The Act controls the sale of alcohol and has no control over the consumption of alcohol other than prohibiting the sale of alcohol to those who are inebriated.

The third licensing objective should be changed to 'the prevention of the loss of amenity of the environment'.

Currently, the third objective also fails to address questions of cumulative impact.

Cumulative impact takes two forms:

- Introducing new premises into areas that already have a number of licensed venues. Bath and North East Somerset (Banes) council, which struggles with balancing the large number of people who live and stay in the city centre with the demands of the night time economy, has to create the rather contrived mechanism of a local cumulative impact policy and cumulative impact zone. This should be addressed within the objectives of the Licensing Acts.
- Mission creep by applicants. In a typical example two residential houses in a purely residential Bath neighbourhood were bought and converted to a B&B. The owners then applied for an alcohol licence, offering many reassurances and conditions to limit the sale of alcohol to in-house residents. However, successive applications have, by small steps, extended this to a bar open to the public, vertical drinking, an outdoor drinking area of some size and off sales.

2. Should the policies of licensing authorities do more to facilitate the enjoyment by the public of all licensable activities? Should access to and enjoyment of licensable activities by the public, including community activities, be an additional licensing objective? Should there be any other additional objectives?

No.

The 2003 Licensing Act already provides too much facilitation for the public enjoyment of licensable activities. The noise-nuisance, the anti-social behaviour, the disturbance to sleep due to late night activities and the damage to property from drunken behaviour that blight so many UK town and city centres is entirely attributable to the 2003 Act's freedom to providers of licensable activities. The Act has not led to the expansion of a café society but has instead led to the expansion of an alcoholic society.

The balance between rights and responsibilities.

3. Has the Live Music Act 2012 done enough to relax the provisions of the Licensing Act 2003 where they imposed unnecessarily strict requirements? Are the introductions of late night levies and Early Morning Restriction Orders effective, and, if not, what alternatives are there? Does the Licensing Act now achieve the right balance between the rights of those who wish to sell alcohol and provide entertainment and the rights of those who wish to object?

Yes, but it has done too much.

The Live Music Act 2012 is a 'one size fits all' deregulation regime which has added to the noise pollution of many town and city centres to the detriment of residents anywhere near where live music is played without the need for a licence. It also is disturbing to many pedestrians passing by live music both in the street and within retail premises. It allows little freedom for local authorities to adapt its provision to local situations. Where people live near licensed premises this Act has left them defenceless in the face of premises' exploiting the opportunities the Act creates to boost their commercial offer. The limitations imposed by the Act are hard and expensive to police. Who will go and count how many people are in a crowded pub? The legislation on noise nuisance is often inadequate to deal with real world situations that arise.

Moreover, licensing reviews have proved to be largely useless in practice for defending the rights of residents and indeed other businesses. It is a little disturbing that the question talks about "those who wish to object" rather than "those who live and work in affected areas". This should be changed. Residents involved in the licensing regime have concluded that the 2003 Licensing Act favours the licensees and discriminates against residents.

4. Do all the responsible authorities (such as Planning, and Health & Safety), which all have other regulatory powers, engage effectively in the licensing regime, and if not, what could be done? Do other stakeholders, including local communities, engage effectively in the licensing regime, and if not, what could be done?

No.

Planning and licensing authorities on the whole ignore each other. They may exchange data, but planners rarely engage in the licensing regime. Although planning legislation is paramount, premises licences usually grant longer opening hours and impose fewer conditions on the use of premises in terms of noise control than those imposed in planning conditions. The use of pavement seating is often left to Highways Authorities, whose concern is primarily with public safety and with no concern for public nuisance or loss of amenity of residents. As a result noise-nuisance is a frequent problem late at night and in the early morning from the use of pavement seating. The regime is clearly biased in favour of licensees.

In Bath most licensed premises' planning conditions are in conflict with their licensing conditions. The artificial barriers created by the legislation between planning and licensing should be removed. This would allow both planning and licensing authorities to hear and consider all the evidence of the impact or potential impact that premises will have on their environments.

Similarly, there should be no constraint on licensing authorities' imposing conditions which are subject to other legislative regimes, allowing the licensing authority effectively to coordinate the work of all agencies in relation to licensed premises.

Licensing and local strategy

5. Licensing is only one part of the strategy that local government has to shape its communities. The Government states that the Act "is being used effectively in conjunction with other interventions as part of a coherent national and local strategy." Do you agree?

No.

The appearance of numerous entertainment centres selling alcohol all day and into the early hours in our town and city centres has produced a blot on their landscape. That has been the 'effect' of the 2003 Licensing Act. There may be a thriving Café Society during the day but after 1800 hours many town and city centres become the Alcohol Society to the detriment of the environment. It may be commercially profitable for the entrepreneurs but it ruins the environment.

6. Should licensing policy and planning policy be integrated more closely to shape local areas and address the proliferation of licensed premises? How could it be done?

Yes.

Simply ensure that planning consent must be obtained before applying for a premises licence, and that conditions on a premises licence must not conflict with relevant planning conditions where they exist.

Crime, disorder and public safety

7. Are the subsequent amendments made by policing legislation achieving their objects? Do they give the police the powers they need to prevent crime and disorder and promote the licensing objectives generally? Are police adequately trained to use their powers effectively and appropriately?

No.

The police are primarily concerned with the crime and disorder licensing objective, rarely considering public safety to be a police matter, and public nuisance to be of no concern. Some police authorities include anti-social behaviour as part of crime and disorder, but rarely take action. The new legislation still leave gaps, the most obvious example being the lack of any effective control over "Party Houses", which can cause endless misery for their neighbours and blight communities.

8. Should sales of alcohol airside at international airports continue to be exempt from the application of the Act? Should sales on other forms of transport continue to be exempt?

No comment.

Licensing procedure

9. The Act was intended to simplify licensing procedure; instead it has become increasingly complex. What could be done to simplify the procedure?

Separate the licensing regime for the sale of alcohol from the licensing regime for entertainment. The first could well be restored to Licensing Magistrates leaving the entertainment licensing to local authorities. The police would not then need to be involved in entertainment licensing. This separation of roles has already taken place in the Ministries, with alcohol licensing now in the Home Office, leaving entertainment licensing at the Department for Culture, Media and Sport.

10. What could be done to improve the appeal procedure, including listing and costs? Should appeal decisions be reported to promote consistency? Is there a case for a further appeal to the Crown Court? Is there a role for formal mediation in the appeal process? Sale of alcohol for consumption at home (the off-trade).

Residents are excluded as third parties when a licensee appeals a licensing decision. When the subject of the appeal is about conditions imposed as a result of residents' representations, residents cannot offer evidence to support the Licensing Authority unless invited by the Authority to appear as witnesses. Those who make representations must be eligible as third parties at appeals.

Mediation is already an important feature of the licensing regime. Licensing officers, if asked by applicants, advise applicants on their proposals. Licensing Officers may advise applicants to mediate with those making representations, but this is optional. Police already

discuss their concerns with applicants. Unfortunately residents are usually excluded from these endeavours, so that they are unaware of the changes until the hearing. The process might well be improved if those making representations were also privy to any mediation, and so offered their advice on preventing problems with the community.

For example, in Bath, a premises used the appeal process to resist decisions of the licensing authority, and the planning authority, for 10 years. This is unacceptable as it led to housing units actually being vacated because the premises involved made living in them intolerable. None of the substantive appeal issues was upheld and the premises could legally trade in defiance of the local authority's decisions.

11. Given the increase in off-trade sales, including online sales, is there a case for reform of the licensing regime applying to the off-trade? How effectively does the regime control supermarkets and large retailers, under-age sales, and delivery services? Should the law be amended to allow licensing authorities more specific control over off-trade sales of "super-strength" alcohol?

Yes.

Licensed premises regularly report pre-loading and the smuggling of alcohol into their premises as a major factor impacting their ability to control drink-fuelled disorder and trade profitably. Retailers, in particular the major supermarkets, often promote cheap drink offers and create products which in practice make drink smuggling easier.

Under the current legislation it is virtually impossible to object to a new off licence, even where it is in close proximity to numbers of licensed venues and areas known for high levels of drink-fuelled disorder – examples available from Bath.

12. Should alcohol pricing and taxation be used as a form of control, and if so, how? Should the Government introduce minimum unit pricing in England? Does the evidence that MUP would be effective need to be "conclusive" before MUP could be introduced, or can the effect of MUP be gauged only after its introduction?

Yes.

Evidence from Australia and Continental Europe is surely enough to prove that taxing alcohol is the simplest and most effective way of controlling the consumption of alcohol. It's surely not necessary to prove the value of increasing the tax on alcoholic refreshment in the UK, when there is so much well-founded evidence from several other countries. The European Commission document, Binge Drinking and Europe 2008, established the benefit of taxation in reducing alcohol consumption and the undesirable effects of excessive alcohol consumption.

Minimum Unit Pricing may appear simple, but the extra charge goes to the licensee, whereas increasing the tax should go to the Exchequer.

Fees and costs associated with the Licensing Act 2003

13. *Do licence fees need to be set at national level? Should London, and the other major cities to which the Government proposes to devolve greater powers, have the power to set their own licence fees?*

The fees for licensing should be sufficient to cover the cost of providing the licensing regime of the Licensing Authorities, the enforcement of the 2003 Licensing Act and the cost of policing. The costs will vary according to the number and nature of the licensed venues, so the fees should be determined locally.

International comparisons

14. *Is there a correlation between the strictness of the regulatory regime in other countries and the level of alcohol abuse? Are there aspects of the licensing laws of other countries, and other UK jurisdictions, that might usefully be considered for England and Wales?*

Many countries elsewhere in Europe have fixed closing times for all licensed premises, usually 2300 hours. They also frequently provide a waiter/waitress service, which can ensure that alcohol is not served to those who 'have had enough'. In every licensed venue in France there are conspicuous notices 'Contre l'Ivresse', and we should have a similar campaign.

As a consequence of these policies drunks are rarely seen on the streets and there is no prominent night economy in towns and cities in most continental European countries.

15. Additional comments

a. **Granting Licences:** Consideration should be given to granting licences to applicants rather than premises. Applications and conditions, which may give little cause for concern by one applicant, may be inappropriate if the premises are sold to a different operator with a different business model. Also, because licences have a commercial value, there are numerous examples of applicants asking for hours they do not intend to use because they will add value to the building when it is sold.

b. **Assertions:** Where applicants make assertions before licensing committees, which are clearly influential in the decision to grant, these assertions can often not be turned into conditions for a variety of largely technical reasons. In these cases, the assertions themselves should be recorded and be made available at subsequent applications or reviews.

c. **Review:** The assumption to grant, built into the 2003 Act, was justified on the basis that the review procedure would be a powerful tool in correcting and mistakes. In practice this has proved not to be the case. Licensing Committees, which might have been quite comfortable with refusing a new application, are very reluctant to close premises that are

already operational and providing employment. The review procedure is also complex and difficult for ordinary residents to use. An example of the reluctance to withdraw licences can be seen in Bath with the outcome of a review on a nightclub where (i) undercover police had been sold class A drugs on numerous occasions by a drugs operation that involved the premises management and (ii) the Licensing Committee was shown some 15 minutes of CCTV footage of customers coming out of the building so drunk they were unable to stand, customers vomiting and defecating outside the premises, customers fighting, and customers trying drunkenly to force entry into neighbouring premises. However, while conditions were imposed on the premises, the premises were allowed to continue their operations uninterrupted.

28 August 2016

Federation of Wholesale Distributors – written evidence (LIC0061)

Summary

The Federation of Wholesale Distributors (FWD) welcomes the opportunity to respond to the House of Lords Select Committee on the Licensing Act call for evidence.

By way of background, FWD has a strong interest in licensing issues as we are the member organisation for UK wholesalers operating in the grocery and foodservice markets supplying independent retailers and caterers via cash and carry, delivery and the internet. The food and drink distribution sector provides a link between large food and drink manufacturers and independent retailers and caterers. FWD members turn over £16bn in sales to retailers and a further £13bn in sales to food service operators and caterers. Our members turn over annual revenues of £30bn and generate £2.9bn of value added annually. Food and drink wholesale distributors supply up to 330,000 food service businesses and 72,000 retail grocery stores, supporting local high streets and small independent businesses across the United Kingdom.

FWD members are large scale employers and directly employ 70,000 people throughout the UK. This employment is spread across the regions of the United Kingdom, with a higher than national share of employment in Scotland, the North West, Wales, the South West, the West Midlands and the North East. We are also responsible for the indirect employment of many hundreds of thousands of people in the associated industries that we support.

Including the whole value chain, the food and drink wholesale distribution sector supports 1.1 million jobs; nearly 2.5 times as many as Tesco and more than the next four largest supermarket chains combined.

As the member body for small and large businesses across the UK, the FWD are actively involved in all the key business debates which impact on our members from business regulation to employment issues such as the national minimum wage.

We have set out our responses to the questions relevant to our members below.

Questions

Licensing Objectives

1. Are the existing licensing objectives the right ones for the licensing authorities to promote? Should the protection of health and wellbeing be an additional objective?

The Licensing Act 2003 is currently working well despite significant changes to the Act. They have helped to achieve a reduction in alcohol related harm. The current licensing objectives do not need to be revised or added to.

We do not support the introduction of health as a licensing objective. There is no evidence to link alcohol related health harms to an individual premises, which means the licensing system is not an appropriate mechanism to address health issues.

Alcohol consumption and alcohol related harm is in long term decline. The proportion of people who drank in the last week fell from 64% in 2005 to 58% in 2013²⁴⁵ and the proportion of young people that had binged in the last week has fallen from 29% in 2005 to 18% in 2013.

In addition, there is also no causal link between the availability of alcohol and alcohol-related harm²⁴⁶. It would be very difficult for the licensing authority to identify whether the individual premises' licence or their licensing conditions promote health as a licensing objective. Using local, relevant evidence to consider an individual premises' licence application or licensing conditions is fundamental to the Licensing Act 2003 and it is not possible to do this in relation to health and wellbeing.

Licensing and local strategy

5. Licensing is only one part of the strategy that local government has to shape its communities. The Government states that the Act “is being used effectively in conjunction with other interventions as part of a coherent national and local strategy.” Do you agree?

FWD agrees that the Licensing Act is being used effectively with other interventions. There is an increasing amount of power being devolved to local authorities that empower them to make robust local planning, economic development and public health strategies, consulting with a wide range of responsible authorities. These bodies represent various interests across the community.

FWD welcomed the focus in the Home Office's Modern Crime Prevention Strategy on local partnership working in communities to address alcohol related harm through the launch of additional Local Alcohol Action Areas (LAAAs).

6. Should licensing policy and planning policy be integrated more closely to shape local areas and address the proliferation of licensed premises? How could it be done?

We do not believe that licensing policy and planning policy should be further integrated. The planning system already supports the aims of the Licensing Act by consulting extensively on the development of local and neighbourhood plans. FWD supports the development of robust evidence led local plans with a clear development strategy for retail and hospitality premises. As such, we do not believe that additional regulatory powers are required to link the Licensing Act and planning powers.

We do not support what could be viewed as an assumption in the consultation question that there has been a significant proliferation in licensed premises. The number of off-

²⁴⁵ ONS: Opinions and Lifestyle Survey, Adult Drinking Habits in GB 2013

²⁴⁶ Alcohol Concern's/ University of West England Report: [One on Every Corner](#) states in its methodological qualification that it does not prove a cause and effect of alcohol harm and availability. Also lack of reliable health data and exclusion of regions undermines the report's assertions.

licences per capita has remained incredibly stable: in 1992, there were 0.91 off-licences per 1000 people, and in 2014, there were also 0.91 off-licences per 1000 people²⁴⁷.

Moreover, the licensing system already has the power to block new licences in a particular area by introducing a cumulative impact policy (CIP). Cumulative impact policies were designed to deal with alcohol related harm in the night time economy as a way to prevent saturation of people in a single location at closing time, which could contribute significantly to crime and anti-social behaviour.

Sale of Alcohol Consumption at home (the off-trade)

11. Given the increase in off-trade sales, including online sales, is there a case for reform of the licensing regime applying to the off-trade? How effectively does the regime control supermarkets and large retailers, under-age sales, and delivery services? Should the law be amended to allow licensing authorities more specific control over off-trade sales of “super-strength” alcohol?

There has not been a significant increase in the number off-trade premises since the introduction of the Licensing Act. The number of off-trade premises has remained stable per capita for over twenty years.

Indeed, according to the most recent ‘Alcohol and Late Night Refreshment Licensing’ report in 2014, the number of off-licences fell from 2013 to 2014 by 3%²⁴⁸, and we await the publication of future statistics on the number of premises licences from the Home Office.

Over recent years there has been a change in the make-up of the off-trade, with the number of specialist off-licences falling by 11% between 2008 and 2016²⁴⁹. Consumers have shifted away from shopping in traditional off-licences, which typically only sell alcohol products, to convenience stores, which provide a wider range of products and services.

House of Lords Licensing Act 2003 Committee members have raised concerns about the increase in off-trade premises and pre-loading during oral evidence²⁵⁰. Polling conducted by YouGov in 2015²⁵¹ suggests that pre-loading is not as common as it is often perceived, with only 35% of 2,000 UK adults stating that they have pre-loaded in the past year. The majority of those who pre-load do so less than once a month. It is important to note that while respondents found pre-loading cheaper than the night time economy, 42% said that the alcohol they consumed before a night out was only a minority of the alcohol they drank that same night.

Prior to the introduction of the Licensing Act 2003, there was concern that the Act would create a 24-hour drinking culture as premises would be allowed to apply for 24-hour alcohol

²⁴⁷ ONS Population Estimates 2016 cross referenced with Home Office Alcohol and Late Night Refreshment Licensing 2014

²⁴⁸ Home Office: Alcohol and Late Night Refreshment Licensing Report 2014

²⁴⁹ IGD Grocery Market Structure 2008-2016

²⁵⁰ [House of Lords Licensing Act 2003 Committee: Oral Evidence 5 July 2016](#)

²⁵¹ Wine and Spirits Trade Association YouGov Polling 2015

licences. However, this concern has not materialised, with only a minority of premises (4%) holding a 24-hour licence.

The majority of the 7,438 premises which hold a 24-hour licence are hotel bars (48%), while only 13% of 24-hour licences being held by convenience stores²⁵². It is important to note these statistics only represent the number of premises who successfully applied for a 24-hour licence, and not the number of premises that sell alcohol 24-hours.

The Licensing Act does not take two different approaches to regulation based on whether the licensee is selling alcohol for consumption on the premises or if they are selling alcohol for consumption off the premises. The Licensing Act 2003 applies equally to off-trade and on-trade premises. As such, the penalties and enforcement action also apply equally to both on-trade and off-trade premises.

FWD recognise concerns about the problem of street drinkers and the high strength alcohol products associated with this. We do not, however, support amending the law to allow licensing authorities to have more control over off-trade sales of “super-strength” alcohol. Such a move would be making an assumption that one form of alcohol is worse than another in terms of health outcomes. Instead, minimum unit pricing should be used as a more equitable solution to the regulation of alcohol consumption and reducing health harms. We set out more detail on this in response to the question below.

Pricing

12. Should alcohol pricing and taxation be used as a form of control, and if so, how? Should the Government introduce minimum unit pricing in England? Does the evidence that MUP would be effective need to be “conclusive” before MUP could be introduced, or can the effect of MUP be gauged only after its introduction?

FWD members recognise the role alcohol plays in contributing to anti-social behaviour and negatively impacting on people’s health. While alcohol is one of the most profitable goods our members sell, we continually seek to support measures which encourage the responsible consumption of alcohol.

FWD have been very active in proposing measures to tackle the illegal sale of alcohol which denies the Exchequer of much needed revenue and can be harmful to people’s health. In particular, FWD proposed the Alcohol Wholesaler Registration Scheme (which seeks to register legitimate wholesalers to sell alcohol) which is in the process of being introduced by the Government.

We are also strong proponents of the introduction of Minimum Unit Pricing (MUP). Setting a minimum price for each unit of alcohol sold could see the price for alcohol raised and lead to a lower consumption supporting responsible drinking.

An across the board measure like MUP would consider the supply of alcohol equally and help to reduce the irresponsible promotions that are often available in large super market

²⁵² Home Office: Alcohol and Late Night Refreshment Licensing Report 2014

chains. It would also serve to level the playing field for wholesalers up and down the country with large supermarkets, who are unable to compete with the deep discounting offered in supermarkets.

The Alcohol [\(Minimum Pricing\) \(Scotland\) Act 2012](#) was passed in June 2012 by the Scottish Government. The main purpose of the Bill was to introduce a minimum price of alcohol below which alcohol must not be sold on licensed premises. The minimum price would be set according to the strength of the alcohol, the volume of the alcohol and the minimum price per unit. Initially this would be 50p per unit. This legislation is now being challenged by drinks companies in the European Courts, who are questioning the relative public health benefit.

We support the moves by the Scottish Government to introduce MUP but it would be important, if the Scottish Government are able to implement the Act, that England follows suit. Different pricing regimes for alcohol could result in purchasers travelling to England from Scotland to buy alcohol and therefore distort the market and undermine the intent of the Act.

Equally, the introduction of MUP would need to be accompanied by strong measures to tackle alcohol fraud to ensure fraudsters did not look to undercut the minimum price which would be harmful to consumers, the Exchequer and wholesalers alike.

1 September 2016

Matthew France –written evidence (LIC0089)

Based on my 10 years' experience as a licensing practitioner I would like to make the following observations in respect of Question 7 within your consultation questionnaire:-

Q7 – The Act was intended to simplify licensing procedure; instead it has become increasingly complex. What could be done to simplify the procedure?

7.1 - The governments drive for e-commerce has resulted in significant year-on-year increases in the number of applications submitted electronically. I see no reason why applicants should be required to submit applications (New Grant, Variation, DPS Transfer etc.) to anyone other than a licensing authority. This fundamental step-change would not only eliminate queries relating to the 'giving' of applications, and disputes regarding consultation periods, it would provide 'a single point of truth' in terms of the content of applications.

7.2 - The 'Planning Portal' process of scanning and posting relevant representations on-line as they occur should be replicated within the alcohol licensing regime. This way applicants would be informed of potential concerns much earlier in the process and be able to start negotiations much sooner. This would result in more applications being resolved at an early stage, negating the need for costly hearings.

7.3 - **Suspended Premises Licences** – premises licences should automatically lapse if the annual fee is not paid within a specific time period e.g. 12/24 months. Costs associated with paying 'back fees' on lapsed licences soon eclipse those of applying for a new premises licence. From a practical perspective, applicants seeking to introduce new licensed establishments in towns and cities with cumulative impact polices are being disadvantaged by responsible authorities needing to take into account suspended licences as part of their decision making process. In one particular seaside resort in my geographical area (CIZ applies) there are 3 suspended nightclub licences. These buildings have been vacant for a number of years and are unlikely to ever be utilised for licensed purposes again. As there are no ongoing financial commitments associated with holding suspended licences, unless reactivated, there is no incentive to surrender them. The problem of 'stagnation' in towns and cities with CIZ's is only likely to get worse unless this matter is addressed.

7.4 - **Lapsed Premises Licences (Dissolved Company)** – as it is possible, in specific circumstances, to restore a company 'struck off' Companies House register (s1024 Companies House 2006) back to the point as if the company had not been struck off, how does that affect the status of the premises licence? Does the licence technically lapse, as is often the stance licensing authorities take, or should it be suspended with back payment of annual fees payable if a company is restored? Covering this scenario within the Section 182 Guidance would be appreciated.

7.5 **Mandatory Conditions** – the current full suite of mandatory conditions should be included within the Section 182 Guidance. At present there is no single reference point for

Matthew France –written evidence (LIC0089)

those within the trade to obtain this information. Only those who make regular changes to premises licences e.g. vary DPS are sighted on any changes. As the onus is on the licence holder to keep abreast of any changes I believe that it would be prudent to provide the most up to date version either within the Section 182 Guidance or within the Alcohol section of the Home Office website, or both.

7.6 - **Apply Conditions to TEN's** – there needs to be a delegated power within the legislation to be able to impose 'agreed' conditions (Premises User / Responsible Authority) onto TEN's without the need for a full licensing sub-committee hearing to determine the matter.

2 September 2016

Marie-Claire Frankie, National Association of Licensing and Enforcement Officers – supplementary written evidence (LIC0158)

It was commented that minimum wage is a legal requirement and conditions are not meant to duplicate law covered by other Acts. There are many crossovers with the Licensing Act 2003, it being an offence to sell alcohol to someone under 18 as an example. In operating schedules time and time again, Licensees will say that they will operate challenge 21/25 systems to ensure compliance with other legislation.

In my opinion the Equality Act 2010 is similar. All licence holders should ensure that they comply with the Act in respect of their clients and employees.

Licence holders who set standards of behaviour for their customers or clients, which have a worse impact on people who share a particular protected characteristic than on people who do not share that characteristic, must make sure that they can objectively justify what they have done. Otherwise, it will be indirect discrimination.

A licence holder who sets standards of behaviour must make reasonable adjustments to the standards for disabled people and avoid discrimination arising from disability.

These are the details that could be included in an operating schedule to help the Authority check that a premises is complying with the Equality Act. It also helps licensees apply their mind to the issue of equality which could otherwise be something that isn't high on their list of priorities when concentrating on a licence.

Should complaints relating to this arise then, again in my opinion, it would give Officers more access to the premises and more able to take direct action to remedy the issue directly with the management. Without it would likely lead to an informal letter at best.

Of course, without the licensing objective the Equality Act still requires compliance but my feeling is that anything that requires anyone in a position of operating a premises that is open to the public to think about equality, not just disability but any of the protected characteristics, is a positive step. Also anything that encourages Officers who are out in those premises to have their eyes open for equality issues which otherwise would be dealt with as a reaction to a complaint can only be a positive step.

5 October 2016

Councillor Bill Gifford – written evidence (LIC0113)

The Licensing Act 2003 whilst it freed the drinks industry has in many ways failed to protect local residents from the effects of an alcohol based night time economy.

Baroness McIntosh of Pickering asks some very sensible questions:

The Licensing Act 2003 enabled premises to serve alcohol for 24 hours a day, 7 days a week. While many heralded the Act as the start of a more continental drinking culture, others predicted round-the-clock consumption, leading to disorder and a deterioration in public health.

"But what has the reality actually been like? Has deregulation allowed the drinks industry to thrive? Have drinkers embraced a more relaxed and healthier approach to alcohol? What happened to the anticipated café culture?"

"For good or ill, the Licensing Act has altered the drinking landscape of England and Wales, but an examination of the changes is long overdue. I would therefore encourage as many people as possible to send us written evidence before our deadline of 2 September."

In my opinion as a town centre resident and a local councillor the Act does not recognise the considerable difference between the evening economy, which I think ends at about midnight and the night-time economy that starts about midnight. The problems of excessive drinking on the whole happen during the early hours of the morning.

The Act also fails to encourage drinking to be sociable as against drinking to get drunk. Directly opposite our house are two restaurants where the licence is for waiter / waitress service to table with a substantial meal. This clearly defines those premises as restaurants and they are very rarely a problem to us. There is a third and at the moment empty unit that was a bar until its licence lapsed and it was refused a renewal. The bar was a major problem to us under 4 different owners. As is normal in this country the drinks were served from a bar not to the table. There were far fewer tables and chairs than were required to enable patrons to sit. Recorded music was often played so loudly that conversation within the premises was difficult.

The problems caused by people who are drunk effect residents beyond the town or city centres. As a councillor I get contacted by those living on the main routes out of town, whose sleep has been shattered and or suffered vandalism.

I believe that the Committee needs to take on board the difference between the evening economy and night-time economy. I hope it would also consider measures that would discourage drinking to get drunk which is inherently anti-social rather than drinking as part of genuinely social occasion.

2 September 2016

Gloucestershire Licensing Officer's Group – written evidence (LIC0101)

Gloucestershire Licensing Officer's group met up on Wednesday 24th August 2016 to discuss the questions. The Licensing Officers Group's answers are highlighted in blue, under each of the questions that have been asked.

1. Are the existing four licensing objectives the right ones for licensing authorities to promote? Should the protection of health and wellbeing be an additional objective?

We feel that the four licensing objectives are the right ones to promote the Licensing Act 2003. The Licensing Act 2003 has been in force for over ten years and the existing four licensing objectives have worked well.

We do not feel that health and wellbeing should form an additional objective as the public safety objective covers the wellbeing part already.

Health and wellbeing could be included in Local Authorities statement of licensing policies.

2. Should the policies of licensing authorities do more to facilitate the enjoyment by the public of all licensable activities? Should access to and enjoyment of licensable activities by the public, including community activities, be an additional licensing objective? Should there be any other additional objectives?

No as there is already a light touch regime in place as most entertainment has been de-regulated. This has put pressure on other services ie Environmental Protection to deal with these issues.

The balance between rights and responsibilities

3. Has the Live Music Act 2012 done enough to relax the provisions of the Licensing Act 2003 where they imposed unnecessarily strict requirements? Are the introductions of late night levies and Early Morning Restriction Orders effective, and if not, what alternatives are there? Does the Licensing Act now achieve the right balance between the rights of those who wish to sell alcohol and provide entertainment and the rights of those who wish to object?

It has now gone too far as the controls that were in place disappeared under the Live Music Act. Apart from premises that open after 11pm. We believe that LNL's and EMRO's are good in theory but in practice has put an administrative burden on the Local Authority. The money that Local Authorities receive is a lot less than the PCC/Police. The PCC/Police can use the money raised to put into whatever they choose where the LA can only use the money for certain initiatives and are accountable for how they spend their proportion raised from the levy. The LNL does not differentiate between cities and rural districts so maybe the reason why the vast majority of LA's have not adopted a LNL.

4. Do all the responsible authorities (such as Planning, and Health & Safety), who all have other regulatory powers, engage effectively in the licensing regime, and if not,

what could be done? Do other stakeholders, including local communities, engage effectively in the licensing regime, and if not, what could be done?

No, it is only the Police and Environmental Protection (noise) who seem to make representations. Parish and town councils should be notified as part of the application process. Asking the applicant to put a public notice in a local paper should be stopped as this is very costly to the applicant.

Licensing and local strategy

5. Licensing is only one part of the strategy that local government has to shape its communities. The Government states that the Act “is being used effectively in conjunction with other interventions as part of a coherent national and local strategy.” Do you agree?

Yes

6. Should licensing policy and planning policy be integrated more closely to shape local areas and address the proliferation of licensed premises? How could it be done?

No two pieces of legislation.

Crime, disorder and public safety

7. Are the subsequent amendments made by policing legislation achieving their objects? Do they give the police the powers they need to prevent crime and disorder and promote the licensing objectives generally? Are police adequately trained to use their powers effectively and appropriately?

No, Police do require regular on-going training on the LA 2003 and their powers under the Act. It all comes down to having the ‘will’ but with such financial restraints is difficult to introduce.

8. Should sales of alcohol airside at international airports continue to be exempt from the application of the Act? Should sales on other forms of transport continue to be exempt?

Yes we feel they should still continue to be exempt from the control of the LA. But feel there needs to be some control on the sale of alcohol from the Civil Aircraft Authority.

Licensing procedure

9. The Act was intended to simplify licensing procedure; instead it has become increasingly complex. What could be done to simplify the procedure?

The exemptions on entertainment are now becoming more confusing. One example to simplify the procedure could be that on receipt of an application either online or post is that the LA send copies of the application to the Responsible Authorities electronically. This would therefore reduce the cost to the applicant. Another example is that all of the current application forms need to be reviewed as they are confusing to the applicant.

10. What could be done to improve the appeal procedure, including listing and costs? Should appeal decisions be reported to promote consistency? Is there a case for a further appeal to the Crown Court? Is there a role for formal mediation in the appeal process?

We think the appeal procedure works fine in its current form. Mediation also works well as it is within the spirit of the Act.

11. Given the increase in off-trade sales, including online sales, is there a case for reform of the licensing regime applying to the off-trade? How effectively does the regime control supermarkets and large retailers, under-age sales, and delivery services? Should the law be amended to allow licensing authorities more specific control over off-trade sales of “super-strength” alcohol?

Yes, the on-trade argue that the off trade are responsible for pre-loading of their customers which lead to drunkenness and crime and disorder in their premises.

12. Should alcohol pricing and taxation be used as a form of control, and if so, how? Should the Government introduce minimum unit pricing in England? Does the evidence that MUP would be effective need to be “conclusive” before MUP could be introduced, or can the effect of MUP be gauged only after its introduction?

This is a tax on the poor, disagree wholeheartedly with MUP, education is the answer.

13. Do licence fees need to be set at national level? Should London, and the other major cities to which the Government proposes to devolve greater powers, have the power to set their own licence fees?

We feel that there needs to be a review of the fees as there has not been one since the LA03 was introduced.

2 September 2016

Gerald Gouriet QC – written evidence (LIC0056)

1. I am a practising barrister who has specialised in licensing for the major part of my professional life. My experience straddles, in equal measure, the Licensing Act 1964 and the Licensing Act 2003. I am a general editor of Paterson’s Licensing Acts.
2. I advise and conduct cases for the trade, the police, licensing authorities and residents’ associations. In addition to acting for multi-national hotels (eg The London Edition) and large nightclubs (eg Fabric), I have recently appeared pro bono in a number of applications/reviews/appeals for local residents who cannot afford representation, but find themselves pitted against highly experienced and effective licensing lawyers.
3. Because of the breadth of my practice, I think I can legitimately make the immodest claim that I am in a strong position to comment on the central issue in this consultation – has the 2003 Act satisfactorily achieved the balancing of the broad range of interests engaged by licensing decisions?
4. I will come such of the specific questions posed in the consultation paper as are most directly related to my experience; but first I will set out in very short form what I believe to be the major issues needing to be addressed, even though there is an obvious overlap with the 14 questions.
 - (a) By a wide margin, it is the consumption of excess alcohol that spawns most of the public order problems that we are all-too familiar with (anti social behaviour, noise and other nuisance). The focus of regulatory action, however, seems mainly to be on premises and their licensees. The remedies of closure, suspension of licence, conditioning of the licence, etc., are superficially attractive; but the actual trouble-makers are rarely affected and will move to other premises if their chosen haunt is closed or becomes less popular because of reduced hours or more draconian conditions. For the most part, the drunks who create the problems that the general public are most concerned about drift through the licensing process unpunished, not even rebuked, with no meaningful consequences for their actions – consequences that might have dissuaded them from repetition.
 - (b) The calibre of licensing panels varies from authority to authority, from the admirable to the indifferent and poor. Sometimes the poor quality is because of the inexperience of newly elected councillors; at other times (not by any means infrequent) panels may comprise councillors who, regrettably, no amount of experience or training is likely to improve, or improve sufficiently. There is no pattern to poor decision-making: applications are granted that should not have been, and refused when they should have been granted. No one category (of those whose interests should be balanced) is in my

experience more prejudiced by poor-quality licensing than any other category.

- (c) The inescapably haphazard quality of licensing committees demands an effective appeals process capable of correcting bad decision-making. Appeals ‘on the merits’ to a tribunal no higher than a magistrates’ court, of cases, the commercial and other implications of which (investment and jobs) may be of the greatest importance, often fall short of this requirement. Planning decisions, by way of contrast, go before an experienced planning inspector; whereas licensing appeals may be heard by a lay bench, or by a district judge, inexperienced in licensing and impatient to clear his/her criminal list. Moreover, and importantly, the appellate limitations brought about by the *Hope & Glory case*²⁵³ can render the appeals process illusory.
- (d) The approach of modern licensing regulation in this Country has been to attempt to predict the outcome of a host of possible permutations of circumstances, and create a rule to govern it. This has been to the detriment of sound decision-making. Instead of a licensing authority striving to “do the right thing”, members are too often trying to identify the rule that governs the case in point. It is worth reminding ourselves of what we abandoned when we repealed the 1964 Act. Under that legislation, licensing justices could grant/refuse a licence in the exercise of a general discretion, when they thought it was right to do so; and that could result in a lawful refusal “*on the ground of remoteness from police supervision and the character and necessities of the neighbourhood.*”²⁵⁴ The attempted regulation, currently, of every predictable eventuality, and the replacement of a general discretion with a template of specific rules and guidance have, in my opinion, dulled the edge of judgment: licensing authorities tend not to ask themselves “*what is the right thing to do, in all the circumstances?*” – but “*what are we allowed to do?*” Or worse still: “*what are we told to do?*”

Question 3

5. The potential benefit of an EMRO (a focussed solution to a discreet area of anti-social problems) has, in my view, been insufficiently recognised by local authorities. In 2014, acting on behalf of the ALMR, I opposed an EMRO in Blackpool: I think that Blackpool’s refusal to make an Order has reverberated too strongly around the country. The central entertainment area of Blackpool had been thought of as tailor-made for an EMRO; and I have heard it suggested that if an Order was not appropriate there, where else could it be? The costs of consultation and subsequent

²⁵³ *R (on the application of Hope and Glory Public House) v City of Westminster Magistrates Court* [2011] EWCA Civ 31

²⁵⁴ *Sharp v Wakefield* [1891] AC 173

hearings, together with fears as to appellate costs (which I will touch on later) have made local authorities disinclined to take advantage of this useful tool.

Questions 4 & 6

6. Planning: a repeated mantra (at licensing hearings) is that planning and licensing are two different regimes, and that, accordingly, planning considerations are irrelevant to licensing. That mantra is difficult to overcome, even though there is a wide overlap between planning and licensing – particularly when considering cumulative impact. Licensing Justices (under the 1964 Act) often required planning permission to be in place before they would consider a licensing application: I think that was eminently sensible. I am sometimes instructed in applications for review in which the terminal hour under the planning permission is shown to be significantly earlier than that given by the 2003 Act licence. Licensing authorities tend to say that enforcement action should be taken under the planning regime, rather than adjust the licensing hours to match the planning hours. I think that an integration of the two regimes, under the authority of Guidance or Law, would be of great benefit.
7. Local communities: the greatest disincentive to local communities becoming involved is the fear of an award of costs on appeal. That fear has made appeals by local communities (or individuals) extremely rare. There is guidance in case-law, and from the Magistrates Association and Justices' Clerks Society to the effect that such awards should be exceptional; but I am of the strong opinion that costs in licensing appeals should be put on a statutory footing, similar to costs in appeals before our Tribunals, and be awarded only against a party who has behaved unreasonably.

Question 7

8. In order to address this question I asked two police licensing officers (with whom I had recently conducted a review) to meet me in chambers and discuss the issues arising. Their responses are as follows –
 - (a) The public perception is that drunkenness on our town and city streets, and the anti social behaviour (generally) of those drunks, are a major (if not the major) cause for concern. Resources, however, do not permit drunkenness itself to be directly targeted: arrests for 'drunk and disorderly' are uncommon; there has been a substantial reduction in police cells and custody suites, which militates against such arrests; transport is (understandably) prioritised for more serious crime and disorder, and therefore unavailable to take drunks off our streets.
 - (b) Police are instructed that if they are to intervene, "disorderly" has to relate to concerns about public safety. Lesser concerns (such as disorder!) cannot be addressed.

- (c) Time-consuming bureaucracy (form-filling), in any event, dis-incentivises the police from taking action against the “mere” urinating, vomiting, shouting, yelling, screaming drunk.
 - (d) Resources do not permit plain-clothes observations in licensed premises, in order to detect and deter the serving of alcohol to persons already drunk, or allowing drunk persons to remain in licensed premises. In one area of London there are 1700 licensed premises, including 500 + pubs and late night clubs (with hours extending to as late as 06:00 in the morning): but there are only 2 licensing police officers (out of a panel of 6) on duty on a Friday and Saturday night.
9. It is my view (and the police I spoke to concurred, although it is right to say the suggestion came from me) that one of the principle adverse consequences of our current licensing regime – the behaviour of drunks on our streets on weekend nights – is only adequately addressed when it escalates to criminal damage and violence. By concentrating our efforts on the premises from which these people pour, we often unfairly attack licensees and businesses that are wholly blameless, leaving so many of the true culprits unpunished, not even reprimanded, free to migrate, wholly unconcerned, to their next licensed base, and start again there.
10. Other issues raised by the police were:
- (e) They would like the power to close premises immediately, where they are being used for the unauthorised sale of alcohol. Closure Orders under section 20 Criminal Justice and Police Act 2001 are an inefficient remedy. (Complaint and summons to attend court soak up time.)
 - (f) They are concerned that they are assigned to licensing for a 2-year period only: just as they become experienced, they are moved on.
11. I should add here that I have a parallel concern in the (often) limited experience of councillors. That they are elected, and in theory represent the views of local people and are accountable to them, are much-praised features of the new regime; but again and again I see counsellors sitting on a licensing panel who have no experience in licensing, nor any understanding of it. It is not possible, nor even permissible, within the ambit of the procedure followed at these hearings, to bring such counsellors up to speed.
- (g) The police I spoke to are troubled by the procedure adopted at licensing hearings. They say it is too formal, sometimes inhibiting, and frequently it does not allow all of the facts to be aired. That concern is best dealt with in Consultation [Question 9](#).

Question 9

12. Home Office Guidance advises that licence hearings should take the form of ‘a discussion led by the chair’. I have never attended a single licensing hearing whose procedure was remotely similar to that description. Licensing committees tend to follow the somewhat ritualistic procedures of a local authority meeting – minutes read and approved, nomination for chair, declarations of interest, etc. A rigid adherence to the printed Agenda, for example, strongly militates against “discussion”. I have found that any attempt to correct a fundamental mistake, because of which a hearing will proceed tangentially off-course, can be silenced until the precise moment in the agenda arrives for that party to be permitted to speak. I have seen 1 ½ to 2 hours of a hearing unnecessarily proceed late into the night, because neither I for the applicant nor the barrister appearing for the police were allowed, despite several attempts on our part, to point out that the 30 conditions under detailed discussion between committee members and their legal officer were agreed and in any event not relevant to the review in hand.
13. It is said that the procedure at a licensing hearing is less inhibiting than court procedure. I cannot agree. The public I deal with, and even on occasion the police, are at sea when attending licensing hearings; nervous as to when to speak, when not to speak, not understanding what is going on, or what they are to do, or how they can (if indeed they are allowed to at all) dispute gross errors. Even experienced licence-holders can find themselves unable to get their points across, because of uncertainty as to procedure, how long they can speak for, or what documents they are allowed to produce.
14. The time-limits imposed by a great many licensing authorities are arbitrary and often a barrier to the true facts of a case seeing the light of day. There is a disinclination to adjust any of these pre-determined limits to the particular hearing before the committee. I was recently before a London authority, on behalf of the police, for a review of a licensed night-club. A gang-member had approached the door of the club with a hand gun and fired at random into the doorway, hitting a member of staff. I was originally given 10 minutes to present the case (including the calling of witnesses), which was later extended to a half-hour. Much was said in the course of the other side’s case (the licensee) that needed correction: but cross-examination was not allowed, so the licensee’s case became untested assertion. Only in my closing remarks could I attempt to explain this to the sub-committee. When it was my turn to close, the chair said to me: “You have one minute”. I pulled rank and took longer – because it was necessary to do so: but a younger lawyer might not have got away with it; and in any event I was under pressure, and although I did what I could in five minutes, I was acutely aware (as was my team) that I had rationed the points needing to be made, leaving out some altogether (though each was of equal importance) because I was limited as to time. A committee drumming its fingers on the table and constantly looking up at the clock is not exactly receptive, even to just five minutes of submissions.

15. Cross-examination of witnesses is rarely, if ever, allowed. This has led to a dawning realisation in some professional witnesses that unsupported assertion (however far-fetched) is likely to go untested. Thus we may have an application for a new bar in a cumulative impact zone: the applicant asserts that he has other such bars (similarly branded) in the UK, and its customers there are mature, (not the 18-25s); he says that the operation is food-led; there will no music; in short, what he proposes is not likely to lead to anti-social behaviour. The police do not have the resources to check the other, similar premises elsewhere in the UK, or the veracity of the applicant's assertions: they take the position – on the strength of what the applicant says – “we do not object”. Local residents visit this brand elsewhere, and find drink-led bars, disk jockeys, dancing, drunkenness, and limited take-up of food. At the licensing hearing, cross-examination is not allowed – so the applicant's assertions are not tested. All the committee has are two sides, each saying the opposite of each other. The tendency then is to decide that since the police do not object, the licence will be granted. A vulnerability to costs, should there be a successful appeal of a refusal to grant when the police have not objected is frequently cited to me, informally, as the principal reason for granting. In my opinion this is an intolerable situation, and one that is arsing with greater and greater frequency.
16. In summary: whether a case is won or lost, whether I appear for a licensee or for a responsible authority, and especially when I am acting for local communities, I and those around me frequently leave licensing hearings with the sense that whilst they may have produced the right result, or something approaching it, that is perhaps by chance rather than because of the quality of the licensing regime and how it is implemented. Too many, on all sides, tell me they leave hearings with a bad taste in their mouths, and the sense that the result was something of a lottery.

31 August 2016

Gerald Gouriet QC – supplementary written evidence (LIC0165)

1. I am concerned at the growing extent to which decisions are influenced (if not effectively taken) by the result of discussions taking place behind closed doors, at which not all interested persons are present.
2. It is usually local communities, residents' associations or individual local people who are kept out of the loop.
3. The position is best illustrated by an example, which may be taken as descriptive of a number of cases in which I have recently been involved:
 - a. An application is made in a cumulative impact area.
 - b. There is residential objection, as well as initial objection from the police and other licensing authorities.
 - c. Meetings take place between the responsible authorities and the applicant and his legal team. As a result of those meetings the responsible authorities withdraw their representations (or do not make any).
 - d. What is said at those meetings is not made public. All that a licensing committee (or magistrates' court on appeal) hears is that "the police do not object", or "the responsible authorities have no concerns". The police and responsible authorities frequently do not attend the licensing hearing. The basis upon which they have decided not to object is never known, and therefore never examined critically.
 - e. The objecting resident or association is left high and dry, often being asked "have all the responsible authorities got it wrong?" – when in fact no one knows if they have got it wrong or right: all we know is that they have made no representation, we do not know upon what basis.
 - f. The application is granted, undue weight being given to the *fact* (but not the reasons behind) absence of police objection, and little scrutiny being given to the application itself.
4. Sometimes (rarely) one gets to hear what has been said at the private meetings between the authorities and an applicant. At other times it may reasonably be inferred that the authorities have been told a similar story to the one told to the residents in trying to persuade them not to object. An applicant may say (and increasingly does so – there is almost a 'cut and paste' of the popular phrases, from application to application): "*we have similar premises elsewhere – there is only background music;; our customers are mature (not the 18-25s); there is no dancing; we serve food throughout opening hours; we are more a restaurant than a bar.*"

5. The truth (for anyone that has the opportunity and inclination to look for themselves) may be that there *is* music and dancing – in a recent case it was found that there was a DJ playing loud dance music! – and/or that there is an *availability* of food, rather than the service of it, and that similar operations are indeed bars, not restaurants, frequented by students. In one case in which I was involved investigation found that student discounts were offered – where assurances had been given that the customers of the bar were all “mature”.
6. I have been told by police officers that they have neither the resources nor the time to investigate the truthfulness or otherwise of the various assurances and assertions made. Their lack of objection is no better than: “If what we have been told is true, then there is no ground for objection” - but it is held out by applicants (and accepted by committees) as being support.
7. Home office guidance is that *“The police should be the licensing authority’s main source of advice on matters relating to the prevention of crime and disorder licensing objective... The licensing authority should accept all reasonable and proportionate representations made by the police unless the authority has evidence that to do so would not be appropriate for the promotion of the licensing objectives.”* That guidance is wrongly interpreted by licensing authorities: absence of police (and other) objection is too frequently equated to a representation in favour, and taken as determinative of a decision to grant the application.
8. Even where an applicant’s assurances to residents are found to be demonstrably false, the absence of police objection (and other objection from responsible authorities) can present an impenetrable barrier to successfully resisting a grant.
9. I am strongly of the opinion that there should be much greater transparency regarding these behind-closed-doors meetings. In particular, it is essential that reasons are given (by the relevant responsible authorities) for not making representations if there is an otherwise contested application.
10. I am concerned that, even with the benefits of transparency, pre-hearing consultation can sail too close to the equivalent of a hearing. If attended heavy-handed (as in my recent experience) there is a vulnerability to ‘discussion’ being steamrollered to ‘decision’ when not all interested persons are present, or if they are present, not having come to the meeting prepared to argue their position to a conclusion.

‘Promotion of Health’ as a licensing objective

1. It is anomalous that local health bodies are responsible authorities, but the promotion of health is not a licensing objective. I have seen many representations made by local health bodies, the content of which is (or should

be) irrelevant because of a missing licensing objective upon which to hang it. It is a matter of impression, but I cannot help but suspect that such representations play a part in the decision-making of the licensing authorities. If so, that is an unhappy situation: if the promotion of health is to have any role in licensing it should be unequivocally permitted to do so, and not be required to creep in through the back door.

2. There is growing evidence of the damage to health that the consumption of alcohol, even in moderation, is capable of causing. I take it as a given that that evidence is not fanciful. Furthermore, a frequently cited justification of cumulative impact policies is that an increase in ‘outlet density’ – the number of premises selling alcohol in a given area – results in an overall increase in consumption. This note assumes that there is some truth behind that assertion.
3. It follows from the propositions in (2) above that an increase in outlet density is likely to result in an increased risk of alcohol-related health issues. A liberal licensing regime (such as we have) that focuses solely on crime & disorder, public safety, nuisance and the protection of children, and fails to weigh in the balance the true extent of proven alcohol-related health issues, may be thought to border on the irresponsible.
4. It is in relation to the wider issue of outlet density (and the control of it), rather than premises-specific issues on an individual application, that I think that ‘promotion of health’ has the more meaningful role to play as a licensing objective.
5. Just as a ‘cumulative impact’ objection may have no specific criticisms of an individual application, but maintains that if granted a licence the premises will add to the general *mêlée* of alcohol-related incidents, so a ‘health’ objection might legitimately be that any addition to an already burgeoning pool of licensed premises is inevitably going to *contribute* to a general deterioration in public health. That consideration may or may not be determinative of an application: but it is, to my mind, remarkable that it isn’t even in the balance.
6. The 2003 Act pays insufficient heed to the consequences of an excess of supply over demand. It has failed to acknowledge the possibility that one of those consequences may be the undermining of public health. With the greatest respect to those who have voiced a contrary conclusion, my own observation is that market forces do not necessarily curb the proliferation of licensed premises. (This is particularly apparent in the licensing of betting shops, but is also true of alcohol-licensed premises.) More than one operator may have his eyes on a single market, and they will seek licences to operate in competition with each other to attract that market. The initial result is an excess of supply over demand – but the over-abundant supply often attracts new demand, which not only satisfies the excess supply but, again, is competed for in the opening of yet more

licensed premises. Such an escalating cycle was recognised by the High Court in a series of betting and casino cases (because ‘demand’ was a statutory requirement in previous gambling legislation) and it was given the label “stimulated demand”.

7. The ‘promotion of health’ is capable of being premises-specific. In a recent review of a nightclub, evidence was given of significant numbers of young people being treated for alcohol poisoning in the A&E department of a local Hospital; and they could be identified as having been to the club in question because of the ‘re-entry stamp’ on their wrists, bearing the club’s name. The evidence was adduced as an indication that there were *likely to have been* sales of alcohol to persons already the worse for wear; and (even by that somewhat tenuous route) it was less than helpful to the licensee’s case: but how much more damning – indeed, it would have been unanswerable – had there been a ‘promotion of health’ licensing objective. It would have been unnecessary to find fault in the licensee or his bar-staff. The alcohol poisoning alone should have been more than sufficient for the review to succeed.
8. Deprivation of sleep is a frequent complaint of residents who are woken up by departing customers of a late-night pub/club. It raises an obvious health issue that is not addressed by the current licensing objectives. “Public nuisance” is too easy to negate with the old chestnut of an argument: “you can’t expect the peace and quiet of the countryside if you choose to live in a town or city”. But I cannot imagine that argument being successfully mutated into: “you can’t expect to keep your health if you live in a town or city.”
9. The potential relevance of ‘the promotion of health’ to applications for/against individual premises licences exists, as exemplified in paragraphs (7) and (8) above: but it is limited in scope. In relation to the wider issues touched on in the preceding paragraphs, however, I believe there is considerable force in the arguments for its adoption as an additional licensing objective.

16 November 2016

Greater Manchester Combined Authority – written evidence (LIC0103)

On behalf of the ten Greater Manchester local authority leaders, Interim Mayor of Greater Manchester and Chief Constable of Greater Manchester Police I would like to submit the attached evidence to your committee in response to the committee's call for evidence.

This submission was prepared by an expert panel group which included the Chair of Greater Manchester Licensing Managers, Greater Manchester Police and representatives of public health. The submission seeks to answer all the questions posed by the committee and sets out our views of the current legislation, associated secondary legislation and where we would look to have powers devolved to us as part of our wider devolution agenda.

As you will be aware, Greater Manchester is at the forefront of devolution in the North of England, which, uniquely, includes the integration of health and social care. Tackling alcohol-related harms has long been recognised as key to reducing social and health inequalities in Greater Manchester. This is why Greater Manchester produced a comprehensive Alcohol Strategy to guide our efforts in 2014, and this very much links into our overarching Greater Manchester Strategy and our collective vision for better health and social care across Greater Manchester. Local reflections on the Licensing Act 2003 are therefore taking place in a devolution context, and we see a vital opportunity here to reshape certain elements of the Licensing Act 2003 to work more effectively in our local context. We have included full details of our devolution ambitions for the Committee's information.

We have a channel of dialogue underway with the Home Office Drugs and Alcohol Unit, in respect of all Greater Manchester's alcohol licensing 'asks' of Government through devolution, which provides a positive indication that many of our key observations are worthy of the fullest consideration. As such, we would therefore strongly welcome the opportunity to present oral evidence to the committee, to illustrate how we envisage the devolving of certain Licensing Act 2003 powers from Whitehall can be more effective locally, and ensure we more appropriately serve local needs.

I am aware that approaches have been made to the Clerk of the Committee offering oral evidence submission from a delegation that would include myself and the Deputy Police and Crime Commissioner with responsibility for alcohol policy (along with the Chair of the GM Alcohol Licensing Managers Group, the GM lead Chief Executive Officer with responsibility for alcohol policy, and our Director of Public Health with GM responsibility for alcohol harm reduction).

I hope that you find this submission adds to the knowledge of the committee of the Licensing Act 2003 from the experiences of a major northern metropolitan area. Additionally I hope that you are able to take up our offer and invite GM representatives to expand on this evidence.

Evidence Submission

House of Lords Select Committee on the Licensing Act 2003

Submitted on behalf of all 10 Greater Manchester local authorities, Greater Manchester Police, the Interim Mayor for Greater Manchester and the Greater Manchester Police and Crime Commissioner

Introduction

This evidence is submitted on behalf of, and has been agreed by, all 10 Greater Manchester Local Authorities and Greater Manchester Police. The evidence was drafted by the Association of Greater Manchester Authorities' Licensing Manager's Group in consultation with Greater Manchester Police and representatives of public health.

Executive Summary

This submission answers the questions posed in the Select Committee call for evidence and also includes further evidence relating to local and collective experiences across the Greater Manchester conurbation / Combined Authority footprint. Greater Manchester local authorities are currently seeking additional licensing powers through the devolution process – details of the requested changes are included in full at the end of this submission (paragraphs 16.1 to 16.14), and also referenced where appropriate in connection with some of the specific questions posed by the call for evidence.

Paragraphs 1.1 through to 14.2 cover the specific questions within the call for evidence.

Paragraphs 15.1 through to 15.4 cover further comments relating to management of licensed premises and staff training.

Paragraphs 16.1 through to 16.14 outline the specific requests which are currently under discussion as part of Greater Manchester's wider devolution programme and forward view.

Licensing Objectives

- 1 Are the existing four licensing objectives the right ones for licensing authorities to promote? Should the protection of health and wellbeing be an additional objective?**
 - 1.1** The four existing licensing objectives are now well established and address the majority of problems or issues associated with licensed premises. They form a good framework around which licensed operators can run a broadly safe and compliant business. However, we believe there is a very strong case for the introduction of a fifth, health-based licensing objective.
 - 1.2** Introducing Public Health as a responsible authority without the introduction of a health-based objective left public health bodies in the difficult position of having to make their health-related intelligence and statistics fit within the framework of the four existing licensing objectives. Difficulties have also arisen for licensing

committees and licensing officers in deciding what are, and are not relevant representations submitted by health bodies, whilst working within the constraints of the 4 existing licensing objectives.

- 1.3** The Health as a Licensing Objective pilot programme (HaLO), run across 7 local authority areas nationally (including Wigan in Greater Manchester) has demonstrated that responsible authorities would welcome a fifth licensing objective, and that it would work operationally. In Wigan, it was demonstrated that the quality of evidence submitted in support of a licensing objective of “The promotion of wellbeing and public health” was well received by both the panel and legal advisors, and would enable the committee to make decisions if health was added to the existing licensing objectives.
- 1.4** However, if considering a health-based objective, in addition to considering the issues of evidence and whether objections / representations could be submitted on health grounds, it is also vitally important that the Act, guidance and local policies are clear in respect of what is expected from operators. Alongside the question: “can we object on health grounds?” we should also be asking the question: “what are operators expected to do to promote a fifth, health-related objective?”
- 2** **Should the policies of licensing authorities do more to facilitate the enjoyment by the public of all licensable activities? Should access to and enjoyment of licensable activities by the public, including community activities, be an additional licensing objective? Should there be any other additional objectives?**
- 2.1** We do not agree with the suggestion that “*access and enjoyment of licensable activities by the public, including community activities*” should be an additional objective. This objective may be an ambition within local licensing or planning policies, but not one which operators of licensed businesses could be expected to actively promote. We suggest that this is an aspiration which should be pursued via local policy / policies, rather than a specific licensing objective to be included in national legislation.
- 2.2** Other licensing objectives could, however, be considered. One suggestion is a licensing objective which requires licensed premises to “*have a positive impact and add social value to the local area*”. Most issues would be covered by the four existing (and a fifth, health-related) licensing objectives, but requiring premises to have a positive impact and to add social value to the local area gives a broad requirement to licensed operators and lays out a clear expectation of all licensed businesses.
- 2.3** This suggested objective needs further consideration and, as with the proposed health objective, the question “what do we expect operators to do in order to promote the objective?” needs to be answered. In broad terms, however, a “positive impact” objective would require premises to be clean, well presented and attractive to potential customers. Premises should be maintained and managed in a way which improves the appearance of the locality and encourages people to visit and frequent

both the specific premise and the surrounding local area. “Adding social value” would be an encouragement for local premises to become involved in the wider community by offering services and activities which can demonstrably benefit the wellbeing and resilience of the local community.

- 2.4** Another alternative could be for the Licensing Act to include a further objective of *“promoting the requirements of the Local Authority’s statement of licensing policy”*. This would allow local authorities far more scope to use their statements of licensing policy to define the broader ambitions of the authority in how they expect licensed operators to manage their businesses, and gives an expectation that such businesses will actively manage their businesses in a way which promotes the Authority’s visions and ambitions.
- 2.5** Although the Act requires licensing authorities to produce a statement of licensing policy every 5 years, it does not specifically require licensed operators to adhere to the requirements of local licensing policy, and a licensing objective which contained such a requirement would give greater local control over the licensed trade.

The balance between rights and responsibilities

- 3** **Has the Live Music Act 2012 done enough to relax the provisions of the Licensing Act 2003 where they imposed unnecessarily strict requirements? Are the introductions of late night levies and Early Morning Restriction Orders effective, and if not, what alternatives are there? Does the Licensing Act now achieve the right balance between the rights of those who wish to sell alcohol and provide entertainment and the rights of those who wish to object?**
- 3.1** With reference to the first part of this question, we believe the Live Music Act 2012 has gone far enough. If the live music provisions were relaxed any further, there would be an increased burden on the Environmental Health function of Local Authorities and there is likely to be a negative impact in respect of the promotion of the public nuisance licensing objective.
- 3.2** Although the late night levy has been successfully introduced by a number of local authorities, we believe that further amendments are necessary in order to make a levy more appropriate and “palatable” for a wider range of different local authorities. The ability to “zone” the levy, rather than applying it to the whole of a local authority’s area would allow authorities to be more selective in the areas required to pay the levy – “making the polluters pay” rather than charging every relevant premises in an authority’s area. In addition, we believe there should be an opportunity to “grade” the levy amount based on a premise’s terminal hour for alcohol. More detailed observations are being developed as part of Greater Manchester’s scoping of additional devolved powers.
- 3.3** Early Morning Restriction Orders are, we believe, no longer viable. No EMROs have been implemented since the introduction of the legislation and we are not aware of

any local authorities that are planning to introduce an EMRO. The Greater Manchester view is that the process for introducing such an order has been shown to be hugely bureaucratic and open to challenge by individual premises.

- 3.4** We believe that a much better approach would be the ability for local authorities to be able to set their own terminal hours for alcohol sales within their statements of licensing policy.
- 3.5** With reference to the balance between the rights of the licensed trade and the rights of those who wish to object, we believe the Licensing Act could be strengthened by the introduction of a fifth, health-based licensing objective. The Alcohol Health Alliance / Healthier Futures Public Opinion Survey 2015 of responses from across the 10 Greater Manchester boroughs found 47% support for including ‘Health’ as a licensing objective and only 13% opposed. There is also an opportunity for licensing authorities to introduce saturation policies where the oversupply of alcohol is a problem as well as cumulative impact policies, which consider not only the numbers of licensed premises, but the effect they have on the local area in broader terms.
- 4** **Do all the responsible authorities (such as Planning, and Health & Safety), who all have other regulatory powers, engage effectively in the licensing regime, and if not, what could be done? Do other stakeholders, including local communities, engage effectively in the licensing regime, and if not, what could be done?**
- 4.1** With reference to responsible authorities, there are, in effect, two distinct “tiers” of responsible authority. The first tier are authorities which play an active role in enforcing licensing legislation and have powers to enter and inspect premises, such as Licensing Authorities, Trading Standards, Police and the Fire Service. The second tier includes authorities who do not hold any specific powers and do not carry out enforcement and compliance visits, such as Children’s Services and Public Health.
- 4.2** Some responsible authorities regularly engage in the licensing process and some do not. With reference to planning, we believe that legislation should be amended to require applicants for new premises licences to obtain planning permission *before* applying for a premises licence, and for clear guidance on which regime takes precedence so that, for example, a premise with planning permission requiring it not to trade after 11.00pm is not granted a licence to trade until 2.00am. This should not require a representation from the local Planning Department.
- 4.3** A number of local authorities regularly comment on a perceived disconnect between planning and licensing regimes. This disconnect is partly a local management issue, but amendments to national licensing legislation could potentially strengthen the links between Licensing and Planning.
- 4.4** Collectively, all 10 Greater Manchester Authorities are currently seeking to obtain a number of additional licensing powers through the devolution process. One of the additional powers we are requesting is the ability to add to the existing list of

responsible authorities. Regionally, Greater Manchester has a number of public bodies which could potentially play a very useful role in the licensing process, but which are currently excluded to a degree by not being included in the list of responsible authorities (and so are not formally consulted in respect of applications).

- 4.5** Included in the list of potential new responsible authorities are national bodies such as HMRC (who deal with a large amount of investigations into illegal, illicit and counterfeit alcohol and tobacco) and British Transport Police, who police the country's transport network but are not consulted on licensing matters. We have also identified several regional bodies which could play a useful role in the licensing process, such as Transport for Greater Manchester (who have many licensed premises in close vicinity to, and sometimes within, their transport hubs).
- 4.6** One further suggestion is that there could be a formal application process for public bodies to apply for status as a responsible authority – this is a method which may be used should Greater Manchester be given the opportunity to devise its own list of additional responsible authorities.

Licensing and local strategy

- 5** **Licensing is only one part of the strategy that local government has to shape its communities. The Government states that the Act “is being used effectively in conjunction with other interventions as part of a coherent national and local strategy.” Do you agree?**
- 5.1** We do not agree. The Act does not clearly integrate with other strategies and there are too many changes to the Act occurring too frequently.
- 6** **Should licensing policy and planning policy be integrated more closely to shape local areas and address the proliferation of licensed premises? How could it be done?**
- 6.1** We do, however, agree that local and national policies should be more “joined up”. There is a clear opportunity to develop a “single application process” for businesses, whereby they could submit a single application which could cover all permissions required to run a business – planning, licensing, food registration, waste contract etc. - to cut down on bureaucracy and simplify processes.
- 6.2** As part of the February 2016 Devolution Deal agreed between the Greater Manchester Combined Authority and central government, it was agreed that “*the Greater Manchester Local Enterprise Partnership, the Growth Hub and Combined Authority will work with government to develop a strategic approach to regulatory delivery, building on the Better Business for All national programme, which will remove regulatory barriers to growth for businesses*”. As part of the ongoing development of the Better Business for All partnership across Greater Manchester, GM authorities have agreed that opportunities to bring alcohol licensing into the

BBfA programme will be fully explored – in particular with regards to the local ambition for a single, shared GM licensing policy statement.

- 6.3** There should also be opportunities for local authorities to make decisions on saturation policies (where there is already an oversupply of alcohol), common terminal hours for alcohol sales etc. Such saturation policies could be combined with cumulative impact powers within the Act to give authorities greater flexibility in addressing local issues of cumulative impact and the oversupply of alcohol.

Crime, disorder and public safety

7 Are the subsequent amendments made by policing legislation achieving their objects? Do they give the police the powers they need to prevent crime and disorder and promote the licensing objectives generally? Are police adequately trained to use their powers effectively and appropriately?

- 7.1** With reference to recent amendments to the Act arising from new policing legislation, we do not believe they are achieving their objectives. The powers are complex and overly bureaucratic and officers are not adequately trained in their use. There are now no clear closure powers for licensed premises within the Licensing Act & any potential closure notices or orders must be associated with some form of anti-social behaviour. The Alcohol Health Alliance / Healthier Futures Public Opinion Survey 2015 of responses from across the 10 GM boroughs found that 70% of residents are put off from going out in their local town due to the drink-related behaviour of others. The Licensing Act should allow us to create an environment, particularly a night-time economy, where all residents feel safe. This would increase the diversity of offerings and economic activity in our town centres.
- 7.2** We believe that the Act should be amended to give police and authorised officers clear closure powers for licensed premises when they are operating other than in accordance with a licence or other permission. Currently, officers rely on sections 19 and 20 of the Criminal Justice & Police Act 2001 to deal with premises which are trading illegally, but these powers can only be used for “on” licensed premises; there are no powers to deal with “off” licence premises and a closure notice does not actually require the closure of the premise – just the cessation of alcohol sales. We believe that clear closure powers for serious breaches of licences (or trading without a licence) should be included in the Act or devolved as a local power to Greater Manchester.
- 7.3** Police officers are not adequately trained in relation to the Licensing Act, their powers and responsibilities under the Act, and associated legislation. Locally, work has been undertaken by licensing managers across Greater Manchester to give training to local police officers, but this is very much dependent on local authority and police resources.

8 Should sales of alcohol airside at international airports continue to be exempt from the application of the Act? Should sales on other forms of transport continue to be exempt?

8.1 Police officers based at Manchester Airport are concerned about the lack of regulation around alcohol sales “airside”. These officers are reporting a year-on-year increase of alcohol-related crime and disorder within the airport and sometimes on aircraft. During the most recent reporting period, 42% of all incidents dealt with by police at Manchester Airport were related to alcohol.

8.2 Although relationships between the police and businesses within the airport are good, the lack of a clear and coherent regulatory regime around alcohol sales causes serious concern for the officers tasked with policing the airport. Businesses are free to sell alcohol in an un-restricted manner and one business has even taken to selling alcohol from mobile “trolleys” to travellers waiting to board at the gates.

8.3 Such an approach would be subject to significant challenge if a licensing regime were in place and responsible authorities would be able to object if they felt it would undermine the licensing objectives. As the legislation stands at the moment, however, businesses are free to operate in whatever way they see fit, with no licensing regime in place. Airside businesses are still obliged to comply with other regulatory regimes, such as food safety, so there seems to be no good reason for such businesses to be exempt from the licensing legislation.

8.4 A licensing regime for airside premises could also go some way to tackling the problems of drunkenness and disorder on aircraft. An issue which, if it took place in a public place, would be considered to be minor public disorder, can be much more serious if it takes place in the restricted confines of an aircraft – and even more of a problem if that aircraft is mid-flight. Better controls over off-sales and the prevention of consumption of duty-free alcohol could have a positive impact on the problem of drunkenness on board aircraft.

Licensing procedure

9 The Act was intended to simplify licensing procedure; instead it has become increasingly complex. What could be done to simplify the procedure?

9.1 Contrary to the statement contained in the call for evidence “*licensing procedure has become increasingly complex*”, we do not believe this is the case and have no evidence that licensing procedures have become any more complex.

9.2 In fact, we believe that the overall aim of the Licensing Act – to grant permissions for “licensable activities” – dramatically reduced the complexities of the previous licensing regimes. Licensing procedures are no more complex today than they were in 2005 and are, in fact, probably less complex now that licensing authorities have become more familiar with the legislation.

9.3 Despite the above, however, we believe that more could potentially be done to simplify the procedure. For example, the administrative burden on applicants could be decreased by reducing the need for advertisements through print media. We also believe that new technology could be used more effectively to reduce administrative burdens on applicants and licensing authorities.

10 **What could be done to improve the appeal procedure, including listing and costs? Should appeal decisions be reported to promote consistency? Is there a case for a further appeal to the Crown Court? Is there a role for formal mediation in the appeal process?**

10.1 We believe that appeals are an important component of the licensing regime and agree that – as with other licensing regimes – there should be a further right of appeal to the Crown Court where appropriate. In addition, we believe that there is an opportunity to explore mediation in disputed cases which may avoid the need for a full court hearing.

10.2 We also believe that appeals should concentrate on the disputed facts of the case, rather than simply being a full re-run of the original hearing.

Sale of alcohol for consumption at home (the off-trade)

11 **Given the increase in off-trade sales, including online sales, is there a case for reform of the licensing regime applying to the off-trade? How effectively does the regime control supermarkets and large retailers, under-age sales, and delivery services? Should the law be amended to allow licensing authorities more specific control over off-trade sales of “super-strength” alcohol?**

11.1 It seems clear that the Licensing Act was primarily drafted with the “on” trade in mind and that it deals less effectively with the “off” trade. Whereas problems in the on-trade are usually obvious and immediate – and occur in or within the vicinity of the licensed premise – problems caused by the off-trade are usually much less obvious (but just as serious).

11.2 In addition, the off-trade has changed dramatically since the introduction of the Licensing Act in 2005. Traditional off-licences are becoming rare and alcohol is now sold in large quantities from local convenience shops, newsagents and supermarkets.

11.3 While the overall number of licenced premises has increased slightly under the Act, the growth of the off-trade is the most significant trend; around twice as many off licences than on-licences have been granted over the last ten years. The breakdown of all premise licences shows a split of 67% off licences and 33% on sales. Additionally, there has been a proliferation of alcohol delivery services which are able to deliver alcohol to the door 24 hours a day, 7 days a week. As the Licensing Act was not drafted with these types of businesses in mind, local policies and procedures have been developed to deal with such businesses.

- 11.4** It has also become increasingly apparent that the health harms associated with alcohol consumption at home are significant, but remain largely hidden. The easy availability of very cheap, high-strength alcohol and the lack of control over alcoholic measures at home are leading to a hidden epidemic of alcohol-related health harms.
- 11.5** The off-trade also contributes significantly to the issue of pre-loading associated with later nights out, but does not suffer the knock-on effects, effectively passing the problem on to the on-trade in busy town centres.
- 11.6** Another issue commonly associated with off-licence premises (particularly smaller, independent licensed shops) is an irresponsible approach to buying stock. There is no licensing regime (other than a recently-introduced HMRC registration scheme) for the wholesaling of alcohol and the amounts of illegal, illicit and counterfeit alcohol stocked and sold by independent licensed retailers is staggering. A licensing regime for wholesalers would be a welcome addition, as would measures within the Act to require retailers to adopt a more responsible approach when obtaining stock (rather than the common approach of buying suspect stock from the rear of an anonymous van).
- 11.7** There is substantial evidence that the easy availability of very high-strength and very cheap lager and cider causes serious health and anti-social behaviour issues, particularly in more deprived areas. Some local and regional schemes have aimed to tackle the problem by introducing “reducing the strength” schemes in an attempt to effectively ban the sale of such products. We believe that a more responsible approach to selling alcohol in general, and high-strength products in particular – would have a positive effect. In addition, Government should look to influence manufacturers to reduce the ABV of such products across the board.

Pricing

- 12** **Should alcohol pricing and taxation be used as a form of control, and if so, how? Should the Government introduce minimum unit pricing in England? Does the evidence that MUP would be effective need to be “conclusive” before MUP could be introduced, or can the effect of MUP be gauged only after its introduction?**
- 12.1** There is evidence that introducing a national minimum unit price would have a positive impact in reducing the overall consumption of alcohol across the population. Evidence suggests that the greatest impact would be on those who are considered heavy drinkers, and less so on moderate drinkers.
- 12.2** The Office for National Statistics calculates that alcohol is now 60% more affordable than in 1980. Locally, a recent alcohol pricing survey conducted in Leigh, Wigan, by Healthier Futures found alcohol being sold as cheaply as 16p/unit. It is clear that alcohol available at such super cheap prices will lead to increased social economic and health harms.

- 12.3** We also believe it would have a positive impact for the “on” licensed trade by reducing the current inequality between the price of alcohol in shops and supermarkets, and the price of alcohol in pubs and other on-licensed premises.
- 12.4** There is already substantial academic evidence that a national minimum unit price would reduce overall alcohol harms. Evidence from the Sheffield University Alcohol Research Group (together with evidence from minimum pricing in several Canadian provinces) continues to show that this policy can have a dramatic health and crime reduction effect. MUP would save lives, cut costs to public services and increase economic productivity.
- 12.5** We do not believe that further evidence is required before introducing a MUP. We believe that a minimum unit price should be introduced nationally, rather than locally.

Fees and costs associated with the Licensing Act 2003

- 13 Do licence fees need to be set at national level? Should London, and the other major cities to which the Government proposes to devolve greater powers, have the power to set their own licence fees?**
- 13.1** The current fee levels under the Licensing Act are too low. The fees were set in 2005 and have not increased since then, despite significant rises in operating and administration costs for Local Authorities. Local Authorities do not cover their own costs and the licensed trade are currently effectively subsidised by the council tax payers in every local authority area.
- 13.2** Local Authorities now have effective measures in place which would allow the accurate calculation of licensing fees which would cover the cost of administering the licensing regime. It is now time to allow local authorities the power to charge fees which reflect the cost of running an effective licensing service.

International comparisons

- 14 Is there a correlation between the strictness of the regulatory regime in other countries and the level of alcohol abuse? Are there aspects of the licensing laws of other countries, and other UK jurisdictions, that might usefully be considered for England and Wales?**
- 14.1** Scotland already has a fifth, public-health related licensing objective, however, during a visit to Glasgow by key senior officers, it was found that the way this objective is promoted differs significantly from the promotion of objectives in England and Wales. We believe the principle of oversupply and saturation policies recognised by the Scottish legislation would be useful additions alongside a health-related objective.
- 14.2** Evidence from Scotland also suggests that the recent reduction in the drink-drive limit has had a further effect on the overall consumption of alcohol in general. The

Alcohol Health Alliance/Healthier Futures Public Opinion Survey 2015 of responses from across the 10 boroughs found 77% support (with only 6% objecting) to lower the drink drive limit to 50mg alcohol/100ml blood, in line with Scotland. We believe that this is an opportunity which is worth further exploration.

15 Further comments

- 15.1** The Licensing Act does not currently define the role of Designated Premises Supervisor sufficiently well. The role of DPS is a vital one in the licensed trade, but the Act only required the DPS to be “identifiable with the day-to-day management of the premise.
- 15.2** The lack of a clear definition of the role has led to some very blurred management practices within many licensed premises – sometimes up to four separate levels of management, some of which have no responsibility in relation to the Licensing Act.
- 15.3** Some Premises Licence Holders employ a 3rd party management company to run a premise on their behalf (a role not defined within the legislation or responsible in any way for any mismanagement of the premise). Pub management companies can then employ a DPS to manage the premises, but the DPS can then further employ a bar manager, who, as with the pub management companies, does not have any responsibility under the Act. This “separation of functions” blurs the lines of responsibility and can lead to badly-managed premises and the undermining of the licensing objectives.
- 15.4** We believe that more emphasis should be placed on training, not only for staff who sell and supply alcohol and for premises licence holders, but for elected members involved in the licensing decision making process. The current requirement for personal licence holders to pass a course of instruction is limited in its scope and the vast majority of alcohol sales are not carried out by personal licence holders (although they must be authorised by a PLH, this is generally a matter of prior consent, rather than direct authorisation). In Scotland, a councillor who is a member of a Licensing Board must not take part in any proceedings of the Board until the member has produced the evidence required that they have received approved mandatory training. This requirement should be considered in England and Wales.

16 Greater Manchester & the Devolution Agenda

- 16.1** Greater Manchester's local councils have a history of working together. This record of co-operation, and the creation of the GMCA, helped us lead the way on city-region devolution through the 2014 Devolution Agreement. The agreement gives the region additional powers, and greater accountability through a new elected mayor. The mayor will lead the GMCA and will be elected in a ballot of all Greater Manchester voters in 2017. The region built upon this innovative agreement with further devolution in the Summer Budget 2015 along with additional powers in

the November 2015 Spending Review and Autumn Statement. A fourth devolution agreement was then agreed in the March 2016 Budget

- 16.2** Amongst the most significant developments in the context of this evidence submission is that, as of 1 April 2016, Greater Manchester became the first region in the country to take control of its combined health and social care budgets – a sum of more than £6 billion. This means that – for the first time – leaders and clinicians will be able to tailor budgets and priorities to directly meet the needs of local communities and improve the health and wellbeing of the 2.8million residents.
- 16.3** Local reflections on the Licensing Act 2003 are therefore taking place in the context of our unique wider opportunity to tackle some of the poor health inequalities that currently blight the region, and make an important contribution to the wider GM vision of shared prosperity for all residents and communities.
- 16.4** We believe that Greater Manchester is extremely well placed to understand how the Licensing Act could be most effectively tailored to local circumstance, and perceive a key opportunity for additional licensing powers to form part of a future devolution agreement. Work is currently being undertaken to explore a number of key “asks”, which are summarised in the following paragraphs:
- 16.5** **A Single Greater Manchester Licensing Policy.** We believe that there would be multiple benefits in adopting a single, regional licensing policy covering the whole of Greater Manchester rather than the current, disjointed approach of 10 separate licensing policies. Work is currently underway to develop a single enforcement & compliance policy for the whole of Greater Manchester and the logical next step would be to introduce a single licensing policy.
- 16.6** We believe that there would be multiple benefits in securing a devolved ability to determine and apply a single, common GM licensing policy. Whilst decisions on applications & reviews would still be made locally by elected members of a local licensing authority within each authority, this would support a greater consistency and commonality in the regulatory approach across Greater Manchester. The change would promote an effective and tiered approach to regulation and enforcement, grounded in problem-solving, which in turn would eliminate inefficiencies and reduce the risk of legal challenge. Work is currently underway to develop a single enforcement & compliance policy for the whole of Greater Manchester and the logical next step would be to introduce a single licensing policy statement.
- 16.7** **Devolved powers for Greater Manchester to define its own licensing objectives.** There has been much discussion about the possibility of introducing a fifth, health-based licensing objective. If Greater Manchester were given the ability to define its own additional objectives, then, rather than waiting for a change to national legislation, the region could set its own objectives based on its own regional problems.

- 16.8 Devolved powers for Greater Manchester to devise its own list of additional responsible authorities.** Regional flexibility over additional RAs could allow Greater Manchester to address regional issues through the additional of responsible authorities which, although not national bodies, would, nonetheless, play a useful role in local licensing. For example, Transport for Greater Manchester, British Transport Police and HMRC.
- 16.9 Devolved powers for Greater Manchester to set its own additional mandatory licence conditions.** Mandatory conditions are set by the Secretary of State and apply to all premises licences and club premises certificates in England & Wales. The ability to set mandatory conditions across Greater Manchester would allow regional decisions to be made to address emerging issues or problems which are specific to Greater Manchester.
- 16.10 A GM “Enforcement & Compliance Concordat”.** A document which outlines a common approach to enforcement & compliance for licensed premises which will be agreed and implemented by all 10 Greater Manchester licensing authorities.
- 16.11 Powers for police and authorised officers to suspend premises licences where appropriate.** Clearer powers for officers within Greater Manchester to deal with serious breaches of licensing legislation by suspending premises licences until compliance has been reached. Off-licensed premises should be included alongside on-licensed premises
- 16.12 Cross-border powers to enter & inspect licensed premises.** Local Authority “authorised officers” are only currently authorised to carry out inspections and use enforcement and compliance powers within their own local authority areas. Cross-border powers would allow greater flexibility, particularly during large events or for county-wide *days of action*.
- 16.13 Powers to determine mandatory licensing hours locally.** An opportunity for Greater Manchester authorities to make local decisions about licensing hours on an area basis rather than for each individual premise.
- 16.14 Extension to current Cumulative Impact Policy powers.** Consideration to be given to the possibility of extending special policies for cumulative impact to include saturation policies where it is felt there are already enough licensed premises.

2 September 2016

Clive Grunshaw – written evidence (LIC0147)

Clive Grunshaw Police and Crime Commissioner for Lancashire

House of Lords Select Committee on the Licensing Act 2003

Introduction:

1. As Police and Crime Commissioner for Lancashire I am responsible for engaging with the public on policing matters, setting the budget and precept as well as the priorities for Lancashire Constabulary and holding the Chief Constable to account for the performance of the police.
2. I am writing alongside the submission made by Lancashire Constabulary which I am aware of and relates to operational policing considerations and their perspective. As Police and Crime Commissioner, my submissions relate more to community impact and the feedback I receive from members of the public, community organisations and groups as well as other public and statutory providers and stakeholders.
3. I have not responded to all the Committee's questions but have addressed points 1, 4, 7, 11 and 14.

Licensing Objectives (1):

4. I support the view that public health and wellbeing be added to the priorities that licensing authorities promote. I agree that the four main priorities are right but given the increased focus on integrated public services, where the work and impacts of one service shouldn't be viewed in isolation from others.
5. Since the 2003 Act, public health has now become the responsibility of local authorities and this allows for greater integration with licensing and planning functions and this opportunity should be explored further within the licensing regime. I believe that local authorities, police and other partners are now much better placed to understand the public health impact of decisions made in other areas. As such I believe that the experiences from Scotland as well as the greater integration of public services in England and Wales could allow scope for including the public health priority in some form within the licensing framework.
6. Whilst evidence is difficult to collate at the moment, a move in this direction may shift the focus towards better awareness of the longer term impacts on people and place of decisions that have previously been made in more isolated or separated departments.

Responsible Authorities (4)

7. Myself or representatives from my office attend Lancashire based meetings to try and join up approaches across police and other responsible authorities on licensing including on Alcohol Harm, Substance Misuse and the licensing officers group.

8. The current environment for local authorities, health bodies and the police is very challenging given the cuts faced by all public bodies across the board. This does raise challenges for working together given the difficulties around resourcing, especially for bodies such as trading standards.
9. From engaging with the public around policing policy I am aware that a lack of knowledge or confidence on a given issue can make it difficult for the public to feel engaged. It would be helpful if a review of the licensing arrangements could consider public involvement at an earlier stage of the process to increase awareness and engagement.

Crime, disorder and public safety (7)

10. The amendments made by the Police Reform and Social Responsibility Act (2011) giving health authorities a statutory role in the licensing process are a welcome step and I believe this further adds to the case for having a public health consideration. This would mean that the health perspective can be fully utilised in the process and may allow longer term benefits to be achieved incrementally through the licensing regime.

Sale of alcohol for consumption at home (11)

11. I am aware of growing issues with the 'off trade' as the disparity of price and increased availability of alcohol through off-trade locations including home deliveries. Price disparity can lead to 'pre-loading' with people drinking large quantities before getting to licensed premises which can lead to more issues as they continue drinking once they are out.
12. I am aware of the concerns expressed by Lancashire Constabulary surrounding the lack of measures available to limit this under the existing legislation, especially drinks promotions. There is a link between off-trade sales and anti-social behaviour as alcohol is consumed in town centres and public spaces as well as 'at home'.
13. A public health consideration would facilitate greater consideration of the long term impact of binge drinking and whether special offers, lower prices and high strength alcohol can be better mitigated through licensing.
14. I would welcome measures that may delay people who have clearly already consumed large quantities of alcohol being able to access more through the 'off-trade'.

International Comparisons (14)

15. As mentioned above I believe that lessons can be learned from the Scottish experience of having a public health consideration as part of the regime. New priorities and impacts will always be difficult to assess as their impact can be challenging to quantify immediately but I believe we have an opportunity to shape future generations and that the benefits will be seen not just in health but also on the streets and in our communities. We know that alcohol use can cause immediate harm but that there is a longer term risk of misuse that can impact on the likelihood to be involved in violent

crime and anti-social behaviour. If these considerations can be linked in more clearly to the licensing approach then it will benefit all services in the long term.

Additional comment

16. An additional consideration for me as a Police and Crime Commissioner are the proposed changes to the police funding formula which was proposed last year and is currently under review by the Home office.
17. The review contained provision for police funding to be partly allocated on the basis of the number of licensed premises in the force area. However this did not include the number of off-licenses. Whilst it is important to recognise the impact that the number of licensed premises can have on police demand the density of these should also be considered, as well as the presence of off licenses.
18. If the Committee have any further queries related to any of the above or I can be of further assistance I would be happy to do what I can to assist.

7 September 2016

Harmood, Clarence, Hartland Residents Association – written evidence (LIC0033)

These are the views of the Harmood, Clarence, Hartland Residents Association based in three roads opposite the Stables Market in Camden, part of the fourth biggest tourist attraction in the UK. As a result of the growth of the Camden Markets and of the Licensing Act 2003, the Residents Association has found itself surrounded, and encroached upon, by licensed venues not only from the Markets but also from licensed premises in Chalk Farm Road which separates the residential streets from the Stables Market. The other side of Stables Market is lined with 3 large estates of social housing, whose tenants suffer the same problems as ourselves in terms of disturbance, noise and pollution.

While these are our own views, they are echoed by those of communities throughout the United Kingdom.

Also attached below are notes on my own experience as an Interested Party in Licensing Hearings.

1. The area in which we live used to be a quiet backwater until the arrival of the market in the 1970s when a Sunday crafts market brought more life to the area. Later on separate markets operated in different parts of Camden Town and Stables joined up with Camden Lock Market. The area became very busy in the daytime but was relatively peaceful at night until the arrival of the 2003 legislation, which led the Council to hand out late licences with seeming abandon - some to 4am. Chalk Farm is quite unlike many areas in London and elsewhere where the Night-Time Economy flourishes in city centres. This is primarily a residential area with houses and flats on three sides of the markets. The rapid growth of venues and the generous hours granted them by licensing panels established a powerful core of licensed premises and a created a momentum that has been difficult to reverse. The designation of Camden Town as a Special Policy Area in 2011 halted the flow but the damage had been done. With a combination of late licences and Temporary Event Notice extensions, the Markets (now in common ownership) are able to stay open in whole or in part until the early hours every weekend. The Council seems powerless to stop them.

2. The effect of this Night-Time Economy (NTE) on residents has been catastrophic for those living near the main road and in the two roads used by late-night revellers to make their way home or to the overground railway. On summer nights in particular, residents suffer from the noise of shouting and swearing, banging of car doors and loudly playing car radios, urination and vomiting in the street (and front gardens). Often, after closing time, the party is continued on the pavement outside residents' houses. Residents who can, have moved to a room in the back of their houses; others have installed double glazing. Neither solution is completely successful in cutting out the noise of the revellers.

3. The Council is aware of these problems and has introduced initiatives to try to mitigate the worst effects of the NTE. None of them has succeeded in our area, which may be considered beyond hope - the Wild West as it is sometimes known. Nevertheless, the Licensing Panels do what they can to prevent worse damage to residential life near the Special Policy Areas by carefully scrutinising new applications with reference to the "presumption to refuse". Residents are grateful for that, and for policy scrutiny of applications within the SPA. Unfortunately no group, however well intentioned, is able to reduce the extremely generous hours given to venues in the period between the introduction of the Licensing Act in 2003 and the change of policy brought about by the introduction of the SPAs in 2011/12. A venue's hours can only be reduced by means of a Review - an increasingly rare event likely, at most, to reduce the venue's hours by an hour. Could licences be time limited in certain circumstances and/or hours reduced as a result of persistent flouting of licence conditions? Residents are not aware of any sanctions being imposed on venues that have violated the conditions of their licences. They usually get away with a gentle reprimand.

4. It is recognised but not widely acknowledged that there is a gulf between the size of the Night Time Economy (NTE) and the ability of the infrastructure to cope with it. Since the 2003 Licensing Act, the NTE has grown exponentially, but the infrastructure needed to contain it - policing, street cleaning, lavatory facilities, monitoring and decision-making by the Council - has remained virtually unchanged. Residential streets were never intended to be used by large numbers of inebriated people looking for somewhere to urinate or vomit; more seriously, A&E departments are scarcely able to cope with the additional numbers brought to them at the weekend by virtue of the NTE. Similarly, the financial arithmetic is out of kilter. While huge sums accrue to the venues, the financial burden lies with the Councils and the NHS. The introduction of the Night Time Levy has been a first step to correct the balance, but it coincides with a further cut in the government grant to Councils, so merely serves to mitigate the effects of this cut.

5. One of the most serious issues is the prevalence of the Temporary Event Notice (TEN). It is evident from the legislation and the commentary around it that TENs were primarily meant to enable community events to take place in premises not otherwise licensed to play music/sell alcohol. In urban areas, and certainly in Camden, TENs are used by all or almost all the large venues, to the maximum 15 a year per premises and lasting for up to 21 days, to extend licensing hours. As a result, there is at least one local late TEN event on most weekend nights. Residents are sometimes, but not always, troubled by noise from venues and that is discussed below. They are ALWAYS disturbed by people issuing from licensed premises at any time up to 5am. We have resident parking until 11pm and visitors are allowed to park after that time. They are exceedingly rowdy when they return to their cars.

6. Members of this Residents Association and those who live in other areas close to the Markets suffer, especially in the summer months, from noise from venues. We are encouraged to complain to the Weekend Noise Service, but are hampered by the difficulties of distinguishing one venue from another - even if one is prepared to leave one's bed and

brave the throng. (It can be difficult to tell which venue is being noisy even when standing outside.) At one time residents believed that sound limiters provided the answer, but the level appears to be decided by the venue. Sound limits need to be set by the Council and sound limiters need to be under Council control and not subject to modification by the venue. Similarly, a condition should be added to licences to ensure that all doors and windows are closed when there is night-time music.

7. Some of the problems suffered by residents in this area are amenable to solution at local level, while others can only be solved nationally. We suggest that these are examples of nationwide problems with a national solution:

The first is that Temporary Event Notice events need to be curtailed in some way, and this cannot be done at a local level. The terminal hour could be cut back - it is currently 5am; the number of TENs available to an individual could be curtailed (although it is likely that another staff member would take up the slack, leaving the situation unchanged). The more practical solution is a complete rethinking of the Temporary Event Notice, its purpose, administration and operation. This has to be done nationally and this "Call for Evidence" is the perfect vehicle for such a change.

The second is a re-examination of the rules and conditions governing the licences of venues. Some of these are decided locally and that is as it should be. Others, such as sound limits, are surely of significance wherever the venue, and we hope that the committee will study them all in some detail (or with expert help) so that the worst consequences to the lives of residents in all parts of the country will be alleviated - and general health improved.

Licensing procedures

This is an addendum to the note sent from the Residents Association. Because the area in which we live is inundated with licensing applications, I attend Hearing as an Interested Party on average once a month. Some of the venues are not in my immediate neighbourhood but are sufficiently close for late hours to be of concern. In Camden Special Policy Area very few other residents object. They do not know that they can object: at best there is a small blue notice in a window whose significance they may be unaware of. I do not know whether the lack of resident involvement is a national problem or whether it is confined to Camden, but I bring it to the attention of this committee.

The committee has asked for suggestions for speeding up the process of dealing with licensing applications. The most obvious of these is some curtailment of the opportunities given to applicants to postpone the date of their Hearings. In my experience this happens in about a third of cases, sometimes several times, and usually the day before the Hearing. Would it be unreasonable to postpone Hearings once only - by law - or at least to postpone them only for certain limited reasons? That would certainly speed up the process and by consequence enable applicants to get a speedier decision.

I do not know whether the licensing forms and standard letters are common to all Councils. I do know that in Camden, within the Special Policy Areas, applicants are advised to discuss any problems raised by Police and Interested Parties. This is good practice outside Special Policy Areas, but seems to me to make no sense within the SPA, where there is a 'presumption to refuse'. If the letters are common to all Councils, may I suggest that someone examines them to see whether they are still relevant.

The same problem applies to the Licensing application form. Is there any advantage in its being so brief, not requiring any explanation of the activities which the applicant expects to carry out other than provide alcohol, music etc at certain hours? The Hearing would certainly be speeded up if more information appeared on the form and less had to be provided at the Hearing itself.

Related to the point above, it seems illogical that the Interested Party or Parties have to state their objections BEFORE the applicant speaks. Would it not be more logical for the applicant first to state his or her case and for the Police, Licensing Authority and Interested Parties to state their objections in the knowledge of what has been proposed?

In other respects, I find the procedure followed at Licensing Hearings to be logical and efficient and I am not sure that great changes are needed to speed them up.

Patricia Thomas

29 August 2016

Harmood, Clarence, Hartland Residents Association – supplementary written evidence (LIC0169)

I am grateful for the opportunity to supplement the written evidence supplied to the Select Committee in September and given in person on October 11. There is still more to be said, but I am confining the supplementary material to two matters, one very small and the other difficult and unwieldy. Further reflection on both was stimulated by the discussion at the Select Committee which gave me my first opportunity to discuss matters with knowledgeable individuals outside the Borough of Camden.

1. In my original representation I touched on the procedure before and during Licensing Hearings. In general, the procedure is satisfactory and probably does not need more than gentle tweaking, but one small but vital matters needs amending. Following introductions, the formal Hearing begins with representations/objections from the police, other statutory authorities and residents (interested parties). Applicants and Panel members can ask questions of those who have spoken, and the applicants are then invited to present their case. After this, neither statutory authorities, interested parties or applicants may speak except to answer questions until the final, summing up, stage.

The problem here is that the statutory authorities and interested parties are asked to make their representations without necessarily knowing what the applicants plan to do and are at a serious disadvantage as a result. Their only information is on the exiguous application form, on which the applicant has to supply answers to questions about timings, ways in which they contribute to the licensing objectives and not much else. The ‘objectors’ have to guess the details of the applicant’s plans before they are laid out by the applicant.

This seems to be the wrong way round and it is difficult to see what could be lost by reversing the order so that the applicant makes his/her case at the outset and the statutory authorities and interested parties may comment in the full knowledge of the activities proposed.

2. The second problem is larger and more intractable. At the Select Committee meeting on October 11, Baroness Grender raised the question of temporary event notices (TENs). She was familiar with the TEN system in connection with a school summer fair and asked whether residents were adversely affected by them. Of the four witnesses on that day, only I perceived the TEN system as a serious problem. It is an intractable problem within Camden and appears to be based on an anomaly and misinterpretation of the original intentions. If this problem does not extend beyond Camden at present, it is likely to do so if and when venues in other authorities learn of the TENs’ undoubted possibilities.

Temporary event notices were indeed intended for occasions such as those mentioned by Baroness Grender. A temporary event notice is required before carrying out licensable

activity on unlicensed premises, or when the activity is outside the scope of an existing licence. The activity so licensed may last for up to seven days, and a premises may be granted twelve TENs in any one year. No more than 499 people may attend a TEN.

A TEN application is 'notified' to the police and the Council's Environmental Health Department. If an objection is made by either statutory authority, the application is heard by a Licensing Panel at a Hearing.

The cost of applying for a TEN is £21 and the authorities have to make a decision within ten days of notification.

TENs were meant to apply to charitable events, weddings, private parties and so on and the rules no doubt work very well when so applied. The wording of the Government Guidance published in April 2013 enables a TEN to be applied equally to any nightclub or similar premises - again for a payment of £21. It is not known how widespread is the practice of nightclubs and bars taking advantage of the provisions of the TEN, but the bars in Camden Town are certainly familiar with the opportunities provided by the TEN. As a result there is at least one TEN in or near the Stables Market in Chalk Farm (where I live) almost every weekend night, especially in the summer months. As a TEN allows the premises to stay open until 5am, there can be a huge disturbance to residents on successive weekends (and occasionally weekdays). The fact that we lie within a cumulative impact or Special Policy Area, makes no difference to the availability of TENs in Camden Town, and the volume of applications/notifications is so high that a refusal or reference to a Licensing Panel is very rare indeed. (Refusals are typically made only because the paperwork is faulty.)

In many cases the TENs in Camden come into conflict with the provisions of the licensing regime in circumventing the steps necessary for licensing activities. In saying this, I do not think I am being controversial or that the licensees would deny that TENs are being used for the purpose claimed below.

(a) a series of TENs may be used by a licensed premises which is seeking a time extension for its licence in the near future. If it has held a number of TENs over a period of time, and received no complaints, it will present the fact to the Licensing Panel as evidence that a late licence would not add to the cumulative impact in the Special Policy Area.

(b) if a licensing application has been refused after a Licensing Hearing before a Licensing Panel, the unsuccessful applicants can carry out the same operations through a series of TENs. Someone with a personal licence may hold up to 50 events a year. (It is only fair to say that many TENs have been held for this purpose, but the personal licence has not so far been exploited in this way.)

(c) a TEN may be used experimentally, to discover the potential popularity and/or profitability of a certain activity. Although this is legitimate in its own terms, this was

never the intention of the Licensing Act, and the TEN serves as a means of circumventing the Act.

The operation of TENs seems to have opened up an anomaly which may or may not be peculiar to the area in which I live but which, if so confined, will almost certainly extend elsewhere unless curbed. On behalf of all the residents of Camden Town's Special Policy Area, I urge the Select Committee to examine the operation of TENs and to find a way of returning them to their original purpose - or at least to curb their worst excesses in terms of availability, hours, the modesty of the fee etc. Clearly the TEN which is used for a school event such as Baroness Greender suggested, or for a similar purpose, would be exempt from such strictures. The two sets of circumstances are so different that it should not be difficult to apply appropriate rulings to each kind of event.

18 November 2016

Healthier Futures – written evidence (LIC0097)

Healthier Futures is a social enterprise and our mission is to help people live longer, healthier, happier lives. We are a member of the Alcohol Health Alliance UK, an alliance of more than 40 non-governmental organisations which work together to promote evidence-based policies to reduce the damage caused by alcohol misuse. This response was prepared with the kind assistance of the Alcohol Health Alliance.

Licensing objectives

Are the existing four licensing objectives the right ones for licensing authorities to promote? Should the protection of health and wellbeing be an additional objective?

The current four licensing objectives cover important areas impacted by licensing and the consumption of alcohol, but the effectiveness of the Act is hampered by the lack of a health objective. This would allow all of the responsible authorities within the Act to better address the undoubted health impacts that alcohol can, and does have on local communities.

Evidence suggests that the addition of a health and wellbeing objective would represent an evolution and not a revolution within licensing.²⁵⁵ It would make amends for a clear legislative gap within the Act and allow for the more even application of the current four objectives. Some local authorities already address some more proximal health issues related to licensing using the current four objectives, demonstrating that it can be done, albeit with limitations. The addition of a specific objective would aid this further and do a significant amount to encourage other local authorities to take this approach. The LGA has found that 9 out of 10 Directors of Public Health report that there is demand for a health objective.²⁵⁶

If any local authorities have specific examples that would support this point please add them here.

Should the policies of licensing authorities do more to facilitate the enjoyment by the public of all licensable activities? Should access to and enjoyment of licensable activities by the public, including community activities, be an additional licensing objective? Should there be any other additional objectives?

The Section 182 Guidance should be far clearer about the fact that the Act, as administrative law, is to be promoted with a view to the wider public interest, not just the night time economy. This does not always happen in practice,²⁵⁷ and there are many examples of licensed premises, particularly in saturated areas, undermining the local public good. A

²⁵⁵ Foster. J., Charalambides. L., (2016) [The Licensing Act \(2003\): its uses and abuses 10 years on](#). Institute of Alcohol Studies. In particular see [here](#).

²⁵⁶ LGA Survey (Jan 2016) [Public Health and the Licensing Process](#)

²⁵⁷ Foster. J., Charalambides. L., (2016) [The Licensing Act \(2003\): its uses and abuses 10 years on](#). Institute of Alcohol Studies. Chapter 4.

greater focus on this both within individual decisions, and licensing policies, would help to ensure that decisions are made in a sustainable way and that they do not undermine the local public good.

The Equality Act 2010 already places obligations on local authorities to ensure access to licenced venues, and is referenced in the Section 182 Guidance. This could be made more prominent, but there is no need to duplicate the Equality Act within the 2003 Licensing Act.

The balance between rights and responsibilities

Has the Live Music Act 2012 done enough to relax the provisions of the Licensing Act 2003 where they imposed unnecessarily strict requirements? Are the introductions of late night levies and Early Morning Restriction Orders effective, and if not, what alternatives are there? Does the Licensing Act now achieve the right balance between the rights of those who wish to sell alcohol and provide entertainment and the rights of those who wish to object?

The lack of a workable Early Morning Restriction Order is a clear strategic failing within the Act. Many local authorities and police forces would like to be able to use this tool, and restricting excessively late closing times is known to significantly reduce alcohol related crimes and associated police costs.²⁵⁸ Late night levies are currently far too inflexible and so have only been practical in limited locations. Recent Home Office plans to address this problem are very welcome.

It is difficult to assess the overall balance of the Act because of the large variations in the way that it is implemented. In some areas local authorities do not operate on a level playing field with the licenced trade, who at times have access to more specialist legal advice, and local authorities can run the risk of significant costs if taken to appeal. This is not always a problem, but can at times result in the balance falling too favorably towards the licenced trade.

Do all the responsible authorities (such as Planning, and Health & Safety), who all have other regulatory powers, engage effectively in the licensing regime, and if not, what could be done? Do other stakeholders, including local communities, engage effectively in the licensing regime, and if not, what could be done?

In general it is uncommon for all of the responsible authorities to engage in licensing, and the process would benefit from better involvement, particularly from planning and child protection. In many areas public health bodies would like to engage more but find the lack of a specific objective to be problematic.

Licensing and local strategy

²⁵⁸ Foster. J., Charalambides. L., (2016) [The Licensing Act \(2003\): its uses and abuses 10 years on](#). Institute of Alcohol Studies. Page 127

Licensing is only one part of the strategy that local government has to shape its communities. The Government states that the Act “is being used effectively in conjunction with other interventions as part of a coherent national and local strategy.” Do you agree?

The development of the Act in recent years has included a welcome shift towards crime and disorder issues, with the Modern Crime Prevention Strategy continuing this trend. However, far more could have been done to encourage responsible authorities to use the Act better as it is. This is a strategic approach, and other notable failings include the EMRO, the inflexible way in which the LNL was introduced and the lack of any meaningful policies to address the impact of very cheap alcohol.

At a local level the Act can be used in an effective strategic way, using Statement’s of Licensing Policy (SLP) to set out a clear and positive view as to what the public good in relation to licensing requires in an area. Some are also well coordinated with other local strategies, such as the planning strategy, the corporate strategy, or the health and wellbeing strategy.

This is not necessarily common though, and many SLPs are quite minimal and do not set out a vision as to what the public good may require from licensing. This is one reason why the Act is often used in a reactive and unresponsive manner, waiting for problems to arise and only then trying to address them.

Should licensing policy and planning policy be integrated more closely to shape local areas and address the proliferation of licensed premises? How could it be done?

Yes, the two should be better integrated, although while this approach may help, it would not necessarily make a significant impact on the proliferation of licensed premises. Another key factor for this is the decision making process and the way in which the locality and evidence are considered.

Crime, disorder and public safety

Are the subsequent amendments made by policing legislation achieving their objects? Do they give the police the powers they need to prevent crime and disorder and promote the licensing objectives generally? Are police adequately trained to use their powers effectively and appropriately?

Amongst others, the Police Reform and Social Responsibility Act (2011) made the following changes:

It made local authority licensing teams a responsible authority in their own right: This has been very beneficial, and many local authorities use this well to uphold their SLP.

Health bodies a responsible authority: this was a welcome step in the right direction, but health is hampered by not having a specific objective.

Lowered evidential threshold to appropriate rather than necessary: this has had a minimal impact and many lawyers view the change as making no practical difference. There are

significant misunderstandings about the evidential threshold used within decision making under the Act. As administrative law, decisions do not ask for certainty, or evidence to prove something definitely would or would not happen, it asks for decisions and evidence on the balance of probabilities. This is often misunderstood, something which greatly helps the licensed trade, who are keen to up the evidential threshold as this makes it harder to identify that premises is linked to a problem.²⁵⁹

Changing the local residents' vicinity test: this has been very beneficial.

Regarding police powers to prevent crime and disorder, the changes, which include additional powers of entry for the police, have helped in this way. However, the biggest obstacle to the promotion of the objectives is the fact that many responsible authorities do not actively 'promote' them, but take quite a reactive approach.

Promoting the prevention of crime and disorder should involve looking at factors that may lead to crime, and so to undermining the objectives. This is a proactive and forward looking view which means that problems should be addressed before they are developed, based on the likely future impact of a new license.

However, many local authorities do not 'promote the prevention', but take the view that you have to wait for a problem to arise, and to undermine the objectives, before then trying to manage it down. Changing this view would make a significant difference to the way in which the Act is used.

Should sales of alcohol airside at international airports continue to be exempt from the application of the Act? Should sales on other forms of transport continue to be exempt?

It seems odd that the Act does not apply airside at airports as the promotion of the objectives is just as relevant in this location. In fact there are potentially additional risks related to passengers being temporally displaced and confined within aircraft. Indeed, recent figures showed that 422 people were held on suspicion of being drunk at an airport or on a plane in the last two years.²⁶⁰

Regarding other forms of transport, the sale and consumption of alcohol on trains can cause specific problems, and can effectively result in additional preloading or on-route loading. In some areas large groups frequently buy large amounts of alcohol from the off-trade, and drink this on the train while traveling to their destination on a Friday or Saturday night. They then arrive in a very intoxicated state, causing significant problems. Reportedly this is a particular problem on the east coast mainline, with groups traveling between cities such as Newcastle and York, amongst others.

Licensing procedure

²⁵⁹ Foster. J., Charalambides. L., (2016) [The Licensing Act \(2003\): its uses and abuses 10 years on](#). Institute of Alcohol Studies. In particular see [here](#).

²⁶⁰ [Airport alcohol sales to be 'examined' by Lord Ahmad](#). BBC news

The Act was intended to simplify licensing procedure; instead it has become increasingly complex. What could be done to simplify the procedure?

The Act does represent a significant simplification when compared to the previous licensing regime in a number of ways, as it combined alcohol and entertainment, and has greatly clarified the issue around granting closing times. There is a consensus that the Act has also enabled better joint working, both between the regulatory bodies, and between these bodies and the licensed trade.

In general the alterations to the Act have addressed deficiencies and problems. Some areas within the Act were originally too focused on tourism and the sociable benefits of licensing, while paying too little attention to the problems that can arise. Alcohol is regulated for a reason and it is a mistake to assume that licensing can automatically be simplified without producing knock on problems.

It is arguable that many of the simplest sections within the Act are the most problematic to administer and enforce, particularly Temporary Event Notices (TENs). These result in significant shortfalls for local authorities; they cost £21 but Westminster Council report that they cost at least £120 to process. Their overly light touch approach has effectively resulted in them working as a loop hole, allowing existing premises to extend their hours with limited oversight. This makes the more regulated elements of the licensing regime harder to enforce.

As mentioned in previous answers, rather than contemplating additional changes to the Act, a more productive approach would be to ensure that local authorities use the Act, as it is, to its full potential. One key issue here relates to fees, and the system could arguably be both simplified and strengthened for local authorities if they were all able to fund their licensing operations adequately. A second issue relates to the decision making process and the way in which misconceptions about this often favour the licensed trade.²⁶¹ Clarifying these misunderstandings would greatly improve and simplify the process, and could help to address the often wide variations in the application of the Act.

What could be done to improve the appeal procedure, including listing and costs? Should appeal decisions be reported to promote consistency? Is there a case for a further appeal to the Crown Court? Is there a role for formal mediation in the appeal process?

The better reporting of appeal decisions would be beneficial, and this could be aided by updating the Section 182 Guidance with case law developments so that it better reflects the practical application of the Act.

There is a case for exploring the use of mediation, but local authorities should not be pushed towards unnecessary compromising when they have a clear duty to uphold and promote the licensing objectives in the interests of the local community.

²⁶¹ Foster. J., Charalambides. L., (2016) [The Licensing Act \(2003\): its uses and abuses 10 years on](#). Institute of Alcohol Studies. See chapter 14.

An important point to make here involves the general quality of licensing decisions. The higher the quality of the original decision, the less likely it is to go to appeal, and if this does happen, the higher the chances of the original decision being upheld. Key factors include ensuring that it is reasonable, based upon relevant local evidence and transparent in its inference and conclusions. Decisions do not have to be absolute and evidenced definitively however, but based on the balance of probabilities. The more that these principles are stressed and explained in the guidance the more likely it is that the act will be applied in a clear and accurate manner.

Sale of alcohol for consumption at home (the off-trade)

Given the increase in off-trade sales, including online sales, is there a case for reform of the licensing regime applying to the off-trade? How effectively does the regime control supermarkets and large retailers, under-age sales, and delivery services? Should the law be amended to allow licensing authorities more specific control over off-trade sales of “super-strength” alcohol?

The 2003 Licensing Act is poorly equipped to deal with the off-trade, which has grown twice as fast as the on-trade in the last 10 years. In Scotland their licensing Act has been rebalanced in order to better take account of the fact that the vast majority of alcohol is consumed at home. This has seen the introduction of a ban on multi-buys, restricting alcohol related products to one part of a store, the restriction of off-trade hours to 10am until 10pm, and their legislation for minimum unit pricing, although this has not yet been implemented.

Research into the impact of these restrictions has found broadly positive, if slightly mixed, results. A study by NHS Scotland using sales data found that there has been a 2.6% decrease in the amount of alcohol sold in Scotland per adult as a result of the multi-buy ban, including a 4% drop in wine sold and an 8.5% decline in pre-mixed alcohol drinks (including alcopops). However, other research found that the ban had changed shopping habits, causing people to buy fewer products per shopping trip, but to buy beer and cider more frequently, leaving the overall amount bought unchanged. This second study however used a panel survey method, which is known to be less accurate than sales data (which was the basis of the first piece of research).

While there is still debate about this issue, both sets of researchers suggested that the effectiveness of the ban had been undermined by retailers reducing prices, something which Minimum Unit Pricing (MUP) would have prevented if it had been implemented in Scotland. A loophole in the multi-buy ban allowing the discounting of single items is also thought to have weakened the ban, with retailers switching from offering promotions such as ‘3 for the price of 2’ to only discounting individual bottles.

While these impacts in Scotland are moderate, they are significant, and it should be remembered that they represent only one strand of a broader alcohol strategy. This comparison also highlights the fact that pricing policies will probably have a bigger impact on supermarket alcohol sales than licensing on its own. Against this, the 2003 Licensing Act

has very limited ability to impact upon alcohol sales in supermarkets, where alcohol promotions are routinely found in all parts of the store, with heavy discounting and price promotions.

Home delivery services are also difficult to regulate under the Act. Some local authorities have produced additional guidance and conditions for operators to ensure that they comply with the Act, particularly regarding sale to minors and sales to drunks. However, this is hard to enforce. While off-trade hours in Scotland are limited to 10am – 10pm, Scottish hours for home delivery services are slightly different; where they are only prohibited between midnight and 6am. This does, however, still allow for greater limits on home delivery during the period which could potentially be the most problematic.

Pricing

Should alcohol pricing and taxation be used as a form of control, and if so, how? Should the Government introduce minimum unit pricing in England? Does the evidence that MUP would be effective need to be “conclusive” before MUP could be introduced, or can the effect of MUP be gauged only after its introduction

Consumption can and should be regulated by price, and alongside licensing price is a key tool for limiting alcohol related harms, There is clear and consistent evidence that price is a key variable and directly influences alcohol related harms – for example, research has shown that in England and Wales the real price of beer has a direct impact on A&E attendance rates.²⁶² Decreases in alcohol taxes in Finland in 2004, for example, led to a 10% increase in overall consumption and a 46% increase in liver disease deaths.²⁶³ As a result, alcohol taxes are recommended by international bodies such as the World Health Organization²⁶⁴ and the Organisation for Economic Co-operation and Development²⁶⁵ as among the ‘best buys’ in public health.

Alcohol is 54% more affordable today than in 1980.²⁶⁶ Successive cuts and freezes to duty since 2012 have exacerbated this problem: beer duty is now 14% lower than in 2012, while cider and spirits duty have each fallen by 6%.²⁶⁷ Raising the price of alcohol through real terms increases in duty is necessary to reverse these dangerous trends.

²⁶² Matthews. K., Shepherd. J., Sivarajasingham. V. (2006), Violence-related injury and the price of beer in England and Wales. *Applied Economics*, p. 668

²⁶³ Mäkelä, P. and Österberg, P. (2009) *Weakening of one more alcohol control pillar: a review of the effects of the alcohol tax cuts in Finland in 2004*, Society for the Study of Addiction, 104, pp554-563.

²⁶⁴ World Health Organization (2011), *From Burden to “Best Buys”: Reducing the Economic Impact of Non-Communicable Diseases in Low- and Middle-Income Countries*

²⁶⁵ Sassi, F. et al (2013) *The Role of Fiscal Policies in Health Promotion*, *OECD Health Working Papers*, No 66, OECD Publishing.

²⁶⁶ Health & Social Care Information Centre (2015), *Statistics on Alcohol England, 2015*.

²⁶⁷ Institute of Alcohol Studies (2016), *Budget 2016 analysis*.

However, it is not just the level, but also the structure of alcohol taxes that matters. Because of anomalies in the duty system, 7.5% ABV ciders attract the lowest duty per unit of any product: 5p per unit, compared to 18p per unit for a beer of equivalent strength. This has given rise to a market for industrial ‘white’ ciders: sold in 3 litre plastic bottles and closely linked to harmful, dependent and underage drinking.²⁶⁸ Tax policy could be used to have a more targeted focus on such products through narrower bands - at present ciders between 1.2% and 7.5% ABV are taxed at the same rate.

MUP is not a silver bullet, and a combination of tax and MUP would be the optimal approach. This would ensure that the cheapest alcohol, which disproportionately causes the greatest harms, increased in price, while ensuring that the Treasury benefited from this rather than the alcohol producers.

MUP at the suggested price of 50ppu would have a minimal impact on the on-trade, where prices tend to be significantly higher than this, but it would impact most dramatically on the cheapest alcohol in the off-trade. The Ban on Below Cost Sales (BBCS) already sets a precedent for a floor price for alcohol, and one which has not been challenged by the licensed trade. However, the current level at which the BBCS is set (a sum of the duty plus VAT for each alcoholic product) is so low as to be almost totally ineffective. It was estimated that on its introduction only 0.7% of alcohol units sold fell below the ban’s threshold, and only 1.0% of units consumed by harmful drinkers. As mentioned above, the floor price for strong white cider at 7.5% is 5p per unit. In contrast, MUP set at a unit price of 45p would affect 23.3% of alcohol units sold, and 30.5% of units sold to harmful drinkers.²⁶⁹ Since its introduction alcohol duties have been cut, further reducing the effectiveness of the BBCS.

Regarding the question of being able to conclusively predict MUP’s impact, the evidence for MUP is very strong, and far stronger than for other policies implemented by the Home Office. For example, the Modern Crime Prevention Strategy places a significant focus on partnership working with the trade, when there is not a single piece of academic, peer reviewed evidence that this has a significant impact on crime and disorder. While the licenced trade has carried out some internal evaluations, these tend to be of a very poor quality.

In contrast the evidence, both modelled and from Canada where they have similar minimum prices, that MUP would be effective is very strong.²⁷⁰ While the Scottish court case

²⁶⁸ Black, H. et al (2014) *White Cider Consumption and Heavy Drinkers: A Low-Cost Option but an Unknown price*. Alcohol and Alcoholism 49:6, pp675-80; Alcohol Concern (2015). *Alcohol brands consumed by young people in treatment 2015*.

²⁶⁹ Brennan. A., Meng. Y., Holmes. J., Hill-McManus. D., Meier. PS., (2014) [‘Potential benefits of minimum unit pricing for alcohol versus a ban on below cost selling in England 2014: modelling study.’](#) BMJ

²⁷⁰ Stockwell, T., Zhao, J., Marzell, M., Gruenewald, P. J., Macdonald, S., Ponicki, W. R., & Martin, G. (2015). Relationships Between Minimum Alcohol Pricing and Crime During the Partial Privatization of

regarding the legality of MUP is ongoing, at present the courts have accepted that it would be reasonable, based on the evidence available and the modelling, to judge that MUP may be an effective policy. On this basis they are satisfied with the policy as a relevant response to the health issue which it seeks to address.

It is worth pointing however that the Scottish MUP legislation includes a sunset clause. If, after 6 years there is evidence that MUP is having unintended consequences, the legislation can be repealed. This seems sensible.

At present the Home Office have provided only poor evidence that partnership working with the trade is an effective policy to reduce alcohol related harms, and no public estimates as to how many crimes this policy will prevent over the next few years. In contrast the evidence for MUP, produced on the same terms as that currently accepted by the Scottish Courts, suggests that MUP set at a rate of 45ppu would reduce alcohol-related crimes by 34,200 incidents per year after 10 years. It would also reduce alcohol-related deaths by 642 per year after 10 years.²⁷¹

For both of these policies their full impact can only be gauged properly after implementation, if efforts are taken to do so. Yet the contrast between the weight and creditability of the evidence used to introduce them is stark, and a lack of evidence has not prevented the Home Office from introducing certain policies seen in a favorable light.

Fees and costs associated with the Licensing Act 2003

Do licence fees need to be set at national level? Should London, and the other major cities to which the Government proposes to devolve greater powers, have the power to set their own licence fees?

Licensing fees should not be set at a national level, and all local authorities should be able to set their own fees in a way that reflects their local costs. This already happens within taxi and street trading legislation, and alcohol licensing should be no different. This was legislated for in the Police Reform and Social Responsibility Bill 2011, but has never been enacted. At present some local authorities see significant shortfalls in the revenue they receive from licensing fees, meaning that they have to subsidise their licensing operation out of general funds. With the reductions in local government funding in recent years this has become increasingly difficult.

a Canadian Government Alcohol Monopoly. *Journal of Studies on Alcohol and Drugs*, (July), 628–634. <http://doi.org/10.15288/jsad.2015.76.628>

²⁷¹ Brennan. A., Meng. Y., Holmes. J., Hill-McManus. D., Meier. PS., (2014) '[Potential benefits of minimum unit pricing for alcohol versus a ban on below cost selling in England 2014: modelling study.](#)' BMJ

Local authorities with the biggest fees shortfall are often those more likely to struggle to oversee the Act.²⁷² The Local Government Association (LGA) estimate that alcohol licensing cost local authorities approximately £183 million in the 10 years since the Act was introduced, which works out at £1.5 million of taxpayers' money per month being used to subsidise the licensed trade.²⁷³

International comparisons

Is there a correlation between the strictness of the regulatory regime in other countries and the level of alcohol abuse? Are there aspects of the licensing laws of other countries, and other UK jurisdictions, that might usefully be considered for England and Wales?

Within developed countries, those which experience greater alcohol related harms tend to have a stricter regulatory response. The 2003 Licensing Act attempted to simplify and deregulate licensing but has had to be toughened up in certain areas as a result of this having been taken too far.

This evidence submission has covered a number of policies from Scotland which would be beneficial for those with an interest in reducing alcohol related harms. These include MUP, a health objective and greater restrictions on the off-trade.

Evidence from Australia also lends support for the introduction of a workable EMRO. In Newcastle, Australia, it was found that bringing forward closing times from 5am to 3am resulted in 37% reduction in assaults.²⁷⁴ After one year, similar opening restrictions in the Kings Cross area of Sydney resulted in a 21% reduction in sexual assaults, a 43% reduction in assaults causing grievous bodily harm, a 50% reduction in assaults causing actual bodily harm and a 57% reduction in robberies.²⁷⁵

Commenting on this, Police Superintendent Mick Fitzgerald, Kings Cross local area commander, stated that 'the man hours saved and the way we are able to reallocate our resources has been phenomenal.'²⁷⁶ While the closure of several clubs in Kings Cross were attributed to measures, a variety of other businesses have been seen to enter the market, including antiques dealers, ice-cream vendors, chemists, restaurants, hairdressers and yoga

²⁷² Foster. J., Charalambides. L., (2016) [The Licensing Act \(2003\): its uses and abuses 10 years on](#). Institute of Alcohol Studies. See chapter 12

²⁷³ Local Government Association (Feb 2015) [LGA responds to Government decision to reject locally-set licensing fees](#)

²⁷⁴ Kypri. K., Jones. C., McElduff. P., Barker. D., (2011) [Effects of restricting pub closing times on night-time assaults in an Australian city](#). Addiction.

²⁷⁵ In addition to moving closing times forward from 5 am to 3 am, a 1 am lockout was introduced, meaning that people could continue to drink alcohol on the premises until the 3am close, but no new patrons could be admitted after 1 am. This became known as the 'one-way door' policy.

²⁷⁶ Australian Daily Telegraph (April 1st, 2015) [Cross clean-up is a victory for Sydney](#)

studios, as well as a number of new bars.²⁷⁷ There is also evidence that, while there has been a reduction in land value of some commercial property, large increases have been observed in both mixed-use and residential property in the Kings Cross region.^{278,279}

Risk based licensing, which is used in various forms in Canada, Australia and New Zealand, also has interesting elements. This approach broadly links licensing fees and regulatory strength to the type of premises and its operating schedule. Types of premises, such as restaurants, bars or clubs, are ranked by their potential risk, and pay a different base rate depending on this. Hours of operation can also be linked to the fee, with some states in Australia charging incremental amounts for every hour that a premises opens after midnight. Compliance history can also have an impact on fee level.²⁸⁰

This approach encourages premises to operate in a less risky manner, while ensuring that those who generate the greatest impact also pay accordingly. If local authorities in England and Wales had the ability to set their own fees some may try and copy elements of this approach.

2 September 2016

²⁷⁷ <https://twitter.com/2011Residents>

²⁷⁸ Land & Property Information. (n.p.). *Potts Point/Kings Cross Report Land Value Review – Report for Land Valuation Advisory Group*. NSW Government.

²⁷⁹ Nicholls, S. (2016, 22 May). Lockout laws hit values in Kings Cross' 'golden mile'. *The Sydney Morning Herald*. Retrieved from: <http://www.smh.com.au/nsw/lock-out-laws-hit-land-values-on-kings-cross-golden-mile-20160522-gp0ych.html>

²⁸⁰ See the appendix to Foster, J., Charalambides, L., (2016) [The Licensing Act \(2003\): its uses and abuses 10 years on](#). Institute of Alcohol Studies.

Heart of London Business Alliance – written evidence (LIC0128)

1. Heart of London Business Alliance was established in 2001, becoming the first central London Business Improvement District (BID) in 2005. We now operate four BIDs across Piccadilly & St James's and Leicester Square to Piccadilly Circus; two representing the 500 businesses in these streets; and, following successful ballots last year, the UK's first two property-owner BIDs. Our area is home to London's most iconic entertainment venues and is rich in history and culture.
2. We welcome the opportunity to share our views on the impact of the Licensing Act 2003, particularly how to improve the legislation and its implementation in future years. It is important for the West End to respond to the changes in the evening and late-night economies in the over the past decade, recognising their contribution to the success of central London and the UK economy.

Questions 1 and 2: Licensing Objectives

3. The main problem with the existing four licensing objectives is how they are applied at a local level. In general, the operators in the Heart of London feel that the four objectives are deployed as a means to regulate businesses and hold them to account, rather than to allow responsible operators in the hospitality and leisure industry more freedom and flexibility, which was the other intention of the Licensing Act 2003.
4. Within this context, we would strongly oppose the addition of the 'protection of health and wellbeing' as a new licensing objective. This objective is vague and could be used to justify all manner of conditions that attempt to address wider problems, many unrelated to alcohol, when a premises itself is behaving responsibly. Other areas of legislation and policy should be used to address the public's health and wellbeing.
5. As we have already stated, the evening and late night economy is a significant contributor to the economic success of central London, providing opportunities for people to eat, drink and enjoy the best of our global city whilst accompanying the unique cultural offer of the theatres, galleries and events. Operators are vital to its long-term success and the access to and enjoyment by the public of licensable activities could be an appropriate additional licensing objective.
6. Stress zones were initially successful, helping to change the nature of the evening and late night economy. However, with many responsible operators now offering a combination of late night entertainment, food and alcohol, we are concerned that no leeway is offered in terms of the hours they are permitted to operate. The zones also fail to allow applications to be assessed according to their potential risk, resulting in the likes of Fortnum & Mason being constrained by the same terms as the remaining 'vertical drinking' establishments in the West End. Even when the

provision of alcohol is wholly ancillary to their offer, the zones allow no flexibility for cinemas, theatres and restaurants that wish to open longer.

7. With the arrival of the night tube on Fridays and Saturdays providing more effective transport, we believe there is greater scope for longer operating hours that recognise and support the late night economy.

Questions 3 and 4: Balancing Rights and Responsibilities

8. The impact of the Live Music Act 2012 has been limited in the West End because most of the venues that offer live music during daytime hours have a capacity greater than 200.
9. Overall, we are concerned that the balance of rights and responsibilities is not always maintained at the local level. For example, we have seen one establishment, which had operated for a long period of time without any complaints whatsoever, taken to a full Licensing Review hearing as a result of complaints from a single neighbouring resident. In the absence of supporting guidance, too often, the decision to trigger a review is arbitrary, with little consistency in the evidence base required.
10. Once a premises is subject to review, we regularly see this used as an excuse to impose additional conditions on their licence that are unrelated to the issues which prompted the hearing. Conditions requiring the implementation and maintenance of CCTV, which is often used by the Police to identify unrelated incidents outside of premises, and the deployment of private security at hotels, are two examples of onerous requirements that are, in effect, offsetting cuts to public budgets.
11. Given the potential consequences of a review, irrespective of the strength of any case an operator presents, they are inherently cautious in their management of licensed premises. Operators spend significant time and money to avoid the risk of Licensing Review application, beyond what would be deemed reasonable or part of responsible management.
12. We encourage the Committee to consider ways to redress this balance, establishing appropriate standards and guidance for responsible operators to meet and for responsible authorities to adopt in the application of the Licensing Act 2003.

Questions 5 and 6: Licensing & Local Strategy

13. As outlined already, we are concerned that licensing strategies and policies are being used beyond their intended scope and deployed as a 'catch-all', either to address deficiencies in other legislation or to compensate for funding reductions to responsible authorities. This results in those strategies failing to support responsible operators or to recognise the changing nature of the night time economy from 'vertical-drinking' establishments to a broad, responsible offer.

14. Powers need to be used and deployed proportionately. In the West End, our footfall and visitor numbers are significantly higher than elsewhere, which means that in terms of raw numbers there are more incidents of crime. However, the overall number has fallen over the past decade and compares favourably in proportion to the number of visitors. We would welcome recognition of the contribution made by responsible operators to this reduction and encourage more flexibility in the application of licensing strategies.
15. Closer alignment between the licensing and planning frameworks needs careful appraisal because the two processes require distinct skills and knowledge, although there are some obvious instances where it could be improved. For example, we believe that it should be possible for licensed premises to be redeveloped without having to apply for a new licence.
16. We are concerned about the negative connotation of using the two regimes to ‘address the proliferation of licensed premises’. It is already the case that responsible authorities are often reluctant to agree to the issuing of any new licences, even when replacing licences that have been voluntary withdrawn, lost through development or revoked by the local authority. The planning framework should not be used to control licensable activity, which is the purpose of the licensing system. Moreover, increasing the variety and type of premises can have a positive effect on an area.
17. If new licences are blocked and little flexibility is shown when determining amendment applications, the evening and late night economy will fail to keep pace with the demands of our global, 24 hour city in the medium term. We are keen to retain the vibrancy of the West End, ensuring it remains a hub for the entertainment industry. The recent history of our area demonstrates that licensed premises should not be assumed to be negative, as central London is benefiting from responsible operators offering a mix of entertainment.

Questions 7 and 8: Crime, Disorder & Public Safety

18. Heart of London believes that the Metropolitan Police and Westminster Borough Command are outstanding in preventing crime and disorder, and in promoting the licensing objectives as they are interpreted in the borough. Incidents will always occur due to the volume of visitors and footfall. We encourage the Police to continue view incidents within this context.
19. In the past, licensed operators have even been subject to enforcement action because they reported unrelated incidents occurring outside their premises to the Police.
20. The Police now take frequency and the size of venues into account when assessing the significance of an incident, which we believe to be a welcome and proportionate step in the right direction.

Questions 9 and 10: Licensing Procedure

21. Licensing committees are comprised solely of local councillors, who are directly elected by residents. We would welcome the Select Committee considering how businesses could receive a stronger voice in the licensing process.
22. By encouraging operators and premises to take excessive precautions, security costs have increased significantly. We are concerned that the procedures, as applied, are failing to support the creation of new jobs or encourage economic growth.

Question 11: Sale of Alcohol for Consumption at Home

23. Given the increase in off-trade sales, we believe that supermarkets should also be asked to meet some of the costs of managing a responsible evening and late night economy, not just licensed premises.
24. We strongly support giving licensing authorities more specific controls over off-trade sales of 'super-strength' alcohol, particularly in regard of premises that retained their former rights and conditions under the terms of the Licensing Act 2003, and hence are not restricted by conditions on their licence.

Question 12: Pricing

25. Within the on-trade, and certainly in central London, pricing is already above the level that any minimum-unit pricing regime would impose. It's only effect may be to increase the costs faced by some businesses, without discouraging consumption. There is a stronger role for taxation with regard to the off trade, although this need not take the form of minimum unit pricing to be effective.

Question 13: Fees & Costs Associated with the Licensing Act 2003

26. We do not support devolving the power to set licencing fees unless there are strict limitations on what fees can be used for and how they are determined, as well as appropriate accompanying guidance.

Question 14: International Comparisons

27. Other countries operate far more flexible licensing regimes. Without weakening the safeguards that the UK's system provides, we should look to adopt more flexibility where possible. This is particularly the case with London, which is a global city and faces global competition for tourism and business activity, where the quality and variety of the entertainment on offer is a strong factor.

Thank you again for requesting our views and comments on the Licensing Act 2003.

2 September 2016

Henrietta Park Residents' Association – written evidence (LIC0109)

Background: Henrietta Park Residents' Association is a local Residents' Association with a membership covering the Henrietta Park area of Bathwick, in Bath. This area is a quiet residential area closely adjacent to the city centre, and which is therefore extremely vulnerable to the threat of spread of the city centre night-time economy. Our submissions on the specific matters on which evidence is requested are given as follows, where the numbering follows that in the Call for Evidence.

1. Are the existing four licensing objectives the right ones for licensing authorities to promote? Should the protection of health and wellbeing be an additional objective?

1.1 No, the existing four Licensing Objectives are not the right ones. The Licensing Objectives focus wholly on promoting drinking and night-time drinking culture to the detriment of local residents. The Licensing Objective of Preventing Public Nuisance is the only Objective that has any potential to prevent the destruction of the character of an area by Licensed Premises, but is unsuitable and ineffective for that purpose. There is a need for an objective that is specifically designed to prevent damage to character of an area, for example damaging the quiet and residential character of an area. Protection of health and wellbeing could be helpful provided that it was clear that health and wellbeing of local residents was a significant factor, not merely that of customers. There should also be a licensing objective to preserve the quality of life, health and wellbeing of vulnerable and disabled neighbours, and an obligation for a suitable authority to step in immediately to protect the interests of vulnerable/disabled residents when there is an application for a premises licence that will affect their quality of life, health and wellbeing.

1.2 In a pristine residential area where there is no public licensed premises it is not possible to succeed in objecting to a licence because the Licensing Authority requires evidence that the premises has caused public nuisance – an obvious impossibility when the licence or extension being requested doesn't yet exist. This does not serve the interests of the community and does a great injustice to those whose quiet enjoyment of their property is ruined by the grant of such licences.

2. Should the policies of licensing authorities do more to facilitate the enjoyment by the public of all licensable activities? Should access to and enjoyment of licensable activities by the public, including community activities, be an additional licensing objective? Should there be any other additional objectives?

2.1 No – the policies of licensing authorities should certainly not do more to facilitate enjoyment by the public of all licensable activities. Policies of licensing authorities as exemplified by our local authority (B&NES) are already inappropriately biased towards those using licensed premises to the detriment of local residents whose enjoyment of their homes and community is given no weight whatsoever in the process as provided for in the

Licensing Act. For example, in a hearing in July 2016, no regard whatsoever was given to the quiet enjoyment by local residents of their property.

2.2 Access to and enjoyment of licensable activities by the public should certainly not be an additional licensing objective, but should be replaced by a Licensing Objective of Prevention of detriment to the character of an area and Prevention of detriment to quiet enjoyment by residents in the vicinity.

3. Has the Live Music Act 2012 done enough to relax the provisions of the Licensing Act 2003 where they imposed unnecessarily strict requirements? Are the introductions of late night levies and Early Morning Restriction Orders effective, and if not, what alternatives are there? Does the Licensing Act now achieve the right balance between the rights of those who wish to sell alcohol and provide entertainment and the rights of those who wish to object?

3.1 The Live Music Act 2012 has done far too much to relax the provisions of the Licensing Act 2003. For example in our quiet residential area the sound of musical entertainment which is no longer subject to regulation reaches us from a Licensed Premises several hundred yards away spoiling enjoyment of gardens on weekend afternoons. The balance again seems totally biased in favour of those who wish to sell alcohol.

4. Do all the responsible authorities (such as Planning, and Health & Safety), who all have other regulatory powers, engage effectively in the licensing regime, and if not, what could be done? Do other stakeholders, including local communities, engage effectively in the licensing regime, and if not, what could be done?

4.1 In our recent experience no other authority engaged in the licensing regime. In spite of the fact that a local licence application was in an area where there were numerous vulnerable elderly neighbours, responsible authorities did absolutely nothing to ensure that the interests of those vulnerable residents were taken into account. There was no due regard to the fact that many elderly and vulnerable people are not able to use the internet, putting them at significant disadvantage in ascertaining the details of an application and submitting objections. In a hearing in 2016 our objections referring to contravention of planning restrictions were not admitted to the proceedings, the policy of our local authority explicitly ruling out any objection relating to planning.

4.2 In our recent experience, the local community was keen to engage in the licensing regime and numerous residents objected to an application – but the majority of the letters of objection were ruled inadmissible on the ground that they did not sufficiently clearly frame their public nuisance objections within the rigid straitjacket implied by the Act and applied by our local Licensing Authority. Thus, the local community has tried its best to engage effectively but has been disenfranchised by the inappropriately framed requirements of the Act.

4.2 The Licensing Act 2003 also disadvantages communities that are unparished since there is no secondary authority to represent a community in fighting unwanted expansions

into such communities of the night-time economy of a neighbouring area within the unitary authority area.

5. Licensing is only one part of the strategy that local government has to shape its communities. The Government states that the Act “is being used effectively in conjunction with other interventions as part of a coherent national and local strategy.” Do you agree?

5.1 Absolutely not. In our local Authority's Policy and practice Licensing is carefully and deliberately kept separate from other interventions, apparently to keep Licensing simple and solely focused on granting licences, which is what the Licensing Act seems to support. It seems that the Licensing Act and policies are deliberately designed to allow licences to be granted even when their operation will violate planning law and irrevocably change the character of an area.

6. Should licensing policy and planning policy be integrated more closely to shape local areas and address the proliferation of licensed premises? How could it be done?

6.1 Yes. Licensing Authorities should be required to take into account objections that a licence application will result in activities that are contrary to planning law and policy – whereas our experience is that currently such an objection is ruled inadmissible. It should not be possible for a Licensing Authority to grant a licence that will demonstrably result in a violation of a planning restriction.

7. No comments

8. No Comments

9. The Act was intended to simplify licensing procedure; instead it has become increasingly complex. What could be done to simplify the procedure?

9.1 The procedure needs to be more transparent with explicit rules about availability of application documents. We had great difficulty obtaining a copy of the licence application in a recent application, and ultimately did not receive all documents. In fact, at the hearing it turned out that a document we had been given had been replaced by later version which we did not have, putting us at a disadvantage. In preparing applications for hearing, Licensing Officers should have more power to require that an application be complete and formally correct, and any defects removed before a hearing can be held.

9.2 The provisions relating to objections and their admissibility should be simplified. In a recent application numerous objections submitted by members of this Association were not admitted because the Licensing Authority considered that they did not relate to the Licensing Objectives. It was abundantly clear that the points submitted were appropriate for consideration under the prevention of public nuisance objective, but the Act requires literal compliance. Lay people with no legal or licensing expertise should not be penalised in this way for not complying with the literal wording of the Act – the result is injustice to local residents.

10. to 14. No comments

2 September 2016

Hinckley & Bosworth Borough Council – written evidence (LIC0049)

Licensing objectives

1. Are the existing four licensing objectives the right ones for licensing authorities to promote? Should the protection of health and wellbeing be an additional objective?

The four licensing objectives are necessary to promote the Act and are well balanced to cover any eventuality that may arise with the current licensable activities that the regime covers; health and wellbeing should not be a fifth objective.

2. Should the policies of licensing authorities do more to facilitate the enjoyment by the public of all licensable activities? Should access to and enjoyment of licensable activities by the public, including community activities, be an additional licensing objective? Should there be any other additional objectives?

This council's policy does aspire to the enjoyment of licensable activities by the community and does look to the greater good of events in the public interest. Access to enjoyment of licensable activities are achieved in this borough by the council licensing all of its open spaces. However, this should not be an additional licensing objective, nor should there be any other new licensing objectives.

The balance between rights and responsibilities

3. Has the Live Music Act 2012 done enough to relax the provisions of the Licensing Act 2003 where they imposed unnecessarily strict requirements? Are the introductions of late night levies and Early Morning Restriction Orders effective, and if not, what alternatives are there? Does the Licensing Act now achieve the right balance between the rights of those who wish to sell alcohol and provide entertainment and the rights of those who wish to object?

- [Redacted]
- **I don't believe that there were unnecessarily strict requirements in the Licensing Act 2003 to begin with; licences granted pre LA2003 all had grandfather rights so what they had they held under the new regime and saved a considerable amount of money in the process if they held either a PEL, Theatre, Cinema or Late night refreshment house licence as well as a justices on-licence.**
- **HBBC do not have sufficient experience of Levies to be specific about whether or not they have been effective, but the limited number of such levies suggests that they have not. Poppleston Allen Solicitors would be the best source of information on this topic. It is suggested that it is not helpful that LNLs only apply only to alcohol sales and not to late night refreshment houses. This council have considered introducing a levy but rejected the proposal.**

- **EMROs have not been successful – we are unaware of any being implemented across the country.**
- **The Act does not achieve the right balance between those who wish to object to an application and those who wish sell alcohol and provide entertainment or late night refreshment. The presumption of grant under the Act means that applicants always have the upper hand, and representors have an uphill battle to prevent something that they feel will have a negative impact on them. It is often the case that a licensing panel will look to find the median between what the applicant and objectors want.**

The principle of taking the smallest steps appropriate makes it harder for a panel to refuse an application outright, and there is often reluctance to refuse an application and face an appeal especially if the applicant is a very large chain store or supermarket.

4. Do all the responsible authorities (such as Planning, and Health & Safety), who all have other regulatory powers, engage effectively in the licensing regime, and if not, what could be done? Do other stakeholders, including local communities, engage effectively in the licensing regime, and if not, what could be done?

The responsible authorities' do not contribute equally. Our experience suggests that the police are the most involved, followed by the environmental health (noise pollution team) and leics trading standards. There appears to be a lack of understanding and engagement amongst the other responsible authorities.

We have never had a response from the body representing public health. The Fire Service hardly ever acknowledge receipt, The Planning Authority only cite planning consent and don't seem to understand the Act at all.

The same is true of local communities. Whilst there may be pockets of interest and activity, it is more often the case that people are not willing or able to put themselves forward to make representations, apply for reviews, etc.

Licensing and local strategy

5. Licensing is only one part of the strategy that local government has to shape its communities. The Government states that the Act "is being used effectively in conjunction with other interventions as part of a coherent national and local strategy." Do you agree?

Where there is a joined up strategy within licensing policies there is not a 'joined up' strategy in practice. For example, some responsible authorities often to prefer to use their 'own' legislation instead of applying for reviews (Environmental Health), even though a review may be an easier and more effective solution. Reviews may also be an option to consider alongside other means of achieving compliance.

6. Should licensing policy and planning policy be integrated more closely to shape local areas and address the proliferation of licensed premises? How could it be done?

Planning and licensing policy are not joined up, and it may not be feasible to integrate the two regimes. Although it seems counterintuitive for an authority to grant one consent under planning law and something different under licensing, the two areas are looking at different activities. Regarding proliferation of licensed premises the LA2003 has the facility to adopt cumulative impact zones to reduce the spread of licensed premises.

Crime, disorder and public safety

7. Are the subsequent amendments made by policing legislation achieving their objects? Do they give the police the powers they need to prevent crime and disorder and promote the licensing objectives generally? Are police adequately trained to use their powers effectively and appropriately?

The amendments are not achieving their objectives. This is because although the powers are adequate (VCRA 2006, POCA 2009, PRSR 2011, ASBCPA 2014) there appears to be a reluctance to use some of them. We believe this is mainly due to a lack of resources and training for the police mainly due to austerity measures, and therefore a lack of knowledge to implement the powers correctly.

8. Should sales of alcohol airside at international airports continue to be exempt from the application of the Act? Should sales on other forms of transport continue to be exempt?

No.

An exemption under the Licensing Act 2003 allows alcohol to be provided airside at all times of the day and night (section 173 the Act and s 182 Guidance 5.17). Those alcohol sales are governed by airport policies and airlines.

If a person or group of people attended a city centre bar on a Friday night and were served alcohol whilst drunk, the premises would be at risk of losing their premises licence. Yet from the police perspective, we see people attend bars airside already intoxicated through having consumed alcohol through the journey. They then consume further amounts at the airside bars, and are served by staff who know these individuals will board a plane but who have limited powers.

There is also evidence that these passengers will purchase further alcohol at duty free shops and consume yet more alcohol before boarding. They will continue to drink on board flights, and be served by airline staff in the hope that this will defuse rowdy, anti-social behaviour. Some airlines have attempted to tackle this by ‘bagging’ alcohol before boarding.

There have been arrests relating to alcohol fuelled disorder airside and on board flights, but very few. Such behaviour has resulted in delayed flights and diverting flights at significant cost (recently a flight was diverted at an estimated cost of £50,000).

Public houses employ SIA door supervisors to prevent entry to customers already under the influence of alcohol to ensure there is no risk to the licence and to ensure public safety. Yet they can be allowed to board a multi million pound jet airliner flying at 30,000 feet.

In addition there should be legislation to deal with offenders, airside, during flights and upon arrival at their destination.

I do not agree with exempting any sale of alcohol from licensing law and I believe that sales on other forms of transport should be licensed to promote the for licensing objectives and ensure the safety of the travelling public.

Licensing procedure

9. The Act was intended to simplify licensing procedure; instead it has become increasingly complex. What could be done to simplify the procedure?

It is agreed that the changes have not simplified the processes – deregulation can be difficult to understand, mandatory conditions are too complex, and although some of the changes to TENs were welcome, they are sometimes difficult to work through with applicants who are inexperienced.

The application process could be modernised via a national online form instead of a prescribed paper form. The form could be designed to auto-fill fields that are repeated in accompanying forms and the public notices (e.g. a premises licence application with a proposed DPS); there could be automatic service on the responsible authorities as appropriate; there could be automatic publication of the public notice on a prescribed website.

We have had our own e-licensing system in place since 2009 that serves all of the RA's with a copy of the relevant application (Premises licence/Vary Prem/Minor/CPC/Vary DPS, Tfer Prem) for our applicants.

An online national database for applications, licences and temporary event notices would allow simple checks to be carried out to confirm whether or not someone had applied for a personal licence elsewhere, or given TENs elsewhere, or even had licences revoked elsewhere. At the moment, everything is taken on trust because there is no realistic way of checking.

Consideration should be given to a process by which a formal agreement between parties can be implemented, without the need for a formal representation or hearing.

10. What could be done to improve the appeal procedure, including listing and costs? Should appeal decisions be reported to promote consistency? Is there a case for a further appeal to the Crown Court? Is there a role for formal mediation in the appeal process?

Appeals take far too long to be listed for a full hearing. This means a business that has been refused a licence or a variation might cease to be viable in the meantime. Conversely, a premises trading pending an appeal against revocation can either continue to make money from inappropriate trading practices or ‘wipe the slate clean’ by showing several months of trouble-free trading pending their appeal.

There should be an option for the licensing authority to declare a review decision to have immediate effect in the most serious cases, which could be challenged at an early court date (e.g., the first hearing, when the date is set for the full hearing).

There have been cases when the appeal fee has not been paid and thus the appeal is kept ‘pending’ in the meantime. The appeal should be dependant on this fee being paid, and the court should have a duty to notify the licensing authority by email as soon as an appeal is received. This would give the licensing authority and responsible authorities certainty over whether or not an appeal had been lodged, and therefore whether or not a premises is permitted to continue trading.

It is suggested that the matter of reasonable costs should be reviewed. We are aware of cases where parties (not the LA) have settled purely on the basis of being unable to meet the opposing side’s huge costs if they lost. It does not seem fair that a party should be able to intimidate another party purely by using an expensive advocate and/or incurring lots of additional costs.

There is a role for formal mediation in the appeal process, in appropriate circumstances. This should not be compulsory – there are some cases where there is little or no room for compromise.

Sale of alcohol for consumption at home (the off-trade)

11. Given the increase in off-trade sales, including online sales, is there a case for reform of the licensing regime applying to the off-trade? How effectively does the regime control supermarkets and large retailers, under-age sales, and delivery services? Should the law be amended to allow licensing authorities more specific control over off-trade sales of “super-strength” alcohol?

I do not think there is a case for reform regarding off-sales, although there are a number of concerns about online sales and home deliveries. In particular, it is difficult to be sure that an online purchase has been made by someone over 18. It should be compulsory for deliveries to be made to a person over 18, with ID checks as would be expected for sales made in person. It may be appropriate for the person who is to receive the alcohol to be

nominated at the time the order is placed. Deliveries of alcohol should be made by a person over 18. Delivery times could be restricted in relation to alcohol sales.

Under-age sales at off licences are a concern, more so than in on licensed premises. This is because someone is likely to remain in an on-licensed premises and therefore the likelihood of being caught (both the seller and the purchaser) is higher. In an off licence, the sale may take place when only the seller and the purchaser are in the store and the alcohol can be concealed very quickly and easily. As well as the issues of proxy purchasing which is common place on some larger housing estates for both alcohol and cigarette sales.

Pricing

12. Should alcohol pricing and taxation be used as a form of control, and if so, how? Should the Government introduce minimum unit pricing in England? Does the evidence that MUP would be effective need to be “conclusive” before MUP could be introduced, or can the effect of MUP be gauged only after its introduction?

The current mandatory condition on minimum unit pricing is rubbish. The unit price is so low that it has little or no impact. In addition, the formula calculation is such that it is hard for most people to understand.

Fees and costs associated with the Licensing Act 2003

13. Do licence fees need to be set at national level? Should London, and the other major cities to which the Government proposes to devolve greater powers, have the power to set their own licence fees?

No.

Why there is a suggestion that some authorities can be trusted to set their own fees when others are not, even though all authorities have to provide the same level of service at equivalent costs.

If all authorities are implementing the same legislation, and there is no suggestion that any are doing it to a lesser degree of competence than others, then all should be afforded the same ability to cover their costs.

Did anyone sayWestminster!

International comparisons

14. Is there a correlation between the strictness of the regulatory regime in other countries and the level of alcohol abuse? Are there aspects of the licensing laws of other countries, and other UK jurisdictions, that might usefully be considered for England and Wales?

Consumption of alcohol - UK regulatory regime and comparison to other countries.

New guidelines issued by the UK's chief medical officers mean the country now has one of the one of the lowest recommended upper limits for alcohol consumption by men in the world.

The amended advice states that men should not consume more than 14 units of alcohol a week, which equates to five pints of beer at 5% ABV strength.

The guidelines update previous ones set in 1995, which said that men should be limited to 21 units or less of alcohol per week. The total recommended for women remains unchanged at 14 units.

A unit in the UK is equivalent to 8g of pure alcohol. This means British men are now being told they should drink considerably less than those in Ireland (21.2 British units), Denmark (21), New Zealand (19) and much less than the recommended upper limit for men in Spain (35).

However, the 14-unit limit for women remains in line with international standards. It is higher than the advised limits in the US (12.3) and Denmark (10.5) and roughly on par with Ireland.

Britain now joins Australia, where the guideline amount is 2.5 units (20g of pure alcohol) on any given day, in being one of the few countries to have parity for men and women.

Making international comparisons between countries' recommended alcohol consumption is not exactly straightforward. A 2013 report by academics at the University of Sussex found a "remarkable lack of agreement" about what constituted harmful or excessive alcohol consumption across the world.

Not all countries are like Britain in having a government department issue advice on recommended alcohol consumption. However, there are nationwide campaigns suggesting upper limits in the country.

Other countries vary in their wording of what they warn against. In Sweden the recommendation (21 British units per week for men) guards against hazardous consumption of alcohol whereas the limit in the UK aims to keep "health risks low".

Age Limits

The minimum legal drinking age varies dramatically around the world. Most such laws apply only to drinking alcoholic beverages in public locations. The only country with a minimum legal age for consuming alcohol at home is the United Kingdom, which prohibits drinking below the age of six.

The average (mean) minimum legal drinking age around the globe is 15.9. The majority of countries have set the drinking age at 18. In fifty countries the minimum age is lower than 18 and in 12 countries it is higher than 18.

The enforcement of minimum legal drinking ages also varies widely between countries and often within countries. In many nations the law isn't generally enforced unless alcohol is abused and associated with behavioural problems.

Internationally, the average age at which drinking alcohol first occurs is 12 years and about 80% of young people begin drinking alcoholic beverages regularly at age 15 or younger according to the World Health Organization (WHO).

The Legal Drinking Age in America under the National Minimum Drinking Age Act of 1984 required all states to raise their minimum purchase and public possession of alcohol age to 21.

Alcohol Culture

[Redacted]

31 August 2016

Home Office – written evidence (LIC0155)

1. Are the existing four licensing objectives the right ones for licensing authorities to promote? Should the protection of health and wellbeing be an additional objective?

2. Should the policies of licensing authorities do more to facilitate the enjoyment by the public of all licensable activities? Should access to and enjoyment of licensable activities by the public, including community activities, be an additional licensing objective? Should there be any other licensing objectives?

Questions 1 and 2 taken together.

The Government is sympathetic to those in local government and public health who believe that there should be a greater role for public health within the licensing system. Measures have been introduced to achieve this aim, for example by adding Directors of Public Health in England, and Local Health Boards in Wales, as responsible authorities under the Licensing Act 2003.

However, the Government believes that any new licensing objectives must be capable of standing alongside the existing objectives and functioning in the same way. Decisions under the Act are taken on a case-by-case basis, with each application being considered on its merits, including about the potential impact on the licensing objectives of each application. This applies when:

- An application is made;
- Decisions are taken to place conditions on a licence;
- Decisions are taken about requests to vary a licence; or,
- Decisions are taken to review, suspend or revoke a licence.

The Government acknowledges the health harms attributable to alcohol, but is not yet convinced that the evidence shows that public health and wellbeing can function as effectively as a licensing objective as the existing four objectives. That evidence must show not only that public health and wellbeing can be used as the grounds for making a representation against a licensing application, but that it can also be used as grounds for imposing conditions on a licence, for objecting to or refusing requests to vary a licence, or as grounds for reviewing, suspending or revoking a licence. As the Committee heard during its early evidence sessions, Public Health England are currently carrying out a series of pilots examining the role of public health and wellbeing within licensing and the Government will consider the results before making a further decision.

The Government is always interested in whether the existing licensing objectives remain suitable. However, the Government does not believe that there is a case for more additional licensing objectives, whether they promote economic growth or the enjoyment of the local community in any or all of the licensable activities. The Act operates on the

basis that unless a licence impacts on one or more of the licensing objectives, or where its risk of doing so can be mitigated effectively through the addition of licensing conditions, that licence should be granted. The system aims to strike a balance between the ability of businesses and local economies to grow, and licensing authorities duties to minimise the harms associated with alcohol. The Government does not believe the system can operate effectively if there are two types of licensing objectives, those that operate as grounds for making a representation *against* a licensing application, and those that operate as grounds for *supporting* a licensing application. This would imply that there would be occasions in which some of the licensing objectives would be of secondary value to other objectives. This would fundamentally undermine one of the core principles of the Licensing Act 2003: that considerations of the licensing objectives are paramount and that the licensing objectives are of equal value. The Government does not believe that this would make for an effective licensing system and it would become confused, and subject to greater litigation in order to interpret the ability of licensing authorities to refuse or grant licences.

Statutory guidance issued under the Licensing Act 2003 already makes it clear that the legislation supports a number of other key aims and purposes, including recognising the important role which pubs and other licensed premises play in our local communities. One of the principal aims of those involved in licensing work is to minimise the regulatory burden on business, encourage innovation and support responsible premises.²⁸¹

3. Has the Live Music Act 2012 done enough to relax the provisions of the Licensing Act 2003 where they imposed unnecessarily strict requirements? Are the introductions of late night levies and Early Morning Restriction Orders effective, and if not, what alternatives are there? Does the Licensing Act now achieve the right balance between the rights of those who wish to sell alcohol and provide entertainment and the rights of those who wish to object?

Refer to evidence given to questions 2, 3, 4, 5 and 39, as well as the written evidence given at paragraphs 121, 123 and 137-42 of the Government's Memorandum on the Licensing Act 2003.

4. Do all the responsible authorities (such as Planning, and Health & Safety), who all have other regulatory powers, engage effectively in the licensing regime, and if not, what could be done? Do other stakeholders, including local communities, engage effectively in the licensing regime, and if not, what could be done?

Refer to oral evidence given to questions 31-34.

5. Licensing is only one part of the strategy that local government has to shape its communities. The Government states that the Act "is being used effectively in conjunction with other interventions as part of a coherent national and local strategy". Do you agree?

²⁸¹ Revised Guidance issued under section 182 of the Licensing Act 2003, published March 2015. Paragraph 1.5.

The Government acknowledges the important role which pubs and other licensed premises play in our local communities. The alcohol industry makes a positive contribution to the economy, through the creation of jobs across England and Wales, particularly for young people, and helps local economies and businesses grow. The Government strongly believes that pubs are important social institutions that can bring benefits for the whole community.

The Government also recognises that, where consumed or sold irresponsibly, alcohol can have significant negative implications for society. Most recent estimates²⁸² show that those harms cost society £21bn per year, once crime and disorder, health and the impact on businesses are taken into account. The Government has taken action to reduce these harms: the UK Chief Medical Officers published new low risk drinking guidelines in August²⁸³, providing the public with the latest scientific information about the risks alcohol may pose to their health. The Government published its Modern Crime Prevention Strategy in March²⁸⁴, setting out its approach to reducing alcohol-related crime and disorder.

Together, these two documents enable people to make informed choices about their own drinking, and set the framework for making the night-time economy a safe environment. Indeed, the Modern Crime Prevention Strategy identifies the areas where local authorities, the police, health partners and the licensed trade can work together more effectively to take concerted action to reduce the negative consequences of alcohol-consumption.

They sit alongside local authority statements of licensing policy, which set out their approach to licensing and how they intend to promote the four licensing objectives. Police and Crime Commissioners too have a statutory duty to publish local policing plans, setting out their priorities for tackling crime in their local area, some of which, where considered appropriate, set out how the police will take steps to reduce alcohol-related crime and disorder.

The licensing system too enables coherent approaches to be taken by encouraging joint-working by the responsible authorities, all of whom are entitled to raise objections to licensing applications.

While the Government acknowledges that individual performance from local authority areas will vary, its approach at a national level, reinforced by local policies and plans, and underpinned by the Licensing Act 2003, forms part of a coherent national and local strategy.

6. Should licensing policy and planning policy be integrated more closely to shape local areas and address the proliferation of licensed premises? How could it be done?

Refer to oral evidence given at questions 31-34.

²⁸² HM Government (2012) *The Government's Alcohol Strategy*. Available at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/224075/alcohol-strategy.pdf

²⁸³ <https://www.gov.uk/government/publications/alcohol-consumption-advice-on-low-risk-drinking>

²⁸⁴ <https://www.gov.uk/government/publications/modern-crime-prevention-strategy>

7. Are the subsequent amendments made by policing legislation achieving their objectives? Do they give the police the powers they need to prevent crime and disorder and promote the licensing objectives generally? Are the police adequately trained to use their powers effectively and appropriately?

The Police Reform and Social Responsibility Act 2011 introduced a series of amendments to the Licensing Act 2003 (for further information, please refer to the Memorandum on the Licensing Act 2003).

The Committee may wish to be aware that these provisions are being assessed as part of the post-legislative review of the Police Reform and Social Responsibility Act 2011. That review is due to be concluded before this Committee makes its recommendations.

8. Should sales of alcohol airside at international airports continue to be exempt from the application of the Act? Should sales on other forms of transport continue to be exempt?

The exemption of premises serving alcohol airside from the licensing system is one of practicality. Airside access is tightly controlled. In order for the licensing system to be upheld, licences awarded to airside bars or restaurants must be capable of being inspected, if necessary through spot-checks as local authorities and the police consider appropriate. It is for this reason that planes and trains are also exempt from the licensing system.

The Government acknowledges that delays and cancellations to journeys, or disorderly behaviour on board planes or trains, caused by people who have consumed too much alcohol can be distressing for passengers and staff alike. However, figures recently released in the media under the Freedom of Information Act 2000 show that the problem as relating to air travel, whilst disruptive for those affected is small, with a very small proportion of the 251 million passenger journeys made each year in the United Kingdom resulting in arrest for drunken behaviour.

The British Air Transport Association (BATA), the Airport Operators Association (AOA), the Airport Police Commanders Group, the Association of Licensed Multiple Retailers and the UK Travel Retail Forum have created the UK Aviation Industry Code of Practice on Disruptive Passengers. This Code is available online at <http://www.bata.uk.com/07/uk-airlines-support-aviation-industry-code-of-practice-on-disruptive-passengers/>. The purpose of this voluntary Code of Practice is to create a common, consistent approach that co-ordinates and enhances existing efforts to prevent and minimise disruptive passenger behaviour. Many airports have also increased police presence at the departures area including pubs and departure gates.

9. The Act was intended to simplify licensing procedure; instead it has become increasingly complex. What could be done to simplify the procedure?

The Government does not accept that the licensing system has become increasingly complex. The Government acknowledges that the Licensing Act 2003 has been subject to regular amendment since its implementation in 2005. These amendments have focused on two key areas within the Act.

First, there have been a number of attempts to deregulate aspects of the Act for activities considered low risk. These include increasing the number of Temporary Event Notices that a premises may obtain in one year, the deregulation of low-risk late night refreshment premises, the as yet uncommenced provision to introduce a Community and Ancillary Sales Notice for small accommodation providers and community groups, and the steps taken to deregulate regulated entertainment, including through the Live Music Act 2012. These measures have been pursued to reduce the burden of the licensing system on businesses as much as possible in order to achieve a more simple, more streamlined licensing system.

Second, steps have also been taken to strengthen the enforcement aspects of the Act, through the removal of the vicinity test (meaning that a member of the public can make a representation about a licensing application or an existing premises, regardless of their proximity to the location), the introduction of the late night levy and early morning alcohol restriction orders, as well as the recent amendments currently being debated by Parliament to amend provisions relating to summary reviews, relevant offences and the ability of police staff to enter and investigate licensed premises, and the commitments made by the Government to give cumulative impact policies a statutory basis, to make amendments to the late night levy and to consult on a new enforcement power for the police and local authorities. To ensure the effective promotion of the licensing objectives, it is essential that the enforcement powers open to the police and local authorities are kept under regular review and that, where those powers can be improved, changes are made.

Collectively, these changes have been designed to make the Act simpler for some types of business, and give the police and local authorities a greater, and more effective, set of powers to tackle irresponsible business owners.

Community groups and charities benefit from an approach to regulation which exempts low-risk activities; and statutory guidance has been revised to provide clear information to anyone concerned with licensing.

10. What could be done to improve the appeal procedure, including listing and costs? Should appeal decisions be reported to promote consistency? Is there a case for a further appeal to the Crown Court? Is there a role for formal mediation in the appeal process?

As the Government's Memorandum on the Licensing Act 2003 shows, the number of appeals against licensing decisions is small, and fewer still are heard by the High Court following application for judicial review.

As Home Office officials explained during their evidence session on 5 July and in subsequent written evidence to the Committee on 22 July, the Government is always interested in ensuring that the system of appeals remains effective. Most recently, discussions were held between the Home Office, representatives of the licensed trade, licensing solicitors and local government to look at whether any improvements could be made to the system of appeals. Those discussions examined the following aspects:

- Whether licensing authorities had been penalized for their decisions by magistrates' courts awarding costs against them, and whether this had an impact on decision-making. In certain cases, costs have been awarded against licensing authorities, but it was generally found that this did not deter licensing authorities from reviewing premises licences where evidence suggested that the licensing objectives were being undermined. Some licensing authorities suggested that having to take into consideration the possible financial consequences of their decision making has meant their decisions were considered and well-reasoned in order to be more robust in court.
- Whether the Licensing Act 2003 should be amended to bring into effect licensing review decisions immediately. Presently, these do not come into effect until at least 21 days, during which time a person subject to that review decision can make an appeal to a magistrates' court. While licensing authorities and trade representatives were critical of the length of time appeals can take, there was no appetite to allow such decisions to take effect immediately.

Those discussions did not suggest that any of the proposals considered would improve the system of appeals as it currently stands.

The Government acknowledges that there may be a case for improving decision making by local authorities through better reporting of cases where necessary, but this would also require changes to the procedures of magistrates' courts which, as the Committee will be aware, are not courts of record. There are no plans to make the magistrates' courts a court of record and so publication of decisions would need to be achieved through other means: the Government would be interested in the Committee's views on how this could be achieved. The Government believes that the case is not yet made for a further onward right of appeal to the Crown Court given the relatively low numbers of decisions that are subject to judicial review following an appeal heard by a magistrates' court.

11. Given the increase in off-trade sales, including on-line sales, is there a case for reform of the licensing regime applying to the off-trade? How effectively does the regime control supermarkets and large retailers, under-age sales, and delivery services? Should the law be amended to allow licensing authorities more specific control over off-trade sales of 'super-strength' alcohol?

As the Government's Memorandum on the Licensing Act 2003 shows, more alcohol is now bought through the off-trade than the on-trade. This was not the case when the Licensing Act was implemented in 2005.

The Government is aware of the impact changing habits among consumers is having on the licensed trade. However, it would be a mistake to blame changing consumption patterns for

pub-closures alone: figures show that consumption is also falling, particularly among young adults between 18-24²⁸⁵.

The Licensing Act 2003 makes no distinction between types of licensed premises, whether they are in the off- or on-trades and the Government believes that the Act should be capable of being applied effectively to both forms of business. Although it acknowledges evidence, both academic and anecdotal, that suggests that alcohol-related harms can be attributed to alcohol bought through the off-trade, it is yet to be presented with evidence that shows that the Licensing Act 2003 is an ineffective means of dealing with licensing applications from either supermarkets or other off-trade businesses, or that measures to tackle harms that may be attributable to the off-trade cannot be introduced within the Act's existing framework.

The problems caused by 'super-strength' products are complex. Evidence indicates that a high proportion of consumers who regularly drink these products have some form of alcohol-dependency²⁸⁶. Where this is the case, banning these products alone may not be effective and individuals may resort to other, more harmful products. Examples from some areas in England and Wales, most notably in Ipswich, have shown that other measures, such as getting individuals into treatment to address their alcohol dependency are as important as removing 'super-strength' products from sale as treatment seeks to change the behaviour driving the dependency. The Government continues to encourage local authorities to provide effective alcohol-treatment services in order to respond effectively to the needs of those with alcohol dependency problems.

12. Should alcohol pricing and taxation be used as a form of control, and if so, how? Should the Government introduce minimum unit pricing in England? Does the evidence that MUP would be effective need to 'conclusive' before MUP could be introduced, or can the effect of MUP be gauged only after its introduction?

Minimum unit pricing remains under consideration pending the outcome of the legal case between the Scottish Government and the Scotch Whisky Association (with the UK Government joining the Scottish Government as a party). Pending the outcome of that case, and the impact of any future implementation in Scotland, the Government will take a decision whether to proceed with this measure. The Government believes that this course of action is most appropriate in order not to unfairly penalise responsible drinkers on low incomes, many of whom may suffer disproportionately following a decision to implement minimum unit pricing.

²⁸⁵ Published statistics relating to drinking habits among young adults cover the age-group 16-24, although we have interpreted these figures more narrowly to reflect the legal drinking age.

²⁸⁶ Chick, J. and Gill, J. (2015) *Alcohol pricing and purchasing among heavy drinkers in Edinburgh and Glasgow. Current trends and implications for policy*. Alcohol Research UK. Available at: http://alcoholresearchuk.org/downloads/finalReports/FinalReport_0128.pdf

13. Do licence fees need to be set at national level? Should London, and the other major cities to which the Government proposes to devolve greater powers, have the power to set their own licence fees?

Licensing fees are levied on the basis of cost recovery, as set out in HM Treasury's *Managing Public Money*²⁸⁷. Parliament agreed to the amendments made to the Licensing Act 2003 via the Police Reform and Social Responsibility Act 2011 that local authorities should have the ability to set their own fees.

The previous administration consulted on proposals for locally-set licensing fees in 2013. The consultation invited views on three issues:

1. The maximum amount that can be charged for each fee-paying process;
2. Whether and under what circumstances, licensing authorities should be able to charge differing amounts for different types of premises, including whether the use of national non-domestic rateable value should be retained; and
3. The mechanisms designed to ensure transparency and cost-effectiveness in setting fees.

The decision not to commence the provisions to allow local authorities to set their own licensing fees is based on two factors:

1. Uncertainty as to the evidence regarding the ability of local authorities to cover the costs of licensing within the current fee regime; and,
2. Uncertainty over the evidence regarding the ability of local authorities to calculate licensing fees accurately.

The Local Government Association was asked by the previous administration to provide evidence of costs before proceeding. The Government will consider the outcome of the further work by the Local Government Association and decide whether or not to commence this legislative provision or request further evidence.

14. Is there a correlation between the strictness of the regulatory regime in other countries and the level of alcohol abuse? Are there aspects of licensing laws of other countries, and other UK jurisdictions, that might usefully be considered for England and Wales?

Refer to oral evidence at question 5.

15 September 2016

²⁸⁷ See A6.1 for further information:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/454191/Managing_Public_Money_AA_v2_-jan15.pdf

Home Office – supplementary written evidence (LIC0063)

Select Committee on the Licensing Act 2003: Evidence Session 1

1. Thank you for sending a copy of the transcript of the first evidence session of the Select Committee. This letter is in response to the additional evidence the Committee requested during the hearing, as well as a small number of clarifications about the evidence given at that session. Specifically, it provides details of: -
 - a. The consultation we held looking at the system of appeals within the Licensing Act 2003 with a view to seeing what improvements could be made;
 - b. Evidence concerning alcohol-related health harms for England and Wales; and,
 - c. Clarifications relating to the evidence given at the session on 5 July.
2. The Committee also requested details relating to two additional points:
 - d. The average time between an appeal being brought and an appeal being decided; and,
 - e. Details of the pilots currently being undertaken by Public Health England looking at the analytical support package to public health teams to support areas build an evidence base that could support decisions based on a licensing objective related to public health.
3. In separate correspondence, you have also requested that we carry out further work to look at the difference between published data regarding the number of judicial reviews of licensing decisions and information gathered by the committee's specialist adviser. I intend to write to you again in September following the outcome of the follow-up work to look into this issue in more detail. At that point, I will also provide details about the average time between an appeal being brought and an appeal being decided. This issue will require a small amount of additional work with local authorities before we are able to provide the committee with an answer.
4. Regarding the pilots currently being undertaken by Public Health England, I will also write to you following the conclusion of that work in the autumn.

Consultation on appeals

5. As I said in my evidence to the Committee, we consulted with partners earlier this year about the appeals system. This consultation involved the Institute of Licensing (IoL), the licensing forum chaired by the Local Government Association (LGA), as well as the licensed trade, which included both trade associations and licensing solicitors. Those discussions focused on issues around whether the threat of appeal made local authorities more cautious in their decision making and the impact any potential award of costs against local authorities may have on a local authority's willingness to fight an appeal.

We also invited views on whether the decisions taken at a licensing review should be brought in immediately, rather than 21 days after the review, to see whether the appeals system acted as a delay to enforcement activity. Finally, we also sought wider comments relating to whether and how the appeals system could be improved.

6. There was no appetite among the groups we consulted to see any change to the appeals system, either in relation to the two specific issues we raised, or in general. In broad terms, both those involved in the IoL and the LGA licensing forum did not believe that the threat of appeal made local authorities more cautious or that the potential award of costs made local authorities more cautious in fighting appeals. If anything, this group felt that the decisions taken by local authorities were more robust and well-reasoned to ensure that they stood up to scrutiny in court. There was not universal agreement on these points, however. One respondent who submitted views through the IoL felt that the threat of costs made licensing committee members more cautious, particularly within the context of local authority budgets; another felt that while the local authority's decision making was unaffected, the issue of costs did impact on police forces considering bring a review (expedited or otherwise).

7. Although both the IoL and the LGA licensing forum considered that appeals often meant delays to review decisions coming into effect, which in some cases they considered excessive, they were also concerned with the possibility that a decision wrongly made could result in the closure of a business. Both the IoL and the LGA licensing forum were concerned about the damages that could be awarded against a local authority in these circumstances. The licensed trade echoed these points. Finally, and in relation to the general question, neither group suggested any additional areas of improvement. There was no suggestion that additional rights of appeal should be created. Mediation has been discussed as part of other policy work not linked to the specific discussions regarding appeals, and those involved in those discussions felt that this was something that already took place within the Act as it currently stands.

Evidence concerning alcohol-related health harms for England and Wales

8. The committee was interested in alcohol-related health harms. Lord Brooke referred to the recent publication of the *Statistics on Alcohol*, published by the Health and Social Care Information Centre on 30 June. The publication includes figures relating to: alcohol-related hospital admissions; alcohol-related deaths; alcohol-related prescriptions; drinking behaviours among adults and children; and expenditure and affordability. The data can be found here and is enclosed at annex A:

<http://www.hscic.gov.uk/catalogue/PUB20999>

9. Lord Brooke also requested information relating to Wales. The data is enclosed at Annexes B, C, D and E. The information at B is a technical guide; the information at C, D and E covers Wales as a whole. Both the evidence relating to England and the evidence relating to Wales should be read alongside the evidence provided in the Government's memorandum.

Evidence given at session on 5 July

10. In addition, I also wish to correct part of the oral evidence gave in relation to four points: additional licensing objectives, the sale of alcohol on trains, links between the off-trade and crime and disorder in the night time economy, and the number of late night levies.

11. Regarding the addition of additional licensing objectives (pp8-12), Rosanna O'Connor said: "as I said earlier when we were talking about the gathering of different databases at a local level to support the arguments in local licensing committees, we are supporting pilots to test the feasibility of introducing health as a licensing objective, linked to community impact policies [this should say 'cumulative impact policies' rather than 'community impact policies'] known in the trade as HALO CIPs." The pilots do not look at the introduction of health as a licensing objective linked to cumulative impact policies. Rosanna should have said:

"PHE, with support from the Home Office and Department of Health, have developed and are testing an analytical support package for public health within the licensing act. The analytical support package is provided for two purposes: firstly to help public health teams with their role as a 'responsible authority' under the existing regime and, secondly, to assist the pilot areas to build the evidence base that would be required to support health or wellbeing as a licensing objective. PHE are piloting this package in eight local areas across England. Evaluation is being undertaken by Sunderland and Bristol universities. PHE will share the evaluation with the Committee when it is published later in the autumn 2016."

It will be this information that we provide the committee with in the autumn once the pilots have concluded, as referred to in 2(e) above.

12. Regarding the sale of alcohol on trains (p25 of the transcript), I said "[t]he Act works on the premise that alcohol is sold in a fixed location, so moving vehicles are not licensed to sell alcohol, with the exception of trains". The Act is more complex than my answer suggests, and a clarification will assist the Committee in understanding this issue. I should have said:

"The Act works on the premise that alcohol is sold in a fixed location. Vessels (including ships and boats) are treated as if they were premises, and those that are not permanently moored or berthed should be treated as if they were premises situated in a place where they are usually moored or berthed. Alcohol may not be sold on a moving vehicle and the vehicle may not be licensed for that purpose. Trains and aircraft engaged on journeys are exempted from the requirement to have authorisation to carry on licensable activities."

13. Regarding the point about links between sales in the off-trade and crime and disorder in the night time economy (p14 of the transcript), I said "we have no studies that show

that the problems that occur in the night-time economy are directly attributable to the amount of alcohol that people have consumed before they have entered it.”

14. I wish to correct this evidence. The committee may wish to be aware that there are some small scale, mainly qualitative, research studies looking specifically at the links between ‘preloading’ and violence in the night time economy. One study involved a group of young men between 17-30 years old that had been arrested in an unnamed city in England. Around two-thirds of the group claimed to have ‘pre-loaded’ before a night out. A second study found that individuals who had ‘pre-loaded’ were around two-and-a-half times more likely to be involved in violent incidents than other drinkers. The extent of the research is limited and cannot be generalised to the wider population, and will need to be read within the context of reduced consumption of alcohol, particularly among young people, changes in the balance of alcohol purchased in the off- and on-trades, and falls in alcohol-related violence. I was made aware of the studies following the hearing and I wish to apologise to the committee for not being aware of this information when I gave my evidence. The research into ‘preloading’ can be found at annex F.

15. Regarding the point about the levy (p29 of the transcript), I said “there are some local authorities that do similar things in this space but do not quite have a late night levy. Nottingham has a night-time economy business improvement district”. Nottingham has both a late night levy and a night-time economy business improvement district, although the business improvement district predates the late night levy. The Nottingham business improvement district was established in 2012 following a merger of the existing retail and leisure business improvement districts. The business improvement district was successfully renewed in 2015. Nottingham introduced its late night levy in November 2014. Members of the business improvement district are exempted from the levy, which covers the surrounding areas. The point I was intending to make was that a business improvement district could act as an alternative approach to a late night levy, but I wish to avoid any possibility that my comments may be interpreted as implying that Nottingham has opted for a night-time business improvement district rather than a late night levy. The committee may also wish to be aware of the business improvement district in Bankside in London. Further information can be found here:

<http://www.themeans.co.uk/projects/better-bankside-bid>

16. I would be grateful if you could correct the official record accordingly.

Enclosures:

Annex A – *Statistics on Alcohol*, published by the Health and Social Care Information Centre on 30 June

Annex B – *Alcohol and health in Wales 2014: Technical Guide*

Home Office – supplementary written evidence (LIC0063)

Annex C – Alcohol and health in Wales 2014: Wales Profile

Annex D – Alcohol and health in Wales 2014: Alcohol Indicators

Annex E – Alcohol and health in Wales 2014: Alcohol Indicators – Drinking by age group

Annex F – Foster, J.H. and Ferguson, C. (2014) 'Alcohol 'Pre-loading': A Review of the Literature', *Alcohol and Alcoholism*, vol. 49(2), pp 213-226.

22 July 2016

Home Office – supplementary written evidence (LIC0164)

1. This letter provides information on two aspects on which the Committee has requested further information:
 - a. The average length of time between an appeal being brought and an appeal being decided;
 - b. An explanation for the reduction in the number of appeals brought against licensing decisions since 2007/ 2008.

I apologise for the delay in providing you with this information.

The average time for an appeal

2. At the evidence session in July, I undertook to provide further information on the average time between an appeal against a licensing decision being brought and it being decided. The Home Office does not routinely collect that information and information held from the statistical returns does not allow us to make an estimate as to the length of time. Subsequent discussions with local authorities following the session in July have not enabled us to provide an accurate answer to this question.

The reduction in the number of appeals since 2007/ 2008

3. Regarding the reduction in the number of appeals against application decisions, you were particularly interested in whether this could be explained by cases being 'compromised', ie whether further discussions between a licensing authority and an applicant or his/ her representatives following a decision had resolved issues to the satisfaction of both parties without the involvement of the courts. However, licensing authorities appear to be recording outcomes of all appeals within our statistics, including cases that are compromised, so this would not explain the reduction in appeals.
4. Based on discussions with partners, our view is that the decline reflects a variety of factors. These include:
 - a. the maturation of the system, through which licensing sub-committees have become more effective in making and communicating decisions;
 - b. a greater willingness on the part of licensing sub-committees to negotiate and to agree mutually acceptable outcomes that allow them to grant licences and mitigate the impact of any risks to the licensing objectives;
 - c. the quality of applications has also increased as a result of increased pre-application discussion between licensing authorities and applicants;
 - d. high profile and well-established case law;

- e. greater awareness of licensing policy among applicants has also supported the decline;
 - f. improved training for council members; and,
 - g. the introduction of cumulative impact policies, which can assist in driving up the quality of applications and encourage discussions between licensing authorities, the police and applicants.
5. There have also been some anecdotal reports that the cost of defending an appeal may have led some councils to prefer to use additional licensing conditions on a licence rather than refuse a licensing application outright. However, these reports have been few and far between. We would expect that the checks and balances within the licensing system to correct any decisions in which a licence has been granted incorrectly, either through the addition of further licensing conditions after a review or, if needs be, through a licence revocation.

4 November 2016

Home Office – supplementary written evidence (LIC0175)

1. I am writing following my appearance before your Committee on 13 December. This letter provides additional information on the following subjects:

- a. Planning and Licensing: examples of good collaboration between planning and licensing teams in local authorities;
- b. Equality and Disability: information about the percentage of businesses that comply with equalities legislation;
- c. Local Partnerships: examples of good practice that have involved a focus on addressing harms that may be attributable to sales of alcohol through the off-trade;
- d. Early Morning Alcohol Restriction Orders (EMROs): information about the legal challenges local authorities faced regarding the introduction of an EMRO as well as the changes that were made as a result of that feedback;
- e. Alcohol Sales Airside: further information on the voluntary UK Aviation Industry Code of Practice on Disruptive Passengers and other measures in place to tackle alcohol related disturbances at airports;
- f. Newspaper advertisements: details of the previous Government’s consultation on removing the requirement for licensing applications to be advertised in newspapers;
- g. Revoked licenses due to sales of alcohol to drunks: statistics

2. I am also taking this opportunity to clarify three aspects of my oral evidence regarding the Equality Act 2010, the Community and Ancillary Sales Notice and the College of Policing, as well as to provide some additional information about how some local authorities have applied the Act to address problems that are attributable to the off-trade.

Additional information

a. Planning and licensing

3. The Committee expressed particular interest in examples where there is good collaboration between licensing and planning authorities. I promised to provide evidence of good practice to show how local authorities have responded to the needs of local communities by effective joint working between planning and licensing.

4. **Warrington Borough Council** has arranged for its Licensing Enforcement Officers to work alongside Planning Enforcement colleagues to enable them to look at discrepancies between licensing and planning decisions, including those between permitted operating hours. Licensing Officers have access to the planning database that allows new licensing applications to be screened against planning information and for any arising issues to be discussed and jointly addressed with the applicants. Information about how licensing

decisions are being used to shape local policies is available online, although I have attached that information at annex A.

5. Licensing and planning officers in the **London Borough of Bexley** work together to ensure consistency between licensing and planning decisions. For example, the licensing authority advises their planning colleagues of all Temporary Event Notices (TENs) they have received to enable planning officers to identify any potential breaches of existing planning conditions. Where breaches are identified, these can be discussed between licensing and planning officers and the applicant. Acknowledgment letters sent to TENs applicants clearly state that any event must comply fully with any other regulatory and legal requirements and, specifically, that the service of the Notice does not in any way exempt the applicant from ensuring full compliance with any planning restrictions that may be in force for the premises. I am aware that the existing arrangements in Bexley have helped ensure that a number of TENs have been withdrawn by applicants and amended accordingly or led to enforcement actions against applicants found in breach of the existing planning restrictions. A similar approach is taken with regard to premises licences.

b. Equality/ disability

6. In my evidence (Q 214), I undertook to provide further information about the percentage of properties that comply with the Equality Act 2010. The Government does not hold information about the percentage of businesses that comply with this legislation. The ONS Opinions and Lifestyle survey shows that from 2013 to 2014, the proportion of disabled people that experienced difficulty accessing restaurants and pubs has decreased from 19% to 14%; this change is statistically significant. Further detail is provided at Annex C.

e. Local partnerships

7. I also promised to write to you with examples of good practice of local partnership working (Q 215). In my evidence, I referred to the Local Alcohol Action Areas programme, which ran between February 2014 and March 2015. The Government committed to a second phase of the programme in the Modern Crime Prevention Strategy, and I hope to be able to announce the participating areas soon. Under the programme, the Home Office, together with the Department of Health, Public Health England and the Welsh Government, will work with licensing authorities, the police, local health partners and, where appropriate, local businesses, to devise local solutions and strategies for preventing alcohol-related crime and disorder and reducing alcohol-related health harms. Further information on the initiatives developed by local areas in the first phase of the programme is at annex D.

8. In my evidence, I also referred to local community partnerships to address harms or crime that arise from perceptions about people purchasing alcohol in off-licence premises. Earlier this year I visited Durham, where I met the Chief Constable and Police and Crime Commissioner who have been active in tackling alcohol related offences in their force area. I spoke to the force's harm reduction unit, local licensing officials and local community partners, including retailers and the Director of the Community Alcohol Partnership (CAP). I witnessed impressive local partnerships to tackle crime, anti-social behaviour, underage

purchases of alcohol and improve residents' feelings of safety and well-being in Durham. For example, an off-trade licence in Durham Council was reviewed at the police request following the intelligence they received from members of the public indicating that under 18s may have been obtaining alcohol from this premises ("Vicky's Supermarket"). At the review hearing, several responsible authorities, including Durham Constabulary, made representations concerning the premises and, on the strength of these representations, the Sub-Committee decided to revoke the licence to promote the licensing objectives.

9. I also accompanied police officers and Street Friends on an evening patrol in Consett town centre to see their management of the night time economy. Street Friends is a church-based initiative in which volunteers patrol Consett town centre late at night, offering support to people with drug and alcohol problems. I visited licensed premises during the patrol and I witnessed how various provisions of the Act are policed on the ground as well as the excellent support provided by the Street Friends. Local partnerships are held in high regard by all involved in the area and one senior police officer of Durham Constabulary praised the important work of Consett Street Friends in helping emergency services and reducing demands on police resources.

10. In addition, the Government has also provided additional financial support for local initiatives aimed at reducing alcohol related harm via the Police Transformation Fund and Police Innovation Fund. The initiatives supported through these programmes include:

- **Devon and Cornwall Police** were awarded up to £400k in 2016/17 and £355k in 2017/18 to develop a pathfinder's hub that will deliver a strategic approach towards preventing and reducing offending by providing early help and intervention, prevention of escalation and the management of prolific offenders. Pathfinders will focus on addressing the nine critical pathways for interventions, one of which is alcohol misuse (others include accommodation, employment, education and training, finances, mental health, physical health, substance misuse, relationships and abuse).

d. Early Morning Alcohol Restriction Orders (EMROs)

11. I promised to write to the Committee to provide more information about what the challenges were to the effective implementation of EMROs, what action was taken and why we think that action will enable people to use EMROs more effectively (Q 216).

12. As the Committee may be aware, several consultations on the introduction of an EMRO took place between 2013 and early 2014. No consultation resulted in the introduction of an EMRO.

13. The Home Office sought feedback from the licensing authorities involved in those consultations, as well as from others that had not actively considered an EMRO. Many licensing authorities felt that they would only use the EMRO as a last resort if other methods to reduce alcohol-related problems had failed, and did not feel it an appropriate means to reduce alcohol-related problems in their area. Some felt that an EMRO could be perceived by members of public and businesses as labelling an area as having high alcohol-related

crime or being unsafe. Some felt that it conflicted with the need to support local businesses and increase economic growth, and preferred alternative approaches such as local partnership working and voluntary agreements, or reviewing individual premises licences. They also highlighted practical issues with implementation: licensing authorities considered the process to be onerous, and this in itself was a barrier to considering an EMRO. Having seen the experience of councils which had consulted on an EMRO, licensing authorities felt that the risk of Judicial Review is too great, and the authorities felt that they either lacked resources to fund a legal challenge. The Association of Multiple Licensed Retailers has also pledged a “fighting fund” to assist businesses who oppose and challenge a proposal to introduce an EMRO in any licensing authority area and this may also have a deterrent effect.

14. In light of this feedback, the previous Government considered what changes could be made to the legislation and the guidance. The previous Government amended secondary legislation in October 2014 to allow paperwork to be provided in electronic format. Previously, licensing authorities were required to send by post paper copies of all representations made, to all those who made them, 10 days before an EMRO hearing. The amended regulations reduced the paper work required for hearings by making electronic dissemination the default for EMROs.

15. In October 2014 the statutory guidance was revised to:

- include a process flow chart setting out the stages to implementing an EMRO;
- clarify circumstances where a proposed EMRO can be changed after consultation without re-consulting;
- expand on what areas could do before consulting, such as holding informal discussions with partners;
- provide more information on what sorts of evidence could be relevant in considering the introduction of an EMRO.

e. Alcohol sales airside

16. I also promised to provide further information about the provisions in the voluntary UK Aviation Industry Code of Practice on Disruptive Passengers (“Code of Practice”) (Q 222).

17. Airlines UK (formerly the British Air Transport Association), the Airport Operators Association, the Airport Police Commanders Group, the Association of Licensed Multiple Retailers and the UK Travel Retail Forum have worked together to create the Code of Practice. Its purpose is to create a common, consistent approach to co-ordinate and enhance existing efforts to prevent and minimize disruptive passenger behaviour in close collaboration with the police. The Code was launched in summer 2016 and operates in 22 airports.

18. Among its commitments, the Code sets expected standards to alcohol sales at UK airports and seeks to replicate best practice and restrictions on the sale of alcohol using examples taken from businesses that are not exempted from the Act. It advocates a zero-tolerance approach to disruptive behaviour and provides for enhanced collaboration with the police in preventing and managing alcohol related incidents.

19. Since the introduction of the Code, many airports have increased police presence in bars and restaurants as well as at departure gates, where they can monitor passengers and intervene if needed. Interventions can include softer measures, such as engaging passengers in conversations about their alcohol consumption, and more assertive measures, such as arresting passengers the airline has decided to offload or deny boarding due to intoxication. The Code gives the police an opportunity to inspect the establishments selling alcohol and aims to ensure that bars and restaurants will adhere to the principles of responsible alcohol sales.

20. In addition to the Code of Practice, many airlines and airports have also launched their own schemes aimed at reducing disruptiveness. These schemes are specifically focused at the different needs of the various industry operators. For example some airlines are now contacting passengers before their flight with a reminder about responsible behaviour and are taking stronger actions during and after disruptive events. Actions include banning individuals from the airline, actively pursuing prosecutions and even recovering costs from the passengers to meet the cost of any delays they may have caused.

21. The Government will continue to support the development of the Code in the next 12 months ensuring it remains relevant, proportionate and fully effective.

22. Finally, the Committee will be aware of two key laws that already govern conduct on board aircraft – the Air Navigation Order 2016 (ANO) and the Aviation Offences Act 2003 (AOA), and both carry severe penalties intended to deter offenders. It is an offence under the ANO to enter an aircraft when drunk, or to be drunk on an aircraft, carrying a maximum of two years in prison and/or unlimited fine. The AOA provides police with automatic powers of arrest to deal with passengers who have been drunk or disruptive on board an aircraft, backed up by a maximum penalty of five years in prison. In addition, the police have powers to issue Penalty Notices for Disorder for offences including being drunk and disorderly in a public space, including airports.

f. Newspaper advertisements

23. I also promised to provide details of the previous Government's consultation on removing the requirement for applicants to take out adverts in local newspapers (Q 225).

24. As the previous Government's response to the consultation makes clear, opinions on the proposal were finely balanced. The consultation asked whether respondents agreed with the proposal to remove the requirement to advertise in a local newspaper. There were 753 responses to this question; 46% of respondents answered 'yes', 50% answered 'no', and 5% answered 'don't know' (rounded figures). A number of consultation responses emphasised that newspapers were an important means through which local communities found out about licensing applications, particularly for those living in rural areas, for older people and those without access to the internet.

25. The Government at the time decided not to remove the requirement to advertise applications in local newspapers. There are no plans to revisit this issue, although I know that the licensed trade would like to see the requirement removed.

26. Analysis of the consultation responses is published here:

www.gov.uk/government/consultations/alcohol-strategy-consultation

g. Revoked licences due to sales to drunk/intoxicated individuals

27. The Committee asked me to provide information about the number of licensed premises that have lost their licence as a result of breaching Section 141 of the Licensing Act (Q227). Statistics published by the Home Office record the number of licences revoked, but do not record reasons for the revocation. The existing statistics can be found here:

<https://www.gov.uk/government/collections/alcohol-and-late-night-refreshment-licensing-england-and-wales-statistics>

28. Licensing authorities are required under the Licensing Act 2003 to keep a licensing register. This must contain a record of each premises licence, club premises certificate and personal licence issued by the licensing authority, and details of any licence reviews. Licensing authorities would therefore hold information about any action taken in respect of breaches of section 141, but this information is not held centrally.

Clarifications

29. I would also like to take this opportunity to clarify some aspects of the evidence I gave.

The Equality Act 2010

30. In my evidence to the Select Committee on 13 December I referred to “the new codes that have come into effect” on accessibility (Q 214). It was in fact the BBPA guidance to which I was referring. A copy of the guidance is at Annex B.

Community and Ancillary Sales Notice (CAN)

31. During my evidence, I said that the reason the CAN had not been introduced was due to lack of parliamentary time (Q 221). The Committee seemed surprised at my answer, potentially owing to a view that a commencement order was all that was required to introduce the CAN.

32. Commencing the CAN is not simply a matter of signing the relevant commencement order for the Deregulation Act 2015: two pieces of additional secondary legislation is also required before the provisions can commence.

33. First, secondary legislation must list the type and size of business which may use a CAN, provide a definition of community group, and specify the quantity of alcohol which is permitted to be sold. The secondary legislation will be subject to the affirmative procedure.

34. Second, further secondary legislation is required to prescribe the form which CAN users will submit to the licensing authority, and the fee is also required. This secondary legislation will be subject to the negative procedure.

College of Policing

35. I informed the Committee that the College of Policing was working to ensure that all police officers properly understand the provisions of the Licensing Act and are given best practice on how to implement it (Q 227). I would like to clarify that as part of the initial learning, all new police recruits to England and Wales forces undertake a module on drug offences and substance misuse, which covers training on alcohol licensing matters. As the Committee may know, new recruits must undertake a College designed mandatory two year training programme called the Initial Police Learning and Development Programme (IPLDP). This training specifically relates to the role of Patrol Constable and ensures they have all the knowledge, understanding, skills and behaviours to enable them to safely and lawfully carry out the responsibilities of that role.

36. Finally, I would like to take this opportunity to provide the Committee with some additional evidence about the way that the Licensing Act applies to the off-trade. As you will recall, there was the subject of some focus, and I wanted to share with you some examples of how local authorities have used the existing framework within the Act to address problems that may be attributed to the off-trade. In particular, there are two examples from Leeds, where the local authority has introduced two cumulative impact policies (CIPs) that include off licences. Specifically:

- Headingley: the licensing authority identified an issue with 24 hours convenience stores opening in a busy student area which suffers from nuisance issues related to student parties. The licensing authority concluded that 24 hour alcohol sales would impact on public nuisance and, as Headingley was already within a CIP area, the licensing authority added off licences seeking alcohol sales after midnight as within the scope. The CIP will be reviewed next year but anecdotal information suggests that the nuisance levels have improved as a result of the extended CIP.
- Armley: in September the Council adopted a new CIP specifically for off licences. The Anti-Social Behaviour Team provided substantive evidence of antisocial behaviour from people drinking on the main street (Town Street). The area already had a Designated Public Place Order²⁸⁸ but the Council was receiving more applications for off licences and decided to use a CIP to control these and two new applications for off-trade premises within the CIP area were subsequently refused. Other measures in Armley complementing the CIP included treatment and housing services for persistent offenders.

²⁸⁸ This is now replaced by the Public Spaces Protection Order under the Anti-Social, Crime and Policing Act 2014

Home Office – supplementary written evidence (LIC0175)

Sarah Newton MP

30 December 2016

Institute of Alcohol Studies – written evidence (LIC0047)

Licensing objectives

1. *Are the existing four licensing objectives the right ones for licensing authorities to promote? Should the protection of health and wellbeing be an additional objective?*

The current four licensing objectives cover important areas impacted by licensing and the consumption of alcohol, but the effectiveness of the Act is hampered by the lack of a health objective. This would allow all of the responsible authorities within the Act to better address the undoubted health impacts that alcohol can, and does have on local communities.

Evidence suggests that the addition of a health and wellbeing objective would represent an evolution and not a revolution within licensing.²⁸⁹ It would make amends for a clear legislative gap within the Act and allow for the more even application of the current four objectives. Some local authorities already address some of the more proximal health issues related to licensing using the current four objectives, demonstrating that it can be done, albeit with limitations.

The addition of a specific objective would aid this further and do a significant amount to encourage other local authorities to take this approach. The LGA has found that 9 out of 10 Directors of Public Health report that there is demand for a health objective.²⁹⁰

2. *Should the policies of licensing authorities do more to facilitate the enjoyment by the public of all licensable activities? Should access to and enjoyment of licensable activities by the public, including community activities, be an additional licensing objective? Should there be any other additional objectives?*

The Section 182 Guidance should be far clearer about the fact that the Act, as administrative law, is to be promoted with a view to the wider public interest, not just the night time economy. This does not always happen in practice,²⁹¹ and there are many examples of licensed premises, particularly in saturated areas, undermining the local public good. A greater focus on this both within individual decisions, and licensing policies, would help to ensure that decisions are made in a sustainable way and that they do not undermine the local public good.

The Equality Act 2010 already places obligations on local authorities to ensure access to licenced venues, and is referenced in the Section 182 Guidance. This could be made more

²⁸⁹ Foster. J., Charalambides. L., (2016) [The Licensing Act \(2003\): its uses and abuses 10 years on](#). Institute of Alcohol Studies. In particular see [here](#).

²⁹⁰ LGA Survey (Jan 2016) [Public Health and the Licensing Process](#)

²⁹¹ Foster. J., Charalambides. L., (2016) [The Licensing Act \(2003\): its uses and abuses 10 years on](#). Institute of Alcohol Studies. Chapter 4.

prominent, but there is no need to duplicate the Equality Act within the 2003 Licensing Act. If there were to be a new objective introduced this should relate to health, for the clear reasons outlined elsewhere in this document.

The balance between rights and responsibilities

- 3. *Has the Live Music Act 2012 done enough to relax the provisions of the Licensing Act 2003 where they imposed unnecessarily strict requirements? Are the introductions of late night levies and Early Morning Restriction Orders effective, and if not, what alternatives are there? Does the Licensing Act now achieve the right balance between the rights of those who wish to sell alcohol and provide entertainment and the rights of those who wish to object?***

The lack of a workable Early Morning Restriction Order is a clear strategic failing within the Act. Many local authorities and police forces would like to be able to use this tool, and restricting excessively late closing times is known to significantly reduce alcohol related crimes and associated police costs.²⁹² Regarding late night levies, these are currently far too inflexible and so have only been practical in limited locations. Recent Home Office plans to address this problem are very welcome, but they will remain difficult to administer, particularly in relation to the amount of revenue that many local authorities seem likely to make from them.

It is difficult to assess the overall balance of the Act regarding its balancing of the rights of various parties because of the large variations in the way that it is implemented. In some areas local authorities do not operate on a level playing field with the licenced trade, who at times have access to more specialist legal advice, and local authorities can run the risk of significant costs if taken to appeal. This is not always a problem, but can at times result in the balance falling too favorably towards the licenced trade.

- 4. *Do all the responsible authorities (such as Planning, and Health & Safety), who all have other regulatory powers, engage effectively in the licensing regime, and if not, what could be done? Do other stakeholders, including local communities, engage effectively in the licensing regime, and if not, what could be done?***

In general it is uncommon for all of the responsible authorities to engage in licensing, and the process would benefit from better involvement, particularly from planning and child protection. In many areas public health bodies would like to engage more but find the lack of a specific objective to be problematic.

Local communities often find it hard to engage effectively with licensing decisions, with barriers including small consultation time periods, difficulties navigating the licensing process and finding out about local activity, a lack of independent legal advice and the legal influence of the licenced trade. It was a stated aim of the Act to better engage local

²⁹² Foster. J., Charalambides. L., (2016) [The Licensing Act \(2003\): its uses and abuses 10 years on](#). Institute of Alcohol Studies. Page 127

communities, but while there have been noted improvements in some areas, for many the process is still mysterious and inaccessible.

The committee may be interested in Westminster Council's very successful 'licensing advice project' for local residents, run in conjunction with the Citizens Advice Bureau. This provides legal help for residents to ensure that they make effective contributions to licensing decisions. While this is expensive replication of this elsewhere seems likely to be very beneficial, and if local authorities had the ability to set local fees, this could be legitimately factored into their calculations.

Licensing and local strategy

5. *Licensing is only one part of the strategy that local government has to shape its communities. The Government states that the Act "is being used effectively in conjunction with other interventions as part of a coherent national and local strategy." Do you agree?*

The development of the Act in recent years has included a welcome shift towards crime and disorder issues, with the Modern Crime Prevention Strategy (MCPS) continuing this trend. However, while the MCPS has some good elements around data gathering and new licensing powers, there is also a very poorly evidenced focus on voluntary schemes. While the MCPS will probably help to reduce and prevent some crime, overall it is likely to be rather ineffective, and its measures are all very piecemeal and downstream. The available evidence shows that action of some sort on pricing would be a far more effective, and strategic, approach.

Another more strategic line of action would be to encourage responsible authorities to use the Act better as it is, and other notable failings include the EMRO, the inflexible way in which the LNL was introduced and the lack of action to allow local authorities to fund their licensing operations properly.

A similar theme is apparent when looking at nationally proposed action to address alcohol harms, with many features of the then Government's 2012 alcohol strategy left unfulfilled, including minimum unit pricing and the introduction of a health objective. Rather than moving onto new issues, such as the MCPS, it would be more effective to see these policies implemented.

Regarding strategy at a local level, one of the key recommendations in the recent IAS report was that the Act be used in a more strategic manner at the local authority level. It is in some areas, but not in many. The Section 182 Guidance is not helpful in this regard; it mentions strategy at para 1.5 but only in very general terms, and similarly at para 13.10. In many areas you could ask the chair of the licensing committee what their strategic plan for the local area is, or what the local public good requires, and they probably would not be able to answer clearly. This is also often the case across licensing departments, though with some notable exceptions, and is one reason why the Act is often used in a reactive and unresponsive manner, waiting for problems to arise and only then trying to address them.

Addressing this is a very clear example of how the Home Office could encourage local authorities to better use the Act as it is.

6. *Should licensing policy and planning policy be integrated more closely to shape local areas and address the proliferation of licensed premises? How could it be done?*

Yes, the two should be better integrated, and the lack of this currently is another example of poorly joined up and strategic thinking. In addition to coordinating with planning, more should be done to encouraging coordination with the local health and wellbeing strategy, the corporate plan and other similar documents.

Crime, disorder and public safety

7. *Are the subsequent amendments made by policing legislation achieving their objects? Do they give the police the powers they need to prevent crime and disorder and promote the licensing objectives generally? Are police adequately trained to use their powers effectively and appropriately?*

Amongst others, the Police Reform and Social Responsibility Act (2011) made the following changes:

It made local authority licensing teams a responsible authority in their own right: This has been very beneficial, and many local authorities use this well to uphold their SLP.

It made health bodies a responsible authority: this was a welcome step in the right direction, but health is hampered by not having a specific objective.

It lowered evidential threshold to appropriate rather than necessary: this has had a minimal impact and many lawyers view the change as making no practical difference. There are significant misunderstandings about the evidential threshold used within decision making under the Act. As administrative law, decisions do not ask for certainty, or evidence to prove something definitely would or would not happen, it asks for decisions and evidence on the balance of probabilities. This is often misunderstood, something which greatly helps the licensed trade, who are keen to up the evidential threshold as this makes it harder to identify that premises is linked to a problem.²⁹³

It changed the local residents' vicinity test: this has been very beneficial.

Regarding police powers to prevent crime and disorder, the changes, which include additional powers of entry for the police, have helped in this way. However, the biggest obstacle to the promotion of the objectives is the fact that many responsible authorities do not actively 'promote' them, but take quite a reactive approach.

Promoting the prevention of crime and disorder should involve looking at factors that may lead to crime, and so to undermining the objectives. This is a proactive and forward looking

²⁹³ Foster. J., Charalambides. L., (2016) [The Licensing Act \(2003\): its uses and abuses 10 years on](#). Institute of Alcohol Studies. In particular see [here](#).

view which means that problems should be addressed before they are developed, based on the likely future impact of a new license.

However, many local authorities do not ‘promote the prevention’, but take the view that you have to wait for a problem to arise, and to undermine the objectives, before then trying to manage it down. Changing this view would make a significant difference to the way in which the Act is used.

Police evidence around very late closing times provides a good example of these differences in how the Act is used. Some licensing committees do not take police resource concerns into account, even where the police have stated that they do not have the resources to deal with a particularly late closing time. Yet if a licensing committee is to promote the prevention of crime and disorder, a lack of police resources could almost certainly be seen to actively create an environment where the objectives are more, rather than less, likely to be undermined.

It may not be possible to empirically prove that a lack of police resources will lead to a problematic environment where crime and disorder become more likely, but this is not the way in which licensing decisions should be approached. Rather, as the Court of Appeal has made it clear, licensing decisions should involve ‘an evaluative judgment’ as opposed to a black and white pronouncement. Firmly establishing this approach, as allowed by the Act and case law, would greatly improve the ability of local authorities to proactively address issues of crime and disorder, as well as other issues relevant to the licensing objectives.

Licensing procedure

8. The Act was intended to simplify licensing procedure; instead it has become increasingly complex. What could be done to simplify the procedure?

The Act does represent a significant simplification when compared to the previous licensing regime in a number of ways, as it combined alcohol and entertainment, and has greatly clarified the issue around granting closing times. There is a consensus that the Act has also enabled better joint working, both between the regulatory bodies, and between these bodies and the licensed trade.

In general the alterations to the Act have addressed deficiencies and problems. Some areas within the Act were originally too focused on tourism and the sociable benefits of licensing, while paying too little attention to the problems that can arise. Alcohol is regulated for a reason and it is a mistake to assume that licensing can automatically be simplified without producing knock on problems.

It is arguable that many of the simplest sections within the Act are the most problematic to administer and enforce, particularly Temporary Event Notices (TENs). These result in significant shortfalls for local authorities; they cost £21 but Westminster Council report that they cost at least £120 to process. Their overly light touch approach has effectively resulted in them working as a loop hole, allowing existing premises to extend their hours with limited

oversight. This makes the more regulated elements of the licensing regime harder to enforce.

As mentioned in previous answers, rather than contemplating additional changes to the Act, a more productive approach would be to ensure that local authorities use the Act, as it is, to its full potential. One key issue here relates to fees, and the system could arguably be both simplified and strengthened for local authorities if they were all able to fund their licensing operations adequately.

A second issue relates to the decision making process and the way in which misconceptions about this often favour the licensed trade.²⁹⁴ Clarifying these misunderstandings would greatly improve and simplify the process, and could help to address the often wide variations in the application of the Act.

9. *Should sales of alcohol airside at international airports continue to be exempt from the application of the Act? Should sales on other forms of transport continue to be exempt?*

It seems odd that the Act does not apply airside at airports as the promotion of the objectives is just as relevant in this location. In fact there are potentially additional risks related to passengers being temporally displaced and confined within aircraft. Indeed, recent figures showed that 422 people were held on suspicion of being drunk at an airport or on a plane in the last two years.²⁹⁵

Regarding other forms of transport, the sale and consumption of alcohol on trains can cause specific problems, and can effectively result in additional preloading or on-route loading. In some areas large groups frequently buy large amounts of alcohol from the off-trade, and drink this on the train while traveling to their destination on a Friday or Saturday night. They then arrive in a very intoxicated state, causing significant problems. Reportedly this is a particular problem on the east coast mainline, with groups traveling between cities such as Newcastle and York, amongst others. In Scotland, ScotRail banned the consumption of alcohol on trains between 9pm and 10am in 2012, and has seen continued falls in anti-social behaviour and crime since then.²⁹⁶

10. *What could be done to improve the appeal procedure, including listing and costs? Should appeal decisions be reported to promote consistency? Is there a case for a further appeal to the Crown Court? Is there a role for formal mediation in the appeal process?*

The better reporting of appeal decisions would be beneficial, and this could be aided by updating the Section 182 Guidance with case law developments so that it better reflects the practical application of the Act.

²⁹⁴ Foster. J., Charalambides. L., (2016) [The Licensing Act \(2003\): its uses and abuses 10 years on](#). Institute of Alcohol Studies. See chapter 14.

²⁹⁵ [Airport alcohol sales to be 'examined' by Lord Ahmad](#). BBC news

²⁹⁶ ScotRail Technology Magazine, [Alcohol ban 'is working'](#) –

There is a case for exploring the use of mediation, but local authorities should not be pushed towards unnecessary compromising when they have a clear duty to uphold and promote the licensing objectives in the interests of the local community.

An important point to make here involves the general quality of licensing decisions. The higher the quality of the original decision, the less likely it is to go to appeal, and if this does happen, the higher the chances of the original decision being upheld. Key factors include ensuring that it is reasonable, based upon relevant local evidence and transparent in its inference and conclusions. Decisions do not have to be absolute and evidenced definitively however, but based on the balance of probabilities. The more that these principles are stressed and explained in the guidance the more likely it is that the act will be applied in a clear and accurate manner, avoiding the need for appeals.

Sale of alcohol for consumption at home (the off-trade)

11. Given the increase in off-trade sales, including online sales, is there a case for reform of the licensing regime applying to the off-trade? How effectively does the regime control supermarkets and large retailers, under-age sales, and delivery services? Should the law be amended to allow licensing authorities more specific control over off-trade sales of “super-strength” alcohol?

The 2003 Licensing Act is poorly equipped to deal with the off-trade, which has grown twice as fast as the on-trade in the last 10 years. In Scotland their licensing Act has been rebalanced in order to better take account of the fact that the vast majority of alcohol is consumed at home. This has seen the introduction of a ban on multi-buys, restricting alcohol related products to one part of a store, the restriction of off-trade hours to 10am until 10pm, and their legislation for minimum unit pricing, although this has not yet been implemented.

Research into the impact of these restrictions has found broadly positive, if slightly mixed, results. A study by NHS Scotland using sales data found that there has been a 2.6% decrease in the amount of alcohol sold in Scotland per adult as a result of the multi-buy ban, including a 4% drop in wine sold and an 8.5% decline in pre-mixed alcohol drinks (including alcopops). However, other research found that the ban had changed shopping habits, causing people to buy fewer products per shopping trip, but to buy beer and cider more frequently, leaving the overall amount bought unchanged. This second study however used a panel survey method, which is known to be less accurate than sales data (which was the basis of the first piece of research).

While there is still debate about this issue, both sets of researchers suggested that the effectiveness of the ban had been undermined by retailers reducing prices, something which Minimum Unit Pricing (MUP) would have prevented if it had been implemented in Scotland. A loophole in the multi-buy ban allowing the discounting of single items is also thought to have weakened the ban, with retailers switching from offering promotions such as ‘3 for the price of 2’ to only discounting individual bottles.

While these impacts in Scotland are moderate, they are significant, and it should be remembered that they represent only one strand of a broader alcohol strategy. This comparison also highlights the fact that pricing policies will probably have a bigger impact on supermarket alcohol sales than licensing on its own.

Set against this example, the 2003 Licensing Act has very limited ability to impact upon alcohol sales in supermarkets, where alcohol promotions are routinely found in all parts of the store, with heavy discounting and price promotions. Research suggests that between 30 per cent and 40 per cent of alcohol sold by supermarkets are specifically promoted.²⁹⁷

Regarding home delivery services, these are also difficult to regulate under the Act. Some local authorities have produced additional guidance and conditions for operators to ensure that they comply with the Act, particularly regarding sale to minors and sales to drunks. This is hard to enforce however. While off-trade hours in Scotland are limited to 10am – 10pm, Scottish hours for home delivery services are slightly different, when they are only prohibited between midnight and 6am. This does however still allow for greater limits on home delivery during the period which could potentially be the most problematic.

Pricing

12. Should alcohol pricing and taxation be used as a form of control, and if so, how? Should the Government introduce minimum unit pricing in England? Does the evidence that MUP would be effective need to be “conclusive” before MUP could be introduced, or can the effect of MUP be gauged only after its introduction

Consumption can and should be regulated by price, and alongside licensing price is a key tool for limiting alcohol related harms. There is clear and consistent evidence that price is a key variable and directly influences alcohol related harms – for example, research has shown that in England and Wales the real price of beer has a direct impact on A&E attendance rates.²⁹⁸ Decreases in alcohol taxes in Finland in 2004, for example, led to a 10% increase in overall consumption and a 46% increase in liver disease deaths.²⁹⁹ As a result, alcohol taxes are recommended by international bodies such as the World Health Organization³⁰⁰ and the Organisation for Economic Co-operation and Development³⁰¹ as among the ‘best buys’ in public health.

Alcohol is 54% more affordable today than in 1980.³⁰² Successive cuts and freezes to duty since 2012 have exacerbated this problem: beer duty is now 14% lower than in 2012, while

²⁹⁷ Alcohol Concern Wales (February 2011) [Out of the way? Alcohol displays in supermarkets.](#)

²⁹⁸ Matthews. K., Shepherd. J., Sivrajasingham. V. (2006), Violence-related injury and the price of beer in England and Wales. *Applied Economics*, p. 668

²⁹⁹ Mäkelä, P. and Österberg, P. (2009) *Weakening of one more alcohol control pillar: a review of the effects of the alcohol tax cuts in Finland in 2004*, *Society for the Study of Addiction*, 104, pp554-563.

³⁰⁰ World Health Organization (2011), *From Burden to “Best Buys”: Reducing the Economic Impact of Non-Communicable Diseases in Low- and Middle-Income Countries*

³⁰¹ Sassi, F. et al (2013) *The Role of Fiscal Policies in Health Promotion*, *OECD Health Working Papers*, No 66, OECD Publishing.

³⁰² Health & Social Care Information Centre (2015), *Statistics on Alcohol England*, 2015.

cider and spirits duty have each fallen by 6%.³⁰³ Raising the price of alcohol through real terms increases in duty is necessary to reverse these dangerous trends.

However, it is not just the level, but also the structure of alcohol taxes that matters. Because of anomalies in the duty system, 7.5% ABV ciders attract the lowest duty per unit of any product: 5p per unit, compared to 18p per unit for a beer of equivalent strength. This has given rise to a market for industrial ‘white’ ciders: sold in 3 litre plastic bottles and closely linked to harmful, dependent and underage drinking.³⁰⁴ Tax policy could be used to have a more targeted focus on such products through narrower bands - at present ciders between 1.2% and 7.5% ABV are taxed at the same rate.

MUP is not a silver bullet, and a combination of tax and MUP would be the optimal approach. This would ensure that the cheapest alcohol, which disproportionately causes the greatest harms, increased in price, while ensuring that the Treasury benefited from this rather than the alcohol producers.

MUP at the suggested price of 50ppu would have a minimal impact on the on-trade, where prices tend to be significantly higher than this, but it would impact most dramatically on the cheapest alcohol in the off-trade. The Ban on Below Cost Sales (BBCS) already sets a precedent for a floor price for alcohol, and one which has not been challenged by the licensed trade. However, the current level at which the BBCS is set (a sum of the duty plus VAT for each alcoholic product) is so low as to be almost totally ineffective. It was estimated that on its introduction only 0.7% of alcohol units sold fell below the ban’s threshold, and only 1.0% of units consumed by harmful drinkers. As mentioned above, the floor price for strong white cider at 7.5% is 5p per unit. In contrast, MUP set at a unit price of 45p would affect 23.3% of alcohol units sold, and 30.5% of units sold to harmful drinkers.³⁰⁵ Since its introduction alcohol duties have been cut, further reducing the effectiveness of the BBCS.

Regarding the question of being able to conclusively predict MUP’s impact, the evidence for MUP is very strong, and far stronger than for other policies implemented by the Home Office. For example, the Modern Crime Prevention Strategy places a significant focus on partnership working with the trade, when there is not a single piece of academic, peer reviewed evidence that this has a significant impact on crime and disorder. While the licenced trade has carried out some internal evaluations, these tend to be of a very poor quality.

In contrast the evidence, both modelled and from Canada where they have similar minimum prices, that MUP would be effective is very strong.³⁰⁶ While the Scottish court case

³⁰³ Institute of Alcohol Studies (2016), *Budget 2016 analysis*.

³⁰⁴ Black, H. et al (2014) *White Cider Consumption and Heavy Drinkers: A Low-Cost Option but an Unknown price*. *Alcohol and Alcoholism* 49:6, pp675-80; Alcohol Concern (2015). *Alcohol brands consumed by young people in treatment 2015*.

³⁰⁵ Brennan. A., Meng. Y., Holmes. J., Hill-McManus. D., Meier. PS., (2014) [‘Potential benefits of minimum unit pricing for alcohol versus a ban on below cost selling in England 2014: modelling study.’](#) *BMJ*

³⁰⁶ Stockwell, T., Zhao, J., Marzell, M., Gruenewald, P. J., Macdonald, S., Ponicki, W. R., & Martin, G. (2015). Relationships Between Minimum Alcohol Pricing and Crime During the Partial Privatization of a Canadian

regarding the legality of MUP is ongoing, at present the courts have accepted that it would be reasonable, based on the evidence available and the modelling, to judge that MUP may be an effective policy. On this basis they are satisfied with the policy as a relevant response to the health issue which it seeks to address.

It is worth pointing however that the Scottish MUP legislation includes a sunset clause. If, after 6 years there is evidence that MUP is having unintended consequences, the legislation can be repealed. This seems sensible.

At present the Home Office have provided only poor evidence that partnership working with the trade is an effective policy to reduce alcohol related harms, and no public estimates as to how many crimes this policy will prevent over the next few years. In contrast the evidence for MUP, produced on the same terms as that currently accepted by the Scottish Courts, suggests that MUP set at a rate of 45ppu would reduce alcohol-related crimes by 34,200 incidents per year after 10 years. It would also reduce alcohol-related deaths by 642 per year after 10 years.³⁰⁷

For both of these policies their full impact can only be gauged properly after implementation, if efforts are taken to do so. Yet the contrast between the weight and creditability of the evidence used to introduce them is stark, and a lack of evidence has not prevented the Home Office from introducing certain policies seen in a favorable light.

Fees and costs associated with the Licensing Act 2003

13. Do licence fees need to be set at national level? Should London, and the other major cities to which the Government proposes to devolve greater powers, have the power to set their own licence fees?

Licensing fees should not be set at a national level, and all local authorities should be able to set their own fees in a way that reflects their local costs. This is the case for licensing fees in Scotland, and in England and Wales already happens within taxi and street trading legislation; alcohol licensing should be no different. This was legislated for in the Police Reform and Social Responsibility Bill 2011, but has never been enacted. At present some local authorities see significant shortfalls in the revenue they receive from licensing fees, meaning that they have to subsidise their licensing operation out of general funds. With the reductions in local government funding in recent years this has become increasingly difficult.

Local authorities with the biggest fees shortfall are often those more likely to struggle to oversee the Act.³⁰⁸ The Local Government Association (LGA) estimate that alcohol licensing cost local authorities approximately £183 million in the 10 years since the Act was

Government Alcohol Monopoly. *Journal of Studies on Alcohol and Drugs*, (July), 628–634.

<http://doi.org/10.15288/jsad.2015.76.628>

³⁰⁷ Brennan. A., Meng. Y., Holmes. J., Hill-McManus. D., Meier. PS., (2014) '[Potential benefits of minimum unit pricing for alcohol versus a ban on below cost selling in England 2014: modelling study.](#)' *BMJ*

³⁰⁸ Foster. J., Charalambides. L., (2016) '[The Licensing Act \(2003\): its uses and abuses 10 years on.](#)' Institute of Alcohol Studies. See chapter 12

introduced, which works out at £1.5 million of taxpayers' money per month being used to subsidise the licensed trade.³⁰⁹

International comparisons

14. Is there a correlation between the strictness of the regulatory regime in other countries and the level of alcohol abuse? Are there aspects of the licensing laws of other countries, and other UK jurisdictions, that might usefully be considered for England and Wales?

Within developed countries, those which experience greater alcohol related harms tend to have a stricter regulatory response. The 2003 Licensing Act attempted to simplify and deregulate licensing but has had to be toughened up in certain areas as a result of this having been taken too far.

This evidence submission has covered a number of policies from Scotland which would be beneficial for those with an interest in reducing alcohol related harms. These include MUP, a health objective and greater restrictions on the off-trade.

Evidence from Australia also lends support for the introduction of a workable EMRO. In Newcastle, Australia, it was found that bringing forward closing times from 5am to 3am resulted in 37% reduction in assaults.³¹⁰ After one year, similar opening restrictions in the Kings Cross area of Sydney resulted in a 21% reduction in sexual assaults, a 43% reduction in assaults causing grievous bodily harm, a 50% reduction in assaults causing actual bodily harm and a 57% reduction in robberies.³¹¹

Commenting on this, Police Superintendent Mick Fitzgerald, Kings Cross local area commander, stated that 'the man hours saved and the way we are able to reallocate our resources has been phenomenal.'³¹² While the closure of several clubs in Kings Cross were attributed to measures, a variety of other businesses have been seen to enter the market, including antiques dealers, ice-cream vendors, chemists, restaurants, hairdressers and yoga studios, as well as a number of new bars.³¹³ There is also evidence that, while there has

³⁰⁹ Local Government Association (Feb 2015) [LGA responds to Government decision to reject locally-set licensing fees](#)

³¹⁰ Kypril K., Jones. C., McElduff. P., Barker. D., (2011) [Effects of restricting pub closing times on night-time assaults in an Australian city](#). Addiction.

³¹¹ In addition to moving closing times forward from 5 am to 3 am, a 1 am lockout was introduced, meaning that people could continue to drink alcohol on the premises until the 3am close, but no new patrons could be admitted after 1 am. This became known as the 'one-way door' policy.

³¹² Australian Daily Telegraph (April 1st, 2015) [Cross clean-up is a victory for Sydney](#)

³¹³ <https://twitter.com/2011Residents>

been a reduction in land value of a some commercial property, large increases have been observed in both mixed-use and residential property in the Kings Cross region.^{314, 315}

Risk based licensing, which is used in various forms in Canada, Australia and New Zealand, also has interesting elements. This approach broadly links licensing fees and regulatory strength to the type of premises and it's operating schedule. Types of premises, such as restaurants, bars or clubs, are ranked by their potential risk, and pay a different base rate depending on this. Hours of operation can also be linked to the fee, with some states in Australia charging incremental amounts for every hour that a premises opens after midnight. Compliance history can also have an impact on fee level.³¹⁶

This approach encourages premises to operate in a less risky manner, while ensuring that those who generate the greatest impact also pay accordingly. If local authorities in England and Wales had the ability to set their own fees some may try and copy elements of this approach.

31 August 2016

³¹⁴ Land & Property Information. (n.p.). *Potts Point/Kings Cross Report Land Value Review – Report for Land Valuation Advisory Group*. NSW Government.

³¹⁵ Nicholls, S. (2016, 22 May). Lockout laws hit values in Kings Cross' 'golden mile'. *The Sydney Morning Herald*. Retrieved from: <http://www.smh.com.au/nsw/lock-out-laws-hit-land-values-on-kings-cross-golden-mile-20160522-gp0ych.html>

³¹⁶ See the appendix to Foster. J., Charalambides. L., (2016) [The Licensing Act \(2003\): its uses and abuses 10 years on](#). Institute of Alcohol Studies.

Institute of Licensing – written evidence (LIC0126)

The Institute of Licensing (IoL) is the professional body for licensing practitioners across England, Wales and Northern Ireland. With over 3000 licensing practitioners within the membership from local authority, police, legal, consultancy, training and industry backgrounds, the IoL is uniquely placed to present a balanced response to consultations.

IoL members have been consulted on the review of the Licensing Act 2003, and the questions set out in the call for evidence have been the basis of our online member survey, for which we have received 319 responses. ***The survey results are available to the Select Committee for information if required.***

72% of respondents to the survey were from a local authority background, with a further 13% from police practitioners and 7% from legal practitioners. The remainder were from industry, consultancy and unspecified background.

The call for evidence included a number of specific questions. Our analysis of the responses follows below, ***while the full survey is available for reference.***

Are the existing four licensing objectives the right ones for licensing authorities to promote?

1. Over 85% felt they are the right licensing objectives. Of the comments that followed some indicated support for a public health objective, there were comments stating that there is a need for local objectives and others felt that there should be a further objective concerning the protection of children and vulnerable adults from sexual exploitation. There was some mention of the potential for a balancing objective along the lines of promoting social, cultural and economic benefit to the locality.
2. The question of a public health objective is dealt with below, and arguably the ‘protection of children from harm’ is more than sufficient to enable consideration of potential or actual issues around child sexual exploitation, while sexual exploitation of vulnerable adults would almost certainly fall under the crime prevention objective. Some respondents felt that the existing objectives give wide scope for consideration of concerns, while others stated that they were too restrictive.

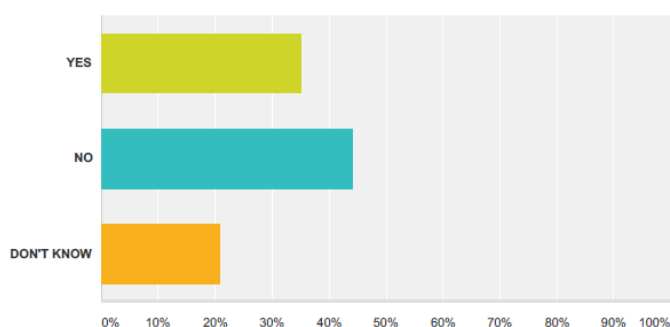
Should the protection of health and wellbeing be an additional objective?

3. This question continues to divide people in their opinions with 46% of respondents in favour, while 41% oppose the inclusion of a health objective, and a further 12% were undecided. Given the percentage of responses from local authorities, the national picture is likely to be equally if not even more divided.
4. Supporters cite the national picture in relation to alcohol health harms and question the point in allowing health bodies to make representations in the absence of a health objective. Objectors point out the difficulty of linking individual premises to evidenced health harms, and refer to the powers already available to licensing

authorities, including the use of cumulative impact areas and the use of licence conditions to prevent the sale of ‘super strength’ alcohol as part of the means to address issues at local level. One respondent asks how any licence applicant seeking licence to sell alcohol can hope to promote ‘the protection of health and wellbeing’ given that alcohol is, according to most experts, indisputably a health risk.

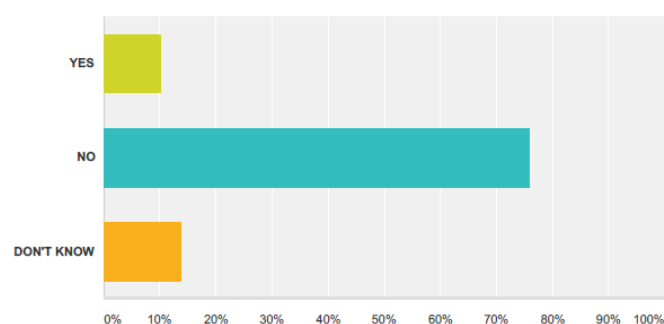
5. There are further issues to do with the consistency of data collected by health authorities across the country as well as the difficulty with establishing direct links to individual premises. Some consider that this is a role for national Government to deal with through drink pricing and alcohol strength regulation. Others suggest that health and wellbeing should be a factor for local authorities to consider in the drafting and implementation of licensing policy rather than an objective applied to licence applications.
6. It is clear, that any moves to introduce a health objective will be met with support and opposition in fairly equal measures, will require careful wording and excellent guidance.

Should the policies of licensing authorities do more to facilitate the enjoyment by the public of all licensable activities?



7. 35% support this with 44% against. Many consider that licensing policies already seek to achieve a balance between regulation and permissive licensing bearing in mind the original intent of the Act to provide greater freedoms to the trade balanced with tougher powers for counteracting problems.
8. Comments within the survey responses reflect the split in views, with some pointing out that councils are able currently to set out within their policies, aspirations for their local areas which would encompass wider objectives, while others clearly consider that the policy should focus on the regulatory aspect of licensing and the ways in which the council will seek to ensure the promotion of the core licensing objectives.
9. Worryingly at least one respondent considers that policy is often ignored once introduced.

Should access to and enjoyment of licensable activities by the public, including community activities, be an additional licensing objective?



10. A clear consensus against this with just 10% in support. Respondents are concerned that this would needlessly complicate the licensing system, providing a conflict within the licensing objectives themselves (rather than a balance). It is clear that some local authorities feel under significant pressure already and consider these proposals to be ‘another hurdle’ rather than any meaningful consideration to licensing. Some suggest again that this is a matter for policy rather than a consideration on individual applications, and others consider that this objective would be too subjective to be achievable or enforceable.

Should there be any other additional objectives?

11. 69% say no with 10% saying yes. Suggestions include:

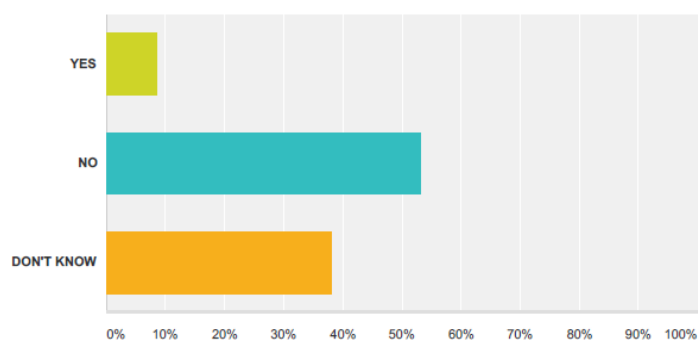
- Compatibility with planning
- Local objectives (evidenced) to support localism
- Promotion of the social, cultural and economic benefit to the locality.
- Demand / need

12. There is more mention here of a need for objectives providing protection of children from sexual exploitation, and one suggestion of an objective to assist businesses to operate responsibly.

Has the Live Music Act 2012 done enough to relax the provisions of the Licensing Act 2003 where they imposed unnecessarily strict requirements?

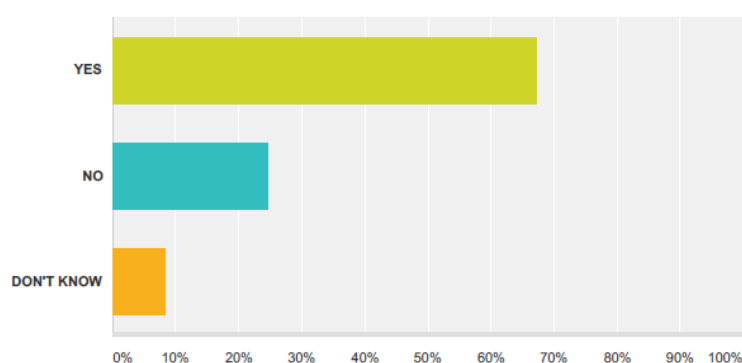
13. 81% think it has, with 6% disagreeing. Some consider that the position is now more confusing, that many organisers will still use TENS for entertainment which is now exempt. Others consider that the LMA has worked well and granted a reprieve for live bands to operate more freely. Some report that noise complaints have increased as a result of the LMA provisions and some feel that the LMA has provided too much deregulation

Are the introductions of late night levies and Early Morning Restriction Orders effective?



14. Most (53%) say no, although 38% are unsure – mainly due to not having experience of either in their areas. EMROS are seen as a failure, and the levy is often considered a business tax. Some consider that restricting the use of income generated through levies would assist as this would provide some assurance at the additional funds were being spent in the levy area. Other comments relate to the use of positive alternatives such as BIDS and Purple Flag awards etc. There are references to reverting to standard permitted hours for the sale of alcohol as some consider that the flexible system provided by the Licensing Act has seen later hours in pubs and clubs which has directly encouraged more pre-loading by customers, while at the same time eroding the differences between types of licensed premises which were previously established through their licence type including pubs, nightclubs but also restaurants etc.

Does the Licensing Act now achieve the right balance between the rights of those who wish to sell alcohol and provide entertainment and the rights of those who wish to object?



15. 67% say yes. 25% disagree. Comments show mixed feelings on this with some considering that applicants (particularly large scale operators) have the upper hand and resources to appeal which will sway some licensing authorities anxious to avoid costly court battles. Others consider that the balance is in favour of local residents and some refer to the removal of the 'vicinity' test as a detriment leading to

objections being received from residents who are not directly affected by the premises in question.

16. Others consider that this depends entirely on the engagement by all parties in individual cases, but that the framework is in place to allow the balance to be achieved. An example comment below:

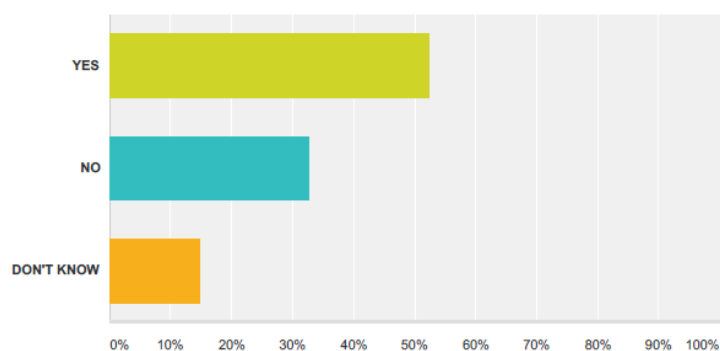
In reality the answer is 'yes' and 'no'. The Act provides a framework where the right balance can be struck. Whether not the right balance is in fact struck on a day to day basis is down to numerous factors; lack of effective engagement by residents in the licensing regime being one of them.

Do all the responsible authorities (such as Planning, and Health & Safety), who all have other regulatory powers, engage effectively in the licensing regime?

17. 67% say no with 26% saying yes.

18. It is clear that in the main, the police and environmental health are the Responsible Authorities (RAs) actively engaged in the licensing process. There is inconsistency across the country and it is apparent that engagement from some RAs, is scarce. That said, some consider that the mechanism is in place for RAs to engage where there are areas of concern and that this is sufficient, while a couple suggest that there should be a mandatory element requiring engagement / response to licence applications. In some areas, the licensing authority positively engages with RAs through regular meetings etc., and this may be a model worth promoting.

Do other stakeholders, including local communities, engage effectively in the licensing regime?



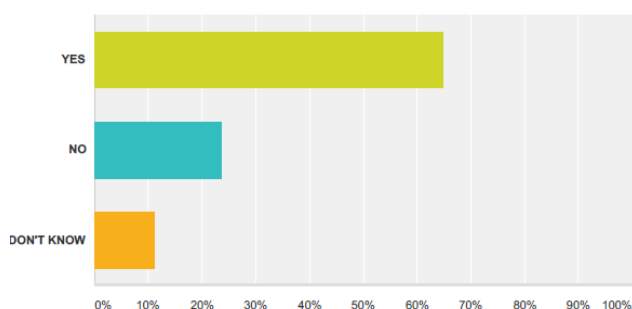
19. 52% say yes with 33% disagreeing. Mention is made of the effectiveness (or not) of the requirement to advertise in the local media, and there is the suggestion that local residents should be notified of applications by the licensing authority. A further suggestion that Town / Parish councils should be a statutory consultee. On the whole, the responses seem to suggest that engagement is forthcoming only where there is a concern (this may be the right balance?), and others feel that local residents are sometimes reluctant to come forward and perhaps lack understanding of the licensing regime and the protections it provides.

20. Again the responses show a lack of consistency across the country in terms of the approach by local authorities.

Licensing is only one part of the strategy that local government has to shape its communities. The Government states that the Act “is being used effectively in conjunction with other interventions as part of a coherent national and local strategy. “Do you agree?

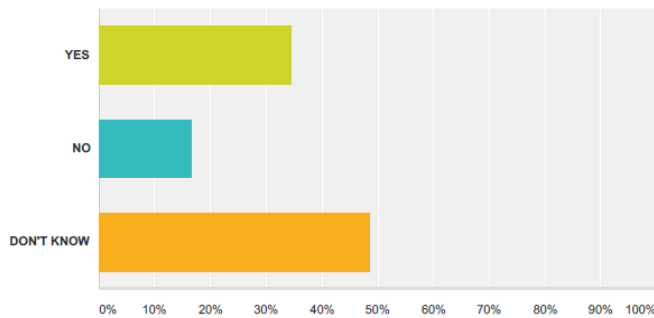
21. 44% say ‘yes’, 24% ‘no’ and the remainder are unsure. Many of the comments question what the coherent national strategy is, and others refer to a ‘gulf’ between planning and licensing for example. Some consider that the Licensing Act is an effective tool and being used as such, but there is also mention of the lack of resources to local authorities which is having an impact across the board in terms of the capacity of local authorities to do more than the minimum to fulfil its statutory duties.

Should licensing policy and planning policy be integrated more closely to shape local areas and address the proliferation of licensed premises?



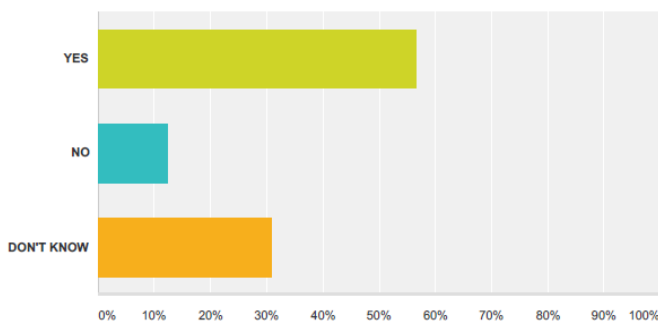
22. Strong feelings on this question with a high level of support for more integration between licensing and planning. Some respondents consider that planning permission should be a pre-requisite to licence applications (although this would be a burden on businesses). Many consider that a regime where planning and licensing can impose the same (but different) restrictions (for example different hours of operation), is an anomaly, while others accept that different considerations apply for each regime and the business is bound by both sets of restrictions and should therefore operate within them. Closer integration would hopefully reduce the instances where there are apparent contradictory requirements, although it may not alleviate it altogether. A more joined up approach in drafting and adopting policy should be beneficial to all parties.

Are the subsequent amendments made by policing legislation achieving their objects?



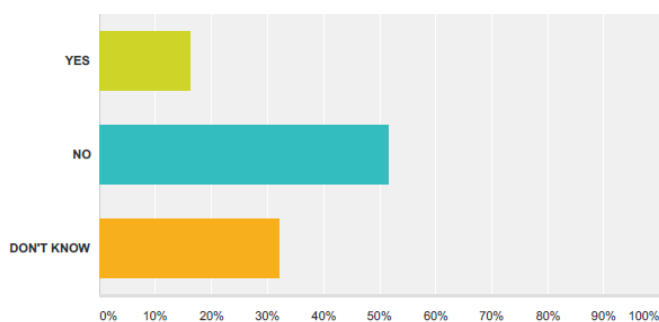
23. Nearly 50% of respondents were unsure. Some consider that there have been so many changes made to the Licensing Act 2003, the overall picture now is confusing and fragmented. Others refer to the lack of police resources meaning that there is limited means to put the powers to good use. Some felt it is too early to judge the effectiveness at this stage.

Do they give the police the powers they need to prevent crime and disorder and promote the licensing objectives generally?



24. Varied feelings on this but some consistent themes arising including the lack of police and police resources, the lack of effective use of the powers, and at the opposite end of the scale, the overzealous use (misuse in some cases) of powers by some police officers. One member comments that ‘The closure powers and the s53A reviews do give police wide-ranging powers. Whether the resources and training exist for these powers to be used proportionately and effectively is another matter’.

Are police adequately trained to use their powers effectively and appropriately?



25. Over 50% of respondents consider that the police do not have sufficient training in relation to powers under the Licensing Act 2003. The comments refer to lack of training to officers ‘on the ground’ and a perception at least that licensing is a low priority, in training terms, for police officers. Respondents comment that police in situ rarely seem to know how to deal with a licensing offence, and others refer again to lack of police resources and also to the rapid change around within police forces, meaning that experience and knowledge gained in licensing is lost when knowledgeable officers are redeployed elsewhere. This is well illustrated by the following comment:

Our police licensing section who had mostly the same specialist officers was about 18 months ago, completely replaced, by officers with no licensing background. They now have working practices which are now are a watered down Weak system. We had a traffic light system. Refer to lic panel for early review, so if needed, a revocation at panel would stick at appeal, but not now. They expect Cllrs to rubber stamp, or be very weak in serious cases, which they have not handled properly.

Should sales of alcohol airside at international airports continue to be exempt from the application of the Act?

26. An even split in views with just over a third saying yes, a third saying no and the final 3rd undecided. Some consider the situation a cause for concern, or at least an anomaly without justification. Some suggest restricting the hours for sales of alcohol at airports, and others consider that unless there is an evidenced need for regulation the status quo should continue, and point out that airport security is necessarily strict in any case and issues arising can be dealt with effectively as a result.

Should sales on other forms of transport continue to be exempt?

27. Mixed views and no consensus on this question with a very even split in support and against. Some consider that alcohol regulation should be the same across the board, while others point out the difficulty of regulating trains for example. One comment (shown below) points out that methods of alcohol sales are evolving and consideration should be given to this.

The Licensing Act 2003 needs to be updated to reflect that the methods of selling alcohol are evolving from traditional methods. In particular, we've had enquiries about people wanting to be able to sell/purchase alcohol while in taxis in certain circumstances ie buy a glass of champagne to drink while in a limo or wedding car. Also, we've had enquiries about people wanting to have a mobile van selling alcohol from venue to venue. There is another issue regarding off-sale deliveries of alcohol. At the moment the provider would need to have a premises licence and the alcohol pre-paid for at that premises in order for it to be licenced . If a specific vehicle itself (regardless of it's location at any given time) could be licenced (if it met specific criteria and subject to certain caveats) this could provide a solution. Obviously thought would need to be given to how this would work in practice!

The Act was intended to simplify licensing procedure; instead it has become increasingly complex. What could be done to simplify the procedure?

28. There are many comments on this and some consider that the Act and procedure are not in fact complicated. Others entirely disagree and suggest either a redrafting to

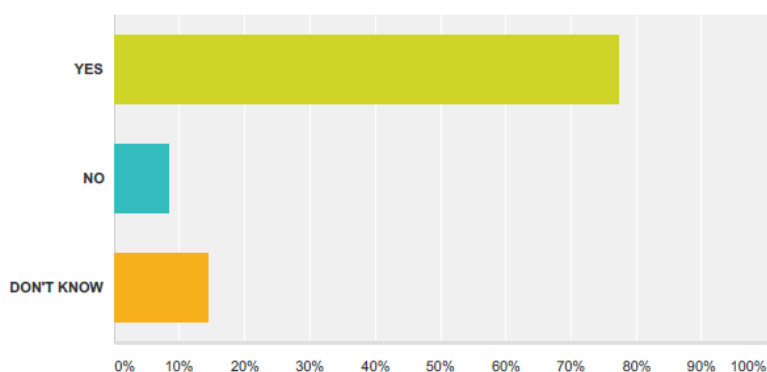
pull all the subsequent amendments into a concise Act, or simply that the Act be left alone and the ‘tinkering’ stop. Several respondents support a simplified (online) application process and there is support too for removing the requirement for newspaper advertising. Others consider that the application for a licence to sell alcohol cannot be simplified, nor should it be, since the sale of alcohol is an important and complex issue. There are other suggestions besides, including deregulation on the one hand, and amalgamation on the other. The role of the licence holder and/or DPS is mentioned here with the suggestion that there should be a responsible person named on the licence in a way similar to that under the previous Act.

What could be done to improve the appeal procedure, including listing and costs?

29. The main theme arising in response to this question is the timing, or rather the delay in getting an appeal to court. It is a source of frustration to licensing authorities in particular who make a decision at a hearing based on the information to hand and current at the time, to have that decision held in abeyance pending a hearing which may not take place for several months, during which time the licensee has either rectified the position to the point that the original decision would not have been necessary or, alternatively, continue to operate without change until just before the appeal date and then leave the premises. This concern is raised more than once in the survey responses.

30. Some respondents support the idea of a licensing tribunal or similar to adjudicate licensing decisions and avoid the delays experienced in the current system of appeals to the magistrates.

Should appeal decisions be reported to promote consistency?



31. There is strong support for this but a consistent theme running through the comments is that regardless of such reporting, all applications must be determined on its merits. Reporting of decisions may assist in promoting more consistency.

Is there a case for a further appeal to the Crown Court?

32. 60% say no, 26% say yes. In the main, respondents consider that this additional level of appeals would prove cost prohibitive although some accept that there may be reason to go to the higher level.

Is there a role for formal mediation in the appeal process?

33. 59% say yes (25% say no). Concerns are raised about resources, and some consider that the process of mediation should start much earlier (pre licensing authority hearing for example) to discuss the concerns / problems in order to seek resolution and in doing so avoid the need for an appeal.

Given the increase in off-trade sales, including online sales, is there a case for reform of the licensing regime applying to the off-trade?

34. 64% support the need for reform in relation to 'off-sales'. There are clear concerns about online sales, pre-loading and super strength alcohol. There is a perception that the off-trade are less regulated than the on-trade, and that there is a lack of training in smaller off sales establishments. Some consider that it is too late to impose greater controls given that 'almost all convenience stores now sell alcohol', and others are concerned that DPS and personal licence holders are often absent from the premises, leaving poorly trained staff in charge of the sale of alcohol.

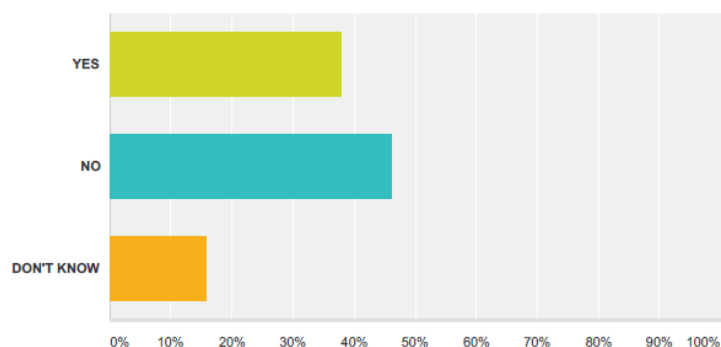
How effectively does the regime control supermarkets and large retailers, under-age sales, and delivery services?

35. A range of responses here with many feeling that the regulations are there, if not always the resources to enforce them. There is a general feeling that larger operators are less likely to cause problems than smaller independent retailers, and there is a definite concern with alcohol delivery services and the difficulties in regulating them.

Should the law be amended to allow licensing authorities more specific control over off-trade sales of "super-strength" alcohol?

36. 59% say yes. Respondents raise questions about the effectiveness of 'super strength' schemes in place, and some feel that the issue here is about personal responsibility of the consumer rather than the retailer. Others point out that consideration must also be given to premium craft beers which may be high strength but are less likely to be a cause for concern in relation to binge drinking or street drinkers due to cost. The combined effect of high strength and low costs are the problem areas and there is a feeling amongst some that this is an area which would benefit from central rather than local control.

Should alcohol pricing and taxation be used as a form of control?

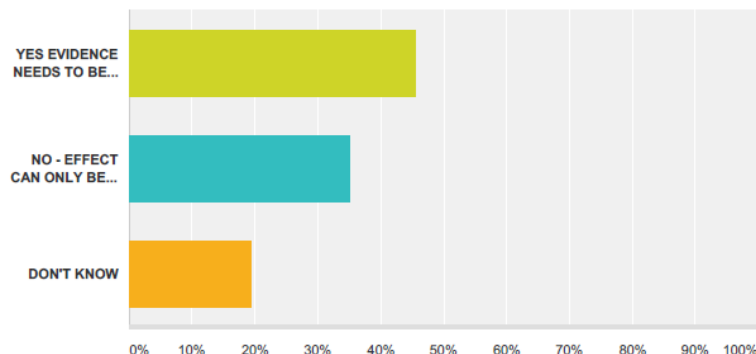


37. Mixed views here. Some feel that price is not the only factor, and that using pricing in this way will penalise consumers with less money who do not in fact have a drink problem. Others feel that this would have limited if any impact on the actual cost of alcohol and would therefore be a pointless exercise.

Should the Government introduce minimum unit pricing (MUP) in England?

38. Again mixed views, with 42% against, 32% in favour and 25% undecided. Some consider that the issues should first be resolved in Scotland before this is attempted in England. Others consider it will have limited effect, and may penalise less affluent consumers rather than necessarily targeting problem consumption.

Does the evidence that MUP would be effective need to be “conclusive” before MUP could be introduced, or can the effect of MUP be gauged only after its introduction?



39. Again mixed views, with some considering it will be almost impossible to gather conclusive evidence, and others pointing out that any moves to introduce MUP will be fiercely opposed whatever the evidence. With regards to reviewing it, opinions remain divided about when such a review should take place and what the level of evidence would need to be to justify retention or removal of MUP.

Do licence fees need to be set at national level?

40. Another divisive question with 46% in favour and 46% against. There are concerns that the current fee levels are insufficient, but on the other hand a concern that locally set fees would prove to be widely inconsistent which would be burdensome for businesses and a postcode lottery, with more potential for challenge, and

therefore more burdensome on local authorities. That said, there is mention of the need for licence fees to be set at a level sufficient to achieve cost recovery

Should London, and the other major cities to which the Government proposes to devolve greater powers, have the power to set their own licence fees?

41. 44% say no, compared to 42% who think they should. Many consider that London and other devolved areas are no different from the rest of the country, and that premises are likely to be of higher rateable values so would have a higher licence fee as a result (based on the current system).

Is there a correlation between the strictness of the regulatory regime in other countries and the level of alcohol abuse?

42. Nearly 70% didn't know or felt that there are too many other factors involved to draw a direct comparison. Some felt that the UK has cultural and educational issues around alcohol which need to be dealt with.

Are there aspects of the licensing laws of other countries, and other UK jurisdictions, that might usefully be considered for England and Wales?

43. Respondents considered that there are certainly lessons which could usefully be learned from the licensing regimes abroad, but most felt unable to comment in detail.

Conclusion

44. It is clear from the responses received that there is inconsistency in the application of the licensing regime and potentially misunderstanding or at least differing opinions about the scope of the current objectives – the clear example here being the call for an objective concerning protection of children from sexual exploitation (safeguarding). Safeguarding is a keen concern for licensing authorities and rightly so, but the existing objective of protecting children from harm is in place and clearly encompasses safeguarding and CSE issues.
45. Planning and licensing regimes should benefit from a more joined up approach, but more generally there is concern in relation to the ever decreasing resources for both local authorities and police. This is combined with a dilution of knowledge and expertise in licensing as a direct result of efficiency savings, merging of services and redundancies. The danger is that the continuing pressure to save already limited resources can force a focus on statutory minimum requirements and divert efforts from other avenues which would otherwise assist. Mediation is an excellent example of this, where the opportunity to bring parties together to discuss problems and identify solutions is often overlooked where it may have negated the need for objections to applications or requests for review thus more than saving the time and effort involved in the mediation in the first place.

46. There are very split views and strong feelings in relation to key questions about potential developments including the introduction of a public health objective, fee setting, super strength, and drinks pricing.

Other Comments

47. In addition to the questions within the call for evidence, we asked members ‘Do you have any other comments / observations for the Select Committee to consider?’
Comments received as a result include:

- a. *Greater emphasis needs to be shown to licensing in terms of:*
- i. *1. funding for training especially for responsible authorities,*
 - ii. *2. additional resources for local authorities to provide greater support to trade and residents,*
 - iii. *3. increase licensing fees nationally,*
 - iv. *4. specialist licensing tribunals to deal with appeals resourced by a mix of local authority staff (with licensing knowledge) and licensing solicitors to improve throughput; cost efficiency and consistency. Payment can be per sitting. This principle is already used by employment panel and other medical panels.*
- b. *Pre-drinking is very common particularly amongst young people. They frequently drink spirits which don't take effect until later in the evening when the on trade and emergency services are left to deal with the aftermath. Penalising on-premises through a late night levy for dealing with problems which are not of their making seems fundamentally unfair. People should be encouraged to drink responsibly on premises where they can be safe rather than drinking irresponsibly elsewhere. The licensing regime is fairly successful in creating premises where customers can drink alcohol responsibly but sadly seems unsuccessful in addressing the alcohol related crime and disorder created by individuals who have drunk too much when unsupervised. These are issues not easily solved, reducing the strength and increasing the price may be a better way to go rather than blaming the night time economy*
- c. *We are frequently being contacted by our Income Recovery Department regarding licensed premises that have not paid their business rates. In one particular case this amounts to £500,000 as the person in question has several licensed premises. Income Recovery are rarely successful in recovering this money as the companies often go bankrupt before it gets to court so the money cannot be reclaimed. A new limited company is then set up and continues to not pay any business rates. In these cases there are frequent transfers of the premises licence to new limited companies.*

- d. Before we were able to suspend premises licences for non-payment of annual fees we often found it was the same individuals that were not paying their business rates that were not paying their annual fees. It would assist local authorities if premises licences could be suspended for non-payment of business rates in addition to the annual licence fee, and if there was also an option for revocation of the licence in persistent cases.*
- e. The statutory guidance advises that where a premises is found to supply illegal tobacco, revocation of the premises licence should be considered even in the first instance. Even if the licence is revoked, the premises could continue to sell (legal) tobacco products, just not alcohol. With this in mind, the sale of tobacco should be included as a licensable activity and follow a similar regime to that of alcohol.*
- f. Outdoor events are becoming increasingly popular nationally, we've seen village fetes turning into village music festivals. There are more and more events where alcohol is sold from a stall at an event under a Temporary Event Notice right through to large music festivals under a Premises Licence. There is no specific guidance on what the government's expectation is of how licensing authorities should deal with applications, nor any guidance for interested parties. Events are temporary but can have a huge effect on the local community and the responsible authorities. Licensing Authorities use their experience of the legislation and try to work with organisers to promote the licensing objectives and balance this with the effect on local people but would benefit greatly with some guidance.*
- g. The gambling regime appears to take into account health and well being issues that can arise from the activities permitted under the legislation, whereas alcohol licensing does not appear to have the same provisions in place. This seems strange given how prominent alcohol abuse seems to be in our society.*
- h. Aside from the licensing Act 2003, the deregulation Bill has unleashed a whirlwind of out of town hackney carriage and out of town Uber private hire drivers in Birmingham and other local authorities throughout the country this is creating an enforcement nightmare. Often these drivers / vehicles are difficult to identify and a lot of these vehicles or drivers would not have passed our tests in Birmingham and often may have already been suspended / revoked by us and would not be considered fit to be licenced to pick up the public in Birmingham. Yet the deregulation bill has unleashed all these drivers on Birmingham and we as a licensing authority feel that this is putting the public of Birmingham in danger as we cannot be confident that these out of town drivers / vehicles would meet the standards we expect from Birmingham licensed drivers.*

- i. By liberalising the licensing law alcohol has now become more readily available in our communities with 24/7 sales. Given the number of premises licences now granted effective and robust regulation is impossible. I carry out regular visits to premises selling alcohol and regularly have concerns that owners/DPS's and members of staff have no understanding or comprehension of the licensing objectives or their aims. I believe far more controls are now required to effectively promote the licensing objectives.*
- j. It would be very useful if a national register of personal licence holders was made available and accessible to operators and the responsible authorities. At the moment one is not available and the courts and responsible authorities have no quick way of checking whether a personal licence holder has been convicted of a relevant offence. The courts also need to be joined into this system so that personal licence holders are flagged up before they appear in court in order to ensure that they do surrender their licenses on conviction of a relevant offence.*
- k. There is a need to update the way the law is written to facilitate its use by the general public rather than the legal profession. There should be a lean to local policy with regards to the Local Authority and what is needed and wanted for a borough and not necessarily what businesses want. A good idea would be to have improvement notices as well as the section 19 notices. It would then allow for informal work then formal improvement the stops. Some times by using improvement notices it would alleviate the need for a hearing straight away. Cost is less in the first instance.*
- l. Annual Fees - local authorities should by law have to send an invoice to the Premises Licence Holder. As a large plc, we cannot just make payments without a paper trail. Some LAs refuse to issue invoices, or will only send correspondence to the DPS. Neither is effective. This can make it very difficult to comply and pay annual fees.*
- m. At the moment, the system is too heavily biased on granting to businesses. We are not allowed to do things which are common sense. Vicinity needs to be included again. As does litter and noise relevant to a premise, but is not right outside its doors. Noise and nuisance needs to be better recognised as an issue. The public need to be informed of their rights. We are supposed to 'prevent' but since Thwaites, that has got more difficult. Thwaites shouldn't stop us, but it has had consequences. So has enforcement. Why should the public purse be expected to cover the costs of poor/bad business's? Hence the licence should include a level of funding for enforcement. The court ruling that said the councils general budget should cover the costs of enforcement were totally perverse!*

- n. The Licensing Act 2003 has seen considerable "tinkering" ever since its implementation. Do not impose any further unnecessary changes just to satisfy political policies and motives.*
- o. All licensing regimes introduced since the Gin Act of 1736 have failed to address the issue of alcohol related crime and disorder. Action has always been focused on the seller and not the consumer who uses the product inappropriately
It is time to take a different strategy and focus on those who misuse the product and ensure they take responsibility for their actions. Susannah Fitzgerald QC has the same view.*
- p. Yes, with the clear growth of illicit tobacco product sales contributing to the revocation due to criminal activity in some off licences premises I would ask the select committee to consider the re-introduction of tobacco licensing. Where a alcohol premises licence has been revoked due to crime associated with tobacco products a premise may continue to retail tobacco even though the alcohol licence has been revoked this is clearly a disparity which I believe causes police issues and a loop hole which should be stopped by tobacco licensing*
- q. I cannot stress how important it is to the remove the cost to applicants of a public notice being obligatory for a Premises Licence Application it is a scandal.*
- r. The regime when administered properly is a good regime. However, it could be enhanced and improved by interlinking other policies as well as ensuring that the evidence presented is fair transparent way as well as looking for medium and longer term solutions.*
- s. The select committee really needs to look at the issue and proliferation of supermarkets and the Off trade where unlimited amounts of alcohol are available without restriction. In a pub you can tells somebody they have had enough and stop serving.*
- t. The Licensing Act system whereby one size fits all is poor. Combining a range of licensable activities into one licence which can last indefinitely is cumbersome. Licences should be time restricted to allow for regular update and consideration of a range of factors, five years would seem to be a reasonable period. This would benefit the licence holders in that licences would be 'fit for purpose', those premises where there had been no change would carry on without concern (such as corner shops). Fees based on rateable value can be unjust, a shop which only sells alcohol at Christmas (included in gifts) but are outside of the TENS constraints will pay the same as a nightclub (where licensable activity is their sole activity) where the rateable values are the same. Rateable values appear to be a mechanism whereby*

licences are based on a view that there is an ability to pay rather than the main focus of the business.

- u. We would do well to revisit the provisions of the 1964 Act which was so much clearer and provided certainty rather than the complex plethora of legislation (often inserted into Acts dealing with a variety of unrelated matters), guidance and licensing statements we face today. It seems that there has been a constant stream of amendments to paper over cracks in the original 2003 Act since its inception which has had the opposite effect to simplifying the licensing system. Scrap it and start again!*
- v. We need to encourage the café culture but set regulation to different levels dependant on the type of premises, a waterfront restaurant/café would be different to a city centre pub, and we need to consider the old night club type of premises, the same licence for a corner shop and a city centre night club is unfair.*
- w. I think the Act has been relaxed too much - especially in relation personal licence holders and DPS. The checks that need to be made and when people apply for these need to be more stringent. People used to have to prove to a magistrate they were a fit and proper person - that is no longer the case. Locally, we have a male who has numerous convictions for drunk and disorderly and assault applying to become a DPS - he also has a previous conviction for fraud (obtaining a personal licence) - but yet he still managed to get one. In addition, we had a person applying to be a DPS of an off licence, he stated he had the necessary qualifications but could not speak English and did not understand the licensing objectives. This part of the Act seriously needs reviewing and tightening up.*
- x. The concept of 24-hour licensing as promoted by the LA 2003 and its introduction was and is a myth. It is a permissive regime, regulated by the requirements of the licensing Objectives. It is now understood by the industry, local authorities, police and the regulators. The proper balance between the needs of industry / retail / night time economy and between residents who may be adversely affected needs to be maintained. With the current levels of understanding of the licensing regime by the authorities, communities and the industry there is a reasonable balance between the needs of all. Licensing Authorities should be able to rely more upon their Licensing Policies (developed and approved by their democratically elected Councils) when determining licence applications, including for example, where a policy states framework hours (for a residential village) then those hours may be applied confidently, relying upon the declared and published policy.*
- y. Offences committed while intoxicated are amongst the most serious. Licensees need to be held more to account through regulation of drinks*

promotions, including sales at supermarkets and off licences. Alcohol consumption can be reduced by price increases and restrictions on how much alcohol people can purchase at supermarkets.

- z. There is a very well-resourced alcohol and live music lobby in the UK which presents opinions as fact which are usually not the case. The recent demise of night clubs is a case in point, it is presented as 'over-regulation' but it is far more likely to be caused by the wider choice of venues opening late and the use of dating apps to meet partners rather than prowling the floors of night clubs. This lobby cannot be matched by resident groups or Local Authorities who have to tackle the ASB and noise associated with poorly regulated night time economies.*
- aa. I feel the introduction of cumulative impact zones or CIZ (not specifically mentioned in the primary legislation) and created post the act for the sake of political expediency are a tool that is too readily utilised by the Police and local authorities to cover inherent problems within their areas of responsibility. Many areas have multiple CIZ's or stress areas as they are sometimes called and are a barrier to new operators joining the market and a protection to existing operators (who may or may not be good operators) already trading. I feel proper policing and conditioning of licenses is the answer. In the last 10 years I have not heard of one area that was a CIZ being delisted. So who is failing despite these draconian regulations - it is a crutch for responsible authorities and the local government to lean upon.*
- bb. The Licensing Act 2003 was generally a good piece of legislation introduced to control premises at a local level. For the first time it allowed easy access to local people to raise concerns and introduced a speedier and more effective means of sanction where things went wrong. Whilst not perfect it has not really been given the opportunity to 'bed in' as it has been subject to continual amendment.*
- cc. Late night, drink led, entertainment is making some areas of our cities a place that is only accessible for 18 to 30's after 11pm. It is driving out restaurants and other types of entertainment that may involve alcohol with other entertainment, such as music. These are types of entertainment enjoyed by people over the age of 30, as well as some younger people. But it is in short supply in some city centres because that sort of entertainment is being 'driven out' by intoxicated people enjoying late night drink led entertainment.*
- dd. Premises licences which are suspended should have a limited suspension period, e.g. a year, after which the licence automatically lapses. My borough has many licences in force even though the premises licence holders have long since moved on. We even have some premises licence in force where the*

actual premises have been demolished and replaced by housing. Why have a licence in force for a premises which no longer exists?

- ee. Review the 3-days that are allowed for Environmental Health and the Police to comment on Temporary Event Notices. Given the current resource situation within Local Government, and the increase in individual workloads it is creating, it is often difficult to fully assess and comment on a TEN within the 3 day period. A more practicable time for comments in relation to TENS would be a minimum of 5 working days.*
- ff. The LA2003 does work better than its predecessor. The general principle that regulation should be the minimum required is appropriate here, and the general principles within the Act are right. The Act's provisions on not serving people who are clearly drunk need to be enforced more. The Act has enabled many people who work unusual hours to access enjoyment of licensable activities. There need to be better integration of Licencing and Planning to allow a planned night time economy. Zoning should be allowed.*
- gg. It may not be perfect but it is working. Don't try and fix something that's not broken.*
- hh. The current licensing regime works well providing that there is a multi-agency approach to dealing with issues at a local level. Resources should not be pulled away from this type of approach as is often the case when funding is tight.*
- ii. Please keep modifications simple to understand. Most are willing to comply but many don't understand the law. Recent 'dereg' changes have just made matters more confusing!*
- jj. This review of the Licensing Act is far too long overdue and there is definite need for a full and in depth review.*
- kk. As previously stated, a registration/ management system for a minimum standard for 'Licensing Advisors' should be considered.*
- ll. The sales of cigarettes and tobacco should be a licensable activity. As should shisha.*
- mm. I've spent the last week sending warning letters to off licences knowing that they will probably be ignored and we will need to continue to gather evidence for a review. That review will probably revoke the licence and appealed and in about a year's time the revocation will be upheld. Some of them will probably continue to sell alcohol and there is NOTHING I can do then except for prosecute which will take about a year as well.*
- nn. The Act works well where the Licensing Authority, Police and Licence Holders work as one. We are all part of the Industry albeit we have different roles.*

- More effort should be made to build partnerships for the good of all and there needs to be a trust between all involved. Local Authorities need to recognise that Licensing is a very serious subject and each LA should have a statutory post as Trading Standards have. There should also be a requirement for Licensing Officers to be qualified due to the very complex nature of the work we are involved in. This should include LA Officers, Consultants and any person offering advice where the said person is not an Officer of the Court.*
- oo. The committee should note that places like Westminster and Kensington & Chelsea make profits from their licensing fees (based on rateable value) whilst the rest struggle to meet the cost of processing.*
- pp. Stop deregulation. Personal licences for all those that work in licensed trade. Go back to old licensee (name above door) remove breweries from being licence holders. More local powers. More training. Locally set fees.*
- qq. Currently the guidance identifies premises as high risk in relation to child protection, where there are concerns about underage drinking or substance misuse. The guidance should include child sexual exploitation alongside these issues, in the guidance.*
- rr. Licensing needs a period of stability allowing local authorities to set their own vision, recover their costs and determine how best to use the existing powers within the Act. Continual tinkering in reaction to Daily Mail headlines does nothing to support this aim. Many licensed premises are well managed and responsible yet get punished for this. If problems occur outside their premises when pre-loaded patrons are refused entry it often gets linked to the premises leading to an unfair review; in the case of town centres, EMROs and LNL may be considered when the problem is not the premises it is individuals. The Act concentrates too much on punishing well managed premises rather than tackling the core problem - individual responsibility! The law should seek to punish drunken and/or disorderly persons for their behaviour rather than punish premises. If I crash my car then the fault lies with me not the garage that sold it to me.*
- ss. The Temporary Event Notice regime is a farce. Legislation should be brought in to exclude any application made more than 15 working days before an event and it should specifically detail that the police have 10 working days from when THEY receive an application. Councils hold on to applications more than a day and then refuse police entreaties that the current 3 working days starts from when the police receive a notice. As it is, 3 working days is insufficient given that some TENs could comprise multiple TENs for an area, effectively be a rave and yet the police only have this time to make a decision on whether to object (and may not have staff immediately available to examine the TEN). Applicants should be required to pay two fees - one to the*

police (who actually expend more time and resources on examining an application) and an admin fee to the local authority. As it stands, a local authority receives the money but does less work than the police in dealing with an application.

- tt. The LA2003 works well, some recent changes have been unnecessary and appear to be a reaction to "statistics" and "lobby groups". What we want are responsible venues, offering the public variety of entertainments and a safe time, and for the public sector to support good business, and help turn around not so good business. Adding burdens to business leads to disenchantment and difficulties in building relationships. The issue of alcohol affected behaviour relates to a culture that is still abundant, and so education and better introduction to alcohol is key to changing the culture.*
- uu. The only problems that the 2003 act have brought about are the times an outlet can trade, along with the amount of outlets alcohol can be purchased from. These are causing problems within the night time economy for all partners, including business operators such as pub and bar owners.*
- vv. More work should be done to reduce bureaucracy and make it simpler for authorities to impose punitive measures on challenged venues.*
- ww. Licensees need to be trained on alcohol law and take full responsibility rather than put all responsibility on the DPS or manager. A 28-day representation period is not needed, 21 days would suffice and speed up the process which for a new business can be very prolonged at times if a hearing is then held. Overall the Act has not been the disaster others often talk about. Where there is limited/no transport home this should be reflected in the hours of operation of premises. Pub watches should be more active and effective in pub watch bans.*

I hope this information is of assistance to the committee in its consideration of the Licensing Act 2003. The Institute of Licensing would be happy to continue to assist in this review.

2 September 2016

Jet2.com – written evidence (LIC0156)

We welcome the opportunity to respond to this Call for Evidence and are pleased to see it will consider how alcohol is regulated across the transport industry.

The issues, figures and case studies outlined in the attached note are of particular significance to Question 8 *'Should the sale of alcohol airside at international airports continue to be exempt from the application of the Act?'* to which we would suggest the answer is no, as well as questions 3, 11 and 12.

There is also evidence to support Question 14, demonstrating that there are international examples of best practice where tighter regulation on the way alcohol is sold at airports correlates to a lower number of disruptive passenger incidents.

We trust that you find Jet2.com's contribution of assistance

Introduction to Jet2.com

Jet2.com is a leading family leisure airline with over 2000 crew carrying millions of holidaymakers each year. We are committed to ensuring all our travellers and our crew have enjoyable, comfortable and safe flights.

In 2015 we took the industry lead in tackling disruptive passenger behaviour by implementing our 'Onboard Together Campaign' which takes a zero tolerance approach to disruptive passenger behaviour – including the excessive consumption of alcohol, racist or threatening conduct – and empowers our crew to take action against it.

Our aim is to stop a minority of passengers ruining flying for other people and to ensure the safety of passengers and crew at all times.

We have received incredible support from our customers and our colleagues for this campaign and the actions we have taken since April 2015. We have worked with the other UK airlines to create a voluntary [Code of Practice](#) which sets out a common industry approach and coordinates existing efforts to minimise disruptive passengers.

As yet another measure to try to tackle disruptive behaviour, we have also recently announced a ban on the sale of alcohol on board our flights before 0800BST.

The disruptive passenger problem and its relation to alcohol

Our figures show that the number of incidents where the passenger fails to respect the rules of conduct at an airport or on board an aircraft have risen significantly. These incidents range from passengers being verbally abusive to crew or fellow passengers to incidents which endanger safety, such as attempting to open cabin doors.

Jet2.com have dealt with 536 such disruptive incidents this summer alone, **over half are reported to have been fuelled by alcohol**. Many also had the opportunity to drink heavily at

the airport before they get on the flight. The Civil Aviation Authority report a 36% increase in disruptive passenger incidents in the UK between 2014 and 2015.

Question 8. Should sales of alcohol airside at international airports continue to be exempt from the application of the Act? Should sales on other forms of transport continue to be exempt?

Many of the disruptive passenger issues with breaches of safety regulation are caused by passengers illicitly consuming duty free alcohol on board the aircraft or consuming alcohol prior to their flight in the terminal bars, restaurants and at sampling stands.

We continue to call for the mandatory introduction of tamper proof bags for alcohol sold at airports to make it clear to passenger's duty free alcohol is not to be drunk onboard the aircraft and discourage the excessive consumption of alcohol in airports. Introducing tamper proof bags would also make it clear that travellers are not permitted to buy soft drinks from airport vendors and use it as a mixer for their duty free alcohol within the airport grounds or on the plane.

We understand that airport vendors are in a unique position catering to customers travelling through many time zones and therefore drinking at 0700 GMT, may not be 0700 for that passenger; consequently many airport retailers are reluctant to restrict the sale of alcohol to the time zone the airport is based in.

However amending the licensing laws in airports to more closely reflect the 2003 Act, would empower bar and restaurant staff to refuse alcohol to those who are already intoxicated. It would also enable airports to regulate vendors who currently promote limitless drinking through unmanned, customer-facing beer taps or early morning duty free sampling stands. Applying the act, or aspects of it, to airports would reduce the number of disruptive incidents caused by alcohol consumption, alleviating the pressure on airport police to deal with drunk and disruptive passengers, reducing the time ground staff and cabin crew spend attending to disruptive passengers and ensuring air travel remains safe and enjoyable for all.

CASE STUDY– LEEDS BRADFORD TO LARNACA. JULY 2016

A flight from Leeds Bradford to Larnaca had to divert into Manchester for police to offload and arrest a 21-year old male after he became abusive to a family onboard the aircraft. Witness reports state that the passenger was observed drinking his own alcohol both in the terminal and onboard.

The passenger demanded that the mother stop speaking to her family in Cypriot and threatened them with violence. He then proceeded to threaten the cabin crew and after the decision to divert the aircraft had been made, he became physically violent in the cabin and was restrained until landing.

Action Taken: The flight was diverted, disruptive passenger arrested and legal action taken by Jet2.com to recover the cost of over £10,000. Manchester Crown Court also sentenced him to 6 months in prison.

Question 14. Is there a correlation between the strictness of the regulatory regime in other countries and the level of alcohol abuse? Are there aspects of licencing law in other countries and other UK jurisdictions that might be considered for England and Wales?

The **Federal Aviation Administration (FAA)**, USA prohibits passengers from drinking alcohol on board the aircraft unless it is served by the air carrier. They have seen a rapid reduction in incidents comparative to the UK from 145 in 2014 to 103 in 2015 and only 31 so far this year.

Similarly **Canadian Aviation Regulations** prohibit the consumption of alcoholic beverages not supplied by Air Canada onboard and the **Australian Government Aviation Authority** rules that passengers are not permitted to consume their own alcohol once they have boarded the aircraft. Both report lower levels of disruptive passenger incidents than the UK.

PROPOSED ACTION

INTERNATIONAL EXAMPLE - CANADIAN AVIATION REGULATIONS (SOR/96-433)

602.04

(1) In this section, intoxicating liquor means a beverage that contains more than 2.5 per cent proof spirits.

(2) No person shall consume on board an aircraft an intoxicating liquor unless the intoxicating liquor has been served to that person by the operator of the aircraft; or where no flight attendant is on board, has been provided by the operator of the aircraft.

(3) No operator of an aircraft shall provide or serve any intoxicating liquor to a person on board the aircraft, where there are reasonable grounds to believe that the person's faculties are impaired by alcohol or a drug to an extent that may present a hazard to the aircraft or to persons on board the aircraft.

(4) Subject to subsection (5), no operator of an aircraft shall allow a person to board the aircraft, where there are reasonable grounds to believe that the person's faculties are impaired by alcohol or a drug to an extent that may present a hazard to the aircraft or to persons on board the aircraft.

Jet2.com is calling for practical steps to protect the majority of law-abiding passengers from those who are disruptive.

1. A comprehensive **review** of how alcohol is sold in airports, looking specifically at promotions and whether they should be subject to more of the rules that apply throughout the rest of the UK on the high-street.
 - The Licensing Act 2003 currently allows airport pubs, restaurants and shops to sell alcohol without a premises licence.

- This means there is no defined limit on alcohol consumption and no time when alcohol cannot be purchased. We believe this contributes towards irresponsible drinking by some passengers.
- 2. **An update to the Air Navigation Order** stipulating that passengers shall only consume alcohol on-board aircraft that has been provided on-board that aircraft to reflect the air navigation orders set by Canada, Australia and the USA.
- 3. Make **tamper-proof bags mandatory** for duty free purchases of alcohol, across UK airports.
 - This would build on the trial we have undertaken at Manchester and Glasgow airports.
 - They are already mandatory in Germany, Canada, Australia and the US.

In conclusion, we are grateful for the opportunity to respond to this important inquiry and look forward to monitoring the Committee's progress and final report.

30 September 2016

John Gaunt & Partners – written evidence (LIC0054)

INTRODUCTION

1. John Gaunt & Partners are a niche licensing practice operating nationally. We have one of the largest specialisms in this area and are unusual in that although based and qualified to practice in England and Wales, we also extensively practice in Scotland and therefore have experience of the licensing regime there.
2. We act for operators large and small but our retainers include some of the largest national leisure companies including Whitbread (and Premier Inn), Marston's and David Lloyd Leisure (where our retainers extends to the entirety of their respective licensing requirements). We are also retained by Greene King on the licensing of new build developments across the country, to name but four. We actively engage with the trade bodies' representative of the industry and are nationally renowned.
3. The views expressed in this document are the views of our practice and not necessarily those of our clients whom we represent.

LICENSING OBJECTIVES

Question 1. We believe that the existing four licensing objectives are the right ones for Licensing Authorities to seek to promote and that there are sufficient balances within the Licensing Act 2003 to ensure that there is normally a proper and proportionate response to applications received. The protection of Health and Wellbeing is, of course, effectively an additional licensing objective in Scotland ('Protecting and Improving Public Health'). Our experience there is that representations, where received, are not always well informed or indeed material to the application in hand. One must question the extent to which "protection of health" properly can transcend to individual applications for which Licensing Committees (or Boards in Scotland) have to determine.

Question 2. Whereas we do not necessarily agree with all the decisions handed down by Licensing Committees or indeed the detail of some of the policies adopted by them, in general, it is our experience that well-presented applications by reputable operators will normally be supported. We are not sure what advantage would be derived by having as an additional licensing objective access to and enjoyment of licensable activities by the public. On balance, we do not believe that there should any other additional objectives.

THE BALANCE BETWEEN RIGHTS AND RESPONSIBILITIES

Question 3. In our experience the Live Music Act 2012 has worked well to relax the provisions of the Licensing Act 2003 and generally offer operators the increased flexibility

which they would like in respect of music within the constraints of that Act whilst balancing the needs of local communities.

Late Night Levies. We have been involved in the consultations of most, if not all, proposed Late Night Levies. In our view these can be a disproportionate burden upon late night operators, particularly as they extend (as by law they must) across the whole of the licensing district. A disadvantage with the current procedure is that although representations may be made, there is not necessarily a hearing at which issues raised can properly be debated. We anticipate that there will be an increasing number of levies adopted going forward.

Individual proposals for Late Night Levies offer little consistency as to exemptions or reductions where greater consistency would be welcomed. Hotel operators, of which we act for a number, fail to understand why, just because they may be licensed for hotel residents 24/7 and have no real impact on the late night economy, they should be burdened by levies in some cases but not others.

Early Morning Restriction Orders. There have been two attempts to impose Early Morning Restriction Orders (EMROs) – as the Committee will be aware - in Hartlepool and in Blackpool. We were actively involved in both. Our experience and view is that EMROs if ever to be adopted are not effective and indeed as was apparent from Blackpool, are the wrong proposal to address the far wider problem than that originating from a small number of premises operating late into the night / early morning.

Those seeking the imposition of an EMRO (and the Police in particular) should be very cautious as to the quality and relevance of the evidence and accuracy of the evidence put forward as was abundantly clear from the failed attempt in Blackpool. The real source of issues of concern should be properly identified. We believe that the powers of review of troublesome premises is or should be a sufficient protection (offering a targeted approach) and the EMRO should be regarded as a redundant force going forward.

Question 4. There is again little consistency of approach between the Responsible Authorities in different areas as to how they engage within the licensing regime. Larger Metropolitan Authorities tend to be more pro-active. Smaller Authorities, less so. We suspect that this is in part a resourcing issue but also a skills issue.

With regard to the Planning Authorities as a responsible authority, many do appear to harbor confusion about their role and the distinct and separate regimes of licensing and planning.

In our view, the licensing regime contains more than enough powers, checks and balances. Those powers just need to be used in appropriate circumstances. Other stakeholders, including local communities, do in our experience engage effectively in the licensing regime where concerns arise (and indeed in some cases where such concerns are misplaced!).

Question 5. We are not sure that there is that coherence of strategy as the Government would like to suggest. Whereas licensing and licensing policy may (in name) be part of a

coordinated approach, we are not convinced that in practice this is the case and that often, licensing is dealt with in isolation.

Question 6. Planning and licensing are and should remain distinct regulatory regimes. They perform different functions and the ‘separation’ is to be welcomed and protected. Proliferation can currently be dealt with by the planners in consideration of (for example) an application for change of use. The licensing function increasingly resorts to the adoption of ‘cumulative impact zones’ a feature derived from the Guidance and not the Act itself. (‘Overprovision’ policies which are a creature of statute are the Scottish equivalent – every Board must carry out an overprovision assessment). Our experience of cumulative impact policies is that (overall) they do not tend to lead to the rejection of a well-crafted application by a responsible operator. However the main shortcoming is that unless sensitively applied, they only serve to reinforce the existing patterns of trade and protect existing operators, not necessarily leading to any improvement in standards.

Question 7. The police in particular but other responsible authorities have more than sufficient powers to prevent crime and disorder and to pursue premises perceived to be problematical. Police training is more problematical. Many police licensing officers are both well trained and well-experienced. The two seem to go together. However in many authority areas, police licensing officers are less well trained and/or less experienced and this is a problem for them, the Licensing Authority and operators. We suspect that this is a resourcing issue. Additionally in many areas such responsibilities can be delegated to civilian staff which may or may not be beneficial depending on the individual’s experience.

Question 8. Sales of alcohol airside seem to be something of an historic anachronism. Having so said, there does not seem to be a resulting issue arising from this and those few troublesome passengers who have drunk too much are likely to do so whether or not airside premises have to become licensed going forward. Trains are a major exemption from the requirement to be licensed which affects or can affect a major part of the population day to day. There is the ability to prohibit the sale of alcohol by court order on specific trains and in our experience this works well when there are perceived to be increased risks of crime or disorder. We see good interaction between the police and the British Transport Police.

Question 9. This is perhaps one of the most critical questions to the whole review. There are many elements of the current regime which are unduly burdensome and which could usefully be streamlined and/or improved. In no particular order these might include:

- Streamline the main premises licence application and variation of the same; far too long; many pages not necessary or left blank etc.
- Improve and streamline the process for electronic applications and electronic payments. The Government’s digitalisation project does not seem to be migrating effectively to licensing and where it has been adopted by licensing authorities there is no consistency of approach
- Requirement to advertise major applications in the local press. This is neither cost effective nor informative. It is widely accepted that the vast majority if not all

comments on applications come from the notices on site. Such notices can add between £200 and 400 to the cost of an application.

- A consistent format for all licences and a requirement upon licensing authorities to produce a one sheet summary of the licence. It is a requirement that the premises licence summary (which currently can be many pages long) must be on prominent public display.
- The possible introduction of a review procedure for personal licence holders independent of a review of the premises licence
- The possibility of introducing a limited and more specific review procedure (such as seeking only the removal of the designated premises supervisor; those issuing review applications in any event should be required to be more specific as to what it is the review is seeking to achieve rather than leaving it to the committee to determine which of the full range of measures available, they wish to impose.
- Petrol stations – the law in relation to petrol station forecourts and motorway service areas is confused and does not assist either the operator or the authorities. The rise in convenience stores located within petrol stations makes the situation worse. Those wishing to license a forecourt need to establish intensity of use to demonstrate the pre-dominance of non-petrol sales to become licensed. Motorway service areas are precluded from holding a licence for the sale of alcohol where effectively in public ownership (on a lease from the Highways Authority). Many newer service stations are privately owned. The former can not contain licensed premises; the latter increasingly do so with mini-branches of supermarket chains (notably M&S or Waitrose) and some even with public houses within them. A distinction clearly lost on the public.

Question 10. We rarely become involved in the appeal procedure and so it is difficult to comment. On the subject of costs however, it does seem wrong that where a licensing authority has made a manifestly wrong decision, the starting point from which one has to argue is that they are protected in terms of costs. Parties to the original hearing should be entitled to be parties to the appeal without having to formally apply to be so.

Question 11. We are not sure that a case can be made out for the reform of the law as it relates to off-sales. Operators need to ensure and be seen to ensure that they have effective systems in place to prevent under aged sales and ensure adequate protection against the same on home deliveries. They are or should already be accountable for the due diligence systems in place and we see no need for wholesale reform in this area. The off-trade and supermarkets in particular adopt Challenge 25 as the increasing norm. The pricing of alcohol and its low cost at supermarkets is not something which we believe can or should be addressed directly through the licensing process.

Question 12. We believe that the evidence around minimum unit pricing is open to question. The detail is outside our expertise but we think that the different sides of the argument should seek to come together (constructively) to commission an informative and informed study with agreed parameters so at least there can be a debate without the

argument being about the statistics. The ‘health lobby’ appears to regard such possible engagement as anathema. Until there is some element of a coordinated approach, the arguments will continue. In our view the current bar on sales below the duty paid and VAT sets the bar so low as to have no material effects save to add a largely unintelligible condition to all premises licences.

Question 13. Licence fees should continue to be set at a national level. From previous consultations we are aware of significant nervousness on the part of individual authorities having the power to set fees locally and the case of ‘Hemmings’ shows just how fraught this process can be. Operators require certainty and whereas the current fees are ‘out of date’ any new fees should be set nationally but proportionate to the administration involved.

Question 14 – Our knowledge of other licensing jurisdictions is largely limited to Scotland where we practice extensively, although we have had very limited involvement in Jersey and Ireland (not sufficient to express any sensible view!). Scotland differs from the regime in England and Wales in many ways. Notably Licensing Boards who always have had responsibility for licensing wanted to maintain a degree of control going forward. Each Board has its own licensing policy which must address ‘over-provision’ (as above).

‘Protecting and Improving Public Health’ is a licensing objective there, driven by perceived health and social issues fueled by the sale of alcohol. The linkage between those issues and individual applications is hard to make and we have seen and experienced many a ‘robust’ policy on overprovision and stated public health concerns not translate into a refusal of a licence or the grant of a more curtailed licence. As such we feel that you need to establish in reality how strict a licensing regime in fact actually is before you can look for any correlation to the level of alcohol abuse and it is our view that many other factors come into play before the impact of the actual licensing regime – most notably price. But society’s issues derive from a far wider base, of which on occasion alcohol is a convenient culprit.

All major licence applications necessarily result in a hearing before the Board; unlike England and Wales, where a hearing is only normally required where objections are received or upon review. We do not think this level of increased scrutiny (if this indeed is what it is) is necessary and indeed can be cost and time intensive. A development can often be significantly delayed until the matter has been before the Board.

CONCLUSION

The licensing regime in England and Wales has been operational for over 10 years. During that time, operators (whom we largely represent) have come to understand the system and how it works, frustrating as this can be on occasion. Whilst initially indicated to be intended to simplify licensing procedure, it has become increasingly complex with frequent amendments to the detail of the law in the intervening period (although it must be said at a rate of change marginally slower than in Scotland!). We believe that there is a balance between the interests of operators and the local communities in which licensed premises

trade. We believe that the existing regime largely serves to promote the existing licensing objectives in a balanced way. Whilst certainly not perfect, a balance is by and large maintained between the parties.

31 August 2016

John Gaunt & Partners – supplementary written evidence (LIC0171)

The Health objective and Scotland

1. John Gaunt & Partners are in the unusual and relatively unique position of being retained by operators in the licensed and leisure sector, acting both north and south of the border; this gives an insight into the workings of both licensing regimes and of the impact of the fifth licensing objective (the protection and improvement of public health) in Scotland in particular.
2. The Scottish licensing regime derives from the Licensing (Scotland) Act 2005, which became operational on 1 September 2009. We have been retained in Scotland since that time.
3. It is fair to say that the health objective has been problematical in its application since that time – acknowledged by Boards and health professionals.
4. Well intentioned as it undoubtedly is, the health bodies and Boards have struggled effectively to understand how to apply it and what evidence should properly be advanced in support of a relevant representation. That position endures to this very day, some 7 years later.
5. At a licensing conference I attended recently, one of the talks was devoted to this subject ‘Health – no ordinary objective’. This was devoted to the history and origins of the Health objective and continuing issues with its application.
6. The Scottish Government Guidance (under section 142 of the 2005 Act) at paragraph 47 states that the results of all consultation should be evaluated to identify robust and reliable evidence which suggests that a saturation point has been reached, *always provided that a dependable causal link can be forged between that evidence and the operation of licensed premises in a locality*. That causal link, or the absence of it, is a significant source of the problem of the application of the health objective. This Guidance has never been updated since its original issue in 2007.
7. The Health objective was reinforced in 2010 by new requirements that:
 - a. Health Boards be notified of each licence application
 - b. Health Representatives be invited to join the local consultative Local Licensing Forums
8. What evidence is relied upon to sustain or lay the foundations of a health objection? Health data is usually broken down from Intermediate Data Zones (IDZs) and at a national level. Sometimes this data can be or has been out of date and in any event is not premises specific – and as such can usually be relatively easily challenged on this basis, thereby undermining the credibility of any representation made to a specific application. This evidence when presented is not easily referenced by Board

to the application before them; evidence in respect of the other licensing objectives can be much more premises centric.

9. Resourcing of health professionals in the field of licensing has also been an issue, along with (particularly initially) appropriate training. Whereas initially there was much presence of health representatives at Board hearings (but with limited appreciation of the process in which they were engaging, this attendance has declined and in any event is geographically patchy. Appropriate resourcing on an ongoing basis would appear to be an issue.
10. We suspect that similarly resourcing and training would be an issue if a health objective were to be adopted under the 2003 Act.
11. Case law has reinforced the need for each application to be demined on its own merits and for the need for site specific evidence; as above this has proved very difficult for Scottish professionals to do. A similar position would ensue in England and Wales, in our view.
12. Alcohol Focus Scotland hosted a series of regional experience sharing events in September 2016. Although we did not attend we have seen reports conclusions drawn that the health objective is still (seven years on) 'bedding in', concerns being expressed about insufficient licensing data, a lack of up to date guidance from the Scottish Government and an acceptance that 'using the licensing regime to regulate alcohol availability has yet to be realised'. See <http://www.alcohol-focus-scotland.org.uk/events/afs-regional-licensing-events/>
13. Our own experience direct and from seeing other applications determined (all new applications in Scotland result in a Board hearing whether or not there is an objection) is that where health has been raised as a concern, it has usually not resulted in any curtailment or refusal of the application. Certainly that experience is that this has been the case on the many applications which we have made for new build developments in Scotland over the years (notably for Whitbread and Premier Inn, Marston's and Greene King).

8 December 2016

Joshua Simons & Associates Ltd – written evidence (LIC0133)

In relation to a public call for written evidence to be submitted for consideration by the Select Committee on post legislative scrutiny of the Licensing Act 2003. Please see our general comments on the following points:

Question 8

Should sales of alcohol at international airports continue to be exempt from the application of the Act. Should sales on other forms of transport continue to be exempt?

Yes the sale of alcohol airside at airports should be regulated for the following reasons (i) to bring into line the sale of all alcohol at airport restaurants, bars and off licenses so as to offer the same protective regulation to passengers, staff and children from those who become intoxicated. There are a number of incidents that were highlighted in an article by the Guardian see link <https://www.theguardian.com/world/2016/jul/29/minister-wants-to-tackle-excessive-alcohol-consumption-at-uk-airports>

Question 9

The Act was intended to simplify licensing procedure: instead it has become increasingly complex. What could be done to simplify the procedure?

The application forms available via the government Open Government Licence internet site for licensing could be shortened i.e exclude the questions that relate to VAT and other non-licensable questions.

Question 10

What could be done to improve the appeal procedure, including listing and costs?

The appeal procedure should be organised through a new government agency that deals solely with licensing appeals similar to the Planning Inspectorate. Such a system could permit applicants to file their appeal via the internet, pay relevant fees or not as the case may be and receive updates via this portal. I make this suggestion as I have experience of using the planning inspectorate internet site and it appears to provide an intuitive and easy to use portal when submitting a planning appeal.

Question 13

Do licence fees need to be set at national level? Should London and the other major cities to which the government proposes to devolve greater powers, have the power to set their own licence fees?

No licence fees should not be set locally for the following reasons (i) they should be set by central government in order to allow equal fees to be applied for all licensed premises, (ii) if fees are set locally councils that have such powers may use such powers to increase their

fees unjustifiably rather than to reflect the volume of work which could discourage applications.

A good example are the fees set by local councils for sexual entertainment venues exemplified in the recent case of Hemmings v Westminster City Council.

2 September 2016

Kent Police – written evidence (LIC0083)

Licensing objectives

1. Are the existing four licensing objectives the right ones for licensing authorities to promote? Should the protection of health and wellbeing be an additional objective?

The existing licensing objectives are broadly sufficient. As the UK's Chief Medical Officer has now stated that there is no safe level of alcohol consumption, promoting the protection of health and wellbeing as a standalone objective within the alcohol licensing arena may be problematic. It may be that any new protection of health and wellbeing objective could or should be used in conjunction with an existing objective and carry appropriate weight in such circumstances.

2. Should the policies of licensing authorities do more to facilitate the enjoyment by the public of all licensable activities? Should access to and enjoyment of licensable activities by the public, including community activities, be an additional licensing objective? Should there be any other additional objectives?

Licensing authorities' policies are a matter for local authorities. The access to and enjoyment of licensable activities by the public, including community activities would be a difficult objective to enforce as what is acceptable for one person may be insufficient for another. No other objectives appear to be required at this stage.

The balance between rights and responsibilities

3. Has the Live Music Act 2012 done enough to relax the provisions of the Licensing Act 2003 where they imposed unnecessarily strict requirements? Are the introductions of late night levies and Early Morning Restriction Orders effective, and if not, what alternatives are there? Does the Licensing Act now achieve the right balance between the rights of those who wish to sell alcohol and provide entertainment and the rights of those who wish to object?

The Live Music Act 2012 appears to have struck a reasonable balance to promote live music in venues without causing a public nuisance to residents nearby.

Late night levies and EMROs have not appeared to have been utilised widely nationwide. No local authority in Kent has pursued either, anecdotally this is due to the fierce opposition and fighting fund set up by the industry. Whilst EMROs in particular appear to be a useful tool for LAs to utilise where appropriate, whether for year round licensable activities or short events, these have not been utilised in Kent at this time.

Overall the Licensing Act balances the rights of providers and objectors reasonably. Temporary Event Notices are becoming an increasing burden on police licensing staff as they are being used instead of, or to influence, licence applications/variations, and

sometimes used for events that should undergo a SAG. In July 2016, Kent Police received 349 TENs to process, a quarter of these were late TENs.

4. Do all the responsible authorities (such as Planning, and Health & Safety), who all have other regulatory powers, engage effectively in the licensing regime, and if not, what could be done? Do other stakeholders, including local communities, engage effectively in the licensing regime, and if not, what could be done?

In respect of engaging partners in the licensing regime, Kent hold a bi-monthly Regulatory Licensing Steering Group involving relevant partners including Licensing Authorities, Police, SIA, Gambling Commission, Fire Service, Public Health and UKBA. The agenda is set by the group and considers issues affecting licensing in Kent. This meeting is hosted by partners and chaired by the police.

Licensing and local strategy

5. Licensing is only one part of the strategy that local government has to shape its communities. The Government states that the Act “is being used effectively in conjunction with other interventions as part of a coherent national and local strategy.” Do you agree?

No response

6. Should licensing policy and planning policy be integrated more closely to shape local areas and address the proliferation of licensed premises? How could it be done?

No response

Crime, disorder and public safety

7. Are the subsequent amendments made by policing legislation achieving their objects? Do they give the police the powers they need to prevent crime and disorder and promote the licensing objectives generally? Are police adequately trained to use their powers effectively and appropriately?

Previous reviews of the Licensing Act have provided statistics and views that will not be repeated here. Generally the police have the powers needed to prevent crime and disorder on the street. In respect of promoting the licensing objectives, the use of reviews instead of simple closures has been an effective and more balanced measure. However, as the use of reviews has become more widespread, larger problematic premises are now fighting what would be reasonable measures or conditions in all the circumstances instead of working with the police and LAs to promote the objectives, sometimes at a cost far outweighing the implementation of such measures. In respect of smaller premises, the decisions made by the LA appear to be balanced and seek to promote the objectives unfettered by the potential of an appeal. The police of course have the right to appeal, but a faster course is to call a new review when a further incident occurs.

Specialist licensing officers are well trained to use their tools and powers effectively and advise other officers accordingly.

8. Should sales of alcohol airside at international airports continue to be exempt from the application of the Act? Should sales on other forms of transport continue to be exempt?

No response

Licensing procedure

9. The Act was intended to simplify licensing procedure; instead it has become increasingly complex. What could be done to simplify the procedure?

No response

10. What could be done to improve the appeal procedure, including listing and costs? Should appeal decisions be reported to promote consistency? Is there a case for a further appeal to the Crown Court? Is there a role for formal mediation in the appeal process?

We have no comment on the improvement of the appeal procedures. Reporting of decisions to LAs and Responsible Authorities may be beneficial.

Further appeal to the Crown Court does not appear to be of any value to enforcement and may delay the implementation of any steps made by the LA. Appeals to the Crown Court may also be detrimental to the making of unfettered decisions as mentioned in Q7, particularly with the threat of costs against LAs at two subsequent appeals.

Sale of alcohol for consumption at home (the off-trade)

11. Given the increase in off-trade sales, including online sales, is there a case for reform of the licensing regime applying to the off-trade? How effectively does the regime control supermarkets and large retailers, under-age sales, and delivery services? Should the law be amended to allow licensing authorities more specific control over off-trade sales of “super-strength” alcohol?

Overall, the current position appears to be sufficient in managing the off-trade. Proliferation of premises in areas of social deprivation and high alcohol abuse could potentially be addressed by the use of any new protection of health and wellbeing objective in conjunction with an existing objective.

Pricing

12. Should alcohol pricing and taxation be used as a form of control, and if so, how? Should the Government introduce minimum unit pricing in England? Does the evidence that MUP would be effective need to be “conclusive” before MUP could be introduced, or can the effect of MUP be gauged only after its introduction?

No response

Fees and costs associated with the Licensing Act 2003

13. Do licence fees need to be set at national level? Should London, and the other major cities to which the Government proposes to devolve greater powers, have the power to set their own licence fees?

No response

International comparisons

14. Is there a correlation between the strictness of the regulatory regime in other countries and the level of alcohol abuse? Are there aspects of the licensing laws of other countries, and other UK jurisdictions, that might usefully be considered for England and Wales?

No response

2 September 2016

Kingscliffe Society – written evidence (LIC0146)

Report on the effects of Licensing Act implemented 2005

From a resident of Brighton East Sussex on behalf of the local conservation society.

- 1). I am an inner city dweller living in a narrow pedestrianised street which is used as a route home for many leaving the city centre. My narrow 3 storey house was rebuilt for me and my family with the aid of my father in 1970. At that time the street was of run down mixed use properties including workshops, garages, offices and a few houses. My residence formed only the fourth dwelling in the street. The street is now part of a conservation area and there are now 26 dwellings.
- 2). I am a member of the local conservation society (The Kingscliffe Society) and I am the vice chair of The St James's Community Action Group (LAT), a more specific neighbourhood group.
- 3). In 2002 - because of the increase in incidences of night disturbance - I joined the national Open All Hours? group on behalf of the Kingscliffe Society. This group which sought to influence the debate on the introduction of longer drinking hours was instigated by the Civic Trust and the Institute of Alcohol Studies and met in London at least 4 times per year until 2006.
- 4). Because of this group, people who were already or thought they were likely to be affected by fallout from the new legislation were advised to keep noise diaries. As a result I kept noise diaries from 20 August 2002 until 14th July 2013. (5 volumes)
- 5). The local city council held Licensing Strategy Group meetings in the run up to the new licensing implementation, attended by the police, council officers and others concerned with vetting applicants and a few members from community groups such as myself. The overwhelming concern seemed to be with processing all the paperwork and checks required for implementation. There was very little discussion of the fallout on residents and the provision of extra police for the control of greater drunkenness. Licensing Strategy Groups continue to meet 3 times per year under B&HCC.
- 6). As an immediate effect of the new licensing when it came into force in autumn 2005 was that the number of night disturbances in my street trebled, in some cases 4 times those of 2002. As a result of this in 2006 with the aid of my noise diaries I petitioned the Valuation Office which consequently reduced the council tax rate on my property from band D to band B.
- 7). A further effect was the street and community became more transitory. Two particular properties are on their 3rd ownerships within 6 years after owners who had been residents of 10 & 30+ years.

8). At the time of implementation of the new licensing hours pressure groups like the St James's Street LAT were given fresh emphasis and meetings were held where police up to the level of inspector emphasised the need for creating 'stats' to aid targeted policing. We were urged to either call at the time of disturbance or email/call the following morning to create a log. Although I attempted to call in at the time of disturbances during 2005-2006 this only had the effect of making one more awake with little chance of a positive outcome.

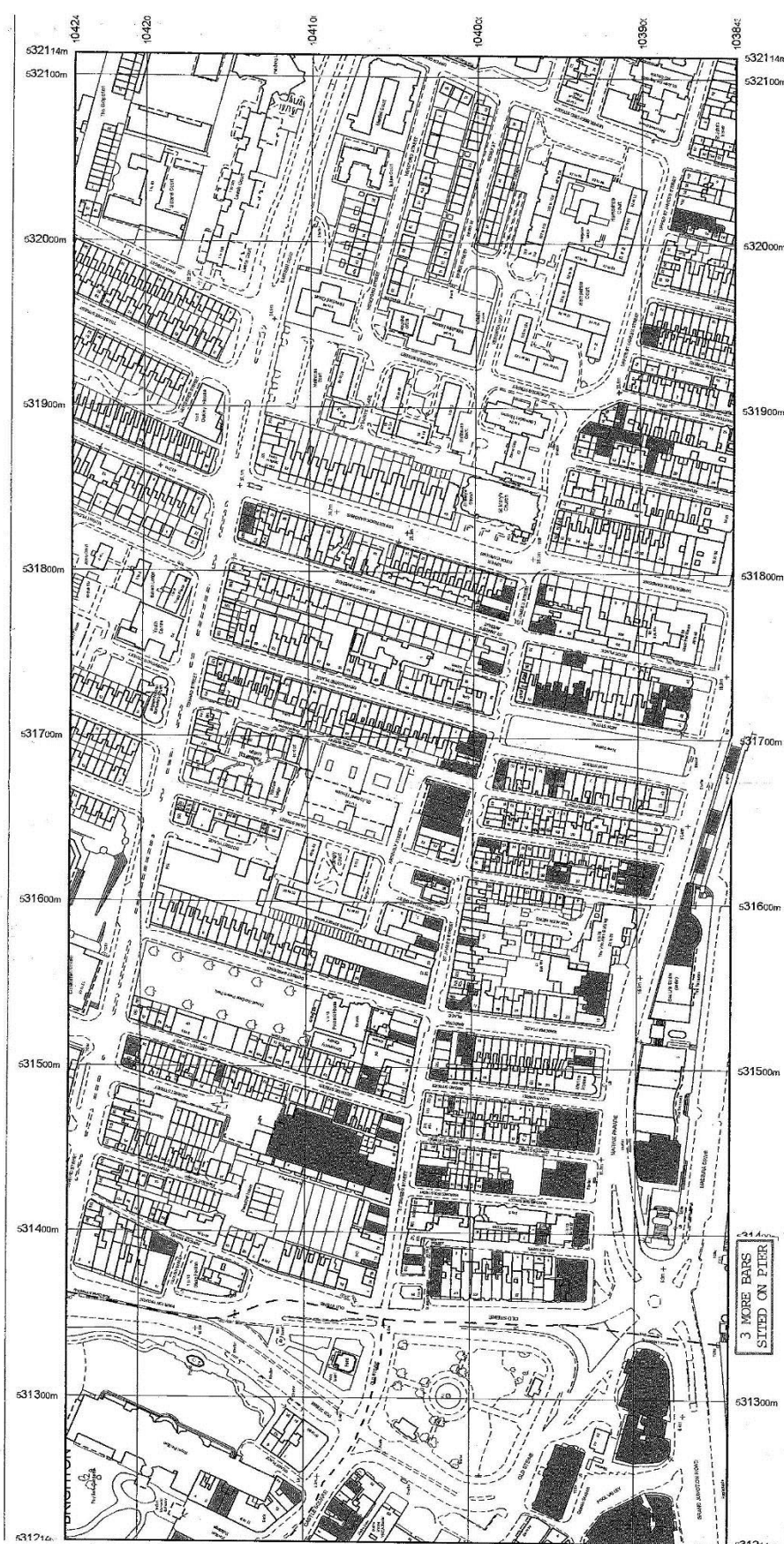
9). However, because of greater encouragement from the police at the LAT meetings I made a concerted effort to phone in reports after every disturbed night (up to 7 separate incidents) from 8/4/09 until 10/6/12. This process ceased after a meeting at Brighton police station where the 'stats' had obviously become an embarrassment and the officer interviewing informed me that she was moving out of Brighton to a quieter area - implying I should do the same ?

10). As a result of the above meeting an article in the local press published the 'stats' which brought about about the police interview. 966 incidents occurring on 404 nights out of 725 nights. This was publicly dismissed by the police as 'having been dealt with at the time'.

11). A map of the St James's Street area was prepared by the Kingscliffe Society to highlight the quantity of premises licensed to sell alcohol (copy supplied). One result of this and similar proliferation city wide has been that, with pressure from the police, a CIZ (cumulative impact zone) has been declared over a wide area of the city. This precludes any further licenses being granted unless they fit a matrix or can prove they will not contribute to the existing problem.

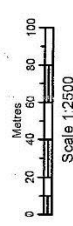
12). Pressure continues to be applied to the area however, the main source being applications for cafe/bars where conditions of service and supply are more vaguely applied. We are also subject to the increase in HMO's used by student groups and similar properties used as 'party houses' by stag &/or hen parties over weekends. Noise breakouts caused by these properties are subject to the split of responsibility between the Police for street and the Council for premises disturbance, which can result in continual activity throughout the night.

13). Since July 2015 I have boarded up my bedroom window with acoustically dead sheet material (MDF) and as a result, because it no longer sounds as though people are shouting in the room, I have not been woken in the night since. (photo supplied) [not published]



DENSITY OF LICENSING (west end of Kingscliffe)

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Kings Cliffe
Brighton
East Sussex

1 September 2016

Kuit Steinart Levy LLP – written evidence (LIC0098)

1. The below summarises the response of Kuit Steinart Levy LLP to the call for evidence by the Select Committee to the House of Lords in respect of the Licensing Act 2003.

Licensing Objectives

2. We have no comment on the licensing objectives of Prevention of Crime and Disorder, Prevention of Public Nuisance and Protection of Children from Harm. Licensing Authorities should continue to seek to promote these objectives.

3. However, the ‘forgotten objective’ of Public Safety could arguably be removed. It has always been intended that premises licences do not duplicate obligations that are contained in alternative legislation. We would submit that almost all conditions that can be offered or imposed in relation to this objective are now dealt with elsewhere.

4. The addition of a Protection of Health/Public Health objective would be a step too far. Firstly, there is adequate alternative legislation in place to deal with the protection of health. Secondly, it would be extremely practically difficult to lodge enforceable conditions to address public health if it were to be introduced as an objective. Should, for example, bar-staff be required to advise regular customers if they drink over the weekly recommended number of units? At what point would this obligation kick in? How would this work? Or, should takeaway premises be required to provide healthy food options as well as their usual offer? How could they possibly be required to push this offer when the customer is paying for the food? Ultimately, health and well-being must be a matter of individual responsibility and to place this responsibility on leisure and hospitality operators is overly onerous.

5. There are ways in which the policies of Licensing Authorities can do more to facilitate the enjoyment of licensable activities (see below in relation to Cumulative Impact). However, this should not extend so far as the introduction of this as a licensing objective. Again, it is difficult (perhaps even more so here) to see how this could translate into enforceable conditions. As such, it is difficult to know how licensing authorities could be expected to achieve this through their policies, and indeed to measure their success in doing so.

6. Whilst there is merit in promoting enjoyment of the leisure economy, and indeed in promoting premises which offer a variety of licensable activities (including diverse regulated entertainment), this is best achieved by allowing market forces to prevail. In terms of community activities, it is difficult to see how the promotion of these could be facilitated through the Licensing Act. The Act provides mechanisms for community events to be licensed on an ad-hoc basis through TENs for example, but it seems misplaced to suggest that the act should encourage rather than simply facilitate such activities.

The Balance between Rights and Responsibilities

7. The Live Music Act 2012 has, in our view, been extremely successful in achieving its objectives of relaxing the provisions of the Licensing Act. It allows sufficient flexibility to operators, whilst the hours of that flexibility means that there is limited scope for nuisance to be caused to other interested parties. Our clients have been universally positive in their feedback about the allowances that the Live Music Act makes for them. Our only comment in relation to this Act is that it seems that there remains an element of confusion amongst some local authority officers (both licensing officers and environmental health officers) in respect of the suspension of conditions relating to live and recorded music during the hours that the deregulation applies. Our understanding is that such conditions can only be reinstated or introduced in response to a review, but officers have suggested that they should be imposed when applying for a new licence despite the fact that in our view they are completely unenforceable if the premises does not trade outside of the hours of 08:00 and 23:00.

8. We cannot comment on the effectiveness of EMROs as none have yet been introduced. In terms of Late Night Levies, our clients who trade nationally do not report increased visibility in terms of policing in the towns and cities where they pay the levy. It seems therefore that it is not sufficiently evident where the money is spent. The introduction of a Levy does not appear to present a particular barrier to larger operators, particularly those with multiple sites. However, whilst we have no specific evidence or experience of these, our concern would be whether it may present a deterrent to small, independent or start-up operators who may have something valuable to offer to the night-time economy.

9. In terms of a general balance between rights and responsibilities, we are of the view that the balance has now swung too far in favour of those who wish to object to applications. The proliferation of Cumulative Impact Policies is a real concern. They can make it exceptionally hard for good operators to enter certain locations. This, in our view, denies those areas the opportunity to improve and allows them to stagnate. We believe the focus needs to be shifted to addressing (potentially by way of review) the premises that are causing the problems which lead to the introduction of these policies, rather than barring entry to the right new operators. We believe that there is real potential for the right operator or operators to change the character of an area if they are allowed to open their doors.

10. Being based in Manchester, we enjoy the effects of being one of the only major city centres without a Cumulative Impact Zone. The food and drinks industry in the city is thriving, and it is allowed to do so because of the eminently sensible merits based approach taken by the Council's policy and the police response to applications. By way of example, the Peter Street area of the city had historically experienced problems caused by the wrong type of licensed premises and latterly experienced a total decline in any type of vibrancy. More recently, the right kind of operators have been granted licences in the area to its great benefit – amongst those Revolucion de Cuba, BrewDog and Alberts Schloss. These types of operations would undoubtedly have faced significant challenges in obtaining a licence if

there had been a Cumulative Impact Policy in place in Manchester, as indeed the former two have in other cities across the country.

11. Furthermore, there is a concerning unwillingness, displayed by a number of local authorities and responsible authorities across the country, to take a nuanced approach to applications received in Cumulative Impact Zones. Responsible authorities regularly talk of being ‘obliged’ to object, even if they are actually of the view that the application is sound and the operator would be a positive addition to the area. No such policy confers an obligation on any responsible authority to object, simply a rebuttable presumption if they do, but this sense of responsibility has developed of its own accord.

12. An example of where this has, in our view, gone too far was a recent application submitted for a new premises licence for a high end cocktail bar and restaurant in a London Borough. The application was made for a licence within core hours, but the premises fell within the Cumulative Impact Zone. We, together with our clients, met with the Police, Environmental Health and representatives of local residents associations. We were able to agree an operating schedule that satisfied all parties, and no representations were received save for one from the Licensing Authority themselves. They objected purely on the basis that the premises fell within the Cumulative Impact Zone. The application was refused by the Committee on that basis, despite evidence of the agreement with the responsible authorities and local residents; of the style of operation of the premises; and of its successful national trading record.

13. The engagement of responsible authorities in the regime naturally varies across the country. The importance of pre-application consultation has become more and more evident over the past few years, and generally authorities are willing to meet and discuss proposals for applications in an attempt to reach a mutually convenient solution. However, whether that is possible can often depend upon whether there is a deemed obligation to object.

14. We see little engagement in the process from planning and health and safety, but this is entirely expected and appropriate. However, planning ‘representations’ are often received which do not make reference to the licensing objectives and which simply refer to the relevant planning permission for the premises. These are irrelevant and seem unnecessary. The separation between planning and licensing, should, in our view, be maintained to allow operators to approach their necessary applications in accordance with a timeline which works for them.

15. It is not necessary to integrate these regimes to address proliferation of licensed premises. Proliferation in itself is not necessarily a negative. It is the quality of the operators that determines the success or otherwise of an area. Where proliferation is negative, market forces will prevail, but this should also be coupled with the use by licensing authorities and responsible authorities of the tools that they have to tackle problematic premises.

16. Local communities engage regularly with the licensing process, and indeed some can be extremely knowledgeable and effective. They are often supported or assisted by local councillors. The process clearly works well for those who wish to use it and provides scope for interested parties to have their views heard. On the other hand, this can become problematic where communities simply do not want any licence applications to succeed and are therefore unwilling to engage or negotiate with potential operators in any meaningful way.

Crime, Disorder and Public Safety

17. We are of the view that the police have sufficient powers at their disposal to address problems with crime, disorder and anti-social behaviour. However, it is our view that they use very few of these powers and when they do, they are rarely effective.

18. It seems that the easier option of objecting to new applications is preferred to that of addressing the causes of the problems that are in existence.

Licensing Procedure

19. The first small change that we would strongly advocate to streamline the process would be to remove the need for newspaper advertising. It is not only an additional element of the process, but it is also expensive and has extremely limited function. We have never known a situation where an interested party has been alerted to a licence application by way of a newspaper advertisement. The display of blue notices is extremely effective, and in addition those who are interested and actively wish to be informed of applications usually avail themselves of mailing lists and online updates offered by local authorities.

20. The second important amendment would be to create a more streamlined process for granting and issuing licences when agreement is reached following receipt of representations. This process varies from authority to authority, but many will insist on the formality of a hearing when representations are received, even if all parties reach an agreement before that date. This is an unnecessary waste of time and money.

21. The process can also be frustrating where objectors refuse to engage, or where there is a refusal to accept reasonable arguments or offered compromises. The open nature of the ability to submit a representation also means that the system can be manipulated by commercial competitors for example. Perhaps it is worth considering providing licensing authorities with a discretion (perhaps in exceptional circumstances) to award costs against objectors.

Sale of Alcohol for Consumption at Home

22. Firstly, we would suggest that it would be difficult to impose more specific control over off-sales of super-strength alcohol. This would have a particular impact on the flourishing craft beer market, which may well sell high strength beers but which target a discerning market of customers who wish to sample new and different brews, rather than customers who wish to consume large quantities of alcohol.

23. However, the key concern in respect of the off trade is in relation to the explosion in popularity of delivery services like Deliveroo. This model simply does not fit within the Licensing Act 2003, and a solution must be reached. Customers who use this service place their orders through the Deliveroo website, albeit for products which come from a particular licensed premises. However, they make payment to Deliveroo and never have any contact with the premises itself. Deliveroo are later invoiced for the food and alcohol purchased and make payment themselves to the premises. Ostensibly, this currently functions under the permission held by the licensed premises, but the concern is where the responsibility lies if something should go wrong.

2 September 2016

Kurnia Licensing Consultants Limited – written evidence (LIC0162)

Further to my appearance in front of the House of Lords Select Committee on the Licensing Act 2003 on 06 September 2016 I wish to submit the following as additional evidence following on from the questions raised and thoughts on these matters. This additional evidence is provided by Michael Kheng as director of Kurnia Licensing Consultants Limited.

On the matter of serving to drunks. The legislation unfortunately does not define what being drunk is. This can prove difficult to the trade as it is clear when someone has not had a drink and equally clear when someone has had too much to drink.

The problem is at what point is it when someone becomes drunk. This point is down to interpretation. Someone who might appear to be drunk to one person may not appear to be drunk to another. Medical conditions may also make someone think a person is drunk when in fact they are not.

As people are different, the amount of alcohol in someone's blood stream cannot be considered. Another problem that the industry faces is that alcohol affects people differently depending on many factors. Some people can consume alcohol and the effects may not show for some time. It could be therefore that someone is served alcohol who appears not to be drunk and the influences of the alcohol take effect a while after. These influences may occur in different premises, or indeed on the same premises. The person may not have been drunk, or may not have appeared to have been drunk, at the time of service but may become drunk sometime after. It also could be that someone may have taken a substance, legal or illegal, that makes the person appear to drink.

There is currently no mandatory training around persons who appear to be, or who are, drunk. The licensing regime in New South Wales, Australia is, in my opinion, one that should seriously be looked at as an example of how to regulate the industry. In NSW nobody can serve alcohol unless they hold a Responsible Service of Alcohol (RSA) Competency Card. To obtain such a card the holder must attend a day course, but, unlike our Award for Personal Licence Holders course, the RSA course centres around service of alcohol to drunks, under age sales, conflict management and the legislation.

When I visited NSW I attended a RSA course and went through the process to obtain a Competency Card. I also visited licensed premises with my teenage children to witness first hand if the regime appeared to be successful or not. Unlike in England and Wales, everyone in NSW who serves alcohol has sat the RSA course and obtained a Competency Card and therefore are far more diligent about all aspects of selling alcohol as if they lose their Competency Card they cannot sell alcohol and therefore would lose their job. Checks for underage sales not only were carried on people purchasing alcohol but if a round of drinks was being purchased servers asked who the other drinks were for. In NSW, the sale of alcohol in the off trade is very restrictive and few supermarkets are permitted to sell

alcohol. Consequently, alcohol in the off trade is not sold at a low price and there appears to be little pre-loading.

I feel our APLH qualification focus too much on aspects of the Licensing Act 2003 that a personal licence holder may never need to know and does not focus on the key aspects such as drunks and conflict management.

Candidates sitting the RSA must pass with a score of 100%. The examination is open book and is marked on the day. If a candidate does not obtain 100% they are told where they have gone wrong (the exam is written not multiple choice) and the candidate has to rewrite the answer until correct. I feel that is a much better system than our 28 out of 40 multiple choice examination as I feel everyone that leaves the RSA exam has a full understanding of the course learning objectives. With our APLH common sense with no knowledge should in most instances get you 28 out of 40 to pass.

On the point raised about inconsistency, I would like to add that as a licensing consultant I see inconsistencies throughout England and Wales on how the Licensing Act 2003 is administered and see different licensing authorities and committees deal with matters in totally different ways.

There are a growing number of licensing authorities now that use the Government web site to accept electronic applications. The Gov.uk portal was, in my mind, set up to simplify and speed up the process of submitting applications. Most authorities administer electronic applications quickly and efficiently whereas some do not. As there is no clear guidance on electronic applications some licensing authorities are still insisting that original documents are sent in the post and that until such time the original documents have been received they will not start to process an application. Application forms to transfer a premises licence or to vary a DPS ask that if the original premises licence cannot be returned that a reason be given. Even if a reason is given some authorities either insist the licence be returned or a fee of £10.50 for a copy be paid. Even when an undertaking to shred the premises licence is given authorities are still insisting the licences are sent in the post.

In regards to committees I do feel that many committee members feel their role is to act as a mediator and do not focus on the matters in hand. In regards to reviews a committee's function is to look at the cause of the problems and apply conditions or measures to remedy the problems. Most committees go slightly further and often add more conditions that are necessary and due to the expense and time of an appeal most decisions go unchallenged. Training for committee members is not consistent throughout England and Wales and is often written and delivered by the principle licensing officer, in some cases the principle licensing officer may not have received any formal training.

Another problem we have with some licensing committees is that decisions are handed down at the end of a hearing and are set in stone at that point. If a decision, or even a condition, has been badly drafted or is not fit for purpose some authorities will not change them and the premises licence holder is faced with either accepting the decision or going

through an expensive and long winded appeal. There should be a mechanism in place to be able to look at what a committee have decided before it becomes set in stone.

Some authorities now are insisting on conditions being on applications for new or variations. Such conditions as Challenge 25 and CCTV.

Within the industry Challenge 21 was introduced by the pub sector and is recognised within the pub sector. The off trade introduced Challenge 25 and Challenge 25 is now recognised within the off trade. There are a number of authorities now insisting that Challenge 25 should be for every licensed premise, which in my mind is wrong.

With CCTV, up and down the country conditions are being applied to licences against what the Data Protection Act 1998 and Information Commissioner's Office. Conditions such as retaining images for 28 days. Data retention is for the premise to decide not the police or licensing authority. Applicants only agree to conditions as they do not wish to go through the process of a hearing, costing time and money, knowing the licensing subcommittee will agree with the police or licensing authority and wrongly impose the condition.

Another problem that licensees have is that there is no period for licensing authorities to issue licences. Some authorities are excellent and issue licences within days of when they have been granted but some take months to issue licences. At one recent hearing a licence holder was criticised by the police for not knowing the conditions on their licence where the licensing authority had not even sent out the licence. Time periods for sending out granted licences is a must and should be introduced without delay.

There is a problem with the review system. Currently once a review is triggered the process cannot be stopped and the review cannot be withdrawn. We have dealt with many reviews where the premises have taken steps to remedy any cause for concern and the applicant for the review, normally the police or EHO, are happy with the premises but none the less they and the licence holder must attend a hearing. This process costs the licence holder time and money, the police or EHO or who submitted the review, time and money as well as the licensing authority time and money. If a review could be withdrawn there would be great amount of time and money saved across the country.

With appeals the process should, in my mind, be changed. If there was a process for mediation, both before review and after a determination of a review, the number of appeals may be reduced. There should also be some measure, before the High Court via a Judicial Review, to challenge the determination of an appeal.

In regards to the annual fee. If a premise does not pay the annual fee the licence is simply suspended. I feel that a licence should only be suspended for a limited period if the annual fee is not paid and after such a period the licence is revoked. I have spoken to licensing authorities who complain of continually chasing payment of the annual fee and are frustrated that if a premise is closed they are spending time and money chasing a fee they may not be paid. Under the Gambling Act 2005 if an annual fee is not paid the licence is revoked, should this not be the same under the Licensing Act 2003?

In conclusion, I feel there must be a consistent approach to licensing throughout England and Wales as there currently is not. Measures should be introduced to ensure licensing authorities deal with applications and issue granted applications within prescribe timeframes and that all licensing authorities administer the Act in the same manner rather than the current regime where each licensing authority administers the Act as they feel fit.

2 November 2016

Lancashire Constabulary – written evidence (LIC0139)

Licensing objectives

1. Are the existing four licensing objectives the right ones for licensing authorities to promote? Should the protection of health and wellbeing be an additional objective?

1.1. Lancashire Constabulary supports the introduction of the protection of health and wellbeing as an additional licensing objective.

1.2. The four existing licensing objectives allow responsible authorities to make representations in a number of different ways however, the introduction of the protection of health and well-being as an objective would enhance the opportunities for Public Health partners to participate in the licensing process. A range of health data sources including alcohol-related hospital attendances and ambulance data are presently used as supporting evidence and information within the licensing process.

1.3. The introduction of a health and wellbeing objective would ensure that alcohol, which we know leads to significant public health harm, would be subject to far wider considerations in the way it is provided, and close the current gap that authorities face in highlighting such harms within the existing objectives. It could allow representation to make greater use of indicators of long-term health harms, alcohol-related mortality or disease.

2. Should the policies of licensing authorities do more to facilitate the enjoyment by the public of all licensable activities? Should access to and enjoyment of licensable activities by the public, including community activities, be an additional licensing objective? Should there be any other additional objectives?

2.1. We do not feel that there should be an additional licensing objective linked to access to and enjoyment of licensable activities by the public. Other factors including economic policy are a far wider consideration within the scope of Local Authorities (LAs) and therefore it is not necessary to make this specific to the Licensing Act. Policies should provide advice on what will be favourably considered, such as restaurants and lower risk premises.

2.2. Sustainability and economic growth are best managed through local policy rather than through statute. Presently the statute supports growth through the presumption of grant of premises licences, and therefore access to and enjoyment of licensed premises would appear to be fundamentally enshrined within the act, and does not need any further footing.

The balance between rights and responsibilities

3. Has the Live Music Act 2012 done enough to relax the provisions of the Licensing Act 2003 where they imposed unnecessarily strict requirements? Are the introductions of late night levies and Early Morning Restriction Orders effective, and if not, what alternatives are there? Does the Licensing Act now achieve the right balance between the rights of those who wish to sell alcohol and provide entertainment and the rights of those who wish to object?

- 3.1. The Live Music Act appears to have struck the right balance between provision and regulation, and has not had a significant negative impact on the licensing objectives. However, any further deregulation could tip the balance and have an adverse effect on the crime and disorder/public nuisance objectives and therefore we would urge caution.
- 3.2. The lack of any Early Morning Restriction Orders (EMRO) is a clear failing of the Act. The lack of flexibility with a Late Night Levy (LNL), and the logistical complexities in establishing an EMRO has led to LAs shying away from their implementation. The threshold required specifically for an EMRO has led to it being very difficult to implement.
- 3.3. Lancashire Constabulary has previously made an application for an EMRO in Blackpool to restrict alcohol sales to no later than 3am. The application related to an area in the centre of the night time economy which experienced a disproportionate amount of violent crime. This was strongly supported by all Responsible Authorities, a large number of business owners and members of the community. Despite the weight of evidence produced, the Licensing Committee voted against the introduction. This case was being followed by a number of Constabulary's who indicated that they would not make an application for an EMRO should Blackpool be unsuccessful.
- 3.4. It has been widely reported that both LNL and EMROs have negative connotations in dealing with late night issues, rather than a potential for a positive resolution.
- 3.5. Evidence from Australia suggests that restricting excessively late closing times leads to a reduction in alcohol related crimes and associated police costs. For example, a modest reduction in trading hours in Newcastle (NSW, Australia) in 2008 was shown by independent evaluation to have had convincing and compelling benefits:
 - an internationally unprecedented 37% fall in alcohol-related non domestic assaults;
 - a 50% reduction in night time street crime; and
 - a 26% reduction in related hospital A&E admissions
- 3.6. In order to be more effective and allow LAs flexibility to target problem areas, the LNL needs to be more specific in which area is covered, however there remains a risk that the scheme will not be financially sustainable due to its reduced size and

therefore prohibitive to putting one in place. The fact that the LNL, only applies to alcohol led premises fails to acknowledge the links to the broader problems in the night time economy associated with other late night premises, specifically late night food premises.

3.7. The presumption of grant, has led to Responsible Authorities having to continually take a re-active stance, which is resource intensive and time consuming.

3.8. There is a view amongst Police Licensing Officers that the industry now shows a degree of complacency as a result of this, which is compounded by the fact that Local Authorities are conscious of the cost of dealing with the frequent appeals against review decisions. The Industry understands that some Responsible Authorities are prohibited from taking action due to cost and use this to their advantage.

4. Do all the responsible authorities (such as Planning, and Health & Safety), who all have other regulatory powers, engage effectively in the licensing regime, and if not, what could be done? Do other stakeholders, including local communities, engage effectively in the licensing regime, and if not, what could be done?

4.1. It is challenging to ensure consistent engagement from all of the Responsible Authorities in the licensing process. Some partners are more willing or able to engage than others based on a number of factors which may include awareness, risk aversion, and budgetary & resource constraints. This invariably leads to the police taking the lead on a significant portion of the engagement and interventions with licensed premises, specifically where licensing objectives are being undermined.

4.2. In instances of underage selling and child sexual exploitation there does seem to be a lack of engagement from Children's Social Care, as a Responsible Authority under the act. There is also room for improved engagement and involvement with the Fire & Rescue Service, within the licensing regime.

4.3. Local communities often feel that their concerns are not given sufficient weight or heard at all due to the licensing act giving the presumption to grant an application.

Licensing and local strategy

5. Licensing is only one part of the strategy that local government has to shape its communities. The Government states that the Act "is being used effectively in conjunction with other interventions as part of a coherent national and local strategy." Do you agree?

5.1. The Licensing Act has created a shift towards crime and disorder issues, with the Modern Crime Prevention Strategy continuing this trend. However, from a wider alcohol harm perspective, there has been no introduction of a coherent and evidence based approach to alcohol harm reduction at a national level. An example

of this is the lack of a meaningful policy to address the impact of cheap, strong alcohol.

5.2. Planning exists in isolation to Licensing (highlighted in question 6 below), which equates to situations where a venue may have a premises licence but not be permitted planning consent, and vice versa. This is also the case with regards to authorisations for pavement licences, which may have a significant impact with respect to the premises, but do not fall within the Licensing Act. Such examples are widespread and are just one example of a lack of a cohesive national policy.

6. Should licensing policy and planning policy be integrated more closely to shape local areas and address the proliferation of licensed premises? How could it be done?

6.1. We believe that licensing and planning policies should be better integrated, although it would not necessarily make a significant impact on the proliferation of licensed premises, which is facilitated by the ‘presumption to grant’ in the Licensing Act 2003.

6.2. The fact that a premises may or may not have planning permission to operate is not taken into consideration by Licensing Committees when considering an application. Planning and licensing processes should be more aligned, with the view that applicants should not be granted a licence until they have planning permission to open for the hours stated on a licensing application.

6.3. The proliferation of licensed premises may have been better prevented under the 1964 Act, where ‘need’ was a consideration within a licensed premises application.

Crime, disorder and public safety

7. Are the subsequent amendments made by policing legislation achieving their objects? Do they give the police the powers they need to prevent crime and disorder and promote the licensing objectives generally? Are police adequately trained to use their powers effectively and appropriately?

7.1. Amendments to policing legislation to prevent crime and disorder have been largely positive.

7.2. Presently there is no accredited national training or qualification specifically for police licensing officers. Training is currently being provided at a local force level, which results in a lack of consistency. There is no national requirement to train police officers in respect of licensing legislation.

7.3. We are aware that the NPCC are in the process of approaching the College of Policing with a view to developing a national accreditation framework in respect of licensing training for police officers. Such training needs to be on a mandatory footing which will ensure consistency in the delivery of licensing functions across the Country.

8. Should sales of alcohol airside at international airports continue to be exempt from the application of the Act? Should sales on other forms of transport continue to be exempt?

8.1. The promotion of the licensing objectives is as relevant at airports and on trains as in any other location. In fact there are potentially additional risks related to passengers being drunk and unruly on these forms of transport. Indeed, recent figures showed that 422³¹⁷ people were held on suspicion of being drunk at an airport or on a plane in the last two years. With this in mind, it would make sense to bring sales of alcohol airside under the control of the licensing act.

Licensing procedure

9. The Act was intended to simplify licensing procedure; instead it has become increasingly complex. What could be done to simplify the procedure?

9.1. In general, the Licensing Act 2003 has simplified the licensing procedure, specifically in relation to the majority of procedures from initial application of premises licence, through to objections and hearings. The focus of the act on partnership working ensures that there is plenty of scope for applicants and responsible authorities to mediate solutions which in reality often leads to hearings and formal objections not being necessary.

9.2. However, there are areas where the act does continue to cause a significant burden, specifically on public bodies, an example of which is the procedures from the point of an appeal. The process is overly burdensome and significantly in favour of the premises licence holder, and is often used as a tactical way to keep premises open post a decision by the licensing sub-committee at a review hearing. This leads to a situation where a committee may decide that a premises licence should be revoked due to serious harm being caused, but then due to the licence holder appealing such decision, the premises continues to remain open and operating on its existing licence without any changes whatsoever, leaving the public at serious risk of harm. Such risks continue until the appeal is heard, in most instances many months later. There should be a timeline set for an appeal to be heard promptly.

9.3. The ever increasing exemptions, exceptions and deregulation have led to confusion and the act becoming far too complex. Examples include the exemptions with regards to the Live Music Act, community premises being permitted to dispense with DPS, and the complexities around Temporary Events Notices. Should the Community and Ancillary Notice be implemented this will again add further layers of complexity around licensing legislation.

10. What could be done to improve the appeal procedure, including listing and costs? Should appeal decisions be reported to promote consistency? Is there a case for a

³¹⁷ Airport alcohol sales to be 'examined' by Lord Ahmad – BBC News 29 July 16

further appeal to the Crown Court? Is there a role for formal mediation in the appeal process?

10.1 The current appeals procedure whilst providing an appropriate safeguard does have some shortcomings which predominantly favour the licensed premises, particularly in an appeal against a review decision.

10.2 Currently where a decision is made by a licensing committee, this does not take effect until after the period for appeal or disposal of an appeal. This can lead to situations where premises that have had a licence revoked or conditions added to their licence, continue to operate for many months without the protections that were deemed appropriate by a Licensing Committee.

10.3 This has on occasion led to premises continuing to be blighted by the problems for which it was brought to review in the first instance. It is also the case that some premises list an appeal only to withdraw it immediately prior to a hearing taking place, simply to enjoy a further period of trading unhindered by the decision of the licensing sub-committee, and in some cases leads to the premises degenerating below the standard for which they were subject to review in the first place. This is aided by the lack of an appeals threshold having to be met before a premises licence holder can apply for an appeal of the committee's decision.

10.4 Added to this, presently an appeal is heard as a de novo case, which effectively means that the case is heard as a new case at the time of the appeal, and not as it was originally heard at the time the licensing sub-committee made the decision. This leads to a situation where the period of time between the initial decision being made, and the appeal taking place, is taken in to account in the appeal hearing.

10.5 We are aware that premises have used tactics to ensure they attend the appeal with an impeccable record. This can then lead to the appeal being favourable to the appellant, to then re-open the premises without the protections put in place by the original committee decision, and in many cases fall back to the old ways where the premises continues to be a risk to public. The cycle of responsible authority intervention then has to start again, usually with the a loss of confidence that decisions made will simply be overruled at a later date, thus undermining the entire licensing decision making process.

10.6 We understand the need to strike a balance, but do not consider this exists at this point. We suggest that provision be made to speed up the appeals process with an expectation that appeals against decisions by the Licensing Committee be heard within a period of not more than 2 months.

10.7 In addition the loss of Licensing Justices at the commencement of the Licensing Act 2003 has meant that we have lost the knowledge and experience that they brought to hearings and we would commend that the re-introduction of a form of licensing Justice for appeals would benefit not only the appellant but also the respondent.

10.8 There is also a significant level of consideration of how much an appeal will cost. It is the experience of the police that potential appeal costs weigh considerably in the mind of local authorities and have a negative impact in the licensing process. Public bodies should not be weighed down with significant court costs, and this seriously needs to be put on a statutory footing. The status quo goes nowhere near enough to protect public bodies from being overburdened by significant claims from an appellant. As a de novo hearing allows for new evidence to be considered, it would appear unfair to permit costs to be awarded against a licensing authority where their decision was based on the circumstances at the time.

10.9 In respect of appeals to Crown Court it is clear that these would prove prohibitively expensive to many appellants and respondents and further at odds with the light touch Licensing Act envisaged by the Government. The Licensing Act provides an initial tribunal by way of Licensing Committee and by appeal to Magistrates court, for the problems outlined above an appeal to the Crown Court that allows a premises to continue trading ‘as is’ would completely undermine the point of the Licensing Act and its objectives.

Sale of alcohol for consumption at home (the off-trade)

11. Given the increase in off-trade sales, including online sales, is there a case for reform of the licensing regime applying to the off-trade? How effectively does the regime control supermarkets and large retailers, under-age sales, and delivery services? Should the law be amended to allow licensing authorities more specific control over off-trade sales of “super-strength” alcohol?

11.1 There has been an increase in reports of problems emanating from pre-loading in the years since the introduction of the 2003 Licensing Act, which is regularly cited by the on-trade.

11.2 There has been a significant increase in the numbers of premises authorised for off-sales since the introduction of the act.

11.3 Price disparity is regularly reported to be a driver in people pre-loading before they enter the night time economy. This is arguably exacerbated by the increased availability of alcohol.

11.4 There are few tools available under the existing legislation to tackle the issues associated with the off-trade. Mandatory conditions relating to drinks promotions could be further extended to tackle some of the issues relating to off-sales. The Section 182 Guidance does not provide particularly clear advice on drinks promotions, and provides examples which are not very helpful.

11.5 A ban on multi-buys, restricting the area within a store where alcohol can be sold, the restriction of off-trade hours to 10am until 10pm, and the proposed introduction of minimum unit pricing could all be beneficial.

11.6 Home delivery services such as 24/7 ‘Dial a drink’ type operations are also difficult to regulate under the Act. Locally, guidance and conditions for operators to ensure that they comply with the Act has been offered, particularly regarding sale to minors and sales to drunks; although this can be challenging to enforce. Limited hours for home delivery of alcohol would be a welcome introduction.

11.7 Our experience shows that there is a correlation between high strength alcohol and anti-social behaviour and crime, which taken alongside the concerns raised by Public Health leads us to support a far more restricted approach to the availability of high strength alcohol sales. This could well form part of the addition of a Health and Wellbeing Licensing objective. The issues relating to high strength alcohol disproportionately affects the most vulnerable people in society.

11.8 The increase in alcohol delivery services could be subject to a delay from time of order to delivery, which will prevent instantaneous sales of alcohol, especially where people are inebriated. The delay could be set at 6 hours. A prohibition of delivering alcohol to any person under the age of 18 (which is exempt under Sec 151) will have minimal effect on the majority of legal purchasers.

Pricing

12. Should alcohol pricing and taxation be used as a form of control, and if so, how?

Should the Government introduce minimum unit pricing in England? Does the evidence that MUP would be effective need to be “conclusive” before MUP could be introduced, or can the effect of MUP be gauged only after its introduction?

12.1 Lancashire Constabulary believes that addressing the price at which alcohol is sold should be an integral part of any long-term strategic approach to tackling alcohol misuse. The links between alcohol misuse and violence and anti-social behaviour are now clearly established as are the links between price and misuse.

12.2 Alcohol pricing is linked to consumption and pricing is a primary mechanism for changing drinking behaviour. Researchers report a relationship between price and the consumption of alcohol, showing that alcohol responds to price increases like most consumer goods on the market³¹⁸ and that the increase in alcohol consumption is very strongly correlated with its increasing affordability³¹⁹.

12.3 MUP is not a silver bullet and a combination of tax and MUP would be the optimal approach. This would ensure that the cheapest alcohol, which disproportionately causes the greatest harms, increased in price, while ensuring that the Treasury benefited from this rather than the alcohol producers. This additional revenue could then be reinvested in evidence-based alcohol treatment and prevention activity.

³¹⁸ Alcohol Health Alliance UK

³¹⁹ House of Commons Health Committee, Alcohol, First Report of Sessions 2009-10

12.4 Lancashire Constabulary therefore fully supports the introduction of a 50p MUP. We believe this would have a minimal impact on the on-trade, where prices tend to be significantly higher in the first instance, but would have a significant positive impact on the availability of cheap high strength alcohol. Regarding the question of being able to conclusively predict the impact of MUP, the evidence of effectiveness from other countries, such as Canada, is already very strong. To wait for conclusive evidence that MUP works risks further increasing the impact cheap alcohol is currently having on individuals and communities.

Fees and costs associated with the Licensing Act 2003

13. Do licence fees need to be set at national level? Should London, and the other major cities to which the Government proposes to devolve greater powers, have the power to set their own licence fees?

13.1 Lancashire Constabulary is not in a position to respond to this question. This is a matter for Local Authorities.

International comparisons

14. Is there a correlation between the strictness of the regulatory regime in other countries and the level of alcohol abuse? Are there aspects of the licensing laws of other countries, and other UK jurisdictions, that might usefully be considered for England and Wales?

14.1 Lancashire Constabulary is not in a position to comment on the link between the strictness of licensing regimes and the level of alcohol abuse in other Countries.

14.2 Whilst the effects of alcohol on individuals will be common internationally, the cultural differences and licensing regimes make it difficult to link a direct correlation between the effectiveness of such controls elsewhere. We believe that this should be subject to UK academic research to evaluate any correlation.

5 September 2016

Christopher Lear – written evidence (LIC0003)

I live in Boston Lincolnshire and I am amazed by the number of licences to sell alcohol that have been granted by the council. The rules apparently dictate that a reason must be put forward showing why a license should not be granted, other than for example, that there are already “x” number of licensees within a given area. Also, public drinking, antisocial behaviour due to drinking in that vicinity are not reasons enough to refuse a licence. It seems strange, that on the other hand, we can only have a set number of Pharmacies in a given area!

One work colleague said that the only place you cannot purchase alcohol in our town are the police station, the various chemist's and the churches at least at the moment.

1. Since the mass immigration to our area, the number of , “baltic”, corner shops starting up, seems to increase almost daily. These shops have all been granted licences to sell alcohol! This must be the reason why I see groups of men on street corners or public seating areas, drinking alcohol as early as 9AM. This goes on through the day and night even though we have made it illegal to drink in public places. Then the amount of cans and bottles scattered around these areas has become a major problem for the councils street cleaning team.

2. In our town, this behaviour has made the town centre at night a no go area for many people, as it is increasingly becoming the haunt of belligerent drunks, many of whom gather in groups based on nationality.

3. Comments have been made about the number of premises that lose their licences for selling to minors, people already drunk or for selling alcohol which is ,”locally produced”, on a regular basis. Then within weeks, these same premises get their licences back. It would seem the owner just takes on a new partner and gets the licence in their name. Some of these sales of course are ,”under the counter”, which results in no duty or tax being paid.

4. Can we have the law changed to limit the number of licenses issued. Bring back the old ,”off licences”, that only sell alcohol and limit their number. Very small corner shops should not be granted licences to sell alcohol. The law must be changed or the next thing will be ice cream vans licensed to sell alcohol?

5. We had areas with views of the riverside with benches for the public. These rapidly became the haunt of drunks, the councils response was to remove the benches. It beggars belief. The licensing system is a shambles in it's current form and serious action needs to be taken.

4 July 2016

Leeds City Council – written evidence (LIC0034)

This is the response to the Call for Evidence from Leeds City Council, licensing authority for the Leeds district. It was prepared in conjunction with Members of the Licensing Committee and officers and ratified by Licensing Committee as the response of Leeds City Council to this Call for Evidence.

Licensing objectives

1. Are the existing four licensing objectives the right ones for licensing authorities to promote?

Yes, the existing four licensing objectives are the right ones.

There have been occasions where the area in which the premises is situated is experiencing issues which are related to the licensing objectives, but there is no premises-specific evidence available that would allow the Licensing Subcommittee to refuse or condition the licence, despite that being the best course of action. The Council has looked to the Section 182 guidance at paragraphs 8.33 to 8.41 which provides guidance to applicants on the need to consider risk to locality when completing their operating schedule, but we do not believe that this is widely used and there is a wide perception that only evidence that directly relates to the premises can be considered regardless of the locality.

We believe there should be further clarity given to the evidence that can be considered and if it needs to relate directly to the bricks and mortar premises, or if the wider locality and community can be taken into consideration.

Should the protection of health and wellbeing be an additional objective?

Yes, especially in relation to localities. There are areas in Leeds in which residents can expect a lowered life expectancy of up to ten years. We know that the causative factors relating to a lower life expectancy are alcohol, obesity and smoking. Although we are working with our Public Health colleagues and other agencies in these areas to promote health and wellbeing, we are also granting new off licences and late night takeaways in these areas as there is no direct link between the proposed activities and the four existing licensing objectives.

If we were able to take health and wellbeing into consideration, as well as receiving further clarity on whether we can consider locality issues, we would be able to consider these applications with a view to refusal or applying conditions that would assist in the promotion of health and wellbeing in these areas.

There is some concern that as the scope of 'health and wellbeing' is so broad that some councils may receive representations to all applications on the basis that even a modest

amount of alcohol consumption could lead to a reduction in health outcomes and wellbeing, however this could be adequately addressed in the S182 guidance.

2. Should the policies of licensing authorities do more to facilitate the enjoyment by the public of all licensable activities?

We believe that voluntary schemes such as Purple Flag, as well as the commercial needs of the business community address the facilitation of the enjoyment of licensable activities without this becoming a specific requirement of the licensing policy.

Should access to and enjoyment of licensable activities by the public, including community activities, be an additional licensing objective?

No, the licensing policy is not the best way of addressing this issue.

Should there be any other additional objectives?

We receive numerous public representations about needs, desire and parking, but we consider these to be adequately addressed by the wider planning controls.

The balance between rights and responsibilities

3. Has the Live Music Act 2012 done enough to relax the provisions of the Licensing Act 2003 where they imposed unnecessarily strict requirements?

Yes. In our view many premises added live music to their licences when they converted from the Magistrates Courts to the Licensing Act regime. It has not been our belief that the licensing regime imposed unnecessarily strict requirements on premises in relation to live music.

Are the introductions of late night levies and Early Morning Restriction Orders effective, and if not, what alternatives are there?

We investigated a late night levy in detail. Despite the potential for raising revenue that could be used to improve the night time environment, the Council felt that the impact on smaller businesses and businesses that were situated in quiet areas would have been too severe to make the proposition feasible. The easiest way to make a late night levy more useful would be to allow the Council to designate the area to which it applies.

The other reason for the hesitancy to impose a late night levy was the arrangement for the disposal of the funds. The lack of oversight led to concerns about where the levy would be spent by Police. We received verbal confirmation that the levy raised in Leeds would be used in Leeds to provide additional policing, but no commitment was provided in a written agreement.

Although we have not specifically looked into an EMRO the procedure for implementing it is complicated and onerous.

Does the Licensing Act now achieve the right balance between the rights of those who wish to sell alcohol and provide entertainment and the rights of those who wish to object?

Yes, the Licensing Act allows the licensing authority to sit between licensees and members of the public/agencies and consider all sides when making decisions.

For members of the public, the quasi-judicial nature of licensing subcommittee hearings can be daunting and we are aware of occasions where people have not made a representation due to the fear of reprisals. However now that the ability to make representations is unrelated to vicinity people can ask their local councillor, residents association or other people to represent them at hearings, and their representations are given just as much weight when presented in writing as they are when they are presented in person.

4. Do all the responsible authorities (such as Planning, and Health & Safety), who all have other regulatory powers, engage effectively in the licensing regime, and if not, what could be done?

We have an excellent working relationship with all the responsible authorities with regular engagement through the Licensing Enforcement Group. For some responsible authorities, such as the Leeds Children's Safeguarding Board the licensing process does not lend itself to intervention at the application stage but there are facilities there to review licences if the premises have been linked to child-related issues.

Sometimes during licensing subcommittee hearings, there is a perception that the responsible authority could have provided more information or liaised with other authorities to provide a more rounded view. However where this has been noted, it has been addressed with the responsible authority concerned and these comments have been taken on board.

The ability to reach agreements can lead to just one responsible authority attending a hearing as others have withdrawn their representations. This is often commented on by the applicant's solicitors and perceived as the absent responsible authority's approval of the application. For example, if Environmental Health is not present the solicitor will often make a comment about their absence indicating there are no public nuisance issues. In most cases Environmental Health have been involved at a very early stage of the process and secured adequate measures to address their concerns.

Do other stakeholders, including local communities, engage effectively in the licensing regime, and if not, what could be done?

There is a need for a liaison service to provide support to local communities in relation to licensing applications. For many their representation is the first and last they will make and it can be a steep learning curve. As they are often at a hearing against trained and experienced solicitors, it can be perceived to be an unfair process on members of the public.

We don't believe the licensing authority is the best authority to provide this service as it is difficult, especially in smaller authorities, to be impartial while assisting both applicants, members of the public and acting as a responsible authority.

In relation to temporary event notices, there are two uses for temporary event notices:

- Non-commercial organisations such as school PTAs use them to sell alcohol at occasional events.
- Commercial premises use them to extend the terms of their licence or to remove restrictions as the notices can replace the premises licence and its restrictive measures.

The first type of temporary event notice creates very few problems and in our view is what the TEN system was designed for. The second type of temporary event notice creates concern amongst ward members who are often dealing with complaints around noise nuisance from licensed and unlicensed premises, but are frustrated by the inability to make a representation themselves. Adding elected members to the list of people that can make a representation would be a way of ensuring that communities have their say in temporary events.

If the premises is licensed, an amendment to the Licensing Act enables the licensing authority to transfer conditions from the premises licence to the TEN, however this comes at a cost as it requires a hearing – costing in excess of £1000. A TEN costs the organisation £21. Increasing the cost of a TEN would unfairly penalise the voluntary and non-commercial organisations that use the TEN system appropriately. It would be useful to have two systems to reflect the additional work that goes into administering TENs for commercial purposes.

Licensing and local strategy

5. Licensing is only one part of the strategy that local government has to shape its communities. The Government states that the Act “is being used effectively in conjunction with other interventions as part of a coherent national and local strategy.” Do you agree?

Yes, Leeds City Council takes shaping and supporting communities very seriously and has formed community committees which have this specific responsibility. Both Planning and Licensing applications are discussed through this process and any amendment to licensing policy is presented to community committees as part of the consultation process.

6. Should licensing policy and planning policy be integrated more closely to shape local areas and address the proliferation of licensed premises? How could it be done?

The tension between Planning and Licensing has been long established. Although in Leeds we have an excellent working relationship between the licensing and planning authorities, there is some merit in tying the two regimes more closely together. Licensing sub-

committees would like the ability to adjourn licensing decisions until the planning decision is made to ensure the two permissions are closely aligned.

We would like to go further and in the sex establishment licensing regime, we require the licence applicant to already have their planning permission in place before proceeding with their licence application so that there is consistency between the planning consent and the licence. This is not encouraged under the S182 guidance which specifies that the two regimes should be dealt with separately due to their different objectives, and the avoidance of allowing residents a ‘second bite of the cherry’.

For example the Duck and Drake is a city centre pub, well known for live music. It is very popular and is one of the few premises with a beer garden in the city centre. This is absolutely vital in the summer as the building is small and hot. The pub has a late licence and has enjoyed popularity for many years. A developer has built flats right next to the pub. The pub received noise complaints from residents living next door who complained about the use of the beer garden into the early hours of the morning. Not only has the pub had to close its beer garden by 9pm, but now has to close all windows and doors to avoid a noise nuisance which makes it unbearably hot in the summer.

Requiring ‘agent of change’ proposals would have placed the onus on the developer to take the proximity of the pub into consideration, and sound proofing and air conditioning could have been a requirement. Alternatively the developer could have been made to sound proof and air condition the pub.

Crime, disorder and public safety

7. Are the subsequent amendments made by policing legislation achieving their objects? Do they give the police the powers they need to prevent crime and disorder and promote the licensing objectives generally? Are police adequately trained to use their powers effectively and appropriately?

We are not in a position to comment on policing powers.

8. Should sales of alcohol airside at international airports continue to be exempt from the application of the Act? Should sales on other forms of transport continue to be exempt?

Our view is that the sale of alcohol airside is a matter for the airport’s security services. It is self-policed at the moment and to our knowledge there is no impact on the licensing objectives at Leeds Bradford airport. However recent news stories have highlighted that this could be an issue.

Licensing procedure

9. The Act was intended to simplify licensing procedure; instead it has become increasingly complex. What could be done to simplify the procedure?

The cost of a newspaper advert has become prohibitively expensive. In Leeds it can cost around £1,000 for an advert in the local newspaper. In order to assist the local businesses, we have found the national daily newspapers to be more affordable and are advising people to obtain quotes from a number of newspapers before placing their order. Removing the requirement to place a newspaper advert would reduce the financial burden on the business, reduce the potential for error and simplify the application process.

Our view would be that you could safely move the entire requirement for the duplication and distribution of applications to the licensing authority. We already fulfil this requirement for electronic applications and all incoming post is now digitised in order to reduce costs and storage, so it would be simple to do. The small cost of the distribution should be included in the application fee.

The main issue is the constantly changing requirements as successive Governments tweak the Licensing Act to fix small problems. We would welcome a five yearly review of the Licensing Act and all amendments to be undertaken at the same time, so that the local authority policy statement can be adjusted accordingly.

10. What could be done to improve the appeal procedure, including listing and costs?

Leeds Licensing Authority is satisfied with the current appeal listing procedures and costs

Should appeal decisions be reported to promote consistency?

Appeal decisions should be reported to promote consistency across the country.

Is there a case for a further appeal to the Crown Court?

No, there is no need.

Is there a role for formal mediation in the appeal process?

No, the current procedures are adequate.

Sale of alcohol for consumption at home (the off-trade)

11. Given the increase in off-trade sales, including online sales, is there a case for reform of the licensing regime applying to the off-trade?

Clarity over whether locality data/information can be considered during licensing decisions would help control off licence applications, but there is no need for a separate system. The Licensing Act 2003 is flexible enough.

How effectively does the regime control supermarkets and large retailers, under-age sales, and delivery services?

Supermarkets, large retailers and under age sales can be controlled adequately under the current regime. Leeds has a number of delivery services and we have applied adequate measures that control under age sales and selling to drunks.

Should the law be amended to allow licensing authorities more specific control over off-trade sales of “super-strength” alcohol?

In Leeds the issue relating to super strength alcohol is in the package sizes. Many independent off licences, convenience stores and corner shops sell ‘white cider’ which is a high ABV alcohol product sold in 1, 2 and 3 litre bottles at a very low cost. This particular product is mainly purchased by dependant drinkers and by selling it in large bottles leads to people drinking more than their addiction needs them to. Anecdotal evidence from people in treatment services informs us that once they remove the top of the bottle, they will drink it all, despite their best intentions. A three litre bottle of white cider contains 22 units of alcohol and costs around £3.50.

Similarly there is a misconception that restricting the ability to sell single cans will stop dependant drinkers from buying alcohol. This is simply not true, but allowing the sale of single cans means that a dependant drinker can self-dose the alcohol they need to consume to keep them from becoming ill, without putting temptation in front of them to drink more than they need to. More research/information from treatment services is needed to ensure that any restriction on alcohol is designed in such a way to assist rather than hinder people’s ability to overcome their addiction.

It is important that any control of super-strength alcohol is designed in such a way that the undesirable alcohol types, such as high strength lager and white cider is included but craft beer and artisan cider is not. We suggest concentrating on the pack size rather than the ABV.

Pricing

12. Should alcohol pricing and taxation be used as a form of control, and if so, how? Should the Government introduce minimum unit pricing in England? Does the evidence that MUP would be effective need to be “conclusive” before MUP could be introduced, or can the effect of MUP be gauged only after its introduction?

We support the introduction of a minimum unit price for alcohol, although we understand there are legal considerations stopping this at the moment.

Fees and costs associated with the Licensing Act 2003

13. Do licence fees need to be set at national level?

No and all licensing authorities should have the ability to set their own fees, on a cost recovery basis. This should include the costs of other departments such as environmental health and the planning service.

Should London, and the other major cities to which the Government proposes to devolve greater powers, have the power to set their own licence fees?

It is not just the major cities that have a deficit in their licensing budgets. The LGA has recently commissioned a fee survey with CIPFA which shows the extent of the deficit:

- It is estimated that annually Licensing Authorities across England and Wales have a net deficit of £10.3m
- Just over half (52%) of the 102 responding Licensing Authorities operate in deficit, primarily made up of London boroughs, Metropolitan Districts and District Councils
- English and Welsh Unitary Authorities are more likely to operate in surplus
- Across the 12 fee categories only two run in surplus, Annual Fee for a Premises License and Annual Fee for a Club Premises Certificate.
- The fee category Temporary Event Notices (TENs) operated with the largest level of deficit
- The Licensing Authority with the largest surplus was an English Unitary Authority (£0.265m), a London Borough recorded the largest deficit (-£1.4m)

International comparisons

14. Is there a correlation between the strictness of the regulatory regime in other countries and the level of alcohol abuse? Are there aspects of the licensing laws of other countries, and other UK jurisdictions, that might usefully be considered for England and Wales?

We are not in a position to comment on the licensing laws of other countries.

30 August 2016

Leicester, Leicestershire and Rutland Licensing Forum – written evidence (LIC0013)

For information, the forum is a working group made up of local authority licensing officers, including police and fire officers with responsibility for licensing.

Licensing objectives

1. Are the existing four licensing objectives the right ones for licensing authorities to promote? Should the protection of health and wellbeing be an additional objective?

The existing objectives are correct; health and wellbeing should not be a fifth objective.

2. Should the policies of licensing authorities do more to facilitate the enjoyment by the public of all licensable activities? Should access to and enjoyment of licensable activities by the public, including community activities, be an additional licensing objective? Should there be any other additional objectives?

The first question is ambiguous, but this is probably a good aspiration for licensing policies in terms of general advice to applicants. However, it should not be an additional licensing objective, nor should there be any other new licensing objectives.

The balance between rights and responsibilities

3. Has the Live Music Act 2012 done enough to relax the provisions of the Licensing Act 2003 where they imposed unnecessarily strict requirements? Are the introductions of late night levies and Early Morning Restriction Orders effective, and if not, what alternatives are there? Does the Licensing Act now achieve the right balance between the rights of those who wish to sell alcohol and provide entertainment and the rights of those who wish to object?

- **The provisions of the Live Music Act are adequate, but have had limited impact.**
- **We do not have sufficient experience of LNL to be specific about whether or not they have been effective, but the limited number of such levies suggest that they have not. It is suggested that it is not helpful that LNLs only apply to alcohol sales and not to late night refreshment venues.**
- **EMROs have clearly not been successful – we are unaware of any being implemented across the whole of the country.**
- **The Licensing Act does not achieve the right balance between those who wish to sell alcohol and provide entertainment or late night refreshment, and those who wish to object. The presumption of grant means that applicants always have the**

upper hand, and representees can feel that they have an uphill battle to prevent something that they feel will impact adversely on them. It is often the case, for whatever reason, that a panel will find the middle ground between an application and a representation. This gives rise to the suggestion that applicants apply for more than they want in the hope that they will get what they really want. The principle of taking the smallest steps necessary makes it harder for a panel to refuse an application outright, and there does seem to be some reluctance to face an appeal.

4. Do all the responsible authorities (such as Planning, and Health & Safety), who all have other regulatory powers, engage effectively in the licensing regime, and if not, what could be done? Do other stakeholders, including local communities, engage effectively in the licensing regime, and if not, what could be done?

The responsible authorities do not all contribute equally. Experience suggests that the police are the most involved, followed by environmental health (noise team) and trading standards. There appears to be a lack of understanding and engagement amongst the other responsible authorities. The same is true of local communities. Whilst there may be pockets of interest and activity, it is more often the case that people are not willing or able to put themselves forward to make representations, apply for reviews, etc.

Licensing and local strategy

5. Licensing is only one part of the strategy that local government has to shape its communities. The Government states that the Act “is being used effectively in conjunction with other interventions as part of a coherent national and local strategy.” Do you agree?

There is not a ‘joined up’ strategy. For example, some responsible authorities often to prefer to use their ‘own’ legislation instead of applying for reviews, even though a review may be an easier and more effective solution. Reviews may also be an option to consider alongside other means of achieving compliance.

6. Should licensing policy and planning policy be integrated more closely to shape local areas and address the proliferation of licensed premises? How could it be done?

Planning and Licensing are not joined up, but we do not think that it would be feasible to try and integrate the two regimes. Although it seems counterintuitive for an authority to grant one thing under planning law and something different under licensing law, the two areas of law are looking at different things. Given that the government wants to reduce red tape it seems impractical to try and bring these two together, as it would create further complications and confusion. Although the two are distinct, the differences can be explained and justified.

Crime, disorder and public safety

7. Are the subsequent amendments made by policing legislation achieving their objects? Do they give the police the powers they need to prevent crime and disorder and promote the licensing objectives generally? Are police adequately trained to use their powers effectively and appropriately?

The amendments are not achieving their object. This is because although the powers may be adequate there seems to be a reluctance to use some of them. This may be due to a lack of resources and training, and therefore a lack of knowledge to implement the powers correctly.

8. Should sales of alcohol airside at international airports continue to be exempt from the application of the Act? Should sales on other forms of transport continue to be exempt?

An exemption under the Licensing Act 2003 allows alcohol to be provided airside at all times of the day and night (Guidance 5.17). Those alcohol sales are governed by airport policies and airlines.

If a person or group of people attended a city centre bar on a Friday night and were served alcohol whilst drunk, the premises would be at risk of losing their premises licence. Yet from the police perspective, we see people attend bars airside already intoxicated through having consumed alcohol through the journey. They then consume further amounts at the airside bars, and are served by staff who know these individuals will board a plane but who have limited powers.

There is also evidence that these passengers will purchase further alcohol at duty free shops and consume yet more alcohol before boarding. They will continue to drink on board flights, and be served by airline staff in the hope that this will defuse rowdy, anti-social behaviour. Some airlines have attempted to tackle this by ‘bagging’ alcohol before boarding

There have been arrests relating to alcohol fuelled disorder airside and on board flights, but very few. Such behaviour has resulted in delayed flights and diverting flights at significant cost (recently a flight was diverted at an estimated cost of £50,000).

There are further issues too. Legislation to deal with offenders, airside, during flights and upon arrival needs consideration.

As licensing authorities we do not have any evidence either way, as we do not have powers to see what happens airside. However, we do consider that sales on other forms of transport should continue to be exempt.

Licensing procedure

9. The Act was intended to simplify licensing procedure; instead it has become increasingly complex. What could be done to simplify the procedure?

It is agreed that the changes have not simplified the processes – deregulation is clunky and difficult to understand, mandatory conditions are far too complex, and although some of the changes to TENs were welcome, they are sometimes difficult to work through with applicants who are inexperienced.

The application process could be modernised via a national online form instead of a prescribed paper form. The form could be designed to auto-fill fields that are repeated in accompanying forms and the public notices (eg, a premises licence application with a proposed DPS); there could be automatic service on the responsible authorities as appropriate; there could be automatic publication of the public notice on a prescribed website.

Service of copy applications could be the responsibility of the licensing authority, who would do so by emailing a scanned copy to the relevant responsible authorities.

An online national database for applications, licences and temporary event notices would allow simple checks to be carried out to confirm whether or not someone had applied for a personal licence elsewhere, or given TENs elsewhere, or even had licences revoked elsewhere. At the moment, everything is taken on trust because there is no realistic way of checking.

Consideration should be given to a process by which a formal agreement between parties can be implemented, without the need for a formal representation or hearing.

10. What could be done to improve the appeal procedure, including listing and costs? Should appeal decisions be reported to promote consistency? Is there a case for a further appeal to the Crown Court? Is there a role for formal mediation in the appeal process?

Appeals take far too long to be listed for a full hearing. This means a business that has been refused a licence or a variation might cease to be viable in the meantime. Conversely, a premises trading pending an appeal against revocation can either continue to make money from inappropriate trading practices or ‘wipe the slate clean’ by showing several months of trouble-free trading pending their appeal.

There should be an option for the licensing authority to declare a review decision to have immediate effect in the most serious cases, which could be challenged at an early court date (eg, the first hearing, when the date is set for the full hearing).

There have been cases when the appeal fee has not been paid and thus the appeal is kept ‘pending’ in the meantime. The appeal should be dependant on this fee being paid, and

the court should have a duty to notify the licensing authority by email as soon as an appeal is received. This would give the licensing authority and responsible authorities certainty over whether or not an appeal had been lodged, and therefore whether or not a premises is permitted to continue trading.

It is suggested that the matter of reasonable costs should be reviewed. We are aware of cases where parties (not the LA) have settled purely on the basis of being unable to meet the opposing side's huge costs if they lost. It does not seem fair that a party should be able to intimidate another party purely by using an expensive advocate and/or incurring lots of additional costs.

There is a role for formal mediation in the appeal process, in appropriate circumstances. This should not be compulsory – there are some cases where there is little or no room for compromise.

Sale of alcohol for consumption at home (the off-trade)

11. Given the increase in off-trade sales, including online sales, is there a case for reform of the licensing regime applying to the off-trade? How effectively does the regime control supermarkets and large retailers, under-age sales, and delivery services? Should the law be amended to allow licensing authorities more specific control over off-trade sales of “super-strength” alcohol?

We do not think there is a case for reform regarding off-sales per se, although there are a number of concerns about online sales and home deliveries. In particular, it is difficult to be sure that an online purchase has been made by someone over 18. It should be compulsory for deliveries to be made to a person over 18, with ID checks as would be expected for sales made in person. It may be appropriate for the person who is to receive the alcohol to be nominated at the time the order is placed. Deliveries of alcohol should be made by a person over 18. Delivery times could be restricted in relation to alcohol sales.

Under-age sales at off licences are a concern, more so than in on licensed premises. This is because someone is likely to remain in an on-licensed premises and therefore the likelihood of being caught (both the seller and the purchaser) is higher. In an off licence, the sale may take place when only the seller and the purchaser are in the store and the alcohol can be concealed very quickly and easily.

There are a number of premises within our area that already have a condition on their licences regarding ‘super-strength’ alcohol. This condition may have been added voluntarily, following an agreement, or following a review. The condition is only requested by the police / imposed by the licensing authority where it is appropriate and proportionate (eg, in areas where there is a problem with street drinkers). It is suggested that an area similar to a CIZ could be introduced, so that where street drinking is a proven

problem it is easier for conditions such as this to be added to existing and proposed licences.

Pricing

12. Should alcohol pricing and taxation be used as a form of control, and if so, how? Should the Government introduce minimum unit pricing in England? Does the evidence that MUP would be effective need to be “conclusive” before MUP could be introduced, or can the effect of MUP be gauged only after its introduction?

The current mandatory condition on minimum unit pricing is meaningless. The unit price is so low that it has little or no impact. In addition, the calculation is such that it is hard for most people to understand.

Fees and costs associated with the Licensing Act 2003

13. Do licence fees need to be set at national level? Should London, and the other major cities to which the Government proposes to devolve greater powers, have the power to set their own licence fees?

It is unclear why there is a suggestion that some authorities can be trusted to set their own fees when others are not, even though all authorities have to provide the same level of service at equivalent costs. If all authorities are implementing the same legislation, and there is no suggestion that any are doing it to a lesser degree of competence than others, then all should be afforded the same ability to cover their costs.

International comparisons

14. Is there a correlation between the strictness of the regulatory regime in other countries and the level of alcohol abuse? Are there aspects of the licensing laws of other countries, and other UK jurisdictions, that might usefully be considered for England and Wales?

We are unable to comment on the legislation in other countries.

12 August 2016

Professor Roy Light – supplementary written evidence (LIC0168)

1. General impression of how effectively Act has operated over the last eleven years.

Generally a great improvement over previous complicated, outdated and inefficient licensing system. The Licensing Act and regulations are operating effectively but aspects of the guidance and practice warrant review. So too do conditions embedded in converted justices' licences and the ambit of the late night refreshment regime.

(a) S.182 Guidance

The s.182 guidance occupies a central place in the licensing process. It is statutory guidance which must be followed unless good reason is advanced for departing from its provisions. It is now some eleven years old and been amended many times. It has been drafted/redrafted by both the DCMS and the Home Office. It has responded to myriad legislative reforms and case law by necessity in a piecemeal fashion.

This has resulted in some inaccuracy and lack of clarity.

Examples from latest, March 2015, guidance:

Motorway service areas - paragraph 5.21 states: *Section 176 of the 2003 Act prohibits the sale or supply of alcohol at motorway service areas ... this is much over-simplified and incorrect.*³²⁰

Alcohol delivery services - paragraph 3.9 states that *Premises with an existing premises licence, which chose to operate such a service in addition to their existing licensable activities, should contact their licensing authority for its view on whether this form of alcohol sale is already permitted or whether an application to vary the licence will be required.* This is incorrect as premises with an off-licence will be able to operate an alcohol delivery service. The guidance seems to suggest that off-sales by way of a delivery service is a separate licensable activity. It is not (although additional conditions may be appropriate on the licence).

In correspondence with the Home Office the writer was told that *I accept that the wording in this part of the guidance may be slightly ambiguous ... and will consider whether the guidance could be made clearer in the October revision.*³²¹ It remains unchanged.

Planning and licensing - paragraph 9.44 states: *Where businesses have indicated, when applying for a licence under the 2003 Act, that they have also applied for planning permission or that they intend to do so, licensing committees and officers should consider discussion with their planning counterparts prior to determination with the aim of agreeing mutually acceptable operating hours and scheme design.*

³²⁰ See further Appendix 1 *Motorway Service Areas: where are we now?*

³²¹ See further Appendix 2 – personal communication 16 May 2012.

Is this intended also to address the situation where a licence is being sought for premises with planning permission already in place? And while on the face of it such discussions may appear to be sensible where is the authority for effectively merging the regimes in this way?

Paragraph 9.44 seems to be in conflict with paragraph 13.57 in any event:

The statement of licensing policy should indicate that planning permission, building control approval and licensing regimes will be properly separated to avoid duplication and inefficiency. The planning and licensing regimes involve consideration of different (albeit related) matters. Licensing committees are not bound by decisions made by a planning committee, and vice versa.

Conclusion – it is time for a review of the s.182 guidance.

Footnote: It would be enormously helpful to those who use the guidance if the Home Office accompanied any revised versions with a table of changes over the previous guidance. I did request this and for one iteration this was done. It saved much time and effort.

(b) Licensing authority policy statements and practice

Local policies - A major criticism of the 1964 Act regime was that there were 400 plus licensing policies around the country which varied widely in length and content. In response, the Justices' Clerks' Society in 1999 produced *The Good Practice Guide* which replaced local policies and provided uniformity across England and Wales.

We now have the s.182 national guidance *as well as* some 350 policies of vastly differing length and content around the country. (Chapter 13 of the s.182 guidance addresses local policies.) While local policies may be appropriate in some circumstances, for example, in relation to the geography and rationale for local cumulative impact policies, there should be harmonisation of the way in which matters without a particular local element should be resolved.

Further, should local policies be permitted to add to the requirements laid down by statute, regulation and the s.182 guidance? For example, in relation to cumulative impact areas should the local policy state what matters will be favourably received and what arguments cannot be used by an applicant?

Conclusion – a review of the content of local policy statements is needed and a view taken on what should be included or, indeed, whether local statements are necessary beyond giving details of specific local matters. (A number of local policies contain little else than a repetition of parts of the s.182 guidance.)

Local practices – where the Act, regulations and s.182 guidance are silent, not surprisingly, licensing authorities have adopted differing approaches to the same matter, often without any reference to their approach in their policy. For example:

Premises primarily used as a garage (s.176) – approaches differ widely around the country. For some primary use is relevant on grant, for others it is seen as an enforcement issue.

Also, different definitions and parameters for primary use are adopted around the country. As one policy notes:

Paragraph 5.22 of the statutory guidance issued under the Act makes it clear that we must decide whether or not any premises is used primarily as a garage. We are aware that different licensing authorities take a number of different approaches to this question. This approach allows us to obtain the necessary information for us to reach that decision.
(Watford BC policy, p.13)

Minor variations (s.182 guidance paras.8.43 to 8.65) – authorities differ in what is considered to fall within the minor variation procedure. Although authorities may take differing views on whether a variation ‘may impact on the licensing objectives’ and each application would need to be looked at on its merits there is concern about variation around the country on matters where a degree of consistency could reasonably be expected.

For example, licences converted from 1964 Act licences contain ‘embedded conditions’. If not varied at the time of conversion to a premises licence an off-licence will have restricted hours on Sundays, Good Friday and Christmas Day. Such restrictions would not be put on licences issued today (especially in a multi-faith society). Some authorities will allow a minor variation to remove the closed period on Christmas day; others require a full variation – which is disproportionate and expensive for the operator.³²²

Many premises licences are littered with embedded conditions which are redundant, duplicate other conditions and/or are not appropriate. These unnecessarily complicate the licence, its operation and enforcement.

Hours premises open to the public - LA 2003 (*Premises Licences*) Regulations 2005 states that an application for a premises licence ... shall be in the form and shall contain the information set out in schedule 2. Section L of the form provided in schedule 2 requires the applicant to set out the hours premises are open to the public. While understandable for on-licences (to provide ‘drinking-up time’) some authorities seek to restrict hours in this way for off-licensed premises, which is not appropriate and probably unlawful.³²³

Conclusion – a degree of uniformity between licensing authorities is desirable where no specific local issues are present.

(c) Late night refreshment

LNR was introduced to counter problems at late night food venues - especially hot dog stalls and burger vans in town and city centres - at which concentrations of intoxicated people may gather and cause problems. It has always been difficult to understand why to sell a coffee and toasted sandwich requires a licence but a coke and cold sandwich does not. More so that a hot drink from a vending machine does not require to be licensed – but only

³²² See further Appendix 3 *Christmas Day Off-Sales*.

³²³ See further Appendix 4 *Premises licences: hours open to the public*.

if the customer and not a staff member puts the money into the machine. The LNR provisions generally seem to operate more widely than is appropriate or was envisaged.

Conclusion – as it seems to be hot food rather than hot drink which is the perceived problem (and witness the hot drink self-service vending machine exemption) it would reduce the burden on some businesses to take hot drinks out of the LNR regime. This option as well as a general reappraisal of LNR should be considered.

2. Do Licensing Sub-Committees perform their duties effectively and impartially ...?

The quality of hearings is hugely variable. For the most part hearings are fair and impartial but on too many occasions standards fall far short (examples were given by the writer to the Committee and see further *Journal of Licensing*, March 2013, p.18). A lack of formality with councillors entering too much into the forum is sometimes apparent as well as particular views being expressed based on other than the evidence before the committee.

The legal advisor is crucial not only to advise the committee on the law but also to steer the committee procedurally and to ensure that matters progress fairly and impartially. For example, a person making representations is required to confine their evidence to matters raised in their written representation (they can of course expand on these issues). It is good practice, often not followed by committees, for the committee chair to refer the hearing to the written representation to ensure that the oral evidence is based on the written representation. Further, it is essential that the chair or legal advisor intervenes if new issues are introduced outside of that contained in the written representation. This should not be left to the applicant/respondent to raise which risks alienating the committee.

While authorities should be free to regulate their own procedure (s.9(3) 2003 Act) a number of matters require consideration. These include (1) the setting of time limits on those speaking at hearings (at a recent hearing parties were allowed 15 minutes to give evidence and two minutes for a closing statement – for the four objectors this time to be divided between them) and (2) what constitutes a quorum - it seems three (see s.9(1) 2003 Act but the hearing regulations are silent). Yet two members sometimes sit (if they disagree the chair's casting vote effectively means the decision is made by one person). At a recent hearing there were five members sitting on the sub-committee.

Conclusion – licensing authorities should ensure that hearings are conducted with a degree of formality commensurate with the proceedings. Appropriate training for those involved in the process – councillors, officers, legal advisors – is essential and should be compulsory before members of the licensing committee sit on a hearing. (As is the case with applicants who are expected to complete their training before being allowed to sell alcohol.) The confusion about what constitutes a quorum needs to be resolved.

3. Licensing is a regulatory regime that sits alongside other regimes, including planning and environmental protection

The relationship between planning and licensing has been mentioned above. At the moment planning and licensing are generally seen as separate regimes. As Cranston J put it *the planning and licensing regimes are separate. The legal considerations driving them are different, although there may be some overlap.*³²⁴

However, the s.182 guidance states:

Where businesses have indicated, when applying for a licence under the 2003 Act, that they have also applied for planning permission or that they intend to do so, licensing committees and officers should consider discussion with their planning counterparts prior to determination with the aim of agreeing mutually acceptable operating hours and scheme design (para.9.44 and see above).

Similar but different considerations apply in licensing and planning and different evidence may have been before the committees. There is therefore the possibility of one or other of the committees taking into account irrelevant considerations or failing to take account of relevant considerations. Applicants will not be privy to such discussions which lack transparency and may be open to challenge. The local planning authority is a responsible authority and able to make representations. If there are relevant matters that it wishes to put before the licensing committee it is able to do so.

Yet here may be a perfectly understandable expectation on the part of applicants, local residents and others involved in the licensing and planning processes that there will be a degree of uniformity in the way that a local authority approaches these separate but closely related regimes.

The separation does not appear to give rise to much difficulty in practice and provided licensing authorities round the country maintain the separation the system is workable. If the intention behind para.9.44 of the s.182 guidance is considered to warrant further investigation it would be necessary to research the operation of the two systems (and others such as environmental protection if that was thought appropriate) with a view to establishing a workable, transparent method of integrating the regimes. Amendment could then be made by way of statute or regulation.

Care would need to be taken to ensure that any proposed reforms reduced rather than increased complication, bureaucracy and the burden on all parties involved.³²⁵

8. Cumulative impact areas

³²⁴ *Gold Kebab Limited v Secretary of State for Communities and Local Government & London Borough of Brent* [2015] EWHC 2516 (Admin), para.18.

³²⁵ See further Appendix 5 *Licensing & Planning*.

Licensing law in England and Wales has over the past 600 years moved through cycles of liberalisation and constraint. The latest liberalising period can be traced from the 1960s. Abandonment of the concept of ‘need’ or ‘demand’ in 1999 was central to this.

The ‘need’ criterion was a method of controlling the supply of alcohol. Put simply, in order to secure an alcohol licence for premises such as a new public house or off-licence it had to be shown to the satisfaction of the licensing justices that there was a need or demand for the new outlet.

‘Need’ had been a central feature of licensing laws for at least 600 years. The abandonment of need has been a crucial factor in the increase in the number of licensed premises over the past few decades. There was no consultation or public debate on the scrapping of need. Its removal was recommended by a Home Office working group on licence transfers and abandoned by the Justices’ Clerks Society in its 1999 *Good Practice Guide*; as part of its effort to keep alcohol licensing in the magistrates’ court.

The Licensing Act 2003 was the culmination of the liberalising phase. Yet even before the Act came into force in 2005 the pendulum had swung back towards constraint. The promised laissez faire approach to alcohol availability (and a continental cafe culture) quickly evaporated and we were propelled through a period of liberal constraint into a severe bout of legislative repentance.³²⁶ The first manifestation of repentance being the introduction of cumulative impact policies in the first version of the s.182 guidance. Cumulative impact policies to some extent resemble need. Cumulative impact is now to be put on a statutory footing which is welcome.

20 November 2016

³²⁶ For a history of licensing law in England & Wales see Appendix 6 *Alcohol licensing, crime and disorder* (2010).

Little Theatre Guild of Great Britain – written evidence (LIC0065)

PREAMBLE

The Little Theatre Guild of Great Britain (LTG) is the umbrella body for independently controlled amateur theatres in the United Kingdom, which produce a regular programme of stage plays. LTG has 114 members in the UK none of which have auditoria seating more than 500. We are pleased to have the opportunity to make representations to the Committee on the current consultation into the operation of the 2003 Act.

We have noted the areas that the Committee are examining and wish particularly to comment on the ability of communities to enjoy licensable activities, the role of licensing in shaping local areas for the benefit of the local economy and the local community and the fees and costs associated with the Act. It appears to us that the balance between rights and responsibilities and the powers of enforcement are about right as none of our members has drawn our attention to any misgivings. We are not aware that there is any evidence that the availability of alcohol to theatre patrons has had any adverse effect on the health of the population.

COMMUNITIES ENJOYMENT OF LICENSABLE ACTIVITIES

We are not aware that the changes brought about in 2003 have had any effect on the audiences at our member theatres. However there has been an impact on the management of the theatres. Before the introduction of the Act, the majority of theatres were either public theatres, licensed by local authorities for the presentation of plays, or club theatres with club licenses. The public theatres supplied alcohol to patrons using the provisions of the Theatres Acts which allowed the supply of alcohol to patrons before and after a dramatic presentation and during the interval. For operation of theatre bars at other times, many theatres had club licences issued by local magistrates. In all cases, responsibility for control of the activity lay with the management Committee of the Theatre.

When the 2003 Act came into operation, most of our members took advantage of the provision which allowed them to convert the theatre licence into a Premises License or a Club Premises License. For a Premises Licence, this involved finding one of their volunteer members who was willing to undertake the training necessary to become a personal Licence holder and a Designated Premises Supervisor (DPS). Since 2003, with the passage of time, it has been necessary for further volunteers to be similarly trained and this does provide a real burden to smaller theatres.

We welcomed the concession made to village halls and community Centres, some of which have a greater capacity than our smaller theatres, to dispense with the need to appoint a DPS and have previously made representations that the burden imposed on voluntary sector theatres who rely entirely on volunteers should be alleviated by similarly allowing their management committees to take responsibility for the statutory functions of a DPS,

thus relieving them of the task of seeking to persuade one of their volunteer members to undertake the training and take on that role.

RECOMMENDATION

That the concession made to village halls and community centres to allow their management committees to assume the responsibility of the DPS be extended to independently controlled amateur theatres

THE ROLE OF LICENSING IN SHAPING LOCAL AREAS

The 114 LTG member theatres in the UK are an essential part of the cultural fabric of their communities and in some areas of the country are the only building offering cultural activities on a regular basis: as well as offering their own productions, the theatres host professional theatre, operatic and dance companies and also provide an outlet for the live streaming of large scale professional productions from the National Theatre, Royal Shakespeare Theatre and other venues.

We are fortunate that the current Licensing regime allows such diversity and would hope that it will continue to be administered with a relatively 'light touch'. We have welcomed the recent change in legislation that allows theatres with a smaller capacity than 500 seats to mount the production of plays without the full licensing regime being enforced, recognising that other legislation gives Health and Safety and public order protection to both participants and patrons

However, for amateur owned theatres, there is a considerable burden imposed by having to comply with some 20 plus pieces of legislation many of which relate to Health and Safety. We welcome the help of our professional colleagues in finding our way through the legislation and have a close relationship through affiliation to the Association of British Theatre Technicians and UK Theatre. We do however find that we sometimes miss the opportunity to comment on Government or Select Committee Consultations because our organisation is not automatically included on the list of consultees.

RECOMMENDATION

That all Government departments and select committees be encouraged to include LTG among the list of those consulted when proposals are contemplated affecting the theatre sector in the UK.

FEES AND COSTS ASSOCIATED WITH THE ACT

It appears to us that the annual fee for renewal of a premises licence is too high. It seems rare that any contact is made to our members by licensing Authorities other than an annual letter requesting the payment of the fee. The cost of systems to produce and send the letter and record the receipt of payment must be minimal and the suspicion must be that our members are subsidising other functions under the Act.

The recent change in legislation allowing theatrical performance from 0900 to 2300 without the need of a licence has meant that many theatres have sought a minor change to their licence which applies to activities up to 2359 daily. It appears to us that the cost of processing such a minor amendment should be minimal and that no charge should be made where amendments for a reduction in hours are sought.

RECOMMENDATION

That consideration be given to the amendment of the fees regime so that, rather than imposing flat rate fees, the level of fees relates directly to the amount of work involved.

That consideration be given to allowing a reduction of hours of operation within a licence at no cost.

1 September 2016

Local Government Association – written evidence (LIC0099)

1. About the Local Government Association (LGA)

- 1.1. The Local Government Association (LGA) is the national voice of local government. We work with councils to support, promote and improve local government.
- 1.2. We are a politically-led, cross party organisation which works on behalf of councils to ensure local government has a strong, credible voice with national government. We aim to influence and set the political agenda on the issues that matter to councils so they are able to deliver local solutions to national problems.

2. Summary

- 2.1. The Licensing Act 2003 provides a sound framework that allows for local decision-making to protect the public, support local businesses and enables councils to take action against mismanaged premises. Whilst this Act should remain in place, there is a need for reform to allow councils to effectively resource, scrutinise, and monitor the licensing system.
- 2.2. Although the Act does not require substantial change, it should be amended to include a public health objective. The need for this objective is reinforced by an LGA survey which showed 89 per cent of Directors of Public Health support its inclusion³²⁷. There should also be a comprehensive policy on alcohol, which encompasses licensing, treatment, taxation and advertising. Currently, there is a too narrow emphasis on crime and disorder, whereas health and wellbeing should also be taken into account. We are pleased the Health Committee supported the inclusion of a public health objective in planning and licensing law, to give councils greater powers to tackle the health issues in their communities.³²⁸
- 2.3. The Act is underfunded as a result of the fees being fixed nationally in 2005 when the Act was first introduced. This means local government as a whole has to subsidise this work by £10.3 million each year and the LGA is therefore calling on Government to localise licensing fees in line with its earlier commitments.
- 2.4. Central government needs to develop a comprehensive policy and approach on alcohol, encompassing licensing, treatment, taxation and advertising, as these can have a significant impact on people's health and wellbeing. Currently, there is a too narrow emphasis on crime and disorder.

³²⁷ <http://www.local.gov.uk/documents/10180/11493/research+-+health+-+LGA+survey+-+Public+Health+and+the+Licensing+Process+Findings+2+feb+2016/8758dd6d-da38-4221-b23e-b56790fb6e66>

³²⁸ <http://www.parliament.uk/business/committees/committees-a-z/commons-select/health-committee/inquiries/parliament-2015/public-health-post-2013-inquiry-15-16/>

2.5. The LGA is lobbying for comprehensive licensing reform of local government licensing based on proposals set out in our Rewiring Licensing report (attached as an annex).

3. Question 1: Are the existing four licensing objectives the right ones for licensing authorities to promote? Should the protection of health and wellbeing be an additional objective?

3.1. The existing four objectives; prevention of crime and disorder, promotion of public safety, prevention of public nuisance and protection of children from harm, are the right ones for local authorities to promote and local government would not want to see these changed. Indeed, we would like some of them to be replicated in the Gambling Act 2005.

3.2. However, the LGA supports the introduction of a health objective to the Licensing Act. Public health was made a responsible authority in 2011, but in 2016 an LGA survey of Directors of Public Health revealed that many were finding practical barriers to effectively contributing a health perspective to licensing decisions. 89 per cent of Directors of Public Health who responded said a health objective would be helpful to them³²⁹.

3.3. Including wellbeing as part of a health objective would encapsulate considerations such as the health impact of noise and light nuisance, which a court³³⁰ recently confirmed were relevant factors in licensing decisions. It would also allow the positive mental health benefits of social engagement in the secure environment of a pub to be considered on the positive side of an application; and provide a clear framework for councils' to deliver their responsibilities under the Equalities Act 2010.

3.4. The LGA has been working with Public Health England, the Home Office, and a number of licensing authorities to identify and test the evidence that could be used in a health representation if there was a health objective under the Act; this evidence will differ from the limited evidence that can be used under the existing objectives. This work is due to conclude shortly and the information could be used effectively to make health representations. It is possible that some decisions made on a health basis may progress to the courts; however, this should not be seen as a reason for not introducing the objective. Decisions made using the existing four objectives are still frequently challenged, and there is no reason to set a higher standard for the health objective than was the case for the existing four.

3.5. We do not feel that any other objectives, beyond health and wellbeing, should be added at this time. It is important to keep the Act, and decisions under it, focused on the main issues. Generally other factors, such as economic impact, are already

³²⁹ This survey has been separately submitted to the Committee following the LGA's oral evidence.

³³⁰ <http://www.morningadvertiser.co.uk/Legal/Licensing-law/Courts-protect-famous-music-pub-in-landmark-victory>

included within the decision-making process and do not need to be given additional visibility in the way that public health does, and could be delivered in existing ways through licensing policies.

4. Question 2: Should the policies of licensing authorities do more to facilitate the enjoyment by the public of all licensable activities? Should access to and enjoyment of licensable activities by the public, including community activities, be an additional licensing objective? Should there be any other additional objectives?

- 4.1. There is an explicit understanding that licences are granted if they do not cause detriment to the licensing objectives. In that sense, there is a default position that the public shall enjoy licensable activities that are safe and do not cause public nuisance or disorder.
- 4.2. The regulated entertainment aspects of the Licensing Act have undergone considerable deregulation, in addition to the Live Music Act 2012. This means that more activities can be enjoyed without a licence than when the Licensing Act was first introduced. There is not a case for further deregulation as councils now spend more time explaining the criteria for a licence to applicants, than they did processing the applications before the change. This time burden is also shared by the applicant, and was an unforeseen result of well-intentioned deregulation.
- 4.3. There were 4000 road closures for street parties for the Royal Wedding in 2011, and more than 1000 street parties for the Queen's birthday earlier this year³³¹. This level of activity does not suggest a problem with hyper-local entertainment, while community groups are making full use of the existing facilities of temporary event notices. These groups are also due to benefit from the planned Community and Ancillary Sales Notice when it is introduced.
- 4.4. The number of members' clubs and nightclubs have declined. The evidence suggests this is due to a changing market rather than to a restrictive legislative framework. Some London Boroughs have looked closely at the reasons behind several nightclub closures in the city and found that in most cases the overriding reason was either a decline in financial viability or, in several cases, the sites being required to deliver Crossrail. Both of these factors are outside the control of licensing policy.
- 4.5. Councils have made significant progress in ensuring licensing policies and information are more easily available to, and supportive of, businesses and the general public, and they continue to build on this work. A number of councils are participating in the Better Business for All initiatives, coordinated by the Department for Business, Energy, and Industrial Strategy (BEIS). East and South Northamptonshire Councils and Cornwall Council are also developing new ways of making their policies and services accessible. The LGA is helping to share these examples of best practice with other authorities.

³³¹ Unpublished LGA surveys of councils prior to these events.

5. Question 3: Has the Live Music Act 2012 done enough to relax the provisions of the Licensing Act 2003 where they imposed unnecessarily strict requirements? Are the introductions of late night levies and Early Morning Restriction Orders effective, and if not, what alternatives are there? Does the Licensing Act now achieve the right balance between the rights of those who wish to sell alcohol and provide entertainment and the rights of those who wish to object?

- 5.1. The Live Music Act has had a positive impact in shaping the approach to licences for live music. However, noise remains one of the biggest issues for local residents and one where it is important for councils to take action; councils also have a legal obligation to intervene if complaints are made. To some extent, the positive impact of the Live Music Act has been diminished by the changes to permitted development, which has enabled development of housing in town centres and next to established premises.
- 5.2. There is still scope to further improve the conditions that are used to govern noise and the LGA has encouraged the Institute of Licensing to take this forward as part of their project into improving conditions. It is not possible to devise a condition that can be applied in every case, nor should this be attempted, but case law has shown that articulating conditions on noise are more complex and challenging than most other conditions that might be placed on a licence.
- 5.3. Early Morning Restriction Orders (EMROs) have not proven effective and no council in England and Wales has introduced one. This is due in part to the fact that there are other, arguably more proportionate, measures that can be taken to achieve this. For instance, a council can modify an individual licence at review if there have been complaints about noise or nuisance. Although this might require individual action against multiple-licence holders, the overall administrative burden is probably still less than that required to introduce an EMRO, with its requirement for a full hearing and the amount of information industry has shown itself willing to provide in those circumstances, which has swamped councils and limited their ability to effectively scrutinise for accuracy all the information available to them. It is possible that the planned Group Intervention Power (GRIP) will make the EMRO even less attractive as an option.
- 5.4. The Late Night Levy has proven more effective as it in part addresses the shortfall in income that otherwise prevents councils from taking forward innovative ideas. However, the requirement to apply it to the whole local authority area has limited it to smaller urban areas, rather than rural ones because of geography. When the legislation passed through Parliament, the LGA argued that councils should be able to define specific areas for the levy to apply to. We also suggested there should be greater obligations on the Police and Crime Commissioner to spend the money in the area from which it was raised, and on the late night economy making the contribution.

- 5.5. We understand the Home Office now intends to make these changes to the levy and this will make it a more attractive option, although we do not envisage widespread adoption of them.
- 5.6. Alternatives to the levy do exist and can be more appropriate where there is broad agreement from local businesses about the issues that can be addressed. The most frequently used alternative is the Business Improvement District and both Reading and Leeds Councils have used this alternative approach in place of a levy.
- 5.7. In overall terms, the Licensing Act has achieved the right balance between encouraging licensable activity and protecting the public. It is important the businesses and individuals have the right to object to an application that they believe will cause them harm and a licensing authority will consider these carefully. Feedback from members of licensing committees and licensing officers is that quantity of complaints is not in itself an indication that the application will be turned down. We have found that applying conditions to licences will be an appropriate and amicable way of addressing the concerns³³².

6. Question 4: Do all the responsible authorities (such as Planning, and Health & Safety), who all have other regulatory powers, engage effectively in the licensing regime, and if not, what could be done? Do other stakeholders, including local communities, engage effectively in the licensing regime, and if not, what could be done?

- 6.1. The Licensing Act has driven partnership working and the role of responsible authorities has been a strong force behind this. Different responsible authorities will take the lead in different parts of the country, but generally the police, environmental health and trading standards will be heavily involved. Other Responsible Authorities, such as Children’s Safeguarding Boards, will become engaged as and when there is a particular issue to be addressed, rather than commenting on every individual application.
- 6.2. In terms of other stakeholders, the relevant businesses themselves are often heavily engaged through coordination of a local Best Bar None or PubWatch scheme. Although the impact and quality of these does vary, they are generally a welcome contribution and ensure that a partnership approach can be taken to improving standards and tackling any local issues. Business Improvement Districts, where they have a night-time focus, can also make valuable contributions to this.
- 6.3. Community engagement is generally low on a regular basis, but can mobilise around individual applications. Occasionally premises themselves may help customers to make positive representations in support of their applications.

³³² We are not aware of any existing studies that quantify the extent to which this is the case, but believe Marion Roberts, Professor of Urban Design, at the University of Westminster is carrying out work in this area for the London Mayor’s Office as part of their Night Time Commission. <https://www.london.gov.uk/WHAT-WE-DO/arts-and-culture/vision-and-strategy/london-night-time-commission>

6.4. Some councils, such as Westminster, provide additional support and facilities³³³ through the Citizen’s Advice Bureau to help people make representations where they have concerns about a premises. At a more strategic level, Lambeth Council invested considerable effort in holding neighbourhood working groups to engage the local community in determining what sort of evening and night-time economy they wanted for their area. The findings were then embedded in Lambeth’s new licensing policy³³⁴. These are best practice examples that we have shared with other councils.

7. Question 5: Licensing is only one part of the strategy that local government has to shape its communities. The Government states that the Act “is being used effectively in conjunction with other interventions as part of a coherent national and local strategy.” Do you agree?

7.1. The LGA works closely with the Home Office and other relevant departments, such as the Department of Culture, Media and Sport, the Department of Health and Public Health England and, to a lesser extent, HMRC. Collaboration between the departments and with the LGA on licensing has noticeably increased over the last four years.

7.2. However, not all departments will be around the table at the same time, and it is unclear whether all departments interested in alcohol meet collectively to take a rounded view of the issue. More could be done to make full use of policy levers to achieve a coherent cross-departmental approach on mitigating alcohol harm. For instance, HM Treasury and HMRC could contribute significantly to lowering damaging levels of consumption, by making use of their fiscal powers and responsibilities.

7.3. The recent Modern Crime Prevention Strategy contained a number of measures that will improve national and local government’s ability to tackle alcohol-related health harms, but stops short of the full package of measures that could be achieved through a coherent overarching government approach.

7.4. There is also some scope to remove duplication in networks and meetings. For instance, the Home Office coordinates a Health and Enforcement forum, and Public Health England coordinates both an Alcohol Leaders Network and a health and licensing network. While there is some difference in membership, there remains significant overlap, yet little co-ordination between the three meetings.

8. Question 6: Should licensing policy and planning policy be integrated more closely to shape local areas and address the proliferation of licensed premises? How could it be done?

³³³ <https://www.westminster.gov.uk/comment-on-a-licence-application>

³³⁴ <http://www.lambeth.gov.uk/sites/default/files/brl-statement-of-licensing-policy-2014-%202019.pdf>

- 8.1. There is more scope to use licensing policy to shape local areas, and many councils are now beginning to explore this opportunity as it does not require any legislative change. Greater interaction between licensing and planning policies is instrumental to this approach. It appears to be emerging as an early strand of work for the London Night Time Commission.
 - 8.2. The Health Committee's report on *public health post-2013 - structures, organisation, funding and delivery*³³⁵ also recommended the Government delivered on health in all policies by enshrining health as a material consideration in planning and licensing law. This obligation should be put on a statutory footing to ensure planning and licence applications give reference to the other. Our concerns about permitted developments, discussed in our oral evidence, have to some extent already been addressed by Government in the specific context of noise, although the LGA and councils continue to have reservations over the wider policy.
 - 8.3. There are also practical amendments that would make the distinction between the two services simpler for businesses and the general public. For instance, it should be a requirement to have planning consent, where necessary, before applying for a licence.
 - 8.4. Licensing committees are also prohibited in legislation from having consideration of planning decisions relating to operating hours when they consider licences, unless a formal representation is made. This can sometimes lead to a different set of operating hours which causes confusion for applicants and residents. While licensing and planning do consider different criteria for a licence's opening hours, and it is right they should do so, an outright ban on taking the other committee's decision into account is too stringent and should be relaxed so that businesses can be provided with one set of operating hours.
 - 8.5. Proliferation, in this context, is best addressed through licensing rather than through planning tools such as Article 4 directions. Councils do, to some extent, already have powers relating to this through cumulative impact policies. However, these are not yet enshrined in law, only in guidance, and we are working with the Home Office to put them on a stronger footing in the Policing and Crime Bill.
- 9. Question 7: Are the subsequent amendments made by policing legislation achieving their objects? Do they give the police the powers they need to prevent crime and disorder and promote the licensing objectives generally? Are police adequately trained to use their powers effectively and appropriately?**
- 9.1. The police are important partners in ensuring the Licensing Act is effectively delivered and enforced. It will be crucial to ensure that reductions in their budgets does not impact on their ability to devote resources to this work, even though that may mean working together in substantially new ways. The role of Police and Crime

³³⁵ <http://www.parliament.uk/healthcom>

Commissioners is instrumental in this and we welcome their development of a strategy on alcohol.

9.2. The quality of evidence submitted by the Police at licensing reviews has improved significantly over recent years and will be further helped by the introduction of a flag for alcohol offences in their recording systems. The high turnover of officers does remain a concern though³³⁶, and we welcome the National Police Chief's Councils commitment to developing training programmes for officers leading this work. The development of national standards for presenting cases to a licensing committee would be helpful.

10. Question 8: Should sales of alcohol airside at international airports continue to be exempt from the application of the Act? Should sales on other forms of transport continue to be exempt?

10.1. The LGA does not take a position on whether the sales of alcohol should continue to be exempt airside at international airports. However, we note that council enforcement staff would need to obtain additional clearance to conduct enforcement or test-purchasing checks on airside premises, if a change were to be made.

11. Question 9: The Act was intended to simplify licensing procedure; instead it has become increasingly complex. What could be done to simplify the procedure?

11.1. The 2003 Act did help to simplify the previous systems, and remains an improvement on the last Act. However, there is more that can be done to simplify the licensing system for business, councils and communities. This requires consideration of other licensing regimes as well as the Licensing Act 2003.

11.2. The LGA set out a number of proposals for reforming licensing legislation in *Rewiring Licensing*³³⁷. A commitment to explore some of these proposals was made by Government in the Autumn Statement 2014 and BEIS has been responsible for taking this forward, although progress with other departments has been limited.

11.3. While there are improvements that can be made to the Licensing Act, the greatest impact for councils, businesses and communities would come from this wider review of licensing legislation approached from the perspective of typical business model, as opposed to a siloed, top-down approach based on departmental responsibilities. This would enable a business or community group to apply for one licence that enables them, if suitable and safe, to do everything they want to do.

³³⁶ A strong consensus on this was reached at a BEIS (then BIS) Licensing Act workshop for industry, councils and the police in 2015. Minutes can be provided on request.

³³⁷ <http://www.local.gov.uk/documents/10180/5854661/L14-40+rewiring+open+for+business.+v3.pdf/6b8aa308-94cd-4af5-9b3a-5f2696a9a4b5>

- 11.4. For instance, Cornwall Council has recently concluded its work³³⁸ to review its processes and explore how a consolidated approach based on business models could work. It is now creating licensing hubs, based on types of business, to provide applicants with all the information they need in one place. Cornwall, and other councils, would like to go further, but are constrained by prescribed forms and legislation.
- 11.5. A more immediate improvement for businesses would be to improve their access to online forms. These do currently exist, but are in a limited state and do not offer the significant efficiencies and cost savings that digital forms have the potential to do. For instance, a form completed using the Gov.Uk system is sent to the council, but the systems do not ‘talk’ to each other meaning the council must re-enter every bit of data that is sent to it. This is needless duplication and inefficiency given today’s technologies.
- 11.6. We surveyed councils about their online offer in 2015³³⁹ and found that there was considerable scope to improve the existing system. This change is desired by councils and by businesses and the solicitors who support them.
- 11.7. The LGA has engaged with the Government Digital Service (GDS) to develop these proposals further, with the support of Regulatory Delivery in BEIS, but GDS has not yet committed resources to take this forward. Doing so would dramatically improve the experience for business and community groups, free up council officers to do other tasks, and save money. Government should commit to investing in this area.
- 11.8. There are a number of amendments that Parliament could make to the Licensing Act, in addition to locally-set licensing fees and the digital reform mentioned elsewhere. These include:
- 11.9. **Align with other licensing regimes** –There are regular opportunities to make small changes to Acts that would bring them more in line with each other. In addition to fee-setting, appeals processes, lifespan of the licence, and supporting documents are all suited to these minor amendments, although the Licensing Act would often be the template for other Acts.
- 11.10. **Reform of Temporary Event Notices** – In many areas these are not being used by the community groups and clubs for whom it was intended, but instead to extend the regular operating hours of premises. This does not come with the safeguards normally imposed by a licence. These are also the area where there is

³³⁸ The final report is not yet published but a presentation from February 2016 can be found at <http://www.local.gov.uk/documents/10180/7711400/Licensing+reform.%20Angie+McGinn/3e1d59d6-2e64-4700-b76a-cefc0e6a0d1e>

³³⁹ http://www.local.gov.uk/documents/10180/6869714/Online+Licensing+Survey_Final+Report.pdf/1c8d3f01-496e-413f-ac08-0b5e922b6459

the biggest discrepancy between the fee charged and the costs received, while also making up a significant administrative volume.

- 11.11. **Reform public notices** - Ending the requirement for public notices to be published in a 'local' paper would save businesses significant amounts of money. In many cases, these adverts cost more than the licence itself and it is increasingly difficult to identify a suitable 'local' paper. Councils receive very few representations or, in many cases, none at all based on these adverts. Residents instead see the notice on the door of the premises concerned³⁴⁰. The Department for Communities and Local Government commissioned some pilot areas to explore alternatives, such as online apps, in 2015 and their successes should be implemented. We recognise the importance of this income stream to local papers, but they should not be indirectly subsidised by an industry that is itself often struggling financially.
- 11.12. **Refine the serving of papers** – Under the current system, applicants must send papers to all responsible authorities. This is expensive and results in a large volume of paper documents requiring storage. While not all councils would choose to introduce this, allowing the council to determine whether they or the applicant needs to send documents to the responsible authority would simplify the application process for many. The mechanism for this in the Gambling Act 2005 could be usefully replicated.
- 11.13. **Database of licence holders** – A national database of licence holders would enable councils to check who has had a licence revoked and factor that into their decisions. This would enable them to either refuse or condition licences as appropriate at the outset, rather than grant a licence that looks appropriate, and then take action when the same problems arise. While neighbouring councils may share information about prosecution, this is not practical across all 350 licensing authorities and needs central coordination.
- 11.14. **Allow removal of 'dead' licences** – Most licences are not returned when a premises closes and a licensing authority has no authority to revoke the licence even though it knows it is not being used. In some cases, the premises is no longer in existence. Despite this, the licensing authority must keep the licence on its register and, notionally, seek to collect the licence fee. In practice, this means keeping a debt on the licensing account, causing questions by auditors, and distorts national figures on how many licences are in existence. Licences should either lapse, or councils should be able to revoke licences, one year after they have been suspended for non-payment of fees, allowing two years during which the premises

³⁴⁰ Ofcom's news consumption survey found that only 21% of the population read local newspapers and this is falling. An LGA survey found that in 54% of council areas local newspapers reach less than 40% of the population, and in 8% of councils the reach is less than 10%. http://stakeholders.ofcom.org.uk/binaries/research/tv-research/news/2015/News_consumption_in_the_UK_2015_executive_summary.pdf

may resume operation and pay the fees. This would be consistent with the approach of the Gambling Act 2005.

11.15. **Allow the licence to lapse or be suspended for unpaid business rates –** Councils must issue, and cannot suspend, a licence to a business that may owe them many thousands of pounds in unpaid taxes³⁴¹. While councils would not seek to exercise revocation until all other options had been exhausted, as it would render future payment even less likely, they should have the option to revoke the licence. No other supplier would indefinitely permit a debtor to continue using their services in this way.

11.16. **Certification of photographs –** Applicants must provide certified photographs with their application. In practice, the signature is not an effective guarantee of identity and is not easily cross-checked. It is also expensive and time-consuming for the applicant to obtain the signature. This is no longer a proportionate way of verifying identity, and changes to be introduced under the Immigration Act 2016 will make this measure even less relevant.

12. Question 10: What could be done to improve the appeal procedure, including listing and costs? Should appeal decisions be reported to promote consistency? Is there a case for a further appeal to the Crown Court? Is there a role for formal mediation in the appeal process?

12.1. The current appeals process is an effective way of ensuring applicants are able to challenge decisions. There are weaknesses with how it is used at the moment, as when it is transferred as a way of keeping the premises open, but these can be addressed through minor changes in the process rather than an overhaul of the fundamental system.

12.2. Critical court decisions on appeals are already widely disseminated, through the LGA's communication channels, the Institute of Licensing's national training events, and specialist publications like Local Government Lawyer and the Morning Advertiser.

12.3. There is scope for improvement in the way that councils apply for, and frequency with which they are awarded, the costs of the appeal. It would be helpful to have improved guidance to magistrates on this, and on the Licensing Act generally.

12.4. There is already extensive mediation between the council, responsible authorities and licensing applicants in many areas, and it is unlikely that formalising this process would add anything. There is also a risk that by formalising it, it

³⁴¹ Two councils have written off almost £300 000 in unpaid business rates from licensed premises. The debts have been written off following business liquidations or bankruptcies where the business model has allowed the company to continue accumulating a very high sum of business rates whilst the councils go through the debt recovery process.

becomes an additional adversarial process where all parties look for something not being done as required, rather than all seeking to come to a reasonable agreement.

13. Question 11: Given the increase in off-trade sales, including online sales, is there a case for reform of the licensing regime applying to the off-trade? How effectively does the regime control supermarkets and large retailers, under-age sales, and delivery services? Should the law be amended to allow licensing authorities more specific control over off-trade sales of “super-strength” alcohol?

13.1. The implications of the growth in off-trade sales are mainly felt on the health side, through increased consumption of alcohol and the consequent increase in health conditions as a result of it. There is limited evidence to connect this with crime and disorder in the night-time economy, although pre-loading is an issue that many areas would recognise as a problem. The LGA is separately providing evidence on this, as requested by the Committee, attached in the accompanying report.³⁴²

13.2. The current Act effectively treats on- and off-sales as if they cause the same sort of problem, which of course is mostly not the case. If the health impacts of increased consumption are a concern, then licensing is possibly not the best route for dealing with the issue – although cumulative impact policies will be able to address this in a small way. Much more could be done with a health objective; and our recommendations in response to question 12 would tackle the most damaging products and support safer drinking patterns.

13.3. There are around 25-30 area-based schemes to tackle ‘super-strength’ alcohol of varying degrees of formality and complexity; and conditions are also used to address this on individual applications where appropriate. At the moment, these schemes rely on retailers accepting the evidence that specific products are linked to alcohol-related harm and voluntarily withdrawing those products. Not all retailers may agree and they have the right not to participate in a voluntary scheme.

13.4. There may be challenges to giving councils formal powers in this context, and councils would not generally want to get involved in specifying what products could and could not be sold by a shop. They become involved only where there is a direct connection between the product and alcohol harm, and problem products vary from place to place. A more efficient approach would be for Government to target the relatively few manufacturers of these products and incentivise them to move to lower-strength products.

14. Question 12: Should alcohol pricing and taxation be used as a form of control, and if so, how? Should the Government introduce minimum unit pricing in England? Does the evidence that MUP would be effective need to be “conclusive” before MUP could be introduced, or can the effect of MUP be gauged only after its introduction?

³⁴² Available at: <http://www.parliament.uk/documents/lords-committees/Licensing-Act-2003/LGA-Pre-loading-report.pdf> [accessed 13 September 2016]

- 14.1. We do not take a position on minimum unit pricing. However, cheap, high strength products have consistently been linked with alcohol-related disorder by local areas who have gone on to introduce Reducing the Strength campaigns to tackle this. We welcome the decision of some producers who have voluntarily withdrawn these products from the market after seeing the harm that they can cause and would like to see this approach adopted across the industry. Councils do have powers to restrict irresponsible promotions, but these are limited.
- 14.2. The existing pricing control mechanism, preventing the sale of alcohol below the cost of duty plus VAT, is ineffective. Councils have found it impossible to obtain precise information over the cost of duty from HMRC and consequently cannot effectively monitor these sales. To date, only one prosecution has been brought using this offence, by Gateshead Council, who were also prosecuting the retailer for several other, more serious offences at the same time. As a minimum, Government departments should have supported councils to enforce this new responsibility when it was introduced. The absence of this information means that councils have now focused their efforts away from this onto more enforceable areas.
- 14.3. We are calling on the Government to incentivise the development of low- or zero-strength products³⁴³. Consumption of alcohol has changed, for a variety of reasons, and there is increasing demand for alternatives to the relatively limited range in strength among existing products. However, the current alcohol duty regime is unbalanced. The system does not sufficiently allow for different production costs, resulting in the strongest drinks being the cheapest available and lower-strength products like beer being the most expensive available. The ultimate effect results in large quantities of high-strength alcohol available at affordable prices to problem drinkers.
- 14.4. In 2011, Government reformed tax on beer which saw a new high strength beer duty on products above 7.5 per cent alcoholic strength by volume (ABV) set at 25 per cent above the main beer duty rate, and a reduction by 50 per cent for weaker beers of 2.8 per cent ABV or less. Within a year of the Chancellor's announcement of the tax break for low alcohol beers, sales of these products had risen by over 40 per cent nationwide³⁴⁴. Industry data for 2013-2014 has shown further significant (8.4 per cent) growth in off-trade volumes of no/low alcohol beer in the UK, whilst a survey by the Campaign for Real Ale (CAMRA) indicates that that 52 per cent of drinkers would consume a lower-strength beer if it were available in their local pub.
- 14.5. Replicating this approach for cider would tackle the problematic, high strength ciders associated with disorder and health harm, while protecting the specialist West Country ciders. There is also scope to look at wine, although this would require a revision of existing marketing legislation. There is a willingness in

³⁴³ http://www.local.gov.uk/media-releases/-/journal_content/56/10180/7763548/NEWS

³⁴⁴ <http://ahauk.org/wp-content/uploads/2015/03/AHA-Policy-Position-Alcohol-Duty.pdf>

industry to respond to this changing demand, and offering the regulatory context in which they can viably do so would have beneficial implications for alcohol-related harm and disorder levels across the country. These changes would need to be introduced at a national level.

15. Question 13: Do licence fees need to be set at national level? Should London, and the other major cities to which the Government proposes to devolve greater powers, have the power to set their own licence fees?

15.1. Licence fees should be set at a local level, as is the case with the Gambling Act 2005, Scrap Metal Act 2013, Taxi and Private Hire Vehicle legislation and many other regulatory systems. Our recent survey³⁴⁵ of councils showed that there is a deficit of around £10.3 million each year in administering the Licensing Act. This is an underestimation of the true costs as it does not include the costs to responsible authorities of delivering their responsibilities under the Act.

15.2. Licensing could be included within the new city and devolutionary deals being negotiated by Government, but licensing fees should always be set locally if they are to effectively recover the true cost of administering the scheme.

16. Question 14: Is there a correlation between the strictness of the regulatory regime in other countries and the level of alcohol abuse? Are there aspects of the licensing laws of other countries, and other UK jurisdictions, that might usefully be considered for England and Wales?

16.1. The LGA has reviewed a number of international models, for example minimum pricing from Canada, density studies exploring the link between outlet density and alcohol-related harm from Australia³⁴⁶, and restricted availability in Scandinavia, as well as Scotland's health objective. There is more that could be learned from these models, but the academic community is still at an early stage in its analysis of the effectiveness of these regimes and their correlation with the level of alcohol abuse. It also appears, mainly on an anecdotal basis, that different countries have different drinking cultures, regardless of the regulatory regime in place. Simply replicating the regulatory regime is unlikely to directly translate into a new drinking culture; and the impact of the 2003 Act suggests this has not been the case in the UK. We hope the Home Office will explore this area further, and know that Alcohol Research UK is commissioning important work in this field.

Annex A

The role of councils

³⁴⁵ http://www.local.gov.uk/web/guest/regulatory-services-and-licensing/-/journal_content/56/10180/7886724/ARTICLE

³⁴⁶ For instance, <http://www.ndlrf.gov.au/publications/research-summaries/summary-28>

1. Councils have a number of functions under the Licensing Act 2003. The primary role for District and Unitary councils is as licensing authorities, who oversee the issue, enforcement, review and revocation of licences.
2. Specific council services such as environmental health, trading standards and public health teams are also responsible authorities under the Act. These services will be located in the same council in unitary councils, but in two-tier areas trading standards and public health will be located in the top-tier county council.

The impact of licensed activities

3. Councils recognise the significant and positive impact that licensed premises and activities have on their local areas, and the importance of delivering their licensing responsibilities effectively. There are many benefits to having a successful and diverse licensed sector; ranging from employment; cultural and tourism value; community and social hubs; and general wellbeing.
4. However, licensed activities can also impact negatively on an area; with risks arising from drunkenness, violence, anti-social behaviour, noise and disturbance; and, in some cases, a cumulative impact that deters other businesses from opening up in the area. It is for these reasons that Parliament has long decided that these activities, and particularly the sale of alcohol, must be licensed.

Managing licensable activities

5. Councils aim to manage the risks associated with these activities, while acknowledging the positive benefits that can accrue. This requires use of local knowledge to understand the impact a new premises may have on an area – either positive or negative. This inevitably requires a balance to be struck between mitigation measures against risk, and permitting the positive activity. Councils will always try to ensure that a premises or event can take place safely, but where this is not possible they must take action to prevent it or to close down an existing premises where safeguards have failed.
6. Councils are increasingly taking an active role in managing the night-time economy, by seeking to attract specific types of venues, often food-led premises, to open up. This is a new role for councils, and a significant shift away from the administrative role that they played under previous licensing acts. It is fair to say that there is more to be learned about effective interventions in this area and for more councils to develop their expertise in this space.

¹For instance, <http://www.ndlrf.gov.au/publications/research-summaries/summary-28>

2 September 2016

Local Government Association – supplementary written evidence (LIC0062)

Evidence to the House of Lords Select Committee on the Licensing Act 2003

Thank you for your letter concerning the Local Government Association's oral evidence to the House of Lords Select Committee on the Licensing Act 2003, which took place on Tuesday 12th July. The LGA was happy to contribute and will be delighted to provide any further support that the Committee may require, in addition to the written evidence that we are also planning to submit.

I can confirm the transcript is an accurate representation of my evidence and that there are no alterations necessary. However, the Committee's specialist advisor asked two questions in regard to the evidence I gave, which I will address, and there was some additional information that I offered to send to the Committee. This information is included below.

Permitted development

In regard to 'Prior Approval', I can confirm that I did mean 'permitted development'. Sarah is correct that a change to the planning controls was made on 6 April 2016 to address this very specific issue in relation to commercial premises. However, prior to this change the only issues that councils could have regard to were the transport and highways impact, flooding and contamination risks.

We have therefore had three years where offices could be converted to residences without noise being a relevant consideration. Developers have responded to the high demand for housing and understandably made full use of this opportunity, and the Department for Communities and Local Government (DCLG) figures show that 5,911 office to residence permitted development conversions went through in the eight quarters up to March 2016 (figures were not collected before this). As with licensing, the £80 fee is significantly below the true costs to councils of assessing the implications of the conversion and will garner less attention in a time of reducing staff resources.

These conversions also cannot be tackled retrospectively and we will continue to see them impact on established licensed premises for some years to come. Even if the first residents do not complain, then subsequent occupiers may complain and a licensed premises may still find themselves the subject of a noise complaint some years after the conversion has taken place. Councils must then follow the process for dealing with noise complaints, and the change to planning controls will provide no protection to the business.

This supports my initial observation that councils were removed from the decision-making process around these conversion and now have limited discretion about how resulting complaints may be addressed.

Temporary Event Notices (TENs)

On the second query relating to TENS, I would reaffirm that the regular practice of submitting applications on a Friday is a common complaint from councillors who are seeing large volumes of TENS. By submitting them on a Friday, a backlog is created which must be dealt with in a very limited time period. This is a particular challenge at popular periods such as Christmas, when councils may be receiving hundreds of TENS a week. Staffing levels at councils and the responsible authorities have also reduced and, as we highlighted, the failure of Licensing Act fees to recover our costs means that we cannot always afford to allocate additional staff to scrutinise these TENS as we would wish.

Typically, councils will wish to support safe events and will negotiate with organisers where we feel additional safeguards are required. However, due to fewer resources this means that on occasion we have to put public safety first and reject a notice due to a lack of capacity to improve the application, although we do our best to keep these occasions to a minimum.

I hope this information addresses your questions, but I would be happy to provide more detail if necessary.

Cited reports

I also promised to provide some additional information to the Committee, and am pleased to enclose the results of our survey of Directors of Public Health on the need for a health objective; and the report from the LGA's recent research into the fees deficit.

We do not have quantifiable information on pre-loading available so are conducting a short survey of our members on the extent of the issue. The findings will be made available to the Committee before the call for evidence closes on 2 September.

Home Office engagement

The Committee also enquired into our engagement with the Home Office. I can confirm that the LGA has responded to all relevant Home Office consultations over the past four years, and regularly meets with Home Office officials to discuss policy ideas and issues facing councils. Home Office officials also regularly attend the LGA's Licensing Forum, which brings together licensing officers from each region, and on occasion we have worked together on large events to stimulate policy discussion between officials and licensing officers and councillors.

Overall, I would to say that levels of engagement and interactive policy development have improved over the last four years and I hope this engagement will continue as it has a positive and practical impact. For instance, recent proposals to strengthen the evidence base and put cumulative impact on a statutory footing have been put forward by the Home Office as a result of this working relationship with local authorities.

However, there are certainly a number of issues where concerns have been raised, but the Home Office has chosen not to bring forward new policy to date. The two that have been most extensively discussed are the inadequate level of fees for licences and the need for a

public health objective. The LGA will explore the key issues in more depth in its formal written submission, but to guide the Committee I can confirm that the following issues have been raised in discussion with the Home Office:

- The lack of a national database of personal licence holders, allowing unsuitable applicants to move between councils as and when their premises gets shut down
- The absence of many Designated Premises Supervisors (DPS) from the premises itself and the general weakness of this role
- Weaknesses in the review/appeals system that allows unscrupulous operators to transfer the licence or delay closure for significant periods of time
- Concerns around enforcing the duty plus VAT mandatory condition
- The costs associated with advertising applications in a newspaper; we believe this information must still be published but this is a costly, ineffective method
- The fact that a licence cannot be refused where a business owes the council unpaid business rates
- The fact that licences cannot be removed where a premises has ceased trading and, in some cases, where it has been turned into a carpark. This means a council has to carry the debt from unpaid fees in perpetuity, and distorts the national picture of how many licences are in existence.

Health data

Lord Foster of Bath asked about the type of health data that needed to be collected and if anyone was working on what that data should be. I can confirm that the LGA and eight councils have been working closely with Public Health England on this very issue. An extensive dataset has been compiled, featuring both nationally available data and some local data that areas may choose to collect.

This has built on the work done in 2014/5 by the 20 Local Alcohol Action Areas, coordinated by the Home Office, and in particular the work done by Middlesbrough Council to relate health data to individual premises. Middlesbrough have successfully reviewed a licence on that basis, although they have indicated that a health objective would permit them to do much more.

I think we will therefore shortly be in a positive position with regards to health data that could be used to inform a health objective. This work is led by Public Health England, so publication of this information will be their responsibility, although the LGA is keen to disseminate it when available.

Sincerely,

Councillor Tony Page

LGA Licensing Champion

28 July 2016

London Borough of Hackney – written evidence (LIC0136)

Question 1. Are the existing four licensing objectives the right ones for licensing authorities to promote? Should the protection of health and wellbeing be an additional objective?

1. The Public Health function of the licensing authority became a Responsible Authority in 2012 and whilst its officers have key involvement in policy development, the wealth of data and knowledge available in this field could be utilised more effectively as part of the application processes if there were to be an additional objective, which focuses on public health.

2. It has been mentioned in the past that this could either be as a specific objective or as a discretionary power available to the authority where there is a particular local problem. We would support the former as we believe the health potential impacts are of equal importance to the existing objectives. Information from Public Health England indicates that 10.8 million adults in England are drinking at levels of that pose some risk to their health.³⁴⁷ Health inequalities are clearly evident as a result of alcohol-related harm, with data indicating that alcohol-related death rates are approximately 45% higher in areas of high deprivation.³⁴⁸ Based on 2012 figures, Hackney has the fourth highest alcohol-related mortality rate for males of any London borough.

3. Alcohol harms health in many different ways. It is a risk factor for liver disease, cardiovascular disease and cancers of the head, mouth, neck, liver, breast and bowel. It is linked to poor mental health, domestic abuse, depression and dependence. It can cause acute toxic poisoning and it increases the risk of accidents, violence and injuries. It can also harm the unborn child and reduce birthweight. As the Chief Medical Officer for England highlighted in her 2012 Annual Report, liver disease is the only major cause of deaths and illness which is increasing in England while decreasing among our European neighbours.

4. In the event that a health objective is introduced, there would first need to be some consideration on how this is phrased. The 'Rebalancing' consultation asked if "the prevention of health harm" should be an objective, whilst in Scotland the objective is "Protecting and improving public health". We understand this also formed the wording

³⁴⁷ <https://www.gov.uk/government/publications/health-matters-harmful-drinking-and-alcohol-dependence/health-matters-harmful-drinking-and-alcohol-dependence>

³⁴⁸ Department of Health (2009) Signs for Improvement: Commissioning intervention to improve alcohol-related harm

proposed in the Licensing Act 2003 (Amendment) Bill [HL] 2014-15. Elsewhere, we have seen the “promotion of public health” as a possible option. Whilst similar, these options could potentially have varying outcomes, for example it may be argued that the Licensing Act 2003 was introduced to regulate the licensable activity not ‘improve’ public health. Therefore, any health objective introduced must remain proportionate.

Question 2. Should the policies of licensing authorities do more to facilitate the enjoyment by the public of all licensable activities? Should access to and enjoyment of licensable activities by the public, including community activities, be an additional licensing objective? Should there be any other additional objectives?

5. Hackney is known for its vitality, creativity and its lively and diverse night life. Increasing numbers of people want to live, work and visit our Borough attracted by its culture and its people. We have acclaimed art galleries, independent cinemas, renowned theatres and many good restaurants as well as a highly successful late night economy of clubs, bars and music venues all providing jobs and adding to the economic growth, sustainability and the well-being of our Borough.

6. The night time economy has grown substantially in Hackney in recent years. The Council has taken a number of steps to try and manage this growth and balance the need of the local businesses with those of residents in nightlife hotspots.

7. Whilst we would always encourage operators to facilitate enjoyment of licensable activities by the public, we would stop short of making this a licensing objective. The licensing objectives are of course grounds for refusal and review so making this a licensing objective would create severe uncertainty for certain types of business, such as adult entertainment premises and nightclubs.

8. We do not think that other than a health objective there should be any others.

Question 3. Has the Live Music Act 2012 done enough to relax the provisions of the Licensing Act 2003 where they imposed unnecessarily strict requirements? Are the introductions of late night levies and Early Morning Restriction Orders effective, and if not, what alternatives are there? Does the Licensing Act now achieve the right balance between the rights of those who wish to sell alcohol and provide entertainment and the rights of those who wish to object?

9. Yes we feel that the Live Music Act 2012 has done enough to relax some provisions within the Licensing Act 2003. And so far, we have seen little negative impact as a result of Live Music Act 2012. However this, along with the Deregulation Act 2015 has led to some confusion in relation to application forms, proposed activities and enforceable conditions.

10. The late night levy powers are only just beginning to be used by more authorities. However, this increase in the number of levies appears to be more as a result of authorities operating them using the method pioneered by Newcastle City Council and Northumbria Police.

11. Furthermore, in our response to the 2015 Home Office consultation on the reform of the late night levy we answered that we would be more likely to implement the late night levy if it could be targeted to specific geographic locations. The need to apply the levy to the whole of the authority area does appear to be problematic in some areas.

12. It would appear that Early Morning Restriction Orders have not been effective as no Council has introduced one. These may end up with a similar fate to that of Alcohol Disorder Zones in that authorities look for more proportionate and pragmatic approaches to tackling problem areas.

Question 4. Do all the responsible authorities (such as Planning, and Health & Safety), who all have other regulatory powers, engage effectively in the licensing regime, and if not, what could be done? Do other stakeholders, including local communities, engage effectively in the licensing regime, and if not, what could be done?

13. It is our experience that officers from the Responsible Authorities do actively engage in the process. However, some are more engaged than others. For example, we regularly see input from the Police, from Licensing Enforcement acting on behalf of the Licensing Authority, Planning and Environmental Health (i.e. the Noise Team) and Public Health. Like most of the public sector though, officers have only limited resources so involvement with the licensing process must be balanced with other priorities.

Question 5. Licensing is only one part of the strategy that local government has to shape its communities. The Government states that the Act “is being used effectively in

conjunction with other interventions as part of a coherent national and local strategy.” Do you agree?

14. No we do not agree that the Act is being used effectively. This is demonstrated by the number of times it has been amended and the number of forthcoming and further proposed amendments. It’s also not clear exactly what the “other interventions as part of a coherent national and local strategy” are.

Question 6. Should licensing policy and planning policy be integrated more closely to shape local areas and address the proliferation of licensed premises? How could it be done?

15. Yes. We have attempted to do this in each of our licensing statements as allowed for by the Guidance. However, the recent changes to permitted development (‘A Classes’) has made this more difficult locally. We have also made it a policy requirement that licences would not normally be granted where the applicant cannot demonstrate that they have the correct planning permission. Of course Guidance states that the licensing and planning processes should be properly separated to avoid duplication and inefficiency which is something that our sub-committees will always have regard to, this in essence still allows for different permissions to be in place for both regimes.

Question 7. Are the subsequent amendments made by policing legislation achieving their objects? Do they give the police the powers they need to prevent crime and disorder and promote the licensing objectives generally? Are police adequately trained to use their powers effectively and appropriately?

16. It is hoped that the Policing and Crime Bill 2016 will remove the ambiguity around interim steps as part of the summary review process. This will be welcome. Whether or not the Police are adequately trained is difficult to answer. It is our experience the Police Officers are often just thrust into the licensing team with little knowledge of the subject and are expected to learn on the job. Whether this can be addressed with the Police would depend on their own resources and priorities. Thankfully in Hackney, the Police Licensing Team has remained stable in recent years.

Question 8. Should sales of alcohol airside at international airports continue to be exempt from the application of the Act? Should sales on other forms of transport continue to be exempt?

17. This is not an issue which we have any experience in so do not feel we can answer this question.

Question 9. The Act was intended to simplify licensing procedure; instead it has become increasingly complex. What could be done to simplify the procedure?

18. We would suggest the following:

- More could be done to improve the digital offer and enable forms submitted via .GOV to be uploaded into Council databases with minimal re-keying. The potential cost savings here would also be significant.
- Simplify or remove the mandatory condition introduced by the Licensing Act 2003 (Mandatory Licensing Conditions) Order 2014 in relation to below cost selling. The text/formula is not written in a way that operators (and even practitioners) can easily understand.
- It is often the case that by the time an application reaches the sub-committee, it no longer reflects what has been appended in the original application and subsequent reports. Therefore we suggest a Change regulation 18 of the Licensing Act 2003 (Hearings) Regulations 2005 to stop late service of additional information “before” the hearing. We would suggest a cut off of five working days. After this point, consent from all parties is required at the hearing.
- Licences/certificates should lapse after a period of being suspended for non-payment of annual fee. The current arrangements where they are simply suspended indefinitely is problematic for accounting and auditing purposes. We also have a growing number of examples of premises that have been demolished yet the licence remains ‘suspended’ as it was never properly surrendered by the holder.

Question 10. What could be done to improve the appeal procedure, including listing and costs? Should appeal decisions be reported to promote consistency? Is there a case for a further appeal to the Crown Court? Is there a role for formal mediation in the appeal process?

19. The current appeals process appears to be an effective way of ensuring applicants are able to challenge decisions. Perhaps appeals could be heard more quickly, however we accept that this is just the nature of court listings.

20. Some appeal court decisions will already be circulated by the Institute of Licensing as well as by signing up to news alerts from legal professionals such as Cornerstone Barristers, Poppleston Allen and Woods Whur.

21. Some guidance around costs could be produced as these seem to vary considerably between different courts and local authority areas. Ideally, the Magistrates Court should be have more powers to enforce costs orders as they have for prosecutions.

Question 11. Given the increase in off-trade sales, including online sales, is there a case for reform of the licensing regime applying to the off-trade? How effectively does the regime control supermarkets and large retailers, under-age sales, and delivery services? Should the law be amended to allow licensing authorities more specific control over off-trade sales of “super-strength” alcohol?

22. The numbers of off-licensed premises have increased in Hackney and there are concerns around the impact on health. We have also witnessed a growth in the number of off-licences in and around our night-time economy areas which appear to add to problems of pre-loading.

23. More should be done with the manufacturers of “super-strength” alcohol as they appear to be specifically targeting vulnerable members of the community. It does not appear that the law needs to be amended. Licensing Authorities already have the powers at their disposal to attach conditions where this is supported by evidence and is appropriate for the promotion of the licensing objectives.

Question 12. Should alcohol pricing and taxation be used as a form of control, and if so, how? Should the Government introduce minimum unit pricing in England? Does the evidence that MUP would be effective need to be “conclusive” before MUP could be introduced, or can the effect of MUP be gauged only after its introduction?

24. There is a growing body of scientific research that shows increasing the cost of alcohol currently sold below this threshold could reduce alcohol-related harm among the

heaviest and youngest drinkers while leaving those who drink responsibly largely unaffected.³⁴⁹ Newcastle City Council already have a voluntary scheme for all new premises, whilst Scotland and Wales plan to adopt regional minimum costs, all at 50p per unit. Setting a minimum price at this rate is backed by Public Health England, the British Medical Association, and the Alcohol Health Alliance³⁵⁰, amongst many others. There is evidence to suggest that the adoption of a minimum unit price could have up to 50 times greater impact than the ban on below cost selling.³⁵¹

25. While there may be concerns that those with lower incomes would be negatively affected, a research study suggests that it would have little effect on moderate drinkers regardless of their income. Although the study did acknowledge that harmful drinkers on low incomes would be most affected, this needs to be balanced against the substantial health gains.³⁵²

26. We would be supportive of the introduction of a minimum unit price but recognise the situation regarding the attempt by the Scottish Government to introduce a minimum unit price and how this fits within EU law would need to be resolved for it to be successful adopted.

Question 13. Do licence fees need to be set at national level? Should London, and the other major cities to which the Government proposes to devolve greater powers, have the power to set their own licence fees?

27. Allowing licensing authorities to set their own fees under the Licensing Act 2003 is well overdue. Hackney responded to the joint consultation by CIPFA and the LGA and found that for the majority of functions discharged under the Licensing Act 2003, the Licensing Service operates at a loss. Only due to the annual fee process are some of the costs offset.

Question 14. Is there a correlation between the strictness of the regulatory regime in other countries and the level of alcohol abuse? Are there aspects of the licensing laws of

³⁴⁹ 'Is alcohol too cheap in the UK? The case for setting a Minimum Unit Price for alcohol' Institute of Alcohol Studies, April 2013 <http://www.ias.org.uk/uploads/pdf/News%20stories/iasreport-thomas-stockwell-april2013.pdf>

³⁵⁰ 'Experts call for UK wide tough action on alcohol pricing' University of Stirling, 1st March 2013 <http://www.stir.ac.uk/news/2013/03/alcohol-pricing/>

³⁵¹ <http://www.bmj.com/content/349/bmj.g5452>

³⁵² [http://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(13\)62417-4/abstract?cc=y=](http://www.thelancet.com/journals/lancet/article/PIIS0140-6736(13)62417-4/abstract?cc=y=)

other countries, and other UK jurisdictions, that might usefully be considered for England and Wales?

28. Possibly. It will be interesting to see if the alcohol “lock out” laws in Sydney have the desired impact. However, the concept of alcohol licensing in this country is in no way a new proposition. There is a long standing drinking culture in the UK that has spanned many generations. That drinking culture and the relationship that many people in this country have with alcohol is not something that can change overnight. However, if as has been suggested by some within the trade that alcohol consumption is falling amongst the young, then we may in years to come see a change in the culture.

2 September 2016

London Borough of Havering – written evidence (LIC0068)

1. Are the existing four licensing objectives the right ones for licensing authorities to promote? Should the protection of health and wellbeing be an additional objective?

Yes

Yes. It can be difficult to relate health and wellbeing to individual applications but for policy development it can help with place shaping and the overall objectives of the Local Authority.

Wellbeing will need to be defined in its broadest sense.

2. Should the policies of licensing authorities do more to facilitate the enjoyment by the public of all licensable activities? Should access to and enjoyment of licensable activities by the public, including community activities, be an additional licensing objective? Should there be any other additional objectives?

No the licensing policy already aims to balance the needs of residents and business and Council run community events are now deregulated.

No

3. Has the Live Music Act 2012 done enough to relax the provisions of the Licensing Act 2003 where they imposed unnecessarily strict requirements? Are the introductions of late night levies and Early Morning Restriction Orders effective, and if not, what alternatives are there? Does the Licensing Act now achieve the right balance between the rights of those who wish to sell alcohol and provide entertainment and the rights of those who wish to object?

With regards to live music Yes but it is confusing for the public. We still get applications for TENS when they are not required. Also we get complaints from the public about noise from music at licensed premises and they are surprised when they are told that it is not licensable.

With regards to Late night levies and Early morning restriction orders probably not as very few have been introduced. Late night levies only relate to alcohol sales and need to include late night refreshment premises as these contribute to the issues of the late night economy. There needs to be an assurance that the money raised from the levy remains within the borough and is used purely on night time initiatives. Business improvement districts appear help in local areas where there is a night time element to the BID offer.

The Licensing Act is still perceived to be more in favour of business than residents. The public have unrealistic expectations about what can be achieved using the Licensing Act and it is still mainly the responsible authorities who make representations for licence applications.

4. Do all the responsible authorities (such as Planning, and Health & Safety), who all have other regulatory powers, engage effectively in the licensing regime, and if not, what could

be done? Do other stakeholders, including local communities, engage effectively in the licensing regime, and if not, what could be done?

Not all responsible authorities respond to applications. The majority come from the police, trading standards, licensing, environmental health and planning. It can be difficult for Public Health to respond relating to the current licensing objectives. Improved training and examples of good practice could be disseminated which would help to build knowledge and skills to enable responsible authorities to make more effective representations.

Often representations are refused from stakeholders because they do not refer to the licensing objectives. We have tried to provide information on the website to assist residents to make valid representations.

5. Licensing is only one part of the strategy that local government has to shape its communities. The Government states that the Act “is being used effectively in conjunction with other interventions as part of a coherent national and local strategy.” Do you agree?

No comment

6. Should licensing policy and planning policy be integrated more closely to shape local areas and address the proliferation of licensed premises? How could it be done?

Yes. For instance the fact that you can have a licence granted until midnight yet not have planning permission to open after 10pm leads to confusion especially for business. They always assume that because they have a licence they are allowed to open to the later time. It would assist the trade and the residents that an application for a licence cannot be determined until the correct planning permission is in place.

7. Are the subsequent amendments made by policing legislation achieving their objects? Do they give the police the powers they need to prevent crime and disorder and promote the licensing objectives generally? Are police adequately trained to use their powers effectively and appropriately?

The Police licensing officers would benefit from training. Often they are experienced police officers but have no specialist knowledge of licensing before they are placed in the job.

8. Should sales of alcohol airside at international airports continue to be exempt from the application of the Act? Should sales on other forms of transport continue to be exempt?

No comment

9. The Act was intended to simplify licensing procedure; instead it has become increasingly complex. What could be done to simplify the procedure?

There has been so many changes to the legislation that a rewrite to consolidate the changes would be useful. This would help applicants.

10. What could be done to improve the appeal procedure, including listing and costs?

Should appeal decisions be reported to promote consistency? Is there a case for a further appeal to the Crown Court? Is there a role for formal mediation in the appeal process?

The problem local authorities face is the length of time that it takes to get an appeal heard. If an application has been rejected it is quicker to re-apply rather than wait for an appeal hearing. If a licence has been revoked by the subcommittee then it is worthwhile for the applicant to appeal as they can continue trading until the appeal is heard. Often by this point they premises is being run correctly and there has been no further issues so as the hearing is new the Council will aim to settle as the most cost effective outcome. Mediation is always carried out where possible and I don't think appeal to Crown Court would be effective.

11. Given the increase in off-trade sales, including online sales, is there a case for reform of the licensing regime applying to the off-trade? How effectively does the regime control supermarkets and large retailers, under-age sales, and delivery services? Should the law be amended to allow licensing authorities more specific control over off-trade sales of “super-strength” alcohol?

The law doesn't need to be changed as many on trade premises also have off trade on their licences however the effort required to prove breaches of legislation in these premises such as selling to drunk people and under age sales is very resource intensive.

12. Should alcohol pricing and taxation be used as a form of control, and if so, how? Should the Government introduce minimum unit pricing in England? Does the evidence that MUP would be effective need to be “conclusive” before MUP could be introduced, or can the effect of MUP be gauged only after its introduction?

There have been studies carried out that increasing the price of alcohol is associated with falls in both alcohol consumption and alcohol-related harm, as summarised in a review by the University of Sheffield. Although there are other mechanisms that could be introduced to increase the price of alcohol, not all of those result in the increased cost being passed on to the consumer, whereas MUP should enable targeting of the price of relatively cheap and high-strength alcohol which is disproportionately purchased by those drinking at higher level. We consider that there is sufficient evidence to introduce MUP which will support local efforts to reduce the harms caused by alcohol.

13. Do licence fees need to be set at national level? Should London, and the other major cities to which the Government proposes to devolve greater powers, have the power to set their own licence fees?

License fees need reviewing to allow true cost recovery. They have not increased since the Licensing Act was introduced and even then the Elton report showed that they were too low and local Authorities were bearing the brunt of the costs of implementing the regime. Authorities should be able to set their own costs but perhaps the government could set a formula on how to calculate the fees so all authorities calculate them in the same way.

London Borough of Havering – written evidence (LIC0068)

14. Is there a correlation between the strictness of the regulatory regime in other countries and the level of alcohol abuse? Are there aspects of the licensing laws of other countries, and other UK jurisdictions, that might usefully be considered for England and Wales?

No comment

1 September 2016

London Borough of Hounslow – written evidence (LIC0025)

Q1: Are the existing four licensing objectives the right ones for licensing authorities to promote? Should the promotion of health and wellbeing be an additional objective?

We believe the four current objectives are fit for purpose, however, these would be complemented by the addition of a fifth objective to ‘protect health and wellbeing’. Licence-holders must take appropriate responsibility for the health impact of the products they are selling to the public. For example, we now know that there is no safe amount of alcohol which can be consumed. In 2016, the UK Chief Medical Officers amended the alcohol consumption guidelines and in doing so noted that “drinking even a small amount of alcohol increases the risk of some cancers compared with people who do not drink at all... the risk of getting some alcohol related cancers gradually reduces over time when people stop drinking, but can take many years before the risk falls to the levels found in people who have never drunk alcohol.”

Importantly, in adding a fifth licensing objective to protect health and wellbeing, the Government will need to consider what this objective means in practice, i.e. what should licensing authorities reasonably expect of retailers? What should they expect as part of the application process (e.g. consideration of cumulative impact / existing issues in local area), or as part of everyday retailing (e.g. where and how alcohol is displayed and promoted). This should be set out clearly and be evidence-based.

Q2: Should the policies of licensing authorities do more to facilitate the enjoyment by the public of all licensable activities? Should access to and enjoyment of licensable activities by the public, including community activities, be an additional licensing objective? Should there be any other additional objectives?

Licensing Authorities are relatively unrestricted in what they can publish within their licensing policies and facilitating the enjoyment of licensable activities is something that many Licensing Authorities already cover within their policies. The London Borough of Hounslow’s Statement of Licensing Policy was last published in November 2015 and I have attached a copy as an Appendix to this response. We take the view that our licensing policy is primarily read by those wishing to apply for a licence to establish what is required of them as well as elected members who use the policy to assist them when making decisions. We have made a conscious effort to keep our policy factual and informative so as not to burden the reader with too much information. The Council has various other policies such as “The Local Plan” and the “Corporate Plan” which outlines the Council’s vision for residents and visitors to our borough. The Local Plan in particular sets out our ambitions for leisure, regeneration and making Hounslow a great place to live, work and visit. Plans such as these are a more appropriate format for setting out our vision for facilitating the enjoyment licensable activities. We do not believe that the Statement of Licensing Policy is the correct

place for these ambitions. We take the view that if licensing authorities wish to include details about enjoyment of licensable activities within their policy they should be able to do so but we do not feel that this should be a mandatory requirement.

The licensing objectives are in place to prevent harm and to promote safety. In our view the 4 current objectives work very well and are reasonably understandable to the majority of applicants. Public nuisance and crime prevention in particular can have a severe and detrimental impact on the lives of our residents and we find that most applicants take these objectives very seriously and do their best to promote these objectives. The enjoyment of licensable activities is subjective and aspirational. We take the view that it would add an extra burden on applicants and licence holders to have to prove that they are meeting a new objective regarding the access and enjoyment of licensable activities.

We also feel that it would be very difficult to prove that this objective is being met or not met. The licensing authority also has a responsibility to take swift action against those that are not compliant with the licensing objectives. This may include a review and subsequent revocation of a licence. We would find it very difficult to take action against a premises which does not (in our opinion) comply with this objective. It is far too vague and far too subjective. One would also have to question why if no harm is being caused, would enforcement action be an appropriate and proportionate measure to take? This poses the question as to why this objective would be needed. In our view, the enjoyment of licensable activities by the public should be discussed within Council policies (not necessarily the statement of licensing policy) and should absolutely not be an objective.

For the reasons given in Q1, we believe that “protection of health and wellbeing” should be an objective.

Q3: Has the Live Music Act 2012 done enough to relax the provisions of the Licensing Act 2003 where they imposed unnecessarily strict requirements? Are the introductions of late night levies and Early Morning Restriction Orders effective, and if not, what alternatives are there? Does the Licensing Act now achieve the right balance between the rights of those who wish to sell alcohol and provide entertainment and the rights of those who wish to object?

We believe that the Live Music Act 2012 and various other deregulation implemented by the Coalition Government has done enough to relax strict requirements imposed under the Act. It is now possible for reasonably large events to be held without any public consultation which in our experience can be distressing for our residents. We do not feel that further deregulation is appropriate and would not support any further increase in the current exclusions from requiring a licence (e.g. no further increase in capacity limits for regulated entertainment events not requiring a licence, no further deregulation of licensable activities and no removal of the need for a personal licence).

The London Borough of Hounslow has no experience of imposing and Early Morning Restriction Order or a Late Night Levy. However, we intend to explore and consult on a Late

Night Levy in financial year 2016/17. We hope that the funds raised will greatly assist us in providing services to police the night-time economy. A condition of introducing a levy will be that an agreement is reached with the police that the funds raised from the levy will not be split 70-30 with the police. The guidance issued by the Home Office in relation to Late Night Levy's permits this at Section 1.41. We feel that the current requirement that police authorities should take 70% of the funds raised was ill thought through and has prevented many local authorities (including ourselves until now) from considering a levy. Local Authorities are best placed to allocate the money raised and could choose to do so over a range of Council provided services such as: licensing enforcement, CCTV controllers, community safety, street cleansing and pollution control. There is no requirement that the 70% currently allocated to the Police is even spent within our borough. We would strongly support a removal of the requirement to split the levy with the police 70-30, and would advocate allowing local authorities to determine where the money should be spent in agreement with the police and other local bodies.

Q4: Do all the responsible authorities (such as Planning, and Health & Safety), who all have other regulatory powers, engage effectively in the licensing regime, and if not, what could be done? Do other stakeholders, including local communities, engage effectively in the licensing regime, and if not, what could be done?

The experience in Hounslow is very mixed on this point. Some responsible authorities, namely the Police, Public Health and Environmental Health are very proactive and frequently comment on licensing applications, often by way of formal objections. We have also received reviews against current licences from the police and environmental health.

We have, to date, never received a representation from the fire authority. We have previously been advised that this authority do not object to new premises licence applications and prefer to use their own enforcement powers when something needs addressing.

We have also never received a representation from children's services or health and safety. We believe the reason for this is that those bodies have considerable powers afforded to them under various pieces of legislation and are able, if necessary, to take swift action. The licensing process is an additional burden on these authorities and they may not find the time to respond to applications. This can be frustrating when as the licensing authority, we are well aware of potential problems that arise with applications and certain responsible authorities refuse to object.

The planning authority never object to applications for a simple reason. We have been told (in the Section 182 guidance issued by the Home Office) that planning is a separate regime. At Section 13:57 of the current guidance (March 2015) we are instructed to indicate in our statement of licensing policy that planning permission, building control approval and licensing regimes will be properly separated to avoid duplication and inefficiency. It goes on to state that Licensing Committees are not bound by the decisions of the Planning

Committee and vice versa. It is clear that the government intends for planning and licensing to be separate regimes, each governed by their own rules. We therefore question why planning are even a statutory responsible authority when in theory they could never make a valid objection to an application based on planning.

One way we have attempted to tackle the issue of responsible authority non-involvement is to establish a responsible authority meeting which occurs every 3 weeks. The Licensing Action Group (LAG) allows officers from responsible authorities to discuss applications and share intelligence.

We frequently receive comments on applications from our residents. We believe that this is because we send consultation letters (similar to planning consultations) to each household within a 50m radius of any premises which applies for a new or variation application. We also send these letters to households surrounding any premises which is subject to a review.

Sending consultation letters is not a requirement of the Licensing Act and this is a measure that we have in place which goes above and beyond. We rarely (if at all) receive enquiries / objections from individuals who have seen a notice published in the newspaper. We question why this is still a legal requirement as it is very costly to applicants and yields very little or no response. We also publish details of all applications on our website which occasionally results in objections being made.

We have also spoken at various resident forums regarding licensing which increases awareness and enables residents to help themselves by knowing where to look for details of applications and how to submit reviews.

Q5: Licensing is only one part of the strategy that local government has to shape its communities. The Government states that the Act “is being used effectively in conjunction with other interventions as part of a coherent national and local strategy.” Do you agree?

It is disappointing that the Government appears to have taken a decision to not develop a standalone, comprehensive alcohol strategy. This can be interpreted to mean that addressing and preventing alcohol-related harm is not a priority.

Whilst the *Modern Crime Prevention Strategy* clearly sets out how alcohol is linked to crime, and the impact successful treatment can have on crime, alcohol harms are widespread in England and Wales and the absence of a national strategy to coordinate actions at various levels will do nothing to curb the impact of alcohol. The Government must develop a strategy that leads the way for local, regional and national action on alcohol, covering health, crime, regulation, protection of vulnerable people, and prevention.

Q6: Should licensing policy and planning policy be integrated more closely to shape local areas and address the proliferation of licensed premises? How could it be done?

In our view, planning and licensing policies are best operated independently because despite the considerable overlap, their overall decision making processes and considerations differ.

Both policies need to consider the other's objectives, but planning policies are difficult to change quickly due to lengthy procedures for adoption of policies, whereas licensing can react faster as circumstances change. There should be clear co-ordination of conditions and controls between planning permission and licences granted, in particular for opening hours which should align, as this is often confusing for businesses and neighbouring residents where there are different times permitted.

The London Borough of Hounslow believe that the current separation on planning and licensing during the decision making process is counterproductive. Section 13:57-13:58 of the guidance issued under Section 182 of the Licensing Act 2003 sets out that planning regimes and licensing regimes are separate. It also states that licensing committees are not bound by planning committee decisions and vice versa.

We accept that a licence permission granted where a planning permission is absent does not give a premises permission to trade, however we feel that this is backwards and complicated way of doing things. If an application is received for a licence which contradicts the planning permission currently in place then the planning authority should be allowed to object and the licensing authority should be able to refuse the application solely on the basis that the correct planning permission is not in place. This would make things clearer for both applicants and local residents.

The issue above has caused various problems for us over the years. One recent problem is a restaurant who built a structure in their garden without planning permission. Planning permission was subsequently applied for and refused. There was fierce opposition to the structure from local residents and in our view the concerns of the residents were valid. The owners have also applied for a premises licence which includes the structure. Planning could not object because the regimes are supposed to be separate and the licence was subsequently granted with restrictions. We now have a situation where the planning permission is refused and the licence is granted. Residents have commented on their confusion and the premises licence holder has received an approval and a refusal for the same structure from the same local authority. The whole process is confusing for our residents and we would support a change in the position so that planning permission can be considered when determining licence applications.

Q7: Are the subsequent amendments made by policing legislation achieving their objects? Do they give the police the powers they need to prevent crime and disorder and promote the licensing objectives generally? Are police adequately trained to use their powers effectively and appropriately?

The powers afforded to the police such as closure notices and reviews are important tools in licensing. When used correctly, they can bring about a swift end to serious crime and disorder. Licensing sub-committees are also advised in the statutory guidance to give a greater weight to police representations. We feel that this measure is appropriate and again when applied is effective.

The biggest problem that we experience is that Police are not adequately trained to use their powers effectively. This is no fault of the individual officers, but the organisation as a whole. Officers are thrown into the role (often working alone or with one other officer) and are responsible for the whole borough's licensed premises. It is a steep learning curve and understandably a lot of the early work (such as objections to applications) are not relevant or appropriate. We find that experience grows over time, but in our view officers are forced to learn on the job without any real understanding of the powers and constraints they have upon them.

We strongly believe that officers should undertake intense and comprehensive training before they start the role and that this should be complimented by a mentor within the police who has licensing experience. We also believe that further and frequent refresher training should also be provided.

Q8: Should sales of alcohol airside at international airports continue to be exempt from the application of the Act? Should sales on other forms of transport continue to be exempt?

The London Borough of Hounslow does not have an airport located within the borough, however we are adjoined to London Heathrow and many of Heathrow's buildings do sit within our borough. Since the Licensing Act 2003 was established, we have never received a single complaint regarding alcohol sales at international airports

Q9: The Act was intended to simplify licensing procedure; instead it has become increasingly complex. What could be done to simplify the procedure?

We would not totally agree with the question. The vast majority of licensing applications progress without issues however, we do agree that there are certain areas of the procedure that could be simplified.

We believe that the application forms, prescribed in the regulations, are too long and often confusing. We receive many phone calls from individuals completing application forms who do not understand what they are being asked. An application for a new premises licence is approximately 21 pages long and this is, in our view, too long and places an unnecessary burden on applicants.

As mentioned in Question 4, we believe that the legal requirement to place an advert in the local paper for new and variation applications is onerous, expensive and useless. It costs applicants approximately £300 in Hounslow and we have never been advised that a

representation received was a result of someone seeing the advert. If locally set fees became a reality local authorities could include the cost of sending out consultation letters to neighbours in their fees which would prove much more effective.

Q10: What could be done to improve the appeal procedure, including listing and costs? Should appeal decisions be reported to promote consistency? Is there a case for a further appeal to the Crown Court? Is there a role for formal mediation in the appeal process?

The appeals process at the Magistrates Court is expensive (for all concerned), slow and complicated. We often have to wait over a year from the day a decision is made by the licensing committee to the determination of the appeal. For all this time a problem premises can remain open (if the licence was revoked at review) or a business cannot trade (if it is a new application).

An appeal is a de novo hearing and when over a year has elapsed from the date of the committee hearing to the date of appeal, this poses serious problems for licensing authorities. If a decision was taken on review to impose restrictions on a licence and then a full year has elapsed, how could it possibly be appropriate and proportionate for the court to impose the same conditions based on something that happened so long ago? We find ourselves in situations where the decision made by the committee was right at the time of the committee hearing but wrong at the time of the appeal. The local authority could then have costs awarded against them for the sole reason that the court system is so slow.

We also believe that appeals are too complicated for lay Magistrates. Whilst many appeals are allocated to a District Judge, we have on occasion had Magistrates sitting on appeals. The clerk is also not a specialist in licensing law and we have found that the system is unfair to all concerned because the knowledge of the law is not present and some of the arguments are very technical and legally advanced. Magistrates are not trained in licensing and it is unreasonable to expect them to grasp the often significant volumes of evidence, law and case law.

We would welcome a faster process, perhaps a licensing appeals body (similar to planning appeals) where experts in the field can make speedy decisions on appeals. This would also free up Court time for other matters. Alternatively, there could be an expert judge who sits in each area that deals solely / predominantly with licensing. We would also advocate a maximum period for hearing an appeal to be set.

An appeal to Crown Court would result in further costs being incurred by all parties, particularly local authorities. Appellants are already able to apply to the High Court for a judicial review of the decision and we do not see the need for a further right of appeal to Crown Court. However, if the Government were minded to introduce a right of Crown Court appeal, then it would be imperative that the right to challenge the Magistrates' decision is open to both the appellant and the respondent (the local authority). It should also be the

case that if the decision of the licensing sub-committee is confirmed at the Magistrates' Court then the decision takes effect and is not again postponed whilst waiting for a further hearing at Crown Court.

We would fully support appeal decisions being reported. This is something that we currently do by way of a press release in Hounslow.

Q11: Given the increase in off-trade sales, including online sales, is there a case for reform of the licensing regime applying to the off-trade? How effectively does the regime control supermarkets and large retailers, under-age sales, and delivery services? Should the law be amended to allow licensing authorities more specific control over off-trade sales of "super-strength" alcohol?

The London Borough of Hounslow takes a very proactive approach to preventing under-age sales. Our Trading Standards team regularly carry out test purchase operations where under-age test purchasers attempt to purchase alcohol. This works very well for physical off-licences and supermarkets. Where failures occur, advice is given and, where appropriate, enforcement action is taken.

On-line sales of alcohol require better regulation; current checks and measures to prevent underage sales via on-line retailers/delivery are inadequate. It is also very difficult logistically to carry out test purchases on online operators.

A key change to licensing enforcement that we would strongly support would be the introduction of fixed penalty notices (FPN's) for certain licensing offences. Currently, FPN's can only be issued for underage sales of alcohol. The various other offences such as unlicensed activity, failure to keep a licence on the premises or to display the licence summary can only be dealt with by warning, caution or prosecution. This is not in line with other licensing regimes. For example our street trading offences (London Local Authorities Act 1990) can all be dealt with by way of fixed penalty. This prevents the Council from spending large amounts on prosecution and also allows the person who has committed the offence to pay a fine and prevent court proceedings and a potential criminal record. FPN's are efficient and effective and should be an option for offences under the Licensing Act 2003.

Super strength alcohol has caused serious problems in Hounslow. The alcohol is cheap, freely available and can destroy the lives of those addicted to it. The Licensing Team, in conjunction with the Police and Public Health have established a "Reduce the Strength Scheme". Initially rolled out in Hounslow and Isleworth, the scheme is voluntary whereby off-licences agree to remove all beers, ciders and ales which are 6% ABV or above. The scheme was initially met with some resistance from off-licences but around 30 premises did sign up in late 2014. Since then various other premises have signed up and the result is clear and visible. Street drinking and litter associated with street drinking has reduced. I have also personally visited some of the off-licences and premises licence holders have confirmed that

they are very pleased with the results. Initial concerns about a loss in revenue were unfounded and antisocial behaviour in or around their premises has reduced.

We recently received a challenge on the validity of our Reduce the Strength scheme on behalf of the breweries who make the products. The challenge related to alleged competition law infringements. We rejected this challenge in line with the current response from the Competition Markets Authority. It is disappointing that the companies making these harmful products are so resistant to change when the effects felt in Hounslow following the introduction of our scheme are evident. We would fully support a legislative change to allow local authorities to ban these products outright.

Q12: Should alcohol pricing and taxation be used as a form of control, and if so, how? Should the Government introduce minimum unit pricing in England? Does the evidence that MUP would be effective need to be “conclusive” before MUP could be introduced, or can the effect of the MUP be gauged only after its introduction?

Alcohol is increasingly affordable in the UK, consumption is increasing, and alcohol is increasingly sold by off-licence retailers (as opposed to on-licence).³⁵³ This is contributing to the closure of community venues such as pubs.

International evidence shows that consumption and alcohol-related harms are driven by availability, promotion, and price. There is strong evidence that the price and affordability of alcohol is linked to a range of adverse long and short term outcomes, such as violence, sexual assault, liver disease, and alcohol-related A&E admissions. A review of studies looking at the effects of cost on alcohol consumption in the UK revealed that in no study was the consumption of any type of alcoholic drink found to be independent of price.³⁵⁴

We support the introduction of minimum unit pricing for alcohol in England. There is a wealth of evidence backing action on minimum unit pricing and on addressing availability and promotion of alcohol. Responsible licensing should support diverse, inclusive and sustainable communities, not undermine local areas nor put undue pressure on the public sector. Alcohol is used and enjoyed by many of our residents, but it can also be the cause of significant social and personal problems. The Licensing Act has a key role to play in addressing and preventing many of these problems. If the Government is not willing to consider the introduction of minimum unit pricing in England, widely agreed to be one of the most effective policies for reducing consumption and therefore harm, the Government should consider devolving powers to introduce policies such as this to regions (e.g. London).

³⁵³ SHAAP, Alcohol Price, Policy and Public Health, 2007.

³⁵⁴ IAS submission to the Social Justice Policy Group, Alcohol: Pricing and Taxation, in Breakthrough Britain. Ending the costs of social breakdown. Vol 4 *Addictions*, July 2007.

Q13: Do licence fees need to be set at national level? Should London, and the other major cities to which the Government proposes to devolve greater powers, have the power to set their own licence fees?

The London Borough of Hounslow strongly feels that fees should be set at a local level on a full cost recovery basis. As a London authority our running costs are significantly higher than non-London local authorities and we are currently losing money on various licences.

In comparison to other London borough's we have a very small team of 1 manager, 1 enforcement officer and 2 processing officers. However, even with these reduced staffing costs we are running at a loss in several areas.

A good example which shows the imbalance between current fees and actual costs are Temporary Event Notices (TENs). The current centrally set fee for a TEN is £21. We estimate that the actual cost to this Council is approximately £60. This takes into account the costs incurred by staff opening the post, cashing the cheque, inputting the TEN onto our system, sending the signed TEN back to the applicant, sending consultation emails to Police and Environmental Health. It also includes the time taken by Environmental Health to scrutinise the application and make any appropriate objections. There is also a small amount of checking carried out by either the Licensing Officer or the Licensing Manager to make sure everything has been done correctly. The cost also takes into consideration the cost of any licensing sub-committee meetings which may be needed to determine and application. IN 2015/16 we processed 254 TEN's represents an approximate £9906 loss in income.

Similarly, we also run a deficit with new premises licence / club premises certificate applications, variations to those licences and any transfers or variations to the designated premises supervisors. A good further example would be a transfer of premises licence. The current nationally set fee for these applications is just £23. We estimate that the true cost to the London Borough of Hounslow is £55. In 2015/16 we processed 172 applications for transfers or variations of DPS representing an approximate £5504 loss in income.

Fees for new / variation of licences range between £100 - £635 (excluding high capacity venues). In reality, the vast majority of fees received are for £190 or £315. We conservatively estimate that the true cost to the London Borough of Hounslow is approximately £750 and that we are losing in excess of £35,000 a year. This takes into account all of the administrative costs but also the costs of licensing sub-committee meetings. Our calculations estimate that a single licensing sub-committee cost can exceed £1000 (inclusive of costs for 3 elected members expenses, a presenting licensing officer's salary, committee clerk's salary, legal advisor's fees and the salary of any Council Responsible Authority Officer. In 2015/16 we had 59 applications for new / variation premises licences of which 29 went to licensing sub-committee. Shared equally among the 59 applicants this makes up £491 of the estimated £750 total cost.

There is currently some uncertainty as to whether Local Authorities can legally include the costs associated with enforcement and compliance within their annual fees. It is therefore difficult to estimate the true cost of the annual licensing fee. A rough estimate excluding

enforcement would be £150. However, if we were able to include the costs of enforcement the fees would increase to approximately £300. Either way, a large proportion of our licence holders would have an increase in fees whilst the rest would receive a reduction.

The variation between the true cost of administering the licensing scheme and the amount we are allowed to charge is significant. We strongly advocate the introduction of locally set fees as soon as possible so that we can operate on a full cost recovery basis.

Q14: Is there a correlation between the strictness of the regulatory regime in other countries and the level of alcohol abuse? Are there aspects of the licensing laws of other countries, and other UK jurisdictions, that might usefully be considered for England and Wales?

We respectfully draw the Committee's attention to sections 1.7 and 4.5 of the following World Health Organization publication: [Global status report on alcohol and health 2014](#). There will be a wealth of publications on this specific question that should be critically appraised via an in-depth review of the evidence.

24 August 2016

London Borough of Lambeth – written evidence (LIC0134)

Licensing objectives

1. Are the existing four licensing objectives the right ones for licensing authorities to promote? Should the protection of health and wellbeing be an additional objective?

- Yes, we believe they are. The protection of health and wellbeing would be a welcome addition to the licensing objectives but it is a broad spectrum and would need very clear guidance as to what it should cover. For example, it isn't always easy to obtain data that would directly connect a particular premises to the effects on hospital admissions or ill health. What kind of evidence would need to be demonstrated by a member of the public to show this objective was being undermined? We can see an argument where if you have particular hotspots of drinking related illnesses / incidents, that you could use it to bolster policy making.
- Public Health have engaged in the licensing regime since becoming a responsibility authority, and the introduction of this objective would strengthen their position.
- See attached data which is indicative of the data we can collect. [1]

2. Should the policies of licensing authorities do more to facilitate the enjoyment by the public of all licensable activities? Should access to and enjoyment of licensable activities by the public, including community activities, be an additional licensing objective? Should there be any other additional objectives?

- It is not clear as to what is being suggested here as to why this should be a licensing objective. There is a presumption to grant unless the licensing objectives may be undermined and the application is opposed.
- If it is being suggested that we could have an objective to require, say, free or reduced price entry for certain sections of the public, this may have any worthwhile impact for the public. (Expensive concert tickets for prominent events in parks for example, will often disenfranchise the less well off in society) But would the absence of such a scheme serve to show that the objective was being undermined then lead to a refused application? It's difficult to see how it can work in conjunction with the other licensing objectives.
- Likewise, offering up a free festival for example, which might promote such an objective, will undoubtedly undermine the other licensing objectives and cause more work for a Licensing Authority in managing the event planning, policing the event to ensure the public are safe and managing the numbers attending. Free events can cause huge resourcing burdens on Local Authorities and Police (and have potential to get out of hand and cause significant safety problems), were numbers cannot be controlled and costs for policing and enforcing are escalating every year.

Organisers are often very well intentioned but don't have the resources to deliver the events to the safety standards required and then need assistance. As local authorities we struggle to shoulder these costs.

- However, a good example of where an authority provides a free event to the public is the local authority organised Lambeth County Show, held annually in Brockwell Park. This is attended by 170,000 members of the public over the weekend, is free to all (donations are encouraged in exchange for programs), and now benefits from the de-regulation of entertainment run by local authorities.
- In terms of what other licensing objectives there should be, it has long been a problem that there is a disconnect in policy make for local authorities when addressing planning and licensing, as it has made clear that the two should not impact on the decision making of each regime, yet is clear there needs to be a more cohesive and inclusive vision for encompassing both. There should be clearer links to planning legislations and noise nuisance legislation and the ability for these links to carry weight when considering licence applications.

The balance between rights and responsibilities

3. Has the Live Music Act 2012 done enough to relax the provisions of the Licensing Act 2003 where they imposed unnecessarily strict requirements? Are the introductions of late night levies and Early Morning Restriction Orders effective, and if not, what alternatives are there? Does the Licensing Act now achieve the right balance between the rights of those who wish to sell alcohol and provide entertainment and the rights of those who wish to object?

- Re relaxation by the Live Music Act – we do not believe there should be any further deregulation at this time. The deregulation already introduced has not been publicised enough as both public and applicants seem to know very little about it. In reality this has had the net effect of confusing applicants and the public alike. As a licensing authority we spend a lot of time explaining the exemptions, interpreting and applying them to specific applications / scenarios, and often entering into significant debate, all of which impacts on the resource available. The public don't understand the relaxation and expect the local authorities to enforce the licence re live music.

As an example, we have many pubs with beer gardens included as part of the licensed premises. Previously where there may have been conditions on the licence prohibiting the performance of live music in the beer garden, those conditions no longer apply and we have to deal with numbered noise complaints from nearby residents who don't understand that we can't simply stop this activity. We and they have the option to bring a review, but in practice most authorities are under resourced and will only bring a review on the most problematic of premises, and residents seem reluctant to bring their own reviews, no doubt for fear of local reprisal or not wanting to be named.

- EMROs have not been adopted here or in any authority that we know of. The Late Night Levy is unattractive at present because it will not allow us to apply it to a defined area where there are particular problems/issues with the night time economy, and it appears prohibitive to require it across the entire borough thereby penalising premises in areas where there are no late night issues. If the government revise the rules and would allow for an authority to define specific areas where it would apply (such as cumulative impact zones), we would be much more likely to adopt it and gain the additional resourcing needed to manage those issues
- In general the majority of applications are granted, and even in those cases where there is heavy opposition, applications are often granted with conditions imposed to address concerns. The public (local residents) might argue that the balance is in favour of businesses, but as Licensing Authorities we strive to get the balance right between the needs of businesses, regeneration (and the employment opportunities which that brings) and the needs of residents. We have taken action against problem premises and in particular don't shy away from revoking licences where there has been severe crime and disorder or persistent breaches of licences, thereby protecting the public.

4. Do all the responsible authorities (such as Planning, and Health & Safety), who all have other regulatory powers, engage effectively in the licensing regime, and if not, what could be done? Do other stakeholders, including local communities, engage effectively in the licensing regime, and if not, what could be done?

- In general, Trading Standards, Environmental Health, Planning, Police and (increasingly) Public Health are the regular engagers. In reality we rarely have any adverse comment from the Fire Brigade. The problem for Planning is that in reality they only have resource to give advice on the current planning status, yet this cannot be used as a reason to refuse an application. It may have been the government's intention for them to apply their expertise to the licensing objectives and comment accordingly on licence applications, but that does not happen. It must be confusing to a business owner that he/she might be granted a licence but then refused planning permission, putting them in a position where if they use the licence they can subsequently be prosecuted under planning law. This disconnect does not assist Local authorities in trying to have a cohesive approach to town planning and regeneration vision.
- That said, the fundamental approach of partnership working has produced effective results. The legislation encourages this and in particular it works very well if there is a dedicated Police licensing team to liaise with the licensing/ enforcement teams in the local authority. It promotes a joined up approach which can assist applicants and licensees and delivers more effective enforcement.
- Local residents and residents associations do engage with the regime, but generally only during the initial application process. It is rare for residents to appeal a decision

(probably due to fear of legal costs) and equally rare for them to bring a review. We would like to see more resident lead reviews instead of a reliance on the responsible authorities to bring them – and anything the government could do to empower them and help them in this respect and ease the burden on stretched public services would be welcomed. For example, often there is a fear of confrontation or intimidation especially if they live in close proximity to a premises – so maybe consideration could be given to allowing them to submit their application but protect their individual contact details to give them more confidence?

- In Lambeth we have held neighbourhood working groups to engage the local community in determining what type of evening and night time economy they want for their area which has helped formulate our Statement of Licensing Policy.

Licensing and local strategy

5. Licensing is only one part of the strategy that local government has to shape its communities. The Government states that the Act “is being used effectively in conjunction with other interventions as part of a coherent national and local strategy.” Do you agree?

- We agree that Licensing is only one part of strategy which can be used, but there is often a lack of understanding about the impact it can have or the powers within the legislation which can be used to control a premises. The number and type of licensed premises in an area can massive impact the type of business that are attracted to it, the customers it will draw in and the potential for anti-social behaviour which can have knock on effects to policing, health, street cleansing etc. It is always a balancing act.
- The relaxation in planning to allow for easier conversion from commercial to residential will always impact where you have long established premises which are then abutted by residential properties.

6. Should licensing policy and planning policy be integrated more closely to shape local areas and address the proliferation of licensed premises? How could it be done?

- Please refer to comments in question 4.
- Prior to The Licensing Act 2003, when local authorities had responsibility for licensing public entertainment and late night refreshment (but not sale of alcohol), they could, if they wished, set application rules which required the applicant to have planning permission before the licence application could be considered. This was actively done away with when the Licensing Act was introduced, thereby introducing a ‘dis-connect’ between the Planning and Licensing regimes.
- The solution would be to allow Licensing authorities to take into consideration the planning status and if the circumstances warranted it to make it a licence condition that they must obtain planning permission before the licence can be used.

Crime, disorder and public safety

7. Are the subsequent amendments made by policing legislation achieving their objects? Do they give the police the powers they need to prevent crime and disorder and promote the licensing objectives generally? Are police adequately trained to use their powers effectively and appropriately?

- All police engaged in licensing regime should have power of entry.
- Licensing is a complex and specialised area of work and training should be mandatory to ensure knowledge and expertise are exercised. Recently Lambeth invested in BIIAB training not just for its own licensing officers, but their EH enforcement staff and the police licensing team which are co-located in the building. This has led to a noticeable improvement in the quality of evidence and composition of applications for review and responses to licence applications as well as assisting them in their enforcement work.

8. Should sales of alcohol airside at international airports continue to be exempt from the application of the Act? Should sales on other forms of transport continue to be exempt?

- We have no position on this given it is not something we encounter in our borough.

Licensing procedure

9. The Act was intended to simplify licensing procedure; instead it has become increasingly complex. What could be done to simplify the procedure?

- Require all application to go to the licensing authority only, and require them to serve electronically on all responsible authorities – in practice this happens anyway an electronic service is much preferred to postal applications.
- TENS – there is too much uncertainty over how these can be used especially when trying to have separate quotas of TENS for different parts of the same building. Also they are predominantly used by premises to extend hours (thereby undermining policy hours). The timelines are sometimes too tight to turn around service and response.
- The suspension for not paying annual fees was welcomed, but it still means the premises are licensed and it stays on our books as a debt which we are then obliged to try and collect over and over. We should be given the power to revoke/lapse licences where the licence has been suspended for more than a year.
- There should be national databases for licensees and personal licence holders.
- Could personal licence holders be moved to a national application system similar to SIA given their licence permits them to work throughout UK?
- The fees need to be overhauled – the national fees have not changed since implementation in 2005 despite ever increasing costs. If Government will not allow

locally set fees (which will cover costs) then they should at the very least allow for annual increments to reflect inflation. At present Local authorities are subsidising the industry despite being under severe financial pressures.

- Do away with the requirement to advertise in local newspapers – in reality very few (if any) representations are made from seeing the public newspaper notice – this has been a way of propping up the newspaper industry at the expense of applicants. If fees are locally set in future it will almost certainly lead to an increase in application fees, and doing away with this requirement would offset any licence fee increases to new applicants.

10. What could be done to improve the appeal procedure, including listing and costs? Should appeal decisions be reported to promote consistency? Is there a case for a further appeal to the Crown Court? Is there a role for formal mediation in the appeal process?

- It is a source of frustration to all parties that the appeal process is generally so long and can be costly. Consideration could be given to introducing a tribunal type system of independent lay people where it could be a speedier and less costly way to decide on more minor matters (such as a disagreement over imposed conditions, rather than an appeal against an outright refusal). It would also possibly encourage residents (who had opposed the application) to pursue matters who at present do not seem to engage with the appeal process.
- Notable appeal decisions are generally published electronically but you generally have to sign up to email alerts from particular organisation to receive such information. Broader publication would be welcomed but only electronically.

Sale of alcohol for consumption at home (the off-trade)

11. Given the increase in off-trade sales, including online sales, is there a case for reform of the licensing regime applying to the off-trade? How effectively does the regime control supermarkets and large retailers, under-age sales, and delivery services? Should the law be amended to allow licensing authorities more specific control over off-trade sales of “super-strength” alcohol?

- Off sale premises have been broadly overlooked in policy in the first decade of the act in favour of focussing on licensing on premises (in particular bars and clubs).
- We have seen a noticeable increase in off sales being the subject of review applications for underage sales, selling illicit or non-duty paid alcohol, selling after hours etc. On such reviews we try to introduce a ban on super strength alcohol when appropriate but it is a case by case basis, and it would be welcomed if the national legislation could be amended to allow a licensing authority to introduce a ban either throughout their borough or in particular areas without requiring individual reviews of licences

- In boroughs like ours we have problems with street drinkers and we find it difficult to prove that one premises is particularly responsible, yet the activities of street drinkers are directly linked to anti-social behaviour and often crime and disorder.

Pricing

12. Should alcohol pricing and taxation be used as a form of control, and if so, how? Should the Government introduce minimum unit pricing in England? Does the evidence that MUP would be effective need to be “conclusive” before MUP could be introduced, or can the effect of MUP be gauged only after its introduction?¹

- The existing mandatory conditions are almost impossible to enforce and this whole area should be looked at again.

Fees and costs associated with the Licensing Act 2003

13. Do licence fees need to be set at national level? Should London, and the other major cities to which the Government proposes to devolve greater powers, have the power to set their own licence fees?

- As stated earlier, across the country local authorities are subsidising the industry despite being under ever increasing pressure to deliver services. Fees have remained set at same level since 2005 despite several reports showing the local authorities cannot afford to subsidise this. Local fee setting is the answer because authorities can charge to cover their individual costs. If however government feel this need to set them nationally then they should be at the very least brought up to date and allowed an annual increase.

International comparisons

14. Is there a correlation between the strictness of the regulatory regime in other countries and the level of alcohol abuse? Are there aspects of the licensing laws of other countries, and other UK jurisdictions, that might usefully be considered for England and Wales?

- We have no comment on this.

2 September 2016

London Borough of Newham – written evidence (LIC0044)

1. Question:

Are the existing four licensing objectives the right ones for licensing authorities to promote? Should the protection of health and wellbeing be an additional objective?

Response

The existing objectives still remain crucial to the licensing regime, and we support the addition of a health objective to those existing licensing objectives. However we are concerned about:-

- a) The inclusion of “wellbeing” in the objective, as we believe that this would be almost impossible to promote without a definite interpretation of the word, and that it could be used as a method to prevent persons enjoying responsible drinking.
- b) The inclusion of a further licensing objective would increase the financial burden on Licensing Authorities, especially as there has been no increase in the statutory licensing fees since 2005 and that Licensing Authorities are unable to set their own fees to cover the additional costs of a further licensing objective.

2. Question

Should the policies of licensing authorities do more to facilitate the enjoyment by the public of all licensable activities? Should access to and enjoyment of licensable activities by the public, including community activities, be an additional licensing objective? Should there be any other additional objectives?

Response

We do not agree that “access to and enjoyment of licensable activities” should become a licensing objective. This matter is more adequately dealt with by Local Authorities in their Statements of Licensing Policy. Indeed the Section 182 Guidance (Chapter 13 - Statements of Licensing Policy) states that “licensing law will always be part of a holistic approach to the management of the evening and night-time economy in town and city centres.” To have such an additional objective can be viewed as shifting the existing balance (between residents and businesses) in the licensing regime to that of favour to those persons who wish to enjoy the licensable activities (and also indirectly to the favour of businesses)..

3. Question

Has the Live Music Act 2012 done enough to relax the provisions of the Licensing Act 2003 where they imposed unnecessarily strict requirements? Are the introductions of late night levies and Early Morning Restriction Orders effective, and if not, what alternatives are there? Does the Licensing Act now achieve the right balance between the rights of those who wish to sell alcohol and provide entertainment and the rights of those who wish to object?

Response

- a) The Live Music Act 2012 and the other exemptions for regulated entertainment brought into force by the Government after that Act have done more than enough to relax any actual or perceived “unnecessarily strict requirements”.
- b) We are of the opinion that the use of Cumulative Impact Zones in Local Authorities Statements of Licensing Policy and the use of the review process under sections 51 -53 of the Licensing Act 2003 are more effective than Late Night Levies and Early Morning Restriction Orders in this Borough.
- c) We believe the right balance has been achieved.

4. Question

Do all the responsible authorities (such as Planning, and Health & Safety), who all have other regulatory powers, engage effectively in the licensing regime, and if not, what could be done? Do other stakeholders, including local communities, engage effectively in the licensing regime, and if not, what could be done?

Response

The problem with effective engagement by some responsible authorities in many ways lies with the Licensing Act and other legislation rather than the responsible authorities themselves.

The Licensing Act 2003 and the section 182 Guidance effectively stops responsible authorities from making representations against applicants when such representations are based on matters that are dealt with by other legislation e.g. the Fire Brigade and The Regulatory Reform (Fire Safety) Order 2005, Health and Safety and the Health and Safety at Work etc. Act 1974, etc.).

5. Question

Should licensing policy and planning policy be integrated more closely to shape local areas and address the proliferation of licensed premises? How could it be done?

Response

It is not possible to integrate the policies more closely without changes to the respective legislation. For example when determining an application under the Licensing Act 2003 a Licensing Authority cannot take into account whether the premises have the appropriate planning approval or is likely to get such approval. We would like the laws changed so that it would become unlawful for future Licensing Act premises licences to be used without the appropriate planning approval being in place for the premises.

6. Question

Should sales of alcohol airside at international airports continue to be exempt from the application of the Act? Should sales on other forms of transport continue to be exempt?

Response

The existing forms of exemption should be continued

7. Question

The Act was intended to simplify licensing procedure; instead it has become increasingly complex. What could be done to simplify the procedure?

Response

We believe this can now only be done by a completely new Licensing Act with new regulations to replace the Licensing Act 2003 and its regulations.

8. Question

What could be done to improve the appeal procedure, including listing and costs? Should appeal decisions be reported to promote consistency? Is there a case for a further appeal to the Crown Court? Is there a role for formal mediation in the appeal process?

Response

- a) The Licensing Act imposes strict time limits on Licensing Authorities, which they have to comply with. Amongst such time limits are those for application and review hearings and the determination of applications. Yet there is no such time limits imposed by the Act on the Magistrates Courts with regard to hearing licensing appeals, and these can take up to 6 months to be heard and determined by the Court. This delay has caused problems for this Council and has led to it losing appeal cases. We believe that the Magistrates Courts

should be subject to the same time limits as Local Authorities i.e. that an appeal should be heard and decided by the Court within 20 working days of the appeal being lodged.

- b) We are of the opinion that there is no case for a further appeal to the Crown Court.
- c) Mediation already takes place during the appeal period, and when parties are in agreement the appeal is dealt with by a Consent Order. We do not believe that the current system of mediation should be formalised, as this could be counterproductive and detrimental to appellants and defendants.

9. Question

Given the increase in off-trade sales, including online sales, is there a case for reform of the licensing regime applying to the off-trade? How effectively does the regime control supermarkets and large retailers, under-age sales, and delivery services? Should the law be amended to allow licensing authorities more specific control over off-trade sales of “super-strength” alcohol?

Response

The majority of problems that this Council experience in regard to alcohol compliance and enforcement relate to off-trade sales (e.g. underage sales, selling after authorised hours, contravening licence conditions, selling counterfeit/tax evaded alcohol etc.). The reform of the licensing regime applying to the off-trade should be reviewed. The problems do not occur with the larger supermarket chains but with the smaller convenience stores and “corner” shops. We are also concerned with on-line sales and delivery services with regard to the protection they give against underage sales and/or the delivery of alcohol to children.

The law should be amended to allow licensing authorities more specific control over off-trade sales of “super-strength” alcohol; as such alcohol is the main cause of the street drinking in the Borough and the problems that such drinking creates.

10. Question

Should alcohol pricing and taxation be used as a form of control, and if so, how? Should the Government introduce minimum unit pricing in England? Does the evidence that MUP would be effective need to be “conclusive” before MUP could be introduced, or can the effect of MUP be gauged only after its introduction?

Response

We are of the opinion that alcohol taxation and MUP should not be used as a form of control. Many low income earners who drink responsibly would be adversely affected by such actions, and it could be seen as an attempt to reduce their quality of life

11. Question

Do licence fees need to be set at national level? Should London, and the other major cities to which the Government proposes to devolve greater powers, have the power to set their own licence fees?

Response

Councils in London must be given the powers to set their own licence fees.

31 August 2016

Malcolm McKessar – written evidence (LIC0011)

1. Are the existing four licensing objectives the right ones for licensing authorities to promote? Should the protection of health and wellbeing be an additional objective? **Agree. The “Protection of health and wellbeing” should be an additional objective. This should give authorities greater scope to deal with problem drinking and it’s licensing related sources.**
2. Should the policies of licensing authorities do more to facilitate the enjoyment by the public of all licensable activities? Should access to and enjoyment of licensable activities by the public, including community activities, be an additional licensing objective? Should there be any other additional objectives? **No. I do not believe it is the place of authorities to “facilitate enjoyment” of licensable activities. Their remit should be clearly to protect/reduce harm etc. We do this through ‘monitoring and control’ measures rather than ‘facilitation’. Providing or facilitating access to, and enjoyment of licensable activities, including community activities, should be the reserve of members of the public, and private and community organisations, not authorities. Additionally, by making any authority responsible under law for any such ‘facilitation’, you would be creating an immediate legal quagmire, in which authorities will be caught by any number of complaints regarding the negative effects on ‘facilitation’ by any controlling actions they may take under their other responsibilities. E.g. any licence holder subject to any proposed or actual condition or control measure, will be able to challenge on the basis of ‘threat to facilitation’.**
3. Has the Live Music Act 2012 done enough to relax the provisions of the Licensing Act 2003 where they imposed unnecessarily strict requirements? Are the introductions of late night levies and Early Morning Restriction Orders effective, and if not, what alternatives are there? Does the Licensing Act now achieve the right balance between the rights of those who wish to sell alcohol and provide entertainment and the rights of those who wish to object? **No comment. Not an area of expertise or experience.**
4. Do all the responsible authorities (such as Planning, and Health & Safety), who all have other regulatory powers, engage effectively in the licensing regime, and if not, what could be done? Do other stakeholders, including local communities, engage effectively in the licensing regime, and if not, what could be done? **No. In Suffolk, it is my observation that participation is fragmented/inconsistent across authorities. E.g. Authorities have differing processes for communicating with other authorities, and use offer differing application forms for licenses etc.**
5. Licensing is only one part of the strategy that local government has to shape its communities. The Government states that the Act “is being used effectively in conjunction with other interventions as part of a coherent national and local strategy.” Do you agree? **No. A coherent national strategy would, for example, deliver a national licence database, and associated national standards for licence applications. Neither of these exist.**

6. Should licensing policy and planning policy be integrated more closely to shape local areas and address the proliferation of licensed premises? How could it be done? **Yes, planning and licensing bodies should together formulate/agree a set of standard national criteria for evaluation of licensing applications in any area. A set of pre-defined zones could be developed, any one of which a local area could then be ascribed on the basis of local characteristic fit to criteria. This zone would then define the allowable licensable activity within it, or limits of.**

7. Are the subsequent amendments made by policing legislation achieving their objects? **Yes, generally.** Do they give the police the powers they need to prevent crime and disorder and promote the licensing objectives generally? **Yes, they appear to.** Are police adequately trained to use their powers effectively and appropriately? **No, but this is a deceptively big question. As long as we have 43 separate forces, each responding to resource pressure and policing needs differently, training will be variable and fragmented. HMIC and the Home Office should play a greater role in standardising and ensuring capability and resource, to, in turn, ensure powers are applied effectively and uniformly across the country.** 8. Should sales of alcohol airside at international airports continue to be exempt from the application of the Act? **No, definitely not.** Should sales on other forms of transport continue to be exempt? **No.**

9. The Act was intended to simplify licensing procedure; instead it has become increasingly complex. What could be done to simplify the procedure? **Standardise processes and materials across all authorities. E.g. A standard national set of licencing related applications and forms, and a move to a national licensing database, rather than hundreds of local authorities maintaining their own.**

10. What could be done to improve the appeal procedure, including listing and costs? **No opinion.** Should appeal decisions be reported to promote consistency? **Yes** Is there a case for a further appeal to the Crown Court? **No opinion** Is there a role for formal mediation in the appeal process? **Yes. Formal mediation is always preferable as an alternative to court.**

11. Given the increase in off-trade sales, including online sales, is there a case for reform of the licensing regime applying to the off-trade? **Yes** How effectively does the regime control supermarkets and large retailers, under-age sales, and delivery services? **Not well.** Should the law be amended to allow licensing authorities more specific control over off-trade sales of “super-strength” alcohol? **Yes, and such controls could be allied to the suggested zones/controls proposed in my answer to point 6 above.**

12. Should alcohol pricing and taxation be used as a form of control, and if so, how? **Yes** Should the Government introduce minimum unit pricing in England? **Yes** Does the evidence that MUP would be effective need to be “conclusive” before MUP could be introduced, or can the effect of MUP be gauged only after its introduction? **No, evidence should only be required sufficient to allow the conclusion that a MUP would be effective, ON THE BALANCE OF PROBABILITY. Nothing will ever been shown to be 100% conclusive without testing it, particularly when extremely powerful lobby groups are presenting the opposing**

case. The efficacy of a MUP will only be fully ascertained after a period of operation. I would suggest a trial period of say 3 years, after which a review would be mandated. (Overseas case studies may help get to this point).

13. Do licence fees need to be set at national level? **Yes** Should London, and the other major cities to which the Government proposes to devolve greater powers, have the power to set their own licence fees? **No, this would just create an ongoing argument about fee variation versus location. Keep them the same everywhere and no-one can complain about being treated differently, and local authorities won't be tempted to see licensing as a new 'tweakable' revenue stream.**

14. Is there a correlation between the strictness of the regulatory regime in other countries and the level of alcohol abuse? Are there aspects of the licensing laws of other countries, and other UK jurisdictions, that might usefully be considered for England and Wales? **Not able to comment.**

8 August 2016

Mayor of London — written evidence (LIC0173)

How do licensing laws impact the night-time economy?

- The Mayor of London is committed to making London a globally leading 24-hour city. This is a key manifesto commitment alongside protecting London's cultural venues and maintaining London's attractiveness as a place to work, study, visit and live. To deliver on this commitment, the Mayor has recently appointed two outstanding people who will lead this work. The first is his Night Czar, Amy Lamé and the second is the new Chair of his Night Time Commission, Philip Kolvin QC. They will work hand-in-glove to support the development of London's night time economy across all boroughs. As well as increasing jobs and providing a world-class night time offer for Londoners and visitors alike, they will be ensuring that the needs of residents, the safety of customers and wellbeing of night time workers is at the heart of this work.

London's night time economy

- The night time economy in London contributed £26.3bn in Gross Value Added to the UK economy in 2014. Its economic activity supports 723,000 jobs - one in eight in London. These include those traditionally associated with the leisure economy such as accommodation and food services (97,000) and arts, entertainment and recreation (46,500), but also those partially associated such as transport and storage (107,000) and wholesale and retail (59,000). When indirect impacts are included, the night time economy is responsible for 1.26 million jobs overall and £40.1bn GVA.³⁵⁵
- It is crucial to an understanding of the economic success of London to understand the value of its night time economy. The economic benefits, however, tell only a small part of the story. In particular, the city's cultural scene and its leisure economy are vital to the success of London as a global capital city. They form a key reason for companies wishing to locate here, for people wanting to live and work here and for London's success as the most visited city in the world, with four out of five visitors citing culture and heritage as their reason for visiting the capital.
- Culture and creativity drives the night time economy. If London's cultural, creative and leisure industries do not keep pace with, or outpace, other capital cities, London's standing as one of the leading cities in the world is at risk. If London falters in attracting investment, a highly skilled workforce and considerable tourist spend, it would be to the detriment of the city and its inhabitants as a whole. The Mayor is therefore expressly committed to championing London's culture scene, creative industries and night time economy.
- London is home to 8.5 million residents, which is projected to rise to around 10 million by 2030. There is only modest scope for creating dedicated entertainment zones which can be guaranteed not to impact upon residential amenity. Therefore, any strategy for

³⁵⁵ London's 24 hour economy. The economic value of London's 24 hour economy. London First and EY, 2016.

expanding the night time economy must take into account and mediate out impacts upon residents, because it would not be acceptable to promote growth at the expense of their reasonable needs. This balance is also inherent in the Licensing Act 2003 itself.

The Mayor's approach to the night time economy

- The Mayor's manifesto made protection and growth of London's night time economy, including cultural venues, a key objective. He pledged to appoint London's first Night Czar and introduce the 'Agent of Change' principle into planning policy in London. He has also pledged to maintain London's place as the preeminent cultural city in the world.
- The early months of the Mayoralty have seen him put in place structures to deliver this commitment.
- Other cities like Amsterdam, Berlin and San Francisco already have Night Mayors. However, London is the biggest city in the world to have created dedicated leadership roles for the night time economy. Due to London's size, the scope of its night time economy and the significant potential for development, the Mayor has decided to structure his support for the night time economy differently to other cities.
- First, he has appointed a Night Czar to be a high profile ambassador, championing London's evening and night time economy. The Czar will be at the frontline of this work: meeting business operators, residents, councils and the police across London and understanding the challenges they face. The Czar will develop initiatives to support and promote the night time economy, also providing advice and mediation where required.
- Second, he has decided to continue the work of the Night Time Commission which was set up under the previous administration. The Night Time Commission has done excellent work in considering the scope and needs of London's night time economy. Amongst the Commission's early achievements has been commissioning Westminster University's Music Tank to carry out a study of London's night time economy so as to inform future policy.
- Third, the Mayor has appointed a new, dedicated Chair to lead the Night Time Commission. The Chair will review the structure, membership and terms of reference of the Commission. They will ensure that the relevant skills are assembled so as to assist in the development of London as a leading global night time economy. The Chair will develop and lead partnerships with key stakeholders at a London-wide level.
- The Night Czar and the Chair of the Night Time Commission will work with the Mayor and his Deputy Mayors to ensure a well-planned and strategic approach as London develops into a genuine 24-hour city. They will ensure that all stakeholders have a strong voice in the development of policy for London's night time economy. To inform their work they will engage with local authorities, the night time industries, the culture

sector, police, transport agencies, residents, night workers and those who use London's night time services.

- Together, the Night Czar and the Chair of the Night Time Commission will develop, promote and articulate a vision for London as a 24-hour city. They will publish a roadmap setting out how the vision will be implemented. They will also be looking to share and promote good practice and learn from other cities across the UK and around the world.
- The Night Czar and the Chair aim to create a better understanding across all sectors of the challenges and opportunities for London's night time economy. By fostering better coordination and collaboration across the capital, they aim to establish London as one of the world's leading 24-hour cities. Underpinning their work will be the challenge of balancing the needs of a growing night time economy with the needs of workers and residents.

Licensing

- The Mayor strongly supports licensing at local level and the protection of residential communities. It is right that these powers lie within local authorities under the Licensing Act. However, the Mayor can support local authorities by providing: a strategic vision for the night time economy as a whole; leadership and education in the planning of night time economies; and pan-London programmes where appropriate. The new structures and posts that he has put in place are intended to further these objectives.
- The Mayor cannot pre-empt the process of consultation and consideration which will lead to the publication of the vision for London as a 24-hour city during 2017. However, there are some clear themes that are already emerging:

Vision: The Mayor expects to publish a vision for the night time economy in the capital. It will help to ensure that the needs of tourists, visitors, workers and residents are met. It will also provide a positive landscape in which boroughs, businesses, the police and others can work together in partnership. Working hand-in-glove with the boroughs, the Mayor would also like to support the development of local visions and strategies for the night time economy. There are already great examples of local authorities taking a joined-up approach to place-making through their planning, licensing, regeneration and culture policies.

Standards and partnership working: There is general consensus in the industry and amongst regulators that blanket conditions, imposed without regard to the merits of individual cases, are inappropriate. However, there are some universal standards which can be followed by licensed premises so as to accord with good practice. These would include, for example, standards in relation to: police call-outs; incident recording; crime scene preservation; CCTV retention; queue management and dispersal; plus a commitment by businesses, councils and the police to joint

problem solving, action planning and, where necessary, mediation. Such standards could reduce the need for police intervention, reduce the number (and therefore cost) of licence reviews, and provide greater assurance to investors.

Personal responsibility: Most licensing harms, be they violence against the person or loud and disruptive behaviour, are committed by a very small minority of visitors to the night time economy, often safe in the knowledge that there will be no personal consequence for them. In order to protect residents, law abiding visitors to the night time economy and venues and their investors, the Mayor would like to explore programmes that promote greater personal responsibility. It is important to focus enforcement action on those whose personal actions threaten the night time economy.

The Licensing Act 2003

- The Licensing Act 2003 passed the responsibility for licensing of the retail sale of alcohol from the magistrates' courts to local authorities, which already exercised functions in relation to the licensing of public entertainment.

This move was positive for a number of reasons:

- local authorities already exercised functions in all the fields relevant to the cultural and leisure economies, including planning, health and safety, environmental health, child protection and trading standards. It is logical that they should also have responsibility for licensing, which is the administrative place where all these functions meet
 - local authorities are experienced in producing policies to guide the exercise of their functions in a transparent, consistent and strategic manner. They also ensure that all relevant stakeholders have a voice in the development of these policies
 - local authorities are democratically accountable for their licensing policies and decision-making
 - the local government process for decision-making is more apt to the kind of consensual discussion and problem solving inherent in the licensing process, rather than the adversarial nature of the court process.
- The Mayor therefore strongly supports the primacy of the boroughs' role as the policy-makers and decision-takers in relation to local licensing matters.

The strengths and weaknesses of the Licensing Act 2003

- In this section, brief consideration is given to the strengths of the Act, certain changes which have been considered by the Committee and also certain weaknesses either in the Act or its implementation.

Strengths

- In common with other recent licensing legislation such as the Gambling Act 2005, the Licensing Act 2003 took as its starting point that the licensable activities should be permitted, providing they uphold the four licensing objectives: the prevention of crime and disorder; public safety; the protection of children from harm; and the prevention of nuisance.
- The threshold for intervention was originally “necessity” but under the Police Reform and Social Responsibility Act 2011 it became “appropriateness”. This was intended to rebalance the legislation in favour of communities. In addition, the concept of proportionality – which is part of the accepted approach to better regulation – serves to ensure, to some extent at least, that disproportionate burdens are not placed on businesses. The Mayor strongly supports such an approach to licensing in the capital.

Proposed changes

- The Mayor is aware that there has been some discussion of the inclusion of health and/or cultural value as licensing objectives. The Mayor is mindful that an additional objective may in fact be counter-productive, not because those objectives are unimportant – quite the contrary – but because their inclusion as licensing objectives could be inapt.
- **Health:** while the health effects of alcohol are a matter of concern for society as whole, its incorporation as a licensing objective would give rise to practical difficulties in local decision-making. In what is a mature and highly evolved licensed economy, it would be extremely difficult to demonstrate that one further licensed premises, or the earlier or later opening of one venue, would have an identifiable, let alone measurable, effect on the health of the local population. The pursuit of important health objectives should therefore lie in other policy measures.
- **Cultural value:** the Mayor would support a system that allowed social and cultural benefit to be considered when councillors are making a licensing decision. However, the inclusion of such a licensing objective risks damaging the fundamental structure of the Act and causing practical difficulties in individual cases. In particular, the licensing objectives do not currently require an evaluation to be made of cultural value. A business is currently entitled to a licence providing it will not cause harm, regardless of its cultural value. If, however, cultural value is added as a licensing objective, the lack of cultural value may become a reason to refuse a licence.
- Furthermore, if there is a serious concern that a business is causing harm, it is hard to see how cultural value could provide a legitimate balancing factor. Therefore, while the Mayor strongly advocates the recognition of cultural value and a positive approach to place-making in the licensing system, including it as a licensing objective is unlikely to be the appropriate means of pursuing it. A proposed better way is set out below.

Planning and Licensing

- The Mayor is also conscious that there is some discussion about the overlap between planning and licensing, whether it is necessary to have two separate regimes, and even whether it would be preferable for licensing to be subsumed within planning. The Mayor is again mindful that such a step could have potentially negative consequences.
- It is accepted that planning is more concerned with the principle of land use and licensing with detailed regulation such as hours and trading conditions. Planning tends to be a once for all decision operating in perpetuity, whereas licensing is flexible and can adapt to changing circumstances in the locality or the premises. In particular, review powers can be used to vary conditions including by altering trading hours, or even to remove licensable activities or revoke the licence, according to requirements of the individual case and locality.
- The more fruitful and sustainable approach would be to realise the vision that National Guidance has often exhorted: for local authorities to ensure that their corporate policies, including planning, licensing, environmental health, regeneration and culture, are well integrated and that control is not duplicated. To date, the guidance has not explained how. The Mayor sets out how he believes this could be achieved below.
- More could be done to solve future problems at the planning stage and better join up planning, licensing and other local authority processes. By way of example, a residential development in central London has recently been carried out with limited sound proofing. At the same time a license has been granted for a new music venue next door. Had the licensing and environmental health teams commented fully on the residential planning application, they may have noted the potential for future noise complaints from the new residents and requested windows with a higher level of soundproofing.

Weaknesses

- **Vision:** The Act's greatest strength – that interference with licensing proposals is only for good regulatory reasons – is also its greatest weakness. It can mean that individual licensing authorities make their decisions without reference to a wider vision for the economic or cultural development of their areas.
- The Mayor strongly believes that each licensing authority should have a vision for their night time economy, including the four principal determinants of licensing decision-making: what kind of activity, in which locations, during what hours and subject to what conditions? It is at the policy level that the licensing authority is able to bring together its corporate strategies, e.g. in the realms of tourism, culture, equality and diversity, employment, spatial development and regeneration. So, for an example, an authority which particularly wishes to promote grassroots music venues might point to a particular area in which such venues will be encouraged to locate and will be likely to have applications for longer hours viewed sympathetically.
- The same approach is equally applicable to residential protection: the authority may wish to point to certain areas which are essentially residential where late night

entertainment uses will not be permitted, just as it may wish to point to areas where such uses will be welcomed provided they are subject to the requisite controls.

- Some authorities do in fact set out their vision in their licensing policies, but because they are not exhorted to do so by the Act itself many do not. This is a missed opportunity and may have the result of stifling good development of the market and loss of investment to other places. This gap in the Act was recognised at the time when it was passed and the government has since addressed it to some degree by the introduction of cumulative impact policies. These have had an important effect, both in London and nationally, in setting out what is not likely to be permitted. But it is far rarer for a policy to set out what is not only permitted but encouraged in a local area.
- Indeed, even in cumulative impact areas, there is nearly always scope for permitting certain uses which will not run contrary to the reasons for having the policy. So, for example, a policy might aim to limit high volume vertical drinking establishments, while positively encouraging grassroots music venues and food-led establishments. These gradations are not recognised sufficiently or at all in the Act and the national Guidance under section 182.
- In short, the Act is a strong, effective instrument for place-keeping. It is a relatively ineffective catalyst for place-making or place-shaping. There needs to be far greater exhortation towards this desirable end, if not in the Act itself then certainly in National Guidance.
- **Revocation.** The Committee will be aware of some high profile cases in which nationally or even internationally known venues have lost their licences. While the Mayor does not seek to criticise any licensing authority for exercising its powers, he does wish to make some observations about the legislative structures for revocation and the appeal process.
- First, the licensed sector is probably unique in UK economic life where incidents at the premises can lead to permanent closure. Save in the most exceptional cases, the Mayor believes that venues should only be closed where there is genuinely no alternative. In general, closure should be preceded by rigorous attempts to help the venue meet the relevant regulatory objectives through partnership working, action planning and mediation, and the management's demonstrable failure to improve its performance following such attempts. This approach should be captured either in legislation or in the Guidance regarding the exercise of discretion to revoke the licence.
- It goes without saying that the effect of revocation can be extremely serious. There is the obvious effect of loss of investment and jobs. If the premises falls in a cumulative impact area this is still more serious since a new licence may never be granted so the loss is permanent. If the venue is of cultural value, revocation depletes the cultural stock of the capital.

- 40% of London’s grassroots music venues and 50% of the UK’s night clubs have closed in the last eight years. This undermines the UK’s £4.1 billion music industry which relies on these seedbeds of new talent. It also risks London losing ground to pro-cultural cities such as Amsterdam and Berlin.
- Whilst a relatively small number of the closures are due to license revocation, a mushrooming of conditions on music venues’ licenses has had a significant effect on the commercial viability of many venues, resulting in a slow spiral of decline. We refer the Committee to the Greater London Authority’s ‘Rescue Plan for Grassroots Music Venues’ (October 2015) which sets out a compelling narrative as to the impact that licensing can have on the UK’s music industry.
- Finally, the ease with which long-term investments can be lost through revocation decisions – even following single incidents at premises – is a serious consideration. This is an important moment to bolster investor confidence, and when incentives to invest should be maximised and disincentives eschewed. A new nightclub might cost £5m to establish: but a wise investor may well be deterred by the thought that criminal incidents by third parties at the venue beyond his/her control may cause the loss of the entire sum.
- **Appeals.** Allied to the preceding point is that the Act sets out no timescales for appeal, no statutory procedures to follow and no rules about costs (save the general rule that costs are in the discretion of the magistrates’ court). The upshot of that in London is that appeals can take up to 9 months to get on and up to 10 days to decide, creating costs for appellants and authorities alike which are unsustainable. What should be a check and balance in the Act, available for applicants, licensees, residents or responsible authorities, has become the preserve of those with the resource to see it through.
- The Act and/or subordinate legislation ought to be amended/created to provide set timescales for appeal processes, and to provide procedures for their expeditious and economic disposal. This is particularly important when revocation decisions have been made. The position hitherto is that for summary reviews, where suspension has been imposed as an interim step, the premises have to remain closed pending appeal. The lapse of time before the appeal is apt to put the licensee wishing to challenge the decision out of business, rendering the appeal futile. In such cases, there ought to be an opportunity for a rapid re-appraisal of the decision at appellate level. This is not currently happening.

21 December 2016

Medway Public Health – written evidence (LIC0066)

The Medway overview

1. As of December 2015 Medway had 845 licensed premises, of which 277, or 32.8%, were primarily designated as off licences.
2. Several areas in Medway have a greater density of off licences than any other single type of premises. Two of our town centres have over 35 off licensed premises within a 1 km radius, the majority being small convenience stores, newsagents and corner shops. The highest concentrations of off licenced premises are in our most deprived areas, with one of the high streets between two deprived wards, having 17 within a few hundred yards.
3. Generally these premises stock substantial quantities of products termed as ‘super strength’ beer and ciders. Competition is fierce due to the density of these types of premises, with the result that prices are low. It is possible to buy a 3 litre bottle of 7.5% ABV cider for £3.50, which equates to just over 15p a unit. Legitimate prices for a 500ml can of 8% beer range from £1.45 to £1.79, or 36p to 44p a unit, although we are aware that a 500ml can of 9% ABV beer can be bought for as little as £1, or 22p a unit, which is below the statutory minimum price.
4. We know from interviewing the owners of these shops the sale of alcohol, and in particular super strength products, is vital to their business model, and it is not unknown for shops to close when they stop selling these products as they cannot make a profit without these sales. It is known from research³⁵⁶ that super strength products, especially white cider, are almost exclusively purchased and consumed by dependent drinkers. This is acknowledged by many of the shop owners, who identify their ‘regular’ customers as buying the same high strength products everyday. This can lead to alcohol harms, including crime, disorder, anti social behaviour and a multitude of health and social harms.
5. Following a 2014 study, we know there are approximately 88,000 people in Medway who engage in preloading, out of a population of just over 270,000. The study found there was a link between areas of high deprivation, the density of licence premises and alcohol related crime. In addition it also found the following:
 - 48% of Medway drinkers occasionally pre-load having a drink before they go out - often this would be just a single drink
 - 71,000 are occasional pre loaders
 - 89% of occasional pre loaders are over 25 years, with half of these being over 45 years
 - Slightly more women than men occasionally pre load
 - 39% of this cohort said they engaged in this behaviour to save money

³⁵⁶ Chick, J., Gill, J., Black, H., O'May, F. (2016) ‘Strong cider sold in Scotland appears to be almost exclusively for dependent drinkers’, *Clinical Medicine*, vol. 16, no. 4 pp 398. Available at <http://www.clinmed.rcpjournals.org/content/16/4/398.full> (Accessed 30th August 2016)

- A further 11% pre-load regularly and this can often turn into a binge drinking episode
 - 17, 000 are regular pre loaders
 - 2/3 of these are aged 25 – 44 years, with 1/3 of the group aged 18 – 24 years
 - Twice as many women than men regularly preload
 - 63% of the cohort questioned said they regularly pre loaded to save money
6. Ambulance call out data from the South East Coast Ambulance Service (between 2011 and 2015) where alcohol is considered to be a contributory factor shows the following:
- There were a total of 11,752 alcohol related ambulance call outs in this period
 - The areas of highest callouts correspond to areas of the same areas of high deprivation, density of licenced premises and high alcohol related crime that were identified in the 2014 study.
7. These areas of deprivation and high density of licence premises also correspond to the areas with the highest alcohol related hospital admissions, persons in alcohol treatment services and alcohol related mortality.
8. Alcohol related crime and disorder data from Kent Police shows that the same deprived areas have the highest rates of public order, anti social behaviour and domestic abuse. One of the most deprived areas has 25% of all Medway’s reported domestic abuse, 21% of day time public order incidents and 19% of incidents of anti social behaviour. These areas also have reported problems with street drinking.
9. Public Health believes the density of off licences, with ready access to cheap alcohol in our deprived areas contributes towards these figures.

Evidence in response to the following questions.

Are the existing four licensing objectives the right ones for licensing authorities to promote? Should the protection of health and wellbeing be an additional objective?

10. The Licensing Act is not able to adequately address the problems outlined in the Medway overview above. The proliferation of off licences, with the corresponding availability of cheap alcohol, is a public health concern. Research and evidence tells us that most drinking now takes place away from pubs and clubs³⁵⁷, so a licensing regime that focuses on pubs and bars will fail to address the major cause of alcohol related harm. This disconnect between the reality we see in Medway and policy, is demonstrated by the government’s ‘Modern Crime Prevention Strategy’³⁵⁸ issued in March 2016 which, while

³⁵⁷ University of Stirling/Alcohol Health Alliance/British Liver Trust (2013). Health First: An evidence-based alcohol strategy for the UK. Available at: <http://www.stir.ac.uk/media/schools/management/documents/Alcoholstrategy-updated.pdf> (Accessed 31st August 2016)

³⁵⁸ Modern Crime Prevention Strategy (2016) Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/509831/6.1770_Modern_Crime_Prevention_Strategy_final_WEB_version.pdf (Accessed 1st September 2016)

acknowledging the link between alcohol consumption and violent crime and other alcohol harms, concentrates on the control of the night time economy. The strategy states

‘Preventing alcohol-related crime and disorder requires concerted action by all with a stake in the successful operation of the evening and night time economy’

11. There is no reference to the crime linked to alcohol bought from the off trade and consumed away from licensed premises, which has evidenced links to domestic abuse, anti social behaviour, underage drinking and associated risky behaviour and all other alcohol related crimes which are not associated with the night time economy³⁵⁹.

12. Without the power to control the overall availability of alcohol in their area, licensing authorities are unable to effectively tackle the problems outlined in the overview above. The legislation does not allow Licensing Authorities to make strategic decisions about individual licensing applications across their area in view of the total availability of alcohol. Although cumulative impact is referred to in the statutory guidance, the concept is not enshrined in legislation, is a cumbersome process and does not cover the whole licensing authority area.

13. Currently the Director of Public Health is reliant on producing and using data which is not directly his, such as ambulance call out data, or evidence which is not health related, such as crime data, due to the exclusion of public health from the four licencing objectives. The inclusion of a ‘public health’ licensing objective would enable public health to engage more proactively in the licensing regime. In addition evidence is expected to be directly attributable to a premises, which excludes area wide and population data. The inclusion of this kind of evidence and the empowerment of Licensing Authorities to make decisions based on alcohol availability across the whole of their area would enable them to address alcohol related harms more proactively.

Given the increase in off-trade sales, including online sales, is there a case for reform of the licensing regime applying to the off-trade? How effectively does the regime control supermarkets and large retailers, under-age sales, and delivery services? Should the law be amended to allow licensing authorities more specific control over off-trade sales of “super-strength” alcohol?

14. The permissive regime brought in by the Licensing Act has allowed the off trade to expand to such a degree it is now almost necessary for every small grocery, newsagents or petrol station to have an alcohol licence, in addition to supermarkets and specialist off licences. Evidence tells us the increase in the availability of alcohol directly influences the amount of alcohol related harms³⁶⁰ and there are few effective ways of controlling off licensed premises. Most of the problems caused by the off sales of alcohol happen away from the licensed premises, such as domestic violence, anti social behaviour and public

³⁵⁹ [All-party parliamentary group on alcohol Misuse \(2014\). Manifesto 2015.](#) (Accessed 31st August 2016)

³⁶⁰ Livingston, M.(2013) To reduce alcohol-related harm we need to look beyond pubs and nightclubs. Drug and Alcohol Review, Vol. 32, no 2, pp 113 – 114. Available at: <http://onlinelibrary.wiley.com/doi/10.1111/dar.12026/abstract> (Accessed 1st September 2016)

nuisance. Unless there is direct evidence of sales to drunks or underage sales, which are difficult to prove due to the reduction in the enforcement capabilities of the police and council, these premises are largely able to sell their products with impunity, taking little or no responsibility for the harms the sale of their products cause in an area.

15. Leaving the regulation of numbers of licensed premises to a market based, business approach has allowed the expansion of premises with off licences which compete on price on those products which evidence tells us are used primarily by dependent drinkers, leading to products containing high alcohol units being available for low prices.

16. As detailed in the overview section above, the density of small shops in Medway selling alcohol in areas of deprivation is high. Alcohol has been turned into a normal 'grocery' item, with little or no distinction between selling beer or carrots. Alcohol can be displayed throughout a shop mixed in with other groceries. We have seen alcohol displayed with sweets, next to children's toys and alongside soft drinks in fridges, where it can be indistinguishable from non alcoholic products. It is stacked on shop floors, in pallets next to the entrance and exit and at the till points as people pay for their shopping. There is no distinction between the hours of sale of alcohol and any other product. In Medway alcohol from off licences can be bought 24 hours a day, 7 days a week, which only increases its availability. There are evidenced incidents of dependent drinkers queueing up and waiting for shops to open in order to buy alcohol from 0600 hours in the morning.

17. The ready availability of 'super strength' beer and ciders fuels dependent drinking in Medway and associated anti social behaviour, such as street drinking and litter. During licensing visits to small newsagents and grocery shops it is clear the sale of these types of products is prevalent throughout Medway. The availability is increased in the most deprived areas due to the density of the number of premises selling alcohol in these areas. From conversations with shop keepers it is apparent the products that appear to be most popular with customers are all over 7% ABV, with many 8% ABV or higher. Many shop keepers feel they have no choice but to stock super strength beers and ciders due to market forces, as so many of their competitors stock them and their businesses are so reliant on the profit from the sales. Many accept that they are selling to people who are alcohol dependant, but again feel they have no choice as their businesses depend so heavily on the sale of these products.

18. In those areas where the police and council have been able to either persuade shop keepers to stop selling these types of products or enforce a ban as a condition of the premises licence, the reduction in problems of public nuisance and anti social behaviour has been noticeable. As stated above there is evidence that white ciders are largely bought and consumed by dependant drinkers and we have anecdotal evidence from service providers in Medway that many of their clients, who are dependent drinkers and substance misusers consume these types of products as they are high in units and can be bought for low prices.

19. The licensing regime allows the Licensing Authority to stop individual premises selling these products on an application to review the premises licence there is no

opportunity to control the sale of these products in an effective and strategic way across the whole local authority area.

Should alcohol pricing and taxation be used as a form of control, and if so, how? Should the Government introduce minimum unit pricing in England? Does the evidence that MUP would be effective need to be “conclusive” before MUP could be introduced, or can the effect of MUP be gauged only after its introduction?

20. Being able to buy 3 litres of strong cider for £3.50, at 15p a unit, enables dependent drinking. Even when strong beer is sold at 45p a unit, this makes buying it affordable to dependent drinkers in Medway. At the very least the disparity of taxation between cider and beer should be addressed. The minimum unit price of ‘white cider’, such as Frosty Jacks (7.5%), Ace white (7.5%) and K Cider (8.4%) is such that these products enable dependent drinkers to continue their consumption. This is supported by treatment services and the voluntary organisations in Medway who deal with the street homeless and drinkers and see the effects of consuming these products at high risk levels has.

21. While the introduction of a MUP would raise the price of the cheapest alcohol, most drinks would remain unchanged and alcohol sold in pubs, bars and nightclubs would be largely unaffected. Evidence supports the effectiveness of increased prices to decrease consumption and the associated alcohol related harms³⁶¹. Another measure that could be considered is the banning of discounting for bulk buying of a product i.e. £1.25 a can, 4 for £4.00

1 September 2016

³⁶¹ NICE (2014) Alcohol-use disorders: preventing harmful drinking: Evidence Update March 2014. Available at <https://www.nice.org.uk/guidance/ph24> (Accessed 30th August 2016)

Middlesbrough Council – written evidence (LIC0073)

Response to consultation questions.

Licensing objectives

1. Are the existing four licensing objectives the right ones for licensing authorities to promote? Should the protection of health and wellbeing be an additional objective?

1.1 Yes we believe that an additional licensing objective of “health and wellbeing should be introduced. This will address the current anomaly whereby Public Health is a Responsible Authority yet does not have a specific health licensing objective on which it can object. It currently has to link health and wellbeing concerns to the current 4 licensing objectives. Alcohol has a huge impact upon health as the health data ranging from alcohol related hospital admissions, ambulance data and treatment and recovery services data etc, demonstrates, and the licensing objectives should reflect that.

2. Should the policies of licensing authorities do more to facilitate the enjoyment by the public of all licensable activities? Should access to and enjoyment of licensable activities by the public, including community activities, be an additional licensing objective? Should there be any other additional objectives?

2.1 No we do not agree that access to and enjoyment of licensable activities should be an additional licensing objective. A premise can apply to hold any event as demonstrated by the wide range of licensed activities that have been received by this council ranging from music festivals, to large and small community events. The only limit to their activities is that they operate responsibly. We therefore believe that the present system provides sufficient scope for public and community enjoyment and access.

The balance between rights and responsibilities

3. Has the Live Music Act 2012 done enough to relax the provisions of the Licensing Act 2003 where they imposed unnecessarily strict requirements? Are the introductions of late night levies and Early Morning Restriction Orders effective, and if not, what alternatives are there? Does the Licensing Act now achieve the right balance between the rights of those who wish to sell alcohol and provide entertainment and the rights of those who wish to object?

3.1 We believe that the provisions of the licensing Act have been relaxed enough. Any further relaxation of the provisions could result in public nuisance. If restrictions on the performance of entertainment are not imposed this could result in a negative impact on the community with a loss of enjoyment in their environment. It could also lead to “Rave “events which are commonly associated with drugs and anti social behaviour. Cleveland Police have local evidence of such events prior to the introduction of the current restrictions.

3.2 EMRO's have been found to be difficult to implement and have also been subject to strong industry opposition and legal challenge as demonstrated by the situation in Blackpool and Hartlepool local authority areas. There are also concerns that they can brand a town centre as high risk. Their ineffectiveness is further evidenced by the fact that, to the best of our knowledge, none/very few have been implemented in the UK.

3.3 The Late night levy has proved difficult to implement by local Authorities. Middlesbrough Council considered the introduction but dismissed it as not being a suitable process for the small number of licensed premises and our authority area. The issue is that the levy has to be applied to the whole licensed area rather than a smaller specific geographical area, such as a town centre. It would seem disproportionate for a licensed premise located outside of the town centre in an area with low or little crime or anti-social behaviour problems to have to pay towards the crime and disorder problems mainly caused by the Night Time economy in the Town centre or a hotspot area.

3.4 In addition, it does not seem equitable that hotels are exempt from the late night levy. Some of these are positioned in the hotspot areas and also actively contribute to night time economy issues. Their exemption from the late night levy may be considered as providing them with an unfair competitive trading advantage over other types of business.

3.5 The late night levy currently applies to premises which only open after 3a.m. We would like to see a review of this deadline so that the levy is imposed on a sliding scale commencing from midnight, premises would contribute more for each additional hour that they open after midnight. It is our views that premises open after midnight contribute to crime and disorder. This sliding scale would prevent the premises which contribute to night-time ASB and crime problems closing 5 minutes before the 3.a.m deadline to avoid the levy.

3.6 We would request that EMRO's and the Late night Levy are reviewed to make them a more flexible, cost effective and enforceable solution to night time economy issues, so that they can be implemented and targeted more effectively to reflect the needs of Local Authorities, the Police, hospital and medical services and local communities .

4. Do all the responsible authorities (such as Planning, and Health & Safety), who all have other regulatory powers, engage effectively in the licensing regime, and if not, what could be done? Do other stakeholders, including local communities, engage effectively in the licensing regime, and if not, what could be done?

4.1 In Middlesbrough we have regular involvement by the Responsible Authorities and local communities in the licensing process. The Police, Trading Standards and Public Health have been the most active Responsible Authorities. Planning and the Fire Brigade use their own legislation to resolve issues at premises rather than the licensing process. Safeguarding and Environmental health have been involved in the process at some point. Capacity in staffing resources to consider the number of applications/variation remains an issue.

4.2 To facilitate active participation monthly meetings are held with all Responsible Authorities. A representative from the Regeneration Team also attends to discuss

developments, new and potential applications for the RA's to provide views and raise any early concerns. The meeting is a very useful forum for discussing broader licensing and policy issues and other related matters such as new legislation, sharing best practice, supporting each other as responsible authorities and acting as a consultation group.

4.3 To encourage participation by local communities in the licensing process, training has been given to all councillors. All Community Councils and Ward councillors are informed of all licensing applications received. Representations have been received from Ward Councillors, Community Councils and residents groups. In the main, community councils have seemed to prefer to direct their representations through their ward councillor.

Licensing and local strategy

5. Licensing is only one part of the strategy that local government has to shape its communities. The Government states that the Act “is being used effectively in conjunction with other interventions as part of a coherent national and local strategy.” Do you agree?

5.1 The licensing regime is used as effectively as possible in Middlesbrough within the current constraints of the existing legislation. There is a conflict between the flexibility of the licensing regime and other wider matters which are affected by alcohol consumption eg high alcohol related mortality and crime and disorder. Public health concerns in relation to alcohol consumption frequently conflict with the presumption of approval for a licensing application. Public health holds strong evidence which is used to good effect in Middlesbrough to control and influence the licensing process, but without a specific public health objective it is sometimes restricted and challenged on its relevance. Alcohol related health harms can and are linked to crime and disorder, public safety and protection from children from harm. However, this is mostly carried out in conjunction with other responsible authorities, most commonly the Police and Trading Standards. It would be beneficial for protecting public health to be an objective in it's own right to truly, for the legislation to allow local policies on how this objective should be used, reflect the local impacts of alcohol on health.

5.2 There is often confusion and conflict between economic development and Licensing, particularly in relation to operating hours. This is often confusing to applicants. Planning laws and strategies need to be aligned more with licensing matters.

5.3 We would also suggest that a national register of personal license holders be set up to assist agencies. This would enable employment history in licensed premises throughout the country to be checked. This would prevent people merely moving area to avoid detection and ensure that only responsible persons are involved in licensed premises.

6. Should licensing policy and planning policy be integrated more closely to shape local areas and address the proliferation of licensed premises? How could it be done?

6.1 Yes licensing and planning policy should be integrated more closely to shape local areas. Aligning policies may not in themselves address the proliferation of licensed premises or address problems in certain locations. The Authority should have the facility to address

cumulative impact as part of the normal application process. Middlesbrough Council has two Cumulative Impact Policies, covering on licences in a designated town centre area and off licences in 5 wards. There is strong multi agency evidence to support these CIP's but it is subject to legal challenge. It is suggested that Local Authorities should be able to automatically consider cumulative impact as part of the licensing process, to implement and enforce such policies in an easier manner. There should not be an automatic presumption of grant within the legislation as it currently stands, as this creates conflict with a range of wider, local issues.

6.2 It would be helpful for the prevention of crime and disorder if the licensing legislation would allow for more prescriptive zoning of closing times in certain geographical areas, rather than for each premise to be judged entirely on its own merits.

Crime, disorder and public safety

7. Are the subsequent amendments made by policing legislation achieving their objects? Do they give the police the powers they need to prevent crime and disorder and promote the licensing objectives generally? Are police adequately trained to use their powers effectively and appropriately?

7.1 No the amendments to powers are not achieving their objects. See comments re EMRO's and Late nights levy's .We would request that section 19 closure notices be extended to apply to off licences and takeaways. The rules on expediated reviews to be more flexible so that they could be used for off licences which have been involved in other criminal activity such as the supply of illicit or counterfeit tobacco, alcohol or other goods. The supply of such goods is recognised as usually being linked to other crimes and/or organised crime groups.

7.2 Excluding the above suggested amendments, it is our understanding from discussions with local Police that they have sufficient powers to prevent crime and disorder and promote the licensing objectives.

7.3 It is our opinion that the police in the Licensing Unit are well trained in relation to the powers available to them. However, officers in the general ranks would benefit from greater licensing knowledge. The training given on licensing is a national certificate, it does not form part of general police training which we contend it should. The implementation of such training would improve the effectiveness of the police in tackling alcohol related crime and disorder.

7.4 We propose that other agencies responsible for enforcing offences under the licensing Act such as Trading Standards and Licensing be given powers under the Act to enforce that legislation effectively, such as the seizure of goods/documents required as evidence.

8. Should sales of alcohol airside at international airports continue to be exempt from the application of the Act? Should sales on other forms of transport continue to be exempt?

8.1 No, sales at airports and other forms of transport should be subject to the same rules as any other licensed premise to ensure that they trade responsibly. Irresponsible sales could have a dramatic impact particularly on crime and disorder and public safety at such locations in addition to their general impact on public nuisance, protection from children from harm and public health. Recent incidents on planes have highlighted how drunken people have put public safety of passengers at major risk on flights. At a more local level, the consumption of alcohol on trains has exacerbated the crime and disorder on transport routes to and within certain popular locations eg York. Currently, the Police resolve the situation through voluntary agreements with the transport operators, but this is an unacceptable approach. Removing the exemption and requiring operators to comply with the licensing objectives would ensure that there are agreed procedures and protocols to manage such situations.

Licensing procedure

9. The Act was intended to simplify licensing procedure; instead it has become increasingly complex. What could be done to simplify the procedure?

9.1 We do not agree that the system has become over complicated. We believe that the process is simple enough. It is now much easier for a licensee to transfer a licence, without the need to go to court. The current framework gives the power to make decisions to locally elected accountable people who have a detailed knowledge of the geographical area and its problems. The process is more transparent and efficient than the previous regime and Responsible Authorities are much more involved. It also allows for Community involvement.

9.2 We would recommend however that Temporary event notices (TENS) should be open to all Responsible Authorities to make an objection, not just the Police and Environmental Health. We would also suggest that the applications for such events be restricted to specific identifiable events such as a named music festival over 1 or 3 days not just for the general sale of alcohol over a period of weeks. We have recently seen a trend for unlicensed retail premises or other types of premises to apply for a TENS, which is of concern. These applications may have been subject to objections from other RA's should they have applied for a licence. Indeed one such premises applied for a number of TENS but its application for a premises licence was rejected following representations.

10. What could be done to improve the appeal procedure, including listing and costs? Should appeal decisions be reported to promote consistency? Is there a case for a further appeal to the Crown Court? Is there a role for formal mediation in the appeal process?

10.1 The current appeal system is open to abuse and renders the whole licensing control process ineffective. Currently, there are long time periods between the licensees having their licence revoked to the time of the appeal. This is due to numerous factors such as difficulties in getting court dates, to frequent and unnecessary delaying tactics. During this time the business is able to continue selling alcohol. In a recent case it took 9 months from the time of the revocation at licensing committee to the court hearing of the appeal at which the decision to revoke was upheld. Such long delays can result in the evidence used

for the revocation becoming out of date. Businesses also use this period to demonstrate how well their business is operating to support their appeal. We believe that the revocation at licensing committee should either become immediately effective until the appeal is heard, or that a 28 day period or other time limit is introduced for the appeal to be heard. It would also prevent continuing harm on communities.

10.2 We do not agree that there should be a further appeal to the crown court or for mediation. We are of the opinion that the appeal process and consistency would be improved if appeals could only be heard by magistrates who had received specific detailed training in licensing law.

10.3 The better reporting of appeal decisions would also be beneficial, and this could be aided by updating the Section 182 Guidance with case law developments so that it adequately reflects the practical application of the Act.

Sale of alcohol for consumption at home (the off-trade)

11. Given the increase in off-trade sales, including online sales, is there a case for reform of the licensing regime applying to the off-trade? How effectively does the regime control supermarkets and large retailers, under-age sales, and delivery services? Should the law be amended to allow licensing authorities more specific control over off-trade sales of “super-strength” alcohol?

11.1 The context in which alcohol is consumed has changed significantly over recent years, as has its availability. Whereas in the past alcohol sales were confined to off licences, pub and clubs, today alcohol is available 24/7, 365 days a year from everywhere ranging from your local general shop to petrol stations and via delivery services straight to your door. At the same time alcohol has become more affordable. This has contributed to an increase in alcohol related harms across Middlesbrough, which suffers from some of the highest rates of alcohol related hospital admissions, particularly for under 18's and mortality figures

11.2 The number of off licences in Middlesbrough has increased by 47 premises since the introduction of the Licensing Act.(50 % increase) Premises often sell alcohol as an ancillary product, outside of their normal retail offer eg Post Offices, garages. This has led to an increasingly competitive market for the sale of alcohol, with alcohol frequently sold at low prices. The ready availability of low cost and increasingly high strength alcohol proves particularly attractive to young people and dependent drinkers. The off trade now plays a large part in the night time economy. It is normal behaviour for some people to consume alcohol (“preload”, “prinks”) at home before they go out.

11.3 We would support a ban on multi buys, the introduction of minimum unit pricing and the restriction of off trade hours, as proposed in Scotland. We also think Super Strength/high strength alcohol should be able to be banned in areas where there is evidence of alcohol related health harms and alcohol related crime and disorder.

11.4 Our experience over recent years has been that Alcohol home delivery services need to be heavily regulated to prevent potential abuse, particularly in relation to underage sales. Complaints and test purchasing highlighted various deficiencies with trading practices in this trade sector. In this authority we have ensured compliance through the imposing of specific conditions covering the entire sale process from initial order over the telephone to the actual delivery. We would consider these essential to prevent future problems. It is our experience that home delivery services in Middlesbrough do not sell the cheapest alcohol, however this does not remove the overall risk related to their type of business and access to alcohol.

Pricing

12. Should alcohol pricing and taxation be used as a form of control, and if so, how? Should the Government introduce minimum unit pricing in England? Does the evidence that MUP would be effective need to be “conclusive” before MUP could be introduced, or can the effect of MUP be gauged only after its introduction?

12.1 We believe that there is no single solution to tackling alcohol related harm. A package of measures is needed to limit the affordability, availability and promotion of alcohol. There is a large body of evidence which demonstrates that price and affordability of alcohol is the key factor for consumption. We would therefore support the introduction of Minimum Unit Pricing (MUP) as our experience and evidence tells us that getting rid of the cheapest, strongest alcohol would have the most impact on health as it is typically consumed by young people and dependent drinkers. In addition we consider that MUP is far easier to understand than the current below cost condition for both the public, traders and enforcers. The provisions would also be easier to enforce.

12.2 Minimum unit pricing is already working in several countries, including Canada. The figures from British Columbia, plus research commissioned by the UK Government, would seem sufficiently strong to justify the introduction of MUP however it's effect will only be able to be fully gauged after it's introduction.

Fees and costs associated with the Licensing Act 2003

13. Do licence fees need to be set at national level? Should London, and the other major cities to which the Government proposes to devolve greater powers, have the power to set their own licence fees?

13.1 We are of the opinion that fees should be set at a national level however we would like to see a sliding scale of fees levy operated for each hour that a premise is open after midnight.

International comparisons

14. Is there a correlation between the strictness of the regulatory regime in other countries and the level of alcohol abuse? Are there aspects of the licensing laws of other

countries, and other UK jurisdictions, that might usefully be considered for England and Wales?

14.1 The presumption to grant, inherent in the current licensing process, restricts and prevents local authorities and Responsible Authorities from controlling when and where alcohol can be sold at a local level.

14.2 We are of the opinion that some of the policies proposed by Scotland namely; a health and wellbeing objective, Minimum unit pricing, greater restrictions on the off trade etc would be beneficial and should therefore be considered for introduction in England and Wales.

14.3 Risk based licensing used in various forms in Canada, Australia and New Zealand, which links licensing fees and regulatory strength to the type of premises and operating schedule may also be a useful approach for consideration. There are policies adopted in some states of Australia which link hours of operation to the fee level, charging incremental amounts for each hour that a venue opens after midnight .We consider that this would be very beneficial and ensure that those premises with the longest opening hours ,at the time which is most associated with crime & disorder , should bear the brunt of the cost of managing the outcomes of their business operation.

1 September 2016

Mill Hill Park Residents' Association – written evidence (LIC0080)

Who are we?

A residents' association based in Acton, London. We review all new licence applications in the Acton area and have submitted 67 representations since 2010.

Cumulative Impact in Acton

Acton town centre was identified as an area subject to cumulative impact and the Council's Licensing Policy was amended in January 2010 to include Acton town centre as a cumulative impact area known locally as Acton Special Policy Area (SPA).

- The number of offences, environmental crime reports, anti-social behaviour (ASB) complaints and London Ambulance Service (LAS) alcohol related incidents are far higher than the borough wide averages.
- The Acton SPA has 66.4 off-licences per km², over eight times the borough wide average of 7.9 per km². The Acton SPA contains eight of the twelve known problematic street drinking locations in Acton and is a borough street drinking hotspot.
- Violence Against the Person was the most common offence with 32.5% involving alcohol.
- 7% of all alcohol related LAS incidents that occurred in Ealing between 7pm and 7am took place within the Acton SPA (300 incidents per km² in comparison to the borough wide figure of 27).

Licensing objectives

1. The four licensing objectives should be retained. We would like to see a greater focus on quality of life issues and local amenity for residents. Anti-social behaviour, noise and litter are day to day issues for residents. ASB and noise are underreported plus it is often difficult for residents to determine which premises are the source of ASB and/or noise. There is no method for accessing the quantity of alcohol related litter in an area. As residents, we are not recognised as official evidence gatherers, which gives us less power at licensing hearings.
2. The predominance of off-licences in an area impacts the local amenity by stifling the offering on the High Street and exacerbating issues with street drinking and pre-loading (drinking before going out to pubs and clubs).
3. Alcohol is often a factor in violent crime, both in public and in the home. Street drinking and pre-loading are both issues in Acton so we support the addition of an objective to cover health and wellbeing issues.

The balance between rights and responsibilities

4. We are fortunate to have a proactive Police Licensing Team covering Ealing Borough. It has been our experience that the police are involved in all new applications and reviews. It is rare that evidence is put forward by the council's Licensing Team, Noise Pollution or Trading Standards. Given that these teams undertake enforcement work, we would welcome their involvement on a consistent basis.

5. MHPRA works closely with another community group in Acton, Churchfield Community Association, to monitor applications in our area. Looking at the list of licensing applications across the borough, it is clear that some areas have a disproportionately high number of applications, with very late hours which will have a negative impact on the residents of that area. There appears to be little or no involvement from local residents from these areas and more could and should be done to raise awareness amongst residents. Awareness sessions to empower local residents should be publicly funded.

6. On a few occasions we have had applications for new premises, where the alcohol hours are discussed at the hearing but there is no control over the opening and closing hours of the premises as this is covered by planning legislation. The Licensing Authority should have the power to set the opening and closing hours of the premises in addition to the hours for licensable activities. Having an off-licence open after alcohol hours in certain areas often generates incidents involving violence and this power would prevent such issues arising.

Licensing and local strategy

7. We recognise that well managed premises can make a great contribution to a local area. Conversely, poorly run premises can result in long lasting damage to an area. Regenerating a local area is a slow process and the Act should permit more powers to speed up this process or make it easier for the police and regulatory authorities to gather evidence.

8. In cumulative impact areas, there is currently a two pronged approach to reducing crime and disorder and/or public disorder:

- For all new applications, ensure core hours and request conditions to promote the licensing objectives;
- Enforcement work undertaken by the police to review poorly run premises.

9. So effectively, the majority of premises within a cumulative impact area who have had a licence for some time, will continue to operate unless a review is triggered. Gathering evidence for a review is a lengthy and costly process. A lot of lower level poor behaviour continues unchallenged which cumulatively has an impact on the area and local residents.

10. The Act should give powers to licensing authorities to set mandatory conditions to halt increases in crime and disorder in cumulative impact areas or areas with emerging

problems. This reduces the burden of proof on the police. It will have an impact on the majority of premises instead of the minority and will result in bigger and quicker reductions in crime levels.

11. As mentioned in 'Licensing objectives', local amenity value is set by a good breadth of licensed premises and not an overabundance of one type of premises, particularly off-licences. Licensing authorities should take the local area into consideration at licensing hearings, paying particular attention to off-trade.

Licensing procedure

Appeals

12. In December 2015 a premises in Acton had their licence revoked. They appealed and continued to trade until the date of the hearing in June 2016 when they withdrew their application. The premises traded for six months and the owners benefited from the proceeds of sales during this time. The decision made by the Licensing Authority should be upheld until the appeal hearing.

13. Alternatively there should be a financial penalty for the appellant that uses the tactic of appealing and then withdrawing before the hearing. The penalty should be tied to the amount of profit made by the premises or the appeal process will continue to be misused in this way. The premises in Acton had serious issues with crime and disorder and public safety and abusing the appeal system in this way, undermines the licensing objectives.

Temporary event notices

14. TENs are often poorly managed and can result in issues with ASB, noise and litter. Local residents should be given the opportunity to submit representations for TENs and request conditions to address noise etc.

15. TENs should not be permitted in cumulative impact areas due to the high levels of crime and disorder and public nuisance already present in these areas.

Issuing licences

16. When a premises closes, the licence should expire. The management standard of premises is critical to the promotion of the licensing objectives. By removing the transfer of licences, the Licensing Authority would be in a better position to ensure the licensing objectives are maintained by the new owners when they apply for a licence.

17. To avoid confusion and conflicts with conditions, premises should only be permitted to have one licence. If an applicant applies for another licence, the previous licence should automatically be surrendered.

Cumulative impact areas

18. More should be done to recognise emerging problem areas so that preventative work can begin. The creation of cumulative impact areas is a reactive approach which occurs after a considerable amount of damage has been done to an area. The process to reverse the increase in crime and disorder is slow and places a lot of burden on the police's time to gather evidence.

19. More powers should be given within the Act to tackle emerging problem areas or areas with a high saturation of one type of premises, such as off-licences. In these areas, the Licensing Authority should be given powers to implement mandatory conditions for all premises in that area.

20. Licence fees in cumulative impact areas should be higher and the additional income used for increased enforcement by police and regulatory services.

Language barriers

21. Measures should be put in place to ensure that licence holders have a reasonable command of English and any licensing training should be carried out in English.

Sale of alcohol for consumption at home (the off-trade)

22. Licensing authorities should be given more control over off-trade sales of super strength alcohol, miniatures and quarter bottles of spirits in cumulative impact areas or areas with street drinking issues.

2 September 2016

James Mooney – written evidence (LIC0008)

Submission based on the 14 questions asked

Licensing objectives

1. The existing licensing conditions are sufficient. To add 'health' will to a certain extent duplicate existing conditions. At this time, there is guidance in the act with regards to drinks promotions, vertical drinking establishments and special policies concerning high concentration of licensed premises. Whilst these matters (and others) could do with some clarity, they do address the potential for a health licensing objective

2. The Licensing Act is a consensual approach towards the licensing regime, whilst it has proven very difficult to develop a 'café culture' due to the embedded culture of the UK, there is a need to be a lot more open minded to the needs of the communities balancing it with the needs of those who's lives maybe effected by licensed premises. No need for a further objective

Balance between rights/responsibilities

3. Very similar to 2 above. The 'Live Music' act has helped to reduce the burden. I do not support Late Night Levy (LNL) or Early Morning Restriction Orders (EMRO). LNL are about generating money to pay for services - in particular policing. All pay taxes and many pay fees. There are sufficient processes in place to deal with 'problem premises' (engagement, intervention, enforcement, reviews) without the need to burden those locations who provide a service to the public and do not cause problems. EMRO are unnecessary and not required.

4. Significant failure by other authorities to engage with those who are pro active in the licensing process (police, trading standards, licensing authority and to a lesser extent Environmental Health)

The other named authorities tend to concentrate on their statutory powers and additional legislation to address licensing matters without considering the requirements within the licensing act and its guidance

How to address this - education which would remove the blinkered approach

Licensing/local strategy

5. Agree

6. Agree - joined up approach to address planning applications based on local needs. Ensure that such matters are subject to statutory consultation with responsible authorities and interested parties

Crime, disorder etc

7. Agree that current procedures within the act are sufficient, alongside the introduction of the 2014 'ASB' act . Police as a matter of course do not receive sufficient training - usually undertaken through IT distance learning without a quality assurance knowledge test. Whilst a lot of police forces have appointed licensing officers, a number have merged the role with others tasks, therefore diluting their ability to address licensing matters. Additionally some forces have deleted the post and given it to unskilled staff alongside their other roles. Licensing is a skilled role and should be maintained and developed as such, developing the role and giving them additional role responsibilities (gaming, betting, taxi licensing, scrap metal licensing and partnership initiatives) it will reduce demand on other policing posts

8. Airports. No - they need to be licensed through the same tried and tested procedures that are in place for all other licensed premises

Licensing procedure

9. To me the procedure is simple enough, but there is a need to reduce the periods required for consultation to allow businesses to develop

10. Appeals - the police do not appeal very many matters - statistical proven. Where appeals are against the decision of the authority, the police rarely get involved - perhaps they should. Time limits for appeals should be adhered to with a legal requirement for mediation - however who would facilitate this and who would pay

Off sales

11. The main problem is with supermarkets. Licensing fees should be based on overall floor space of the licensed premises - the larger the premises the more they pay. However this could result in some premises changing their licensed premises plan - to address this alcohol displays should only be allowed within the specific area covered by the license plan. Some supermarkets have a bullying approach towards licensing authorities and will use their paying power to challenge decisions - therefore cap of costs and times for applications and appeals should be in place

Super strength - I agree there is a need to put something in place. Too often the approach is reactive to a problem, which is very time consuming and costly

Pricing

12. No view

Fees

13. Should always be set nationally within a set parameter, with guidance that the upper level has to be justified due to locality requirements

International comparisons

14. No view

James Mooney – written evidence (LIC0008)

5 August 2016

Ian Mowbray – written evidence (LIC0006)

When the proposed legislation was first mooted, during the Labour Government, by the then Home Secretary, to replace the Licensing Act 1964 and other legislation. Noting that the intention of the new legislation would transfer the responsibility for such, from the law courts, to the local government authorities. It attracted my interest, having dealt with issues under the old laws in my previous occupation.

I composed and forwarded a written composition to the appropriate address and I was pleased to have received a very kind letter of thanks from a lady government minister. That written submission was, apparently, placed on a Government website.

What the Licensing Act 2003 offered was the opportunity, for any interested person to submit a written representation to the Licensing Department of the local authority; and if required to attend to make a verbal representation at a convened Licensing Panel, if living within a reasonable distance of a public house and that the company owners of the public house, were making an application for a Premises Licence at those premises.

Under the new Act, the Licensing Panels were able to require certain conditions be met under an Operating Schedule, having taken into consideration of all the representations made. All the conditions had to be complied with and failure to do so would mean a criminal offence had been committed and liable to a substantial fine and/or imprisonment.

The company owning the public house would lease out the public house at quite a substantial rent per year and the lessee would become the Designated Premises Supervisor.

The Licensing Panel would Grant a Premises Licence with the conditions that would be tailored made for the public house, to ensure that one or more of the Licensing Objectives were met. Most, if not all, of the licences granted would ensure, that noise from any recorded music, live music or dance, was kept to a minimum. Therefore, all such entertainment would take place indoors only. If any such entertainment was sought to take place outdoors, a Temporary Event Notice had to be obtained from the Police and others.

Most public houses in the Northwest areas are of some age and are in built up areas of the towns or cities. Some may have beer gardens in the less urbanised areas, which have come designated areas for the consumption of alcohol only.

My great concern, is how the Government of the day, are able to undermine the statutory authority of the Licensing Panels of what had been decided for the conduct of those public houses, by introducing amendments to the Act.

The contentious amendment is The Live Music Act 2012, which deregulated live amplified music in alcohol licensed premises and work places between 8am and 11pm provided that the audience size of 200 was not exceeded. This was further altered following Parliamentary approval of the Legislative Reform (Entertainment Licensing) Order 2014 as from the 6th April 2015.

Ian Mowbray – written evidence (LIC0006)

I subsequently queried this legislation with Mr Chris Hambly, the Senior Licensing Officer of the Licensing Department, Fylde Borough Council, The Town Hall, St. Annes.

Apparently, that amendment(s) to the Licensing Act 2003, means that any public house, with a beer garden, or converted back yard of some size, can hold an amplified music entertainment outside until 11pm at night, namely a "disco". Discos are a noisy event and if taking place, with residential properties in close proximity to the public house. There is no "Prevention" of a public nuisance in that situation. No Temporary Event Notice is required, no requirement to notify the Police or a Environmental Protection Team.

All the conditions attached to the Premises Licence can be over-ruled.

Surely, this additional legislation, as amendments to the Licensing Act 2003, should be severely questioned as to its purpose, that it is the benefit of the pub companies and not to the benefit or consideration of local residents.

11 July 2016

Music Venue Trust – written evidence (LIC0058)

About Music Venue Trust

The Music Venue Trust is a registered charity which seeks to protect, secure and improve the UK's grassroots music venues. It was created in January 2014 to protect the UK live music network. Its immediate focus is on securing the long term future of the iconic venues which make up the UK's grassroots touring circuit, iconic venues like Southampton Joiners, Tunbridge Wells Forum, the 100 Club, Exeter Cavern, Hull Adelphi, Manchester Band on the Wall etc. These venues have played a crucial role in the development of British music over the last 40 years, nurturing local talent, providing a platform for artists to build their careers and develop their music and their performance skills. In the last 10 years, the UK has lost more than 35% of these venues. Music Venue Trust has created a clear 5-year plan to ensure those venues continue to play their vital role in supporting the British music success story.

Grassroots Music Venues (GMVs) – Overview

The grassroots sector:

- Consists of circa 400 venues spread throughout the UK
- Average capacity 316
- Total capacity 126,400 per night
- Delivers 1556 shows per week, 80,912 shows per annum
- 4,668 performance opportunities per week
- 242,736 performance opportunities per annum
- 249,667 people attend every week
- 12,982,667 people attend per annum
- Generate £130million in ticket sales per annum
- Spends £168million per year on artists and production

Venues in this sector across Europe spend 129% of raised ticket money on artists and production (*Live Komm study, October 2015*). Within this sector, the presentation of new and emerging artists is an inherently loss making activity. The continuation of such opportunities is of vital importance to the continued health of the UK music industry (<http://www.ukmusic.org/news/uk-music-partners-with-venues-day-2015> , <https://www.bpi.co.uk/home/geoff-taylors-speech-at-the-music-futures-conference-2015.aspx>)

Sustainability – Financial and Cultural Circumstance of GMVs

Music Venue Trust – written evidence (LIC0058)

To address the economic sustainability of GMVs, all EU nations except the UK and Spain provide a mechanism of grant funding to support this sector (*Live DMA Annual report, 2015*), averaging a 42% subsidy, as high as 60% in France resulting from a 3.5% levy on live music tickets administered by CNV

(http://www.snac.fr/pdf/coalition_brochure_english.pdf).

In Spain, profit margins and brand sponsors are used to bridge this gap. In the UK, the sustainability of grassroots music venues (GMVs) is intrinsically financially dependent upon the sale of alcohol and other subsidiary trade (catering, merchandise). This is despite evidence that live music events typically attract a significantly lower spend per head on alcohol than average licensed premises – an average of £6.27 per head (*London's Grassroots Music Venues: Rescue Plan, October 2015*) compared to a national average of £15.30 (<http://www.morningadvertiser.co.uk/Operators/Other-operators/Pub-visits-fall-but-customer-spend-per-visit-on-the-rise>).

Music Venue Trust has engaged with the cultural sector (Arts Council England, PRS Foundation, Help Musicians UK etc) to identify ways of bringing some subsidy to this sector. MVT has engaged directly with government to establish the case to reduce core or external costs, such as a successful campaign with UK Music and Musicians Union to remove permitted development rights from spaces near to music venues (thereby reducing legal costs when this occurs). The music industry is discussing how to tackle economic challenges by restructuring the delivery of live music so that core costs are reduced.

There are significant measures that can be taken to improve the sustainability and economic circumstances around GMVs. Whilst those steps are taken, GMVs remain entirely at the mercy of the licensing system for their sustainability; their core aim of providing cultural activity is financially undeliverable unless a premises licence exists.

Statement to the House of Lords – Select Committee on the Licensing Act 2003

The Live Music Act 2012 and the subsequent Legislative Reform (Entertainment Licensing) Order 2014 was intended to address licensing for live music. In practice, we have seen evidence amongst GMVs that most conditions relating to live music have now been transferred to other parts of a premises licence by the local authority. These include conditions such as noise control, hours of live music, security, capacity, entry conditions (specifically ages). This goes against the deregulatory spirit of the recent reforms and in some cases may be against the law. The limited financial resources of GMVs are such that this conditions can go unchallenged.

This has placed GMVs in an invidious position: Previous to the Act, breach of a term of your entertainment licence might have led to the loss or suspension of that licence, resulting in a period in which the business owner would be unable to present live music. Post the Act, and the way that it has been interpreted at some local levels, breach of a live music condition threatens your entire business; the sanction available to local authorities is to suspend the premises licence, thereby ending the business.

As a result, venues that find themselves in receipt of a letter alleging a breach of a live music condition on their premises licence faces a stark choice; address the allegations within that letter whilst continuing to present live music and place at risk the entire business, or suspend live music and continue to trade. Understandably, this is a risk that many venues have been unable to take.

The intent and purpose of the Live Music Act is clear; that presentation of live music in less than 500 capacity situations does not and should not require a licence. To fulfil the intent of the Act, we therefore recommend:

- 1. That action should be taken to enforce the intent of the Live Music Act and remove live music conditions from premises licences of venues with less than 500 capacity.**
- 2. That this action should include a nationwide review of premises licences for grassroots music venues of less than 500 capacity to ensure that local authorities act upon the**

Are the existing four licensing objectives the right ones for licensing authorities to promote? Should the protection of health and wellbeing be an additional objective?

The creation of the Live Music Act (and subsequent revisions) has the potential to address our belief that music should not be regarded as a licensable activity. Control measures for noise or disorderly conduct of a business are available in other legislation (Environment Protection Act and Fire Safety Order 2005) providing protections that the existing licensing objectives seek to address. At issue is the intent of the Live Music Act and its inclusion or interpretation for consideration by local authorities when licensing. The Licensing Act's existing objectives specifically make regulation of live music a public order issue associated with nuisance, crime and disorder, public safety and protection from harm. This reinforces a perception within licensing authorities that live music is something that should be controlled under the Act, rather than enabled.

We believe that a balanced and proportionate approach from licensing authorities when dealing with applications and complaints relating to live music is required. We recommend:

- 1. That an additional licensing objective relating to “the promotion of cultural activity and inclusion” is created in order to support this.**
- 2. Creation of such a “fifth pillar of licensing” should specifically seek to balance the enjoyment of culture as a positive part of a vibrant community against the negative interpretations placed on live music by the existing act.**

Grassroots music venues are vital to the music industry ecosystem and the future success of British artists. Government, the music industry and the cultural sector all have a stake in ensuring their sustainability and future prosperity. We urge the APPG to use this opportunity to influence the Licensing Act so that the needs of this sector are specifically recognised with it.

Music Venue Trust – written evidence (LIC0058)

1 September 2016

Music Venue Trust, UK Live Music Group and Musicians' Union – supplementary written evidence (LIC0174)

Thank you for giving us the opportunity to present oral evidence to the House of Lords Select Committee on the Licensing Act 2003 on Tuesday 6 December. We greatly appreciate the opportunity of providing the Committee with detailed perspectives from the live music industry on the operation of the Licensing Act and its impact on our ability to provide a service to customers and musicians a chance to perform.

During the evidence session we suggested the creation of a new objective within the Licensing Act to ensure cultural activities are supported by the legislation. Proposals along these lines have been debated by Parliament recently as part of consideration on the Policing and Crime Bill.³⁶² Whilst the amendments were not supported by the Government they did none-the-less gather a degree of cross-party political support when debated.

Whilst we recognise your Committee has received evidence from witnesses resistant to changes to the overall objectives we do ask you to consider supporting some of the following measures which could improve the way local authorities support live music:-

1. Paragraph 13.18 of the statutory guidance under the Act outlines how licensing authorities should address entertainment provision in their licensing policies.³⁶³ The Government should analyse the extent to which this is being complied with and whether the existing wording in the statutory guidance needs to be strengthened to achieve its purpose. We also propose that local representatives of regulated entertainment should be given the status of statutory consultees on licensing policies. At present licensing policies are only changed every five years. Many policies therefore do not adequately reflect the challenges to music venues which have been uncovered by reports such as the Mayor of London's Music Venue Taskforce Rescue Plan published in late 2015.³⁶⁴

³⁶² <https://hansard.parliament.uk/Lords/2016-11-09/debates/CA54673A-3418-44F9-8318-7EEBF85692A/PolicingAndCrimeBill> (col. 1210 – 1216) and <https://hansard.parliament.uk/Lords/2016-12-07/debates/71350001-A57A-4C90-B8FB-D9199A6776CD/PolicingAndCrimeBill> (col. 780 – 785)

³⁶³ "Entertainment provision

13.18. *Statements of licensing policy should set out the extent to which the licensing authority intends to facilitate a broad range of entertainment provision for enjoyment by a wide cross-section of the public. Statements of licensing policy should address what balance is to be struck between promoting the provision of entertainment and addressing concerns relevant to the licensing objectives. Licensing authorities should be conscious that licensing policy may inadvertently deter live music by imposing indirect costs of a disproportionate nature, for example a blanket policy that any pub providing live music entertainment must have door supervisors."*

³⁶⁴ https://www.london.gov.uk/sites/default/files/londons_grassroots_music_venues_-_rescue_plan_-_october_2015.pdf

2. The introduction of a statutory “agent of change” principle in UK law. This would build on the progress made in relation to office to residential accommodation permitted development rights earlier this year, covering new build property developments too.
3. A campaign from central government to local authorities to raise awareness about planning and licensing issues to the extent that they impact cultural activities and how existing legislation and guidance can be best used to support this.
4. Amending Schedule 1 of the Licensing Act so that exemptions created by the Live Music Act and other recent entertainment deregulations conclude at midnight, as opposed to 11pm.
5. The Government should instigate an analysis of the licenses for existing music venues that ought to qualify for the exemptions under the Live Music Act and other recent entertainment deregulations. This would ensure venues are fully benefiting from the recent changes to the law and are not subject to any unnecessary licensing conditions.

On your wider point about whether licensing should become part of the planning process, we will discuss this idea further with colleagues at the UK Live Music Group³⁶⁵ and then respond accordingly. The Group will again next meet on the 17th January.

You also requested further information on international perspectives. We would like to draw your attention to paragraph 23 of UK Music's response to your call for evidence which provides some of the information that you seek in this regard.³⁶⁶

Do please let us know if you require further information. We look forward to the findings of your Committee once it reports.

22 December 2016

³⁶⁵ The UK Live Music Group is part of UK Music, the umbrella body for the commercial music industry, and is made up of Association of Independent Festivals, Association of Festival Organisers, Concert Promoters Association, Agents Association, International Live Music Conference, National Arenas Association, Production Services Association, Music Venue Trust and Association of Electronic Music. The Group also receives contributions from the Musicians' Union, Music Managers Forum, BPI and PRS Foundation.

³⁶⁶ http://www.ukmusic.org/assets/general/UKMusic_LicensingAct.pdf

National Association of Licensing and Enforcement Officers – written evidence (LIC0148)

Licensing objectives

Question 1

Are the existing four licensing objectives the right ones for licensing authorities to promote? Should the protection of health and wellbeing be an additional objective?

1. Members were agreed in the main that the existing four objectives are the correct ones for licensing authorities to promote. They enable responsible authorities and licensing authorities to focus on the important issues of the Act. They give a framework within which to administer, regulate and enforce licensing matters.

They also give focus to “other persons” who may wish to make representations in respect of premises
2. Members did note that currently health bodies are able to make representations as other persons in respect of health issues for all of the current licensing objectives where a link can be made to an individual premises.
3. Members were split on the matter of a health and wellbeing objective being introduced. The view was that the Act did not properly allow health bodies to deal with matters fully. However it was also noted that “health and well being” is subjective and needs properly defining.

Question 2

Should the policies of licensing authorities do more to facilitate the enjoyment by the public of all licensable activities? Should access to and enjoyment of licensable activities by the public, including community activities, be an additional licensing objective? Should there be any other additional objectives?

4. Members were split on the matter. Some were of the opinion that licensing authorities were there to safeguard the public not make sure that they have a good time. Enjoyment by the public is not a licensing objective. The licensing policy should set out how licensing authorities intend to exercise their functions under the Act. However they recognise that licensed premises are a major contributor to the Borough, attracting tourists and visitors and making for vibrant towns and communities.
5. Many community events are no longer regulated by the Licensing Act following recent deregulation and therefore do not require the attention of a further licensable activity. Partnership working and cooperation with all parties will be more effective in enabling access and enjoyment of licensable activities.

6. Members were unanimous in rejecting the idea of additional objectives

The balance between rights and responsibilities

Question 3

Has the Live Music Act 2012 done enough to relax the provisions of the Licensing Act 2003 where they imposed unnecessarily strict requirements? Are the introductions of late night levies and Early Morning Restriction Orders effective, and if not, what alternatives are there? Does the Licensing Act now achieve the right balance between the rights of those who wish to sell alcohol and provide entertainment and the rights of those who wish to object?

7. Members were agreed that the Live Music Act 2012 has done more than enough to relax provisions. Allowing an audience of 500 to attend a live music event with no potential conditions needs careful management. The major issue with premises under the Act is currently noise.
8. More clarity is needed regarding the exemptions for both the public and licensing authorities including the definition of “workplace”.
9. Members were unsure of the effectiveness of the introduction of late night levies and EMROs. They pointed out that the introduction of them is long winded and complicated. The benefits are hard to realise and they do not appropriately address issues. Indeed one council is consulting on the removal of the current late night levy to be replaced by a BID. Only eight late night levies have been introduced across the country.
10. Levies can only be introduced after midnight but all licensed premises contribute to the late night economy and the inherent issues prior to that time. A fairer system would follow Business Improvement District (BID) schemes whereby all premises would be involved in shaping and promoting the night time economy and contributing to the process. The levy process also does not sell itself to licensing authorities with the funding split.
11. EMROs are also a long, drawn out process when action may be needed in a more prompt manner. No EMROs have been introduced in England or Wales. If premises are causing problems, reviews should and would deal effectively with the matter. The proposed “Group Review Intervention Powers” may well assist in dealing with matters effectively.
12. The Statement of Licensing Policy if linked to the authorities place shaping and planning policies may well assist in creating a safe and secure evening and night time economy. Linking up with best practice schemes such as “Best Bar None” and “Purple Flag” may also assist.

13. There was a mixed response regarding whether the Act has achieved the right balance. It was suggested that the Act may favour business at the expense of communities.

Question 4

Do all the responsible authorities (such as Planning, and Health & Safety), who all have other regulatory powers, engage effectively in the licensing regime, and if not, what could be done? Do other stakeholders, including local communities, engage effectively in the licensing regime, and if not, what could be done?

14. Police, Environmental Health and Trading Standards tend to be the more engaged partners. Responses indicated that engagement from other responsible authorities is somewhat sporadic. Planning and the Fire Service have separate legislation to deal with licensing matters.

However it would be of great benefit if licensing and planning decisions were to be better aligned. Premises licence holders often plead confusion over opening hours using the one that benefits them most.

15. On a more positive note, the Act has engendered a spirit of partnership working within the licensing regime. NALEO works on a number of levels to spread best practice with licensing seminars held locally and nationally. We interact and engage with Public Health England and Trading Standards at a national level as well as Safeguarding bodies across the country.
16. Communities tend to become engaged when issues directly affect them. There may be issues with a public lack of understanding and knowledge in the wider community

Licensing and local strategy

Question 5

Licensing is only one part of the strategy that local government has to shape its communities. The Government states that the Act “is being used effectively in conjunction with other interventions as part of a coherent national and local strategy.” Do you agree?

17. Members thought that generally this is the case. Local and National strategies are not linked generally There are some useful initiatives such as the community Alcohol Partnership which helps create a link between local and national strategy.

Communication with DCMS and the Home Office is working very well at the moment. Best Bar None, Purple Flag and PubWatch are all recognised by Government as excellent “best Practice” schemes and are referenced in published strategies.

Question 6

Should licensing policy and planning policy be integrated more closely to shape local areas and address the proliferation of licensed premises? How could it be done?

18. Yes. Currently there is no link between planning and licensing. There needs to be more coherent decision making policy linking planning conditions to licensing applications and decisions. It seems strange that a licence can be granted for more hours than planning permission allows. There should be legislative links ensuring consistency, not least to avoid confusion for applicants. Planning should be involved in planning Cumulative Impact Policies. It was noted that applications seem to have slowed down in the last few years. There is a great opportunity to shape town centres in terms of the entertainment offer by ensuring that planners and licensing teams consult and coordinate local plans. Indeed there is a role for all of the responsible authorities to assist in the process.

Crime, disorder and public safety

Question 7

Are the subsequent amendments made by policing legislation achieving their objects? Do they give the police the powers they need to prevent crime and disorder and promote the licensing objectives generally? Are police adequately trained to use their powers effectively and appropriately?

19. It was agreed that police have all the powers they need to effectively engage with the Act. There does not appear to be a properly researched, developed and rolled out consistent training programme in particular for front line officers in terms of licensing. Members expressed concern at the lack of training and understanding.

It was noted that police officers are frequently moved around and where a senior officer has strong views on licensing, he or she can change the goalposts when dealing with applications and variations in terms of what they want to see as conditions on licences.

Consistency in the decision making process would be good to see. One area of concern is the production of evidence by police to licensing panels at hearings. There is an inconsistency in the process which needs addressing nationally by introducing guidelines.

Question 8

Should sales of alcohol airside at international airports continue to be exempt from the application of the Act? Should sales on other forms of transport continue to be exempt?

20. Without major legislative changes, enforcement will be a major issue. However, despite some rare headline news there does not appear to be a major issue. Responsibility rests with the airport authorities and premises operators to ensure matters are properly dealt with.

21. Current exemptions on other forms of transport appear to be sufficient.

Licensing procedure

Question 9

The Act was intended to simplify licensing procedure; instead it has become increasingly complex. What could be done to simplify the procedure?

22. A more simplified application process would be of benefit. The current form is long and complicated. The process of serving applications could be simplified by requiring licensing authorities to circulate applications to responsible authorities where necessary and notices to those who are unable to engage. Publishing notices in newspapers is a burden not required. Most objections to premises licences are generated by the notice displayed at the premises for the duration of the consultation period.
23. TENs were singled out for improvement as was the inability to amend conditions on licences which were outdated or un-enforceable without the need for a fee. Also requested by members was a national database of personal licence holders.
24. Barely a year goes by without some sort of piecemeal change to licensing legislation. Perhaps a period of consolidation and consideration is now due.
25. A major concern is the issue of ghost premises. A number of premises remain on licensing authority registers because there is no facility to remove them (for a number of reasons). The Home Office needs to address the matter as a matter of urgency to ensure that licensing statistics are accurate.

Question 10

What could be done to improve the appeal procedure, including listing and costs? Should appeal decisions be reported to promote consistency? Is there a case for a further appeal to the Crown Court? Is there a role for formal mediation in the appeal process?

26. The current appeals system works well apart from timely listing of cases to ensure prompt resolution. What needs clarifying is how committee decisions are dealt with during the appeal period. Tactical appeals, delaying implementation of licensing committee decisions are becoming a problem. Decisions should be properly published to promote consistency as currently magistrate's decisions are inconsistent and underreported. Licensing training for magistrates would also be of benefit. There was certainly no appetite for a further appeal to the Crown Court.
27. Mediation could be a formal part of the appeals process however it would be important to retain fundamental rights of appeal.

Sale of alcohol for consumption at home (the off-trade)

Question 11

Given the increase in off-trade sales, including online sales, is there a case for reform of the licensing regime applying to the off-trade? How effectively does the regime control supermarkets and large retailers, under-age sales, and delivery services? Should the law be amended to allow licensing authorities more specific control over off-trade sales of “super-strength” alcohol?

28. There are many controls that can be used to manage the “off-trade” effectively. Home deliveries are an issue and perhaps need some clarity in respect of young persons being able to accept a home delivery without any under-age offences being committed. Members are generally agreed, however, that the current regime is effective in controlling supermarkets and large retailers, under-age sales and delivery services.
29. A number of members thought that the law should be amended to cover “super-strength” alcohol. It should also be noted that local schemes are effective and are able to target the offending products such as cheap strong cider which has never seen an apple or an orchard. Many specialist craft ales and beers have high strengths and would potentially be caught by more specific controls.

Pricing

Question 12

Should alcohol pricing and taxation be used as a form of control, and if so, how? Should the Government introduce minimum unit pricing in England? Does the evidence that MUP would be effective need to be “conclusive” before MUP could be introduced, or can the effect of MUP be gauged only after its introduction?

30. Members were evenly split on this issue and concerns were raised that this was trying to impose a health objective by the back door.
31. What is being controlled? If this is a health issue or to reduce consumption further, it is not a licensing matter. If it is to reduce alcohol related harms and issues in the night time economy, it is a very blunt instrument. If taxation can be used to target the harmful high strength products that may be a way forward.
32. The current “Duty plus VAT” pricing is ineffective, catching very few products. MUP will only affect the off trade generally and the rationale for MUP will need to be identified before any questions can be asked.

Fees and costs associated with the Licensing Act 2003

Question 13

Do licence fees need to be set at national level? Should London and the other major cities to which the Government proposes to devolve greater powers, have the power to set their own licence fees?

33. Members were divided on the issue but at the very least thought that an increase was long overdue. Some thought that fees should be set locally by all licensing authorities in the same manner as the Gambling Act to enable full cost recovery. However strict guidelines should be in place to advise licensing authorities on the fee setting process. It will be key that licensing authorities are able to include enforcement as a part of the fee.

34. However all licensing authorities should be treated the same.

International comparisons

Question 14

Is there a correlation between the strictness of the regulatory regime in other countries and the level of alcohol abuse? Are there aspects of the licensing laws of other countries, and other UK jurisdictions, that might usefully be considered for England and Wales?

35. There were no responses to the correlation of foreign regimes. It may warrant some research and information sharing to ascertain the true facts of the matter.

36. Making the role of DPS a properly responsible person under the Act in the same way that a licensee was under the 1964 Act will assist in ensuring that there is a proper point of contact responsible for compliance at the premises.

9 September 2016

National Federation of Retail Newsagents – written evidence (LIC0107)

1. Are the existing four licensing objectives the right ones for licensing authorities to promote? Should the protection of health and wellbeing be an additional objective?

The NFRN believe that there could be potential for including a ‘protection’ objective, however, this would be more appropriate if Councils and the Government focused more resources on responsible alcohol schemes, as well as highlighting the dangers and risks of purchasing from non-licensed retailers for items such as alcohol. By having less responsible licensed retailers, it could open an illicit alcohol market in the area.

2. Should the policies of licensing authorities do more to facilitate the enjoyment by the public of all licensable activities? Should access to and enjoyment of licensable activities by the public, including community activities, be an additional licensing objective? Should there be any other additional objectives?

The NFRN does not have any comment to make regarding this question.

The balance between rights and responsibilities

3. Has the Live Music Act 2012 done enough to relax the provisions of the Licensing Act 2003 where they imposed unnecessarily strict requirements? Are the introductions of late night levies and Early Morning Restriction Orders effective, and if not, what alternatives are there? Does the Licensing Act now achieve the right balance between the rights of those who wish to sell alcohol and provide entertainment and the rights of those who wish to object?

The NFRN does not have any comment to make regarding this question.

4. Do all the responsible authorities (such as Planning, and Health & Safety), who all have other regulatory powers, engage effectively in the licensing regime, and if not, what could be done? Do other stakeholders, including local communities, engage effectively in the licensing regime, and if not, what could be done?

We believe that there is a need for a liaison service to provide support to small businesses in relation to licensing applications. Our Helpline service has had a number of queries regarding licensing applications. For many retail members who have contacted us, it is their first licensing application. We understand that the licensing authority may not be the best authority to provide this service due to impartiality issues.

Licensing and local strategy

5. Licensing is only one part of the strategy that local government has to shape its communities. The Government states that the Act “is being used effectively in conjunction with other interventions as part of a coherent national and local strategy.” Do you agree?

The NFRN feel that both Planning and Licensing applications should be discussed with businesses as well as the community by having clear information and communication.

6. Should licensing policy and planning policy be integrated more closely to shape local areas and address the proliferation of licensed premises? How could it be done?

The NFRN is not in a position to answer this question.

Crime, disorder and public safety

7. Are the subsequent amendments made by policing legislation achieving their objects? Do they give the police the powers they need to prevent crime and disorder and promote the licensing objectives generally? Are police adequately trained to use their powers effectively and appropriately?

We believe that the subsequent amendments made are achieving their objective generally; however we have urged Police to further their powers to close unlicensed premises selling illicit and non-duty paid products.

8. Should sales of alcohol airside at international airports continue to be exempt from the application of the Act? Should sales on other forms of transport continue to be exempt?

The NFRN does not have any comment to make regarding this question.

Licensing procedure

9. The Act was intended to simplify licensing procedure; instead it has become increasingly complex. What could be done to simplify the procedure?

Due to changing Governments changing the requirements and tweaking the Licensing Act. The NFRN calls for and would welcome a five yearly review of the Licensing Act and all amendments to be undertaken at the same time, so that local authorities, businesses and policy can be adjusted accordingly without interfering with the system dramatically and keeping consistency.

10.
 - a. What could be done to improve the appeal procedure, including listing and costs?

We believe that the current appeal listing and costs are adequate.

- b. Should appeal decisions be reported to promote consistency?

Nationally, appeal decisions should be reported to promote consistency.

- c. Is there a case for a further appeal to the Crown Court?

No, there is no need and we believe that Crown Court procedures can have a negative effect on the process.

- d. Is there a role for formal mediation in the appeal process?

As a whole, the current procedure is adequate; however we would support a formal mediation appeal process.

Sale of alcohol for consumption at home (the off-trade)

11. Given the increase in off-trade sales, including online sales, is there a case for reform of the licensing regime applying to the off-trade? How effectively does the regime control supermarkets and large retailers, under-age sales, and delivery services? Should the law be amended to allow licensing authorities more specific control over off-trade sales of “super-strength” alcohol?

We are concerned with some levels of off-trade alcohol sales from ‘Beverage Distributors’ which can deliver a 24hr alcohol service across the country. The NFRN promotes responsible and honest retailing, with NFRN members adopting challenge 21 and challenge 25 proof of age schemes in store. NFRN members are aware of the serious risks selling items to underage customers; as it may result in financial penalties, court prosecution, and even the risk of their business being closed down.

The NFRN is aware of some online alcohol distributors who do not operate responsibly and within the law of the sale of alcohol. These online distributors offer the sale of high strength alcohol with 24 hour delivery.

Pricing

12. Should alcohol pricing and taxation be used as a form of control, and if so, how? Should the Government introduce minimum unit pricing in England? Does the evidence that MUP would be effective need to be “conclusive” before MUP could be introduced, or can the effect of MUP be gauged only after its introduction?

The NFRN supports the principle of Minimum Unit Pricing on high strength alcohol; however we understand that there are legal considerations currently ongoing. We believe that this should be a combined health and crime policy. If a Minimum Unit Price is targeted too high, this could have a negative impact on legitimate alcohol retailers, which are already out priced by off-trade sales.

It is crucial that any control of high-strength alcohol is designed in such a way that the undesirable alcohol types, such as high strength lager and white cider are included.

Fees and costs associated with the Licensing Act 2003

13. Do licence fees need to be set at national level? Should London, and the other major cities to which the Government proposes to devolve greater powers, have the power to set their own licence fees?

To promote fairness, the NFRN believes that any licence fees should be set at a national level.

International comparisons

14. Is there a correlation between the strictness of the regulatory regime in other countries and the level of alcohol abuse? Are there aspects of the licensing laws of other countries, and other UK jurisdictions, that might usefully be considered for England and Wales?

The NFRN does not have any comment to make regarding this question.

2 September 2016

National Organisation of Residents Associations – written evidence (LIC0024)

Licensing objectives

1. Are the existing four licensing objectives the right ones for licensing authorities to promote? Should the protection of health and wellbeing be an additional objective?

No.

In terms of protecting the amenities of residents, the third licensing objective – the prevention of public nuisance - has proved inadequate. Licensing Authorities have taken the legal view that evidence in support of likely damage has to be hard. This means that, unless the public nuisance already exists, any concerns about future likely loss of amenity and breach of the prevention of public nuisance are rejected. Accordingly new premises licences and extensions of hours are almost invariably granted against the wishes of fearful residents. The recourse to mitigate damage is to use the process of seeking a review; residents have to suffer the noise-nuisance and anti-social behaviour in order collect evidence, a process that can take a year or more. A third of all reviews are about public nuisance.

We do not see how the members of Licensing Committees can ensure that a premises licence has a positive effect on ‘health and well-being’ either of the customers or the community. The Act controls the sale of alcohol and has no control over the consumption of alcohol other than prohibiting the sale of alcohol to those who are inebriated or underage.

The key fault in the legislation in the 2003 Licensing Act is the conflict between planning legislation, which is concerned with the protection of the amenity of the environment, and the licensing legislation, which is governed by the licensing objective of preventing public nuisance, a much narrower criterion.

It is our view that the third licensing objective should be changed to ‘the prevention of loss of amenity of the environment’.

2. Should the policies of licensing authorities do more to facilitate the enjoyment by the public of all licensable activities? Should access to and enjoyment of licensable activities by the public, including community activities, be an additional licensing objective? Should there be any other additional objectives?

No.

The 2003 Licensing Act already provides too much facility for the public enjoyment of licensable activities. The noise-nuisance, the anti-social behaviour, the disturbance to sleep due to late night activities and the damage to property from drunken behaviour that blight so many UK town and city centres and some countryside areas are entirely attributable to

the 2003 Act's freedom to providers of licensable activities. The Act has not led to the expansion of a café society but has instead led to the expansion of an alcoholic society.

The balance between rights and responsibilities

3. Has the Live Music Act 2012 done enough to relax the provisions of the Licensing Act 2003 where they imposed unnecessarily strict requirements? Are the introductions of late night levies and Early Morning Restriction Orders effective, and if not, what alternatives are there? Does the Licensing Act now achieve the right balance between the rights of those who wish to sell alcohol and provide entertainment and the rights of those who wish to object?

Yes, but it has done too much.

The Live Music Act has added to the noise pollution of many town and city centres to the detriment of residents anywhere near where live music is played without the need for a licence. It also is disturbing to many pedestrians passing by live music both in the street and within retail premises. Buskers can now play their tin whistles with accompanying amplified backing music without a licence.

The legislation considers 2300 hours is a reasonable hour for non-licensable live music to stop, whereas a substantial proportion of the community expect to be asleep by that time including children, the elderly and most workers. The 1967 Licensing Act closed licensed premises at 2300 hours, so any noise-nuisance was limited to the time customers left the premises. Noise-nuisance from the built licensed premises was unusual prior to the 2003 Act. Whereas prior to the 2003 Licensing Act most street noise ceased before midnight, it is now common place for street noise-nuisance to continue into the early hours on nights when licensed venues take advantage of their extended hours of opening.

The number of Late Night Levies is so low and there are no EMROs in force, that their effect is virtually nil.

Residents involved in the licensing regime have concluded that the 2003 Licensing Act favours the licensees and discriminates against residents.

4. Do all the responsible authorities (such as Planning, and Health & Safety), who all have other regulatory powers, engage effectively in the licensing regime, and if not, what could be done? Do other stakeholders, including local communities, engage effectively in the licensing regime, and if not, what could be done?

No.

Planning and licensing authorities on the whole ignore each other. They may exchange data, but planners rarely engage in the licensing regime. Although planning legislation is paramount, premises licences often grant longer opening hours and impose fewer conditions on the use of premises in terms of noise control than those imposed in planning

conditions. The use of pavement seating is often left to Highway Authorities, whose concern is primarily with public safety and with no concern for public nuisance or loss of amenity of residents. As a result noise-nuisance is a frequent problem late at night and in the early morning from the use of pavement seating.

Local communities can be relied upon to engage in the licensing regime, but their involvement is rarely effective in preventing late night opening or the noise-nuisance emanating from licensed premises and pavement seating. The regime is clearly biased in favour of licensees.

A key measure would be to ensure that licensing conditions do not conflict with relevant planning conditions.

Licensing and local strategy

5. Licensing is only one part of the strategy that local government has to shape its communities. The Government states that the Act “is being used effectively in conjunction with other interventions as part of a coherent national and local strategy.” Do you agree?

No.

The appearance of numerous entertainment centres selling alcohol all day and into the early hours of the night in our town and city centres has produced a blot on their landscape. That has been the ‘effect’ of the 2003 Licensing Act. There may be a thriving Café Society during the day but after 1800 hours many town and city centres become an Alcohol Society to the detriment of the environment. It may be commercially profitable for the entrepreneurs but it ruins the environment.

Sadly many members of licensing committees take the view that town and city residents should accept the noise-nuisance from late-night licensed venues, because it is part of living in the centre. They ignore the fact that most urban centre noise-nuisance used to cease before midnight, and its extension into the early hours of the night has only developed in the last ten years since the 2003 Licensing Act was implemented.

6. Should licensing policy and planning policy be integrated more closely to shape local areas and address the proliferation of licensed premises? How could it be done?

Yes.

Simply ensure that planning consent must be obtained before applying for a premises licence, and that conditions on a premises licence must not conflict with relevant planning conditions where they exist, and they must consider the general effect on the environment.

Crime, disorder and public safety

7. Are the subsequent amendments made by policing legislation achieving their objects? Do they give the police the powers they need to prevent crime and disorder and promote the licensing objectives generally? Are police adequately trained to use their powers effectively and appropriately?

No.

The police are primarily concerned with the crime and disorder licensing objective. They rarely consider public safety a police matter, and public nuisance is of no concern. Some police authorities include anti-social behaviour as part of crime and disorder, but they rarely take any action.

8. Should sales of alcohol airside at international airports continue to be exempt from the application of the Act? Should sales on other forms of transport continue to be exempt?

No comment.

Licensing procedure

9. The Act was intended to simplify licensing procedure; instead it has become increasingly complex. What could be done to simplify the procedure?

It might be helpful to separate the licensing regime for the sale of alcohol from the licensing regime for entertainment. The first could well be restored to Licensing Magistrates leaving the entertainment licensing to local authorities. The police would not then need to be involved in entertainment licensing. This separation of roles has already taken place in the ministries with alcohol licensing now in the remit of the Home Office leaving entertainment licensing at the Department for Culture, Media and Sport.

10. What could be done to improve the appeal procedure, including listing and costs? Should appeal decisions be reported to promote consistency? Is there a case for a further appeal to the Crown Court? Is there a role for formal mediation in the appeal process?

Residents are excluded as third parties when a licensee appeals a licensing decision in a Magistrate's Court. When the subject of the appeal is about conditions imposed as a result of residents' representations, residents cannot offer evidence to support the Licensing Authority unless invited by the Authority to appear as witnesses. We seek the right of those, who made representations, to be eligible as third parties at appeals.

Mediation is already an important feature of the licensing regime. Licensing officers, if asked by applicants, advise applicants on their proposals. Licensing Officers may advise applicants to mediate with those making representations, but this is optional. Police already discuss their concerns with applicants. Residents are excluded from these endeavours, so that they are unaware of the changes until the hearing. The process might be improved if those making representations were also privy to any mediation, and so could offer their advice on preventing problems with the community.

Sale of alcohol for consumption at home (the off-trade)

11. Given the increase in off-trade sales, including online sales, is there a case for reform of the licensing regime applying to the off-trade? How effectively does the regime control supermarkets and large retailers, under-age sales, and delivery services? Should the law be amended to allow licensing authorities more specific control over off-trade sales of “super-strength” alcohol?

Yes.

Off-sales need more control since patrons of licensed venues often prime themselves with cheap off-sales alcoholic drinks before starting a night out. They are not obviously inebriated so entry to venues is not banned, but they can become drunk quite quickly once inside the venue.

Prohibition of discounted and cheap alcoholic drinks is the simplest way of controlling off-sales.

Pricing

12. Should alcohol pricing and taxation be used as a form of control, and if so, how? Should the Government introduce minimum unit pricing in England? Does the evidence that MUP would be effective need to be “conclusive” before MUP could be introduced, or can the effect of MUP be gauged only after its introduction?

Yes.

Evidence from Australia and Continental Europe is surely enough to prove that taxing alcohol is the simplest and most effective way of controlling the consumption of alcohol. It is not necessary to prove the value of increasing the tax on alcoholic refreshment in the UK, when there is so much well-founded evidence from several other countries. The European Commission document, ‘Binge Drinking and Europe 2008’, established the benefit of taxation in reducing alcohol consumption and the undesirable effects of excessive alcohol consumption.

Minimum Unit Pricing may appear simple, but the extra price goes to the licensee, whereas increasing the tax would go to the Exchequer.

Fees and costs associated with the Licensing Act 2003

13. Do licence fees need to be set at national level? Should London and the other major cities to which the Government proposes to devolve greater powers, have the power to set their own licence fees?

The fees for licensing should be sufficient to cover the cost of providing the licensing regime of the Licensing Authorities, the enforcement of the 2003 Licensing Act and the cost of policing. The costs will vary according to the number and nature of the licensed venues, so the fees should be determined locally.

International comparisons

14. Is there a correlation between the strictness of the regulatory regime in other countries and the level of alcohol abuse? Are there aspects of the licensing laws of other countries, and other UK jurisdictions, that might usefully be considered for England and Wales?

This answer is given as a result of data from members and is not derived from known legislation.

Most European countries have legislation banning the consumption of alcohol by youngsters outside the home and imposing blood levels of alcohol on drivers, but most of the management is decided not by legislation but by those selling and serving the alcoholic refreshment. Accordingly the hours of the availability of alcohol are often determined by the local culture and the proximity of residential properties, which is taken seriously by those providing alcoholic refreshment. In the bars and clubs of many European countries alcoholic refreshment is provided by a waiter/waitress service, which can ensure that alcohol is not served to those who 'have had enough'. In every licensed venue in France there are conspicuous notices 'Contre l'Ivresse', and we should have a similar campaign.

As a consequence of these policies, drunks are rarely seen on the streets in towns and cities in most continental European countries, and there is no prominent night economy. Only where holiday resorts have succumbed to the British drinking culture, this may not be true.

22 August 2016

National Organisation of Residents' Associations – supplementary written evidence (LIC0160)

Seven criticisms of the Effects of the 2003 Licensing Act were aired at the 11th October 2016 hearing of the Lords Select Committee, and here are suggested solutions that might resolve them.

- Giving little or no weight to residents' predicted concerns

Licensing committees should use their discretion to give significant weight to the likelihood of predictive concerns expressed by residents, and not just dismiss them as guesswork with no weight.

- Minimising the effects of the 'night economy'

Local councillors knowledgeable of the effects of the licensing application on their ward should not be excluded from membership of licensing committees on the grounds of hidden bias. It is doubting their integrity and ability to be impartial. Being just one of three councillors of a licensing committee should ensure that any evident bias would be countered.

- Conflict of licensing conditions with planning and highways conditions

The serious problem of conflicting conditions imposed by planning, licensing and highways authorities would be avoided if authorities were obliged to abide by relevant planning conditions, which are paramount anyway. This would ensure, for example, that applicants seeking longer opening hours than those permitted by planning consents for premises or for the use of pavement seating, had first to seek appropriate variations to the planning consent.. When applications occur simultaneously, serious discussion between the regimes is essential to avoid conflict.

- Blue notices

In order to increase the certainty that residents are aware of licensing applications, the Blue Notice requirement should be changed to notices similar in design and colour to those for planning applications and placed on adjacent public furniture rather than on the premises.

- Mediation prior to hearings

Licensing Authorities should be obliged to inform residents, who have made representations, of any agreed changes to the licensing application as soon as they are accepted and not leave notification to the hearing.

- Mediation prior to appeals

Appeals are declining with only 800 registered in 2014. The fear of costs deters residents and persuades Licensing Authorities to seek compromise leading to withdrawal of the appeal. So it is vital that Licensing Authorities should be obliged to accept offers of support from residents, who have made representations and only refuse when justified by adequate reasons. They should also be obliged to inform them of compromises designed to withdraw the appeal.

- Temporary Event Notices

There is little information about the reasons for TENs or for the incidence of problems. The involvement of the police and Environmental Health Departments may minimise the likely problems, but residents are unaware of the existence of TENs until they are implemented (except for Westminster where they are listed on their website). NORA suggests that in order to inform residents of those TENs involving amplified music after 2300 hours, a standard notice describing the function must be displayed on public furniture near the venue.

NORA's RESPONSE to NOTE on RESIDENTS' RIGHTS on LICENSING APPEALS

Our concerns relate solely to the lack of 'Equality of Arms' in respect only of appeals by applicants when they are appealing against decisions made by Licensing Authorities that are the result of representations made by residents.

The Specialist Adviser's report [not published] is fully accepted, but NORA was unaware of the legal case that established the right of a third party to an appeal "to be joined as a party to continue the resistance to the appeal and to attempt to persuade the court to reject the proposed compromise between appellant and licensing authority." It does provide a second opportunity for residents to be involved in appeals.

There are therefore two possible ways for residents to be involved in such appeals. Either they can offer to be witnesses for the Licensing Authority or they can seek to be a recognised 'party'. Both routes are optional because they depend on the Licensing Authority accepting the residents' offer to be witnesses and informing residents of their mediation with appellants.

In order to ensure that residents are involved, NORA is seeking that Licensing Authorities should be advised that in such appeals they must seriously consider using residents as witnesses with reasons given for refusing their offer, and must inform residents of any mediation with appellants and not leave it to their discretion.

Licensing Authorities quite reasonably want to avoid the cost of appeals especially when there is a risk of paying costs should they lose the case, but this should not deny residents the right to have their case heard in such appeals.

23 October 2016

National Police Chiefs' Council – written evidence (LIC0115)

Licensing objectives

1. Are the existing four licensing objectives the right ones for licensing authorities to promote? Should the protection of health and wellbeing be an additional objective?

The NPCC strongly supports an additional licensing objective based on health and wellbeing.

The introduction of an additional 'health and wellbeing' objective would enhance the opportunities for Public Health partners to participate in the licensing process. A range of health data sources, including alcohol-related hospital admissions and ambulance data, are presently used as supporting evidence and information within the licensing process.

The introduction of a health and wellbeing objective would ensure that alcohol, which is known to lead to significant public health harm, would be subject to far wider considerations in the way it is provided, and close the current gap that authorities face in highlighting such harms within the existing objectives.

2. Should the policies of licensing authorities do more to facilitate the enjoyment by the public of all licensable activities? Should access to and enjoyment of licensable activities by the public, including community activities, be an additional licensing objective? Should there be any other additional objectives?

We do not feel that there should be an additional licensing objective linked to access to and enjoyment of licensable activities by the public. Other factors including economic policy are a far wider consideration within the scope of Local Authorities (LA) and, therefore, it is not necessary to make this specific to the Licensing Act. Policies should provide advice on what will be favourably considered, such as restaurants and lower risk premises.

Sustainability and economic growth are best managed through local policy rather than through statute. Presently, the statute supports growth through the presumption of grant of premises licences and, therefore, access to and enjoyment of licensed premises would appear to be fundamentally enshrined within the Act and does not need any further footing.

The balance between rights and responsibilities

3. Has the Live Music Act 2012 done enough to relax the provisions of the Licensing Act 2003 where they imposed unnecessarily strict requirements? Are the introductions of late night levies and Early Morning Restriction Orders effective, and if not, what alternatives are there? Does the Licensing Act now achieve the right balance between the rights of those who wish to sell alcohol and provide entertainment and the rights of those who wish to object?

Live Music Act

The Live Music Act appears to have struck the right balance between provision and regulation and has not had a significant negative impact on crime and disorder nor public nuisance. However, any further deregulation could tip the balance and we would urge caution.

LNL and EMRO

The NPCC believes that the lack of flexibility with a LNL, and the logistical complexities in establishing an EMRO, has led to LAs shying away from their implementation. The threshold required specifically for an EMRO has led to it being very difficult to implement.

It has been widely argued that both LNL and EMROs have negative connotations in dealing with late night issues, rather than a potential for a positive resolution. Evidence from Australia suggests that restricting excessively late closing times leads to a reduction in alcohol related crimes and associated police costs. For example, a modest reduction in trading hours in Newcastle (NSW, Australia) in 2008 was shown by independent evaluation to have had convincing and compelling benefits:

- an internationally unprecedented 37% fall in alcohol-related non domestic assaults;
- a 50% reduction in night time street crime and
- a 26% reduction in related hospital ED admissions.

In order to be more effective and allow LAs flexibility to target problem areas, the LNL needs to be more specific in relation to the geographical area covered. However, there remains a risk that the scheme will not be financially sustainable due to its reduced size and prohibitive to putting one in place.

The fact that the LNL only applies to alcohol led premises fails to acknowledge the links to the broader problems in the night time economy associated with other late night premises; specifically late night food premises.

Balance

The balance is clearly in favour of the applicant due to the presumption of grant, which has led to Responsible Authorities having to continually take a reactive stance, which is resource intensive and time consuming.

There is a view amongst Police Licensing Officers that the industry now shows a degree of complacency as a result of this. Additionally, the Local Authority are aware of the cost of dealing with the frequent appeals against review decisions; the Industry understand that some responsible authorities are prohibited from taking action due to cost and use this to their advantage.

4. Do all the responsible authorities (such as Planning, and Health & Safety), who all have other regulatory powers, engage effectively in the licensing regime, and if not, what could be done? Do other stakeholders, including local communities, engage effectively in the licensing regime, and if not, what could be done?

The national police operational view is that it is challenging to ensure consistent engagement from all of the responsible authorities in the licensing process. In respect of other stakeholders, our experience is that this varies greatly across the country with some groups more willing or able to engage than others based on a number of factors; including awareness, risk aversion, and budgetary and resource constraints. The way local crime reduction groups are established within each authority area is likely to have an impact on this.

This invariably leads to the police taking the lead on a significant portion of the engagement and interventions with licensed premises; specifically where licensing objectives are being undermined. The police are, however, frequently supported by Trading Standards and Environmental Health.

In instances of underage selling and child exploitation, there does seem to be a lack of engagement from Child Safeguarding, as a Responsible Authority, under the Act. There is also room for improved engagement and involvement with the Fire & Rescue Service, within the licensing regime.

Licensing and local strategy

5. Licensing is only one part of the strategy that local government has to shape its communities. The Government states that the Act “is being used effectively in conjunction with other interventions as part of a coherent national and local strategy.” Do you agree?

The Licensing Act has created a shift towards crime and disorder issues, with the Modern Crime Prevention Strategy continuing this trend. However, from a wider alcohol harm perspective, there has been no introduction of a coherent and evidence based approach to alcohol harm reduction at a national level.

Planning exists in isolation to Licensing (highlighted in question 5 below), which equates to situations where a venue may have a premises licence but not be permitted planning consent, and vice versa. This is also the case with regards to authorisations for pavement licences, which may have a significant impact with respect the premises, but do not fall within the Licensing Act. Such examples are widespread and are just one example of a lack of a cohesive national policy.

6. Should licensing policy and planning policy be integrated more closely to shape local areas and address the proliferation of licensed premises? How could it be done?

Yes, we believe that licensing and planning policies should be better integrated, although it would not necessarily make a significant impact on the proliferation of licensed premises, which is facilitated by the ‘presumption to grant’ in the Licensing Act 2003.

The fact that a premises may or may not have planning permission to operate is not taken into consideration by Licensing Committees when considering an application. Planning and licensing processes should be more aligned, with the view that applicants should not be

granted a licence, until they have planning permission to open for the hours stated on a licensing application.

The proliferation of licensed premises may have been better prevented under the 1964 Act, where need was a consideration within a licensed premises application.

Crime, disorder and public safety

7. Are the subsequent amendments made by policing legislation achieving their objects? Do they give the police the powers they need to prevent crime and disorder and promote the licensing objectives generally? Are police adequately trained to use their powers effectively and appropriately?

The amendments do not go far enough. Some amendments have actually made it more difficult for police operationally. This includes the changes made to powers of closure under Section 161 of the Licensing Act 2003, which is now repealed, and superseded by Section 76 of the ASB Crime & Policing Act 2014. The new closure power is far more complex with regards its procedural requirements and in some circumstances operationally impossible to adhere to. For example, if the police were to close a licensed premises on a Saturday night on a bank holiday weekend, there is very little opportunity to get the case in front of a magistrate's court within the 48 hour statutory timeframe. The power requires the police to provide notification of the court time and location, at the time the closure notice is served. Such requirements lead to the police not being able to fully utilise the power effectively. It is also the case that a premises cannot be closed for serious crime alone; the threshold is for disorder or nuisance. Therefore a licensed premises where serious crime is taking place cannot be closed at the time unless police can provide evidence that such crime is leading to disorder or nuisance, which is not always possible to prove at the time. The power is far too restrictive.

Similarly, the new dispersal powers under Section 35 of the ASB Crime & Policing Act, now require a dispersal zone to be pre-authorized by an Inspector, which has led to policing alcohol related ASB becoming more difficult. Previously police officers could utilise Section 27 of the Violent Crime Reduction Act 2006 (now repealed) which ensured that where officers came across alcohol led anti-social behaviour, they were able to disperse the person from a specific area to prevent crime and disorder. Officers are now not able to act swiftly to prevent such disorder due to the necessity for an area to be designated as a dispersal zone by an Insp, which in reality is not always possible to achieve operationally. This legislation worked hand in hand with promoting the objectives within the Licensing Act, and such changes are detrimental in preventing crime and disorder.

The powers available for police need to be based on preventative measures, rather than purely reactive to problems that have been allowed to develop over time, in part due to the initial high evidential thresholds required, and the overburdensome processes currently in place.

The way police forces resource licensing requires the introduction of a specific power of entry for authorised police staff, which can be delegated by the Chief Constable.

Presently, there is no accredited national training or qualification specifically for police licensing officers. Training is currently being provided at a local force level, with little consistency. There is no national requirement to train police officers with respect to licensing legislation.

The NPCC are in the process of approaching the College of Policing with a view to developing a national accreditation framework for the licensing training of police officers. Such training needs to be on a mandatory footing which will ensure consistency in the delivery of licensing functions across the country.

8. *Should sales of alcohol airside at international airports continue to be exempt from the application of the Act? Should sales on other forms of transport continue to be exempt?*

The promotion of the licensing objectives is as relevant at airports and on trains as in any other location. In fact, there are potentially additional risks related to passengers being drunk and unruly on these forms of transport; recent figures showed³⁶⁷ that 422 people were held on suspicion of being drunk at an airport or on a plane in the last two years. With this in mind, it would make sense to bring sales of alcohol airside under the control of the Licensing Act.

Licensing procedure

9. *The Act was intended to simplify licensing procedure; instead it has become increasingly complex. What could be done to simplify the procedure?*

In general, the Licensing Act 2003 has simplified the licensing procedure, specifically in relation to the majority of procedures from initial application of premises licence, through to objections and hearings. The focus of the Act on partnership working ensures that there is plenty of scope for applicants and responsible authorities to mediate solutions which, in reality, often leads to hearings and formal objections not being necessary.

However, there are areas where the Act does continue to cause a significant burden, specifically on public bodies; an example of which are the procedures from the point of an appeal. The process is onerous and significantly in favour of the premises licence holder, and is often used as a tactical way to keep premises open post a decision by the licensing sub-committee at a review hearing. This leads to a situation where a committee may decide that a premises licence should be revoked due to serious harm being caused but then, due to the licence holder appealing such decision, the premises continues to remain open and operating on its existing licence without any changes whatsoever; leaving the public at

³⁶⁷ [Airport alcohol sales to be 'examined' by Lord Ahmad](#). BBC news

serious risk of harm. Such risks continue until the appeal is heard, in most instances many months later; there should be a timeline set for an appeal to be heard promptly.

The ever increasing exemptions, exceptions and deregulation have led to confusion and the Act becoming far too complex. Examples include the exemptions with regards the Live Music Act, community premises being permitted to dispense with DPS, and the complexities around Temporary Events Notices. Should the Community and Ancillary Notice be implemented, this will again add further layers of complexity around licensing legislation.

10. What could be done to improve the appeal procedure, including listing and costs? Should appeal decisions be reported to promote consistency? Is there a case for a further appeal to the Crown Court? Is there a role for formal mediation in the appeal process?

The current appeals procedure, whilst providing an appropriate safeguard, does have some shortcomings which predominantly favour the licensed premises; particularly in an appeal against a review decision.

Currently where a decision is made by a licensing committee, this does not take effect until after the period for appeal or disposal of an appeal. This can lead to situations where premises that have had a licence revoked or conditions added to their licence, continue to operate for many months without the protections that were deemed appropriate by a Licensing committee.

This has, on occasion, led to premises continuing to be blighted by the problems for which it was brought to review in the first instance. It is also the case that some premises list an appeal only to withdraw it immediately prior to a hearing taking place, simply to enjoy a further period of trading unhindered by the decision of the licensing sub-committee, and in some cases leads to the premises degenerating below the standard for which they were subject to review in the first place. This is aided by the lack of an appeals threshold having to be met before a premises licence holder can apply for an appeal of the committee's decision.

Added to this, presently an appeal is heard as a de novo case, which effectively means that the case is heard as a new case at the time of the appeal, and not as it was originally heard at the time the licensing sub-committee made the decision. This leads to a situation where the period of time between the initial decision being made and the appeal taking place is time then taken into account in the appeal hearing. We are aware that premises have used tactics to ensure they attend the appeal with an impeccable record. This can then lead to the appeal being favourable to the appellant to then re-open the premises without the protections put in place by the original committee decision, and in many cases fall back to the old ways where the premises continues to be a risk to public. The cycle of responsible authority intervention then has to start again, usually with the loss of confidence that decisions made will simply be overruled at a later date; thus undermining the entire licensing decision making process.

We understand the need to strike a balance but do not consider this exists at this point. We suggest that provision be made to speed up the appeals process with an expectation that appeals against decisions by the Licensing Committee be heard within a period of not more than two months.

In addition, the loss of Licensing Justices at the commencement of the Licensing Act 2003 has meant their knowledge and experience has been lost at hearings and we would commend that the re-introduction of a form of Licensing Justices for appeals would benefit not only the appellant but also the respondent.

There is also a significant level of consideration of how much an appeal will cost. It is the experience of the police that potential appeal costs weigh considerably in the mind of local authorities and have a negative impact in the licensing process. Public bodies should not be weighed down with significant court costs and this seriously needs to be put on a statutory footing. The status quo goes nowhere near enough to protect public bodies from being overburdened by significant claims from an appellant. As a De Novo hearing allows for new evidence to be considered, it would appear unfair to permit costs to be awarded against a licensing authority where their decision was based on the circumstances at the time.

In respect of appeals to Crown Court, it is clear that these would prove prohibitively expensive to many appellants and respondents and further at odds with the light touch Licensing Act envisaged by the Government. The Licensing Act provides an initial tribunal by way of Licensing Committee and by appeal to Magistrates Court. For the problems outlined above, an appeal to the Crown Court (that allows a premises to continue trading 'as is') would completely undermine the point of the Licensing Act and its objectives.

It is difficult to envisage what mediation could/should take place post a committee decision and before an appeal; the opportunity for mediation clearly sits prior to a committee hearing. Mediation post a decision made by a licensing sub-committee, could lead to a position where such decisions are constantly undermined.

Sale of alcohol for consumption at home (the off-trade)

11. Given the increase in off-trade sales, including online sales, is there a case for reform of the licensing regime applying to the off-trade? How effectively does the regime control supermarkets and large retailers, under-age sales, and delivery services? Should the law be amended to allow licensing authorities more specific control over off-trade sales of "super-strength" alcohol?

There has been an increase in reports of problems emanating from pre-loading in the years since the introduction of the Act, which is regularly cited by the on-trade.

There has been a significant increase in the numbers of premises authorised for off-sales since the introduction of the Act.

Price disparity is regularly reported to be a driver in people pre-loading before they enter the night time economy. This is arguably exacerbated by the increased availability of alcohol.

There are few tools available under the existing legislation to tackle the issues associated to the off-trade. Mandatory conditions relating to drinks promotions could be further extended to tackle some of the issues relating to off-sales. The Section 182 Guidance does not provide particularly clear advice on drinks promotions and provides examples which are not very helpful.

A ban on multi-buys, restricting the area within a store where alcohol can be sold, the restriction of off-trade hours to 10am until 10pm, and the proposed introduction of minimum unit pricing could all be beneficial

Home delivery services such as '24/7 Dial a drink.' are also difficult to regulate under the Act. Locally, guidance and conditions for operators to ensure that they comply with the Act has been offered, particularly regarding sale to minors and sales to drunks; although this can be challenging to enforce. Limited hours for home delivery of alcohol would be a welcome introduction.

Our experience shows that there is a correlation between high strength alcohol and anti-social behaviour and crime, which taken alongside the concerns raised by Public Health leads us to support a far more restricted approach to the availability of high strength alcohol sales. This could well form part of the addition of a Health and Wellbeing Licensing objective. The issues relating to high strength alcohol disproportionately affects the most vulnerable people in society.

The increase in alcohol delivery services could be subject to a delay from time of order to delivery, which will prevent instantaneous sales of alcohol, especially where people are under the influence of alcohol. The delay could be set at 6 hours. A prohibition of delivering alcohol to any person under the age of 18 (which is exempt under Sec 151) will have minimal effect on the majority of legal purchasers.

Pricing

12. Should alcohol pricing and taxation be used as a form of control, and if so, how? Should the Government introduce minimum unit pricing in England? Does the evidence that MUP would be effective need to be "conclusive" before MUP could be introduced, or can the effect of MUP be gauged only after its introduction

There is no single solution to tackling alcohol-related harm and a package of measures to limit the affordability, availability and promotion of alcohol is what is required. However, all of the independent evidence suggests that getting rid of the cheapest, strongest alcohol would have the most impact as it is typically consumed by young people and those drinking at harmful levels.

There is a large and significant body of international evidence which demonstrates that the price and affordability of alcohol is the key factor in driving consumption. In the 2009 Global Strategy, the World Health Organisation recommends introducing pricing policies to reduce alcohol-related harm and recognises the option to “establish minimum prices for alcohol where applicable” as an appropriate action.

Furthermore, Minimum Unit Price is already working in several countries, including Canada. Figures from British Columbia indicate that a 10% increase in average minimum price would result in a fall in consumption of 8%³⁶⁸; a 9% reduction in alcohol specific hospital admissions³⁶⁹; a 32% reduction in wholly alcohol caused deaths³⁷⁰; and a 10% fall in violent crime.³⁷¹ In addition, research commissioned by the UK Government revealed that the introduction of MUP would be significantly more effective than banning below-cost sales.³⁷² According to this work:

- After 10 years, a ban on below cost sales would save 14 lives, compared to 960 lives saved with the introduction of MUP at 50p;
- In the first year of implementation, a ban on below cost sales would reduce crimes by 900, whilst an MUP at 50p would result in a fall of 50,700 crimes.
- After 10 years, a ban on below cost sales would save an estimated £77m, whilst the equivalent figure for MUP at 50p is £5.1 billion.³⁷³

MUP is not a silver bullet, and a combination of tax and MUP would be the optimal approach.

The NPCC fully supports the introduction of MUP, which we believe would have a minimal impact on the on-trade, where prices tend to be significantly higher in the first instance, but would positively impact significantly on the availability of cheap high strength alcohol.

Regarding the question of being able to conclusively predict MUP's impact, the evidence for MUP is very strong, taking Canada as the example where they have similar minimum prices, that MUP would be effective. To wait for conclusive evidence that MUP works, risks further increasing the impact cheap alcohol is currently having on individuals and communities.

³⁶⁸ Stockwell, T., et al. (2012), [The Raising of Minimum Alcohol Prices in Saskatchewan, Canada: Impacts on Consumption and Implications for Public Health](#). American Journal of Public Health

³⁶⁹ Stockwell, T., et al. (2013), Minimum alcohol prices and outlet densities in British Columbia, Canada: Estimated impacts on alcohol attributable hospital admissions. American Journal of Public Health

³⁷⁰ Zhao, J., et al. (2013), [The relationship between changes to minimum alcohol price, outlet densities and alcohol-related death in British Columbia, 2002-2009](#). Addiction.

³⁷¹ Stockwell, T., et al. currently unpublished research on the effects of minimum pricing on crime in Canadian provinces

³⁷² University of Sheffield (2013), [Modelled income group-specific impacts of alcohol minimum unit pricing in England 2014/15](#)

³⁷³ Brennan, A., Meng, Y., Holmes, J., Hill-McManus, D. and Meier, P. (2014) 'Potential benefits of minimum unit pricing for alcohol versus a ban on below cost selling in England 2014: modelling study', BMJ,

Fees and costs associated with the Licensing Act 2003

13. Do licence fees need to be set at national level? Should London and the other major cities to which the Government proposes to devolve greater powers, have the power to set their own licence fees?

This is a matter for local authorities. The NPCC offers no specific views in regards to the setting of licence fees.

International comparisons

14. Is there a correlation between the strictness of the regulatory regime in other countries and the level of alcohol abuse? Are there aspects of the licensing laws of other countries, and other UK jurisdictions, that might usefully be considered for England and Wales?

The NPCC is not in a position to comment in relation to international regulatory licensing regimes. However, there is international evidence we are aware of which would suggest that greater alcohol control leads to less crime and reduced harms.

Whilst the effects of alcohol on individuals will be common internationally, the cultural differences and licensing regimes make it difficult to link a direct correlation between the effectiveness of such controls elsewhere. However, the positive results that can be witnessed internationally clearly should be subject to UK academic assessment and trial.

2 September 2016

National Police Chiefs' Council – supplementary written evidence (LIC0166)

Police practitioners licensing training conference:

May 2014 content, which took the form of 5 x 1.5 hour workshops on the following subjects (approx. 100 attendees):

Licensing Act 2003 review applications

- Taking a stepped approach to licensing enforcement
- LA2003 expedited & summary review applications
- Licensing Act 2003 Closure Orders S160 and S161
- Premises Licence conditions and the use of Section 19, Criminal Justice and Police Act 2001 Closure Notice.

One Barrister, Peter Savill, in attendance offering advice and support on complex queries.

June 2015 content, which took the form of one large conference room with input from two Barristers (approx. 110 attendees)

• Single subject of Police Evidence to be used for Review Applications. Barristers Sarah Clover and Peter Savill gave examples of good / bad evidence and explained what constitutes both and how to ensure evidence is always substantiated. Examples and advice given with cases being presented and discussed with lively audience participation.

May 2016 content, which again took the form of one large conference as feedback said this type of format was preferred by attendees (approx. 120 attendees – max reached)

- Cumulative Impact Policies, implementation and maintenance
- S76 Closure Orders Anti-Social Behaviour, Crime & Policing Act 2014 specifically for Licensed Premises, which carries its own challenges differing from regular S76 Closure Orders
- Recent licensing stated cases and new legislation
- Ample opportunity to ask complex questions of experienced licensing Barristers.

Three Barristers in attendance, Rory Clarke, Richard Hanstock & Peter Savill

May 2017 content, to be finalised but date confirmed as 10th May:

• Two Barristers: Peter Kolvin QC and Gary Grant and subjects will be as per the feedback requests from last year's event.

The Current Appeals process:

• If the premises licence holder doesn't like the decision of the Local Authority Licensing Committee in a standard S51a Review Application case, they can appeal it without giving

any reason – simply because they don't like the result. This results in a very high proportion of decisions being appealed.

- There can also be an appeal against a premises licence application refusal – e.g. because it's in a Cumulative Impact Area. This type of appeal is a nightmare as Magistrates do NOT understand CIA and so inevitably will just grant the applicant against the Licensing Authorities Licensing Policy. Many appeals are lost against CIZ refusals, I have had 3 in the last 6 weeks, and this is not acceptable as the Mags are just not getting that a CIA area is there because there are major issues for policing and residents in the area and the area has reached saturation point for licensed premises. There must be properly trained Mags to deal with licensing cases.
- All appeals are heard by the Magistrates Court who no longer have specialist licensing Magistrates.
- The appeal is against the Licensing Authority (LA), as they made the decision. If the decision was as a result of police evidence, then police will provide witnesses to the LA to defend the appeal against them.
- The decision of the committee in a S51a Hearing does not take effect until after the appeal period, or if the case is appealed, until after the Magistrates Court make their decision.
- The appeal is heard De Novo
- Approx. time to get a case of appeal is 6-9 months
- During the appeal time the premises management will go above and beyond its normal practice to ensure nothing else happens at the premises
- It is common place for the Mags to overturn the LA decision.

Suggested Remedies;

- **KEY:** Fully licensing trained magistrates OR (preferred) a District Judge hears the case
- Mags MUST be told to pre-read the case. The fact is they do NOT pre-read the history or any of the paperwork. I have attended 10's and 10's of appeals and NOT ONCE have the Mags pre-read any papers, so right from the start they do not understand the case. It is then normal for the LA's Barrister to ask for a short adjournment so the Mags can read at least some of the papers.
 - o If a District Judge oversees the case we have found that they DO pre-read the papers and also really understand the issues. We have won both appeals that have been presided over by a DJ.
- Proper reasons for the appeal must be given – and not just 'we don't agree with the decision'
- **KEY:** the case must be heard within a reasonable timeframe – I would suggest no longer than 2 months between the LA decision and the Court case.

- More controversially, the decision of the LA should take immediate effect until the appeal is heard. Although this has been muted in the past, and was dismissed as not viable as some of the LA decisions have been a little perverse.
- **KEY:** It is important that costs **MUST NOT** be awarded against the LA or Police unless the decision is proven to be perverse. Although there is already a stated case which says this must be the case – more and more mags are ignoring the stated case and awarding costs against the public purse which is just wrong and will soon start to adversely affect the balanced decisions being made by LA's. This should be enshrined in legislation.
 - o Many LA's agree to 'deals' in advance of the Court case as they know costs can be awarded against them and they just can't afford it. This is not acceptable as it means those with the biggest purse / budget will inevitably win cases.
 - o Businesses will throw £1,000's at appealing a decision – they have little to lose – but the police and LA's cannot afford to take that stance.

15 November 2016

Night Time Industries Association – written evidence (LIC0100)

Creative, passionate and full of energy, The NTIA represents the enormous success story that is the UK's fifth biggest industry, which accounts for at least 8% of the UK's employment and revenues of 66 Billion per annum (that's 6% of the UK total).

The NTIA has been formed by independent bar, nightclub and restaurant owners, pubs, festival and live music event operators as well as music managers and other supporters of the benefits of the Night Time Industry from the world of business, culture, media and politics.

We are owners and operators that represent the creative and entrepreneurial drive that makes Britain such an exciting country to visit and live in – as well as helping to forge some of the most talented people in the music industry who all cut their teeth in the venues of The NTIA.

We know that, whether it is London Fashion Week, Frieze Art Festival, The Brits, MOBO's or The BAFTA's, it is always at The Night Time Industry venues that people enjoy themselves and are entertained. It is also the melting pot and coming together experience that makes the UK a leader in the creative world.

"The blending of creative industries, tourism, food and night time leisure economies transformed this area into an 'international brand'" (Brick Lane) and "...cultural and creative firms share "symbolic capital" with the associated bars and independent shops..."

NESTA, quoted Forward In To The Night.

"Running a creative agency in the heart of London, in Shoreditch, we at Mother are acutely aware of the exciting relationship between the night time economy, creativity and innovation. Where bars, cafes, pop up festivals and nightclubs are, so too are young, dynamic, interesting entrepreneurs. Fashion without nightlife is difficult to imagine. Tech areas have expanded where new cultural quarters spring up due to night time industry. In my own field maintaining a vibrant nightlife in our neighbourhood is key to attracting an retaining inspired creative talent. It's also of course, where we have fun."

Sarah Tate, Mother Advertising Agency MD

We have focused our response to two questions posed.

1. Are the existing four licensing objectives the right ones for licensing authorities to promote? Should the protection of health and wellbeing be an additional objective?

1. We would like to begin by emphasizing the relative benefits of the Night Time Economy against the background of important facts about the nation's drinking. We draw the Committee's attention to the significant work produced by Christopher Snowdon *Drinking Fast and Slow* which explores the crime figures, Accident & Emergency Levels and what was feared and what actually has happened over the last

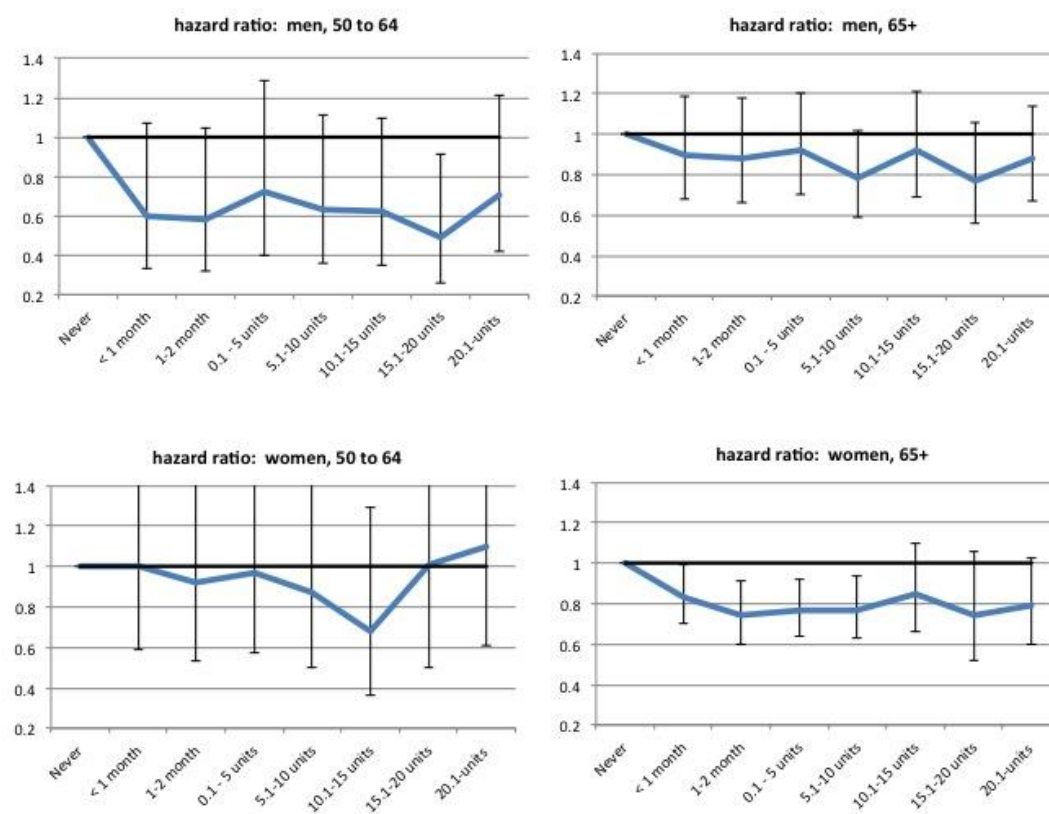
ten years. We believe it is worth quoting the summarised points in their entirety as they bear so much weight and heavily on the discussion and considerations of the committee hearing.

The key points are:

- Introduced in 2005, the Licensing Act allowed more flexibility in pub, bar and nightclub opening times for the possibility of '24 hour drinking'.
 - It was widely predicted that the relaxation of licensing laws would lead to higher rates of alcohol consumption, more binge-drinking, more violent crime and more alcohol-related attendances to Accident and Emergency departments. In the event, none of this occurred.
 - Per capita alcohol consumption has been rising for many years but peaked in 2004 and has fallen by 17 per cent since the Licensing Act was introduced. This is the largest reduction in UK drinking rates since the 1930s.
 - Rates of 'binge-drinking' have declined amongst all age groups since 2005 with the biggest fall occurring amongst the 16-24 age group.
 - Violent crime declined in the first year of the new licensing regime and has fallen in most years. Since 2004/05 the rate of violent crime has fallen by 40 per cent, public order offences have fallen by 9 per cent, domestic violence has fallen by 28 per cent and the number of incidents of criminal damage has fallen by 48 per cent. There has been a rise in violent crime between 3am and 6am but this has been offset by a larger decline at the old closing time (11pm-midnight and 2am to 3am).
 - The evidence from England and Wales contradicts the 'availability theory' of alcohol, which dictates that longer opening hours lead to more drinking, more drunkenness and more alcohol-related harm. The British_experience_since_2005_shows_that_longer_opening_hours_do_not_necessarily_create_greater_demand.
2. The weight of evidence from Accident and Emergency departments suggests that there was either no change or a slight decline in alcohol- related admissions after the Licensing Act was introduced. Alcohol- related hospital admissions have continued to rise, albeit at a slower pace than before the Act was introduced, but there has been no rise in the rate of alcohol-related mortality. There was also a statistically significant decline in late night traffic accidents following the enactment of the Act.
 3. Today, 27 % of young people describe themselves as "teetotal" and all categories (except for middle aged women drinking at home) consume far less alcohol. People are more likely to be taking photos of their non-alcohol infused cocktails while enjoying international street food than going to a bar with friends without experiencing what once not so long ago plagued British and London streets.

4. The recent “advice” of further reducing levels of drinking for males from 21 units to 14 (it was 56 not so long ago and in France there are still no limits) has been widely criticised. Particularly because while promoting a fearful reaction and presenting cancer of a liver as a risk, it ignored all of the significant work that has demonstrated moderate drinkers live longer and healthier than teetotalers, while habitual abusers of alcohol (of which there are far less today) do worse. See David Spiegelhalter who has written widely on this and explains the flawed report that was referred to in the most recent work using the tables below:

5.



Hazard ratios in different age/sex groups, for different weekly alcohol consumption. Baseline group are 'never-drinkers'. Data from Health Survey for England.

6. Spiegelhalter’s graphs showed the following:

- a. All groups consuming less than 20 units a week experienced lower mortality rates than the lifelong teetotalers.
- b. The confidence intervals are very wide. This is because there were few teetotalers and so not many deaths - for example the entire comparison for 50-64 year-olds is based on 17 deaths in the male baseline group, and 19 deaths in the females. This is completely inadequate to draw any firm

conclusions, since there is large uncertainty about what the true underlying relative risks are.

- c. All the observed data are compatible with the kind of 10 to 20% protection that has been previously suggested.
 - d. The 'significant' protective effects are implausibly large (greater than 20% reduction in risk). This is because in an underpowered study, only implausibly extreme observations can ever achieve 'significance'
7. The authors have reported the few groups with 'significant effects' (ie where the interval excludes 1), and claimed the other groups showed 'little to no' effect. This is a classic statistical error, and produces very misleading conclusions, as even casual inspection of the graphs clearly shows.

Benefits

8. The Night Time Economy generates over 66 Billion UKP per annum in revenue for the UK, while employing 8% of our workforce. While 1 in 4 young Londoners are unemployed, the Night Time Industries employs a disproportionate amount of young people; helping to motivate, promote an understanding of business, discipline and hard work and entrepreneurial endeavor.
9. So many of the businesses within the night time are independent; bars, nightclubs, restaurants, street food vendors, as well as businesses that are part of the enormous ecosystem around it such as marketing companies, record labels, agents, managers, PR companies as well as the obvious ones such as taxi cabs and newsagents. It is difficult to comprehend how our advertising agencies could work without the music that emerges from within the creative innovation of dance floors, djs, producers, clubs and bars and the continual hatching of new cultural phenomena that is there. According to the DCLG, The Night Time Economy accounts for 10-16 per cent of a town centre's employment (more in London), while paying 1 Billion UKP in business rates in 2013/2014.
10. In fact, from The Beatles and Rolling Stones onwards, it is almost impossible to comprehend of our Great British exports, such as Adele, Ed Sheeran, Mark Ronson and Tinie Tempah without bars and nightclubs. Adele has broken all the records recently with her latest album in the USA – her record label XL Recordings is a dance music record label. Many of the venues she first performed at, like all our other cultural and economic exports are part of our vibrant and culturally vital Night Time Economy.
11. We understand and appreciate the enormous pressures that police authorities and councils are under today and being requested and demanded at times to deal with all manner of increasingly challenging problems (such as terrorism, pedophilia, bullying) all the while having resources cut and stations closed. However, a worrying trend has been for the police (and at times others in health policy *campaigning*,

citing “stresses on the NHS”) to motivate their claim to ‘success’ based around stats-driven approaches.

12. While it is now common knowledge and in the public domain that Serious Crime has drastically reduced in the UK over the past 10 years (see below), there is a different approach to any incident that occurs currently. The increasing language of “Health and Safety” and “Risk Assessment” across British society and business has provided the cultural environment where there is an expectation that all and any risk can be prevented entirely. While the news is very encouraging as to our continually decreasing crime levels, when ever there is some kind of human activity and congregation, whether that be around shopping centres (theft, muggings, petty crime) or sports stadiums, there will be incidents. However, unlike bank robberies, jewel heists, or deaths on our motorways and roads, nobody is demanding (quite rightly) those activities be closed down, reviewed or curbed. However, a different measure is provided for the Night Time Industries – as though the acts of an decreasingly few individuals should be the responsibility of business.

‘Wellbeing’

13. The NTIA acknowledge that the existing licensing objectives attempt to handle any concerns that may impact the public. However, we *absolutely do not believe* there should be additional objectives around “wellbeing” or the “protection of health”. We have laid out some points of reference below and are happy to provide more evidence both written and in person to the committee on this.
14. Whereas other statutory licensing objectives can be objectively measured, the notion of ‘wellbeing’ is overly subjective and open to interpretation. How would the ‘well being’ of people with different interests be appropriately balanced? We would have significant concerns that local councils could rely on the vague and undefined notion of ‘wellbeing’ as a ‘fall back’ to impose more stringent conditions on venues where there was little or no objective evidence as to their failure to comply with respect to the other objectives.
15. We are extremely concerned that in the attempt to make claims against dwindling resources and to prove efficiency, some thinking around policing and stats has attempted to take all incidents reported, with the claim to “hot spots” and “spikes” in crime around the Night Time Economy and then impose further conditions, reviews and curbs on night time industry businesses.

16. Examples of this are plentiful across the UK –

Glasgow’s The Arches had license reduced from 3am to Midnight (meaning it could no longer commercially operate and subsequently closed) – on the basis of the *stats for confiscations of substances handed over to the police then used as “evidence” as to why the club was a problem “hot spot”*.

Liverpool – where operators were taken to review when a drug dealer was handed over to the police. They discovered he was under 18 years of age: the club had ID checks – but (as a drug dealer may be inclined to have) he had fake ID. After magistrates rejected it the club was warned “any other incident we will move to close you”.

In **Camden**, London where a 700% reduction in crime over 2 years, was considered good, however a 12% rise (meaning still well over 680% decline) in isolated incidents down the road was presented to venues as an issue they have to be accountable for.

Further examples persist, such as in Tower Hamlets, the continual reference to “Anti Social Behaviour” fears, were used by licensing police officers to turn down Temporary Entertainment Notices for a Street Art Fair, that wanted to trade between 12 midday and 6pm. The impact of this language and some of the way the alcohol discussion is presented we give comments on below.

17. It should be noted that while some of the national discussion has been very positive more recently (and the Mayor of London as well his predecessor has come out strongly in favour of a vibrant and dynamic night time and 24 hour economy) it was notable that Sir Bernard Hogan-Howe in a speech at The RA in 2015 said that while money was to be made by councils from bars and clubs, if we want to reduce crime up to 50% of licensed premises should close. This notion if extended to logical conclusion would be to have a curfew at 10pm and then nothing (outdoors) would occur. Fortunately the *spirit* of the 2003 Act was to have 24 Hour Licensing. However, it has been very rare to have many 24 hour licenses granted. This has been detrimental to the UK.
18. The NTIA has noted that in many instances at Pub Watch meetings (where licensees, managers and police meet regularly) across the capital and around the UK police are increasingly using the terms “alcohol” with “harm” in one phrase, ie “alcohol harm”. This continual linking of terms is part of a new approach to the discussion of alcohol – as is the relatively new term “Anti Social Behaviour” (ASB) to describe all manner of different activities.
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20. In summary:
 - a. The Night Time Economy brings enormous benefits to both the economy of the country and the lives of its citizens.

- b. The current licensing objectives are adequate, but enforcement of them must be monitored to ensure that night time stakeholders are not unfairly targeted.
- c. An additional condition relating to wellbeing is unnecessary and potentially open to significant abuse.

Are the subsequent amendments made by policing legislation achieving their objects? Do they give the police the powers they need to prevent crime and disorder and promote the licensing objectives generally? Are police adequately trained to use their powers effectively and appropriately?

Terminology: “Alcohol-fueled crime”

- 21. The term “alcohol-fueled crime” is a thorny and tricky one. There is no category in English Law for alcohol-related or “fueled” crime and yet it has become increasingly popular for police and licensing officers to continually use these terms.
- 22. Under English Law there are crimes, such as theft, burglary, vandalism, physical attacks such as Grievous Bodily Harm (GBH) and Actual Bodily Harm (ABH) – although even these latter terms are being redefined as “Violence With Injury” (VWI). Increasingly solicitors and police have recorded that pushes and shoves are also being categorized in the Violence With Injury heading.
- 23. There are also categories for being “drunk and disorderly” – the illegal part is the disorderly, not the drunk part. It is not illegal to be drunk, however it is illegal to serve people alcohol in a licensed premises if one believes them to be overly intoxicated / drunk.
- 24. As there are no specific categories of crime designated, what tends to happen is that in reports written up questions are asked as to the circumstances of the incident. If alcohol is mentioned, it will be recorded as “alcohol-related” or “alcohol-fuelled”. However, this is very unscientific; one example is the London journalist who was mugged on the way home from the opera and was asked if he had consumed any alcohol. “Yes, I had a glass of champagne,” he responded. It then became another statistic in the “alcohol related crime” figures.
- 25. One of the biggest problems with the “crime statistics” however is that *they are not ever evaluated on the basis of the number of attendees to an area, nor indeed the increased number of attendees*. So called ‘spikes’ in crime could equally be attributed to large numbers of people congregating in one place, rather than the particular security measures of a particular venue.

One of the biggest contributors to so-called “crime spikes” is mobile phone losses.

- 26. Mobile phone losses comprise the largest category of “spikes” in crime surrounding the night time. When somebody loses their phone for what ever reason, they often want to claim it back on insurance. In order to do so, they have to get a crime

reference number. To get a crime reference number, so that the insurers will honor their claim, they have to report it to the police and they have to say where they lost the phone.

27. So, a venue is named – whether this is the place it has been lost or not. Then, the “crime stats/ spikes” increase due to quite often people losing their phones in any number of places. This has placed enormous pressures on night time businesses who are told “crime figures are up” due to mobile phone loss reporting to insurers. However, if we ask the British public if this is considered to be a serious crime and to what extent it requires (m)any of our resources, we know from our own work that they do not believe it is or should be an area to focus on. It should especially not be used to then provide an argument to limit and reduce night time licenses, activity and business, on the spurious grounds of “reducing crime”.

“Last Drink”

28. Another worrying and problematic development is that police officers are now regularly asking people that have committed a crime where they consumed their “last drink”. As though this somehow can shed any light on any incident.
29. As with the newspaper photos that aimed to depict Britain as being full of drunkards on New Years Eve, rather than the hundreds of thousands of ordinary decent citizens and visitors that had fun, celebrated and went home without incident, the question as to where the “last drink” was consumed implies that the venues are somehow culpable for individual behavior. It ignores the fact that again, millions of people go out in the UK and across London every week without incident and enjoy themselves, form new friendships, relax, get inspired and go home – and instead simplistically pushes a narrative that crime “spikes” are up and that venues are responsible.
30. In no other walk of life is an institution held responsible, not a school, a family, a police station, City Hall, jewelers when there are armed robberies or anywhere else, in the same fashion that night time economy operators and particularly licensed premises are.
31. Venues, many now with numerous security personnel, increasingly with CCTV cameras, often being forced in to having ID Scanners for ID admittance and some even pressurized with breathalysers before entering amidst attempts to have dogs also at some venues means the cost – and the psychological pain as well as ongoing management implications of being concerned about anything happening inside and outside the venue has become extremely problematic.
32. If an individual takes it upon him or herself to hit someone, steal something or do any other illegal act – the act is defined in law and it should be they that are held accountable (thankfully the numbers have all decreased) rather than bringing “stats” to pub watch meetings and continually pressurizing licensed premises to somehow be accountable for any and all eventualities.

Unfair attribution and ‘location codes’

33. The manner in which crimes are recorded by the police mean there is a real risk that nightclubs are scapegoated in our discussion on crime. When an allegation is reported to the police they will rely on a ‘location code’ to identify where an incident took place. These codes are inputted into a database, ordinarily as we understand by a custody sergeant on the basis of limited information. These location codes include ‘JA’ signifying a public house, ‘JC’ indicating a wine bar or bistro and ‘JE’ indicating a nightclub. Crime statistics will accordingly include the caveat that the location code may not indicate that the venue was the place of the alleged assault but may have been used as a place of reference
34. Nightclubs are often housed in prominent buildings meaning that they are often treated as ‘landmarks’ for the sake of crime reporting. This means that a nightclub can become ‘associated’ with an offence merely because of its proximity to an incident. Figure 1 is a set of crime statistics which provide an illustration of this methodology. This is, in turn, can be used by the media to create an unfavourable narrative against nightclubs as sites of increased risk.
35. Determining the content of allegations and their relation to venues is made more difficult by restrictions on Freedom of Information provisions. The police are able to reject Freedom of Information requests that require an excessive use of police time. Effectively challenging the figures that are often reported with respect to nightclubs would require extensive disclosure of police records. For example, a 2013 article indicated that ‘police were called out 26,414 times’ to ‘pubs nightclubs and bars’. Understanding how and why these call outs were attributed ‘to pubs nightclubs and bars’, what the nature of the incidents were and how they were resolved is impossible without access to the police records.
36. The opportunity to challenge a particular venue’s culpability will arise in the context of a licencing review. In the context of a contested licensing review, a venue will be served with witness statements from police officers detailing the nature of the allegations that were dealt with at the venue, in the context of determining whether amendments to the venues licence would be appropriate. These often give rise to factual disputes about what took place and what a venue did in response to particular incidents.
37. In order to improve our discussion around the relationship between alcohol and crime there should be further clarity in crime statistics to clarify what it means for a venue to be ‘associated’ with a particular criminal incident. There is, presently, a clear risk that venues are unfairly scapegoated for individual’s behaviour and may be held accountable for activity which has no relationship to the manner of their operation.

Night Time Industries Association – written evidence (LIC0100)

2 September 2016

Office of the Police and Crime Commissioner for Devon and Cornwall – written evidence (LIC0153)

Licensing objectives

1. Are the existing four licensing objectives the right ones for licensing authorities to promote? Should the protection of health and wellbeing be an additional objective?

The current four licensing objectives provide a solid basis for alcohol licensing and the protection of the public and the community from harm. While public health considerations can feature in the existing licensing objectives and health can make representations the absence of a public health licensing objective now that it is a 'Responsible Authority' does create some difficulties. The inability for wider public health considerations to be part of decisions regarding initial licensing (and ongoing compliance) is an issue raised frequently by public health professionals.

2. Should the policies of licensing authorities do more to facilitate the enjoyment by the public of all licensable activities? Should access to and enjoyment of licensable activities by the public, including community activities, be an additional licensing objective? Should there be any other additional objectives?

We have no particular view on this issue.

The balance between rights and responsibilities

3. Has the Live Music Act 2012 done enough to relax the provisions of the Licensing Act 2003 where they imposed unnecessarily strict requirements? Are the introductions of late night levies and Early Morning Restriction Orders effective, and if not, what alternatives are there? Does the Licensing Act now achieve the right balance between the rights of those who wish to sell alcohol and provide entertainment and the rights of those who wish to object?

a. Late Night Levy – *the existing late night levy system has potential to play an important role in helping local areas deal with the impact on night time economies – there are some good examples of how this is operating such as Cheltenham – where a partnership approach is used across industry, public sector and policing to utilise the levy fund. However the existing levy system is flawed, which has been acknowledged by the Government in the recent Modern Crime Prevention Strategy and we look forward to working with the Home Office through their consultation on this issue to improve the arrangements. The key issues include:*

- *Lack of geographic flexibility – the levy must be applied across a whole local authority area which means that it will never be a workable solution for some areas – for example a levy would need to be in place across the entire county of Cornwall when in reality it*

might only be required to in a small number of areas – for example a small Cornish town like Lostwithiel would require a completely different response to Newquay or Penzance.

- *Limited application – there is a perceived inequity in the current system which fosters resistance to the levy from licences premises because it does not include late night refreshment premises. Some of the largest challenges faced in an ENTE can occur after alcohol premises have closed and people congregate or remain in the vicinity for considerable time around food premises.*
- *Blanket approach on fees – the same rate of levy is applied to premises whether they stay open until 1am or 6am – creating perverse incentives for premises. A sliding scale could also allow us to better reflect the additional cost burdens faced in the later hours of the evening – which are considerable [add a figure on shift patterns etc]*
- *A clearer requirement that the funds should be spent collaboratively and on initiatives designed to reduce demand, improve safety and prevent and harm would also help galvanise support for the levy.*

b. EMROs

EMROs are the only existing tool by which a local area can restrict licensing hours within an area – and essentially draw back opening hours. The current legislative arrangements for EMROs do not work. All attempts to utilise the powers have been frustrated by flaws in the system and there are no EMROs in place across the country. The intention behind an EMRO is sound (i.e. that the permissive approach to 24 hour licensing can be curtailed within an area in the public interest) but the legislation does not have that effect in reality.

One of the major drivers of public interest in this sphere is the proportion of public sector resources that are consumed by late night drinking, in particular the costs of effectively policing night time economies and the costs faced by local health services, in particular A&E. In a time when public sector resources are shrinking – choices need to be made about where resources are deployed. The disproportionate loading of police resources into night time economy area has a negative impact on wider policing – with more officers on shift across policing areas on Friday and Saturday nights than at any other time of the week. The loading of resources in this way inevitably means that there are less resources available for neighbourhood policing and for high harm areas of work such as safeguarding. The resourcing pressures faced by the police, healthcare and local authorities are not considered within the narrow test under the legislation. If these powers are to have any impact this needs to be resolved.

The negative impact on a local community of extended licensing hours can be significant but again the focus on the licensing objectives means that such matters are largely irrelevant to any consideration of an EMRO. The legislation needs to look beyond the licensing objectives and allow a broader view to be taken of public interest.

The PCC does not believe that there is widespread community support for extended opening hours – in particular in view of the impact on public sector resources as well as localised community issues. The PCC is intending to carry out a survey of the public, in Devon and Cornwall (ideally in conjunction with local authorities) to seek views on the issue of closing times and would be happy to share the results with the Committee in due course.

4. Do all the responsible authorities (such as Planning, and Health & Safety), who all have other regulatory powers, engage effectively in the licensing regime, and if not, what could be done? Do other stakeholders, including local communities, engage effectively in the licensing regime, and if not, what could be done?

There is more that could be done by other parts of the public sector to help address issues before they arise – in particular from a town planning perspective.

Input from local communities is limited and hampered by the complexity of regulations and data. The relative weight of community contributions is also unclear from the existing licensing objectives – perceived failures to take account of the views of communities can deter them from participating in the future.

Licensing and local strategy

5. Licensing is only one part of the strategy that local government has to shape its communities. The Government states that the Act “is being used effectively in conjunction with other interventions as part of a coherent national and local strategy.” Do you agree?

This question is largely for local authorities, but we would comment that for it to operate effectively we need to ensure that there is scope for the voice of the local community to be heard strongly in shaping the part that licensed premises play in the ecosystem – reforms to the late night levy and EMRO would assist this.

6. Should licensing policy and planning policy be integrated more closely to shape local areas and address the proliferation of licensed premises? How could it be done?

Yes we support licensing and planning policy being more integrated.

Crime, disorder and public safety

7. Are the subsequent amendments made by policing legislation achieving their objects? Do they give the police the powers they need to prevent crime and disorder and promote the licensing objectives generally? Are police adequately trained to use their powers effectively and appropriately?

We consider that the police are adequately trained to use their powers effectively and appropriately – although there are deployment pressures in view of reduced resources and shifting priorities (for example the increased focus on safeguarding and cyber crime). This can mean that they play a less active role in the system than licensing committees would desire. One of the ways to help address this would be to look at the issue of cost recovery for

the costs incurred by policing in actively participating in the licensing regime – for example on premises reviews.

8. Should sales of alcohol airside at international airports continue to be exempt from the application of the Act? Should sales on other forms of transport continue to be exempt?

No comment.

Licensing procedure

9. The Act was intended to simplify licensing procedure; instead it has become increasingly complex. What could be done to simplify the procedure?

The use of mandatory licensing conditions is helpful in simplifying the procedure – the scope to develop localised mandatory conditions where the need is well evidenced would be a step forward.

10. What could be done to improve the appeal procedure, including listing and costs? Should appeal decisions be reported to promote consistency? Is there a case for a further appeal to the Crown Court? Is there a role for formal mediation in the appeal process?

We would support moves to allow for cost recovery in respect of policing input to long and complex appeals.

Sale of alcohol for consumption at home (the off-trade)

11. Given the increase in off-trade sales, including online sales, is there a case for reform of the licensing regime applying to the off-trade? How effectively does the regime control supermarkets and large retailers, under-age sales, and delivery services? Should the law be amended to allow licensing authorities more specific control over off-trade sales of “super-strength” alcohol?

Off sales play an increasingly significant role in alcohol consumption in the UK and further reform is needed in this area. We would support action to better regulate delivery services and their impact on under age sales. We have seen success in tackling under age sales through the Challenge 21 and Challenge 25 schemes but the growth in home delivery services has the potential to counter-act that progress.

The easy availability of low cost super strength alcohol is an issue of national concern – with a range of academic studies showing the linkages to health harms as well as the links with anti-social behaviour. These are often complex individuals and removal of the product alone will not often solve the underlying problems. Reducing the availability of very cheap super strength alcohol does have a role to play though – as part of a holistic, partnership approach. The government’s introduction of an alcohol floor price to address the sale of super strength very cheap alcohol is not having the intended effect. The loophole that exists for white cider means that it is still possible to purchase around 40 unit of alcohol for £7. This needs to be fixed – whether it is by the introduction of a minimum unit price or by a

specific intervention to close the loophole. We recognise that steps have been taken to try and resolve this – in terms of the development of a new Public Health Responsibility Deal industry pledge to stop selling single cans containing more than 4 units but the pledge has had little impact. The four units per can limit does not affect most of the current products considered to be ‘very high strength’ and in any event the voluntary scheme has had limited take up.

Pricing

12. Should alcohol pricing and taxation be used as a form of control, and if so, how? Should the Government introduce minimum unit pricing in England? Does the evidence that MUP would be effective need to be “conclusive” before MUP could be introduced, or can the effect of MUP be gauged only after its introduction?

The Government’s own evidence base from 2012 showed that a minimum unit price of 45p per unit of alcohol could provide an immediate drop in crimes of over 5000 per year, saving around £13m, and with an estimated fall in hospital admissions of over 4,500 in year one. Sheffield University³⁷⁴ estimates an MUP of 45p could provide a longer-term reduction after 10 years of 34,000 less crimes and 24,000 less hospital admissions each year. The impact of a Minimum Unit Price of 45p on alcohol prices is not as broad as industry would suggest. It would have no notable impact on the price of a bottle of wine at about £4 or a bottle of spirits at about £13. Its main impact will be on very high strength low cost alcohol.

It has now been some time since the Government considered the issue of MUP and there would be value in it being re-examined. In particular to consider the emerging international evidence – in particular from Canada – that the introduction of a MUP can have a positive impact on health and wellbeing as well as on levels of crime and disorder.

Fees and costs associated with the Licensing Act 2003

13. Do licence fees need to be set at national level? Should London, and the other major cities to which the Government proposes to devolve greater powers, have the power to set their own licence fees?

All locations should have the ability to set licence fees – perhaps within set parameters. Such fees should enable cost recovery not only for the local authority but for other Responsible Authorities – in particular the police given the evidence and analytical burdens that are imposed upon them in initial applications as well as reviews and compliance.

International comparisons

14. Is there a correlation between the strictness of the regulatory regime in other countries and the level of alcohol abuse? Are there aspects of the licensing laws of other countries, and other UK jurisdictions, that might usefully be considered for England and Wales?

³⁷⁴ <https://www.shef.ac.uk/scharr/sections/ph/research/alpol/faq#evidence>

No comment.

19 September 2016

Paddington Waterways and Maida Vale Society – written evidence (LIC0144)

Introduction

PWMVS is an amenity society recognised by Westminster City Council (WCC). It covers the area between Praed Street (including Paddington Station) north to the boundary with Kilburn, Maida Vale and Edgware Road to the East and Eastbourne Terrace to the west. It has a standing Licensing Sub Committee and has been actively engaged with responding to applications within our area of interest since the Act was brought in. We have also worked closely with WCC in defining and developing its Statement of Licensing Policy, and related initiatives and processes. We consider the merits of every application for a New Licence or Variation within our area as it is advertised on the WCC Register. We are very fortunate in that WCC funds a dedicated Project at Citizens Advice Westminster, which provides free advice, information, assistance and representation at licence hearings.

Response

1. We feel that the unexpected impact of the ban on smoking within licensed premises has led to negative impact on nearby residents, through the use of outside space. Not only is there the issue of third party inhalation but also a significant increase in disruptive noise in many cases, particularly in the summer. In the past people only went outside to enjoy the good weather, but now there is constant year round use of the immediate area surrounding the premises. With the spread of shisha, we also have concerns about the health and wellbeing not only of those that smoke but also those residents and workers in adjoining properties.
2. n/a
3. We feel that WCC's approach before 2012 brought common sense to balance these rights. However it now has no powers to insist on conditioning the closing of doors and windows, nor on the necessary regulator equipment to control the sound volume, unless a review of a licence is sought. The Act does not take into account the difference between a situation in the City centre and the outer dormitory suburbs where families are trying to have quality sleep. The noise arising from the static music, as well as the float music, at Notting Hill Carnival had increased substantially. So on balance we find that it has gone too far
4. We find that Planning is dealt with quite separately from Licensing and this is occasionally detrimental, as Planning allows certain conditions which do not keep within WCC's Licensing Policy. Tables and chairs are a good example, also opening hours. It certainly needs to be enmeshed.
5. n/a

6. This is likely to be a key issue for the future- our area is changing and the proliferation of licences for late hours in the Praed street area is a good example. We think it should be integrated more closely, to better promote consistency in decision making at a local level, whilst still considering each case on its merits.

7. n/a

8. We feel it should be a policy at international airports to place the onus on the licensed operator to cease selling to those near incapacitation.

9. Frankly 28 days for filing an objection does not allow much leeway for research or site visits. WCC has taken the stance that it is beneficial for mediation and discussions between the applicant and objectors to take place and thus limit the cases requiring a hearing. Once again, the time is very limited between the requirement to hear the case within the specified lead time and the final date for objections, so this is not always possible. The current licensing model is under severe strain, with increased requirements and expectations to protect health and amenity coming at a time when local authority funding is being squeezed. The result is that ever more complex regulations play into the hands of well funded commercial licence holders/ applicants who are better placed to navigate the inconsistencies to their advantage, with the volunteer bodies and reduced local authority teams that they contend with frequently do not have realistic timescales to marshal! a response that reflects the needs of the community.

10. The system is long and burdensome- one entity has gone to appeal twice involving us in a great deal of time and effort. It is open to abuse by unscrupulous operators.

11.

Yes, yes and yes. We have long been concerned about the street drinking problems in certain parts of our area, often linked to the purchase of super strength alcohol, and the associated problems of litter, public urination and general anti social behaviour.

12. n/a

13. Given the great number of licensed premises WCC has to deal with, it should be left to them to ensure they recover full costs - otherwise this is a significant burden to WCC rate payers.

25 August 2016

Pinsent Masons LLP – written evidence (LIC0074)

The Select Committee on the Licensing Act 2003 (LA 2003) has made a public call for written evidence to be submitted to them in relation to a number of questions posed in respect of the LA 2003. Below are the submissions from the Licensing Team at Pinsent Masons LLP, in relation to the legal aspects of the questions that have been posed. It should be noted that Pinsent Masons LLP is the only firm that has specialist licensing solicitors covering all countries within the UK.

LICENSING OBJECTIVES

1. Are the existing four licensing objectives the right ones for licensing authorities to promote? Should the protection of health and wellbeing be an additional objective?

1.1 The team believes that the current four licensing objectives are the right ones for licensing authorities to promote, as they cover the key areas that give rise to most issues associated with licensed premises. Each will be covered in detail below:

1.1.1 The prevention of crime and disorder

(a) This objective relates to the preventing of both 'crime and disorder' on or linked to the premises in question and not a general area. A common example of a licensing authority discharging its responsibility in relation to this objective would be to ensure that a premises installs CCTV cameras which are operational and licensed to the specific premises. It is believed that CCTV can actively deter disorder, nuisance, anti-social behaviour and crime generally, as stated in the S182 Guidance. A further example would be the requirement for door staff. Again, as stated in the S182 Guidance, the licensing authority should look to the police as the main source of advice on crime and disorder. The correct conditioning and appropriate hours will ensure that a licensing authority is in a position to discharge its role in promoting the licensing objectives.

1.1.2 Public safety

(a) This should be read as "safety of those on the premises". This objective relates to the physical safety of people using a licensed premises and is applicable to both staff and customers. An example of this would be the physical state of the premises itself. It also includes the type of activities taking place within the premises i.e. the use of pyrotechnics. This licensing objective also covers general safety and safety from fire. Fire is, however, now regulated in non-domestic premises by the Regulatory Reform (Fire Safety) Order 2005. Through Health and Safety teams, appropriate conditioning of a premises licence should and does allow a licensing authority to discharge its role in promoting the licensing objectives. The Fire Authority, as a responsible authority in its own right, will comment on any fire related issues.

1.1.3 Prevention of public nuisance

(a) It is noted that public nuisance is already a criminal offence at common law, but due to its importance, it was felt that it should be a specific licensing objective and not fall under the crime and disorder objective. The most common form of public nuisance is in relation to noise, whether it be from machinery or loud music within a premises. However, other issues such as litter and noxious smells would also fall underneath this licensing objective. Licensing authorities, through environmental health teams are, therefore, responsible for the prevention of public nuisance. The appropriate control of hours that activities can take place and the conditioning of a premises licence, should and does allow a licensing authority to discharge its role in promoting the licensing objectives.

1.1.4 Protection of children from harm

(a) The protection of children from harm is intended to cover the protection of children from moral, psychological and physical harm, as stated in the S182 Guidance.

(b) In terms of LA 2003 this may relate to, for example, conditions associated with films and a categorisation as well as whether the premises were to have adult entertainment. Again, this is an area that through the correct conditioning of a licence, can allow a licensing authority to discharge its role in promoting the licensing objectives.

(c) It is our experience that when a premises licence is granted by a licensing authority, the majority of conditions will relate to the promotion of the "prevention of crime and disorder" objective.

1.1.5 Additional Objectives

(a) In respect of a further objective for the protection of health and wellbeing, it is the opinion of the English and Welsh element of the Pinsent Masons' Licensing Team, that this additional objective is not required. Indeed the statistics in the Memorandum to the House of Lords Select Committee, Post-Legislative Scrutiny of the Licensing Act 2003 Document confirms that alcohol consumption is falling and evidence from analysis of the London Ambulance Service alcohol-related callouts shows that their proportion of urgent and emergency callouts for alcohol-related incidents has remained at around 3 or 4 per cent since 2004/05. It is the former in relation to the levels of consumption that are important here in the protection of health and wellbeing.

(b) A similar argument will be made below in relation the 'minimum unit pricing' of alcohol. That this need for a 'health objective' is not required. In Scotland there is a fifth objective in terms of section 4 of the Licensing (Scotland) Act 2005, "protecting and improving public health." The experience of our licensing specialists in Scotland is that it is very difficult to achieve on a premises by premises basis. For example, it results in general objections from NHS representatives which do not relate (indeed cannot) relate to the premises which are the subject of the application.

2. Should the policies of licensing authorities do more to facilitate the enjoyment by the public of all licensing activities? Should access to and enjoyment of licensable

activities by the public, including community activities, be an additional licensing objective? Should there be any other additional objectives?

2.1 As stated above, it is our belief that the current four licensing objectives are sufficient. We are not aware of any public or community activities that are hindered or constrained by the LA 2003. Indeed the use of temporary event notices would meet the requirements of most community events. If the event is to be larger than the set level of 499 persons, then it is quite right that a full premises licence application is required. Temporary event notices are not expensive and indeed can be applied for by individuals without any licensing knowledge or experience. It is not believed there should be any further licensing objectives.

BALANCE BETWEEN RIGHTS AND RESPONSIBILITIES

3. Has the Live Music Act 2012 done enough to relax the provisions of the Licensing Act 2003 where they imposed unnecessary strict requirements? Are the introductions of late night levies and Early Morning Restriction Orders effective, and if not, what alternatives are there? Does the Licensing Act now achieve the right balance between the rights of those who wish to sell alcohol and provide entertainment and the rights of those who wish to object?

3.1 We do not believe that the LA 2003 placed unnecessarily strict requirements in relation to live and recorded music. We are unaware of any committee or environmental health officer who has or would have objections or raised a written representation in relation to a premises that applied for either of these in a licensing application (live or recorded music), should the terminal hour for the activities be 2300 hours. We are unaware of how widely the other exemptions that the Live Music Act 2012 are used, for example: a performance of live music in a workplace with an audience of no more than 200 people. Evidence for this will have to be submitted by those that have utilised the measures the Live Music Act has introduced.

3.2 In respect of the introduction of late night levies and early morning restriction orders being effective, we are not in a position to comment on their effectiveness, statistical evidence from the relevant authorities should confirm if they have been effective or not. In the entire period since late night levies have been introduced, we have submitted only two minor variations to reduce the hours of premises to ensure that the premises did not have to pay the late night levy.

3.3 It is felt that with the powers that are available to the responsible authorities, that the LA 2003 does achieve the right balance between the rights of those who wish to sell alcohol to provide entertainment and the right of those who wish to object.

4. Do all the responsible authorities (such as Planning, and Health & Safety), who all have other regulatory powers, engage effectively in the licensing regime, and if not, what could be done? Do other stakeholders, including local communities, engage effectively in the licensing regime, and if not, what could be done?

4.1 It is the experience of the team, that the only responsible authorities that tend to be involved in the application process are the police, environmental health and the licensing authority themselves. Occasionally the planning team will make a representation. As planning runs parallel with licensing and indeed a professional operator will adhere to their planning permission, it tends to be the case that planning teams do not often get overly involved in licensing applications. We as a firm advocate that the system currently works and believe further engagement from responsible authorities is not required.

4.2 In terms of other stakeholders, including local communities, this is very dependent on where premises are situated. For example, in Westminster and Headingley (Leeds), Housing and Residents' Associations are always involved, and their involvement is generally positive. Early interaction with local communities will mean that issues that could arise later can be avoided. It is thought that currently the licensing authority has the necessary powers, to balance the needs of operators and local communities. Whether this be through the curbing of hours or specific conditions to be attached to the premises licence upon being granted.

LICENSING AND LOCAL STRATEGY

5. Licensing is only part of the strategy that the local government has to shape its communities. The Government states that the Act "is being used effectively in conjunction with other interventions as part of the coherent national and local strategy." Do you agree?

5.1 As licensing specialists, we will only be involved in the licensing elements for a premises and so could not comment on how well integrated the system is in regard to specific premises. However, although the current S182 Guidance promotes the integration of licensing and planning, it is our experience, that in reality there is little joined up thinking between the two committees.

6. Should licensing policy and planning policy be integrated more closely to shape local areas and adjust the proliferation of license premises? How could it be done?

6.1 As stated above, it is believed that licensing and planning are not integrated. Although planning teams are responsible authorities for all new applications and for full variations, as stated previously, they tend not to submit representations. We would submit that this is because good operators will be aware of their planning hours, understand that it is an offence to operate outside of them and so will adhere to their planning permissions.

6.2 The question states that there has been a proliferation of licensed premises. The team disagree with this and indeed the figures given in the Memorandum to the House of Lords Select Committee do not corroborate this statement. Indeed the number of licences for sales of alcohol on the premises only has increased from 33,000 in 2007 to 37,700 in 2014. Similarly off-sales premises licenses have only increased from 44,400 in 2007 to 52,400 in 2014. It is not clear whether these figures take into account that licences may not be surrendered, even if they are not used, which would lead to inflated figures. Other facts

given within the Memorandum suggest that there has even been a decline in drink focused premises from 85,000 to 62,000 between 2006 and 2016. Over the same time period 80% of new openings (net between 2006 and 2016) have been food focused.

6.3 In response to how this could be done, the team believe that there is not a necessity for this integration to take place. A responsible operator will adhere to the planning conditions that have been imposed by the permission or indeed should they be different, imposed by the premises licence. Currently the system allows for planning and licensing applications to run concurrently, in order to reduce the time taken to have both granted. We submit that the responsible operator would be unduly penalised should he have to make an application for either planning or licensing first before being able to submit an application for the other.

CRIME, DISORDER AND PUBLIC SAFETY

7. Are the subsequent amendments made by policing legislation achieving their objective? Do they give the police the powers they need to prevent crime and disorder and then provide the licensing objectives generally? Are the police adequately trained to use their powers effectively and appropriately?

7.1 It is the team's view that the current tools available to the police are sufficient in order to prevent crime and disorder and promote the licensing objectives. The police have closure powers under the Anti-social Behaviour, Crime and Policing Act 2014, as well as, the closure powers contained within the LA 2003. In particular the powers of 'review' and 'summary review' enable the police to deal with problem premises. It is our experience that if used properly and presented with supporting relevant evidence, that these powers are sufficient and indeed that there is no need for further legislation.

7.2 In respect of whether police are adequately trained and use their powers effectively and appropriately, in the round, the team agree that the police are aware of how best to use the powers that they have, in order to deal with issues. There have been a handful of cases, however, where the police have not used their powers correctly. An example being where the Yorkshire Police Force launched a summary review of a premises licence, where on appeal, in court, the newly appointed police licensing officer admitted that they did not have the relevant experience to launch a summary review. Thankfully these incidents are few and far between. Due to the length of time the legislation has been in force and the clear guidance given, police forces do now use an escalated approach, starting with warnings to the operators, before harsher measures are taken.

8. Should sales of alcohol airside International airports continue to be exempt from the application of the Act? Should sales on other forms of transport continue to be exempt?

8.1 The team do not have any strong views on this matter. It should be dependent on any evidence to suggest that there are issues in relation to alcohol being served, sold airside

or indeed on any other forms of transport. We are not aware of any major issues in relation to either of these.

LICENSING PROCEDURE

9. The Act was intended to simplify licensing procedure; instead it has become increasingly complex. What could be done to simplify the procedure?

9.1 The team would disagree with the statement that licensing procedure has become increasingly complex. It would be fair to say that it is a specialist area of the law. However, applications are relatively straightforward. Indeed with amendments to the legislation in terms of the removal of some licensable activities, including for example 'facilities for dancing' and with licensing authorities and responsible authorities having a greater understanding of the way that conditions should be imposed on premises licences, the system can and does operate in an effective way. A very recent example of this being an application made in Westminster for a restaurant premises licence located within the West End Stress area. By following the Westminster City Council statement of licensing policy and by utilising the Council's basket of model conditions and with liaison with the responsible authorities the process was affective and the premises licence granted at a hearing.

10. What could be done to improve the appeal procedure, including listing and costs? Should appeal decisions be reported to promote consistency? Is there a case for a further appeal to the County Court? Is there a role for formal mediation in the appeal process?

10.1 It would be useful if there was a specific procedure and uniform application form to do this. Currently an appeal is made in writing to the court, this needing to be done with 21 days of receipt of written notification of the decision being appealed. The current system clearly works, as appeals are lodged when needed. However, it is our experience that there is a great disparity in the level of detail for the actual grounds of appeal. Often at pre-trial reviews/case management hearings, the appellant is asked to expand on their grounds, as there are often insufficient details for the respondent to deal with. The team believe that if there was a set procedure form that needed to be completed when the appeal was launched, the form could be set out in such a way to ensure that the level of detail that is required is contained within the form. It is our understanding that in respect of listings, this is purely dependant on how busy the Magistrates' courts are, and so there would be very little that could be done about it. Unless, of course, legislation was changed to stipulate that a LA 2003 appeal must be heard and disposed of within a certain period of time.

10.2 It is the team's experience that many cases will be dealt with by an informal mediation process by both parties and a consent order setting out the agreement will be made prior to the appeal hearing date. It is, therefore, the team's view that there is no requirement for a formal mediation procedure in the appeal process.

SALE OF ALCOHOL FOR CONSUMPTION AT HOME (THE OFF-TRADE)

11. Given the increase in off-trade sales, including online sales, is there a case for reform of the licensing regime applying to the off-trade? How effectively does the regime

control supermarkets and large retailers, under-age sales and delivery services? Should the law be amended to allow licensing authorities more specific control over off-trade sales of "super-strength" alcohol?

11.1 The team's view in relation to normal off-trade sales for a shop or a supermarket, is that licensing authorities do have the relevant controls already over the off trade. Specific conditions can be applied to premises licences, as they often are, to ensure that underage sales and the sale "super-strength" alcohol are controlled. In particular to super-strength alcohol there are a number of licensing authorities, for example; Tower Hamlets, London Borough of Newham, City of Westminster and many others that now do have specific "super-strength" alcohol conditions. The team, therefore, do not believe that the law needs to be amended to give more specific controls in this area.

11.2 In relation to online delivery sales, having worked with a number of these types of operators, in order to ensure that this area is controlled correctly, the team do think further controls should be applied. A particular issue that is of concern is 'underage' sales. More emphasis should be placed on delivery drivers to ensure that they carry out the correct age verification checks upon delivery. For example, a teenager could borrow his/her parent's credit card and order beer online and have it delivered to the house. There is nothing currently stopping delivery drivers from just leaving parcels in a safe place. This does cause the team concerns and could be easily avoided by ensuring that delivery drivers, as is the case with on-sales, do ensure that the person they are delivering the alcohol to a person of 18 years or over.

PRICING

12. Should alcohol pricing and taxation be used as a form of control and if so, how? Should the Government introduce minimum unit pricing in England? Does the evidence that MUP would be effective need to be "conclusive" before MUP can be introduced, or can the effect of MUP be gauged only after its introduction?

12.1 Since the introduction of 'minimum pricing' in May 2014, we are only aware of one case, that of the Gateshead shopkeeper who has been prosecuted for selling alcohol below the minimum price. This prosecution was on 19 May 2016. The team think that the introduction of a 'minimum unit price' would be unjust. The people who would be most penalised by minimum pricing are those who are already on the tightest budgets. This would include people on fixed incomes or pensioners, for example. It is thought that those in the minority who do have issues with alcohol or habits of heavy drinking will not be deterred by minimum unit pricing. Therefore, it would not stop the real issues of binge drinking and alcohol misuse in the minority and so MUP should not be introduced. The Scottish Government passed legislation in 2012 seeking to introduce a minimum unit price which prohibits the sale of alcohol below a minimum price, calculated on the basis of the drink's alcoholic content. This has been challenged by the Scotch Whisky Association (SWA) and a number of European wine and spirit trade associations. The matter has still to be determined by the Scottish Courts. The SWA argued in the Court of Session that the

Scottish Government was required to produce objective and impartial evidence demonstrating that the intended health benefits of its policy could not be otherwise achieved through less restrictive means than minimum unit pricing.

FEES AND COSTS ASSOCIATED WITH THE LICENSING ACT 2003

13. Do licence fees need to be set at national level? Should London, and the other major cities to which the Government proposes to devolve greater powers, have the power to set their own licence fees?

13.1 The team feels that the current template of licence fees set nationally works well. Should there be a requirement for the fees to be increased or decreased, at the national level, then this should be taken into consideration.

13.2 The main issue that operators are concerned about would be the rise in the level of fees, should individual areas have greater powers to set this then it may lead to higher prices in certain areas. It would be a case for licensing authorities on an evidence basis to confirm whether there should be any change to the current system. Previous attempts to look at this issue, (the last consultation being done in February 2014) saw very few licensing authorities respond. This was the reason that the government at the time decided not to introduce local level set licensing fees.

INTERNATIONAL COMPARISONS

14. Is there a correlation between the strictness of the regulatory regime and other countries and the level of alcohol abuse? Other aspects of the licensing laws of other countries, and other jurisdictions, that might usually be considered for England and Wales?

14.1 Our licensing specialists in Scotland, where the Licensing (Scotland) Act 2005 is in place and is seen as being a stricter regime than that of England and Wales, comment that increased regulation on the 'on trade' has pushed people out of pubs and into supermarkets; that if you are to believe those arguing for further restrictions, Scotland is now a nation of "home drinkers"- or "pre-loaders". The lesson to learn is perhaps that increased regulation, when not followed through with appropriate investment in implementation can have the wrong effect. Our specialists in Scotland have long argued that education and enforcement of the existing rules are more likely to work than even more regulation.

1 September 2016

Plymouth City Council – written evidence (LIC0048)

Firstly, may I thank the House of Lords Committee in providing the opportunity to contribute to the review of the Licensing Act 2003. The alcohol debate has historically been and will continue to be a balance between individual freedom to responsibly use alcohol against the need to control the negative impact of its use on the individual, local communities, wider society and the country as a whole. The Licensing Act contributes to this by having an ability to control availability, on sale usage and responsible retailing. It is vital, therefore, that a correct balance is maintained.

Please accept this submission in my role as the Director of Public Health for Plymouth, and also as Chair of the local Alcohol Programme Board. This Board is a multiagency strategic level group consisting of members from the Police, Local Authority, NHS, CCG, voluntary sector and higher education establishments.

Where possible I have directly answered the questions posed and have also added additional comments where relevant to specific subject areas.

I am sure that you will receive numerous submissions in response to this consultation, many of which will be similar in content. I would like to highlight the areas of this submission that I believe may be new to the Committee for consideration:

Personal licence holders – I recommend a review of the current qualifications required and a return to the use of a fit and proper assessment for personal licence holders. I suggest that those left in charge of premises in the absence of the DPS must have received training equivalent to a personal licence holder.

Local alcohol risk assessments – local authorities should publish local alcohol harm data that licensees are encouraged to use when completing local alcohol risk assessments as part of their operating schedules, and then as part of ongoing management of the premises.

Health Objective - I would like add my personal support for the addition of a health objective within the licensing regime. There is overwhelming support for this to be introduced and despite concerns about how it can be utilised I am confident that it has the potential to reduce overall levels of alcohol related harm and support integrated approaches to promoting health and wellbeing.

Finally I have also submitted local research by Plymouth University with regards to pre-loading that identifies the impact on arrest as well as attitudes and factors that have contributed to the increase of pre loading.

Licensing objectives

1. Are the existing four licensing objectives the right ones for licensing authorities to promote? Should the protection of health and wellbeing be an additional objective?

Yes – alcohol harm includes the impact of alcohol on individual and population health. The impacts on health are well researched and documented and are evidenced in the continued rise of alcohol related hospital admissions. In Plymouth the 2014/15 rate of persons admitted to hospital due to alcohol (broad) was 1,392 per 100,000 population. This represents an 18% increase in the rate since 2008/09. Rates of admission episodes for alcoholic liver disease in Plymouth are significantly higher than England average and present an increasing challenge to the local health system. Rates of admissions and levels of health harm are most notable in areas of deprivation and compromise local efforts to reduce inequalities.

There is a growing body of evidence indicating that the number of licensed premises in an area has a direct impact on levels of consumption and subsequent harm³⁷⁵.

The impact on health and wider harm caused by the availability of alcohol is therefore a relevant matter to Licensing Authorities. Licensing forms a significant part of the local influence on reducing negative impacts of alcohol usage through promoting responsible retailing and controlling availability in terms of number, location and times of operation. In this way it has the potential to influence the levels of alcohol related health harm in a local area. The licensing policy and the control of individual licensed premises forms part of a wider systems approach to managing alcohol harm.

There has been much debate about whether the addition of a health objective would add value due to the difficulty in applying this objective to individual applications.

I believe that there is great value to the health objective, both in overall policy development and also in influencing individual applications where appropriate. For this to be effective local authorities should collate intelligence regarding alcohol harm in their area. Many LAs are now developing this baseline of data, which has been used successfully in policy development and to influence individual applications.

Local alcohol harm data can identify local populations who are at risk of alcohol related health harm and where greater control regarding the density and operation of alcohol sales is required. For example, areas with high levels of street drinking may require additional conditions in relation to the sale of high strength, low cost alcohol, including a prohibition of their sale. This is a natural extension of the operation of a cumulative impact policy, which primarily addresses crime and disorder.

Once the policy has identified areas at increased risk of alcohol harm then appropriate mitigation measures can be applied to individual applications in these areas. Again this mirrors the operation of applications in areas of cumulative impact.

³⁷⁵ Re-thinking alcohol licensing, Alcohol Focus Scotland and Scottish Health Action on Alcohol Problems, 2011.

Our overall aspirations for a health objective and the use of local alcohol harm data mirrors that already identified in evidence submitted to the Committee by Leeds City Council

2. Should the policies of licensing authorities do more to facilitate the enjoyment by the public of all licensable activities? Should access to and enjoyment of licensable activities by the public, including community activities, be an additional licensing objective? Should there be any other additional objectives?

No – the default position of the Act is permissive in that applications must be granted unless representations are made and it is determined that the promotion of the licensing objectives cannot be met. Deregulation now means that licensable activities other than alcohol are only regulated beyond 11pm. The majority of activities are therefore outside of the scope of the Act. It is not clear what the suggested additional objective will add.

The balance between rights and responsibilities

3. Has the Live Music Act 2012 done enough to relax the provisions of the Licensing Act 2003 where they imposed unnecessarily strict requirements? Are the introductions of late night levies and Early Morning Restriction Orders effective, and if not, what alternatives are there? Does the Licensing Act now achieve the right balance between the rights of those who wish to sell alcohol and provide entertainment and the rights of those who wish to object?

The Live Music Act is only one area of deregulation, which has resulted in most licensable activities now being restricted to activities beyond 11pm. Further deregulation will erode safeguards to local communities from nuisance or crime and disorder. Deregulation has led to a very complicated position when deciding if activities are licensable. Indeed s182 guidance issued by the Home Office devotes 16 pages to this issue. This has led to a highly confusing environment for licensing authorities and the trade. This is compounded by deregulated conditions still showing on licences and therefore available on the public register, which local communities believe are still enforceable.

Further deregulation is possible in relation to the process and procedure of the system. These will be addressed under question 9.

Levy – Plymouth City Council has twice consulted on the introduction of a levy. The Council fully supported the intention of the levy and that a “polluter pays” principle applies, however, the levy mechanism does not apply this in an equitable way for the following reasons:

- It unfairly targets suburban or community based licenced premises outside of the main ENTE areas. These premises will pay the levy but contribute little to overall crime and disorder and will see little benefit from additional activity funded through the levy.

- Off sales, unless open after 2300 hrs, do not contribute to the levy, yet we know pre-loading is prevalent, contributing to the overall levels of excessive intoxication and therefore levels of disorder.

For the levy to be more acceptable the Home Office should consider:

- Allowing local discretion to define geographic areas for the levy
- All licenced premises should contribute to the levy to help fund activity to prevent, reduce or remediate alcohol harm in all of its components. A system similar to the Community Infrastructure level in Planning Services could be used. By all businesses contributing, the amount of levy for each will be considerably smaller and could be structured so that those that operate long hours, have greater sales or operate into the early morning pay proportionately more.

EMRO – This is an attempt to control closing hours after the horse has bolted from the stable. The levy is a better way to ensure those that operate late pay for the additional burden that they produce. Levy fees, in themselves, will require licensees to make a commercial business decision on whether it is better to reduce hours.

New controls – Our experience has shown that problems can arise from either poor overall management or day to day supervision. This raises two issues regarding the appropriateness of the current system of Designated Premise Supervisors (DPS) and their training that forms part of their competence. We would propose the following changes:

Licensee and DPS competence – the current qualification achieved to obtain a personal licence is not providing the level of knowledge required. Responsible retailing, whether it is for on or off sales, is not simple. In our experience the knowledge and understanding of those who have acquired the relevant qualification is inadequate.

Recommendation – the Home Office reviews the current syllabus to ensure that the level of acquired knowledge is suitable and sufficient. It may well be beneficial to have separate qualifications for on and off sales as the issues posed by each side of the trade are sufficiently different.

Premise management – Currently a DPS can be responsible for the management of a number of premises over a large geographic area which limits their ability to actively manage on a day to day basis. A DPS is required to receive approved training and is vetted prior to be issued a personal licence, yet those left in day to day charge of a premises will have received no formal training or competency assessment.

Recommendation - that anyone left in charge of a licenced premises must have received personal licence holder training and achieved the relevant qualification

Lost lessons from the Licensing Act 1964 – there are two aspects of the Act which should be considered for re-introduction.

Service of drunks – This is difficult to enforce but agencies could do more to actively tackle this issue. That said those that are excessively drunk are often supplied with further alcohol through friends. The Act had a provision which prohibited drunks remaining on the premises. This could be a useful addition to ensure licensees and security staff do more to proactively manage customers.

Personal Licence Holders – the previous test was that of being fit and proper, whereas currently the assessment of licence holders is largely only based on unspent criminal convictions. The re-introduction of a fit and proper assessment would widen the scope of the assessment of the proposed personal licence holder, and then also to include their competence to manage the premises that they propose to own or manage. This would also allow for some deregulation as currently the Home Office has to maintain a list of relevant convictions. A fit and proper assessment would only require a list of generic offences to be maintained. The system is well established within the taxi licensing system and Committee members should already be familiar with the principles of a fit and proper assessment.

4. Do all the responsible authorities (such as Planning, and Health & Safety), who all have other regulatory powers, engage effectively in the licensing regime, and if not, what could be done? Do other stakeholders, including local communities, engage effectively in the licensing regime, and if not, what could be done?

The experience in Plymouth indicates that only the Police, Fire Authority, Public Health, Environmental health and Trading Standards actively engage. The other agencies either do not have the capacity to engage or struggle to identify how they can usefully contribute on individual applications. There is greater coordination required between Planning and Economic Development teams in regards to policy development to ensure a coordinated approach to local strategy and policy. Please note our comments for question 5 and 6.

Community engagement is patchy, often being driven by individual members of the community. Community representation is most effective where there is support from local ward Councillors who can represent communities at the Committee hearing. Community engagement could be improved through greater visibility and accessibility of local licensing processes.

Individuals may be fearful of making representations against applications or feel that they cannot make a difference due to their perceived inability to influence local decision making. Only local education and promotional campaigns can change this.

Licensing and local strategy

5. Licensing is only one part of the strategy that local government has to shape its communities. The Government states that the Act “is being used effectively in conjunction with other interventions as part of a coherent national and local strategy.” Do you agree?

In the main yes. In recent years the ability of licensing to contribute to local priorities has been recognised.

6. Should licensing policy and planning policy be integrated more closely to shape local areas and address the proliferation of licensed premises? How could it be done?

Yes – the need for pro-active management of the evening and night time economy (ENTE) is an often unrecognised. The development of ENTE must be managed to ensure a breadth of offer, appropriately sited and effectively served by the necessary infrastructure such as transport links and Policing. Authorities must therefore take a view regarding the type and nature of ENTE that they wish to promote within their area. This should be achieved through a coordinated integration of licensing, planning and economic development policies, in order to reduce potential conflicts but also add value to each other.

Rather than just weeding, we should seek to plan our ENTE garden!

This should not be interpreted to assume that the two systems can be completely aligned. Planning consider a different range of relevant matters that the 4 licensing objectives. Subsequent planning conditions are unspecific due to the breadth of potential uses of a building under planning use classes. The licensing regime, however, considers a very specific usage and so may well result in slightly different conditions tailored to that business.

Crime, disorder and public safety

7. Are the subsequent amendments made by policing legislation achieving their objects? Do they give the police the powers they need to prevent crime and disorder and promote the licensing objectives generally? Are police adequately trained to use their powers effectively and appropriately?

Yes - our experience locally is positive.

8. Should sales of alcohol airside at international airports continue to be exempt from the application of the Act? Should sales on other forms of transport continue to be exempt?

We are not in a position to comment on this aspect

Licensing procedure

9. The Act was intended to simplify licensing procedure; instead it has become increasingly complex. What could be done to simplify the procedure?

The process of deregulation has itself overly complicated the system, causing confusion on what is licensable – please note my earlier comments. There are specific areas which could benefit from a review benefiting both licensees but also licensing authorities, these being:

Forms – these are prescribed forms and are unduly complicated. Being overly complicated influences licensees in seeking professional assistance in completing applications, which often is unnecessary and costly to the applicant.

Public notices – the average cost of a notice is over £300 and with declining newspaper sales the value of using this means of seeking responses from local communities is questionable. A review is required to find suitable alternative mechanisms.

Personal licences – with the recent changes to remove the 10 year life of a licence, Licensing Authorities are now faced with maintaining licences for an ever increasing number of personal licence holders with no end date. Significant numbers of the licensees no longer actively use their licence and as such fail to maintain accurate personal details with their issuing authority. Although there is a minimal cost associated with maintaining these records some decision must be made when these records can be disposed of in accordance with a retention policy. It also raises issues under the Data Protection Act where authorities are maintaining incorrect personal details.

Suspended licences – Failure to pay annual fees results in a suspension of the licence. In many cases these annual fees are never paid either as the premises is never again used for licensable purposes or even ceases to exist. An improved approach could be that where a licence has been suspended for a period of 5 years then it should automatically lapse. Local experience suggests that it is cheaper for applicants to apply for a new grant rather than pay any outstanding annual fees.

Ancillary sales notice – the aim of this provision, which has yet to commence, is to enable a light touch for business who wish to provide alcohol as an ancillary activity, such as B&Bs, florists, hairdressers etc. The proposed new system is unnecessary complex with unenforceable limits on the levels of alcohol provided. A much simpler system, that achieves that same aim, would have been to provide exemptions from the current normal application system, such as the requirement for a public notice, only to require notifying the Police and Environmental Health and also to introduced a reduced annual fee payable every 3 years.

Mandatory conditions –The value of the mandatory conditions in respect of below cost pricing and irresponsible drinks promotions are questionable. Many of the mandatory conditions are difficult to enforce and have no meaningful impact. The mandatory conditions need a review to ensure that they are fit for purpose.

10. What could be done to improve the appeal procedure, including listing and costs? Should appeal decisions be reported to promote consistency? Is there a case for a further appeal to the Crown Court? Is there a role for formal mediation in the appeal process?

The appeals system can be abused by licensees seeking to continue trading during the potentially lengthy appeals process, which can take several months. The Act contains a very prescriptive set of timescales for the licensing process and determination of applications - except for appeals. It would be advantageous to set a maximum time period for appeals to be determined at the Magistrates Courts. Given the very small numbers of appeals this should be not be undue burden on Magistrates and may reduce the number applied for by removing the tactical appeals that are then withdrawn at the last minute.

Appeal decisions are generally well reported by legal practices, Institute of Licensing or through informal communication channels.

Decisions by Magistrate Courts do have onward redress to an administrative court, either by way of case stated or judicial review. These have been successfully used and have resulted in current case law.

Formal mediation is unnecessary as local experience suggests that this will natural occur in cases where applicants are willing to mediate.

Sale of alcohol for consumption at home (the off-trade)

11. Given the increase in off-trade sales, including online sales, is there a case for reform of the licensing regime applying to the off-trade? How effectively does the regime control supermarkets and large retailers, under-age sales, and delivery services? Should the law be amended to allow licensing authorities more specific control over off-trade sales of “super-strength” alcohol?

These issues could all be addressed through the addition of a health objective. Off sales is a cause of concern due to increased availability, low cost and irresponsible retailing. This should be supported by additional s182 guidance on the application of the objective in relation to these issues and the mitigation measures that can be considered.

A beneficial control could be to introduce amendments to the requirement for operating schedules. On the whole operating schedules are poorly drafted and often do not address specific issue posed by the application. Local experience suggests that applicants are often not aware that the operating schedule forms the basis of the attached licence conditions.

A more effective system could be for applicants to undertaken a local alcohol risk assessment. This would require applicants to specifically address any local concerns or sensitivities around alcohol retailing and address these within their operating schedule. The creation of local alcohol harm data would support this system.

This approach has recently been introduced within gambling licensing. Although at a very early stage this approach offers a much more logical, evidenced and targeted approach to the creation of operating schedules and therefore conditions. This would be an answer to the issues raised by off licences.

This supports the approach of Leeds City Council from which the Committee have already received evidence.

Pre-loading has been the subject of much debate, both in regards to prevalence and impact. Plymouth University has released published research into the impact of pre-loading. It established that the majority of people arrested will have pre-loaded. It also gave an insight into the reasons for pre-loading.

A summary of the finding can be found via this link:

http://www6.plymouth.ac.uk/files/extranet/docs/U_IHC/Barton.pdf

The full published report can be obtained from the following link:

<http://www.emeraldinsight.com/doi/abs/10.1108/17459261211235119>

Pricing

12. Should alcohol pricing and taxation be used as a form of control, and if so, how? Should the Government introduce minimum unit pricing in England? Does the evidence that MUP would be effective need to be “conclusive” before MUP could be introduced, or can the effect of MUP be gauged only after its introduction?

There is now a wealth of evidence supporting a minimum unit price as one of the most an effective ways of reducing population levels of consumption and minimising overall levels of harm. Evidence from Canada, where a minimum price has been implemented in certain areas, shows a reduction in overall consumption and associated reductions in levels of morbidity and mortality. It is difficult to gauge conclusive evidence of the effectiveness of any policy – this can only be identified through the implementation of the policy. In this instance there is enough reputable evidence as well as support from key academics, scientists and health experts to warrant the introduction of a minimum unit price for alcohol.

Fees and costs associated with the Licensing Act 2003

13. Do licence fees need to be set at national level? Should London, and the other major cities to which the Government proposes to devolve greater powers, have the power to set their own licence fees?

LAs should have the ability to set local fees, so that they can reflect the amount of resource devoted not only to administering the system but the additional resources devoted to managing the impact of alcohol harm.

A system similar to that operated by the gambling Act can be used. Locally set fees are the only way for Licensing Act fees to be consistent with the Provision of Services Regulations 2009 in that fees must only reflect the costs of administering the licensing system and its enforcement. Some Councils will create a surplus from licensing whilst others will be in deficit. Local fees should not be linked to devolution.

International comparisons

14. Is there a correlation between the strictness of the regulatory regime in other countries and the level of alcohol abuse? Are there aspects of the licensing laws of other countries, and other UK jurisdictions, that might usefully be considered for England and Wales?

We are not in a position to respond to this question but would support further research on this topic

31 August 2016

Michael Pollard – written evidence (LIC0002)

1. I think the Act has failed in its core objective of offering consumers greater freedom of choice, apart from being able to choose to drink at different times of the 24 hour day. Due to several factors, consumers now have **less** choice of venues because fewer pubs exist. For many years, the press has reported that several pubs close each week, often because they cannot make a profit. In part, this is due to supermarkets selling cheaper alcohol during extended opening hours. Unlike many pubs, the supermarkets do not exercise any control over who is buying their alcohol, or how much they buy, or what they do when intoxicated. Pubs also act as a social hub, supporting local communities and providing company and friendship. In my experience, this type of pub and its customers have benefitted from a modest extension of licensed hours – up to midnight and through the afternoon at weekends.

Therefore, I believe that minimum pricing or some other appropriate measures should be introduced to restore some balance between supermarkets and pubs. I also believe that genuine community pubs (as opposed to bars and clubs – see below) should receive greater financial support, for instance, reduced business rates. In addition, I think the excise duty on British brewed beer or ale should be reduced to support traditional national industries (pubs, hop and barley growers, breweries, etc).

2. I don't think the Act has achieved the right balance between rights and responsibilities. I lived in Wimbledon, London, when the Act was introduced, and there was a torrent of applications to extend licensing hours to well past midnight. Most of the venues were large bars and clubs, usually with music and catering mainly for young people. Along with other residents, I objected to many of these on grounds of increased noise and nuisance from anti-social behaviour. To my knowledge, not one objection was upheld. As a result, the town centre became rather unpleasant and sometimes dangerous, as drunks congregated outside the drinking venues and fast food outlets, or noisily roamed the residential streets on their way home. The morning shoppers, including children, were faced with the aftermath on the streets – vomit, blood stains, litter and bottles. In my experience, these venues do virtually nothing to control the quantity drunk, the condition of their customers or what they do once they leave the premises. The massive rise in alcohol-related presentations to Accident & Emergency departments since 2003 can be no coincidence. The financial cost to individuals, their families and society is huge.

Therefore, the protection of health and wellbeing should be an additional licensing objective.

3. I don't believe that the Act is being used effectively in conjunction with other interventions as part of a coherent national and local strategy. I see no evidence of any other interventions or a strategy. It is well documented that local councils and the police have faced severe funding cuts since 2008, therefore they cannot be as well equipped to deal with issues around licensing, health, crime, disorder and public safety. Despite some

protection for NHS funding, the number of alcohol-related A&E presentations and hospital admissions continue to rise year on year. Figures from a number of sources can confirm this, eg, Alcohol Concern. In London alone, there was over 100,000 alcohol-related admissions in 2008/9; two-thirds of these via A&E, peaking between 10pm and 2am. The cost to the taxpayer was an estimated £264 million, or £34 for every resident, and over half a million hospital bed days were taken up.

4. The Act has not achieved a change in Britain's drinking habits, for example, moving towards the so-called continental style. Binge drinking is still very much in evidence and there has been little or no control over (a) the high alcoholic strength products, typically purchased from supermarkets; and (b) sweet alcohol products targeted at youngsters, sometimes under-legal age (mixers, jellies, shots, etc).

1 July 2016

Poppleston Allen – written evidence (LIC0105)

Poppleston Allen is the largest niche alcohol and entertainment licensing firm in the UK. Whilst we act for many household names in the leisure sector, the views expressed below are ours alone and should not be taken as our clients’.

Whether the Licensing Act 2003 has provided greater freedom and flexibility to the leisure industry whilst balancing this by tougher powers for the Authorities.

1. Yes. The Act has generally been a success, subject to some important caveats detailed below.

Licensing Objectives

2. Generally, the four existing licensing objectives are the right ones, although, in our experience, Public Safety has rarely if ever been used as the sole reason for a licence Review. It is frequently “tagged on” to Reviews based upon crime and disorder or public nuisance and this may be a reflection of the wide range of enforcement powers available to Health & Safety bodies and the Fire Service outside the Act. We rarely receive objections to applications from the Health & Safety or Fire Officer.
3. The Protection of Health and Wellbeing should not be added as an additional licensing objective. It is almost impossible to link problems with public health directly to any particular premises. It also cuts across one of the fundamental concepts of the Licensing Act which is to treat each application on its own merits.
4. We therefore do not believe additional objectives should be added to the existing four.

The balance between right and responsibilities.

5. The Live Music Act 2012 (and subsequent deregulatory legislation) has, in our view, been successful. There are many occasions when our clients may previously have had to use Temporary Event Notices or apply for a variation to their licence to host a small scale music event whereas now they are able to rely upon the 2012 Act. The checks and balances also appear to be working – we are aware of a handful of cases where conditions have been re-imposed upon licences following noise complaints, meaning that licence holders who previously could rely upon the exempting provisions of the 2012 Act either cannot hold live music at all, or only by complying with very strict conditions. Whilst relatively rare, this does seem to show that the 2012 Act has teeth.
6. Regarding Early Morning Restriction Orders, having been involved in several parts of the country where EMROs were proposed and subsequently withdrawn, the general feeling from the Trade was that simply telling all licensed premises in a certain area that they are not permitted to sell alcohol after a certain time was too indiscriminate

and disproportionate and that voluntary measures, such as Best Bar None, can achieve the same aim.

7. As to Late Night Levies' effectiveness, the picture is mixed. One of the first Councils to adopt a Levy has now discontinued it, having generated far less revenue than was originally envisaged. Many licensees who are permitted hours on their licence that would otherwise fall within the Levy but do not trade them will naturally use a minor variation to amend those hours to fall outside the Levy. The Levy does tend therefore to target those premises who actually sell alcohol within the Levy hours, although as a Levy applies to the whole of the Licensing Authority area it can potentially affect licensed premises that are far outside the night-time "hotspots" which, if they do not fall within one of the exemptions have to pay the Levy if they trade their later hours.
8. Anecdotally, we do question how effective the Levy is on "the ground". In one Levy area of which we are aware, the Levy pays for two Community Support Officers who stop their shift at midnight, the very time when the Levy hours kick in. Additionally, in all likelihood whilst they are working before midnight, they will be patrolling the BID area (which is the busy later-evening area of the city concerned) and premises in the BID area are actually exempt from the Levy. The BID exemption is a very important exemption for licensed operators who contribute financially to it but this example does raise a question of whether the revenues arising from the Levy are being directed in the right way.
9. As to the respective rights of licensed operators and local residents, in some areas there is an imbalance towards local residents. Some London Boroughs will send out a letter to local residents notifying them of pending applications in order to allow them to make representations. We have no issue with this. However, in one case 2,000 letters were sent out resulting in one objection. At the subsequent hearing (with consequent costs and legal delay to the client concerned) that resident, (whose issue was mainly about car parking, a questionable issue in licensing terms) did not attend, but the Licensing Committee imposed a condition to address the resident's concerns nevertheless. The client was investing well in excess of £1m in this particular venture. It does seem in some (particularly London) boroughs that disproportionate weight is given to the one or two who object, rather than the often hundreds of people who do not. Often, the many residents who do not respond to such circulars can be seen by the Licensing Authority as potential complainants rather than perhaps people who have read the letter or application and have no concerns. No doubt it is sometimes a bit of both, but there is an impression that some Licensing Authorities accord too much weight to unvoiced speculative fears from local residents. Outside London this issue does not appear to be as prevalent – could it be that the economic stimulus of a new premises licence or variation to an existing licence carries greater weight in the country than it does in the capital?

10. The relevant Health & Safety Authority, the Fire Authority and in the vast majority of cases the Planning Authority do not in our experience become involved in the licensing process at all. Trading Standards will sometimes bring a Review for failed test purchases to under 18s, but if they make a Representation to an application, they will often only do so in order to ask for a standard condition, perhaps for a “Challenge 25 Policy” on the licence in order to standardise the licences in their area. It is not the purpose of the Act for Authorities to use their ability to make Representations to applications simply to “clean-up” a licence or to apply standard conditions for the purposes of their administrative consistency. Representations to applications must be about the *likely effect of the variation* on the licensing objectives and if, for example, a premises has been operating a Challenge 21 Policy for years without a problem it cannot be right that Trading Standards, for example, can request a Challenge 25 condition when the application relates to an unrelated issue, for example, a change to the layout of the premises.

Licensing and Local Strategy

11. We do not believe the Act is being used effectively as part of a coherent national and local strategy with other interventions. We have clients who have spent substantial amounts of money, sometimes £millions, on negotiating leases (often with Council landlords) and obtaining planning permission only to find that at the licensing stage the application is refused or granted on terms that are commercially non-viable, or at least require an expensive and lengthy Appeal process.

Crime, Disorder and Public Safety

12. The powers for Expedited / Summary Reviews introduced in 2007 together with further closure powers introduced in 2014 equip the Police with more than sufficient powers. We cannot comment on the adequacy of Police training, although often we do find that where there has been a death at or near a licensed premises then a Closure Notice or Expedited Review shortly follows. In many cases this of course is justified, but Expedited Reviews, which should be for serious crime or serious disorder, have in our experience been issued for example for “persistent low-level disorder”, or issued by the Police a full 23 days after the serious incident giving rise to the ‘Expedited’ Review occurred. The Expedited Review legislation was generally (although not exclusively) meant to deal with urgent situations, quite often involving guns or knives but it is used much more widely than that. It also seems odd that powers under the Anti-Social Behaviour Crime and Policing Act 2014 allow the Police to close a premises down immediately based upon nuisance or disorder whereas an Expedited Review, which has more serious criteria, at least requires an evidence based decision made by the Licensing Committee.
13. Often, there seems to be a disconnect between the Police Licensing Officers on the ground (who know the individuals at licensed premises quite well and might favour a voluntary resolution) and their superiors, who may demand, in the light of a death,

that “something is done”. The result of this is often a closure notice or an Expedited Review but we question whether in all cases this is the appropriate tool. The effect on a licensed business of being temporarily closed (often for several weeks) until a full hearing can be catastrophic.

14. As to airside licensing, our clients generally have the same policies air side (age verification policies, drunkenness policies, etc) as they do land side. We appreciate, however, that if customers do become drunk at an airside pub then air stewards (who would be the last check before the customer arrives on the plane) may not be trained to the same level in terms of spotting signs of drunkenness. We note that Lord Ahmad is looking into the potential regulation of airside premises.

Licensing Procedure

15. We have a few points as follows:
 - i. We see no reason that premises should have to advertise in a local newspaper. The costs are on average between £200-£400 and anecdotally, out of thousands of applications that we have issued since 2005 we only know of one where a Representation was made by a resident as a result of seeing the newspaper advertisement rather than word of mouth or the notice affixed in the premises’ window, or on a nearby lamp-post;
 - ii. External areas. One Licensing Authority requires outside areas used for seating customers to be covered by a premises licence. This is regardless whether the operator wishes to provide licensable activities in this area and adds an unnecessary extra level of bureaucracy to the existing requirements of planning permission and a Table & Chairs Licence;
 - iii. Licensed plans – the licensing regulations require that licensed plans show firefighting and fire safety equipment even though the Fire Officer rarely becomes involved in licensing applications. Is there any need for such level of detail on licensed plans given this lack of involvement from the Fire Officer?
 - iv. Why do Regulations need to show the height of the stage and any steps? This appears to be a public safety issue, but as we have said before, the Health & Safety Officer rarely becomes involved in licensing applications.

These points may seem minor but they often require several versions of licensed plans to be prepared and amended resulting in both designers’ and legal costs.

- v. The Temporary Event Notice (“TEN”) form could be simpler and shorter;
- vi. Why should TENs applied for by “associates” apply to a current applicant as well, when calculating whether the statutory limits have been exceeded? (Associates include close relatives or business partners). This can result in a situation where a husband and wife may book-out a village hall for charity events that needs a TEN. Neither are Personal Licence Holders so the limit on

TENs that each can have is 5 per calendar year. The husband has used 4 of his 5, and the wife has used 1. He issues a 5th TEN only to be told by the Licensing Authority that because his wife's 1 TEN is included in his limit (as she is an "associate") his personal limit of 5 is already used up. As the limit on TENs per individual premises (for example, the village hall) can be no more than 15 in any calendar year, we question whether this additional level of personal limits is necessary;

- vii. Why is there the requirement for a 24 hours gap between TENs? Is there a material difference to the licensing objectives between a 21 day event for 499 people (currently not permitted) compared with an event over 3 weeks with a 24 hour gap at the end of each week (i.e. 23 days in total, and presently permitted)?
- viii. Again, with TENs, some clients have problems when a manager has issued a TEN and then leaves the business for personal or disciplinary reasons. As the TEN can only be held in the name of a natural person rather than a limited company, it is usually the manager who is the "user" of the TEN. Sometimes it is too close to the date of the event which needs the TEN to apply for a new TEN. A quick procedure whereby a TEN could be transferred in such circumstances (perhaps with the police having a right to object in exceptional circumstances, similar to a DPS variation) would assist;
- ix. Consultation period for new licence applications, variations and Reviews. Is there any reason this period needs to be 28 days? Could it not be 21 days?
- x. We also find that many authorities leave making a representation until the penultimate or final day of the 28 day period. Whilst entirely lawful, this can be frustrating for applicants and clearly reduces the period in which any objections can be negotiated away. Could the Statutory Guidance be amended to encourage authorities to make their views known as soon as possible within the 28 day period?
- xi. Annual fees – a premises licence attracts an annual fee but many of our clients require an invoice in order to pay it. This is simply a commercial/accounting reality. Licensing Authorities could be placed under an obligation to issue an invoice perhaps three months before the annual fee is due;
- xii. We would support the option of a single date for the payment of all annual fees, in light of the issues raised above and for both clarity and commercial consistency;
- xiii. Representations – one of the tests for whether a representation should be accepted as valid is that it is not "frivolous or vexatious". These rather antiquated terms can bemuse both Licensing Officers and applicants alike.

“Lacking seriousness” and “intending to cause commercial harm” might be better;

- xiv. Visits to premises by Councillors. This very rarely happens, either at a hearing or beforehand, but can often be an excellent way for Licensing Sub Committees to understand the specific issues from both operators’ and residents’/authorities’ perspectives alike;
 - xv. General Orders of Exemption for Special Occasions, including local events. In Scotland, local Licensing Boards can grant general extensions in their area, but there is nothing similar in England and Wales;
 - xvi. Personal Licences – in Scotland, on a Review of a premises, if it is found that the DPM (Scottish equivalent of the DPS) is in some way culpable for the conduct of the premises, the Board can recommend that the DPM’s personal licence should be reviewed. A similar system in England and Wales would ensure that the DPS, who is ultimately responsible for the management of licensed premises, can potentially lose their personal licence even without a criminal conviction;
16. The appeal process should be quicker. Full appeals can take 6 – 9 months to be heard. As with procedure in the civil courts, we feel that a preliminary hearing to establish such facts and issues that are agreed would ultimately save time and money in the long run. We do agree it would be sensible to have a mediation process built into the appeal system. We do not see any particular need for a further appeal to the Crown Court, not least because of the existing rights to apply for Judicial Review and the inevitable further delays in using the criminal justice system for what is essentially a civil matter. It would help if there were standard directions across all courts.

Sale of alcohol for consumption at home (the off trade)

17. The only observation we would make about this section is regarding alcohol delivery services. Such services are unlikely to fall under the Authorities’ enforcement spotlight in the same way as a typical pub or bar. If alcohol has been delivered to under 18’s via an on-line or telephone ordering service for use at a house party we question whether the Police, in the event of offences or anti-social behaviour at that party, would follow the paper trail back to the original seller of the alcohol. Whilst this is a question only the Police can answer it is possible that any incident might be viewed as “domestic” and the usual referral from the investigating team to the Licensing Department within the police quite possibly may not occur. The risk of irresponsible or unlawful remote sales of alcohol to children or drunks may be something that needs further scrutiny.

Fees & costs associated with the Licensing Act 2003

18. We believe there should be locally set fees with a national cap. We appreciate that a Licensing Officer in Westminster is going to cost more to employ than one in the regions, although we are concerned that without a national cap fees may spiral. Licensing Authorities should only be able to recover the costs of complying with their statutory obligations under the Licensing Act rather than voluntary measures, for example, sending out circulars to residents, advice projects for residents, etc.

2 September 2016

Punch Taverns – written evidence (LIC0087)

Punch Taverns ('Punch') is one of the UK's largest leased pub companies with a portfolio of around 3,300 leased pubs nationwide, ranging from pub-restaurants to traditional drink led locals. Our aim is to be respected for providing the best consumer hospitality experiences through the very best Publicans and their teams. Our premises are operated by thousands of enterprising individuals - our publicans - who are running their own pub businesses in our premises.

In 2015 Punch won both the Publican Responsible Retailer of the Year and Best Operations Team of the Year at the Publican Awards.

In 2005 we took the decision to hold the premises licence for our estate. Although we do not undertake licensable activities in our leased pubs, the holding of the premises licence imposes upon our business a significant obligation in terms of licensing regulation and compliance.

Punch has made a strategic decision to look at whether the tenanted model that had been used previously was likely to still be viable for both our publicans and Punch. Punch is currently offering a range of business models to our publicans, including the traditional 'tie' and the market rent only options, as well as a third alternative known as the 'Falcon retail contract', which allows our partners the flexibility of running their own business but with additional support from Punch.

Corporate Social Responsibility is embedded across many elements of our business, from corporate fundraising to responsible retailing. We have dedicated teams in place to assist in ensuring that our premises operate to the highest standards.

As Portman Group signatories and supporters of Drinkaware we do not condone irresponsible promotions and pricing of alcohol, and we have actively supported the 'Why let good times go bad?' campaign to tackle excessive drinking amongst 18 to 25 year olds.

To further support our publicans, "The Punch Buying Club" offers them an online 24/7 service allowing access and assistance to help run their business, this includes online training, regional workshops, legislative updates, best practice messages, risk management material such as mandatory signage and more.

All of our Punch Development Managers (PDM's) are trained to a minimum of BII level 4 in Multiple Retail Management, which consists of eight modules including communication, negotiating, business knowledge and marketing. We believe a well trained, talented and high performing team will help our publicans reach their potential and ensure their premises are well run.

We believe that Punch is in a uniquely qualified position to make a valuable submission as, not only do the majority of our circa 3,300 premises cover every local authority area in England and Wales, but we also have significant experience and knowledge of the Licensing

Act 2003 and associated relevant legislation. We also have an estate of 225 premises in Scotland and so are able to give insight into what works well and what does not, north of the border.

Questions

Licensing objectives

1. Are the existing four licensing objectives the right ones for licensing authorities to promote? Should the protection of health and wellbeing be an additional objective?

We have split this question into 2 sections:

Are the existing four licensing objectives the right ones for licensing authorities to promote?

The Licensing Act balances the needs of business development, with all that entails in terms of jobs, taxes, tourism & leisure and vibrant economies, against the interests of local residents and the neighbourhoods in which they live. The licensing objectives are fundamental to this principle and the bedrock for all decisions made by local licensing authorities.

We feel that 3 of the current 4 objectives promote these aims in a positive and constructive way. However, the public safety objective is both overly broad and difficult to interpret and, in almost all material regards, overlaps with other areas of legislation.

For example the Regulatory Reform (Fire Safety) Order 2005 expressly removed the fire safety aspects of public safety from the licensing objective. Additionally, health and safety legislation creates a blanket framework under which premises are responsible for customer and staff welfare.

Given the above, we question the continued value of this objective.

Should the protection of health and wellbeing be an additional objective?

The short answer is 'no'.

We would urge considerable restraint in recommending 'Health' as a licensing objective. Whilst the notion of 'wellbeing' has a much wider context, 'health' implies a causal link between premises providing licensable activities and the choices that individuals make that may be considered 'unhealthy'.

Linking the two in the context of licensing premises is misleading. It implies that a fundamental part of the licensing regime is to interfere in an individual's choice to determine whether they are making unhealthy choices or not. In doing so the effect may be to unintentionally signal to individuals that so long as they only drink as much as permitted by the operators premises themselves, then this is 'healthy'.

Licensable activities provide the vast majority of people with the opportunity to socialise, enjoy time away from the daily grind and a chance to 'let their hair down'. To try to regulate

a whole industry to prevent the minority from doing themselves and others harm stigmatises the industry rather than those drinking to excess and harming themselves and others in the process. The health of individuals is a matter of education and where needed assistance/ punishment should be on that basis. The Licensing Act is not a tool capable of achieving this. Just as individual premises that undermine the licensing objectives should face sanction, so should individual responsibility be equally recognised.

In Scotland, despite the fact that there has been a health objective since 1 September 2009, it remains the least understood and most controversial of the five licensing objectives. There is a lack of clear Government guidance for Licensing Boards on the practical purpose and intent of the objective, which we feel is in part because it sits awkwardly when considered against the reasons behind having licensing objectives, as set out above. There are numerous examples of objections being made by local NHS boards or other parties on health grounds with little or no real merit other than to get a 'message' across. Examples include:

- Attempts to restrict a licence for a cinema's bar so that patrons could only purchase the newly reduced "daily recommended limit" of alcohol
- Objection to the grant of a small family restaurant on the basis that as children could attend and this would normalise the consumption of alcohol
- Objecting to a £1million refurbishment of a city centre nightclub because of the number of licences in the locality

Given the length of time the objective has been part of Scottish law and the lack of any real understanding of what it is there to achieve, we suggest that there is no good reason to introduce it in England and Wales.

In relation to 'wellbeing', please see below.

2. Should the policies of licensing authorities do more to facilitate the enjoyment by the public of all licensable activities? Should access to and enjoyment of licensable activities by the public, including community activities, be an additional licensing objective? Should there be any other additional objectives?

If one accepts that the remit of Local Authorities when dealing with licence applications is to strike a balance between competing interests, we feel that the 4 licensing objectives should recognise this balance, rather than focus purely on 'prevention' and 'protection'. As an example, one of the competing interests that is not currently reflected in the licensing objectives, but plays a major part in licensing hearings is the need for growth, change and business development within a local market. A more balanced 4 licensing objectives would present greater clarity to all parties engaged in the licensing process, without removing or diluting the protections that the objectives are there to uphold. We would propose the following 4 Licensing objectives offer that greater balance:

- Prevention of Crime and Disorder
- Prevention of Public Nuisance

- Protection of Children from Harm
- Promotion of Culture, Community and Wellbeing

A balance between the two would remind all parties entering into a dialogue on matters of licensing premises that there are wider interests than simply an individual's personal concerns. Representations often focus solely on the possibility that purely theoretical problems may arise were a licence to be granted. Additional context contained in the proposed revised licensing objectives would remind all parties of the broader scope that transferring responsibility for the granting of licences to local authorities was meant to have.

3. Has the Live Music Act 2012 done enough to relax the provisions of the Licensing Act 2003 where they imposed unnecessarily strict requirements? Are the introductions of late night levies and Early Morning Restriction Orders effective, and if not, what alternatives are there? Does the Licensing Act now achieve the right balance between the rights of those who wish to sell alcohol and provide entertainment and the rights of those who wish to object?

We have answered the above in 3 parts:

Has the Live Music Act 2012 done enough to relax the provisions of the Licensing Act 2003 where they imposed unnecessarily strict requirements?

Our publicans have, in the main, enjoyed the flexibility granted to them by the Live Music Act (and the recorded music exemption) and there has been very little undermining of the licensing objectives in doing so. However, the redress of removing the S.177A exemption by way of review of the premises licence should be expanded to permit premises licence holders to voluntarily remove the exemption. This would ensure that where conditions need to be complied with, this can be achieved without the expensive and time-consuming need for a review.

Are the introductions of late night levies and Early Morning Restriction Orders effective, and if not, what alternatives are there?

We have made submissions in relation to each late night levy ('LNL') consultation where our publicans would be directly affected. Along with trade bodies and other operators, we have largely felt that the consultations have been only paid lip-service and the decision to impose a LNL has been pre-determined. Examples, such as City of London, where they had to re-consult following clear indications within the consultation document that the terms of the LNL had already been determined, only exacerbated this feeling. There is currently no need for councils to publish their reasons for determining to adopt the LNL, which means there is little scope to challenge their decisions. Chelmsford stands out as an exception to this, where the levy imposed differed materially from that consulted on after responses were received.

Cheltenham is considering withdrawing the LNL and all authorities that have introduced the LNL and published accounts after the first year have been shown to have raised

considerably less than they estimated in their consultation documents. We see the LNL as a tax on one part of night time economy that is iniquitous and unfair. The rise in popularity of Business Improvement Districts, with the right for those paying to have a direct say in whether it is introduced and if it is, how their money is spent, is an obvious example of a fairer alternative.

Given that no authority has introduced an EMRO, following 3 official consultations only, the appetite for such a measure appears to be little to none.

Does the Licensing Act now achieve the right balance between the rights of those who wish to sell alcohol and provide entertainment and the rights of those who wish to object?

More can be done to ensure that a distinction between personal responsibility and a businesses responsibility is made in both the Guidance and local licensing policies. At the moment, premises operators face enforcement action, when matters should correctly be ascribed to the actions of an individual or individuals. We can point to examples where action appears to be taken against us as premises licence holders, where in fact our publicans are just as much victims of criminal action as anyone else.

4. Do all the responsible authorities (such as Planning, and Health & Safety), who all have other regulatory powers, engage effectively in the licensing regime, and if not, what could be done? Do other stakeholders, including local communities, engage effectively in the licensing regime, and if not, what could be done?

The reality is that some officers engage more than others and some categories of responsible authority have more of a direct and relevant interest in licensing than others. However, with the exception of the health body, we see the value in the system of notifying the responsible authorities in relation to applications that might affect the licensing objectives.

However, we question the value of having the health body as a responsible authority. We feel that their addition has opened the doorway to representations that are not directly related to individual premises and can, in some cases, provide a misleading picture of the issues they purport to bring to hearings. It is very difficult to argue against such evidence given its' nature and the source material purported to be used.

Licensing and local strategy

5. Licensing is only one part of the strategy that local government has to shape its communities. The Government states that the Act “is being used effectively in conjunction with other interventions as part of a coherent national and local strategy.” Do you agree?

The main interventions outside of, but to a degree integrated with, licensing, relate to noise abatement notices (EHO) and Police powers of closure.

EHO officers can take steps to deal with noise abatement with immediate effect, such as with powers to confiscate items causing issues (musical instruments etc) and by the issuing

of abatement notices. Often such steps are then followed by licence reviews where it is considered that the actions of the premises operator have undermined the licensing objectives.

Whilst police have powers to shut premises with immediate effect, they often rely on an informal agreement with premises where there has been trouble, or on summary reviews to close premises in a short timeframe.

For Punch, the fact that we do not operate our premises directly can cause something of a problem for enforcement officers who are not always aware of the relationship between us and our publicans. For instance, a noise abatement notice served on Punch would be, as a matter of course, appealed, because we are not directly responsible for the alleged public nuisance. The same issue arises with interviews under caution where because we are not directly responsible for managing the premises, we often cannot assist officers to the degree they request. However, a noise abatement notice served against the publican directly should provide a more effective means of enforcement than a review of the premises licence because the nature of such enforcement looks to go to the heart of the issue and target the individual responsible.

The Police and EHO currently do more than a reasonable job given the resources they have at their disposal. Issues are generally dealt with effectively, but enforcement protocols put in place by local authorities to ensure transparency in enforcement matters are not always followed.

There are a number of interventions that were used initially but now rarely seen. For instance S.161 closure notices etc.

Additionally, the review process is an integral part of the intervention strategy envisaged under the licensing Act. In the most part it is a vital and useful means by which residents and the responsible authorities can ensure the promotion of the licensing objectives. The process is often effectively used in conjunction with other powers granted to the responsible authorities to regulate premises providing licensable activities, such as those mentioned above. However, we have given examples in relation to question 7 that are as applicable to other responsible authorities as the police in this regard as to where sometimes licensing is not being properly used in conjunction with other interventions.

6. Should licensing policy and planning policy be integrated more closely to shape local areas and address the proliferation of licensed premises? How could it be done?

Licensing authorities do not always pay attention to their own wider strategies and objectives when making licensing decisions. This is usually only really seen where either a councillor hearing a licensing application also sits on the planning committee, or where we refer to such strategies in our applications or submissions at a hearing.

There are also differences of approach in various local authority licensing policies in relation to planning that are unhelpful- in particular for companies like Punch with large estates throughout the country. For instance:

Punch Taverns – written evidence (LIC0087)

Hackney - Planning is required before you even approach licensing. There is no reference to other integrated strategies for Hackney.

York – The City centre is designated a cumulative impact area and therefore on face value difficult to get new licence. However, their statement of licensing policy refers to their integrated town centre strategy documents. Therefore any applications that can be shown to promote these other strategies as part of the overall city plan are often granted. There is no reference to planning being a pre-requisite.

We commend the approach of authorities such as York as it provides operators with the information that informs applications and recognises there is no need to have planning permission prior to applying for a premises licence.

We feel that reference to other relevant strategies within policies would assist applicants and licensing sub-committees, but that there is no need for closer ties between licensing and planning per-se.

Crime, disorder and public safety

7. Are the subsequent amendments made by policing legislation achieving their objects? Do they give the police the powers they need to prevent crime and disorder and promote the licensing objectives generally? Are police adequately trained to use their powers effectively and appropriately?

Anything that can simplify the police powers they have has to be commended.

However, we submit that the lower burden of proof in seeking a review (compared to prosecution) can lead to the process being abused. Reviews can be used by police officers as an easier and simpler method for seeking 'punishment' of publicans (which immediately affects Punch as the licence holder), rather than seeking a prosecution against the alleged offender. Committees are being asked to restrict a person's right to peaceful enjoyment of their licence under the Human Right's Act. When the police make such applications it asks a lot of a licensing sub-committee to go behind the allegations and look at the substance of what is being said. This is as much to do with time constraints at licensing hearings as it is to do with any other factor. The results, however, can be devastating to premises licence holders in terms of livelihoods etc.

Appeals to such decisions, when heard with enough time for a proper scrutiny of the evidence provided by the police has, on a number of reported cases, lead to criticism of their representations. This demonstrates a 'disconnect' between what is considered by officers to be sufficient evidence to bring a review and what a court considers is required for justice to be done. Therefore it is an area where better training and guidance would assist the police in putting forward a case from the outset that withstands scrutiny. In particular guidance on the purpose of reviews (including summary reviews) that sets the bar on the standard of evidence expected would be invaluable. It would also be of assistance to train

officers in when prosecutions should be taken as opposed to reviews of a premises licence. After all, that is why offences under the licensing Act carry financial and custodial penalties. The balance of use of the 2 options is currently skewed too far in favour of review.

8. Should sales of alcohol airside at international airports continue to be exempt from the application of the Act? Should sales on other forms of transport continue to be exempt?

We have no comment to make in relation to this question.

Licensing procedure

9. The Act was intended to simplify licensing procedure; instead it has become increasingly complex. What could be done to simplify the procedure?

We would applaud any attempts to simplify procedure in such a way as to reduce costs to applicants and the administrative burden to local authorities. 2 examples of simplified procedure that we think would have a positive effect on licensing are taken from our Scottish experiences:

- **DPS/DPM "Immediate Effect" provisions.** Under the Scottish 2005 Act, when a DPS leaves a premises (referred to as a Designated Premises Manager (DPM) north of the border), notice must be given with 7 days of this event, and in turn a new DPS must be named within 6 weeks. The premises is allowed to trade in the interim period. Under the 2003 Act there is no similar provision meaning when a DPS leaves a premises can often have to close down creating considerable disruption for business and the public. A period of grace such as adopted in Scotland would be most welcome.
- **Annual Fee Payments:** under the 2005 Act every single licensed premises in Scotland must pay the annual premises licence fee on 1 October. In England & Wales these dates change from premises to premises. For Punch, this is a bureaucratic headache. Having a single date for payment works well in Scotland and means that licensing authorities, as well as pub companies, can gear up accordingly rather than have to deal piecemeal with many thousands of payments across the year.

10. What could be done to improve the appeal procedure, including listing and costs? Should appeal decisions be reported to promote consistency? Is there a case for a further appeal to the Crown Court? Is there a role for formal mediation in the appeal process?

We agree that an appeal to the Crown Court would be of benefit to the licensing procedure.

We suggest that there should be official guidance given in relation to whom licensing authorities need to consult when determining whether an appeal can be settled 'out of court'. There is a large discrepancy between who is consulted and whether other parties' (often resident's) consent needs to be given in relation to a proposed settlement. Given that losing an appeal leaves a council open to costs being awarded against them on 'lost' appeals, we suggest that there is merit in specifically advising that licensing authorities are under no obligation to seek the consent of interested parties in settling an appeal. If a party

is likely to disagree with a proposed settlement, they should apply to be joined as a party themselves and accept that there is a risk as to costs in losing at the appeal.

In relation to summary reviews of premises licences, a right of immediate appeal needs to be given to the police and premises licence holders/ premises operators in relation to a determination by the licensing sub-committee whether or not to re-impose interim steps during the appeal period. The effect of suspension of a licence throughout a drawn-out appeal period following the conclusion of the final review hearing is of such import to the very existence of a business, that such a right should be made available. Likewise, the police should have the right to appeal a determination to lift interim steps if they believe there is a serious risk of crime and disorder in so-doing. Such a right would focus the minds of the committee on what is a very important part of their determination, that can currently be overlooked.

Sale of alcohol for consumption at home (the off-trade)

11. Given the increase in off-trade sales, including online sales, is there a case for reform of the licensing regime applying to the off-trade? How effectively does the regime control supermarkets and large retailers, under-age sales, and delivery services? Should the law be amended to allow licensing authorities more specific control over off-trade sales of “super-strength” alcohol?

We do not have a view in relation to regulation of 'off trade'. However there is a mistaken understanding by a number of councils and their officers as to what constitutes an 'off sale'. This is a matter that needs clarifying to ensure officers stop considering customers taking a drink outside a premises (for instance onto the pavement immediately to the front of a premises or into a garden that is not shown on a plan) as an 'off sale'.

Pricing

12. Should alcohol pricing and taxation be used as a form of control, and if so, how? Should the Government introduce minimum unit pricing in England? Does the evidence that MUP would be effective need to be “conclusive” before MUP could be introduced, or can the effect of MUP be gauged only after its introduction?

Whilst MUP is more likely to affect off-sales of alcohol, we have concerns about its introduction eventually being used as a means for regulation of the industry outside of any of the currently stated aims of such a policy. We feel that such a proposal would need to be based on conclusive evidence of price directly affecting the purchase of alcohol by problem drinkers before it is further considered as a means of control.

Our experience of the Scottish attempt at introducing minimum pricing is that it has often been portrayed as the principle solution to alcohol harms. The policy position to date has been speculative and there is no evidence base that MUP would be effective beyond academic limited modelling. The underlying philosophy is based on a "Whole Population Approach" which in our view does not sit with licensing system because it is unspecific: it does not target harm or look at localities and individual merits/demerits but instead

imposes a position on all members of the public whether responsible drinkers, teetotalers, risky drinkers or alcoholics.

Fees and costs associated with the Licensing Act 2003

13. Do licence fees need to be set at national level? Should London, and the other major cities to which the Government proposes to devolve greater powers, have the power to set their own licence fees?

We think that it is essential that fees are set at a national level. We would be happy to provide our response to the consultation on fees that we submitted at the time.

International comparisons

14. Is there a correlation between the strictness of the regulatory regime in other countries and the level of alcohol abuse? Are there aspects of the licensing laws of other countries, and other UK jurisdictions, that might usefully be considered for England and Wales?

Beside the specific examples given above in relation to Scotland, we have not responded to this question.

2 September 2016

Royal Borough of Greenwich – written evidence (LIC0176)

Royal Borough of Greenwich background

1. The Royal Borough of Greenwich welcomes the opportunity to submit written evidence to the House of Lords Select Committee on the Licensing Act 2003.

2. Royal Greenwich is a great place to live, work and visit – it boasts some of London’s major visitor attractions, venues and events. Pubs, clubs, restaurants and other businesses selling food and alcohol have an important part to play in the social and cultural life of our Borough. The Royal Borough wants to support local businesses to operate in a responsible way, to continue to develop the Royal Borough as a visitor destination, and to promote the rich cultural heritage of the area.

3. Alcohol use is a long established part of British society, while many people drink alcohol responsibly, alcohol is linked with a wide range of social, economic and health problems. Estimates for Greenwich from national data surveys suggest that 43,000 adults drink above the lower risk guidelines (25% of adults) and 27,000 (14% of adults) binge drink. These rates are typical for a London Borough. Around 1,000 adults in Greenwich may be moderately or severely dependent on alcohol and need specialist treatment and services.

4. Over half of violent crimes are alcohol-related, with particularly strong links to domestic abuse and family problems. Alcohol-related crime is estimated to cost £56m every year in Greenwich alone. These wider effects of alcohol mean that the impact is not just on those who drink to excess, but can impact on the people around them.

5. In 2014/15 there were 3,647 crimes that involved alcohol of which 45.2% were identified as domestic abuse. The hotspots for alcohol crimes (Woolwich Town Centre, Greenwich Town Centre and the area in and around Plumstead Common Road and Barnfield Road) are the same as the hotspots for domestic abuse in Greenwich.

6. The NHS spends around £18m per year on alcohol-related problems in Greenwich. In 2012/13, people living in Greenwich had to go to hospital 4000 times because of alcohol (6% of the total). The impact of long-term diseases caused by alcohol is highest in the most deprived parts of the borough (Woolwich Riverside, Woolwich Common and Glyndon). The impact due to injury and crime is highest in town centres that have a high number of premises and shops licensed to sell alcohol (Greenwich, the O2, Woolwich and Eltham).

7. At least 5% of the 32,000 ambulance call-outs in Greenwich are related to alcohol. The rate of alcohol-related call-outs is highest in town centres of Greenwich West and Peninsula (the O2 arena).

Around £36m per year is lost through lack of productivity across Greenwich from sickness absences and reduced performance at work due to alcohol.

8. The Borough's licensing policy aims to seek a balance; to support local businesses to operate in a responsible way by setting out our expectations for new licensed premises and so promote the continued regeneration already occurring within Royal Greenwich on the one hand, but on the other to ensure that the rights of residents are upheld, ensuring that licensed premises are a) not the source of, nor contribute towards, crime and disorder or public nuisance, b) promote public safety, and c) have measures in place to protect children from harm.

9. It is our view that the following will together enhance the balanced approach we seek:

- the inclusion of the promotion of health and wellbeing as a licensing objective;
- more powers to curb the impact of alcohol off-sales on local communities, including standardised opening hours and Challenge 25;
- the introduction of a national Minimum Unit Price; and
- the ability of our authority to set local fees that more realistically reflect the costs of our licensing role.

Licensing objectives

10. The Royal Borough of Greenwich supports the introduction of a health and well being objective – “To promote the health and well being of the locality and local area” into the Licensing Act 2003.

11. This objective would clarify that locally based factors which impact on health and well being are a consideration in licensing, both during licensing decisions and while statements of licensing policy (SLPs) are developed. With this objective, licensing decisions over time would be more likely to create an environment in which alcohol does not unduly undermine our communities so as to lead to health and social hazards.

13. The use of the term 'health and well being' rather than 'public health' attempts to emphasise the wider quality of life issues associated with alcohol and entertainment licensing in local areas. For example, the promotion of health and well being may well be advanced in support of important community assets such as pubs which provide a social hub for the local community. Alternatively, an application for yet further off licences in an area with health and social deprivation issues might not advance this objective.

Sale of alcohol for consumption at home (the off-trade)

13. Since the introduction of the 2003 Act, the balance has shifted towards alcohol consumed at home. This is likely to have been driven by price, as well as a general societal shift towards home entertainment.

14. The Licensing Act, and the support and enforcement with the on-trade, enables more effective management of the locality and wider impacts of this drinking, for example in terms of Police presence when pubs and clubs are emptying. It is more difficult to “police” in

the broadest sense, home drinking. Home drinking also plays a significant role in alcohol-related crime (particularly in terms of domestic violence).

15. The availability, as well as price, of alcohol through the off-trade in our view contributes to particular problems of street drinking and late night binge drinking. We would support the re-introduction of locally set opening/operational hours for off-licensed premises to reduce the opportunities for early morning street drinking, and late night binge drinking. This would fit with the devolution of powers from central to local government, and we would support a pan-London approach to locally set hours, within which Boroughs could further vary set opening/operational hours depending on local circumstances.

16. Off-licenses are the main source of under-age sales of alcohol, and protecting children and young people from harm is at the core of the Licensing Act. We believe that Challenge 25 provides a higher margin of error in terms of sales of alcohol, than Challenge 21, and so is more effective at preventing both direct or proxy sales of alcohol to children and young people. We are of the view that Local Authorities should be able to set Challenge 25 as a standard condition and be able to refuse to grant a license if this condition is not accepted by the retailer.

Pricing

17. Due to the weight of international and national evidence about the impact of price of alcohol on consumption, we support the introduction of a nationally agreed Minimum Unit Pricing for alcohol, especially because of the likely impact of this on health inequalities

18. Alcohol harms are more likely to affect people living in more deprived communities. This is despite the fact that people in more deprived communities generally do not drink as much as people in better off communities. Because of this (which some people call the “alcohol harm paradox”), alcohol is one of the reasons for the health inequalities experienced in Greenwich.

19. These inequalities mean that life expectancy varies by 9.6 years for men and 11.2 years for women between the most and least well-off in the borough. 57% of those in the most deprived communities in London do not drink at all, and 15% drink at the higher risk level; while among the least deprived, 28% do not drink at all and 22% drink at the higher risk level. Despite this fact that drinking levels are higher on average among the more well-off, alcohol harms are actually experienced more among the poorest parts of society.

20. Over the last 30 years the evidence is very strong as to the impact of increasing the price of cigarettes on smoking prevalence, and we are of the view that increasing the price of alcohol will have a similar effect. Higher prices will also help protect young people who are less able to afford alcohol, and so help uphold the licensing objective of protecting children from harm. Around 25% of Greenwich’s adult residents currently drink at levels that impact directly on their health and wellbeing (“increasing risk” drinkers), and by increasing the unit price of alcohol it is likely that many of this group would reduce their drinking to lower risk levels.

Fees and costs associated with the Licensing Act 2003

21. With central government funding to councils reducing by 40% over the last Parliament, and those reductions continuing, it is vital that councils are able to set fees at full cost recovery level as soon as possible, so we urge government to move forward on this quickly, and for the House of Lords Select Committee to support this as a recommendation. This request sits within an overall context of greater devolution of powers and responsibilities to local areas.

22. The local fee setting approach adopted must be fully in line with the EU Services Directive. The Local Government Association (LGA) has favoured moving away from NNDR to an approach based on locally-set flat fees. As larger premises do not necessarily incur the highest administrative costs, in terms of applying for and maintaining licences we support this position. Any new local (or London) fee needs to be higher than the current level as the LGA has demonstrated the significant existing deficit between fee income and the costs of implementation.

23. The regulations and guidance must be clear about the legitimate inclusion of licensing compliance costs within the cost-recovery process as failure to do so could undermine the entire licensing system.

5 September 2016

Sainsbury's – written evidence (LIC0046)

About Sainsbury's

Sainsbury's employs 161,000 colleagues and operates over 1,300 stores across England, Wales, Scotland and Northern Ireland, around 700 of which are smaller format convenience stores ('Locals'). We also operate 22 depots and five store support centres. Serving over 24 million customers every week, our market share is almost 17% and our tax contribution is the sixth largest in the UK. Our goal is to make customers' lives easier, offering great quality and service at fair prices, serving our customers whenever and wherever they want.

Sainsbury's is committed to being a responsible retailer. One of our corporate values is to make a positive difference in the communities in which we operate and we therefore work hard to make sure alcohol is sold responsibly throughout our estate. We are also committed to helping our customers live healthier lives, and this includes ensuring all our own brand alcohol is labelled clearly, in a way that helps customers find the information they require to make informed choices. We also seek to reformulate where we can, to reduce the alcohol content of our products, while maintaining outstanding taste and quality.

We welcome this opportunity to comment on the operation of the 2003 Licensing Act and we are pleased the House of Lords Committee has commenced this post-legislative review. The 2003 Act marked a step change in the way premises wishing to sell alcohol are regulated and, with over 1,200 premises in England and Wales, we have an acute understanding of the impact the Act has had.

Alcohol Policy at Sainsbury's

Recognising the fact that alcohol is a unique product, and should be treated differently to other lines on sale in our stores, we have implemented different governance procedures to make sure social responsibility is at the heart of decisions taken. Our internal 'Responsible Drinking Steering Group' (RDSG) comprises colleagues from across the different departments which have a role in alcohol policy (such as trading, legal, marketing, public affairs, retail risk and product development) and meets regularly. RDSG is chaired by our Head of Legal Services.

Sainsbury's has also played a significant role in establishing industry-wide opportunities to make sure alcohol is treated responsibly by retailers. We are a founding member of the Retail of Alcohol Standards Group (RASG) and chaired it for over 10 years. We were also one of the first retailers to pioneer the Community Alcohol Partnership (CAP) scheme, and we sit on the CAP Board, and we have supported Drinkaware since its inception. These initiatives have made a real difference in the way in which alcohol is sold and discussed, and will have contributed to the positive trends regarding underage consumption and anti-social behaviour which we see reflected in official statistics.

In terms of specific policies, we operate a tough 'Challenge 25' approach across all age-restricted products. All colleagues with a public-facing role receive training, which is refreshed every 6 months. Every store receives a test purchase every 12 weeks, conducted for us by a third party provider. Colleagues that fail one of these tests, or struggle with our training, receive specific help to address the needs identified. Our training includes sections on how to deal with customers that may be drunk, as well as proxy sales.

We also take a responsible approach to our product ranges. For example, we do not stock any white cider, or 'shooter style' products. We do not sell large, three litre bottles of cider, and we do not sell higher alcohol strength lager in large (440ml) cans. Approximately 400 of our Beers, Wines and Spirits (BWS) products are own brand (for example 'Winemakers by Sainsbury's or 'Taste the Difference') and we take a particularly diligent approach to making sure these products are of the highest quality, with the clearest information, so our customers are clear about their purchasing decisions.

As part of our sustainability plan, we are publically committed to growing our sales of lighter alcohol wine, defined internally (as there is no legal definition of lighter wine) as 10.5% Alcohol by Volume (ABV) or under³⁷⁶. Measured against 2010 by volume, we have already seen a 66% increase of sales in lighter alcohol wine. This has been achieved through a number of measures, including reformulating some of our best-loved products so they are lower in alcohol (such as our award-winning Taste the Difference Conegliano Prosecco). We have also introduced new spritzer lines, more single-serve products so customers can easily moderate their intake and redesigned our packaging so alcohol strength is more visible, on the front of products, in colour and in a font that is 10% larger than required (see annex for an example). We believe that introducing a definition for 'lighter alcohol wine' could make a difference in helping communicate some of this activity with our customers. Currently various regulatory restrictions prevent us from doing so effectively and it is an issue we continue to raise with Government.

Our commitment to clear, uncomplicated labelling is also just as applicable to alcohol as it is to food. We were the first retailer to roll out the initial Department of Health approved label regarding alcohol guidelines, and we have also rolled out calorie labelling across all our own brand product lines, labelled per 100ml and per serving³⁷⁷.

We are also publically committed to supporting our communities in relevant and impactful ways³⁷⁸, which includes supporting Community Alcohol Partnerships (CAPs)³⁷⁹ whenever they are established in an area where we have stores, as well as funding Drinkaware, both in cash and in kind. We are active in approximately 30 CAPs and supported Drinkaware's '*Cut back, feel better*' campaign in January via our online grocery website.

³⁷⁶ <http://www.j-sainsbury.co.uk/responsibility/our-sustainability-plan/our-commitments>

³⁷⁷ <http://www.j-sainsbury.co.uk/media/latest-stories/2014/0220-brits-admit-calorie-confusion-in-alcohol-is-a-barrier-to-healthier-lifestyles/>

³⁷⁸ <http://www.j-sainsbury.co.uk/responsibility/our-sustainability-plan/our-commitments>

³⁷⁹ For more information regarding CAP, please visit <http://www.communityalcoholpartnerships.co.uk/home>

General Comments regarding the Licensing Act 2003

Overall, we feel the Licensing Act works well to regulate the alcohol and entertainment industry. The Act can be tough, but it fosters a culture where licensees, the licensing authority and relevant stakeholders must engage with each other. In the majority of cases, this facilitates constructive relationships which last longer than just during the licence application process.

However, the Act does present some challenges, particularly for responsible businesses. This includes a significant amount of bureaucracy, which has an impact on licensees and licensing authorities alike, and an increasing trend towards blanket approaches such as Cumulative Impact Policies which treat all possible new entrants to a market in the same way, not differentiating between the responsible and not so responsible traders.

Committee Questions

1. Are the existing four licensing objectives the right ones for licensing authorities to promote? Should the protection of health and wellbeing be an additional objective?

The existing four licensing objectives are the right ones for licensing authorities to promote, as they are measurable and directly relevant to the local community. The current objectives also provide interested parties, including local residents, clear guidance on how to frame their representations which is useful to them. We are not convinced that the addition of a fifth licensing objective related to health and wellbeing fits that criteria. A health and wellbeing objective looks at an area as a whole. It would have no regard to the style of operation of an applicant or its trading standards.

Our experience in Scotland has shown that it is extremely difficult to correlate the impact of one licenced premises with health issues related to alcohol, such as ambulance data or alcohol-related admissions. This is particularly true in relation to the off-trade, as where a product was purchased does not provide any reliable insight regarding where that alcohol was or will be consumed. Such data based on a broad range of indicators is multi-faceted and most unlikely to be relevant to an individual licence application.

The complex nature of this data makes contesting it expensive and prohibitive, particularly for independent businesses. The submission of a representation based on public health data in an area covered by a cumulative impact policy would place the burden on the applicant of having to prove that the grant of a licence is not contrary to public health and wellbeing. This would place an impossible hurdle in front of applicants.

A fifth licensing objective related to health and wellbeing pre-supposes that increased alcohol density would lead to such harm. We have not seen compelling evidence to support this view in the context of off licence premises, which come in many shapes and sizes.

We are also concerned that a public health objective would have a disproportionate impact on new entrants to the market that may well be more responsible in their operations than established licensees and will be bringing new jobs to the local community. This would reduce competition and choice in a local area.

In an earlier oral evidence session, the example of a store we were seeking to develop in Brighton was used. It is hard to tell from the discussion which store the discussion relates to. However we currently have three stores in Brighton that do not have an alcohol licence, and therefore do not sell alcohol as part of their grocery offer. This is frustrating as the Licensing Authority's decision is based on a blanket approach, making no distinction between our operation and any other alcohol retailer. This penalises good corporate citizens, whilst potentially allowing rogue traders to continue selling in an irresponsible way.

This policy puts us, and other potential new entrants to the market, at a competitive disadvantage as we are unable to offer the range of product choice that others can – simply because they have been trading for longer. A more evidence-based policy would look at the operation of the proposed applicant, and would use powers available to also consider the operation of the current traders, thereby not automatically disadvantaging those bringing new investment into a community.

Therefore, instead of pursuing a fifth licencing objective, we believe there should be greater focus on those alcohol retailers that do not operate to our high standards. Officers have suggested that there is nothing they can do to impose restrictions of the type we frequently offer and implement on other applicants, with some arguing that the review process is insufficiently precise to allow them to review off licences to achieve better standards. Instead, they block the grant of new licences, which does not have the effect the officers would ultimately like to achieve.

Through CAP, we try to help improve standards across the off trade, as one of the key ways in which some of the larger retailers are involved is by offering free underage sales training to other retailers in the CAP area that may not have access to training in the same way. This has made a real difference in many CAPs, and it also fosters a collaborative approach more generally. However, unfortunately it is not always taken up by some of the traders within the CAP area.

2. Should the policies of licensing authorities do more to facilitate the enjoyment by the public of all licensable activities? Should access to and enjoyment of licensable activities by the public, including community activities, be an additional licensing objective? Should there be any other additional objectives?

We consider a licensing objective concerning the access to and enjoyment of licensable activities by the public to be too subjective to be a helpful tool in considering licence applications. The enjoyment of a licensable activity is currently determined by market demand. If the public do not "enjoy" a licensable activity they will not use it.

The subjective nature of a licensing objective of this nature would mean that representations would be made on based on degrees of 'enjoyment', and it would be difficult for these representations to provide evidence to support these claims, on either side. In a cumulative impact area, the applicant would have to demonstrate that the member of the public would "enjoy" the facility, which seems a difficult hurdle to overcome.

The balance between rights and responsibilities

3. Has the Live Music Act 2012 done enough to relax the provisions of the Licensing Act 2003 where they imposed unnecessarily strict requirements? Are the introductions of late night levies and Early Morning Restriction Orders effective, and if not, what alternatives are there? Does the Licensing Act now achieve the right balance between the rights of those who wish to sell alcohol and provide entertainment and the rights of those who wish to object?

As a general rule we do not feel that a blanket approach is the best way to deal with issues associated with particular licenced premises, and we feel that there are sufficient measures in the Act to deal with alcohol-related issues in the night time economy.

In addition, the success of partnership approaches in dealing with issues, whether they be on or off trade, suggest they can be an effective way to work with a number of licences to tackle a problem, instead of using Late Night Levies or EMROs. Our experience of CAP and some BIDs shows the positive impact these partnerships have.

However, we are not currently impacted by the few Late Night Levies or EMROs that are in place, so it is difficult to comment further on their effectiveness.

4. Do all the responsible authorities (such as Planning, and Health & Safety), who all have other regulatory powers, engage effectively in the licensing regime, and if not, what could be done? Do other stakeholders, including local communities, engage effectively in the licensing regime, and if not, what could be done?

Overall the Act contains sufficient provisions to ensure other authorities are consulted on applications, and applications are advertised widely, so there is plenty of scope for those with views to make representations.

We have found that some responsible authorities, such as the fire authority, rarely respond to a licence application, but they are able to deal with premises through other legislation, so this is not problematic.

One point we would make is that there can be a question regarding fairness with regards licensing officers also being responsible authorities; this can mean that an application is considered at a hearing, and a licensing officer opposes the grant before its own Licensing Committee, which is in turn being advised by another licensing officer from the same office.

It is important, of course, that licensing officers have the opportunity to make representations, but this scenario perhaps is not what was intended.

Licensing and local strategy

5. Licensing is only one part of the strategy that local government has to shape its communities. The Government states that the Act “is being used effectively in conjunction with other interventions as part of a coherent national and local strategy.” Do you agree?

During the 10 years since the Act was first implemented there has been an increased focus on ‘place-shaping’, including work to support High Streets, and multiple changes to planning processes. We believe that the Licensing Act has broadly complemented these policies.

In the time the Licensing Act has been in operation we have also seen a greater focus on partnership and collaboration, such as the creation of Challenge 25 and CAPs. Additionally, the alcohol element of the Public Health Responsibility Deal has been successful, with many pledges reaching, or surpassing, their intended targets.

The Act is an important part of this broader framework, enabling local authorities to tackle alcohol related crime and disorder and encouraging partnership and dialogue. Given alcohol consumption and alcohol related crime have also fallen in this period, this suggests that the Act has been used effectively, alongside the other interventions.

6. Should licensing policy and planning policy be integrated more closely to shape local areas and address the proliferation of licensed premises? How could it be done?

As per the WSTA submission, it is important to put the number of licensed premises into context. While numbers have increased since the Act, the numbers fell in 2013-14, and alcohol sales themselves have fallen. Therefore, while the number of licenced premises may have increased it has not translated into an increase in the amount of alcohol sold.

From a Sainsbury's perspective, retail has changed significantly over the past 10 years, with customers shopping more frequently, but buying fewer items per shop, and utilising smaller convenience stores instead of larger supermarkets. We now operate over 700 ‘Local’ convenience stores and over the past few years we have seen considerable growth in that side of our business.

Sainsbury's Local stores stock a range of products, enabling customers to shop for groceries they wish to consume in the immediate days ahead. These stores have helped bring footfall back to high streets and town centres, and each creates around 25 local jobs.

It is our view that the Licensing Act has more or less kept up with the changing face of retail, and works well with the planning regime. Planning officers are able to object to a licence if they believe there are grounds to do so, and licensing authorities are using the powers

contained within the Act to work with applicants on conditions and ways of working that are relevant to the local communities in which these stores operate.

Crime, disorder and public safety

7. Are the subsequent amendments made by policing legislation achieving their objects? Do they give the police the powers they need to prevent crime and disorder and promote the licensing objectives generally? Are police adequately trained to use their powers effectively and appropriately?

The Licensing Act and subsequent amendments made to it provide the police with significant powers to prevent crime and disorder and promote the licensing objectives. A number of these powers are underutilised and it would be useful to understand the Police's view as to why. We believe that a greater focus on effective use of the powers that already exist would be more beneficial than further changes to the Act.

It is important that the Police fully understand the powers available to them. We have seen a few examples in some local areas of Police officers not fully understanding some aspects of licensing policy, and we would therefore suggest that some additional training or guidance may be useful.

One area where we work closely with the Police under the Act is in relation to football matches and events. We have agreed to many voluntary restrictions related to key football matches and events, on advice from the Police, to help play our role in maintaining public and colleague safety. These include restricting sales at certain times, reducing advertising, increasing management cover, managing the number of customers in stores at any one time, reducing the amount customers can buy and limiting product choice (ie not selling products in glass containers). We will always listen to evidence from the Police on the steps they believe are necessary during key events, and we expect our fellow traders to take the same responsible approach.

This is necessarily a two way partnership and we will work with the Police to ensure requests are evidence-based and proportionate. For example, not all events at stadia come with a risk regarding disorder, so blanket conditions on licences are not appropriate. Instead, a voluntary, collaborative approach to individual events is more constructive.

8. Should sales of alcohol airside at international airports continue to be exempt from the application of the Act? Should sales on other forms of transport continue to be exempt?

Not applicable

Licensing procedure

9. The Act was intended to simplify licensing procedure; instead it has become increasingly complex. What could be done to simplify the procedure?

Licensing is a complex area of regulation, and over the past 10 years there have been a number of additions and changes to the Act, which has made the landscape harder to manage. We believe there are a number of aspects that that could be simplified for licensees and local authorities, without impacting on the Act's objectives.

For example;

- Remove the requirement to display a licence summary and to hold the original/certified copy premises licence at the premises.

While we recognise the need to be able to produce a copy of our premises licence if requested, by insisting this is an original or certified copy, the ways in which we can store the licence are limited. If maintaining a scanned/electronic copy of the licence was permissible, this would ensure a copy was always easily available to be viewed (either on screen or printed) as well as filed appropriately – alongside all the other important documents on our internal system. The original licence could then be secured centrally.

We would also question the value for customers, colleagues and the enforcement community of the requirement to display the licence summary. In our experience these notices are very rarely read by customers. As per the above suggestion, we would therefore recommend that Government considers whether a summary notice could be mandated to be kept on electronic file and easily accessible to anyone that wants to see it. This would achieve the same objective of ensuring it is available for those who would like to check it, but in a more appropriate way than at present.

In addition, we would suggest that the requirement to display a notice under s.57 of the Act be repealed. This notice simply informs officers and customers who has been designated as the person responsible for securing that the licence or a certified copy is at the premises. As this person will always be the premises manager this public notice serves no real purpose. The many requirements to display notices can have the effect that they are less likely to be seen.

- Better online capability.

The Licensing Act has not kept up with technological change, and there are many aspects of it that could be done online, thus reducing time and bureaucracy. These include all variations, submissions of photos and a consistent online payment systems. A number of Licensing Authorities have moved aspects of the Act online, which is welcome, but this is not universal, or consistent.

Any electronic system should incorporate all Local Authority licencing functions – including alcohol, fireworks, music etc. It is commonplace for the same personnel to deal with all licensing requirements, so to bring more standardisation into the payment methods attached would be welcome.

- Remove the requirement to submit the original premises licence with applications to vary licences.

Currently, the existing premises licence has to be enclosed or scanned when making variations to it, such as when changing the Designated Premises Supervisor (DPS). This feels like an unnecessary burden given that the licensing authority will already have a copy of the licence, and therefore enclosing a copy does not provide any further information to the officials dealing with the change than they had already.

In large retail businesses, the DPS can change with relative frequency, as colleagues move across our premises. Including the original certificate when making these applications adds to the regulatory burden, without providing any clear benefit.

- When a DPS leaves a premises a grace period should be allowed to appoint a replacement (similar to Scotland) to save premises going dry.

As above, in our business the DPS can change with relative frequency. To enable an easier transition a short grace period would be helpful.

- If representations are made but issues are resolved during dialogue, there should be no need for a hearing; the licence should be granted under delegated authority.

While rare, we have experience of some Licensing Authorities insisting a hearing must go ahead even if all the matters relating to the application have been settled. This can cause unnecessary delays to the process. Additionally, in relation to Licence reviews, there is no provision in the Act to settle and so, even if all matters are agreed, a hearing is held and parties must attend.

In these circumstances this is an unnecessary part of the process and amending it could save all parties time and resources.

- There should be no time limits imposed on any parties. All parties should be given the opportunity to present their case in full.

We have come across some Licensing Authorities that stipulate that each party has a certain amount of time to present their case, regardless of its complexity. This can mean that the full facts have not been established and a decision may be based on insufficient knowledge. Ultimately this can lead to unnecessary appeals and expense for all parties.]

- There should be a review of how a Cumulative Impact Policy should be adopted and then implemented.

There is a great deal of inconsistency at present. In a similar way to our response to question 2 (page 3) regarding health as a licensing objective, in the absence of evidence linking off licence density with alcohol related harm, Cumulative Impact Policies should not apply to off licence applications. The unintended effect of current cumulative impact policies is to protect existing traders from competition.

- Reintroduce a Slip Rule

A licence application can include numerous steps, including the display of a notice in a newspaper and the display of a notice or notices on the premises for 28 consecutive days. Problems can arise where, for example, a newspaper office fails to place the advert or public notices on the premises are inadvertently removed. Licensing Officers' reactions to such issues vary enormously; from extending the representation period for an appropriate number of days so no one is prejudiced, to invalidating the application and adopting a literal interpretation of the Regulations. Invalidating the application means a huge amount of extra paperwork and cost not only for the applicant but for all of the responsible authorities who receive the application a second time and perhaps even have to make representations again. We propose that there be a "slip rule" as there used to be in the Licensing Act 1964 which allows for appropriate remedy where a step is not adhered to through inadvertence.

10. What could be done to improve the appeal procedure, including listing and costs? Should appeal decisions be reported to promote consistency? Is there a case for a further appeal to the Crown Court? Is there a role for formal mediation in the appeal process?

Better and more effective use of the Licensing Act should reduce the need for appeals, but equally, the process should also be considered afresh. For example, Direction Hearings and skeleton arguments seem to have little impact on decision making, but instead add cost and process.

Ultimately, the high cost of an appeal will deter all but the largest of operators.

Sale of alcohol for consumption at home (the off-trade)

11. Given the increase in off-trade sales, including online sales, is there a case for reform of the licensing regime applying to the off-trade? How effectively does the regime control supermarkets and large retailers, under-age sales, and delivery services? Should the law be amended to allow licensing authorities more specific control over off-trade sales of "super-strength" alcohol?

The Licensing Act 2003 certainly increased the regulations surrounding the off trade market and, in the most part, does this in a tough, but proportionate way. We believe that the powers currently available via the Act enable licensing authorities to take action if they believe an off, or on, trade premises is not abiding by the licensing objectives, not least via the system of conditions that can be added to a licence.

The use of conditions is a fundamental part of the Act as they can be specifically tailored for local need. In our experience these conditions can be fairly standard, such as requiring CCTV, or more specific to an area, such as restrictions on the sale of single cans or prohibiting the sale of beer, cider or perry above a certain ABV percentage.

We do not think further reform is required, as the powers to impose controls already exist. There are, without doubt, problem traders selling alcohol that is inappropriate in some areas, but we think these traders should be targeted with the powers that exist.

Pricing

12. Should alcohol pricing and taxation be used as a form of control, and if so, how? Should the Government introduce minimum unit pricing in England? Does the evidence that MUP would be effective need to be “conclusive” before MUP could be introduced, or can the effect of MUP be gauged only after its introduction?

Given the ongoing legal case regarding Minimum Unit Pricing in Scotland, it is difficult to comment on whether the Government should consider its introduction in England.

When assessing the use of pricing mechanisms more generally, it is important to make sure policy interventions are targeted and evidence-based. Over the past 10 years, alcohol consumption has fallen and alcohol related crime is also in decline, this has been achieved without significant price intervention (other than the 2014 introduction of the ‘below cost’ mandatory condition, which we did not oppose). Instead, greater partnership working, better provision of information and efforts regarding unit reduction have rightly been the focus of industry and Government alike over this time.

Official statistics demonstrate that alcohol-related health outcomes vary considerably across England, however these do not correlate with similar changes in price. This suggests that other issues are more relevant for government and industry to tackle and we would suggest the Committee may want to consider looking into this in greater depth.

Fees and costs associated with the Licensing Act 2003

13. Do licence fees need to be set at national level? Should London, and the other major cities to which the Government proposes to devolve greater powers, have the power to set their own licence fees?

Our strong preference is for licence fees to be set at national level. Localised fees would result in greater inconsistency which in turn would make payment of the fees more complex and costly. Locally-set fees would also reduce certainty for businesses spanning more than one Local Authority, and could lead to frequent revision and change, depending on the way in which this was introduced.

Locally-set fees would also increase the bureaucracy for Licensing Authorities as well as Licensees, which would add further costs in itself.

International comparisons

14. Is there a correlation between the strictness of the regulatory regime in other countries and the level of alcohol abuse? Are there aspects of the licensing laws of other countries, and other UK jurisdictions, that might usefully be considered for England and Wales?

As a UK only retailer, our experience only relates to the three different regimes across the four UK nations. As has been mentioned previously, there are elements of the Scottish Licensing regime that we believe work well (such as a grace period for DPS changes) but there are other elements that we do not believe add significant improvements (such as health as a licensing objective). Likewise, our experience of the difficulties in obtaining a licence in Northern Ireland is that this simply acts as a barrier to trade for new entrants.

Overall, our experience suggests that a more restrictive regime does not translate into a reduction of alcohol related harm or consumption, and that cultural shifts and longer term partnerships are likely to be more successful in this regard.

Annex: An example of the way in which we label the percentage Alcohol by Volume (ABV) on our own brand wine products



31 August 2016

Sainsbury's – supplementary written evidence (LIC0170)

Following the oral evidence session that took place on Tuesday 6 November, as part of the Committee's inquiry into the operation of the Licensing Act 2003, I was keen to follow up on a number of the points raised during the discussion.

Firstly, to respond to Lord Brooke of Alverthorpe's question (Q157) regarding the number of full rejections of licence applications we have had, I can confirm that, since the 2003 Act came into force, there have been eight applications for licences that have not been granted. These stores were all smaller format convenience stores ('Locals'). Of these, one was granted on appeal, two were granted by way of consent order following our appeal and a fourth was granted following a new application. As per the discussion during the evidence session, one of our values is to make a positive difference in the communities in which we operate, and we are proud of the constructive way in which we work with licensing committees, the police and the wider community, both during regulatory processes such as obtaining licences, as well as more holistically as we trade our stores.

Secondly, I also wanted to provide some further information regarding the suggestion made about changes to legislation that could incentivise the lower alcohol market, and help provide customers with greater choice in this regard. As part of Sainsbury's Sustainability Plan, we have committed to doubling the sale of lighter alcohol wine³⁸⁰. There is no legal definition of lighter alcohol wine, so we have set our internal definition as 10.5% ABV or below. To meet this goal we have introduced a number of ambitious changes within our wine range. For example, we have reformulated some of our products, including our award-winning Taste the Difference Prosecco Conegliano (reduced from 11% ABV to 10.5% ABV), we have introduced wines naturally lower in alcohol, and we have developed a range of spritzers as a lower alcohol alternative. Our work on reformulation specifically requires a long term commitment to our goal; it took 18 months to achieve the reduction in alcohol in our Prosecco, working closely with our suppliers and the Italian regulatory authorities. However, this change alone has led to the removal of approximately one million alcohol units from customers' annual alcohol consumption.

Unfortunately it is very difficult to communicate some of this work with customers, as promoting alcohol on the basis of strength is not allowed, and Nutrition and Health Claims legislation means making comparisons is particularly complex. While the Department of Health has been supportive of our work³⁸¹ and has commenced research into what the public understand by the current definitions that govern when the phrases 'Low Alcohol, Non-Alcoholic and De- Alcoholised' can be used, progress has been slow.

³⁸⁰ <http://www.j-sainsbury.co.uk/responsibility/our-sustainability-plan/our-commitments>

³⁸¹ Former Public Health Minister Jane Ellison provided a quote for our press release relating to our work on Prosecco. <http://www.j-sainsbury.co.uk/media/latest-stories/2014/1013-sainsburys-removes-1-million-units-of-alcohol-from-own-brand-prosecco/>

We believe change in this area would not only enable us and other companies engaged in similar work to talk to our customers more about it, but it would also mean there is greater incentive for producers and suppliers to invest in the technology and research required to develop products lower in alcohol. At the moment, there is little incentive to do so, particularly in the wine category.

Similarly on alcohol duty, the regulations are complex. However, we have seen growth in the market of non and low alcohol beers, and wine-based products under 5.5% ABV. The duty rates change at these levels, and you can therefore see an incentive for investment in new product development. There could be real value in looking at how else the duty system could be used to encourage further innovation in this area.

Thank you once again for the opportunity to provide evidence to the Committee, and we are happy to discuss any of the points raised in this letter in further detail, or any other questions you may have as you consider the evidence you have received as part of this inquiry.

9 December 2016

Sandwell Metropolitan Borough Council – written evidence (LIC0026)

Attached is a response from Sandwell Licensing Task Force, consisting of Trading Standards, Police, Licensing and Public Health.

Are the existing four licensing objectives the right ones for licensing authorities to promote? Should the protection of health and wellbeing be an additional objective?

Yes the protection of health and wellbeing should be an additional objective. Since 2011 Directors of Public Health have been included as a Responsible Authority under the Licensing Act 2003 but the absence of a corresponding licensing objective covering the protection of health and wellbeing limits the extent of involvement from Public Health and limits consideration of the impact of licensing decisions on health and wellbeing.

The lack of a licensing objective around health and wellbeing has led to the normalisation of alcohol – a psychoactive substance -which causes over 2,000 alcohol related admissions and 160 deaths every year within Sandwell. Licensing is the primary way in which alcohol is regulated – therefore in addressing alcohol related harms we would expect the licensing to act as a tool in helping to address those harms. The introduction of a health and wellbeing licensing objective would need to be precisely defined as to inform data and evidence considered relevant.

If there were a fifth objective we understand there would still be the need to prove cause and effect in line with the legal mechanisms within the Act –in the case of longer term health conditions coupled with the predominant source of cheap alcohol now via off license sales we feel that MUP would be a more far-reaching and appropriate solution but still feel there is a need for a fifth licensing objective for health and wellbeing.

In addition to the above, we would welcome guidance on the application of Public Health, which is often broad in nature, to the premises-by-premises approach demanded in the Licensing Act, particularly during the process of reviewing a licence.

Should the policies of licensing authorities do more to facilitate the enjoyment by the public of all licensable activities? Should access to and enjoyment of licensable activities by the public, including community activities, be an additional licensing objective? Should there be any other additional objectives?

Due to the permissive nature of the current regime we do not consider it necessary to introduce an additional licensing objective focusing on access to and enjoyment of licensable activities.

Has the Live Music Act 2012 done enough to relax the provisions of the Licensing Act 2003 where they imposed unnecessarily strict requirements? Are the introductions of late night

levies and Early Morning Restriction Orders effective, and if not, what alternatives are there? Does the Licensing Act now achieve the right balance between the rights of those who wish to sell alcohol and provide entertainment and the rights of those who wish to object?

Not applicable

Do all the responsible authorities (such as Planning, and Health & Safety), who all have other regulatory powers, engage effectively in the licensing regime, and if not, what could be done? Do other stakeholders, including local communities, engage effectively in the licensing regime, and if not, what could be done?

Some responsible authorities such as the police, Trading Standards and Public Health do engage effectively in the licensing regime.

Local communities' engagement is limited and this could be down to the lack of knowledge among the wider public about the licensing regime.

Licensing is only one part of the strategy that local government has to shape its communities. The Government states that the Act "is being used effectively in conjunction with other interventions as part of a coherent national and local strategy." Do you agree?

Yes, Sandwell MBC is part of the Community Alcohol Partnerships (CAP). This is a national initiative which is delivered in local communities by bringing together local retailers, trading standards, police, public health, education providers and a range of other community groups and service providers to tackle the problem of underage drinking and associated anti-social behaviour.

The partnership has already achieved a number of projects. These include the provision of free training sessions to local independent retailers regarding the law and best practice on preventing underage sales together with a range of point of sale materials; two multi-agency night audits (patrols) of the hotspot areas namely Tipton and Rowley Regis, offering a range of youth diversionary activities to young people as positive alternatives to drinking alcohol. Trading Standards and the Police worked together during these two patrols, using child volunteers to carry out undercover test purchases. This resulted in a number of local retailers being warned for selling alcohol to an underage person.

There is also a Pubwatch initiative between Sandwell Licensing Police and pub landlords across Sandwell. This is a voluntary scheme with the aim to:

- Reduce alcohol-related crime and disorder in pubs by improving communication between licensed premises, pubs and the police.
- Achieve a safe, secure and responsible social drinking environment in all licensed premises.

Should licensing policy and planning policy be integrated more closely to shape local areas and address the proliferation of licensed premises? How could it be done?

We feel that there is room for much better integration of planning and licensing policy. In particular we would welcome some planning considerations to be made relevant to licensing committee decisions.

Are the subsequent amendments made by policing legislation achieving their objects? Do they give the police the powers they need to prevent crime and disorder and promote the licensing objectives generally? Are police adequately trained to use their powers effectively and appropriately?

Police powers are vastly improved following the Police & Criminal Evidence Act (PACE) and the Anti-Social behaviour Act. It is recognised that police have a great amount of power and responsibility and to that end the powers have to be managed adequately. We do not believe that there is any requirement for any further modernising of police powers in respect of the Licensing Act.

Should sales of alcohol airside at international airports continue to be exempt from the application of the Act? Should sales on other forms of transport continue to be exempt?

Not applicable

The Act was intended to simplify licensing procedure; instead it has become increasingly complex. What could be done to simplify the procedure?

We do not feel that the procedure is overly complex, although the application forms could benefit from revision and simplification.

What could be done to improve the appeal procedure, including listing and costs? Should appeal decisions be reported to promote consistency? Is there a case for a further appeal to the Crown Court? Is there a role for formal mediation in the appeal process?

We are particularly concerned with a legal loophole within the Licensing Act where, following a revocation of a premises licence, the defendant would kick start a tactical appeal. This would essentially allow the premises to carry on selling alcohol until such appeal is dealt with. In the meantime, the defendant would pass the business onto a friend or family member into order to transfer or apply for a new premises licence under a new name or company. If the application is successful then the defendant would withdraw the appeal and the premises would carry on selling alcohol. The tactical appeal process is there

to circumvent the decision of a local authority licensing committee, hence undermining the promotion of the four licensing objectives.

Given the increase in off-trade sales, including online sales, is there a case for reform of the licensing regime applying to the off-trade? How effectively does the regime control supermarkets and large retailers, under-age sales, and delivery services? Should the law be amended to allow licensing authorities more specific control over off-trade sales of “super-strength” alcohol?

Online supermarket grocery service, late night and 24 hour alcohol home delivery service are on the increase; however there has been a lack of attention and enforcement in this area. The relevant law relating to home delivery of alcohol is rather unclear and difficult to enforce.

With reference to *S.151, A person who works on relevant premises in any capacity...commits an offence if he knowingly delivers to an individual aged under 18 alcohol sold on the premises. But it does not apply where alcohol is delivered at a place where the buyer or, as the case may be, person supplied lives or works.* To illustrate, when a child answers the door and signs for the delivery of his parent's order at home, no offence has been committed under S.151.

The Government should review the efficacy of current licensing law relating to home delivery of alcohol, in terms of whether it adequately protects children from alcohol related harm.

In relation to super strength alcohol, at the moment any off trade sales of super strength alcohol would be addressed by voluntary sign up to local schemes however if Local Authority's had the ability to impose a blanket ban on super strength products this could more effectively remove such products from the local area and have a positive impact on very visible street drinking and alcohol related litter across the borough.

Should alcohol pricing and taxation be used as a form of control, and if so, how? Should the Government introduce minimum unit pricing in England? Does the evidence that MUP would be effective need to be “conclusive” before MUP could be introduced, or can the effect of MUP be gauged only after its introduction?

The evidence base for MUP is far stronger than the ban on below cost sales. The introduction of MUP would help address a number of short and long term issues linked to the impact of very cheap alcohol and the Government should introduce this. MUP is targeted at the population of harmful drinkers while having a minimal impact on responsible drinkers

Previous government consultation on MUP was questionable and the Responsibility Deal currently in place does not go far enough in addressing harms from alcohol – liver disease is still the only major disease still on the increase.

In contrast to evidence on the effectiveness of the current below cost ban, evidence about the effectiveness of reducing harm from the introduction of MUP (45p) does appear already conclusive.

Do licence fees need to be set at national level? Should London, and the other major cities to which the Government proposes to devolve greater powers, have the power to set their own licence fees?

Sandwell Licensing Department feel that fees should continue to be set at a national level, but that the fees need to be increased to cover the cost of administering the system.

The Department feels that a premises licence, suspended for non-payment of the annual fee, should lapse should the fee remain unpaid for more than 12 months.

The potential implications resulting from the case of **Hemming v Westminster Council** is causing some uncertainties among local councils concerning licensing fees. Central Government should move swiftly to clarify the legal position following the judgement.

Is there a correlation between the strictness of the regulatory regime in other countries and the level of alcohol abuse? Are there aspects of the licensing laws of other countries, and other UK jurisdictions, that might usefully be considered for England and Wales?

Not applicable

25 August 2016

John Saunders – written evidence (LIC0067)

My submissions are addressed to two specific issues where I believe that the Licensing Act is not operating effectively.

1. **Music in pubs:** Many pubs are putting on live music in order to attract customers. One of the ideas behind the original and then further relaxation of the laws relating to music in licensed premises was to encourage the playing of traditional folk music. Folk music never used to be amplified but now it invariably is. The playing of amplified music in beer gardens and in premises which have no noise insulation can cause a serious nuisance to neighbours in a residential area. Obviously discussions can take place between neighbours and the landlord but they have different objectives. The landlord wants to get people into his pub in a market place which is becoming more and more competitive with the difficult economic climate. The resident wants peace and quiet particularly late at night. The only recourse, if negotiations do not work, is to involve environmental health. In order to assess the problem and try and do something about it, the EHO needs to come out and listen for themselves. Due again to shortage of money, environmental health officers in most rural areas or smaller towns do not work at night. The disturbance to neighbours of amplified pop music with a resounding bass and the consequence effect on health should not be underestimated. In London local authorities do have EHOs who can actively monitor the situation at night. That is not true across the country. If the Committee is considering further relaxation, then residents need to be protected and given the ability of dealing with excessive noise in a simple and inexpensive way. No doubt most of the representations that you receive will come from the trade. Residents in the provinces will not even have heard of your committee's review so there is a danger that you will get a distorted view. The vast majority of music in pubs is amplified and is capable of causing disturbance and affecting the sleep and health of residents. It is a very long procedure to try and do anything about it and it may be ultimately unsuccessful. Bringing a nuisance action in the courts is not to be recommended as it is very expensive and is likely to involve the employment of experts.

2. An associated problem is noise from beer gardens which are often located in residential areas. Particularly late at night people after a great deal of alcohol has been consumed, people become noisier. If they are in a beer garden they often feel no need to keep quiet or respect the neighbours. Landlords do put up notices but they do not have the staff to police noise levels or do not have the inclination to ask their customers to keep quieter. Even where there is a time limit for people to come in from the garden; if the landlord is busy he will not do it and any residents need to ring up to complain. This does not always make you very popular with the drinkers. It is a problem which should not be overlooked. Again if the disturbance becomes intolerable and cannot be sorted out through negotiation then the only people who can sort it are environmental health and the same problems arise. Applying for the revocation of a premises licence would equally be very expensive for a few individuals and they could face an application for costs if they failed.

I suspect that these are likely to be lone submissions. That does not mean that there are not a large number of people in the country who are having serious problems from noise pollution from pubs and are effectively unable to do anything about it. They will simply not know about your review.

The lawyers will tell you that there are remedies available. They are expensive so are not available to the average person; they can only be invoked when the nuisance has gone on for a long time. Negotiation with the landlord is the correct course but not all are reasonable. One landlord who I will not identify, in the face of complaints of noise from residents put on his facebook page that drunk people had been coming out of that pub for a lot longer than those residents had been living there.

It is not an infrequent response to be told, sometimes by councillors, that if you want a quiet life you should not live in a town centre. While that argument has some force, it should not be a licence to make unlimited noise.

A quick and effective remedy is urgently needed.

3. **S. 129 of the Licensing Act 2003.** This section provides for the forfeiture or suspension of a personal licence on conviction for a relevant offence. It was part of the Blair philosophy of relaxation in the granting of licences but an iron fist in enforcement. This provision is simply not applied because criminal courts do not know of it. It hardly appears in any criminal text book. The Law Commission who are compiling a list of all criminal penalties which should include this only know about it because I told them. I would be interested to know whether it has ever been applied. No circular was ever, to my knowledge, sent to criminal courts to notify them of this power. That may be because of the Government department that sponsored the bill. There are a wide range of relevant offences which can result in forfeiture. There is a duty on the holder of a personal licence to notify the court if he is convicted of a relevant offence. That is the only way a court would get to know. This is unlikely to happen, either because the licence holder does not know of his obligation or he would prefer not to run the risk of losing his personal licence. In practice this means that if a personal licence holder is convicted of selling illegal drugs while selling alcohol, he is unlikely to lose his personal licence. This is the only way of revoking a personal licence during the period of its operation that I am aware of it. I have yet to meet a criminal Judge or magistrate who has ever heard of this power.

I suggest it clearly does not work and it may be that some thought could be give to amending this part of the Act.

I am afraid that these submissions have been prepared in a considerable rush as I have not been aware of the existence of this review for very long.

1 September 2016

Scarborough Borough Council – written evidence (LIC0014)

Please note that the attached are the views of the three Licensing Officers of Scarborough Borough Council's Licensing Authority and are not therefore the views of the Council itself nor the Councillors of the Licensing Authority itself. They are based solely on experience of dealing with the Licensing Act.

1. Are the four licensing objectives the right ones?

The Prevention of Public Nuisance is the Licensing Objective that causes Licensing Officers the most problem as the question is always asked 'Does it affect a sufficient number of people' to constitute 'public'. [Crosby Homes v Birmingham City Council and Nightingale Club - 2008].

Our recommendation is to remove the word 'Public' and simply state the Prevention of Nuisance in order to broaden the definition thereby allowing the Responsible Authority for Noise Pollution to object to applications which is currently not happening in this Borough.

2. Should there be a fifth licensing objective "Protection of health and well-being"

Licensing Officers have a mixed view. Two officers are of the view that rather than add an additional health-related LO why not amend the 'Public Safety' LO so it reads 'Public Health and Safety'.

One officer states that Public Health do not (and are unable to) play an active role in applications nor do they have the data or evidence against specific individual premises so it is questionable as to what role they could play and why have a fifth LO?

3. Should our Policy do more to facilitate the enjoyment by the public of all licensable activities?

By facilitate do you mean make more accessible or encourage licensable activities and if so we are not sure that this really needs to be incorporated into our Policy particularly when the Government is adamant at 'reducing the burden on businesses'.

If this means to relax legislation then our view the reducing the burden has indeed gone far enough and there should be a period of time to wait to see the result of 'relaxing this burden'. There should indeed be a fine balance between this and regulation to protect the public from nuisance, etc.

4. Should access to and enjoyment of licensable activities by the public (including community activities) be an additional licensing objective?

No, there would be no value in real terms. Could possibly have "Supporting the local economy" or "Promoting diversity" instead?

5. Should there be any other licensing objectives?

No.

6. Has the Live Music Act done enough to relax the provisions of the LA03?

Yes. Any further deregulation is likely to increase the number of noise complaints. In addition, the audience limits of 500 should not be increased as this could be detrimental to public safety. We believe an 11pm time is quite late for residents and a 10pm deadline should be considered.

7. Are the introductions of late night levies and EMROs effective?

No and unless significantly amended (the process is extremely complicated) these should be scrapped. This view is supported by the poor take up.

8. Do all responsible authorities (e.g. Planning, Env. Regulation, H & S, Public Health, Fire, etc. etc.) engage effectively in the licensing regime?

The level of Responsible Authority involvement in Licensing varies significantly across the country. Unless the guidance regarding duplicated legislation is removed then this will continue as it is very subjective. There should be a mechanism whereby a RA must submit a representation where certain criteria/thresholds are met, i.e. number of noise complaints/incidents of crime, etc. The public unfortunately are poorly served by RA's in some authorities as they are not supported in their representations.

9. If not, what can be done to make them engage more effectively?

See above.

10. Do other stakeholders, including local communities, engage effectively in the licensing regime?

Yes, a number of our local parish and town councils (not all) are proactive and show a clear concern for the potential impact a licence application may have in their local area.

11. If not what could be done to encourage more engagement?

We believe that the newspaper adverts are prohibitively expensive and as such are often very small so the public do not see this. There should be a requirement for applications to be advertised more widely as often residents are not aware and do not necessarily see the pale blue notice.

12. Do you agree that the regime is being used effectively in conjunction with other interventions as part of a coherent national and local strategy?

The LA03 can only go so far in terms of national and local strategies but it should remain a key part.

13. Should licensing and planning policies be integrated more closely to shape local areas and address the proliferation of licensed premises?

Yes but it is not and leads to inconsistencies in permissions granted. Planning do not make representations as it is difficult for them to provide evidence. Having said that they should be more integrated and often licensing officers ‘comment’ on planning applications but the Licensing Policy is not adhered to specifically with reference to the cumulative impact zones.

14. If so, how could this be done?

Planning should be able to object solely on the inconsistency of hours between licensing and planning. Consideration should be given in having a joint Planning and Licensing Committee particularly as half our licensing committee members also sit on planning.

15. Have the amendments made by policing legislation given the police powers to prevent crime and disorder and promote the licensing objectives?

No, it appears there is no impact. Basically there are not enough officers able to deal with licensing issues. It is not high priority.

16. Are the Police adequately trained to use their powers effectively and appropriately?

Yes, our Police Licensing colleagues are adequately trained but other front line officers clearly are not.

17. Should sales of alcohol airside at international airports continue to be exempt from the licensing regime?

There is a mixed view here. In light of Jet 2 agreeing ‘to open later at 8am!’, two officers believe that these sales should not be exempt and we should be given powers to go ‘airside’ to control the lawlessness that is currently going on. Why are licensed premises in this area not controlled and allowed to serve alcohol to customers who are drunk thereby placing the public at risk by boarding a flight drunk, this should be stopped.

The other officer says they should continue to be exempt as it would provide additional challenges in regard to inspection and enforcement – however, these could be overcome in much the same way as bar staff and cleaners are allowed airside.

18. Should sales of alcohol on other forms of transport continue to be exempt?

Again, mixed opinion here.

One officer believes they should not be exempt citing football fans’ behaviour on trains and indeed hen/stag parties on trains drinking alcohol at all times.

One officer suggests waiting and seeing if licensing airside works first then consider other forms of transport.

One officer says they should continue to be exempt for the same reasons as quoted above, i.e. inspection and enforcement.

19. The Gov. say the Act was supposed to be a simple licensing procedure but that it has become increasingly complex. They ask what could be done to simplify the procedure?

There have been many changes to the LA03 through other legislation and statutory instruments that have tried to plaster over the inadequacies of a poorly written Licensing Act. This has caused the procedure to be complex. It is time for reform now and re-drafting of the Act to make it easier for everyone.

In addition, minor variations were supposed to be easy but the “clever” licensing lawyers have tried to get through major variations through this route and often manipulate the system to make it complex and time consuming for Officers.

The consultation process needs to be urgently addressed and consideration given to including Parish/Town Councils as statutory consultees who would be best placed to consult with their residents.

20. What could be done to improve the appeal procedure, including listing and costs?

More court staff. It is a joke when a licensing appeal listing is 6 – 9 months away due to the courts’ backlog of cases. These appeals should not be penalised for the inadequate staffing resources in the court system. Also, now the magistrates are no longer experienced they need training on this as often we have to use a District Judge as the magistrates would not understand the complexity of the legislation.

21. Is there a case for further appeal to the Crown Court?

No absolutely not for the reasons outlined above.

22. Is there a role for formal mediation in the appeal process?

Yes and this has been done regularly in this Borough to avoid the heavy costs on appeal. It is called a Consent Order and works usually for all parties.

23. Given the increase in off sales, including online sales, is there a case for reform of the licensing regime applying to the off trade?

No, the mandatory conditions are a sufficient safeguard.

24. How effectively does the regime control supermarkets and large retailers, under age sales and delivery services?

Not very effectively, the general opinion is that supermarkets play a major role in the proliferation of alcohol-related incidents and preloading.

25. Should the law be amended to allow licensing authorities more specific control over off trade sales of ‘super strength’ alcohol?

Yes, a mandatory condition could be placed on the licence to ensure that such super strength alcohol should be placed behind a counter or not exposed. We have huge

problems with street drinkers in this Borough so if this alcohol was not easily accessible this would help.

26. Should alcohol pricing and taxation be used as a form of control? If so, how?

No as this penalises the majority of sensible drinkers. Control should be directed at the minority that cause the problems, i.e. preloading by buying cheap alcohol at supermarkets.

27. Should the Gov. introduce minimum unit pricing (MUP) in England?

As above, however one officer believes the Gov. should introduce it.

28. Does the evidence that MUP would be effective need to be 'conclusive' before MUP could be introduced or can the effect of MUP be gauged only after its introduction?

Before introducing this in England and Wales, the Gov. should review the outcome in Scotland first.

29. Do licence fees need to be set at national level?

No, they should be set locally as with all licence fees and should be on a cost recovery basis. As there are already inconsistencies in the country (SEV fees are but an example) there should be clear guidelines on what can be charged and what can't be charged. There is still a discrepancy on whether a Licensing Authority can charge for enforcement which needs clarification. Our belief is that they should be able to charge for this.

One officer believes they should continue to be set at a national level as it works and there are higher priorities to deal with than the considerable time it takes in proving your fees are cost recovery.

30. Should London, and the other major cities to which the Government proposed to devolve greater powers, have the power to set their own licence fees?

Mixed view here. As above. One view is London and the other major cities should not be any different to the other towns in the rest of the country. Leads to inconsistent practices again in the same way as Hackney Carriage licensing legislation.

31. Is there a correlation between the strictness of the regulatory regime in other countries and the level of alcohol abuse?

The LA03 tried to introduce the continental way of drinking but it has not worked. Complaints are regularly received about drinkers outside intimidating passers by. Licensed premises regularly serve alcohol to those who are already drunk, often from pre-loading.

32. Are there aspects of the licensing laws of other countries, and other UK jurisdictions, that might usefully be considered for England and Wales?

One officer believes that the American law of having to be 21 to purchase alcohol in some States should seriously be considered. This will not of course prevent preloading but would

go a long way in preventing 15-17 year olds dressing up to look as if they are 18 and getting past door supervisors.

Another believes that compared to the USA or continental holiday resorts we appear to be getting it right although the rules on serving to drunken individuals and being drunk and disorder need to be more rigorously enforced.

12 August 2016

Scarborough Borough Council Licensing Committee – written evidence (LIC0145)

I submit this document in my capacity as Vice Chairman of the Licensing Committee of Scarborough Borough Council.

1 The existing four Licensing objectives are sufficient and cover the protection of health and wellbeing. People have a responsibility to look after their own health and safety in many areas of life. Councils could be sued following an accident on the basis that insufficient was done to protect them. However, the objective "Prevention of Public Nuisance " should have the word Public removed so as to allow objections to applications from, for example, the responsible authority for noise pollution

2 Not all licensable activities appeal to the same people. Those who enjoy country pubs may find the concept of a night club abhorrent. The suggestion here seems to be that all licensable activities should be designed to appeal to as many people as possible. Some licensable activities are narrowly segmented, pole dancing clubs for example.

We must allow people to decide what they want to do with their leisure time. To promote enjoyment of any licensable activity borders is almost telling the public what they should enjoy. I still cannot understand the wisdom of allowing betting firms to tell people to bet responsibly while showing Ray Winstone who is a role model for many, indulging in gambling. The message that emerges from that campaign is to enjoy gambling but do it all day. We should be ashamed for allowing the advertising of on line gambling which gives out the message that the gambler gains. He does not.

3 My experience is that each case must be decided on its own merits and there is now the right balance within the regime between those who provide the activity, who in Q2 might describe as the life enhancers and the perpetual objectors, whom we might all describe as the life diminishers.

4 I have found that responsible authorities are adequately consulted about licensable activities but that outside bodies tend to respond more slowly. We are an efficient and well respected LA and I have heard people say that whilst the outcome of an application was not what they wanted they are content that the matter has been properly dealt with. However, not all Licensing Authorities are as vigorous as Scarborough. Most of our Parish Councils take a keen interest in applications and the potential impact on their immediate area.

5 I agree with the statement but it should be revisited on a regular basis to ensure that it is always true.

6. Planning and Licensing departments should never be merged as the objectives are different. Planning Committees need to be able to reject an application for the reason that local businesses should be protected without fear of that decision being overturned on appeal, particularly in locations where the economy is fragile such as coastal resorts whereas Licensing Officers and Members should not consider parity of business opportunity, particularly in High Impact Zones.

7. Scarborough Borough Council has a good working relationship with the Police. When a sub committee disagrees with a Police representation reasons are always well explained to the extent that the Police believe that an appeal would be dismissed. That at least is my experience so far. That said, there are insufficient Police Officers to deal with licensing matters, whether they be of an administrative nature (compiling representations) or front line (patrolling the High Impact Zone).

8. Increasingly worrying is the number of reports of people being highly intoxicated before they board an aeroplane and the consequent breach of some, and occasionally all, of the licensing objectives. Thus I believe that alcohol sales airside should be very tightly regulated and that this should be introduced at the earliest opportunity.

Sale of alcohol on other forms of transport are a different problem but no less serious (football fans, pub crawls, stag and hen parties etc). On trains, the Licensing Authority could be the one that controls the area in which the rail company has its UK headquarters. For marine traffic, control of alcohol sales is likely to be more complicated as vessels move between territorial waters of different countries.

However, the problem is always going to be one of enforcement, and as earlier noted, there are insufficient Police Officers now without creating further requirements.

9. I was not a member of the Licensing Authority before the 2003 Act and therefore not in a position to make a comparison. However, I perceive that the questions being asked in this consultation invite increasing legislation and complexity rather than less. Parish Councils, Town Councils and possibly Residents Associations should be statutory consultees.

10. I have only been involved in one appeal and that was brought about by a poorly prepared application in the first instance. The matter was settled by agreement in court by the solicitors of both parties. I do not see how licensing legislation can affect listing and

costs. It would be unfair to allow licensing appeals to take precedence over other matters, which I presume is what you are asking, and costs will be whatever they are, payable as directed by the court. In order to reduce waiting time for appeal hearings, more court staff and more trained magistrates are needed. Who will fund that cost? There should be no opportunity for further appeal to the Crown Court.

11. The abolishment of Retail Price Maintenance many years ago paved the way for supermarkets to sell alcohol as loss leaders. It is fatuous to suggest that there should be control over "super strength" alcohol because it will not address the issue. There are a number of very strong French and Belgian Trappist beers that have been brewed at 7% to over 9% for a few hundred years and these do not, in general, appeal to those who want to pre load on cheap, strong lager before going out on the town, but any legislation will have to include these specialist beverages. Notwithstanding the foregoing, anyone wishing to become inebriated quickly can do no better than imbibe cheap sherry. This would probably not be encompassed by new legislation.

What is needed is an agreement with brewers not to produce strong cheap lager and another with the supermarkets not to sell it as loss leaders. Good luck with that.

12. MUP will not be a deterrent to the determined drinker but it will be an annoyance to those who enjoy an occasional drink but cannot afford speciality beers. Evidence that MUP will be effective needs to be absolutely conclusive before introduction. If you introduce it and it does not have the desired effect, would you have the courage to repeal it?

13. Licence fees need to be set locally so as to ensure that they are based on cost recovery. Local Authorities should be allowed to charge for enforcement. All areas of the country should be subject to the same regime.

14. I have yet to visit a country that does not have alcohol related socio economic problems of one sort or another. This is particularly true of east European and Pacific Rim countries. The problems became worse in this country when we set about making the stuff available freely 24 hours a day, introducing the Continental approach. We must endeavour to stop licensed premises from selling alcohol to those who are already drunk. Punishment for the offence of being drunk and disorderly need to be more harsh - much more harsh.

Far too many teenagers below 18 are entering licensed premises and drinking without being challenged about their age. Again penalties for selling alcohol to these people should be more severe and we should consider penalties for those under age attempting to purchase it.

8 August 2016

Scotch Whisky Association – written evidence (LIC0092)

Introduction

1. The Scotch Whisky Association (SWA) is the industry's representative body with a remit to promote Scotch Whisky's long-term growth worldwide and secure its place as the leading, high-quality spirit drink. Our 62 member companies account for around 95% of the Scotch Whisky industry.
2. The Scotch Whisky industry contributes nearly £5 billion in added value to the economy, supporting 40,000 jobs across the UK. Scotch Whisky accounts for over 20% of the UK's total food and drink exports. The UK market is the industry's third largest in terms of volume.
3. Having a fair, consistent and effective licensing regime - that allows for the balancing of the broad range of different interest groups - is key.
4. Alcohol-related health and social harms are generally moving in a positive direction:
 - Binge drinking down 19% since 2005³⁸².
 - In the last decade the proportion of children aged 11-15 who have had an alcoholic drink has declined by 38%³⁸³.
 - Violent incidents committed by those perceived to be under the influence down by 40% since 2007³⁸⁴.
 - Drink driving deaths have fallen 60% since 2004.³⁸⁵
 - The alcohol-related death rate is 2.6% lower compared to 2005³⁸⁶.

Assessing the impact of the Act on these trends is difficult as there are multiple factors at play.

5. We welcome the opportunity to make a written submission to the inquiry. However, as an organisation representing producers we have limited our response to certain questions in the call for evidence.

Question

Licensing objectives

Q. Are the existing four licensing objectives the right ones for licensing authorities to promote? Should the protection of health and wellbeing be an additional objective?

6. The current licensing objectives:

³⁸² Adult Drinking Habits in Great Britain 2014, 8 March 2016

³⁸³ Smoking, Drinking and Drug Use Among Young People in England, HSCIC, 23 July 2015

³⁸⁴ ONS Crime Survey of England and Wales

³⁸⁵ [\(Department of Transport\)](#)

³⁸⁶ Alcohol Related Deaths in the United Kingdom: Registered in 2014, 2 February 2016

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

We consider these to be the correct ones to promote.

7. The issue of whether or not the protection of health and wellbeing should be introduced as a licensing objective is an issue which has been raised in the past.

8. We note protecting and improving public health is a licensing objective under the Scotland (Licensing) Act 2005, which came into force in September 2009. The experience from Scotland would appear to suggest the public health objectives are poorly understood and that Licensing Boards have struggled with the issue since its introduction.

9. The ‘Monitoring and Evaluating Scotland’s Alcohol Strategy’ (MESAS) final report³⁸⁷ noted in relation to this licensing objective that it is difficult to operationalise. In that the scale of the licensed trade in England and Wales is much greater, it may be an even more difficult issue to address south of the border.

Q. Should the policies of licensing authorities do more to facilitate the enjoyment by the public of all licensable activities? Should access to and enjoyment of licensable activities by the public, including community activities, be an additional licensing objective?

Should there be any other additional objectives?

10. We are not convinced of the need or benefits of introducing any new licensing objective. To do so would add another layer of complexity to the licensing system.

11. A number of the predictions for the Act when first introduced e.g. higher consumption, increase binge drinking, more violent crime have not materialised³⁸⁸.

Crime, disorder and public safety

Q. Should sales of alcohol airside at international airports continue to be exempt from the application of the Act? Should sales on other forms of transport continue to be exempt?

12. With regard to alcohol sales airside at international airports, we have no evidence to suggest the exemption should be removed. Both on and off retail sales take place. Travel retail (off sales) is an important area for Scotch Whisky in terms of showcasing our brands to international travellers wishing to purchase a premium product.

13. Recent media reports have highlighted the issue of intoxicated passengers on flights and the potential dangers and nuisance they cause to themselves and to other passengers. However, it must be recognised the number involved in such incidents is small compared to the vast number of people who pass through airports.

³⁸⁷ Monitoring and Evaluating Scotland’s Alcohol Strategy, Final Annual Report, NHS Health Scotland, March 2016

³⁸⁸ C Snowdon, Drinking, Fast and Slow: Ten Years of the Licensing Act, Institute of Economic Affairs, May 2015

14. We support retailers in the travel retail sector to ensure strict action not to sell alcohol to those who are intoxicated. We also support strict enforcement of airlines own policies of not allowing intoxicated passengers to fly.

Sale of alcohol for consumption at home (the off-trade)

Q. Given the increase in off-trade sales, including online sales, is there a case for reform of the licensing regime applying to the off-trade? How effectively does the regime control supermarkets and large retailers, under-age sales, and delivery services? Should the law be amended to allow licensing authorities more specific control over off-trade sales of “super-strength” alcohol?

15. We are aware of a number of ‘reducing the strength’ schemes operating in England. These schemes appear to be mainly aimed at what are termed ‘street drinkers’. The schemes invariably encourage retailers not to stock high strength beer and cider products above certain strength, typically 6.5% alcohol by volume.

16. Our view is that all types of alcohol are capable of being misused and to address the issue of street drinkers requires a holistic approach. Many street drinkers will be alcohol dependent and therefore require treatment in addition to a range of targeted interventions and services to support them.

17. Our primary concern is what is meant or could be defined as ‘super-strength’ alcohol if more control was given to licensing authorities in this area. Within the current schemes this appears to relate to product within category e.g. beer or cider as opposed to between categories e.g. beer, wine, spirits. Any categorisation along the latter route would not be acceptable or justifiable. It is the quantity of alcohol consumed and the drinking pattern, not the type of alcohol that is the issue in relation to alcohol-related harm.

Pricing

Q. Should alcohol pricing and taxation be used as a form of control, and if so, how? Should the Government introduce minimum unit pricing in England? Does the evidence that MUP would be effective need to be “conclusive” before MUP could be introduced, or can the effect of MUP be gauged only after its introduction?

18. Taxation serves to generate revenue for government. It is often portrayed as a ‘silver bullet’ in tackling alcohol-related harm. Tackling alcohol-related harm is a complex issue and complex issues are not typically addressed by simple solutions. We know from experience of other countries, for example in Scandinavia, that having high levels of taxation do not necessarily lead to lower levels of heavy episodic drinking³⁸⁹.

19. The SWA is opposed to minimum unit pricing (MUP) for alcoholic drinks for a number of reasons, which can be summarised as follows:

³⁸⁹ Taxation of Beverage Alcohol, Policy Review, IARD 2016

- MUP will not tackle alcohol misuse effectively. Price measures are ineffective in reducing consumption by hazardous and harmful drinkers. The consensus of international studies is that the price responsiveness of heavy drinkers is close to zero³⁹⁰.
- There is no convincing evidence that MUP as a policy will reduce alcohol-related harm because it has not been shown that it will reduce the number of hazardous and harmful drinkers³⁹¹;
- MUP will set a precedent for equally ineffective and illegal measures by other countries which could severely damage the Scotch Whisky industry's export markets and the Scottish economy.
- We believe the measure to be illegal. Minimum pricing was first ruled illegal as a barrier to trade by the Court of Justice of the European Union (CJEU) more than 30 years ago. The Court has consistently ruled against minimum pricing since.

The SWA launched a judicial review of the Scottish MUP scheme in 2012. The Court of Justice of the European Union issued its ruling on the case on 23 December 2015. The Court ruled that:

- MUP is contrary to EU law if less trade restrictive measures can be introduced.
- MUP significantly restricts the market and this may be avoided, and the aim of the measure achieved, by the introduction of a less restrictive tax measure.
- The fact that tax may procure additional benefits and be a broader response to the objective of combating alcohol misuse cannot in itself justify the rejection of that measure.

A link to the full ruling can be found at:

<http://curia.europa.eu/juris/document/document.jsf?jsessionid=9ea7d0f130d5b1a03d08eb1b493dbfd195a3e08f1318.e34KaxiLc3eQc40LaxqMbN4Oc3mLe0?text=&docid=173249&pageIndex=0&doclang=en&mode=req&dir=&occ=first&part=1&cid=650540>

A further hearing was held before the Scottish Courts over the summer. A final ruling is anticipated later in 2016.

20. We do not believe the Government should introduce minimum unit pricing in England. The previous Government stated it would not proceed with MUP noting that it “has not provided evidence that conclusively demonstrates that MUP will actually do what it is meant to: reduce problem drinking without penalising all those who drink responsibly”³⁹². There is no justification for requiring responsible drinkers to pay more, and those in poverty are hardest hit.

³⁹⁰ Jon P Nelson – Does heavy drinking by adults respond to higher alcohol prices and taxes? A survey and assessment. *Economic Analysis and Policy*, March 2013

³⁹¹ Model-Based appraisal of alcohol minimum pricing and off-licensed trade discount bans in Scotland using the Sheffield alcohol policy model (v2): Second update based on newly available data. January 2012.

³⁹² Home Office: Next Steps following the Government's Alcohol Strategy Consultation July 2013. Paragraph 5 of Ministerial Foreword

21. Evidence from Scotland shows the majority of hazardous and harmful drinkers are in the top three income quintiles³⁹³. According to modelling by Sheffield Alcohol Research Group, most of the alcohol purchased by these wealthy hazardous and harmful drinkers will not increase in price³⁹⁴. An OECD study acknowledged that high income heavy drinkers may not be impacted by MUP³⁹⁵.

22. Experience from Canada is often quoted as providing evidence to support MUP. Sales of alcoholic drinks in Canada are controlled by provincial liquor boards, i.e. there is a state controlled monopoly. Two provinces in Canada, namely British Columbia and Saskatchewan, have applied what is described as ‘social reference pricing’. This is not MUP. While the provincial liquor boards fix the prices of alcoholic drinks, for example beer and spirits, the prices are not related to the alcoholic strength of these drinks. The purpose of this price fixing is largely to maximise revenue. As such, the Canadian system is more akin to a tax, with revenue passing to the local state owned liquor boards. Evidence from research conducted in British Columbia on the impact on health harms found the alcohol-related death rate rising and falling from year to year, while the rate of alcohol-related hospital admissions rose every year across the period studied³⁹⁶.

23. A recent study from the Sheffield Alcohol Research Group which modelled different tax and pricing policies in England, including an MUP of 50p and an across the board excise tax increase of 13.4%, predicted MUP would increase consumption and mortality among higher income heavy drinkers³⁹⁷.

24. A study examining on and off-trade prices in the context of preventing violence – related injuries in England and Wales conclude that reforming the current alcohol taxation system (moving to a system where alcoholic drinks are taxed relevant to strength) may be more effective at reducing violence related injury than MUP³⁹⁸.

25. There are also concerns that MUP could have unintended consequences that could widen rather than reduce health inequalities³⁹⁹.

26. As an industry we are not against appropriate levels of taxation. The SWA supports all alcoholic beverages being taxed on the same basis according to alcohol content. We believe this is the only fair and responsible way to tax alcohol.

Fees and costs associated with the Licensing Act 2003

³⁹³ Scottish Health Survey 2014

³⁹⁴ <https://www.shef.ac.uk/scharr/sections/ph/research/alpol/faq> (accessed 31.08.16)

³⁹⁵ A. Ludbrook, How does minimum unit pricing for alcohol affect different types of drinkers. Tackling Harmful Alcohol Use: Economics and Public Health Policy, OECD 2015

³⁹⁶ http://www.thejournal.ie/minimum-unit-pricing-alcohol-ireland-facts-2932210-Aug2016/?utm_source=facebook_short

³⁹⁷ PS Meier et al, Estimated Effects of Different Alcohol Taxation and Price Policies on Health Inequalities: A Mathematical Modelling Study, PLOS Medicine, 23 February 2016

³⁹⁸ N Page et al, Preventing violence-related injuries in England and Wales: a panel study examining the impact of on-trade and of-trade alcohol prices.

³⁹⁹ F O’May et al, The Families and friends of heavy drinkers: caught in the cross-fire of policy change? Drug and Alcohol Review, 2016

Q. Do licence fees need to be set at national level? Should London, and the other major cities to which the Government proposes to devolve greater powers, have the power to set their own licence fees?

27. We support the principle that fees should be set at a level to recover the cost of delivery and managing the licensing regime. They should not be seen as a revenue generating stream for local government.

International comparisons

Q. Is there a correlation between the strictness of the regulatory regime in other countries and the level of alcohol abuse? Are there aspects of the licensing laws of other countries, and other UK jurisdictions, that might usefully be considered for England and Wales?

28. We would highlight the EU-funded AMPHORA project, in particular work package 3⁴⁰⁰, which investigated the empirical relationship between socio-cultural, economic and demographic determinants, and control policies on consumption and indicators of harm in twelve European countries between 2009 and 2012. The purpose of the study was to determine those policy measures with the highest likelihood of success. The findings show no fixed or predictable association between the implementation of alcohol control policies on either consumption or levels of harm. These changes can only be explained when other contextual factors such as social, cultural, economic, religious, demographic and other factors are considered simultaneously.

29. Training of staff is an important issue. Whilst it must be recognised that responsible retailers ensure the training of their staff, a mandatory condition would be for all retailers to be able to demonstrate that their staff have been appropriately trained in the relevant aspects of the licensing regime, if challenged.

2 September 2016

⁴⁰⁰ http://amphoraproject.net/w2box/data/Deliverables/AMPHORA_WP3_D3.2.pdf

Scottish Health Action on Alcohol Problems – written evidence (LIC0032)

Scottish Health Action on Alcohol Problems (SHAAP) welcomes the opportunity to comment on the 2003 Licensing Act. SHAAP provides the authoritative medical and clinical voice on the need to reduce the impact of alcohol related harm on the health and wellbeing of people in Scotland and the evidence-based approaches to achieve this.

SHAAP was set up in 2006 by the Scottish Medical Royal Colleges through their Scottish Intercollegiate Group (SIGA). SHAAP is governed by an Executive Committee made up of members of the Royal Colleges and Faculties in Scotland.

SHAAP works in partnership with a range of organisations in Scotland and beyond. Key partners include Alcohol Focus Scotland, the British Medical Association (BMA), the Scottish Alcohol Research Network (SARN), the Alcohol Health Alliance, the Institute of Alcohol Studies, Eurocare and the European Public Health Alliance (EPHA).

Question 1

Are the existing licensing objectives the right ones for licensing authorities to promote? Should the protection of health and wellbeing be an additional objective?

In Scotland, the Licensing (Scotland) Act 2005 contains a fifth objective of ‘protecting and improving public health’⁴⁰¹ and we call on the UK Government to prioritise the introduction of this objective to ensure the protection of health and wellbeing is accounted for in licensing decisions, and to minimise the impact on alcohol-related (health) harm.

The protection of health and wellbeing should be an additional objective and must be treated with equal weight and value to the four other objectives, sufficiently enabling the health impacts of alcohol licensing decisions on individuals and local communities to be accounted for.

Question 2

Should the policies of licensing authorities do more to facilitate the enjoyment by the public licensable activities? Should access to and enjoyment of licensable activities by the public. Including community activities, be an additional licensing objective? Should there be any other additional objectives?

No comment.

Question 3

Has the Live Music Act 2012 done enough to relax the provisions of the Licensing Act 2003 where they imposed unnecessarily strict requirements? Are the introductions of late night levies and Early Morning Restriction Orders effective, and if not, what alternatives are

⁴⁰¹ Scottish Executive (2007) Licensing (SCOTLAND) Act 2005 – Section 142 - Guidance for Licensing Boards <http://www.gov.scot/Resource/Doc/175487/0049459.pdf>

there? Does the Licensing Act now achieve the right balance between the rights of those who wish to sell alcohol and provide entertainment and the rights of those who wish to objective?

No comment.

Question 4

Do all responsible authorities (such as Planning and Health & Safety), who all have other regulatory powers, engage effectively in the licensing regime, and if not, what could be done? Do other stakeholders, including local communities, engage effectively in the licensing regime, and if not, what could be done?

We believe there is much greater scope for joined-up, multi-stakeholder action on licensing. Alcohol-related outcomes are influenced by key planning decisions, health and safety regulations, and broader environmental factors, all of which are known to contribute to healthy and wealthy spaces, places and communities.

Local communities are one group of stakeholders particularly removed from and not effectively engaged in licensing decisions in Scotland. This is stratified by social economic characteristics. Scottish Government figures reveal that 84% of community councils are considered to be active, although those situated in deprived areas were, overall, much less likely to be active⁴⁰². This is highly problematic in relation to reducing alcohol-related harm, as the greatest harm is known to be situated in deprived communities, and concentrated among hazardous and harmful drinkers. Furthermore, alcohol outlet density is greater in these deprived communities - 40% more outlets - where there is also a greater concentration of off-license premises, making alcohol more readily available⁴⁰³. The uneven distribution of negative retail and economic environments, in relation to alcohol, exposes individuals in the most disadvantaged areas to the greatest harm. Encouraging and widening participation of all communities is therefore essential to ensure that licensing decisions reflect local areas and take account of their needs.

In 2015, a Private Members Bill - Alcohol (Licensing, Public Health and Criminal Justice) (Scotland) Bill - was introduced to the Scottish Parliament which contained two proposals for greater community involvement in licensing decisions. The first was, where there is no community council for the area or the community council is inactive, written notification of the application must be given to all neighbours within a 50m radius. The current requirement is notification of those within a four metre radius. It was suggested this would result in more individuals being directly notified of licensing applications, and in urban

⁴⁰² Scottish Government (2013) Survey of Local Authority Community Councils
<http://www.gov.scot/Resource/0044/00440438.pdf>

⁴⁰³ Shortt, N.K, C. Tisch, J. Pierce, R. Mitchell, E.A Richardson, S. Hill, and J. Collin (2015) A cross-sectional analysis of the relationship between tobacco and alcohol outlet density and neighbourhood deprivation, BMC Public Health 15: 1041 http://download.springer.com/static/pdf/515/art%253A10.1186%252Fs12889-015-2321-1.pdf?originUrl=http%3A%2F%2Fbmcpublichealth.biomedcentral.com%2Farticle%2F10.1186%252Fs12889-015-2321-1&token2=exp=1470231237~acl=%2Fstatic%2Fpdf%2F515%2Fart%25253A10.1186%25252Fs12889-015-2321-1.pdf*~hmac=f35e9226c20075cbcf35b8ed66373a3a06e1988f5d4d883babb7a42075e4a6b7

areas, the number could rise substantially due to population density. The second proposal was to double the public notification periods for licences from 21 to 42 days. The purpose of this was to give those affected more time to lodge an objection. In particular, it was noted this may give community councils the chance to meet and consult before submitting a response or objection⁴⁰⁴. In our response to the Scottish Government’s consultation on the Bill, we supported the proposals, and argued that any measure designed to encourage and better enable community input, particularly in areas lacking a formal representative body, into licensing decisions can only be of benefit in realising important public health goals⁴⁰⁵. We were disappointed to note that the Scottish Government, after consideration, did not recommend the introduction of these proposals or the Bill as a whole. We believe that these proposals are effective ways for increasing community involvement of licensing decisions and call for similar proposals to be outlined for consideration at UK level as part of the Licensing Act.

A good model for encouraging community involvement in alcohol licensing decisions is the Alcohol Licensing Toolkit⁴⁰⁶ for communities produced by Alcohol Focus Scotland. The toolkit is for anyone who wishes to be involved in and learn more about how alcohol impacts on their community, and explains how licensing systems and processes operate in Scotland, outlining some practical tips for getting involved.

Question 5

Licensing is only one part of the strategy that local government has to shape its communities. The Government states that the Act “is being used effectively in conjunction with other interventions as part of a coherent national and local strategy.” Do you agree?

No comment.

Question 6

Should licensing policy and planning policy be integrated more closely to shape local areas and address the proliferation of licensed premises?

Decisions to grant licensing applications must reflect the situation and circumstances of the local area in question. Licensing policy and planning policy should be better integrated; however, this would not necessarily do anything to significantly impact on the abundance of licensed premises.

⁴⁰⁴ SPICe Briefing (2015) Alcohol (Licensing, Public Health and Criminal Justice) (Scotland) Bill
http://www.parliament.scot/ResearchBriefingsAndFactsheets/S4/SB_15-61_Alcohol_Licensing_Public_Health_and_Criminal_Justice_Scotland_Bill.pdf

⁴⁰⁵ Scottish Health Action on Alcohol Problems (SHAAP) (2015) Response to Scottish Government Consultation on Alcohol (Licensing, Public Health and Criminal Justice) (Scotland) Bill
<http://www.shaap.org.uk/news/response-to-the-scottish-parliament-s-alcohol-bill.html>

⁴⁰⁶ Alcohol Focus Scotland (2015) Alcohol Licensing in your community: How you can get involved
<http://www.alcohol-focus-scotland.org.uk/media/133477/Community-licensing-toolkit.pdf>

The Licensing (Scotland) Act 2005 contains a requirement for all Licensing Boards to undertake an assessment to determine the extent to which there is overprovision of licensed premises in their area⁴⁰⁷. This has proved challenging. There is deemed to be a lack of guidance for assessing and determining overprovision, and Boards reported being unsure how to define outlet capacity⁴⁰⁸. Licensing Boards also cannot reduce current availability or capacity in their area; they can only limit increases in capacity.

We support and call for better integrated policy which more readily reflects the needs of the local area and community, and enhances their ability to respond to and use Licensing legislation to reflect these needs.

Question 7

Are the subsequent amendments made by policing legislation achieving their objectives? Do they give the police the powers they need to prevent crime and disorder and promote the licensing objectives generally? Are police adequately trained to use their powers effectively and appropriately?

No comment.

Question 8

Should sales of alcohol airside at international airports continue to be exempt from the application of the Act? Should sales on other forms of transport continue to be exempt?

No, we believe that alcohol sales airside should not be exempt from the Act. There are potentially additional risks related to passengers being temporally displaced and confined within aircraft. Indeed, recent figures showed that 422 people were held on suspicion of being drunk at an airport or on a plane in the last two years⁴⁰⁹.

Similar problems can also arise on other forms of transport. The sale and consumption of alcohol on trains can cause specific problems, and can result in additional preloading or on-route loading. In Scotland, since July 2012, Scotrail operated trains currently operate a policy where the consumption of alcohol on trains is banned from 9pm to 10am⁴¹⁰. Since the introduction of the ban, British Transport Police have reported a marked reduction in incidents of anti-social behaviour and disorder⁴¹¹.

⁴⁰⁷ Scottish Executive (2005) Licensing (Scotland) Act 2005 Contents

http://www.legislation.gov.uk/asp/2005/16/pdfs/asp_20050016_en.pdf

⁴⁰⁸ MacGregor, A, C. Sharp, J. Mabelis and J. Corbett (2013) An evaluation of the implementation of, and compliance with, the objectives of the Licensing (Scotland) Act 2005: Final Report

<http://www.healthscotland.com/uploads/documents/21321-RE024%20Licensing%20Act%20Evaluation%20Final%20Report.pdf>

⁴⁰⁹ BBC news (29/07/2106) Airport alcohol sales to be 'examined' by Lord Ahmad

<http://www.bbc.co.uk/news/uk-36920665>

⁴¹⁰ BBC news (22/06/2012) ScotRail outlines train drink ban <http://www.bbc.co.uk/news/uk-scotland-18549048>

⁴¹¹ Daily Record (23/06/2014) Alcohol ban on trains hailed success as police record decrease in drink-fuelled crimes <http://www.dailyrecord.co.uk/news/scottish-news/alcohol-ban-trains-hailed-success-3054397>

The introduction a minimum unit price for alcohol would significantly contribute to a lessening of these problems.

Question 9

The Act was intended to simplify licensing procedures; instead it has become increasingly complex. What could be done to simplify the procedure?

No comment.

Question 10

What could be done to approve the appeals procedure, including listing and costs? Should appeal decisions be reported to promote consistency? Is there a case for a further appeal to the Crown Court? Is there a role for formal mediation in the appeal process?

No comment.

Question 11

Given the increase in off-trade sales, including online sales, is there a case for reform of the licensing regime applying to the off-trade? How effectively does the regime control supermarkets and large retailers, under-age sales, and delivery services? Should the law be amended to allow licensing authorities more specific control over off-trade sales of 'super-strength' alcohol?

The 2003 Licensing Act is poorly equipped to deal with the off-trade, which has grown two times faster than the on-trade over the last decade. In Scotland, the off-trade now accounts for 74% of total alcohol sales, a level higher than has ever been seen before. The price of this alcohol is also significantly cheaper, being purchased for an average of 52 pence per unit compared to £1.74 in the on-trade⁴¹². Scotland has introduced a suite of legislation to better reflect this shift in consumption towards home drinking. This includes the introduction of a ban on promotions, most significantly multi-buy offers; regulation to restrict the display of alcohol within premises, limiting it to one part of the store; restriction of off-trade selling hours to 10 am to 10 pm; and minimum unit pricing, although this has yet to be implemented.

Evaluation of this legislation by NHS Health Scotland has found their impact to be broadly positive. The introduction of the multi-buy ban (part of the Alcohol Act 2011) was associated with a 2.6% decrease in alcohol sold per adult in Scotland, including a 4% fall in wine sales⁴¹³. This is equivalent to 4.5 million fewer bottles of wine sold in the year immediately following implementation. Significantly, the legislation has contributed to a shift in

⁴¹² NHS Health Scotland (2015) Alcohol consumption and price in Scotland, 2015

<http://www.healthscotland.com/uploads/documents/27345-00.%20Alcohol%20consumption%20and%20price%20in%20Scotland%202015%20-%20May2016.pdf>

⁴¹³ NHS Health Scotland (2016) Monitoring and Evaluating Scotland's Alcohol Strategy Final Annual Report March 2016 http://www.healthscotland.com/uploads/documents/26884-MESAS_Final%20annual%20report.pdf

knowledge and attitudes and there is now increased agreement that alcohol is the drug that causes the most harm in Scotland. Although perhaps moderate, these impacts are nonetheless significant. They are part of a much broader alcohol strategy and effectively highlight the fact that pricing policies will probably have a greater impact on supermarket alcohol sales than licensing on its own.

In terms of controlling under-age sales, the Licensing (Scotland) Act 2005 introduced a test purchasing scheme for limiting sales of alcohol to minors. An extension of Police Scotland's test purchasing scheme could contribute towards reducing the number of outlets where children and young people are able to purchase alcohol. Education and engagement with alcohol retailers in this regard is important to address the knowledge gap that many retailers have⁴¹⁴. At a meeting SHAAP held with Police Scotland in October last year to discuss test purchasing, they stressed that education of the license holder (of an outlet or premise) is key to the success of test purchasing. When an outlet or premise fails a test purchase, it is usually widely publicised in media and the local area, and thus has a much wider impact. This should also be accompanied by stronger enforcement of ID checks. NHS Health Scotland's evaluation of the test purchasing scheme reports that it was positively received by licensing authorities and implemented well but, although deemed necessary, it was not considered sufficient to reduce availability to under-age drinkers on its own⁴¹⁵. It must be accompanied by a broader package of measures to control the price and availability of alcohol.

Licensing authorities should have more control over the off-trade sales of 'super-strength' alcohol, although it can be questioned whether licensing is the best mechanism through which to do this. An effective pricing policy, like minimum unit pricing, would have a much greater impact. It is widely acknowledged that minimum unit pricing affects cheap, strong drinks such as own brand vodkas, cheap white ciders, and super strength lager, which cause the most harm⁴¹⁶.

Question 12

Should alcohol pricing and taxation be used as a form of control, and if so, how? Should the Government introduce minimum unit pricing in England? Does the evidence that MUP would be effective need to be "conclusive" before MUP could be introduced, or can the effect of MUP be gauged only after its introduction?

Consumption of alcohol can and should be regulated by price, and alongside licensing, price is a key tool for limiting alcohol availability. There is clear and consistent evidence that price is a key factor directly influencing alcohol-related harm. Policies which impact on the price

⁴¹⁴ Scottish Centre for Social Research (2007) Evaluation of Test Purchasing Pilot for sales of alcohol to under 18s – Interim Report <http://www.gov.scot/Resource/Doc/166491/0045369.pdf>

⁴¹⁵ NHS Health Scotland (2015) Monitoring and Evaluating Scotland's Alcohol Strategy Final Annual Report March 2015 http://www.healthscotland.com/uploads/documents/26884-MESAS_Final%20annual%20report.pdf

⁴¹⁶ <http://www.shaap.org.uk/minimum-pricing-for-alcohol.html>

of alcohol are recognised and recommended by the World Health Organisation, and others, as one of their ‘Best-Buys’ for action to improve public health⁴¹⁷.

Alcohol is 54% more affordable today than in 1980. Recent research highlights that in some places of the UK it is possible to purchase the recommended weekly limit of 14 units for as little as £2.17⁴¹⁸. Successive cuts and freezes to duty since 2012 have exacerbated this problem: beer duty is now 14% lower than in 2012, while cider and spirits duty have each fallen by 6%⁴¹⁹. Additionally, it is not only the level but the structure of alcohol taxation which is important. The EU excise duty structure for wine and cider prevents targeting drinks by strength. EU rules are that a 15% wine carries the same excise duty as an 11% wine and a 4% cider the same as a 7.5% cider⁴²⁰. Ciders of 7.5% ABV attract the lowest duty of any product at 5 pence per unit, compared to 18 pence per unit for beer of equivalent strength. This has given rise to a market for industrial ‘white’ ciders, sold in 3 litre plastic bottles and closely linked to harmful and hazardous drinking. Tax policy could be used to have a more targeted focus on such products through narrower bands - at present ciders between 1.2% and 7.5% ABV are taxed at the same rate.

However, taxation is likely to only have limited effectiveness. Rather than focusing on the drinks which cause the most harm, taxation increases would increase the price of all alcohol products, including those not associated with high levels of harm. Minimum unit pricing, on the other hand, allows the price on the shelf to directly relate to the alcohol content of the product.

Evidence from the latest version of the Sheffield Alcohol Policy Model, which models the effect of introducing MUP in Scotland and compares this to taxation, shows that a 28% increase in taxation would be required to achieve the same reduction in alcohol-related deaths among harmful and hazardous drinkers as would be achieved with a 50 pence minimum unit price (MUP). When compared to a 50p MUP, a 28% increase in alcohol taxes would lead to slightly larger reductions in alcohol consumption among moderate and hazardous drinkers but crucially to smaller reductions in consumption among harmful drinkers, and in particular, harmful drinkers in poverty⁴²¹. The model predicts that a minimum unit price of 50p would reduce alcohol consumption in Scotland by 3.5% or 26.3 units per drinker per year. Reductions in consumption are estimated to be largest among harmful drinkers (7%, 246.2 units per drinker, per year) and hazardous drinkers (2.5%, 35.5 units per drinker, per year). The smallest would be seen among moderate drinkers, who would experience an average reduction of 1.2% or 3.7 units per drinker per year. MUP at the suggested price of 50 pence per unit would also have minimal impact on the on-trade, where prices are significantly higher, and would only directly affect products currently sold

⁴¹⁷ http://www.who.int/nmh/publications/who_bestbuys_to_prevent_ncds.pdf

⁴¹⁸ Alcohol Concern Wales (2016) Cheap booze on our streets <http://www.alcoholconcern.org.uk/wp-content/uploads/2015/05/40672-ACW-Cheap-booze-on-our-streets-Briefing-E-FINAL.pdf>

⁴¹⁹ Institute of Alcohol Studies (2016), Budget 2016 analysis

⁴²⁰ <http://www.shaap.org.uk/minimum-pricing-for-alcohol.html>

⁴²¹ University of Sheffield (2016) Model-based appraisal of the comparative impact of Minimum Unit Pricing and taxation policies in Scotland http://www.shf.ac.uk/polopoly_fs/1.565373!/file/Scotland_report_2016.pdf

at less than 50p per unit. Hazardous and harmful drinkers purchase more of this cheap, strong alcohol and it accounts for a greater share of the total amount of alcohol they purchase. MUP thus sets a floor price below which alcohol cannot be sold. Further, evidence from Canada shows that a 10% increase in the minimum ‘floor’ price of alcohol led to a 14.1% fall in demand and consumption, and a 22% reduction in demand for high strength beer specifically. This was accompanied by an immediate reduction in mortality of 35.25%⁴²². The Canadian experience points to the effectiveness of minimum or ‘floor’ prices as a means of reducing harmful alcohol use.

A combination of taxation and MUP would be the optimal approach to limiting alcohol availability and for preventing and reducing harm. This would ensure that the price of cheapest alcohol, which causes the greatest harm, is increased, while also ensuring that the Treasury benefitted from these increased prices rather than the alcohol companies. MUP effectively works with taxation to regulate the price of alcohol, and control its availability.

Regarding the question of being able to conclusively predict the impact of MUP, the evidence for MUP (outlined above) is very strong and far stronger than for other policies already implemented. Based on modelling and evidence from Canada, where they have similar minimum prices, we have clear evidence that MUP is and would be effective. While the Scottish court case regarding the legality of MUP is on-going, at present the Courts have accepted that it would be reasonable, based on the evidence available and the modelling, to judge that MUP may be an effective policy. On this basis they are satisfied with the policy as a relevant response to the health issue which it seeks to address. The outcome from the Scottish Court of Session hearings is due in the autumn and we are confident that MUP will be implemented in Scotland in the near future. It is worth noting that the Scottish MUP legislation includes a sunset clause. If, after 6 years there is evidence that MUP is having unintended consequences, the legislation can be repealed.

Questions 13

Do licence fees need to be set at national level? Should London, and the other major cities to which the Government proposes to devolve greater powers, have the power to set their own licence fees?

No comment.

Question 14

Is there correlation between the strictness of the regulatory regime in other countries and the level of alcohol abuse? Are there aspects of the licensing laws of other countries, and other UK jurisdictions, that might be usefully considered for England and Wales?

No comment.

⁴²² Andreangeli, A (2016) Making markets work in the interest of public health: the case of the Alcohol (Minimum Pricing) (Scotland) Act 2012, The University of Edinburgh Law School and The Royal Society of Edinburgh

29 August 2016

Sedgemoor District Council – written evidence (LIC0007)

Health & Wellbeing – Sedgemoor District Council – Working together for a 5th Licensing Objective

We, Sedgemoor District Council, believe that a major amendment should be made to the Licensing Act 2003 by the addition of a 5th Licensing Objective: Health & Wellbeing.

The core aim would be to improve the operational delivery of licensing decisions by enabling Regulatory Bodies to provide effective representations, if necessary, on the basis of Health & Wellbeing when considering new applications or triggering a review of an existing licence.

This can only be achieved, however, by getting good communication data about licensed premises (including pubs, clubs, off-licences, takeaways etc) and the areas in which they are situated from organisations such as the police, public health and hospitals. It would also give us the momentum to be able to decide if a licensed premises is in the best interests of the Community.

For instance, allowing a new application for a premises licence to go unchallenged when, for example, there may already be a Gambling premises next door and they are already in an area of deprivation may just be adding to the issues our police and hospitals have to deal with. We need to think about 'Health' and this can only be looked at effectively with this added objective.

Evidence suggests at the moment that there is a lack of response to the consultation process relating to premises licence applications. Furthermore, other bodies often say that they can't share data. The result could be that we have premises licences being granted when perhaps the local hospital and police collect data that indicates they are in known hot spots for, as an example, serving people when drunk or making underage sales.

For reference, the existing Licensing Objectives are listed below:-

1. Prevention of Crime and Disorder
2. Public Safety
3. Protection of Children from harm
4. Prevention of Public Nuisance

It is our belief, therefore, that for the future we should aim to work together to promote the introduction of a 5th Licensing Objective 'Health and Wellbeing'. It's an aspirational hope but by working together we believe is achievable. Scotland have already managed to do this under 'Health & Wellbeing' as a 5th Objective – Protecting and improving Public Health (2005)

Sedgemoor District Council – written evidence (LIC0007)

We owe it to all of our residents in Sedgemoor to help and provide a safer, healthier environment.

13 July 2016

Sedgemoor District Council Licensing and General Purposes Committee – written evidence (LIC0076)

1. Are the existing four licensing objectives the right ones for licensing authorities to promote? Should the protection of health & wellbeing be an additional objective?

1.1 We fully support the inclusion of Health & Wellbeing within the Act as a fifth Licensing Objective. It is clear that many Health & Wellbeing issues have an impact on the Licensing regime. The addition of this objective would improve the operational delivery of licensing decisions by providing a clear route for Regulatory Bodies to provide effective representations when addressing Health & Wellbeing concerns.

1.2 This will drive co-operation between regulatory bodies in collecting and sharing effective data regarding health issues in order to ensure promotion of all five objectives.

2. Should the policies of licensing authorities do more to facilitate the enjoyment by the public of all licensable activities? Should access to and enjoyment of licensable activities by the public, including community activities, be an additional licensing objective? Should there be any other additional objectives?

2.1 No. The Licensing Authority has a responsibility of enforcing the legislation, in partnership with other organisations such as the police, and ensuring that the licensing objectives are promoted. The balance is there already. It is hard to see how the very body whose responsibility it is to enforce and refuse some applications can be in a position to “facilitate enjoyment” and even harder to see the relevance of this embodied in a licensing objective.

2.2 We fully support the inclusion of Health & Wellbeing as an objective but do not feel that the addition of further objectives is necessary.

3. Has the Live Music Act 2012 done enough to relax the provisions of the Licensing Act 2003 where they imposed unnecessarily strict requirements? Are the introductions of late night levies and Early Morning Restriction Orders effective, and if not, what alternatives are there? Does the Licensing Act now achieve the right balance between the rights of those who wish to sell alcohol and provide entertainment and the right of those who wish to object?

3.1 The Live Music Act has clearly gone too far in relaxing the provisions of the Licensing Act rather than, as suggested above, not far enough. The de-regulation that the Act established has given rise to difficulties. One example of the de-regulation in question is that the playing of recorded and live music are no longer licensable activities between the hours of 08.00 and 23.00, where the sale/supply of alcohol for consumption on the premises is authorised by the licence already in place. This includes premises where the original premises licence application attracted significant objections and, as a result, either a) specific conditions

mitigating noise nuisance from the premises (for example) were agreed between Regulatory Bodies and the applicant or b) a hearing of the Licensing & General Purposes Sub-Committee attached such conditions. The result of the Live Music Act is that these carefully introduced conditions, for very good reason at the time, no longer apply to the hours referred to above and are, therefore, unenforceable. We have recently experienced complaints from members of the public regarding two premises in the Sedgemoor District who are incredulous that the conditions imposed on premises, at hearings they themselves attended as objectors, are no longer enforceable within the Act. This has attracted criticism of the Licensing Team which is, incorrectly, perceived to be allowing this to continue.

3.2 If there are to be broader freedoms for the leisure industry in terms of licensable activities then there should also be more precise regulations for the Licensing Authorities to work with. As mentioned earlier, for instance, the deregulation has made it harder for residents being disturbed to see quick and effective action as a result of their complaints within the Act itself. The Review process is there but, in practise, is only really effective with a level of evidence that shows issues over a period of time. The only method of removing deregulation from a premises licence and, therefore, bringing the conditions back into force between 08.00 and 23.00 hrs, is by sub-Committee resolution at a Review hearing.

3.3 We feel that an interim sub-committee hearing to deal with specific issues (noise problems, for example) could be introduced into the process rather than full review being the only route available to impose or re-impose conditions.

4. Do all the responsible authorities (such as Planning, and Health & Safety), who all have other regulatory powers, engage effectively in the licensing regime, and if not, what could be done? Do other stakeholders, including local communities, engage effectively in the licensing regime, and if not, what could be done?

4.1 Some responsible authorities engage very well with the licensing regime. It's also fair to say, however, that we rarely hear from some of the consultee bodies. As the Licensing Authority, it is hard for us to drive engagement on (for example) new/ variation premises licence applications because each consultee would need to have the necessary expertise on which to base a concern that may lead to an effective objection. Arrangements made at a local level could improve this position rather than suggesting changes to legislation.

4.2 In terms of other stakeholders within our District, the consultees on new/ variation applications include Ward Councillors and the local parish/town council. Furthermore, the requirements of the Act include the applicant placing notices on the premises and to take a local advert (almost always, but not exclusively, in a local newspaper). We also place details of the application on the Council's website. With 4.3 this in mind, applications are extensively advertised giving the general public and other stakeholders the opportunity to submit representations. We would not, therefore, support an imposed requirement to notify nearby residents and/or businesses in every case of a licensing application being made.

6. Should licensing policy and planning policy be integrated more closely to shape local areas and address the proliferation of licensed premises? How could it be done?

6.1 Yes. We recommend an amendment to the Licensing Act to ensure that applications for new (and variations to existing) premises licences can only be submitted once the appropriate planning permission has been granted.

6.2 Licensing policy and planning policy should be more closely integrated to consider major concerns raised by the local community. It appears that local information is not fully taken into account when agreeing to the location of a premises (for example, should a local school be situated nearby).

8. Should sales of alcohol airside at international airports continue to exempt from the application of the Act? Should sales on other forms of transport continue to be exempt?

8.1 We can see no reason to change these exemptions.

9. The Act was intended to simplify licensing procedure; instead it has become increasingly complex. What could be done to simplify the procedure?

9.1 The key message should be that further deregulation is not the answer in attempting to cut red tape. The application process from start to finish could be streamlined to enable a smoother operation. For example:-

- An applicant can serve documents only on the Licensing Authority rather than submitting identical papers to all the regulatory bodies. It would then fall upon the Licensing Authority to send the papers electronically to all the consultees.
- Simplify the fee structure for all forms of changes. Currently there are separate fees for full variations, minor variations, change of plans, transfer of licence, and specifying a new DPS. Consideration may be given to introducing one fee for all changes.
- Introduce a requirement that the appropriate planning permission must be obtained before a licence application is submitted.

10. What could be done to improve the appeal procedure, including listing and costs? Should appeal decisions be reported to promote consistency? Is there a case for a further appeal to the Crown Court? Is there a role for formal mediation in the appeal process?

10.1 It is felt that greater emphasis should be given into ensuring that decisions are correct in the first place rather than necessarily changing the process for appeals. 10.2 We count ourselves very fortunate in Sedgemoor that sub-Committee decisions made here are extremely well considered, robust and also comprehensively justified in terms of decision notices.

10.3 The current appeal process is clear and there is no real need to introduce either a further step (Crown) or a formal mediation process. If decisions are clear and informed,

there should be nothing to fear from the appeal process. Furthermore, there could be a danger that the financial implications for local authorities of costs being awarded against them, especially in the Crown Court, may unduly influence decisions made.

11. Given the increase in off-trade sales, including online sales, is there a case for reform of the licensing regime applying to the off-trade? How effectively does the regime control supermarkets and large retailers, under-age sales, and delivery services? Should the law be amended to allow licensing authorities more specific control over off-trade sales of “super strength” alcohol?

11.1 There does seem to be an increasing number of premises applying for off sales of alcohol locally and this must be reflecting the national trend. In terms of the proliferation of premises, Licensing Authorities can already adopt a cumulative impact policy, if necessary, to limit the growth of licensed premises in a problem area. In general terms, however, there is a case for considering a reform with regards to off sales. Many supermarkets and larger retailers appear to have good policies & practises in place with regards to under age sales and deliveries. The same is likely to be said of the larger online retailers. There is a risk, however, that small online companies and premises (such as restaurants and local shops) who offer deliveries of alcohol may slip through the net. We are lucky within Sedgemoor that the Police Licensing Officer engages with smaller businesses and usually agrees stringent delivery related conditions with the retailer for inclusion within the licence. The difficulty, of course, is ensuring that the delivery driver is robust enough in dealing with a Challenge 25 issue “on the doorstep” so-to-speak. Inconsistencies could, however, arise from area to area. It is essential, therefore, that the off sales regime is reformed for consistency across England & Wales in relation to all alcohol sales, not just super-strength alcohol. Robust mandatory conditions in terms of delivery issues would, for example, prove beneficial.

12. Should alcohol pricing and taxation be used as a form of control, and if so, how? Should the Government introduce minimum unit pricing in England? Does the evidence that MUP would be effective need to be “conclusive” before MUP could be introduced, or can the effect of MUP be gauged only after its introduction?

12.1 There has to be some control on the provision of cheap alcohol. The difficulty is at what level should it be pitched? The introduction of the Licensing Act effectively permitted the sale of alcohol to take place further into the night and the early hours. This allowed consumers to have the time to “pre-load” with alcohol before going out. Cheaper alcohol available through off sales has made this affordable to consumers. In England and Wales, currently the mandatory conditions stipulate a formula which, frankly, is neither easy to understand nor effective in raising prices to a level that may be prohibitive to excessive drinking.

12.2 Scottish legislation, however, is introducing minimum unit pricing (following a challenge through the European Courts) using the following formula:-

“The minimum price of alcohol is to be calculated according to the following:-

$$MPU \times S \times V \times 100$$

Where: MPU is the minimum price per unit, S is the strength and V is the volume”

Having a minimum unit price does appear to be a clearer example to use.

12.3 In summary, therefore, our views are as follows:-

- Yes, minimum unit pricing should be introduced.
- There is a need, however, to assess whether or not it would be effective first. The impact in Scotland can be assessed over time to provide a useful steer on these matters. After all, there is little point in going to the significant upheaval of changing the law if the end result is of little impact.

13. Do licence fees need to be set at national level? Should London and the other major cities to which the Government proposes to devolve greater powers, have the power to set their own licence fees?

13.1 Licensing Act 2003 fees should be set at a national level but they need to be set realistically. Since 2005, the fees have not increased and are currently set at a level nowhere near covering the cost to local authorities of administering the scheme even without factoring in hearings.

13.2 There has been lobbying in recent years for local authorities to be given the powers to set their own fees. It seems sensible, therefore, that larger authorities (as referred to above) could have the freedom to set their own fees. As a smaller authority, however, the process of setting fees from scratch is a complicated process and one that takes up valuable resources. There is a risk too that, should the level of fees be challenged successfully, reparation costs are potentially payable over a lengthy period of time.

14. Is there a correlation between the strictness of the regulatory regime in other countries and the level of alcohol abuse? Are there aspects of the licensing laws of other countries, and other UK jurisdictions, that might usefully be considered for England and Wales?

14.1 We clearly do not have enough knowledge of foreign legislation to be able to comment fully. Anecdotal evidence, however, at least seems to suggest that this country has a problem with “binge drinking”, although statistically this has been in decline for some time. Pre-loading, on the other hand, does appear to be on the rise. Other countries seem to enjoy a café culture which clearly has not worked here. There is no evidence of a Continental drinking culture having developed since the Act’s introduction. It’s also fair to say that it’s impossible to address these issues within the Licensing Act alone considering that there are over-riding social issues at stake which may require reform of the justice system, for example. To summarise, our most experienced Officer puts it like this: “Café

culture or job culture, I know which we have and so does the public. 30 years of front line policing and 13 years of local authority licensing only confirms my view that for the majority of the adult population, most city centres are no-go areas after 10.00pm”.

14.2 Scotland appears to be significantly ahead of England & Wales in terms of sensible licensing provision including:-

- A renewal process for Personal Licences
- A training requirement for Personal Licence holders every 5 years
- The power to revoke, suspend or endorse a Personal Licence where notice of relevant convictions have been received.
- Alcohol sales over a 24 hour period only to be considered in exceptional circumstances.
- Generally speaking, the Licensing Board must refuse the application if it requests off sales of alcohol before 10 am, after 10 pm or both.

Maybe we can learn from this.

Other issues for consideration:-

15. Personal Licences

15.1 Recent changes in legislation have removed the need for a Personal Licence to be renewed. Although there is still a requirement for a Personal Licence holder to declare a change of address or any relevant convictions, the licence is literally for life, with no requirement for refresher training. Scotland’s provision is shown in the preceding paragraphs and seems to be a more balanced approach.

15.2 We do, however, fully support the proposals contained within the Policing & Crime Bill 2016-17 which would allow devolved power to licensing authorities enabling them to suspend and revoke personal licences when notified of a conviction for a relevant offence. It is essential that this is brought into the Act. The only way at present of achieving this in England & Wales is for the Courts to take action. In short they fail to do so on most occasions (sometimes not even acknowledging or understanding the implications of the accused person holding a licence).

15.3 A Personal licence should be granted for a ten year period with a requirement for refresher training every five years.

16. When is a garage not a garage it’s a shop (?)

16.1 At present, S176 of the Act refers to two types of “garage”. In short:-

- a) If a Motorway Service area was originally commissioned by the Highways Authority (as in most cases when motorways were being built years ago), then they are excluded premises

when it comes to the sale/supply of alcohol and cannot be granted a licence. This can also apply to the shop adjacent to the fuel forecourt within the Services area. Service areas that have been built more recently, however, are situated on private land and, as a result, are not exempt and can legitimately be granted a licence permitting off sales (usually) of alcohol. This is clearly creating an inconsistency that will only continue as new service areas are constructed and subsequently licensed.

b) The second consideration is for similar premises (i.e. shops adjacent to fuel forecourts or garage repair businesses) but on any location other than a Motorway Service area. In these cases, the Licensing Authority has to determine whether the premises as a whole is predominantly a shop with secondary fuel sales or vice versa. To Officers this is not as simple as it should be. For instance, you might think that fuel sales would vastly outweigh the value of shop sales. Unfortunately, this may not be the crux of the argument because a judgement could be based on customer footfall. So, we may need to know what percentage of customers over a period of time are a) fuel only customers, b) shop only customers and c) shop and fuel customers. A customer within category c), however, may be someone who has spent £50 on fuel and picked up a Mars Bar or a newspaper before paying for the fuel. Inconsistency is also often the outcome between businesses (as per Service areas) and guidance under the Act is not very helpful.

16.2 In conclusion, this section of the Act needs to be urgently reviewed for a consistent approach to Motorway Service areas (no matter where they are built) and much better guidance and clearer direction for authorities in terms of garage/shop premises elsewhere.

1 September 2016

Sefton Metropolitan Borough Council – written evidence (LIC0084)

Licensing Objectives

1. Sefton believes the four existing licensing objectives are the right ones for licensing authorities to promote. However within the Act there exists a potential conflict in relation to the issuing of Personal Licences and the promotion of the licensing objectives.
2. This is most starkly demonstrated in the Protecting Children from Harm objective and the emerging patterns of child sexual exploitation (CSE) and how the systematic abuse of children can prosper when agencies either do not or cannot work together and share information.
3. The Act requires that a Local Authority **must** grant a personal licence to sell alcohol if it appears that:
 - a. The applicant is aged 18 or over
 - b. The applicant possesses a licensing qualification or is a person of a prescribed description
 - c. No personal licence held by the applicant has been forfeited in the period of five years ending with the day the application was made, and
 - d. The applicant has not been convicted of any relevant offence or any foreign offence.
4. In effect this means the Police are unable to comment on the majority of applications and the Local Authority is under no legal obligation to inform any of the responsible authorities of the application, including ‘the body responsible for safeguarding children’.
5. The Personal Licence is valid across municipal boundaries and as no national database exists, it is easy to see how a determined individual could abuse the privilege of holding a Personal Licence if they were so inclined and continue to utilise this in another area without the Licensing Service, Police and Safeguarding Children Service local area awareness . A national database of Personal Licence holds may dilute this potential risk.
6. Agencies in Sefton have been frustrated by this in a recent application for a Personal Child Sexual Exploitation investigation meets all of the criteria in paragraph 3.
7. It is our belief that the Act and the issuing of Personal Licences could provide another weapon in the fight against child sexual exploitation as a method of disrupting those who are considered to be sexually exploiting children. Allowing the sharing of information with the Police and Local Authority Safeguarding Service and

applying a precautionary principle to the issue of Personal Licences where child sexual exploitation concerns are raised would help restrict the potential for licensed establishments to be used as a way individuals / organised groups sexual exploit vulnerable children and young people in our community. Sefton's Chief Executive and Merseyside Police Borough Commander have previously raised concern regarding the permissive nature of the Licensing Legislation to the Home Office and Department for Education.

2 September 2016

Stuart Seydel – written evidence (LIC0005)

I am writing as the publican of The Old Duke, in Bristol. The pub has been a live music venue for over 50 years, focusing primarily on Jazz and Blues. I have been the licensee here for over 16 years now and have directly witnessed the impact of the 2003 Licensing Act, both on my business and the city in general.

Overall, in my opinion, the Act has had a positive effect. While very few (if any) premises other than super-markets are open 24 hours the extra flexibility the Act has allowed has significantly reduced the strain on infrastructure. The levels of crime and disorder, from my point of view, have dropped notably.

I cannot comment on any impact the Act may have had on Health but I have witnessed drinking habits change. My customers *may* drink as much as before the act but they drink far slower and there is no 'last-orders' rush any more, which can only be a good thing.

Outside the pub I have seen an increase in the consumption of cheap, 'strong' alcohol, mainly by the increasingly large homeless population, which is concerning.

I have only answered the below questions of which I have direct experience or opinion.

Licensing objectives

- **Are the existing four licensing objectives the right ones for licensing authorities to promote? Should the protection of health and wellbeing be an additional objective?**

I feel that the current objectives can be a little vague and hard to interpret, for licenses and authorities. Some clarification would be useful. The addition of 'protection of health and wellbeing' as an objective would help strengthen the Act as long as the objective was clearly defined.

- **Should the policies of licensing authorities do more to facilitate the enjoyment by the public of all licensable activities? Should access to and enjoyment of licensable activities by the public, including community activities, be an additional licensing objective? Should there be any other additional objectives?**

I think that this could create issues unnecessarily. Some premises would struggle to provide access while other (such as my premises) provide a great deal of access. I don't think an overall policy would be helpful or practical.

The balance between rights and responsibilities

- **Has the Live Music Act 2012 done enough to relax the provisions of the Licensing Act 2003 where they imposed unnecessarily strict requirements?**

I believe so, yes.

Sale of alcohol for consumption at home (the off-trade)

- **Given the increase in off-trade sales, including online sales, is there a case for reform of the licensing regime applying to the off-trade? How effectively does the regime control supermarkets and large retailers, under-age sales, and delivery services? Should the law be amended to allow licensing authorities more specific control over off-trade sales of “super-strength” alcohol?**

This, in my opinion, is one of the major issues for the Licensing Act to address. The significant increase in ‘pre-loading’ (the consumption of cheaper alcohol at home, before coming out) has been noticeable.

Pubs and Clubs monitor and control those who consume alcohol, to varying degrees of success admittedly, while the off-trade has no such ability or requirement. The danger of under-age sale and/or excessive consumption is therefore much, much greater.

Pricing

- **Should alcohol pricing and taxation be used as a form of control, and if so, how? Should the Government introduce minimum unit pricing in England? Does the evidence that MUP would be effective need to be “conclusive” before MUP could be introduced, or can the effect of MUP be gauged only after its introduction?**

I think minimum pricing would be very helpful, not just as a form of control. As I write this you can buy cans of Fosters from Asda for £1.36 per litre (Asda Online, 05-07-16). A pint of Fosters in my pub costs £4.20 a pint, or £7.39 per litre.

This equates, approximately, to 34p per unit of alcohol from Asda verses £1.85 per unit from me. This is for Fosters, far from the cheapest drink per unit available in most off-trade premises.

When Duty is increased my prices sky-rocket while supermarkets appear to absorb the cost elsewhere. When I started in this industry, 20 odd years ago, the ratio on prices in pubs verses supermarkets was about 2:1, which I felt was reasonable and sustainable. As you can see above it is now over 5:1, which is ridiculous.

I think that MUP should be introduced as soon as possible.

Fees and costs associated with the Licensing Act 2003

- **Do licence fees need to be set at national level? Should London, and the other major cities to which the Government proposes to devolve greater powers, have the power to set their own licence fees?**

I think fees can be set locally but maybe with caps/guidance from Government.

International comparisons

- **Is there a correlation between the strictness of the regulatory regime in other countries and the level of alcohol abuse? Are there aspects of the licensing laws of other countries, and other UK jurisdictions, that might usefully be considered for England and Wales?**

I think that there are significant cultural differences between Europe and the UK surrounding the consumption of alcohol which play a stronger role than regulation. While I'm sure it would be useful to study other country's approach but I'd be cautious about assuming that their policies would have a similar impact here.

5 July 2016

Caroline Sharkey – written evidence (LIC0119)

I am aware that Alcohol Health Alliance UK has provided a comprehensive response. In addition to this, I would like to respond to the criteria set out in the call for evidence document as follows:

Licensing objectives

1. Are the existing four licensing objectives the right ones for licensing authorities to promote? Should the protection of health and wellbeing be an additional objective?

- I fully support the information provided by the Alcohol Health Alliance UK that a health and wellbeing licensing objective should be added to the Act. This will allow the Public Health Authority to better address health impacts on alcohol without the limitation imposed by the current licensing objectives.

2. Should the policies of licensing authorities do more to facilitate the enjoyment by the public of all licensable activities? Should access to and enjoyment of licensable activities by the public, including community activities, be an additional licensing objective? Should there be any other additional objectives?

- Section 182 guidance should provide more direction with regards to premises licence applications and planning permissions. The current guidance makes it difficult when presenting licence applications to the Licensing Sub Committee that are pending planning permissions. Whilst it is noted that some guidance has been provided under paragraph of 9.44 of Section 182 guidance it is not robust enough. The application forms for premises licences should be amended so that applicants can indicate that they've also submitted an application for a planning permission to the Planning Authority. Paragraph 9.44 should be amended to reflect that in cases where the applicant has indicated that they've simultaneously submitted a applications to the LA and Planning, the Licensing Authority should agree a mutually acceptable operating hours with the planning Officers when granting such premises licence applications.

The balance between rights and responsibilities

3. Has the Live Music Act 2012 done enough to relax the provisions of the Licensing Act 2003 where they imposed unnecessarily strict requirements? Are the introductions of late night levies and Early Morning Restriction Orders effective, and if not, what alternatives are there? Does the Licensing Act now achieve the right balance between the rights of those who wish to sell alcohol and provide entertainment and the rights of those who wish to object?

- Late night levies can be more robust to enable LAs to gain more flexibility in managing the late night economy. The current split to the Licensing Authorities is disproportionate as the Licensing Authority does most of the administration of work. I

would therefore recommend that the distribution to the benefits should be split 70% to the LA and 30 % to the Police or split in half.

- Deregulation of entertainment – can be clearly defined.

Community events, in village halls, church halls or similar buildings. Similar buildings is open to misinterpretation. Clear guidance should be given on what is classed as a similar building to assist applicants and the LA.

- Advert notices for Premises Licences - Regulation 25(b) of the Licensing Act 2003 (Premises Licences and Club Premises Certificates) Regulations 2005 provides that the person making the application shall advertise the application:

(i) in a local newspaper or, if there is none, in a local newsletter, circular or similar document, circulating in the vicinity of the premises; The Act does not give clear guidance on what the Licensing Authority can do when applicants wish to publish notices in newsletters circulating in the vicinity of the premises. Clear guidance should be provided to the Licensing Authority to have discretion to approve the local newsletters to ensure that any persons wishing to make a representation to the application is fully informed.

4. Do all the responsible authorities (such as Planning, and Health & Safety), who all have other regulatory powers, engage effectively in the licensing regime, and if not, what could be done? Do other stakeholders, including local communities, engage effectively in the licensing regime, and if not, what could be done?

- Whilst the Public Health Authority in Warrington engage more with our application process it would be helpful to them if they had a specific health and wellbeing objective to comment on applications. The current licensing objectives limit them from providing further evidence.

Licensing and local strategy

5. Licensing is only one part of the strategy that local government has to shape its communities. The Government states that the Act “is being used effectively in conjunction with other interventions as part of a coherent national and local strategy.” Do you agree?

- Warrington Borough has developed a Licensing Policy which links well into the strategic vision of the Council and its partners. However, it is often noted that the Licensing Policy does not supercede primary legislation. It is therefore important that the Licensing Act is amended to reflect the intervention of a coherent and nation local strategy in order to set clear direction to the Licensing Authorities.

6. Should licensing policy and planning policy be integrated more closely to shape local areas and address the proliferation of licensed premises? How could it be done?

- I agree with this approach. Further guidance should be provided as in line with guidance provided under the Gambling Act 2005. The best approach is to amend the Licensing Act rather than the licensing policy.

Crime, disorder and public safety

6. Are the subsequent amendments made by policing legislation achieving their objects? Do they give the police the powers they need to prevent crime and disorder and promote the licensing objectives generally? Are police adequately trained to use their powers effectively and appropriately?

- In addition to the points raised by the Alcohol Health Alliance UK, the Licensing Act should be amended to give Licensing Officers powers to prevent crime and disorder. For example, Licensing Officers should be given the enforcement powers for seizure of goods on a licensed premises which would lead to criminal proceedings rather than relying on the Police.

Licensing procedure

8. The Act was intended to simplify licensing procedure; instead it has become increasingly complex. What could be done to simplify the procedure?

- The prescribed fee of £21 for TENs is not cost effective for Licensing Authorities to administer. Its cost LA's at least £120 or more to administer the process especially when representations are received.
- The Licensing Act and Section 182 guidance should be amended to take into consideration TENs applications for premises that are located in a CIP area.
- The current process for adding conditions to TENs when all parties are in agreement is bureaucratic. Currently only the Licensing Committee can add conditions to TENs, which means that all cases have to be referred to the Licensing Sub Committee even though all parties are in agreement. This process can be very costly to LAs, therefore it should be reviewed to allow a hearing to be dispensed with if all parties are in agreement.
- Application for Personal Licences needs to be amended to provide a date of birth field so that checking and verification process for licensing officers can be more robust.
- National Database for Personal Licence holder should be provided so that LAs can improve the checking process to ensure that multi licences are not being issued, enforcement practices can be improved.

2 September 2016

Abigail Shepherd – written evidence (LIC0070)

I have had experience of the Licensing Act 2003 following my move to Bristol in 2007. Before that I lived in a quiet part of Bath and away from the city centre so was not affected by any licensed premises.

At the time I moved to Bristol, Whiteladies Road was known as 'The Strip' because of its bars, clubs and pubs. When a nightclub called Platform One/Dorma was in existence it was a weekly occurrence to be woken up in the early hours of the morning by people noisily heading home after a night out. The same was true on the night of the week when the university sports clubs went out drinking on Whiteladies Road (although these clubs have now moved to premises in the city centre for these sessions). Fortunately a couple of the clubs (including Platform One/Dorma) have closed which has made a huge difference to local residents being able to get a good night's sleep; another club has become a pub which keeps reasonable opening hours.

I live just off Whiteladies Road which is a main road out of the city centre and have had direct experience of late night alcohol sales on two occasions.

At around 3-4am one winter night a few years ago someone rang my doorbell – a young man, very drunk, was sitting on the wall outside my door barely able to hold his head up. He had blood on him and must have come into the front garden to pee, tripped in the dark and fallen. When I opened the door he wanted to come in and lie on the floor (it was a freezing night outside). I phoned for the police who called for an ambulance. It turned out he had been drinking shots at a club at The Triangle in the city centre. Before they left the police asked me for a bucket of hot water so that they could wash the blood and vomit off the steps.

This year – a few months ago - I was woken up by a young woman hammering on the door at 3am. She was drunk and calling out a name I didn't recognise and when I opened the door to see what was going on she tried to push past me to come inside. There was a police car by the gate with two police officers in it who had obviously been following her to make sure she got home safely and when they realised she wasn't at her own home they took her away. I don't know where she was coming from but she had obviously been out late drinking at a club in the city centre and couldn't find her way home. She was incredibly vulnerable.

In cases like this the police can ask someone where they have come from and find out if any licensed premises are creating problems. This isn't so easy with some of the licensing applications we are seeing for (effectively) the home delivery of alcohol. Takeaways with a licence to sell late night refreshments (eg. to 2am or 4am) are applying for a variation of their license so that they can sell alcohol as well (with food orders). This is very difficult to refuse because unless you can demonstrate it's causing a problem there is no evidence – alcohol will be sold along with food and if it fuels more late-night drinking at a particular

Abigail Shepherd – written evidence (LIC0070)

address and disturbs the neighbours there is very little chance there will be any sort of comeback for the licensed premises concerned because it is happening away from their premises.

Today I have just been to a Licensing Committee Hearing and heard the applicant (who has 4 or 5 different takeaways in Bristol/Bath) say that when a customer phones a branch that is in a residential area and only has a license to sell alcohol/stay open until 11:30pm or midnight, if they are closed the call gets diverted to a branch in the city centre and the order for food and alcohol goes out from there which seems to me a way of getting around the system.

The Licensing Act 2003 is imposing a burden on local residents who have to endlessly fight battles to try and keep a lid on the number of licensed premises and the hours they operate. You have to do this or it appears that no-one objects when in reality people lead busy lives and can't always take the time to do this. The Licensing Act has not lead to a more continental style of drinking. It is enabling drinking to go on longer and later and there must be implications for public health in this style of consumption, never mind public order.

1 September 2016

James Sloan – written evidence (LIC0020)

Licensing Officer, Milton Keynes Council

Nine years experience.

Responding as an individual

Milton Keynes has approx. 850 licensed premises.

1. Are the existing four licensing objectives the right ones for licensing authorities to promote? Should the protection of health and wellbeing be an additional objective?

Public safety seems to be the preserve of specialist officers and often covered by primary legislation. I cannot recall a licence where public safety concerns have created a relevant condition or objection to an application.

The inclusion of health and wellbeing may prove difficult in successfully applying the objective to specific premises. The information available to Milton Keynes Public Health cannot be drilled down to a focussed enough level to show whether a particular premises is undermining health and wellbeing. Though our colleagues in PH have been keen to consider applications, they have not been able to submit a single relevant representation since becoming a responsible authority.

Such an objective would need a caveat that didn't require specific attachment to a premises, rather, it would link to a specific area in which the premises is located.

2. Should the policies of licensing authorities do more to facilitate the enjoyment by the public of all licensable activities? Should access to and enjoyment of licensable activities by the public, including community activities, be an additional licensing objective? Should there be any other additional objectives?

No. the Licensing Act 2003 is liberal enough to permit many licensable activities, should a provider wish to provide it. Involving the regulatory body to promote such activities seems counterproductive. Could also lead to arguments where over proliferation of provision of licensable activities could become a valid reason for objection.

3. Has the Live Music Act 2012 done enough to relax the provisions of the Licensing Act 2003 where they imposed unnecessarily strict requirements? Are the introductions of late night levies and Early Morning Restriction Orders effective, and if not, what alternatives are there? Does the Licensing Act now achieve the right balance between the rights of those who wish to sell alcohol and provide entertainment and the rights of those who wish to object?

Live Music Act 2012 could not relax the restrictions any more. The now more reactionary requirement to review licences to impose restrictions means there is very little preventing live music.

The balance remains in favour of the licence applicant. In Milton Keynes we have rejected no more than ten licenses at committee.

There have been 25 reviews – of these eight revoked.

Six of the 25 reviews had members of the public make representation.

The condition to permit regulation of regulated entertainment has only been employed on two occasions.

Those affected by unacceptable public nuisance both from the premises and the customers on the premises or leaving have a limited to recourse to resolve the problems, having often to rely on other legislation for action. Not the legislation that permits the activity that causes the problem.

4. Do all the responsible authorities (such as Planning, and Health & Safety), who all have other regulatory powers, engage effectively in the licensing regime, and if not, what could be done? Do other stakeholders, including local communities, engage effectively in the licensing regime, and if not, what could be done?

Experience in Milton Keynes shows only the Police, Trading Standards and Environmental Health regularly engage with the regime. Local residents can be isolated in their objection and far less likely object if not represented. The Parish Councils often have political reason not to object. A method to represent a group of local residents to ensure they are protected from the fear of perceived intimidation, by forcing Responsible authorities to represent objectors would aid in promoting community engagement in the process.

I have noted perhaps only two occasions where residents views have been represented by a responsible authority.

5. Licensing is only one part of the strategy that local government has to shape its communities. The Government states that the Act “is being used effectively in conjunction with other interventions as part of a coherent national and local strategy.” Do you agree?

No comment

6. Should licensing policy and planning policy be integrated more closely to shape local areas and address the proliferation of licensed premises? How could it be done?

Integration in this manner would be difficult and require enforced cooperation. More effective enforcement of planning opening hours would resolve this matter.

We very rarely find breach of hours on a licence and act to resolve. However, numerous applications have been (rightly so) granted for hours in excess of planning consent. This causes dismay and incredulity for objectors to a licence.

7. Are the subsequent amendments made by policing legislation achieving their objects? Do they give the police the powers they need to prevent crime and disorder and

promote the licensing objectives generally? Are police adequately trained to use their powers effectively and appropriately?

Not in position to comment accurately

8. Should sales of alcohol airside at international airports continue to be exempt from the application of the Act? Should sales on other forms of transport continue to be exempt?

No comment

9. The Act was intended to simplify licensing procedure; instead it has become increasingly complex. What could be done to simplify the procedure?

Combining regulated entertainment – live/ recorded/ tv/ dance.

Combine sport and wrestling/ boxing

Removing public safety objective

Remove club premises certificate distinctions – only permit a premises licence

10. What could be done to improve the appeal procedure, including listing and costs? Should appeal decisions be reported to promote consistency? Is there a case for a further appeal to the Crown Court? Is there a role for formal mediation in the appeal process?

No comment

11. Given the increase in off-trade sales, including online sales, is there a case for reform of the licensing regime applying to the off-trade? How effectively does the regime control supermarkets and large retailers, under-age sales, and delivery services? Should the law be amended to allow licensing authorities more specific control over off-trade sales of “super-strength” alcohol?

Off trade delivery and internet sales seem to be a significant loop hole removing license holders from the responsibility of preventing underage sales remotely.

However I have no evidence to show it is not working.

12. Should alcohol pricing and taxation be used as a form of control, and if so, how? Should the Government introduce minimum unit pricing in England? Does the evidence that MUP would be effective need to be “conclusive” before MUP could be introduced, or can the effect of MUP be gauged only after its introduction?

High strength alcohol is only routinely sold in off licences and anecdotally from local residents and partners, only bought by those likely to be street drinkers or in considerable health difficulties form alcoholism. The alternative, preventing its sale though the Licensing Act 2003 could only be achieved via a public health licensing objective, I do not agree could be implemented, so taxation a necessary option.

13. Do licence fees need to be set at national level? Should London, and the other major cities to which the Government proposes to devolve greater powers, have the power to set their own licence fees?

Licence fees should relate to the cost of servicing them. There will be a range of costs throughout the land and the power to set fees should lie with the local authority with guidance provided by the government.

14. Is there a correlation between the strictness of the regulatory regime in other countries and the level of alcohol abuse? Are there aspects of the licensing laws of other countries, and other UK jurisdictions, that might usefully be considered for England and Wales?

No comment

22 August 2016

Society of Independent Brewers – written evidence (LIC0093)

Introduction

SIBA, the Society of Independent Brewers was founded in 1980 and today represents around 850 independent brewing businesses across the UK.

Recent years have seen significant growth in the number of independent brewers in hundreds of communities across the country in response to increasing demand from consumers for local beers of excellence brewed by craft brewers.

While the majority of our members do not run licensed premises, there is significant growth in the number of local brewers leasing or buying their own pubs, as well as selling their beers directly to consumers in other ways including through onsite shops and bars and via internet sales. As the pub market continues to fragment we expect more independent brewers will acquire pub businesses to improve routes to market. The majority of the beer produced by SIBA members, over 80%, is sold through pubs. SIBA members provide local beer to local community pubs. 70% of SIBA's member breweries sell the majority of their beer to pubs within 40 miles of the brewery.

We are pleased to offer our responses to the questions set by the Select Committee. Please note that we have not responded to all the set questions.

Summary

SIBA believes that the Licensing Act 2003 has allowed more flexibility for pubs and while it was predicted by many that the relaxation of opening hours would increase problems with binge drinking and alcohol-related crime and disorder this has not generally occurred. The reality is that very few licensed premises are open 24 hours, or anything near this, as feared by many and the majority of pubs either have the same opening hours as before or have modestly extended their hours of business to the benefit of customers. While the Act did not provide a 'café culture' as hoped by some, it has been generally positive for the licensed trade and for consumers.

However, the effectiveness of the Act has been somewhat hindered by a stream of changes and amendments since its introduction in 2005 which has affected many operators.

Key points which we raise in this response are:

1. We oppose strongly the introduction of a licensing objective related to health and wellbeing.
2. We oppose late night levies, EMROs and Cumulative Impact Policies, favouring existing partnership schemes
3. We oppose schemes which effectively ban high-strength beers sold in the off-trade and support measures to promote pub use

4. We support any proposals which would reduce the cost burden for community pubs

Licensing objectives

1. Are the existing four licensing objectives the right ones for licensing authorities to promote? Should the protection of health and wellbeing be an additional objective?

1.1. SIBA believes that the four existing licensing objectives are appropriate and is not calling for the addition of any new objectives as the existing four are now understood by the majority of stakeholders.

1.2. In particular, we oppose strongly the addition of a health and wellbeing objective, as this is unnecessary, since powers exist under the current system for local authorities to deal with health-related issues. We believe that the inclusion of such an objective could be used unreasonably by some local authorities as a means of controlling the issue of new licenses which could not otherwise be refused under the four existing Objectives. Furthermore, individual licensees should not be held responsible for ‘population level’ events, i.e impacts on the health and wellbeing of a population, particularly when people are increasingly consuming alcohol at home rather than in licensed premises. This would simply not be effective.

1.3. We are also concerned that the introduction of such an objective would be ineffective as it would be impossible to identify if new individual licensed premises would have an impact on health and wellbeing. Furthermore, it is not possible for such an objective to be successful since the health and wellbeing of people cannot be considered with regards to licensed premises alone given access to alcohol outside these environments.

1.4. The introduction of a similar objective in Scotland is not generally regarded to have been a success.

2. Should the policies of licensing authorities do more to facilitate the enjoyment by the public of all licensable activities? Should access to and enjoyment of licensable activities by the public, including community activities, be an additional licensing objective? Should there be any other additional objectives?

2.1. SIBA supports the general principle and the positive intention of this proposal but would be concerned about the addition of a fifth licensing objective as understanding of the existing objectives is now strong amongst stakeholders.

2.2. It is certainly the case that pubs play an important role as ‘hubs’ of many local communities and that there has been increased diversification in activities and the services they provide, a point demonstrated very well by the success of the Pub is the Hub scheme. It is the case, however, that the recognition and promotion of this role and contribution to community life could be recognised in different ways outside the licensing regime.

2.3. Furthermore, pubs provide a safe and responsible environment for adults to enjoy alcohol sociably and SIBA is very supportive of this contribution to society.

The balance between rights and responsibilities

3. Has the Live Music Act 2012 done enough to relax the provisions of the Licensing Act 2003 where they imposed unnecessarily strict requirements? Are the introductions of late night levies and Early Morning Restriction Orders effective, and if not, what alternatives are there? Does the Licensing Act now achieve the right balance between the rights of those who wish to sell alcohol and provide entertainment and the rights of those who wish to object?

3.1. SIBA supports the introduction of the **Live Music Act** which has provided a useful commercial activity for many pubs. Live music, on a small scale, is a very important offer for many pubs.

3.2. SIBA opposes **Late Night Levies** which are an extra cost burden for pubs and are unpopular with consumer groups. Importantly, they are unfair as they lead to extra costs on all licensed premises in an area and not on the individual premises which may be causing problems.

3.3. SIBA supports the report from the BBPA and CAMRA, ‘Supporting a Safer Night Time Economy: alternatives to the late night levy’ published in April.

3.4. SIBA believes that the work through partnerships schemes such as Purple Flag, Pub Watch and Best Bar None have been successful and render Late Night Levies unnecessary.

3.5. SIBA does not support the use of **Early Morning Restriction Orders**. We are not aware that any local authority has made use of these restrictions. They are therefore unnecessary and unpopular.

3.6. Furthermore, SIBA opposes the use of **cumulative impact policies**. New applications for premises licences should be considered on their own merit and not restricted by a blanket policy.

4. Do all the responsible authorities (such as Planning, and Health & Safety), who all have other regulatory powers, engage effectively in the licensing regime, and if not, what could be done? Do other stakeholders, including local communities, engage effectively in the licensing regime, and if not, what could be done?

4.1. Local residents generally have more influence within the current regime than pub customers and we would like to see this re-balanced, since pubs are often essential community amenities providing much-needed meeting places for people of all walks of life.

Licensing and local strategy

5. Licensing is only one part of the strategy that local government has to shape its communities. The Government states that the Act “is being used effectively in conjunction with other interventions as part of a coherent national and local strategy.” Do you agree?

5.1. We have no comment to make.

6. Should licensing policy and planning policy be integrated more closely to shape local areas and address the proliferation of licensed premises? How could it be done?

6.1. SIBA believes that areas benefit from a range of well-run licensed premises and does not accept that a certain number of licensed premises could be regarded as a bad thing as a matter of course.

Crime, disorder and public safety

7. Are the subsequent amendments made by policing legislation achieving their objects? Do they give the police the powers they need to prevent crime and disorder and promote the licensing objectives generally? Are police adequately trained to use their powers effectively and appropriately?

7.1. SIBA believes that powers already exist to ensure licensed premises are run appropriately.

8. Should sales of alcohol airside at international airports continue to be exempt from the application of the Act? Should sales on other forms of transport continue to be exempt?

8.1. We are not aware of any evidence having been put forward which would support any changes.

Licensing procedure

9. The Act was intended to simplify licensing procedure; instead it has become increasingly complex. What could be done to simplify the procedure?

9.1. The addition of a fifth licensing objective related to health and wellbeing would create unnecessary and ineffective complexities.

9.2. A number of changes and additions have increased the complexity of the Act and this should be reviewed.

10. What could be done to improve the appeal procedure, including listing and costs? Should appeal decisions be reported to promote consistency? Is there a case for a further appeal to the Crown Court? Is there a role for formal mediation in the appeal process?

10.1. We have no comment to make.

Sale of alcohol for consumption at home (the off-trade)

11. Given the increase in off-trade sales, including online sales, is there a case for reform of the licensing regime applying to the off-trade? How effectively does the regime control supermarkets and large retailers, under-age sales, and delivery services? Should the law be amended to allow licensing authorities more specific control over off-trade sales of “super-strength” alcohol?

11.1. SIBA is in favour of initiatives which support and promote the responsible enjoyment of alcohol in the sociable and controlled environment of on-trade licensed premises. We would therefore support action which promotes pub use in particular.

11.2. SIBA opposes the introduction of ‘voluntary’ bans in some licensing authorities as we believe this is likely to be a breach of competition law. It is our understanding that around 100 such schemes are in place in the UK, of one kind or another. It is quite wrong that these bans typically apply only to beer and cider and not to wine and spirits, despite their higher strength. SIBA brewers produce high quality artisanal beers which are not associated with street drinking and it is wrong that consumers cannot purchase these beers for responsible consumption.

Pricing

12. Should alcohol pricing and taxation be used as a form of control, and if so, how? Should the Government introduce minimum unit pricing in England? Does the evidence that MUP would be effective need to be “conclusive” before MUP could be introduced, or can the effect of MUP be gauged only after its introduction?

12.1. SIBA does not have a policy on MUP as it is awaiting the outcomes of the legal challenge in Scotland. Generally, such a policy should only be considered if it can be demonstrated that it would be successful.

12.2. As a matter of principle, excise duties should favour low-strength products, such as beer typically enjoyed in sociable environments such as the pub.

Fees and costs associated with the Licensing Act 2003

13. Do licence fees need to be set at national level? Should London, and the other major cities to which the Government proposes to devolve greater powers, have the power to set their own licence fees?

13.1. Licensing fees should be set at a national level.

13.2. We would oppose any cost increases which would affect pubs which already face a significant regulatory and cost burden compared to the scale of the business.

International comparisons

14. Is there a correlation between the strictness of the regulatory regime in other countries and the level of alcohol abuse? Are there aspects of the licensing laws of other countries, and other UK jurisdictions, that might usefully be considered for England and Wales?

14.1. We do not believe any further restrictions are required

2 September 2016

Soho Society – written evidence (LIC0050)

Introduction

The Soho Society is a charitable company limited by guarantee established in 1972. The society is a recognised amenity group and was formed to make Soho a better place to live, work or visit by preserving and enhancing the area's existing diversity of character and uses, and by improving its facilities, amenities and environment. For almost forty-five years the Soho Society has actively commented on and contributed to Westminster City Council's Licensing and Planning policies. The evening and night time economy in Westminster is the largest concentration of its kind in the UK. It is significantly bigger than the combined ENTes of Edinburgh, Birmingham and Manchester and the degree of concentration of entertainment in the West End are unique. Soho forms part of the West End Cumulative Impact area, ENTE activity is highly concentrated in the West End it has a total of 1005 licensed premises and comprises of just 4.5% of local land area of Westminster. Soho is arguably the most densely saturated area in the country regarding the amount of licensed premises operating within its boundaries. The society supports Westminster City Council's licensing policies, including the cumulative impact policy, as set out in the Statement of Licensing Policy 2016.

Licensing objectives

1) We believe the existing four licensing objectives are the correct ones for licensing authorities to promote, and we strongly agree that the protection of health and wellbeing should be a fifth objective. In an area like Soho, where residential accommodation abuts commercial premises, the impact of successful licensed premises on the health and wellbeing of nearby residents should be acknowledged. Soho residents regularly have to deal with and suffer from sleep disturbance caused by noise nuisance from music, customers, outside smokers, in addition to street fouling, drug taking and associated paraphernalia and general inconvenience as a result of loud premises (calling Noise Officers late at night, negotiating with premises, attending hearings and sometimes undertaking legal proceedings, etc). This new fifth objective will also address the availability of cheap alcohol.

2) We do not agree that the additional objectives listed in Question 2 are necessary as we cannot see how licensing authorities can "do more to facilitate" public enjoyment "of all licensable activities". How can the facilitation of public enjoyment be monitored and measured?

Balance between rights and responsibilities

3) From our general experience of licensing in Soho we do not feel that we can comment on the impact of the Live Music Act 2012. We also feel it is too early to properly assess the impact of late night levies with regard to Soho. However, we do consider Early Morning Restriction Orders to be largely ineffective as we are not aware of any local

authority which has utilised this order. We do not believe that the Licensing Act achieves the right balance between the rights of those selling alcohol/providing entertainment and those who wish to object as we know that, in Westminster, if there are no objections to a licence application, it is automatically granted. Whilst residents and amenity groups like The Soho Society, as well as the police and Environmental Health Officers are all able to object, we note that in order for the Soho Society to actively partake in licensing, we very much need the services of the Licensing Project (based at Westminster CAB). We find that residents in Soho often do not feel well-informed or confident enough to object to licence applications or take moves to redress the balance when a premises creates a negative impact on its immediate surroundings. In order to make a representation to a licensing application, one has to be properly informed regarding Westminster Licensing Policy and the licensing objectives, which is information The Soho Society has (due to the Licensing Project and invaluable experience) – and which applicants and their solicitors have – but residents generally do not. Although Soho residents are often informed about nearby licence applications, this is not something that we believe happens everywhere. The current system is weighted against residents, with attendance at local authority licensing hearings often a daunting and challenging experience as they are invariably against applicants represented by senior solicitors / barristers. Likewise appeals to the magistrates court for residents is prohibited by the potential allocation of hefty costs.

4) Both Planning and Health & Safety authorities should be encouraged to engage more actively in licensing. Planning is currently empowered to grant a restaurant licence until 11pm, whereas Licensing can grant it until 4am: we believe that their areas of operation should more closely fit. In a neighbourhood like Soho, with constant redevelopment and a huge concentration of licensed premises, the potential for sudden and extreme change in the area's character is huge. Communities and residents have the power to engage in the licensing regime, but we find that, apart from The Soho Society, they rarely do so. When Soho residents approach the Society with queries about licensing, it is apparent that they do not know how to engage. And our engagement in the licensing regime means a significant amount of effort and resource from volunteers - not all communities will have people who can provide this time and expertise. We believe that in many communities the balance is stacked in favour of applicants who employ lawyers who can outfox local community representatives and possibly also the responsible authorities.

Licensing and local strategy

5) No, we do not agree that the Licensing Act “is being used effectively in conjunction with other interventions.....” as we believe that Licensing and Planning need to work more closely together (see 4 above). The individual consideration of licence and planning applications fails to reflect the need for an overall vision and strategy for the local community in managing the night time economy.

6) Yes, we believe that Licensing and Planning policy should be as closely integrated as possible in order to shape local areas and address the proliferation of licensed premises but we are not sure how this would work. It is difficult to suggest that planning and licensing

should be considered as a joint application as planning is always granted first and sometimes the developer doesn't even know who the potential tenant will be, let alone the details of the licence application. Our view is that planning and licensing need to share information and licensing applications need to clearly state the details of their planning permission so the licence granted should be identical to planning. This relates to the need for a strategic overview of planning and licence applications for the effective management of the number of restaurants /bars and late night entertainment premises and the resulting impact on the residential community (i.e. it's not joined-up).

Crime, disorder and public safety

7) Subsequent amendments made by policing legislation could be achieving their objects, but it is difficult to answer this from a Soho viewpoint as we are seeing cuts to police funding on a level that means the police here are powerless to deal adequately with crime in the area which is directly associated with the late night economy. 55% of all recorded offences in Westminster from June 2013 - May 2014 occurred in the West End Cumulative Impact Area. The majority of violent crime reports occurs between midnight and 4am and the number of offences has increased year on year, in 2014 - 2015 this being 246. Residents suffer on a daily and night time basis from high levels of crime and disorder and anti-social behaviour in the form of blatant drug dealing and drug taking (including injecting) on the streets, street fouling, noise and general disturbance. Soho has seen significant year on year reductions in police numbers (an example being the Safer Neighbourhood team being reduced from 22 to 9) which has resulted in inadequate police levels covering an area with the highest number of licensed premises. Not too long ago a famous Soho venue named 'Madame Jojo's' was the focus of activity by a criminal gang. When this gang paid a violent visit to these premises, the result was that Jojo's was closed down. Without cuts to police funding and activity, we feel it is far more likely that police intelligence would have been able to prevent such things happening in the first place.

8) No comment.

Licensing procedure

9) An example of increasingly complex procedure is the Act allowing more than one permission (i.e. premises licences and/or TENs) to exist in respect of one premises. This makes it more difficult for both residents and enforcement bodies to know precisely which licence is in force. We believe that any licensed premises should have just one clear licence, and where shadow licences are issued, they should exactly mirror the premises licence in use.

10) No comment due to little experience of the appeal process due to potential costs. We agree there is a role for mediation in the appeal process.(see number 3)

Sale of alcohol for consumption at home (the off-trade)

11) We note that takeaway sales of alcohol and food do not require a licence prior to 11pm. If a premises licence already permits 'off sales' of alcohol, which many do, no

variation application would be required to permit deliveries of alcohol/food. In fact, we are seeing an increase in applications (usually variations to existing licences in order to permit ‘off sales’) to facilitate deliveries. We only comment on these if they are outside Westminster’s defined core hours and currently feel unable to comment on this regime beyond such general representations. A potential problem lies in the fact that any restaurant currently licensed for off sales of alcohol is able to sell the same for delivery and if delivery services become much more popular, there could be ensuing traffic, noise, etc issues.

Pricing

12) No comment regarding MUP (Minimum Unit Pricing).

Fees and costs associated with the Licensing Act 2003

13) We agree that major cities should have the power to set their own licence fees as they are closer to their own areas and can better understand what is necessary. This is in regard to impact of particular venues/premises on the local area – the higher their impact, the more a licence holder should pay.

International comparisons

14) No comment – we would expect a Government Department to be able to research this far better than we could ever hope to.

Additional comments

Licences ; Our experience in the West End Cumulative Impact Area leads us to believe that the practice of transferable premises licences should cease. Having new owners reapply for a licence whenever they take over a premises would facilitate more effective control and monitoring of both areas and individual premises by the Licensing Authorities.

Late night levy; although this important power exists Westminster City Council do not implement the levy, therefore ring fenced revenue for policing is not available to increase the number of officers on the streets to tackle alcohol related crime and disorder. We are aware that a number of barriers to adoption exist, examples being: (i) the levy must apply to the entire borough and therefore cannot be targeted to specific problem areas or premises; and (ii) the levy applies to small and large operators which is seen as a disadvantage to small businesses. A review of this levy and removal of barriers to implementation would be welcomed by residents and the police to enable the effective management of the night time economy.

31 August 2016

South Derbyshire District Council – written evidence (LIC0151)

1. Key aims of the Act and the licensing objectives - are they appropriate? Should there be an additional objective of promoting health and wellbeing?

The current licensing objectives are appropriate and should remain as they are. There is no need to change the licensing objectives as they cover all relevant considerations in determining applications under the Act or deciding any necessary enforcement action.

There should not be an additional objective in relation to promoting health and wellbeing. From experience, the local Health Trusts do not have the systems in place to record the necessary data to use as evidence against any Licensing Act 2003 applications. This is despite being a responsible authority since 2012. There is a lack of data available to pinpoint any particular premises and it is not for premises licence holders to be responsible for health issues in their area that do not directly affect them or are not directly caused by them. There are enough provisions within the legislation to take action against any 'rogue' premises licence holders that may be directly impacting on the health and wellbeing of any person i.e. serving to drunks or underage children.

2. Has any greater availability of alcohol had impact on the health of the population?

I am not able to comment directly on this but studies show that the consumption of alcohol across the nation has decreased and the number of hospital admissions due to alcohol has decreased.

3. The lessons to be learned from across the UK and other countries

There should be a thorough consideration and consultation with Licensing Authorities prior to any amendments to the legislation. This has not been done in the past which had led to the introduction of legislation that duplicates existing powers and offers no benefit to the Act as a whole.

The introduction of a national personal licence database in order to monitor personal licence holders throughout the country.

4. Does the Act still aim to encourage tourism, leisure and culture? Should access to and enjoyment of licensable activities by the public be an additional objective?

No, as this should not be a consideration when determining any applications under the Licensing Act 2003. It is for the individual areas and business opportunities to determine what is required in terms of tourism, leisure and culture.

5. Government policy on alcohol, health and minimum unit pricing (MUP) - is the Act being used effectively in conjunction with other interventions as part of a coherent national and local strategy? Should MUP be introduced in England?

No, MUP shouldn't be introduced in England, as it is contrary to competition law and does not add anything to the Act.

6. Are all responsible authorities engaging appropriately with the licensing process and, if not, what can be done?

The planning department do not engage and this is common across most authorities as the regimes are entirely separate. It is an added burden on the applicant to notify the planning department so it may be option to remove them as a responsible authority.

As fire safety is covered under the Fire Safety Reform Order, fire authorities will use this order to deal with any fire issues rather than the Licensing Act 2003 so their role may need revising.

7. Enforcement and crime and disorder - do the Police have adequate powers to promote the licensing objectives?

Yes, however each Police Force needs to ensure that each Officer is experienced in dealing with the Licensing Act 2003 to ensure that the powers are used appropriately.

8. Late night levies and early morning restriction orders - have they been effective and, if not, what are the alternatives?

No they haven't been effective. They are of no benefit to the Licensing Act and should be scrapped. Any problem premises should be dealt with by the powers already available in the Act i.e. review and/or prosecution on a sliding scale.

9. Has the licensing process become too complex and, if so, what might be done to simplify it?

Simplification of the application forms so that they are easily to understand and complete for applicants.

10. What could be done to improve the appeal procedure and is there a case for a further appeal to the Crown Court?

Quicker progress through the Courts with a time limit on the appeal process i.e. to be heard within 3 months and better training of Magistrates.

11. Should licensing fees be set at national level, or should this be devolved, at least to London and the other major cities to which the Government proposes to devolve greater powers?

Fees should be set at a local level across the whole country not just to large cities as smaller authorities are running at a deficit and local tax payers are subsidising the trade.

1 September 2016

South Holland District Council – written evidence (LIC0116)

Select Committee on the Licensing Act 2003 Call for Evidence

1. It is considered that the existing four licensing objectives work well. More work in South Holland is carried out in relation to the crime and disorder objective, for example from January to July 2016 Lincolnshire Police and or trading standards have called into review 4 premises licences for failing to promote this objective, and all were revoked. Fewer problems in general are reported in relation to the other licensing objectives, although it is considered that other problems such as noise nuisance or under age sales are adequately addressed.

There is general agreement that there should be a fifth objective for the protection of health and wellbeing, and this should be a key principle for licensees to uphold. This is in line with the councils' priorities and should be a consideration for the licensing authority when making licensing decisions. However it is recognised that there is currently a lack of engagement with public health and difficulties in relating general public health data to a specific premises or area. If the protection of health and wellbeing does become a fifth licensing objective we would need more detailed information to be made available from public health bodies, hospitals and ambulance trusts to enable problems to be linked to particular premises.

2. It is agreed that the statement of licensing principles could be used more effectively at a local level to facilitate the enjoyment of and access to licensable activities. It is not felt that there is any evidence to support the need to include this as an additional licensing objective.
3. The Council has not introduced a late night levy or Early Morning Restriction Order as it has not felt that these methods would add value or address concerns within the local authority area.
4. The licensing authority does not have consistent and effective engagement with all responsible authorities. Representations are most frequently received by police, trading standards and environmental health. Planning, fire authority, public health and children's safeguarding do not engage effectively as responsible authorities and when discussion has taken place regarding this, the feedback has generally been that they do not feel able to make a representation on the existing licensing objectives and/or in relation to a particular premises. The current mechanism of serving documentation on these responsible authorities appears to be ineffective, other than to notify them of the application for their own information purposes.
5. It is considered that the Act is not being used effectively in conjunction with other interventions as part of a coherent local and national strategy. There is greater scope for licensing to join up with strategies addressing crime and disorder. For example, there have been issues with licensed premises within the local authority area selling

illegal tobacco products. Whilst this can be dealt with reactively on a local level through licence reviews, it would be sensible to consider a national preventative strategy including HMRC and trading standards. Consideration should also be given again to a statutory licensing scheme for tobacco products to help control legal sales and deter illicit sales of tobacco, giving local licensing officers greater powers in a broader range of premises.

6. It is felt that licensing and planning policy could be more closely integrated to shape local areas and address problems such as the proliferation of licensed premises. This Council is considering the introduction of a cumulative impact policy but it is acknowledged that the policy is only effective where there is already a problem and evidence to support this. A joint preventative strategy would be more useful. In particular it is considered that consideration should be given to re-introducing the requirement of “need” in relation to licensing applications and the suitability of the premises under planning considerations. For example: access to the premises; shop design and layout, aesthetics and presentation.
7. South Holland has very good links with the Lincolnshire Police Licensing Team and considers the officers to be well equipped and enthusiastic. However it is recognised that where a county wide police licensing team is in place, service levels may vary as their resources will be directed by intelligence and risk.
8. We do not have any information to inform discussion on this point.
9. It is considered by officers and members that in general most licensing processes are not overly complex, and where numerous checks are in place this is considered to be necessary and proportionate to the risk. It may be useful to standardise the layout and information requested on all application forms, for example the inclusion of dates of birth for individual applicants would be of use, particularly with the forthcoming right to work checks. It would also be useful if future revisions of licensing procedures take into account the increase in digital processes. For example we are currently moving over to online applications for the Licensing Act 2003.
10. In relation to appeals, we have found conflict with the legality of the business to continue with the licensable activity, despite revocation of the licence by the licensing panel, until an appeal decision is made or has been withdrawn. In relation to the 4 licensing reviews heard by a licensing panel between January and July 2016, all 4 premises had their licences revoked. One of the premises ceased trading and three of them appealed the decision in the Magistrates Court. In all three cases, the premises continued to sell alcohol during the appeal period, and the appeals were withdrawn immediately prior to the scheduled hearing. During this appeal period the police uncovered continuing illegal activity at the premises. This clearly undermines the original decision of the licensing panel and calls into question the intentions of the appeal being made in the first place. In all cases the authority has been successful in achieving the payment of their costs by the applicant for appeal.

We consider that it would be useful for licensing appeal decisions to be reported to promote consistency and inform others of outcomes, although quite clearly every case will be heard on its own merits. We do not consider there is any basis for further appeal to the Crown Court.

Mediation is a useful tool within licensing however we do not consider that there is a role for formal mediation during the appeal process. This could potentially undermine the decisions made by elected members on the licensing panel and could be difficult to manage in practice as a fair mediation process should include all interested parties.

11. It is felt that voluntary schemes to control high strength alcohol and pricing can be effective and more should be done to support and promote these.

There is general concern over the existing regime for personal licence holders, the information on them is likely to be out of date. A central database would be helpful, as well as incorporating a test of suitability to hold a personal licence. Greater emphasis should be placed in the courts for requiring personal licence holders to declare this, and for notification to be provided to licensing authorities in all relevant cases and in a timely manner.

12. We do not have any information or evidence to inform discussion on this point
13. It is considered that licence fees should be set locally to enable full cost recovery by the local authority. Local authorities have proven that they can adequately set fees in other areas of licensing, and it is not acceptable that the local community is effectively paying where current statutory fees do not recover the cost for delivering the licensing service.
14. We do not have any information or evidence to inform discussion on this point.

2 September 2016

South Somerset District Council – written evidence (LIC0019)

Licensing Objectives

Are the existing four licensing objectives the right ones for licensing authorities to promote? Should the protection of health and wellbeing be an additional objective?

Health & Wellbeing should be implemented as 5th objective. Public Health as a responsible authority (and other authorities) could use this objective to look at the wider impact the application can have on the community.

Evidence: TIIG, London

<http://www.cph.org.uk/wp-content/uploads/2016/03/Optimising-the-use-of-NHS-data-in-violence-prevention-final-report-March-2016.pdf>

Should the policies of licensing authorities do more to facilitate the enjoyment by the public of all licensable activities? Should access to and enjoyment of licensable activities by the public, including community activities be an additional licensing objective? Should there be any other additional objectives?

Authorities should have a far more strategic approach with licensing and the whole night time economy. Licensing and its impacts are often overlooked in planning and economic development departments and not considered in LA Local Plans. The Night Time Economy (NTE) generates much revenue for an area and it is vital that it is included in these plans to ensure that it can flourish and increase the vitality of the NTE.

<http://cornerstonebarristers.com/wp-content/uploads/2016/05/Night-time-economy-FINAL.pdf>

The balance between rights & responsibilities

Has the Live Music Act 2012 done enough to relax the provisions of the Licensing Act 2003 where they imposed unnecessarily strict requirements? Are the introductions of late night levies and Early Morning Restriction Orders effective, and if not, what alternatives are there? Does the Licensing Act now achieve the right balance between the rights of those who wish to sell alcohol and provide entertainment and the rights of those who wish to object?

Late night levies have a ratio of income 75:25 in favour of the police to the local authority. The 25% does not cover the costs of implementation. Furthermore you have to apply levies across the whole area whereas you may only have issues arising from only a few premises. Not a fair cost on well run premises.

Do all the responsible authorities (such as Planning, and Health & Safety), who all have other regulatory powers, engage effectively in the licensing regime, and if not, what could

be done? Do other stakeholders, including local communities, engage effectively in the licensing regime, and if not, what could be done?

In our experience Public Health or the County Childrens services have not responded to applications. Public Health colleagues don't necessarily have the right training to know how to apply the four objectives. In Somerset there is only one part time Public Health official to cover the whole of the county in terms of applications.

Licensing and local strategy

Licensing is only one part of the strategy that local government has to shape its communities. The Government states that the Act "is being used effectively in conjunction with other interventions as part of a coherent national and local strategy." Do you agree?

There could be a lot more done, data sharing with the Police, NHS A&E departments, Ambulance & other emergency services could all provide vital information on how the Licensing Act is working within the community and where attention needs to be focussed. For example, the effects of off licenses in housing estates.

See attached article

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/509831/6_1770_Modern_Crime_Prevention_Strategy_final_WEB_version.pdf

Should licensing policy and planning policy be integrated more closely to shape local areas and address the proliferation of licensed premises? How could it be done?

Yes, and any data that Licensing has can be used in the decision to allow any further premises.

Crime, disorder & public safety

Are the subsequent amendments made by policing legislation achieving their objects? Do they give the police the powers they need to prevent crime and disorder and promote the licensing objectives generally? Are police adequately trained to use their powers effectively and appropriately?

In our opinion the local police have a good knowledge of the Act and what they can and cannot achieve in terms of enforcement. Joint working in our area is excellent and the norm rather than the exception. However specialist licensing officers within the Police are spread very thinly. Our Police licensing officer is currently covering 3 large rural council areas, so is unable to devote as much time as possible to consideration of individual applications.

Should sales of alcohol airside at international airports continue to be exempt from the application of the Act? Should sales on other forms of transport continue to be exempt?

We do not have an airport, so do not see this as a priority for ourselves/

Licensing procedure

The Act was intended to simplify licensing procedure; instead it has become increasingly complex. What could be done to simplify the procedure?

The Act was poorly drafted and relies on regulations and guidance far too much. It should be redrafted in its entirety. This would ensure that the Act is easily understood, administered and enforced by all those who have dealings with it.

What could be done to improve the appeal procedure, including listing and costs? Should appeal decisions be reported to promote consistency? Is there a case for further appeal to the Crown Court? Is there a role for formal mediation in the appeal process?

Changes are needed in order to make appeal proceedings cheaper, speedier, fairer to all parties and less of a burden on the court system.

See attached article:

<http://cornerstonebarristers.com/wp-content/uploads/2014/08/Improving-the-system-of-appeals-3.pdf>

Sale of alcohol for consumption at home (the off-trade)

Given the increase in off-trade sales, including online sales, is there a case for reform of the licensing regime applying to the off-trade? How effectively does the regime control supermarkets and large retailers, under-age sales, and delivery services? Should the law be amended to allow licensing authorities more specific control over off-trade sales of "super-strength" alcohol?

This is a key area that requires addressing. The availability of alcohol 24/7 and the low price point are causing problems all over the UK. Street drinking is the norm in many areas of the country. Supermarkets and shops that in effect facilitate uncontrolled drinking should be restricted in their ability to sell alcohol and the hours reduced. Street drinkers invariably purchase the cheap super strength products so further control would be welcomed in this area. The sharing of data would be valuable in determining the impact of off-license trade in terms of health & wellbeing, and also crime & disorder.

See attached article

http://www.alcoholconcern.org.uk/wp-content/uploads/woocomerce_uploads/2014/12/one-on-every-corner.pdf

Pricing

Should alcohol pricing and taxation be used as a form of control, and if so, how? Should the Government introduce minimum unit pricing in England? Does the evidence that MUP would be effective need to be "conclusive" before MUP could be introduced, or can the effect of MUP be gauged only after its introduction?

The current restrictions on selling at below the cost of duty and VAT are quite frankly ridiculous. They have done nothing to remove the problem of cheap high strength alcohol on the high street. MUP needs to be introduced with its effectiveness gauged after its introduction. It is currently perfectly lawful to sell 8% beer at around £1 per can.

Fees & costs associated with the Licensing Act 2003

Do license fees need to be set at national level? Should London, and the other major cities to which the Government proposes to devolve greater powers, have the power to set their own licence fees?

The LGA and CIPFA have recently conducted a survey that shows that the nationally set fee levels are resulting in over a 10 million per year shortfall to local government. The licensing regime will be more costly to administer in a large rural area than an inner city area.

International comparisons

Is there a correlation between the strictness of the regulatory regime in other countries and the level of alcohol abuse? Are there aspects of the licensing laws of other countries, and other UK jurisdictions, that might usefully be considered for England and Wales?

There is a lot of work abroad, e.g. Australia which saw a direct correlation between sharing of data and reduction of violence

See attached article

<http://www.liquorlawreview.justice.nsw.gov.au/Documents/Submissions/Australian%20Drug%20Foundation.pdf>

19 August 2016

South Tyneside Council – written evidence (LIC0027)

LICENSING OBJECTIVES

1. *Are the existing four licensing objectives the right ones for licensing authorities to promote? Should the protection of health and wellbeing be an additional objective?*

The four existing licensing objectives allow responsible authorities to make representations in a number of different ways, but South Tyneside Council consider the introduction of an additional ‘health and well-being’ objective would enhance the opportunities for Public Health partners to participate in the licensing process. A range of health data sources, from alcohol-related hospital admissions statistics, to ambulance data, as well as a having a negative impact on the emotional wellbeing of individuals and communities demonstrate that alcohol has a huge impact upon health and it is clear that factors linked to health and well-being should be taken into account as part of the licensing process.

At the same time, the overall emphasis of the Licensing Act, built upon the ‘presumption to grant’ makes it hugely difficult to challenge individual license applications. Although we believe the introduction of a ‘health and well-being’ objective would be beneficial – not least in terms of reinforcing the fact that health and well-being are important considerations in the licensing process, it is unlikely that it would enable ‘responsible authorities’ to control outlet density in a more proactive or decisive way. A recent revision in the Gambling Commission’s social responsibility code requires new applicants, or those wishing to vary licences, to produce a local risk assessment demonstrating adequate policies, procedures and control measures to mitigate local risks to the licensing objectives.

In our view, the existing Licensing Act requires a fundamental overhaul, which would give ‘responsible authorities’ the powers to decide when and where alcohol could be sold, based upon clear objectives, including the protection of health and well-being. As it stands, the evidence suggests that the addition of a health and wellbeing objective would represent an evolution and not a revolution within licensing.⁴²³ It would make amends for a clear legislative gap within the Act and allow local authorities to highlight health and well-being concerns in a more specific way, rather than trying to address them under one of the existing four objectives. It would also potentially encourage Public Health partners to take a more active role in the licensing process, by raising the profile of representations linked to health and well-being. In this context, a Local Government Association survey found that 9 out of 10 Directors of Public Health agreed that there was demand for a health objective.⁴²⁴

2. *Should the policies of licensing authorities do more to facilitate the enjoyment by the public of all licensable activities? Should access to and enjoyment of licensable*

⁴²³ Foster. J., Charalambides. L., (2016) [The Licensing Act \(2003\): its uses and abuses 10 years on](#). Institute of Alcohol Studies. In particular see [here](#).

⁴²⁴ LGA Survey (Jan 2016) [Public Health and the Licensing Process](#)

activities by the public, including community activities, be an additional licensing objective? Should there be any other additional objectives?

We do not feel that there should be an additional licensing objective linked to access to and enjoyment of licensable activities by the public. From an alcohol perspective, it is clear that communities across the North East feel that they already have more than enough access to licensed premises. In a recent survey undertaken by Balance – The Regional Alcohol Office for the North East showed that 95% of North East residents agreed that there were enough or too many places selling alcohol.⁴²⁵

Based on several thousand interviews, Balance’s annual Public Perceptions Survey provides a compelling insight into public opinion in the North East. The findings from recent questionnaires demonstrate that people across the region are overwhelmingly opposed to the explosion of availability and that communities need a greater voice in local licensing decisions. Key findings were as follows:

- 55% of respondents supported restricting alcohol sales in off-licenses and supermarkets to between 10am-10pm, compared to only 18% who backed a more flexible approach;⁴²⁶
- Two thirds of North Easterners felt that “the drunken behaviour of others” put them off a night out in our town and city centres;⁴²⁷
- Almost 3/4s of North Easterners agreed that pub and club closing times should be between 11pm to midnight;⁴²⁸
- 95% of North Easterners felt that it was unacceptable to sell alcohol in a soft play area; 84% opposed sales in a hair salon; and 77% in a garage forecourt – all locations in which alcohol is currently available in the North East.⁴²⁹

Taking this into account, we believe that we urgently need a licensing system which listens to local communities, protects our health and well-being and fosters vibrant and diverse local economies. This means that more powers should be given to local people to decide when and where alcohol is sold, rather than introducing new objectives, which would potentially support the further expansion of outlet density within our local communities.

THE BALANCE BETWEEN RIGHTS AND RESPONSIBILITIES

- 3. *Has the Live Music Act 2012 done enough to relax the provisions of the Licensing Act 2003 where they imposed unnecessarily strict requirements? Are the introductions of late night levies and Early Morning Restriction Orders effective, and if not, what alternatives are there? Does the Licensing Act now achieve the***

⁴²⁵ Balance, Public Perceptions Survey 2015

⁴²⁶ Balance, Public Perceptions Survey 2015

⁴²⁷ Balance, Public Perceptions Survey 2015

⁴²⁸ Balance Public Perceptions Survey 2014

⁴²⁹ Balance Public Perceptions Survey 2013

right balance between the rights of those who wish to sell alcohol and provide entertainment and the rights of those who wish to object?

The lack of a workable Early Morning Restriction Order is a clear strategic failing within the Act. Many local authorities and police forces would like to be able to use this tool, and restricting excessively late closing times is known to significantly reduce alcohol related crimes and associated police costs.⁴³⁰ For example, a modest reduction in trading hours in Newcastle (NSW, Australia) in 2008 was shown by independent evaluation to have had convincing and compelling benefits:

- an internationally unprecedented 37% fall in alcohol-related non domestic assaults;
- a 50% reduction in night time street crime; and
- a 26% reduction in related hospital ED admissions.⁴³¹

On the contrary, as experience from localities such as Blackpool and Hartlepool has shown, it is currently almost impossible to curb opening hours through the introduction of EMROs, which are far too inflexible and open to industry challenge.

In addition, it is clear that Late Night Levies do not meet the needs of diverse local economies. Whilst experience from the North East has shown that Late Night Levies can be beneficial in the context of large, vibrant, night-time economies, they are simply not suitable for less well-developed or more diverse authorities, particularly where there is a split between urban and rural communities. With this in mind, it would be helpful to introduce a more flexible version of the Late Night Levy, which would allow responsible authorities to apply the levy to particular geographical localities, rather than the local authority as a whole.

Taking all of this into account, the evidence suggests that both EMROs and Late Night Levies need rebalancing in favour of local authorities and communities, to ensure that they can be implemented and targeted more effectively.

4. Do all the responsible authorities (such as Planning, and Health & Safety), who all have other regulatory powers, engage effectively in the licensing regime, and if not, what could be done? Do other stakeholders, including local communities, engage effectively in the licensing regime, and if not, what could be done?

Experience from our Licensing Service suggests that it is challenging to ensure consistent engagement from all of the responsible authorities in the licensing process, with involvement from planning, child safeguarding and the Fire and Rescue Service particularly patchy. Colleagues in Public Health would welcome the opportunity to engage more actively in the licensing process however the lack of a health and well-being objective only allows them to play a supportive role.

⁴³⁰ Foster. J., Charalambides. L., (2016) [The Licensing Act \(2003\): its uses and abuses 10 years on](#). Institute of Alcohol Studies. Page 127

⁴³¹ Kypri. K., Jones. C., McElduff. P., Barker. D., (2011) [Effects of restricting pub closing times on night-time assaults in an Australian city](#). Addiction.

It has also been indicated that planning and licensing processes should be more aligned, with the view that applicants should not be granted a license, until they have got planning permission to open for the hours stated on a licensing application.

Local Communities do not frequently engage in the licensing process. Unlike the planning application process there is no statutory requirement to notify owners of properties adjoining premises of applications, reliance is upon press notices or the statutory notices within the vicinity. There is also no legal requirement to provide evidence to the local authority that the statutory press notice has been advertised, Councils are therefore reliant upon the honesty of the applicants statutory declaration. Whilst the principles around objecting to planning are well established in our experience this has not been replicated within the Licensing Act regime.

LICENSING AND LOCAL STRATEGY

5. *Licensing is only one part of the strategy that local government has to shape its communities. The Government states that the Act “is being used effectively in conjunction with other interventions as part of a coherent national and local strategy.” Do you agree?*

The development of the Licensing Act in recent years has included a shift towards crime and disorder issues, with the Modern Crime Prevention Strategy continuing this trend. We have developed our local statement of licensing policy to take a strong approach to alcohol harm reduction, setting a clear and positive vision for the development of the night time economy, with health and well-being (in addition to the four existing licensing objectives) at the heart of the local strategy.

Whilst we work closely with our colleagues in economic development to achieve the right balance between our vision for economic growth balanced with safe neighbourhoods and the health and wellbeing our local communities it would helpful if the Government provided more national leadership and powers to reflect the adverse harms that alcohol can have upon our local communities, as well as the economic benefits.

6. *Should licensing policy and planning policy be integrated more closely to shape local areas and address the proliferation of licensed premises? How could it be done?*

Yes, we believe that licensing and planning policies should be better integrated, although it would not necessarily make a significant impact on the proliferation of licensed premises, which is facilitated by the ‘presumption to grant’ in the Licensing Act 2003. Reversing the ‘presumption to grant’ approach and requiring the applicant to demonstrate the need for additional licensed premises would support greater control of the number of licensed premises.

Development of both specific national and local planning policies and guidance to control limits on the number of licensed premises within defined areas would be of assistance, similar approaches have been, or are being developed, by a number of local authority

planning services in relation to Hot Food Take Away premises as part of the approach to deal with the issue of obesity.

CRIME, DISORDER AND PUBLIC SAFETY

- 7. *Are the subsequent amendments made by policing legislation achieving their objects? Do they give the police the powers they need to prevent crime and disorder and promote the licensing objectives generally? Are police adequately trained to use their powers effectively and appropriately?***

Amongst others, the Police Reform and Social Responsibility Act (2011) made the following changes:

- It made local authority licensing teams a responsible authority in their own right: This has been very beneficial, and many local authorities use this well to uphold the local Statement of Licensing Policy.
- Health bodies were designated a responsible authority: this was a welcome step in the right direction, but health is hampered by not having a specific objective.

LICENSING PROCEDURE

- 8. *The Act was intended to simplify licensing procedure; instead it has become increasingly complex. What could be done to simplify the procedure?***

In many ways, the current Licensing Act has simplified the licensing regime, particularly by combining alcohol and entertainment issues. There is also a consensus that the Act has fostered more effective partnership working, both between individual regulatory bodies, and with the licensed trade. In general, the alterations to the Act have addressed deficiencies and problems. Some areas within the Act were originally too focused on tourism and the sociable benefits of licensing, while paying too little attention to the problems that can arise. However, the ‘presumption to grant’ licenses remains a huge challenge, putting far too much power in the hands of the industry, whilst limiting the ability of responsible authorities to control when and where alcohol is sold at a local level.

It is arguable that some of the simplest sections within the Act are the most problematic to administer and enforce, particularly Temporary Event Notices (TENs). These result in significant financial shortfalls for local authorities; they cost £21 for applicants, but vastly more to administer and process. Their overly light touch approach has effectively resulted in TENs working as a loop hole, allowing existing premises to extend their hours with limited oversight. This makes the more regulated elements of the licensing regime harder to enforce.

- 9. *Should sales of alcohol airside at international airports continue to be exempt from the application of the Act? Should sales on other forms of transport continue to be exempt?***

Whilst South Tyneside does not have an airport it does have a direct interest in Newcastle International Airport as a key stakeholder. It is a real anomaly that the Licensing Act does

not apply airside at international airports, as the promotion of licensing objectives is just as relevant in these locations. In fact there are potentially additional risks related to passengers being drunk and unruly within this context. Indeed, recent figures showed that 422 people were held on suspicion of being drunk at an airport or on a plane in the last two years.⁴³² With this in mind, it would make absolute sense to bring sales of alcohol airside under the jurisdiction of the responsible authorities in the licensing process.

Discussions with regional colleagues have identified, the sale and consumption of alcohol on trains can cause specific problems, often resulting in additional preloading or on-route drinking. In some areas, large groups have been known to buy excessive amounts of alcohol from the off-trade, drinking on trains while traveling to their destination on a Friday or Saturday night. They then arrive in a very intoxicated state, causing significant problems from a crime and disorder and health perspective. Colleagues have noted that this is a particular problem on the east coast mainline, with large groups of revellers (often hen and stag parties) traveling between cities such as Newcastle and York, consuming large quantities of alcohol and disturbing services for other passengers.

Again, it would be helpful to regulate the sale of alcohol on trains and other forms of transport, much more effectively, with the Government prescribing certain conditions, whilst allowing some local flexibility to tackle particularly problematic routes.

10. *What could be done to improve the appeal procedure, including listing and costs? Should appeal decisions be reported to promote consistency? Is there a case for a further appeal to the Crown Court? Is there a role for formal mediation in the appeal process?*

The current appeals procedure is open to abuse, with significant room for improvement. For example, when a licensing committee orders a license revocation, the premises in question can continue trading, pending the result of an appeal to Magistrates – a process which can last six months or more after the initial committee hearing.

In effect, this enables poorly run premises and / or unscrupulous license holders to use the appeals process as a ‘stay of execution’, with many continuing to pose challenges to local partners and communities in the meantime. With this in mind, we believe that there should be a process of interim revocation, pending appeal, which would effectively implement an immediate ban on the sale of alcohol. This would admittedly necessitate a speeding up of the appeals process; but more importantly, it would protect local communities from further problems during the appeal period and militate against the abuse of the overall system.

The better reporting of appeal decisions would also be beneficial, and this could be aided by updating the Section 182 Guidance with case law developments so that it adequately reflects the practical application of the Act. There is a case for exploring the use of mediation, but local authorities should not be pushed towards unnecessary compromise,

⁴³² [Airport alcohol sales to be 'examined' by Lord Ahmad](#). BBC news

when they have a clear duty to uphold and promote the licensing objectives in the interests of the local community.

SALE OF ALCOHOL FOR CONSUMPTION AT HOME (THE OFF-TRADE)

- 11. *Given the increase in off-trade sales, including online sales, is there a case for reform of the licensing regime applying to the off-trade? How effectively does the regime control supermarkets and large retailers, under-age sales, and delivery services? Should the law be amended to allow licensing authorities more specific control over off-trade sales of “super-strength” alcohol?***

The context in which we consume alcohol has changed significantly over recent years, with massive shifts in levels of consumption, availability and pricing. Since the 1950s, the average annual intake of alcohol per adult in the UK has risen from 5 litres to 9.65 litres in 2012/13 and this is largely attributable to wider availability. Whereas in the past, alcohol sales were confined to off-licenses, pubs and clubs, today alcohol is available 24/7, 365 days of the year, in locations as diverse as petrol stations and soft play areas and via services such as ‘Dial-a-Drink’, which deliver alcohol straight to your front door. At the same time, alcohol has become much more affordable, costing 61% less in real terms than in 1980. These shifts have contributed to a striking increase in alcohol-related harms across the North East, which suffers from some of the highest rates of alcohol-related hospital admissions, mortality and morbidity.

In the North East and across England as a whole, we are increasingly choosing to drink at home. This is explained, at least in part, by the disparity in price between the on and off-licensed trades; alcohol bought from off-licenses now costs on average one third of the cost of alcohol bought from the on-trade. Since 1992, the volume of alcohol drinks consumed in the home has increased from 527ml per person per week to 706ml in 2008, whilst the amount of alcohol sold by the on-trade has dropped by 40% between 2001 and 2008.⁴³³ The number of UK off-licenses has increased by 25% in the past 30 years, fuelled by the expansion of supermarkets and convenience off-shoots (Tesco Metros, Sainsburys Locals etc.) leading to an increasingly competitive alcohol-market place, with alcohol frequently sold at pocket money prices. Off-licensed sales are also the predominant direct and indirect source of access to alcohol for under-18s, with growing international evidence linking off-license density with a range of negative alcohol-related consequences.

At the same time, the Licensing Act 2003 is poorly equipped to deal with the off-trade and more needs to be done to regulate and reform this area of the licensing regime. In this context, there is much that we could learn from Scotland; for example, the Scottish Licensing Act has been rebalanced to acknowledge the fact that the vast majority of alcohol is consumed at home. This has seen the introduction of a ban on multi-buys, restricting alcohol related products to one part of a store, the restriction of off-trade hours to 10am

⁴³³ British Beer and Pub Association Statistical Handbook, BBPA 2011

until 10pm, and the proposed introduction of minimum unit pricing (although is yet to be implemented, pending legal challenge by the alcohol industry).

Research into the impact of these restrictions has found broadly positive results. For example, a study by NHS Scotland using sales data found that there has been a 2.6% decrease in the amount of alcohol sold in Scotland per adult as a result of the multi-buy ban, including a 4% drop in wine sold and an 8.5% decline in pre-mixed alcohol drinks (including alcopops). In addition, as part of a wider evidence-based alcohol policy, with greater pricing restrictions - ideally a Minimum Unit Price – there is strong evidence to indicate that the impact on a range of metrics (alcohol-related hospital admissions, alcohol-related crime etc.) would be hugely positive.

Home delivery services are also difficult to regulate under the Act. Some local authorities have produced additional guidance and conditions for operators to ensure that they comply with the Act, particularly regarding sale to minors and sales to drunks; although this can be challenging to enforce. While off-trade hours in Scotland are limited to 10am – 10pm, Scottish hours for home delivery services are slightly different, with a ban between midnight and 6am. This does however still allow for greater limits on home delivery during the period which could potentially be the most problematic.

PRICING

12. *Should alcohol pricing and taxation be used as a form of control, and if so, how? Should the Government introduce minimum unit pricing in England? Does the evidence that MUP would be effective need to be “conclusive” before MUP could be introduced, or can the effect of MUP be gauged only after its introduction*

There is no single solution to tackling alcohol-related harm and we believe that we need a package of measures to limit the affordability, availability and promotion of alcohol. However, all of the independent evidence tells us that getting rid of the cheapest, strongest alcohol would have the most impact as it is typically consumed by young people and those drinking at harmful levels.

There is a large and significant body of international evidence which demonstrates that the price and affordability of alcohol is the key factor in driving consumption. In the 2009 Global Strategy, the World Health Organisation recommends introducing pricing policies to reduce alcohol-related harm and recognises the option to “establish minimum prices for alcohol where applicable” as an appropriate action.

Furthermore, Minimum Unit Price is already working in several countries, including Canada. Figures from British Columbia indicate that a 10% increase in average minimum price would result in a fall in consumption of 8%⁴³⁴; a 9% reduction in alcohol specific hospital

⁴³⁴ Stockwell, T., et al. (2012), [The Raising of Minimum Alcohol Prices in Saskatchewan, Canada: Impacts on Consumption and Implications for Public Health](#). American Journal of Public Health

admissions⁴³⁵; a 32% reduction in wholly alcohol caused deaths⁴³⁶; and a 10% fall in violent crime.⁴³⁷ In addition, research commissioned by the UK Government revealed that the introduction of MUP would be significantly more effective than banning below-cost sales.⁴³⁸ According to this work:

- After 10 years, a ban on below cost sales would save 14 lives, compared to 960 lives saved with the introduction of MUP at 50p;
- In the first year of implementation, a ban on below cost sales would reduce crimes by 900, whilst an MUP at 50p would result in a fall of 50,700 crimes.
- After 10 years, a ban on below cost sales would save an estimated £77m, whilst the equivalent figure for MUP at 50p is £5.1 billion.⁴³⁹

From a North East perspective, the cheapest, strongest alcohol is responsible for some of the greatest problems in our local communities. Although more affluent groups of the population tend to drink at higher levels, the people in our most deprived communities suffer from the worst alcohol-related harms - harmful drinkers on the lowest incomes spend on average almost £2700 a year on alcohol, with 41% of the alcohol they consume purchased for less than 45 pence per unit.⁴⁴⁰ These are the people who end up in hospital time and time again and die prematurely, whilst their families pay the price of cheap alcohol.

Alcohol is 54% more affordable today than in 1980.⁴⁴¹ Successive cuts and freezes to duty since 2012 have exacerbated this problem: beer duty is now 14% lower than in 2012, while cider and spirits duty have each fallen by 6%.⁴⁴² Raising the price of alcohol through real terms increases in duty is necessary to reverse these dangerous trends.

However, it is not just the level, but also the structure of alcohol taxes that matters. Because of anomalies in the duty system, 7.5% ABV ciders attract the lowest duty per unit of any product: 5p per unit, compared to 18p per unit for a beer of equivalent strength. This has given rise to a market for industrial 'white' ciders: sold in 3 litre plastic bottles and closely linked to harmful, dependent and underage drinking.⁴⁴³ Tax policy could be used to have a

⁴³⁵ Stockwell, T., et al. (2013), Minimum alcohol prices and outlet densities in British Columbia, Canada: Estimated impacts on alcohol attributable hospital admissions. *American Journal of Public Health*

⁴³⁶ Zhao, J., et al. (2013), [The relationship between changes to minimum alcohol price, outlet densities and alcohol-related death in British Columbia, 2002-2009](#). *Addiction*.

⁴³⁷ Stockwell, T., et al. currently unpublished research on the effects of minimum pricing on crime in Canadian provinces

⁴³⁸ University of Sheffield (2013), [Modelled income group-specific impacts of alcohol minimum unit pricing in England 2014/15](#)

⁴³⁹ Brennan, A., Meng, Y., Holmes, J., Hill-McManus, D. and Meier, P. (2014) 'Potential benefits of minimum unit pricing for alcohol versus a ban on below cost selling in England 2014: modelling study', *BMJ*,

⁴⁴⁰ Effects of minimum unit pricing for alcohol on different income and socioeconomic groups: a modelling study Holmes et al May 2014

⁴⁴¹ Health & Social Care Information Centre (2015), *Statistics on Alcohol England, 2015*.

⁴⁴² Institute of Alcohol Studies (2016), *Budget 2016 analysis*.

⁴⁴³ Black, H. et al (2014) *White Cider Consumption and Heavy Drinkers: A Low-Cost Option but an Unknown price*. *Alcohol and Alcoholism* 49:6, pp675-80; Alcohol Concern (2015). *Alcohol brands consumed by young people in treatment 2015*.

more targeted focus on such products through narrower bands - at present ciders between 1.2% and 7.5% ABV are taxed at the same rate.

MUP is not a silver bullet, and a combination of tax and MUP would be the optimal approach. This would ensure that the cheapest alcohol, which disproportionately causes the greatest harms, increased in price, while ensuring that the Treasury benefited from this rather than the alcohol producers.

MUP at the suggested price of 50p per unit would have a minimal impact on the on-trade, where prices tend to be significantly higher than this, but it would impact most dramatically on the cheapest alcohol in the off-trade.

Regarding the question of being able to conclusively predict MUP's impact, the evidence for MUP is very strong, and far stronger than for other policies implemented by the Home Office. For example, the Modern Crime Prevention Strategy places a significant focus on partnership working with the trade, when there is not a single piece of academic, peer reviewed evidence that this has a significant impact on crime and disorder. While the licenced trade has carried out some internal evaluations, these tend to be of a very poor quality. In contrast the evidence, both modelled and from Canada where they have similar minimum prices, that MUP would be effective, is very strong.⁴⁴⁴

FEES AND COSTS ASSOCIATED WITH THE LICENSING ACT 2003

13. *Do licence fees need to be set at national level? Should London and the other major cities to which the Government proposes to devolve greater powers, have the power to set their own licence fees?*

At present some local authorities see significant shortfalls in the revenue they receive from licensing fees, meaning that they have to subsidise their licensing operation out of general funds. With the reductions in local government funding in recent years this has become increasingly difficult.

Local authorities with the biggest fees shortfall are often those more likely to struggle to oversee the Act.⁴⁴⁵ The Local Government Association (LGA) estimates that alcohol licensing cost local authorities approximately £183 million in the 10 years since the Act was introduced, which works out at £1.5 million of taxpayers' money per month being used to subsidise the licensed trade.⁴⁴⁶

INTERNATIONAL COMPARISONS

⁴⁴⁴ Stockwell, T., Zhao, J., Marzell, M., Gruenewald, P. J., Macdonald, S., Ponicki, W. R., & Martin, G. (2015). Relationships Between Minimum Alcohol Pricing and Crime During the Partial Privatization of a Canadian Government Alcohol Monopoly. *Journal of Studies on Alcohol and Drugs*, (July), 628–634. <http://doi.org/10.15288/jsad.2015.76.628>

⁴⁴⁵ Foster, J., Charalambides, L., (2016) [The Licensing Act \(2003\): its uses and abuses 10 years on](#). Institute of Alcohol Studies. See chapter 12

⁴⁴⁶ *Local Government Association (Feb 2015)* [LGA responds to Government decision to reject locally-set licensing fees](#)

14. Is there a correlation between the strictness of the regulatory regime in other countries and the level of alcohol abuse? Are there aspects of the licensing laws of other countries, and other UK jurisdictions, that might usefully be considered for England and Wales?

Within developed countries, those which experience greater alcohol related harms tend to have a stricter regulatory response. The 2003 Licensing Act attempted to simplify and deregulate licensing but the ‘presumption to grant’ has played into the hands of the industry and prevented responsible authorities from actively and decisively deciding when and where alcohol can be sold at a local level.

This evidence submission has covered a number of policies from Scotland which would be beneficial for those with an interest in reducing alcohol related harms. These include MUP, a health and well-being objective and greater restrictions on the off-trade.

Evidence from Australia also lends support to the introduction of a workable EMRO. In Newcastle, Australia, it was found that bringing forward closing times from 5am to 3am resulted in 37% reduction in assaults.⁴⁴⁷ After one year, similar opening restrictions in the Kings Cross area of Sydney resulted in a 21% reduction in sexual assaults, a 43% reduction in assaults causing grievous bodily harm, a 50% reduction in assaults causing actual bodily harm and a 57% reduction in robberies.⁴⁴⁸

Commenting on this, Police Superintendent Mick Fitzgerald, Kings Cross local area commander, stated that ‘the man hours saved and the way we are able to reallocate our resources has been phenomenal.’⁴⁴⁹ While the closure of several clubs in Kings Cross were attributed to measures, a variety of other businesses have been seen to enter the market, including antiques dealers, ice-cream vendors, chemists, restaurants, hairdressers and yoga studios, as well as a number of new bars.⁴⁵⁰ There is also evidence that, while there has been a reduction in land value of some commercial property, large increases have been observed in both mixed-use and residential property in the Kings Cross region.^{451, 452}

Risk-based licensing, which is used in various forms in Canada, Australia and New Zealand, also has interesting elements. This approach broadly links licensing fees and regulatory strength to the type of premises and the operating schedule. Types of premises, such as restaurants, bars or clubs, are ranked by their potential risk, and pay a different base rate

⁴⁴⁷ Kypril, K., Jones, C., McElduff, P., Barker, D., (2011) [Effects of restricting pub closing times on night-time assaults in an Australian city](#). *Addiction*.

⁴⁴⁸ In addition to moving closing times forward from 5 am to 3 am, a 1 am lockout was introduced, meaning that people could continue to drink alcohol on the premises until the 3am close, but no new patrons could be admitted after 1 am. This became known as the ‘one-way door’ policy.

⁴⁴⁹ Australian Daily Telegraph (April 1st, 2015) [Cross clean-up is a victory for Sydney](#)

⁴⁵⁰ <https://twitter.com/2011Residents>

⁴⁵¹ Land & Property Information. (n.p.). *Potts Point/Kings Cross Report Land Value Review – Report for Land Valuation Advisory Group*. NSW Government.

⁴⁵² Nicholls, S. (2016, 22 May). Lockout laws hit values in Kings Cross’ ‘golden mile’. *The Sydney Morning Herald*. Retrieved from: <http://www.smh.com.au/nsw/lock-out-laws-hit-land-values-on-kings-cross-golden-mile-20160522-gp0ych.html>

South Tyneside Council – written evidence (LIC0027)

depending on the outcome of the risk assessment. Hours of operation can also be linked to the fee, with some states in Australia charging incremental amounts for every hour that a venue opens after midnight. Compliance history can also have an impact on feel level.⁴⁵³

Submitted on behalf of South Tyneside Council by:

Councillor Moira Smith

Lead Member for Area Management & Community Safety

Councillor Tracey Dixon

Lead Member for Independence and Wellbeing

25 August 2016

⁴⁵³ See the appendix to Foster. J., Charalambides. L., (2016) [The Licensing Act \(2003\): its uses and abuses 10 years on](#). Institute of Alcohol Studies.

South Wales Police – written evidence (LIC0072)

Licensing objectives

1. Are the existing four licensing objectives the right ones for licensing authorities to promote? Should the protection of health and wellbeing be an additional objective?

1.1 The existing four licensing objectives are essential. Given the increasing vulnerability of people residing in our Communities it is critical that ‘health and well-being’ is added as a fifth objective. Alcohol is a key contributor to a deterioration in health over a period of time however the short term risks for those who binge drink cannot be underestimated. South Wales Police and the Police and Crime Commissioner have worked hard to bring health and wellbeing closer to this area of licensing with campaigns such as #Knowthescore and #Knowyourlimits and #Drinklessenjoy. In addition the creation of a ‘Help point’ on a Wednesday and Saturday evening in the middle of the night time economy has diverted demand away from A&E departments. Much of this work however is aimed at dealing with the consequences. The addition of health and wellbeing as an objective would assist in more preventative work around alcohol consumption. Bringing wider Health closer as one of the responsible authorities will be key to making this objective achievable

<http://commissioner.south-wales.police.uk/en/news-archive/swansea-help-point-opens/>

2. Should the policies of licensing authorities do more to facilitate the enjoyment by the public of all licensable activities? Should access to and enjoyment of licensable activities by the public, including community activities, be an additional licensing objective? Should there be any other additional objectives?

2.1 Current evidence suggests that an additional licensing objective based on the above suggestion is unnecessary as those who wish to enjoy and partake in activities are free to do so. It is important to remember that ‘the public’ comprise of many different cultures, communities, preferences, tolerance levels and interest in licensable activities therefore this would be a difficult objective to find the right balance.

The balance between rights and responsibilities

3. Has the Live Music Act 2012 done enough to relax the provisions of the Licensing Act 2003 where they imposed unnecessarily strict requirements? Are the introductions of late night levies and Early Morning Restriction Orders effective, and if not, what alternatives are there? Does the Licensing Act now achieve the right balance between the rights of those who wish to sell alcohol and provide entertainment and the rights of those who wish to object?

3.1 The Live Music Act has done too much to relax restrictions on premises. The majority of complaints regarding licensed premises refer to noise from music entertainment. The Live Music Act has made it easier for premises to provide activity that results in noise disturbance for neighbouring properties. The effectiveness of Early Morning Restriction

Orders and Late Night Levies can be assessed by their lack of implementation. The cost of implementation is also prohibitive for Authorities, as it exceeds the revenue that will be generated from them. A policy to tidy up late night economy areas is desperately required as currently it does not come from those businesses who profit from such late hours. Conditions should be put in place in which premises who benefit from later hours should also pay a charge for such. A later license charge could be levied. This charge should then be fed back to the organisations that work the late night economies in keeping them safe.

3.2 The balance achieved by the Licensing Act, between sellers rights and objectors rights is weighted in favour of the trade. The Licensing Act does not appear to be balanced and appears to be 'pro Industry' to those who can afford to pay for the legal practitioners whereas the regulatory authorities cannot.

3.3 There are so many ways around measures that may be implemented by responsible authorities, for example, where a premises licence is reviewed for revocation, there is nothing to prevent a third party applying for a new licence during the process to enable premises to trade even if the original licence is revoked. A further example is a local case where the appeal was delayed by the legal rep until a year after the original case, meaning they had the ability to clean up their act whilst no measures were put in place during this delay strategy.

4. Do all the responsible authorities (such as Planning, and Health & Safety), who all have other regulatory powers, engage effectively in the licensing regime, and if not, what could be done? Do other stakeholders, including local communities, engage effectively in the licensing regime, and if not, what could be done?

4.1 Planning and Health & Safety rarely engage in the licensing regime but need to. The bringing together of permitted planning hours and licensing hours should be made at any new grant, variation, hearing and whichever is the lowest should be adhered to. Prosecutions from breaching one of the permitted hours and not the other is costly and it causes confusion. Health and safety do not engage as the risk is not high enough, therefore self-governance does not take place with the retailer as there is no threat. Licensing authorities should be able to represent these areas and take over their governance. The info should be requested and provided, just like a freedom of information request on all premises within the directory.

4.2 Other stakeholders, like fire, health and local communities engage very little with the licensing regime in terms of what they can offer in relation to them. An education campaign could change this, along with localised training or involvement.

Licensing and local strategy

5. Licensing is only one part of the strategy that local government has to shape its communities. The Government states that the Act "is being used effectively in conjunction with other interventions as part of a coherent national and local strategy." Do you agree?

5.1 The Act has limitations in terms of local strategy. The power to create more business is perceived as far more important with the possibility of bringing in jobs to boost the economy. There is also no strategy to dovetail the two, a new pub application for example, to have a new playground that would then benefit and develop the local community that it serves should be asked for by the authority at the time of the application.

6. Should licensing policy and planning policy be integrated more closely to shape local areas and address the proliferation of licensed premises? How could it be done?

6.1 Licensing and planning should work together. At a hearing / grant application planning hours should be considered and vice versa. It causes confusion to have them separate. The Planning Department are statutory consultees in the licensing process however have rarely made representations regarding any application. There is a proliferation of licensed premises which does little to reduce the amount of alcohol related harm, such as health and crime issues. There are far too many premises licensed to sell alcohol, including those frequented by children, newsagents, general stores, and more recently food take-aways.

Crime, disorder and public safety

7. Are the subsequent amendments made by policing legislation achieving their objects? Do they give the police the powers they need to prevent crime and disorder and promote the licensing objectives generally? Are police adequately trained to use their powers effectively and appropriately?

7.1 There is no formal training or qualification available via the College of Policing for licensing teams to match the legal knowledge of barristers who are paid to represent large companies. It is a David and Goliath scenario whenever an attempt is made to take businesses to review. As an example a large national company paid their Barrister £15000 to represent them at two meetings with licensing committees. This emphasised the disparity in investment between enforcement officers and defence barristers.

8. Should sales of alcohol airside at international airports continue to be exempt from the application of the Act? Should sales on other forms of transport continue to be exempt?

8.1 Increasing instances of ‘air rage’ and drunkenness on board aircrafts is evidence that the exemption currently applied ‘airside’ should be reviewed to make those selling alcohol more responsible. The majority of airport issues occur after the passenger has departed on an aircraft or by refusal at the boarding gate. Responsibility for these issues must be taken by those premises serving alcohol prior to departure.

Licensing procedure

9. The Act was intended to simplify licensing procedure; instead it has become increasingly complex. What could be done to simplify the procedure?

9.1 The former legislation was far simpler and in some ways more effective. The powers afforded to authorities under current legislation are useful however there are many gaps.

One such gap is the number of licensees who now have relevant convictions but are still in charge of premises.

Granting the licensing authority further powers would be useful in order to meet and structure an application with the applicant prior to it being served. This would reduce the need for and cost of unnecessary hearings.

10. What could be done to improve the appeal procedure, including listing and costs? Should appeal decisions be reported to promote consistency? Is there a case for a further appeal to the Crown Court? Is there a role for formal mediation in the appeal process?

10.1 The appeal procedure is a costly and unfair to both authorities and the applicant. They should be time limited, so an appeal has to be heard within a month of the case being brought. As it stands it is currently open to abuse by unnecessarily being prolonged. Costs can be brought against the local authority that makes a decision and they have no budget for this, so they will often grant in favour of the industry. This must change and the redress for legal costs should not be a part of the process. Set fees should be given, so that expensive barrister's costs are not seen as so attractive.

10.2 Courts do deviate greatly on decision making. A classification guide should be issued to help gain some consistency and help them make a targeted response.

10.3 Formal mediation could be a good idea, to bring the two parties together prior to the appeal being heard.

Sale of alcohol for consumption at home (the off-trade)

11. Given the increase in off-trade sales, including online sales, is there a case for reform of the licensing regime applying to the off-trade? How effectively does the regime control supermarkets and large retailers, under-age sales, and delivery services? Should the law be amended to allow licensing authorities more specific control over off-trade sales of "super-strength" alcohol?

11.1 There are far too many premises licensed for off sales. The variety of businesses that sell alcohol has drastically increased under current legislation. The popularity of home drinking has increased due to the availability of cheap alcohol from supermarkets, and has resulted in persons then frequenting town centres and pubs arriving already intoxicated. The fact that pub premises are open to such late hours enables customers to drink at home and still spend a number of hours in licensed premises, having already consumed quantities of alcohol. This has been detrimental to the on licensed trade, evidenced by the low volume of trade, premises closing and often, standards of service at pubs declining just to get cash in the tills.

11.2 The off trade could be improved to add a few changes to accommodate the sales process. That a licence holder, - or DPS should be present at all times to administer the sale, however, the courses does not really train people in their responsibilities. It is not specific

enough, the level 3 DPs course should be mandatory, as it is a good course and explains exactly what being a DPS is all about.

11.3 Supermarkets have too much autonomy over the Act where local agreements have been made that authorities will not test purchase them without warning them first. They should not be treated differently and these procedures should stop. Electronic till prompts on self-service are sometimes being ignored as the operator is too busy doing other things. It's the same with on line and some delivery.

11.4 Super strength lager and street drinking do go hand in hand and local authorities should be allowed to put measures in place when ASB issues and crime prevention is engaged meaning super strengths should not be sold in these problematic areas.

Pricing

12. Should alcohol pricing and taxation be used as a form of control, and if so, how? Should the Government introduce minimum unit pricing in England? Does the evidence that MUP would be effective need to be “conclusive” before MUP could be introduced, or can the effect of MUP be gauged only after its introduction?

12.1 Minimum Unit Pricing would be potentially ineffective as many already sell alcohol way above the MUP anyway. It is far too simplistic to look at MUP as the solution to all issues. Those people with alcohol addictions and the necessary intent to purchase alcohol will involve themselves in potentially criminal matters to fund the purchase. Alternatively, other expenses in their life will take a knock on effect to other areas of society such as responsible parenting, personal welfare and hygiene

Fees and costs associated with the Licensing Act 2003

13. Do licence fees need to be set at national level? Should London, and the other major cities to which the Government proposes to devolve greater powers, have the power to set their own licence fees?

13.1 Fees should be allowed to be set at a local level. The fees are currently far short of what it costs to administer any application. Devolved power should be allowed to set fees according to their requirements, especially if a late night licence can be charged a late night fee locally.

International comparisons

14. Is there a correlation between the strictness of the regulatory regime in other countries and the level of alcohol abuse? Are there aspects of the licensing laws of other countries, and other UK jurisdictions, that might usefully be considered for England and Wales?

14.1 There is no correlation in the strictness of regulatory regime in other countries in relation to alcohol abuse with culture appearing to be a strong influencer. The laws in Australia are far advanced to ours and should be considered in relation to alcohol abuse.

South Wales Police – written evidence (LIC0072)

Currently there is no deterrent in place to prevent drinking to excess – resulting in arrests, crimes, public health issues, anti-social behaviour, and community issues. A higher cost as a penalty may deter those from getting heavily intoxicated.

1 September 2016

St Austell Town Council – written evidence (LIC0051)

St Austell Town Council at a meeting on Tuesday 30th August 2016 discussed the Licensing Act 2003 review and expressed a number of views which are summarised below.

Members welcomed the review which they considered timely in view of a spate of drug and alcohol related anti-social behaviour in and around St Austell Town centre. This issue has in recent weeks attracted a great deal of press and social media attention and culminated in the local MP, Steven Double, inviting the Police and Crime Commissioner for Devon and Cornwall, Alison Hernandez, to visit St Austell to view the problems first hand.

Members concerns can be summarised in relation to your questions as follows:

Question 3

Members expressed concern with regard to the evidence required to object to an application for a licence to sell alcohol and the difficulties in stopping new establishments from opening. They have had experience recently of an application from premises on the edge of the town centre at St Austell to sell alcohol 24/7 and were unsuccessful in stopping approval despite there being evidence of alcohol and drug related anti-social behaviour in the area and a wide spread belief that an additional outlet in this area, near to rehabilitation centres would cause problems. A number of complaints have been received since the licence was granted about anti-social behaviour and noise nuisance. Members felt that the Police and local authorities needed greater powers to control alcohol sales in geographical areas of concern.

Question 4

Members felt that there were insufficient links between the planning and licensing functions and felt that often decisions made by different parts of the local unitary authority were un-coordinated.

Question 7

Members felt that alcohol related anti-social behaviour was not sufficiently prioritised by the Police largely due to a shortage of resources.

Question 11

Members questioned the need for 24/7 alcohol sales and felt that the opening hours of supermarkets and off licences should be restricted, particularly in areas where there was evidence of alcohol related anti-social behaviour. There were also concerns with regard to the sale of cheap, strong alcohol.

Question 13

Members were concerned that the late night levy was too bureaucratic and that the procedures for applying late night levies needed to be simplified. There was also a belief

St Austell Town Council – written evidence (LIC0051)

that the monies raised from such levies should be available to the local authority rather than the police to use locally to help mitigate any effects of anti-social behaviour and late night drinking.

I hope that these comments are helpful and thank you for the opportunity to comment.

31 August 2016

St Edmundsbury Borough and Forest Heath District Councils – written evidence (LIC0060)

Licensing objectives

1. Are the existing four licensing objectives the right ones for licensing authorities to promote? Should the protection of health and wellbeing be an additional objective?

For relevant premises such as nightclubs and festivals, I think this would be helpful in protecting the public in terms of pre-loading, selling to customers already too intoxicated and to promote schemes like the Town Pastors or street rangers

2. Should the policies of licensing authorities do more to facilitate the enjoyment by the public of all licensable activities? Should access to and enjoyment of licensable activities by the public, including community activities, be an additional licensing objective? Should there be any other additional objectives?

I believe the licensing authorities does all it can to promote safe and enjoyable licensable activities. Authorities run a free Safety Advisory Group for activities and large events.

The balance between rights and responsibilities

3. Has the Live Music Act 2012 done enough to relax the provisions of the Licensing Act 2003 where they imposed unnecessarily strict requirements? Are the introductions of late night levies and Early Morning Restriction Orders effective, and if not, what alternatives are there? Does the Licensing Act now achieve the right balance between the rights of those who wish to sell alcohol and provide entertainment and the rights of those who wish to object?

In our authority, the deregulation of live music before 11pm has assisted new premises to be able to enjoy the licensable activity without having to jump through the Act and application process. This also does not preclude objectors from being able to review a licence to add conditions if it affects their lives in a negative way. We have not entertained late night levies or EMRO's being a small county and have used the Anti-social Behaviour Act when a premises has high crime and disorder. I think the process for dealing with problematic premises is a long, drawn out and arduous task and an alternative with a provision for police or authorities to serve a notice of closure if they do not improve would be a great benefit.

4. Do all the responsible authorities (such as Planning, and Health & Safety), who all have other regulatory powers, engage effectively in the licensing regime, and if not, what could be done? Do other stakeholders, including local communities, engage effectively in the licensing regime, and if not, what could be done?

Planning do not really engage as they have their own legislation to follow and our licensing policies do not allow the conditions of planning to be taken into consideration when a premises is applying for licence. I think that this restriction should be removed and relevant conditions planning impose on a premises is mirrored in the licensing application.

Licensing and local strategy

5. Licensing is only one part of the strategy that local government has to shape its communities. The Government states that the Act “is being used effectively in conjunction with other interventions as part of a coherent national and local strategy.” Do you agree?

Yes

6. Should licensing policy and planning policy be integrated more closely to shape local areas and address the proliferation of licensed premises? How could it be done?

Yes, as per my answer in no.4

Crime, disorder and public safety

7. Are the subsequent amendments made by policing legislation achieving their objects? Do they give the police the powers they need to prevent crime and disorder and promote the licensing objectives generally? Are police adequately trained to use their powers effectively and appropriately?

As being a police officer until this year, I can confirm that there is no set licensing training. IF the individual force have licensing officers, they rely on certain day inputs from solicitors and associations and occasional conferences. There is no course or qualification or anything to supply officers with confidence and the tools to effectively deal with crime and disorder in terms of their objectives. Almost the same with authorities, it took me a while to locate a formal qualification for licensing.

8. Should sales of alcohol airside at international airports continue to be exempt from the application of the Act? Should sales on other forms of transport continue to be exempt?

I think that sales safe to remain exempt, the main issues are consumption of alcohol on transport and customers being drunk and abusive.

Licensing procedure

9. The Act was intended to simplify licensing procedure; instead it has become increasingly complex. What could be done to simplify the procedure?

Where would you start?

10. What could be done to improve the appeal procedure, including listing and costs? Should appeal decisions be reported to promote consistency? Is there a case for a further appeal to the Crown Court? Is there a role for formal mediation in the appeal process?

Mediation should be offered as the beginning of the appeal process at no cost, Magistrates or Crown court should be last resort

Sale of alcohol for consumption at home (the off-trade)

11. Given the increase in off-trade sales, including online sales, is there a case for reform of the licensing regime applying to the off-trade? How effectively does the regime control supermarkets and large retailers, under-age sales, and delivery services? Should the law be amended to allow licensing authorities more specific control over off-trade sales of “super-strength” alcohol?

Pricing

12. Should alcohol pricing and taxation be used as a form of control, and if so, how? Should the Government introduce minimum unit pricing in England? Does the evidence that MUP would be effective need to be “conclusive” before MUP could be introduced, or can the effect of MUP be gauged only after its introduction?

Chains such as Wetherspoons need to be part of a minimum pricing level, they are outpricing other on-licensed premises and promoting excessive drinking.

Fees and costs associated with the Licensing Act 2003

13. Do licence fees need to be set at national level? Should London, and the other major cities to which the Government proposes to devolve greater powers, have the power to set their own licence fees?

I think the licence fees are fair being as they are part of the rateable value of the premises, however, it may be an idea to add an extra fee if the premises is open in the night time economy? (instead of a late night levy, add it to the application fee or annual fee)

International comparisons

14. Is there a correlation between the strictness of the regulatory regime in other countries and the level of alcohol abuse? Are there aspects of the licensing laws of other countries, and other UK jurisdictions, that might usefully be considered for England and Wales?

1 September 2016

St Peter's Residents' Association – written evidence (LIC0104)

Rights and responsibilities

- Does the Licensing Act 2003 achieve the right balance between the rights of those who wish to sell alcohol and provide entertainment, and the rights of local people?

No.

- o What could be done to improve this?

We are a residents' association representing about 150 households in an area within the mediaeval walls of the city of Canterbury. Within this central area (only about 800 m in diameter) there is a significant concentration of pubs, clubs and bars. We have three universities and 35,000 students: this has a considerable effect on this small city with a population of about 40,000. We ourselves are inevitably close to the city centre. Indeed, within our area there is a so called 'saturation zone', where there are so many bars that the presumption by the planning department is that no more licences will be granted.

The Licensing Act 2003 has had a considerable impact on us. Although from Sunday to Thursday most pubs have closing times of midnight or earlier, the times are much later on Fridays and Saturdays. Bars and clubs are open later, usually until 2 a.m. during the week, and 3 a.m. at the weekends. However well the premises are managed, there is considerable pedestrian traffic as people leave for their homes or car parks. These people are not necessarily deliberately noisy (though some are), but having been drinking, their voices are often loud, and even loud talking is a disturbance to residents living in narrow streets in the early hours of the morning. Many of us have had to install double glazing to soundproof our bedrooms.

The closing times are later than they were before the introduction of the Act. So probably people are drinking more. This is not good for their health or their work. There are increased costs for the NHS (long-term illness and dealing with emergencies), and creates a requirement for more police resources in unsocial hours. Bar staff have to work more unsocial hours and their employers have to pay them more. No one benefits from this except the alcohol industry.

The problem is that there is competition. Pubs and clubs compete with each other and if one is open until 2 a.m., the one next door will obviously (and reasonably) want to be open until the same time. One might think that the Council would take a responsible attitude and impose earlier closing times, but they are keen to promote what they call 'the night time economy' (although the benefits of this are unquantified), as they are competing for customers with other nearby towns and cities.

The relaxations brought about by the Act have led to the normalisation of late-night drinking and the resultant anti-social behaviour, which is a sad state of affairs. It doesn't have to be this way. We would like to see closing times brought back to midnight, universally, to

exclude the possibility of competition. Although hardened drinkers would start earlier, it is likely that there would be less alcohol consumed. This would have great benefits for the country and would certainly improve the lives of local residents.

- Do local communities engage effectively in the licensing system?

They do, but it could be made easier for them.

- o How could local communities be more aware of the licensing procedure?

We are well aware of the licensing procedure: the problem is that it is so difficult for local residents to engage with it: see our next answer.

- o How could engagement with the licensing regime be made easier?

There is a great contrast between planning and licensing procedures. With planning, all new planning applications are posted on the council's website and as a residents' association we are emailed weekly with a list of new applications, and with a further list of decisions made. It is easy for local people to comment online or in writing. Those close to the site of a planning application are notified in writing and kept informed of the progress of the application. If the case officer for the application decides to grant the application, and there are more than four objections, the application has to go before a planning committee at which community groups and residents may speak.

With licensing the only notification local people have of a licensing application is a notice fixed to the premises. In our city this is printed on dark blue paper which inevitably makes it difficult to read, and sometimes the details are not clear because of the way in which the notice has been fixed to the premises. There is a licensing register on the council's website, but when one has found the premises, there is simply a list of all the activities (of which there may be 10 or 20) for which the premises will be licensed if the application is successful. We therefore cannot see what changes are being requested: the new conditions (e.g. the new licensing hours) are not highlighted. To see the actual application we have to pay a visit to the council offices, and pay a fee if we want to take away a copy.

We are told that it is a legal requirement for the process to work in this way. We would like to see a system similar to that for planning, i.e. notice of applications would be posted on a website (with the changes spelt out) with an opportunity to comment.

It is also not easy to find out about a Temporary Events Notice (TEN). Anyone applying for a TEN need give only 10 days' notice (only 5 days' notice if applying for a 'late TEN'). There is no requirement to inform anyone other than the Environmental Health Department and the Police. Only these two bodies may object and whether they do so may depend on their resources. They may not be willing to commit resources to this especially if there is the possibility of an appeal.

Crime, disorder and public safety

- Do the police have the necessary powers to prevent crime and disorder around licensed venues?

Yes.

- o If not, what would you like to see in addition to the current powers?

We think they have adequate powers: the question is whether they have adequate resources. We haven't tried dialling 999 but when we dial 101 we are connected to a call centre somewhere in Kent. Response time may be 15-30 minutes.

Licensing procedure

- Have you been affected by the licensing procedure since 2003?
- o How effective do you think this is?
- o How would you like to see this changed?
- o Would you like to see this simplified?

We think we have answered this question earlier: briefly it should be much more transparent. At present the odds are stacked in favour of the applicant.

Appealing a licensing decision

- Have you ever appealed against a licence application, or thought about doing so?
- o How easy was this for you?

Fairly easy, once we had overcome a few hurdles (e.g. finding out about the application in the first place).

- o Did you find the costs of doing this prohibitive?

No cost, except of our time and energy. However, we can envisage a situation in which an applicant engages a legal representative who is experienced in dealing with licensing applications. Looking at the minutes of Council meetings, we can see that this does often happen. If we wanted to compete on a level playing field there would certainly be costs involved.

- Would you like to see more chances to appeal a licensing decision?

There seems to be adequate chance to appeal.

- Is there a role for formal mediation in the appeal process? How effective do you think that this would be?

Yes: a mediation process would be very helpful. It would help the applicant and local people to understand each other and some difficulties might be dealt with quite easily. At present we have just the licensing committee meeting at which to come to some agreement, and in a possibly combative atmosphere

2 September 2016

Staffordshire Police – written evidence (LIC0037)

Licensing objectives

Q1. Are the existing four licensing objectives the right ones for licensing authorities to promote? Should the protection of health and wellbeing be an additional objective?

Staffordshire Police Response

It is considered the protection of public health and wellbeing should be included as a fifth licensing objective to support the Government's objective to tackle 'alcohol related public health harm'. The 'Public Health' objective would assist public health teams with their role as a responsible authority allowing licensing decisions to be made based on local population health criteria such as numbers of dependent drinkers in treatment, alcohol related mortality, ambulance call outs where alcohol is a factor etc. Greater involvement of public health in licensing matters would enhance working relations with other responsible authorities with mutual benefits for all. Such involvement would help to reduce the burden caused by problematic alcohol consumption to the health service and other responsible authorities would benefit from support in tackling problem localities and problem premises. There is good practice of this evident (Cardiff Model)

The balance between rights and responsibilities

Q3. Has the Live Music Act 2012 done enough to relax the provisions of the Licensing Act 2003 where they imposed unnecessarily strict requirements? Are the introductions of late night levies and Early Morning Restriction Orders effective, and if not, what alternatives are there? Does the Licensing Act now achieve the right balance between the rights of those who wish to sell alcohol and provide entertainment and the rights of those who wish to object?

Staffordshire Police Response

Early Morning Restriction Orders and Late Night Levy's have proved unpopular with Local Authorities. Opinion amongst local councils appears to be that they would be seen as anti-business, undermining the promotion of business interests, associated jobs and a prosperous night time economy. The EMRO also target only a small number of late night operators and therefore impacts on a small proportion of premises. The issues of pre-loading and heavy consumption until this point is not addressed with EMRO increasing the terminal hour issues.

Staffordshire Police consider current powers and procedures under the Licensing Act 2003 can be used effectively to tackle problem premises or problem locations. Effective conditions on the premises licence or revocation of the licence, can be brought about through a 'review hearing' this reduces the need for an EMRO which would create a blanket ban on the sale of alcohol for all premises.

Q4. Do all the responsible authorities (such as Planning, and Health & Safety), who all have other regulatory powers, engage effectively in the licensing regime, and if not, what could be done? Do other stakeholders, including local communities, engage effectively in the licensing regime, and if not, what could be done?

Staffordshire Police Response

Each local authority in Staffordshire has a Responsible Bodies Group, who examine and tackle alcohol licensing issues. These groups include representatives from Police, Trading Standards, Health & Safety, Fire and Rescue Service, Environmental Health and the local authority licensing team. Local community groups are currently not represented in these responsible bodies groups due to the confidential information discussed and the confidential data shared. More could be done to involve community groups in licensing decision, at present local residents are made aware of premises variation applications through display of 'local authority notices' placed adjacent to the licensed premises. It may be possible for such notification to be extended through electronic notification (email) to other identified community groups thereby providing greater involvement of interested parties in local licensing decisions.

Licensing and local strategy

Q6. Should licensing policy and planning policy be integrated more closely to shape local areas and address the proliferation of licensed premises? How could it be done?

Staffordshire Police Response

Cumulative Impact Policies are used effectively within Staffordshire and have assisted greatly in limiting the detrimental effect of excessive licensed premises within specific areas. It would be a great advantage if licensing policy and planning policy could have greater integration. The use of area special plans for long term development attempt to design the look and feel of an area. The ability to obtain license without due consideration of this long term plan can have a detrimental effect on future demand.

Crime, disorder and public safety

Q7. Are the subsequent amendments made by policing legislation achieving their objects? Do they give the police the powers they need to prevent crime and disorder and promote the licensing objectives generally? Are police adequately trained to use their powers effectively and appropriately?

Staffordshire Police Response

See response to Q3.

Licensing procedure

Q9. The Act was intended to simplify licensing procedure; instead it has become increasingly complex. What could be done to simplify the procedure?

Staffordshire Police Response

The Licensing Act 2003 did bring together a number of areas of licensing, alcohol, entertainment and late night refreshment, however this area of business is still complex. Licensing procedures could be assisted through such things as a National Register of Personal Licence Holders and shared I.T. between the police and Local Authority to enable more effective sharing of data and notifications of licence applications / variations etc.

Q10. What could be done to improve the appeal procedure, including listing and costs? Should appeal decisions be reported to promote consistency? Is there a case for a further appeal to the Crown Court? Is there a role for formal mediation in the appeal process?

Staffordshire Police Response

Formal mediation is an approach which is worth considering, however such mediation would need to be timely to be effective and not an option to extend the appeal period.

Sale of alcohol for consumption at home (the off-trade)

Q11. Given the increase in off-trade sales, including online sales, is there a case for reform of the licensing regime applying to the off-trade? How effectively does the regime control supermarkets and large retailers, under-age sales, and delivery services? Should the law be amended to allow licensing authorities more specific control over off-trade sales of “super-strength” alcohol?

Staffordshire Police Response

Off-trade sales contribute significantly to problems in the night time economy, with many persons ‘pre-loading’ prior to visiting on-licence premises. However, evidencing and attributing such problems to off-licence sales in a culpable manner would be difficult to establish.

‘super-strength’ alcohol is problematic and significantly contributes to alcohol related health problems and anti-social behaviour by street drinkers in many town and city centres. However, the complexities of competition law have prevented the compulsory removal of such products from retail sales. The ability to reference sales to a specific premises with so many licenses being present in an area is problematic.

30 August 2016

Councillor Clive Stevens – written evidence (LIC0077)

Response to House Of Lords - Licensing Objectives

I am a Councillor for a ward in Bristol called Clifton Down, we have a high student population, young professionals, family homes and homes for the elderly – a mixed, not quite balanced but vibrant community with typical problems coming from late night establishments operating from a high street close with residential homes backing on to it. I have discussed this answer with the appropriate Officer at Bristol City Council who is unable to respond due to lack of resource, we are currently going through a large redundancy programme (again).

Q1

The four existing ones objectives are fine. The issue is (lack of) enforcement and management of spill over effects after they leave the licensed premises regarding public nuisance. If a night club has a license until four in the morning and is playing music until then the enforcement of the noise volume is problematic and expensive to enforce but not impossible. The big problem between say 3am and 4am that's when the nuisance starts with people noisily walking away in groups, going to the takeaways that service the late night market, then dropping their pizza boxes in the street and some throwing up on their way home. So the nightclub is the catalyst for the public nuisance and once people leave it the council have no powers to enforce, it's down to the police and the police are interested in crime and disorder not nuisance.

Bristol has a policy of balanced communities so most licensable activities are occurring within a few yards of residential areas. The Licensing Act 2003 seemingly ignored the costs of enforcement, harm and tidying up. In these times of austerity, society can't afford the luxury of the 2003 Act. Bristol has not implemented EMROs nor Night Levies for reasons I am not party to.

You suggest a fifth objective: health and wellbeing. Given that the licensable activities that cause the most problems are the sale of alcohol and fast food, neither of which are healthy, and some doctors would call them harmful, I don't see how you can add this objective without this leading to the shutting down of such premises because their offer causes harm. Not only are they harming the residents via public nuisance but they are harming their customers with the long term effects of their products. There is no balance possible if you add this objective? It might be the right thing to do but surely not via the Licensing Act?

Q2

There is talk that it is more difficult for pubs to put on small music events especially new bands, this should be made easier and/or cheaper before 11pm. See other comments from residents of Bristol.

Q3

See other comments from residents of Bristol.

Q4

At this time of writing, we have a premises in our ward that has a license to serve refreshments until 4am (takeaways). It has a planning condition to do this until 2am set presumably on nuisance grounds. Planning Enforcement have served a notice on them to shut at 2am. At the same time the premises are applying to the Licensing Committee to vary their 4am licence to provide alcohol with takeaways and to do deliveries. The Licensing (Sub) Committee can't take account of planning conditions when awarding a license only the four objectives. Planning Dept. haven't the resource to make a representation so I have had to in this instance. I attended the Sub Committee review and they have just granted a 4am license for the delivery of alcohol (with food) even though there's still a planning condition for 2am closing .

This wasteful outcome (on council and residents time) is due partly to the lack of resources in Bristol City Council and also I'm told by the Council's Regulatory Lawyer due to the drafting of the Licensing Act and the T&CPlanning Acts. Either an oversight or what Parliament intended (unlikely). It is certainly a good way of wasting public money, upsetting locals and premises and bringing local government into disrepute.

And it gets worse. There are thousands of Temporary Event Notices (TEN) each year for £21 each. The public can't make representations and Licensing don't have the resource to look up planning conditions for each site. So a location with an 11pm condition can put in a TEN for say 2am, get it, hold the event, the residents complain and planning enforcement follow up, then a second TEN is applied for and granted and Planning could then start enforcement proceedings. Put the fee up to enable the revenue for Licensing to check planning conditions at least.

Q5

There is no obvious strategy. It seems that this is done randomly and the statement from Government "the Act is being used effectively" shows they have no idea of what's going on in reality.

Q6

Yes, yes, yes. How to do it? You tell me.

Q7

No – the police are rightly concerned with crime and disorder. Public nuisance is primarily a local authority concern.

Q8

No comment

Q9

No comment

Q10

Residents and Councillors should be present and be able to speak at appeals. They can at planning appeals.

Q11

Because Government is unwilling to admit that alcohol is actually harmful it is developing all these costly ways of skating around the real issue. Tax is part of the solution but see my answer to Q14 below. If alcohol were taxed appropriately / minimum price then half these problems wouldn't occur. One goes to a nightclub having consumed some drinks in a pub or at home. If the price of off-sales were higher people would drink less, still enjoy it, cause less nuisance and be less of a strain on the NHS.

Q12

See answer to Q11. Just tax alcohol and use some of the revenues to support those worse hit e.g. microbreweries, small pubs and the NHS.

Q13

The fees and costs should cover all the costs of licensing including the committees, enforcement, litter, police, NHS, and if necessary harm to the neighbours (sleepless nights). If alcohol were taxed higher then some of the costs that local authorities, police and NHS have to bear could be funded from that and the costs of alcohol licenses be reduced. A night time levy could be part of this, perhaps variable depending on the location.

Q14

Yes. I've recently been in Norway with the highest alcohol taxes in Europe. Yet they still have big alcohol problems. It's down to national culture. That culture is then reinforced by regulation and especially minimum drinking age.

To treat alcohol maturely you need to drink alcohol with food in small amounts but regularly (e.g. most evenings, maybe a glass of wine). You learn this behaviour from your parents. If alcohol is not drunk at home in a controlled way then it becomes something special and naughty, you then learn from your peer group as a teenager to drink as much as possible of the cheapest drink as it's socially the thing to do. That triggers the wrong association. How you break that I don't know.

1 September 2016

Suffolk Coastal District Council and Waveney District Council – written evidence (LIC0029)

JOINT RESPONSE OF SUFFOLK COASTAL DISTRICT COUNCIL AND WAVENEY DISTRICT COUNCIL TO THE CALL FOR EVIDENCE

The evidence is offered by our two councils, based on our experience as licensing authorities since the act came into force in 2005. Suffolk Coastal and Waveney are neighbouring districts which have worked in partnership and shared the services of a Chief Executive, Senior Management team and other officers for a number of years, and are now considering a formal merger. Our districts between them cover most of East Suffolk. Although a significant number of our residents live in the coastal towns of Lowestoft (pop. 73,000) and Felixstowe (pop. 23,000) much of the area is rural, containing a number of villages and market towns. We therefore have a broad experience of the workings of the Licensing Act in both rural and urban settings; this includes the significance of tourism as a factor.

As Cabinet members responsible for our licensing services we have drawn on the expertise of our licensing teams and legal advisers, and we have also spoken to our councillor colleagues on our licensing committees, who have sat on the 3 member sub-committees that make most contested licensing decisions.

In the case of some of the Select Committee's questions, we are unable to offer evidence based comments, and so must leave it to others to comment; however there are 9 questions where we do have relevant experience; these are set out below with our answers and evidence.

1. Are the existing four licensing objectives the right ones for licensing authorities to promote? Should the protection of health and wellbeing be an additional objective?

In our experience the existing licensing objectives are essentially straightforward, and are accepted as fair and sensible by applicants and objectors (responsible authorities and other persons in the words of the act.) Problems have arisen from time to time with the precise definition of public nuisance; residents are often surprised to be told that it is not intended in most cases to include traffic and parking issues, which are rather a matter for planning decisions. In some cases an alleged nuisance may be too localized in its effect to be 'public'. We want to give every reasonable support to the promotion of health and well-being as a public policy objective, but we are not persuaded that it would be sensible for England to follow the Scottish example of making the promotion of health a fifth licensing objective; in our opinion this would add an unnecessary complication to the process, without making a positive practical difference

2. Should the policies of licensing authorities do more to facilitate the enjoyment by the public of all licensable activities? Should access to and enjoyment of licensable activities by the public, including community activities, be an additional licensing objective? Should there be any other additional objectives?

Our councils' statements of licensing policy (in common, we are sure with other councils) do refer to the positive contribution that licensed premises make, and in practice our sub-committees are able to take into account the enjoyment by the public of licensable activities, We suggest that to make it a statutory licensing objective could cause objectors to think that the decision making process was unreasonably weighted against them, and would decrease public confidence in the licensing system.

3. Has the Live Music Act 2012 done enough to relax the provisions of the Licensing Act 2003 where they imposed unnecessarily strict requirements? Are the introductions of late night levies and Early Morning Restriction Orders effective, and if not, what alternatives are there? Does the Licensing Act now achieve the right balance between the rights of those who wish to sell alcohol and provide entertainment and the rights of those who wish to object?

In our opinion the Live Music Act has led to an extensive and generous relaxation of controls on entertainment, which are as yet not widely appreciated by the public. In 2011 the previous government issued a consultation entitled 'Regulated Entertainment'. We were so concerned by some of its ideas that we wrote to our local MPs as well as responding to the consultation, and we were relieved when the more radical deregulatory ideas were not followed through. It seemed to us then that central government had been persuaded that all of the problems arising in this area are traceable to alcohol, and that entertainment licensing is unnecessary red-tape. We believe this to be wrong. We have to acknowledge now that we have not been made aware of any serious problems arising out of the implementation of the Live Music Act, but we suggest that there should be a breathing space while the effect of this deregulation is assessed.

We consider that the Licensing Act provides a good process, where regulation of the licensable activities is essentially light touch, but applicants are expected to anticipate problems and plan how to deal with them via their operating schedules. Decision making is speedy, accessible and democratic, and there are remedies available thorough the review process if problems occur. The benefits of this process would be put at risk by excessive deregulation.

Our councils have no experience of levies or EMROs and so must leave others to comment on those issues,

4. Do all the responsible authorities (such as Planning, and Health & Safety), who all have other regulatory powers, engage effectively in the licensing regime, and if not, what could

be done? Do other stakeholders, including local communities, engage effectively in the licensing regime, and if not, what could be done?

Generally speaking, responsible authorities have engaged with the licensing process in a good or satisfactory way. We can also point to many licensing hearings where the concerns of some in the community have been very well articulated. One observation that must be made, though, is that reviews called by a resident(s) are very rare. This may be a good thing if it suggests that the existence of a review procedure is having a deterrent effect, and we would in any case hope that the most serious cases were taken up by responsible authorities. However, we have been concerned to note some anecdotal evidence that residents have wanted to bring reviews but lacked the confidence to do so.

5. Licensing is only one part of the strategy that local government has to shape its communities. The Government states that the Act “is being used effectively in conjunction with other interventions as part of a coherent national and local strategy.” Do you agree?

Broadly speaking, yes. Our councils certainly have made efforts to ensure that liaison occurs within the council between our licensing teams, environmental health officers, anti-social behaviour officers, the Police and other agencies, and this occurs proactively, rather than just formally when licence applications are made.

6 Should licensing policy and planning policy be integrated more closely to shape local areas and address the proliferation of licensed premises? How could this be done?

As we say in answer to question 9 below, misunderstanding of the differing roles of planning and licensing control is one of the commonest reasons for dissatisfaction and confusion on the part of both applicants and objectors. On reflection we think that formal linkage between planning and licensing decisions would create as many problems as it would solve. As far as policy is concerned, planning is about the character and use of land, and the spatial planning needs of the community, whilst licensing addresses in more detail the effect of licensable activities and the premises in which they take place on the community. It therefore seems inevitable that licensing policies will be more detailed and localized, but we agree that efforts should be made to avoid any unnecessary contradiction with planning policies. We would certainly want to give every encouragement to liaison between planners and licensing officers.

9. The Act was intended to simplify licensing procedure; instead it has become increasingly complex. What could be done to simplify the procedure?

We are rather puzzled by this question. In our view the licensing system is as straightforward as it can be. When applications are made, there is a fixed consultation period and then, if necessary, a hearing must take place within 20 working days. In our experience when

dissatisfaction is expressed by participants in the licensing process it is usually for one of the following reasons

- a) *If a representation is ruled irrelevant because it does not relate to one of the licensing objectives.*
- b) *If the distinction between licensing and other regulatory codes such as planning is not understood*
- c) *As a result of the minimal publicity requirements that arise. Residents are often surprised to be told that the council is only obliged to publicise an application on its website, and that the applicant need only put a sign on the premises and advertise in a local newspaper. This can be a problem, particularly in our remoter rural areas, where, with the best will in the world, a sign may not be seen by many people, and an advert may not come to the attention of those likely to be affected.*

There is little that can be suggested in responding to this. We doubt that the government would wish to return to the very broad discretion that councils had in dealing with entertainment licensing prior to 2005 under the Licensing Act 1964, and that is something that we would not argue for ourselves. We deal with the planning/ licensing issue under question 6. With regard to publicity, we do informally urge applicants to engage voluntarily with their communities and it would be good if this approach were backed up more by the statutory guidance. We also think that there is a case for involving Parish Councils in the process, perhaps not as responsible authorities, but it would not trouble applicants unnecessarily if Parish/Town Councils had to be notified of application.

10. What could be done to improve the appeal procedure, including listing and costs? Should appeal decisions be reported to promote consistency? Is there a case for a further appeal to the Crown Court? Is there a role for formal mediation in the appeal process?

In our view this is one of the most important issues raised by this document

Procedure

We have been seriously concerned by delays in the cases where our decision has been subject to appeal. We have had four cases over the last few years. One took 9 months to come to trial (admittedly there were procedural complications), another two were heard five months after our decision, the fourth case was resolved without a full hearing, but it was delayed in its early stages because the court staff were not sure that a valid appeal had been submitted in time, but did not take steps to resolve this issue with any urgency. In two of these cases the start of the trial was delayed on the day because the lay bench had to spend time reading the bundle of documents, although we had sent it to the court several days beforehand as required. In one case this resulted in the matter being adjourned part heard.

We are well aware that the court service, like our councils is affected by constraints on the public finances, and we do not want to be unfair in our criticisms. Our legal adviser draws our attention to articles published in the Journal of Licensing by Philip Kolvin QC in March 2014 and March 2015, which seem to us to make many excellent suggestions. One significant cause of delay, which these articles indicate is nationwide, is the court's insistence on fixing Case Management Hearings (CMHs) a couple of months after the lodging of the appeal, and not listing the appeal for a full hearing until after the CMH. A CMH is often unnecessary, especially if the appellant is legally represented. Although those of us who have attended the magistrates' court have been impressed by the care and attention which lay magistrates give to these matters, we agree with Mr Kolvin QC that there is a strong case for the use of legally qualified District Judges.

Further appeal to the Crown Court?

We hope that the Select Committee will not be persuaded to recommend this. Under the old (Licensing Act 1964) regime the initial decision lay with the Magistrates' Court, with an appeal to the Crown Court. It is quite logical, now that initial decisions are made by councils, for there to be a single appeal this time to the Magistrates' Court, with the possibility, as before, of a case going to the High Court on a point of law. We have been advised that case law requires the court to respect the fact that the initial decision makers are accountable to the electorate, and only to overturn a decision if satisfied that it is wrong. We suggest that this admirable approach is compromised if a further appeal which puts factual issues at large again is allowed. Our experience has been that local residents who have participated in our hearings, notwithstanding their strength of feeling, do not relish giving evidence in court, and have often needed a lot of reassurance about it.

Costs

We understand that the latest case law means that a magistrates' court will not usually award costs (to any party) unless there has been unreasonable conduct, or a successful appellant demonstrates that they will experience significant financial difficulty without an award. This seems to us to be fair and even handed.

Mediation?

We understand that our licensing officers often undertake informal mediation if it appears to them that an applicant and a (small) number of objectors are not far apart, but we presume that the question relates to appeal situations. Our councils have positive experience of mediation as a means of dispute resolution in civil litigation. However, there may not be as many mediators experienced in licensing and regulatory matters as there are in business/family matters. It must be harder to mediate a licensing matter which has reached the appeal stage when there may be a number of objectors with different perspectives, as well as the applicant and the council, whose democratic decision should not lightly be overturned. We would never discourage formal mediation, but would consider any compulsion on the parties to be unwise.

13. Do licence fees need to be set at national level? Should London and the other major cities to which the Government proposes to devolve greater powers, have the power to set their own licence fees?

We acknowledge that national fee fixing creates consistency and fairness which is appreciated by the leisure industry; our only comment is that after five years, it is surely time for fees to be revised.

Councillor Mary Rudd, Cabinet Member for Community Health and Safety, Waveney DC

Councillor Steve Gallant, Cabinet Member for Community for Health, Suffolk Coastal DC

30 August 2016

Sunderland Health and Wellbeing Board – written evidence (LIC0110)

LICENSING OBJECTIVES

1. *Are the existing four licensing objectives the right ones for licensing authorities to promote? Should the protection of health and wellbeing be an additional objective?*

1.1 The four existing licensing objectives allow responsible authorities to make representations in a number of different ways. However we would encourage the wording around the ‘Protection of Children’ to be extended to add ‘the protection of children and vulnerable people’ in a similar form to the objective under the Gambling Act 2005.

1.2 Yes the introduction of a health objective would enhance the opportunities for Public Health partners to participate in the licensing process as a range of health data sources, from alcohol-related hospital admissions statistics, to ambulance data, demonstrate that alcohol has a huge impact upon health and it is clear that factors linked to health and well-being should be taken into account as part of the licensing process. However, if a health and wellbeing objective is enacted then Public Health should not be the only partner that can participate in the licensing process and Clinical Commissioning Groups and Foundation Trust would need to become Responsible Authorities, due to Public Health being a function of local government and not an NHS organisation.

1.3 In our view, the existing Licensing Act requires a fundamental overhaul, which gives ‘responsible authorities’ the powers to decide when and where alcohol could be sold, based upon clear objectives, including the protection of health and wellbeing.

2. *Should the policies of licensing authorities do more to facilitate the enjoyment by the public of all licensable activities? Should access to and enjoyment of licensable activities by the public, including community activities, be an additional licensing objective? Should there be any other additional objectives?*

2.1 We do not feel that there should be an additional licensing objective linked to access to and enjoyment of licensable activities by the public. The current provisions of the Licensing Act are sufficient for the enjoyment of licensable activities. The use of Temporary Event Notices facilitates the operation of community events.

2.2 From an alcohol perspective, it is clear that communities across Sunderland feel that they already have more than enough access to licensed premises; the North East Alcohol Behaviour and Perceptions Survey in 2015 showed that 96% of Sunderland residents agreed that there were enough (56%) or too many places selling alcohol (40%).⁴⁵⁴

2.3 Balance’s annual Public Perceptions Survey provides a compelling insight into public opinion in the Sunderland area. The findings from recent questionnaires demonstrate that people across the region are overwhelmingly opposed to the explosion of availability and

⁴⁵⁴ Balance, Public Perceptions Survey 2015

that communities need a greater voice in local licensing decisions. Key findings were as follows:

- 58% of respondents supported restricting alcohol sales in off-licenses and supermarkets to between 10am-10pm, compared to only 14% who backed a more flexible approach;⁴⁵⁵
- 63% of Sunderland residents felt that “the drunken behaviour of others” put them off a night out in our town and city centres;⁴⁵⁶
- Only 1% of Sunderland residents said that *there are not enough places that sell alcohol*
- 48% said *opening hours should be shortened*, a higher proportion when compared to the North East as a whole at 37%
- When asked to what extent they agreed or disagreed that *the more freely alcohol is available the more people will drink*, 74% said they *agreed*

2.4 Respondents were asked, in their view, how acceptable or unacceptable it is to be able to buy alcohol in various different settings across Sunderland:

- over two in three residents (68%) feel that it is *unacceptable* to be able to buy alcohol in the foyer of a multiplex cinema
- two in five (39%) of residents feel it is *unacceptable* to be able to buy alcohol at a bed and breakfast
- 88% of residents feel that it is *unacceptable* to be able to buy alcohol at a hairdressing salon
- 95% of residents feel it is *unacceptable* to be able to buy alcohol at a soft play area.
- 85% of residents feel it is *unacceptable* to be able to buy alcohol at a motorway service station
- four in five (79%) feel that it is *unacceptable* to be able to buy alcohol at a garage forecourt

2.5 Taking this into account, we believe that we urgently need a licensing system which listens to local communities, protects our health and well-being and fosters vibrant and diverse local economies, with more powers been given to local people to decide when and where alcohol is sold, rather than introducing new objectives, which would potentially support the further expansion of outlet density within our local communities.

THE BALANCE BETWEEN RIGHTS AND RESPONSIBILITIES

3. *Has the Live Music Act 2012 done enough to relax the provisions of the Licensing Act 2003 where they imposed unnecessarily strict requirements? Are the introductions of late night levies and Early Morning Restriction Orders effective, and if not, what alternatives are there? Does the Licensing Act now achieve the right balance between the*

⁴⁵⁵ Balance Public Perceptions Survey 2015

⁴⁵⁶ Balance Public Perceptions Survey 2015

rights of those who wish to sell alcohol and provide entertainment and the rights of those who wish to object?

3.1 We have no evidence that the Live Music Act has been anything but successful in its aims.

3.2 Cumulative Impact Policies - While cumulative impact policies (or CIPs) are not mentioned specifically in the Licensing Act, the powers to introduce them are set out in statutory guidance issued under section 182 of the 2003 Act. They offer licensing authorities a tool to restrict the number of licensed premises in a specifically defined area if they evidence that a concentration of premises is having a cumulative impact on the promotion of one or more of the current licensing objectives, such as preventing public nuisance or crime and disorder.

3.3 As such they effectively place the onus of proof on the applicant, who then needs to demonstrate, to the satisfaction of a review panel, that their specific proposal will not compromise licensing objectives. In practice, this has had the effect of discouraging applications where the likelihood of success is low (e.g. city centre areas with an already high concentration of outlets and established ‘trouble hot-spots’). It has also prompted applicants to give serious consideration as to how best to ‘upgrade’ the quality of their application and discourages in particular the pubs known as ‘vertical drinking establishments’, in favour of more upmarket restaurants and wine bars. A major city in the North East of England has attributed much of its success in ‘re-branding’ its city centre to the operation of a CIP⁴⁵⁷.

3.4 Late Night Levys - In smaller local authorities where premises may be of limited rateable value the application of a Late Night Levy is unlikely to raise sufficient revenue to make the introduction viable. No local authority has introduced an Early Morning Restriction Order which speaks for itself.

3.5 The Licensing Act is unbalanced between the trade and members of the public who wish to object to a premise. The licensed trade have access to solicitors and barristers to argue their case while the public may have difficulty in putting together a structured case.

3.6 Early Morning Restriction Order - The lack of a workable Early Morning Restriction Order is a clear strategic failing within the Act. Many local authorities and police forces would like to be able to use this tool, and restricting excessively late closing times is known to significantly reduce alcohol related crimes and associated police costs.⁴⁵⁸ For example, a modest reduction in trading hours in Newcastle (NSW, Australia) in 2008 was shown by independent evaluation to have had convincing and compelling benefits:

- an internationally unprecedented 37% fall in alcohol-related non domestic assaults;

⁴⁵⁷ Base on in depth interviews with police and licensing personnel about Newcastle’s CIP which has been in place since 2011/12.

⁴⁵⁸ Foster. J., Charalambides. L., (2016) [The Licensing Act \(2003\): its uses and abuses 10 years on](#). Institute of Alcohol Studies. Page 127

- a 50% reduction in night time street crime; and
- a 26% reduction in related hospital ED admissions.⁴⁵⁹

3.7 On the contrary, as experience from localities such as Blackpool and Hartlepool has shown, it is currently almost impossible to curb opening hours through the introduction of EMROs, which are far too inflexible and open to industry challenge.

3.8 Taking all of this into account, the evidence suggests that both EMROs and Late Night Levies need rebalancing in favour of local authorities and communities.

4. Do all the responsible authorities (such as Planning, and Health & Safety), who all have other regulatory powers, engage effectively in the licensing regime, and if not, what could be done? Do other stakeholders, including local communities, engage effectively in the licensing regime, and if not, what could be done?

4.1 In Sunderland there is good representation from the Responsible Authorities in the licensing regime. Other fora such as Pubwatch and trade groupings including Business Improvement Districts makes some contributions. There is a challenge to ensure consistent engagement from all of the responsible authorities in the licensing process, with involvement from child protection / safeguarding particularly patchy.

4.2 Public Health would welcome the opportunity to engage more actively in the licensing process, but capacity remains an issue, alongside the absence of a health and well-being objective.

4.3 It has also been indicated that planning and licensing processes should be more aligned, with the view that applicants should not be granted a license, until they have got planning permission to open for the hours stated on a licensing application.

4.4 There is limited scope for public interaction. Public engagement is usually restricted to issues with individual premises.

LICENSING AND LOCAL STRATEGY

5. Licensing is only one part of the strategy that local government has to shape its communities. The Government states that the Act “is being used effectively in conjunction with other interventions as part of a coherent national and local strategy.” Do you agree?

5.1 The act is a limited and cannot be used to be reactive to the abuse of license holders. It needs health input with Public Health enabled to engage in Planning/ Licensing matters for the betterment of the public health/ greater good. Fundamental change in the act is needed to make it a robust pro-active piece of legislation that will fundamentally change how society deals with the delivery of alcohol to its population.

5.2 The Licensing Act allows effective action to be undertaken in relation to individual premises that cause particular problems in relation to the licensing objectives. The Act does

⁴⁵⁹ Kypri. K., Jones. C., McElduff. P., Barker. D., (2011) [Effects of restricting pub closing times on night-time assaults in an Australian city](#). Addiction.

not address the wider social and health problems associated with the price, availability and marketing of alcohol for example licenced premises promote and product place alcohol, especially supermarkets and off licences.

5.3 The Act does not address the issue of alcohol being only available in one part of a supermarket/ store away from essential food items and away from checkouts. The rationale is that children and vulnerable adults should not see alcohol advertised and promoted alongside core food items e.g. wine on offer next to checkout or at end of aisles. People should specifically go to the “alcohol aisle” to purchase such items, this would aid unnecessary and unplanned consumption that product placement techniques are known to promote. Such advertising and product placement techniques normalise the buying of alcohol akin to essential food products and potentially teaches children alcohol is as important in adult life as the loaf of bread. It is also a challenge for those fighting addiction to get essential food items without temptation of alcohol placement. Licencing should have powers to remove alcohol licences to premises that breach any guidance developed. Equally advertising should be banned by supermarkets promoting alcohol instead of food products , such adverts could be taken as a breach of licence .

5.3 The development of the Licensing Act in recent years has included a shift towards crime and disorder issues, with the Modern Crime Prevention Strategy continuing this trend. However, from a wider perspective, the Government has failed to introduce a coherent and evidence based approach to alcohol harm reduction at a national level, particularly through the lack of any meaningful policy to address the impact of cheap, strong alcohol.

5.4 Sunderland has recently developed a strong approach to alcohol harm reduction, using the Statement of Licensing Policy (SLP) to set a clear and positive vision for the development of the night time economy, with health and well-being (in addition to the four existing licensing objectives) at the heart of the local strategy.

5.5 At the same time, it is clear that there are tensions between licensing authorities and counterparts in economic development / planning departments and it would helpful if the Government provided more national leadership and powers to reflect the adverse harms that alcohol can have upon our local communities, as well as the economic benefits.

6. *Should licensing policy and planning policy be integrated more closely to shape local areas and address the proliferation of licensed premises? How could it be done?*

6.1 Yes, we believe that licensing and planning policies should be better integrated, although it would not necessarily make a significant impact on the proliferation of licensed premises, which is facilitated by the ‘presumption to grant’ in the Licensing Act 2003. Currently the Licensing Act does not permit the Licensing Authority to reject an application where the premises use or permitted hours are contrary to planning legislation. An application should only be valid where the planning permission is consistent with the licence application.

CRIME, DISORDER AND PUBLIC SAFETY

7. Are the subsequent amendments made by policing legislation achieving their objects? Do they give the police the powers they need to prevent crime and disorder and promote the licensing objectives generally? Are police adequately trained to use their powers effectively and appropriately?

7.1 Amongst others, the Police Reform and Social Responsibility Act (2011) made the following changes:

- It made local authority licensing teams a responsible authority in their own right: This has been very beneficial, and many local authorities use this well to uphold the local Statement of Licensing Policy.
- Health bodies were designated a responsible authority: this was a welcome step in the right direction, but health is hampered by not having a specific objective.

7.2 Regarding police powers to prevent crime and disorder, the changes, which include additional powers of entry for the police, have been largely positive and have allowed police colleagues more flexibility in achieving their objectives. However, feedback from local partners suggests that as it stands, there is insufficient training to ensure that powers are used to their full potential. With this in mind, it has been suggested that the National College of Policing should be encouraged to create and implement a standardised training package as soon as possible.

LICENSING PROCEDURE

8. The Act was intended to simplify licensing procedure; instead it has become increasingly complex. What could be done to simplify the procedure?

8.1 In many ways, the current Licensing Act has simplified the licensing regime, particularly by combining alcohol and entertainment issues. There is also a consensus that the Act has fostered more effective partnership working, both between individual regulatory bodies, and with the licensed trade. In general, the alterations to the Act have addressed deficiencies and problems. Some areas within the Act were originally too focused on tourism and the sociable benefits of licensing, while paying too little attention to the problems that can arise. However, the ‘presumption to grant’ licenses remains a huge challenge, putting far too much power in the hands of the industry, whilst limiting the ability of responsible authorities to control when and where alcohol is sold at a local level.

8.2 The current licensing system allows a degree of scrutiny for applications. Any simplifying of the regime could only be achieved by reducing the level of scrutiny to the detriment of the licensing objectives.

9. Should sales of alcohol airside at international airports continue to be exempt from the application of the Act? Should sales on other forms of transport continue to be exempt?

9.1 It is a real anomaly that the Licensing Act does not apply airside at international airports, as the promotion of licensing objectives is just as relevant in these locations. In fact

there are potentially additional risks related to passengers being drunk and unruly within this context. Indeed, recent figures showed that 422 people were held on suspicion of being drunk at an airport or on a plane in the last two years.⁴⁶⁰ With this in mind, it would make absolute sense to bring sales of alcohol airside under the jurisdiction of the responsible authorities in the licensing process.

9.2 Regarding other forms of transport, the sale and consumption of alcohol on trains can cause specific problems, often resulting in additional preloading or on-route drinking. In some areas, large groups have been known to buy excessive amounts of alcohol from the off-trade, drinking on trains while traveling to their destination on a Friday or Saturday night. They then arrive in a very intoxicated state, causing significant problems from a crime and disorder and health perspective. Colleagues have noted that this is a particular problem on the east coast mainline, with large groups of revellers (often hen and stag parties) traveling between cities such as Newcastle and York, consuming large quantities of alcohol and disturbing services for other passengers.

9.3 Again, it would be helpful to regulate the sale of alcohol on trains and other forms of transport, much more effectively, with the Government prescribing certain conditions, whilst allowing some local flexibility to tackle particularly problematic routes.

10. *What could be done to improve the appeal procedure, including listing and costs? Should appeal decisions be reported to promote consistency? Is there a case for a further appeal to the Crown Court? Is there a role for formal mediation in the appeal process?*

10.1 The court system currently in use is all that we can work with. As most matters under the Licensing act are considered administratively by officers or at Committee the number of appeals to the Magistrates' Court is minimal. It is unclear what value a further appeal to the Crown Court could have except increase the cost of the process.

10.2 According to partners across the North East, the appeals procedure is open to abuse, with significant room for improvement. For example, when a licensing committee orders a license revocation, the premises in question can continue trading, pending the result of an appeal to Magistrates – a process which can last six months or more after the initial committee hearing.

10.3 In effect, this enables poorly run premises and / or unscrupulous license holders to use the appeals process as a 'stay of execution', with many continuing to pose challenges to local partners and communities in the meantime. With this in mind, we believe that there should be a process of interim revocation, pending appeal, which would effectively implement an immediate ban on the sale of alcohol. This would admittedly necessitate a speeding up of the appeals process; but more importantly, it would protect local communities from further problems during the appeal period and militate against the abuse of the overall system.

⁴⁶⁰ [Airport alcohol sales to be 'examined' by Lord Ahmad](#). BBC news

10.4 The better reporting of appeal decisions would also be beneficial, and this could be aided by updating the Section 182 Guidance with case law developments so that it adequately reflects the practical application of the Act. There is a case for exploring the use of mediation, but local authorities should not be pushed towards unnecessary compromise, when they have a clear duty to uphold and promote the licensing objectives in the interests of the local community.

10.5 Any appeal decisions should be published with a guide for officers and Elected Members in their decision making.

10.6 Before any application is referred to a Committee mediation is usually undertaken to see if objectors and applicant can come to some compromise negating the need for the Committee. A formal mediation process therefore seems redundant.

SALE OF ALCOHOL FOR CONSUMPTION AT HOME (THE OFF-TRADE)

11. *Given the increase in off-trade sales, including online sales, is there a case for reform of the licensing regime applying to the off-trade? How effectively does the regime control supermarkets and large retailers, under-age sales, and delivery services? Should the law be amended to allow licensing authorities more specific control over off-trade sales of “super-strength” alcohol?*

11.1 The context in which we consume alcohol has changed significantly over recent years, with massive shifts in levels of consumption, availability and pricing. Since the 1950s, the average annual intake of alcohol per adult in the UK has risen from five litres to 9.65 litres in 2012/13 and this is largely attributable to wider availability. Whereas in the past, alcohol sales were confined to off-licenses, pubs and clubs, today alcohol is available 24/7, 365 days of the year, in locations as diverse as petrol stations and soft play areas and via services such as ‘Dial-a-Drink’, which deliver alcohol straight to your front door. At the same time, alcohol has become much more affordable. These shifts have contributed to a striking increase in alcohol-related harms across the North East, which suffers from some of the highest rates of alcohol-related hospital admissions, mortality and morbidity.

11.2 In the North East and across England as a whole, we are increasingly choosing to drink at home. This is explained, at least in part, by the disparity in price between the on and off-licensed trades; alcohol bought from off-licenses now costs on average one third of the cost of alcohol bought from the on-trade. This is discussed in 5.2 and 5.3 of this document.

11.3 In 2005 when the Licensing Act came in to force Sunderland had 621 Premises Licenses, now Sunderland has 941 Premises Licenses, of which 345 are off licenses.

11.4 Since the Introduction of the Licensing Act 2003 Sunderland has seen 146 additional premises become off licences. Many small retailers now see provision of alcohol as an essential part of their business viability. The Licensing Act 2003 is poorly equipped to deal with the off-trade and more needs to be done to regulate and reform this area of the licensing regime. In this context, there is much that we could learn from Scotland; for

example, the Scottish Licensing Act has been rebalanced to acknowledge the fact that the vast majority of alcohol is consumed at home. This has seen the introduction of a ban on multi-buys, restricting alcohol related products to one part of a store, the restriction of off-trade hours to 10am until 10pm, and the proposed introduction of minimum unit pricing (although is yet to be implemented, pending legal challenge by the alcohol industry).

11.5 There were no 24 hour licenses before the introduction of the Licensing Act, and now Sunderland has currently have about 9 premises with 24 hour licences, two of which are Supermarkets and the other are petrol stations. Most of the large retailers sell a significant volume of alcohol with product displayed throughout the store. Most large retailers have systems and procedures to comply with the licensing objectives including underage sales. This is not always the case with smaller retailers.

11.6 Underage sales persist but reporting is sporadic. The need for authorisation under the Regulation of Investigatory Powers Act to conduct test purchase exercises limits the amount of enforcement undertaken.

11.7 We have no information on delivery services, however home delivery services are also difficult to regulate under the Act. Some local authorities have produced additional guidance and conditions for operators to ensure that they comply with the Act, particularly regarding sale to minors and sales to drunks; although this can be challenging to enforce. While off-trade hours in Scotland are limited to 10am – 10pm, Scottish hours for home delivery services are slightly different, with a ban between midnight and 6am. This does however still allow for greater limits on home delivery during the period which could potentially be the most problematic.

11.8 The sale of super-strength alcohol is often associated with problem drinkers and could be addressed with a new or amended licensing objective protecting vulnerable individuals.

PRICING

12. *Should alcohol pricing and taxation be used as a form of control, and if so, how? Should the Government introduce minimum unit pricing in England? Does the evidence that MUP would be effective need to be “conclusive” before MUP could be introduced, or can the effect of MUP be gauged only after its introduction*

12.1 There is a large and significant body of international evidence which demonstrates that the price and affordability of alcohol is the key factor in driving consumption. In the 2009 Global Strategy, the World Health Organisation recommends introducing pricing policies to reduce alcohol-related harm and recognises the option to “establish minimum prices for alcohol where applicable” as an appropriate action.

12.2 Furthermore, Minimum Unit Price is already working in several countries, including Canada. Figures from British Columbia indicate that a 10% increase in average minimum

price would result in a fall in consumption of 8%⁴⁶¹; a 9% reduction in alcohol specific hospital admissions⁴⁶²; a 32% reduction in wholly alcohol caused deaths⁴⁶³; and a 10% fall in violent crime.⁴⁶⁴ In addition, research commissioned by the UK Government revealed that the introduction of MUP would be significantly more effective than banning below-cost sales.⁴⁶⁵ According to this work:

- After 10 years, a ban on below cost sales would save 14 lives, compared to 960 lives saved with the introduction of MUP at 50p;
- In the first year of implementation, a ban on below cost sales would reduce crimes by 900, whilst an MUP at 50p would result in a fall of 50,700 crimes.
- After 10 years, a ban on below cost sales would save an estimated £77m, whilst the equivalent figure for MUP at 50p is £5.1 billion.⁴⁶⁶

12.3 In Sunderland, the cheapest, strongest alcohol is responsible for some of the greatest problems in our local communities. Although more affluent groups of the population tend to drink at higher levels, the people in our most deprived communities suffer from the worst alcohol-related harms - harmful drinkers on the lowest incomes spend on average almost £2700 a year on alcohol, with 41% of the alcohol they consume purchased for less than 45 pence per unit.⁴⁶⁷ These are the people who end up in hospital time and time again and die prematurely, whilst their families pay the price of cheap alcohol.

12.4 Alcohol is 54% more affordable today than in 1980.⁴⁶⁸ Successive cuts and freezes to duty since 2012 have exacerbated this problem: beer duty is now 14% lower than in 2012, while cider and spirits duty have each fallen by 6%.⁴⁶⁹ Raising the price of alcohol through real terms increases in duty is necessary to reverse these dangerous trends.

12.5 However, it is not just the level, but also the structure of alcohol taxes that matters. Because of anomalies in the duty system, 7.5% ABV ciders attract the lowest duty per unit of

⁴⁶¹ Stockwell, T., et al. (2012), [The Raising of Minimum Alcohol Prices in Saskatchewan, Canada: Impacts on Consumption and Implications for Public Health](#). American Journal of Public Health

⁴⁶² Stockwell, T., et al. (2013), Minimum alcohol prices and outlet densities in British Columbia, Canada: Estimated impacts on alcohol attributable hospital admissions. American Journal of Public Health

⁴⁶³ Zhao, J., et al. (2013), [The relationship between changes to minimum alcohol price, outlet densities and alcohol-related death in British Columbia, 2002-2009](#). Addiction.

⁴⁶⁴ Stockwell, T., et al. currently unpublished research on the effects of minimum pricing on crime in Canadian provinces

⁴⁶⁵ University of Sheffield (2013), [Modelled income group-specific impacts of alcohol minimum unit pricing in England 2014/15](#)

⁴⁶⁶ Brennan, A., Meng, Y., Holmes, J., Hill-McManus, D. and Meier, P. (2014) 'Potential benefits of minimum unit pricing for alcohol versus a ban on below cost selling in England 2014: modelling study', BMJ,

⁴⁶⁷ Effects of minimum unit pricing for alcohol on different income and socioeconomic groups: a modelling study Holmes et al May 2014

⁴⁶⁸ Health & Social Care Information Centre (2015), Statistics on Alcohol England, 2015.

⁴⁶⁹ Institute of Alcohol Studies (2016), *Budget 2016 analysis*.

any product: 5p per unit, compared to 18p per unit for a beer of equivalent strength. This has given rise to a market for industrial ‘white’ ciders: sold in 3 litre plastic bottles and closely linked to harmful, dependent and underage drinking.⁴⁷⁰ Tax policy could be used to have a more targeted focus on such products through narrower bands - at present ciders between 1.2% and 7.5% ABV are taxed at the same rate.

12.5 MUP is not a silver bullet, and a combination of tax and MUP would be the optimal approach. This would ensure that the cheapest alcohol, which disproportionately causes the greatest harms, increased in price, while ensuring that the Treasury benefited from this rather than the alcohol producers.

12.6 Case study from Sunderland:

12.6.1 RP is a 47 year old male living in Sunderland. At the age of 22 his father died suddenly, as a result, RP’s drinking spiralled out of control and he locked himself in his house and drank to numb the pain of grieving for his father. He drank approximately 3 bottles of ‘frosty jacks’ each day or any other cider that that he could afford to buy.

12.6.2 His drinking caused a strain on his relationship with his family, and caused his relationship with his wife and children to breakdown. He began to self-harm, and became very depressed as a result of his drinking. His mother became increasingly concerned about his drinking and contacted Turning Point for help. He was assessed and referred to the Huntercombe Centre where he completed an inpatient detox. After his detox he went to live with his mother who is very supportive to ensure that he had the support to remain abstinent. He continues to attend Lifeline for on-going re-lapse prevention support.

12.6.3 RP is now attending SMART meetings with the support of his mother. He has made lifelong friends with people experiencing similar issues and is now looking to volunteer with services as a peer mentor.

12.6.4 MUP at the suggested price of 50p per unit would have a minimal impact on the on-trade, where prices tend to be significantly higher than this, but it would impact most dramatically on the cheapest alcohol in the off-trade.

12.7 Regarding the question of being able to conclusively predict MUP’s impact, the evidence for MUP is very strong, and far stronger than for other policies implemented by the Home Office. For example, the Modern Crime Prevention Strategy places a significant focus on partnership working with the trade, when there is not a single piece of academic, peer reviewed evidence that this has a significant impact on crime and disorder. While the licenced trade has carried out some internal evaluations, these tend to be of a very poor

⁴⁷⁰ Black, H. et al (2014) *White Cider Consumption and Heavy Drinkers: A Low-Cost Option but an Unknown price*. Alcohol and Alcoholism 49:6, pp675-80; Alcohol Concern (2015). *Alcohol brands consumed by young people in treatment 2015*.

quality. In contrast the evidence, both modelled and from Canada where they have similar minimum prices, that MUP would be effective, is very strong.⁴⁷¹

FEES AND COSTS ASSOCIATED WITH THE LICENSING ACT 2003

13. Do licence fees need to be set at national level? Should London and the other major cities to which the Government proposes to devolve greater powers, have the power to set their own licence fees?

13.1 All local authorities should be allowed to charge on a full cost recovery basis for the processing of applications and a premium to finance enforcement that the licensing trade generates. At present some local authorities see significant shortfalls in the revenue they receive from licensing fees, meaning that they have to subsidise their licensing operation out of general funds. With the reductions in local government funding in recent years this has become increasingly difficult.

13.2 Local authorities with the biggest fees shortfall are often those more likely to struggle to oversee the Act.⁴⁷² The Local Government Association (LGA) estimates that alcohol licensing cost local authorities approximately £183 million in the 10 years since the Act was introduced, which works out at £1.5 million of taxpayers' money per month being used to subsidise the licensed trade.⁴⁷³ The current licence fees are woefully inadequate. Local authorities are effectively subsidising the licensing trade with public money.

International comparisons

14. Is there a correlation between the strictness of the regulatory regime in other countries and the level of alcohol abuse? Are there aspects of the licensing laws of other countries, and other UK jurisdictions, that might usefully be considered for England and Wales?

14.1 Within developed countries, those which experience greater alcohol related harms tend to have a stricter regulatory response. The 2003 Licensing Act attempted to simplify and deregulate licensing but the 'presumption to grant' has played into the hands of the industry and prevented responsible authorities from actively and decisively deciding when and where alcohol can be sold at a local level.

14.2 There is clear international evidence from a number of countries, including France, the USA and Canada that decreased availability of alcohol results in decreased alcohol

⁴⁷¹ Stockwell, T., Zhao, J., Marzell, M., Gruenewald, P. J., Macdonald, S., Ponicki, W. R., & Martin, G. (2015). Relationships Between Minimum Alcohol Pricing and Crime During the Partial Privatization of a Canadian Government Alcohol Monopoly. *Journal of Studies on Alcohol and Drugs*, (July), 628–634. <http://doi.org/10.15288/jsad.2015.76.628>

⁴⁷² Foster, J., Charalambides, L., (2016) [The Licensing Act \(2003\): its uses and abuses 10 years on](#). Institute of Alcohol Studies. See chapter 12

⁴⁷³ *Local Government Association (Feb 2015)* [LGA responds to Government decision to reject locally-set licensing fees](#)

consumption in the population; this is true when availability is restricted either by physical means or by price. Where changes have been robustly measured and assessed, it can be seen that the effects happen at local, regional and national levels and lead to substantive reductions in alcohol related morbidity and mortality.

14.3 The burdens of alcohol related harm on public health, society and the economy within Sunderland are amongst the highest in the UK, and fall disproportionately on the most disadvantaged members of our community. It would therefore be remiss of any responsible authority not to try to intervene and make meaningful reductions to the unacceptable and unfair toll of ill health and premature mortality related to the inappropriate use of alcohol.

14.4 Potential Policy Options - Minimum unit price (MUP) remains the best evidenced and most cost-effective regulatory intervention for alcohol harm reduction. Sunderland City Council has strongly supported MUP and was disappointed by the reluctance of the previous UK coalition government to follow through on its stated commitment around MUP. As a consequence, local authority licensing panels and their constituent 'responsible authorities' (RAs) are likely to be the major influence on the availability of alcohol in both on-trade and off-trade sectors in a local area.

14.5 Regarding availability, it is important to note that the licence application process is essentially a "permissive system" whereby unless successful objections are tabled by one of more RAs, all applications are effectively approved, regardless of how seemingly inappropriate they might be seen to be. As highlighted in the NE Alcohol Behaviour & Perceptions Survey [...], there is negligible public perceived need for more licensed premises.

14.5 The difficulties of making successful challenges to new licence applications combined with the already high concentration of outlets in many areas, have prompted local councils to explore a number of innovative new policies which either place local area based 'enhanced restrictions' on new licence applications or seek to modify existing licences through voluntary arrangements or mediated through expedited licence reviews, where concerns have arisen. The two policies which have received most attention are 'cumulative impact policies' and late light levys. While the relative novelty of these measures means that evidence of their impact remains at an early stage, there have been promising indications that they are able to make a meaningful impact without detracting from the viability (in some cases enhancing it) of the night-time economy. While the following sections concentrate on these two policies it is important to note, perhaps unsurprisingly that combinations of policy measures are more effective than isolated initiatives.

14.6 This evidence submission has covered a number of policies from Scotland which would be beneficial for those with an interest in reducing alcohol related harms. These include MUP, a health and well-being objective and greater restrictions on the off-trade.

14.7 Evidence from Australia also lends support to the introduction of a workable EMRO. In Newcastle, Australia, it was found that bringing forward closing times from 5am to 3am

resulted in 37% reduction in assaults.⁴⁷⁴ After one year, similar opening restrictions in the Kings Cross area of Sydney resulted in a 21% reduction in sexual assaults, a 43% reduction in assaults causing grievous bodily harm, a 50% reduction in assaults causing actual bodily harm and a 57% reduction in robberies.

14.8 Commenting on this, Police Superintendent Mick Fitzgerald, Kings Cross local area commander, stated that ‘the man hours saved and the way we are able to reallocate our resources has been phenomenal.’⁴⁷⁵ While the closure of several clubs in Kings Cross were attributed to measures, a variety of other businesses have been seen to enter the market, including antiques dealers, ice-cream vendors, chemists, restaurants, hairdressers and yoga studios, as well as a number of new bars.⁴⁷⁶ There is also evidence that, while there has been a reduction in land value of some commercial property, large increases have been observed in both mixed-use and residential property in the Kings Cross region.^{477,478}

14.8 Risk-based licensing, which is used in various forms in Canada, Australia and New Zealand, also has interesting elements. This approach broadly links licensing fees and regulatory strength to the type of premises and the operating schedule. Types of premises, such as restaurants, bars or clubs, are ranked by their potential risk, and pay a different base rate depending on the outcome of the risk assessment. Hours of operation can also be linked to the fee, with some states in Australia charging incremental amounts for every hour that a venue opens after midnight. Compliance history can also have an impact on fee level.⁴⁷⁹

2 September 2016

⁴⁷⁴ Kypri. K., Jones. C., McElduff. P., Barker. D., (2011) [Effects of restricting pub closing times on night-time assaults in an Australian city](#). Addiction.

⁴⁷⁵ Australian Daily Telegraph (April 1st, 2015) [Cross clean-up is a victory for Sydney](#)

⁴⁷⁶ <https://twitter.com/2011Residents>

⁴⁷⁷ Land & Property Information. (n.p.). *Potts Point/Kings Cross Report Land Value Review – Report for Land Valuation Advisory Group*. NSW Government.

⁴⁷⁸ Nicholls, S. (2016, 22 May). Lockout laws hit values in Kings Cross’ ‘golden mile’. *The Sydney Morning Herald*. Retrieved from: <http://www.smh.com.au/nsw/lock-out-laws-hit-land-values-on-kings-cross-golden-mile-20160522-gp0ych.html>

⁴⁷⁹ See the appendix to Foster. J., Charalambides. L., (2016) [The Licensing Act \(2003\): its uses and abuses 10 years on](#). Institute of Alcohol Studies.

Sussex Police – written evidence (LIC0042)

LICENSING OBJECTIVES

- 1. Are the existing four licensing objectives the right ones for licensing authorities to promote? Should the protection of health and wellbeing be an additional objective?***

Should the policies of licensing authorities do more to facilitate the enjoyment by the public of all licensable activities? Should access to and enjoyment of licensable activities by the public, including community activities, be an additional licensing objective? Should there be any other additional objectives?

Sussex Police strongly supports an additional licensing objective based on health and wellbeing.

The introduction of an additional ‘health and well-being’ objective would enhance the opportunities for Public Health partners to participate in the licensing process. A range of health data sources including alcohol-related hospital admissions and ambulance data are presently used as supporting evidence and information within the licensing process.

The introduction of a health and wellbeing objective would ensure that alcohol, which we know does lead to significant public health harm, would be subject to far wider considerations in the way it is provided, and close the current gap that authorities face in highlighting such harms within the existing objectives.

We do not feel that there should be an additional licensing objective linked to access to and enjoyment of licensable activities by the public. Other factors including economic policy are a far wider consideration within the scope of Local Authorities and therefore it is not necessary to make this specific to the Licensing Act. Policies should provide advice on what will be favourably considered, such as restaurants and lower risk premises.

Sustainability and economic growth are best managed through local policy rather than through statute. Presently the statute supports growth through the presumption of grant of premises licences, and therefore access to and enjoyment of licensed premises would appear to be fundamentally enshrined within the act, and does not need any further footing.

THE BALANCE BETWEEN RIGHTS AND RESPONSIBILITIES

- 2. Has the Live Music Act 2012 done enough to relax the provisions of the Licensing Act 2003 where they imposed unnecessarily strict requirements? Are the introductions of late night levies and Early Morning Restriction Orders effective, and if not, what alternatives are there? Does the Licensing Act now achieve the***

right balance between the rights of those who wish to sell alcohol and provide entertainment and the rights of those who wish to object?

Live Music Act

The Live Music Act appears to have struck the right balance between provision and regulation, and has not had a significant negative impact on crime and disorder and public nuisance. However any further deregulation could tip the balance and therefore we would urge caution.

Late Night Levy and Early Morning Restriction Orders

Sussex Police believes that the lack of flexibility with a LNL, and the logistical complexities in establishing an EMRO has led to Local Authorities (LA) shying away from their implementation. The threshold required specifically for an EMRO has led to it being very difficult to implement.

It has been widely argued that both LNL and EMROs have negative connotations in dealing with late night issues, rather than a potential for a positive resolution.

Evidence from Australia suggests that restricting excessively late closing times leads to a reduction in alcohol related crimes and associated police costs. For example, a modest reduction in trading hours in Newcastle (NSW, Australia) in 2008 was shown by independent evaluation to have had convincing and compelling benefits:

- an internationally unprecedented 37% fall in alcohol-related non domestic assaults;
- a 50% reduction in night time street crime; and
- a 26% reduction in related hospital ED admissions

In order to be more effective and allow LA's flexibility to target problem areas, the LNL needs to be more specific in which area is covered, however there remains a risk that the scheme will not be financially sustainable due to its reduced size and therefore prohibitive to putting one in place.

The fact that the LNL, only applies to alcohol led premises fails to acknowledge the links to the broader problems in the night time economy associated with other late night premises, specifically late night food premises.

Balance

The balance is clearly in favour of the applicant due to the presumption of grant, which has led to Responsible Authorities (RA) having to continually take a reactive stance, which is resource intensive and time consuming.

There is a view amongst Sussex Police Licensing Officers that the industry now show a degree of complacency as a result of this, adding in to the LA being conscious of the cost of dealing with the frequent appeals against review decisions. Industry understand that RAs are prohibited from taking action due to cost and use this to their advantage.

- 3. Do all the responsible authorities (such as Planning, and Health & Safety), who all have other regulatory powers, engage effectively in the licensing regime, and if not, what could be done? Do other stakeholders, including local communities, engage effectively in the licensing regime, and if not, what could be done?**

Sussex Police has found that it is challenging to ensure consistent engagement from all of the Responsible Authorities in the licensing process. In respect of other stakeholders our experience is that this varies greatly across the country with some groups more willing or able to engage than others based on a number of factors which may include awareness, risk aversion, and budgetary & resource constraints.

This invariably leads to the police taking the lead on a significant portion of the engagement and interventions with licensed premises, specifically where licensing objectives are being undermined. Sussex Police are however frequently supported by Trading Standards and Environmental Health.

In instances of underage selling and child exploitation there does seem to be a lack of engagement from Child Safeguarding, as a Responsible Authority under the act.

LICENSING AND LOCAL STRATEGY

- 4. Licensing is only one part of the strategy that local government has to shape its communities. The Government states that the Act “is being used effectively in conjunction with other interventions as part of a coherent national and local strategy.” Do you agree?**

The Licensing Act has created a shift towards crime and disorder issues, with the Modern Crime Prevention Strategy continuing this trend. However, from a wider alcohol harm perspective, there has been no introduction of a coherent and evidence based approach to alcohol harm reduction at a national level.

Planning exists in isolation to Licensing (highlighted in question 5 below), which equates to situations where a venue may have a premises licence but not be permitted planning consent, and vice versa. This is also the case with regards to authorisations for pavement licences, which may have a significant impact with respect the premises, but do not fall within the Licensing Act. Such examples are widespread and are just one example of a lack of a cohesive national policy.

- 5. Should licensing policy and planning policy be integrated more closely to shape local areas and address the proliferation of licensed premises? How could it be done?**

Yes, we believe that licensing and planning policies should be better integrated, although it would not necessarily make a significant impact on the proliferation of licensed premises, which is facilitated by the ‘presumption to grant’ in the Licensing Act 2003.

The fact that a premises may or may not have planning permission to operate is not taken into consideration by Licensing Committees when considering an application.

Planning and licensing processes should be more aligned, with the view that applicants should not be granted a licence, until they have planning permission to open for the hours stated on a licensing application.

The proliferation of licensed premises may have been better prevented under the 1964 Act, where need was a consideration within a licensed premises application.

CRIME, DISORDER AND PUBLIC SAFETY

6. *Are the subsequent amendments made by policing legislation achieving their objects? Do they give the police the powers they need to prevent crime and disorder and promote the licensing objectives generally? Are police adequately trained to use their powers effectively and appropriately?*

The amendments do not go far enough. The way police forces resource licensing requires the introduction of a specific power of entry for authorised police staff, which can be delegated by the Chief Constable.

Presently there is no accredited national training or qualification specifically for police licensing officers. There is no national requirement to train police officers with respect licensing legislation. In Sussex police officers and staff dedicated to licensing roles are required to attend and acquire the accreditation of the British Institute of Innkeepers Licensing Practitioners Course Level 2

It should be noted that NPCC Licensing & Alcohol Harm Reduction group are in the process of approaching the college of policing with a view to developing a national accreditation framework with respect licensing training for police officers. Such training needs to be on a mandatory footing which will ensure consistency in the delivery of licensing functions across the country.

LICENSING PROCEDURE

7. *The Act was intended to simplify licensing procedure; instead it has become increasingly complex. What could be done to simplify the procedure?*

In general, the Licensing Act 2003 has simplified the licensing procedure, specifically in relation to the majority of procedures from initial application of premises licence, through to objections and hearings. The focus of the act on partnership working ensures that there is plenty of scope for applicants and responsible authorities to mediate solutions which in reality often leads to hearings and formal objections not being necessary.

However, there are areas where the act does continue to cause a significant burden, specifically on public bodies, an example of which are the procedures from the point of an appeal. The process is over-burdensome and significantly in favour of the premises licence holder, and is often used as a tactical way to keep premises open post a decision by the

licensing sub-committee at a review hearing. This leads to a situation where a committee may decide that a premises licence should be revoked due to serious harm being caused, but then due to the licence holder appealing such decision, the premises continues to remain open and operating on its existing licence without any changes whatsoever, leaving the public at serious risk of harm. Such risks continue until the appeal is heard, in most instances in Sussex, many (5-6) months later. There should be a timeline set for an appeal to be heard promptly.

The ever increasing exemptions, exceptions and deregulation has led to confusion and the act being becoming far too complex. Examples include the exemptions with regards the Live Music Act, community premises being permitted to dispense with DPS, and the complexities around Temporary Events Notices. Should the Community and Ancillary Notice be implemented this will again add further layers of complexity around licensing legislation.

9. *Should sales of alcohol airside at international airports continue to be exempt from the application of the Act? Should sales on other forms of transport continue to be exempt?*

The promotion of the licensing objectives is as relevant at airports and on trains as in any other location. In fact there are potentially additional risks related to passengers being drunk and unruly on these forms of transport. Indeed, recent figures showed that 422 people were held on suspicion of being drunk at an airport or on a plane in the last two years. With this in mind, it would make sense to bring sales of alcohol airside under the control of the licensing act.

Gatwick Airport sits within the Sussex Police boundary and there have been a number of alcohol test purchases conducted airside at the Airport. Whilst improvements have now been made, during the first round of testing, all but one of the premises selling alcohol sold alcohol to our under 18 year old test purchasers. No sanctions were possible due to none of the Licensing Act 2003 offences being relevant for airside premises, and because of this engagement with the owners of the licensed premises, including very large well know providers, was very difficult.

10. *What could be done to improve the appeal procedure, including listing and costs? Should appeal decisions be reported to promote consistency? Is there a case for a further appeal to the Crown Court? Is there a role for formal mediation in the appeal process?*

The current appeals procedure whilst providing an appropriate safeguard does have some shortcomings which predominantly favour the Licensed premises, particularly in an appeal against a review decision. Currently where a decision is made by a licensing committee this does not take effect until after the period for appeal or disposal of an appeal. This can lead to situations where premises that have had a licence revoked or conditions added,

continuing to operate for many months without the protections that had been deemed appropriate by a Licensing committee.

This has on occasion led to premises continuing to be blighted by the problems for which it was brought to review and also for some premises to list an appeal only to withdraw it immediately prior to a hearing in some cases with premises degenerating below the standard for which they were subject to review in the first place. This is aided by the lack of an appeals threshold having to be met.

Sussex Police understands the need to strike a balance, but we do not consider this exists at this point. We suggest that provision be made to speed up the appeals process with an expectation that appeals against decisions by the Licensing Committee be heard within a period of not more than 2 Months.

In addition the loss of Licensing Justices at the commencement of the Licensing Act 2003 has meant that we have lost the knowledge and experience that they brought to hearings and we would commend that the re-introduction of a form of licensing Justice for appeals would benefit not only the appellant but also the respondent.

In respect of appeals to Crown Court it is clear that these would prove prohibitively expensive to many appellants and respondents and further at odds with the light touch Licensing Act envisaged by the Government. The Licensing Act provides an initial tribunal by way of Licensing Committee and by appeal to Magistrates court, for the problems outlined above an appeal to the Crown Court that allows a premises to continue trading 'as is' would completely undermine the point of the Licensing Act and its objectives.

It is difficult to envisage what mediation could/should take place post a committee decision, and pre an appeal the opportunity for mediation clearly sits prior to a committee hearing. Mediation post a decision made by a licensing sub-committee could lead to a position where such decisions are constantly undermined.

SALE OF ALCOHOL FOR CONSUMPTION AT HOME (THE OFF-TRADE)

- 11. *Given the increase in off-trade sales, including online sales, is there a case for reform of the licensing regime applying to the off-trade? How effectively does the regime control supermarkets and large retailers, under-age sales, and delivery services? Should the law be amended to allow licensing authorities more specific control over off-trade sales of "super-strength" alcohol?***

There has been an increase in reports of problems emanating from pre-loading in the years since the introduction of the 2003 Licensing Act, which is regularly cited by the on-trade.

There has been a significant increase in the numbers of premises authorised for off-sales since the introduction of the act.

Price disparity is regularly reported to be a driver in people pre-loading before they enter the night time economy. This is arguably exacerbated by the increased availability of alcohol.

There are few tools available under the existing legislation to tackle the issues associated to the off-trade. Mandatory conditions relating to drinks promotions could be further extended to tackle some of the issues relating to off-sales. The Section 182 Guidance does not provide particularly clear advice on drinks promotions, and provides examples which are not very helpful

A ban on multi-buys, restricting the area within a store where alcohol can be sold, the restriction of off-trade hours to 10am until 10pm, and the proposed introduction of minimum unit pricing could all be beneficial

Home delivery services are also difficult to regulate under the Act. In Sussex, guidance and conditions for operators to ensure that they comply with the Act has been offered, particularly regarding sale to minors and sales to drunks; although this can be challenging to enforce. Limited hours for home delivery of alcohol would be a welcome introduction.

Our experience shows that there is a correlation between high strength alcohol and anti-social behaviour and crime, which taken alongside the concerns raised by Public Health leads us to support a far more restricted approach to the availability of high strength alcohol sales. This could well form part of the addition of a Health and Wellbeing Licensing objective. The issues relating to high strength alcohol disproportionately affecting the most vulnerable people in society.

The increase in alcohol delivery services could be subject to a delay from time of order to delivery, which will prevent instantaneous sales of alcohol, especially where people are inebriated. The delay could be set at 6 hours. A prohibition of delivering alcohol to any person under the age of 18 (which is exempt under Sec 151) will have minimal effect on the majority of legal purchasers.

PRICING

12. *Should alcohol pricing and taxation be used as a form of control, and if so, how? Should the Government introduce minimum unit pricing in England? Does the evidence that MUP would be effective need to be “conclusive” before MUP could be introduced, or can the effect of MUP be gauged only after its introduction*

There is no single solution to tackling alcohol-related harm and a package of measures to limit the affordability, availability and promotion of alcohol is what is required. However, all of the independent evidence shows us that getting rid of the cheapest, strongest alcohol would have the most impact as it is typically consumed by young people and those drinking at harmful levels.

There is a large and significant body of international evidence which demonstrates that the price and affordability of alcohol is the key factor in driving consumption. In the 2009 Global Strategy, the World Health Organisation recommends introducing pricing policies to reduce alcohol-related harm and recognises the option to “establish minimum prices for alcohol where applicable” as an appropriate action.

Furthermore, Minimum Unit Price is already working in several countries, including Canada. Figures from British Columbia indicate that a 10% increase in average minimum price would result in a fall in consumption of 8%⁴⁸⁰; a 9% reduction in alcohol specific hospital admissions⁴⁸¹; a 32% reduction in wholly alcohol caused deaths⁴⁸²; and a 10% fall in violent crime.⁴⁸³ In addition, research commissioned by the UK Government revealed that the introduction of MUP would be significantly more effective than banning below-cost sales.⁴⁸⁴ According to this work:

- After 10 years, a ban on below cost sales would save 14 lives, compared to 960 lives saved with the introduction of MUP at 50p;
- In the first year of implementation, a ban on below cost sales would reduce crimes by 900, whilst an MUP at 50p would result in a fall of 50,700 crimes.
- After 10 years, a ban on below cost sales would save an estimated £77m, whilst the equivalent figure for MUP at 50p is £5.1 billion.⁴⁸⁵

Sussex Police fully supports the introduction of MUP, which we believe would have a minimal impact on the on-trade, where prices tend to be significantly higher in the first instance, but would positively impact significantly on the availability of cheap high strength alcohol.

Regarding the question of being able to conclusively predict MUP’s impact, the evidence for MUP is very strong, taking Canada as the example where they have similar minimum prices, that MUP would be effective. To wait for conclusive evidence that MUP works risks further increasing the impact cheap alcohol is currently having on individuals and communities.

FEES AND COSTS ASSOCIATED WITH THE LICENSING ACT 2003

⁴⁸⁰ Stockwell, T., et al. (2012), [The Raising of Minimum Alcohol Prices in Saskatchewan, Canada: Impacts on Consumption and Implications for Public Health](#). American Journal of Public Health

⁴⁸¹ Stockwell, T., et al. (2013), Minimum alcohol prices and outlet densities in British Columbia, Canada: Estimated impacts on alcohol attributable hospital admissions. American Journal of Public Health

⁴⁸² Zhao, J., et al. (2013), [The relationship between changes to minimum alcohol price, outlet densities and alcohol-related death in British Columbia, 2002-2009](#).Addiction.

⁴⁸³ University of Sheffield (2013), [Modelled income group-specific impacts of alcohol minimum unit pricing in England 2014/15](#)

⁴⁸⁴ Brennan, A., Meng, Y., Holmes, J., Hill-McManus, D. and Meier, P. (2014) 'Potential benefits of minimum unit pricing for alcohol versus a ban on below cost selling in England 2014: modelling study', BMJ,

⁴⁸⁵ Brennan, A., Meng, Y., Holmes, J., Hill-McManus, D. and Meier, P. (2014) 'Potential benefits of minimum unit pricing for alcohol versus a ban on below cost selling in England 2014: modelling study', BMJ,

13. Do licence fees need to be set at national level? Should London and the other major cities to which the Government proposes to devolve greater powers, have the power to set their own licence fees?

This is a matter for local authorities. Sussex Police no specific views in regards to the setting of licence fees.

International comparisons

14. Is there a correlation between the strictness of the regulatory regime in other countries and the level of alcohol abuse? Are there aspects of the licensing laws of other countries, and other UK jurisdictions, that might usefully be considered for England and Wales?

The NPCC is not in a position to comment in relation to international regulatory licensing regimes, however there is internal evidence we are aware of which would suggest that greater alcohol control leads to less crime and reduced harms.

Whilst the effects of alcohol on individuals will be common internationally, the cultural differences and licensing regimes make it difficult to link a direct correlation between the effectiveness of such controls elsewhere. However the positive results that can be witnessed internationally clearly should be subject to UK academic assessment and trial.

31 August 2016

Sustainable Acoustics – supplementary written evidence (LIC0172)

INTRODUCTION

This written submission has been prepared in response to the invitation of the Lord Chairman of the Committee to cover the detail of some of the points raised in verbal evidence given on the 29th November 2016, Panel 1; or other matters that occur after the event which are considered relevant by Mr Rogers to the Committee’s deliberations and awareness.

This is intended for the purpose of assisting the Lords in considering the supporting information and to add depth and justification to the outline points made in brevity, verbally, on the day.

BACKGROUND

Mr Rogers is a Fellow of the Institute of Acoustics. He owns his own business, called Sustainable Acoustics Ltd, which is an acoustic consultancy. He is a practitioner that provides expert witness evidence in both the planning and licensing regimes. He assists both premises and residential objectors in providing technical evidence on noise. He has over 20 years’ experience, with his career beginning in enforcement in Local Authority, which gives him a unique perspective and desire to find solutions to sound problems to make things better. He is also a Trustee of the Institute of Acoustics, and acts in the role of Chairman of the Parliamentary Liaison Group for the Institute of Acoustics.

Mr Rogers’ experience with the Licensing Act, and associated legislation such as the Live Music Act, has been from the beginning of its implementation 11 years ago.

Supporting information to Question 1

Mr Rogers expressed the view that the Licensing Objective of Public Nuisance has caused an obstacle, with regards to noise, as it has not been clearly defined. He proposed that a more suitable measure would be to implement the existing overarching Government Policy on Noise, which sets out and defines the “Effect level” as “Significantly Adverse”. This would be, in his opinion, a suitable limit that would be appropriate for protecting communities from unreasonable harm from noise associated with licensed premises.

The source documentation for this is the [Noise Policy Statement for England 2010](#)⁴⁸⁶, which balances the Economic and Societal benefits with the Environmental and Health burden on

⁴⁸⁶ ⁴⁸⁶ Noise Policy Statement for England 2010 ,

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/69533/pb13750-noise-policy.pdf

Aims of NPSE: • avoid significant adverse impacts on health and quality of life; • mitigate and minimise adverse impacts on health and quality of life; and • where possible, contribute to the improvement of health and quality of life

the community and is equally relevant to Licensing matters, stating that it applies to Licensed premises in the text at para 2.5.

As a result change would be welcomed to clear up the intended threshold on which to balance the impact on residents with the benefit to society and business. This “see-saw” test is essential when balancing the planning aims and the licensing aims, which currently are very different. This would enable a positive change culture, which can be reassuring to communities, but also encouraging to businesses. Making an overt reference to this overarching policy on noise would be helpful rather than the current focus being on Public Nuisance.

The tinkering with the Act led to the introduction of the [Live Music Act 2012](#)⁴⁸⁷ to relax controls on premises, after lobbying from the industry, but the safeguards of [The Noise Act 1996](#)⁴⁸⁸ ([as amended](#)) were not extended to cover the period opened up by the Live Music Act. The consequence was that there is no way to deal quickly with “excessive noise” for stretched Local Authority officers. As a result it is Mr Rogers’ opinion that a vacuum has formed where inconsistency has crept in for how different Local Authorities handle the impacts on residents, where Statutory Nuisance is often not pursued. It would be of assistance, in the view of Mr Rogers, to extend the Noise Act to provide a straight forward way to check premises noise levels, and to set control measures to achieve consistency and clarity.

The exact levels for this daytime period would need careful review, and Mr Rogers would commend the Institute of Acoustics to be a suitable professional body to assist with this assessment on the evidence base available. The Institute of Acoustics has over 3,000 members, comprising acoustic academics, consultants and manufacturers.

The Institute of Acoustics is currently in the final stages of preparing a ‘Pubs & Clubs Guidance on the Control of Noise from Places of Entertainment’ (a working title). This is expected to be jointly endorsed by the Institute of Licensing and it would be helpful if this could be adopted as official Government guidance on noise to promote consistency through a risk based approach. It is also intended to guide appropriate conditions for both the Planning and Licensing regimes. The Institute of Acoustics expects this to be ready for issue in the first half of 2017, and would welcome discussions on how this could be endorsed, to assist both licensees and communities, when dealing with noise.

Supporting information to Question 2 – The Benefit and Burden test

To the questionAre planning and licensing separate? Mr Rogers followed Mr Lyons and Mr Suschitzky suggesting that in his experience there are cases already in the Planning regime where a License gained without planning permission comes to bear as a material consideration by the planning committee. This means that the more relaxed Licensing test

⁴⁸⁷ Live Music Act 2012 , http://www.legislation.gov.uk/ukpga/2012/2/pdfs/ukpga_20120002_en.pdf

⁴⁸⁸ Noise Act 1996, http://www.legislation.gov.uk/ukpga/1996/37/pdfs/ukpga_19960037_en.pdf , amended in 2006.

may provide a route for operators to leverage planning committees with. Mr Rogers said that if there was one outcome that would assist consistency then it would be the removal of the 'Chinese wall' between the two regimes.

Here is an example of when this has happened in the London Borough of Islington Planning Committee this year. A marquee, erected in total for more than 28 days, required a planning application to be submitted despite the fact that it had operated for years without concern under a premises license. The effect was that a temporary permission was granted which tightened the Noise Management Strategy, because of the more stringent controls that relate to planning and protection of quality of life. The operator therefore has an increased burden which means that the site it is on the verge of being commercially untenable. This is a common story in the industry, with many Licensed Premises struggling to survive, and such burdens will only result in vibrant social night economies tending to become more sterile. Discussions within the Planning Committee's publically held deliberations, in this case, included that there was recognition that the licence was already in place. This illustrated that planning was interfering in an existing operation which had been going smoothly, and now places the whole operation in doubt.

The same situation occurred in London Borough of Lambeth this winter. Which forced an operator that had been doing temporary marquee events on this site successfully for a number of years, to satisfy tighter controls than Mr Rogers considered to be reasonable in his professional judgement, even though a licence already existed and there was no complaints history to justify the burden then placed on the operator.

In the counter position a planning permission for a late use of premises was not matched by the licence, because a stress area (Cumulative Impact Area) had been established. This conflicted with the land use, which the operator could have reasonably expected to have enjoyed on purchase.

With these examples from real planning and licensing committee decisions, and cases that can be sourced if further evidence is required, it becomes clear to Mr Rogers that there is a need to have an order to things. Where possible, planning should be applied for first; perhaps even with a standard licence attached that is temporary for a year to test the viability and impact on the character of the area and residents. This would secure a back-to-back ability to trial its intended use and operators could then apply to vary the licence from that point if it is successful. In this way the planning permission would be able to respond to the desired local balance between the 'benefit and burden test'.

Supporting information to Question 3 – Overarching National Policy on Noise

The Home office memo suggests that a coherent national and local strategy is being used, but this does not fit with the fact that the National policy on noise ([Noise Policy Statement](#)

[for England](#)⁴⁸⁹) is not being applied, and has been ignored in the guidance issued on the Act. It therefore can not be the case that a coherent national and local strategy is being used.

Supporting information to Question 4 – New development near Premises

Mr Rogers explained that the effects of noise can be mitigated largely in the design of the facades and provision of attenuated ventilation for residents, but that may not be enough, and improvements to the licensed premises may be required to achieve the appropriate level of protection for residents, and therefore the business.

To achieve this it would require an agreement that the developer contributes to the works (as was concluded in the planning appeal of Crosby Homes Special Projects v Birmingham City Council 2006⁴⁹⁰). In this case, permission was granted with acoustic mitigation conditioned, but there was no control over the noise emissions from the neighboring nightclub (called the Nightingale), which had an ‘inaudibility’ condition. A Review of the premises’ licence by Crosby failed, but the point was made that there was a distinction between the meaning of Public Nuisance in planning and licensing matters. It was followed by cases such as most recently the ‘Ministry of Sound’ case, where an ‘easement’ was effectively granted by intervention of the London Mayor, to compensate the new residents upfront with integrated mitigation measures and the premises with sound insulation improvements works, under a Section 106 agreement. This could be a way forward, but has not been tested in the courts, in relation to a resident complaining of nuisance as yet. Since then the consequence has been that the club has moved, and therefore the Premises and its history as a beacon for vibrancy in the British dance scene worldwide lost to this area.

As for problems ‘moving to a nuisance’ is not a defense in common law, so there would need to be some clear thought around how to give Premises the confidence that they would have something equivalent to Best Practicable Means, as a defense of their business. The Institute of Acoustics ‘Pubs & Clubs Guidance on the Control of Noise from Places of Entertainment’ (a working title) will look to cover such advice to assist developers and premises alike.

Supporting information to Question 5 & 7 – Integrating Licensing into Planning Committee

Mr Rogers suggested that he thought it would be a workable step in principle, which would engender consistency and joined up thinking. He thought that, with training, a Planning Inspector would be well placed to distinguish the subtle differences in the regimes and apply them in a more consistent way than has occurred through the current licensing regime and appeals process.

⁴⁸⁹ Noise Policy Statement for England 2010, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/69533/pb13750-noise-policy.pdf

Aims: • avoid significant adverse impacts on health and quality of life; • mitigate and minimise adverse impacts on health and quality of life; and • where possible, contribute to the improvement of health and quality of life

⁴⁹⁰ Crosby Homes (Special Projects) Limited v Birmingham City Council (1) and Nightingale Club(2) [75] (Licensing Review, 26, October 2008)

Supporting information to Question 6 – Residents voice

Mr Rogers agreed with Ms Aantaa-Collier's point and expanded it by saying that in his experience within planning there was a better chance for applicants to resolve objections, whilst Licensing played out in a dynamic and less predictable way in the committee hearing. This perhaps did not give residents the sense that they were being given the same opportunity as objectors in planning. By using the officers as the conduit for objections there would be a more consistent approach for both regimes and therefore the residents' experience.

Mr Rogers thanks the Lord Chairman and the Committee for inviting him to give evidence on this matter, and remains available for further questions or involvement as is seen to be helpful.

15 December 2016

Telford and Wrekin Council – written evidence (LIC0057)

Licensing objectives

1. Are the existing four licensing objectives the right ones for licensing authorities to promote? **Telford & Wrekin Council believes that the current Licensing Objectives are sufficient.** Should the protection of health and wellbeing be an additional objective? **Telford & Wrekin do not believe that this extra licensing objective is necessary. The wording “Protection” is too ambiguous and instead if it is to become an additional objective, then perhaps the wording should be to “promote health and wellbeing”. Good Guidance would be needed on this licensing objective.**

2. Should the policies of licensing authorities do more to facilitate the enjoyment by the public of all licensable activities? **No** Should access to and enjoyment of licensable activities by the public, including community activities, be an additional licensing objective? **No. This could not be enforced.** Should there be any other additional objectives? **No, the current licensing objectives suffice.**

The balance between rights and responsibilities

3. Has the Live Music Act 2012 done enough to relax the provisions of the Licensing Act 2003 where they imposed unnecessarily strict requirements? **Yes** Are the introductions of late night levies and Early Morning Restriction Orders effective, and if not, what alternatives are there? **No they have not been effective as reflected by the numbers of schemes that exist and that some are being removed by the Licensing Authorities. BIDS, Purple Flag and Best Bar None schemes appear to be a more effective way of policing the night time economy.** Does the Licensing Act now achieve the right balance between the rights of those who wish to sell alcohol and provide entertainment and the rights of those who wish to object? **Yes we think it has achieved the right balance.**

4. Do all the responsible authorities (such as Planning, and Health & Safety), who all have other regulatory powers, engage effectively in the licensing regime, and if not, what could be done? **In our experience Responsible Authorities do engage with the licensing regime.** Do other stakeholders, including local communities, engage effectively in the licensing regime, and if not, what could be done? **In our experience local communities partly engage and will make representations. However, local communities appear to be reluctant to participate in Licensing Hearings. We are not sure what can be done as local communities already have the option of having their ward member represent their views at Committee Hearings. Perhaps more publicity/public awareness campaigns would encourage more participation.**

Licensing and local strategy

5. Licensing is only one part of the strategy that local government has to shape its communities. The Government states that the Act “is being used effectively in conjunction with other interventions as part of a coherent national and local strategy.” Do you agree?

Yes we agree.

6. Should licensing policy and planning policy be integrated more closely to shape local areas and address the proliferation of licensed premises? **Yes. There is strong merit in applicants only being permitted to submit a licensing application if Planning Consent is already in place and the hours requested for licensing activities mirror the permitted planning hours. We have often received applications that have yet to obtain the necessary Planning Consent and for the applicant to then use their newly granted Premises Licence as a leverage to assist them in obtaining Planning Consent.**

How could it be done?

Crime, disorder and public safety

7. Are the subsequent amendments made by policing legislation achieving their objects? **Yes** Do they give the police the powers they need to prevent crime and disorder and promote the licensing objectives generally? **Yes** Are police adequately trained to use their powers effectively and appropriately? **No. There has been a loss in West Mercia of a dedicated licensing officer to deal effectively with applications. Now that licensing applications are passed to local policing teams which have a high turnover of staff by their very nature, this has resulted in an inconsistent approach to applications.**

8. Should sales of alcohol airside at international airports continue to be exempt from the application of the Act? **Yes** Should sales on other forms of transport continue to be exempt? **Yes**

Licensing procedure

9. The Act was intended to simplify licensing procedure; instead it has become increasingly complex. What could be done to simplify the procedure? **This could be done by simplifying the statutory application forms. We find that the Gov.uk web forms to be complex and do not mirror the forms prescribed in Regulations.**

10. What could be done to improve the appeal procedure, including listing and costs? **We would like to see time constraints on Appeals.** Should appeal decisions be reported to promote consistency? **Yes.** Is there a case for a further appeal to the Crown Court? **No this would make the process more complex and costly to all parties concerned.** Is there a role for formal mediation in the appeal process? **Yes and this already exists on a practical level.**

Sale of alcohol for consumption at home (the off-trade)

11. Given the increase in off-trade sales, including online sales, is there a case for reform of the licensing regime applying to the off-trade? **There are sufficient controls already in place.** How effectively does the regime control supermarkets and large retailers, under-age sales, and delivery services? **Very effectively.** Should the law be amended to allow licensing authorities more specific control over off-trade sales of “super-strength” alcohol? **No. However there should be tighter controls on Premises that have delivery services in relation to age verification. Also greater emphasis should be placed on the perpetrators rather than the businesses.**

Pricing

12. Should alcohol pricing and taxation be used as a form of control, and if so, how? Should the Government introduce minimum unit pricing in England? **We need to see what happens in Scotland first.** Does the evidence that MUP would be effective need to be “conclusive” before MUP could be introduced, or can the effect of MUP be gauged only after its introduction? **Yes it needs to be conclusive.**

Fees and costs associated with the Licensing Act 2003

13. Do licence fees need to be set at national level? **Yes** Should London, and the other major cities to which the Government proposes to devolve greater powers, have the power to set their own licence fees? **No, however, there should be a review of the current national fee level which has not changed in 10 years.**

International comparisons

14. Is there a correlation between the strictness of the regulatory regime in other countries and the level of alcohol abuse? Are there aspects of the licensing laws of other countries, and other UK jurisdictions, that might usefully be considered for England and Wales? **We cannot comment as we do not know enough about the regulatory regime in other countries. We do think that many of the anti social behavioural problems associated with alcohol are cultural and this is what needs to be addressed through education and clearer emphasis on responsible drinking.**

1 September 2016

Thomas and Thomas Partners – written evidence (LIC0131)

1. Thomas and Thomas Partners practice exclusively in licensing and related law. The firm was founded by its eponymous partners Alun Thomas and Thomas O'Maoileoin in 2011. Both partners and indeed the rest of the firm, have many years' experience of the Licensing Act 2003 and the preceding legislation. The firm acts for tenants, landlords, developers and indeed the Crown, currently advising the Royal Household and previously as the Clerk to the Board of Green Cloth, the last remaining Court of the Royal Prerogative. We sat on the Advisory Board of the Department of Culture of Sport in both the lead up to and post implementation of the new Act.
2. In the prelude to the new Act, the Government at the time promised "*flexible opening hours for licensed premises, with the potential for up to 24 hour opening, seven days a week, will now be available*". Regretfully, what has followed is a disproportionate and onerous response to businesses and a more complicated and uncertain scheme of legislation, guidance and policies.
3. Our experience is that there has been an over reliance upon policies and restriction of use at the expense of allowing flexibility and growth for appropriate operations and operators. Furthermore, a remarkable reluctance to enforce against bad operators again to the detriment of the good, in some cases, all operators being seen and treated as the same, thus creating a burden on well-run premises at the expense of the bad.
4. The Licensing Act 1964 and, in relation to public entertainment, the Local Government (Miscellaneous Provisions) Act 1982 and the London Government Act 1963 was in some ways not perfect (e.g. there was limited provision to revoke or change conditions on licences) but stood the test of time for over 40 years. Whilst the subject of much case law, it was without doubt, a transparent and accessible platform for businesses to obtain the necessary consents to run their businesses. For example, a new licence or an amendment could be obtained in 21 days. An application under the new Act will routinely take two months and often longer. The new Act is also without doubt as biased towards local residents as was the old Act to businesses; a balance has yet to be achieved.
5. Many councils now have 'special policies' which relate to 'cumulative impact' and support the assertion that, in some areas, there are too many licensed premises and that number has an adverse effect on local amenity.
6. It is axiomatic that the authors of such policies (even after consultation) conclude and maintain that such policies are necessary, usually in favour of residents (or at least a vocal minority of residents). These policies to an extent are understandable. For example, in the absence of such, the legislative scheme of allowing any applicant to apply for pretty much what they wanted (and in the absence of objection would

get) mean that such policy presumptions level what would have otherwise been a very uneven playing field.

7. The problem has been with consistency of such policies and their implementation. Council policies are often radically different from one neighbouring council to another often resulting in ‘forum shopping’ or indeed operators avoiding certain areas and opening their businesses in areas where policies are absent or weaker.
8. For example: In the City of Westminster (who were the architects of cumulative impact), it is more or less impossible to obtain a new licence for a pub or bar in their Cumulative Impact Areas (“CIA”), notably Soho and Covent Garden. There are of course exemptions to the policy but the policy is intended and indeed implemented as being strict. Therefore, whilst it is usual to be able to obtain a licence for a restaurant, the hurdle for a new wine bar is virtually unassailable, no matter how small the premises are. This therefore results in new entrants to the market either forum shopping, not investing in the UK completely or amending their offer to make it policy compliant (e.g. having a glass of wine with tapas). Where a licence is granted, it is usual for such licences to be the subject of twenty or more conditions, whereas a restaurant licence under the old Act had two.
9. Food trends and such policies have meant that applications may now have a retail, bar and restaurant element. Such hybrid uses can then cause their own problems with planning legislation. Until 2002, the planning use classes order split leisure use classes into: A1 retail, A3 restaurant, A4 bar and A5 hot-food take-away. Previously, uses were either A1 or A3. Whilst food trends have evolved, there is no doubt that restrictive licensing and planning policies have led to more mixed or sui-generis uses which has led to more pressure on planning authorities, more enforcement and more uncertainty as to what the correct planning use is. Where some councils will not grant a licence without the ‘correct’ planning permission in place, this then causes problems in a licensing context.
10. In central London, only the Royal Borough of Kensington and Chelsea (which borders Westminster and shares a tri-borough legal team) does not have a CIA. Seemingly, the Royal Borough, which has its fair share of licensed premises, takes the view that such policies are not necessary; instead relying upon the statutory test of the licensing objectives and of course the considerations of local residents who may or may not make a representation to an application.
11. In practice and effect, the inconsistency of approach across authorities can cause glaring and unfair and inconsistent consequences. An application in Westminster’s CIA will always attract objection from the Environmental Health Officer, Police and more recently, the Licensing Authority, thus engaging the CIA Policy which otherwise would not apply. In RBKC, there is no such practice with objections being made and applications determined on their merits.

12. Landlords and Tenants as a result have to negotiate conditional lease agreements and indeed some operators prefer to adapt their use or indeed move to an area which is outside the CIA. Where such applications are made, there are usually far less 'policy objections' and in the absence of other objections usually mean that an application is granted outside a CIA easier, quicker and usually on better terms. Whilst it could be argued that is the intention of such policies, the effect is that more and later licences are often granted in areas which are more residential than areas of so-called 'stress', for example in Marylebone, in preference to Soho.
13. The unintended consequence is that the very residents that such policies were intended to protect are the victims of displacement from CIA areas. Whereas, in areas such as Soho where arguably such uses would have a lesser impact, it is not possible to obtain a new licence.
14. Some Councils have even stricter policies or worse still, policies which are impossible to interpret or apply with consistency. In Islington for instance, there is a strict special policy which does not differentiate between a large pub, small restaurant or a supermarket. It's a one-size-fits-all approach which hinders both residents and councils.
15. Most Councils now give no formal credit for a well-run business or a proven operator. This is a counter-productive approach based upon a reluctance (presumably due to financing) to carry out appropriate and sufficient enforcement activity which would identify the good from the less-so. In our experience, a well-run and experienced operator can and does operate their business more often than not without problem or complaint. Removing what was formerly known as the 'fit and proper' test means councils are unable to give proper weight to what matters in an application – not just what it is but who it is. The fact that there seems to be a meagre number of prosecutions supports this.
16. Confusingly, some Councils (even Westminster being one example) will grant an off licence with very little scrutiny. We are aware of a recent case where such a licence was granted in Leicester Square Underground Station (in the heart of Westminster's CIA) and where the Police were concerned that alcohol would be drunk on the tube system. However, because the application was not for a pub or a bar use, it was policy compliant and therefore allowed.
17. Other unfairness arises (again giving the example of Westminster where most of our applications are made) as to what is a restaurant and what policy therefore applies as a consequence. In Westminster, in order to qualify as a restaurant, several hoops have to be jumped through:
 - a. Alcohol may only be served with a table-meal to persons seated by waitress/waiter service
 - b. No take-away

- c. No disposable crockery
 - d. Customers shown to their table
18. The outcome of an application where all such tests are not satisfied is that the application will be considered as a pub or bar and therefore likely to be refused. In reality and the 21st century, many restaurants are inconsistent with this ‘white table cloth’ approach. The UK and London in particular is at the forefront of a casual dining revolution and such policies act as a real deterrent for development and investment.
 19. Fixed opening hours are also an antithesis of what was proposed by the Government in 2003. Instead of a potential for later opening to ease the pressures of the infrastructure of fixed-closing-times, such policies usually reflect exactly that, even since the introduction of the night tube.
 20. Enforcement is also inconsistent nationally. Test purchase range from being regular in some areas to rare or never in others. Many local authorities often prefer to review a licence rather than prosecute as the evidential test is quicker and presumably cheaper.
 21. The 1896 11th edition of Paterson’s Licensing Acts contained 435 pages. The Alcohol and Entertainment Volume of the 2016 Edition alone contains 3008. Instead of a slimline, refined and flexible licence of accessible legislation, what has been born out of the 2003 Act is a complex scheme of primary, secondary laws, compounded by inconsistent local policies which if published in Paterson’s would run to several thousand more pages.
 22. There is inconsistency in approach and an over-emphasis on the protection of residential amenity in some cases where there is no evidence of likely detrimental impact. That balance needs to be re-addressed. Proportionality is a recognised fulcrum of both licensing, national and European law – appropriate flexibility (called it carrot and stick) is missing from the licensing system.
 23. In difficult economic times, the leisure industry (being the biggest employer in the UK) should be encouraged and supported. In the vibrant West End of London, it’s virtually impossible to buy a drink after midnight. That can’t be right.

2 September 2016

TLT Solicitors – written evidence (LIC0112)

About TLT

TLT LLP is a full-service commercial law firm. TLT currently employs approximately 1,000 people, with offices in Bristol (head office), Belfast, Edinburgh, Glasgow, London and Manchester.

TLT provides licensing advice to a number of the UK's largest pub companies, as well as a range of other clients including large retail and restaurant chains, hotel groups, festivals and insolvency practitioners. We have acted for clients across the spectrum of licensed premises, from small establishments with limited licence requirements to large nightclub operators and major festivals. Clients of TLT include:

- Greene King PLC
- Punch Taverns PLC
- Glastonbury Festival
- Bloomberg
- Imperial Hotels Group
- Ministry of Sound
- Las Iguanas Restaurants
- Yum! (Pizza Hut Delivery and KFC)
- Nobu
- Greenwich University
- Rileys Sports Bars
- Merlin Entertainment
- KPMG

In the lead up to the 2012 Olympic Games, TLT undertook all the licensing work for LOCOG in relation to the 'off park' sites, such as Greenwich Park, Horse Guards Parade and Eton Dorney.

TLT's licensing team is recognised as a market leader, being ranked first in both the Chambers and Legal 500 the independent legal directories.

Members of TLT's licensing team have also worked as council solicitors and licensing officers.

The size and scope of TLT's licensing practice means that we have advised clients with premises in every licensing area in England, Wales and Scotland. As such, we have particular expertise in the following areas that may be of use to the Committee:

- Comparative assessment of England and Wales' licensing legislation with Scottish legislation.
- Differences in local authority implementation of the Licensing Act.

- Appeals.
- Effects of the Licensing Act in relation to commercial and strategic advice offered to clients.
- Practical implementation and pitfalls of making applications and representing clients in Licensing Act 2003 matters.

To give an idea of the scope of our licensing practice, we estimate that TLT's licensing team has made in the region of 12,500 premises applications under the Licensing Act since 2005.

This document represents TLT's views on the Licensing Act 2003. We have assisted a number of clients with their responses to this call for evidence. There may well be some overlap between their replies and this response.

Summary of response:

This page provides a summary of TLT's response contained in this document.

- The Licensing Act 2003 generally works well, although there are a number of suggestions we have made that we feel will streamline and benefit both licensing officers and applicants alike
- The introduction of a 'health' objective is inappropriate given the overarching reasons behind giving licensing to local authorities
- The Public Safety licensing objective has become increasingly redundant when compared to the other three objectives
- The Act would benefit with a licensing objective that recognises the balance local authorities are expected to make between businesses and local communities
- Fees need to remain set nationally
- The Live Music Act has, in general, been very beneficial
- Additional guidance and assistance given to police and responsible authorities in relation to what is expected when making representations would assist in ensuring licensing sub-committees are able to exercise their functions effectively and prevent appeals
- Late Night Levies and Early Morning Restriction Orders have failed to have the effect they were intended and need scrapping or radically re-thinking.
- Crown Court appeals would be welcomed.

Questions

Licensing objectives

1 Are the existing four licensing objectives the right ones for licensing authorities to promote? Should the protection of health and wellbeing be an additional objective?

We have split this question into 2 sections:

1.1 Are the existing four licensing objectives the right ones for licensing authorities to promote?

1.1.1 The Licensing Act works best when local authorities feel empowered to balance the needs of business development, with all that entails in terms of jobs, taxes, tourism & leisure and vibrant economies, against the interests of local residents and the neighbourhoods in which they live. The licensing objectives are fundamental to this principle and the foundation for all decisions made by local licensing authorities.

1.1.2 We feel that 3 of the current 4 objectives promote these aims in a positive and constructive way. However, the public safety objective does not sit quite so easily. There are 2 reasons for this observation:

- (a) The definition is overly broad and difficult to interpret; and
- (b) 'Public safety' falls within other areas of legislation, to such an extent that it can be argued that this particular objective is otiose.

1.1.3 The Regulatory Reform (Fire Safety) Order 2005 expressly removed the fire safety aspects of public safety from the objective (Section 43 specifically suspends conditions on premises licences from having effect where they duplicate matters contained in the Order). Health and Safety legislation creates a blanket framework under which premises are responsible for customers and staff welfare. Additionally, those conditions that could legitimately fall under the public safety objective, such as toughened glass to be used at premises, also fall under other objectives (in this example: prevention of crime and disorder). Given the above, we question the continued relevance of this objective.

1.1.4 Additionally, businesses providing licensable activities often spend a great deal of time and money risk-assessing their businesses to ensure that they are safe for the public outside of any conditions on their licence requiring them to do so.

1.1.5 If the Public Safety licensing objective is to be kept (and we appreciate that removing it may appear unattractive for political reasons), it would benefit from being reframed to avoid this duplication and clearly establish its purpose.

1.2 Should the protection of health and wellbeing be an additional objective?

1.2.1 We would urge considerable restraint in recommending 'Health' as a licensing objective. 'Health' implies a causal link between premises providing licensable activities and the choices that individuals make that may be considered 'unhealthy'. Linking the two is intrinsically flawed and misleading. It is akin to banning contact sports on the basis that people occasionally get injured and sometimes killed, without recognising the value that exercise and being part of a team has for an individual's wellbeing.

1.2.2 Health is a 'national' issue and unlikely to vary between areas such as to require it to be a licensing objective. Legislating to improve the health of the nation is a matter for national Government, not local authorities.

1.2.3 The notion of 'wellbeing' has a much wider context and, when combined with considerations such as community and culture, offers a much better bell-weather of the value and place of licensed premises within society. Licensable activities, for the vast

majority of people, provide the opportunity to socialise, enjoy time away from the daily grind and a chance to 'let their hair down'; all of which have well documented positive health benefits.

1.2.4 As such, to try to regulate a whole industry to prevent a small minority of people from doing themselves and others harm, misses the point. The health of individuals is a matter of education and if needed assistance/ punishment on a case-by-case basis. The Licensing Act is not a tool that is capable of achieving this.

2 Should the policies of licensing authorities do more to facilitate the enjoyment by the public of all licensable activities? Should access to and enjoyment of licensable activities by the public, including community activities, be an additional licensing objective? Should there be any other additional objectives?

2.1 The debate about licensable activities needs to recognise the breadth of premises regulated by the Licensing Act. We act, or have acted for, theatres, cinemas, community centres, festivals, pubs, clubs, restaurants, and a myriad of premises that fall into more than one of these categories. Sometimes the debate tends to be (wrongly) framed around 'pubs' and 'nightclubs' even though such terms are becoming less clear-cut and do not encompass the full range of premises that need to be considered. The debate would also benefit from a greater willingness to recognise the benefits of a vibrant night-time economy in detail within policies, rather than the usual slightly pithy statement to that effect that some policies contain. A lot of the scare stories over the years around the night-time economy have, when considered in greater detail, proven to be red-herrings. Examples such as drinks spiking, 'dentist chairs', and the banning of glass from pubs and clubs, whilst serious issues on paper, have been proven not to be the all consuming problems that they were made out to be. The reality is that individual premises undermining the licensing objectives should be dealt with individually.

2.2 Given that the Licensing Act and the Local Authority remit is to strike a balance between competing interests, at a basic level, of residents and licensed businesses, we feel that the 4 licensing objectives should recognise this balance rather than focus purely on 'prevention' and 'protection'. As an example, one of the competing interests that is not currently reflected in the licensing objectives, but plays a major part in licensing hearings is the need for growth, change and business development within the local market. A more balanced 4 licensing objectives would present greater clarity to all parties engaged in the licensing process, without removing or diluting the protections that the objectives are there to uphold. We would propose the following 4 Licensing objectives* offer that greater balance:

- Prevention of Crime and Disorder
- Prevention of Public Nuisance
- Protection of Children from Harm
- Promotion of Culture, Community and Wellbeing

2.3 *If Public Safety is to be retained as a licensing objective, we propose the 'Promotion of Culture, Community and Wellbeing' as a fifth objective.

2.4 We can provide examples that demonstrate the difficulties that lie in local authority licensing policies that do not strike the correct balance between allowing new business to obtain licences and strict enforcement of policy under the current objectives. Arguably cumulative impact zones are one of the main reasons for the difficulties that arise.

The balance between rights and responsibilities

3 Has the Live Music Act 2012 done enough to relax the provisions of the Licensing Act 2003 where they imposed unnecessarily strict requirements? Are the introductions of late night levies and Early Morning Restriction Orders effective, and if not, what alternatives are there? Does the Licensing Act now achieve the right balance between the rights of those who wish to sell alcohol and provide entertainment and the rights of those who wish to object?

We have answered the above in 3 parts:

3.1 Has the Live Music Act 2012 done enough to relax the provisions of the Licensing Act 2003 where they imposed unnecessarily strict requirements?

3.1.1 In short, the LMA 2012 has proved very popular with licensees, although the introduction of the work place exemption within S177A has confused matters for practitioners, operators and licensing authorities. In general, however, it has been invaluable in bringing music back into venues without undermining the licensing objectives.

3.2 Are the introductions of late night levies and Early Morning Restriction Orders effective, and if not, what alternatives are there?

3.2.1 We would suggest that the Late Night Levy in its current form has failed, in the main, to appeal to local authorities and operators alike. The reason for this is simple: it applies a blanket principle to a system geared toward individual responsibility of premises operators.

3.2.2 LNL has, however, re-framed the discussion in terms of who is responsible for causing the problems in the night time economy. This in turn has led to increased interest in initiatives, such as Business Improvement Districts that are more flexible in terms of who pays the fee and who participates, as well as allowing for greater engagement from those paying. It is clear that the inflexibility of Late Night Levies has hamstrung councils and police forces considering introducing them and it is fair to say that all councils who introduced them have been surprised by the number of premises opting to reduce hours rather than pay the levy. Therefore the levy has generated less income whilst at the same time returning many premises to having an arbitrary closing time which is what the Licensing Act sought to avoid in the first place.

3.2.3 Given that no authority has introduced a EMRO, following only 3 official consultations, the appetite for such a measure currently appears to be little to none.

3.3 Does the Licensing Act now achieve the right balance between the rights of those who wish to sell alcohol and provide entertainment and the rights of those who wish to object?

3.4 More can be done to ensure that the notions of “personal responsibility” and “business responsibility” are recognised as being separate considerations in Guidance and Policy. At the moment, premises operators often face enforcement action when incidents complained of should more correctly be ascribed to individuals involved in causing trouble. We can give examples of expedited reviews sought by the police on the basis of single incidents (albeit serious ones), where by the time the matter goes to the full hearing, it has become clear that the premises was not to blame. Unfortunately, the cost to an operator of suspension of their licence has, on at least one occasion we can point directly to, led to the bankruptcy of the business.

3.5 There is, in addition, a certain 'tyranny of the minority' in licensing matters where individuals are given a greater voice in licensing matters than they really should which leads directly to significant costs and delays for legitimate businesses. We feel that a re-balancing of the four objectives to include a 'promotion of Culture, Community and Wellbeing' objective, as well as better guidance to licensing officers about when representations should be considered vexatious, irrelevant or frivolous would help to address this issue.

4 Do all the responsible authorities (such as Planning, and Health & Safety), who all have other regulatory powers, engage effectively in the licensing regime, and if not, what could be done? Do other stakeholders, including local communities, engage effectively in the licensing regime, and if not, what could be done?

4.1 The reality is that some officers engage more than others and some categories of responsible authority have more of a direct interest in licensing than others. This is not to denigrate the right of any of the responsible authorities to be notified of applications, as on occasion, all will play their part, particularly given the range of premises and activities that may require a premises licence.

4.2 The only exception to this is the engagement of the health body as a responsible authority. We feel that their inclusion has opened the doorway to representations that are not related to individual premises and can, in some cases, provide a misleading picture of the issues they purport to bring to hearings. For this reason, we question the value of health bodies being responsible authorities.

Licensing and local strategy

5 Licensing is only one part of the strategy that local government has to shape its communities. The Government states that the Act “is being used effectively in conjunction with other interventions as part of a coherent national and local strategy.” Do you agree?

5.1 The main interventions outside of, but to a degree integrated with, licensing, relate to noise abatement notices (EHO) and Police interventions. We deal with police interventions in more detail in our response to Q7 below.

5.2 EHO officers can take steps to deal with noise abatement with immediate effect, such as with powers to confiscate items causing issues (musical instruments etc) and through issuing noise abatement notices. Often such steps are then followed by licence reviews where it is considered that the actions of the premises operator has undermined the licensing objectives.

5.3 Whilst police have powers to shut premises with immediate effect, they often rely on an informal agreement with premises where there has been trouble. We have also seen a rise in the use of summary reviews as a means to take swift action. It is critical that officers taking such draconian steps understand precisely what the powers should be used for and the consequences.

5.4 Police/EHO officers are specifically trained to deal with these issues, in comparison, for instance, with licensing officers who may seek to review licences, but may not have received training.

5.5 The Police and EHO currently do more than a reasonable job given the resources they have at their disposal. Issues are generally dealt with effectively, but this sometimes falls down in the execution, often as a result of the enforcement protocols put in place to ensure transparency in enforcement issues not being followed rigorously.

5.6 There are a number of interventions that were used initially but now rarely seen. For instance S.161 closure notices etc.

6 Should licensing policy and planning policy be integrated more closely to shape local areas and address the proliferation of licensed premises? How could it be done?

6.1 Licensing authorities do not always pay attention to their own wider strategies and objectives when making licensing decisions. This is usually only really seen where either the councillor sitting on a licensing sub-committee also sits on the planning or other regulatory/strategy committee, or where an applicant refers to such strategies in their applications.

6.2 Many licensing policies do not list the strategies adopted by the local authority (tourism, regeneration, etc). We often cite these documents at licensing hearings in order to give the committee a better sense of how the licensing application before them fits within other local authority strategies.

6.3 Where policies refer to other council strategies, we find it an invaluable aid for both applicants and licensing sub-committees. Better integration can be easily achieved by requiring local authorities to refer to relevant council strategies in licensing policies.

6.4 Planning deals with future development, and allows councils to plan for positive change in their areas. The reality is that where the planning and licensing regimes overlap, this is where problems can occur.

6.5 It is rare to see planning representations in licence applications. This is because of the difference in the regimes and the understanding that they should not overlap. Closer integration is not desirable, although there are certainly more conditions now on planning

decisions that one would normally expect to see on premises licences. This may be a question that needs addressing if the planning regime is being looked at. Where planning officers do comment on licence applications, it's usually more in an advisory role, much like the fire authority.

7 Are the subsequent amendments made by policing legislation achieving their objects? Do they give the police the powers they need to prevent crime and disorder and promote the licensing objectives generally? Are police adequately trained to use their powers effectively and appropriately?

7.1 Anything that can simplify the police powers they have has to be commended. The new powers under the Anti Social Behaviour, Crime and Policing Act 2014 are an example of a simplification that we are slowly seeing being used by police.

7.2 However, the lower burden of proof in seeking a review (compared to prosecution or applying to the Magistrates Court) can lead to the review process being used when other powers at the police and council's disposal would be the more appropriate. One only needs to look at the number of prosecutions sought for breaches of licence condition compared to prosecutions.

7.3 The review process is an integral part of the intervention strategy envisaged under the licensing Act. In the most part it is a vital and useful means by which residents and the responsible authorities can hold premises licensees to account.

7.4 However in a process where representations can be made without detailed analysis, this sometimes leads licence holders to feel that the process is being abused. For example, reviews can sometimes feel as though they are being used by responsible authorities and police officers as an easier and simpler method for seeking 'punishment' of premises licence holders, rather than promoting the licence objectives. In particular allegations are, on occasion, made without any real proof and based on hearsay, with a committee being asked to restrict a licence on the basis of this 'evidence'. When responsible authorities, in particular the police, make such submissions, it asks a lot of a licensing sub-committee to go behind the allegations and look at the substance of what is being said.

7.5 This is as much to do with time constraints at licensing hearings as it is to do with any other factor. The results, however, can be devastating to premises licence holders in terms of livelihoods for them and their staff.

7.6 Based on our experience one would only need to look at the limited number of prosecutions sought for the criminal offence of breach of conditions, compared to the number of licence reviews brought on the same basis, to understand this discrepancy.

7.7 There are various cases where on appeal District Judges in particular have criticised the evidence put forward by police and other council officers in hearings. This is because time is given over at appeals to allow for a forensic analysis of the evidence presented. However, many parties cannot afford the appeal process, especially as costs will rarely be awarded against the licensing authority unless they erred in law or made a manifestly

unreasonable decision. An award of costs is unlikely if the police, for instance, have presented a case that prima facie can be considered to be factually correct, but is then shown to be inaccurate on appeal.

7.8 As such, better guidance needs to be given to officers either bringing or supporting reviews in relation to the level of scrutiny they should subject their evidence to before submitting it. In addition, guidance needs to be given as to when prosecution should be sought rather than review, for instance when the aim of the action is to seek punishment of an individual for transgressions. In particular, reviews are not meant to be used to punish premises licence holders. That is why offences under the licensing Act carry financial and custodial penalties for convictions.

7.9 We also suggest that better guidance is given to licensing authorities in relation to how they carry out hearings. Licensing hearings should be, and work best, when they are a discussion led by the chairman of the committee, rather than a more 'formal' quasi-judicial approach that some take.

8 Should sales of alcohol airside at international airports continue to be exempt from the application of the Act? Should sales on other forms of transport continue to be exempt?

8.1 It is clear that selling alcohol airside should require the same standards of the seller as required by the Licensing Act; in particular in relation to selling alcohol to under 18's or to persons who appear intoxicated. Whether that extends to requiring such premises to be fully licensed under the Act would require its own consultation.

Licensing procedure

9 The Act was intended to simplify licensing procedure; instead it has become increasingly complex. What could be done to simplify the procedure?

9.1 We would applaud any attempts to simplify procedure in such a way as to reduce costs to applicants and the administrative burden to local authorities. 2 examples of simplified procedure that we think would have a positive effect on licensing are taken from our Scottish experiences:

- **DPS/DPM "Immediate Effect" provisions.** Under the Scottish 2005 Act, when a DPS leaves a premises (referred to as a Designated Premises Manager (**DPM**)), notice must be given within 7 days of this event, and in turn a new DPS must be named within 6 weeks. The premises is allowed to trade in the interim period. Under the 2003 Act there is no similar provision meaning when a DPS leaves, a premises can often have to close down creating considerable disruption for business and the public. A period of grace such as adopted in Scotland would be most welcome.
- **Annual fee payments:** under the 2005 Act every single licensed premises in Scotland must pay the annual premises licence fee on 1 October. In England & Wales these dates change from premises to premises. This is a bureaucratic headache for large operators and their advisers. Having a single date for payment works well in Scotland

and means that licensing authorities, as well as pub companies, can gear up accordingly rather than have to deal piecemeal with many thousands of payments across the year.

9.2 We estimate that TLT has made in the region of 12,500 premises applications under the Licensing Act since 2005. Below is a list of areas where we feel either clarification is needed or consideration given to changing the current process in order to streamline licensing for applicants and local authorities alike.

9.3 Streamlining

- Standardised electronic submission procedure across all local authorities.
- Standardised online payment procedure (in particular for applications to have immediate effect).
- A single date for payment of annual fees for multiple operators (see Scottish example above) or a single date for all annual fees nominated by each licensing authority. Given that licences are suspended for non-payment, such a system would be invaluable.
- A grace period for appointing a new DPS (see Scottish example above).
- Right for personal licence holders to have a new personal licence issued without an expiry date (on payment of a small administration fee).
- Removal of requirement to advertise in the local press.
- A requirement for local authority accounts teams to have a system for ensuring payments received are recorded to a premises by reference to the premises licence number, or by address where the fee is for a new licence application.
- Provision in the Act that applications are automatically granted after 10 working days from the end of the consultation period if no notification of representations having been received is sent to the applicant.
- Grounds for licensing officers refusing applications limited to where specified documents are not provided. No power of rejection on the basis that documents received are 'defective'.
- A deadline for licensing officers to consider and either accept or refuse an application received by them on grounds that it is materially defective (we suggest within 4 working days of receipt).
- A deadline after the statutory period where applications must be deemed granted for local authorities to notify applicants of the grant.

9.4 Clarifications required for applicants/ licensing authorities

- A nationally set minimum time given to all parties attending licensing hearings to make submissions, with the ability for any party to make an application to extend the time limit (by notification in the 'Regulation 8' notification process).
- A clearer means of ensuring that applications that require a hearing are heard within the statutory time limits, or a process is established for ensuring parties with time constraints can ensure the matter is listed as a matter of urgency.

- Requirement for licensing officers processing applications to ensure that notices put on council websites/ sent to residents display all the information contained on the applicant's notice displayed at the premises.

Representations received in relation to applications to be made available to the applicants within a specified time of receipt by the licensing authority (we suggest 3 working days). This allows for negotiations to be entered into and should assist in preventing unnecessary hearings.

10 What could be done to improve the appeal procedure, including listing and costs? Should appeal decisions be reported to promote consistency? Is there a case for a further appeal to the Crown Court? Is there a role for formal mediation in the appeal process?

10.1 We agree that an appeal to the Crown Court would be of benefit to the licensing procedure not least this will assist in building a recognised body of case laws for solicitors advising applicants and councillors, with the backing of the majesty of the law.

10.2 We suggest that there should be official guidance given in relation to whom licensing authorities need to consult when determining whether an appeal can be settled 'out of court'. There is a large discrepancy between who is consulted and whether other parties' (often resident's) consent needs to be given in relation to a proposed settlement. This is often a result of internal procedures as to who is permitted to 'sign-off' on consent orders and can sometimes lead to cases going to fully-contested appeals against the weight of a council solicitor's advice.

10.3 Given that losing an appeal leaves a council open to costs being awarded against them, we suggest that there is merit in specifically advising that licensing authorities are under no obligation to seek the consent of interested parties in settling an appeal. If a party is likely to disagree with a proposed settlement, they should apply to be joined as a party themselves and accept that there is a risk as to costs in losing at the appeal hearing.

10.4 For summary reviews of premises licences, a right of immediate appeal needs to be given to the police and premises licence holders/ premises operators in relation to a determination by the licensing sub-committee as to whether or not to re-impose interim steps during the appeal period. The effect of suspension of a licence throughout a drawn-out appeal period following the conclusion of the final review hearing is of such import to the very existence of a business, that the right to appealing is justified. Likewise, the police should have the right to appeal a determination to lift interim steps if they believe there is a serious risk of crime and disorder in so-doing. Such a right would focus the minds of the committee on what is a very important part of their determination, but which often gets paid not much more than lip-service at hearings.

Sale of alcohol for consumption at home (the off-trade)

11 Given the increase in off-trade sales, including online sales, is there a case for reform of the licensing regime applying to the off-trade? How effectively does the regime control supermarkets and large retailers, under-age sales, and delivery services? Should

the law be amended to allow licensing authorities more specific control over off-trade sales of “super-strength” alcohol?

11.1 Whilst not strictly relevant, there is a mistaken understanding by a number of councils and their officers as to what constitutes an 'off sale'. This is a matter that needs clarifying to ensure officers stop considering customers taking a drink outside a premises (for instance onto the pavement immediately to the front of a premises or into a garden that is not shown on a plan) as an 'off sale'.

11.2 We feel that there is a disproportionate amount of “blame” placed on on-licensed premises compared to off licences in the media and some local authority policies when it comes to the negative effects of licensable activities. This needs to be addressed in order to educate parties on the issues surrounding pre-loading and the burden this places on on-licensed premises.

11.3 The discussion around 'super-strength' alcohol urgently needs to be re-framed. Belgian beers have often been much stronger in ABV than usual lagers and bitters; however with the rise of 'craft beer', the debate has become ever more necessary. Many craft beers are brewed for flavour profile and often are stronger than other beers- sometimes to the same ABV as 'super-strength' lagers of 7% ABV or more. Given that the concern is mainly in relation to the availability of 'super-strength' alcohol (mainly beers) for street and 'problem' drinkers, the debate needs to be taken away from a simple reference to ABV. The Licensing Act makes individual premises responsible for promoting the licensing objectives and where it is deemed necessary, action should be taken against individual premises who fail to do so. To simply ban drinks on the basis of alcoholic strength fails to understand this distinction.

Pricing

12 Should alcohol pricing and taxation be used as a form of control, and if so, how? Should the Government introduce minimum unit pricing in England? Does the evidence that MUP would be effective need to be “conclusive” before MUP could be introduced, or can the effect of MUP be gauged only after its introduction?

12.1 Whilst MUP is more likely to affect off-sales of alcohol, we have concerns about its introduction eventually being used as a means for regulation of the industry outside of any of the currently stated aims of such a policy. We feel that such a proposal would need to be based on conclusive evidence of price directly affecting the purchase of alcohol by problem drinkers before it is further considered as a means of control.

12.2 Our experience of the Scottish attempt at introducing minimum pricing is that it has often been portrayed as the principle solution to alcohol harms. The policy position to date has been speculative and there is no evidence base that MUP would be effective beyond academic limited modelling. The underlying philosophy is based on a "Whole Population Approach" which in our view does not sit with licensing system because it is unspecific: it does not target harm or look at localities and individual merits/demerits but instead

imposes a position on all members of the public whether responsible drinkers, teetotalers, irresponsible drinkers or alcoholics.

Fees and costs associated with the Licensing Act 2003

13 Do licence fees need to be set at national level? Should London, and the other major cities to which the Government proposes to devolve greater powers, have the power to set their own licence fees?

13.1 We think that it is essential that fees are set at a national level. Many of our client's would face a very real headache should local authorities set their own fees in terms of budgeting and additional administration costs.

13.2 One only needs to look back at the differences between Public Entertainment Licence fees from council to council to see how disproportionately high fees would be in certain authorities. The Hemming case is likely to have a say on what can and cannot be charged, but the potential for litigation and the inevitable industry scrutiny of local authority set fees is likely to be an administrative burden in and of itself.

13.3 We would be happy to provide our response to the consultation on fees that we submitted at the time.

International comparisons

14 Is there a correlation between the strictness of the regulatory regime in other countries and the level of alcohol abuse? Are there aspects of the licensing laws of other countries, and other UK jurisdictions, that might usefully be considered for England and Wales?

14.1 Beside the specific examples given above in relation to Scotland (Q's 8 and 11 above), we offer no response, except to say that in the experience of TLT's licensing team who have between them travelled widely outside of England and Wales, that the strictness of the regulatory regime has very little effect on the activities of individuals in that place. People will act as their personalities dictate, irrespective of the regulatory regime, for good or ill. There is a much wider sociological context that is often forgotten when policy is drawn up. Alcohol, in particular, is often the whipping boy of various groups intent on suggesting that 'society' is afflicted by issues that need addressing. The consensus view here is that premises and the licensing of them is rarely the root cause of problems, it is a lack of education of individuals as to the harm they cause themselves and others that is at the heart of the matter.

For and on behalf of TLT solicitors

1 September 2016

UK Health Forum – written evidence (LIC0035)

1. About the UK Health Forum

1.1 The UK Health Forum (UKHF), a registered charity, is both a UK forum and an international centre for the prevention of non-communicable diseases (NCDs) including coronary heart disease, stroke, cancer, diabetes, chronic kidney disease and dementia through a focus on up-stream measures targeted at the four shared modifiable risk factors of poor nutrition, physical inactivity, tobacco use and alcohol misuse. UKHF undertakes policy research and advocacy to support action by government, the public sector and commercial operators. As an alliance, the UKHF is uniquely placed to develop and promote consensus-based healthy public policy and to coordinate public health advocacy.

1.2 The UKHF is a member of the Alcohol Health Alliance (UK).

2 Questions

2.1 Licensing objectives

2.1.1 (1) Are the existing four licensing objectives the right ones for licensing authorities to promote? Should the protection of health and wellbeing be an additional objective?

2.1.2 The current four licensing objectives cover important areas impacted by licensing and the consumption of alcohol, but the effectiveness of the Act is hampered by the lack of a health objective. This would allow all of the responsible authorities within the Act to better address the known health impacts that alcohol can, and does have on local communities.

2.1.3 Evidence suggests that the addition of a health and wellbeing objective would represent an evolution and not a revolution within licensing. It would make amends for a clear legislative gap within the Act and allow for a more even application of the current four objectives. Some local authorities already address more proximal health issues related to licensing using the current four objectives, demonstrating that it can be done, albeit with limitations. The addition of a specific objective would aid this further and do a significant amount to encourage other local authorities to take this approach.

2.1.4 (2) Should the policies of licensing authorities do more to facilitate the enjoyment by the public of all licensable activities? Should access to and enjoyment of licensable activities by the public, including community activities, be an additional licensing objective? Should there be any other additional objectives?

2.1.5 The Section 182 Guidance should be far more clear about the fact that the Act, as administrative law, is to be promoted with a view to the wider public interest, not just the night time economy. This does not always happen in practice,⁴⁹¹ and there are many examples of licensed premises, particularly in saturated areas, undermining the local public

⁴⁹¹ Foster. J., Charalambides. L., (2016) [The Licensing Act \(2003\): its uses and abuses 10 years on](#). Institute of Alcohol Studies. Chapter 4.

good. A greater focus on this both within individual decisions, and licensing policies, would help to ensure that decisions are made in a sustainable way and that they do not undermine the local public good.

2.1.6 The Equality Act 2010 already places obligations on local authorities to ensure access to licenced venues, and is referenced in the Section 182 Guidance. This could be made more prominent, but there is no need to duplicate the Equality Act within the 2003 Licensing Act.

2.2 The balance between rights and responsibilities

2.2.1 (3) *Has the Live Music Act 2012 done enough to relax the provisions of the Licensing Act 2003 where they imposed unnecessarily strict requirements? Are the introductions of late night levies and Early Morning Restriction Orders effective, and if not, what alternatives are there? Does the Licensing Act now achieve the right balance between the rights of those who wish to sell alcohol and provide entertainment and the rights of those who wish to object?*

2.2.2 The lack of a workable Early Morning Restriction Order is a clear strategic failing within the Act. Many local authorities and police forces would like to be able to use this tool, and restricting excessively late closing times is known to significantly reduce alcohol related crimes and associated police costs.⁴⁹² Late night levies are currently far too inflexible and so have only been practical in limited locations.⁴⁹³ Recent Home Office plans to address this problem are very welcome.

2.2.3 (4) *Do all the responsible authorities (such as Planning, and Health & Safety), who all have other regulatory powers, engage effectively in the licensing regime, and if not, what could be done? Do other stakeholders, including local communities, engage effectively in the licensing regime, and if not, what could be done?*

2.2.4 In general it is uncommon for all of the responsible authorities to engage in licensing, and the process would benefit from better involvement, particularly from planning and child protection. In many areas, public health bodies would like to be more engaged but find the lack of a specific objective to be problematic.

2.2.5 Further more, the lack of information regarding use of the Act for the public health community is a hindrance. Further support for resources such as the *Healthy Places* online resource would be welcome.⁴⁹⁴

2.3 Licensing and local strategy

2.3.1 (6) *Should licensing policy and planning policy be integrated more closely to shape local areas and address the proliferation of licensed premises? How could it be done?*

⁴⁹² Foster. J., Charalambides. L., (2016) [The Licensing Act \(2003\): its uses and abuses 10 years on.](#) Institute of Alcohol Studies. Page 127

⁴⁹³ UK Health Forum. (2016). [Healthy Places – Local Alcohol Control – Late Night Levy.](#)

⁴⁹⁴ UK Health Forum (2016). [Healthy Places – Local Alcohol Control.](#)

2.3.2 Yes, the two should be better integrated, although while this approach may help, it would not necessarily make a significant impact on the proliferation of licensed premises. Another key factor for this is the decision making process and the way in which the locality and evidence are considered.

2.4 Pricing

2.4.1 (12) *Should alcohol pricing and taxation be used as a form of control, and if so, how? Should the Government introduce minimum unit pricing in England? Does the evidence that MUP would be effective need to be “conclusive” before MUP could be introduced, or can the effect of MUP be gauged only after its introduction.*

2.4.2 Consumption can and should be regulated by price, and alongside licensing price is a key tool for limiting alcohol related harms. There is clear and consistent evidence that price is a key variable and directly influences alcohol related harms – for example, research has shown that in England and Wales the real price of beer has a direct impact on A&E attendance rates.⁴⁹⁵ Decreases in alcohol taxes in Finland in 2004, for example, led to a 10% increase in overall consumption and a 46% increase in liver disease deaths. As a result, alcohol taxes are recommended by international bodies such as the World Health Organization and the Organisation for Economic Co-operation and Development as among the ‘best buys’ in public health.

2.4.3 Alcohol is 54% more affordable today than in 1980.⁴⁹⁶ Successive cuts and freezes to duty since 2012 have exacerbated this problem: beer duty is now 14% lower than in 2012, while cider and spirits duty have each fallen by 6%. Raising the price of alcohol through real terms increases in duty is necessary to reverse these dangerous trends. We recommend that the duty escalator should be reinstated at 2% above inflation.

2.4.4 MUP is not a silver bullet, and a combination of tax and MUP would be the optimal approach. This would ensure that the cheapest alcohol, which disproportionately causes the greatest harms, increased in price, while ensuring that the Treasury benefited from this rather than the alcohol producers.

30 August 2016

⁴⁹⁵ Institute of Alcohol Studies (2015). [Alcohol’s impact on emergency services](#).

⁴⁹⁶ Health & Social Care Information Centre (2015), Statistics on Alcohol England, 2015.

UK Music – written evidence (LIC0096)

About UK Music

1. UK Music is the umbrella body representing the collective interests of the UK's commercial music industry, from songwriters and composers to artists and musicians, studio producers, music managers, music publishers, major and independent record labels, music licensing companies and the live music sector.
2. UK Music exists to represent the UK's commercial music sector, to drive economic growth and promote the benefits of music to British society. The members of UK Music are listed in an annex.

General

3. UK Music welcomes the House of Lords decision to conduct post-legislative scrutiny of the Licensing Act 2003. We would like to provide general remarks as well as responding to specific questions where we are best placed to provide contributions based on our knowledge and experience.
4. The UK music industry contributed £4.1 billion in GVA in 2014 to the economy, growing by 5%. The sector is responsible for total export revenues of £2.1 billion and employs over 117,000 people.⁴⁹⁷
5. Live music is a key ingredient to what makes the UK music industry the success that it is. It contributes almost £1 billion in GVA and employs over 25,000 people.⁴⁹⁸ A total of 27.7 million people enjoyed live music events in 2015.⁴⁹⁹
6. The sector has experienced year on year growth and has a profound impact on other parts of the economy. Music tourists to festivals and concerts generated £3.7 billion in spend in 2015.⁵⁰⁰ Across the nations and regions of the UK, areas such as the East of England, North West, Scotland, South West and South East all contribute hundreds of millions in music tourist spend. Three quarters of a million people came to the UK for gigs and events in 2015.

Music and the Licensing Act 2003

7. The legislative framework has a profound impact on the music industry's ability to both nurture talent and grow economic value. For example, strong copyright law is required to give incentives to invest in music creativity.
8. For live music, the Licensing Act 2003 is a significant piece of legislation in England and Wales. The Act regulates the performance of live music in public, with licences

⁴⁹⁷ http://www.ukmusic.org/assets/general/Measuring_Music_2015.pdf

⁴⁹⁸ http://www.ukmusic.org/assets/general/Measuring_Music_2015.pdf

⁴⁹⁹ <http://www.ukmusic.org/research/music-tourism-wish-you-were-here-2016/>

⁵⁰⁰ <http://www.ukmusic.org/research/music-tourism-wish-you-were-here-2016/>

necessary for moderate and large scale events and concerts. Exemptions from the Act for smaller events have more recently been introduced under the Live Music Act 2012 and the Legislative Reform (Entertainment Licensing) Order 2014. These exemptions can still be reviewed by licensing authorities which may result in them being disapplied.

9. Unlike other activities regulated by the 2003 Act, public entertainment licensing (PEL) had already been transferred from magistrates to local authorities since the Local Government (Miscellaneous Provisions) Act 1982. A significant change for music as a result of the 2003 Act concerned the abolition of the “two in a bar rule”.

10. The “two in a bar rule” allowed for two musicians in a bar to perform without the need for a licence. Whilst this rule was seen as restrictive towards the performance of live music, its abolition under the 2003 Act meant it was replaced by a “none in a bar rule” whereby all performances of live music required applications for licences.

11. In order to respond to concerns that the 2003 Act would have a detrimental impact on live music provision, a number of remedies were attempted. It was not until the Live Music Act 2012 and the subsequent Legislative Reform (Entertainment Licensing) Order 2014 that meaningful solutions to address problems for the performance of live music associated with the 2003 Act were put in place however.

12. Example of attempted remedies include:-

- (i) Schedule 1 of the 2003 Act originally included a broad incidental music exemption. This lacked definition and was left open to interpretation by each local licensing authority. The statutory guidance under section 182 of the Act was also unhelpful in interpreting this exemption.
- (ii) The original Section 177 of the 2003 Act attempted to create an exemption for small scale live music yet it was badly drafted, making it unclear what it was trying to achieve. There is no evidence of the provision ever being successfully used to exempt live music.
- (iii) Temporary Event Notices which provide permission for regulated entertainment under the 2003 Act yet these are for a limited period of time and audience and have a regulatory and financial cost burden attached to them.
- (iv) In 2009 the Legislative Reform (Minor Variations to Premises Licences and Club Premises Certificates) Order introduced a “fast track” solution to amend premises licences but this did not decrease regulatory burdens and could only be used by those already in possession of a licence.

13. Furthermore, the Live Music Forum which was established to monitor the impact of the 2003 Act on music reported in 2007 that the promised increase in live music had not happened and that evidence of incorrect or zealous interpretation of the Act from local

authorities existed.⁵⁰¹ The 2007 BMRB live music survey revealed that there had been a 5% decrease in the provision of live music since the 2003 Act came into force.

14. The deregulation of live music from the 2003 Act between 2012 to 2015, which UK Music campaigned for⁵⁰², was therefore a welcome breakthrough to support the provision of music through the legislative framework.

15. Whilst the recent legislative changes mean that the Act has a greater opportunity of fulfilling its original objectives regarding the provision of entertainment our default position remains that music should not be regarded as a licensable activity under the Act.

16. UK Music has consistently argued that other legislation exists, such as the Environment Protection Act, Health and Safety at Work Act and the Fire Safety Order 2005, to provide the protections that the existing licensing objectives seek to address.⁵⁰³

17. Whilst music remains a licensable activity we argue for the introduction of a new positive licensing objective to bring balance to the way regulated entertainment is treated under the Act and by licensing authorities in discharging their functions.

Licensing objectives

18.

Question 1

Are the existing four licensing objectives the right ones for licensing authorities to promote? Should the protection of health and wellbeing be an additional objective?

Whilst the existing four licensing objectives assist in mitigating the potential for anti-social behaviour and criminality, UK Music are concerned that they create a culture within licensing authorities that views and treats entertainment regulated by the Act negatively.

Operating music venues within London have shrunk by 35% in the past eight years.⁵⁰⁴ Restrictive licensing laws is often cited as a contributing factor in venue closures. Licensing authorities rely on the existing objectives when assessing complaints and applications. Without a positive objective when responding to applications or complaints related to entertainment provisions, licensing authorities are not encouraged to acknowledge the benefits of music to economic, cultural and social wellbeing within local communities.

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http://webarchive.nationalarchives.gov.uk/20121204113822/http://www.culture.gov.uk/images/publications/lmf_forewordexcsunmary.pdf

⁵⁰²

http://www.ukmusic.org/assets/general/UK_Music_LRO_Entertainment_Deregulation_Submission_2013.pdf
http://www.ukmusic.org/assets/general/licensing_guidance_technical_consultation_ukmusic.pdf

⁵⁰³ http://www.ukmusic.org/assets/general/Response_to_DCMS_Consultation_Licensing_Act_.pdf

⁵⁰⁴ <https://www.theguardian.com/uk-news/2015/oct/20/save-londons-live-music-venues-city-wide-campaign-launched>

UK Music recognises the importance of ensuring public safety, protecting children from harm and the prevention of crime and disorder and public nuisance yet believes consideration should be given to an additional licensing objective relating to “the promotion of cultural activity and inclusion”. We set out further details on this in our response to the next question.

When considering whether health and wellbeing should be an additional objective, UK Music emphasises the positive impact that music has on the public generally. Examples of research into this includes work undertaken by the “Music and Wellbeing” research unit within the University of Sheffield.⁵⁰⁵ The work of charities such as Nordoff Robbins relating to music therapy also demonstrates the positive impact music can have.⁵⁰⁶ Health and wellbeing as a licensing objective should not be used to restrict music provision further.

19.

Question 2

Should the policies of licensing authorities do more to facilitate the enjoyment by the public of all licensable activities? Should access to and enjoyment of licensable activities by the public, including community activities, be an additional licensing objective? Should there be any other additional objectives?

We seek a balanced and proportionate approach from licensing authorities when dealing with applications and complaints relating to live music. Licensing authorities should be encouraged to understand the impact of their decisions on local culture and the businesses that enable these activities to be enjoyed. There is a need for an additional licensing objective relating to “the promotion of cultural activity and inclusion” in order to support this.

The Licensing Act’s existing objectives specifically made regulation of live music a public order issue associated with nuisance, crime and disorder, public safety and protection from harm. That failure to have a licence for music could potentially lead to criminal sanctions and penalties (such as large fines and terms of imprisonment) reinforces a perception within licensing authorities that entertainment is something that should be controlled under the Act, rather than enabled.

The lack of an objective to promote licensable activities has a knock on effect on licensing authorities’ decisions, often resulting in onerous conditions being imposed on licensed premises. Research conducted by the Music Venue Trust, reported by the Mayor of London’s Music Venue Taskforce⁵⁰⁷, demonstrated that one London venue has over 70

⁵⁰⁵ <http://musicwellbeing.group.shef.ac.uk/>

⁵⁰⁶ <https://www.nordoff-robbins.org.uk/>

⁵⁰⁷ https://www.london.gov.uk/sites/default/files/londons_grassroots_music_venues_-_rescue_plan_-_october_2015.pdf

separate conditions on its licence. Another has its capacity set at the same level as before the smoking ban, despite the risk of fire now being reduced. We have also been made aware that conditions related to music are still featuring on some small venues licences despite the fact they should be benefiting from the Live Music Act and other recent entertainment exemptions.

UK Music has long advocated the introduction of an “agent of change” principle into UK law. Such a measure would address planning disputes between music venues and developers by placing responsibility for managing the impact of a change on those instigating it. This principle could equally apply to licensing authorities when discharging their functions. One residential noise complaint is often all that is required to generate a review of a premises licence. Consideration of the circumstances of the complainant and whether they have recently moved into the area is not generally a factor taken into account. This leaves existing businesses at the mercy of a minority individuals whose actions could result in restrictions on the enjoyment of licensable activities.

A licensing objective for “the promotion of cultural activity and inclusion” would encourage licensing authorities to consider the impact of an application or complaint on cultural activities such as music and their propensity to stimulate public inclusion through accessibility, attendance and participation.

The balance between rights and responsibilities

20.

Question 3

Has the Live Music Act 2012 done enough to relax the provisions of the Licensing Act 2003 where they imposed unnecessarily strict requirements? Are the introductions of late night levies and Early Morning Restriction Orders effective, and if not, what alternatives are there? Does the Licensing Act now achieve the right balance between the rights of those who wish to sell alcohol and provide entertainment and the rights of those who wish to object?

The Live Music Act and subsequent entertainment deregulations are examples of modest exemptions from the Licensing Act which have gone some of the way to relaxing the most prohibitive and worrying aspects for live music caused by the 2003 Act. Whilst we would strongly support further exemptions, particularly on timing and audience sizes, our priority now is to achieve a positive licensing objective relating to cultural activities.

Prior to the commencement of the Live Music Act, UK Music conducted a survey to assess the appetite and awareness amongst licensed premises of the 2012 Act. The survey revealed that 17% of venues would stage live music for the first time due to the Act, with a

further 24% of venues increasing their provision.⁵⁰⁸ The research indicated that 78% of venues were unaware of the Act before it came into force on 1st October 2012.

Monitoring the impact of the 2012 Act is a challenge. Previously the best way to assess the scale of live music was to consider whether a premises licence contained provision. Given that the Live Music Act and further deregulation render permission unnecessary in certain circumstances it is harder to assess how many premises are benefiting from the exemptions and how many events are taking place.

In order to address this, UK Music held a series of roundtables across England and Wales with local venues, musicians and audiences to assess the Act's impact. On the anniversary of the Act's first year in force UK Music published the Rocktober Report.⁵⁰⁹ The report revealed that the new Act is working well and that there has not been an increase in complaints as a result of it. Furthermore, we understand that the licensing review mechanism which can be used to disapply entertainment exemptions is seen to be working well.

Despite the difficulties in assessing the impact of the Live Music Act there are signs that its exemptions could be making a real difference. The Government's most recent entertainment licensing statistics indicate overall premises licence applications have increased by 1.3%. During the first full year of operation of the Act there had been a 1.5% decrease in applicants seeking the need to apply for the provision of live music.⁵¹⁰ The same period saw a 5.9% decrease in the number of club premises certificates seeking permission for live music.⁵¹¹ These statistics cover licences in force on 31st March 2014. We urge the Government to release updated statistics to coincide with this inquiry. This should cover the first full year in operation of the entertainment deregulation exemptions that commenced in April 2015 and would provide an opportunity for further analysis of this policy measure.

One issue that has arisen and is linked to the 2012 Act concerns small grassroots venues whose primary business is putting on live music. It is suggested that these venues are facing increased competition from pubs and clubs which are now putting on live music as a result of Act. That venues dedicated to music should feel a negative impact from the Act is an unintended consequence but should not diminish the important achievement of deregulating live music from the Licensing Act given its overall objective of increasing music provision and participation.

Grassroots small music venues are vital to the music industry ecosystem. The Government has rightly acted, such as on planning law, to alleviate some of the challenges they face. That they still could be suffering as a result of the licensing system despite deregulations to the law that are intended to assist them provides further evidence of the need for a new licensing objective relating to the "the promotion of cultural activity and inclusion".

⁵⁰⁸ <http://www.ukmusic.org/assets/general/UKMUSIC-LMBS-DOC3-PRINT.pdf>

⁵⁰⁹ <http://livemusicexchange.org/wp-content/uploads/UKMUSIC-The-Rocktober-Report.pdf>

⁵¹⁰ <https://www.gov.uk/government/publications/entertainment-licensing-2014/entertainment-licensing-statistics-2014>

⁵¹¹ <https://www.gov.uk/government/statistics/entertainment-licensing-2014>

Licensing and local strategy

21.

Question 6

Should licensing policy and planning policy be integrated more closely to shape local areas and address the proliferation of licensed premises? How could it be done?

There is a direct correlation between the operation of the planning and licensing systems which causes problems for music venues. This can be resolved by a more integrated approach through the full adoption of the “agent of change” principle into law.

A venue’s licence is put at risk if a resident of a new development makes a noise complaint to a licensing authority. New licence conditions may be attached with expensive adjustments for the venue, such as soundproofing, being required. The introduction of “agent of change” will mean the burden of responsibility for dealing with the implications of a new development reside with those that have a direct interest in the new development, as opposed to the existing businesses that may be affected by it.

Recognising that music venues are in particular vulnerable to change of use rules, the Government introduced a new “noise impacts” consideration when offices are turned into residential accommodation as part of permitted development planning rights in early 2016.⁵¹² This only addresses one set of circumstances however. A full “agent of change” principle would allow all planning decisions to be made on the basis of pre-empting implications that may arise through the licensing system once a new development is complete.

Licensing procedure

22.

Question 9

The Act was intended to simplify licensing procedure; instead it has become increasingly complex. What could be done to simplify the procedure?

As already stated, our position is to deregulate live music from the 2003 Act entirely. Failing this, a positive licensing objective concerning the promotion of cultural activity should be introduced. This would foster greater understanding amongst licensing authorities about regulated entertainment, its benefits and aid in reducing the complexity of licensing processes and procedures.

International comparisons

23.

⁵¹² <http://www.ukmusic.org/news/planningamendment>

Question 14

Is there a correlation between the strictness of the regulatory regime in other countries and the level of alcohol abuse? Are there aspects of the licensing laws of other countries, and other UK jurisdictions, that might usefully be considered for England and Wales?

In 2015 global music industry body the IFPI and Music Canada produced a report, *The Mastering of a Music City*, which analysed how cities across the world can take steps to develop their music economies.⁵¹³ The report details restrictive and confusing licensing laws that restrict the viability of music venues and performance in Australia, Canada and Germany. At a national level the UK would appear relatively unique in that there exists a Live Music Act for England and Wales which seeks to eliminate the regulatory and financial burdens of licensing from the performance of live music. However, it is notable that the State of New South Wales in Australia eliminated live music venue licences in 2009.

New South Wales's action was complemented by the introduction of local council music action plans and the establishment of a live music office to support the development of local government live music policies. We are aware of similar offices operating in cities such as San Francisco in the USA.⁵¹⁴ In European cities like Amsterdam and Berlin we are seeing the creation of night ambassadors, often dubbed "Night Mayors", which also have a role in enhancing the relationship between entertainment and the legal framework that supports it.⁵¹⁵ The new Mayor of London, Sadiq Khan, intends to introduce a "night czar" for the capital also.⁵¹⁶ We would urge other cities in England and Wales to consider such an approach too.

Annex

UK Music's membership comprises of:-

- AIM – Association of Independent Music - representing over 850 small and medium sized independent music companies.
- BASCA - British Academy of Songwriters, Composers and Authors – BASCA is the membership association for music writers and exists to support and protect the professional interests of songwriters, lyricists and composers of all genres of music and to celebrate and encourage excellence in British music writing
- BPI - the trade body of the recorded music industry representing 3 major record labels and over 300 independent record labels.
- FAC – The Featured Artists Coalition – the voice of the featured artists.
- MMF - Music Managers Forum - representing 425 managers throughout the music industry.

⁵¹³ <http://www.ifpi.org/downloads/The-Mastering-of-a-Music-City.pdf>

⁵¹⁴ <http://sfgov.org/entertainment/>

⁵¹⁵ <https://www.theguardian.com/cities/2016/mar/21/night-mayor-amsterdam-holland-mirik-milan-night-time-commission>

⁵¹⁶ <http://www.bbc.co.uk/news/uk-england-london-36332868>

UK Music – written evidence (LIC0096)

- MPG - Music Producers Guild - representing and promoting the interests of all those involved in the production of recorded music – including producers, engineers, mixers, re-mixers, programmers and mastering engineers.
- MPA - Music Publishers Association - with 260 major and independent music publishers in membership, representing close to 4,000 catalogues across all genres of music.
- Musicians' Union representing 30,000 musicians.
- PPL is the music licensing company which works on behalf of over 90,000 record companies and performers to license recorded music played in public (at pubs, nightclubs, restaurants, shops, offices and many other business types) and broadcast (TV and radio) in the UK.
- PRS for Music is responsible for the collective licensing of rights in the musical works of 114,000 composers, songwriters and publishers and an international repertoire of 10 million songs.
- UK Live Music Group, representing the main trade associations and representative bodies of the live music sector

2 September 2016

University of Westminster – written evidence (LIC0137)

The findings and opinions are drawn from research carried out recently by the team on behalf of the Great London Assembly London Night time Commission, and via previous research as noted in references section.

1. We have responded only to questions that have come within the purview of our research and where possible our responses are based upon the empirical research conducted as part of our current commissioned work for the GLA, and previous work for the Institute of Alcohol Studies, the Civic Trust and ODPM and the Joseph Rowntree Foundation.

2. Overall, whilst the Licensing Act has gone some way in attempting to balance the various interests and stakeholders, our research indicates that the balance does need to be finessed, and in particular mechanisms for ensuring the collaboration and input of various stakeholders needs to be reinforced where possible. We indicate below some instances of good practice that could be used as exemplars here.

3. As regards **Licensing Objectives** (Q1&Q2) we have two specific points, Firstly, our research indicates that the addition of a further licensing objective, focusing upon the positive benefits of the NTE is worthy of consideration. This already informs a number of licensing policies, in our study Lambeth for example note the purpose of their policy is to maintain Lambeth's position as a vibrant place to visit and enjoy, and the positive benefits that Lambeth see in the NTE inform their policy throughout, whilst acknowledging the needed to balance the various stakeholder interests. Similarly, all of the policies acknowledge these benefits at least implicitly and inform their broader policy, we would argue that an explicit acknowledgement of this via becoming a specific LO may be appropriate. Authorities are already starting to adopt an holistic approach that includes this as a consideration and making this explicit should be seriously considered.

4. At the same time, we would argue that having health and well being as a licensing objective may be problematic. Licensing is quasi-legal and committees are concerned to keep within the law and not to lay themselves open to possible challenge. Unless the parameters of this objective are carefully defined, there is a real concern that licensing applications for music, hospitality and entertainment premises could be dealt with in too restrictive a manner. The latest health guidance is that there is no safe level of alcohol consumption, a view that arguably could ultimately lead to the closure of these venues, to the detriment of cultural and socio-economic priorities and benefits.

5. This is not to deny that there is a relationship between the density of licensed premises, consumption, crime and anti-social behaviour. Our research in a north-eastern city demonstrated that a 'party' atmosphere of tightly packed venues facilitated high levels of alcohol consumption which young people negotiate. Such premises are already highly regulated and the majority of young people can have a 'good night out'. What is of more concern is the contrast between the price levels of alcohol in off-licensed premises such as

supermarkets and on-licensed premises such as clubs and bars. This contrast leads to over-consumption in domestic settings. Furthermore, our research found that initiatives by the police and youth services were effective in combatting under-age purchasing and consumption from off-licensed premises. It will be a matter of concern if these interventions are cut back because of lack of resources.

6. In terms of the **Balance between rights and responsibilities** (Q3 & Q4), a key finding within our research has been that there were some excellent examples of good practice where applicants and stakeholders were able to engage in meaningful and constructive dialogue. In Brixton for example the BID encourages licensees to anticipate potential issues and initiate conversations, and in Westminster the applicant will often engage in meaningful conversation, and make concessions, in light of other stakeholder input - particularly from residents. Whilst these examples do show good practice, it is plain that proper resourcing and a real will and effort is needed to facilitate this. The team are conscious that this may be impacted by local authority and policing budgetary cuts. Many authorities do promote a balanced approach between different stakeholders. The Purple Flag accreditation scheme, for example has been used by nearly 50 local authorities to demonstrate good practice and improvements in their night-time economies. Again the comments above about the continuing need for resources apply.

7. **Licensing and local strategy** (Q5&Q6). Some forward looking authorities integrate their planning and licensing policies (see for example Westminster) and we argue that a proper integration of planning and licensing to allow a holistic approach should be adopted. Licensing and planning policies in Lambeth were notably positive about the benefits of a vibrant night-time economy, indeed the Core Strategies Local Plan document reported how the ENTE has benefitted Brixton, Vauxhall & Clapham, Westminster's planning policies note that the large scale of Westminster's ENTE provision 'plays a vital role' in its world city status'. This includes 40 theatres and 1500 licensed premises. Nevertheless, the pressures on the ENTE in Westminster have led to a policy of not approving planning permission for large -scale late night ENTE uses of over 500 sqm. Other authorities tend to have aspirational policies in planning looking for vibrancy on the one hand combined with use of restrictive policies such as Cumulative Impact Zones. The inclusion of a licensing objective that acknowledged the positive contribution that licensed premises can make to the qualities of place would help in integrating two separate quasi-legal forms of regulation.

8. More broadly, one barrier to be negotiated is the very different culture and educational backgrounds of licensing and planning staff within local authorities. Planning is a recognized profession with a Royal Charter, postgraduate entry qualifications and its own intellectual history. Licensing, by contrast, is more of a local authority function and does not have the same attributes. While there are some overlaps between the concerns of licensing officers and planning staff, they have different roles and functions. One solution may be to raise the profile of licensing and licensing committees, through focusing on the impact of licensing decisions in shaping the experiences of place and well being in a broader sense.

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2 September 2016

Watford Borough Council – written evidence (LIC0106)

Watford Borough Council wish to respond to the Select Committee's call for evidence with regards to the Licensing Act 2003 ('the Act'). We are grateful for the opportunity to contribute to this Committee.

Our submission to the Committee is as follows.

The council are of the opinion that that the existing licensing objectives are sufficiently broad enough to be adequate for purpose, and therefore should remain in place and prescribed by the Act. However, it is recommended that there should be a fifth licensing objective concerning public health.

It is considered that a public health objective would be beneficial in assessing the potential impact of a licence application, as well as the risk and harm posed by existing operators. Such an objective would strengthen the council's position when it is deemed appropriate to attach conditions to a licence as an appropriate measure to promote the licensing objectives. There would obviously need to be clear guidance issued under s182 of the Act to assist in the implementation and adoption of this objective.

The impact of such an objective would only be felt with more informed data being gathered by the NHS, Health and Wellbeing boards, and local authorities. The s182 guidance may be a tool with which to encourage data sharing and interpretation, although not being too restrictive so that the final decision on the use of the data is made at a local level.

The success of a public health objective will also depend heavily upon the national approach towards alcohol. Councillor Tony Page, in his submission to this Committee in July 2016 stated that, although alcohol sales may be reducing, the overall harm that the country is seeing from alcohol is not reducing, and that there has been a significant shift towards people focussing on one or two big nights out in the week. In this regard, we request that the Committee urges the Government to issue a clear statement on alcohol and its place within society. A clear statement of intent is required to assist the decision making process, both in terms of licensing authorities, responsible authorities including the Police and Public Health authorities, and the courts, in order to try and reduce the harm from alcohol.

The council agrees that Cumulative Impact Policies (CIPs) should be given a statutory footing, to strengthen the ability of authorities to control the availability of alcohol and reduce alcohol-related crime and disorder, as recommended in the Home Office's Modern Crime Prevention Strategy (March 2016). It is not felt that there are many other changes required to licensing policies, provided that they remain as being set at the local level.

It is not felt that there are any additional steps which are particularly required to promote community activities and engagement, and licensing authorities can already choose to emphasise the desire for such events within their licensing policies. A few examples can be through not requiring strict conditions on community premises, providing advice to

community groups to assist them through the licensing process, or by actively stating that they wish to encourage more community based events.

It is appreciated that community premises can already exempt themselves from the requirement to have a Designated Premises Supervisor, can benefit from an increased number of Temporary Event Notices as a result of the Deregulation Act 2015, and can provide deregulated entertainment without the need for a licence. However, there is a query over how this information is being dissipated to community premises and through communities, and it may be that this information is not being made as widely available as it could be.

The council does not feel that Late Night Levies and Early Morning Restriction Orders are necessarily appropriate tools within the licensing system and as such these have not yet been adopted within Watford. We consider a partnership approach and positive compliance to be more efficient tools in promoting standards, highlight local issues and trends, and recognising good business practice, through using Pubwatch and similar forums, the Best Bar None scheme, or even Business Improvement Districts.

We believe that it is right to review the requirement to advertise licensing applications in a local newspaper. We understand from applicants that the cost of a newspaper advertisement is disproportionate to the cost of a licence application, and is considered to be a burden upon applicants. There is also a question over how relevant it is to publish adverts in local publications, and whether this advertising is at all effective.

We wish to stress that licensing fees do need to be set at a local level, by licensing authorities, and not nationally. Doing so would allow local authorities to reflect the actual costs of processing applications. The LGA survey into licensing fees, published July 2016, reports that local government as a whole suffers an annual deficit of approximately £10.3 million due to fees not being set at appropriate levels. The average deficit is calculated to be £29,680. It is not appropriate that residents or other licensed businesses effectively subsidise premises licensed under the Act. Local authorities have the discretion to set licence fees for other licensing regimes on a cost recovery basis, as well as through a risk based approach, and we feel that it is sensible and proportionate to extend this power to the Act. If local fees are to be adopted, and the requirement to publish a newspaper notice is scrapped, then fears over a potential rise in licensing fees can be addressed by removing the financial burden of the newspaper notice.

Notably within the LGA survey on fees, it was revealed that the fee which resulted in the highest deficit was the fee for Temporary Event Notices (TENs). We believe that there should be an increase in the cost of TENs to reflect the costs involved in processing these notices. Although there may be fears that a rise in the fees for TENs could adversely affect community associations and non-profitable organisations, these fears could be allayed by specifying organisations and groups that either would pay a reduced fee, the existing fee, or no fee at all, such as how licensing regimes already exempt certain groups from requiring authorisation. We would specifically point to Schedule 3A of the Environmental Protection

Act 1990 (as amended), and the controls around distributing leaflets, which specifically exempts religious, charitable, and political organisations from requiring a consent. We feel that fees set on risk based approach would again be sensible and proportionate, and accurately reflect the cost of processing these notices, not penalising those applicants who present little or no risk.

The benefit of local licensing fees could also be felt in encouraging the resurrection of ‘dead’ licences and empty premises, thereby providing a boost to the local economy. If there was a mechanism in place whereby the annual licence fee could be either deferred or exempted for empty premises, because the premises is empty and therefore there is no work or enforcement required for the premises under a risk based approach, this would aid new operators to consider taking on an existing licence as they would only need to transfer the licence into their name to start benefitting from the licence. At the moment, if a premises is empty, the licence fee continues to accumulate, and after two years, it is cheaper to obtain a new licence than resurrect an existing licence. This creates an unfavourable situation where there could be two licences in place for one premises, and a growing debt associated with the licence which is not being utilised, requiring resources to chase this debt which ultimately may not be recoverable if the business failed.

An alternative solution to the problem of unpaid licence fees would be to implement the right to revoke a licence where the annual fee has not been paid, as is permitted under the Gambling Act 2005.

We do feel that the existing licensing objectives do provide a good basis with which to control premises which are licensed for off-sales. Securing statutory protection for CIPs will assist in strengthening these controls and the problems caused through a saturation of any particular type of premises, and this could include off-licences. A licensing objective which covers public health will also help in assessing the licensing of off-sales in areas where it is seen that there are dangerous levels of consumption of alcohol and the associated health problems linked to alcohol and alcohol dependency.

However, we would express that more support is needed for small and medium enterprises, particularly for off-sales. This support is needed in order to gain not only confidence, but experience too, in implementing controls and measures to support the licensing objectives. Larger businesses have significant resources at their disposal with regards to training and establishing company procedures, and these standards do not necessarily filter down to independent retailers. By building the resilience of these businesses, and promoting confidence in particular in refusing alcohol sales, we feel that the aims of the Act will be supported.

In much broader terms, the prospect of businesses only needing one permission per premises, which states what activities can be permitted on that premises, is a desirable one. There would be a benefit to applicants as well as to local authorities, not only in reducing the administrative burdens the licensing regimes present, but also in clearly stating what activities could take place on certain premises, preventing confusion and assisting in

enforcement against rogue businesses. This goal may be better achieved by combining the licensing and planning regimes, which would also address the existing problem of licensing policies not always being compatible with other policies, such as planning policies, whether by content or when and how often the policies are implemented and reviewed. However, we understand that this is a largescale reform with considerable impact.

We thank you again for this opportunity to provide feedback and to voice our concerns about the current operation of the current licensing regime.

2 September 2016

Waverley Borough Council – written evidence (LIC0117)

Licensing Objectives

The existing Licensing objectives are the correct ones and we do not believe an additional objective of health and wellbeing or any other is required. It would be too subjective, data would most likely be unreliable/hearsay and difficult to evidence against a particular premises.

The balance between rights and responsibilities

The Live Music Act has done more than enough to relax the provisions of the LA 2003.

Late Night Levies and Emro's are not required in our borough, however if they were we do not believe they would be effective.

We believe that the LA Act has reached a fair balance between all parties although clarification and some tidying up of the Act would not go amiss.

We would suggest that Licensed Premises should not be able to apply for TEN's and a separate application/procedure made if they required an extension

Licensing and local strategy

In general only the Police, Fire and Environmental Health engage with Licensing on a regular basis, It is very rare to receive input from the other responsible authorities.

What are the other interventions?

Keep planning and licensing policies separate however integration with the law would be better.

For example, LA 2003 should require neighbours of applications to be informed as with planning. Remove the need to advertise in the newspaper which most people do not see and have them both advertise on the councils website.

Require the local authority to put notices up at the premises when an application is received. The authorities already go and check to see if the notices are up and if they are correct (often not). It would be less onerous on the applicant and a more economical use of officer time if officers issued the notice and displayed it at the premises.

Crime, disorder and public safety

We do not feel that the Police are adequately trained to use their powers effectively and appropriately.

We see no reason why an airport should be exempt from licensing

Again we see no reason why other forms of transport should be exempt from licensing however we understand the difficulties in licensing a moving premises.

Licensing procedure

Deregulate all regulated entertainment on licensed premises up to 500 in line with recorded music.

Brief plan of the premises shown on the 'Summary' of the licence. It to be made clear what is part of the premises and not and what is licensed.

Notification of offences for personal licence holders is a shambles, this need to be reviewed and a national database introduced.

Personal licence qualification needs to be overhauled and focus more on relevant licensing practical training for licensees. At the moment it is just a cash cow for training providers

Sale of alcohol for consumption at home (the off-trade)

On-line sales to have specific application, legislation and guidance.

Over all the large retailers and supermarkets have policies in place and are effectively controlled by the licensing regime. It is the smaller one off shops that struggle with the legislation and are harder to control

Authorities should be able to have more control on the alcohol types and strengths sold at individual premises.

Pricing

No, pricing should not be used as a form of control. As well as being restrictive and over complicated it will increase the black market and white van trade that has no regulation and could be more harmful than good.

Fees and costs associated with the Licensing Act 2003

Yes fees need to be set at national level.

If you use taxi licensing fees as a bad example, you can see the wasted man hours and costs in setting, advertising, supporting and defending them that it leads to.

International Comparison

No experience or data to make comment.

2 September 2016

Welsh Government – written evidence (LIC0102)

1. The Welsh Government welcomes the opportunity to submit written evidence to inform the Committee's consideration of the Licensing Act 2003.
2. As requested, we have outlined our evidence against the appropriate headings.
3. At present the sale and supply of alcohol is non-devolved, but the Welsh Government has a direct interest in the operation of the Act. We are seeking reforms that would enable us to pursue a more preventative and health focused approach to alcohol related harm.
4. In the context of the current Wales Bill, which is expected to come before the Lords in October, the Welsh Government is seeking the deletion of the specific reservation that has been inserted into the Bill of the sale and supply and alcohol. This would enable us to develop reforms designed to mitigate alcohol related harm on individuals and devolved public services in Wales.

Licensing Objectives

5. Alcohol remains a major cause of preventable death and illness in Wales. There is a pressing need to tackle alcohol misuse using the full range of tools at the disposal of Government. Policies that control the way in which alcohol is sold and supplied are widely acknowledged to be amongst the most effective mechanisms for tackling alcohol related harms. The health harms associated with alcohol misuse are a grave and increasing problem; therefore, in addition to the current objectives, we are of the view that that the protection of health and wellbeing should be an additional licensing objective.
6. A report by the Public Health Wales Observatory, Alcohol and Health in Wales 2014, stated that: *“Every week in Wales, alcohol results in 29 deaths; around 1 in 20 of all deaths. The impact of alcohol on health also creates enormous pressures on our health systems. Every week our hospitals handle as many as 1,000 admissions related to alcohol, increasing strains on already stretched services. Such admissions are only the tip of an iceberg which includes many more presentations at emergency departments, ambulance requests and GP appointments, all resulting from alcohol.”*
7. The report also indicated *“while we are making progress much more is still to be done if we want to reduce the avoidable harms that alcohol causes families, business and communities across Wales”*. Although the percentage of adults drinking above the previous guidelines has fallen slightly since 2008, in the Welsh Health Survey 2015, 40% of adults still reported drinking more than the guideline amounts at least once in the past week.

8. The UK CMO's recently published new low risk drinking guidelines, outlining that the risk of developing a range of health problems, including some cancers, increase the more you drink on a regular basis. The guidelines also include that the protective benefits from consuming small amounts of alcohol are less than previously thought and are significant only in a limited segment of the population (women over 55). An additional health and wellbeing objective built into licensing legislation could help ensure licensed premises are promoting sensible drinking and messages relating to the health risks of drinking such as a requirement that licence holders offer a ratio of non-alcohol drinks to alcoholic drinks on their premises

Sale of alcohol for consumption at home (the off trade)

9. Welsh Government is of the view that the law should be amended to allow licensing authorities to have more control over off-trade sales of super-strength alcohol.
10. As highlighted in this paper, alcohol misuse is a major cause of preventable death and illness in Wales. It can lead to a number of health and social harms, particularly for a significant minority of people who drink to excess. Regulating the availability of the super-strength alcohol on offer is therefore an important way to reduce the harmful use of alcohol. Furthermore, the Welsh Government does not believe that the current provisions to tackle irresponsible promotions within the Licensing Act 2003 go far enough. Measures eliminating all forms of irresponsible promotions, including end of aisle selling and the introduction of controls on product placement, should be considered.

Pricing

11. The Welsh Government considers that a minimum unit price should be introduced for alcohol. There is significant evidence that the price of alcohol matters. It is no coincidence that as the affordability of alcohol has increased significantly in recent times, alcohol-related death and disease has also risen.
12. The Welsh Government commissioned the Sheffield Alcohol Research Group at Sheffield University to study the potential impact to Wales of a range of alcohol pricing policies. On 8 December 2014 their report *Model-based appraisal of minimum unit pricing for alcohol in Wales* was published. The study concluded that, minimum unit price policies would be effective in reducing alcohol consumption, alcohol-related harm (including alcohol-related deaths, hospital admissions, crimes and workplace absences), and the costs associated with those harms.
13. Minimum unit price policies would only have a small impact on 'moderate drinkers', larger impacts would be experienced by 'increasing risk drinkers', with the substantial effects being experienced by 'high-risk drinkers', particularly as these are

more likely to consume the types of alcohol affected by MUP. Sheffield University also estimated that introducing a minimum unit price of 50p for alcohol would be worth £882m to the Welsh economy in terms of reductions in illness, crime and workplace absence over a 20-year period.

14. The Welsh Government's expert Advisory Panel on Substance Misuse considered the academic literature on minimum unit pricing for alcohol and looked at the key peer-reviewed papers in this field, as well as some non-peer-reviewed publications. The panel's report, published in July 2014, concluded that the evidence base is both extensive and reliable.
15. Additionally, on 12 May 2015 the Organisation for Economic Co-operation and Development (OECD) published a report entitled "*Tackling Harmful Alcohol Use*". Chapter 4 of that report states that the targeted approach of minimum unit pricing policies has been at the centre of the alcohol debate in several OECD countries and evidence suggests that minimum unit pricing has greater potential to deter harmful and hazardous drinkers than taxation.
16. Further to the above work, the Welsh Government undertook a consultation on the draft Public Health (Minimum Price for Alcohol) (Wales) Bill, which closed on the 11 December 2015. A total of 194 responses were received; the majority of which (68%) were in favour of introducing legislation to provide a minimum unit price for alcohol in Wales. The majority of those in favour of the proposal said that more needed to be done to address the problems associated with excessive alcohol consumption in Wales.
17. Respondents to the consultation felt that minimum unit pricing of alcohol would be a targeted and proportionate measure which would not only benefit hazardous and harmful drinkers but also generally help individuals become more responsible for their own health and wellbeing. Most said that the specific groups that would particularly benefit from minimum unit pricing would be those on low incomes, the homeless, the elderly and vulnerable young people although a few expressed concern that some people on low incomes may still consume alcohol at the same levels. Others suggested that in addition to minimum unit pricing of alcohol, more should be done to reduce binge drinking and alcohol advertising and marketing particularly where products appeared to be aimed at young drinkers. A number of respondents also raised concern over the increased availability of alcohol in a variety of retail outlets in recent years.
18. The Welsh Government is clear that the UK Licensing Act does not go far enough to reduce alcohol related harm and, given the significant impact on devolved public services, this is an area that should be devolved to the National Assembly for Wales. This would bring Wales into line with other UK nations and allow the Welsh Government to take the additional action necessary to tackle the cause and effects of alcohol misuse in Wales.

2 September 2016

West Midlands Neighbouring Authority Working Group (Licensing) – written evidence (LIC0052)

Are the existing four licensing objectives the right ones for licensing authorities to promote? Should the protection of health and wellbeing be an additional objective?

Members were generally supportive of the introduction of an additional licensing objective in relation to health and wellbeing.

It was felt that currently there is a difficulty in Public Health Directors being responsible authorities, but not having an appropriate licensing objective to link their comments to. This has made it difficult in for Public Health to contribute to the licensing process in many local areas.

However there were some doubts and concerns from members about how relevant data on health and wellbeing in a local area could be sufficiently precise to be able to be considered in relation to individual applications being considered on a “case by case” basis.

Members felt there was value in having a health and wellbeing licensing objective when reviewing and revising Statements of Licensing Policy.

Should the policies of licensing authorities do more to facilitate the enjoyment by the public of all licensable activities? Should access to and enjoyment of licensable activities by the public, including community activities, be an additional licensing objective? Should there be any other additional objectives?

Whilst members agree that Statements of Licensing Policy should recognise the importance of access and enjoyment of licensable activities, it was not necessary for this to become a specific licensing objective in its own right.

It was felt that the current application of the Licensing Act 2003 was permissive in nature and in the absence of relevant representations relating to the promotion of the licensing objectives, applications are granted in line with the wishes of the applicant.

Members felt that some additional paragraphs on the benefits of facilitating access to licensable activities within the section 182 guidance would be sufficient to ensure that licensing authorities had regard to this point.

Has the Live Music Act 2012 done enough to relax the provisions of the Licensing Act 2003 where they imposed unnecessarily strict requirements? Are the introductions of late night levies and Early Morning Restriction Orders effective, and if not, what alternatives are there? Does the Licensing Act now achieve the right balance between the rights of those who wish to sell alcohol and provide entertainment and the rights of those who wish to object?

Members felt that the Live Music Act 2012 has done enough to relax the provisions of the Licensing Act 2003, but that perhaps there was not enough awareness amongst licence holders and the general public about the changes the relaxations introduced by the Act.

Members felt that late night levies and EMROs were not proving to be effective, as demonstrated by the small number of authorities that had chosen to introduce them.

Members feel that the alternatives are already in existence in terms of partnership schemes such as Best Bar None and Purple Flag, which encourage licence holders and relevant bodies to work together to promote a safe and diverse night time economy.

Members feel that the Licensing Act 2003 does achieve the right balance between the rights of those who wish to sell alcohol and provide entertainment and the rights of those who wish to object. However again Members feel there is insufficient public awareness of the application and licence review process and how the community can become engaged with licensing matters in their local area.

Do all the responsible authorities (such as Planning, and Health & Safety), who all have other regulatory powers, engage effectively in the licensing regime, and if not, what could be done? Do other stakeholders, including local communities, engage effectively in the licensing regime, and if not, what could be done?

Members felt that not all responsible authorities do engage effectively in the licensing regime. A lack of training and awareness, exacerbated by lack of resources to effectively engage, were felt to be the main barriers.

In relation to Planning Departments, it was felt that when they did become engaged with the process, their representations were often relating to the absence of appropriate planning permission, which the Act and guidance do not allow licensing authorities to consider when making licensing determinations.

Other stakeholders and local communities do engage in the licensing regime in some areas, but not others. Member felt that greater public awareness of the licensing regime and how it operates would improve engagement further.

Licensing is only one part of the strategy that local government has to shape its communities. The Government states that the Act “is being used effectively in conjunction with other interventions as part of a coherent national and local strategy.” Do you agree?

Members agreed that the Act is being used effectively in conjunction with other interventions as part of a coherent national and local strategy.

Should licensing policy and planning policy be integrated more closely to shape local areas and address the proliferation of licensed premises? How could it be done?

Members felt that there was great confusion amongst the general public and planning officers about how a licence could be granted which, if utilised to its fullest extent, would place the licence holder in breach of relevant planning conditions.

Concerns were also raised that applicants would seek to obtain a licence and then use this as justification and evidence for seeking relaxation of planning restrictions. Local authority departments feel that they are effectively being “played off” against one another.

There was debate amongst members about whether or not having relevant planning permissions in place should be a pre-requisite for applying for a licence, but no consensus was reached.

Are the subsequent amendments made by policing legislation achieving their objects? Do they give the police the powers they need to prevent crime and disorder and promote the licensing objectives generally? Are police adequately trained to use their powers effectively and appropriately?

Members felt strongly that the police had the powers they need to prevent crime and disorder and promote the licensing objectives.

Members feel that the real problem is the lack of police resources to train and deploy officers to effectively utilise the powers that have been given.

In some areas, police forces no longer have specialist licensing officers, which is considered to be a major weakness and to be contributing to the lack of training and knowledge amongst front line officers.

Should sales of alcohol airside at international airports continue to be exempt from the application of the Act? Should sales on other forms of transport continue to be exempt?

Some Members questioned the rationale of exempting these sales from the regulatory regime. Others have said that the legislation does not need to be amended, but airlines and other transport providers need to take a firmer line to ensure passengers are not allowed to travel when they are intoxicated.

The Act was intended to simplify licensing procedure; instead it has become increasingly complex. What could be done to simplify the procedure?

Members felt that the procedure has only become increasingly complex due to successive Governments feeling the need to make frequent amendments to the legislation that increase the complexities.

Members believe that licensing authorities and responsible authorities need the legislation to be left alone so that it can properly “bed in” and they can spend less time training their staff about the new powers that they are being given, and more time to utilise the powers they already have.

One area that Members do feel needs simplification is the application forms. It was felt that there was scope for the form for a new premises licence to be significantly shorter. Members also wanted to point out that the online application forms provided on Gov.uk were still not compliant with the forms prescribed by regulations made under the Licensing Act 2003.

What could be done to improve the appeal procedure, including listing and costs? Should appeal decisions be reported to promote consistency? Is there a case for a further appeal to the Crown Court? Is there a role for formal mediation in the appeal process?

Members felt that a lack of resources in the court system was the main factor in the issues they have experienced with getting cases listed.

Some Members felt that there should be statutory time limits on appeals being heard as there are with Sub-Committee hearings.

Members were strongly opposed to providing a further right of appeal to the Crown Court as this would simply drag things out longer for all parties.

Members felt that there was already a role for mediation in the appeal process and that many appeals were already being disposed of by way of negotiation and consent order.

Some Members expressed the view that, in exceptional circumstances, local authorities should be able to direct that their decisions take effect immediately pending any review.

Proceedings as in some cases, the delay in the decision taking effect could have a serious adverse effect on the licensing objectives.

Given the increase in off-trade sales, including online sales, is there a case for reform of the licensing regime applying to the off-trade? How effectively does the regime control supermarkets and large retailers, under-age sales, and delivery services? Should the law be amended to allow licensing authorities more specific control over off-trade sales of “super-strength” alcohol?

Members felt that there needed to be better guidance to licence holders providing an alcohol delivery service on how to ensure that underage sales are avoided.

Some Members felt that the mandatory licence condition relating to age-verification policies could be amended to include reference to remote sales and how the purchasers age should be verified.

Members felt that there was no need for more specific controls on the sales of “super-strength” alcohol and that existing controls, if properly utilised, could control any issues arising from the sale of such products.

Should alcohol pricing and taxation be used as a form of control, and if so, how? Should the Government introduce minimum unit pricing in England? Does the evidence that MUP

would be effective need to be “conclusive” before MUP could be introduced, or can the effect of MUP be gauged only after its introduction?

Opinion was mixed amongst Members, but the majority felt that the evidence should be conclusive before MUP is introduced. Some Members also suggested that it would be useful to wait and see what unfolds if Scotland introduces MUP.

Do licence fees need to be set at national level? Should London, and the other major cities to which the Government proposes to devolve greater powers, have the power to set their own licence fees?

The majority of members felt that fees should continue to be set at a national level but desperately need to be increased as they have not been subject to any increase since February 2005.

The particular fees that members feel are set at too low a level to achieve cost recovery are the fees payable to transfer premises licences, nominate new designated premises supervisors and for temporary event notices.

Some members felt that licensing fees should be subject to review by Government on a regular basis and are increased in line with inflation at the very least.

Members feel strongly that a premises licence suspended for non-payment of an annual fee should lapse if the annual fee remains unpaid after 12 months.

Is there a correlation between the strictness of the regulatory regime in other countries and the level of alcohol abuse? Are there aspects of the licensing laws of other countries, and other UK jurisdictions, that might usefully be considered for England and Wales?

Members felt that the issue with alcohol abuse is less to do with the strictness of regulatory regimes and more to do with cultural attitudes to drinking and drunkenness.

Members pointed to the recent example of football fans from many different nations coming together in France during Euro 2016. All these supporters were buying alcohol under the French regulatory regime, and yet only English football fans appeared to become involved in violent behaviour associated with alcohol.

31 August 2016

Westminster City Council – written evidence (LIC0090)

Licensing objectives

1. Are the existing four licensing objectives the right ones for licensing authorities to promote? Should the protection of health and wellbeing be an additional objective?

It is the view of Westminster City Council that the existing four licensing objectives allow for an appropriate balance to be achieved between commercial and other interests. There may however, be scope to improve the operation of the Licensing Act through the introduction of other, well thought through, objectives. Vitally, it must be possible, for the Licensing Authority to measure the impact an individual application has on the objectives on a case-by-case basis as is required by the Act.

This suggests a potential problem with the introduction of health and wellbeing as an additional objective, which requires consideration. Whilst the impact of licensable activities, particularly the sale of alcohol, on health may be demonstrable in broad terms, it is not necessarily the case that the presence or actions of individual premises can be linked to particular health issues. This does not mean that Westminster City Council opposes the introduction of a health objective, but would urge any government seeking to go down this route to carefully consider exactly how this would operate in practice.

As noted in the 2014 Alcohol Research UK report ‘Using licensing to protect public health: From evidence to practice’, *“public health considerations tend to concern population level indicators and long-term trends, whereas licensing operates in an environment characterised by case-by-case decision-making, negotiated settlements and complex legal argument”*. It goes on to state that:

“Policies had to be founded on a sound factual basis and fall within the legal parameters of the Act, therefore the promotion of the health objective must be linked to the effects of the sale of alcohol. The opinion acknowledged that it is difficult for a board to promote the health objective in relation to any individual license application because it is so difficult to evidence ill effects on health at individual premises level, because the evidence is generally at population or board area level”.

As such, in practice, it would be extremely difficult to judge why an individual premises selling alcohol is likely to be more or less of a threat to health than another since both are selling the same product. In this scenario there may be reasonable grounds to refuse every application as a threat to health or, as is understood to be the case in Scotland, to not to reject any on health grounds because the legal basis for refusal is considered to be weak and likely subject to challenge. The report shows that, whilst the introduction of a health objective in Scotland has improved understanding and engaged of public health in the licensing process, the extent to which health considerations have actually influenced decision making is unclear.

It would also be important to recognise that there is not always a direct geographical link between consumers and license premises, thus making it difficult to prove health impacts. For example, the West End has the highest concentrations of licensed premises in the country, and yet, the majority (exact number unknown) of the patrons of these are not Westminster residents. Similarly the impact of alcohol purchased via off-sales from a supermarket in outer-London and consumed at home before patrons visit the West End is largely unknown. It is therefore extremely difficult to show that the concentration of premises (both on and off-sales) in the West End has a significant impact on the health of the local population. It would be equally difficult to show, given the nature of the availability of health data, the West End concentration as contributing to any overall adverse effects in health throughout London or the wider UK.

It may however, be possible to apply a health objective in a concentrated area where the vulnerability to alcohol abuse is higher amongst local populations. This could be delivered in the same way as current cumulative impact policies, albeit using a different evidence base, or could operate in a similar manner to local areas risk assessments in the Gambling Commissions updated Licensing Conditions and Codes of Practice (see Westminster's recent studies for more information⁵¹⁷). This would bring England into line with Scotland's policy approach to 'overprovision'. Consideration may also need to be given to the difference between on and off-sales in contributing to alcohol-based health harm. It is likely for example, that a health objective would be more relevant to off-licenses in areas where street drinking is particularly prevalent and contributes, not only to anti-social behaviour, but also health concerns amongst consumers. This would not necessarily mean that a health objective should only apply to off-sales but it may influence the way in which many local areas choose to implement such a change.

It should be stressed that health authorities and professionals can, of course, already make representations under the Act should they be relevant to the existing objectives, possibly using A&E data or ambulance callout data. The fact that this may not happen particularly often should not be seen as a failure of the system (see question four below), but should instead be understood as a reflection of the reality that health authorities are generally less interested in the existing objectives as indicators of problems. As such, this question actually boils down to whether or not there should be another basis (health) on which to control licensable activities? Of course, such a move would appear to strengthen the ability and regularity with which health authorities would be able to make representations on licences and would therefore improve engagement with the process, as has been seen in Scotland, but it is not clear that it would result in a positive shift in decision making in the vast majority of cases.

In summary, Westminster would welcome the introduction of a health objective; particularly as mental health issues have become ever more apparent in conjunction with the use of alcohol. However, any objective given must be accompanied by guidance on

⁵¹⁷ <https://www.westminster.gov.uk/gambling-research>

relevant representations to the new objective and additional provisions relating to concentrations, cumulative impact or overprovision.

2. Should the policies of licensing authorities do more to facilitate the enjoyment by the public of all licensable activities? Should access to and enjoyment of licensable activities by the public, including community activities, be an additional licensing objective? Should there be any other additional objectives?

The policies of licensing authorities are matters of sovereign local interest and, as such, the extent to which policy seeks to promote wider enjoyment of licensable activities should remain a local decision. It is unclear what the introduction of a new objective linked to the enjoyment of licensable activities by the public would add to the existing regime, but there is a risk that it would introduce a significant level of conflict and tension between objectives. This would be unhelpful to practitioners and may lead to heightened levels of legal dispute over the outcome of certain applications. At present, all of the objectives are designed to provide the public with a form of protection from harm. Licensing Authorities take decisions based on these objectives but are also aware of a wider set of factors, including more positive considerations around the local economy and public enjoyment.

If there were an ambition from government for the licensing regime to be further used as a tool for the promotion of economic or cultural activities, serious consideration would need to be given to how this would be implemented. As noted above, there is a risk that such a move would simply lead to more legal challenges and increased cost of decision making to the taxpayer, as a result of tension between newly competing objectives. Perhaps one method through which this could be more effectively implemented would be to introduce a second tier of licensing objectives or ambitions. These objectives or ambitions could have less weight against the existing four objectives, but place an obligation on the applicant. The Licensing Authority, to show or understand the impact on an application, may have included certain additional issues such as economic vibrancy or public enjoyment.

The balance between rights and responsibilities

3. Has the Live Music Act 2012 done enough to relax the provisions of the Licensing Act 2003 where they imposed unnecessarily strict requirements? Are the introductions of late night levies and Early Morning Restriction Orders effective, and if not, what alternatives are there? Does the Licensing Act now achieve the right balance between the rights of those who wish to sell alcohol and provide entertainment and the rights of those who wish to object?

Westminster City Council considers the current provisions around regulated entertainment as appropriate to create a suitable and fair balance between the competing interests. Our experience and feedback from engaging with the local entertainment industry is that the challenges facing venues, in putting on live music, are less to do with the regulatory environment and more to do with the lack of commercial viability. This is driven mainly by

fewer people being willing to pay to watch live music, particularly at the smaller end of the spectrum, rather than increased costs as a result of overly burdensome regulation. It is notable however that in Soho, an area where this issue is perhaps perceived as most acute, the number of licenses involving music rose from below 100 to over 250 between 2003 and 2013.

With specific regard to the late night levy, Westminster City Council has considered this option as a potential solution to the management issues facing the city but it has not, for a variety of reasons, deemed the late night levy suitable at this time.

If a levy were to be applied across the whole of Westminster, the total revenue generated would be £2,782,620 p.a. from 1,877 businesses. This is considered the 'best case scenario' for Westminster, because, in practice, many premises would argue that they are not liable to pay the multiplier on grounds that they are not 'alcohol-led'. Recent experience has shown that this argument can be made successfully by a surprising diversity of premises.

We believe that the levy, as currently constructed in legislation, would unfairly penalise premises which operate responsibly or have little or no systemic connection to crime and anti-social behaviour, such as individually owned pubs in residential neighbourhoods. There is a marked contrast between these types of operators and those operating in high concentrations in the West End. The revenue calculations, if it were possible to apply a levy in the West End Cumulative Impact Zone only, suggest that the total revenue generated would be £1,187,457 p.a. from 758 businesses. This suggests that, under the current legislative framework, 1,119 businesses would have to pay the levies which are not contributing to cumulative impact in the West End, and are therefore not, broadly speaking, a source of management problems. This additional £1.5m burden on the industry would, in Westminster's opinion be unfair in the vast majority of cases.

The approach to charging, the inability to target in a geographical area and the potential that funds generated in the West End could be used elsewhere in London by the Metropolitan Police were the primary reasons why Westminster chose not to introduce the levy.

The alternative may be to introduce a more flexible approach to the levy, which allows local authorities to target the levy at problem premises or groups of premises, based on particular characteristics. Such an approach could involve the ability to geographically target the levy within a borough (not currently possible), an open approach to exemptions (currently exemptions have to be picked from a long-list determined by government) and introducing a new approach to charging (away from the unsophisticated and unfair use of rateable values). Reforms like this would make the levy more effective in tackling bad behaviour, without penalising unnecessarily responsible operators. The government has promised to examine reform of the levy as part of the 2016 Modern Crime Prevention Strategy, but it remains unclear how ambitious such reforms will be. We would therefore, urge the committee to make comment on this matter.

4. Do all the responsible authorities (such as Planning, and Health & Safety), who all have other regulatory powers, engage effectively in the licensing regime, and if not, what could be done? Do other stakeholders, including local communities, engage effectively in the licensing regime, and if not, what could be done?

The main responsible authorities that regularly make representations to applications in Westminster are the Metropolitan Police and the Council's own Environmental Health Department. It is extremely rare to receive representations from other responsible authorities for applications. The Council's Planning Department does not tend to make representations, as planning requirements cannot be taken into account when considering Licensing Act 2003 applications. If there were however, to be no compliance with planning law whereby enforcement action has been taken that constitutes a crime, then the Planning Department may make a representation to inform the Licensing Authority of the operator's non-compliance and criminal convictions.

The Fire Authority uses their own powers under the Regulatory Reform (Fire Safety) Order 2005 and rarely will make a representation to a licence, as it duplicates their own powers. Like Planning however, when there is a need to make a representation, then the Fire Authority will make a representation.

The lack of responses from some responsible authorities should not be seen as a failure of the Act, or indeed that changes are required to promote authorities to make more representations to applications. The nature of the types of responsible authorities under the Act means that some will be able to make general views and comments based on the main concerns for the operation of the premises, such as the Police and Environmental Health Departments. Other responsible authorities, such as Planning, Fire Authority, Environment Agency, etc. will make representations when there is a clear need to due to the proposed operation of the premises, any specific policies or requirements that are relevant and when they deem it necessary having regard to any concerns or issues associated with one or more of the licensing objectives.

It is our experience that local communities do come together and make representations to applications when there are significant local concerns regarding the operation of the premises. We also find that resident and amenity societies take an active role in informing their members of applications and also making representations on behalf of those members.

It is also true however, that individual local residents and small groups often feel unsure of their rights and powers under the Act. Residents often have concerns about attending a hearing, their safety if the premises they wish to make a representation about is seen to be operated by people they perceive to be violent and the view that their concerns may not be taken seriously by the Licensing Authority. Such concerns can put some residents off from making representations to applications or submitting a review application against premises that are operating badly.

Westminster City Council does engage and support local residents and communities. The Council will actively publish notifications of the application beyond that which is required by the Act. The Council will inform local communities, within the vicinity of the premises, to which applications have been submitted. This is usually done via letter and notices on street furniture, such as a lamppost outside or near the premises. These letters and notices provide a very basic description of the application, the date when representations must be received by the Council and how to submit a representation.

In addition to the letters and notices, the Council also funds a dedicated Licensing Solicitor via the Citizens Advice Bureau. The solicitor, who acts independently from the Council will advise and support local communities in submitting representations, preparing and submitting a review application and will also represent them at a Licensing Sub-Committee hearing. This service has proved to be very effective in supporting the local communities surrounding licensed premises. It removes many of the residents' concerns referred to the above and enables them to be confident that their views are being presented to the Licensing Authority.

As far as Westminster is aware, this is the only example of such a service being provided within the United Kingdom. We believe that it is effective and is a key enabler for local communities to voice their concerns and sometimes support for licensed premises applications. This service does of course cost the Council money to fund however, and we would like to see the ability to fund such support services for local communities via a surcharge or supplementary fee on top of the application and annual licence fees that are paid by the licensed trade. Such reforms to the funding model would further enable other local authorities to implement an independent service for local communities, such as the one provided by the Citizens Advice Bureau in Westminster.

Licensing and local strategy

5. Licensing is only one part of the strategy that local government has to shape its communities. The Government states that the Act “is being used effectively in conjunction with other interventions as part of a coherent national and local strategy.” Do you agree?

Yes, our experience in Westminster is that the Act can be used in conjunction with other pieces of legislation and tools to deliver a coherent local strategy for the place and communities. In order to deliver this, it is important to have a shared understanding of what all partners, including the licensing authority, the planning authority, other parts of local government, other public bodies, residents and businesses want from an area. There will of course, often be tension between partners in the construction of such a vision and the strategy to deliver it, but with effective governance it is possible.

The West End Partnership⁵¹⁸ provides a good example for a shared vision for an area which actually spans two local authorities (Westminster and Camden) and feeds into the ambitions for each in terms of the construction of local policy. Further commentary can be provided

⁵¹⁸ <https://westendpartnership.london/publications/>

on this subject if necessary but, for the purposes of this call for evidence, we feel it is sufficient to agree that the Act is being used in conjunction with other policy tools and practices in Westminster, but it is difficult for us to comment elsewhere for obvious reasons.

6. Should licensing policy and planning policy be integrated more closely to shape local areas and address the proliferation of licensed premises? How could it be done?

Yes, planning and licensing policy should be more closely aligned, but this is not something that can or should be delivered via changes to national legislation, instead local authorities should be supported, where possible, to develop complementary policies. The underpinning structures for licensing and planning are based on fundamentally different rationales and it is therefore possible, and reasonable, for inconsistencies to exist between policies at a local level. This may mean that premises may have different operating hours as far as the Licensing and Planning authority are concerned, but this shouldn't be seen as a particular problem, as it is widely understood by the industry.

The aims and objectives for both regimes could, of course, be harmonised by amending the primary legislation which underpins each, namely the Licensing Act 2003 and the town and Country Planning Act 1990. It is difficult to say how such an alignment would or should look in reality, but it is likely that the positive emphasis of the Planning system, and particularly the presumption in favour of sustainable development, would influence the structure of national licensing policy which, as noted previously, is based primarily on negative objectives and protecting the public from harm. This may involve taking into account the impact of licensing decisions on economic, social and environmental outcomes, and thus changing the evidence base on which policy is formulated. As previously noted, such an approach would, under the current system, create unhelpful tension in the licensing process between objectives. To deliver such an approach, it would therefore be necessary to review the whole Licensing Act 2003 and re-think the approach to evidence, the process and the objectives which underpin it. Whilst this fundamental reform approach may be considered desirable by this or a future government, this would, in Westminster's view, be a disproportionate response to this issue at this time, especially as it would require a significant cross-government policy programme to be delivered between the Home Office and the Department for Communities and Local Government.

It may be possible however, to achieve closer alignment without fundamental reform by encouraging both licensing and planning to be aware of the circumstances with regard to premises under the other system. Whilst licensing decisions could not be taken on the basis of the planning situation, it would give sub-committees more information about the wider circumstances surrounding the premises.

Crime, disorder and public safety

7. Are the subsequent amendments made by policing legislation achieving their objects? Do they give the police the powers they need to prevent crime and disorder and promote the licensing objectives generally? Are police adequately trained to use their powers effectively and appropriately?

No specific comment to make

8. Should sales of alcohol airside at international airports continue to be exempt from the application of the Act? Should sales on other forms of transport continue to be exempt?

No specific comment to make

Licensing procedure

9. The Act was intended to simplify licensing procedure; instead it has become increasingly complex. What could be done to simplify the procedure?

Unfortunately, the Act has become more complex in some areas due to regulatory reform, deregulation and other amendments since it was introduced in 2005. The deregulation of certain types of licensable activities, if they do not exceed certain thresholds, does create confusion for applicants and sometimes for the enforcing bodies.

There have also been some examples of when an amendment to the Act has made a process easier. An example of one of these was the introduction of a minor variation process. This enabled licensees to amend their licences to take into account these minor changes. Previously there would have been a need to go through a full variation process which could be costly for businesses and delay the granting of the variation.

Temporary Event Notices were introduced as a system to permit temporary activities, under which licensable activities could be carried out on a temporary basis without the need for a premises licence or club premises certificate. The idea of these notices was sensible and originally, they were intended for use by small events and for communities, thus the fee was set at such a small amount, reflecting the level of work that the Government believed Licensing Authorities would have to do to administer this process. Westminster City Council will process over 3100 of these notices a year. However, since the introduction of this scheme, we have seen that the vast majority (85%) of these notices submitted each year in order to extend licensable activities in licensed premises.

The only responsible authorities that can make an objection to a Temporary Event Notice are the Police and, more recently Environmental Health. The extension of licensable activities beyond that already permitted by a licence requires consideration as to whether this would impact on one or more of the licensing objectives. This has a significant resource implication for licensing authorities and costs considerably more than the current £21 fee. There is also a considerable amount of pressure on resources, due to the limited time permitted for Responsible Authorities to submit an Objection Notice (three working days). When there are considerable volumes of these notices received, the ability to adequately assess them and their potential impact on the licensing objectives is diminished.

The other concern is that a premises licence or club premises certificate would have been properly considered by the Licensing Authority when the licence was granted. In most cases, conditions would have been put in place to ensure that the premises operation will not impact on the licensing objectives. Although there is a power to impose the licence

conditions from the premises licence, if the notice is brought before the Licensing Authority, most events will operate without any conditions in place. Most good operators who are extending their licensable activities will comply with their conditions. However, there are no requirements for them to do so and they can then operate under the notice without complying with these conditions.

As stated above, only the Police and Environment Health Department can object to a notice. As there is no requirement to advertise the notice or inform local communities, local residents will not be aware of the Temporary Event Notice proposed activities and when it is in effect. Local residents also cannot oppose these events, which then can cause frustration and problems for residents. In such cases, the only recourse for residents will be to complain to the Council if the event is causing a public nuisance relating to noise or to call the police if there are crimes being committed.

We would like to see the introduction of a scheme, for temporary extensions of permissions to premises licence and club premises certificate, which is separate from Temporary Event Notices. These temporary extensions should be dealt with in a similar way to the minor variation process. This would enable the Licensing Authority to determine who it consults and also provide sufficient time (14 days) to consider the application. This temporary extension would then, if granted, permit the premises to operate within the remit of the permitted temporary extension subject to the conditions of the licence or any new conditions attached for the purpose of that temporary extension. Such a scheme would not necessarily need to then limit the licensed premises to a specific number of extensions a year, as the extensions would only be permitted and conditions attached if it was deemed that the extension would not adversely impact one or more of the licensing objectives.

It is our view that a temporary extension process, similar to the minor variation application process, would enable responsible authorities and local residents the ability to comment and if necessary, oppose an extension. By removing the requirement on the number of permitted temporary extensions that premises can have per calendar year, it would then enable operators to have extensions when they need to and these will only be permitted if the extension will not harm one or more of the objectives. Although this would add another formal approval scheme to the process, it would enable a better approach to dealing with the need for premises to extend their operation on occasions, whilst balancing the needs of the local community.

10. What could be done to improve the appeal procedure, including listing and costs? Should appeal decisions be reported to promote consistency? Is there a case for a further appeal to the Crown Court? Is there a role for formal mediation in the appeal process?

The experience in Westminster is that the existing appeal process works well.

In relation to listing, Westminster City Council has found the local Magistrates Courts to be flexible enough to be able to list urgent hearings where necessary (e.g. in relation to appeals against Temporary Event Notices, or decisions to revoke on summary review). Costs in the Magistrates Courts should continue to be dealt with in accordance with the general

principles which apply to appeals against administrative decisions taken by local authorities – there is no case for any special treatment of licensing appeals.

In relation to publication of appeal decisions, it is important to note that Magistrate Court appeal decisions are not legally binding on a Licensing sub-committee (or indeed other Magistrate Courts), and in all cases the decisions have to be made on the individual circumstances of the case (including the local licensing policy). Whilst not legally binding, Magistrate decisions can however, be relevant factors which the sub-committee can consider if they are aware of them. In the interests of transparency for all interested parties, we feel it is important to make the default position to publish appeal decisions. We feel transparency of information is particularly important when some parties (solicitors representing licence holders) to a hearing are well placed to have access to such information and other parties (residents) are often not.

We would oppose the introduction of a further right of appeal to the Crown Court. Our concern is that such a right would enable “bad” operators to delay the coming into effect of Licensing Sub-Committee decisions by tactical appeals. We have had experience of such tactics in relation to the street trading regime in Westminster (regulated by the City of Westminster Act 1999) where an appeal to the Crown Court is provided for. In practice, appellants are more than adequately protected by the right to ask for a case to be stated to the High Court, and by the availability of Judicial Review. It is also important to note that local Magistrates Courts can acquire an experience and expertise in dealing with licensing appeals, which will not necessarily be replicated in the Crown Court.

In relation to mediation, Westminster City Council has reservations about both its practicality and its utility. We have dealt with well over 400 appeals, and mediation has been suggested by an operator only once. We rejected the proposal, because of the difficulty in ensuring that the interests of all parties (not just the licensing authority and the appellant, but also the responsible authorities and local resident objectors) were adequately protected.

Another area where we feel there may be scope for the appeals process to be amended is with regard to Section 52 (11) of the Licensing Act 2003, which states that the review decision shall not have effect before the end of the 21 day period allowed to bring an appeal or, if an appeal is lodged, until the appeal is disposed of. This is only the case for standard reviews; whereas expedited reviews, in the event of serious crime or disorder, can be invoked within 48 hours to allow the licensing authority to quickly deal with the matter by imposing “interim steps” prior to a full review hearing.

Our experience of standard review procedures is that the delay in making the licensing authority decision effective can undermine the effectiveness of the review procedure itself. It is relatively cheap and easy to lodge an appeal to the Magistrate Court. Delays in Court listing means that appeal hearings will typically not be listed for 6 to 12 months, during which none of the measures that the licensing authority considered appropriate to promote the licensing objectives are implemented. Unscrupulous licence holders can, and sometimes

do, choose to abandon their appeal shortly before an appeal hearing and, although they can be liable for the council's costs in defending the appeal to that point, this can be an insignificant amount compared with the benefits of continuing to trade unrestricted for many months. There is however, case law where the Courts have been very clear about licensees who try to extend the appeal procedure by seeking questionable adjournments. The Courts have recognised that such adjournments are to the disadvantage of residents and have refused them.

For these reasons, we would suggest that this situation be reversed, and specifically Section 52 (11) of the Licensing Act 2003 should be amended, so that the decision of the Licensing Authority takes effect immediately and are not undermined by the appeals procedure.

We do however recognise that whatever approach is adopted, either the Licensing Authority or the licensee is potentially at a disadvantage and that this is a balance between the rights of the licensee and the rights of those seeking a review. We would therefore suggest that the Committee consider this proposal alongside the fact that the right of appeal is crucial to meeting the wider legal requirement (specifically the Human Rights Act 1998), that a party is entitled to a hearing by an independent and impartial tribunal. In certain other situations, this means that the status quo is maintained until the appeal has been heard, i.e. in this case, that the licensee gets to keep the existing licence free of any of the steps determined by the Sub-Committee. Furthermore, from a commercial point of view, it would mean that licensees could be compelled to comply with expensive requirements which may be adjudged on appeal to be unnecessary, leaving a need for greater clarity over compensation in such a situation. On balance however, our preference would be for a reversal of the current situation.

Sale of alcohol for consumption at home (the off-trade)

11. Given the increase in off-trade sales, including online sales, is there a case for reform of the licensing regime applying to the off-trade? How effectively does the regime control supermarkets and large retailers, under-age sales, and delivery services? Should the law be amended to allow licensing authorities more specific control over off-trade sales of "super-strength" alcohol?

As noted above, in answer to question one, there is a significant difference between off-sales and on-sales which requires careful consideration. This is especially the case in a hyper-connected city such as London, where alcohol purchased via an off-sale in one area may not be consumed in the same area. Furthermore, the impact of that alcohol sale may also not be felt by the area in which it takes place. For example, alcohol may be drunk at home with a group, then on a train from outer-London to the West End, in order to carry on their night already having consumed a quantity of cheaper alcohol in an uncontrolled environment. This is not a situation which requires a direct solution, and indeed there may not be a simple remedy, but it does highlight the fundamental differences between on and off-sales from a licensing perspective which suggest a need to review the regime.

With regard to the specific issues highlighted in the supplementary questions, Westminster City Council considers that sales of “super-strength” alcohol may require specific controls in areas where it can be demonstrated that street-drinking is particularly prevalent. Whilst action can be taken to restrict the consumption of alcohol on street through controlled drinking zones, these could be further enhanced by limited the sale of certain types of alcohol in and around that area.

Pricing

12. Should alcohol pricing and taxation be used as a form of control, and if so, how? Should the Government introduce minimum unit pricing in England? Does the evidence that MUP would be effective need to be “conclusive” before MUP could be introduced, or can the effect of MUP be gauged only after its introduction?

No, Westminster City Council does not consider pricing and taxation and appropriate or effective forms of control for alcohol.

Fees and costs associated with the Licensing Act 2003

13. Do licence fees need to be set at national level? Should London and the other major cities to which the Government proposes to devolve greater powers, have the power to set their own licence fees?

No, license fees do not need to be set at a national level and these should be set by the Licensing Authority in each area based on detailed local understanding of costs incurred as a result of administering a licensing system, but also the impact on the economic vibrancy of the area.

Going back as far as 2006, when the independent Elton Review demonstrated that existing fee levels did not result in full cost recovery, successive governments have given commitments that fees should be set at a level that permits full cost recovery. The Police Reform and Social Responsibility Act 2011 actually allows for locally set fees to fully recover costs, but the government have not brought forward proposals to implement this. The reasons previously given by government, not to implement this approach, relate to the Hemming vs. Westminster City Council case which considered the acceptable level of fees in the Services Directive. However, any such reservations should have now been laid to rest by the decision of the Supreme Court made in April 2015.

Westminster City Council has also long argued that, since the introduction of the Licensing Act in 2005, it is not possible to recover the cost of the resources that we channel into administering and managing the licensing regime. The LGA have previously estimated that the current system results in local authorities and local taxpayers subsidising the licensed trade by up to £1.5m per month as a result of the current, nationally-set system. CIPFA recently undertook a survey of participating local authorities which further suggests that the national system does not allow for cost recovery with the country-wise deficit estimated at between £9.2m and £11.4m p.a.

In Westminster, we understand that our own local deficit is approximately £1.387m per annum, based purely on the costs of administering the system without any wider consideration of costs incurred. Many of the most significant costs linked to licensed premises and incurred by the licensing authority fall outside the scope of the 2003 Licensing Act e.g. street cleansing and community protection. A full analysis of costs relating to the evening and night time economy as a whole in Westminster estimated that the local authority incurred somewhere in the region of £26m worth of costs every year when taking everything into account⁵¹⁹. Whilst, it is not the purpose of licensing fees to recover such costs, it does highlight a wider funding issue which requires consideration, perhaps as part of analysis of late night levy provisions as suggested above, in response to question 3.

Furthermore, the current structure of licensing fees can be unfair and damaging to business. As an example, in the current fee structure we have wide ranging variances in terms of what businesses pay the local authority in annual fees. A nightclub licensed until 3am with a capacity of 1,050 currently pays £350 while a local pub in Pimlico that closes at 00:00 with a capacity of less than 50 people is charged £1,050. Furthermore, we have hairdressers with occasional on sales until 21:00 paying the same as nightclubs with 3am terminal hours and capacities of greater than 1000 patrons.

Rateable value as a criterion for fee setting is not one which Westminster supports. We recognise the need to have a benchmark on which to assess premises, however the rent ability of premises should not be a factor on which to determine a fee, see the above example. There are also intensive administrative tasks in ensuring rateable values are updated on our system and chasing the VOA for rateable values for new premises. Westminster also has the issue of parks and open Spaces which have no rateable value but do have Premises Licences.

Local conditions could be better managed and such irregularities ironed out fairly, if decisions on license fee levels were made at a local rather than national level.

Finally, it is important to note that, in London, it is the boroughs that are the Licensing Authority and not the Mayor or the GLA. As such, it would not be appropriate to devolve license fee setting powers to the Mayor as they powers should rest at the same level as the administrative costs are incurred.

International comparisons

14. Is there a correlation between the strictness of the regulatory regime in other countries and the level of alcohol abuse? Are there aspects of the licensing laws of other countries, and other UK jurisdictions, that might usefully be considered for England and Wales?

No specific comment to make

⁵¹⁹ <https://www.westminster.gov.uk/evening-and-night-time-economy>

Other issues

One other area that Westminster City Council would suggest the Committee consider is the emerging issue of ‘shadow’ licenses. This involves a situation whereby a freeholder of a property will seek to acquire a premises license on the exact same terms as that which is held by the actual operator. When such an application is made, it can be very difficult to find grounds to refuse such an application because, as it is a direct mirror of the existing license, there are often no grounds on which to find that it would either fail to promote the licensing objectives or, where such policies apply, add to cumulative impact.

Whilst not a problem in and of itself, the reasons behind this and the issues it can cause become apparent when a premises license is reviewed and conditions apply or the license revoked only for the shadow license to then be immediately activated allowing the premises to continue operating on the same terms as was the case before the review took place. This is clearly in the commercial interests of landlords to protect the value of their landholdings as licensed premises.

Whilst we do not currently know the exact number of shadow licenses that exist in Westminster, our experience is that this is a growing trend which clearly represents a threat to the ability of the Licensing Authority to take meaningful action to review premises licenses and uphold the licenses objectives set out in the Act. We do however have limited experience of taking action on both the ‘active’ and the ‘shadow’ license at the same time following a review, but the legislative framework has not yet caught up with this phenomenon sufficiently and we therefore consider it appropriate that the Committee give some thought to the matter.

2 September 2016

Wine and Spirit Trade Association – written evidence (LIC0130)

1. Introduction

The Wine and Spirit Trade Association (WSTA) is the UK organisation for the wine and spirit industry representing over 300 companies producing, importing, transporting and selling wines and spirits. We work with our members to promote the responsible production, marketing and sale of alcohol.

This response to the Lords Committee consultation on the Licensing Act 2003 sets out some of the work that is being done by the retail trade to ensure the responsible retail of alcohol and responds directly to the questions set out in the consultation document.

2. Industry action on responsible retailing

Retail of Alcohol Standards Group

The Retail of Alcohol Standards Group (RASG) was established in 2005 in an effort to tackle the issue of underage sales and underage drinking. The Group is made up of all major UK supermarket retailers. After conducting research into underage drinking in 2006, the group developed and launched the ID scheme Challenge 25 (previously Challenge 21). This required that anyone that looked under the age of 25 were requested to produce ID when purchasing alcohol. The scheme is now the gold standard of ID schemes and has had a significant impact on reducing underage sales. A report on its effectiveness was published in 2014 and is available here:

<http://wsta.co.uk/images/Committees/RASG/2013workstreams/Challenge25Report2014.pdf>

RASG continues to meet and is undertaking further work on the responsible retail of alcohol. In autumn 2016 RASG will be publishing further research on the issue of proxy alcohol purchasing to support retailers and licensing authorities in dealing with this issue and will be launching a best practice guide to support retailers in selling alcohol responsibly.

Community Alcohol Partnerships

Following on from the development of Challenge 25, RASG began to focus on the demand side of alcohol and proxy purchasing, which continued to remain an issue, despite the reduction in underage related sales. This work led to the development of Community Alcohol Partnerships (CAP), localised schemes which aim to tackle both the supply and demand side of alcohol in communities.

This is achieved through co-operation at a local level between alcohol retailers and other partners such as trading standards, police, local authority licensing teams, schools and

health networks. Over 108 schemes have been launched across every part of the UK. The CAP model is unique in that it recognises that retailers and licensees are part of the solution and has been shown to be more effective than traditional enforcement methods alone.

There is an emerging body of evidence – both from the independent evaluations commissioned by CAP and the self-evaluation reports that all schemes are required to produce – that CAP helps to reduce alcohol-related crime and disorder and the acquisition of alcohol by under-18s. Local needs vary as do the objectives of local CAPs. The impact of individual CAPs reflects this variety of objectives, for example:

- **Barnsley CAP, South Yorkshire** - 30% reduction in alcohol related anti-social behaviour in the CAP area compared with a 7.4% drop in matched control areas
- **Brecon, Powys, Wales** - Reduction in alcohol-related youth ASB of 39.5%
- **Corby CAP, Northamptonshire** - 27% reduction in alcohol related anti-social behaviour in the CAP area
- **Derry CAP** - Referrals to youth diversion officers decreased from 114 to 40 and youth nuisance decreased by 50%
- **Edinburgh CAP** - 18% reduction in alcohol-related crime and an estimated 12.5%-25% reduction in alcohol seizures from young people
- **Gateshead South CAP** - 50% reduction in youth alcohol-related crime
- **Great Yarmouth CAP, Norfolk** - 83% decrease in police letters to parents of under 18s caught with alcohol and 61% decrease in crime and disorder reports linked to street drinking in CAP area compared to a 25% decrease across the rest of Norfolk
- **Hayling Island CAP, Hampshire** - 41% decrease in anti-social behaviour
- **Peterlee CAP, Durham** - 66% decrease in alcohol litter at problem locations and only 9% of residents report underage drinking as being a “very big problem” after the CAP was set up compared to 46% before the CAP
- **Tower Hamlets CAP, London** - 46% decrease in anti-social behaviour, 87% decrease in alcohol seizures and 80% decrease in youth disorder

3. Licensing Act 2003

It is important to understand the Licensing Act 2003 has been subject to constant review since its implementation in 2005. A full list of the amendments to the Act has been set out in the annex below. Therefore the WSTA would argue that there is no need for the Act to be revised further and that time should be allowed to for these changes to bed in.

Since the Act came into effect in 2005, alcohol consumption in the UK has fallen by around one fifth, alcohol related crime has reduced by one third and underage consumption has fallen to its lowest recorded levels. This is set out below in more detail. It is clear that, while issues still remain, the Act has played a role in these trends and continues to be the right framework under which further progress can be made.

Key statistics on alcohol

- HMRC clearance data shows that total alcohol consumption per head of the UK population fell by 18.4% between 2004 and 2014, from 9.51 litres of pure alcohol per person to 7.76;⁵²⁰
- 16-24yr olds are seeing the greatest decline in consumption dropping 14% from 60% in 2005 to 46% in 2013 having drunk in the last week (compared to the average decline of 6%)⁵²¹
- Since 2005 the number drinking over 3/4 units in at least one day in the past week has fallen from 37% to 30, with the largest decline (from 44% to 29%) from the 16-24yr olds⁵²²;
- The number drinking double the guideline amount has fallen from 18% to 15%, again with 16-24yr olds seeing the largest drop from 29% to 18%⁵²³;
- Alcohol related violent crime in England has fallen from 4.81 per 1000 in 2008/9 to 3.93 in 2012/13⁵²⁴
- Alcohol related recorded crime in England has fallen from 7.31 per 1000 in 2008/9 to 5.74 in 2012/13⁵²⁵
- Proportion of pupils who had tried an alcoholic drink dropped from 55% in 2006 to 38% in 2014⁵²⁶;
- Proportion of pupils consuming alcohol in the last week dropped from 21% in 2006 to 6% in 2014⁵²⁷;
- Alcohol related admissions for 0-17 yr olds that were wholly attributable to alcohol have dropped by 46% since 2006/7;⁵²⁸

4. Response to consultation questions

⁵²⁰ British Beer & Pub Association, 2014 Figures, March 2015

⁵²¹ Office of National Statistics, alcohol consumption data, February 2015 (2013 data)

⁵²² Ibid

⁵²³ Ibid

⁵²⁴ Public Health England, Local Alcohol Profiles

⁵²⁵ Public Health England, Local Alcohol Profiles

⁵²⁶ Department of Health, Drinking Smoking and Drug use among young people, 2015 (2014 data)

⁵²⁷ Department of Health, Drinking Smoking and Drug use among young people, 2015 (2014 data)

⁵²⁸ Local Alcohol Profiles for England (LAPE), (accessed 04th August 2016)

Licensing objectives

1. Are the existing four licensing objectives the right ones for licensing authorities to promote? Should the protection of health and wellbeing be an additional objective?

Yes, the WSTA believes that the existing objectives are the right ones for the licensing authorities to promote. These objectives are consistent with the principles of the Act that focuses on the impact of the individual licensee. Core to this principle is whether or not an individual premises is contributing to specific harms such as public safety, crime and anti-social behaviour, public nuisance and protection of children from harm. All of which are easily defined and easily attributed to a particular premises, this ensures that remedies are understood and can be monitored.

No, the WSTA does not agree that a health objective is either workable or desirable for a number of reasons. Firstly, the data collected by health authorities on alcohol related admissions is inconsistent and could not be uniformly applied across England and Wales, unlike the recording of crime. Evidence from Scotland suggests its implementation there has had limited impact and its application is inconsistent⁵²⁹.

Secondly, it is highly problematic for health authorities to attempt to trace alcohol related health harm to an individual alcohol retailer particularly if it is long term health harms, multiple retailers are involved or if health admissions take place across a range of local authority areas. An objective of this kind would require uniform monitoring and registering of alcohol health harms by health authorities and a systematic approach to recording and disseminating this information as it would be impossible for this process to be monitored by licensing authorities. The Act does not currently contain provision to cover health authorities in this way, which would be required to make this workable.

Furthermore, the Licensing Act is designed to control the sale of alcohol from premises and to ensure that premises do this responsibly, it is not clear what remedies a retailer could adopt in an attempt to prevent general health harms that relate to alcohol. It is unclear how a retailer could promote public health.

Thirdly, health authorities were made responsible authorities as part of the Police Reform and Social Responsibility Act, yet there has been no analysis or assessment of the impact of this approach.

Finally, it is unclear as to what is meant by health and wellbeing, there are range of potential health issues if alcohol is misused which range from long term harms, to short term episodic admissions, clarity on exactly what this meant

⁵²⁹ <http://alcoholresearchuk.org/alcohol-insights/using-licensing-to-protect-public-health-from-evidence-to-practice-2/>

2. Should the policies of licensing authorities do more to facilitate the enjoyment by the public of all licensable activities? Should access to and enjoyment of licensable activities by the public, including community activities, be an additional licensing objective? Should there be any other additional objectives?

The WSTA believes that the existing licensing objectives are appropriate.

The balance between rights and responsibilities

3. Has the Live Music Act 2012 done enough to relax the provisions of the Licensing Act 2003 where they imposed unnecessarily strict requirements? Are the introductions of late night levies and Early Morning Restriction Orders effective, and if not, what alternatives are there? Does the Licensing Act now achieve the right balance between the rights of those who wish to sell alcohol and provide entertainment and the rights of those who wish to object?

There are very few examples of Late Night Levies (8) or Early Morning Restriction Orders (0) in place to judge their effectiveness. As a principle the WSTA does not support the blanket approach to additional restrictive licensing measures that impact on all retailers even those retailing responsibly and not contributing to alcohol related crime and disorder.

The WSTA believe that there are sufficient measures in the Act to deal with alcohol related licensing issues in the late night economy and believes that partnership approach to dealing such issues has proven to be more effective including through industry led schemes such as Pubwatch, Best Bar None, Business Improvement Districts and Community Alcohol Partnerships.

4. Do all the responsible authorities (such as Planning, and Health & Safety), who all have other regulatory powers, engage effectively in the licensing regime, and if not, what could be done? Do other stakeholders, including local communities, engage effectively in the licensing regime, and if not, what could be done?

The WSTA believes that the Licensing Act contains sufficient provisions to ensure that other authorities are consulted on new license applications. Planning and licensing issues are often conflated and this is an area where a greater level of co-ordination could be more beneficial, however this does not need to be legislated in the Act, but should be something that local authorities are able to co-ordinate as a matter of best practice.

Licensing applications are well advertised and there is evidence that local communities do engage in the application of the Licensing Act through the use of objections and in attending licensing committees. In the Police Reform and Social Responsibility Act 2012 the vicinity

test was removed ensuring that anyone could object to a licence application.

Licensing and local strategy

5. Licensing is only one part of the strategy that local government has to shape its communities. The Government states that the Act “is being used effectively in conjunction with other interventions as part of a coherent national and local strategy.” Do you agree?

Yes, since the Licensing Act was implemented it has been the framework under which alcohol consumption has fallen by one fifth and alcohol related crime has fallen by a third. The Act allows local authorities the power to deal with alcohol related crime and disorder, however it also allows local partnerships to be developed and for voluntary action to improve local communities.

6. Should licensing policy and planning policy be integrated more closely to shape local areas and address the proliferation of licensed premises? How could it be done?

While licensing numbers have increased since 2005, the number of alcohol licenses in the UK actually fell by 3,300 from 2013-2014 and club certificates by 300. This included falls of 4% in on sale only premises, a 3% fall in off sales licences and a 0.1% fall in joint on and off sales⁵³⁰. The density per 100,000 has also fallen from 338 in 2001 to 334 in 2012⁵³¹. In addition, the number of premises is not a good indicator of the alcohol volumes sold. Since the act came into effect, the number of premises has increased overall, but the volume of alcohol sold has decreased by one fifth, meaning that the average amount of alcohol sold per licence is falling and that an increase in licenses has not led to an increase in consumption.

The changing nature of the retail sector, particularly moving from out-of-town mega stores to a greater number of convenience and smaller format stores, means that overall there is a requirement for a greater number of licences, however the volume of alcohol sold overall is not increasing. Therefore local authorities should be cautious not to take an approach that attempts to control the amount of alcohol consumed by limiting the absolute number of alcohol licences, as this is not a good indication of the level of alcohol consumed or how responsible that consumption will be. Additionally, off trade retailers provide a greater level of products than just alcohol, yet the refusal of an alcohol licence could mean that a high street or town centre does not get the investment that a new retailer would bring and therefore could have wider knock on effects.

In addition to the falling volume of sales per premises, since 2009 the number of personal licence holders, who have undertaken licensing training, has increased by 48% so that there

⁵³⁰ Home Office, Alcohol and late night refreshment licensing statistics, 2013/14

⁵³¹ <http://www.ias.org.uk/Alcohol-knowledge-centre/Availability-and-licensing/Factsheets/Alcohol-licences-Statistical-trends.aspx>

are now 2.6 personal licence holders to every premises, up from 1.8 in 2009, highlighting the increased level of standards in licenced premises.

Overall local authorities have the opportunity to shape their retail space and night time economy through the planning and licencing system and integration between the two should remain the responsibility of the local authority, the WSTA does not believe that amendments to the Licensing Act are required to do this.

Crime, disorder and public safety

7. Are the subsequent amendments made by policing legislation achieving their objects? Do they give the police the powers they need to prevent crime and disorder and promote the licensing objectives generally? Are police adequately trained to use their powers effectively and appropriately?

The WSTA believes that the existing and additional powers in the Licensing Act are sufficient to prevent crime and disorder and promote the licensing objectives. In fact, many of the powers are underutilised. The following table, for example, highlights how infrequently many provisions in the Act are used by highlighting how many convictions there are for each offence⁵³²:

<i>Offence description</i>		2009	2010	2011	2012	2013
S.141—Sale of alcohol to a person who is drunk	Convictions	6	3	5	10	5
S. 142—Obtaining alcohol for a person who is drunk	Convictions	0	1	1	1	1
S.146—Sale of alcohol to person under-18	Convictions	331	258	194	182	128
S.147A—Persistently selling alcohol to children	Convictions	3	6	7	10	1
S.149 (1 and 7a) Purchase of alcohol by an individual under 18 ⁷	Convictions	4	0	1	1	2
S.149 (3, 4 and 7b)—Buying or attempting to buy alcohol on behalf of an individual under-18 ⁷	Convictions	25	19	20	11	5

⁵³² <http://www.parliamentonline.co.uk/hansard/hocw/140630w0002.htm#14063048000081>

S. 151—Knowingly delivering to a person aged under-18 alcohol sold or supplied on premises	Convictions	0	0	1	0	0
S.152—Sending a person aged under-18 to obtain alcohol	Convictions	0	0	0	0	0
5.153—Responsible person allowing individual aged under-18 to sell or supply alcohol	Convictions	0	1	0	2	1
Total	Convictions	369	288	229	217	143

In addition to the offenses, the Police also have a number of powers in relation to the closure of premises from Section 160 – 170 of the Act and the further provisions for the Late Night Levy and Early Morning Restriction Orders, which have not been utilised to any extent. The WSTA therefore does not believe that a greater number of powers are required for the police, but that the powers that already exist should be utilised more fully where necessary.

8. Should sales of alcohol airside at international airports continue to be exempt from the application of the Act? Should sales on other forms of transport continue to be exempt?

It is difficult to calculate what benefit would be gained from the application of the Licensing Act to airports, given their unique structure, the nature of their custom and the fact they are not based in a community in the same way other licensed premises are.

In order to address problems with alcohol related disorder in airports, a code of practice has recently been published by the UK Airport Police Commanders, ALMR, AOA, BATA, Retail Travel and the UK Travel Retail Forum and this approach is supported by the WSTA.

This code is available here: <http://www.aoa.org.uk/wp-content/uploads/2016/07/The-UK-Aviation-Industry-Code-of-Practice-on-Disruptive-Passengers-FINAL.pdf>

Licensing procedure

9. The Act was intended to simplify licensing procedure; instead it has become increasingly complex. What could be done to simplify the procedure?

The WSTA does not agree that licensing procedure is more complex than before the Act when the courts played a greater role in administering the licensing regime. Given its

importance to economic development, shaping communities, planning, community safety and environmental health it is right that the Act now sits firmly within local authorities and is administered with those aspects in mind.

There are a number of areas in which the Act is more complex than it needs to be and amending this to remove these complexities would improve the application of the Act. This includes:

- Removing the requirement for applications to be published in a newspaper;
- Allowing applicants to apply and pay for licences online;
- Remove the requirement to submit the original premises licence with applications to vary licences;
- Ensure that authorities have a better understanding of what appropriate and workable conditions are;
- Remove the requirement to display a licence summary and to hold the original/certified copy premises licence at the premises;
- Remove the need for a hearing to take place if both parties resolve issues ahead of this.

10. What could be done to improve the appeal procedure, including listing and costs? Should appeal decisions be reported to promote consistency? Is there a case for a further appeal to the Crown Court? Is there a role for formal mediation in the appeal process?

The WSTA supports a partnership-based approach between the licensed trade and local authorities and would therefore welcome a greater levels of mediation, whether formal or informal, in order to reduce the number of appeals that are required and the cost of these to the trade and licensing authorities. Anecdotally, a relatively high number of decisions are overturned on appeal and therefore this suggests that, had there been a greater level of discussion between the applicant and the local authority, that this could be avoided. The current system allows time between the decision and the appeal in which a greater level of discussion could take place on the application and this time period should remain.

Rather than consider further levels of appeal, the WSTA believes the focus should be on reducing the need for appeals through better and more effective application of the Licensing Act.

Sale of alcohol for consumption at home (the off-trade)

11. Given the increase in off-trade sales, including online sales, is there a case for reform of the licensing regime applying to the off-trade? How effectively does the regime control supermarkets and large retailers, under-age sales, and delivery services? Should the law be amended to allow licensing authorities more specific control over off-trade sales of “super-strength” alcohol?

Off-trade sales

It is important not to over exaggerate the increase in off-sales since the Licensing Act 2003 came into effect. Since 2005, the volume of pure alcohol being sold per person through the off-trade increased from 6.1 litres per adult to 6.3 litres and is down slightly from its peak in 2009. Since 2005 levels have been broadly stable between 6.1-6.3 litres per adult each year. This is the equivalent to a 3% rise over a 10 year period⁵³³.

There is little therefore to suggest therefore that drinking patterns in the off-trade have change substantially in the 10 years since the Act came into effect. There is also little evidence to suggest that the reduction in the on-trade consumption, which has fallen by 1.6 litres of pure alcohol per adult, has moved to the off-trade as is often suggested as this fall is 8 times greater than the rise in off-trade sales.

The reduction of volume sales in the on-trade is a symptom of the changing nature of the market in which there is a growth of diversity including more food or entertainment. This has seen a fall in the number of alcohol only "vertical drinking establishments" and a growth in family friendly, food venues. Additionally, the trend in the on-trade has been to premiumise by selling less volume at a higher value, particularly through the growth of premium products such as craft products or cocktails. This is why wines and spirits now account for 42% of the value of what is sold in the on-trade and now 35% of the value of alcohol sold in pubs. In terms of value sales, on-trade sales continue to grow and now stand at £24bn (up £1.6bn since 2012 +7.4%) compared to the off-trade at £15.8bn (up £1.3bn since 2012 +8.9%)⁵³⁴. This suggests that while the absolute number of on-licensed premises are reducing, the level of spending in the on-trade overall continues to rise.

Underage

Retailers take their responsibility in dealing with underage sales very seriously and through the Retail of Alcohol Standards Group have pioneered the ID scheme Challenge 25⁵³⁵, which is the off-trade standard compared to the on-trade's Challenge 21, and Community Alcohol Partnerships⁵³⁶, of which there have been over 108 launched in the UK. Since the Act came into effect, underage hospital admissions have fallen dramatically and underage drinking is now at record lows. Key to this has been both the improved standards as well as the growth of partnership working between the trade and licensing authorities through schemes like Community Alcohol Partnerships.

⁵³³ Measuring and Evaluating Scotland's Alcohol Strategy May 2006, Nielsen data.

⁵³⁴ WSTA Market Report, Nielsen and CGA Strategy data, June 2016

⁵³⁵ A report on its effectiveness can be seen at

⁵³⁶ For more information please go to www.communityalcoholpartnerships.co.uk

The Licensing Act is very clear on the obligations of retailers in relation to home delivery with the Section 182 Guidance very clear:

“Licence holders should consider carefully what steps they are required to take to comply with the age verification requirements under the 2003 Act in relation to sales of alcohol made remotely. These include sales made online, by telephone and mail order sales, and alcohol delivery services. Each of these sales must comply with the requirements of the 2003 Act.

The mandatory condition requires that age verification takes place before a person is served alcohol. Where alcohol is sold remotely (for example, online) or through a telephone transaction, the sale is made at this point but the alcohol is not actually served until it is delivered to the customer. Age verification measures (for example, online age verification) should be used to ensure that alcohol is not sold to any person under the age of 18. However, licence holders should also consider carefully what steps are appropriate to ensure that age verification takes place before the alcohol is served (i.e. physically delivered) to the customer to be satisfied that the customer is aged 18 or over. It is, therefore, the responsibility of the person serving or delivering the alcohol to ensure that age verification has taken place and that photo ID has been checked if the person appears to be less than 18 years of age.”

In addition to adhering to this guidance and operating the Challenge 25 scheme, different retailers undertake a range of activity designed to prevent underage sales, this includes; highlighting alcohol purchases at the top of home delivery receipts; flagging challenge 25 on handheld devices where home deliveries contain alcohol; monitoring alcohol only baskets or unusual purchases and confirming with registered account holder; conducting credit check searches on account holders. This is on top of the registration requirements, age verification question, the cost of delivery for orders under a certain value and the requirements to wait for a designated delivery slot. All of which act as a disincentive for potential underage drinkers. This may explain why online alcohol sales are not cited by young people as a way in which they gain access to alcohol, for example In the HSCIC report on drinking among young people. In order to improve understanding of this, the HSCIC could ensure that this potential means of getting alcohol is included in its surveys as this will build an accurate picture of its prevalence.

One area in which further investigation may be useful is on the night alcohol delivery services that are aimed at supplying house parties and other events at night. This can be licenced from one local authority area but can impact on another and can include deliveries after midnight depending on the licence. Unlike supermarket deliveries that required advanced booking and operate generally between 7am and 10pm. This may be an area in which the committee may want to consider further.

Super-strength

The committee should be clear on what it means by super-strength, it is assumed that this is referencing beers and ciders that have been targeted by “reducing the strength” schemes

and retail at anywhere between 5.5%-9% ABV. There is no consistent view of exactly what the definition of “super-strength” is, as this varies from local authority to local authority and there is no consistent view of which products these provisions are applicable to with licensing officers regularly targeting specific products from within the ABV range.

The WSTA does not support the amendment of the act to provide greater power to focus on specific products which are often done on the basis of ABV level as it believes that the Act contains appropriate measures to deal with these issues. The WSTA believes that the most effective approach to tackling problems that are faced in local communities is to develop a partnership that treats retailers as part of the solution rather than just as part of the problem. This has occurred through Community Alcohol Partnerships in Great Yarmouth and Hastings which have look to tackled street drinking as part of its activities. This has been achieved without the need for further regulation.

Pricing

12. Should alcohol pricing and taxation be used as a form of control, and if so, how? Should the Government introduce minimum unit pricing in England? Does the evidence that MUP would be effective need to be “conclusive” before MUP could be introduced, or can the effect of MUP be gauged only after its introduction?

Alcohol duty in the UK is already among the highest in Europe, with UK consumers paying nearly 40% of all duties collected by EU member states. The duty on a bottle of wine is now £2.08 and on a bottle of spirits it is £7.75, meaning that in shops and supermarkets 55% of a bottle of wine and 75% of the average price of a bottle of spirits is taken up in tax. Wine consumers are the single largest contributor of alcohol duty at £4bn and spirits consumers contribute over £3bn and this is why the UK has significantly higher prices than countries such as France, Germany or Italy.

With regards to Minimum Unit Pricing, the Licensing Act 2003 applies to both England and Wales, as this area of policy is not devolved. Therefore, amendments to the Act would impact on Wales and not just England as stated in question 12. Wales do not have devolved powers to introduce MUP through the licensing regime. A price floor already exists within the Act through the amendment to ban sales below the level of duty plus VAT. This already sets a minimum price for alcohol and the WSTA were supportive of the adoption of this measure to ensure that the worst cases of discounted sales were dealt with and that a further enforcement mechanism existed to deal with those selling without duty paid. It is sometimes the case that those that are selling at the lowest prices in the off-trade do so because they have not paid the duty and this provision allows licensing authorities to be able to identify these cases better.

However, a higher Minimum Unit Price would push up the prices in shops for around half of all alcohol for consumers in England and Wales and impact on those on the lowest incomes. It is not a targeted measure, hitting all drinkers regardless of how responsible they consume alcohol and is unlikely to impact those the heaviest drinkers that are least responsive to

price changes. In terms of business, the requirements would result in significant expenditure to update pricing systems, particularly if different prices are set in different UK regions, which would have to deal with duty plus VAT and Minimum Unit Pricing regulations. This would have a considerable cost at a time when retailers are already facing difficult trading conditions.

It is important to note that the Government's Economic Impact Assessment⁵³⁷ highlighted that an MUP of 45p would cost the Treasury £200m in lost revenue and also cost consumers an additional £1bn and, at a time of significant uncertainty for business and the Government, this could have a significant impact.

Overall the WSTA does not believe that the flawed model on which Minimum Unit Pricing is based provides any real understanding of its impact. Alcohol consumption has decreased by nearly one fifth over the past decade, nearly three times more than the 45p MUP model originally anticipated, and this was achieved without the need for expensive and arbitrary pricing restrictions.

Fees and costs associated with the Licensing Act 2003

13. Do licence fees need to be set at national level? Should London, and the other major cities to which the Government proposes to devolve greater powers, have the power to set their own licence fees?

The WSTA does not support the local setting of licensing fees, because of the complexity of administering such a system. Our submission to the Home Office Consultation on this issue is available at the following link: <http://www.wsta.co.uk/images/PAN/2016/LocallySetFees-ConsulationResponse.pdf>

Licence fees are already structured to take into account the size and type of business, with fees based on rateable value, including a multiplier for larger premises where it is used primarily for the supply of alcohol. The industry currently pays in the region of £35m-£40m a year on annual fees on top of the business rates which are additionally paid to the local authority.

While there is a recognition that fees have not increased since the Licensing Act 2003 came into effect, the WSTA continues to await the results of the review by the local Government into the cost of administering the licensing system which was requested by the Home Office when it published its consultation response on locally set fees⁵³⁸. The WSTA believes the any

⁵³⁷ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/157763/ia-minimum-unit-pricing.pdf

⁵³⁸

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/407175/HO_Consultation_GOV_Response_to_Local_fees_2015v5_ARTWORK.PDF

change to the licence fee system should be based on evidence relating to the administration of the licensing system.

14. Is there a correlation between the strictness of the regulatory regime in other countries and the level of alcohol abuse? Are there aspects of the licensing laws of other countries, and other UK jurisdictions, that might usefully be considered for England and Wales?

Comparable countries outside of England and Wales, such as Ireland or Scotland, have much more restrictive licensing regimes yet also see much higher levels of harm. Yet conversely, countries like France have higher levels of alcohol consumption and less strict licensing regimes than the UK, but lower levels of harm. Suggesting there is not a simple link to licensing, consumption and harm.

Overall, the licensing regime plays a very important role in the responsible retail and consumption of alcohol, however more severe restrictions and greater level of bureaucracy for businesses is not the right approach to tackling alcohol related crime or harm. The WSTA believes that a partnership approach which includes raising standards, improving training and ID schemes, better use of existing laws and better alcohol education and awareness is required alongside the existing licensing regime and therefore why we do not recommend further amendments to the Act.

Annex 1: Changes to the Licensing Act since 2005

2005

Licensing Act 2003 comes into effect.

2007

Violent Crime Reduction Act 2006:

- Alcohol Disorder Zones (later repealed)
- ‘Three strikes’ for underage sales

2010

Policing and Crime Act

- Mandatory Code of Practice:
- Promotions ban
- Free tap water
- Age verification schemes

Wine and Spirit Trade Association – written evidence (LIC0130)

- Smaller drinks measures

Crime and Security Act

- Original Early Morning Restriction Orders

2012

Police Reform and Social Responsibility Act 2011

- Late Night Levy
- Extended EMROs
- Reduction in evidential burden for licensing decisions
- Changes to TENs procedure
- Doubling of fine for persistent alcohol sales
- Licensing Authorities become responsible authorities
- Health bodies become responsible authorities
- Removal of vicinity test

2014

- The off-trade added to Cumulative Impact Policies
- Ban on the sale of alcohol below duty plus VAT

2015

- Removal of requirement to renew Personal Licences
- Level five fines became unlimited
- Changes to relevant offences and immigration amendments
- Removal of the age restriction on liqueur confectionary
- Review of the Mandatory Conditions

2016

- Placing Cumulative Impact Policies on a statutory footing
- Review of the Late Night Levy
- Proposals on Group Review Intervention Powers
- Removal of Parliamentary scrutiny of Section 182 guidance

2 September 2016

Wirral Council – written evidence (LIC0053)

Q1: Are the existing four licensing objectives the right ones for licensing authorities to promote? Should the protection of health and wellbeing be an additional objective?

We believe there is a strong case for the introduction of a fifth, health based licensing objective. Introducing Public Health as a responsible authority without the introduction of a health based objective left public health bodies in the difficult position of having to make their health related intelligence and statistics fit within the framework of the four existing licensing objectives.

A health based licensing objective would enable licensing sub-committees to consider health related issues in a standard way across England. A recent public opinion survey conducted by Healthier Futures and the Alcohol Health Alliance, found support from 55% of respondents for the inclusion of health as a licensing objective, with 11% of respondents objecting.

The figures recently published by Public Health England offering guidance on how to prevent and reduce the harms caused by alcohol included data that shows deaths from liver disease have increased by 15% since the time of implementation of the Act, and underlines the fact that liver disease has more than doubled since 1980, and is the only major disease on the increase during that period. The links between alcohol use and liver disease are well documented so the value of the inclusion of health as a licensing objective, and the consideration of the health impacts in licensing applications, has a strong evidence base.

However, as there is currently an emphasis on relating every piece of evidence back to an individual premises (even if the application is for a new premises) simply having a fifth health objective would not mean that health data could be used as a reason in itself to decline an application, as very often health data is only available at a wider geographical footprint and cannot be linked to a single premises, particularly if it is an application for a new licence and the retailer isn't currently operating. For a fifth Public Health objective to be useful the guidance on evidence allowed in sub-committee decision making needs to be very clear. Evidence that licensing sub-committees are allowed to consider should include more area based data e.g. lower super output area data, A&E data for a post code etc., this would enable the committee to take into consideration the health status of an area, this would be especially pertinent when they are considering new licence applications.

There also needs to be stronger emphasis on applicants showing that they are aware of the health status of the area they wish to operate in. Currently this is not required and an applicant can apply for a licence and have it granted without ever having visited or investigated the issues of the area, therefore the following question needs to be taken into consideration, 'what are operators expected to do to promote a fifth health-related objective?'

Q2: Should the policies of licensing authorities do more to facilitate the enjoyment by the public of all licensable activities? Should access to and enjoyment of licensable activities by the public, including community activities, be an additional licensing objective?

There needs to be a balanced approach to licensed premises across an area, particularly when a survey of residents on Merseyside overwhelmingly (70%) told us that they are put off from going out in their local town due to the drink-related behaviour of others (2015 National Alcohol Behaviour & Perceptions Survey).

The current objectives set ground rules for managing premises whereas Statements of Licensing Policy (SOLP) show how an area will support tourism etc. A SOLP is the correct place for this to be highlighted and not within another objective. However an additional objective could be 'to promote the requirements of the SOLP' or 'to have a positive rather than negative impact on the local area'.

The Section 182 guidance could be clearer around the effects of over saturation of off-licensed premises.

Q3: Has the Live Music Act 2012 done enough to relax the provisions of the Licensing Act 2003 where they imposed unnecessarily strict requirements? Are the introductions of late night levies and Early Morning Restriction Orders (EMRO) effective, and if not, what alternatives are there? Does the Licensing Act now achieve the right balance between the rights of those who wish to sell alcohol and provide entertainment and the rights of those who wish to object?

As a local authority we have not had the resources to assess whether there has been any increase in the performance of live music in licensed premises. The provisions of the Live Music Act 2012 and further amendments made through deregulation are not well known by the trade or members of the public. It can be of concern to local residents when they learn that the granting of a licence to permit the sale of alcohol also brings with it the right to allow entertainment at the premises. However there has been no significant increase in noise complaints since the relaxation.

Wirral does not have a late night levy or any EMRO's in place. Business Improvement Districts are an alternative to Late Night Levy's and EMRO's. More emphasis should be given to the responsibility that goes with selling alcohol. The requirement for only the Designated Premises Supervisor (DPS) to have a qualification is not sufficient, particularly as the sale of alcohol can take place in the absence of the DPS. Mandatory training should be in place for all individuals who sell alcohol. Training in responsible alcohol retailing which provides individuals with not only details of the legal requirements but the consequences of selling alcohol to underage persons or individuals who are drunk could influence a change in culture without recourse to penalties that can have an impact on responsible businesses. However, amending late night levies to make them more flexible, for instance by allowing them to be 'zoned' rather than defined by the entire licensing authority area, would allow authorities to target those premises and areas where most harms originate from and thus

make the problem causers pay. Income from such levies should be ring fenced to licensing authorities to allocate to partnership work with the police.

Q4: Do all the responsible authorities (such as Planning, and Health & Safety), who all have other regulatory powers, engage effectively in the licensing regime, and if not, what could be done? Do other stakeholders, including local communities, engage effectively in the licensing regime, and if not, what could be done?

Responsible authorities (RA) have a statutory role but some RAs (such as the Local Safeguarding Children's Board) have not been able to find the resources to engage with the local licensing system. This leaves a gap in local knowledge around areas such as under age sales and alcohol consumption trends in young people and means other RAs can't use relevant evidence in representations as it is not available to them. Further guidance on how the Local Safeguarding Children's Board could contribute to the process may assist. Due to limited resources in this area it may be that it would require a mandatory response.

The planning authority can also have limited resources to engage in the licensing process meaning that there can be conflict with local residents as quite often a premises licensed hours and planning restrictions in relation to hours of operation are different. This is confusing to both businesses and residents. The licensing and planning processes should be allowed to overlap more flexibly as there have been cases when a premises has applied for an alcohol licence and subsequently found out that planning permission is also required in order for them to operate. If planning was systematically engaged with the licensing process this would have been picked up at an earlier stage.

An applicant would focus on the planning permission of their premises if it was a requirement to declare such permissions in their application for a premises licence and vice versa. Whilst it is acknowledged that there should be a separation of the processes, for a business to operate lawfully they need to be directed by the application process to find out the details of the permissions that apply to their premises and would then engage with planning and licensing when writing their application. Alternatively, a solution to this gap would be that an applicant could not apply for licensed hours that are outside of planning permitted hours of operation, meaning that applicants would have to investigate both areas of the system before applying for an alcohol licence.

Other stakeholders, such as the local population, don't routinely get involved in licensing applications. We are looking to develop a community toolkit to aid community engagement. A national campaign re: community involvement would be beneficial in promoting personal action and informing the public as to where they can go and who they can contact to become better informed, and more engaged in the process.

It is clear from the case law that the Licensing Authority must base decisions on evidence, but it is not always clear to residents and other stakeholders what they need to bring to the table in order to satisfy the evidence test.

There is an over-emphasis on evidence regarding a premises and significant misunderstandings as to what “evidence” is permissible and what the evidential threshold is, this needs to be made much clearer in the future to aid those wishing to make representations and local authority sub-committees when making decisions. Currently the licensed trade has a massive advantage as quite often evidence cannot be linked to a specific premise especially if it is a new licence application and this makes the use of the idea of cumulative impact more difficult.

The following link provides details of work in Scotland to support local people to take part in licensing decisions.

<http://www.alcohol-focus-scotland.org.uk/media/133477/Community-licensing-toolkit.pdf>

Q5: Licensing is only one part of the strategy that local government has to shape its communities. The Government states that the Act “is being used effectively in conjunction with other interventions as part of a coherent national and local strategy” Do you agree?

The Government states the Act “is being used effectively in conjunction with other interventions as part of a coherent national and local strategy”. We do not agree. There isn’t a coherent national strategy that links to local initiatives. There are lots of local initiatives and legislation (such as gambling legislation, “Healthy High Streets” and the “place-based approach”) that need to be supportive of local campaigns. Legal frameworks can prevent local strategies from shaping communities.

We believe that local and national policies should be more “joined up”. There is a clear opportunity to develop a “single application process” for businesses, whereby they could submit one single application which could cover all permissions required to run a business – planning, licensing, food registration, waste contract etc. to cut down on bureaucracy and simplify processes.

Statements of Licensing Policy could be given more power on a national level in order for local authorities to use them in a more strategic way and to connect them to an area’s strategic vision.

Q6: Should licensing policy and planning policy be integrated more closely to shape local areas and address the proliferation of licensed premises? How could it be done?

Yes, these two areas of policy should be more integrated, to ensure consideration of the priorities and objectives of these areas are in tune with each other.

Powers provided jointly to Planning and Licensing to consider the number of licensed premises within a defined area could be effective in shaping local areas without recourse to Cumulative Impact Policies.

The licensing and planning processes should be allowed to overlap more flexibly to ensure that alcohol licence applicants know that they may need planning permission or that the building they intend to operate in has specific planning restrictions attached to it, currently this is not always the case and this causes confusion and frustration.

There could be a supplementary planning document for licensed premises, (similar to those in place for hot food takeaways) that could include limits on numbers of premises where there are high rates of alcohol harm.

Q7: Are the subsequent amendments made by policing legislation achieving their objects? Do they give the police the powers they need to prevent crime and disorder and promote the licensing objectives generally? Are police adequately trained to use their powers effectively and appropriately?

This question will be more appropriately answered by the Police however this response relates to the experience of working in partnership with Merseyside Police in Wirral.

Since the implementation of the Licensing Act 2003 Wirral licensing officers have worked closely with police licensing officers (one Sergeant two constables) and have provided training to other police officers working in the night time economy in order to maximise the use of powers and resources. The outcome of this work led to a reduction in alcohol related crime, avoided the need for late night levies and EMRO's and made effective use of the power to review licences. This working partnership has been severely impacted upon due to police re-organisation that has removed a dedicated police licensing team from Wirral.

The local licensing team are keen to engage with Merseyside Police to ensure that they know what their role is within the Licensing Act 2003, and what they are legally allowed to do. There is a resource issue within police forces currently and police officers change roles frequently, so keeping knowledge around the Licensing Act 2003 up to date is a challenge.

Q8: Should sales of alcohol airside at international airports continue to be exempt from the application of the Act? Should sales on other forms of transport continue to be exempt?

No. The impact of the sale of alcohol at these locations should be subject to the same controls as other on licensed premises. It is recognised that the appropriate licensing authority would need to be identified for moving vehicles but this is not insurmountable.

Q9: The Act was intended to simplify licensing procedure; instead it has become increasingly complex. What could be done to simplify the procedure?

Bringing together licensing and entertainment has made it easier and the procedure and process is effective. Electronic applications have also made the process easier. The legislation itself has become more complicated due to the number of amendments made to the Act occurring too frequently. This could be mitigated by re-writing/drafting the Licensing Act 2003.

Q10: What could be done to improve the appeal procedure, including listing and costs? Should appeal decisions be reported to promote consistency? Is there a case for a further appeal to the Crown Court? Is there a role for formal mediation in the appeal process?

An improvement would be to provide clarification in respect of the interim steps that are put in place following a summary review i.e. remove the provision that following a review

the decision of a sub-committee does not come into effect until after the appeal process is concluded. In these circumstances the Licensing Authority appears ineffective in addressing the issues that caused the review to be brought before them. The listing of an appeal can be many months later which may allow bad management to continue to operate undermining the licensing objectives. Costs can be prohibitive to local residents, preventing them appealing the decision. Costs can also impact on Licensing Authorities seeking to defend appeals. Due to the extensive time period taken for appeals to take place mediation is taking place more commonly. When such mediation takes place this is confusing for local residents who have attended a Hearing and then expect the decision to be implemented. When advised that the decision is subject of an appeal the expectation is that the courts will make the decision. Changes / compromises can be difficult for local residents to engage in and ultimately accept when a formal appeal Hearing has not taken place.

In some circumstances a further appeal to the Crown Court may be appropriate reducing costs and time involved in Judicial Review.

If the issues mentioned in this response on “evidence” and the use of it during sub-committees were ratified then sub-committee decisions would be more sound and reasonable and less likely to go to an appeal.

Appeal decisions should be reported as this would assist a uniform approach being adopted country wide.

Q11: Given the increase in off-trade sales, including online sales, is there a case for reform of the licensing regime applying to the off-trade? How effectively does the regime control supermarkets and large retailers, under-age sales, and delivery services? Should the law be amended to allow licensing authorities more specific control over off-trade sales of “super-strength” alcohol?

The Licensing Act 2003 is more weighted to on-sales and there is no reference to cumulative impact policy within it.

Cumulative Impact Policies come too late in the process whereby authorities attempt to control the increase in off trade premises with a policy originally identified as a tool to control the impact of the number of on licensed premises in one area. Change is needed to affect the culture of pre-loading which has developed with the availability of cheap alcohol in supermarkets and off-licences coupled with later operating hours of the night time economy. This has heightened the culture of drinking to get drunk.

When the Licensing Act 2003 was introduced premises applied for later hours in the first instance because they could and then because they had to in order to compete. Many applicants finding themselves at a sub-committee hearing, because of the hours applied for, stated that they did not want to operate such hours but had no choice. Some night time economy premises now only open for trading beyond 11.00 pm and have to trade for 6 hours to be viable. However, young people may have been drinking alcohol purchased from supermarkets or off licences from the early evening which could mean an unsafe amount of

alcoholic units will have been consumed during the course of an evening / early morning. A reform of the availability of alcohol in the off trade would be welcome but must also have regard to the longer hours operated by the night time economy venues.

The current legislation means that a licence is granted unless there are representations against it, and, sufficient evidence to stop it being granted. This means that in some deprived areas there are a high number of off-licences selling alcohol from early in the morning to late at night and the only way to have any control is to bring these licences into review if they breach a licensing condition. If the law stated that a new applicant or a variation applicant had to show how their business would help the local area and how they have taken into consideration local issues (crime / health etc.) then this would give more power to local authorities to prevent over proliferation and inappropriate licences being granted as a matter of course. Take away the need for an area to have a CIP and put the onus back onto all applicants to show how their business will improve an area or provide a needed service, or make clear the claim in the Modern Crime Prevention Strategy that CIPs are to become statutory.

24hour licensing has given every applicant the opportunity to open and sell alcohol all day but this hasn't meant that there are lots of 24 hour licences. What it does mean is that off-sales are available very early in the morning at corner shops / supermarkets and petrol stations and also that the night time economy has pushed into the early hours 5-6am. A solution to the current situation would be to investigate introducing a period of time across England that alcohol cannot be sold such as 3am-10am for on-licences and 10pm-10am for off-licences. This would reduce crime and assault in the early hours thus reducing the burden on police and A&E depts. It would also mean that dependant drinkers could not access alcohol first thing in the morning. This would also mitigate some of the effects of pre-loading.

The Licensing Act 2003 does not have specific "controls" for supermarkets and large retailers and these organisations usually have solicitors in place to negotiate on their behalf. Although locally some retailers have engaged with Public Health and agreed to reduce the licenced hours applied for by 1-2 hours (e.g. an 8am off-licence rather than a 6am off-licence) in areas of high alcohol harm, many large chains (and individual premises) don't routinely look into the areas they are moving into from a health or crime perspective, even though the Statement of Licensing Policy (SOLP) states that they should. More power needs to be given to the adherence to SOLPs by licence applicants.

Currently in Wirral there is a voluntary Reducing the Strength campaign that has been very successful in removing from sale super strength alcohol in Birkenhead and surrounding areas (although there are two large chains that still sell it, and therefore it is still causing some problems). If the legislation supported this work then that could only be beneficial to the health of our most deprived communities and would more than likely reduce crime in those areas also.

Q12: Should alcohol pricing and taxation be used as a form of control, and if so, how? Should the Government introduce Minimum Unit Pricing (MUP) in England? Does the evidence that MUP would be effective need to be “conclusive” before MUP could be introduced, or can the effect of MUP be gauged only after its introduction?

There is evidence to show that MUP would reduce alcohol harms in our most affected communities. The Government should introduce it in England based on this evidence and then over a 5-10 year period monitor and assess the effects it has on alcohol related harm across England, along with the effects it has on moderate drinking habits.

Dr Arianna Andreangeli conducted a study on the following theme, Making markets work in the interest of public health: the case of the Alcohol (Minimum Pricing) (Scotland) Act 2012. The study looked at Canada as an example of where MUP is in place in some provinces and the evidence shows that minimum unit pricing may well be the most effective tool to address health-related and social ills arising from alcohol consumption. Evidence from British Columbia between 1989 and 2009 showed that a 10% increase in floor price of a single type of liquor could lead to a cut in demand by between 14.6% and 16.1%; if the same increase was applied across the whole range of alcoholic drinks the study indicated a loss of demand of 3.4%. Heavier drinkers are more likely to be affected by minimum pricing as the “cheapest options” for them became unavailable and thus led to a 22% reduction in demand.

<http://www.clie.law.ed.ac.uk/2016/07/06/between-the-needs-of-public-health-and-free-markets-the-scottish-minimum-alcohol-pricing-saga-nears-the-end-what-now/>

Another study carried out by a team from Cardiff University found that reforming the current alcohol taxation system (1% above inflation increase in alcohol duty) would be more effective than MUP at reducing violence-related injury. The study states that any such policy would need to increase the price of alcohol in both on and off licensed premises and that the additional tax revenue of about £1 billion a year could be used to offset the cost of alcohol-related harm to the NHS.

<http://www.cardiff.ac.uk/news/view/380146-small-rise-in-booze-duty-could-cut-violence-related-hospital-emergency-visits-by-6,000-a-year>

The recent survey of residents found 50% support for MUP on Merseyside (Healthier Futures, 2015). On top of that, Sheffield University researchers have modelled the effects of MUP in England. Using the Sheffield Alcohol Policy Model they estimate that a 50p MUP would target the youngest and heaviest drinkers and, that in England, it would: save the economy £5.1 billion, mostly due to fewer crimes and increased productivity; reduce hospital admissions by 35,000; cut 50,700 crimes; save almost 1,000 lives each year.

<http://www.shef.ac.uk/scharr/sections/ph/research/alpol/research/sapm>

Taxation of cider products should be reformed to ensure that each unit of alcohol is taxed, as with beer duty, rather than the current stepped duty bands which help create super-cheap cider products due to very low per unit equivalent duty rates. Indeed the recent

survey of people living in Merseyside found that 51% of people agree that drink prices should reflect the alcoholic strength.

In Wirral (Birkenhead) a multi-agency Town Centre Group has been re-established to deal with issues that are currently being caused by street drinkers drinking very cheap cider. Issues such as anti-social behaviour, fighting, defecation and urination are a regular occurrence and it is the concern, alarm and offence that these behaviours have caused that have led to this group being brought together. After only a couple of meetings some significant practical and positive actions have been taken.

Q13: Do licence fees need to be set at national level? Should London, and the other major cities to which the Government proposes to devolve greater powers, have the power to set their own licence fees?

Nationally set fees give consistency to businesses, especially large chains that operate country wide. If fees are to be locally set then there needs to be clarity and flexibility in what can be included in the fees so that licencing authorities can build in the cost of enforcement visits, training and other ancillary costs. This would allow councils to carry out more training, increased test purchasing etc. ensuring that the Licensing Act 2003 is being upheld by businesses.

Q14: Is there a correlation between the strictness of the regulatory regime in other countries and the level of alcohol abuse? Are there aspects of the licensing laws of other countries, and other UK jurisdictions, that might usefully be considered for England and Wales?

Scotland already has a health objective. We believe that good access to health data in England would enable responsible authorities to effectively engage with the licensing regime via a health objective.

Some Canadian provinces, as mentioned above, have minimum pricing regimes for alcohol which, when raised, show clear health and crime benefits.

31 August 2016

Emily Wolfe and Simon Margetts – written evidence (LIC0018)

Summary of our view:

The changes to the licensing laws have been disastrous for us. It has been far too easy for licensed premises to obtain licences for hours that wreck the sleep of residents. It is well nigh impossible for residents to challenge such licences (and attempts to obtain an EMRO by us and many other local residents have revealed that this measure is not fit for purpose). It is now very widely acknowledged that loss of sleep can cause the exacerbation of many serious health problems, including cancer and heart disease, so we beg you to find a way to withdraw late-night licences such as the 4am one granted to a large nightclub in earshot of our bedroom.

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### Specific points:

- (1) Protection of the health and well-being (and particularly sleep) of residents living near (say, within a mile) of licensed premises should clearly be added as a Licensing Objective.
- (2) We suggest that all new licences should automatically require wheelchair access to the premises.
- (3) EMROs have proved useless, as it seems that local authorities routinely attach more importance to business concerns than to the health of residents. We, together with other residents and many local resident groups, asked the Council to impose an EMRO on our local area, and got nowhere. This is despite hundreds of complaints having been made about a late licence (to 4am) granted to a large nightclub near our homes. The system is massively weighted against objectors.
- (4) The Council sometimes do not seem to understand their own guidelines, especially as regards Cumulative Impact Zones, and so frequently fail to protect residents. Premises are not allowed to sell alcohol to people who are already drunk, but there seems to be no attempt to impose this rule and it is clearly widely flouted.
- (5) The Government states that the Act “is being used effectively in conjunction with other interventions as part of a coherent national and local strategy.” We certainly do not agree. The act has led to massive issues of loss of sleep and nightmare levels of disturbance, which can only have led in turn to deleterious effects on the health of residents. Additionally, the rise in attendant problems such as vomiting, public urination and vandalism is wholly negative.
- (6) Licensing and planning departments seem to have little contact. We have encountered several cases of licences being granted that are for hours outside of those allowed by planning. This is ridiculous. The planning restrictions are there to protect residents, and should surely not be overridden by licensing decisions. Another important area is ancillary noise arising from late-night alcohol licences. For example, following the granting of a very late licence to our nearby nightmare nightclub, a Domino's Pizza was

granted an even later licence. They back on to our house, so we are fully exposed to their extractor system. Such systems need to have an absolute (not relative) noise limit set on them by law, with a lower limit after 11pm, to be set AT THE PREMISES. Current guidelines such as 'no more than 5dB over background' just lead to escalation with each additional noise source, and often require very intrusive access to residential property for assessments despite the problem being wholly obvious from outside.

(11) Night-time alcohol delivery services should surely be banned. These are likely to be used only by people who have already had quite enough to drink, and deliveries of extra drink to parties in flats can only make matters worse for neighbours. Pizza deliveries are bad enough! There is also far too much scope, with such services, for sales to people under age and/or already drunk.

(12) We would favour the introduction of a MUP of 70p or more. The evidence for the benefits of this seems pretty incontrovertible already, and this would perhaps reduce the problems of pre-loading and loss of trade to traditional pubs.

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Other issues:

(A) TEN licences are being routinely used by licensed premises to get round the restrictions on their licences, imposed to protect local residents. This is a long way from what they were originally intended for. Also, police should be allowed to oppose their granting on the basis of a likelihood of nuisance (not a proven record of trouble); if the licensing authority considered that later opening would be a nuisance to local residents, the police should not override this view.

(B) Many pubs have gone to later opening at the insistence of the brewery (in what might be called 'mission creep') even when managers/landlords are opposed to this. This just seems to result in the noisiest time in an area moving commensurately later, with no clear benefit to anyone and major problems for many (especially those with children and people with an early start for work). This trend needs reversing BY LAW. (C) Many pubs are now open all afternoon. While this may have some benefits, it means that people living near pub gardens have to put up with noise over much longer periods. Neighbours of ours have had to keep their windows shut on sunny days to avoid the intrusive noise from a pub garden.

(D) Residents should be able to rely on Councils for automatic rejection of plainly inappropriate applications. This very week we're having to produce objections to two fast-food outlets who are seeking 2am/4am opening and alcohol sales, within metres of residential property. We have had to put in effort objecting to many, many obviously crazily inappropriate applications. Surely some baseline protections of residential amenity should be imposed immediately without requiring lots of time and work by residents, and attendance at multiple hearings to make the same points again and again.

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In summary, earlier closing times MUST SURELY return BY LAW where local residents are being kept awake by licensed premises (booming bass, shouting punters, cars pumping out music etc). It should not be necessary to firmly establish which premises are causing problems when a group of premises in an area have similar business models---an across-the-board ban on licensed premises in or near residential property opening beyond midnight in the week and, say, 2am on Friday/Saturday night and Saturday/Sunday night should surely be a minimum requirement allowing us all to GET ENOUGH SLEEP.

*18 August 2016*

## **Emily Wolfe – written evidence (LIC0030)**

I contend that the routine later opening of pubs has been a very bad thing, in two respects: (a) later noise nuisance to local residents; (b) adverse impact on the lives of regular pub-goers, with impacts on energy use etc.

As regards (b), my experience is as follows. I am a regular pub-goer. When licensing was liberalized, my local pub changed from closing at 11pm to closing at midnight. This was at the insistence of the brewery, to maintain competitiveness; the landlord (who had a young son living on the premises), neighbours, and the regulars were almost all opposed to the change. Like many (perhaps most) pub-goers, I find that I lack the will-power to leave the pub before closing time. Hence I, like most other regulars, simply switched to going to the pub an hour later (I only have a fixed amount of money to spend, and I try to keep my intake to a fairly healthy level). The impact is that my whole day has moved later by an hour. Assuming that a similar scenario is playing out countrywide, this could have quite a cumulative effect on energy use (heating, lighting etc) by those who have been able to switch to a later time for going to bed and getting up, and on performance at work for those who do not have that flexibility. I contend that, tied in with the adverse impact of loss of sleep under (a), this must have proved a costly mistake for this country.

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I have two other general points to make, which apply to licensing before and after the changes to the Act, but have become far more significant with the later opening times: (A) The licence stays with the premises, not the licensee. Surely, it would make sense to have the option for a hearing when the licence changes hands if (i) there have been complaints about/problems with the premises or (ii) there is likely to be a major change---e.g., from locals' late-drinking club to 'banging' nightclub. (B) I'd like to see an addendum to each licence indicating broadly what type of venue is planned: a nightclub playing hip hop for students is very different to a real-ale-based folk/blues club or a bhangra venue, yet they all have the same licence requirement. Where a major change is planned, surely at least a 'minor variation' application should be needed. Example: some friends of mine moved in next door to a pub well known for its heavy metal jukebox, but the pub changed owner and became a country-and-western venue. Neighbours have no say in a change from dream to nightmare (for them) such as this.

*27 August 2016*

## **James Wood – written evidence (LIC0010)**

1 I am contacting the committee looking into the workings of the Licensing Act 2003. This is an individual submission, as I am an ordinary member of the drinking public with a couple of points to make.

2 This paragraph is in response to your paragraph 14 - international comparisons. It has been said that the Licensing Act 2003 could be the "start of a more continental drinking culture" in this country. I wish that could happen but the attitude to drinking here is different from the attitude in continental countries and legislation has not changed this. If you go to Belgium, France, Italy, and many other countries in Europe you will see that the people out drinking are a mixture of types of people - people of both sexes, young people, families, older people, groups of people after work, etc etc. In contrast in this country the larger part of drinkers are upper teens, lower twenties, middle-aged men who've managed to escape from their families for the evening. There is a much greater percentage of males than females. There is an attitude of drinking as much as you can, not necessarily to get drunk but if you do it's not tragic, while on the continent people are more inclined to be out there to be sociable without drinking heavily. From mid-evening onwards here the people you're likely to see out and about in the streets are from the sections of the community I've just mentioned, while on the continent there are more people about and they are from all sections of society. In short, while the 2003 Act has done various things like lengthening drinking hours, it has not produced a continental drinking culture because we here have a different attitude to drinking, and an act of parliament doesn't alter that. I know the archetypal English pub scene can be an inn with oak beams and open fires, patronised by the local inhabitants, in a gorgeous village in the Cotswolds (doubtless many members of this committee will have visited such a pub, possibly live in such a village), but regrettably this is not the typical drinking environment in the whole country.

3 The powers of enforcement authorities should be stronger, to remove from pubs and streets people who are causing problems related to drinking, and to keep them away from those places. This would make the streets and pubs better places, while at present they can be almost threatening, with rowdyism and shouting. Last year in Belgium (at Leuven, in Brabant) I recall a large square that was full of bars, and was noisy, but there was no sense of menace walking through that square or visiting a bar there, while in this country you might worry about being there.

*9 August 2016*

## **Worcestershire County Council – written evidence (LIC0040)**

Response from Worcestershire County Council Public Health Directorate

Worcestershire County Council Public Health Directorate welcomes the opportunity to contribute to the House of Lords Committee to support the scrutiny of the Licensing Act 2003.

The call for evidence is timely in the face of particularly challenging times. Public health is developing new and innovative ways of working with partners, in order to deliver a preventative agenda that encourages and enables people to take responsibility for their own health and wellbeing.

One of the key priorities for Worcestershire Health & Wellbeing Board is reducing harm from alcohol, with particular focus on middle aged and older drinkers. Evidence in Worcestershire highlights increasing numbers of people admitted to hospital for alcohol related conditions, particularly aged 40 and over, alcohol specific mortality is also increasing in the county.

The introduction of tighter licensing controls and a health and wellbeing licensing objective would give public health an opportunity through the licensing process, to promote responsible licensing and tackle some of the issues that have an impact on the harms associated with alcohol use.

Please see the comments below from Worcestershire Director of Public Health under the relevant questions for each theme (Q1, Q3, Q11,Q12).

### **1. Q1.**

#### **Are the existing four licensing objectives the right ones for licensing authorities to promote?**

1.1 The existing licensing objectives could be effective in enabling the public health response if used effectively, however they are not being used in this way and there is a need for strengthening legislation in order to reduce the burden of alcohol related harm

#### **Should the protection of health and wellbeing be an additional objective?**

1.2 The Directorate of Public Health (DPH) for Worcestershire strongly supports the potential for inclusion of the 'protection of health and wellbeing' as an additional licensing objective. This would give Directors of Public Health the opportunity to fully enact their role as a responsible authority. At present health has an opportunity to contribute meaningfully to licensing but this requires working 'around legislation not with it' which is a real constraint on the ability to make a real difference to public health.

1.3 We are generally supportive of well-run licensed premises which provide jobs and social venues and can enhance health and wellbeing, as well as contribute to the local and UK



economy. Public health Worcestershire is already working in partnership with Worcester Business Improvement District and licensees in Worcester City to support responsible licensing schemes such as Best Bar None (BBN) and Purple Flag. Health is included as part of the assessment criteria for BBN in Worcester City. A health objective would ensure that health and wellbeing is included in the national assessment criteria for responsible licensing schemes and that health is a consideration in managing the evening and night time economy.

1.4 The introduction of health as a licensing objective would be particularly effective in areas of cumulative impact, and in developing local Statements of Licensing Policy (SLPs). A recent study<sup>539</sup> on whether the effectiveness of cumulative impact zones and the intensity with which local areas enforced licensing, had an impact on alcohol-related hospital admissions on health, concluded that 'during the period 2009–2015 greater reductions in alcohol-related admissions were observed in areas with more intense alcohol licensing policies, suggesting these policies really can help curb alcohol-related harm'.

1.5 As well as cumulative impact policies, it would be of benefit to health and wellbeing if the scope of a health objective was extended to areas where evidence suggests there are disproportionate numbers of people who experience worse health and social outcomes as a result of alcohol misuse, and also those where adults, children and young people, access health services as victims of alcohol related crime, domestic abuse and family problems.

1.6 There is extensive research which highlights a direct link between the availability of alcohol and alcohol related harm in the surrounding environment, including alcohol related disease and violence.<sup>540</sup> Alcohol abuse not only affects physical health but has an impact on wider health determinants such as housing, income, education and disability. It can also have a profound effect on families and communities in terms of crime, domestic violence, family breakdown and mental and physical health in children of parents with alcohol problems. Twenty seven percent of serious case reviews mention alcohol misuse as a factor. Public Health England estimates that the total annual cost of alcohol to society is approximately £21bn.

1.7 A useful addition to a health objective would be guidelines on how relevant data on health and wellbeing in a local area could be sufficiently precise to be able to be considered in relation to individual applications being considered on a “case by case” basis.

## 2. Q3

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<sup>539</sup> Measurable effects of local alcohol licensing policies on population health in England de Vocht F., Heron J., Angus C. et al.

Journal of Epidemiology and Community Health: 2016, 70(3), p. 231–237.

<sup>540</sup> NICE 2010, Alcohol use disorders: prevention [www.nice.org.uk/guidance/ph24](http://www.nice.org.uk/guidance/ph24)

NICE 2014, Alcohol use disorders: preventing harmful drinking. Evidence update March 2014

Richardson 2014, Alcohol related illness and death in Scottish neighbourhoods: is there a relationship with the number of alcohol outlets?

**Should licensing policy and planning policy be integrated more closely to shape local areas and address the proliferation of licensed premises? How could it be done?**

2.1 There are 2 arms of Planning where this is relevant. Firstly, in relation to Development Control (DC) whereby planning applications are considered for various forms of development including changes of use to licensed premises. Weekly lists of Planning applications are produced which the licensing department has access to. It is also understood applications for new licensed premises are sent to DC for information and Worcestershire Regulatory Services are consulted on planning applications where there are particular environmental concerns such as in relation to noise where for instance opening hours may be a key issue.

2.2 In relation to policy planning, various policies can be introduced via the Local Plan or Supplementary Planning Documents which aim to control any adverse effects the evening and night-time economy may have on the environment. Specifically in Bromsgrove, the Bromsgrove District Plan 2011-2030 has emerging policies in relation to the Town centre (Policy BDP 17) and on Health and Well Being (BDP25). The Council is also committed to carrying out a new SPD which will address issues in relation to design which will also include the evening and night time economy. It is envisaged that interested parties would be consulted on this SPD including, for example, the Police and Licensing department.

**3. Q11.**

**Given the increase in off-trade sales, including online sales, is there a case for reform of the licensing regime applying to the off-trade?**

3.1 We would strongly support the case of reform of the licensing regime to include the off trade as evidence shows that price and availability are key drivers of alcohol-related health problems<sup>541</sup>.

3.2 Guidance is needed for licence holders providing an alcohol delivery service on how to ensure that underage sales are avoided.

3.2 A suggestion to manage underage online sales would be that the mandatory licence condition relating to age-verification policies be amended to include reference to remote sales and how the purchasers age should be verified

**How effectively does the regime control supermarkets and large retailers, under-age sales, and delivery services?**

3.3 The present regime has limited effect on the control of off licenses, supermarkets and large retailers; the sale of cheap high strength alcohol, and multiple buy drinks promotions including free home delivery are prevalent in the majority of these establishments. At present for example Iceland sell 3 litre bottles of high strength cider (7.5%) at £3.50 and

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<sup>541</sup> Public Health England, Alcohol treatment in England 2013-14 (October 2014)

alcohol is freely available 24 hours a day from off sales in supermarkets and at petrol stations.

**Should the law be amended to allow licensing authorities more specific control over off-trade sales of “super-strength” alcohol?**

3.4 We are strongly in favour of the law being reformed to allow licensing authorities more specific control over off-trade sales including online sales of “super-strength” alcohol and cheap alcohol promotions. We recommend that powers be introduced giving the local authority sanction to restrict sales of specific items at its discretion in response to specific, local issues.

3.5 Greater control of online purchases should be introduced for age verification and purchase of super strength alcohol. Some success has been had with voluntary schemes that restrict the sale of high strength alcohol in areas where there are known to be street drinkers and in areas where there are hazardous and vulnerable drinkers, for example in Portsmouth the introduction of a reducing the strength scheme, resulted in 'incidents related to street drinking coming down by 80% in one area of the city which was previously blighted by anti-social behaviour'.<sup>542</sup>

3.6 However, the regime relies on persuasion and goodwill which appears to be ineffective in the face of nationally set targets. An amendment to the law allowing greater control over off sales of 'super strength' alcohol would enable responsible authorities to protect individuals and communities in areas where hazardous drinking and high hospital admissions is known to be a problem.

3.7 More control of these establishments would have limited success if it had the implication that expensive legal advice and representation would be required to maintain and defend the Authority's position.

3.8 NICE guidelines (PH24 2010)<sup>543</sup> state that making alcohol less affordable is the most effective way of reducing alcohol-related harm. Evidence suggests that making it less easy to buy alcohol, by reducing the number of outlets selling it in a given area and the days and hours when it can be sold, is another effective way of reducing alcohol-related harm. NICE recommend that licensing departments take into account the links between the availability of alcohol and alcohol-related harm when considering a licence application and include 'protection of the public' health' as a licensing objective

**4. Q12.**

**Should the Government introduce minimum unit pricing in England?**

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<sup>542</sup> <http://www.saferportsmouth.org.uk/alcohol/alcohol-campaigns/reducing-the-strength/>

<sup>543</sup> NICE PH24 (2010)

4.1 Worcestershire DPH strongly supports the introduction of minimum unit pricing in line with the commitment of the Coalition Government’s alcohol strategy of March 2012, to introduce a minimum unit price for alcohol.

4.2 The introduction of minimum pricing would protect vulnerable and hazardous drinkers, whilst not negatively affecting responsible drinkers or those who use pubs and bars socially. The profits of licensed premises would also not be impacted on as they already charge above the 50p per unit suggested as a minimum price.

**Does the evidence that MUP would be effective need to be “conclusive” before MUP could be introduced, or can the effect of MUP be gauged only after its introduction?**

4.2 There is already a wealth of evidence to support minimum unit pricing, and its effect on the health and wellbeing of individuals and communities; we do not feel that there is a need for additional evidence prior to its introduction.

4.3 Researchers at the University of Sheffield School of Health and Related Research (SCHARR) have modelled the health and economic consequences of a minimum unit price. Based on a minimum unit price of 45p per unit (in 2014/15 prices), they forecast that within ten years the policy could prevent 860 deaths a year, 29,900 hospital admissions and save the health service £0.6bn annually<sup>544</sup>. Moreover, such a policy is estimated to lead to 34,200 fewer crimes each year.<sup>545</sup>

SCHARR estimate that the proposed minimum price of 50p per unit would result in the following benefits:

- Alcohol related deaths would fall by about 60 in the first year and 318 by year ten of the policy
- A reduction in hospital admission of 1,600 in year 1, and 6,500 per year by year ten of the policy
- A reduction in crime volumes by around 3,500 offences per year
- A financial saving from harm reduction (health, employment, crime etc.) of £942m over ten years

4.4 The introduction of minimum unit pricing would enhance health and wellbeing by limiting availability of high strength alcohol. In some stores super strength cider is available for as low as 16 pence per unit, less than half the price that health experts recommend.

4.3 Although not yet fully implemented, evidence supporting the Alcohol (Minimum Pricing) (Scotland) Act 2012, suggests that minimum pricing would have huge health benefits to

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<sup>544</sup> H Holmes, J, et al (2014), Effects of minimum unit pricing for alcohol on different income and socioeconomic groups: a modelling study, *Lancet* 383, pp1655-64.

<sup>545</sup> Meng, Y., Brennan, A., Holmes, J. et al (2013), Modelled income group-specific impacts of alcohol minimum unit pricing in England 2014/15: Policy appraisals using new developments to the Sheffield Alcohol Policy Model (v2.5). , Sheffield: SCHARR, University of Sheffield, p81

those who regularly drink above the recommended levels and would consequently save lives and reduce cost to the economy.

4.4 The Institute for Alcohol Studies (2013) state that for young people aged 16-24, 'cost of alcohol shapes the frame of reference through which alcohol is consumed'. The evidence suggests that cheap alcohol is viewed as a second-rate commodity drunk primarily for its intoxicating effects'. A factsheet on young people and drinking by the Institute for Alcohol Studies made recommendations for tackling the culture of drinking for drunkenness's sake. These included introducing a minimum price per unit to directly alter the price-sensitive attitude of young people who often drink to excess because alcohol is cheap<sup>546</sup>.

*31 August 2016*

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<sup>546</sup> Institute of Alcohol studies, Young people and alcohol Factsheet (2013)

## **Working Men's Club and Institute Union Limited – written evidence (LIC0088)**

As an interested party, the Club and Institute Union Ltd (CIU) submit this response to the House of Lords Committee's call for evidence.

### **Introduction.**

The CIU is an umbrella body for around 1500 non-profit making private members clubs owned and governed by their respective members under formal written constitutions. CIU member clubs satisfy the conditions set out in Part 4 of the Licensing Act 2003 (the Act) for "qualifying club" status. Thus the supply of alcohol and regulated entertainment by CIU clubs to their members and guests is authorised primarily by a Club Premises Certificate (CPC) granted by local licensing authorities.

### **Evidence.**

The CIU and its member clubs have had experience of the Act from its inception and of its administration at local authority level. The following evidence is submitted:-

#### Temporary Event Notices (TENS).

A frequently voiced concern of club secretaries and CIU officers and officials is the inconsistent and arbitrary application of some provisions of the Act by local licensing officers. This seems to apply particularly to the rules governing Temporary Event Notices (TENS). These are in effect light touch fast track licences which clubs utilise to cover licensable activities for limited duration events beyond the scope of their extant CPCs.

Some clubs complain of licensing officers applying arbitrary constraints in regard to TENS contrary to the provision of the Act and Home Office statutory guidance under Section 182; for example, locally determined requirements as to who in the club context may sign a TEN, and arbitrary limits on the number of TENS a single individual can sign.

The Section 182 statutory guidance to licensing authorities purports to be "a key medium for promoting best practice (and) ensuring consistent application of licensing powers". It makes clear to regulators that any individual over age 18 may give a TEN provided, in the case of non-personal licence holders, that no individual does so on more than five occasions in a calendar year.

Admittedly there are numerous quantitative limits governing TENS in the Act which require to be assimilated. However regulators should be cognisant of what the Act says and pay heed to the Section 182 guidance which exists to assist them in applying the law and exercising their functions uniformly.

#### Licensing Fees.

Licensing fees need to continue to be set at a national level to promote uniformity and consistency across all licensing authorities.

Minimum Unit Pricing.

Minimum unit pricing should be introduced in England and monitored.

Regulations regarding irresponsible drinks promotions should be equally applied to off-sales as it currently is to on-sales. Examples include 'buy one, get one free' promotions.

*2 September 2016*