

The Licensing Act (2003): its uses and abuses 10 years on

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About the Institute of Alcohol Studies

The core aim of the Institute is to serve the public interest on public policy issues linked to alcohol, by advocating for the use of scientific evidence in policy-making to reduce alcohol-related harm. The IAS is a company limited by guarantee (no. 05661538) and a registered charity (no. 1112671). For more information visit www.ias.org.uk.

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Glossary

DCMS: Department of Culture Media and Sport
NTE: Night time economy
SLP: Statement of Licensing Policy
LNL: Late Night Levy
EMRO: Early Morning Restriction Order
BBN: Best Bar None
TEN: Temporary Event Notice

Appendices can be found on our website www.ias.org.uk.

Section 1: Background

CHAPTER 1: METHOD

CHAPTER 2: THE BACKGROUND TO THE 2003 LICENSING ACT

CHAPTER 3: KEY FACTS AND TRENDS

Introduction and executive summary

In this research project the Institute of Alcohol Studies (IAS) set out to assess the impact of the Licensing Act 2003 (hereon referred to as 'the Act') on the wider public sector 10 years after its implementation. IAS has been involved with the Act from its very beginning; while there was undoubtedly a real need for reform, at the time we cautioned that the proposals seemed:

Likely to undermine rather than protect the public welfare

and described the White Paper as 'confused and ambiguous.'¹ In partnership with the Civic Trust, IAS founded 'Open All Hours?', a network of local residents' and amenity groups, to ensure their voice was heard in the policy process. This group lobbied in particular for the cumulative impact provision that was finally included in the guidance.

On starting this project there appeared to be wide disagreement as to what licensing could and should do, whether it is regulatory or permissive, and whether it is narrowly administrative or guided by a wider view of the public good. We hope that this project will stimulate debate on these issues and lead to greater clarity for all involved in licensing.

IAS wants to see licensing support diverse, inclusive and sustainable communities, without undermining local areas and putting undue pressure onto the public sector. Alcohol is used and enjoyed by many, but it can also be the cause of significant social and personal problems; licensing should have a key role to play in addressing and preventing many of these problems.

Looking back: 10 years of the Act

In many respects the Act has resulted in continuity rather than change, yet this research found common complaints from local authorities who felt that it has caused them significant problems, particularly in regard to the off-trade.

This report puts forward the view that the Act has been interpreted to the advantage of the licenced trade and there is a need to address some of the myths that have developed around the Act's use.

Issues impacted by the Act

- There was a common view that the Act has improved day-to-day coordination and cooperation, both within the various regulatory agencies and between the regulators and the licenced trade.
- At the strategic level many participants from a regulatory background saw the Act as fundamentally permissive, reactive and led by market forces at the expense of local communities. Controlling the off-trade was seen to be a particular problem.
- Late night opening has spread crime and disorder back into the early hours, causing significant problems for the police. Most police forces had to rearrange their shift patterns and allocate increased resources to the night time economy to address this change.
- Late night opening seems not to have increased the amount of time or money that people spend in the night time economy, but to have shifted the night out backwards. This has probably increased pre-loading, as people have more time to drink at home before going out.
- While overall numbers of licenced premises have 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.

Relevant issues not impacted by the Act

- Overall crime levels, and those specifically related to alcohol, have been dropping since before the Act was introduced and there is no evidence that the Act has contributed to this reduction.
- There is no evidence of a relaxed continental drinking culture developing, or that the Act has lead to increased diversity within the night time economy, two key aims of the Act.
- Overall levels of alcohol consumption have been declining since before the Act was introduced. Since the Act came in rates of binge drinking have declined while the number of people abstaining from alcohol has increased. However, there is nothing to link these developments with the Act itself.

Other key concerns and issues

- Many Home Office initiatives were viewed with scepticism, particularly Early Morning Restriction Orders (EMROs) which were seen as impractical to implement. Late Night Levies (LNLs) were viewed as useful in certain locations but too inflexible to be commonly used.
- Cheap alcohol was seen as a significant problem by almost all participants, including those from the licenced trade. The ban on below cost selling introduced by the Home Office was thought to be totally ineffective in addressing this issue.
- The Act is poorly equipped to deal with the off-trade, and is based upon an incorrect assumption that most alcohol is consumed via the on-trade. In fact around two-thirds of all alcohol comes from the off-trade.
- Police and local government funding cuts are already causing problems, particularly because the Act's fee system means that many areas are not able to recover their costs. This raises serious questions about the regulation and policing of licensing and the night time economy.
- Moves to put greater emphasis on the self-regulation of the licenced trade via voluntary schemes were viewed with concern and scepticism. There is a significant lack of evidence that such schemes are effective at reducing crime and disorder.
- Many participants reported that the Act had lead to alcohol being found in every walk of life. While the impact of this is difficult to quantify, the normalisation of alcohol was seen to be problematic, particularly for children, and one interviewee likened it to a 'reverse smoking ban'.

Overall this suggests that the Act has had no impact on levels of crime and disorder, overall alcohol consumption and the diversity of the night time economy. Given the widespread predictions that the Act, and specifically 24-hour licences, would increase binge drinking and alcohol-related harms, this is significant, and clearly these predictions have not come to pass.

It would be wrong however to see all of these non-impacts as a success, and the Act has failed to have a positive effect in areas it was intended to, such as alcohol-related violence. There is also a mismatch between the assertion that the Act is benign and the view, found in both this and other research, that the Act significantly handicaps local authorities while being overly lenient on the licenced trade, particularly the off-trade. The impact of this discrepancy is not necessarily universal, but seems to be most sharply felt in areas of high alcohol-related harms.

Looking forward: Using the Act differently?

There appears to be a significant mismatch between the written detail of the Act and its practical application; many considered that the Act has often been interpreted to the advantage of the licenced trade. There is a real need to address some of the myths that have developed around the Act, and to encourage all those involved in licensing to reengage with the detail of the Act, the section 182 Guidance and relevant case law. As part of this the objectives could be used in a far more even manner, and with their preventative nature emphasised more fully in order to actively create environments where the objectives are less likely to be undermined.

The Act should only be narrowly permissive, and it gives licensing authorities more discretion than most realise to reach reasoned and balanced evaluative judgements in the public interest. The Act does not require licensing authorities to make decisions upon incontrovertible facts, and it does not prevent them from considering the wider geographic location within which a premises sits – indeed the High Court states that a venue's impact, or potential impact, upon its wider location should be carefully considered. There is nothing in the Act, s 182 Guidance or case law that directly underpins the 'premises by premises' approach.

Licensing authorities do need to make better decisions. Many are understandably worried about the prospect of expensive legal costs if a decision is appealed, and clear examples were given in the course of this project where consciously 'safe' decisions were made in order to avoid this prospect, despite concerns about an application. Indeed, the money and legal power available to certain sectors of the licenced trade are key reasons as to why local authorities have failed to properly assert their powers under the Act. The best remedy to this problem is good clear decision making; in the words of the High Court:

The fuller and clearer the reasons, the more force they are likely to carry (*Hope and Glory v Westminster* [2011] para 43)

A higher standard of decision making could be achieved by clearer training and guidance for licensing committees and the better use of specialist legal advice by local authorities, resulting in greater legal clarity and focus within licensing hearings. This would narrow the gap in legal rigour between licensing committees and appeal hearings.

While individual applications must be judged on their own merits, decisions should also be informed by wider strategic aims and the public interest; yet beyond guarding against irresponsible operators, many licensing authorities do not seem to have a view as to what these might be in their local area. If asked about their strategic vision for licensing in their area most chairs of licensing committees would not know what to say. As a result, across much of England and Wales there is no coherent and strategic approach to licensing and the wider evening and night time economy. This does seem to be slowly changing as local authorities cautiously adopt locally based strategic policies.

Key areas of tension

The true extent of the permissiveness (if at all) of the licensing regime: see chapter 4.

The extent of local authority powers to administer and regulate the licensing regime for the public good: see chapters 4, 13 and 14.

The nature and use of evidence within licensing decision-making: see chapter 14.

Questions on terminal hour, including the role of police evidence: see chapters 10 and 14.

The greatly overplayed role of the premises by premises approach: see chapter 14.

Locality context and its importance in licensing decisions: see chapter 14.

The questionable application of economic considerations: see chapters 5 and 14.

The role of public health, well being and the wider quality of life: see chapter 15.

The difference between reactive decisions and decisions based on strategic thinking: see chapter 13.

Selected recommendations

(A full list of recommendations can be found at the end of this report)

Taken as a whole, these recommendations would give local authorities a great ability to be proactive and assertive in their use of the Act, using it more effectively to promote the public good in their local area.

1. Better application of the s 182 Guidance in practice

It is evident that there has been a failure to have proper regard to the s 182 Guidance and we encourage all parties to engage with it fully. As per paragraph 1.7, all those involved in licensing should be clear that:

It is a key medium for promoting best practice, ensuring consistent application of licensing powers across England and Wales and for promoting fairness, equal treatment and proportionality.

2. Ensuring local authorities have a clear and coordinated strategic approach to licensing

Local authorities should be given greater steer to outline a clear strategic vision for licensing in their area, building upon the advice in para 1.5 of the s 182 Guidance and others, and coordinated with other relevant council strategies. This strategic view should be developed by elected councillors, with the input of licensing officers and other responsible authorities.

At present there is no requirement for local authorities to consult with anyone from a child protection background in developing their Statement of Licensing Policy. This should be amended at section 5(3) of the Act, and then paragraph 13.4 of the s 182 Guidance.

3. Locally set fees

The ability of local authorities, and indeed all responsible authorities under the Act, to properly fund their licensing operations is a key concern. At present many struggle to do this, and locally set fees, reflective of costs, are needed to address this problem. This is also needed for fees to be compliant with the EU Services Directive.

As with alcohol licensing, street trading comes under the EU Services Directive. Its fees and charges provisions have been reviewed by the Department for Business Innovation and Skills in order to ensure compliance with the Directive. Under street trading statutes the local authority is entitled to charge an application fee to recover its administrative costs in respect of the application. There is thereafter a further power to charge a fee in respect of the control and supervision arising from the operation of the licensing regime and the impact of the licences granted.

A similar approach separating application charges from charges arising out of the ongoing operation of the licensing regime might be used to frame the *locally set fees* debate. Using street trading legislation, we suggest an amendment to the Licensing Act 2003 which would enable this.

4. The introduction of a health and well being objective: To promote the health and well being of the locality and local area

This objective would clarify that locally based impacts on health and well being are a consideration in licensing, both during licensing decisions and while 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 society and lead to health and social hazards.

The key legal principles within the Act would limit this objective in exactly the same way as they do for the other objectives, meaning that health and well being impacts more proximal to licensed venues are more likely to fall within its remit.

5. The introduction of an economic objective: To promote sustainable economic development and the well being of the locality and local area

This objective would allow for the consideration of sustainable economic factors – both positive and negative - that should be taken into account, both during licensing decisions and while SLPs are developed. It should address issues like employment and stimulating demand, the need for licensed premises, oversaturation, the importance of diversity and the economic impact of licensed premises in the locality of the premises, but also within the wider context of the wider local area.

An alternative to this objective, which may be more straight forward for local authorities to use in practice, would be introducing the concept of ‘overprovision’, as used in Scotland.

6. Minimum Unit Pricing

There was very strong support for MUP from participants with experience in compliance and enforcement within the night time economy, as well as those from a public health background. No one policy can be considered a ‘silver bullet’, but the evidence base for MUP is far stronger than for the ban on below cost sales. Subject to the legal case in Scotland, its introduction at an effective level would help to address a number of short and long term issues identified by participants in this report related to the impact of very cheap alcohol.

7. Re-introduction of national or locally set opening / operational hours for off-licensed premises

Scottish off-license hours of 10am – 10pm were widely supported by participants in this study, and there was a strong view among participants that extended opening hours within the off-trade had increased alcohol-related problems. As one licensing officer put it:

Early morning sales are just for street drinkers, late opening is for binge drinkers.

Participants also talked of the off-trade’s impact within the night time economy, including en route loading, side loading and post loading, which could potentially be off-set by controlled opening and operational hours.

While on the one hand nationally set operational hours may be more effective, the stronger use of framework hours within SLPs could be used to similar effect at the local level. Some local authorities already do this for both the on and off-trades, in places with more restrictive hours than those mentioned above.

In addition, changes equivalent to the 2010 Alcohol Act (Scotland) should be introduced in order to reorientate licensing to the fact that around two thirds of alcohol is bought via the off-trade. This should include limiting alcohol and alcohol-related products to one part of the store and introducing bans on multi-buy discounts.

8. Better engaging local residents in licensing

While it does have cost implications, Westminster has had great success with its licensing advice project, where it funds licensing advice for local residents in conjunction with the Citizens Advice Bureau. Replication of this elsewhere seems likely to be very beneficial, and could be legitimately factored into a licensing authorities costs under locally set fees.

9. A flexible Late Night Levy

For the LNL to be a genuine option open to local authorities it needs to be made more flexible, targeting only certain geographic locations rather than the whole local authority area.

¹ IAS. Response from IAS to the consultation on Time for Reform: Proposals for the Modernisation of Out Licensing Laws

Chapter 1: Method

Chapter summary

This project is based upon interviews with 36 participants from all key groups involved in licensing (e.g. police, licensing officers, licensing lawyers, trade associations).

In addition, three workshops were held with a similar group of 35 participants.

Key trends and themes within the interviews and workshops were identified and used to answer the research questions.

The results were checked against other related research and discussed with expert advisors.

The focus of this report is the sale of alcohol under the Licensing Act 2003 and, broadly speaking, the impact this has had on the public sector – the local authority bodies involved in licensing along with the Police and Public Health bodies.

The report is based around four key research questions:

1. How do key professionals within the licensing community view the effectiveness of the Licensing Act 2003?
2. What key tensions and problems do licensing practitioners face, and how might these be addressed?
3. How might the licensing regime be changed or amended (if at all) in order to better address current trends in alcohol consumption and the use of licensed premises? How might any such changes be implemented in practice?
4. What lessons can be learned from international licensing systems, and can any of these lessons be applied in the UK?

These questions, and the full list of questions asked during the interviews, were based upon initial research into licensing in the UK, with additional input from the project's expert advisors. A full list of questions asked in the interviews can be found in appendix 1. This list includes questions on the Act and its use, the impact of cheap alcohol on licensing, the impact of funding cuts and licensing fees, and questions on efforts to better incorporate public health within licensing.

Participants were given a copy of these research questions, and the specific interview questions, prior to interview. They were also provided with a short briefing on Risk Based Licensing (RBL) systems from Canada, Australia and New Zealand in order to address research question four. This can be found in appendix 2, with a more detailed version of this briefing in appendix 3. While the short briefing only provided an overview of how these RBL systems operate, it was considered to be the best way to introduce this new approach and obtain a reasonably informed view from participants.

While no detailed ethical approval was sought, key ethical principles were agreed internally within IAS prior to starting the project. All participants were promised anonymity before being interviewed and this has been fully respected, with all views anonymised unless specific permission was given.

1. Method

It was thought that semi-structured interviews would be the most appropriate method for obtaining thorough and detailed answers from participants. Our original intention was that these should only be carried out one to one via telephone, however opportunities arose to carry out three regional workshops in addition to this. While workshops do not allow each participant to go into as much detail on each question as one on one interviews, they do enable a larger group of people to take part. For this reason we took the opportunity to carry out the workshops, thereby effectively doubling the sample size. The same questions were used for both the interviews and the workshops, with the lead researcher coordinating the workshops.

1.1. Sample

Purposive sampling was used to ensure views were obtained from all key groups involved in licensing (e.g. police, licensing officers, licensing lawyers). Within these groups, efforts were made to ensure that a range of different voices were included, particularly on the issue of public health within licensing, which was known to be a divisive issue. Participants were sought from local authorities known to have an interest in this issue, as well as from local authorities with less experience of it. For this reason, the sample is probably not representative of most local authorities on the issue, as at the time of research only a limited number have made strong efforts to incorporate public health better within the licensing regime. However, if efforts had not been made to find those with a particular interest in public health, the project would probably not have been able to address this important issue. Overall, those with experience of public health within the licensing regime were still a minority within the sample.

Details of the full sample are below:

Figure 1.1 Interview participants

Interview Participants	
Legal background	4
Police	2
Academics	6
Licensing Officers	3
Local Authority regulatory background	5
Chairs of Licensing Committees	4
Local Authority Public Health	4
Non Local Authority Public Health	1
Civil Servants	2
Licensed Trade	4
Other (former licensee and resident activist)	1
Total	36

One participant with a legal background and one with a non local authority public health background were from Scotland. The lead researcher and those interviewed were generally aware of the differences between the Licensing Act 2003 (applicable in England and Wales) and the Licensing (Scotland) Act 2005 as it applies to Scotland.

Figure 1.2 Workshop participants

Workshop Participants	
Police	6
Licensing Officers	7
Local Authority Public Health	6
Local Authority regulatory background	8
Non Local Authority Public Health	4
Chair of Licensing Committee	2
Trading Standards	3
Total	35
Total combined participants	71

Expert advisors were asked to suggest suitable participants, and a number of participants were approached because of their involvement in the Public Health England Licensing Network Group. Some participants were approached at the 2014 Institute of Licensing National Training Event in Birmingham. Others were approached as a result of internet research. At times participants suggested other potential interviewees, and towards the end of the interviews participants from specific backgrounds were sought to try and balance the sample. The research stage of the project stopped after 36 interviews and three workshops as the lead researcher felt that by this point the sample was broad enough to have included a wide range of views from all the relevant groups.

A number of participants did not respond to email requests to participate in the project, or where unable to take part because of time commitments. This included representatives from the National Association of Licensing and Enforcement Officers, the Association of Town Centre Managers, The National Federation of Retail Newsagents, two licensing committee chairs, someone from a trading standards background, two directors of public health and a civil servant from the Home Office. One academic declined an interview saying that their experience of the 2003 Licensing Act was not up to date. In all cases other participants were recruited from comparable backgrounds.

The vast majority of the one-to-one interviews were carried out over the telephone, with two performed face-to-face. One interviewee was not able to spare the time for an interview, but sent a detailed written reply covering all the questions. All interviews and workshops were audio recorded so that key details could be checked afterwards. Transcripts for 18 interviews were typed up in full. Time constraints meant not all interviews could be transcribed, so priority was given to those interviews thought to be particularly useful. Detailed notes were taken by the lead researcher during all interviews and workshops.

1.2. Data evaluation

An interview tracking sheet was maintained during the research process, recording the key points for each question from each participant. This enabled key trends and themes to be identified within the answers, which were then discussed with expert advisors.

As each section of the project was written up, the views of participants were collated and explained. The interview tracking sheet was extremely useful for this, but we referred back to individual interviews for greater detail. After this, relevant research was identified and used to see if participants' views matched or differed from this. The background chapter differs; participants were not asked about their knowledge of the way in which the Act was introduced and this chapter was based solely on a literature review and included in order to provide additional context for the project.

Within this research the views of participants have been given primacy, and a concerted effort has been made to represent the full range of views expressed from all participants. On certain detailed points, interviewees were contacted after their interview and asked to expand upon their answers, or to check that their comments have been presented accurately.

While the general views of all participants have been included and explained, additional weight has been given to participants with specialist expertise in particular topics; for example, the views of police representatives have been prioritised when discussing crime and disorder issues.

Views from the licensed trade have been included as partners in the implementation of the Act. However, there are a range of key areas in which the licenced trade face a conflict of interest, and where their priorities are at odds with those of professionals who work to enforce the Act. In such cases this conflicts of interest have been pointed out.

Beyond merely reporting the views expressed by participants, we have sought to gauge the 'extent to which claims are supported by convincing evidence'¹ in order to assess the reliability and validity of participants views. This has been done in the discussion sections that follow participants' views on each issue, where key findings are examined in light of other relevant research. At times appropriate case studies and examples have been included to explain key points further.

When using other published research, a priority has been given to peer reviewed research, although there are areas where this is in limited supply and where non-peer reviewed grey literature is used.

1.3. Limitations

Qualitative research can be influenced by the preconceptions or bias of the researcher, and so it is important to reflect on these. Prior to starting this project, the lead researcher had a limited knowledge of the 2003 Licensing Act, and so had few preconceptions. He was nevertheless aware of the negative media coverage of 24-hour licences. Based upon initial scoping research before starting the project, the lead researcher was sceptical about the way in which public health could be better incorporated within licensing. It was partly because of this that examples from risk based licensing were used, as provided a starting point for considering alternative approaches.

While information and advice was sought from a range of people, including expert advisors, we acknowledge the limitations of using only one lead researcher.

2. Key advisors

Advice was taken from expert advisers during the research process:

Leo Charalambides, LL.M (Lond), Fellow of the Institute of Licensing, Barrister of the Inner Temple, Francis Taylor Building.

Dr Philip Hadfield, Associate Fellow, Centre for Criminal Justice Studies, School of Law, University of Leeds.

Dr James Nicholls, Director of Research and Policy Development, Alcohol Research UK, Honorary Senior Lecturer at the London School of Hygiene and Tropical Medicine.

¹ Anderson, C., (2010) Presenting and Evaluating Qualitative Research *Am J Pharm Educ.* 2010 Oct 11; 74(8): 141

Chapter 2: The background to the 2003 Licensing Act

Chapter summary

The Act made a number of practical improvements, included combining the alcohol, public entertainment and late-night refreshment licensing regimes, moving responsibility from licensing justices to local authorities, and introducing clearer standards for the granting, refusal and termination of licenses.

While the Act was framed as a move away from regulation and towards a positive enabling process, issues of crime and disorder remained a central theme.

The Act was based upon a partial and industry friendly evidence base, with research that contradicted this excluded by the Cabinet Office Strategy Unit.

10 years on a number of key omissions in the Act remain contentious, including cumulative impact and areas of saturation, the lack of health involvement, a lack of strategic oversight, and the licensing fees system.

1. The aims of the Act

Although conceived as a deregulatory measure, the Act came to be presented as a method of civilising the night time economy, and drew heavily on the idea of cultural modernisation.¹ It marked a significant shift in approach to alcohol; away from regulation and enforcement and towards a positive enabling process. As Nicholls puts it, New Labour saw licensing as key to:

facilitating the development of a leisure economy and promoting a culture of socialised consumption.²

Given this new approach, the Department of Culture, Media and Sport (DCMS) was seen as the best government department to oversee licensing. Their overarching aims for the Act included:

- The removal of 'obstacles to the further development of the tourism, retail, hospitality and leisure industries';
- The 'slashing' of regulatory 'red tape' for business;
- 'relaxed trading hours' that will 'provide greater choice for consumers... allowing England and Wales' NTEs (Night Time Economies) to rival their European counterparts'
- The introduction of a 'crucial mechanism for the regeneration of areas that need the increase investment and employment opportunities that a thriving NTE can bring.'³

As one senior civil servant put it:

Essentially (ministers) wanted to have a more economic-facing approach; they didn't want it to be just about crime and disorder.⁴

When it came to selling the proposals, crime and disorder nevertheless remained a central theme. Extended opening hours were not framed primarily as an issue of consumer choice, but as a method of:

Reducing the problems of disorder and disturbance associated with fixed universal closing times.⁵

2. The background to the Act

Momentum for change had been building for some time. The discussion focused on the issues of opening hours, excessive bureaucracy and regional variations in the application of licensing law.⁶ The 1970 – 1974 Conservative Government had set up the Erroll committee in England and Wales, and the Clayson committee in Scotland, in order to consider licensing liberalization. Both of these recommended a general relaxation of licensing, including an extension of licensing hours and removing the 'afternoon gap,' with the Erroll Report also arguing for the abolition of 'need' (see later on chapter). However, while the Clayson recommendations were adopted in Scotland, no reforms were made in England and Wales, although the Erroll Report was significant in setting the tone for later changes.⁷

More recently, the 1998 Better Regulation Task Force report 'Licensing Legislation' criticised the 'inconsistency' of licensing under the control of magistrates, and recommended a move to a simpler and more flexible system, with local authorities making decisions based on national guidelines.⁸

Licensing in England and Wales was also altered significantly by the abolition of the 'need' criterion in the late 1990s. Prior to this, magistrates had, at least in theory, been able to limit the number of premises based on local 'need' in order to limit alcohol-related harm. The application of this principle was often patchy. Sections of the licensed trade saw this, with some justification, as anti-business and incompatible with an entirely free market. In particular, new businesses looking to grow saw it as protecting the interests of existing premises.⁹

In the face of this and other criticism, there was a growing sense that magistrates may lose their responsibility for licensing. The Justices' Clerks' Society responded by introducing a 'good practice guide' in early 1999 as an attempt to usher in reforms, one of which was to effectively abolish 'need' as a practical consideration.

These gradual moves towards liberalisation helped to frame licensing as a regulatory and economic issue, as opposed to one of public interest.¹⁰ This change in approach chimed with calls for reform from industry, focusing on the economic potential of the licensed trade. The 1989 'Beer Orders' had been designed to tackle problems caused by consolidation within the brewing and licensed trades, preventing the 'Big Six' brewers from owning large numbers of pubs, and thus freeing much of the licensed trade from brewery ties.

However, a significant unintended consequence of this was the creation of large multinational corporations, commonly known as 'pubcos', who bought up considerable sections of the licensed trade.¹¹ The size of these pubcos gave them considerable influence, and over time supermarkets also became significant players in the field. While the 1964 Act had been applied in a more liberal manner throughout the 1980s and 1990s, the licensing system was still seen as bureaucratic and antiquated, and these industry players were keen for further change.¹²

There is a general consensus in the literature that the 2003 Act was heavily influenced by the drinks industry and the licensed trade.^{13 14 15} Meetings of the Licensing Advisory Group set up to consult on the Licensing Bill's provisions were held at the head quarters of the British Beer and Pub Association. However, while business led the way in pushing for reform, there was initially a wider consensus on the need to update licensing, with early support from some police bodies who saw the '11 o'clock swill' as a problem.¹⁶

Against this background, New Labour was persuaded to enact more significant reforms. Their business friendly, Third Way approach to policy, which aimed to plot a middle course between state control and free trade, is reflected in the Act; the approach is deregulatory, with social responsibility initiatives for industry, and an emphasis on personal responsibility for individuals, including stricter penalties for those who do not comply.¹⁷

The assumptions upon which this approach was based contributed to the manner in which the Act now frames licensing policy.

3. The Licensing objectives

At the heart of the 2003 Licensing Act are the licensing objectives. These introduced clear objectives, which set out the issues to be taken into account within licensing. They are:

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

While greatly reduced in scope compared with the discretion at one stage given to magistrates, these objectives are arguably more precise in delineating the areas of public interest that licensing should and should not promote. Their use, however, is predominantly reactive; within the Act a licensing application is assumed to carry no risk unless a 'responsible authority' (such as the police or trading standards) or other persons (local persons, groups or Councillors) expresses concern that the application may undermine one or more of the licensing objectives.

Commentators have suggested that this, and the narrowly defined objectives, reflect a primary concern for the operation of the market at the expense of its wider social impact.¹⁸ As will be outlined further on in this report, local authorities felt that they were given extremely few powers to limit these market forces in relation to opening hours, and, initially at least, no powers to address the physical concentration of venues. The overarching aims for the 2003 Act outlined above give a clear indication of this new economically led approach, and of the extent to which DCMS was significant in driving the liberalisation agenda.¹⁹

4. Economics

The abolition of 'need' and the corporatisation of the drinks industry significantly changed both the alcohol economy and the way in which it was regulated. After the recessions of the 1980s and early 1990s and the rise of out of town shopping centres, many local authorities were understandably keen to capitalise on the growing night time economy (NTE) in an attempt to rejuvenate their town centres. In doing so they moved from simply regulating an economy based on alcohol, to actively promoting it,²⁰ and alcohol was placed into a broader licensing regime which also included cinemas, plays and sporting events, all of which have very different implications for public order and public health.

It was hoped that the 2003 Act would consolidate and build upon this new economic approach, simplifying things in the process. While there was no economic objective, significant emphasis was given to market forces as the main driver behind the new licensing process, which was seen by some as replacing the former duty to act in the public interest given to magistrates.²¹ Robin Room, from the Centre for Social Research on Alcohol and Drugs in Sweden, described the Act's reliance on the market as a 'deliberate effort to disable the public interest' that resulted in the:

Neutralization of local powers to control the alcohol market in the interests of public health and safety.²²

Later chapters will look at this in more detail, including the evidence behind the rhetoric around market forces and the perceived permissiveness of the Act.

5. Opening hours

Opening hours had effectively been lengthened during the liberalisation of the application of licensing during the 1980s and 1990s, via the use of Public Entertainment Licenses. These were used as another method of 'back door de-regulation'²³ and had a significant impact,

yet industry was keen to move further. It was argued that longer opening hours would allow for greater economic benefits, both in terms of tourism and the night time economy, and for supermarkets who wanted to offer 24-hour opening.²⁴

As mentioned above, when it came to selling the proposals, extended opening hours were not framed primarily as an issue of consumer choice, but as a method of:

Reducing the problems of disorder and disturbance associated with fixed universal closing times.²⁵

The White Paper, *Time for Reform*, published in 2000, made the case that the current system of fixed closing times accentuated drunken violence, and that a relaxation of closing times would result in significant reductions in binge drinking and alcohol-related crime.²⁶

This introduced the idea of culture change, and the Government argued that the extended hours would promote a more relaxed 'continental' drinking culture in place of binge drinking and the rush to drink up before closing time.²⁷ While some police groups initially welcomed this change, others predicted that extended hours would cause them problems, stretching their resources back into the small hours.²⁸ Regardless, for many the notion that a fixed closing time promoted speedy drinking and an excess of people milling around outside pubs and bars seemed intuitively true. This argument had, after all, been put forward by the Erroll Commission, a report for the Home Office on rural violence,²⁹ and in a report produced by the Portman Group, which is funded by the drinks industry and widely regarded as an industry lobbyist.³⁰

Time for Reform nevertheless relied heavily upon these reports.³¹ While limited liberalisation in Scotland had not seemed to increase alcohol-related harm, and the Erroll Commission had taken a broadly even handed approach in coming to its deregulatory conclusion, *Time for Reform* and the Bill that followed were based upon a rather narrow and partial evidence base. The White Paper does not, for example, mention the negative impacts resulting from extended opening hours in other countries, or any of the relevant historical developments in licensing.^{32 33 34 35}

6. A lack of evidence

As a result of these evidential gaps the Government received limited support from the academic and medical community during this period. Commentators such as Hadfield have been extremely critical of the mismatch between evidence and policy, describing the Government's 'bounding of debate' as a way of excluding politically inconvenient research from official discourse. He details how research and policy conclusions that contradicted the foundations of the Act, and the industry's preferred position, were removed by the Cabinet Office Strategy Unit.³⁶

Doctors and public health specialists also criticised the assumption that it was only a minority of people who drank in a problematic way, whereas most people would drink sensibly if left to it.³⁷ This ignored environmental factors, and experts warned that if the intention was to reduce alcohol-related harms, both medical and social, the available evidence suggested a reduction in overall consumption would be needed, along with increased supply side controls.³⁸ Issues related to overall consumption and health were explicitly excluded from consideration in the context of the Act however.

In addition to an apparent lack of evidence that unrestricted opening hours would have a positive impact on crime, the government was also criticised for lacking evidence to suggest that deregulation would lead to greater diversity in the night time economy.³⁹ Others pointed out that many parts of the continent have similar alcohol-related problems to the UK, and that the relaxed 24-hour continental approach put forward by the government was something of a fantasy, and might be more accurately viewed as 'the 24-hour consumption city.'⁴⁰

Had Time for Reform paid more attention to the history of licensing it may also have noted this passage from the 1931 Royal Commission on Licensing:

We may note at this point that the continental café has been held up as the type of establishment at which reform of the public house should aim. We think that there is some tendency to idealize the conception of the average continental establishment.⁴¹

Commentators have pointed to the 2003 Licensing Act as a clear example of selective post hoc policy being used to justify decisions, rather than the formulation of rational evidence based policy.⁴² One Minister stated:

We are trying to modernise the system and the industry is with us⁴³

Industry does of course have a legitimate interest in licensing, and is entitled to state its position, but it is hard to view the government as having balanced both sides of the debate in finalising its policy choices. Indeed, complaints were made to the Cabinet Secretary about Andrew Cunningham, the official in charge of licensing policy at DCMS, for making partisan speeches in favour of the drinks industry.⁴⁴

This raises questions about the basic the foundations upon which New Labour presented the 2003 Licensing Act. In the event, however, few alterations were made during the passage of the Bill through Parliament.

7. Media reaction to the Act

Media coverage of the Bill's passage through parliament was fairly sparse, and there was little mention of 24-hour opening.⁴⁵ This changed in 2003, after the Bill had been passed, when concerns over binge drinking came to the fore. Statistics showed 'heavy episodic drinking' by young people to be amongst the highest in Europe, and 'booze Britain' became a commonly used media term,⁴⁶ with The Daily Mail and Mail on Sunday campaigning to block the extension of opening hours. The Association of Chief Police Officers also expressed concern about this issue, and criticism from health professionals started to get more traction.⁴⁷

According to Baggot, this opposition reflected a general unease about the lack of a wider alcohol strategy, despite promises by New Labour to formulate one in 1998.⁴⁸ A strategy did not appear until 2003, and while the Act was being formulated there were no cross-governmentally agreed aims for reducing alcohol-related harms. The lack of a joined up approach was discussed in government at the time but was not resolved, and departmental approaches remained uncoordinated.⁴⁹

The fact that issues around health, crime and disorder came to dominate the debate represents the failure of attempts to frame the Act as an aid to tourism and the economy. In

parallel to this failure in public relations, there were reports of a struggle between DCMS and the Home Office about the implementation of the Act. As a result the government did give ground, amending the guidance to better recognise public disorder issues, and introducing the ability to address the cumulative impact of premises in certain areas.⁵⁰

Undoubtedly much of the media coverage was rather sensationalist in nature, and with the benefit of hindsight many of the warnings have not come to pass. Yet the contradictory and unstable nature of the assertion that greater liberalisation would go hand in hand with increased public order, rather than increased public disorder, gave the media plenty of material to play with. Roberts and Eldridge quote one journalist who highlighted these gaps with particular clarity:

On the one hand, Ministers encourage ever more access to booze by extending pub opening hours, while on the other they lecture us on the perils of binge drinking. Jack Straw, when he was at the Home Office, said long pub hours were meant for 'men who could take their drink', while Tessa Jowell (Minister for Culture) posed for the press pulling pints. Yet they fret and fume that our town centres are turning into war zones, impossible to stop or control⁵¹

The government did respond further, publishing *Drinking Responsibly* in January 2005, which aimed to strengthen police powers and introduced Alcohol Disorder Zones (ADZ). These proved to be ineffective, and were eventually removed from the statute book without a single ADZ ever being introduced.⁵² A new alcohol strategy - *Safe.Sensible.Social.* - was also produced in 2007, and the Act was 'rebalanced' in 2010/11 with increased police powers, when responsibility for licensing was transferred from DCMS to the Home Office. However, at this point we have moved passed the background to the act, and it is perhaps worth looking at some of the issues that were originally omitted from the Act.

8. Key flaws in the Act

8.1. Health

As previously discussed, the Act did not concern itself with the health impacts of alcohol. In contrast, the Licensing (Scotland) 2005 Act included a fifth public health objective, and while it shares some liberalising similarities with the Westminster Act it differs in key respects, including: the requirement for a policy on 'overprovision', carried over from the 1976 Act; the establishment of Licensing Forums; the creation of Licensing Standards Officers; a stated presumption against 24-hour licenses, despite the removal of permitted hours; the restriction of opening hours in the off-trade to 10am till 10pm; a 'public' right to object to licence applications; and mandatory conditions on price promotions.⁵³ As a result:

Scottish licensing authorities had considerably more power to regulate the trade in their jurisdictions than was afforded to authorities in England and Wales.⁵⁴

There was a further step change when the Scottish National Party entered government. They accepted population based measures and introduced the 2010 Alcohol Act (Scotland), which included bans on multi-buy discounts, brought off-licences within the existing 'happy-hour' restrictions, and included plans for a minimum unit price for alcohol.⁵⁵ According to Nicholls this Act:

Represents a rebalancing of licensing policy towards regulation of off-trade retail which is significantly in advance of England and Wales, where recent

amendments to the 2003 Licensing Act (under the 2011 Police Reform and Social Responsibility Act) impact almost exclusively upon the on-trade.⁵⁶

A number of reasons have been put forward to explain the focus on health within Scottish alcohol policy. Scotland has had a very unhealthy relationship with alcohol for some time, and it is arguable that the greater levels of harm within Scotland have led to a more focused and concerted effort to address them. While this is probably important, McCambridge, Hawkins and Holden have argued that the election of a minority Scottish National Party (SNP) administration in Scotland 'disrupted long standing relationships between industry actors and Scottish Ministers',⁵⁷ which was crucial in the development of Scotland's more proactive alcohol strategy from that point.

This included the 2008 document '*Changing Scotland's Relationship with Alcohol*' which marked the adoption of a whole population approach, and informed the *2010 Alcohol Act (Scotland)*, and *The Alcohol (Minimum Pricing) (Scotland) Act 2012*. All of these have been opposed by the alcohol industry and the licenced trade, with the Scotch Whisky Association taking the Scottish Government to the European Court of Justice in an attempt to prevent minimum unit pricing (MUP).

Other research into this area seems to back up this thesis; interviews with key actors involved in the Scottish Government's attempts to implement MUP have pointed to the replacement of the Labour-Liberal Democrat Coalition by the SNP as significant. Research has found that:

According to interviewees, the former administration had expressed interest in taking action but preferred to continue a partnership approach with industry, exemplified by the establishment of the Scottish Government's Alcohol Industry Partnership. It appears that it was not until the political environment changed following the election of the SNP that addressing alcohol price became a focus for policy.⁵⁸

8.2. Cumulative impact and areas of saturation

A senior police officer pointed out during the passage of the Bill that there comes a point at which:

The number of premises in an area precipitates violence no matter how well they are managed individually.⁵⁹

The Bill gave local authorities no effective powers to strategically control either the spacing or terminal hours of licensed premises, an issue that caused great concern.

Officials drafting the Act put forward the view that local authorities should use planning to address overconcentration, despite the fact that the White Paper argued that licensing authorities should not re-run planning applications. In practice the decision making rational put forward by the Act involved individual decisions made one at a time, with no thought to the problems that saturation may cause.⁶⁰

As with many other aspects of the Act, the influence of industry is key here. Over-saturation is brought about by the pursuit of profit, with licensed premises congregating towards the best locations.⁶¹ The Act considered market forces as only producing 'good' outcomes, but gave little thought to the possibility of the problems that oversaturating a particular area may

cause. This issue highlights the tension in the government's position regarding individual rights and responsibilities - structural issues such as saturation of premises and the impact this has on behaviour were initially ignored, while the police were given more authoritarian powers to deal with individuals who abused their newly granted freedoms.

Hadfield makes a very interesting comparison between the way in which problems associated with large amounts of people have been dealt with in two (slightly) different settings, with the overriding difference that of corporate influence. The only way that the Act acknowledged the impact of large groups of people was via closing times, where it was said that extended opening times would prevent peaks and troughs. The overall volume of people leaving was not seen as an issue by the Act, nor was it envisaged as causing particular problems, or a particular link between volumes of premises and volumes of people made.

Hadfield points out that similar issues involving large volumes of people associated with rave culture were treated entirely differently by Government. He quotes Michael Howard, the then Home Secretary, introducing the draconian 1994 Criminal Justice and Public Order Act as saying that:

Local communities should not have to put up with, or even fear, the prospect of mass invasions by those who selfishly gather, regardless of the rights of others.⁶²

While there are clearly issues of illegality around drugs and the rave scene, both alcohol and drugs are forms of 'psychoactive consumption' involving large crowds of intoxicated people, who often distress local communities with the noise and nuisance they create. A difference, as Hadfield points out, is that profits from drugs cannot be 'channelled into the pockets of corporate investors and used to drive the economic renaissance of post-industrial cities.'⁶³ This appears to be the key reason why the two scenarios are treated so differently, despite their apparent similarities. As Hadfield concludes, the rationale of the 2003 Licensing Act suggests that:

Stress-inducing mass invasions were soon to become, in official eyes, not such a bad thing after all.⁶⁴

Looking back further than this, it is clear that the relationship between the density of licensed premises and crime and disorder had been known within the Home Office for a considerable length of time, despite its exclusion from the 2003 Act. A Home Office press release from 19th February 1990 titled 'Home Secretary advises licensing magistrates and planners to avoid the 'Alcohol Flashpoint,' provides an interesting comparison with the current situation (see appendix 4 for the full release). Commenting on the Newport alcohol abuse and social disorder project, it states that:

A high proportion of alcohol-related disorder occurs in the early hours of Saturday and Sunday mornings in the town centre... At the most congested times as many as 4,000 people can be found in this tiny area, many of them much the worse for drink. Indeed, at one point many of these people crowd through an area of no more than 40 square yards. Is it any wonder that this is regarded as a trouble 'flashpoint' by the police?⁶⁵

The then Home Secretary, the Rt Hon David Waddington QC MP, advised licensing magistrates and town planners to:

Take great care in granting licence applications that might lead to small areas becoming congested with licenced premises.⁶⁶

This is a very long way from the approach taken by the Act, or by the Home Office at present.

Disquiet after the Act's implementation within the National Guidance Sub-Group of the Licensing Bill Advisory Group, and a debate held in the House of Lords, eventually prompted DCMS to produce a 'grudging' amendment within the Guidance to the Act.⁶⁷ Councils would be allowed to implement a presumption against granting an application in pre-identified 'cumulative impact' areas where there was evidence of over-saturation. There are generally known as Cumulative Impact Policies (CIPs) or (CIZs) Zones. This presumption could not be absolute though, and an objection would have to be lodged or the application would still go through unimpeded.⁶⁸ Amendments were tabled to the Bill which would have made CIPs a statutory consideration rather than discretionary, but the Government opposed any such amendment.

As discussed in a later chapter, there is limited evidence to suggest that cumulative impact areas have any meaningful effect beyond slowing the growth of the licenced trade, and their use to actually reduce acute concentrations of premises appears to be very rare. Many of the problems related to high concentrations of licenced premises were created before the Act was implemented, yet even with CIPs the Act gives local authorities no power to address this.

8.3. Strategic oversight

In addition to its failure to address saturation points, the Act was seen by many local authorities as permissive and reactive. They felt it did not allow them to take a strategic hold of their local area and positively influence the market. While this may often be true in practice, the Act does offer opportunities for strategic oversight. Part of the problem is to an extent with implementation, and ten years on these powers appear to been used very infrequently.

Rather than helping local authorities to use the Act better, the government's answer to this accusation involved strengthening the police's ability to reprimand those who drink too much. The police take disagreed with this approach, with one former Association of Chief Police Constables (ACPO) licensing spokesman stating that:

If you look at the new legislation there are some pretty strong powers in there, new police powers, enhanced powers. Now, our view, as we've said, is we want to *prevent*, we want to *reduce*, we want to be *proactive*...we don't want a weak system that allows the wrong type of premises to be in the wrong area, open for the wrong time and a load of crime and violence to emerge out of the back of it and for us to have to start using our powers *unduly*.⁶⁹

Under the Act local authorities have to produce Statements of Licensing Policy (SLP), setting out how they intend to approach licensing in their area. SLPs were a continuation of the statements previously issued by magistrates in each area,⁷⁰ and were reportedly one of the few things within the White Paper that the industry disagreed with. The government claimed that they would give councils a local democratic voice,⁷¹ but in practice local authorities had no experience of producing them, and initially at least, they lacked strategic vision and a clear understanding of how they could be used.⁷²

As will be discussed later in the report, some local authorities have used their SLP in an effective, strategic manner. In practice however this has not happened a great deal within the ten years since the Act's implementation, and many local authorities have struggled as a result of their failure to use the Act effectively in this way.

8.4. Licensing fees

The 2003 Act set national licensing fees based upon the non domestic rateable value of the licensed premises, including multipliers for larger premises used exclusively or primarily for the consumption of alcohol on site. Issues were raised about the fee system at the time, with some predicting that they would not be able to cover the costs incurred by the new system, and that they were too prescriptive and not flexible enough to deal with the significant variations in cost between local authorities.

These concerns remain today, with the Local Government Association (LGA) calculating that local government has subsidised the licensed trade to the tune of £183 million since the Act was introduced, because of the fact that licensing fees do not cover the costs of administering and enforcing the licensing system in many areas.⁷³ This is perhaps another example of the government creating a very favourable regulatory scheme for industry within the Act; not only is industry subsidized by local taxpayers, but by making it difficult for local authorities to fund their licensing operations, many have become stretched and under staffed as a result. Ten years on this situation is worsening as a result of cuts to local government funding.

9. Conclusion: Looking back on the first ten years

This introductory chapter has outlined the way in which the Act came into being, the rationale for its approach, and the cited flaws in that rationale. Both the contemporary and more recent evidence demonstrates tensions and inconsistencies within the Act. Commentators have argued that these stem from the strong influence exerted by industry^{74 75 76} and attempts to dress significant deregulation up as cultural modernisation, while using tough rhetoric on crime.⁷⁷

It should be noted that DCMS did convene a Licensing Advisory Group with sub-groups, on which the police and local authorities were represented, as was Alcohol Concern and Open All Hours? While some concessions were won via this route, such as the inclusion of cumulative impact policies in the Ministerial Guidance, only small changes were made to the overall shape of the Act.

It is our view that these factors caused New Labour to frame the Act around a number of contradictory and unstable concepts, revolving around economics, leisure, health and crime.⁷⁸ These included the poorly evidenced idea that extended opening times would not just prevent violence, but reduce it from current levels,⁷⁹ spurring a significant cultural change away from binge drinking and towards a relaxed, continental cafe style culture. In narrative terms the relaxed and unregulated continental 'other' was important, but also proved to be a myth.⁸⁰

Another unstable concept was the simplistic idea that market forces would always produce positive results, without any thought to the negative 'externalities' of the night time economy. Hadfield sets this against the background of an industry attempting to 'bound' the debate in their favour, and argues that the market is distorted because the costs of 'externalities' are met by the public sector, and therefore have little impact on commercial interests.⁸¹

The greatly increased focus on the personal responsibility of individual drinkers is also seen as problematic, given that at the same time the Act increased the overall availability of alcohol and reduced restrictions on business. While individuals do have choices, options and responsibilities, this is only one half of the equation. The Act's ambition was to strike a:

Proper balance between the rights and responsibilities of individuals, business and the community.⁸²

It has though fallen a long way short of this. It is with this in mind that the Act's impact on personal freedom and choice need to be considered. While far less significant within written material around the Act, Ministers did talk about the Act's positive impact in this area, and it is true that individuals could be considered to exercise more freedom if able to buy a drink at any hour of the day. Yet New Labour's Third Way approach had the effect of removing from debate the constraining, and at times coercive, structural issues within the NTE such as competition, price* and physical geography. In their place the responsibility and agency of individuals is put forward as the only realistic cause of problems. In many ways this can be seen as an extension of the 'bounding' of debate, and as Nicholls points out:

While the right to sell and the right to consume alcohol were to be shared equally, the responsibility to avoid excess was to be slanted towards the consumer.⁸³

For some the freedoms brought in by the Act might be an end in themselves, but for others they could be seen as a means to an economic end, which is particularly problematic when there is a:

Real reluctance to penalize the 'suppliers' of crime opportunities that contrasts markedly with the enthusiasm with which their 'consumers' are punished.⁸⁴

All in all, the Act gave the licensed trade wide-ranging freedoms, but responsibility for any problems that this might cause is often laid at the door of others.

Much of the press reaction to the Act was undoubtedly over the top, but the Act's unstable foundations provided ample opportunity for the media to take aim at the government's approach, which empowered business while leaving police and local authorities with limited ability to address many of the underlying causes of drink related problems. Some commentators have described the Act's focus on individual responsibility as twisting alcohol policy towards criminal justice issues and the 'management of drunkenness'.⁸⁵

This could have been addressed to some extent by including health concerns, but the Act excluded all but acute alcohol-related injuries from debate. Long-term chronic conditions make up 75% of all alcohol-related hospital admissions, yet they were not considered relevant to licensing and were not addressed by the Act.⁸⁶ Questions remain as to how or if medium and longer term health issues might feasibly be addressed by licensing, but as detailed later in this report, there does seem to be far more scope than allowed originally within the Act.

* Although it should be pointed out that price is not normally seen as a licensing issue.

10. Looking forward

The 2003 Licensing Act undoubtedly made a number of practical improvements to licensing. These included combining the alcohol, public entertainment and late-night refreshment licensing regimes, moving responsibility from licensing justices to local authorities, and introducing clearer standards for the granting, refusal and termination of licenses.⁸⁷ On this administrative level the Act appears to have been a success. However, as will emerge from the discussion in subsequent chapters, the Act has also caused significant problems, stretching police resources late into the early hours, leaving many licensing teams short of funding and staff, generating significant growth within the off-trade and leaving many local authorities without the power to control the licensed trade in their areas.

It is reasonable to conclude that the assumptions upon which the Act was built and the narrative used to sell the changes were inherently contradictory, lacked credible evidenced and were poorly thought out. What is unclear however, is whether these problems are inevitable after ten years, or whether the Act could have been used in a more authoritative and powerful way by local authorities.

After looking in more detail at the impact of the Act, this report will investigate the theory and practice of the Act in more detail, and puts forward the view that the Act has been interpreted to the advantage of the licenced trade and that there is a need to address some of the myths that have developed around the its use.

¹ Nichols, J., (2012) Time for reform? Alcohol policy and cultural change in England since 2000. *British Politics*, Vol 7, 3, p 252.

² Nichols, J., (2012) Time for reform? Alcohol policy and cultural change in England since 2000. *British Politics*, Vol 7, 3, p 252.

³ Hadfield, Philip Mason (2005) *Bar Wars: Contesting the night in British cities*, Durham theses, Durham University. Available at Durham E-Theses Online: <http://etheses.dur.ac.uk/2709/> p 3.

⁴ Greenaway. J., (2010) Alcohol in the UK, background paper, National School of Government, p 7.

⁵ Nicholls. J., (2009) *The Politics of Alcohol*, Manchester University Press, p 229.

⁶ Greenaway. J., (2010) Alcohol in the UK, background paper, National School of Government, p 2.

⁷ Blocker. J., Fahey. D., Tyrrell. I., (2003) Alcohol and Temperance in Modern History: An International Encyclopedia, Volume 1, p 225.

⁸ Nicholls. J., (2009) *The Politics of Alcohol*, Manchester University Press, p 229.

⁹ Light. R., Heenan. S., (1999) Controlling Supply: The Concept of 'Need' in Liquor Licensing. University of the West of England, p 4.

¹⁰ Greenaway. J., (2010) Alcohol in the UK, background paper, National School of Government, p 3.

¹¹ Nicholls. J., (2009) *The Politics of Alcohol*, Manchester University Press, p 219.

¹² Baggot. R., (2010) A modern approach to a new problem? Alcohol police and New Labour. *Policy & Politics*, Vol 38 no 1, p 137.

¹³ Baggot. R., (2010) A modern approach to a new problem? Alcohol police and New Labour. *Policy & Politics*, Vol 38 no 1, p 137.

¹⁴ Greenaway. J., (2010) Alcohol in the UK, background paper, National School of Government, p 2.

¹⁵ Hadfield, Philip Mason (2005) *Bar Wars: Contesting the night in British cities*, Durham theses, Durham University. Available at Durham E-Theses Online: <http://etheses.dur.ac.uk/2709/> p 3.

¹⁶ Nichols, J., (2012) Time for reform? Alcohol policy and cultural change in England since 2000. *British Politics*, Vol 7, 3, p 253.

¹⁷ Baggot. R., (2010) A modern approach to a new problem? Alcohol police and New Labour. *Policy & Politics*, Vol 38 no 1, p 136.

¹⁸ Room, R. (2004), Disabling the public interest: alcohol strategies and policies for England. *Addiction*, 99: 1083-1089.

¹⁹ Baggot. R., (2010) A modern approach to a new problem? Alcohol police and New Labour. *Policy & Politics*, Vol 38 no 1, p 138.

²⁰ Nicholls. J., (2009) *The Politics of Alcohol*, Manchester University Press, p 224-6.

²¹ Roberts. M., Eldridge. A., (2009) *Planning the night time economy*. Routledge, p 124.

- ²² Room, R. (2004), Disabling the public interest: alcohol strategies and policies for England. *Addiction*, 99: 1083-1089.
- ²³ Hadfield, Philip Mason (2005) *Bar Wars: Contesting the night in British cities*, Durham theses, Durham University. Available at Durham E-Theses Online: <http://etheses.dur.ac.uk/2709/> p 62.
- ²⁴ Baggot, R., (2010) A modern approach to a new problem? Alcohol police and New Labour. *Policy & Politics*, Vol 38 no 1, p 138.
- ²⁵ Nicholls, J., (2009) *The Politics of Alcohol*, Manchester University Press, p 229.
- ²⁶ Nichols, J., (2012) Time for reform? Alcohol policy and cultural change in England since 2000. *British Politics*, Vol 7, 3, p 252.
- ²⁷ Baggot, R., (2010) A modern approach to a new problem? Alcohol police and New Labour. *Policy & Politics*, Vol 38 no 1, p 138.
- ²⁸ Roberts, M., Eldridge, A., (2009) *Planning the night time economy*. Routledge, p 119.
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Chapter 3: Key facts and trends

Chapter summary

Between 2004 and 2014 the total number of licensed premises increased by 2.1%.

Around twice as many off-licences have been granted than on-licenses over the last 10 years

It is likely that that there has been a shift towards greater numbers of licenced premises in urban areas.

While overall alcohol consumption, binge drinking and alcohol-related violence have dropped in the last 10 years, these are not related to the Act in any way.

Alcohol-related hospital admissions, and specific A&E admissions, have increased over the last 10 years.

The Act came into force at midnight on 24 November 2005. This chapter charts some of the key trends in the ten years since then, although in many cases figures are not available for the whole ten-year period.

1. Licensing issues

1.1. Premises numbers

Between 2004 and 2014 the total number of licensed premises increased by 2.1%, from 179,865 to a total of 183,600.¹

At first glance the statistics suggest that the on-trade has declined by around 2000 premises over this period. However, this total masks a number of underlying trends which have significantly altered the composition of the on-trade. Firstly, the number of registered clubs shrank by 4,900 between these years. This is likely to have masked the growth of other types of license. In addition there have been significant pub closures, with over 7,000 between 2004 and 2014.²

The fact that overall on-trade numbers have remained fairly steady despite significant pub closures suggests a that there has been a change in the nature of the sector. The likelihood is that there has been a shift towards greater numbers of licenced premises in urban areas.

Looking behind the headline figures demonstrates that the increase in the total number of premises over this period has been primarily driven by the off-trade, with 5,800 more premises (a 12.5% increase) between 2004 and 2014, from 46,582 to 52,400.³ These figures suggest that around twice as many off-licences have been granted than on-licenses over the last 10 years.*

Another factor that should be taken into consideration is the impact of supermarkets, which have grown in number since 2004⁴ but which sell a very large volume of alcohol with only one license. In terms of total volume of alcohol sold, supermarkets could in practice considerably magnify the impact of the growth in the off-trade.

1.2. Outlet density

Setting the present figures in an international context, the UK appears to have a particularly high density of licensed premises. It is hard to find accurate and comparable information on the number of licensed premises per 1,000 adults between different countries, however figure 3.1 includes information on this from a range of sources, including Home Office figures and academic studies into outlet density. A fully referenced version of this can be found in appendix 5.

* This figure was calculated using statistics from the 2015 BBPA statistical handbook, page 64. Excluding registered clubs, the on-trade increased by 2800 premises between 2004 and 2014. Over the same period the off-trade increased by 5818 premises. It should be noted that – due to data limitations – these calculations are for *net* openings, and so do not account for any difference in the rate of closures between on and off-trade.

Figure 3.1 International comparison of outlet density

Country	Year	Outlet count	Adult population	Outlets per 1,000 adults
England & Wales	2010	199,449	43,799,893	4.6
Scotland	2011-12	16,157	4,257,900	3.8
USA	2005	NA	NA	2.7
Melbourne, Australia	2001			0.1
Victoria, Australia	2009			2.5 (overall population, not just adults)

These figures are a little ‘rough and ready’ the years of origin differ between sources, and the Victoria figure was calculated for the whole population rather than just adults.

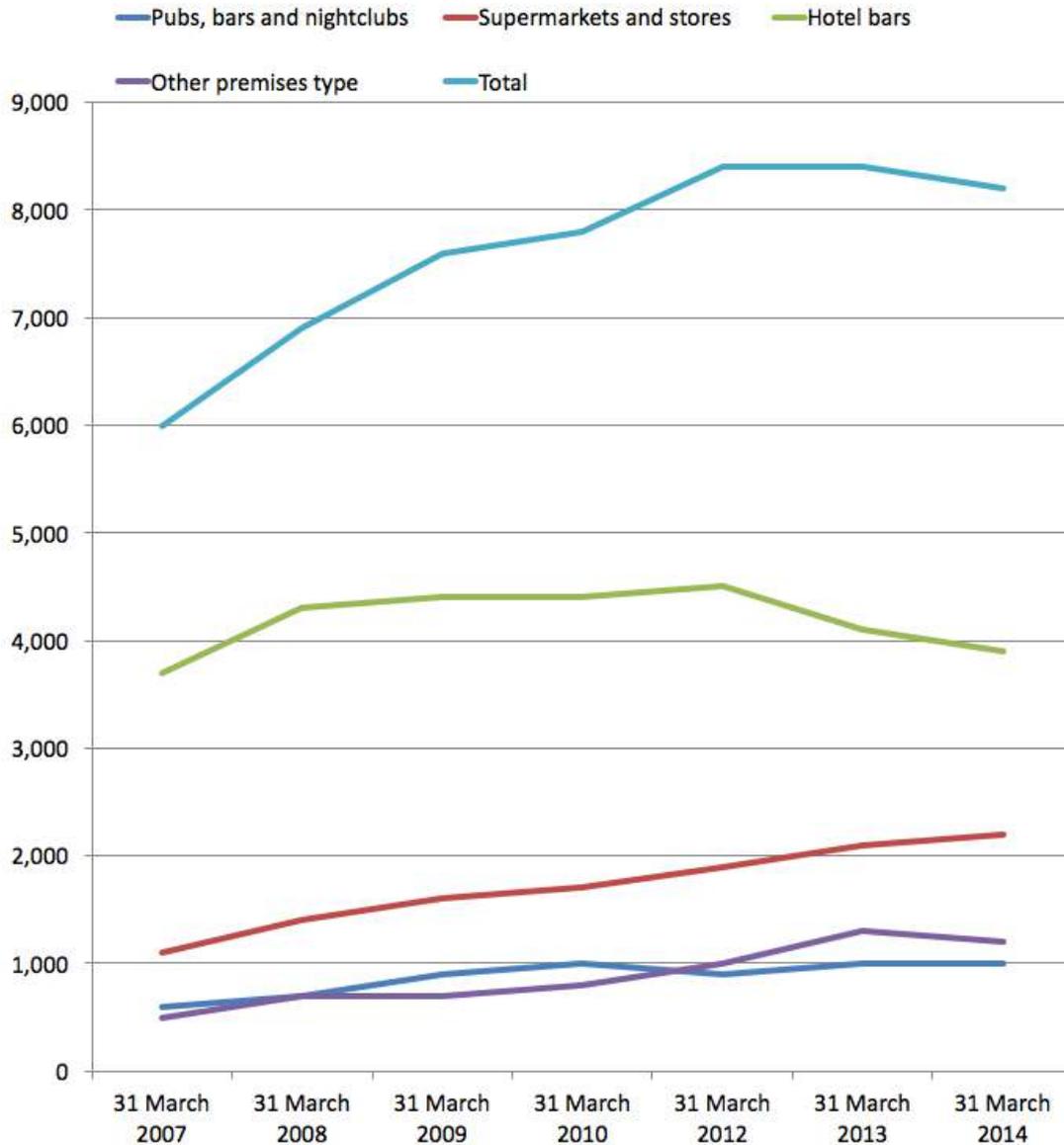
While these caveats need to be remembered, it does seem that England and Wales have significantly higher number of licensed premises relative to the population than the USA or parts of Australia. Even if Melbourne had quadrupled the size of its licenced trade since 2001 there would still be far fewer premises relative to those in the UK.

However, there is no clear way in which outlet density results in certain outcomes, and there are numerous types of outlet density, across the on and off-trade. For example, supermarkets are likely to impact differently to off-licences, and hotel bars differently to restaurants etc. Nevertheless, the UK figures are striking.

1.3. 24-hour licences

The use of 24-hour licenses brought about by the 2003 Licensing Act has varied between different types of premises. Overall there are just over 8,000 24-hour licenses across the country; the majority of these are hotel bars, the number of which has decreased since around 2012. Whereas numbers in the on-trade have remained relatively stable since 2010 at around 1,000, the number of supermarkets and other off-trade premises with 24-hour licences has, conversely, increased steadily since 2007. Figure 3.2 shows these trends over time.

Figure 3.2 Number of 24-hour licences between 2007 and 2014



Source: Alcohol and late night refreshment licensing

1.4. Reviews

The ability to Review a premises is perhaps the most powerful enforcement tool available, and usually occurs when either informal or more minor attempts to address a problem have failed. Figure 3.3 below shows the number of Reviews completed annually since 2009, although no data was collected in 2011.

Figure 3.3 Completed reviews

Total number of completed reviews					
From Alcohol and late night refreshment licensing statistics, 2013/14, Home Office					
March 2009	March 2010	March 2011	March 2012	March 2013	March 2014
1,100	1,300	-	1100	900	800

It is not entirely clear why the number of Reviews has declined since 2010. It could be a result of increasing pressures on police and local authority resources, as both of these have come under increasing pressure.

However, anecdotally it has been said that some police forces failed to use conditions adequately when the Act was introduced, and so had to use large number of Reviews in order to address the problems that developed as a result of this.

Figure 3.4 shows actions taken following reviews in England and Wales in 2013/14, with 24% resulting in closure and additional conditions added or modified 56% of the time.

Figure 3.4 Action taken following completed reviews, England and Wales, 2013/14

	Total	Percentage ¹
Completed reviews	838	100%
No action taken	52	6%
Operating hours modified	141	17%
Licensable activity partially restricted	69	8%
Licensable activity completely excluded	10	1%
Other conditions added or modified	469	56%
Designated Premises Supervisor removed (premises licences only)	65	8%
Licence or certificate suspended	101	12%
Licence revoked or club premises certificate withdrawn	198	24%
1 The percentages do not sum to 100% as more than one action can apply to each completed review.		
<i>From Alcohol and late night refreshment licensing statistics, 2013/14, Home Office</i>		

The Act's first 10 years: the wider context

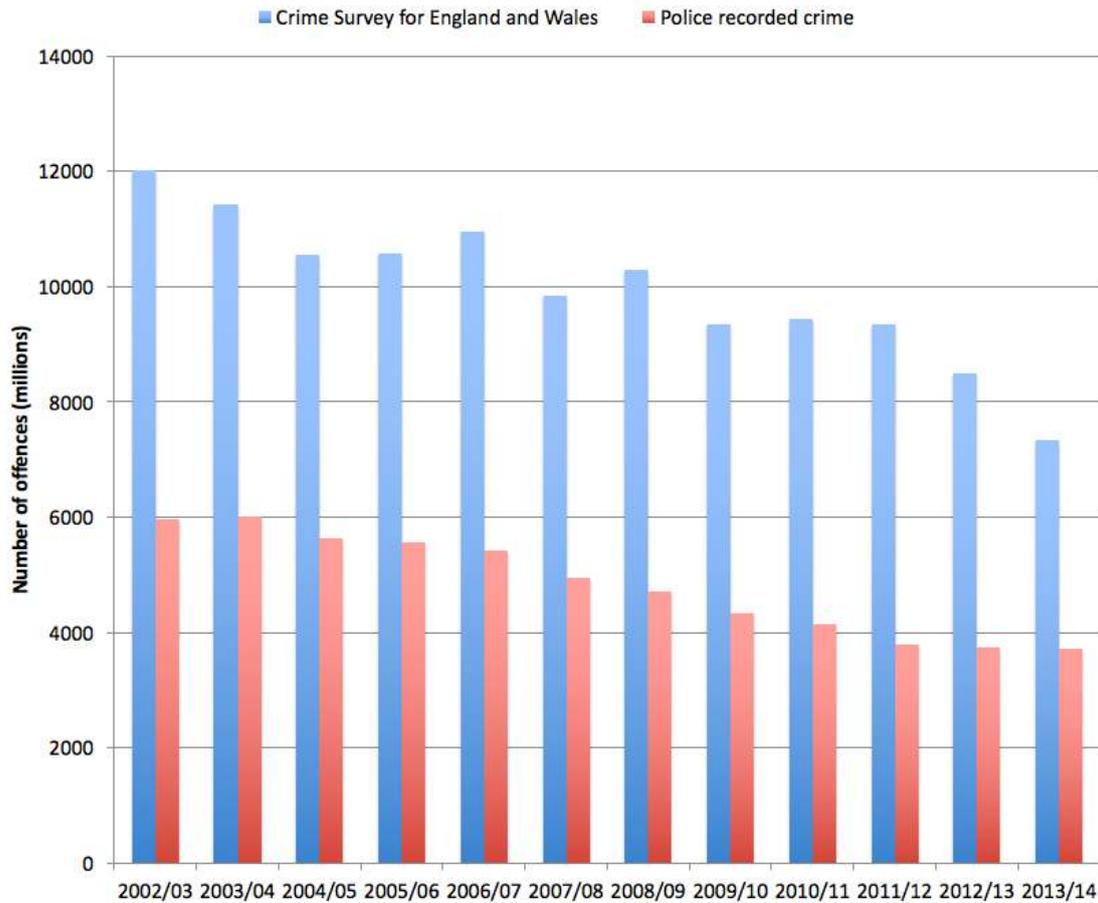
It is not possible to link the Act directly to any of the broad outcomes detailed in this report, but they have been included for context. There have been many other variables in addition to the Act, and other confounding issues to consider, such as concurrent policy changes relating to alcohol. For example, there was a significant increase in police activity around alcohol-related harm between 2004 – 2007, in addition to the launch of the Alcohol Harm Reduction Strategy for England in 2004 and the National Alcohol Strategy in 2007.⁵

The price and affordability of alcohol has also varied since the Act was introduced, as have demographic and workforce trends, all of which interact with alcohol consumption and its effects in different ways. Any attempt to draw correlations between the Act and increases or decreases in certain outcomes without going into more detail and attempting to identify causation would be oversimplistic.

2. Crime and disorder

There had been a general reduction in both recorded crime and perceptions of crime in recent years, as figure 3.5 demonstrates.

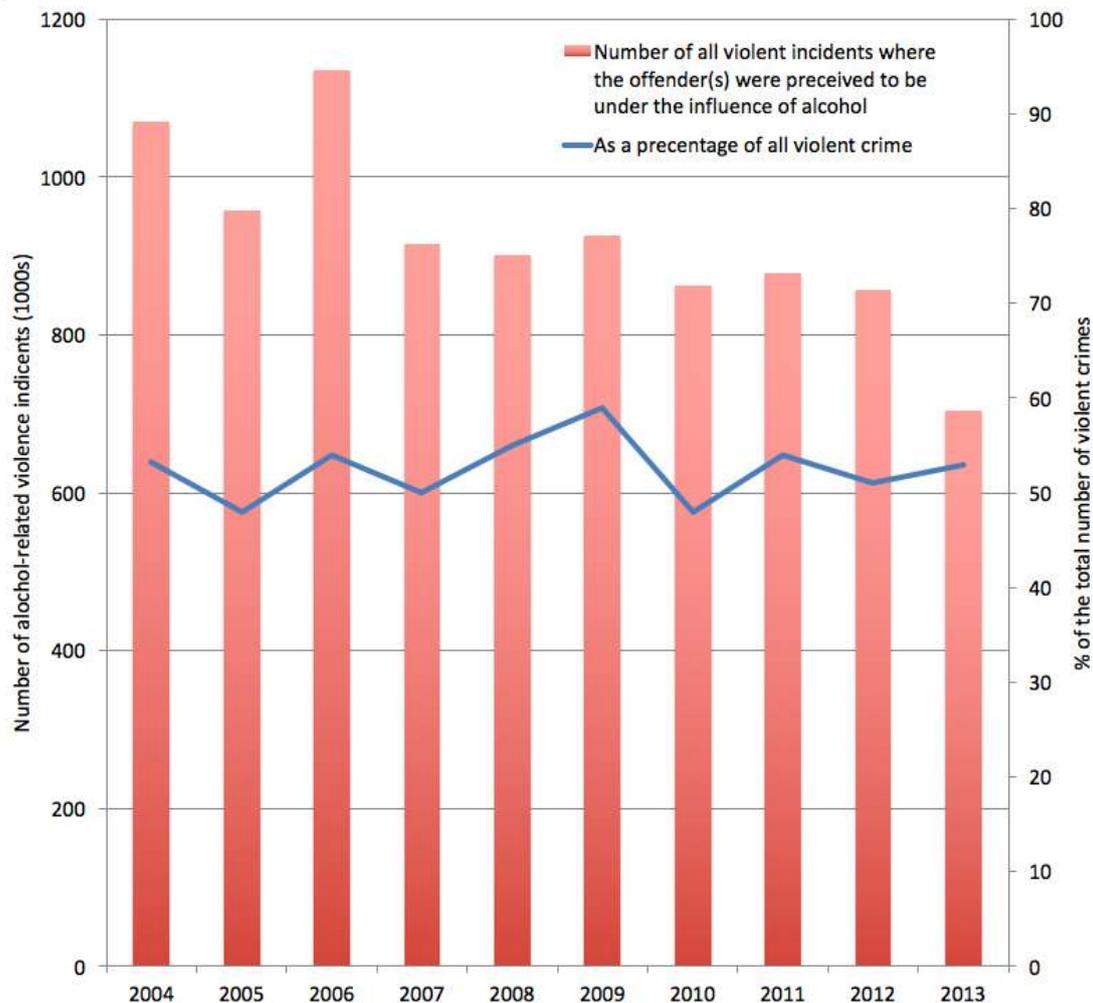
Figure 3.5 General reductions in reported and recorded crime between 2002/3 and 2013/14



Source: [ONS](#)

Over the same period there has been a similar reduction in total rates of alcohol-related crime, see figure 3.6. The proportion of violent incidents where the victim believed the offender(s) to be under the influence of alcohol has fluctuated, but started and ended this period on 53%. In 2013/14 this meant that there were 704,000 alcohol-related violent incidents. Moreover, alcohol was implicated in 64% of incidents of stranger violence and 36% of domestic violence incidents.⁶

Figure 3.6 The number of violent incidents where the offender(s) were perceived to be under the influence of alcohol, and these incidents as a percentage of all violence crime, from 2004 to 2013



Source: Adapted from the [ONS Nature of Crime Tables 2013-14, Violence](#)

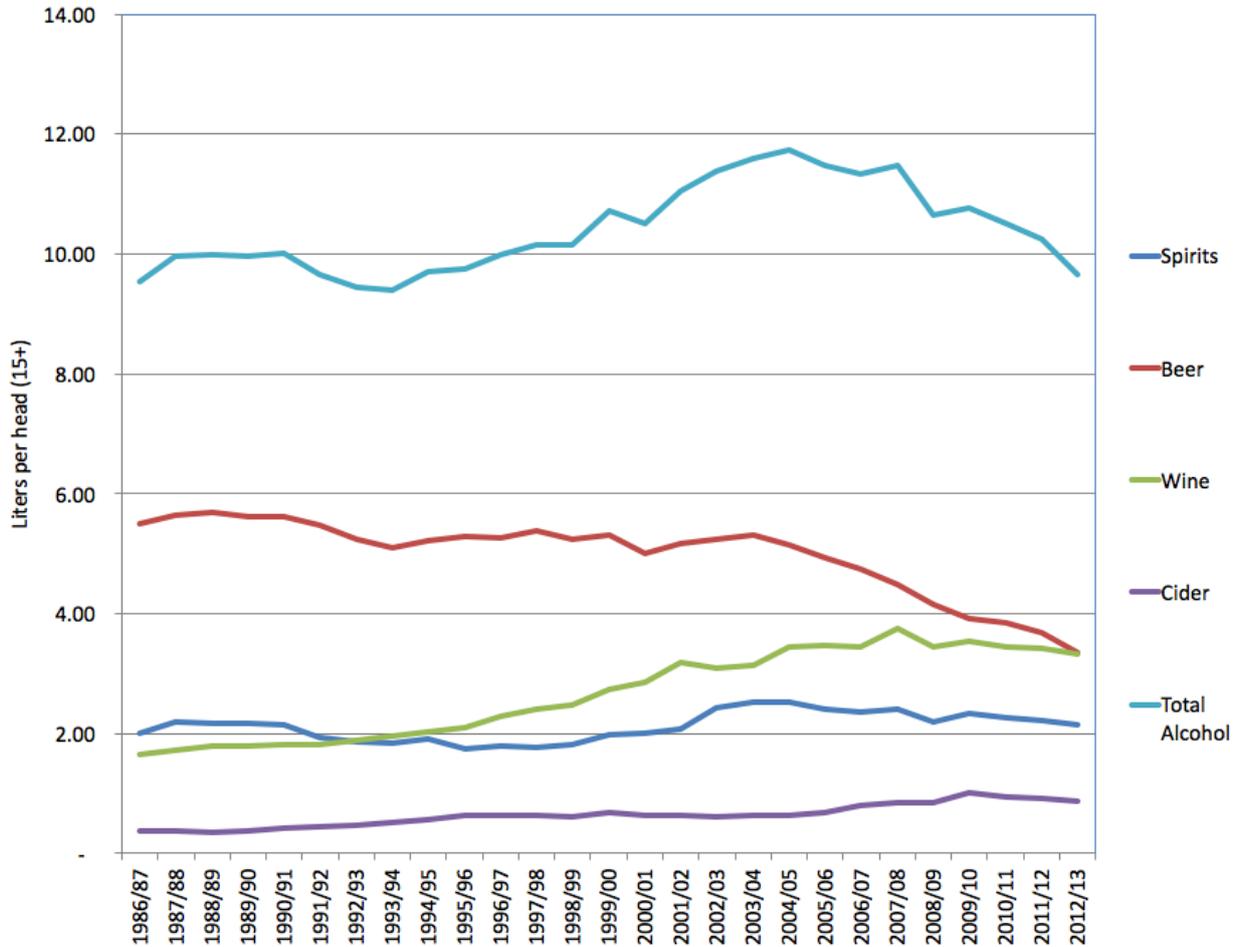
Overall there were 367,000 fewer violent alcohol-related incidents in 2013 than there were in 2004, which is a significant drop. However, this drop fits in with the general reduction in crime, which started before the Act was introduced.

3. Health-related issues

3.1. Alcohol consumption

There has been a general decline in alcohol consumption in recent years coming down by 18% between 2004/5 and 2012/13. Figure 3.7 shows this trend. Looking specifically at the fall in recent years, it can be seen that this has been driven primarily by a fall in beer sales, starting around 2003.

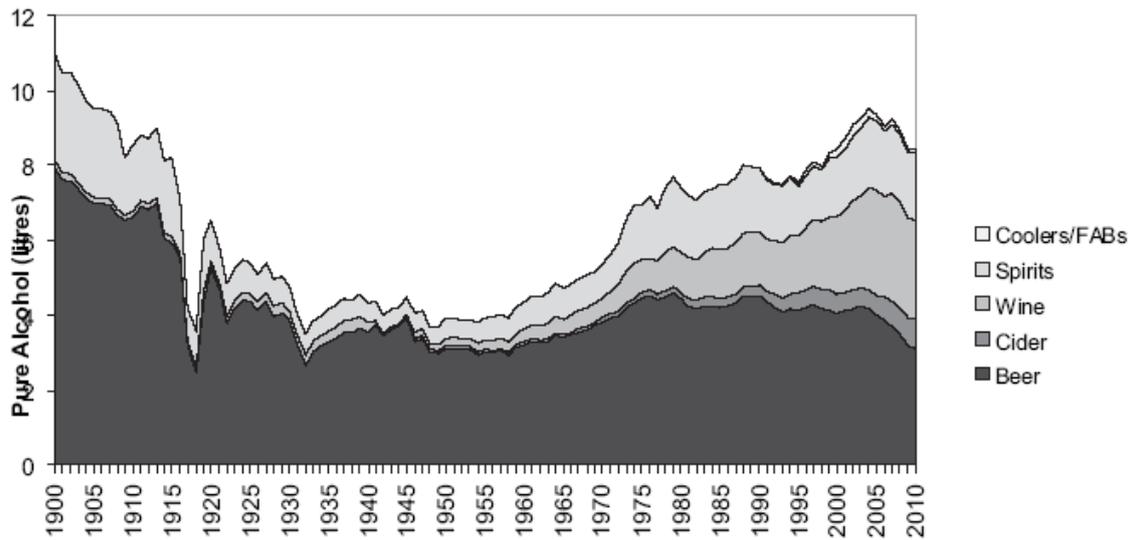
Figure 3.7 Alcohol consumption per capita (15+) 1986 – 2012



Source: HMRC Alcohol Fact Sheet 2013

Current levels, however, are still historically high, as figure 3.8 demonstrates, and the UK population still drinks around twice as much as it did in the 1950.

Figure 3.8 Alcohol consumption per UK resident 1900 – 2010

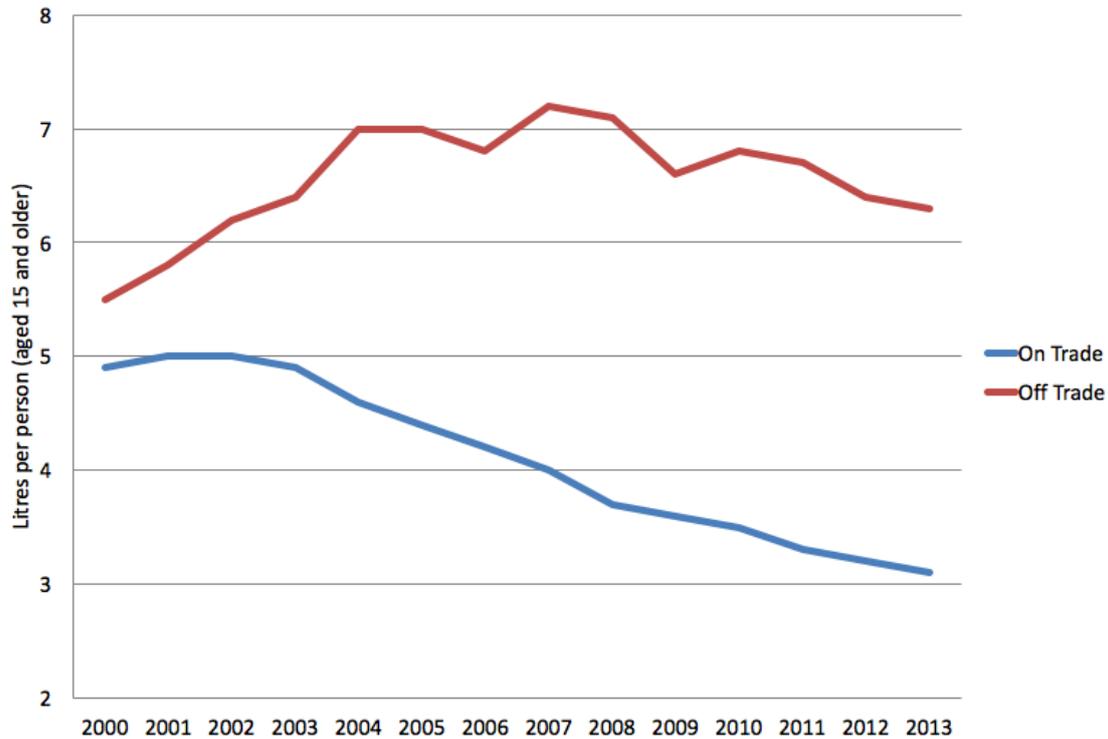


Source: *Written evidence from the Department of Health to the Health Select Committee, 2012*

3.2. On vs off-trade drinking

As illustrated in figure 3.9, there has been a significant shift towards off-trade drinking, with the on and off-trades diverging significantly since the early 2000's. In 2013 33% of all alcohol consumed by those 15 and older in the UK came from the on-trade, with 67% coming from the off-trade.

Figure 3.9 On versus off-trade consumption in UK, litres per person (15 years and older), 2000 – 2013

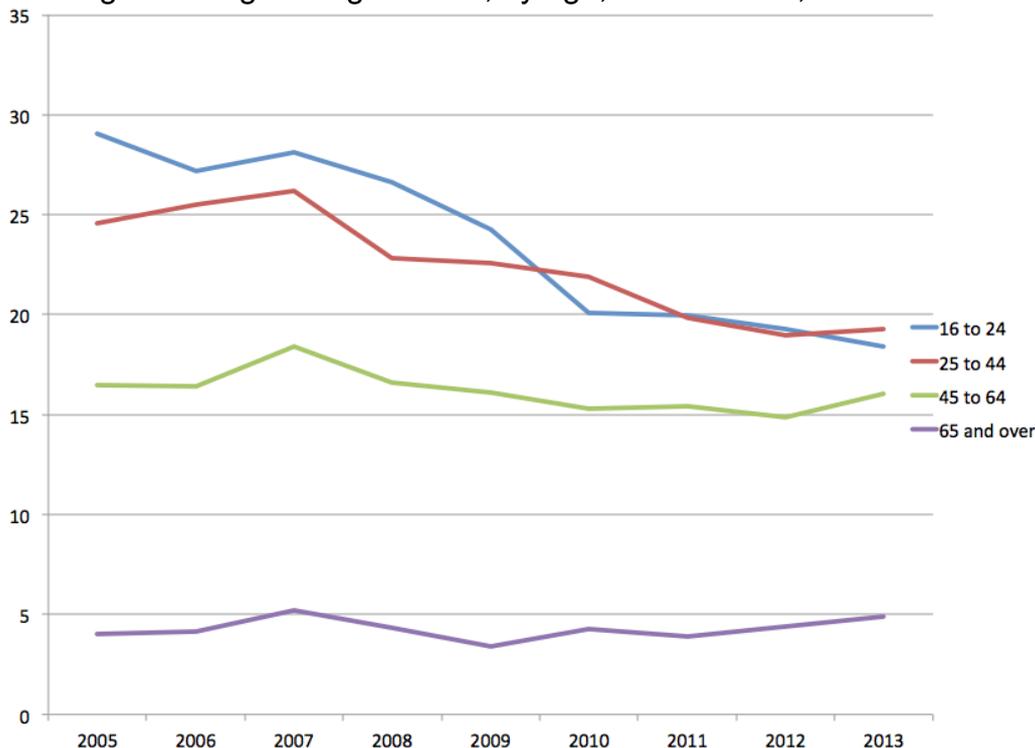


Source: BBPA

3.3. Binge drinking

There has been a fall in binge drinking between 2005 and 2013 among those aged 44 and under. Over this period binge drinking among 16 to 24 years olds fell from 29% to 18%, and among those aged 25 to 44 it fell from 25% to 19%. This represents a fall from 18% of the population having binged at least once in the week before the interviews in 2005, to 15% in 2013.

Figure 3.10 Binge drinking amongst adults, by age, Great Britain, 2005-2013



Source: ONS Adult Drinking Habits in Great Britain, 2013

The Office of National Statistics (ONS) reported that the fall in binge drinking is explained in part by increases in the proportion of young adults and those aged 25 to 44 who are teetotallers.⁷ The impact of the recession is also likely to be reflected in these figures, with young people perhaps most affected by this.

The fact that it has become harder for under 18s to access alcohol could also have had an impact, as it is known that those who start drinking earlier are more likely to drink more frequently, and in greater quantities, when older. However, the ONS state that:

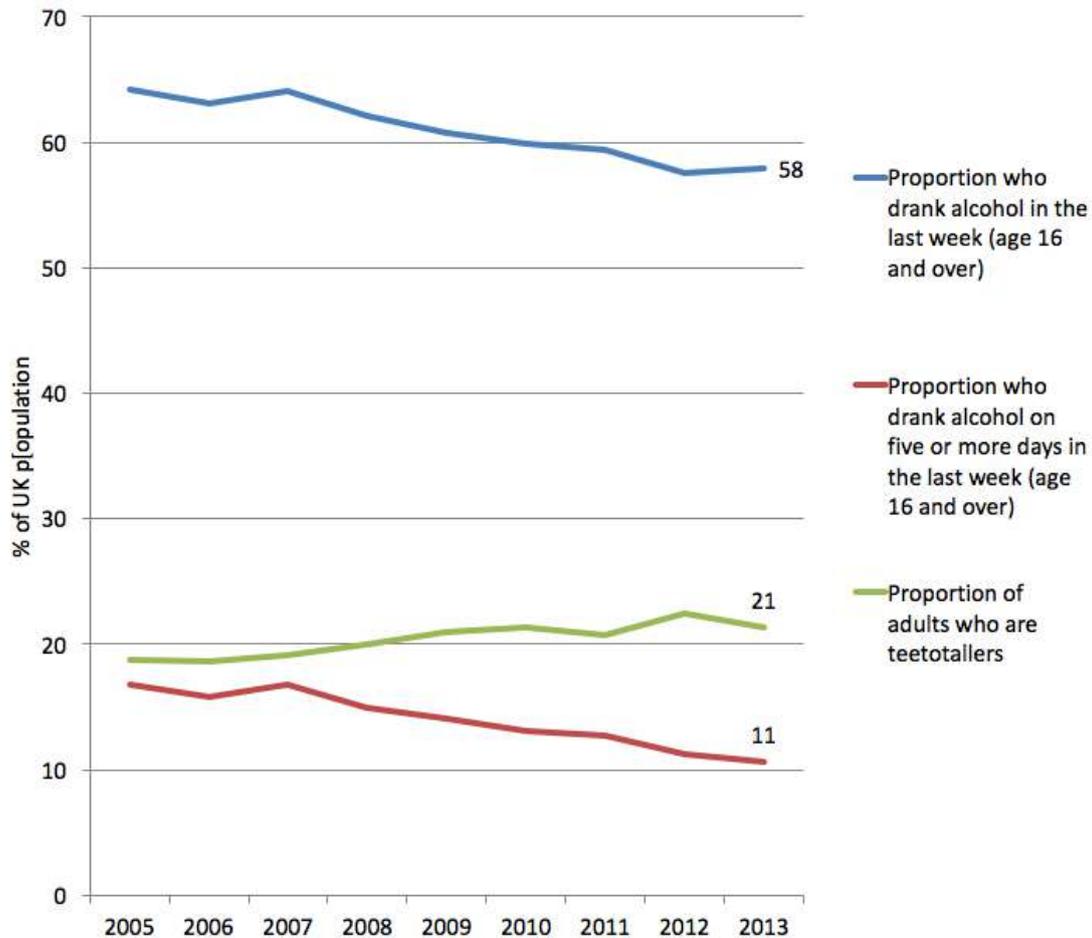
It is difficult to attribute the fall in binge drinking among young people to any particular factor.⁸

3.4. Sub-groups and cohorts consumption

Looking at specific subgroups within the population there are a number of different trends, with some groups drinking more while others are starting to drink less.

As mentioned above in relation to binge drinking, there has been a rise in those who abstain from drinking alcohol in the last few years, with the latest figures recording 21% of adults as non-drinkers, as shown in figure 3.11.

Figure 3.11 Proportion of adults (16+) who drank in the last week, who drank alcohol on five or more days in the last week, and who are teetotal



From ONS Opinions and Lifestyle Survey, Adult Drinking Habits in Great Britain, 2013

Examining this trend in more detail shows that the highest numbers of teetotalers can be found in London (32% of the population) and the West Midland (25% of the population), with the lowest number in the South West (15%). Commenting on this trend the Office of National Statistics stated that:

Although it is difficult to attribute regional differences to any single factor, London is the most ethnically diverse region of the UK and has a lower than average population age of just 33. Both of these factors may play a part in London having a higher than average number of teetotalers.⁹

There are groups who seem to be drinking more, however, such as older middle class women¹⁰ and while there is only limited research into the consumption habits of those who regularly used the night time economy, it has been found that they drink considerably more than the general population, and are more likely to be increasing risk or higher risk drinkers.¹¹

3.5. The affordability of alcohol

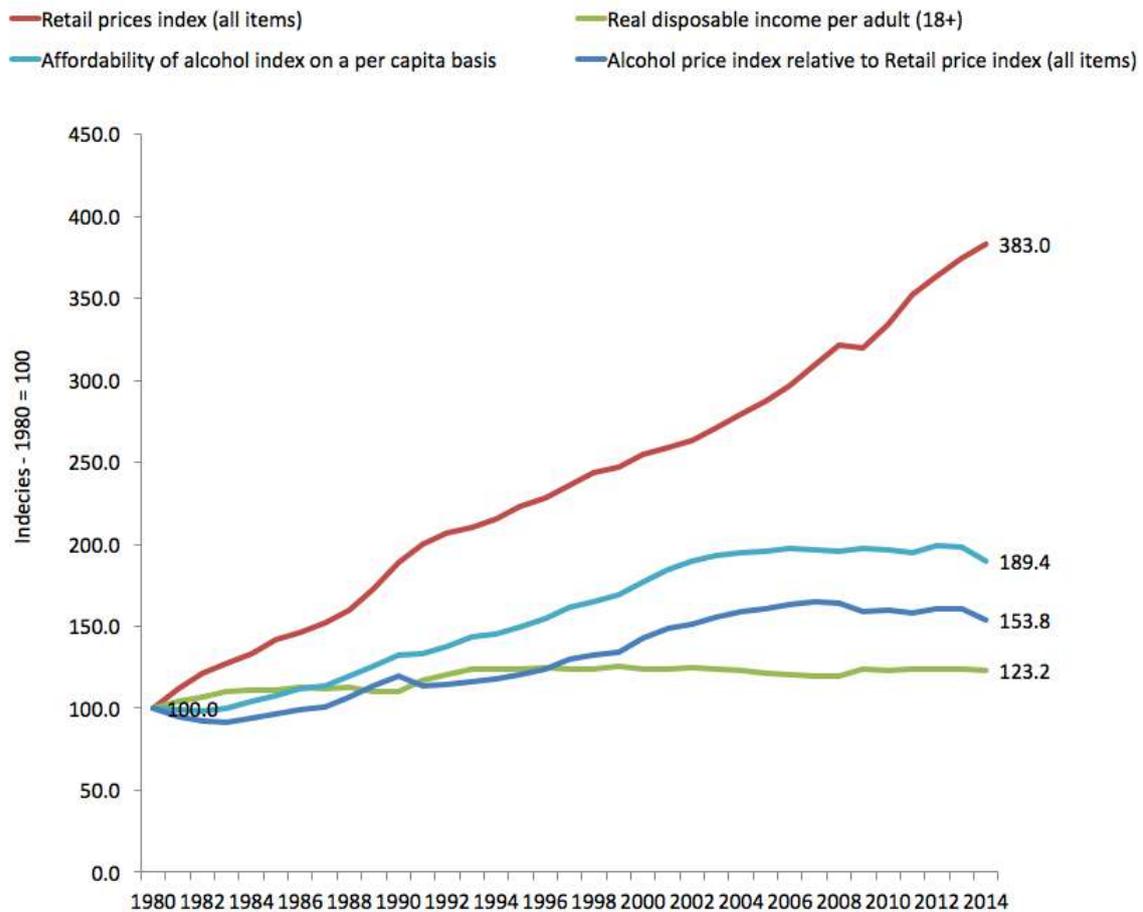
There is strong evidence that the price and affordability of alcohol is linked to a range of adverse long and short term outcomes, such as violence,¹² sexual assault¹³ and liver

disease.¹⁴ For example, it has been found that rates of alcohol-related A&E admissions are directly affected by the real price of alcohol.¹⁵

Figure 3.12 shows the affordability of alcohol since 1980, compared with Retail Price Index and real disposable income, and also shows the affordability of alcohol index on a per capita basis. By comparing the relative changes in the price of alcohol with changes in real household disposable income per adult over the same period (with both allowing for inflation), it can be seen that alcoholic beverages were 54% more affordable per person in 2014 than in 1980.

However, while general prices as reflected in the Retail Price Index have increased since 2005, it can be seen that the relative price of alcohol has stayed fairly static over this period, as have real disposable incomes. This is despite the introduction of the Alcohol Duty Escalator in March 2008, which increased the duty on alcohol drinks by 2% above the rate of inflation each year. It seems likely that while this policy stopped alcohol becoming more affordable, it did not decrease overall affordability. However, the affordability of alcohol seems likely to increase in the next few years as the alcohol duty escalator was scrapped in 2014, and alcohol duty was reduced in 2015. There is no evidence of the ban on below cost sales having any impact on alcohol affordability either.

Figure 3.12 Indices of retail prices, alcohol price index relative to retail prices index (all items), real disposable income per adult and affordability on a per capita basis, 1980 to 2013



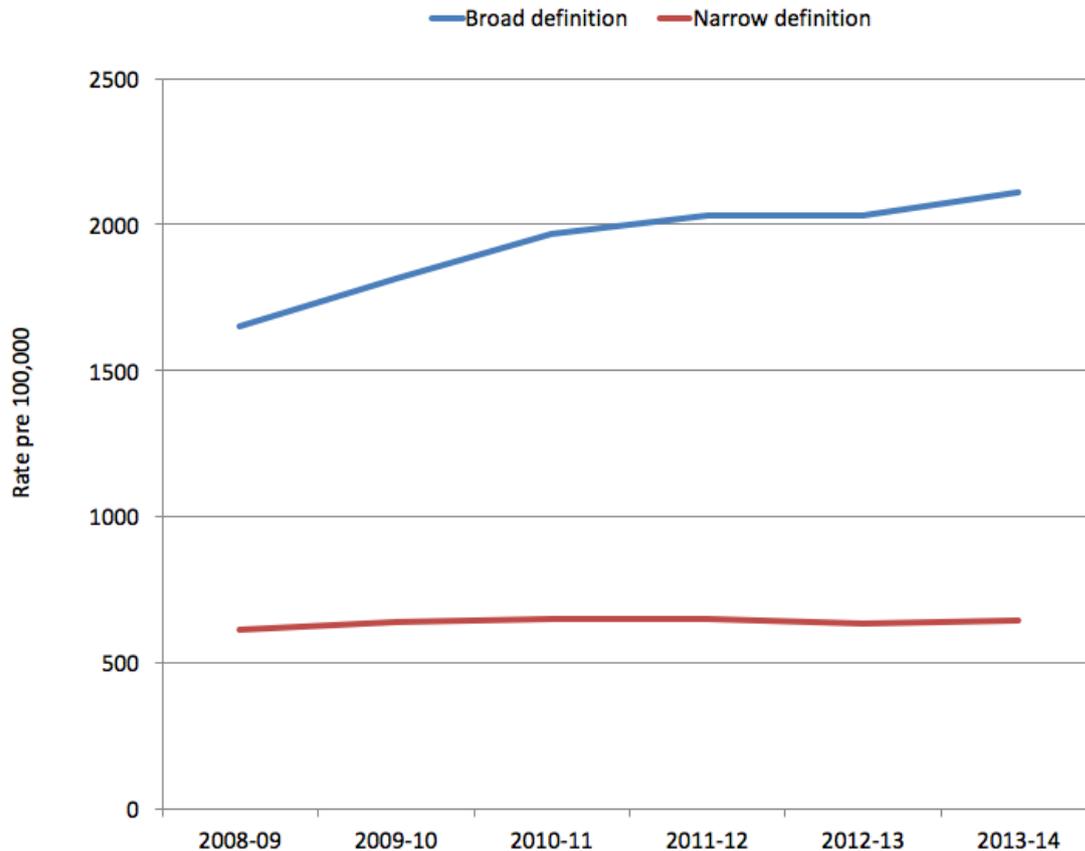
Source: [Health and Social Care Information Centre, Statistics on Alcohol 2014](#)

3.6. Alcohol-related hospital admissions

3.6.1. General hospital admissions

Figures released in 2015 show that overall alcohol-related hospital admissions have increased in recent years, as illustrated in figure 3.13.

Figure 3.13 Alcohol-related NHS hospital admissions in England, broad and narrow measures, 2003/4 to 2013/14



Source: [Health and Social Care Information Centre](#)

Figure 3.13 shows both the broad and narrow measures of alcohol-related admissions. While the narrow definition is better for identifying trends over time, because of the fact that it is recorded in a more consistent manner, according to the HSCIC the broad measure:

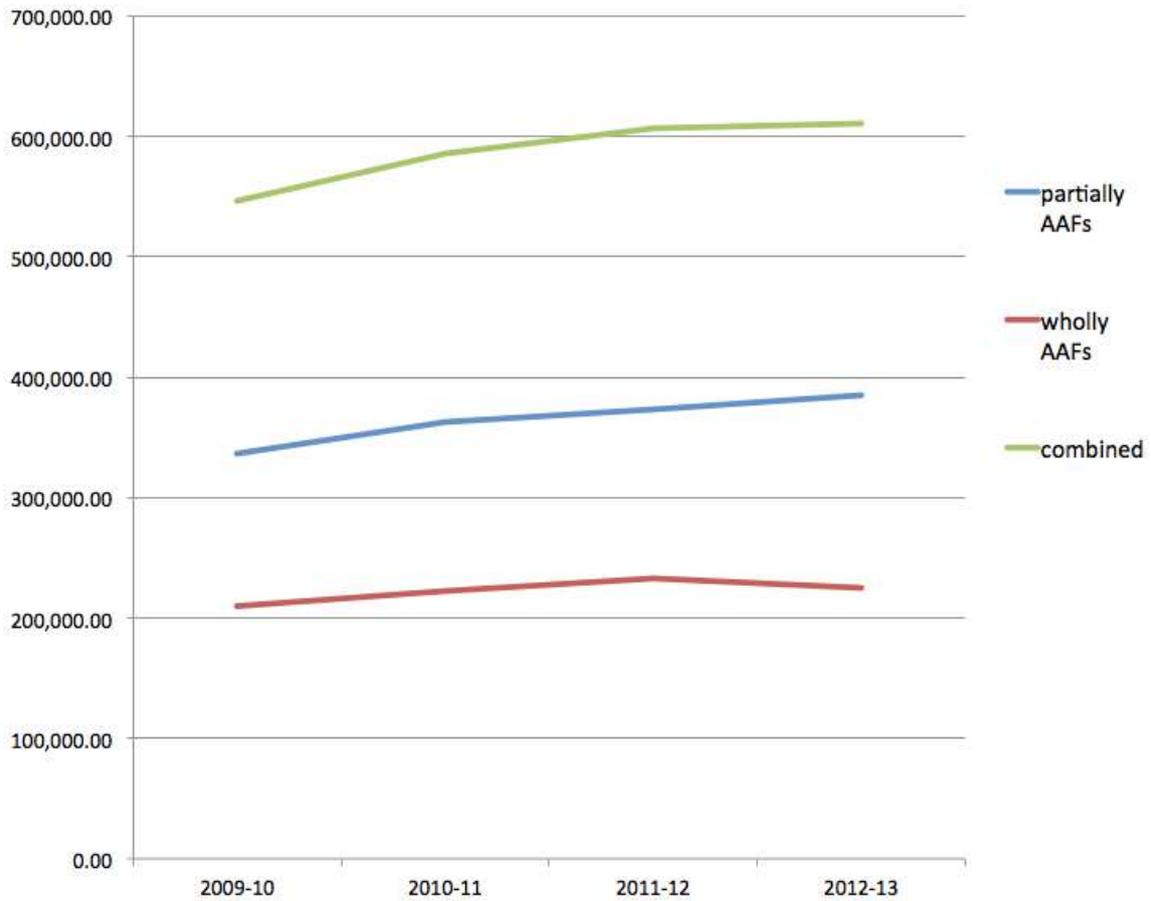
is a better indicator of the total burden that alcohol has on health services as it takes more account of secondary diagnoses than the “narrow” measure.¹⁶

In 2013 there were 6,592 alcohol-related deaths in England, a 1% increase from 2012, and a 10% increase from 2003.¹⁷

3.6.2. Alcohol-related admissions to Accident & Emergency departments

Looking specifically at alcohol’s impact on A&E, the best data available suggests that alcohol-related admissions have increased slightly since 2009/10 from 546,000 to 610,000 in 2012-13.

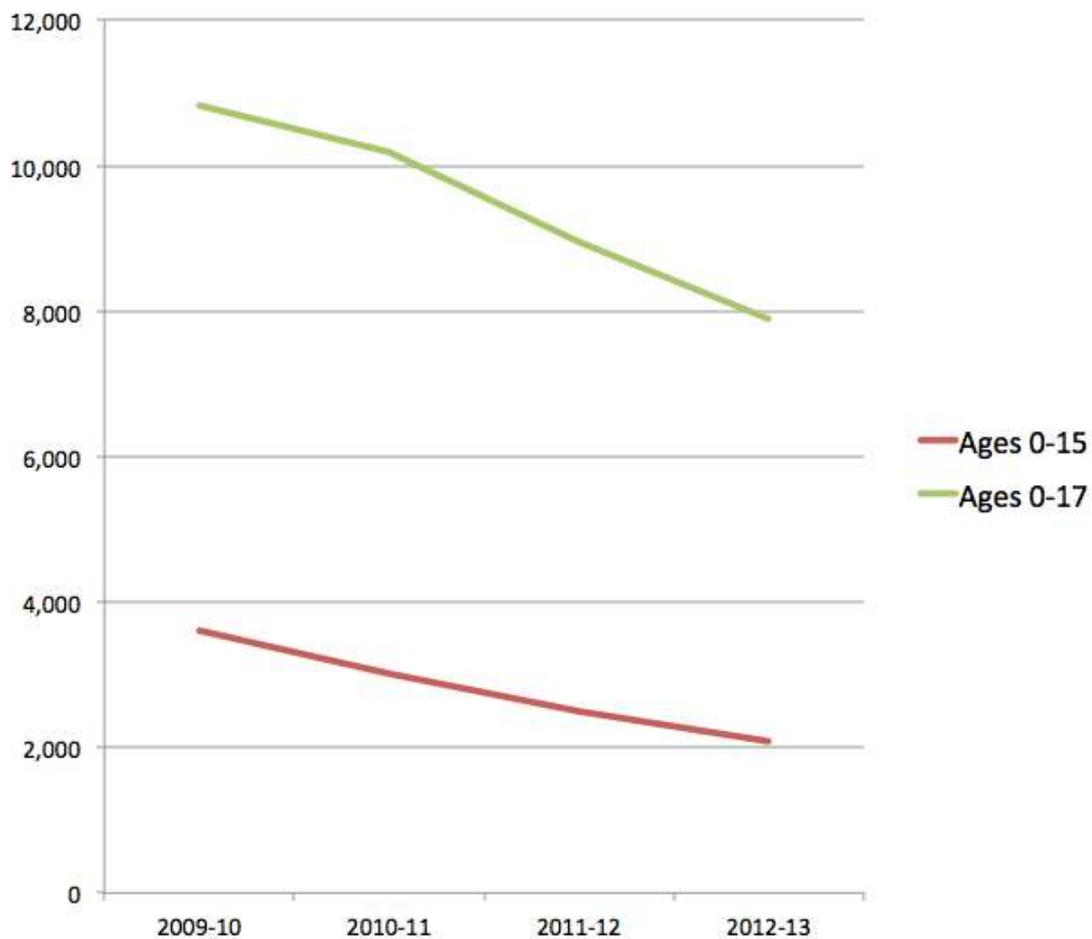
Figure 3.14 Partially, wholly and combined alcohol attributable fractions (AAFs) to A&E for all ages across the UK between 2009/10 and 2012/13



3.6.3. Under-18 alcohol-related hospital admissions

The number of children being admitted to hospital for alcohol-related reasons has decreased significantly in the last few years, which suggests that it has become increasingly difficult for minors to access alcohol. This will be discussed in more detail in chapter 6.

Figure 3.15 Number of hospital admissions (both wholly and partially alcohol-related) for those aged 15 and under and 17 and under



Source: [Hansard, 8 July 2014 : Column 226W](#)

There is a well-known time lag between alcohol consumption and certain alcohol-related diseases. Many alcohol-related harms are still on the increase despite that fact that overall consumption is declining. It may be that hospital admissions will in time start to decrease because of the fall in consumption, however, better economic prospects may prevent this by stimulating an upturn in alcohol consumption.

4. The cost of alcohol to society

There is some debate about the social costs of alcohol and up to date research into this issue would be welcome. The current official Government estimate is that the cost of alcohol to society in England and Wales comes to £21 billion a year. This is made up of:

- NHS costs, at about £3.5 billion per year (at 2009–10 costs)
- Alcohol-related crime, at £11 billion per year (at 2010–11 costs)
- Lost productivity due to alcohol, at about £7.3 billion per year (at 2009–10 costs, UK estimate)¹⁸

As pointed out in a recent IAS report on alcohol's harm to others,¹⁹ in addition to these factors there are costs to family and social networks that cannot be quantified easily using available data, for example the cost to children affected by parental alcohol problems. This

was the approach taken by the National Social Marketing Centre in 2007, which estimated the total annual societal cost of alcohol misuse in England to be £55.1 billion including:

- £21 billion cost to individuals and families/households (e.g. loss of income, informal care costs)
- £2.8 billion cost to public health services/care services
- £2.1 billion cost to other public services (e.g. criminal justice system costs, education and social services costs)
- £7.3 billion cost to employers (e.g. absenteeism)
- £21.9 billion in human costs (DALYs).²⁰

More detailed, and more up to date, cost data on the national impact of alcohol would be welcome.

¹ British Beer and Pub Association (2015) *Statistical Handbook 2015*, p 64.

² British Beer and Pub Association (2015) *Statistical Handbook 2015*, p 68.

³ British Beer and Pub Association (2014) *Statistical Handbook 2014*, p 64.

⁴ BBC News (22 December 2010) Growth of the 'Big Four' supermarkets [Accessed 28 May 2015]

⁵ Hadfield. P., Measham. F., (2010) After the Act: Alcohol licensing and the administrative governance of crime. *American Society of Criminology*, Vol 10, Issue 1, p 73.

⁶ Office for National Statistics (2014), *ONS Nature of Crime Tables 2013-14, Violence*

⁷ Office of National Statistics (2015) *ONS Adult Drinking Habits in Great Britain*, 2013

⁸ Office of National Statistics (2015) *ONS Adult Drinking Habits in Great Britain*, 2013

⁹ Office of National Statistics (2015) *Statistical bulletin: Adult Drinking Habits in Great Britain*, 2013

¹⁰ Sassi, F.(ed.) (2015), *Tackling Harmful Alcohol Use: Economics and Public Health Policy*, OECD Publishing, Paris.

¹¹ Hadfield. P., Measham. F., (2014) The outsourcing of control: Alcohol law enforcement, private-sector governance and the evening and night-time economy. *Urban Studies*, p 4.

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¹³ Markowitz. S. (October 2000), 'The Price of Alcohol, Wife Abuse, and Husband Abuse', *Southern Economic Journal*, Volume 67, Issue 2, accessed from the National Bureau of Economic Research

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Section 2: Looking back on 10 years of the Act

CHAPTER 4: OVERALL VIEWS ON THE ACT

CHAPTER 5: THE ACT AND THE ECONOMY

CHAPTER 6: CRIME AND DISORDER – GENERAL TRENDS

CHAPTER 7: CRIME AND DISORDER – ENFORCEMENT

**CHAPTER 8: THE TRANSFER OF LICENSING FROM
MAGISTRATES TO LOCAL AUTHORITIES**

**CHAPTER 9: ENGAGEMENT OF LOCAL RESIDENTS IN THE
LICENSING SYSTEM**

Chapter 4: Overall views on the Act

Chapter summary

While many saw the Act as less bureaucratic and cumbersome than its predecessor, a number of participants stated that it had been written in an industry friendly manner, which caused problems for those enforcing the Act.

Most participants were unaware that the Act, Guidance and case law gives local authorities powers to promote the wider public interest as related to licencing.

Some local authorities do use their Statement of Licensing Policy to set out and promote a clear strategic vision of the local public interested.

There is significant scope to use the licensing objectives in a more even manner, making greater use of the public safety, public nuisance and child protection objectives.

The Act should not be seen as overly permissive, and it gives local authorities more discretion than many realise.

The inadequate fee system within the Act has caused significant funding problems in a number of areas.

This chapter provides an overview of the key issues and themes identified by participants. Many of these are explored in more detail in later chapters.

There were very mixed views on the overall success of the Act. Many pointed out that the exaggerated fears about 24-hour drinking and increased violence had not been borne out, while also highlighting the absence of the promised benefits associated with an idealised, Mediterranean café style culture. As a result of this some thought that the Act had not made much of a difference either way and described it as a qualified success. Others strongly disagreed.

Understandably participants from different backgrounds had varying views. Police officers were commonly critical of the impact that extended opening hours had had on their work, whereas many licensing officers saw the Act as relatively straightforward and liked its strong compliance powers. Representatives from the licensed trade also tended to take a favourable view.

There was wide disagreement between participants as to what licensing could and should achieve. Some thought that licensing should be preventative and regulatory, and although no one explicitly said so, have regard to a wider view of the public good. Others thought that it should be used in a purely administrative way, supporting business and individual freedom, but with quite a narrow overall scope and limited concern for wider impacts.

Academics and participants from a public health background tended to be more critical of the Act; a number of these stated that the Act had been based on an out-dated notion that most people drink in a pub or bar, when in fact it has been a long time since this was the case. The majority of participants thought that the Act had led to a large increase in the off-trade, and saw this as a problem. There was also a common view that the Act was very reactive, overly permissive and that it was hard for local authorities to take proactive action to shape their local area.

1. As a regulatory regime

There was a very widespread view that the Act was less bureaucratic and cumbersome than its predecessor in its day-to-day operation. In particular interviewees mentioned the fact that the Act had done away with the slightly farcical use of Public Entertainment Licences to obtain extended opening under the former Act.

Most participants stated that the Act provided for better local coordination and joint working across most of the related services. One police officer mentioned that this move to better coordination had started with the Crime & Disorder Act (1998), which introduced Crime & Disorder Partnerships. He saw the Licensing Act as having successfully built upon this approach.

It was also suggested that this cooperation extended to the licensed trade, with one stating that:

The police, local authorities and licensed trade can all get on the same page now and work together without the hostility of the old system

Participants from the licensed trade echoed this, and reported that it was now far easier to build constructive relationships with council officers, which often resulted in smaller

problems being fixed in a mutually beneficial way that had not been possible under the former regime.

Police representatives also reported that they were able to 'work around the Act' in a beneficial way, often cajoling premises into action with the threat of strong enforcement powers if this approach does not work. The ability to put conditions on a license was widely seen as a success, although disliked by some in the licensed trade.

Despite these improvements a number of participants, particularly from the licensed trade and those with a legal background, thought that licensing had been clearer and more evenly enforced between different areas under the old system. Long time delays were also mentioned within some local authorities that had not been experienced before the Act. Some were of the view that while Scotland has a more restrictive licensing system, it provides a clearer regulatory environment for retailers to work in. Scotland also has tighter regulations and more training for personal license holders. A number of participants with knowledge of both systems preferred the more rigorous Scottish system.

Some, particularly licensing officers and those with a regulatory background, stated that the Act had caused them problems by:

not addressing the fundamental problem of fees

and that in many areas local authorities were not able to get their licensing costs back through fees, meaning that the system had to be subsidised out of other council funds. Another licensing officer reported that:

Where problems occur, it's often within local authorities who can't afford to enforce and run things properly.

There was a general view that this would become increasingly problematic as a result of local government funding cuts, and many participants from local authorities, although not all, wanted to be able to set their own local fees.

2. Café culture and the influence of industry

While the Act's administrative functions and compliance tools were generally liked, a number of the Act's basic principles and assumptions were questioned by participants. One stated that the Act was designed with 'leafy London suburbs in mind', and failed to take account of other differing local contexts. This was particularly in relation to the fact that the cumulative impact of premises was not taken into account, though as a result of pressure subsequent guidance has sought to address this issue.

The assumption within the Act that the market would always provide 'good' outcomes is regarded by many as too simplistic and overly pro-business. Others reported that the Act failed to take into account recent night-time economy developments in the mid to late 90's, including the build up of high numbers of premises in many city centres.

A number of interviewees argued that the Act had been shaped significantly in the drinks industry's favour, and used by Tony Blair as part of his 'modernisation' project, while others reported that DCMS had effectively been 'industry lobbyists.' As a result of this some stated that local authorities were left with very limited powers to influence their local night time economy. It was generally considered that things were a little better now, but that some

areas had lost control completely and not yet managed to get back on the front foot. One participant from a regulatory background in a large local authority stated that:

The process is frequently out of sync with local needs – it's difficult to put local needs and views into practice... there's little power to shape our local area, the law is on side of the market, not local authorities.

Another interviewee, from a similar background, shared this view although reported that there had been some improvement:

It (the Act) was so stacked in favour of industry to start with, it's a little better now, and councils have some ability to shape their night time economy. Some did lose control completely though and have not been able to catch up with things

A number of people were aware of the controversy surrounding the evidence base for extended closing times and the gradual dispersal of people. Most stated that in practice, extended closing times had only succeeded in shifting problems later into the night, but had not reduced levels of violence. A number of people also reported that it had acted to encourage preloading, because of the fact that people now head out later.

In place of the relaxed café culture that later closing times were meant to foster, many interviewees thought that the Act had encouraged the growth of the off-trade and city centre circuit bars. While there was a general view that this was problematic and led to negative side effects, many also stated that the media predictions that 24-hour licensing would lead to chaos had not materialised.

3. A work in progress

For some the transfer of licensing from the Department for Culture, Media and Sport to the Home Office, and the corresponding 'rebalancing' of the Act, had improved things. Others though saw this as rather tokenistic. They stated that in practice, the Act had been shifted towards the crime and disorder objective, and that it could have been used in a very different way, utilising the other objectives more often.

Overall there was general criticism of the way in which the Act had been pushed and pulled in various directions between government departments. Some regarded this as disappointing but necessary given the Act's unstable foundations and original focus, whereas others saw this as generally unhelpful. Some participants were critical of some of the alterations to the section 182 guidance, which at times they saw as stretching the Act in ways not originally intended, such as to deal with legal highs.

A number of people suggested that local authorities were still getting to grips with certain aspects of the Act, such as the move to a more policy led process with a larger role for Statements of Licensing Policy. While most appreciated that the Act offered much greater opportunities for local residents to become involved with licensing decisions, responses imply that in many areas things are not much more accessible or transparent than under the previous system.

4. The impact of the Act

A number of academics pointed out that there had only been a few formal evaluations of the Act, and that these had generally been of limited scope. They noted the lack of proper

evidence for the principles used to sell the Act, and suggested that this was a symptom of the same issue; that without considered formal evaluations policy quickly moves onto new ideas and fails to learn the lessons, both positive and the negative, from previous initiatives. As one participant put it:

The government has a duty of care to evaluate its actions, and properly determine whether policies are working or actually causing harm. This hasn't happened with the Act, and too much time's passed now for it to be done properly

5. Moving forward

Overall, participants stated that there was appetite for limited reform to the Act but not a fundamental review, although some of the follow up comments included issues that could be seen as fundamental to the working of the Act. One academic reported that there was a need for reform:

Not because of the 24-hour (opening) issue, but because the system is not geared up for current retail environment regarding off sales, the Act is way out of date in this way. There is some appetite for reform but no groundswell; you'd need to make argument properly.

Other participants reported that there were good arguments for a fresh look at the Act, but that there was a limited appetite for this. One police representative stated that:

You should recognise both the good and bad bits, the Act offers a good framework for a problem solving approach, for prompting change, and with clear offences and scope for robust policing. But the limits of the four objectives are a problem, as is the premises by premises approach.

A number of participants echoed these comments, talking positively about the administrative and enforcement elements of the Act, but raising the limitations of the decision making approach and the four objectives. There was a fair degree of agreement around the areas which should be reformed, which included the addition of a health objective, the ability to look at premises within an area rather than only individually, the need for licensing fees to cover their costs on a local level, and for workable versions of the Early Morning Restriction Order and Late Night Levy to be introduced.

A number of licensing officers, regulatory officials, and some from the licenced trade, commented on the continued deregulation of personal licences, and saw this as a problem, particularly in light of child sexual exploitation problems within taxi licensing in recent years. The continued deregulation of licensing, was also seen as complicating things by introducing new forms of licence. In addition one or two were critical of the continued confusion around interim steps and the Home Office's refusal to clarify the situation. Although not traditional licensing issues, most participants also expressed a desire for minimum unit pricing because of the problems they faced related to very cheap alcohol.

Representatives from the licensed trade tended to disagree with all of these suggestions, stating that there was no appetite for reform and that the Act was only 10 years old, and had already been tinkered with considerably. Although, with that in mind, one participant from a regulatory background stated that:

The Act's been continually tinkered with, it's a bit of a mess really, would it be better to start again and do it properly?

Discussion

6. Differences in theory and practice

While participants were clear that the Act was an improvement regarding the day to day administration of the licensing regime, there were common complaints about the restrictions placed upon local authorities by the Act. While these probably give an accurate reflection of the way in which the Act has been used, there is strong evidence that local authorities have made things difficult for themselves by not using all their available powers under the Act.

To some extent, the money and legal power available to sections within the licenced trade are key reasons for this, having shaped the practical application of licensing to their advantage quite frequently. This however has not often been challenged by local authorities taking a close reading of the guidance and case law, and many also take specialist legal advice far too infrequently. As a result, possible solutions to many of the complaints from local authorities lie within the guidance and relevant case law, which could be used to apply the Act in a slightly different way.

7. Clarifying the Act's basic principles

Given the Act's history and the way in which it has been pushed and pulled in different directions, it is perhaps no surprise that there was wide disagreement between participants as to what licensing could and should do. The fact that the Act's foundations are somewhat confused does not help this, nor do the alterations made to the Act in its first ten years.

In some ways these amendments have clarified the Act's use, but some have described these changes as 'legislative repentance'¹ and an unfortunate shift towards the 'management of drunkenness'.² It has also been suggested that new laws were passed when more should have been done to ensure that existing laws were actually enforced properly.³ Previous research with police officers has raised concerns about the effectiveness and short-termism of the rebalanced Act, identifying a:

General inability of area and person specific powers to address many of the underlying causes of drink-related crime and disorder.⁴

However, in practice most participants regarded the Act as deregulatory, with market principles at its heart, if somewhat reactive, overly permissive and lenient towards the licenced trade. Given the fact that alcohol can have a positive impact, both in terms of the economy and individual enjoyment, as well as causing significant harms, there will always be a tension between the two. The question is whether this view is accurate and whether, in practice, the 2003 Act got the balance right.

So, what is the Act's overall aim for licensing? All participants were well aware of the four licensing objectives, but many seemed to consider them on their own, divorced from the context in which the guidance places them. Looked at in this way they are still objectives, but those objective appear rather one-dimensional. They lack an overall direction or aim. Clearly the licensing objectives are important, but what exactly do they seek to achieve?

The s 182 Guidance places the objectives within a wider context, with para 1.5 stating that the Act:

also supports a number of other key aims and purposes. These are vitally important and should be principal aims for everyone involved in licensing work. They include:

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

While this is not the clearest section in the guidance relating to licensing's overall context, it does help to put flesh on the bones of the objectives. The first two bullet points to an extent replicate some of the substance of the objectives, while the third is supportive of responsible premises and the constructive role licensed venues can play in communities, pointing towards some of the wider positive issues local authorities should consider.

In contrast the fourth bullet point concerns some of the negative outcomes relevant to licensing, making it clear that local authorities should be able to use the Act in a powerful and strategic way. This sits at odds with the complaints from many participants that the Act does not allow them to do this, an issue we returned to later. The fifth reflects the need for local residents to have a significant voice in licensing in their community, which is also a key concern.

While paragraph 1.5 is helpful in setting the licensing objectives in context, there is one key factor missing, the fact that applications should be determined:

With a view to promoting the licensing objectives in the overall interest of the local community (*s 182 Guidance, para 9.37*)

This, along with bullet point four under para 1.5, gives local authorities a strong steer that the public interest should be a key consideration under the Act. Including a statement to the effect that the licensing objectives should be promoted in the overall interest of the local community within para 1.3 would be a useful clarification to the s 182 Guidance.

The High Court has also commented on this, stating that in contrast to the judicial function carried out by a district judge, licensing authorities have an administrative function, which should involve regulating licensing in the public interest. Licensing is:

the exercise of a power delegated by the people as a whole to decide what the public interest requires (*Hope and Glory v Westminster [2011] para 41*)

The High Court has also determined that:

The relevant local authority is uniquely equipped and well-placed to make such judgments (*Taylor v Manchester [2012] para 73*)

So, local authorities should be clear that the Act gives them the power to have regard to the public interest, and promote it. This means that, to a reasonable degree, local authorities have the ability to decide for themselves whether they want to use the Act in quite a narrow, administrative manner, or in contrast to use it in a more powerful and expansive way – whichever of these they deem to be ‘what the public interest requires’ locally.

The fact that this approach is included within the guidance, and supported by the High Court, gives it significant strength. Yet perhaps with one near exception, no participant within the interviews seemed to be aware of this approach. This suggests that there is a real need for local authorities to reengage with the guidance and relevant case law, and to take specialist legal advice more often.

As noted above, representatives from a regulatory background within local authorities commonly made comments such as:

The (licensing) process is frequently out of sync with local needs – it’s difficult to put local needs and views into practice... there’s little power to shape our local area, the law is on side of the market, not local authorities.

Evidence suggests that given the way in which the Act is currently used this is a common situation in some areas, but it does not necessary have to be this way if local authorities better used their available powers.

In order to do this however, local authorities would have to take an informed and considered view as to what, in the context of licensing, the public interest in their area actually is.

8. A strategic approach to licensing

While the Act already requires local authorities to take a view as to what the public interest in their area is in relation to licensing, beyond guarding against irresponsible licensees reactively, very few seem actually to have done so. One legal representative interviewed stated:

When I do training with councillors I always ask them what their overall vision is for licensing in their area – very few have any real idea.

This issue will be dealt with in more detail in chapter 13. We stress, however, that the few authorities that have used their Statement of Licensing Policy to set out clearly what they see to be in the local public interest seem to have been far more successful in using the Act in a clear regulatory manner. A number of participants thought that there was a good deal of innovation currently in this area, with this approach also allowing councils to use the Act in a more proactive manner. So, whilst we have heard many complaints that the Act is fundamentally reactive in nature, we do not see this necessarily has to be the case.

A clear strategic approach could also be seen to offer opportunities for the licenced trade, with possibilities for the better engagement of, and support for, responsible premises that

can help to promote the objectives for public benefit. While it is a very theoretical approach, and very different from the practicalities of most licensing decisions, the High Court has stated that when determining the grant of a licence:

There is no controversy between parties, no decision in favour of one or other of them, but the decision is made for the public benefit one way or the other in order to achieve the statutory objectives (*Chief Constable of Nottinghamshire v Nottingham Magistrates' Court [2009], para 38*)

As a result, licensing could, or perhaps should, be about developing and pursuing the public interest. Those local authorities who do not take a clear view as to what this might be in their locality greatly reduce their ability to influence the development of the licensed trade, and are arguably not carrying out their full duties under the Act. In the absence of a clearly defined and followed strategy, market forces have a far greater opportunity to shape licensing.

9. Using the objectives more evenly

A few participants reported that licensing decisions very often depend strongly upon the crime and disorder objective, with too little consideration given to the other objectives. This was partly attributed to the 'rebalancing' of the Act when responsibility was moved from DCMS to the Home Office and police powers were strengthened.

It was also thought that there had been a shift to an overly evidential use of the Act which had moved the decision making process towards a more black and white assessment as opposed to an evaluative one. This had led to over-reliance on large amounts of easily quantifiable data. A shift in this direction does not necessarily appear to accord with the guidance and case law, and this is another issue to which we return later.

Where this shift has taken place, the crime and disorder objective is perhaps the most easily quantified, with local police data used to see what crime there is in an area, or linked to a particular premises. The absence of a clear understanding of how licensing should contribute to the public good in a given area may also contribute to the overuse of the crime and disorder objective. If this was clearly laid out, and all responsible authorities had regard to it, other wider community issues relating to the other objectives might be more easily identified and acted upon.

While the crime and disorder objective clearly has an important role, an overreliance on it perhaps stops issues related to the other objectives being explored, and it is possible to imagine a way in which the four licensing objectives are used in a more even way. This would not necessarily involve a shift away from crime and disorder issues. Rather the public nuisance and public safety objectives should simply be applied more widely, building upon the harmful (but not necessarily violent) impact alcohol can have on people besides the drinker, and better engaging with issues such as environmental health.

This approach has been taken by some local authorities, a number of whom have also worked to better include public health within licensing, utilising the change in 2011 which made directors of public health a responsible authority under the Act. Non-statutory guidance issued by Public Health England and the Local Government Association on how to achieve effective participation in licensing by public health teams also points towards ways in which the objectives might be used differently, stating that:

The role of the DPH (directors of public health) is to help promote the health and wellbeing of the local populations they serve. This is an expansive remit that influences a wide range of circumstances, including local licensing arrangements. Similarly, the licensing regime is concerned with the promotion of the licensing objectives, which collectively seek to protect the quality of life for those who live, and work in the vicinity of licensed premises and those who socialise in licensed premises. This focus on the wellbeing of the wider community via licensing is an important addition to public health teams' existing work to promote the wellbeing in their localities.⁵

While this could be more specific, drawing attention to the way in which licensing impacts on the 'wellbeing of the wider community' is useful is undoubtedly a beneficial addition to the Act's remit. The inclusion of public health within licensing's stated key aims links back to the previous section, and the fact that the Act should have a regard for the wider public interest. In the context of public health, and a generally more even application of the objectives, this could reasonably be understood as 'the quality of life for those who live, and work in the vicinity of licensed premises and those who socialise in licensed premises.' This approach is however at odds with the way in which many local authorities use the Act.

The addition of a health objective could go some way to allowing for a more even application of the current objectives, but may not expand the range of health issues beyond those that more innovative councils are already attempting to address via licensing. The risk averse nature of many local authorities, and the contested legal environment in which they operate, mean that the full extent of all the current objectives are unlikely to ever be explored fully. Adding an additional health objective could give local authorities the practical ability to do what they could, in theory, be able to do already if the current objectives were used more fully. This idea will be developed further in the second half of chapter 15.

A significant number of participants argued for the addition of a fifth health objective. While it is a slightly controversial idea for some, much of this appears to stem from a misunderstanding that the fundamental workings of the Act would apply in a different way to health, but there is no reason why this might be the case. However, before looking at the possibility of a fifth objective, as already exists in Scotland, there is a real need for licensing and public health teams in many areas to better establish how they can use the current system effectively, although some have done this well.

Pulling these themes together – the lack of an overarching licensing strategy in many areas, the fact that this should be informed by a clear view as to what the public good requires in an area, and a more even and rounded use of the licensing objectives – it seems that the current regime allows significant opportunities for local authorities to take a more proactive and assertive approach to licensing.

So, while many of the complaints from participants about the Act prohibiting and disempowering local authorities are true in practice, they are perhaps largely down to local authorities not using the Act to its full extent.

10. How permissive is the Act?

The fact that many participants saw the Act as permissive and overly lenient on the licenced trade was another common theme within the interviews. As stated by one participant from a regulatory background in a large northern local authority:

Take the automatic presumption to grant a licence for example, who does that benefit? But who does that hinder? We have to make the best of what we've got in the current Act, but it's not good enough. It should have protection of communities at its heart.

It is true that an application must be granted if no representation is made against it, something that reflects the Act's original pro business approach. Some participants mentioned that due to staff shortages they had at times found it difficult to put in representations, even for new applications within cumulative impact areas. Clearly this is worrying from a regulatory perspective, and evidences the need for reform to the licensing fee system within the Act. However, in itself it does not mean that the Act is permissive. Once a representation is made:

the licensing authority's discretion will be engaged (*s 182 Guidance, para 9.3*)

The Act then becomes a balancing regime, assessing the likely impact of an application on the licensing objectives. Given this discretion, the Act should only be narrowly permissive, and licensing authorities are required to:

Determine what actions are appropriate for the promotion of the licensing objectives in their area (*s 182 Guidance, para 9.41*)

This could involve granting a licence, granting with conditions attached, or rejecting the licence, and there is no reason why this should necessarily be used in a permissive manner.

Licensing committees are, though, often quite passive in both their decision-making process and the way they conduct hearings, which perhaps has the effect of making things seem more permissive. They could be far more proactive, and not only should decisions be made with regard to their Statement of Licensing Policy (SLP), which offers opportunities for them to be assertive, regulation 17 of the Hearing Regulations allows licensing authorities to be inquisitive and ask questions of any party. The High Court has confirmed this right, with relevance and materiality to the application the only limits to such questions (*Murco Petroleum v Bristol [2010], para 30*).

So, rather than passively accepting the information placed before them by either side, licensing committees have the opportunity to actively assess it against their SLP, detailing their own council's view of what licensing should be doing in that area, and to inquisitively engage with all parties involved. They could question whether the information presented to them tells the full story asking, for example: 'What other perspective might there be? Is the evidence presented accurately?' The s 182 Guidance, at paragraph 8.33, offers numerous issues on which all parties could reasonably be questioned, and many committees would be better informed by delving into these issues.

Of course, the practical application of the Act is not the same as the theory behind it, and many of the current problems and limitations on local authorities mentioned above are relevant here, particularly the shift towards overly evidential decisions. However, if used to its full potential, the Act should not be overly permissive despite the presumption to grant an application if no representation is made.

11. Licensing fees and the under-enforcement of the Act

Licensing fees have been contentious ever since the introduction of the 2003 Licensing Act, and a strong argument can be made that the Act could have been administered in a far more stringent way had local authorities been able to fund themselves properly from the start.

Participants were clear that problems have increased in some areas recently as a result of additional cost pressures due to cuts in local government funding. Not all areas have seen funding shortfalls, but the fee system is not flexible enough to cover the many varied circumstances faced by different local authorities across the country.

Writing in 2014, Roberts described the fee system as having:

Proved to be inadequate for many authorities, who, due to cuts in local authority expenditure, continue to struggle to supply the necessary officer time.⁶

The Local Government Association (LGA) have consistently raised this issue with the Home Office, estimating that alcohol licensing has cost local authorities across the UK a total of £183 million since the Act was introduced in 2005, which works out at £1.5 million of taxpayers' money per month being used to subsidise the licensed trade.⁷

The fact that the Police have also undergone significant cuts in many areas needs to be highlighted too; it seems very unlikely that cuts in budgets and resources for the two main enforcement bodies will not lead to enforcement problems within the NTE. These issues are discussed in more detail in chapters 11 and 12.

12. Better compliance

While in many cases the Act may not have provided local authorities with adequate money for their licensing operations, favourable comments about the Act's enforcement and compliance powers made in the course of this research tally with those found in other research.

An evaluation of the Act carried out in 2008 found a general improvement in the way that responsible authorities engage with licensing. It resulted in better co-working, and the ability to add conditions to a license was 'perceived as a key advantage'.⁸ Other research found improved stakeholder engagement, although primarily in urban areas, and commented that the Act seemed predominantly concerned with 'urban issues'.⁹

In a similar way to interviewees who talked of 'working around the act', research interviewing licensing professionals has found that using conditions and the threat of Review 'engages and focus the minds of operators' and that:

The power to Review a licence was seen by interviewees from regulatory authorities and the magistracy as perhaps *the* major key improvement brought about by the Licensing Act 2003 in comparison with the Licensing Act 1964 (as amended)¹⁰

On this administrative and compliance level the Act does seem to have made considerable improvements to the way in which licensing is carried out on a day to day level. As covered elsewhere, there is also a general perception that the transfer of licensing from magistrates

to local authorities has helped with this coordination and joint working, and police are also keen on their compliance tools.

13. Personal licences

A number of interviewees expressed concern about the deregulation of personal licences, including some from the licenced trade. Of particular concern was the fact that licences would not have to be renewed and the lack of effective lines of communication to ensure that an individual convicted of a relevant offence also had their personal licence revoked. Formal arrangements for this exist, but are commonly thought to be poor. Many of these concerns have also been expressed by the Institute of Licensing (IoL) and brought to the attention of the Home Office. After surveying members on this issue the IoL summarised the main concerns as follows:

- Personal licence holders failing to declare the licensing at court
- Courts failing to use their authority in relation to personal licence on convictions
- No ability for licensing authorities to address concerns once a personal licence is issued other than by way of prosecution
- Removal of the renewal effectively removing the opportunity to update personal licences
- Lack of any national database making it impossible to keep details up to date

One interviewee from a national retailer expressed very similar concerns within the interviews, and stated that the administration of personal licences in Scotland was far stronger, including mandatory training requirements. They also stated that they often have problems obtaining information on personal licences and would prefer a national database of personal licence holders.

14. Lack of detailed evaluations

Criticism of the lack of proper evaluations carried out on alcohol policy is a common theme in the literature.^{11 12} Not only does this prevent proper consideration of how effective policy is, but it has a direct impact on future policy, whereby initiatives are:

often hastily introduced, ill-thought out and aimed more at securing political capital rather than a considered approach to the issue of alcohol-related crime and disorder¹³

This issue is not unique to alcohol policy, although some participants seemed to think that this area was particularly badly affected. Unfortunately, things do not seem to be improving, with only limited resources put forward by the Home Office for the evaluation of the Local Alcohol Action Areas, which concluded in May 2015. Scotland offers a better example when it comes to evaluating the impact of alcohol policy. The multidisciplinary Monitoring and Evaluating Scotland's Alcohol Strategy (MESAS) team have produced thorough annual evaluation reports since 2011, covering all aspects of the Scottish alcohol strategy, not just licensing.

15. Summary

The Act seems to have made a genuine difference to the way in which licensing professionals work together, and the way in which they engage and cooperate with the trade. While the results of this are perhaps slightly intangible, being able to address issues before

they escalate into problems is undoubtedly a good thing, as is having strong options available if cooperation in this manner does not work.

These positives are important, but so too are the Act's problems. In some ways the Act was designed as if to deal with moderate suburban NTEs, and funded as if to accommodate small rural ones. The ability to deal with and fund licensing teams, for problems arising out of built up urban environments are generally lacking. Even so a close reading of the Act, guidance and relevant case law offers local authorities far more options for tackling alcohol-related issues than many currently realise.

Recommendation: Better application of the s 182 Guidance in practice

It is evident that there has been a failure to have proper regard to the s 182 Guidance and we encourage all parties to engage with it fully. As per paragraph 1.7, all those involved in licensing should be clear that:

It is a key medium for promoting best practice, ensuring consistent application of licensing powers across England and Wales and for promoting fairness, equal treatment and proportionality.

During the 'rebalancing' of the Licensing Act consultation, the Home Office put on a national road show to encourage better engagement with the guidance, and perhaps this could be repeated, as well as working with the Institute of Licensing and the Local Government Association towards this end.

Recommendation: The use of proper evaluations in order to assess the impact of legislative changes, and inform the development of future initiatives

This has been lacking from alcohol policy in England and Wales for some time, and numerous opportunities to properly learn from policy changes have been missed. Lessons could be learned from Scotland, where the Monitoring and Evaluating Scotland's Alcohol Strategy (MESAS) programme evaluates the impact of the cross departmental alcohol strategy.

¹ Hadfield. P., Measham. F., (2014) The outsourcing of control: Alcohol law enforcement, private-sector governance and the evening and night-time economy. *Urban Studies*, p 3.

² Hadfield. P., and Measham. F., (2011) Lost Orders? Law enforcement and alcohol in England and Wales. Final report to the Portman Group, p 8.

³ Hadfield. P., Measham. F., (2014) The outsourcing of control: Alcohol law enforcement, private-sector governance and the evening and night-time economy. *Urban Studies*, p 3.

⁴ Hadfield. P., Measham. F., (2014) The outsourcing of control: Alcohol law enforcement, private-sector governance and the evening and night-time economy. *Urban Studies*, p 9.

⁵ Public Health England & the Local Government Association (2014) Public health and the Licensing Act 2003 – guidance note on effective participation by public health teams. p 5.

⁶ Roberts, Marion (2014) *A helping hand? The contribution of the night-time economy to the evolving high street*. In: Wrigley, Neil and Brookes, Erin, (eds.) *Evolving high streets: resilience and reinvention. Perspectives from social science*. University of Southampton, pp 27.

⁷ Local Government Association (February 2015) LGA responds to Government decision to reject locally-set licensing fees

⁸ Hough. M., Hunter. G., Jacobson. J., Cossalter. S., (2008) The impact of the Licensing Act 2003 on levels of crime and disorder: and evaluation. Home Office, p 4.

⁹ Foster. J., Herring. R., Waller. S. Thom. B., (2007) Implementation of the Licensing Act 2003: A national survey. Report to the Alcohol Education and Research Council, p 41.

¹⁰ Hadfield. P., and Measham. F., (2011) Lost Orders? Law enforcement and alcohol in England and Wales. Final report to the Portman Group, p 22.

¹¹ Hadfield. P., Measham. F., (2014) The outsourcing of control: Alcohol law enforcement, private-sector governance and the evening and night-time economy. *Urban Studies*, p 9.

¹² Light. R., (2010) Alcohol licensing, crime and disorder. Published in Herzog-Evans (ed) *Transnational Criminology Manual*, Wolf Legal Publishing

¹³ Light. R., (2010) Alcohol licensing, crime and disorder. Published in Herzog-Evans (ed) *Transnational Criminology Manual*, Wolf Legal Publishing

Chapter 5: The Act and the economy

Chapter summary

It is hard to determine the actual impact of the Act on the economy; it does seem to have provided a positive economic environment but other factors have almost certainly been more important.

A number of interviewees described the economy as the 'unofficial fifth objective'. Most felt that the Act had been good for the licensed trade, particularly the off-trade, although this was thought to vary from area to area.

It was reported that extended opening hours had caused people to shift their night out backwards, but not to extend its length or spend any additional money.

Some stated that sections of the licenced trade felt competitive pressure to remain open into the small hours, despite low takings.

Negative competition related to high concentrations of off-trade premises was mentioned, leading to circumstances that undermined the licensing objectives.

Given the huge number of variables involved, there is no clear method of identifying the specific impact of the Act on the economy. As detailed in the methods chapter, most participants were from local government, the police, academic or legal backgrounds, with only a few participants from the licenced trade. As such, not many had a direct knowledge of the Act and its economic impact as a result of having operated a business.

1. Overall views

Asked for their general perceptions on this issue, most participants felt that the Act had been good for the licensed trade, particularly the off-trade, although its impact varied from area to area. The majority of participants mentioned areas they knew that had seen significant growth in their night time economy since the Act came in, within rural areas and market towns, as well as large urban areas. One licensing officer stated that:

The town centre has developed a lot under the Act, the premises are doing well, and with low crime rates, but other areas haven't seen this.

Differences in economic performance, and crime rates, depend upon a far wider range of factors, and that the Act is not necessarily a catalyst for growth, although it could have a clear and deliberate economic impact in certain circumstances.

A number of people stated that in some areas the night time economy had been used for the express purpose of encouraging economic growth since the 2008 banking crisis. Some also mentioned that gambling had been used similarly. While the Act should not, in theory, take economic issues into account, many participants reported that this happened quite frequently in some areas, resulting in regional differences. A number of interviewees described the economy as the 'unofficial fifth objective.' As one licensing officer put it:

Local authorities are asked to face in two directions at once, and economics almost always wins

Some did not see this as a problem, and stated that local authorities had to balance a wide range of potentially competing interests. Others, though, commented that the negative impacts of alcohol on the wider public sector were at times ignored by those seeking economic growth, with one interviewees reporting that:

It's been good for the narrow night time economy sector, but I think it's had a big impact on health, obesity, crime, and anti social behaviour – with all that added in I think it's probably been negative to economy overall.

The interviewee was, however, unable to quantify this further though, and not all of these impacts may be attributable to the Act directly.

Despite a generally positive economic view, many participants reported a significant slowdown in the night time economy since 2008, particularly outside of larger conurbations. Many interviewees said that while Friday and Saturday nights were often still busy, other nights were noticeably quieter than in previous years. Some also talked about the impact of increasing high street rents, and that in some areas this was perhaps the biggest issue facing the licensed trade.

Large regional variations were mentioned, such as those between Newcastle and Gateshead, which was discussed at one of the workshops. It was reported that the size and

fairly compact nature of Newcastle's city centre had allowed it to impose a Late Night Levy (LNL) in order to raise funds, an option that was not open to many other areas (see chapter 10). Participants from the area stated that there was strong political support for action to reduce alcohol-related harms, but that the economic contribution of the NTE was valued too. Some stated that businesses within the NTE had had a difficult time in recent years however.

Despite being just over the river, it was reported that Gateshead had not been able to use the Act in as effective a manner, despite political support. Part of this was thought to be the result of the Act, but part of it was attributed to the fact that Gateshead's local economy is structured very differently from Newcastle's. In particular there is a large off-trade in Gateshead, which the Act was seen to be less able to deal with effectively.

The price difference between the on- and off-trade was frequently cited as a problem by interviewees, and viewed as contributing to pre-loading, excessive drunkenness and low level spending in the on-trade. This was acknowledged by almost all participants, including some from the licenced trade. Without prompting, the vast majority of participants suggested minimum unit pricing as part of the solution to this issue.

2. The economic consequences of opening hours

Quite a large number of interviewees from a regulatory background stated that the introduction of longer opening hours had changed the way people drink - not towards that of a café style culture, but that people started their night out later and so had more time to drink at home. It was reported that this later start time meant that in practice people did not spend any longer than they used to out in the on-trade, and quite a number of people thought that longer opening hours had in many cases worked out to be a false economy for the on-trade.

Many participants reported that this had both economic and social implications, with people coming into the night time economy more intoxicated, and then reportedly spending less money in the on-trade as a result. Some participants mentioned premises taking only £2.50 or so a head in the small hours, and some were thought to rely primarily on entrance fees for a profit at these times, but there was a common view that premises felt pressure to stay open late because of the fact that others nearby did, although not all venues follow this pattern.

Reflecting another regional variation, it was mentioned in one area that new groups of people had started to come out into the on-trade earlier on in the evening, but that they had left by around 11pm when more alcohol focused groups arrived. Some areas had consciously tried to diversify their offer to encourage people out into the NTE who would otherwise have stayed at home. Many reported that this was very difficult to achieve in practice though, and that the Act had little to do with it. Some participants mentioned that they did not think that the Act had brought about greater diversification within the NTE, although this was a stated aim of the Act.

One participant, from a regulatory background in a northern city, attributed the closure of 40% of their local night time economy to the negative competition caused by late closing times. In contrast, it was mentioned that there had been a universal 2am closing time Durham City for years, as a result of a 'gentlemen's agreement' between the trade, the police and the council, and that all parties saw this as beneficial. Other areas had tried but failed to introduce similar agreements.

Overall participants thought that the idea of having staggered opening times set by the market did not work in practice, as premises tended to copy each other and move together (this issue is addressed in more detail in the next chapter). It was thought by most that local authorities and the police should have a greater say in determining closing times, taking into account the full range of local circumstances. While some participants thought that it would be beneficial to move standard closing times forward to between 1am and 3am, depending on the situation, only very few wanted to see things brought forward beyond this.

Participants from the licensed trade were against any restrictions on opening hours, and it is worth mentioning that some venues only open at 1am or so, and would not expect to be busy before 2 or 3am. However, there seemed to be a clear view amongst participants that extended opening hours been a 'mixed blessing' for the on-trade.

3. The off-trade

The Act's original inability to deal with the impact of high concentrations of licensed premises is considered elsewhere. In addition to the antisocial and criminal implications, some interviewees were very critical of the Act's micro-economic impact where there is a concentration of off-licenses, resulting in tight price competition.

Interviewees reported that this competition had pushed businesses into selling to children, to street drinkers, and prompted them to sell counterfeit alcohol. In contrast greater economies of scale allow large retailers higher profit margins, and so it was commented that this affected them less. In fact, many saw supermarkets and their very low prices as helping to drive this downward price competition. The impact of supermarkets and very cheap alcohol was recognised by virtually all participants, including some from the licenced trade.

A number of people also commented on the changing face of corner shops and convenience stores, and some saw the Act as having played a central role in shifting them towards an alcohol based business model. Convenience stores:

Used to primarily sell newspapers, milk, bread and sweets, but now most are just off-licences with a few other bits on the side

One licensing officer mentioned a corner shop he knew well, where alcohol made up three quarters of their £250k annual turnover, and stated that this was a common scenario in their area. However, some said that this shift towards alcohol within newsagents was a sign of retailers doing what they can to keep their business going, particularly since the recession, and less related to the Act, which is only one factor among many.

While saturation of premises was reported to cause problems in terms of compliance with the Act, the reliance of many small shops on alcohol was reported to cause problems in terms of sustainability and negative unintended consequences. One participant mentioned a deprived estate that had only one convenience store; they were well aware that alcohol caused significant problems in the area, but also that if the business lost their licence for any reason the whole store would close, depriving the estate of their only shop. Another participant mentioned a corner shop that also housed the local post office. In their view alcohol sales supported the post office, and without those sales the post office would close. They commented that in practice they might have to be more lenient in dealing with any problems related to that licence because of the potential knock on impact on the post office.

Discussion

4. The economic impact of the Act

While participants did mention the growth of the off-trade, they primarily talked about the economic impact of the Act in relation to the NTE. This is probably because of the fact that the on-trade is more visible, both in physical terms within town centres, and in terms of its knock on impacts. However, when trying to look at the economic impact of the Act a distinction needs to be made between the on and off-trade; while they do impact on each other, their retail environments are very different.

It is difficult to identify the Act's direct impact on the economy because of the huge number of other variables involved, such as the general state of the economy and consumer spending, although there are indirect ways of looking at its economic consequences.

4.1. The on-trade

Economic consultancy TBR compiles its own Night Mix Index (NMI) which is the only specific measure of the core economic activities available for this sector and is used by many public bodies. Figures from this index show that there has been steady growth in terms of both economic output and the number of firms within the core night time economy over 2004 to 2013.

The definitions used behind the statistics in this section of the report have been applied in major research studies in the UK and internationally and are based upon the international Standard Industrial Classification (SIC) used by ONS in the UK. The key constituents of Core Evening and Night Time Economy (ENTE) businesses are:

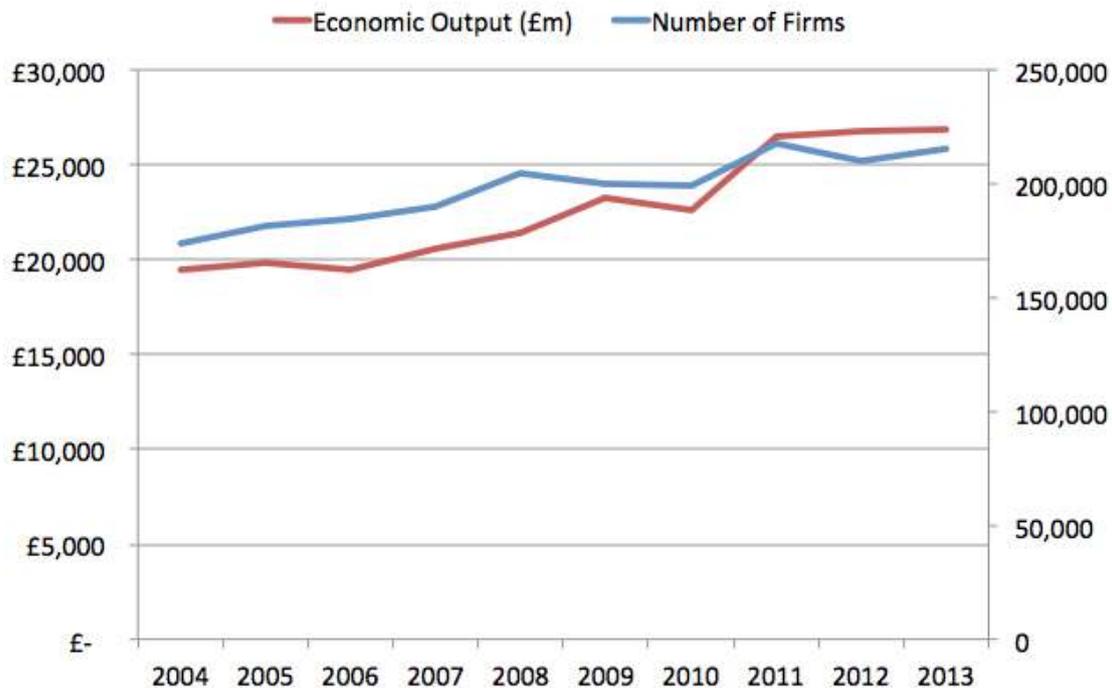
- Drink-led outlets
- Food-led outlets
- Entertainment led outlets

They are defined in a combination of 5 digit SIC classification and business activity. Non-Core ENTE which are not exhibited here describe the activities in broad sector classification that are connected through service provision to Core activities to a greater or lesser degree. This includes non drink retail; accommodation, transport, hospital and police services and other public service provision.

Core activities constitute the driving catalyst of the night time economy but they do not include activities such as retail trading which remains primarily a day time activity or hotels and guest houses. These sit with the TBR wider Non-Core or supply chain definition.

Licensed premises fall mainly under drink-led businesses although they also form part of entertainment and food-led businesses. Figure 5.1 illustrates the Core-NTE trend between 2004 and 2013. Economic Output is an estimate of the Gross Value Added delivered by NTE Core Firms.

Figure 5.1 Core Night Time Economy statistics for England and Wales from the TBR Night Mix Index (with thanks to TBR for providing the data)



It is unlikely that the broad increase in Value Added and in Firms has been strongly influenced by either former or current Licensing Acts. The primary drivers relate to changes in disposable income and the propensity of consumers to spend money on this range of activities as part of their leisure activities.

The fact that there has been steady growth in the night time economy over the last ten years, with only a short dip as a result of the global financial crisis, suggests that the public has a strong appetite for the NTE. However, it is the view of the leading TBR specialist in this field that the potential for growth may not have been optimised. This is primarily because the strategic arguments surrounding the benefits of better engaging families in the Early Evening economy are not made in an integrated and collaborative way. The negative publicity surrounding the late night economy also causes problems for participation.

The problems raised here about a lack of integrated and collaborative planning could be seen to mirror those elsewhere in this report about the absence of a strategic focus from local authorities in regard to licensing.

4.2. Diversity within the night time economy

One of the stated aims of the Act was to increase diversity within the NTE, but some participants stated that they did not think this had happened. Other research has come to the same conclusion, finding no evidence that new varieties and types of premises has opened, with the one exception of lap-dancing establishments, which had doubled in number nationally at the time of the study.¹

A previous IAS report, done in conjunction with the University of Westminster, found that licensees regarded the smoking ban as having done more to prompt them towards family and food orientated outlets than the Act, and that while there had been a slight change in the diversity of premises in some areas, this was probably not related to the Act.^{2 3}

It was probably unwise ever to make the claim that the Act could be used to stimulate greater diversity. Diversification within the NTE is driven primarily by providing services that chime with the interests of people who would otherwise stay at home. As such, consumer demands and preferences are likely to be more important than legislation.

The 2008 DCMS evaluation of the Act reported that:

It is too early to identify any pattern of change in types of venues and the diversity of the sector.⁴

10 years on from the introduction of the Act, there is little evidence that things have moved on from this, and it seems that the Act has failed on the stated aim of increasing diversity within the NTE, with a range of economic factors pulling in the other direction.

As mentioned by participants, it is difficult to stimulate diversity within the NTE and attract new groups of consumers. It could only really be achieved if all key trade and local authority stakeholders agreed a comprehensive approach to change the nature of the NTE offer and appeal to a wider range of groups. Such an approach could also be used to reduce the likelihood of negative impacts and to coordinate with the needs and concerns of local communities.

4.3. Takings in the early morning

Efforts to find data on the amount of money that licensed premises take in the early hours were unfortunately unsuccessful. There are however reports of premises taking only small amounts within other published research on the night time economy. The 2008 Hough et al evaluation of the Act for the Home Office carried out interviews with 105 licensees and other night time economy business owners, finding that:

Most respondents reported no great increase in trade or profits as a result of extended opening hours, particularly when assessed against the additional overheads required for staying open longer. They also observed that customers tended to have a finite budget for alcohol; they might stay out later but this did not necessarily mean they would buy more drinks over that period.⁵

Research in the UK seems to back this up, finding that only 20% of sales made between 6pm and 6am occur after midnight.⁶ This only refer to drinks, however, so may not be fully representative of all takings. Other work interviewing those who work in the night time economy found that:

Licensees believed that the night out had extended later, rather than longer as a result of the removal of licensing restrictions and therefore resulted in them getting to bed much later without an associated increase in overall profits. They felt unable to close earlier than their competitors and therefore pressurised into later closing times.⁷

However, this sits at odds with many of the arguments put forward by the licenced trade, such as representations made at the Blackpool Early Morning Restriction Order (EMRO) hearing that the measure would have a significant impact on the financial viability of the licenced trade. This though, might not be a very representative case.

While competition can have positive results, it is also recognised to be a mixed blessing in a number of situations, and extended closing times may well be one of those. As detailed in chapter 6, extended closing times have not produced the reductions in crime and disorder promised by ministers, but have led to significant problems for the police, and possibly for sections of the licenced trade too. The example of Durham, where all venues voluntarily close at 2am, shows that leadership and cooperation can produce mutually beneficial results, but this seems rare. It also demonstrates that closing times, as with many other issues related to licencing, are more of a political than an economic issue.

4.4. The off-trade

The economic impact of the Act stretches beyond the night time economy. As mentioned in chapter three, the growth of new premises outside the core NTE as defined by TBR has been led significantly by off-trade retail.

It has not been possible to find any economic figures on the performance of the off-trade. As detailed in chapter three, the fact that BBPA figures show that the off-trade has outgrown the on-trade in the last 10 years suggests that this area has outstripped the core night time economy.

This is probably illustrative of the fact that the off-trade operates within a different retail context, as well of the fact that the Act has a marginal effect on the economics of the NTE. However, another factor in the growth of the off-trade could be the decision making process within the Act, which as commonly applied focuses on the proximal and short term harms relating to the sale of alcohol, excluding wider and longer term issues.

4.5. The economics of corner shops

As with a number of the issues, there is very little data or research available on the role alcohol plays in the economics of corner shops. However, Davidson, Forsyth and Ellaway have looked into this in Scotland. Their research found that the expansion of supermarkets has had a significant impact, and that:

Local shops are unable to compete with supermarkets and their drinks prices are generally higher as a result. Yet despite this, (in)direct alcohol sales are extremely important to the majority of licensed shops.⁸

As a result of this some shopkeepers are vigilant in complying with the law, as alcohol is an important source of revenue for them. However:

Some unscrupulous shopkeepers may be more inclined to bend or ignore the law (e.g. selling to an underage person) as a stream of additional revenue, particularly if they know the legal technicalities in the test purchase system.⁹

5. Economic considerations within the Act

As already mentioned there is an inherent tension here. On the one hand, licensing was moved from magistrates to local authorities to prompt more joined-up local decision making, and local authorities are naturally concerned with their local economy. Yet on the other hand there is no economic objective. The Late Night Levy also introduces economic considerations, as it is a revenue raising device, although in practice only applicable in certain circumstances.

This economic tension is nothing new, and some have suggested that it derives from the 1990's economic boom within the NTE where:

Alcohol consumption ceased to be an adjunct to regional economies, and became instead a key driver¹⁰

Key to this was a change in consumer behaviour, but some commentators have also suggested that there was a corresponding change in the way that local authorities viewed and attempted to manage the NTE in order to capitalise on this.

Participants within this project reported that economic concerns are commonly taken into account, although with wide local variation, and other research has come to similar conclusions.¹¹ While local cultures of regulation are not only inevitable but also often desirable¹², it could be argued that this range of different approaches to economic issues related to licensing is problematic. There are, for example, clear examples of economic factors being taken into account, despite there being no licensing objective for this. In rejecting the proposal for an Early Morning Restriction Order (EMRO), Hartlepool Borough Council stated that it was:

Mindful of the concerns raised by local licensees that a reduction in opening hours, in the current economic climate, could have serious consequences for the viability of their businesses¹³

The High Court has also commented on this issue, outlining some of the wider economic considerations that are relevant to an application:

Licensing decisions often involve weighing a variety of competing considerations: the demand for licensed establishments, the economic benefit to the proprietor and to the locality by drawing in visitors and stimulating the demand, the effect on law and order, the impact on the lives of those who live and work in the vicinity, and so on. (*Hope & Glory v Westminster [2011] para 42*)

As a result it is rather unclear how local authorities should properly consider economic issues within licensing. Economic considerations as used in practice have too often involved highlighting the potential profits and advantages brought about by licenced venues, and not the potential losses and disadvantages, the vast majority of which fall on the wider public sector and not on the licenced trade. These might include the impact on policing and local accident and emergency departments for example, as well as issues such as street cleaning.

A distinction must be made regarding the negative impacts of alcohol in general, and those specifically related to the NTE; even without a NTE at all alcohol sold via the off-trade would still have significant impacts in some areas. However, the uneven application of economic considerations routinely disadvantages local authorities and the wider public sector, and should be addressed.

Looking at the High Court's comments on this in more detail, it seems clear that the consideration of:

The economic benefit to the proprietor and to the locality by drawing in visitors and stimulating the demand

equates to an economic objective, but the phrase directly before this:

the demand for licensed establishments

could also be interpreted as equating to something akin to the 'need' for licenced premises, despite the fact that section 13.19 of the s 182 Guidance rules this out. However, High Court rulings take precedence over the guidance, as the Guidance notes at paragraph 1.10, and using the Act's own rational and objectives a strong argument can be made for considering 'need', as where supply exceeds demand it can result in tight competition and adverse impacts that undermine the licensing objectives.

There is undoubtedly real tension here, and an amendment to the Act and Guidance adding a well rounded economic objective that accounts for both positive and negative economic impacts on local communities would be the best way to clarify the issue.

Operated solely on a case-by-case bases, an economic objective could perhaps result in quite arbitrary and disjointed decisions. However, within a licensing system where each local authority has a clear strategic vision for licensing, not only across its whole area, but for individual areas within this, economic issues both positive and negative could be highlighted and definite goals outlined and worked towards.

Proper coordination with other council strategies and genuine collaboration with local businesses would be key, and could bring together a number of points mentioned above. These include opportunities for local authorities and the business community to develop a proper collaborative case to diversify and encourage new groups into the evening and night time economy. In doing so problems such as negative competition and overly high concentrations of premises could be properly addressed and avoided, with alternative commercial options encouraged. Rather than turning town centres, or areas within then, into more or less uniform blocks of similar bars, pubs and clubs, a far more inclusive and mixed environment could be encouraged where the negative impacts that licensed premises can lead to are balanced out by a wider range of other premises.

6. Summary

All in all, it is hard to determine the actual impact of the Act on the economy; it does seem to have provided a positive economic environment for the growth of the night time economy, although other factors have almost certainly been more important.

However, licencing – and other – laws should not be looked at from an exclusively economic perspective. Rather they are a means to wider ends - as tools for creating and sustaining the kinds of social environments desired and supported by the public. While there is clearly case law highlighting the importance of economic considerations within the licensing regime, the fundamental purpose of the Act is to promote the licensing objectives 'in the overall interest of the local community' (s 182 Guidance, para 9.37) any economic benefit needs to be assessed accordingly.

A large number of participants thought that growth within the NTE and off-trade was often focused on the short term and without a wider consideration of its community impact and other knock on effects. If used properly within a clear and well integrated licensing strategy, a well rounded economic objective could be a powerful tool for local authorities in preventing this, moving towards a more inclusive urban environment with fewer negative impacts. Some

of these negative impacts are not necessarily licensing issues and need to be addressed by alternative means, but proper planning and coordination with the licensing regime would undoubtedly help.

Recommendation: The introduction of an economic objective: To promote sustainable economic development and the well being of the locality and local area

This objective would allow for the consideration of sustainable economic factors – both positive and negative - that should be taken into account, both during licensing decisions and while SLPs are developed. It should address issues like employment and stimulating demand, the need for licensed premises, over saturation, the importance of diversity and the economic impact of licensed premises in the locality of the premises but also within the wider context of the wider local area.

An alternative to this objective, which may be more straight forward for local authorities to use in practice, would be introducing the concept of ‘overprovision’, as used in Scotland.

¹ Roberts. M., Eldridge. A., (2009) *Planning the night time economy*. Routledge, p 131.

² Institute of Alcohol Studies (2008) Unfinished business – an evaluation of the Licensing Act 2003. Alcohol Alert, 2008 Issue 2

³ DCMS (2007) Evaluation of the impact of the Licensing Act 2003, p 39.

⁴ DCMS (2007) Evaluation of the impact of the Licensing Act 2003, p 40.

⁵ Hough. M., Hunter. G., Jacobson. J., Cossalter. S., (2008) The impact of the Licensing Act 2003 on levels of crime and disorder: and evaluation. Home Office, p 6.

⁶ National Local Government Drug and Alcohol Committee (Australia) (February 2015) The Australian Night Time Economy and the NTE Economic Performance of Key LGAs 2009 to 2013, p 9.

⁷ Hadfield. P., and Measham. F., (2011) Lost Orders? Law enforcement and alcohol in England and Wales. Final report to the Portman Group, p 19.

⁸ Davidson. N., Forsyth. A., Ellaway. A., Shop servers experience of alcohol-related issues and interventions in socially contrasting areas p 78.

⁹ Davidson. N., Forsyth. A., Ellaway. A., Shop servers experience of alcohol-related issues and interventions in socially contrasting areas p 78.

¹⁰ Nichols, J., (2012) Time for reform? Alcohol policy and cultural change in England since 2000. *British Politics*, Vol 7, 3, p 226.

¹¹ Foster. J., Herring. R., Waller. S. Thom. B., (2007) Implementation of the Licensing Act 2003: A national survey. Report to the Alcohol Education and Research Council, p 37.

¹² Hadfield. P., and Measham. F., (2011) Lost Orders? Law enforcement and alcohol in England and Wales. Final report to the Portman Group, p 6.

¹³ Nicholls. J., (2015) Public Health and Alcohol Licensing in the UK: Challenges, Opportunities, and Implications for Policy and Practice. *Contemporary Drug Problems*, p 13.

Chapter 6: Crime and disorder – general trends

Chapter summary

The predictions of 24-hour alcohol fueled crime and disorder made when the Act was introduced have not come true, but neither has the Act produced any discernable reduction in alcohol-related crime and disorder.

There is mixed evidence as to the effectiveness of staggered closing times in reducing crime and disorder.

Extended opening hours have had a significant impact, stretching crime and disorder back into the small hours, and spreading the police and other emergency services recourses more thinly. Most police forces had to rearrange shift patters in response.

Participants reported that the Act gave local authorities and the police very few powers to bring forward closing times, even where there were significant problems late into the night. This was seen to be a big problem in many areas.

Cumulative Impact Policies do not seem to be effective in capping the number of premises in oversaturated areas. They can be successful as a 'place shaping' tool in order to influence the development of the licenced trade.

Whilst it is difficult to isolate the impact of the Act from other related issues, participants in this study argued that the Act had had a limited impact on overall levels of crime and disorder. The key change they identified was that it had pushed crime and disorder back later into the night.

One or two interviewees pointed out that levels of crime within an area are closely related to how built up it is, and how many pubs and clubs there are. Much of the development and concentration of premises within city centres happened before the Act and so cannot be attributed to it, although it was reported that the Act has not enabled local authorities to address these concentrations where problematic. More rural areas will generally not see similar levels of crime and disorder, but this is nothing to do with the Act.

Interviewees recognised that there has been a general reduction in crime rates measured against previous years, but that this is probably not related to the Act either. It simply reflects better general control of law and order and is an international trend. However, against this backdrop it was said that the proportion of crime related to alcohol had remained the same. Some police representatives reported that alcohol-related crime was probably quite a lot higher than that picked up by official figures, and that resource issues meant a lot of alcohol-related incidents were not officially recorded. One academic described the reduction in the affordability of alcohol since the recession as the biggest factor in reducing rates of alcohol-related violence.

As we discuss elsewhere, there were disagreements about how the Act could be used in practice. One participant with a legal background stated that the design of the Act had greatly benefitted the police, because of the ability to target the causes and catalysts of crime rather than waiting for offences to be committed. In contrast, however, many police representatives seemed to understand that Act in a very different way. They expressed frustration at what they regarded as the reactive nature of the Act, and at not being able to address some of the key causes of alcohol-related harm, such as the proliferation of off-licenses.

1. Extended opening hours

It was widely thought that extended opening hours had failed to deliver the reductions in crime and antisocial behaviour promised when the Act was passed. Instead it was reported by many interviewees that extended opening had caused people to venture out later, probably having had more time to drink at home beforehand.

A number of participants commented on the significant contrast between the current reality and the café style culture talked about by the government when the Act was introduced. Many also reported that in almost all cases staggered closing times had not really developed because competition prompted most venues in an area to copy each other. One officer stated that:

In XXX, when the Act came in closing times all gradually moved back together from 2am, we (the police) struggled with this, everyone got stretched out, there were more people drunk and vulnerable and more hidden harm at home.

All police representatives interviewed thought that the Act had caused significant problems for the police, with one describing it as a 'disaster'. While their 'busy period' had previously lasted from around 11pm to 2 or 3am, officers now reported having to deal with alcohol-related problems until 6 or 7am.

One police representative stated that most police forces had had to change shift patterns as a direct response to the way in which the Act spread crime and disorder back into the early hours, effectively having to double shift on a Friday and Saturday night. In their own force the late shift lasted from 6pm to 5am, while the night shift spanned from 8pm to 7am, meaning that there is significant overlap between the two shifts. In addition, they stated that it was common for officers on the late shift to work well beyond their 5am finish, which causes considerable problems for those with another shift the following day. They reported that this level of policing had not been needed under the previous licensing regime.

It was recognised that there will always be 'trouble makers' and problem venues, but extended opening hours were thought to have magnified the problem. One of the workshops discussed the impact of just one very late opening venue in a large city nearby at some length; it closed at 6:30am and had a capacity of 300 people, but police stated that its clientele kept them busy all night and through to the next day. Despite this, it was described as a borderline case. The evidence, apparently, was not specific enough for the police to try and bring the closing time forward or address any other issues. One police representative stated that

We've got to wait for it to get worse before we can do anything.

In contrast, police representatives from the Durham area mentioned that there is a 'gentleman's agreement' in Durham that all venues will close at 2am at the latest, and that this was found to be beneficial for both the licensed trade and the police.

There was also a view that crime and disorder were now spread over a wider area, and less confined to city centres and more traditional hot spots. Some officers mentioned being called into A&E units to deal with alcohol-related violence, which they had not experienced before the Act. In addition to crime and disorder incidents, a number of officers reported that they now had to deal with more people who are vulnerable and incapable because of alcohol.

The majority of participants expressed the view that the Act gave local authorities and the police very few powers to bring forward closing times where there were significant problems late into the night. This was seen to be a big problem in many areas.

2. Preloading and the off-trade

There was a general consensus amongst all those from a compliance and enforcement background that preloading and very cheap alcohol bought via the off-trade caused big problems for law and order in the night time economy. A number of police officers described it as the biggest problem in their area. In addition to the impact in city centres, a number of officers also thought that they now had greater numbers of alcohol-related domestic incidents due to off-trade sales and drinking in the home. Sometimes this would pull them away from town centres at peak times, creating a further strain on resources. It was stated that Cumulative Impact Policies (CIPs) could be effective at limiting the future growth of licenced premises in certain areas, but participants were unsure as to how effective they were in practice.

One of the workshops was held in Cardiff, which provides an interesting example of the changes brought about by the Act. In 2006 there were two off-licenses within the square mile making up Cardiff city centre; today there are over 30. Both preloading and street drinking were described as big problem in the city.

The impact of cheap alcohol, preloading and the growth of the off-trade were also mentioned as having caused significant problems for the police. These issues are dealt with in more detail in chapter 16.

Discussion

3. Identifying the impact of the Act

It has already been noted that it is very difficult, and on some issues impossible, to directly link the Act to broad outcomes. Not only are there many variables, but there are also confounding issues to consider as well, such as concurrent policy changes relating to alcohol. For example, of particular significance here is the notable increase in police activity around alcohol-related harm between 2004 - 2007, in addition to the launch of the Alcohol Harm Reduction Strategy for England in 2004 and the National Alcohol Strategy in 2007.¹

4. Extended opening hours: General reduction in crime

Interviewees were correct in stating that there had been a general reduction in both recorded crime and perceptions of crime in recent years, and that within this the proportion of alcohol-related violence had remained quite static. Further details on these trends can be found in chapter 3.

While there has been a drop in total incidents, and the number of violent incidents has decreased significantly, it is not possible to attribute this directly to the Act. Many other variables are in play and a wide number of theories have been put forward for the general decrease in crime rates.² One particularly well-evidenced link between rates of alcohol-related crime and rates of violence is affordability, with a recent report from the Cardiff University Violence Research Group suggesting that the decline in the affordability of alcohol as a result of the recession was a key factor in the reduction in violent crime rates.³

The Act was sold as a way of significantly reducing alcohol-related crime. While there were 367,000 fewer violent alcohol-related incidents in 2013 than there were in 2004, there is no evidence to suggest that this can be attributed to the Act specifically. Rather this decline fits with the general reduction in crime which started before the Act was introduced. Given that in 2013, just as in 2004, alcohol-related violence still accounts for over 50% of all violent crime,⁴ it seems that the Act has failed in its ambition to reduce alcohol-related crime significantly, beyond the general trend.

4.1. Extended opening hours: Impact on closing time

The actual impact of the 2003 Licensing Act on closing times is difficult to gauge. As mentioned in the introductory chapter, there had been a de facto liberalisation of closing times in the years building up to the Act via the use of Public Entertainment Licenses. As a result many venues had much later opening times than a strict reading of the former licensing regime would suggest; one piece of research found that in some areas 61% of premises already had some sort of extended opening hours before the Act came in.⁵ It is likely, however, that this varied greatly between areas.

There is consequently no obvious baseline against which to judge the impact of the Act on opening hours. In addition, the fact that under the 2003 Act premises can apply for a 24-

hour license, but choose when they actually close, also makes it difficult to ascertain their opening hours in real terms.

An evaluation of the Act conducted for the Department of Culture Media and Sport (DCMS) in 2007 found that opening times had lengthened by only 21 minutes on average as a result of the Act.⁶ A Home Office evaluation published a year later found there had been 'a modest increase in opening hours.' It detailed a snapshot study showing that 20% of premises had stuck with their 11pm closing time, 50% had extended one hour to midnight, and 30% had extended to a 1am finish. It reported clubs as typically closing between 3am and 4am.⁷

However, in depth work looking at the impact of flexible closing times in a major northern city found significant local variation in closing patterns across the area, with closing times extended but about an average of 1 hour on weekdays and 1.5 – 2 hours at the weekend.⁸ Other research interviewing those who work in the night time economy has described the Act as shifting typical drinking periods from approximately 8pm – 12am before the Act, to 10pm – 2am after.⁹ Overall it seems likely that the 21 minutes figure is rather out of date and not representative,¹⁰ but it is also true that the actual impact of the Act on extended opening times has not been as great as expected.

4.2. Extended opening hours: Impact on overall levels of crime

In general, most participants did not think that there had been an increase in overall crime within the night time economy as a result of the Act, although some police representatives disagreed. Previous evaluations of the Act have come to a range of conclusions as to the Act's impact on crime. Some found significant reductions in harm,¹¹ others significant increases,¹² whereas others found either no effect¹³ or mixed effects.¹⁴

This unclear picture may be a result of licensing in general, as opposed to the 2003 Act, and the way in which local areas differ from each other in their use of licensing. Rather than judging the impact of one particular change in licensing, these studies may have in practice been judging the way in which multiple variations of the Act were implemented. Indeed, Newton et al looked at the Act's impact in Birmingham, Croydon, Guildford, Blackpool and Nottingham and found mixed results across these areas.¹⁵

Commenting on these studies, Humphreys and Eisner stated that:

The ability of these studies to identify the specific effect of the Act is questionable. These studies largely represent analyses of crime patterns before and after the introduction of the Act, but they do not assess the more detailed changes in licensing practices or whether these changes were related to crime outcomes.¹⁶

Despite this mixed view it does seem clear that removing restrictions on opening times has not lead to a general reduction in levels of alcohol-related violence. As mentioned in 2013/14, victims of violent crime believed the offender to be under the influence of alcohol in 53% of violent incidents, the same proportion as in 2004. However, the fact that levels of alcohol-related violence within the night time economy have remained the same needs to be considered against a backdrop of a general reduction in crime. It may be that the general reduction has masked increases within the night time economy; this need further detailed investigation. Either way, given the political emphasis placed on extended opening hours as a measure to cut crime, it is clear that the Act has failed on this account.

4.3. Extended opening hours: Impact on when crime is committed in the night

There was a very clear view amongst interviewees that the Act had pushed alcohol-related incidents back into the night, causing significant logistical problems for the police.

The Metropolitan Police Service predicted this even before the Act was passed,¹⁷ and subsequent research in this area provides strong support for their view. Two evaluations investigated the impact of extended opening times on the temporal spacing of crime through the night; one found that there had been a 25% increase in offences between 3am and 6am,¹⁸ while the other found a 36% increase in violence for the same time period.¹⁹*

These studies quantify the views expressed by police officers in the interviews. Indeed, one study stated that:

Peaks were, for most periods of the week, temporally displaced later into the night, which could serve to intensify the burden on police and emergency services to stretch shifts out longer.²⁰

While the increase in offences is moderate, it is not insignificant; even a few additional incidents over and above previous levels of crime and disorder can be enough to overload already stretched officers. The impact of the Act in spreading problems over a longer period was also felt in A&E units, where one study found that alcohol-related admissions, which had peaked around 11pm until 1am or 2am, shifted back until 4am or 5am.²¹

Research by Hadfield and Measham into enforcement within the night time economy found similar views to those expressed by interviewees here, with police officers and licensees reporting that they would 'like the 'night out' to shift back to earlier in the evening'. It was also found that police officers viewed trading beyond 1am as 'incurring an additional level of risk.'²²

The fact that there is a 'gentleman's agreement' in Durham City that all venues will close by 2am provides an interesting example of all sides working together to shift the 'night out back to earlier in the evening.' A number of other areas may well be interested in coming to similar agreements. However, there will inevitably need to be a balance, particularly in large urban areas, where there is significant demand for extended opening hours, and having too restrictive an attitude towards closing times may push people towards illegal venues.

4.4. Extended opening hours: Staggered closing times

Interviewees were generally dismissive of the premise that staggered closing times had led to less of a rush at 'kicking-out' time, or a reduction in crime, with many reporting that premises in an area often mimicked each other's closing times.

* On a methodological note, baseline levels of violence at this time of the night are low, so even small changes (i.e. one or two crimes on average) may be recorded as large proportions. However, in the interviews police reported that even a few additional incidents were enough to cause them significant extra problems, and that anecdotally there were more unrecorded incidents since the Act was introduced. It is also worth pointing out that it is not possible to say exactly whether these changes were caused by the Act or by changes in shift patterns, but police representatives stated that shifts were changed in response to the impact of the Act, and similar patterns were seen within A&E's, so changes in shift patterns seem to be an unlikely explanation.

Some previous evaluations of the Act have found a perception that leaving the pub had become a more gradual process because of staggered closing times, although there has not always been agreement on this.^{23 24} In one instance police officers who had seen a reduction in problems around closing time still regarded the former peaks as preferable to being kept busy into the small hours.²⁵

This mixed picture almost certainly reflects regional variations in the interpretation and implementation of the Act. Of particular note is the reliance on market forces to 'naturally' organise closing times; investigating the impact of extended closing times, Humphreys and Eisner comment that:

The provisions of the Act do not guarantee that the essential inputs (staggered closing times) will occur.²⁶

So, even if the premise that staggered closing times will reduce problems is taken at face value, it is simplistic to assume that the Act will necessarily bring these about.

Humphreys and Eisner's 2010 paper looked at the impact of the Act on closing times in Manchester in great detail. They found that to some extent staggering had occurred, but that important peaks in closing times remained. These had been pushed back into the night, and now:

Three peaks occur in closing as opposed to two. For Friday, Saturday, and weekdays, the second, less pronounced peak follows at 2 a.m., and is followed by a third peak later at 4 a.m.²⁷

At the time the Act was going through Parliament it was argued by some that commercial pressures would work against the 'natural dispersal' of customers; competition would prompt premises to offer similar closing times and bar managers would not want to keep staff on waiting for only a few customers to leave.²⁸ When looking at the impact of staggering on specific clusters of premises Humphreys and Eisner found evidence that this had happened in a number of cases. Most clusters had staggered their closing to some degree, but a substantial proportion had not, because premises there had:

Opted to extend by the same proportions as their neighbouring premises, thus negating the potential effects of staggering²⁹

This also backs up the perceptions of many participants in the interviews. Importantly, it was found that a small number of clusters had actually increased the concentration of their closing times.³⁰

Overall, this extremely useful study shows wide variation in the way in which the Act impacted on closing times, and that while staggering was evident, the changes were modest and important peaks in closing times were not removed, only diluted and pushed back into the night.³¹ Using the Act's own flawed rationale this outcome would not be expected to have a significant impact on levels of crime, but only to extend it though the night. Clearly the evidence backs this up. It is also notable that in some areas concentrations of closing times had actually got worse as a result of the Act.

4.5. An about-turn on staggered closing times?

In autumn 2014 there was a change in the Section 182 guidance around closing times that went relatively unnoticed, despite the fact that it contradicted one of the key premises upon which the Act was based. Section 13.41 of the new guidance advised local authorities that:

As part of its licensing policy, the licensing authority may also wish to consider the use of alternative measures such as fixed closing times, staggered closing times and zoning within its area, providing such mechanisms are justified on the basis of the licensing objectives and are only presumptive, with final decisions continuing to be made in relation to individual premises on a case by case basis in accordance with what is appropriate to promote the licensing objectives.³²

This contrasts rather with the advice issued in 2004, which stressed that market forces would 'naturally' organise closing times and that:

Licensing areas should not set predetermined closing times for particular areas

According to the Home Office the Government's about-turn on this came after a 2010 consultation that showed support for zoning and staggered closing times.³³ This, and the lack of any impact brought about by freely extended opening hours, suggests that this is another key element of the 2003 Licensing Act that has failed to make any positive impact on crime and disorder.

5. Opening hours: the off-trade

In addition to the general availability of cheap alcohol, 24-hour opening within the off-trade, particularly within city centres on Friday and Saturday nights, was seen as a significant issue by many. 'En route loading', 'side-loading' and 'post-loading' on the way home were mentioned, and a number of licensing officers working in rural areas mentioned problems with petrol stations selling alcohol to people traveling home after a night out in the small hours.

While there was consistent anecdotal evidence that late opening off-licenses added a significant amount of alcohol into the night time economy, there is very little research evidence on this topic. In Scotland off-trading hours are restricted to 10am to 10pm, and a number of interviewees suggested that a move to these hours would be beneficial in England and Wales, for both crime and the interests of public health.

When introducing this change to the permitted licensing hours, the Scottish Government said it was attempting to balance the need for public protection with responsible trading.³⁴ The licensed trade objected strongly, but unsuccessfully, to this change. Their protests focused particularly on the 10am start, saying that it would prevent tourists and responsible customers from purchasing alcohol between 9am and 10am. Gavin Partington, of the Wine and Spirits Trade Association, commented that these:

Are not the people with the problem with alcohol misuse.³⁵

It is interesting to note that there were no widespread complaints from industry about the assertion that allowing off-licenses to open past 10pm was likely to contribute to binge drinking and alcohol-related violence. Similar reductions in off-trade hours have been found

to result in significant reductions in teenage hospital admission in Germany and Switzerland.³⁶

6. Opening hours: café culture

Most participants ridiculed the idea that the Act could ever have fostered a continental style café culture. They were clear that this had not happened. Many took the view that the Act had encouraged a culture of preloading and allowed people within the night time economy access to alcohol over a longer period.

Cultural changes are difficult to pin down, but there seems to be no evidence that a café culture has emerged, and other research has come to the same conclusion.³⁷ As the introductory chapter suggested, the somewhat mythical café style culture was presented in a wholly idealised and unrepresentative way.

As Roberts and Eldridge point out, unlimited hours within Mediterranean holiday resorts are the exception, rather than the rule, across most of Southern Europe. Using a number of case studies, they show that economic pressures in European cities produce:

Similar problems with noise and other nuisances, anti-social behaviour, alcohol and drug misuse as compared to town and city centres in the UK. Problems associated with concentrating licensed venues and dwelling in close proximity are not resolved purely by some erroneous notion of culture.³⁸ **

Having concluded that a relaxed continental café culture has not emerged as a result of the Act, it is worth considering what drinking cultures do exist in the UK at the moment. While the Licensing Act 2003 is by no means the only influence on drinking cultures, and these will vary depending on age, social class and other more personal attributes, a number of commentators have assessed the Act's influence on how people now consume alcohol within the night time economy.

Nicholls has argued that the 2003 Act and the influence of big business has led to drunkenness being encouraged by both local and national government as a lifestyle choice, and that consumption in this manner is part and parcel of a wider consumerist economy. Yet, while hedonism is promoted it is also stigmatized:

Young binge drinkers, from this perspective, are simply consuming in a manner which reflects the ideological values of consumer capitalism (have fun and buy cheap), and yet are the very people who are identified as a moral threat. What is more, they are also consuming in precisely the way that was encouraged by the deregulation of the retail market and the development of the night-time economy. Simply blaming consumers for the effects of this, a number of recent commentators have observed, is deeply hypocritical.³⁹

Deregulating the drinks industry, encouraging competition, the commodification of pleasure and the concentration of premises, was always likely to, and in fact designed to, encourage a consumerist response.⁴⁰ In addition, the ease with which the off-trade has been able to expand since the 2003 Act has also encouraged people to drink at home, and in response more have done this.

** Roberts and Eldridge also point out a numerous points the importance of spatial planning and geographical issue to the night time economy, issues that are not only neglected, but downplayed within the Act.

Whilst this may appear to sit at odds with the decline in rates of binge drinking and overall consumption, these are not issues that can be tied to the Act with any degree of certainty, and as mentioned in chapter three, there are a number of possible reasons for the trends. Those who regularly use the night time economy are more likely to be high risk drinkers, and patrons who spend longer in licenced venues report higher consumption.⁴¹ This is contrary to the aims of extended opening hours within the Act which, it was said, would not cause people to drink more, but drink the same amount over long periods of time.

The café style culture argument was put forward by New Labour in an attempt to regain the narrative control of the Licensing Act as it was going through parliament. It was intended to counteract fears about crime and disorder, and to persuade the public that deregulation would benefit the public and the industry alike. This was never likely to be the case. In hindsight the arguments and evidence put forward by opponents of extended hours seems to have been accurate, painting the notion of café culture as nothing more than a smoke screen. As Roberts and Eldridge conclude:

Much of what can be seen in continental Europe owes to regulation rather than genetic predisposition.⁴²

They also point out the key impact of planning and spatial aspects on drinking cultures and the night time economy. As the former Nottinghamshire Chief Constable said:

If you want a Continental Café culture – build cafés.⁴³

But that is not what the 2003 Licensing Act set out to do.

7. Cumulative Impact Policies

The fact that there are now 208⁴⁴ Cumulative Impact Policies (CIPs) in place across England and Wales demonstrates their necessity within the licensing regime, and makes their original omission from the legislation all the more dubious.

However, their effectiveness and flexibility was questioned by a number of participants. As with many aspects of the Act, they were seen to be inherently reactive, and in most instances it was reported that councils have to wait for problems to arise before they have enough evidence to implement a CIP. The process of compiling the evidence and consulting on a CIP is also considerable, and in general they only have the effect of containing a problem, rather than actively reducing it.

Despite the fact that CIPs create a presumption not to grant a license, the latest figures show that 86% of applications or variations in CIP areas were still granted.⁴⁵ While this does not account for those who were put off applying because of the CIP, it still seems to be a very high number (within non-CIP areas the figure is 91%).

The accuracy of these figures has been called into question however. A recent review of the statistics in a small sample of local authorities found large errors in the compilation of the data. One authority has reported having 22 applications in their CIP, but in reality did not actually have a CIP in place. Another reported 43 applications with 43 granted, but more detailed work revealed that the correct figures were 7 applications made, 3 granted, 3 withdrawn and 1 refused.⁴⁶ The picture within the new corrected figures is also confusing, and reveals that a significant number of applications within CIPs (21 within one local

authority, half of their total number of applications) are going through without challenge, despite the recognised problems resulting from a saturation of premises in the area.⁴⁷

Given the wide inaccuracies in the data we are left with a very unclear picture as to the effectiveness of CIPs in limiting the further saturation of premises. Yet while this was the original rationale upon which CIPs were introduced, it does not seem to be the way they are used in practice, and it is perhaps a misconception that CIPs can be used to actively address high concentrations of premises. Instead they seem to be used primarily as a method of shaping and influenced the future development of the licenced trade within the CIP area. For example, encouraging restaurants or theatres may add welcome diversity to areas otherwise packed with bars, potentially bringing a different clientele to the area and reducing problems.

Research in Westminster provides an interesting example of this. It was found that between 2003 and 2013 the concentration of premises within the West End Stress Area CIP increased by over 35%. While part of this time period predates the Act, it demonstrates clearly that the CIP has not capped the total number of premises. Interestingly, 93% of these additional businesses were food-led, something encouraged within Westminster's SLP. Food-led venues do not necessarily mean that there will be a reduction in the volume of alcohol sold, but arguably altering the environment this way could reduce alcohol-related problems. The shift also suggests that Westminster has been successful in using their West End Stress Area CIP, and SLP, as a 'place shaping' device.⁴⁸

While this is not what CIPs were originally intended for, it does seem to be a key function in practice, along with encouraging a higher standard of application. They can also be used to reduce opening hours as well as targeting premises assumed to be selling particularly cheap alcohol. Research has also found that they increase engagement between applicants and the local authority.⁴⁹

Many participants saw this as useful, and other research has found similar views. The fact that some responsible authorities are too under resourced to put in a representation on applications within a CIP is also a key concern, and raises important questions as to how effectively the licensing objectives are being promoted in these areas.

8. Summary

Ten years on, it is clear that the Act has not lived up to the rather apocalyptic predictions of 24-hour alcohol fuelled crime and disorder. Neither has it brought about any discernible reduction in alcohol-related crime and disorder above and beyond the general reduction in crime. The reduction of crime and disorder was a key point on which the Act was presented to the British public by Ministers, and this failure to deliver one of its critical objectives undermines the effectiveness of the Act as a whole.

However, it would be wrong to ignore the 2003 Act's impact on the way in which the police deal with the night time economy. Extended opening hours have had a significant impact, stretching the police and other emergency services back into the night. In addition, the deregulation of the off-trade, including removal of restrictions on supermarkets which now allow them to market alcohol anywhere within the store, seems likely to be at least partly behind a rise in home drinking.

While there is clearly a balance to be struck when allowing responsible individuals to enjoy alcohol, both within the on-trade and at home, it is questionable whether the balance struck

in the Act is of primary benefit to individuals or the drinks industry. Either way it is clear that the police have been badly affected by the Act, and given increasing budgetary pressures it is not surprising that many areas are attempting to bring forward closing times where possible in order to limit the inevitable cost to the police and wider public services.

In March 2015, The Commissioner of the Metropolitan Police, Sir Bernard Hogan-Howe, gave a speech to the Royal Society of Arts in which he outlined the impact that alcohol currently has on policing, while also suggesting possible ways forward. Taking a 'prevention first' approach, he stated that:

Alcohol continues to be a force multiplier in the volume of crime in the UK. In the evening 80% of arrests can be alcohol-related. The users put their safety at risk as much if not more than their health, with similar costs for society to pick up...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 their local economies.

We know that many injuries occur inside or outside licensed premises, and if we can close down 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.⁵⁰

It is extremely interesting that Sir Bernard Hogan-Howe chose specifically to highlight the density of premises as the biggest alcohol-related issue facing policing. As discussed elsewhere, the density issue is extremely prominent within the emerging public health approach to licensing, although there are questions around the evidence on this, and its applicability within the current licensing system. Overall the available evidence linking high densities of premises to crime and disorder problems is probably both stronger, and more applicable within the licensing process, than evidence related to density and public health issues.

The fact that problems around density are being highlighted from a crime and disorder perspective is not surprising, but it is a theme that has not been particularly prominent for some time. Questions on this were raised during the passage of the Act, where it was noted that levels of pedestrian density, and in turn volumes of people and numbers of licensed premises, had been linked to crime and disorder in the night time economy, and that this should be considered as more important than closing times.⁵¹

More recent research has strengthened this view, with serious violence in Cardiff's main NTE thoroughfare found to be directly proportionate to the capacity of licensed premises in that street.⁵² This was partly explained by the simple fact that being in a crowd provides more opportunities for conflict with others, with alcohol acting as an additional catalyst. These physical factors however are not considered by the Act.

Recommendation: Ensure local authorities have a clear and coordinated strategic approach to licensing

The proposal that local authorities should be given greater steer to outline a clear strategic vision for licensing in their area, building upon the advice in para 1.5 of the s 182 Guidance and others, and coordinated with other relevant council strategies, is put forward elsewhere in this report.

In the specific context of crime and disorder, this should be coupled with section 17 of the Crime and Disorder Act 1998, which requires local authorities to have a statement of crime and disorder and outline their plans for reducing this. Coordinating this with an overall vision for licensing would result in more coordinated planning and action on this issue.

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Chapter 7: Crime and disorder – enforcement

Chapter summary

Many saw the Act as having a useful compliance and enforcement 'toolkit', and talked about being able to 'work around the Act', using it to encourage best practice from licensees and address issues before they grow into problems.

However, police and local authority funding cuts have had a negative impact on enforcement and compliance, and many thought this would get worse.

Most thought that it was now more difficult for minors to purchase alcohol, although this was not necessarily a direct result of the Act. Online sales and proxy purchases were seen as areas of concern.

Serving to drunks was seen as a persistent problem, but one that is difficult to address. Evidence suggests that multicomponent approaches are the most effective.

In many areas child protection services do not engage with licensing, and the scope potentially allowed by the 'moral, psychological and physical' protection of children is very rarely used or explored.

1. Increased compliance tools and coordination

Many interviewees thought that the 2003 Act provides a more expansive 'toolkit' for ensuring licence holders comply with the objective of preventing crime and disorder, such as the ability to put conditions on a license. It was mentioned that the Act as originally introduced had been too liberal, but that the guidance had gradually become more prescriptive and effective. The use of CIPs and additional police powers were also thought to be particularly beneficial, particularly the ability to Review problematic premises.

Some police officers described being able to 'work around the Act', using it to encourage best practice from licensees, and addressing issues before they grow into problems. A number of participants knew of venues that would not report violence or crime to the police, so as not to bring them adverse attention. However, this appears to happen much less under the 2003 Act.

It was also reported that the police now work in a far more coordinated manner under the Act, both internally and with local authorities and other relevant bodies. One police representative commented:

I'll use county XXX as an example, there would be 12 police stations across the county, there would be magistrates' courts attached to each of those police stations or very close by, so it was often an uncoordinated effort, so magistrates in one location would probably adopt a slightly different approach to another location. Now we've got a unitary authority which has a universal view of the world of licensing, we've got a police force which has got an alcohol harm reduction unit which takes a universal view of licensing and we've got an operational joint unit with the local authority and police working together - we've got a much more coordinated approach. I think the fact that it's now gone away from the magistrates and it's now administered within the local authority means that it's a much more joined up experience.

2. Funding cuts

A number of police representatives stated that the impact of cuts and a general reduction in police numbers was making it harder to deal with alcohol-related problems in the night time economy. One area had recently lost 300 officers, and expected to lose a similar amount in the next few years. A number of people mentioned the success of high visibility policing earlier in the evening at preventing problems later in the night. However, participants from two areas stated that police cuts had already affected this, and as a result they had seen increased problems later into the night.

Local Authority interviewees also talked of the impact that cuts have had on personnel and the way in which this has impacted upon their ability to enforce the Act. A number of them stated that reductions in personnel, while an economic necessity, actually worked out to be a false economy, because of the additional problems that under enforcement can cause. The impact of police funding cuts on the night time economy is discussed in more detail in chapter 11.

3. Enforcement and serving to drunks

Some mentioned that there needed to be a greater focus on both compliance with and enforcement of the law prohibiting sales to drunks, and the use of existing powers, with a

particular focus on less responsible retailers. However, with some exceptions, it was thought that most local authorities now had fewer resources with which to carry out compliance work.

A number of participants expressed the view that the licenced trade had too much to lose and would inevitably be reluctant to address this issue. One mentioned high rents and the pursuit of profit as the key driver behind sales to drunks, and buying 'rounds' of drinks was also mentioned as part of the problem.

One participant from the licenced trade stated the law was inherently difficult to apply in this area and that "people who know what they are doing" use different methods such as threatening to review the premises license and engaging with staff, rather than opting for convictions or closure.

However, others from the licenced trade, and some from a legal background, were frequently critical of the police for not enforcing laws against serving to drunks, and being drunk and disorderly. Some participants reported police giving people the taxi fare to get home when they should have been arrested, and that fixed penalty notices were often only used if someone was already in custody.

It was recognised that there are difficulties in establishing the levels of evidence required to prove that someone had been served alcohol while drunk. Yet there was a view that most police forces did not attempt to address the issue, and it was said that this had the effect of allowing an environment where excessive drunkenness went unchecked.

In contrast, police officers regarded these laws as almost impossible to use effectively, although they did think they had a place as a tool with which to prompt licensees into action, and often found them effective in this way. They were also keen to point out that it is the licensed trade who actually serve drunks, and create the conditions where this is acceptable. It was mentioned that the Scottish mandatory conditions around training for bar staff are far more comprehensive than in England and Wales.

Officers reported that they were too busy dealing with the after effects of drunkenness to be able to spare the considerable time and resources to get a conviction for serving someone who is drunk. Many also pointed out that arresting someone ties up officers for a considerable amount of time, and stated that they would like to make more arrests, but could not afford to divert the man power. It was also said that in many places almost everyone would be drunk after a certain point, and it is simply not practical for limited numbers of police offers to try to enforce the law without considerable discretion.

4. Serving to minors

The vast majority of interviewees thought that laws against serving to minors were effectively enforced in most cases, and that there had been a significant improvement in recent years. While it was said that the Act had enabled better cooperation and joint working between the police and trading standards, most thought that this improvement was down to schemes such as Challenge 21 and Challenge 25, and to greater engagement of supermarkets and chain operators within the on-trade.

National retailers have apparently tightened their procedures around this issue because they had too much to lose if caught breaking the law, and that their scale enabled them to put in place effective training and monitoring systems. A large number of participants implied that independent stores were more likely to sell alcohol to minors, and in some cases this was

still an issue. Some licensing officers mentioned that they know of shops that only sold to children that they knew, making test purchase operations very difficult.

A significant number of people stated that child protection services did not engage with licensing in their area, and there seemed to be a consensus that this was a common issue. Many thought that this was a problem, and highlighted the link between alcohol and issues such as truancy and inequalities in both health and education, as well as the fact that those who drink at an early age are more likely to develop problems with alcohol in adulthood.

Discussion

5. Serving to minors

There was a common view amongst participants that there had been a great deal of progress in tackling this issue over the last few years, particularly because of the Challenge 21 and Challenge 25 schemes introduced by industry in 2006 and 2009 respectively. Many reported that problems were now most likely to be found in small independent off-licenses. This reflects comments elsewhere about how the Act has had a beneficial impact on partnership working, which itself has helped improve effectiveness in preventing serving to minors too.

It is slightly difficult to verify the perception that compliance is increasing in this area, as no national data is collected on underage sales, and standards of enforcement are likely to vary regionally. As mentioned in chapter three, the number of children being admitted to hospital for alcohol-related reasons has decreased significantly in the last few years, which does suggest that something has made it more difficult for minors to access alcohol.

Another method of assessing success in this area is to look at test purchase figures. Recent figures from test purchasing company Serve Legal show that 66% of pubs passed test purchases in 2013, which is down 4% from 2012 and down 8% on 2010. Within this, late night venues had the highest pass rate at 85%, with managed pub premises on 66% and leased and tenanted pubs on only a 46% pass rate.¹ In contrast, off-sales via high street sales had an 83% pass rate, up 3% on the year before, and supermarkets reached an all time high pass rate of 85%.²

While these figures may not be fully representative of the national picture, they suggest some room for improvement; a greater than 50% chance of minors being sold alcohol in leased and tenanted pubs is clearly very poor, and even a 15% chance of minors being sold alcohol within late night venues and supermarkets is higher than the impression given within the interviews. However, without longer-term trend data it is not possible to say whether the situation has improved since the Act came in or not. Most interviewees thought that it had.

A recent industry funded report into Challenge 25 claimed widespread awareness of, and support for, the scheme, yet also found a test purchasing pass rate of 79% for the off-trade, and 69% for the on-trade.³ These figures chime with those mentioned above, and suggest room for improvement. The report was also not able to identify whether compliance had increased since the introduction of Challenge 25.

The common view within the interviews that sales to minors have been successfully addressed is slightly difficult to verify, but hospital admissions figures suggest a positive change in this area. However, test purchase figures show that there is more to do. Many of

the possible solutions, particularly the use of multicomponent programmes, are addressed in more detail shortly when discussing sales to those already intoxicated.

On a slightly different topic, it was mentioned that the Act contradicts itself, in allowing children to drink alcohol with a meal at age 16 if accompanied by an adult, but not to buy alcohol via the off-trade until the age of 18. As well as being slightly confusing, at times this can be abused by someone who has just turned 18 buying rounds for their 16 or 17-year-old friends. It was thought that a clear universal 18-year-old restriction would be more effective.

5.1. Online sales and proxy purchases

A number of interviewees raised the issue of online sales, and the fact that this is likely to increase the chances of alcohol being served to both children and those who are intoxicated. Some mentioned test purchase work done by Alcohol Concern Cymru and South Wales Police in Cardiff, which found that 15% of young people interviewed had successfully bought alcohol online. The police test purchase operation found that in 44% of test cases alcohol was delivered in person with no proof of age requested.⁴

In response to online sales, not only with supermarkets but also 24-hour takeaways and home delivery services, Poole council has written a set of specific conditions to try and bring internet sales in line with the standards expected within shops. The customer has to be informed on the phone that ID will be required, the delivery driver not only has to ask for ID, but to note the ID and then pass the information to the duty manager, who must keep a full record of all sales. While the Act specifically exempts the delivery driver from committing an offence, these conditions help ensure that Poole Council can take the appropriate action if the seller is subsequently found to have sold alcohol to a minor without checking for suitable ID. The full set of conditions can be found in appendix 6.

While it was not mentioned often within the interviews, much of the literature in this area describes proxy sales as a growing problem. A 2013 report by Serve Legal and Plymouth University warned of changes in the way that children obtain alcohol because of the increased use of ID checks. In addition to problems with online sales it identified proxy-purchasing as an increasing trend, with 42% of underage drinkers claiming to have bought alcohol from friends, relatives or 'someone else.' It also stated that while only 4% of under 18s would try to buy alcohol in a large supermarket, 74% would expect parents to get alcohol for them, and 86% would get alcohol from older siblings or friends.⁵

Proxy sales appear to be a particularly difficult issue to address, and research into this area would be welcome. It has been suggested that the general density of alcohol outlets may increase 'shoulder tapping' outside of alcohol outlets,⁶ although that is a difficult issue to address. It may be that a successful prosecution or two would bring beneficial media attention, and that the issue could be included within multicomponent programs aimed at sales to minors and drunks in general.

5.2. Police RIPA problems

One police officer mentioned problems faced by the police regarding the authorisations required to run a test purchase operation investigating sales to minors. This involves a long standing dispute with the Better Regulation Delivery Office (BRDO) over the circumstances in which the police need to comply with the Regulation of Police Powers Act 2000 (RIPA).

The BRDO guidance states that 'Authorisation is required for 'directed surveillance' and the use of 'covert human intelligence sources (CHIS).'7 However, the Association of Chief Police Constables (ACPO) disagrees with this, taking the view that RIPA authorization (CHIS) is only needed in some situations. While the BRDO guidance refers to two paragraphs from the Office of Surveillance Commissioners guidance, it fails to mention a third paragraph, which ACPO consider to be the most relevant. This third paragraph states that:

There is a difference between test purchases to establish whether juveniles are sold goods illegally and a test purchase conducted by a law enforcement officer for the sale of drugs or stolen items. The latter is more likely to require authorisation for the use and conduct of a CHIS (Covert Human Intelligence Sources). The authorisation always relates to the CHIS relationship and not the operation. All CHIS should be properly risk assessed.⁸

ACPO consider that this removes the requirement for CHIS authorisation, leaving only directed surveillance authorisation (DSA) to be considered, although if repeated visits are being by the same juvenile then CHIS may be needed. It is also thought that neither DSA or CHIS authority is actually required if recording equipment is not being used and it is a one-off purchase.

In addition, ACPO disagree with BRDO on the requirements for using Covert recording equipment, and do not think that 'private life' would be breached by a one off recording, limited to a minute or so to prove or disprove offences.

After initial discussions, the BRDO then refused to look into this issue further, and the stalemate has existed for a number of years. In practice, some police forces and trading standard teams do comply with the BRDO guidance and get CHIS authorisation, but it was reported that a considerable number do not. It was also stated that the confusion in this area is unhelpful, and a resolution would be very beneficial for police forces.⁹

6. Serving to drunks

The issue of serving to drunks brought out significantly contrasting views from participants in the interviews. Those from the licensed trade were often very critical of the police for rarely attempting to enforce the law. They felt that police failures had the effect of allowing an environment where excessive drunkenness went unchecked. In contrast, police officers regarded these laws as almost impossible to use effectively, and pointed out that it is the licensed trade who actually serve drunks, and create the conditions where this is acceptable. Other participants often thought that the licensed trade had too much to lose and would inevitably be reluctant to address this issue.

Tensions and problems around this issue have existed for hundreds of years without a particularly practical balance ever being found, and it is perhaps to state the obvious that laws in this area are routinely flouted within licensed premises.¹⁰ One 2013 study found that trained pseudo-drunk actors were sold alcohol 83.6% of the time, and that:

Bar servers often recognised signs of drunkenness in actors, but still served them. In 18% of alcohol sales, servers attempted to up-sell by suggesting actors purchase double rather than single vodkas.¹¹

[*'One too many?'*](#), a recent report by Alcohol Research UK and the Alcohol Academy, dealt with sales to drunks in some detail, noting three key interrelated areas of action around legislation, enforcement, and the responsibility of industry for promoting good practice.

While there is little point in repeating the whole of *'One too many?'*, which provides a comprehensive overview of this topic, some key points do merit discussion here in light of issues raised within the interviews.

6.1. Legislation

There is no clear and enforceable definition of 'drunkenness', and in practice, it is not illegal to be drunk in public or the night time economy; someone may have been 'sober' when sold their last drink and only after consuming that drink become 'drunk'. Or they may have drunk alcohol at home and only drunk soft drinks since. The very fact that drunkenness is 'normal' within the night time economy, and also inherently hard to define, creates great problems in this area of the law. Previous research into this issue quoted a bar manager in a metropolitan area saying that:

At meetings with the police we have wink wink, nudge nudge conversations about drunkenness because it is slightly absurd... almost everyone goes out to get drunk.¹²

The sale of alcohol to someone intoxicated must be proven to have been done 'knowingly' in order to have broken the law, which provides a high evidential bar and makes prosecutions difficult. On the other hand, it does act to protect bar staff who can frequently be put in a difficult position; not only is drunkenness hard to define, but it is frequently the norm in many venues, and 'strict enforcement of the law may well run counter to the business model.'¹³ This highlights a range of conflicting interests and raises issues of natural justice, with bar staff potentially placed in positions were they could be encouraged to break the law.

One interviewee with longstanding experience in alcohol policy mentioned that Senior Police Officers had lobbied against the addition of 'knowingly' in the Act, arguing that it would make their job more difficult. They were, however, disregarded. Yet, as *'One too many?'* points out, the Licensing (Scotland) Act 2005 does not include 'knowingly.' Prosecutions are similarly low in Scotland, so this perhaps is not the main inhibiting factor.¹⁴

6.2. Responsibility of industry

Interviewees from the licensed trade were keen to point to their own internal responsible beverage serving (RBS) training, and other initiatives such as Challenge 25. These are of course important, but evidence suggests that standards of RBS training and levels of implementation are patchy across the country, and that enforcing the ban on sales to people already intoxicated is a low priority for many retailers.¹⁵

Yet while training is important, so too is the environment, and research has identified common venue characteristics associated with sales to intoxicated persons, including cheap drinks, promotional practices, overcrowding, reduced seating and later trading hours.¹⁶

'One too many?' points out that a key barrier to retailer support for enforcement activities is the degree to which responsibility is placed on the license holder when a test purchase fails:

Cooperation appeared dependent on their (the license-holders) responsibilities extending no further than having provided training of some form.¹⁷

This is an interesting point; the 2003 Act places responsibility primarily on those serving alcohol to avoid selling to people already intoxicated, although premises can have their license reviewed as a result of continued illegal sales. In Spain, the owner of the venue is held responsible for any illegal sales,¹⁸ and a similar focus ‘up the chain of command’ could help to ensure more responsible practices within venues. A number of participants in the interviews mentioned that they felt that the licensed trade had too little to fear from serving to drunks – licensees very rarely lost their license and may only be given additional conditions after being found serving minors or drunks.

6.3. Enforcement

Given the very low conviction rate for the sale of alcohol to someone who is drunk detailed in figure 7.1, it is perhaps easy to see why some criticized the police for neglecting this area of the law. Yet, as mentioned, the law can be used as both a carrot and a stick, and given the resource constraints it is easy to see why it is currently used as a motivation for licenses more often than a punishment.

Figure 7.1 Convictions for the sale of alcohol to a person who is drunk, 2009 – 2013

Offence		2009	2010	2011	2012	2013
Sale of alcohol to a person who is drunk (S.141)	Convictions	6	3	5	10	5
	Given maximum sentence (£1000)	0	0	0	0	0

Source: [House of Commons Debate, 30 June 2014, c386W](#)

While using the threat of legal action can be effective in ensuring compliance, there will clearly be times when those threats have to be carried out. Statistics show that the number of premises licensing reviews are declining however, possibly as a result of cuts within enforcement teams. In the year to 31 March 2014 there were 800 reviews, 11% (-100) fewer than the previous year, and 27% (-300) fewer than 31 March 2009.¹⁹ This is a slightly worrying trend and perhaps makes the case for better funding within enforcement teams and the police.

Previous work investigating the views of people working within the night time economy has revealed similar views, with prosecution of members of the public considered as:

Too expensive and time-consuming to pursue. There was a perception that the courts would not support such prosecutions, or that the fines imposed would be minimal. Also, the commitment of resources to the surveillance required to obtain the necessary evidence for conviction was seen as disproportionately great.²⁰

Other research reported a police officer as saying that:

On the face of it, it looks like a great piece of legislation, let’s tackle it right from the start... (but) nothing happens to them when you get them to court anyway.

So you put in an awful lot of resources to something that isn't gonna [sic] solve long term problems, isn't gonna [sic] change the culture and nothing much happens to the company either.²¹

6.4. Multicomponent initiatives

'*One too many?*' points out the strong evidence behind 'multicomponent approaches, which seek to change retail environments, improve community engagement and raise public awareness alongside changing retailer and police practices.'²² They also provide a good opportunity to get beyond what some regard as a rather stale argument between the police and the licensed trade on this issue.

Two recent multicomponent initiatives, one in South Wales²³ and one in Liverpool,²⁴ were found to have resulted in increased awareness of laws against serving to drunks, and that there was a drop in the numbers of people preloading post intervention, reducing from 63.2% to 54.3% in Wales and from 65.4% to 53.9% in Liverpool. Both reports made similar recommendations, including minimum unit pricing and continued broad strategic approaches to tackling excessive drunkenness, including the point that:

Enforcement activity should be a strong feature of future work to ensure that there is a realistic expectation of prosecution for illegal alcohol sales among venue staff and managers.²⁵

'*One too many?*' also recommend the introduction of a mandatory condition requiring premises to produce a policy on sales to drunk customers, similar to that covering underage sales. Given research suggesting that 'policy development and implementation within outlets may be more effective than server training in determining RBS effectiveness',²⁶ this seems a sensible idea.

7. Child protection

A significant number of interviewees stated that child protection services did not engage with licensing in their area. Many thought that this was a problem, and that greater input from child protection would be beneficial.

The section 182 Guidance states that:

The protection of children from harm includes the protection of children from moral, psychological and physical harm.²⁷

So, in addition to the more obvious issue around preventing children from obtaining alcohol, the licencing regime also has the scope to tackle issues around protecting children in a broader sense. For example some areas have used these powers to prevent premises using names such as 'The Drunken Sailor' or 'Bargain Booze'.²⁸

Others have gone much further, linking alcohol to issues such as truancy and inequalities in both health and education,²⁹ as well as the fact that those who drink at an early age are more likely to develop problems with alcohol in adulthood. Many of these issues overlap with public health concerns, and are being driven by public health teams rather than child protection, although there are some areas where child protection teams are involved with licensing. The scope potentially allowed by this objective could be far better used and explored by all responsible authorities.

Given financial restrictions it is hard to know how to better encourage child protection services to engage with licensing, but there is certainly a need to share best practice around this area and demonstrate what child protection can bring to the table.

Recommendation: On sales to drunks

This is a very difficult issue to address, but research consistently finds that multicomponent approaches to this, and other related issues such as serving to minors and proxy sales, provide the most effective approach. There is a need for more research into this.

The recent ‘*One too many?*’ report suggested a number of potentially fruitful recommendations on this issue that should be given strong consideration. These include the introduction of a mandatory condition requiring premises to produce a policy on sales to drunk customers, similar to that covering underage sales, and improved guidance on how drunkenness should be defined within the context of refusing sales.

In addition, the Better Regulation Delivery Office and the National Police Chief’s Council should restart negotiations and come to a resolution over when RIPA (Regulation of Investigatory Powers Act) authorization is needed for test purchasing operations. The lack of clarity in this area currently presents a significant obstacle to effective policing.

¹ Alcohol Policy UK (July 30th, 2014) What’s the picture with underage sales?

² Morning Advertising (July 7th 2014) Pubs filing more underage test purchase checks

³ Retail of Alcohol Standards Group (undated) Rising to the Challenge: A report into the application and impact of Challenge 25

⁴ Alcohol Policy UK (July 30th, 2014) What’s the picture with underage sales?

⁵ Alcohol Policy UK (July 30th, 2014) What’s the picture with underage sales?

⁶ Alcohol Concern (undated) One on Every Corner, p 8.

⁷ Better Regulation Delivery Office, Department for Business Innovation and Skills (April 2014) Age Restricted Products and Services: A Code of Practice for Regulatory Delivery, p 15.

⁸ This paragraph supplied by ACPO in correspondence.

⁹ All information here comes from conversations and correspondence with ACPO, who were very helpful with the issue.

¹⁰ Hadfield. P., Measham. F., (2014) The outsourcing of control: Alcohol law enforcement, private-sector governance and the evening and night-time economy. *Urban Studies*, p 10.

¹¹ Hughes, K., Bellis, M., Leckenby, N., Quigg, Z., Hardcastle, K., Sharples, O. and Llewlynn, D. (2014). Does legislation to prevent alcohol sales to drunk individuals work?: Measuring the propensity for night-time sales to drunks in a UK city, *Journal of Epidemiology and Community Health*.

¹² Hadfield. P., and Measham. F., (2011) Lost Orders? Law enforcement and alcohol in England and Wales. Final report to the Portman Group, p 28.

¹³ The Alcohol Academy & Alcohol Research UK (2014) One Too Many? Sales to drunk customers. Police, enforcement and responsibility. p 3.

¹⁴ The Alcohol Academy & Alcohol Research UK (2014) One Too Many? Sales to drunk customers. Police, enforcement and responsibility. p 6.

¹⁵ The Alcohol Academy & Alcohol Research UK (2014) One Too Many? Sales to drunk customers. Police, enforcement and responsibility. p 9.

¹⁶ Hadfield. P., Measham. F., (2014) The outsourcing of control: Alcohol law enforcement, private-sector governance and the evening and night-time economy. *Urban Studies*, p 10.

¹⁷ The Alcohol Academy & Alcohol Research UK (2014) One Too Many? Sales to drunk customers. Police, enforcement and responsibility. p 9.

¹⁸ Roberts. M., Eldridge. A., (2009) *Planning the night time economy*. Routledge, p 149.

¹⁹ John Gaunt and Partners (11th December 2014) Home Office Licensing Statistics in the year to 31 March 2014

²⁰ Hadfield. P., and Measham. F., (2014) The outsourcing of control: Alcohol law enforcement, private-sector governance and the evening and night-time economy. *Urban Studies*, p 9.

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- ²⁴ Quigg. Z., et all (April 2015) Evaluation of the Liverpool Say No To Drunks Pilot Intervention. Centre for Public Health, Liverpool John Moores University.
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- ²⁷ Home Office (October 2014) Revised Guidance issued under section 182 of the Licensing Act 2003, p 21
- ²⁸ Leeds City Council (June 2013) South Leeds Licensing Guidance
- ²⁹ Smith. K., Foster. J., (2014) Alcohol, Health Inequalities and the Harm Paradox: Why some groups face greater problems despite consuming less alcohol p 22.

Chapter 8: The transfer of licensing from magistrates to local authorities

Chapter summary

Most regarded the transfer of licensing from magistrates to local authorities as a success, and that it has led to a more transparent and easily administered and coordinated system.

It is though unclear whether there has been an improvement in the quality of decision making.

While the Act aimed to reduce regional variations, these are still significant, both in terms of administrative processes and the decision making process.

Far more could be done to encourage a more uniform application of licensing nationally. All parties having greater regard to the s 182 Guidance would be a good way to start this process.

This question generated a mix of comments, but most reported that the transfer of licensing to local authorities has been a success. Not all of the participants had first hand knowledge of the previous licensing system, although some had experience stretching back 35 years. Almost all were aware of the main differences between the two regimes.

Some who had worked under the 1964 Act viewed the former system as an inaccessible rubber-stamping exercise, as one participant put it:

You could sit there all day, but miss your slot if you went to the loo at the wrong moment – things are more accessible and transparent now.

Some were also critical of magistrates for being out of touch with the areas they covered, although others disagreed with this strongly, and had clear examples of magistrates understanding and addressing local issues.

1. A successful move

Overall most participants thought that local authorities were in a good position to make licensing decisions, and that the transfer of powers had been a success. It was thought that local authorities had the requisite local knowledge and accountability, and that licensing should be more than a black and white legalistic exercise. The logistical transfer between magistrates' courts and local authorities in 2005 was thought to have been handled well overall.

It was also thought that the move had led to big improvements in cooperation and joint working between the relevant agencies. Many thought that this greater cooperation extended to the licensed trade as well; it is now far easier for the trade to build constructive relationships with council officers. This often means small problems can be fixed in a mutually beneficial way that was not possible under the former regime. One participant from the licenced trade stated that:

Local authorities have got better over time, some are very good, but councillors do need proper training. There is still a concern that some lack the legal skills, but overall it's pretty good.

2. Regional variations

Some participants reported wide regional variations in the application of the Act, both in terms of the procedures and administrative processes within licensing, and in the way that licensing committees make decisions. While there was an acceptance that licensing should be flexible enough to accommodate local conditions, many commented on a degree of variation that goes beyond a margin of appreciation for regional differences and suggested problematic disparities in attitudes. This section will primarily cover administrative variation, while variations in the decision making process will be covered in later chapters, particularly 14.

A large number of administrative variations were mentioned as being problematic, including:

- What should and should not be considered a 'relevant' representation.
- When deliberation at hearings should and should not be held behind closed doors.
- What should and should not be considered a minor variation. For example, some councils will accept adding a first floor under minor variation legislation, whilst others will not accept extending a bar by one meter.
- Whether councils should or should not engage in discussion prior to submission of application without charging.
- When a new application is and is not necessary. Some councils will not allow any amendments whatsoever, whereas other allow a certain amount of flexibility. Some will call the applicant and resolve things immediately, whereas other will communicate via post, which eats into consultation periods.
- The use of more than one Temporary Event Notice (TEN) on the same premises within 24-hours.
- The use of section 176 arguments in licensing petrol stations. Some councils expect a full report, whereas other do not because they do not have the resources to ensure that it is correct.
- Whether there is or is not a reasonable balance of questions from Councillors inviting comments both for and against applications.

In some cases there might be a genuine local reason for variation on some of these issues, but many participants, particularly from the licenced trade and a legal background, thought that a far more uniform approach should be possible.

Some interviewees from national licenced retailers were particularly critical of regional variations in the application of the Act. In their view, magistrates had understood and enforced law in a clearer and more even-handed way. One participant with considerable experience of the former system described the way in which everyone who attended the monthly Transfer Sessions, or Triennial Brewster Sessions, such as clerks, solicitors, police, fire officers, council officers, had a more or less up to date edition of Paterson's *Licensing Acts*. This set out the latest case law and was reported to have been beneficial in providing a common base line, and evening out the application of the law nationally. Regional annual meetings to standardise approaches were also mentioned.

In addition to regional variations, timelines were also now seen as a problem by some in the licensed trade. One interviewee complained of delays when dealing with local authorities that they had never experienced with magistrates; in one area they routinely experienced delays of 3-6 months for personal licenses to be processed.

While the issue crosses over into the decision making process, there was a concern, particularly from those in the legal profession and from the licenced trade, that some councillors may not understand the need to be seen to be impartial. Examples were given where one party to a hearing was not given an equal opportunity to put forward their case, and a perceived bias both for and against the licensed trade was reported. The varying use of economic issues as an 'unofficial 5th objective' was another factor reported to result in local differences, as were differences in the weight given to police concerns around late closing times.

As a result of these issues, some participants thought that licensing committees would benefit from a stronger legalistic element, with others suggesting a less adversarial system that was more inquisitive in nature. The need for better training was frequently mentioned. However, despite these issues there was a general consensus that the majority of local authorities 'got it right' most of the time.

3. The continuing role of magistrates

While the Act transferred licensing decisions to local authorities, magistrates remain involved at the appeal stage, and so have retained an involvement with the licensing system.

A small number of participants stated that magistrates do not always give due weight to councillors' concerns when reviewing decisions at appeal. It was reported that this can result in licensing committees taking a more legalistic approach than they might do otherwise, and perhaps applying a higher evidential burden than that actually outlined within the Act, knowing that such a standard will be applied if there is an appeal. Some participants from a legal background disagreed with this, but one licensing committee chair who took part in the interviews agreed with this strongly, stating that:

We've often got local knowledge that should be applied, but anecdotally magistrates don't take our (councillors) concerns into account as they should do. Sometimes we take a more legalistic approach than we might otherwise, knowing that this approach will be taken if things go to appeal, it can have a negative impact on our decisions.

A large number of participants were also aware of licensing committees making 'safe' decisions, that they perhaps did not fully agree with, in order to avoid the expensive appeals process. It was reported that this was due in part to the way in which magistrates could at times apply a different decision making process, but also because of the legal influence of sections of the licenced trade. As one interviewee from a legal background stated:

I only have to raise the spectre of a costly appeal and local authorities scurry away scared.

By contrast, it was also reported that some committees made decisions knowing that they would be appealed, just to send a particular message. This however seemed to be a relatively rare event.

Discussion

Magistrates first gained primary responsibility for licensing in 1552,¹ so the transfer of power from magistrates to local authorities was a significant event. This significance was somewhat overshadowed, however, by other features of the Act which received far more attention. Some formal evaluations of the Act did touch on the issue though, and reported similar findings to those above: that the move increased efficiency and local coordination.^{2 3}

4. Regional administrative variations

A number of regional administrative variations have been outlined here, both within the former system administered by the magistrates, and within the current Licensing Act. Given this, and the fact that such variations within the administering and application of licensing have always been common,⁴ it is hard to know the extent to which the Act increased these. For example, the 1998 Better Regulation Task Force report 'Licensing Legislation' criticised the 'inconsistency' of licensing under the magistrates, and recommended a move to a simpler and more flexible system, with local authorities making decisions based on national guidelines.⁵ However, participants with knowledge of the former licensing system generally

reported that things are now more variable, despite the fact that one of the stated aims of the Act was to reduce regional variations in the application of licensing.

It has been argued that the 'third way' nature of the Act, aiming to be neither top down nor bottom up but giving a strong steer to local councils, has actually worked to increase variation.⁶ While this may be part of the picture, as with other issues within this report, a general lack of regard for the guidance may be part of the problem. As detailed at paragraph 1.7 of the s 182 Guidance, all those involved in licensing should be clear that the guidance is:

a key medium for promoting best practice, ensuring consistent application of licensing powers across England and Wales and for promoting fairness, equal treatment and proportionality.

Many of the inconsistencies mentioned by participants earlier in this chapter could be addressed if local authority licensing teams administered the Act in line with the guidance. At times, the Home Office could assist with this by clarifying the guidance in certain areas. As with other related issues, funding problems may lead to greater inconsistencies, and it might be expected that well funded and resourced licensing teams are more likely to stick to the best practice as detailed in the guidance than stretched and depleted licensing teams.

5. The relationship between licensing committees and magistrates

A number of interviewees reported that magistrates at times did not give due weight to the views of licensing committees, and that this, and the threat of being taken to an expensive appeal, could prompt committees to make 'safe' decisions and not use their discretion fully. As a result it was stated that licenses went through that should not have been granted. This potential problem was in fact highlighted in the Regulatory Impact Assessment produced when the Licensing Bill was introduced to parliament.⁷

However, it is likely the case that much of the problem here is the way in which licensing committees make decisions, and the fact that there is often greater clarity and legal rigour within a magistrates' court. Most licensing committees do not engage lawyers, and as mentioned already, there can be wide variation in the way in which hearings are conducted. As stated by some interviewees, at times some councillors may not understand the need to be seen to be impartial. Within this less formal atmosphere it may also be the case that too much weight is given to a particularly emotive representation, when a more impartial view might see this as less important, or only partially relevant.

When less rigorous decisions are appealed, the gap in legal clarity and focus is often easily exposed by more professional approach within a magistrates' C court. Good decisions can still be appealed of course but, in the words of the High Court:

The fuller and clearer the reasons, the more force they are likely to carry (*Hope and Glory v Westminster [2011] para 43*)

If a magistrate is asked to reconsider a good decision they should only depart from it if the factual circumstances have altered. If a magistrate comes to a different conclusion, it should not be because they have applied a different evidential burden. This is not to say that magistrates are infallible, only that much of the criticism here seems misplaced.

A higher standard of decision making could be achieved by clearer training and guidance for licensing committees and the better use of specialist legal advice. This could help to narrow the gap in legal rigour between licensing committees and appeal hearings, and in the process help local authorities be more assertive in their decision making process. The decision making process will be explored in more detail in chapter 14.

At the moment many local authorities are too easily bullied by the money and legal power available to sections within the licensed trade. The threat of the appeals process in licensing is, of course, nothing new. In his 2005 book *Bar Wars*, Hadfield extensively documents the use of the legal system by corporate interests under the former licensing regime:

The courtroom casts a long shadow. The *threat* of court action and its financial, personal and organisational consequences can often be a spur to agreement and concession...these spurs are felt most sharply... by local residents and public sector agencies.⁸

6. Summary

Overall it is clear that the majority of interviewees regard the transfer of power to local authorities as a success, and that it has led to a more transparent and easily administered and coordinated system. With this shift, coordination between the many bodies involved in licensing has certainly improved, but it is unclear quite how much of an improvement there has been in the quality of decision making. One anecdote mentioned during this research seems to sum things up well:

Today some complain about licensing committees, thankful that there is a right to appeal to the magistrates' court, whereas in the past many people complained about the magistrates' and were thankful of their right of appeal to the Crown Court.

Seemingly less successful though, is the Act's impact on addressing regional administrative differences. These, combined with variations in the decision making processes which have only briefly been touched upon here, suggest that far more could be done to encourage a more uniform application of licensing nationally. This is perhaps a surprise given the fact that the former regime was far from perfect in this regard, and that one of the Act's stated aims was to introduce more uniformity. On this account it does not seem to have been very successful.

Recommendation: Better application of the s 182 Guidance in practice

The need for all parties properly to engage with the s 182 Guidance has been mentioned within the recommendations already. This could also help to address regional variation within the administration of the Act. There is a need for local authorities to ensure that they follow the administrative guidelines throughout the guidance, particularly the advice on hearings at paragraphs 9.30 – 9.40.

Recommendation: Regular review and consultation on the advice contained in the s 182 Guidance

The Home Office (and DCMS) have provided regularly revised editions of the s 182 Guidance. The review of the Guidance could be further regularised, incorporating wider departmental discussion (from the Department of Health, and the Department of Business

Innovations and Skills, for example). In addition to review, regular consultation on the effectiveness of the s 182 Guidance should be considered.

¹ Nicholls. J., (2009) *The Politics of Alcohol*, Manchester University Press, p 11.

² Hough. M., Hunter. G., Jacobson. J., Cossalter. S., (2008) The impact of the Licensing Act 2003 on level of crime and disorder: an evaluation. Research Report 04 (Home Office) p 4.

³ DCMS (March 2008) Evaluating the impact of the Licensing Act 2003, p 7.

⁴ Greenway. J., (2003) *Drink and British Politics since 1830*, Palgrave, p 13.

⁵ Light. R., Heenan. S., (1999) *Controlling Supply: The Concept of 'Need' in Liquor Licensing*. University of the West of England, p 28.

⁶ Roberts. M., Eldridge. A., (2009) *Planning the night time economy*. Routledge, p 131.

⁷ DCMS. Regulatory Impact Assessment, Licensing Bill, p 15.

⁸ Hadfield, Philip Mason (2005) *Bar Wars: Contesting the night in British cities*, Durham theses, Durham University. Available at Durham E-Theses Online: <http://etheses.dur.ac.uk/2709/> p 14.

Chapter 9: Engagement of local residents in the licensing system

Chapter summary

While resident engagement within licensing has improved in some areas, it is debatable whether this has improved overall under the Act.

There was a widespread view that most local authorities do not encourage public participation. Some questioned the benefits of encouraging residents to participate in the licensing process.

There are however good examples of local authorities encouraging residents to engage in licensing. Clear, easy to navigate websites were regarded as a good first step in this process.

This issue is closely linked with the move from magistrates to local authorities. The magistrates' court was widely regarded by participants as overly formal, bureaucratic and intimidating, all of which made it difficult for residents to participate in the licensing process.

In general, participants agreed that licensing was now more accessible to local residents, but with wide variation, and that significant problems still existed. There was a widespread view that most local authorities did not encourage public participation. This was partly because of the cost, but also because of the fact that it could produce additional work for already-stretched licensing teams. A number of interviewees reported that the licensing pages on most council websites were difficult to navigate and frequently off-putting.

1. Examples of good engagement

A number of examples considered to be best practice were mentioned; for example, Westminster Council fund the [Licensing Advice Project](#) (LAP), which is provided by a Westminster Citizens Advice Bureau Solicitor who offers free advice and representation to local people and groups on issues relating to the licensing of alcohol, sex establishments and gambling.

It was also mentioned that Westminster, Islington and some other areas write to all residents within a 50-metre radius of a premises applying for a licence, and that this is very successful in encouraging people to comment. It was reported that areas, such as Lambeth and Newcastle have been effective in engaging local groups with the licensing process, both when consulting on Statements of Licensing Policy (SLP), and for commenting on applications in general.

Other interviewees stated that Drink Wise North West had developed an 'alcohol inquiry' scheme as a method of engaging residents in wider alcohol-related issues, and as part of this helped to equip people with the knowledge and skills to engage with licensing. A number of good council websites were also mentioned, which were thought to be clear, easy to navigate and to make it easy to search applications by name and location.

2. The benefits of engagement

Participants disagreed about the benefits of encouraging residents to participate in the licensing process. Interviewees from areas that made a concerted effort to engage local residents generally reported that this was not only important on a democratic level, but that it was extremely useful in adding legitimacy and weight to that council's actions. This was particularly the case for SLPs; a number of participants stressed the fact that they felt better equipped to turn down licensing applications seen to be inappropriate if they had good evidence of residents supporting their plans for an area.

The perception that residents' views could have a positive impact extended beyond SLPs though. Many stated that residents could provide an important story or narrative to complement the representations put forward by responsible authorities – the qualitative to go with the quantitative.

In contrast to this, other interviewees were more dismissive of resident participation in general. Certainly some council websites are extremely difficult to navigate with no easy way to find relevant local licensing information. Some councils also make no effort to consult on SLPs other than advertising it on their website. One participant did make the point that it is difficult to quantify the impact of public participation, and that if they could substantiate the

impact that a widely consulted SLP had, it would be much easier to get the funds for this. Research into the effectiveness and cost-benefit implications of resident consultation and participation in licensing would be extremely useful.

Many participants commented on the fact that it is frequently difficult to engage residents, and that when this does happen it is often brought about by one particular application that is likely to impact on them. Some also stated that it is often people from more affluent areas who have the time to get involved, and that residents in poorer areas do so less often, when they perhaps may actually have more to gain by trying to influence the licensing process.

There was a widespread view that significant problems still existed for local residents wanting to engage in the licensing process. In particular participants stressed the inability of some residents to structure their objection around the four licensing objectives and that the need to do so could be off-putting for those without a background in licensing.

Despite licensing committees being more accessible than the magistrates court, hearings were still regarded as intimidating and difficult for residents to speak at. The fact that residents with similar representations are at times asked only to give one statement between them was seen as insulting and problematic in encouraging future participation. One interviewee mentioned an occasion where 12 residents had all arrived at a licensing committee hearing but been told that they could only submit one statement between them, which they were not very happy with and had done little to encourage them to participate again in future.

Examples were given when residents had withdrawn objections as they did not want their name to be made public, fearful of intimidation or other actions from the applicant. One interviewee stated that they routinely anonymise representations to protect people; the s 182 Guidance says this should only be if there is the risk of violence, but they find the wider use of this very beneficial.

Participants from the licenced trade often took a different view of public participation. It was reported that too much engagement was problematic for business, and that in particular the Department of Culture, Media and Sport saw it as a burden on business. One participant wanted to scrap the obligation to put license application notices into local newspapers, and said that the blue signs put up to notify people of an application work well. A cynic would note the contrast with the views from licensing enforcement officers however, who state that blue notices are ineffective in alerting members of the public to licensing applications.

Some argued that it was too easy for people to object, and that some local authorities allow very poor complaints to be heard. One stated that objections could cost the applicant a considerable amount of money, and that residents should have to attend a hearing to have their objection stand. In contrast, one interviewee from a national supermarket stated that they do try to engage with residents who put in representations, and that they write to them to explain how they will attempt to address their concerns. They viewed these residents as potential customers, and wanted to show that they had listened to them.

Overall there appear to be very large regional variations on this issue; some local authorities have brought about a significant improvement in the accessibility of the licensing process for their residents, but in many places things are only slightly better than under the former system.

Discussion

3. Regional variations

The wide regional variation in licensing is reflected in this issue too, with some areas extremely effective in supporting and enabling residents to influence the licensing system, and others doing very little to aid this beyond putting information on a (probably quite inaccessible) website. Despite this variation, however, it does seem that opportunities for engagement across the board are somewhat better for local residents than under the former system.

There has only been a small amount of research into this issue, but generally moderate improvements have been found. Roberts and Eldridge, for example, found a general improvement for residents but a very mixed view overall:

Interested residents can have an influence on the operation of the night time economy in their area, although the circumstances in which they can restrict its overall growth are limited... the process has become more transparent and accessible. Where residents and businesses are less well organised, they are vulnerable to changes that may not be beneficial.¹

Regarding the impact of local representations on business, there is evidence elsewhere that backs up the claim from one participant that DCMS viewed resident involvement as a burden on business, with Roberts and Eldridge reporting that a group of pubcos and breweries had argued that local authorities would be too receptive to the views of residents and 'interfere' in licensing.² Overall the fact that there has only been a small improvement in local engagement in licensing suggests that this has not happened. While tenuous or vexatious representations would certainly be an undue burden on business, local authorities should not accept these. As with other issues, it may be that there is wide variation in the quality of resident representations and that a greater focus on the guidance would ensure a more consistent standard is applied nationally.

4. The benefits of consultation

There is no real evidence of the actual impact of public participation on either individual licensing decisions, or individual SLPs and how they influence decisions. While work has been done reviewing the content to SLPs, this is not the same as looking at their use and the way in which they actually shape licensing decisions in practice. Research into this area would be beneficial. Clearly there are positive democratic arguments for making genuine efforts to take local residents' views into account, but that does not address the question of whether such a consultation might produce positive results, or be 'cost effective'. It may though be a misnomer to try and quantify public consultations economically, although from a legal perspective an SLP that demonstrates strong public support and participation could be seen to have greater legal weight. Similarly, some local authorities have taken their SLP to full council in order to add to its legal weight.

In this research a number of participants from local authorities who had done significant consultation reported that it had been beneficial, and generally given them support for licensing decisions. No one though appeared to have considered the possibility that consultation responses might not coincide with local authority priorities, potentially making things more difficult. This happened in Hackney where the majority of residents who replied

to a consultation on the introduction of a cumulative impact policy or special policy area were against the proposal. In the event it was introduced anyway.

It is of course up to each local authority to weigh up what the public interest in their area requires, and the views of local residents should be key to this. It may well be that in certain areas most residents would like to see growth in the licenced trade, or perhaps growth in specific ways that would change the dynamic of the night time economy. However, local authorities do need to take into consideration a wide range of views; it would be beneficial if, as part of any efforts to conduct wider consultation, the views of a wide range of residents and local groups were taken into account. Chapter 14 will address this issue in more detail.

5. Summary

While there have seemingly been improvements in resident engagement in licensing in some areas, it is debateable whether much has actually changed overall. For many, licensing is still, in the words of one interviewee:

A mysterious and impenetrable process, often not seen and hard to access

Given the pressures on local authority budgets it is hard to know how to encourage improvements in this area, but there are clearly some areas that excel in engagement local residents and who could act as good examples for other local authorities looking to do the same.

Recommendation: Better engaging local residents in licensing

While it does have cost implications, Westminster has had great success with its licensing advice project, where it funds licensing advice for local residents in conjunction with the Citizens Advice Bureau. Replication of this elsewhere seems likely to be very beneficial, and could be legitimately factored into a licensing authorities' costs under locally set fees.

¹ Roberts. M., Eldridge. A., (2009) *Planning the night time economy*. Routledge, p 135.

² Roberts. M., Eldridge. A., (2009) *Planning the night time economy*. Routledge, p 123.

Section 3: Looking forward

CHAPTER 10: LATE NIGHT OPENING AND THE POLICE

CHAPTER 11: POLICE FUNDING AND VOLUNTARY BEST PRACTICE SCHEMES WITHIN THE LICENSED TRADE

CHAPTER 12: LOCAL AUTHORITY FUNDING PROBLEMS

CHAPTER 13: LICENSING STRATEGIES & STATEMENTS OF LICENSING POLICY

CHAPTER 14: DECISION-MAKING AND THE USE OF EVIDENCE

CHAPTER 15: LICENSING AND PUBLIC HEALTH

CHAPTER 16: PRICE AND MARKETING

CHAPTER 17: CONCLUSION

CHAPTER 18: FULL RECOMMENDATIONS

Chapter 10: Late night opening and the police

Chapter summary

Policing the NTE is resource intensive, and the prospect of greatly reduced police numbers raises significant questions in this area.

The vast majority of police representatives favoured bringing forward extremely late closing times in order to relieve pressure on the police. Evidence suggests this is an effective method of reducing violent crime, including sexual assaults.

While many stated the need for more powers to limit very late closing times, many licensing committees do not properly take police resource concerns into account within decisions, despite this being highly relevant for the promotion of the licensing objectives.

Early Morning Restriction Orders (EMROs) were seen as unworkable, but the ability of local authorities and the police to make a well evidenced case may be part of the problem.

While the Late Night Levy (LNL) has worked well in some areas, it was seen as too inflexible to be used widely. Many also reported that LNLs require a lot of work for a modest return, and their impact on crime and disorder is yet to be established.

A significant number of police representatives raised the issue of funding cuts. They stated that it had already become more difficult to police the night time economy and that this would get worse in future. One area had recently lost 300 officers, and expected to lose a similar amount in the next few years. Another reported that their area might only have enough police officers to respond to 999 calls in three years' time, raising significant questions about the policing of the night time economy.

A number of people mentioned the success of high visibility policing earlier in the evening at preventing problems later in the night. However, participants from two areas stated that police cuts had already affected these, and as a result they had seen increased problems.

These views reflect comments reported in the press about the impact of police funding cuts, with Gwent's Police and Crime Commissioner (PCC) Ian Johnston stating that the impact of planned police cuts has:

Not been understood by the public or politicians.¹

Lancashire's PCC also reported that his force has lost 700 officers and 500 staff as a result of recent cuts, and that these figures could double by 2020/21 if cuts continue at the current pace.² In addition, a National Audit Office report released in June 2015 accused the Home Office of making deep cuts in policing without understanding how it will affect the public.³

In light of these statements it is clear that police funding and resources are a key consideration that have the potential to impact upon everyone within the night time economy. As covered in the next chapter, the fact that local authority enforcement teams have also undergone significant cuts in many areas needs to be highlighted too; it seems very unlikely that cuts in budgets and resources for the two main enforcement bodies will not lead enforcement problems within the NTE.

This section will look at possible responses to the concerns raised by funding cuts and what participants thought of these, including the impact of very late closing times, Early Morning Restriction Orders (EMROs) and the Late Night Levy (LNL), while the next chapter will look at Best Bar None (BBN) and other similar voluntary schemes.

1. The impact of very late closing times

The fact that extended opening hours brought about by the Act has caused significant logistical problems for the police by pushing crime and disorder later into the night has been discussed at length in chapter 6.

As a result of these problems the majority of police representatives stated that they would favor restricting opening hours, and this was reflected across the majority of all participants, who expressed the view that local authorities needed more powers to bring forward closing times where there were problems late into the night. A number of participants suggested 2am as a reasonable cut off point. However, it was thought that this would be difficult to do now because of the fact that late closing times were so well established.

Given that most police forces had had to rearrange their Friday and Saturday night shifts to accommodate the increased workload brought about by the Act, with some effectively double-shifting to meet demand, it was reported that reduced hours would probably lessen the impact of the night time economy on police forces.

2. Early Morning Restriction Orders (EMROs)

EMROs were introduced via the Police Reform and Social Responsibility Act 2011 (PRSA), which received Royal Assent in September 2011. In theory they:

Enable a licensing authority to prohibit the sale of alcohol for a specified time period between the hours of 12am and 6am in the whole or part of its area, if it is satisfied that this would be appropriate for the promotion of the licensing objectives.⁴

The Home Office states that EMROs are designed to address recurring problems such as:

- High levels of alcohol-related crime and disorder in specific areas at specific times
- Serious public nuisance
- Other instances of alcohol-related antisocial behaviour which are not directly attributable to specific premises.⁵

It is interesting to note that by considering 'the whole or part of its area', and the fact that alcohol-related antisocial behaviour does not have to be directly linked with a specific premises, EMROs specifically involve a holistic area wide view of licensing and the combined impact that concentrations of premises can have on an area. This is in marked contrast to the primary decision making process within the Act – or at least the way in which it has been used in the last 10 years - where each premises is considered individually and where negative outcomes must by and large be linked to a specific venue. According to one interviewee this was a point of real contention within the Home Office while the EMRO regulations were being formulated.

All participants had a negative view of EMROs, with most describing them as impractical, 'completely unsuccessful' or 'the nuclear option'. One participant stated that:

EMROs are like the old alcohol disorder zones, ineffective and simply not practical, and have been killed off by the Trade. The legal processes are difficult for local authorities.

There was a common view that the licensed trade had worked very hard to prevent EMROs from being introduced, and a number of participants stated that the Association of Licensed Multiple Retailers (ALMR) had set up a national 'fighting fund' to help local licensed businesses challenge EMROs in their area. It was reported by a number of participants that Blackpool's failure to implement an EMRO, despite having some of the very worst alcohol-related harms in the country, and the police having hired a top licensing barrister, had put all local authorities off this policy and that no one would attempt to introduce one in future.

A few participants had personal experience of EMROs, having got to various stages of the implementation process. Two participants reported the local authority having stopped at the initial investigation stage because it was thought it would have too negative an impact on the local economy, and that they were put off by the failure of other areas to implement EMROs. One interviewee with experience in London reported that local authorities there feared losing business to other nearby areas if they implemented an EMRO.

One or two, however, were very critical of Blackpool council and the police for their attempts to introduce an EMRO, describing miscommunications and administrative problems which put them needlessly on the back foot. They also reported that there had been problems

gathering and coordinating evidence, which had been done by the police, and that it had been used to flood the licensing committee with information rather than to illuminate key issues. It was stated that this had set an unfortunate precedent. One interviewee from a legal background stated that:

EMROs could have worked in some black spots, but councils and the police are not up to task of imposing them. The trade fought hard, but councils are not used to being proactive and are not confident enough, they've been intimidated.

Others disagreed however, stating that economy, the absence of health consideration and fear of being first area to implement an EMRO were much bigger factors in the Blackpool decision. One interviewee, who had spent some time looking into EMROs while their local authority was considering one, stated that:

The guidance within the EMRO regulations pretty much amounts to a fifth economic objective – it's all about the impact on industry, and makes it difficult to include the negative economic elements of alcohol-related harm. So things are easy for the licenced trade, but there is little scope for NHS costs etc. to be considered properly.

Other participants echoed this view, and stated that EMROs had been designed in a way that would always put local authorities at a disadvantage. Interviewees from the licensed Trade were universally against EMROs, however there is a clear conflict of interest amongst trade bodies in this area, as EMROs could impact on their profitability.

3. The Late Night Levy (LNL)

LNLs were introduced at the same time as EMROs. They enable licensing authorities to:

Charge a levy to persons who are licensed to sell alcohol late at night in the authority's area, as a means of raising a contribution towards the costs of policing the late-night economy.... beginning at or after midnight and ending at or before 6am.⁶

At present only a small number of local authorities have introduced a LNL. Participants expressed a range of views about the success of LNLs. Some came from areas that had successfully implemented them. One stated that:

The LNL works very well locally, it has reduced the availability of alcohol and made money, which pays for street wardens and street cleaning. The condition of the local area is important, if it's clean it's treated well. But the system's only as good as the local authority who runs it.

Another participant from an area with a LNL reported that

It's working OK, it's an important part of our local strategy. But there are problems; premises stop serving at midnight but allow people to bulk buy just before time. So people can sit there and keep drinking into the night, but the premises doesn't have to pay. They should, it's a loop-hole.

Overall, most participants were critical of the LNL and saw it as an inflexible policy that was only appropriate for certain areas. One stated that:

LNLs are not very workable in practice. Newcastle has a big night time economy but within a relatively small council area, so it's easier and they've made it work. It would not be practical for XXX as LNLs have to cover the whole local authority area, which would seriously impact on rural pubs that cause no problems, it's not a fair principle.

One interviewee referred to a Home Office focus group run as part of the creation of the LNL. They stated that all the participants from local authorities had wanted the LNL to be more flexible, and to be able to apply it only in certain areas, or only against certain premises that they could prove were creating extra costs. This request, however, was ignored.

A few participants stated that the inflexibility of the LNL was a result of discussions with the Treasury, who had put forward a tax related legal argument as to why it had to be applied universally to all premises. Some participants reported, however that one or two local authorities had been lobbying the Home Office to increase the flexibility of the LNL, arguing that it would be more effective if only applied to 'problem premises' using a risk based approach. One participant, from a large urban local authority, stated that:

We want to focus on problem premises, there is support for the polluter pays principle, but we can't use it. You shouldn't need the LNL, do it with fees, a bit like the old public entertainment license, which were less for rural pubs.... We'd want to charge bigger and later venues more, the rateable value doesn't catch the impact of premises on our work well. Supermarkets are huge but have low rateable value, whereas corner shops in a posh area can pay fees two or three times as much.

In addition, a large number of participants raised issues about the administration of the LNL, and had concerns about the way in which any money raised was allocated. In particular, one interviewee noted that LNL's may not always be financially viable with the cost of administering and enforcing the LNL outweighing its benefits. This they suggested was in part because 70% of the money raised goes to the police who may not then spend that money on policing the late night economy.

Other participants reported similar concerns, and some stated that they did not have the local resources to administer the LNLs and make a worthwhile profit. We also note that premises involved with voluntary schemes such as BIDs (Business Improvement Districts) and Best Bar None can be given a 30% reduction in the levy if they are seen to reduce crime and disorder. In reality responses from participants suggested that participating in these schemes was a necessary part of engaging collaboratively with the licensed trade, but that the evidence for a link between these schemes and a reduction in crime and disorder is very limited. This point was made by a large number of participants, although some said that it was not about making money necessarily, but better regulating the availability of alcohol by encouraging some venues to close earlier. The effectiveness of voluntary schemes will be addressed in the next chapter.

Interviews from the licensed Trade were universally against the LNL, as LNLs could impact on their profitability, and this conflict of interest should be noted. Some stated that, as with EMROs, LNLs prevented partnership working. Another echoed comments made above:

Petrol stations in xxx were all sent a £1500 bill, just the same as city centre nightclubs and bars. That's not fair.

Taking a different approach, a few participants, including some from the licensed trade, reported that the off-trade was a bigger problem. They suggested that LNLs miss the point and won't affect people's drinking habits. Rather they pointed to the price of alcohol as the key variable. Higher prices would both discourage preloading and reduce the amount people drink when they are out.

Reflecting on both LNLs and EMROs, one participant described the Home Office as 'firing blanks again'. Members of the legal profession were equally damning. One from lawyer stated:

It's a common theme, Government gives powers to local authorities but they are not effective, or at least can't be effectively used. The lack of take up on both of these proposals suggests that they are both flawed in the first place.

and another that:

Just about everything that the Home Office sponsors is doomed to failure... if you look over all the licensing initiatives that have been introduced in the last few years, how many of them have had any real significant or lasting impact? Not many actually.

Discussion

4. The impact of very late closing times on the police

In essence EMROs and LNLs were introduced to counter some of the negative impacts of 24-hour licensing. During a BBC run debate in the lead up to the 2015 General Election, Andy Burnham, who for a time had responsibility for the 2003 Licensing Act as Culture Secretary, stated that it had been a 'mistake' to allow 24-hour opening, something that all the other main political parties agreed with.⁷

Arguments can be made for extremely late closing times on the grounds of individual freedom: why shouldn't someone be able to stay out till 5am? Yet in the context of continued cuts in police budgets there is a need to balance that individual freedom with the negative consequences that can come with it, and the police's ability to respond to a whole range of other issues. Police officers interviewed for this report put forward the view that this balance is not right at present, and that the NTE was taking up an undue amount of police resources. They stated that if closing times were brought forward police forces, many of whom currently double shift officers on Friday and Saturday nights, would be able to redeploy these officers into other duties.

The prospect of greatly reduced police numbers raises significant questions for the night time economy. Individual areas will address this issue differently, and some may not wish to impact on closing times. Others may attempt to move the 'night out' forward and foster more of an 'evening and night time economy'. Durham's 'gentleman's agreement' that all venues will close at 2am could act as a good example regarding closing times, and is thought to be beneficial for all parties. Reportedly, the licensed trade do not feel they were losing much profit by closing at 2am, and research showing that only 20% of sales made between 6pm and 6am occur after midnight would support this view.⁸

At present EMROs could in theory be part of the solution where voluntary alternatives cannot be agreed, but this remains unlikely, and LNLs are too inflexible to be a realistic consideration in many places. Councils could attempt to review licences one by one and try and bring forward closing times individually, but this would be a difficult and time consuming process, and as with many licensing issues, would almost certainly be taken through the courts where large multinational business can outspend local authorities.

Another consideration mentioned within the interviews was that some licensing committees do not take police resource concerns on this issue into account. It was mentioned that even where the police had stated that they did not have the resources to deal with a particularly late closing time this would sometimes be ignored. On a point of law this is surprising, given that the guidance makes clear that:

The promotion of the four licensing objectives is a paramount consideration at all times' (section 1.4)

A lack of police resources could almost certainly be seen to have a negative impact on the promotion of the licensing objectives. This issue, and the 'promotion of the prevention' of the licensing objectives, is discussed more fully in chapter 14.

At this point it is perhaps worth mentioning research from Newcastle, Australia, which found that bringing forward closing times from 5am to 3am resulted in 37% reduction in assaults.⁹ 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.*

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.¹⁰

While there are differences between the night time economies in Australia and the UK, this is an extremely interesting comparison, and further research into the possible impact of similar opening times restrictions in the UK would be welcome.

5. Early Morning Restriction Orders

A number of commentators have pointed out the ineffectiveness of EMROs and LNLs, with Hadfield and Measham terming them 'invisible powers',¹¹ and listing similar reasons to participants in our research for why local authorities have not implemented them: low expected revenues from the LNL, legal concerns over implementing new legislation, economic impacts on business and reputational damage to the area.

The fact that EMROs specifically involve a holistic area-wide view of licensing and the combined impact that concentrations of premises can have on an area, could be seen to provide an interesting precedent within the 2003 Licensing Act. Many participants from a regulatory background expressed an interest in this perspective. It is probably because of this holistic area wide view, and the fact that alcohol-related antisocial behaviour does not

* 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.

have to be directly linked with a specific premises, that the licensed trade have worked so hard to prevent EMROs being implemented.

Within this report a number of participants have stated that venues often do not make much profit in the early hours, and a small amount of research appears to back this up.¹² This sits at odds with the view put forward by the licensed trade within EMRO hearings that:

A reduction in opening hours, in the current economic climate, could have serious consequences for the viability of their businesses.¹³

This could of course be true, either universally or in some locations. Alternatively, it could be that the licensed trade are keen to minimise regulation as much as possible, regardless of its genuine impact upon them or the external problems that their businesses cause, a view put forward by more than one participant. Given the recession brought about by the 2008 banking crisis, it is perhaps understandable that local authorities have been keen not to impinge upon economic growth. However, the externalities and knock on effects of economic growth in the night time economy need to be remembered, and Bernard Hogan-Howe, Head of the Metropolitan Police Service, recently called for local authorities to put regulation ahead of economic growth as part of a 'prevention first' approach to policing:

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.¹⁴

In establishing the EMRO the Home Office recognized a clear need for local authorities to have the power to bring forward closing times and prevent alcohol-related harms in particular hot spots. Yet if local authorities are to do this properly, they need to be given effective tools to work with, and there is clearly debate as to whether EMROs amount to an effective tool. Interviewees talked of the EMRO being complicated and overly favourable to business, and after looking into implementing an EMRO in Lambeth, councillors were reported in the media describing the powers as poorly drafted and not 'fit-for-purpose'.¹⁵

The influence of the licensed trade is also a key consideration here, and Nicholls has described EMROs as a clear example of 'venue shopping' by industry:

On the one hand, local areas provide the opportunity to test and develop new policies but equally, they provide opportunities for opponents to challenge and derail national legislation. In this instance, when national legislation threatens the interests of the alcohol industry, local settings can provide the opportunity for challenges that make national legislation ineffective or impractical.¹⁶

On first reading this seems to sum up the EMROs fate very well, and as reported in the interviews, Nicholls also mentions the fact that the Association of Licensed Multiple Retailers established a fighting fund to bring appeals against any local authority attempting to introduce both EMROs and LNLs.

However, blaming the failure of the EMRO solely on the licensed trade and poor guidance is rather unfair. While these are key factors, the administrative and evidential errors from the police and Blackpool council may have been more significant in setting an unfortunate negative precedent. It was stated by the police and local authority that alcohol-related crime had increased since the Act was implemented in 2005, yet this was found to be incorrect both locally in Blackpool and nationally.¹⁷ In addition there were complications in the

evidence gathering process and reportedly it was not a well focused exercise. Any legal argument based upon incorrect evidence such as this is likely to struggle, and while trade pressures also played a part, Blackpool's failure to implement an EMRO may well be due to these errors.

While it would be a daunting and potentially expensive task, if well organised and evidenced, implementing an EMRO remains a realistic prospect for a local authority. Key to this would be resources, training and expertise; using the appropriate evidence, considered in the balance of probabilities, as to the likely positive and negative effects within the context of local needs and priorities. As with the Act in general, EMROs should be operated in the wider public interest, not that of the licenced trade. The Home Office could aid this by clarifying the guidance, particularly around the use of evidence, and perhaps by sponsoring training for local authorities. However, as chapter 14 investigates in more detail, many local authorities put themselves on the back foot in their use of evidence within licensing decisions, and could take a different approach which increases their discretion, fully in keeping with the Act.

Returning to the issue of strategy within licensing, local authorities who could demonstrate that an EMRO was in keeping with their overall licensing strategy and wider public interest, perhaps also highlighting alternative economic opportunities with a less detrimental local impact, might also give themselves additional scope in implementing an EMRO.

6. The Late Night Levy

The LNL is not quite as 'invisible' a tool as the EMRO, but while it has not failed, it has not succeeded either. Its inflexible nature does seem to be one of the main reasons that it has only been adopted in a handful of areas, which as of January 2015, were Newcastle, Cheltenham, Islington, City of London, Nottingham, Chelmsford and Southampton. Camden have also decided to implement one, and Liverpool have consulted on this but as yet not taken a decision. As suggested in the interviews, most of these areas are predominantly urban and concentrated around well-developed city centres. This seems to be the only type of location that would be able to generate the political support for a LNL, because of the fact that more premises than not could be seen to be contributing to antisocial behaviour. Local authorities with significant urban areas facing antisocial behaviour, but who also have large rural areas within their boundaries, seem unlikely to be able to implement a LNL because of the impact that this would have on rural premises who are not seen to contribute to problems experienced elsewhere.

At present there are no formal evaluations that have investigated the impact of LNLs, but the legal firm Poppleston Allen submitted freedom of information requests to a number of LNL areas in order to identify the impact of their respective LNLs one year on from implementation.

Cheltenham Council had originally estimated that 218 premises would be affected by the LNL, but in fact this figure was considerably smaller at 123 premises, and 22% of premises reduced their hours to avoid paying the levy. The council had predicted that the LNL would generate approximately £199,000 in revenue, but in practice it raised £76,889, 39% of the prediction. This was in part due to the smaller number of premises affected by the LNL, but also the fact that 49 of the 123 premises were eligible for a discount as they were members of best practice schemes.¹⁸ One slight consolation was the finding that the LNL had cost £1,015.15 to administer, against a prediction of £6,268.51, probably partly as a result of the fact that the scheme was smaller than expected.¹⁹ Overall Cheltenham Council's net

revenue from the LNL was £76,889 from 123 premises. In February 2016 the *Morning Advertiser* reported that the Cheltenham LNL could be scrapped and replaced with a Business Improvement District (BID) because of the fact that it has not raised the funds expected.²⁰

Newcastle Council provides a rather different example, having raised £302,942 in their first year, just within their estimated revenue of £300,000 to £400,000. This amount was raised from 240 premises, with 130 of those receiving a 30% discount as a result of being involved with a best practice scheme. The cost of administering the levy in the first year was £22,500, resulting in net revenue of £280,442 from 240 premises.²¹ For the year 2014/15 Newcastle have estimated that exceptions to the LNL will be worth £18,000.²² Overall Cheltenham raised £616.86 per premises affected by the LNL, whereas Newcastle raised almost double this at £1168.50 per premises, which may be down to relative size of the venues in Newcastle, as large venues pay higher fees.

These two differing examples suggest that in certain circumstances the LNL can work to secure additional funding for use within the night time economy, although there are clearly significant differences between areas, with Cheltenham only raising 39% of its target. In both scenarios the local licensed trade were very much against the LNL and viewed it as an additional cost, with at times unclear benefits. Indeed, raising additional revenue is only half of the effort, with the way in which it is spent arguably more significant. Councils must give at least 70% of the net revenue raised to the local Police and Crime Commissioner (PCC), and:

There are no restrictions on what the PCC's portion of the levy revenue can be spent on, in line with standard practice on the allocation of police funds.²³

This means that the LNL revenue does not have to be spent within the NTE, which seems problematic. Within the guidance there are however limitations on the way in which the Council can use its remaining share. The money spent by the Council:

Must have regard to the connection with the supply of alcohol during the late night supply period and related to arrangements for:

- The reduction of crime and disorder;
- The promotion of public safety;
- The reduction or prevention of public nuisance; or
- The cleaning of any relevant highway or relevant land in the local authority area.²⁴

Both Cheltenham and Newcastle have decided to split the revenue 70:30, and come to agreements with their PCC that the funds given to them from the LNL will be spent within the city.^{25 26} Instead of having two separate funds, Cheltenham and their PCC have decided to form a single Late Night Levy Advisory Group to oversee the way in which the revenue is spent, made up of representatives from 'the licensed trade, Councillors, council officers and officers from Gloucestershire Constabulary and the Office of the PCC.'²⁷

The *Morning Advertiser* reported that Cheltenham has spent its LNL revenue on the following:

- £885.90 on St Paul's Streetwatch
- £30,974 on a Purple Flag co-ordinator
- £6,388 on The Hub Bistro, an alcohol-free venue
- £16,000 on a multi use community van
- £12,778 on a University community street patrol, one day a week
- At the time of the article almost £9000 was yet to be spent.²⁸

Cheltenham Council were also reported as saying that

In terms of benefit, the LNL funding seeks to promote greater diversity in the night-time economy that is less focused on alcohol.²⁹

This is a creative approach. The regulations do not mention promoting diversity, although diversifying the night-time economy could potentially be seen to reduce crime and disorder while promoting public safety. However, some within the licenced trade have called for the LNL to be scrapped, and criticized the way in which the money has been spent, stating that it was 'against the spirit of the regulations' and that it has been used to fund activity that would normally be covered by regular local authority budgets, such as the Purple Flag coordinator.³⁰ It was also stated that there has been no visible change in policing levels as a result of the levy, suggesting that this might be a bigger priority for the licensed trade. At present there has been no evaluation of the impact that these schemes have had on law and order or cleanliness in the night time economy within Cheltenham.

Newcastle has spent its LNL funds on a range of initiatives such as street pastors, taxi marshals, bar and nightclub scanners, additional CCTV, street cleaning, and a 'Safe Haven' scheme for anyone who is in difficulty. It was not possible to find details of how much these initiatives have cost or how they have been split between the police and council sections of the LNL revenue.

Newcastle's LNL has been criticized by the local licensed trade because of the fact that, despite overall crime figures falling, between April and November 2014 violent crime, sexual offences and anti-social behaviour had increased between 6pm and 5am in comparison to the year before. It was suggested by opposition councillors that spending the money on street pastors and club cameras had not worked, and that it should be reallocated.³¹

Both the police and Newcastle Council have suggested that the increase in crime figures between 6pm and 5am could be a result of increased reporting of crime now that there are more resources within the night time economy.³² However, the upward trend was also mirrored in the wider Northumbria Police region, so seems unlikely to be linked to the LNL in any way. The Council also stated that future police budget cuts would make policing the city at night more difficult and that the late night levy could be:

Used to minimise some of the consequences of austerity... (which is) another good reason to have it.³³

The local Newcastle Pubwatch chairman stated: 'We perceive that crime in the city centre is at an all-time low,' and that:

The small rises in crime in the city centre in our experience as pub managers is not related to the levy. Other factors are involved such as 'pre-loading' where customers are trying to get best value for themselves so drink at home because alcohol bought from the supermarket can be as low as 23p a litre.³⁴

There is not space here for a full investigation in the way in which revenues raised by LNLs have been used and the actual impact that this has had on the four core issues included within the LNL regulations. Legal firm John Gaunt and Partners have commented that:

The LNL may be deemed a success; following the many reductions of licences only those premises operating in the LNL period contribute additional funding, we are yet to establish the full extent of how this money is spent and what effect this is having. Our initial findings would suggest the LNL schemes have been effective in raising additional revenue but their impact on crime and disorder is yet to be established.³⁵

There is clearly a real need for a better understanding of what options available to the police and local authorities will be the most effective in reducing crime and disorder. It is interesting that in neither case here was the money used to provide additional police officers on Friday or Saturday nights. This was the case in Nottingham however, who when introducing their LNL stated that they would use the revenue to fund two night time Community Protection Officer posts.³⁶ A number of participants within the interviews stated that they know visible policing to be effective, and that having recently lost officers from this role they had seen crime rates go up. It would be interesting to compare this use of resources with the other methods described above. Given the inflexibility of the LNL and the fact it seems not to be suitable for many areas, this inflexibility will probably need to be addressed if it is to become more widespread.**

Recommendation: On the Early Morning Restriction Order

Clarifications to the s 182 Guidance in order to encourage local authorities to implement EMROs, with a focus on coordination of the process between the local authority and the police and on the gathering and use of evidence.

Recommendation: A flexible Late Night Levy

For the LNL to be a genuine option open to local authorities it needs to be made more flexible, targeting only certain geographic locations rather than the whole local authority area.

Funds raised via the LNL for both the police and local authorities should be clearly ring fenced for the night time economy, and police funds should be used to augment the existing police strategy rather than provide alternative funding for existing arrangements. Greater consideration should be given to guarantee that only activities well evidenced to address local problems are commissioned.

¹ BBC News (March 2015) Police forces all face major budget cuts.

² BBC News (March 2015) Police forces all face major budget cuts.

³ Syal. R., (4th June 2015) Home Office making police cuts without understanding, report says [Accessed 11 June 2015].

** An interesting addition to this debate, which there is not time to discuss here, is the options that Business Improvement Districts (BID) offer as a potential alternative to the LNL. Indeed, to prevent a LNL being introduced, Reading BID brought in a specific night time charge for premises operating after midnight. With the exception of police costs, funds are used for similar purposes to the LNL but controlled by the BID.

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- ⁴ Home Office. Alcohol licensing: early morning alcohol restriction orders (EMROs). Online: <https://www.gov.uk/government/collections/alcohol-licensing-early-morning-restriction-level-forms>
- ⁵ Home Office. Alcohol licensing: early morning alcohol restriction orders (EMROs). Online: <https://www.gov.uk/government/collections/alcohol-licensing-early-morning-restriction-level-forms>
- ⁶ Home Office. Amended guidance on the late night levy
- ⁷ The Telegraph (April 29th, 2015) Labour was wrong to bring in 24-hour drinking, admits Andy Burnham
- ⁸ National Local Government Drug and Alcohol Committee (Australia) (February 2015) The Australian Night Time Economy and the NTE Economic Performance of Key LGAs 2009 to 2013. p 9.
- ⁹ Kypri. K., Jones. C., McElduff. P., Barker. D., (2011) Effects of restricting pub closing times on night-time assaults in an Australian city. *Addiction*
- ¹⁰ Australian Daily Telegraph (April 1st, 2015) Cross clean-up is a victory for Sydney
- ¹¹ Hadfield. P., Measham. F., (2014) The outsourcing of control: Alcohol law enforcement, private-sector governance and the evening and night-time economy. *Urban Studies*, p 6.
- ¹² National Local Government Drug and Alcohol Committee (Australia) (February 2015) The Australian Night Time Economy and the NTE Economic Performance of Key LGAs 2009 to 2013. p 9.
- ¹³ Nicholls. J., (2015) Public Health and Alcohol Licensing in the UK: Challenges, Opportunities, and Implications for Practice. *Contemporary Drug Problems*, p 13.
- ¹⁴ Hogan-Howe. B., (March 2015) 2020 vision, public safety in a global city. Speech to the Royal Society to Arts. p 22.
- ¹⁵ Hadfield. P., Measham. F., (2014) The outsourcing of control: Alcohol law enforcement, private-sector governance and the evening and night-time economy. *Urban Studies*, p 6.
- ¹⁶ Nicholls. J., (2015) Public Health and Alcohol Licensing in the UK: Challenges, Opportunities, and Implications for Practice. *Contemporary Drug Problems*, p 12.
- ¹⁷ Nicholls. J., (2015) Public Health and Alcohol Licensing in the UK: Challenges, Opportunities, and Implications for Practice. *Contemporary Drug Problems*, p 14.
- ¹⁸ The Publican's Morning Advertiser (13th May 2015) Full analysis of the Cheltenham Late Night Levy revelations
- ¹⁹ The Publican's Morning Advertiser (13th May 2015) Full analysis of the Cheltenham Late Night Levy revelations
- ²⁰ The Publican's Morning Advertiser (1st February 2016) Cheltenham late-night levy to be scrapped after scheme flops
- ²¹ The Publican's Morning Advertiser (15th May 2015) Newcastle councils raises £300k from late night levy
- ²² Newcastle Council. Late Night Levy Exceptions [Accessed 21 May 2015].
- ²³ Home Office. Amended guidance on the late night levy
- ²⁴ Home Office. Amended guidance on the late night levy
- ²⁵ Newcastle Council. Late night levy [Accessed 21 May 2015].
- ²⁶ Cheltenham Council. Late night levy [Accessed 21 May 2015].
- ²⁷ Cheltenham Council. Late night levy [Accessed 21 May 2015].
- ²⁸ The Publican's Morning Advertiser (13th May 2015) Full analysis of the Cheltenham Late Night Levy revelations
- ²⁹ The Publican's Morning Advertiser (13th May 2015) Full analysis of the Cheltenham Late Night Levy revelations
- ³⁰ The Publican's Morning Advertiser (13th May 2015) Trade figures call for review of late night levy
- ³¹ Chronicle live (17th January 2015) Newcastle Late Night Levy under fire as anti-social behaviour and violent crime on the up
- ³² Chronicle live (17th January 2015) Newcastle Late Night Levy under fire as anti-social behaviour and violent crime on the up
- ³³ Chronicle live (17th January 2015) Newcastle Late Night Levy under fire as anti-social behaviour and violent crime on the up
- ³⁴ Chronicle live (20th January 2015) Newcastle's Late Night Levy IS tackling crime, pubs' chief claims but denting finances
- ³⁵ John Guant and Partners (29th June 2015) Late Night Levy – Update [Accessed 6 July 2015].
- ³⁶ Nottingham City Council. Late Night Levy [Accessed 6 July 2015].

Chapter 11: Police funding and voluntary best practice schemes within the licensed trade

Chapter summary

Some interviewees, most notably from the licensed trade, were enthusiastic about voluntary schemes.

Most participants thought that these schemes had a useful role to play, but were sceptical about the extent of their impact.

At times voluntary schemes do appear to improve local cooperation and raise standards within premises.

No proper work has been done to establish the impact voluntary schemes have in reducing crime and disorder.

While there is a role for voluntary schemes, suggestions that they should take on a more prominent role in regulating the NTE because of police cuts raise significant questions. In such a scenario commercial imperatives seem likely to override the public good.

We did not ask interviewees specifically about voluntary best practice schemes, but a large number of participants mentioned them within their answers. Given the police funding problems outlined in the last chapters, many were concerned that the police would have to rely on such schemes in the future as a way of making up for their own diminishing resources.

1. Participants' views

Best Bar None (BBN) was the most frequently mentioned and one participant from the licenced trade suggested that BBN could be part of the 'solution to police cuts' and that partnership working produced good results. A small number of other participants were keen on voluntary schemes. It was thought that they helped foster dialogue between the trade, local authorities and the police. Some stated that the Business Improvement Districts (BIDs) they knew of had improved the general upkeep of town centres, although it was mentioned that they were often primarily focused on the daytime rather than the night time economy.

Despite the recognition that voluntary schemes could help to improve dialogue, most participants were sceptical about their real world impact on law and order. Even participants with a favourable view of voluntary schemes stated that standards varied quite a lot between areas. One interviewee stated:

They can work at times, but there are too many schemes and sometimes areas don't choose one that fits their needs... there is too much chopping and changing.

There was also a common view that only more responsible premises signed up, and that the premises that would most benefit from additional support were missed altogether. A legal interviewee pointed out that whilst BBN works well in some areas, lots of places 'fall below the radar' and that although it would be in the interests of everyone for the scheme to regulate itself properly, the approach was often too *laissez faire*.

One police representative, who knew of premises that had been called to Review only a few months after passing BBN accreditation, was especially dismissive of BBN. He pointed out that the scheme ought to be unnecessary, saying:

It's like getting an award for doing everything you should be doing anyway – being responsible and complying with the law.

Some participants mentioned claims by BBN to have reduced crime in a certain area by quite significant amounts, but they were sceptical about whether this was accurate or whether any change in crime rates could actually be attributed to BBN. One academic described reports they had seen from BBN about their impact on crime and disorder as 'extremely flimsy'.

Discussion

2. The rise of voluntary corporate responsibility schemes

The effect of police cuts is already changing enforcement and compliance within the night time economy. Voluntary best practice schemes within the licensed trade have been around since 2003, but more recently the lack of funding for traditional law enforcement activities has seen them increase in prominence, aiming to fill the 'vacuum in the delivery of traditional alcohol law enforcement'.¹

There are now over 100 Best Bar None (BBN) schemes nationally. While they were originally intended to sit alongside traditional alcohol law enforcement agencies, these schemes are, in some places, now taking on strategic roles formerly undertaken those responsible for enforcement,² raising significant questions around effectiveness, conflicts of interest and public accountability.

Voluntary, business-led initiatives include:

[Best Bar None](#), which is sponsored by Diageo, and focuses on 'promoting responsible management and operation of alcohol licensed premises.'

[Purple Flag](#), run by the Association of Town Centre Managers, which states the scheme is for 'town centres that meet or surpass the standards of excellence in managing the evening and night-time economy.'

[Community Alcohol Partnerships](#), which are run by the Retail of Alcohol Standards Group, primarily a collection of supermarkets and convenience store chains, aiming to address underage alcohol use.

Due to time constraints this section will focus primarily on BBN, which was the most frequently mentioned voluntary scheme during interviews. While independently run, BBN receives backing from the Home Office, which has encouraged its expansion in areas covered by its Tackling Violent Crime Programme. BBN also has semi official status through recognition within official guidance, such as the LNL, and it also appears within Alcohol industry pledge six within the Public Health Responsibility Deal. As part of this Bacardi, Diageo, Heineken and Molson Coors have been working with the British Institute of Innkeeping and the Home Office to further develop the Best Bar None scheme, including an investment of at least £500,000 between them over three years.³ BBN also features within the Home Office's Local Alcohol Action Areas (LAAAs). In short:

Central government appear happy to delegate a proportion of their role in protecting the public interest to private actors who might previously have been understood, primarily, as the targets of public regulatory intervention.⁴

Despite the official promotion of BBN there are concerns about its effectiveness, along with that of other voluntary schemes.⁵ A 2007 report by the Government Office for London into the effectiveness of BBN in Croydon concluded that there was 'a lack of credible evidence' to suggest that the scheme had an impact on the reduction of crime and disorder in the town centre. It found:

An absence of evidence to confirm that good practice has been shared with other licenced premises in Croydon – BBN accredited or not.⁶

This is supposedly one of the scheme's key aims. The report did highlight some benefits of the scheme, such as improved partnership working between different agencies, and acknowledged the effectiveness of the combination of encouragement, good practice and regulatory enforcement associated with BBN.

However, reflecting wider concerns about the lack of evaluation within alcohol policy, the report also stated that:

If BBN is to continue both within London and nationally, there is a real need to agree a suitable 'measuring tool', which will assess the impact of it and provide credible evidence for those considering introducing it.⁷

Other recent research (2014) into this area found that neither BBN nor Purple Flag provide more than anecdotal support for their actual impact, and that while they may help stimulate partnership working, this is 'surely a distraction from the development of the types of evaluated Multi-Component Programmes,' which are known to be more effective.⁸

Initial investigations, including conversations with BBN and the Home Office, suggest that nothing was done to address the issues highlighted by the Croydon evaluation in 2007, and no other formal evaluations could be found. A document produced by Leeds Metropolitan University for Best Bar None called 'Introduction to the Best Bar None Scheme and its Benefits', included some 'statements that have been made stating Best Bar None as a major contributing factor', such as a '26% reduction in alcohol-related incidents.'⁹

This however, is a long way from being able to link BBN to such a change, particularly given the overall reduction in crime rates, and other related issues, such as whether crime had been displaced outside the city centre, had not been investigated. As mentioned in the interviews, one academic described such claims from BBN as 'extremely flimsy', and while BBN may be successful at reducing crime in certain areas, it seems that efforts to establish this so far have not been particularly valid.

Proper evaluations of voluntary schemes are needed not only to see whether they actually work, but also to 'level the playing field' in terms of the evidence used within licensing generally. Other sections in this report have gone into some detail regarding the need for specific evidence to establish a link between a premises and a (usually negative) outcome; attempts to blame and sanction a group of premises for a general increase in crime without clearly evidencing this link would get nowhere under the Act. Yet this is the approach that many voluntary schemes have taken when trying to prove their positive impact – drawing broad correlations without evidencing any link – and as such they seem rather hypocritical.

The Leeds Metropolitan University document mentioned above also highlights some of the concerns raised in the interviews about BBN's failure to engage more problematic venues - the very venues that would likely benefit the most from additional support. It states that:

Small towns and cities with the majority of licensed premises with Best Bar None Accreditation could "make a difference" in a collective sense. However, it may not be prudent to set over-arching targets and objectives, attributable to Best Bar None, for towns and cities that have 200 to 300 of pubs, clubs and bars with only a small proportion with Best Bar None Accreditation; a small percentage of pubs/clubs & bars may not be able to make a significant/quantifiable impact on the overarching targets for the town/city.¹⁰

The expansion of BBN with Home Office support, despite these critical findings and a lack of effectiveness, may be surprising. Yet the nature of drinks industry involvement in recent policy development shows that evidence and effectiveness are not the only considerations, particularly where policy changes may benefit business. Indeed, both the regulator and the regulated can be seen to benefit from voluntary schemes: venues receive 'awards' which become bargaining tools with enforcement agencies, and public agencies are able to present the impression that 'something is being done.'¹¹

3. BBN and the police

Regardless of its as yet quantified effectiveness, BBN is being rolled out further. At the scheme's 2015 launch in Exeter, the Plymouth Herald reported that the police:

told bar bosses they will have to take more responsibility for reducing alcohol-related trouble – because further public sector cuts are inevitable.... “We need Plymouth's ENTE (evening and night time economy) to 'police' itself and unload the extra pressure on policing and other services.”¹²

Is this a realistic ambition? The answer is certainly not an unqualified yes. Research by Hadfield and Measham into the area has found that the implementation of voluntary schemes is:

Patchy, and in many cases deficient, with the words of politicians being at odds with the actions of local practitioners.¹³

They add that:

'Partnerships' are, at best, increasing trust and the flow of intelligence, and at worst, breeding complacency, inaction and regulatory capture.¹⁴

Given that not all premises will sign up to BBN, with the scheme missing out large numbers of premises in some areas, what will happen to standards if BBN is relied upon in place of traditional police oversight? Key here is the fact that voluntary schemes seem to be a reluctant to address poor performance with anything more than voluntary efforts. In order to qualify for the LNL 30% reduction, best practice schemes have to be established for:

Purposes that result in, or are likely to result in, the reduction or prevention of crime and disorder in connection with the supply of alcohol between midnight and 6am.¹⁵

As part of this, schemes must have a mechanism for expelling any premises that does not work sufficiently to reducing crime and disorder.¹⁶ However, Phillip Kolvin QC, who chairs both BBN and Purple Flag, stated that he was 'very disappointed' that best practice schemes would have to expel members in order to qualify for the levy discount. He stated that:

They seem to be saying that best-practice schemes can escape from this regulation if they do a bit of regulating, which includes punishing people. Nobody in these schemes goes in wanting to punish their colleagues.¹⁷

Yet, if BBN and similar schemes are to take a more prominent role, they will certainly have to 'do a bit of regulating'. Commenting on the same issue, the then National Pubwatch chairman said:

I would not want anything to infer [*sic*] that the police have some kind of control over a pubwatch scheme.¹⁸

There appear to be a number of points of tension here. Firstly, there is an inherent conflict of interest within the night time economy when those who are regulated write their own rules, and a reduced police presence only serves to increase this. The use of industry created

voluntary codes of practice are known to be patchy, and commercial imperatives normally override adherence.¹⁹ There are therefore important issues around public interest if there is no additional formal oversight.

Secondly, the 'confusing mix of regulatory and voluntary provision' within voluntary schemes is often problematic, 'neither reducing bad practice, or promoting good practice,' despite the fact that many of the voluntary provisions simply repeated statutory requirements.²⁰ Hadfield and Measham conclude that in the absence of agreed targets and proper monitoring and enforcing, both voluntary and statutory frameworks for governing the NTE fail to drive good practice.²¹

Thirdly, Hadfield and Measham note that off-the-shelf 'solutions' 'attempt to steer local practice and policy towards an externally imposed template'²² which may not reflect local need. This was a point mentioned in the interviews. In addition, these templates inevitably reflect private sector concerns, seemingly at the expense of public interest, raising key issues about the removal of traditional routes of public accountability.²³

4. Conclusion

BBN has appointed Leeds Beckett University to develop an evaluation toolkit, with an original planned launch date of June 2015 – at the time of going to press this had not been released. Such a toolkit is of course a welcome move, and proper efforts to evaluate BBN's impact may prove it to be effective in cutting crime. It does seem remarkable that BBN and other voluntary schemes have become so well established without this.

BBN does in some cases appear to help local coordination and raise standards; clearly this is a good thing. Voluntary schemes may also play a role in addressing crime and disorder, although at present this is far from established. The potential problems in this area come not from voluntary schemes per se, but from a reliance on them in place of traditional enforcement and law and order bodies. The philosophy behind the Act has been described as:

Sell as much booze as you want, for as long as you want, and that the police will have more draconian power to mop up the disorder.²⁴

But if the police are less able to do this, it seems unwise to let the licenced trade do it themselves.

Recommendation: The use of proper evaluations in order to assess the impact of legislative changes, and inform the development of future initiatives

The fact that proper evaluations have been lacking from alcohol policy in England and Wales for some time has been mentioned elsewhere, but is equally relevant here in relation to voluntary schemes. The current understanding of their true impact is extremely poor and the proper evaluation of voluntary schemes is long overdue.

¹ Hadfield. P., Measham. F., (2014) The outsourcing of control: Alcohol law enforcement, private-sector governance and the evening and night-time economy. *Urban Studies*, p 2.

² Hadfield. P., Measham. F., (2014) The outsourcing of control: Alcohol law enforcement, private-sector governance and the evening and night-time economy. *Urban Studies*, p 14.

³ Department of Health (June 2013) Public Health Responsibility Deal, AI -6. Best Bar None

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- ⁴ Hadfield. P., Measham. F., (2014) The outsourcing of control: Alcohol law enforcement, private-sector governance and the evening and night-time economy. *Urban Studies*, p 11.
- ⁵ Hadfield. P., Measham. F., (2014) The outsourcing of control: Alcohol law enforcement, private-sector governance and the evening and night-time economy. *Urban Studies*, p 12.
- ⁶ Ackerman. K., Rogers. T., (2007) Best Bar None Croydon Review. Government Office for London
- ⁷ Ackerman. K., Rogers. T., (2007) Best Bar None Croydon Review. Government Office for London
- ⁸ Hadfield. P., Measham. F., (2014) The outsourcing of control: Alcohol law enforcement, private-sector governance and the evening and night-time economy. *Urban Studies*, p 13.
- ⁹ Kenyon. A., (undated) Introduction to the Best Bar None Scheme and its Benefits.
- ¹⁰ Kenyon. A., (undated) Introduction to the Best Bar None Scheme and its Benefits.
- ¹¹ Hadfield. P., Measham. F., (2014) The outsourcing of control: Alcohol law enforcement, private-sector governance and the evening and night-time economy. *Urban Studies*, p 2.
- ¹² Plymouth Herald (11th March 2015) Pubs told to up security as police will no longer have recourse to patrol them
- ¹³ Hadfield. P., Measham. F., (2014) The outsourcing of control: Alcohol law enforcement, private-sector governance and the evening and night-time economy. *Urban Studies*, p 13.
- ¹⁴ Hadfield. P., Measham. F., (2014) The outsourcing of control: Alcohol law enforcement, private-sector governance and the evening and night-time economy. *Urban Studies*, p 1.
- ¹⁵ Home Office. Amended guidance on the late night levy
- ¹⁶ The Publican's Morning Advertiser (18th October 2012) Late-night levy: Pubs "ignored" by Government says Best Bar None chairman Philip Kolvin QC
- ¹⁷ The Publican's Morning Advertiser (18th October 2012) Late-night levy: Pubs "ignored" by Government says Best Bar None chairman Philip Kolvin QC
- ¹⁸ The Publican's Morning Advertiser (18th October 2012) Late-night levy: Pubs "ignored" by Government says Best Bar None chairman Philip Kolvin QC
- ¹⁹ Hadfield. P., Measham. F., (2014) The outsourcing of control: Alcohol law enforcement, private-sector governance and the evening and night-time economy. *Urban Studies*, p 11.
- ²⁰ Hadfield. P., Measham. F., (2014) The outsourcing of control: Alcohol law enforcement, private-sector governance and the evening and night-time economy. *Urban Studies*, p 11.
- ²¹ Hadfield. P., Measham. F., (2014) The outsourcing of control: Alcohol law enforcement, private-sector governance and the evening and night-time economy. *Urban Studies*, p 11.
- ²² Hadfield. P., Measham. F., (2014) The outsourcing of control: Alcohol law enforcement, private-sector governance and the evening and night-time economy. *Urban Studies*, p 14.
- ²³ Hadfield. P., Measham. F., (2014) The outsourcing of control: Alcohol law enforcement, private-sector governance and the evening and night-time economy. *Urban Studies*, p 14.
- ²⁴ Hadfield, Philip Mason (2005) *Bar Wars: Contesting the night in British cities*, Durham theses, Durham University. Available at Durham E-Theses Online: <http://etheses.dur.ac.uk/2709/> p 165.

Chapter 12: Local authority funding problems

Chapter summary

There was a common view that the fee system within the Act has always been problematic. Fees have not increased since the Act was implemented, despite recommendations for this

Some stated that the Act could have been implemented in a more rigorous manner if it had allowed local authorities to recoup their costs properly.

Funding cuts are now further reducing the ability of local authorities to administer and enforce local licensing.

A slight majority wanted to be able to set their own local licensing fees. It was stated that this would allow them the flexibility to get their costs back and run a licensing team that reflected their workload.

Some stated they should be able to recover wider costs directly related to licenced premises within fees, as happens within street trading.

The ability of local authorities to set fees and properly recover their costs is a key concern. Firstly, so as to recoup the cost of administering the licensing regime, and secondly so as to recoup the wider costs of the licensing system such as compliance and enforcement. Thirdly, it would be extremely useful to be able to recover the wider cost associated with the general impacts of the licensing system, such as street cleaning and taxi marshalling, where these can clearly be identified as coming from or being associated with the operation of licenced premises.

1. Views from participants

Problems relating to the fact that the Act does not allow many local authorities to recoup the costs incurred in running their licensing teams have been mentioned a number of times before, and this chapter will consider them in more detail.

While funding cuts are having an impact on the ability of local authorities to administer and enforce local licensing (by reducing the extent to which councils can subsidise funding from fees), there was a common view amongst participants that the Act had always been problematic in this area. It was mentioned that the independent inquiry led by Sir Les Elton did look into this issue in detail, but that its recommendations were never implemented.

However, one participant from a legal background, who also had experience of the previous licensing system, stated that:

It's always been the case (that licensing fees do not cover the costs), at magistrate court it cost £12.50 to transfer a licence and that clearly didn't cover the costs. It is a problem, why should licences be subsidised?

Some participants, particularly licensing officers and those from a regulatory background, stated that the fee system within the Act had caused them problems and did not address the fundamental problem of fees. A number of participants reported that when problems arise it is often within a local authority who cannot afford properly to enforce the licensing regime. One licensing officer commented that:

In xxx we have over 2000 licenses and it's very built up, but we can only charge the same fees as North Yorkshire where the situation is very very different, we can't get our full costs back.

Amongst interviewees, annual licensing shortfalls of between £70,000 per year and £1.5 million were reported. In contrast, one licensing officer from a rural area stated that they were able to recover their costs properly, and two participants from a regulatory services background thought that they probably did, but were not sure.

One licensing officer gave an example of how they saw the current system as inflexible and set up badly:

When personal licenses came in they cost £37 (for the applicant), but just producing the licence badge cost us (the council) £36... so there is lots of subsidising, there has to be.

Some academic participants also commented on the funding and fees within the Act, with one stating that the Act could have been implemented in a more rigorous and thorough manner if it had allowed local authorities to recoup their costs properly. This echoed with

comments from licensing officers that they were frequently short on time and manpower. They pointed to the fact that the Act increased opening hours and availability, but there was no corresponding increase in enforcement resources. As a result, licensing officers – who have to deal with all types of licensing, not just alcohol – were not always able to stay on top of things.

In addition to problems within the Act, a number of participants reported reductions in local authority staff as a result of cuts in local government funding, including licensing officers and trading standards officers, sometimes by as much as 50%. They stated that the remaining staff were expected to expand their workload greatly, but that many areas had moved to more of a reactive, intelligence led service, that they were now less able to co-work with other responsible authorities, and as a result unable to be as proactive in catching problems before they escalate. Some stated that the ability to do this had been one of the key advantages of the Act.

Reference was also made to police cuts reducing the number of officers, and thereby police enforcement. This has further compounded the problems in some areas. One academic commentator pointed out the inherent injustice of the situation for the public, who subsidise the licensing regime through their taxes, but who, because of the impact of cuts in public funding, are not being properly protected.

There was a general view that this would become increasingly problematic in many areas as a result of local government funding cuts. In addition to funding problems, one trading standards officer mentioned regulatory trends that prevented them from taking a routine or proactive approach to compliance work, as there is a need to have evidence before taking action, which they saw as a problematic restriction at times. An interviewee from the field of public health, was frustrated at the fact that problems are being exacerbated by shrinking licensing teams, and questioned whether the public underestimated what regulating licensing involves.

2. Locally set fees

A slight majority of licensing officers, participants from regulatory services and those with a legal background, wanted to be able to set their own local licensing fees. It was stated that this would allow them the flexibility to get their costs back and run a licensing team that reflected their workload. One participant from a legal background felt that local fees could work, and that it might prove good motivation for joint working and cooperation, with the aim of reducing fees.

One or two interviewees stated their opinion that the current fee system within the Act was illegal, because under the EU Services Directive license fees should reflect the costs of their administration and compliance, whereas this is often not the case under the Act because fees are set nationally. This is a personal interpretation and has not been legally tested.

A number of participants in favour of locally set fees had specific ideas about how they would want to implement this in their area, with the use of some sort of risk rating a relatively common theme. However, a significant number of licensing officers and participants from regulatory services were personally against locally set fees, because it was thought to be difficult to quantify costs. This was despite the fact that they are required to do this for other fee regimes. One stated that:

I'd prefer nationally set fees but with greater range so we can cover costs, I think it would be difficult to justify local fees all the time – something like the Gambling Act, with a range of levels.

A number of others expressed a preference for the approach to fees taken in the Gambling Act. One licensing officer who agreed in principle with a need to raise the level of fees charged opposed flexible local fees on the basis that they would create too much extra work, and could in themselves be a cause of problems and subject to challenge from the trade.

Some reported that officer time was often spent out and about meeting with and talking to the licenced trade. While they saw this as productive and useful in the long term, some reported that they felt it to be intangible and difficult to cost. It was also stated that costs were not always comparable between the on and off-trades. However, others disagreed and thought that they could cost things accurately and in a transparent way.

Hinting at wider problems within some licensing teams, one or two participants reported that they did not currently know how much it cost to run their licensing operation. One participant from a regulatory services background stated that:

Actually, we don't quantify licensing costs in our area, I think taxis probably subsidise others, but we are now reviewing this and will hopefully move to a better understanding of costs, but rateable value doesn't reflect the interventions needed or the impact of a venue on the area.*

Regardless of their position in relation to locally set fees a number of participants were critical of the Home Office for the way it had handled this issue. One interviewee described the Home Office consultation on the subject as 'awful', using questions that suggested a level of predetermination so that participants did not feel listened to.**

Interviewees on both sides of the argument also stated that fees should rise with inflation. One licensing committee chair from a rural area made a comparison with vehicle tax. If that isn't subsidised, why should licensing be any different?

Some participants also commented on the types of activity they could include within fees, either locally set or not. In addition to the administration of the system, one licensing officer talked of wanting to expand the types of activity licensing teams could include within fees, contributing to the funding of public health, children's service and environmental health to help engage all of the responsible authorities in the licensing process.

3. Trade views

Despite the common view amongst interviewees from local authorities that fees were often too low, participants from the licensed trade were also critical of the fee system within the Act. Overall, they felt that the current system puts a burden on small premises who rarely cause problems and disliked the fact that their fees contributed to dealing with problems that they saw as being caused by other premises. One participant from the on-trade was opposed to any move away from rateable value. They argued that the on trade already paid more despite the fact that many of the concerns over the regime relate to the off-trade. They

* It should be pointed out that using fees from one type of licence to subsidise another is technically illegal.

** The interviews were carried out before the Home Office had responded to the consultation.

also attacked a comparison with the Gambling Act noting that although there were maximum levels under that Act the majority of local authorities charge fees within 5% of that maximum.

While the sample only included a small number of participants from the licenced trade, implicit within most responses on this issue was a view that problems, and therefore costs, arose from other premises, and not theirs. As an interviewee from a national supermarket commented,

Ok, there's a cost for a licence, but what do we really pay our fee for? We don't see anyone (from the local authority)? Why should we subsidise others who create the problems? You could have local fees but on what criteria?

Most representatives from the licensed trade did however accept that funding was a problem for local authority licensing teams. However, some also displayed a somewhat paradoxical standpoint stating:

I'm not against local authorities getting their costs back, but fees shouldn't go up

As an interesting comparison, both participants from Scotland mentioned that the situation regarding licencing fees was very different north of the border. In terms of setting fees, the Scottish Government set a cap while allowing licensing boards some discretion around the fees they can charge. It was reported however, that the licenced trade are pushing for a review of fees because it is thought that licensing boards are making significant profits out of licensing, which are being inappropriately moved into general council funds.

Across the UK, including Scotland, councils cannot use licensing fees for general funds, although they can, and often have to, use general funds to subsidise licensing fees. Surpluses made through fees must be reinvested in the service, leading to a reduction in fees in future years. Similarly, a deficit in fees should technically be recovered through higher fees in the following years.

Commenting on general fee problems, one participant from a legal background stated that:

The only way that this can be addressed anywhere in the UK is to require the system to be fully transparent and the fees to be reflective of the costs of the administration. The fact of the matter is that all UK Local Authorities... which administer the fees are required under European Law to be cost neutral so there is no way around this, it should simply be done.

4. Licensing fees and risk

As detailed in the methods chapter, this project provided interviewees with information about Risk Based Licensing (RBL) systems from overseas in order to gauge their views on this, as it was thought that there may be useful lessons to learn from these systems. Most participants were interested in the possible use of risk within licensing fees, and some had already thought about how they might use risk within fees should they have the chance to set fees locally. For example, one head of regulatory services from a large city commented that:

Licensing in XXX doesn't cover its costs, there is a big subsidy, we want local fees and to include risk factors in how we set our fees, using our risk matrix, but we've not looked at legal implications yet.

Some areas have made the use of risk quite explicit in their enforcement work. Cardiff, for example, operates a successful 'traffic light system' where premises earn points for working with the police and lose them for incidents they are judged to be responsible for. The traffic light rating is shared with each venue, who know that those with a red rating can expect more compliance visits from the police, and each incident is looked into carefully where responsibility might lie.¹ Indeed, a risk based approach such as this is encouraged by the Regulator's Compliance Code, which recommends that a:

Comprehensive risk assessment should be the foundation of all regulators' enforcement programmes²

A handful of participants went on to talk about using risk based principles within a reformed and more focused LNL, and stated that this might be one of the best ways to better use risk or impact to raise funds. One participant from a legal background stated that:

Risk could be applicable, but via a focused LNL, I'm not sure there is appetite for wider reform but a LNL for risky premises could be very good and more likely. Some councils have already been lobbying for something like this

Offering another alternative, one interviewee from a local government background suggested adding a 2% charge to Business Improvement Districts (BIDs) to cover police time, cleaning and other related issues, as they saw this as being more palatable for the trade. However, in general it was thought that RBL was a distraction from the issues facing local authorities.

5. Licensing fees and wider licensing costs

In general participants were positive about the potential use of fees to recover wider costs to a local authority related to licensing, such as street cleaning and taxi marshalling, with some arguing that this approach could be used to replace the LNL. One participant from a legal background stated that there was a precedent within street trading fee legislation for this, as traders are charged an additional fee related to the impact that their stall has on the immediate local environment to cover issues such as street cleaning.

However, most participants were against using licensing fees to recover money towards police costs. One police representative stated that:

If they're paying extra fees they may expect police officers outside their door, we could have to deploy differently. Taxes should probably cover it, though there is a precedent with the LNL.

Discussion

6. A longstanding problem

Licensing fees have been somewhat contentious since the introduction of the Act, and have been criticised by both the licenced trade³ and local authorities. In bringing in the 2003 Act the Government:

Consistently expressed the aim of ensuring that, so far as possible, the legitimate costs of local authorities' administration, inspection and enforcement associated

with the new regime should not fall on the central or local taxpayer, but on those choosing to engage in licensable activities.⁴

This has not happened however, and fees have not increased since the Act was implemented, despite recommendations for this within the Elton Report.⁵ 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.⁶

As a result of the fact that in many areas licensing is not self funding, and fees do not fully cover the costs of operating the licensing system, cuts in local government funding have meant that many local authorities are now less able to subsidise licensing out of other funds. Many licensing teams have consequently lost staff, further affecting their ability to ensure the proper functioning of the licensing system in their area. Writing in 2014, Roberts described the fee system as having:

Proved to be inadequate for many authorities, who, due to cuts in local authority expenditure, continue to struggle to supply the necessary officer time.⁷

This very much chimes with interviewees who thought that the Act would have produced better results if it had allowed licensing teams to recover the money needed to enforce it properly. The lack of enforcement has also been mentioned in the trade press; commenting on the impact of the 2008 financial crisis, Steve Thomas, head of Luminar, stated that more unsuitable late night venues would have closed if local authorities had been able to enforce the Act properly.⁸

The actual impact of funding cuts varies from area to area. Overall government funding to councils was cut by 40% over the lifetime of the Coalition Government (2010-2015), but the impact on individual regulatory services' budgets has varied above and below that figure. Nationally some trading standards teams have reported cuts up to 80%. A number of licensing officers in the interviews reported having to shift to more of a reactive, intelligence led service, as a result of funding cuts, and that they were now less able to co-work with other responsible authorities. The ability to co-work was highlighted in the interviews, and elsewhere, as one of the main benefits of the Act, so this is a worrying sign.

The significant impact of funding cuts on the police was detailed in the previous chapter, but here too the way in which reduced police numbers impact on overall enforcement and local authority regulatory teams needs to be remembered. The fact that both of the main bodies responsible for the enforcement and compliance of the licencing system have experienced significant cuts seems likely to lead to less effective and rigorous oversight.

The *Hemming* case^{***} has reinforced the principle that local authorities are able to recover enforcement costs within their fee, (although there are outstanding questions as to when this can be charged). This means that it is entirely down to the UK legislation to outline what can be charged for. The Act only refers to 'a fee', and does not actually state that enforcement can be included, as such the addition of the phrase 'control and supervision' or perhaps 'all costs related to administering and enforcing the Act', into the Act would make it very clear that councils can recover all costs coming out of licensable activity.

^{***} R (on the application of Hemming (t/a Simply Pleasure Ltd) and others) (Respondents) v Westminster City Council [2015] UKSC 25

While some interviewees from the licenced trade questioned why they pay fees when they do not require any enforcement action, there is an underlying legal principle that all premises contribute whether they incur enforcement costs or not. While this is perhaps unfair in one regard, it is practical, straightforward and well established. For example, if this was not the case supermarkets could end up paying far less than corner shops, which may not be a very sustainable situation.

7. Locally set fees

The LGA have been very vocal on the issue of licensing fees because of the large amounts of money lost by local authorities under the current system. The 2006 Report of the independent fees review panel, Chaired by Sir Les Elton, came to the conclusion that a locally applied national fee system was the most straightforward approach. It reported that some of the cost problems reported could be attributed to the transition arrangements used in introducing the new system, that not all of the deficit amount was justifiable expenditure, and that:

The extra costs incurred by some authorities by virtue of location are catered for by Government's contribution to financing local services⁹

This reliance on central government funding, which is in increasingly short supply, seems to be a key part of the reason why many licensing teams are now struggling. While the review did recommend a range of incremental fee increases and additional central government funding, these were not implemented and nothing has been done to address the ongoing problems. Original fee levels have not even been adjusted for inflation.

The legislation needed to introduce locally set fees was passed with the 2011 Police Reform and Social Responsibility Act, but has never come into effect. The Home Office did consult on them in 2014, responding in February 2015 after a ten-month wait. They announced that the government would not proceed with locally set fees, but that they did want further evidence from the LGA on the issue.¹⁰ The LGA described the Home Office's decision not to allow locally set fees as 'hugely disappointing', and highlighted the fact that local councils would have to continue to subsidise the licensed trade by significant amounts at a time of increasing economic difficulty.¹¹

One interviewee reported that according to the 2006 EU Services Directive (the Directive), which is an attempt by the European Commission to break down barriers to cross border trade within the EU, the fee system under the Act was probably illegal. Guidance from the Department for Business Innovation and Skills on the Directive seems to support this view, stating that:

Local Authorities must set fees that are proportionate to the effective cost of the procedure dealt with. As costs vary from region to region, central advice on the level of fees will not be appropriate. Local Authorities will need to bear in mind the threat of a legal challenge should a service provider feel that the levels of fee are being used as an economic deterrent or to raise funds for Local Authorities.¹²

This seems to very clearly suggest that nationally set fees under the licensing Act are incompatible with the Directive, and that fees should be set locally. It also clarifies other principles that will restrict the way in which councils might be able to set their fees, including the fact that fees cannot be seen as an economic deterrent or to raise general funds for Local Authorities.

Within the interviews there were mixed views on locally set fees, although a slight majority of licensing officers, participants from regulatory services and those with a legal background wanted to be able to set their own local licensing fees. The main argument put forward by those who were against this was that transparently determining exactly how much their licensing system cost would be time consuming, and that it would have to be continually kept up to date.

However, it is arguable that local authorities should already be able to transparently justify their fee arrangements, and they already have to set fees in this way for both taxis and gambling fees (although these do not come within the remit of the EU Services Directive). It is also becoming more common for local authorities to be challenged over the way in which they have set their fees, particularly in regard to taxis, something that would have wider implications for locally set alcohol licence fees.

In contrast to expensive judicial reviews, section 16 of the Audit Commission Act 1998 allows any elector to object to the local authorities' yearly accounts on grounds that an item is contrary to law. The District Auditor can also be asked to issue an advisory notice against the proposed unlawful item, requiring the authority to consider its proposed actions. This happened regarding taxi fees in Derby, where the council ended up repaying £25,300,¹³ and Guildford, where the amount repaid was almost £100,000.¹⁴

This method of challenging licensing fees is far less expensive than a judicial review, and much less evidence is needed. The onus is also placed firmly onto the local authority to prove it has calculated its fees correctly, as opposed to the complainant having to prove that they were done incorrectly, and for many councils this is likely to be a lengthy process. Legal commentators have suggested that the use of the District Auditor to challenge licensing fees is likely to increase,¹⁵ and that for many councils it is probably a question of when, not if, their fees will be challenged.

With this in mind, the comments from participants that they would prefer not to have to calculate their actual alcohol licensing costs perhaps seem less relevant, as they should probably be doing this anyway for other types of licence, and be able to apply their method across to alcohol licensing. It is not in the scope of this report to cover how councils may or may not calculate their licensing fees, but those who have done this to a high level of detail have reportedly used time and motion studies to evaluate staff time and cost their actions, as well as factoring in appeals, office costs, training and stationary costs etc.

While nationally set fee bands may be simpler in one sense, this would not prevent the licenced trade from using the District Auditor to ensure that the actual fee level charge was appropriate. If this happened a local authority would have to produce the same evidence it required to set properly transparent local fees. It therefore makes sense to start with this approach and allow local authorities to set fees that properly reflect their costs.

Amending the legislation to achieve this would not be difficult. There is no need to reinvent the wheel. As with alcohol licensing, street trading comes under the EU Services Directive, and its fee system has already been reviewed by the Department for Business Innovation and Skills to ensure that it is compliant with the Directive. As a result, the incorporation of this fee system (which can be found within the Local Government Miscellaneous Provision Act, schedule 4, para 9) within the 2003 Licensing Act should be quite straightforward (see recommendations at the end of the chapter).

8. Trade views

It is entirely understandable why the issue of fees is of great concern to the licenced trade, and any changes to fee levels and the way in which they are calculated needs to keep the viability of local licensed businesses in mind.

Within the Government's response to the consultation on locally set fees, a number of trade concerns were mentioned. Firstly, it was mentioned that many were worried about fees rising significantly as soon as any new system was introduced. Clearly this would cause problems, particularly for small businesses, but case law in this area, particularly *R v Manchester City Council ex parte King* (1991) 89 LGR 696, and the successful use of the *Wednesbury* (unreasonableness) objection suggests that if set properly this should not happen. In this case Manchester City Council's proposal to increase its taxi fees by a significant amount was found to be unreasonable, because of undue impact this would have on licensees. As a result of this, even in areas where licensing fees fall a long way short of covering costs, any increase would have to be implemented in a slow and careful manner, and in reality rising insurance and utilities costs seem more likely to cause problems for the licenced trade, as these are already significantly higher than many licence fees.

Another objection to locally set fees within the Government's consultation response was the fear that licensing fees would not be set in a clear and transparent way. However, as outlined above local authorities already have to set fees for gambling and taxis in this manner, and are increasingly being challenged on the accuracy of these.

9. Licensing fees and responsible authority costs

A historic, but important point often forgotten in the long running debate on licensing fees is that the regime was originally intended to cover the legitimate licensing costs of all responsible authorities involved with licensing, not only licensing teams. This was clearly stated in the original impact assessment for the Bill, and also in the November 2004 DCMS Consultation on Fees, which stated that:

It is fundamental to the Government's approach that the calculation of the overall costs of the new licensing regime to local authorities should include the probable costs incurred by licensing authorities in respect of administration, inspection and enforcement. In addition, "responsible authorities" which form part of the local authority must also be able to recover their costs in performing that role under the Licensing Act 2003.¹⁶

10. Licensing fees and wider licensing costs

At present wider costs directly related to licenced premises are not recoverable from licensing fees for local authorities. These might include street cleaning, taxi marshals, additional CCTV or initiatives such as street pastors. Some participants argued that these should be paid out of general funds as public services, while others argued that they should be recoverable as a direct cost related to a licenced activity, with one participant from a legal background pointing to the fact that similar wider costs were recoverable within Street Trading legislation.

Allowing the recovery of these costs or not would clearly be a political decision. It is interesting the LNL covers many of these issues, with the two LNL examples in chapter 10

paying for many similar issues out of LNL funds. This suggests that there is a definite appetite for the ability to cover these costs, which is not surprising given the current financial environment.

Most interviewees were against the idea of including an element of police costs within licensing fees, and some from a legal background pointed out that this would be more problematic as local authorities and the police receive different funding. The use of the LNL for police costs was well supported however.

Recommendation: Locally set fees

As with alcohol licensing, street trading comes under the EU Services Directive, and its fees and charges provisions have been reviewed by the Department for Business Innovation and Skills in order to ensure compliance with the Directive. Under street trading statutes the local authority is entitled to charge an application fee to recover its administrative costs in respect of the application. There is thereafter a further power to charge a fee in respect of the control and supervision arising from the operation of the licensing regime and the impact of the licences granted.

A similar approach separating application charges from charges arising out of the ongoing operation of the licensing regime might be used to frame the *locally set fees* debate. Taking the street trading legislation as our inspiration we suggest the following amendment to s 55 of the Licensing Act 2003:

Section 55C Determination of fees and charges

(1) Pursuant to s 55(1) a licensing authority may charge such application fee for the grant, variation or transfer of a premises licence, club premises certificate, temporary event notice or personal licence as they may determine and as may be sufficient in the aggregate to cover in whole or in part the reasonable administrative costs in connection with their functions under this Act not otherwise recovered.

(2) A licensing authority may determine different fees for premises licence, club premises certificate, temporary event notice or personal licence and, in particular, but without prejudice to the generality of the sub-paragraph, may determine fees differing according to:
[a] such other matters as the Secretary of State may by regulations prescribe.

(3) Pursuant to s 55(2) a licensing authority may charge such annual fee from the holders of a premises licence, club premises certificate or personal licence as they may determine and as may be sufficient in the aggregate to cover in whole or in part the other reasonable costs in connection with their functions under this Act not otherwise recovered of:

[a] the collection, removal and disposal of refuse associated to or otherwise arising from the operation of authorisations under this Act not otherwise recovered,

[b] other street cleaning associated to or otherwise arising from the operation of authorisations under this Act, not otherwise recovered;

[c] other services rendered by them to holders of authorisations under this Act associated to or otherwise arising from the operation of authorisations under this Act, not otherwise recovered;

[d] the cost of control and supervision in so far as that control and supervision is attributable to the carrying out of functions under this Act not otherwise recovered;

[e] the cost of enforcing the provisions of this Act;

[f] other costs incurred with the carrying out of functions under this Act not otherwise recovered; and

[g] such other matters as the Secretary of State may by regulations prescribe.

(4) Upon the grant of a temporary event notice a licensing authority may charge a fee from the holder of a temporary event notice as they may determine and as may be sufficient in the aggregate to cover in whole or in part the other reasonable costs in connection with their functions under this Act not otherwise recovered of:

[a] the collection, removal and disposal of refuse associated to or otherwise arising from the operation of authorisations under this Act not otherwise recovered,

[b] other street cleaning associated to or otherwise arising from the operation of authorisations under this Act, not otherwise recovered;

[c] other services rendered by them to holders of authorisations under this Act associated to or otherwise arising from the operation of authorisations under this Act, not otherwise recovered;

[d] the cost of control and supervision in so far as that control and supervision is attributable to the carrying out of functions under this Act not otherwise recovered;

[e] the cost of enforcing the provisions of this Act;

[f] other costs incurred with the carrying out of functions under this Act not otherwise recovered; and

[g] such other matters as the Secretary of State may by regulations prescribe.

(5) Before determining fees and charges under this section (whether originally or by way of variation of charges previously determined) a licensing authority must consult and:

[a] give notice of the proposed charges to the holders of existing licences or club permit holders or such persons as the licensing authority considers to be representative of them;

[b] give notice of the proposed charges to such other persons as the licensing authority considers to be representative of businesses and residents in its area;

[c] publish notice of the proposed charges in a newspaper circulating in the area; and

[d] publish notice of the proposed charges in electronic format.

(6) A notice under subsection 5(c) and (d) above shall be accompanied by a statement showing how the proposed charges have been computed; and any body representative of licence holders or club permit holders may request the licensing authority to supply such further information or explanation with regard to the proposed charges as the body may reasonably require in order to ascertain whether the proposed charges are reasonable and have been computed with the provisions of this section.

(7) A notice under subsection 5(c) and (d) above shall specify a reasonable period being not less than 28 days from the date of publication of the notice referred to in 5(c) above within which written representations concerning the proposed charges may be made to the licensing authority.

(8) It shall be the duty of the licensing authority to:

[a] consider any representations which are made to them within the period specified in the notice; and

[b] comply with any request made under subsection (6) above;

and where any such request is made the period so specified, if still current, shall be treated as extended by the number of days in the period beginning with the day which the request is made and ending with that on which it is complied with or for such other period as deemed reasonable by the licensing authority.

(9) When a licensing authority has determined charges, whether originally or by way of variation of fees and charges previously determined) they shall give reasonable notice of the fees and charges so determined and of the date on which those fees and charges are to be brought into effect.

This simple change would result in, firstly, a fee structure that can be varied according to local needs and the type of licence, with flexibility to allow for regulations to consider types of premises (e.g. different fees and charges for convenience stores, off-licences, drinking led venues, restaurants, late night takeaways and hotels etc). Secondly, it would allow the ability to charge a sum for services rendered, such as enforcement as well as street cleaning and similar costs, and other costs associated with the control and supervision of the premises (which are not recovered in some other way). It is submitted that this approach is compliant with the EU Services Directive and the Provision of Services Regulations 2009.

Despite this practical simplicity there does however seem to be a great deal of political resistance to allowing local authorities to set their own fees. Should the situation remain as it is, the current original fee bands should be increased by at least 20% in order to allow local authorities to better fund their licensing operations. One participant with detailed knowledge of this area stated that this was a figure previously discussed within the Home Office, and that it was probably a fair amount. This option would mean that the fee system remains incompatible with the Directive.

¹ Hadfield. P., and Measham. F., (2011) *Lost Orders? Law enforcement and alcohol in England and Wales*. Final report to the Portman Group, p 32.

² Hadfield. P., and Measham. F., (2011) *Lost Orders? Law enforcement and alcohol in England and Wales*. Final report to the Portman Group, p 14.

³ DCMS (2007) *Evaluation of the impact of the Licensing Act 2003*, p 38.

⁴ Elton. L., (2006) *The Licensing Act 2003: Report of the independent fees review panel*, p 9.

⁵ Elton. L., (2006) *The Licensing Act 2003: Report of the independent fees review panel*

⁶ Local Government Association (February 2015) *LGA responds to Government decision to reject locally-set licensing fees*

⁷ Roberts, Marion (2014) *A helping hand? The contribution of the night-time economy to the evolving high street*. In: Wrigley, Neil and Brookes, Erin, (eds.) *Evolving high streets: resilience and reinvention*. Perspectives from social science. University of Southampton, p 27.

⁸ Harrington. J., (2009) *Luminar Boss; half of UK nightclubs could close*. [Accessed 14 September 2015].

⁹ Elton. L., (2006) *The Licensing Act 2003: Report of the independent fees review panel*, p 18.

¹⁰ Home Office (26th February 2015) *The government's response to the consultation on locally-set fees*

¹¹ Local Government Association (February 2015) *LGA responds to Government decision to reject locally-set licensing fees*

¹² Department for Business, Innovation and Skills (2009) *The European Services Directive Guidance for Local Authorities*, Second edition. p 17.

¹³ Derby Telegraph (24th September, 2013) *Thousands of pounds to be repaid to Derby taxi firms* [Accessed 1st June 2015].

¹⁴ Get Surrey (11th February 2011) *Council 'could owe £5 million' to cabbies after error* [Accessed 1st June 2015].

¹⁵ Button. J., (August 2012) *Licensing Fees Bulletin*

¹⁶ DCMS (November 2004) *Consultation on level of fees to be established by regulation under the Licensing Act 2003*

Chapter 13: Licensing strategies and Statements of Licensing Policy

Chapter summary

While some local authorities put significant emphasis on Statements of Licensing Policy (SLPs) as a key strategic document, others pay them little regard.

It was thought that the role of SLPs could be clarified in the s 182 Guidance.

Participants who saw their SLP as a strategic document reported that it was a useful method of outlining their vision of the local public good, and to 'set the agenda' for licensing in their area.

Used in this way, SLPs could go some way to addressing some of the most common complaints about the Act – that it is passive, reactive and without a clear view of the wider public interest.

1. Overall views

There was a general view amongst all participants that Statements of Licensing Policy (SLPs) were very variable, with many lacking any overall vision, often poorly consulted upon and unrepresentative of local views as a result.

Some participants put great emphasis on SLPs as key to the way they made decisions, whereas others reported that SLPs were frequently done out of bureaucratic necessity rather than a wider practical aim, and that they did not properly understand their purpose. One participant with a legal background called for 'clear guidance on SLPs and their role in decision making'.

It was also stated that SLPs frequently lacked any element of strategy, with no positive vision for what the night-time economy should look like. One interviewee who had reviewed a large number of SLPs as part of a study commented that most were 'legalistic, boring and difficult to read and understand'.

Some authorities, on the other hand, suggested that they deliberately made their SLP short and simple, making it easy for licensing committees to take the policy into account when making decisions. Having to carry out a consultation on SLPs was a common complaint, both in terms of time and cost, and because of the fact that licensing officers often lack knowledge and expertise in how to do this, as it is very different from their day-to-day role. A few participants stated that there was a lack of clear guidance on how wide the consultation on SLPs should be, or what the benefits of a more thorough consultation might be.

Some participants stated that their consultation consisted of putting their draft SLP on the council website and writing to the local licenced trade to invite their views. In such cases anywhere between 15 and 60 responses were reported to have been received during their last consultation. A number of such participants commented on an imbalance in responses, with most coming from the local licenced trade and very few from local residents. Indeed, in circumstances where most of the few responses received come from licensing solicitors, some participants questioned whether there was any real value in the process.

However, other participants described considerable consultation efforts, stating that they had targeted local community groups, churches and schools, and used local councillors and other local figures to encourage local residents to get involved. Some mentioned efforts to use everyday language in the consultation documents and make it as easy as possible for residents to understand and respond to the SLP. Some had conducted specific focus groups with a range of community groups in order to ensure that they were getting a wide and representative range of local views. In such cases up to 600 responses had been received.

This approach was often taken by participants who wanted their SLP to provide a mandate for council action on licensing, and it was stated this often, although not always, overlapped with a desire to see greater public health involvement in licensing. Participants from such areas also mentioned having wider input from responsible authorities into their SLP as they were drafted, particularly from Public Health. It was stated that one North Eastern local authority had seconded a member of their public health team to the licensing team for three days a week while the SLP was being written.

Whilst it might seem easy to criticise those areas that only carried out minimal consultations and put little thought into their SLP, a range of reasons for this were reported. Consultation

fatigue was mentioned a number of times, as was the 'risk averse nature of local authorities' and the fact that they often relied upon non specialist in-house legal advice which did not place much weight on SLPs. Some from rural areas stated that licensing was not a big enough concern to justify the time and money for a large consultation, and even within urban areas this was seen to be a problem; one participant from a large urban area argued for a need to persuade local authorities of the cost benefits of consultation and SLPs and to demonstrate the value they add.

This does indeed seem to be true, and while some local authorities are clearly convinced of the benefits of having detailed, locally specific SLPs well grounded in resident's views, work to quantify the impact of this on licensing decisions would be welcome.

2. SLPs as a strategic document

Some participants, who very often came from areas who had done considerable consultation on their SLP, regarded their SLP as a strategic document which could be used to 'set the agenda' for licensing in their area. One commented that:

We see our SLP as a strategic document; everyone has regard to it, including councillors, and there is good political buy in, it's linked in with our alcohol strategy. ... We did a very wide consultation and the document went to full council in order to give it extra weight.

A number of participants mentioned that this approach allowed them some scope to direct the local markets to some extent, which was seen as important. Westminster's SLP, which specifically identifies a preference for restaurants as opposed to drink-led venues because of alcohol-related issues in the area, was mentioned by some participants as a successful way of using SLPs to prompt positive change in an area. Other SLPs mentioned had taken a 'matrix' approach, identifying what was seen as acceptable in each local area in terms of types of premises and opening hours.

By outlining what the council saw as both suitable and not suitable within an area, it was stated by some that SLPs could be used to put the onus onto the applicant, prompting them to identify how they will ensure that they do not add to the problems outlined in the SLP. It was reported that this was a successful approach, although it was also mentioned that some SLPs could be very negative in this regard, only identifying problems, and that a positive vision should also be put forward.

While talking about this approach, another interviewee remarked that:

Licensing shouldn't just be a scientific process, but needs a community approach: to consult and decide on what a community wants, in terms of type and numbers of premises, and then apply it. It will result in different local approaches, but it's democratic, accountable and locally based.

Another interviewee considered it from a different perspective. They argued that SLPs always include a 'value judgement' and so need accountability, and to be based on dialogue with the community. That value judgement should focus on the evidence of what causes alcohol-related harm in the area and the local authority should be accountable for making it.

Some participants favoured going further and 'beefing up' the existing policy led aspect of the licensing process. One suggested following Scotland's 'overprovision' principle, while

another made a comparison with the drink drive limit. There is always, he suggested, a 'risk curve' and it is for the government to make an informed decision regarding what is an acceptable level of risk. Councils should have the discretion to make the same informed decision in a licensing context.

A number of participants mentioned that SLPs were being increasingly used as a way of incorporating public health into licensing, something which will be looked at in more detail with chapter 15.

3. Trade views

Participants from the licenced trade tended to dislike SLPs. One, from a national retailer, complained that they were continually invited to respond to local consultations but never had the time to do so. The suggested that they didn't see the need for SLPs and would prefer only national guidance.

Another trade participant wanted to scrap SLPs, and complained about the burden that having to redo them every five years placed on the local authority, as well as the burden on the licenced trade in taking part in the consultations. Another interviewee from the licenced trade was generally against SLPs, but stated that if well done they could be useful for some licensing applications, by clearly stating what was expected in that area.

Some participants mentioned the potential conflict of interest surrounding views obtained from the licenced trade. While it was recognised that the views of the trade needed to be taken into account, it was reported that their personal interests and economic focus needed to be carefully balanced with views on the overall impact that alcohol and the licenced trade have on the community.

Discussion

4. SLPs and regional variations

Responses on this issue suggest that there is a very wide range in the emphasis that different local authorities place on their SLP, ranging from extremely significant to almost insignificant. This is perhaps another example of wide regional variations within licensing, an issues that the Act was intended to address.

As mentioned in chapter two, SLPs were included in the Act to give councils a local democratic voice,¹ and they were reportedly one of the few things within the White Paper that the industry disagreed with. While SLPs are not new within licensing, but rather a continuation of the statements previously issued by magistrates in each area,² they were new for local authorities when they took over licensing with the 2003 Act. Other research has suggested that many local authorities had no experience of producing them, and initially at least, lacked strategic vision and a clear understanding of how they could be used.³ This seems to echo some of the comments here, although there are clear exceptions where some local authorities have used them strategically.

5. SLPs and strategy within licensing

As suggested by some participants above, there are a number of reasons why the strategic use of SLPs has the potential to make a significant difference for local authorities. These

link to issues mentioned elsewhere in this report, many of which cause problems for local authorities.

Firstly, SLPs provide a very clear way for local authorities to outline their view of what the 'public interest' requires in regard to licensing, an important issue covered in chapter four. Indeed, para 1.5 of the s 182 Guidance states that one of the Act's wider aims is:

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 (added emphasis)

Chapter 4 also details case law in support of this, and the fact that when it comes to determining what the 'public interest' requires:

The scheme is based on the premise that the relevant local authority is uniquely equipped and well-placed to make such judgments (*Taylor v Manchester [2012] para 74*)

Clearly all decisions are taken on a case-by-case basis and are determined on their own facts and circumstances. However, this research has strongly suggested that the key – and fundamental concern – that the Act is to serve the wider public interest is often lacking. This public interest purpose ought to be highlighted in the SLP, and through this document make its way into each licensing decision. Indeed, para 1.17 of the s 182 Guidance confirms that:

Each application must be considered on its own merits and in accordance with the licensing authority's statement of licensing policy

Because of this, SLPs provide the ideal method through which local authorities can clearly spell out their view of the public interest regarding licensing. The way in which local authorities decide what this public interest is needs some consideration though. It is perhaps something that should be led by elected councillors, with a view to wider priorities such as the corporate plan, and the input of licensing officers and other responsible authorities.

The s 182 Guidance on the consultation, preparation and content of SLPs is lacking in sufficient detail however, only stating (at para 13.10) that SLPs:

May set out a general approach to making licensing decisions

Far more could be done within the s182 Guidance to encourage local authorities to take a thoughtful and considered strategic approach within their SLPs.

As the guidance is rather sparse and unhelpful on this issue it is worth looking at the case law to see the way in which the Court of Appeal, in the case of *Hope & Glory [2011] EWCA Civ 31*, views the exercise of licensing decisions, and how this may impact on the way in which licensing strategies are put together. At paragraph 42 of the case the Court of Appeal has stated that:

Licensing decisions often involve weighing a variety of competing considerations: the demand for licensed establishments, the economic benefit to the proprietor and to the locality by drawing in visitors and stimulating the demand, the effect on law and order, the impact on the lives of those who live and work in the vicinity,

and so on.... They involve an evaluation of what is to be regarded as reasonably acceptable in the particular location.

Looking at the Court's comments on this in more detail, it seems clear that, the consideration of:

the economic benefit to the proprietor and to the locality by drawing in visitors and stimulating the demand

equates to an economic objective, but the phrase directly before this:

the demand for licensed establishments

could also be interpreted as equating to something akin to the 'need' for licenced premises, despite the fact that para 13.19 of the s 182 Guidance rules this out. The s 182 Guidance reminds us, at para 1.10, that court rulings take precedence over the s 182 Guidance. In addition, using the Act's own rationale and objectives, a strong argument can be made for considering 'need', as where supply exceeds demand it can result in tight competition and adverse impacts that undermine the licensing objectives. This is a significant contradiction in the s 182 Guidance that restricts local authorities.

It may be that it is easier for local authorities to focus on 'saturation' rather than 'need', although you could take a more expansive view of 'need', which extends beyond areas of saturation. Any local authority wishing to make these arguments would be well advised to get legal advice beforehand, but as one of the examples in this chapter demonstrates, some local authorities have already made similar arguments.

As there is no economic objective it would be difficult to make clear economic arguments at the level of individual decisions, although something similar to this does seem to happen in a haphazard way quite frequently. Returning to the Court of Appeal's comments in *Hope & Glory*, the 'evaluation of what is to be regarded as reasonably acceptable in the particular location' might best be seen as operating at a strategic level, setting the context within which decisions are made via a SLP. Seen in this light local authorities could have far greater sway over economic decisions within licensing, highlighting both the potential positive and negative economic impacts of licensing, and bringing these into play within their SLP.

Wider strategic issues need not stop with economic concerns however, and based upon the Court of Appeal's statement, could easily include other issues linked to the consumption of alcohol within the area and the wider local authority. These may include anti-social behaviour, child sexual exploitation and other sexual offences, street drinking, and potentially the link between alcohol, wellbeing and deprivation where this can be linked to the licensing objectives.

5.1. Strategic examples

Newcastle have taken a wellbeing orientated approach within their SLP, mapping wellbeing related issues such as deprivation, crime data, and the overall availability of alcohol, and introducing CIPs in certain areas to ensure that new premises do not impact negatively on these issues. This is clearly backed up and explained within their SLP, giving a strong message regarding what is and is not in the local interest.

Other strategic examples might include taking a holistic approach to the dispersal of crowds, with some areas ensuring that late night refreshment operators close at the same time as local night clubs, so that there is nowhere for crowds of people to gather. Late night refreshments can often act as a catalyst to violence and public disorder, but if late night refreshment venues are not open, people are more likely to go straight home. Some local authorities have also used road closures or changed the position of taxi ranks to achieve similar ends, using their SLP as a method of explaining these actions and the way in which they can benefit a local area.

The way in which Southwark have linked their SLP with their gambling policy also provides an interesting example of strategic thinking. This is seemingly based upon the accepted idea that cumulative impact can apply to a range of issues within an area; not just licenced premises, but their interaction with related activities such as taxis for example. Southwark used local evidence to demonstrate that there was a link between street drinkers, off licenses and betting shops, with street drinkers using betting shops for shelter during wet weather. These examples show that there are ways of reducing alcohol-related risks without directly addressing the sale of alcohol in some cases.

Some participants mentioned Westminster City Council's SLP, which sets out a clear and positive direction for how they want the local night time economy to grow, stating that:

The council wishes to discourage drunkenness and to encourage the provision of more seating in premises which serve alcohol for people to sit and enjoy a drink and order food by table service, in place of open bar space which caters for high volume vertical drinking. (Westminster City Council, SLP, para 1.3)

It was reported by participants that this had had a positive impact in shaping the licenced trade away from drink-led venues, and helped set a clear direction for the licensing committee. Recent research backs this up, finding that 93% of the growth within Westminster's West End Stress Area CIP over the last 10 years was made up of food-led venues.⁴

Warrington Borough Council's recent SLP is based upon a very positive vision for the area, with much of this focused on encouraging a diverse and sustainable night time economy which does not impact negatively on the wellbeing of the local population. The Warrington SLP has been coordinated with their Strategy for Wellbeing, Local Plan Core Strategy, and the 'Warrington means business' plan (an approach encouraged at paragraph 13.56 of the s 182 Guidance) and sets out a very clear set of positive objectives. Warrington Borough Council states that:

We want to work together to:

- Provide a safe environment for people to enjoy
- To broaden the appeal of the late night economy
- To create an environment that attracts appropriate investment and allows responsible businesses to thrive and grow
- To tackle alcohol-related harm and to promote health and wellbeing
- To address any negative perceptions around the town centre and to re-invigorate people to work together to deliver real change.⁵

Their SLP sets out some of the ways in which the council intends to achieve these objectives, some of which includes:

- Encouraging businesses to develop alternative business models, which do not unduly rely on the high volume sale of cheap alcohol.
- Encouraging businesses to bring back the 'terminal' hour to reduce the potential for pre-loading and the excessive consumption of alcohol...
- Improving guardianship and care and to take action against those people who target the vulnerable...
- Using special policies to ensure that the number of bars and hot food takeaway establishments are commensurate to the needs of the area....
- Playing to the strengths of different areas around the town centre and to promote future uses that are consistent with the needs and character of those areas...
- Creating an environment that gives businesses the confidence to move away from high volume vertical drinking towards a broader, higher quality offer.
- Promoting a café and restaurant culture.
- Encouraging developers and investors, who share our ambitions, to choose to invest in the town....
- Ensuring that we make a positive contribution to the alcohol harm reduction strategy
- Reducing underage access to alcohol and to educate young people on the dangers of misusing alcohol.
- Tackling illicit goods that put people at risk.
- Working with our partners to access data on alcohol-related harm e.g. Hospital admissions and ambulance data.
- Working with partners to promote the responsible retailing of alcohol, including the sale of strong beers and ciders.⁶

This SLP gives a very clear and undoubtedly positive message about the direction in which the local council want their night time economy to develop, with the wellbeing of the local population at the heart of their vision of the 'public interest' in relation to licensing. It could reasonably be expected that applicants whose business model differed from this vision, such as vertical drinking and alcohol focused venues, would face a more difficult task in obtaining a licence.

It is also arguable that some elements within this come close to the old concept of 'need'; clearly any SLP must be used on a case by case bases and not as a blanket policy, but phrases such as

Encouraging businesses to develop alternative business models, which do not unduly rely on the high volume sale of cheap alcohol.

Or

Playing to the strengths of different areas around the town centre and to promote future uses that are consistent with the needs and character of those areas

Could be seen as coming close to the old concept of 'need'. They are however, entirely in keeping with the Court of Appeal in *Hope & Glory* [42] when talking about:

the demand for licensed establishments, the economic benefit to the proprietor and to the locality by drawing in visitors and stimulating the demand, the effect on law and order, the impact on the lives of those who live and work in the vicinity, and so on.

Taking a similarly positive view, but with more local detail, Kingston has outlined a neighbourhood by neighbourhood approach to licensing within their SLP. In addition to

sections covering the four licensing objectives, specific neighbourhood plans are used to identify local priorities and concerns, and highlight the different ways that licensing can impact on different communities.⁷ These neighbourhood specific policies detail how applications will be handled in light of local circumstances, and include a range of recommended measures to limit the negative impact any new licensed premises may have. This is intended to put the onus onto the applicant to demonstrate that they will not add to existing community problems, and is surely a very detailed way of outlining how the local authority views the local public good.

So, while SLPs are in many ways an area-wide overview, they can be developed from the bottom up, using local knowledge and information to build an overall strategy designed to promote the licensing objectives, sometimes at a very local level.

6. SLPs and consultations

While some interviewees described doing very little in terms of public consultation for their SLPs, others had gone to considerable lengths and saw it as a very useful exercise. If SLPs are regarded as key for local authorities in communicating their views on the public good, it could be argued that those who made the effort to consult widely on their SLP are closer to this goal.

The s 182 Guidance at para 13.4 lists a number of bodies that must be consulted (responsible authorities and trade representatives) but leaves the general consultation (at para 13.6) very much to the discretion of the local authority:

It is for each licensing authority to determine the extent of the consultation it should undertake... While it is clearly good practice to consult widely, this may not always be necessary or appropriate

This makes sense to an extent, and it might cause problems for some local authorities if rigid obligations were imposed. However, it would be useful for the guidance to outline better the potential benefits of proper consultation, such as greater democratic legitimacy and a more confident appraisal of what the public interest may be in an area. While this perhaps sounds rather intangible, an SLP that can be proved to be based on the views of local residents could be seen as carrying greater legal weight than one without this.¹

While there is no obligation to do this, some local authorities consult with the other responsible authorities while writing and designing their SLP, in order to ensure a coordinated approach and make sure that the SLP matches up with other relevant documents and strategies. This can be done to a greater or lesser extent, and para 13.56 of the s 182 Guidance recommends coordinating SLPs with other relevant strategies, as exemplified the Warrington example above.

In contrast, some areas take a very disjointed approach, with responsible authorities having to input into the SLP via the general consultation. Interviewees who experienced this were very critical of the local authority for not including their views earlier, and regarded that approach as indicative of a lack of respect for their views.

Despite the general perception in the interviews, the public consultation process does not have to be onerous to be effective. Some areas have run specific focus groups in order to

¹ As mentioned in one of the quotes above, some councils have also taken their SLP to full council in order to give it greater legitimacy and legal weight.

get local views, but in many cases there already exist local networks that can be used. In addition to a general public consultation, council officers could take a set of short questions to local groups and organisations in order to get their views on general licensing issues, encouraging anyone with more detailed ideas to fill in the full consultation.

These local groups or organisations might include schools, colleges, churches, Scout groups, youth clubs or similar, community groups or sports clubs, the local Healthwatch group, and patient or carer groups. In places where there are alcohol or drug treatment and rehabilitation centres a very strong case could be made for ensuring that their views are taken. The local safeguarding board should also be included; indeed, this should perhaps be made a statutory consultee, as the current statutory list does not contain anyone with a specialist interest in children's safeguarding.

It could be argued that many of the groups in this list might be more likely than not to prefer greater restrictions on licensing. However, given that the licenced trade, who seem likely to argue for less restrictions, are statutory consultees, including the views of local groups seems only fair. This also points to the fact that there is clearly more to identifying the public good than asking local residents and the licenced trade for their views, and there will always be wider concerns and conflicting issues that need to be balanced; this is why democratically elected local councillors are in the ideal position to decide upon local issues. As a result, local authorities should be very clear about their reasons and motives behind decisions within their SLP, and the way in which conflicting issues have been assessed – something that should be stressed for all licensing decisions.

It may also be the case that there are advantages to being proactive in gathering local views from a wide range local groups; a local authority may be more confident that the results are a more genuine reflection of local views if it has consulted thoroughly. Interestingly none of the interviewees seemed to have thought about the prospect that responses to their SLP consultation may disagree with their plans, but this could well happen. In Hackney for example, 84% of respondents to a consultation for a new CIP were against the idea.⁸ It is unclear as to whether this was representative of local views, and attempting to gauge this accurately will always be difficult, but the council went ahead with the CIP despite the consultation. Again this points towards the need for local authorities to be very clear about their reasons and motives behind decisions within their SLP, and why they have taken a certain view of what the public interest requires in an area.

Some of the problems and objections put forward against wide consultations are valid however, such as consultation fatigue and the logistical problems that consultations can bring, especially as this is very different to a licensing officer's day to day job. This lack of experience does, though, strengthen the case for properly coordinating SLPs with other relevant council strategies, such as planning, the wellbeing strategy and economic plans or similar, as these could all be consulted upon together in a more efficient way.

The fact that some interviewees stated that they were hampered by in-house local authority lawyers who did not know how to draw together an effective SLP is perhaps understandable from one perspective, as specialist legal advice can be expensive. Yet given the fact that SLPs have been used by some local authorities to shape and control licensing in their area very effectively, the spend-to-save argument for using specialist legal advice early on and creating an effective and legally sound SLP seems very strong. There is definitely a need to demonstrate that there are financial and legal benefits to both wide consultations and the early use of specialist legal advice, and this is hopefully an area that will be looked at in more detail in the future.

7. In the absence of a licensing strategy

While the examples above are both interesting and varied, a coordinated and strategic approach to licensing appears to be lacking within the vast majority of local authorities. It was stated in the interviews that some local authorities deliberately put very minimal information into their SLP, as this makes it very easy to take it into account within decisions. However, this also suggests that they take little or no view as to what the public interest regarding licensing may require either. Indeed, beyond guarding against irresponsible licensees, many areas did not appear to take a clear view of what the public interest might be locally, and some participants, including chairs of licensing committees, did not really know the contents of their SLP.

This unfocused approach to SLPs has a number of potential disadvantages, and links to some of the problems identified by local authority representatives within the interviews. This includes the view that the Act is overly permissive, and the common statement that the Act allowed market forces to drive licensing to the detriment of local authorities. These could be combated by the stronger use of SLPs, with licensing authorities better using their powers as a responsible authority to promote their SLP.

In the absence of a clearly defined strategy for licensing in an area, market forces seem far more likely to have the opportunity to drive the development of the licensed trade in an area. The negative impact of 'market forces' was talked about many times within the interviews, and the fact that they have seemingly been unchecked in many areas during the first 10 years of the Act seems to have led to real problems in some areas.

However, if SLPs give a clear steer on what does and does not seem likely to lead to a situation that undermines the licensing objectives in an area, and this is then used within each decision, licensing committee members would have far more information on which to base their decisions. Evidence brought forward specifically in relation to the individual case is of course also relevant, but if the SLP is effectively a blank slate the applicant has far more leeway to set the agenda. If a decision were appealed they would also have far less cover than if they had had a detailed SLP upon which to rely.

8. Using SLPs in each and every decision

Some licensing committees incorporate their SLP into each and every decision, and this does not have to be a difficult thing to do. At the start of each new application, the licensing authority can be asked to present information from the SLP about the local area, setting the scene and identifying any relevant issues or problems. Licensing committee members should already know their SLP well, and applicants should of course have had regard to it when putting their application together, but starting proceedings in this way can be a good mechanism for setting the scene and identifying what the local authority regards as in keeping with the public good in that location.

This means that when the licensing authority comes to determining:

what actions are appropriate for the promotion of the licensing objectives in their area (9.41)

the details of that particular area have been brought to the fore. It also gives the licensing authority a clear role in outlining and defending its SLP every time it is engaged. In addition,

this links to the fact that licensing committees can be proactive and inquisitorial in their questioning both within, and before, licensing hearings, something covered in the next chapter.

9. Constraints on SLPs

While SLPs can be used to outline the overarching framework within which licensing decisions will be made locally, they are 'constrained by the provision of the primary legislation' and in the case of appeals, courts need only 'have regard' to SLPs and may depart from them if 'considered justified to do so because of the individual circumstances of the case.'⁹ This could of course be taken in one of two ways, and could mean that SLPs could be departed from in order to strengthen a local authorities discretion, not only to weaken it.

10. Conclusion

Some of the most significant problems with the Act reported by participants from a local authority background could potentially be addressed to a large extent by the greater use of SLPs. Rather than taking a passive and reactive view of licensing, some local authorities have used them to outline a clear and definite view of what the public interest requires from licensing, and how detriment to that public interest should be avoided. This view has often come directly from elected councillors, interlinked with wider council priorities, and this seems a sensible approach. The encouragement and spread of this approach would be very beneficial.

Recommendation: Clarifications to the s 182 Guidance to ensure local authorities have a clear and coordinated strategic approach to licensing decisions

Local authorities should be given greater steer to outline a clear strategic vision for licensing in their area, building upon the advice in para 1.5 of the s 182 Guidance and others, and coordinated with other relevant council strategies. This strategic view should be developed by elected councillors, with the input of licensing officers and other responsible authorities.

Recommendation: Child protection involvement in SLPs

At present there is no requirement for local authorities to consult with anyone from a child protection background in developing their SLP. This should be amended at section 5(3) of the Act, and then paragraph 13.4 of the s 182 Guidance.

¹ Greenaway. J., (2010) Alcohol in the UK, background paper, National School of Government, p 6.

² Roberts. M., Eldridge. A., (2009) *Planning the night time economy*. Routledge, p 113.

³ Nicholls. J., (2015) Public Health and Alcohol Licensing in the UK: Challenges, Opportunities, and Implications for Policy and Practice, *Contemporary Drug Problems*, p 7.

⁴ Beven. T., Hadfield. P., Davis. P., (July 2015) Westminster Evening & Night Time Economy: A Cost Benefit Study for Westminster City Council, Summary of Key Findings

⁵ Warrington Borough Council (2015) Draft Statement of Licensing Policy

⁶ Warrington Borough Council (2015) Draft Statement of Licensing Policy

⁷ Safe, Sociable London Partnership (2014) Called in for Review: London Statement of Licensing Policies, Lessons Leant and Future Developments, p 26.

⁸ Harris. J. (26th June 2015) End of the party: how police and councils are calling time on Britain's nightlife, *The Guardian* [Accessed 22 September 2015].

⁹ Nicholls. J., (2015) Public Health and Alcohol Licensing in the UK: Challenges, Opportunities, and Implications for Practice. *Contemporary Drug Problems*, p 7.

Chapter 14: Decision-making and the use of evidence

Chapter summary

In most situations the best evidence is local information which can be seen as material fact and directly relevant to a specific case. This however could come in many forms, and licensing committees are not bound by strict rules of evidence.

Almost all participants mentioned the 'premises by premises' approach, by which they meant that a venue should be considered in isolation from its local environment. There is however nothing in the Act, s 182 Guidance or case law that directly underpins this approach.

In contrast to the supposed 'premises by premises' approach, the Court of Appeal clearly directs committees to consider an application dynamically within its local context.

'Promoting the prevention' of the objectives can be seen as actively working to create environments where the licensing objectives are less likely to be undermined. While decisions on this need to be evidenced, transparent and logical, by their nature they are often not clear-cut.

While participants commonly felt the need to make decisions using large amounts of factual evidence, the Act does not ask for this. The Court of Appeal has made it clear that licensing decisions should involve 'an evaluative judgment' as opposed to a black and white pronouncement.

Licensing committees can come to decisions that, on the balance of probabilities, something is more likely than not to be the case.

Interviewees were not specifically asked about the nature of decision making under the Act, although this was something that came across implicitly in many of the answers. Because of this, this chapter follows a different structure from others within this report, as it is not divided up into participants' views followed by a discussion.

Comments from interviewees suggested that there are large differences between local authorities as to how they approach this issue, and potential tensions between the written detail of the Act and its application. This chapter questions some of the assumptions that have been made about the Act, and examines them in light of the guidance and case law.

As mentioned previously, many participants saw the Act as permissive and overly lenient on the licenced trade. One participant from a regulatory background in a large northern local authority took as an example of the presumption to grant a licence and stated:

Who does that benefit? But who does that hinder? We have to make the best of what we've got in the current Act, but it's not good enough. It should have protection of communities at its heart.

However, the 'presumption to approve' does not mean that the Act is permissive. Once a representation is made:

the licensing authority's discretion will be engaged (s 183 Guidance, para 9.3)

and the Act becomes a balancing regime, assessing the likely impact of an application on the licensing objectives. To further recap issues discussed elsewhere, the licensing objectives are not stand-alone issues to be looked at in a vacuum, but should be promoted with a wider view to what the public interest requires. For example, para 9.37 of the s 182 Guidance states that applications should be determined

with a view to promoting the licensing objectives in the overall interest of the local community.

While the Court of Appeal has also confirmed that licensing is:

the exercise of a power delegated by the people as a whole to decide what the public interest requires (*Hope and Glory* [41])

1. The decision-making process

So, local authorities should be clear that the Act gives them a duty to have regard to the public interest in the performance of their licensing functions, and that they should have a view as to what that means in the context of their local area. As detailed in the previous chapter, the SLP provides the ideal mechanism for a local authority to outline its view of the public interest in a licensing context, and these factors should frame the fact that licensing authorities are required to:

determine what actions are appropriate for the promotion of the licensing objectives in their area (s 182 Guidance, para 9.41)

This could involve granting a licence, granting with conditions attached, or refusing the licence. The same process is required by the Act whether the premises is currently operating or not. The assertion that it is not possible to determine the likely effect of a new licence is

entirely unfounded; not only does the s 182 Guidance require licensing committees to reach a conclusion on this, but sections of the s 182 Guidance starting at para 8.33 require applicants themselves to address the potential impact of their licence on the licensing objectives.

In all cases decisions should be made not only on whether there is currently crime, public nuisance, etc. present, but whether an application might lead to circumstances that could generate these, and therefore undermine the licensing objectives.

The process of deciding upon the most appropriate course of action brings in a number of interrelated issues, including the evidence that is needed, the way in which the evidence is considered, the issue of causality, and the way in which individual premises may or may not interact with their local environment.

2. The use of evidence within licensing decisions

The only reference to the types of evidence applicable in the s 182 Guidance states, at para 9.42, that when making a decision:

The authority's determination should be evidence-based, justified as being appropriate for the promotion of the licensing objectives and proportionate to what it is intended to achieve

This does not bind committees by strict rules of evidence; although some are needed. Evidence may, for example, come from the geographic location or the conduct of an operator, and there is reasonable discretion here. For new applications it is necessary to evaluate the impact that they may have on the objectives, and relevant evidence from the locality can be used to help with this.

So called 'local knowledge', which many councillors will have as a result of their position, is a perfectly acceptable and probably underused source of evidence, often put to one side as a result of evidence introduced as part of a hearing. One participant reported that their licensing committee members were prevented from conducting sight visits by their local authority lawyer so as not to influence their decision, but the Court of Appeal is quite clear about the role that local knowledge can play as a source of evidence within decisions:

It is clear from the Guidance that drawing on local knowledge at least the local knowledge of local licensing authorities, is an important feature of the Act's approach. There can be little doubt that local Magistrates' are also entitled to take into account their own knowledge but, in my judgment, they must measure their own views against the evidence presented to them. In some cases, the evidence presented will require them to adjust their own impression. (*R on the application of Daniel Thwaites PLC) v Wirral Magistrates' Court & Ors* (2008) EWHC 838)

Participants were clear that good, local data was key to licensing decisions, as well as the necessity of using it to establish a causal link between problems and premises. Causality is an important issue that will be returned to shortly, and these factors appear within other research on this issue, with data collection found to vary between areas,¹ and commentators highlighting the need for the collection of high quality, standardised data.^{2 3}

One point of contention, particularly from those with an interest in public health, was the use of academic research and international studies. While some wanted to use these within

licensing hearings, there was an acceptance from most participants that they should not be relied upon in the absence of other information. Local data provides a far more effective evidence base for influencing licensing decisions. So, while academic research can be useful and at times compelling, it does not necessarily count as 'evidence' within a licensing committee. Talking about this issue Scottish Licensing Lawyer Stephen McGowan points out that what matters is local specificity, and that:

Ultimately, and as a matter of law, academic studies are of lesser evidential value than material fact.⁴

Historian James Nicholls also discusses difficulties around data and 'evidence' and suggests that licensing tends to 'see like a city' in a very practical and local manner. As a result there is a limited role for international studies that draw broad conclusions and 'see like a state'.⁵ When dealing with public health issues, he argues that 'high-quality, consistent and relevant local data development' is 'a critical step' in establishing its relevance in everyday licensing practice. The same can be said of the other issues that feed into licensing.⁶

Similar views were found amongst interviewees. One participant with a licensing background that spanned trading standards and public health, as well as health and safety, commented that:

It's about good local data, going ward by ward using data to map trends and alcohol-related harm... good applicable evidence and the legal process are key.

Another participant stressed the importance of using good local data to look at trends and use this as a way to focus licensing activity:

Local authorities need to get better at pooling data from different sources, geomapping it and plotting things together so that relationships and problem areas can be identified. This can be difficult and costly but once it's up and running it makes a world of difference.

This 'good local data', which can be seen as material fact and directly relevant to a specific case, could come in many forms. Section 2 of the s 182 Guidance works through the four licensing objectives, detailing which issues they relate to, and provides a useful resource regarding evidence. At no point however does the s 182 Guidance specifically stipulate which sources of evidence are or are not applicable; this is properly left entirely open to be determined on a case-by-case basis. Clearly sound judgement is vital.

In some cases, such as crime and disorder, the evidence that might be used for that objective is fairly self-evident, and the Guidance points to the police as key partners in this area. The other objectives are left more wide ranging. While a number of issues related to public nuisance are mentioned, it is left broadly defined, relating potentially to the:

Reduction of the living and working amenity and... may also arise as a result of the adverse effects of artificial light, dust, odour and insects or where its effect is prejudicial to health. (s 182 Guidance, para 2.15)

Evidence relating to these issues could come from a wide range of sources, and licensing committees are given the scope to consider anything they deem to be relevant in this area. The situation is similar regarding the protection of children from harm, which includes:

The protection of children from moral, psychological and physical harm....
Licensing authorities must also consider the need to protect children from sexual exploitation (s 182 Guidance, para 2.21)

Again this is a very wide-ranging concern, and licensing authorities have the scope to consider any information deemed relevant.

Sometimes data on these issues might be routinely collected, while at others it could be a one off exercise for a specific application. One interviewee went into detail about the types of data that they collect as standard, which included:

1. locations used by the 'street community' (homeless persons, beggars, street drinkers)
2. reported locations for drug activity
3. ward by ward data on crime and disorder, violence against the person, injury from violence, non-injury violence, sexual offences, criminal damage
4. total area crime data on victim recorded under influence of alcohol: suspect recorded under influence of alcohol
5. alcohol suspected ambulance call outs
6. A&E attendances with a record of alcohol.

It was reported that good local data collection systems were useful for identifying and addressing alcohol-related problems across all of the licensing objectives, and some participants talked about the 'Cardiff data model' which many areas have attempted to copy. This originated from crime and disorder concerns, but also has wider implications. Public Health England have put together a guide to generally available sources of data that could be applicable across all of the licensing objectives. This, and various case studies relating to data and licensing, can be accessed via the Local [Government Knowledge Hub Forum](#).

The case study from Liverpool outlines the way in which data was pulled together and presented in order to implement a new CIP within an extremely deprived area. It demonstrates the way in which a wide range of data sources can be linked to the licensing objectives if carefully coordinated and thought through. It also shows that while the data is important, so too is the context within which it is presented; the local authority clearly outlined what it thought was needed to promote the public good in this area, and the way in which it wanted to stop alcohol from undermining this.

* A knowledge hub account is needed to access the database, but anyone is able to sign up. Search for '[Using data in alcohol licensing](#)'. Once you have selected the group you can use the 'apply to join' button. Alternatively direct requests can be made to paul.duffy@phe.gov.uk or maria.smolar@phe.gov.uk.

Case Study: Alcohol-related health inequalities CIP in Liverpool

Liverpool City Council's Public Health Team has taken an innovative approach to using alcohol-related health data in building the case for a CIP in the Kensington and Fairfield Ward, which has a specific street drinking problem, along with acute deprivation. The proposal for a CIP was made in order to limit off licenses and late night takeaways operating between the hours of 11pm – 5am, and in putting their evidence together the public health team focused on two particular licensing objectives, the protection of children from harm and public safety, taking a 'creative' approach to the second of these which included health related data. They also worked collaboratively with the other responsible authorities involved.

Evidence used included:

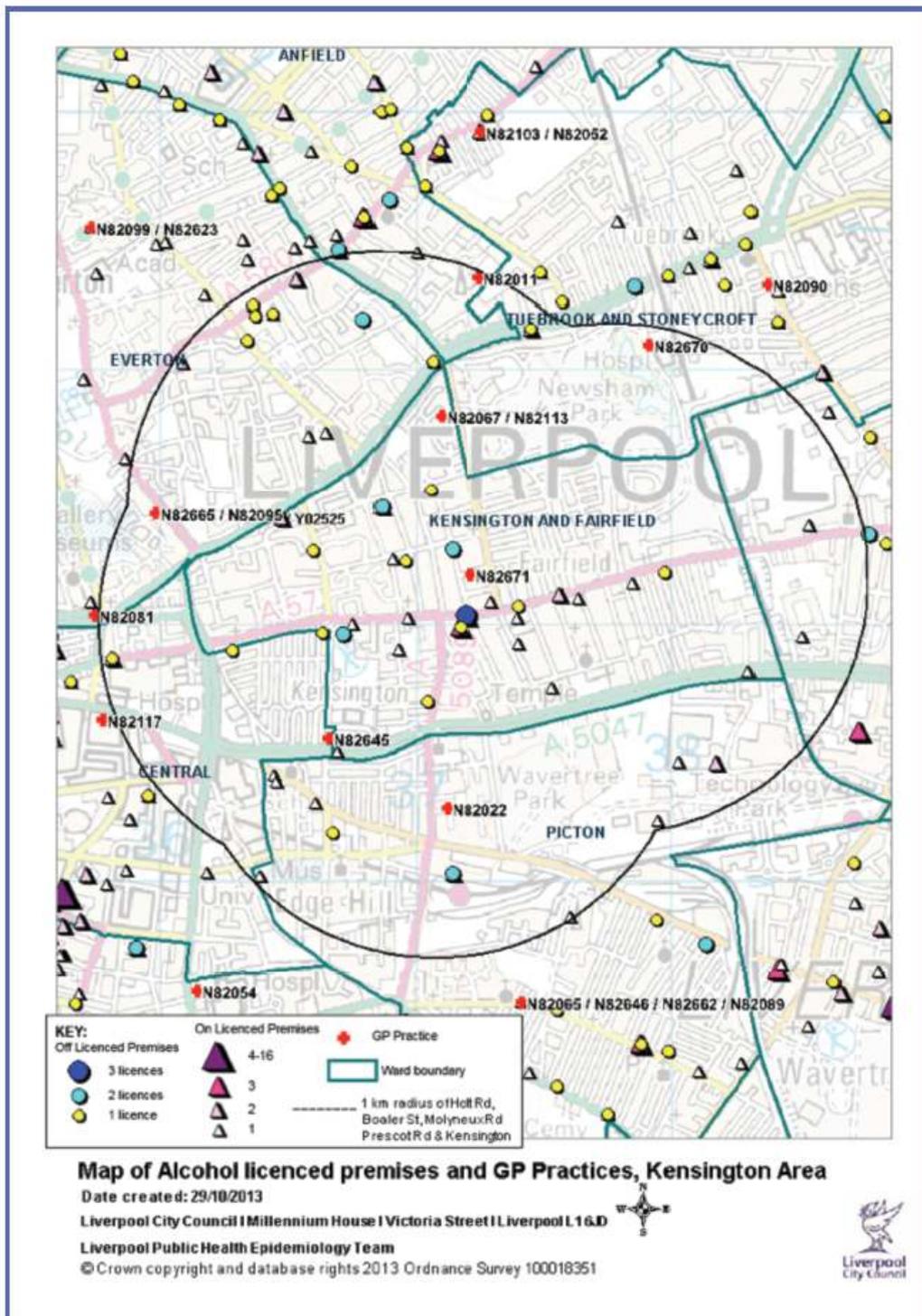
- Local representations from Ward Councillors, Housing Associations, the Police, Local Authority Community Safety Department, a local Head teacher and Youth Centre Manager.
- Alcohol-related crime figures, for the area and the specific streets highlighted for inclusion in the CIP.
- Information from NICE about outlet density and harm.
- Age standardised rates per 100,000 population for admission for alcohol-specific admissions for patients registered at local GP practices, ranked versus other neighbourhoods in Liverpool.
- Levels of children in poverty: 45.4% in the ward, more than twice the national average (20.6%).
- Levels of pupil absence (up to 23% in one school)
- Levels of academic achievement
- Levels of employment
- Claimant count and worklessness
- Car ownership, as another indicator of deprivation

They also mapped GP practices, pubs, off licences, restaurants, cafés and hotels in the area, producing a striking visual image of the ward, and estimating that most people were within a 2-minute walk of licenced premises (see Figure 14).

For some of this data it is clear how it is relevant to licensing, while for others greater explanation was needed, for example the fact that persistent truancy is a key indicator of substance abuse. It was made clear that as a Responsible Authority, Public Health have a duty to consider the wider impact of alcohol on the local population. The representation also referred to the World Health Organisations explanation of the wider determinants of health, and the way in which socio-economic conditions influence the health of individuals and communities as a whole. This was used to explain the complicated social reasons for the high levels of alcohol misuse in the area, and to explain the wider motives behind the CIP – the incrementally support positive action to address the wide range of issues highlighted.

Since the introduction of the CIP no new applications have been received in the CIP area. A number of licences have closed due to economic forces and a licensee found to have breached the terms of their license has had their licence revoked, subject to appeal. This has resulted in a reduction in the number of licensed premises, and sent a very strong signal to other licensees in the area. In addition, the Public Health funded Alcohol and Tobacco Unit in Liverpool has engaged with licensees in the area, promoting good practice, and Liverpool City Council have asked licensees to stop selling single units of beer over 6.5% ABV. This agreement is currently on a voluntary basis but is being written into licencing conditions as and when licences come under review.

Figure 14: Map of alcohol licensed premises and GP practices in Kensington area, Liverpool, supplied by Liverpool City Council Public Health Team



Early evaluation data shows a significant drop in alcohol-related crime, both within the streets that sat within the CIP area and within the vicinity of off licences and takeaways. For example, when considering reported crime in the immediate vicinity of off licences and takeaways, the percentage of alcohol-related crime fell from 56% before the CIP to 10% between 6 and 12 months after the launch of the CIP.

All details here come from Liverpool City Council Public Health Department.

A number of problems were mentioned that restrict the ability of local authorities to collect such data. Some stated that it was difficult to get GP practices to engage, and to get A&E Units to record the information that they wanted, although motivating staff by fully explaining the benefits of collecting the data was said to help. It was reported that in some areas data is only shared with the police and licensing officers, when it would be helpful for all responsible authorities to be informed. Staff resources were also mentioned; one area reported that their entire data system had fallen apart when they lost their regional data manager, a post that had not been filled since.

Some participants, including those from the licenced trade, also reported problems with data accuracy, and this is clearly an important issue. One interviewee from the licenced trade stated that they frequently challenged local data and statistics, both police data and hospital data, while another commented that:

Sometimes a violent incident is attributed to a venue just because it happened on the street outside, the people involved might not have been drinking there at all.

So far all the evidence sources mentioned have been factual and quantitative, but this is by no means the only type of evidence admissible within licensing decisions. Local residents putting forward an objection are perhaps less likely to quote facts and figures while instead talking about personal experience of the impact, or potential impact, of a premises. The case study from Liverpool included written submissions from local ward councillors, a Head Teacher and youth club manager, and clearly these views could be just as valid as a statistic, as could the operating history of an application, or the location in question. For example, it may be self evident to the licensing committee that an area with lots of street drinking and homelessness requires a different approach to an application within a rural village.

3. Being assertive with evidence

If a licensing committee thinks that any evidence submitted is either unclear or misleading, or if it has questions that remain unanswered, it has the power to be inquisitive and ask questions of any party at the hearing (see Reg 17 of the Hearings Regulations 2005). The High Court has held that the only parameter to this power is 'relevance and materiality' (*Murco Petroleum v Bristol* [2010] para 30).

Given that licensing is in practice adversarial, parties on all sides understandably suppress and distort unfavourable evidence 'however truthful it may be.'⁷ However, the case of *Nottinghamshire Police v Nottingham Magistrates' Court* [2009] makes the point that all parties have a common goal – the promotion of the licensing objectives.

The use of adversarial tactics and specialist experts can have a significant impact, and the use of expensive specialist legal advice by the licenced trade often puts local authorities on

the back foot. The greater use of this questioning power by licensing committees could help them to be more assertive in determining the likely impact of an application instead of accepting the information presented to them at face value.

This issue was also mentioned in the previous chapter regarding SLPs, and the fact that some licensing committees ask the licensing authority to use information from the SLP set the scene at the start of each new application. If SLPs are well constricted and evidenced, this has clear strategic advantages and enables the licensing authority to promote its SLP every time it is engaged.

Being inquisitive with information supplied by responsible authorities also has other advantages, and can help to ensure that all parties are treated and questioned equally. At times licensing committees were criticized in the interviews for not being even-handed with their questioning of all parties, but focusing more on the applicant. This can be problematic and decisions made in an unclear or one-sided manner are more likely to be appealed, and to lose on appeal.

Having the licensing authority set the scene at the start of every application gives licensing committee members the opportunity to question them too, in addition to any other responsible authorities. Even if these questions may only involve going through the preliminaries, councillors can ensure that the whole process is seen to be even-handed and balanced.

Being inquisitorial with responsible authorities also gives the licensing committee greater scope to be inquisitorial with the applicant where this is needed, and generally to be more assertive in their approach to promoting the wider public interest. The s 182 Guidance, at paragraph 8.33, offers numerous issues on which all parties could reasonably be questioned, and many committees would be better informed by delving into these issues.

4. Evidence and location: The ‘premises by premises’ approach

Participants frequently stated that decisions under the Act had to be taken using a ‘premises by premises’ approach. This was often thought to mean that each decision had to be taken in isolation, without reference to the wider geographic area. It was often stated that this was because of the way in which the Act relied upon market forces, and that this prevented local authorities from looking at the interactions between premises, except within cumulative impact areas. One licensing officer who favoured greater public health involvement stated that:

The government should open things up, away from a premises by premises view, to make it easier. At the moment our licensing committee is trained to take a case-by-case view, and if there is no specific evidence against, things will get granted, but they should be able to take a wider view.

There is however nothing in the Act, s 182 Guidance or case law that directly underpins this approach. The idea that each venue should be looked at in isolation appears to be a myth that has developed around the Act – one that has greatly helped the licenced trade while significantly disadvantaging local authorities.

So, what does the s 182 Guidance actually say on this issue? Paragraph 1.17 states that:

Each application must be considered on its own merits

with para 9.41 also stating that:

All licensing determinations should be considered on a case-by-case basis

This is both common sense and in keeping with natural justice. However, the individual merits of the case, and a case-by-case basis do not work to vacuum-pack a venue and cut it off from its geographic location.

At no point in the Act or the s 182 Guidance is the phrase 'premises by premises' or 'premises by premises approach' mentioned. Its common usage to suggest that licenced venues must be considered as if artificially isolated from their geographic location is a fallacy, and rulings from the courts clearly direct licensing authorities to consider an application within its local context. In the *Hope and Glory* case, for example, the Court of Appeal details some of the wider considerations relevant to an application:

Licensing decisions often involve weighing a variety of competing considerations: the demand for licensed establishments, the economic benefit to the proprietor and to the locality by drawing in visitors and stimulating the demand, the effect on law and order, the impact on the lives of those who live and work in the vicinity, and so on. (*Hope and Glory* [2011] para 42)

All of these considerations involve a wider consideration of the geographic location in which the licenced venue sits, and how the application would impact upon this. In direct contrast to a supposed 'premises by premises approach,' the courts clearly direct licensing authorities to look at an application within its context. Paragraph 13.33 of the s 182 Guidance expresses a similar area wide view, stating that:

The absence of a special policy does not prevent any responsible authority or other person making representations on an application for the grant or variation of a licence on the grounds that the premises will give rise to a negative cumulative impact on one or more of the licensing objectives.

If the Act did operate solely on a 'premises by premises' approach, this would not be possible. Paragraph 8.33 of the s 182 Guidance also instructs applicants to:

Undertake their own enquiries about the area in which the premises are situated to inform the content of the application

with para 8.34 stating that applicants are expected to demonstrate an understanding of:

The layout of the local area and physical environment.... Any risk posed to the local area by the application's proposed licensable activities; and any local initiatives.... which may help to mitigate potential risks.

It is therefore not only the licensing authority who should take into account the wider context of an application, but the applicant too.

5. Evidence, causality and judgment within licensing decisions

A number of misconceptions expressed by participants have been clarified so far. Firstly, we have explained that licensing authorities are free to have regard to reasonable evidence

they see as material and relevant, but that local data and evidence which constitutes directly relevant material fact is most likely to be effective. Secondly, we suggest that a licence, or application for a licence, should not be considered in isolation from its environment, but interactively within it. These two points work hand in hand, as a wider consideration of what is suitable within a particular location will inevitably allow greater scope for using relevant local data.

However, participants also expressed misconceptions as to how evidence such as this should be weighed up and considered, with the 'burden of evidence' and causality at the heart of this. Many reported that they felt compelled to use large amounts of quite factual evidence within licensing decisions, and a failure to do this was thought to make an appeal more likely.

It was stated by some participants, including some from a legal background, that the licenced trade often argues for a higher evidential burden than is actually necessary, as this makes it more difficult for local authorities to prove that any problems, or potential problems, are related to a premises.

This view is not necessarily accurate however. Commenting on this point, one interviewee from a legal background stated that:

What operators will argue is that you've got to have a really strong evidential basis, whereas I think the evidential threshold isn't so high – if you think about promoting the prevention of crime and disorder, what you're saying is that the circumstances and the facts on the ground must be such that it is more likely than not that there would be less crime as opposed to more crime, and so you're not really looking at whether there is crime or not, you're looking at the factors that might generate crime.

Seen in this light, the objectives are not just about preventing crime, public nuisance, etc. but 'promoting the prevention' of them, and actively working to create environments where the licensing objectives are less likely to be undermined. While decisions on this need to be evidenced, transparent and logical, by their nature they are often not clear-cut.

Frequently it would be very difficult to put together a case to prove definitively that something will or will not happen as a result of a decision. Views from participant suggest that at times this is what licensing committees feel compelled to do, something which limits their options while helping the licenced trade.

For example, 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. 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. The Court of Appeal has made it clear that licensing decisions should involve 'an evaluative judgment' as opposed to a black and white pronouncement:

It requires the making of an evaluative judgment... It inherently involves an evaluation of what is to be regarded as reasonably acceptable in the particular location, and of what is necessary and proportionate to the promotion of the statutory licensing objectives in terms of scope of the licence and conditions in a local context... The scheme is based on the premise that the relevant local authority is uniquely equipped and well-placed to make such judgments. (*Taylor v Manchester [2012] para 73*)

Key to this 'evaluative judgment' is the way in which the issues and the evidence are dealt with. Although these are:

In a sense questions of fact, they are not question of the 'heads or tails' variety. They involve an evaluation of what is to be regarded as reasonably acceptable in the particular location... (this) is essentially a matter of judgment rather than a matter of pure fact. (*Hope and Glory [2011] para 42*)

Within this process relevant evidence is of course essential, but licensing committees are not a court of law and operate to different evidential standards. While licensing decisions may appear to be quasi-judicial, the Court of Appeal is clear that licensing is an administrative function (*Hope and Glory v Westminster [2011] para 41*), to which a balance of probabilities applies. This means that licensing committees can come to decisions that, on the balance of probabilities, something is more likely than not to be the case.

This is a similar situation to that found in Scotland; for example, in *Tesco Stores Limited v City of Glasgow Licensing Board*, [2012], an appeal against a licence refused on the grounds of overprovision, it was stated that:

The pursuer demands a standard appropriate to a court not a licensing board. Unlike a court judgment, it is sufficient for a board to make a value judgement.

The issue of causality is also altered by this approach. Causation is central to licensing law, as it is to the legal profession in general, but it is incorrect to view there as being one type of causality that is universally applied across every legal situation. Within licensing decisions causality also needs to be seen within 'an evaluative judgment', and not necessarily to be proved beyond reasonable doubt.

At times the uneven use of the licensing objectives, with a reliance on the crime and disorder objective and police evidence, probably also contributes to this perception that licensing decisions have to be made to a higher evidential standard. Naturally the police are used to working to a criminal standard, using this as a benchmark for both their arguments and their supporting evidence. However, both the police and those on licensing committees should be clear that the evidential standard within licensing decisions is different, and allows them more scope to reach evaluative judgements, with a rational but nuanced view of causality.

One participant from an area that takes this approach described the way in which they train their licensing committee members to take decisions:

With existing licences, there's a need to link the sale of alcohol and consumption to the resulting impact, effects on community, detritus, etc. This is challenging with off sales, but evidence can be used. The Licensing Members need to consider what weight to give it, following Natural Justice principles, however the

standard of proof is not the criminal standard but a balance of probabilities. It's hard to do this and it isn't always successful but it can be done.

This gives leeway to licensing committees to take a more discretionary and nuanced approach in their assessment of evidence and its link with a particular premises.

In addition, paragraph 92 of the *Matthew Taylor v Manchester City Council* [2012] case, outlines further discretion available to licensing authorities:

“Promoting the licensing objectives” ... requires the balancing of various strands of public interest; and in performing that balance, it is possible, of [sic] not inevitable that one of the objectives may be demoted in order to benefit another.

This is despite the fact that the s 182 Guidance para 1.5 states that ‘each objective is of equal importance,’ and again points to the key role that the public interest should have in all licensing decisions.

6. Specialist legal advice

While participants frequently referred to the way in which the legal clout of sections within the licenced trade had influenced the implementation of the Act, the influence of in-house local authority lawyers was also mentioned. One senior police representative from a large city commented on the fact that their licensing committee had started to make safe decisions from around 2011, and that there was a clear understanding that this was directly related to reduced council finances and a pressure from council lawyers to avoid potentially expensive appeal hearings.

It was stated that even where all three members of the licensing sub-committee had agreed with a decision, the council solicitor was frequently successful in making them change their mind and grant the application. This was usually on the basis that there was not enough evidence to decline the application, even though the councillors had originally judged that they had enough information on which to make a fully informed decision.

Interviewees from a legal background were also critical of in-house local authority legal advice for limiting the discretion of licensing committees. One stated that:

[Local authorities] are perhaps a little bit risk averse, and a little unimaginative, but actually I think the risk aversion comes not from the licensing officers but from the lawyers that really haven't got a clue. Quite often the legal advisor is a non-specialist lawyer who has far bigger fish to fry, like the housing portfolio and the planning portfolio which is considered bigger, cleverer and more important.

It could of course be argued that licensing lawyers and barristers would support this view, as it could result in them gaining extra work. However, licensing is a specialised area of law and the evidence does suggest that local authorities would benefit from the greater use of specialist legal advice. While this may be more expensive in the short term, it could pay for itself overall.

7. Summary

Clarifying these misunderstandings within the decision making process broadens the scope of licensing decisions in a number of ways: it increases the physical area that should be

considered, including the interactions which may occur within this; it brings into play a wider range of evidence and data that may be considered; the understanding of decisions as 'evaluative judgments' rather than black and white pronouncements frees licensing committees to use their judgment about what the public good requires to a greater extent; and causality is also altered by this approach, needing to be seen to occur in the balance of probabilities, rather than beyond reasonable doubt.

Seen in this light, the practical promotion of the licensing objectives is 'a complex balancing exercise' (*Taylor*, para 9). This balancing exercise or 'evaluative judgment' is central to the 'assessment' that should be undertaken by a licensing authority. The s 182 Guidance could be far clearer in encouraging this approach, but at para 9.40 it states that:

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. (Emphasis added)

Some local authorities already take this approach, but it does seem that this is rare, and that most local authorities have bought into a number of myths and misconceptions about the decision making process, which work to significantly reduce their ability to use the Act.

From a theoretical perspective it should be straightforward for local authorities to correct these misconceptions, with better training for licensing committees and the more frequent use of specialist legal advice. In practice this would of course be far more difficult, and if this approach spread it would almost certainly be challenged legally; indeed this is probably the main reason why it has not been tried more often. As covered elsewhere, there is often a very un-level playing field when local authorities take on certain parts of the licensed trade, as Hadfield has documented in great detail:

PH: 'When you turn up in court with the best barrister and a team of expert witnesses, do you think it is an equal contest?'

Licensing Solicitor: 'No, not an equal contest at all. I am there to get the best results for my client and usually we do just that' ^{xxxi}

This appears to be why many licensing committees are trained to take a risk averse black and white approach, an approach that limits their discretion and is more favourable to the licenced trade. To do so is not, however, in keeping with the Act, the s 182 Guidance and the case law. Far more attention should be paid to these documents.

Recommendation: The more frequent use of specialist legal advice by local authorities

A better regard to, and application of, the s 182 Guidance has been recommended elsewhere in this report, but is equally relevant here. As an additional step towards this end, many local authorities would benefit from the more frequent use of specialist legal advice, particularly with training for licensing committee members and developing SLPs. This could help them to take more confident decisions, and with this to be more assertive and preventative in their use of the Act. While this may be more expensive in the short term, it could pay for itself overall.

¹ Newton, A., Hirschfield, A., Armitage, A., Rogerson, M., Monchuk, L. and Wilcox, A. (2008e) Evaluation of Licensing Act: Measuring Crime and Disorder in and around Licensed Premises, Research Study SRG/05/007 Final Report. University of Huddersfield

² Hadfield. P., Newton. A., (2010) Alcohol, crime and disorder in the night-time economic; Alcohol Concern's information and statistical digest Factsheet, p 10.

³ Nicholls. J., (2015) Public Health and Alcohol Licensing in the UK: Challenges, Opportunities, and Implications for Practice. *Contemporary Drug Problems*, p 16.

⁴ McGowan. S., (8th January 2015) Licensing: Public Health Evidence and Causality [Accessed 2nd June 2015].

⁵ Nicholls. J., (2015) Public Health and Alcohol Licensing in the UK: Challenges, Opportunities, and Implications for Practice. *Contemporary Drug Problems*, p 18.

⁶ Nicholls. J., (2015) Public Health and Alcohol Licensing in the UK: Challenges, Opportunities, and Implications for Practice. *Contemporary Drug Problems*, p 20.

⁷ Hadfield, Philip Mason (2005) *Bar Wars: Contesting the night in British cities*, Durham theses, Durham University. Available at Durham E-Theses Online: <http://etheses.dur.ac.uk/2709/> p 286.

Chapter 15: Licensing and Public Health

Chapter summary

Some did not think it was possible to address public health using licensing, whereas others thought it possible and had personal experience of doing so.

A large number of participants stated that it had been a mistake to make health a responsible authority without introducing a specific health objective. There was strong support for such an objective.

The consideration of health issues under the former licensing regime offers informative examples as to how health might be better incorporated into the current Act.

Statements of Licensing Policy were reported as a key method for the better consideration of health issues within licensing.

There is no reason to think that health could, or would, work on a different basis from that currently found within the Act, and all the rules around evidence, causality and decision making apply.

The existing framework of the Act means that more proximal public health issues seem likely to be the most actively addressed via licensing. With this in mind it may be useful to shift from focusing on physical health to social health issues.

The notion of wellbeing could be particularly useful within licensing, focusing on local quality of life issues and the 'wellbeing of the wider community'.

There is no health objective under the 2003 Licensing Act, although some acute health issues can be linked to the objectives. Health was, however, made a responsible authority in 2011 and some local authorities have done significant work in order better to capture health concerns within the existing objectives. A number of groups have called for a specific health objective to be added to the Act, as is the case in Scotland.

As mentioned in the methods section at the start of the report, participants were selected in order to try and gather a wide range of views across the diverse professions involved in licensing. Because of the report's specific interest in possible future developments within licensing, particularly the move towards the greater involvement of public health, participants with existing experience of this area were deliberately sought out. Many of this group had a public health focused approach to licensing, but some were sceptical as a result of their experience.

1. Should licensing include a Public Health perspective?

When addressing this issue, participants tended to fall into two groups. The first group, consisting of people mainly with a pure licensing background, started from an understanding of the licensing system and then considered how public health might impact upon that, with varying interpretations. The second group consisted of people mainly from a public health or wider regulatory background (such as directors of regulatory services within local authorities). They tended to start with a public health perspective, identifying problems and concerns, and then seeking to tackle those problems and concerns through licensing. These groups were not of course rigid, and a number of licensing officers interviewed had experience of using public health data and arguments within licensing.

In a sense these two general groups were looking at licensing through different prisms: broadly speaking the first viewed licensing as an important administrative check on the who, when and where of alcohol provision; the second started with a concern about alcohol's wider impact, and then looked to licensing for answers. To use a familiar analogy they were looking through the same telescope, but from opposite ends. It would however, be unfair to say that those from a more regular licensing perspective were not concerned by alcohol's wider impact, but many saw licensing as having a less significant role to play in addressing this.

These two approaches frequently arrived at different conclusions, and clashed on some issues, discussed in this chapter. If public health is to gain greater traction within licensing in the future, there needs to start to be a common understanding of what public health can do for licensing, how licensing understands public health, and exactly what scope there is within the Act to incorporate health concern and data. Arguments for this were made within the interviews, although some participants disagreed with a health related approach entirely.

One example of these differing perspectives revolved around the way in which the Act should, or could, actually regulate the supply of alcohol. As mentioned previously, many police representatives and those from public health, argued strongly that the vastly increased availability and presence of alcohol within society was problematic, and wanted to use the Act to restrict and regulate this. One participant described the Act as:

Bringing about a reverse smoking ban... greatly increasing alcohol's availability, and with this an acceptability and legitimacy that masks the potential harms.

However, some from a licensing background, including licensing officers and many from the licensed trade, did not see this as a problem. For them the Act should seek to ensure that those who sell alcohol are responsible, and venues of a suitable standard, but the general impact of the alcohol sold on the wider population did not fall within the Act's remit. In many ways this second perspective is more true to the original drafting of the Act, in which health was given no role.

1.1 Arguments for incorporating Public Health within licencing

Despite this, alcohol does clearly have a wider impact on society. Given that licensing is the primary way in which alcohol is regulated, it is perhaps not surprising that those concerned with alcohol-related harms look to licensing as a potential tool. One academic made just this point, saying that there was a 'clear legislative gap' regarding licensing and health, which needed addressing:

Just because it's difficult doesn't mean the law shouldn't cover it – we have laws around serving to drunks, which is a very tricky area, but a very necessary one

A number of other participants emphasised the impact of very cheap alcohol, which was primarily seen to come from supermarkets. Others discussed the way in which supermarkets and corner shops interacted, some stating that supermarkets could push independent off-licences into selling counterfeit alcohol because of strong price competition.* It was also stated that large concentrations of off-licences in a small area had the same effect at times. Some mentioned that these situations could undermine the licensing objectives, but despite the fact that they should be working to uphold these, the Act did not let them address these problematic situations.

These and similar examples were used to argue for greater emphasis on public health perspectives within licensing, but also to point to the importance of price as an additional consideration. Price has not traditionally been addressed via licensing, although this has, at least in theory, changed recently with the introduction of the ban on below cost selling as a mandatory licensing condition. This important issue will be addressed in more detail elsewhere, but a small number of participants stated that having health as a responsible authority had helped them to attach health related conditions to licences, and that they had encouraged the use of voluntary conditions on price, with some success.

Other participants argued for the inclusion of public health by highlighting the impact of alcohol on the NHS, particularly on A&E units. One public health officer reported that 70% of those using their local A&E on Friday and Saturday nights had been drinking, and another argued that individuals such as this should be charged. Others talked about wanting to address liver disease, which is currently the only major chronic disease with increasing mortality rates in the UK. All in all, the range of issues that participants wanted to address via public health involvement in licensing was very wide, which perhaps begged the question as to whether they were all realistic expectations.

One interviewee with a background in planning and urban design stated that the way in which the Act largely ignores large concentrations of premises, at least until they have

* Research with independent shopkeepers backs up this view, finding that: 'The major supermarkets' practice of deep discounting was felt to be the main driver of alcohol problems. Local shops felt under threat from these majors' business practices.' Forsyth, A. J. M., Davidson, N. and Lennox, J. L. (2007) An Investigation into the environmental impact of off-licensed premises on residential neighbourhoods. London: Alcohol Education Research Council.

developed, at times came close to encouraging binge drinking. This echoed a number of comments made in the background chapter, and another participant from a legal background stated that penalising individuals too harshly was:

Like putting a kid in a sweetshop and telling them off when they spend all their pocket money on sweets.

In their view it was not possible to divorce the Act from its impact on health and wider behaviours. Yet others, including another from a legal background, focused far more on the individual drinker than the environment in which they drank; where they talked about the environment, it was the individual premises rather than how larger groups of these impacted on people.

1.2. Arguments against incorporating Public Health within licencing

This more focused view, which quite often started with individuals and individual premises, was more common amongst those who were sceptical about public health involvement within licensing. Part of this involved concerns around the kind of impact that licensing could have on drinking behaviour and health. One such participant, who was a principle licensing officer in an urban area, stated that:

Middle age home drinkers often consume to unhealthy levels, but how would licensing impact on them? People are mobile, you need other interventions. I'm not sure licensing's the best tool, minimum unit pricing would work better for health concerns.

Interviewees from the licensed trade were universally against moves to incorporate public health perspectives within licensing. One business representative pointed to the Coalition Government's Responsibility Deal with industry as a better approach to public health, along with encouraging licensing officers to focus more on poorly run premises. They did acknowledge concern about price issues between the on and off-trade, but felt that 'interfering in the market is dangerous'.

A number of off-trade participants stated that they would not open a dry store because of the need to offer 'customer choice'. Their attitude was that the problem was with individual self control and that consequently it would be wrong to hamper industry in the name of public health.

This attitude was exemplified by an interviewee who agreed that it was difficult to control the off-trade within the Act, but stated that:

It is not feasible to address public health via licensing, how would you measure and quantify any impact? You need to fine drunks in A&E and the police need to do more.

Another of the interviewees, with a legal background, highlighted concerns about public health involvement in terms of the legal mechanisms within the Act, stating that in the current legal framework individual cause and effect would be very hard to prove for longer-term health issues.

2. Public Health and its involvement in the Act so far

Public health was made a responsible authority by the Police Reform and Social Responsibility Act 2011. Most participants thought that there had been poor engagement from health in general since then, and little impact, although with gradual improvement over time.

Some areas however had done a great deal of work to engage public health within licensing. One participant, from a regulatory services background within a local authority, reported having made good progress in this area, including successfully defending legal challenges. Going further, the participant stated they did not necessarily think that the addition of a specific public health objective would change the way they worked, although they did state it would probably give them more legal cover for the approach they were taking.

A number of other participants argued that health was already well engaged with licensing in their area, and while they were not as enthusiastic about the current situation, they did state that they had found public health involvement had had a significant impact on licensing. This was in contrast to other participants, including one from a public health background, who had found enmeshing public health and licensing a challenge and stated that they 'did not really know where to start'.

A large number stated that it was a mistake to make health a responsible authority without introducing a specific health objective. One interviewee with a legal background stated that:

It has required creative thinking to make things work; the strongest statements from government on public health involvement in licensing are not in the guidance, which suggests only a weak commitment.

Another participant stated that while health could contribute meaningfully under the present regime this required working 'around legislation not with it' which was a real constraint on using licensing to make a proactive difference to public health. There was a feeling that the latter was simply not properly embedded within the former.

Echoing this, a number of participants stated that it was hard for health to contribute to licensing, but that CIPs were the best way in which public health could contribute at the moment. It was suggested that there was a need for greater guidance on how health could make meaningful representations using the current four licensing objectives. Recently published guidance from Public Health England was mentioned by some participants, and while many found it helpful, some thought that it was not prescriptive enough. Participants also talked of 'silo' working, and the fact that other responsible authorities were not always supportive of health, because of its supposedly more uncertain place within the range or responsible authorities.

Those participants who were sceptical about the role of public health within licensing tended to agree that making health a responsible authority had made little difference, although some commented on what they described as the 'questionable use of health data'.

A number of licensing officers and public health participants stated that there was good scope within the Act at present to address public health concerns within licensing, and indeed suggested they behave as if there is already a public health objective, by trying to fit public health evidence in via one of the current objectives. This was thought to be a useful

approach but with clear limitations because of the fact that the current objectives only allow limited room for this.

There was a common view that, in general, areas which experienced the greatest levels of alcohol-related harm had done the most to try and use opportunities that having health as a responsible authority offered. The level of local political leadership on alcohol was also key to this, as were the time and resources available to the Director of Public Health. Training and the make up of a licensing committee was also reported to be important, with particular councillors being able either to block or to enable ways of working that might favour public health.

3. Views on a fifth Public Health licensing objective and alternatives

The majority of participants were in favour of introducing a specific public health objective within the licensing act. This included police representatives, licensing officers, chairs of licensing committees, representatives from public health and those from regulatory services within local authorities. One participant summed up the broad views of this group when he said:

Trying to regulate a harmful substance with a deregulatory Act is very difficult, because of the presumption to approve. We're making the best of a contradictory framework, but a fifth public health objective would be radical shift... we could be regulatory at last.

As one Director of Public Health put it:

I'd certainly want a fifth objective, the problem at the moment is that the processes more or less work but there is no lever to pull. We would focus more on licensing if we had it, but we need good chance of impact.

It is worth pointing out that some of those who stated support for greater public health involvement in licensing, particularly the chairs of licensing committees, had little knowledge of public health issues within licensing prior to the interview. However, they expressed support after reading the project outline and pre-interview briefing paper, and having discussed things during the interview.

Overall, a slight majority of those who supported a public health objective came from urban areas. This probably reflects the fact that urban areas are perhaps more likely to suffer high levels of alcohol-related harms, and because of this, participants from these areas saw a public health objective as a potential additional tool. However, there were licensing officers and chairs of licensing committees from rural areas who were keen for a fifth objective, and likewise licensing officers from urban areas who did not think a public health objective would work in practice.

The minority group of participants who were sceptical about whether a public health objective would work included licensing officers, some police representatives, an academic and an interviewee from a legal background. The only group to universally oppose a public health objective were participants from the licenced trade, who plainly have a vested interest in this area.

One participant from a legal background stated that they did not favour Scotland's approach of introducing a public health objective, as it was not clear enough. Instead they supported the introduction of a 'health and wellbeing' objective:

I think it is difficult to address direct health related issues, but it would be easier to address health and society impacts, so [it] would be about creating an environment in which alcohol supply doesn't unduly undermine society so as to lead to health and social hazards.... asking how does having 5, 10, 15 off licenses promote the quality of life in this area?... You could also take into account the impact of licences on local schools, rehab centres, street drinkers, it would be about context.

However, most participants thought that the concept of wellbeing was too difficult to define, and was not clear cut enough to be legally useful. Some stated that it could bring economic arguments into licensing, and that while this happens to some extent already, it was thought that the health element within wellbeing would be too easily pushed aside.

Participants were also asked their view on the possibility of using health as a licensing objective within a cumulative impact policy. The Home Office and Public Health England have been trailing initiatives along these lines, termed HALO CIPs. In general, interviewees who were against greater public health involvement in licensing objected to these, while those who favoured public health saw them as potentially useful but far more limited in scope than a full public health objective, which was generally favoured over HALO CIPs.

Participants raised a number of possible issues with HALO CIPs. It was stated that current CIPs require long consultation processes and can be difficult to establish. This would probably be the same for HALO CIPs, as would the displacement effect, where problems are shifted to the periphery of the CIP. In contrast, it was thought that a fifth objective would be far more straightforward to implement. Some, including interviewees from the licenced trade, commented that health would still be on a lesser footing to the other objectives and so may lack legal strength even within a HALO CIP. Others pointed to the lack of evidence that current CIPs are actually effective in addressing premises density issues, and that given this, CIPs may not provide the best blueprint to copy.

One participant drew parallels between potential HALO CIPs and the now defunct Alcohol Disorder Zones, stating that councils would not want to introduce them because of the negative perception that it would bring to an area. In contrast a number of others stated that if available, they would look to introduce HALO CIPs that covered their entire local authority area, and work as if there was a public health objective.

One academic stated that a HALO CIP would represent a different understanding of the way in which alcohol can lead to harms, addressing the nature of availability in one area only in contrast to a health objective, which they saw as representing a more fundamental change of thinking. A few participants also stated that where a CIP was in place there was no need for a public health objective, or a HALO CIP, as CIPs enabled the use of more health related data. The majority of participants were far more interested in ways in which they could better use health concerns within day to day licensing outside of CIPs or HALO CIPs.

4. Public Health and licensing before the 2003 Act

After discussing the current involvement of public health within licensing, some participants pointed to previous precedents within licensing that incorporated health concerns as a way

of exploring the issue further. One participant with experience of the previous licensing regime clarified the issue by stating that:

When talking about public health within licensing, the real question is how to control the number of premises in practice.

They continued by explaining that magistrates had had considerable discretion to make subjective decisions when using the concept of 'need', which had been:

Infinitely flexible. The problems start when you lay down rules, and things become more legalistic and complicated. When is one more licensed premises in an area going to become a problem? – you then start to need evidence for that.

However, magistrates did not quite have unlimited discretion. Then, as now, each case had to be considered individually. 'Need' was used to varying degrees regionally, and part of the decision making process involved assessing the application against that individual court's local alcohol policy (akin to current Statements of Licensing Policy). These also varied widely, but some were particularly health focused, and the interviewee reported that many had incorporated local information such as rates of liver disease, alcohol-related death rates and alcohol's impact on local services and the police. It was mentioned that Sheffield magistrates court had been particularly strong on this in the late 1980's, and that their public health policy had been read at the start of their annual brewster session, which dealt with the granting, renewal, and transfer of licences.

With clear parallels to the use of SLPs today, when a new licence application was submitted, magistrates would take their local alcohol policy into account in making a decision. The interviewee stated that if it were rejected on the grounds of 'need' the magistrates would refer back to the relevant section within their policy, making the point that an extra premises in this area was likely to add to the existing problems.

It was stated that this approach was phased out around 1988/89, and replaced gradually by market forces, which have made the licensing process less discretionary and more administrative. The interviewee considered that this put the current debate about public health's involvement in licensing into perspective:

The free market approach makes considering public health within licensing difficult, but while the EU and competition law etc. are new, the principle and the problem are not.

This historical example is useful in showing that the issues here are not new, but that the current Act has framed them in a different way; a way that is not very amenable to public health. The clarification that 'when talking about public health within licensing, the real question is how to control the number of premises in practice,' is particularly useful, although conditions can be used too.

5. How would a Public Health objective work?

While there were broad philosophical differences between most of those for and against greater public health involvement in licensing, participants who were against identified practical legal issues related to the workings of the Act as a key concern.

In particular, they stated that it was important to look at individual licenced premises, using a 'premises by premises' approach, which discounted geographical interactions between

premises. As public health issues often involved alcohol in general, which can come from many sources rather than a specific premises, it was stated that public health did not fit with licensing. One participant stated that:

Could you really discriminate against individual pubs just because their clientele happen to drink more overall than others, or maybe smoke too? Or what if the licensee hadn't done anything wrong, but just happened to be in an area with lots of other outlets?

One participant described these issues as 'natural justice' concerns; the worry that public health could hinder licensees even though they were 'running good premises and doing everything by the book.' This also appeared to reflect the perspective, described above, that there is a limit to what licensing can or should do in terms of curtailing individual behaviour and protecting health.

As detailed in the previous chapter on evidence and decision making, however, the idea of a 'premises by premises' approach, which involves ignoring the geographical location and interactions related to a premises, is a fallacy. Rather, premises and their environment should be looked at in a dynamic way, with the local authority coming to:

An evaluation of what is to be regarded as reasonably acceptable in the particular location (*Hope and Glory v Westminster* [2011] para 42)

Given this, those objections to the use of public health approaches within licensing that are premised upon the view that each premises can only be looked at in isolation are erroneous. This misunderstanding was also apparent amongst interviewees who wanted greater public health involvement too however, along with wider problems related to the Act and 'market forces'. Many such interviewees made calls for licensing to take a more holistic overview in contrast to what they saw as a 'premises by premises' market driven approach. One, from a regulatory services background in an urban area, made the case for a holistic approach by stating that:

At times it's hard to tell exactly where the harm comes from. With crime and disorder it's here and now, but health is delayed and involves different evidence. You need a holistic view, like that taken with smoking. Its important not to miss the impacts of things on other people - risk often covers an area not just an individual premises or person.

In some ways the clarification that licensing decisions should involve issues within the local area is helpful for public health within licensing. Nevertheless, it only helps to a certain degree. The Act involves decisions made one at a time, from the bottom up as it were, and as such contrasts with the top down holistic approach that public health takes.

However, as covered in chapter 13, local authorities do have a top down holistic method of influencing licensing, and market forces, via their SLP. These do not give local authorities free reign to refer to any and all public health issues however, and would not do so even if there were a specific public health objective. They simply offer a clear method of countering market forces and enabling local authorities to set the licensing agenda, preferably based on good local evidence. However, before looking at SLPs as a way of getting around causality within the Act, it is worth looking at the use of evidence and data within individual decisions, where causality does need to be established.

6. Cause-and-effect and health issues in licensing

Issues related to causality remain a key limitation, and as detailed in the last chapter, while causality should be thought of as evaluatively judged rather than empirically proven, focusing on the importance of this issue is perhaps the simplest way of thinking about the actual workings of public health within licensing. Pointing directly to this, one participant asked a key question:

When exactly does the number of premises in an area become a problem? How could you prove this? Is fifteen off-licenses in a town OK but sixteen isn't? What about all the other factors that might be important?

Looking at the arguments both sides put forward the key issue that emerges is the ability to identify cause and effect. Those who were against public health perspectives in licensing argued that it was not possible to identify individual premises as having an impact on wider public health concerns. Those in favour of public health acknowledged this as a key issue, but offered solutions and examples that, in their view, allowed them the scope to address public health within the Act, sometimes with and sometimes without direct cause and effect.

There is an important clarification to be made however; those against public health seemed on the whole more concerned about the possible impact on current premises and the way in which they might be affected. They stated that proving the individual impact that any one premises had on longer-term health trends was not possible.

While those in favour of public health did clearly want to impact on existing premises they saw to be a problem, there was a common view that this would be very hard to achieve using public health data, although not impossible, because of the need to judge cause and effect. Some did talk of 'getting around' causality by using Statements of Licensing Policy to impact on the application process and thereby influence new license applications.

The fact that those in favour of public health preferred a method of getting around the cause and effect mechanism demonstrates how central it is to the Act. One participant from a regulatory background expressed their frustration with this issue by stating that:

80% new applications locally are for off-licences, but with the off-trade the link between the sale and the problems is lost in time and space, it's very difficult, even though we can see the problems.

This also throws some light on developments in Scotland, where there is a fifth public health licensing objective. Participants with knowledge of how this has developed in Scotland reported that it had only had a minimal impact on licensing. One participant from a national retailer stated that:

The fifth objective in Scotland has not made any difference to our licensing applications – how could you prove any alcohol we sold put someone in A&E, or was key to a long-term problem? It's all unquantifiable, legally you need to be specific to a premises.

In the opinion of another participant, from a Scottish public health background, many public health bodies in Scotland had used poor and inappropriate evidence within licensing, which had further complicated things and meant the debate had only moved 'one step forward'. It is worth pointing out that the participant did think that the fifth licensing objective was

beneficial, as well as the Scottish duty to assess whether there is an 'overprovision' of licenses in an area. Other participants echoed this, and suggested that it was too early to say how effective it had been. However, while the fifth objective in Scotland enables health to have a greater say, establishing cause and effect – and the evidence that may achieve this - is still central to licensing and has limited health's impact.

One Scottish participant from a legal background stated that:

In general terms I think that the vast majority of people welcome insight from Public Health in relation to Licensing.... (However, there is) decades worth of jurisprudence which requires Licensing Boards to make their decisions based on causal evidence.... the fact that this results in decisions which do not meet with the approval of the Public Health lobby is a matter to which they must reconcile themselves.

Another interviewee from a legal background within England and Wales made similar comments:

There are degrees of causation – public health is more able to address primary visible problems, such as addiction, and social ills such as domestic violence or deprivation, it could work with these but it just won't ever work with liver disease.

This highlights the importance of causality as a legal mechanism within the Act. The ability (or not) to show a link between population level harms and individual premises is at the heart of public health and its involvement in licensing, and has important implications for 'evidence' and what can and cannot be used within licensing decisions.

However, many (although not all) of the more visible concerns can already be taken into account under the existing four licensing objectives. The crux of the problem for public health practitioners is that quite a number of them were most concerned by issues such as liver disease and other long-term conditions.

This suggests that there may be a need to change the expectations of some within public health regarding what they may be able to achieve within the 2003 Licensing Act, even if a fifth health objective were introduced. It is worth stating, however, that a significant number of participants from a public health background had quite modest expectations of what they could achieve via licensing. For issues such as liver disease or cancer rates, other tools such as pricing probably offer public health a greater chance of success.

Some participants were clear that there is a practical limit to the extent to which cause and effect can be judged, and that there are genuine legal problems where causality is lost over time and space. Yet, as mentioned, cause and effect does not need to be proven beyond doubt. Seen in this light a health objective – as currently incorporated via the existing objectives, or as a hypothetical new objective – would operate within the same constraints as the current objectives.

There is no reason to believe that an additional health objective would change the fundamental workings of the Act, and its use in ways that are counter to the Act would be challenged and found wanting at appeal.

7. Poor Public Health data for licensing

There was a common view that the use of public health data within licensing was a problematic issue. Public health data, because of the nature of the long-term trends that it deals with, almost always looks at correlations, which do not establish causality. For example, participants who favoured greater public health involvement in licensing often raised the issue of the density of premises in an area:

We can point to a great deal of evidence that shows a link between the density, or number, of premises in an area, and level of alcohol-related harm. Even the World Health Organisation acknowledges this.

Such research is often not very useful within licensing committees however, as it may come from other countries and therefore be seen as too far removed from local circumstances, as well as being based on long term correlations that cannot demonstrate causality. Another issue, and one which was raised by a number of participants from both an academic and a legal background, is the fact that while the academic research in this area does generally point towards outlet density as a factor in rates of alcohol-related harm, it is also inconclusive and at times contradictory:

Density is a big issue, and you need a holistic view to consider it, but is there a simple formula that states that 'density x' or 'density y' equals a certain level of harm? That's a long way off.

One academic highlighted there are many different types of density: of off-licenses, or on-licenses, supermarkets, or home delivery take aways, and that it was simplistic to assume that they were all equally important in terms of harm. It was also stated that the kind of premises that people interact with changed as they aged, and with other factors such as having children, social class or disposable income. For example, some may be attracted to a noisy pub, whereas their neighbours may be put off by this and head to somewhere quieter, or buy alcohol from the supermarket and stay at home. It was also mentioned that for some people, the density and nature of licensed premises near their work might be more important than those near their home.

As a result, there is no clear or standardised way in which this knowledge can be generally applied to licensing. One academic also put forward the view that the UK is so saturated with licenced premises a reduction of 5-10% might not actually make any difference to alcohol-related harms. As a result, they reported that, if a reduction in outlets was a genuine aim of public health professionals within licensing, they should have very long term aims, although in their view it would be very difficult to use the current Act to reduce premises numbers.

Some mentioned that public health groups in Scotland, keen to influence licensing after the introduction of their fifth public health objective, had been overly keen to use academic data within licensing hearings, when it was at times inappropriate and could not be linked to a premises. It was also stated that the use of academic studies from other countries, which potentially have significant differences in the nature of their licensed premises and overall environment, was also problematic. While some participants thought that these could provide useful background information, caveats are needed because of the differences, and at times the use of unspecific research in this way has had the effect of putting licensing boards off public health data altogether, which is plainly counter productive.

These participants were keen for further research in this area, but were doubtful about its actual impact on licensing given the restrictions imposed by the Act. This points to the need for a common language and understanding between everyone involved in licensing as to what amounts to suitable 'evidence' within licensing decisions. While some from a public health perspective may point to academic research as indicating that something may contribute to alcohol-related problems, it does not mean that that is useful as 'evidence' for a specific licensing case.

8. Good Public Health data for licensing

As already mentioned in chapter 14, there was a clear view regarding the kind of 'good local data' that was appropriate, and this was generally seen as a material fact directly relevant to a specific case. Chapter 14 looked at the issue of data regarding the four objectives, but the same rules apply here regarding public health, both as currently used within the Act and for a hypothetical health objective. There is no reason to think that health could, or would, work on a different basis from that currently found within the Act, although some participants seemed to do so.

Talking about the use of public health data, one participant with a background that spanned trading standards and public health, as well as health and safety, stated:

There is scope to use local data to control availability; going ward by ward, using data to map trends and alcohol-related harm... objecting on the basis of the local data. An additional fifth objective would only be the start of an effective process; good, applicable evidence and the legal process are key.

The use of geomapping to pool numerous data sources and identify common themes was mentioned by a number of participants with experience of attempting to use public health within licensing. One participant went into detail about the types of data that they collect, which included locations used by the 'street community', locations for drug activity, a range of police crime data, alcohol suspected ambulance call outs and A&E attendances with a record of alcohol. The participant then went on to explain that this data was used and assessed in an evaluative manner by the licensing committee, stressing the fact that causality is not established to a criminal standard but within the balance of probabilities, as outlined in chapter 14.

Looking at the issue from the opposite direction, one legal participant stated that it was useful to first properly understand the local health based issues within an area before looking to find sources of data that might be useful:

In the current framework the most important thing for public health within licensing is to know your location and then determine what your objectives there are. If you work in a rural area you're going to be concerned about preloading and availability, people driving while drunk ... but in deprived urban areas with schools surrounded by off licenses you are going to be concerned about alcohol abuse, addiction, deprivation poverty, truancy and the impacts that would have on the family and so on... A seaside town might have problems around the pier, that kind of thing... knowing the location and knowing your strategy is key, and so when you look at a hypothetical public health objective in isolation it's inevitably going to be difficult, it's only when you take real examples and the objective and marry them together with local circumstances that it makes sense.... whatever

your aim is, you can focus your representations on applications, on reviews, and developing strategies for the local authority to achieve that end.

This quote helpfully puts health issues into context, and hints strongly towards the key local issues that would need to be evidenced. However, some areas described having very good local data, but still felt unable to use this effectively without a fifth public health licensing objective. One participant from a public health background said what whilst licensing committees were generally perceived to be responsive to health concerns, they often felt that they couldn't use the relevant evidence in the absence of a specific objective.

This was diametrically opposed to the position of the other participants, who felt that the current objectives gave them a reasonable capacity to include a range of health related concerns, and perhaps points to the fact that some areas have not got to grips properly with the full scope of the existing objectives. For many this would be a good place to start before calling for additional objectives.

9. Statements of licensing policy and Public Health

This section builds upon chapter 13, which covered SLPs and their potential as strategic documents that could be used by local authorities to influence the development of the licenced trade. As mentioned, a number of participants pointed to SLPs as an increasingly significant way of incorporating public health into licensing. These tended to be participants who favoured greater public health involvement, and many came from a local authority background of some sort, as well as public health.

By setting the context within which individual licensing decisions are made, SLPs were considered to allow far greater scope for health and wellbeing concerns, although their use in this way was said to be rare. Some participants reported including local public health data within their SLPs, with the intention of putting a greater onus onto applicants to prove that their application would not add to existing problems.

It was reported that this holistic area-wide view was far more accessible to public health and the way in which it operates, and some participants reported success in using this method to prevent new off-licences opening. One such participant stated that:

The Act sees licensees as personally responsible for people on their premises, but how can that work with chronic problems? You need to be proactive and SLPs allow you to do that.

Interviewees did talk about the necessity to base this upon good local data so that the local situation on the ground was both clear and accurate, but as mentioned in chapter 13, that:

You should be open that it (the SLP) is a value judgement, based on evidence and local views, and balanced with the economy etc., but focused on the evidence of what causes alcohol-related harm and problems – the decision should be accountable.

Some did have legal concerns about the use of public health within SLPs, with one reporting that public health was only included in the appendix for this reason. This was still thought to be effective though, and others had no problem with using public concerns and health data within the body of their SLP. Participants from the licenced trade tended to be against SLPs in addition to health perspectives within licensing.

Discussion

10. Support for a health objective

A number of groups, such as the Local Government Association (LGA),¹ the Greater Manchester Alcohol Strategy Group,² Public Health England and the Police and Crime Commissioners alcohol lead Tony Hogg,³ have called for the addition of a public health licensing objective so that Local Authorities can better implement their public health responsibilities. The government consulted on the addition of a specific 'prevention of health harm' objective in the 2010 Rebalancing the Licensing Act consultation, with 38% of respondents supportive, 37% against and 25% neutral.⁴ In response the government decided not to legislate on this issue but did not clearly explain why. The response simply stated that it saw:

Merit in the proposal to make the prevention of health harm a material consideration in the Licensing Act 2003 (and)... will consider the best way to do so in the future.⁵

Echoing comments made by interviewees in this project, some respondents to the Rebalancing the Licensing Act consultation questioned how effectively health would be able to contribute without a specific objective.⁶ Hadfield and Measham have also been critical of the Home Office for making health a responsible authority without introducing a public health objective.⁷ Previous research of theirs with key licensing stakeholders has also reported that:

Enforcement powers alone can only operate as 'sticking plasters' to bigger challenges regarding the role of alcohol in British society, which individual agencies cannot be expected to address. Shifting the legislative balance away from the current focus on crime and disorder and towards greater inclusion of health priorities was regarded as having clear benefits for partnership working.⁸

Yet the inclusion of public health within licensing is clearly a contentious and detailed issue. Much of this conflict centres around both philosophical and practical disagreements over the impact that individual licenced premises have on wider populations and how this might be evidenced.

The view that those in favour of public health tend to start with a public health perspective, identifying problems and concerns, before considering how these could be addressed through licensing, has been reported in other research into licensing in Scotland.⁹ Overall this group would prefer licensing to be a regulatory exercise. In contrast, opponents of public health input into licensing start with their understanding of the licensing system, and then consider how public health might or might not work within that. More often than not they tend to agree with the deregulatory approach of the current Act. As one interviewee with this mind-set put it, they feel 'licensing cannot follow people home' and therefore regarded its scope as more limited and practical. With these differing perspectives come differing understandings, expectations and concerns – the result is clearly sometimes a mismatch, although this is not the case with within all local authorities.

It is not surprising that the licenced trade are hostile towards public health involvement within licensing, as any method of quantifying and acting upon alcohol's wider harm to society is likely to impact on their profits and the ease with which they operate. Indeed, industry views

expressed elsewhere seem to back up the opinion that public health within licensing is about 'how to control the number of premises in practice'; when talking about Scotland's public health objective, one leading lawyer stated that the sole reason for introducing it must be an intention to reduce alcohol consumption by the general population.¹⁰

Many of those from a public health background, including participants in this research, would agree with this. Reflecting back on the history of licensing, Nicholls (2015) states that the extent to which specific health concerns have been considered within licensing is limited. However:

Claims regarding the role of licensing in strategically promoting the public good (however that is defined) have strong historical justification.¹¹

Like some participants, Nicholls also notes that many of the current debates are far from new, including the issue of outlet density, the extent to which individual premises can be seen to contribute to wider problems, and tensions around whether alcohol policy should aim to proactively reduce alcohol harms in general, or only react to specific problem premises.

Nicholls does state that licensing's concern with 'promoting the public good' has lessened in the mid to late 20th century,¹² which is perhaps slightly at odds with the participant who described the Sheffield Magistrate's Court taking an openly public health approach in the late 1980's. That is not to cast doubt on the participant, who had first had knowledge of this case, but is probably an example of the many regional variations within licensing.

Many of these historical tensions are interesting and informative, although the modern legal framework is clearly different, particularly concerning market forces, although in certain ways this is also not new, with the former licensing regime having been adapted to take these into account during the 1980s and 1990s.

The current understanding of alcohol's wider health and social impacts is however much more detailed, as is the data that illustrates this. More than anything it is perhaps this clearer view of alcohol's wider impact on public health that is the driving force behind attempts to move licensing back in a regulatory direction.

11. Licensing and Public Health: Present tensions

The opposing views of participants as outlined in the first half of this chapter include tensions around whether licensing should address areas or individual premises, the use of causality and what counts as evidence, as well as the implementation of the Act and how different variations can either help or hinder public health. Looked at as a whole, these issues seem to show a variety of ways of looking at public health and licensing, and research into the development of Scotland's public health objective found similar differences in perspectives and practices.¹³ As a result of these different ways of working there is a real need for licensing and public health to come to a common understanding of what is and is not possible within the current Act, and as part of this to develop a common language and approach.

It is likely that developing a common language and understanding of these issues will be difficult to achieve; research into the application of training within local authorities has found that local experiential knowledge built up over time is often prioritised over standardised solutions of best practice from elsewhere.¹⁴ As such it is likely that understanding will always

vary locally, but a first step might be to overcome some of the misconceptions around what is and is not possible that are apparent on both sides of the argument.

The following discussion will attempt to test these misconceptions and, using case studies, explore what has been possible under the Act and what additional scope a public health objective may or may not allow for licensing teams. For those concerned with alcohol-related harm who favour the use of public health within licensing, it is also important to put licensing in the context of other evidence based approaches, such as marketing restrictions and price increases, and bear in mind that for some issues these may offer more appropriate avenues.

12. A population-level approach

When talking about a holistic overview of licensing, many participants were effectively arguing for a population level approach. This approach implies that licensing, and indeed any measure to address public health issues, should be aimed at the whole population as opposed to only problematic minorities. As stated by Alcohol Focus Scotland:

Whole population measures work to both *reduce* and *prevent* harm. Targeting only harmful drinkers would not reach the majority of people who consume alcohol and who are therefore at risk of developing diseases related to their alcohol consumption. Whole population measures also work to generate social norms about the use of alcohol and the place of alcohol in society that can support and encourage individuals to change risky and harmful drinking practices.¹⁵

Others have described the population level approach as aiming to lower the risk at the population level.¹⁶ In designing the Act, New Labour specifically rejected this more public health friendly approach,¹⁷ yet by including SLPs in order to give councils a 'democratic voice',¹⁸ they also left a work-around which some councils are now using to better incorporate public health views into licensing.

Scotland provides an interesting case study regarding licensing and the population level approach. Like the 2003 Licensing Act, the 2005 Licensing (Scotland) Act does not take a population approach, nor did the Nicholson Committee that formed the basis for the legislation. However, it was the 2008 document 'Changing Scotland's Relationship with Alcohol,' commissioned by the SNP, that marked the adoption of the population approach.

This report informed the 2010 Alcohol etc. Act and the 2012 MUP Act, which both take a more population level approach. While there are other issues, such as the evidence used within decisions, it seems that coordination of these holistic developments with the non-population 2005 legislation has led to a number of problems which can be learnt from and applied to potential changes in England and Wales.

The 2003 Licensing Act does not take a population level approach to licensing, dealing primarily with individual premises and the need to link any negative outcomes with these. Yet as mentioned SLPs allow local authorities to work around this to a degree, and some of the interviewees attempted to use the Act from a population level approach where possible. This approach has less of an impact on the existing premises in an area, but can make a big difference to the type of premises that may be able to open in the future. Some have described the use of SLPs as:

A sea-change in the way British licensing boards operate, shifting licensing from being an application-driven process to a policy-driven one.¹⁹

Although in practice their active use in this way seems to have been limited during the first 10 years of the Act, SLPs do allow for a more holistic approach, potentially placing a greater burden on applicants to prove that they will not have an undue impact. Indeed, recent research from Scotland has described the use of SLPs in exactly this way:

How does one prove that one more pub, among so many others, will add to public health harm?... the burden of proof seems to rest with those arguing for public health. They would be in a stronger position if responsibility lay instead with applicants – if they had to prove that an extra licence would not be detrimental to public health. Some have attempted to use licensing policy to shift this burden.²⁰

Whether used in this manner or not SLPs should be a key tool for the promotion of the licensing objectives, with s 4(3) of the Act stating that:

In carrying out its licensing functions, a licensing authority must also have regard to – (a) its licensing statement...

Guidance on effective participation in licensing for public health teams, produced by Public Health England (PHE) and the Local Government Association, states that SLPs:

Provide an important opportunity to incorporate relevant local public health concerns within the wider policy context of the local licensing authority. For example, including local health statistics on alcohol consumption, along with highlighting action that could help remedy any particular concerns.²¹

Examples within this PHE document, and a recent review of SLPs in London by the Safe, Sociable London Partnership (SSLP),²² show a variety of ways in which this is being done. A number of councils have used data mapping to identify which areas have a high number of outlets as well as high alcohol-related harms, and detailed this using local data. By doing this SLPs can be used to provide an area by area overview of the local alcohol-related impact experienced by residents.

As detailed in chapter 13, Kingston has taken a neighbourhood by neighbourhood approach to licensing within their SLP, recognising local priorities and the different ways that licensing can impact on different communities. While their SLP does not include a great deal of public health data within the neighbourhood plans, a number of participants were interested in a localised approach similar to theirs, but in which they did intend to include public health data. It seems reasonable to assume this could be used to better include health concerns within licensing, changing the context within which applications are made on a local level.

Also mentioned in chapter 13 is Warrington's SLP, which specifically mentioned wellbeing in a number of places. This seems to be used in a similar manner to that mentioned by one of the participants, working as a broader and less specific version of public health, which is perhaps easier to incorporate under the existing objectives. While the SLP does not use much local health data, it is easy to see how this could be added in order to create a more detailed local picture.

As an alternative method of looking at specific local areas, some SLPs have taken a 'matrix' approach, identifying what the local authority regard as acceptable in each local area in terms of types of premises and opening hours. This is commonly based upon the existing problems, and public health data can be used to establish what these are in each area.

Taking a slightly different approach, other areas have issued voluntary guidance to address specific local issues, as the example from Leeds demonstrates (see over page). Some councils have looked to align their SLPs with local alcohol harm reduction strategies and other key local public health documents.²³ Some have also worked closely with their Health and Wellbeing Board and commissioned specific alcohol health related impact assessments, or alcohol-related joint strategic needs assessments, which can be fed into licensing work as well as informing wider local authority decisions related to alcohol.

In the most significant areas of harm, some local authorities have introduced CIPs in order to try and contain the existing problems. Many interviewees, and the PHE and SSLP documents, agree that CIPs are a key method through which public health can input into licensing. SSLP include an example of one such CIP in Croydon:

The SLP cites that there is a clear relationship between increased premises and increased alcohol consumption in adults and young people. Evidence is provided for each area including data such as the number of premises, density of premises, London Ambulance Service (LAS) call data, resident concerns and GP data on number of persons who are classified as alcohol dependent. Further information about the specific evidence used can be found in Appendix 8 of the SLP.²⁴

The use of academic studies as evidence was criticised by a number of participants, but importantly this example only uses them to set the context, and relies strongly on local data, which is used to give a clear impression of the conditions in the specific area. This is an issue that will be returned to shortly.

Taking an overview, the SSLP report helpfully pulls together a number of these common themes found within SLPs that seek to highlight alcohol-related public health issues. These:

Include statements that acknowledge the impact of alcohol consumption on residents and stress the importance of addressing this issue. They use data and knowledge to link excess alcohol consumption with poor health. Often SLPs reference the Joint Strategic Needs Assessment for their borough. SLPs may choose to use health data for establishing special policies such as Cumulative Impact Policies. Some SLPs include a section dedicated to health in the borough. Health can also be addressed under sections outlining the existing licensing objectives.²⁵

Given this evidence, and the positive views expressed by some participants for the way that SLPs can be used to put forward health related issues there does seem to be significant scope for including health perspectives within SLPs. While the limitations mentioned in chapter 13 do of course apply, incorporating health within a wider strategic approach to licensing could have significant advantages for local authorities. Health concerns cannot be included on a whim however, and any claims within an SLP would need to be well evidenced.

Case Study: Leeds City Council South Leeds Guidance

Leeds City Council has taken an alternative approach to incorporating an area wide approach to licensing in trying to address an area they identified within their Joint Strategic Needs Assessment as having particular problems related to health inequalities - the postcodes LS10 and LS11. These are areas of deprivation, with a life expectancy in some parts 10 years lower than other areas in Leeds. Alcohol misuse, obesity and smoking were identified as contributory factors, and rates of all three, including alcohol-related conditions, hospital admissions and alcohol-related domestic violence, were found to be significantly above the city average. Data from GP practices, such as the locality middle level super output area (MSOA) health profiles, as well as alcohol-related A&E admissions, was used to confirm this.

Leeds City Council and NHS Leeds formed a multi-agency group in order to address the problems presenting in these areas, bringing together the police, licensing, planning, treatment services, domestic violence team and youth services.

In terms of licensing, the area has a low number of pubs but a high number of corner shops selling alcohol, but it was not felt that there was enough evidence to implement a CIP. Instead the licensing team issued voluntary guidance, which was approved and endorsed by the licensing committee, and which they worked with applicants to implement. The licensing team met with applicants face to face to explain the rationale behind the guidance, with the aim of agreeing measures to go into the premises licence operating schedule. In the absence of a public health licensing objective they have worked to tie health related actions to the existing four objectives. Figure 10 below details the guidance conditions and the licensing objective to which they apply.

Figure 10: Provisions within the voluntary Guidance developed by Leeds City Council to address alcohol-related health inequalities

Licensing Objective	Guidance Condition
Crime and Disorder	The display of alcohol will be in a designated area of the premises which is supervised directly by staff from the counter area.
	The display of high strength beers, ciders and lagers of 7.5% alcohol by volume (ABV) or higher shall be in an area accessible only by staff.
	There will be no sale of cider and lager of 7% alcohol by volume (ABV) in 1, 2 or 3 litre plastic bottles.
	All areas where alcohol is displayed shall be covered by CCTV.
Prevention of Public Nuisance	Staff will make hourly checks around the premises and remove any litter, including takeaway wrappers, cans and bottles.
Protection of Children	There will be no window display posters or similar advertising containing any reference to alcohol on the premises shop frontage or the highway abutting the premises.
	There will be a Check 25 proof of age verification scheme in place.
	Alcohol will not be displayed next to the public entrance/exit of the premises.
	All alcohol sale refusals will be recorded in a register which will be retained on the premises for inspection by responsible authorities on request.

Leeds City Council has found the majority of licensees willing to work to these voluntary guidance measures with 9 out of 10 applicants agreeing. The tenth withdrew their application. Having piloted the initiative for one year, licensing is now introducing similar guidance in other areas. While this approach has been judged a success, it was still felt to be limited in scope compared to measures that could be implemented under a public health licensing objective.

All details here come from Leeds City Council.

13. Public Health data

Participants were clear that good, local data was key for better incorporating public health within licensing, and all the issues raised in chapter 14 regarding data and evidence apply equally here to health issues. Those opposed to public health frequently raised data accuracy, in addition to the necessity of using it to establish a causal link between problems and premises, as a concern. These key issues appear within other research on this issue, with data collection found to vary between areas,²⁶ and commentators highlighting the need for the collection of high quality, standardised data.^{27 28}

As already mentioned, academic research and international studies can be useful for setting a broad context, but should not be relied upon on their own. Local data is far more effective at influencing licensing decisions. This is a point of real frustration for many of those in public health, who see academic research as both useful and at times compelling, but are not necessarily able to use it as 'evidence' before a licensing committee. This fact is also reflected in the wider literature on this issue,^{xxviii} but with Martineau et al commenting that:

Broadening the scope of alcohol control frameworks to explicitly address health concerns does not change the underlying legal principles governing individual licensing decision. Health evidence needs to be legally relevant as well as scientifically valid.^{xxix}

This problem with public health data frequently stems from the fact that studies are based upon correlations measured over long periods of time, and while studies have found the relationship to be dose dependent (as the number of premises in an area goes up, alcohol-related harms in that area increase in line with this) it still does not amount to proving causality, or that any individual premises is responsible. Legally it is also difficult to define what number of premises is acceptable, and at what point the number may become a problem.

Some participants did argue that studies such as this showed all the premises in an area were playing a role in alcohol-related harm, but those sceptical of public health within licensing said it was not possible to allocate blame to any particular premises. Other types of public health evidence such as guidance, systematic reviews of research, and evaluation documents are equally problematic for the same reason. Given this, the necessity of establishing causality must be remembered, in addition to the fact that:

Repeated submissions based on health evidence that is unrelated to the licensing objectives, or not deemed 'relevant' to the application, may weaken the credibility of future representations.²⁹

While good local data is useful for SLPs and other area wide approaches, if organised well it can also be applied effectively to individual applications. The lack of a public health objective means that health concerns must be addressed via the existing four objectives, and some local authorities have found ways to do this consistently and effectively. The PHE Guidance on effective participation in licensing for public health teams suggests ways of doing this on pages 11-15, and as mentioned in chapter 14, PHE have also put together a guide to generally available sources of data that could be applicable across all of the licensing objectives, which can be accessed via the Local [Government Knowledge Hub Forum](#).^{**} The case study from Liverpool in chapter 14 also demonstrates how good local data can be effectively used within the existing licensing objectives.

At times it can be relatively straightforward to identify a link between health data and a particular premises. For example, some areas have had success using health as a responsible authority to identify the exact medical costs of continued violent incidents at certain premises. This has included:

1. A & E treatment
2. Inpatient treatment
3. Outpatient treatment
4. Specific treatment costs e.g. head trauma, MRI, CT scans.
5. Paramedic and ambulance costs

When combined with other representations this was used to provide a detailed view of the impact that badly run premises, or extended opening hours, was having on the local area. Taking things one step further, appendix 7 details an example of a representation against a new premises put in by the public health team from Tameside Council. They use a detailed excel spread sheet with a postcode search function to screen every licensing application against the following datasets in order to identify whether the application is in an area of high alcohol-related harms:

Density of Licensed Premises – Tameside Council information

Alcohol Specific Hospital Admissions – Tameside General Hospital Statistics

Weekend A&E Attendances between 0000hrs and 0500hrs – Tameside General Hospital Statistics

Alcohol-related Crime – Greater Manchester Police data

Alcohol-related Domestic Violence – Greater Manchester Police data

Alcohol-related Anti-Social Behaviour Incidents – Greater Manchester Police data^{***}

Having these datasets within an easily used excel spread sheet makes screening licensing applications extremely fast, and representations are only made against applications found to be in areas of high alcohol-related harm. For example, the in the representation in the appendix, based on the local data:

A decision has been made to make a representation in relation to this specific application as it has an overall weighted ranking as being within the LSOA (Lower Super Output Areas) with the 4th highest level of alcohol-related harm out of the 141 LSOAs within the Tameside area (a visual representation of the local data is also provided (see over page).

^{**} A knowledge hub account is needed to access the database, but anyone is able to sign up. Search for '[Using data in alcohol licensing](#)'. Once you have selected the group you can use the 'apply to join' button. Alternatively direct requests can be made to paul.duffy@phe.gov.uk or maria.smolar@phe.gov.uk.

^{***} Additional information about this data tool and the representation can be found in the appendix.

THE LICENSING ACT (2003): ITS USES AND ABUSES 10 YEARS ON

INDICATORS		WEIGHTING		
Alcohol Specific Hospital Admissions		33.3%		
Weekend A&E attendances (12-05 AM)		33.3%		
Alcohol Related Crimes		11.1%		
Alcohol and Domestic Violence Associated Crimes		11.1%		
Alcohol Related Anti-Social Behaviour Incidents		11.1%		
RESULTS FOR SELECTED LSOA		E01006060		
		VALUE	Z-SCORE	TAMESIDE RANK
INDICATOR	Density of Licensed Premises (per 1000 population)	13.5	3.05	3
	Alcohol Specific Hospital Admissions (DSR per 100,000 Population)	1609.4	1.32	16
	Weekend A&E attendances (12-05 AM)	1183.7	1.31	13
	Alcohol Related Crimes	133.5	4.60	2
	Alcohol and Domestic Violence Associated Crimes	25.6	3.03	2
	Alcohol Related Anti-Social Behaviour Incidents	119.3	4.05	2
OVERALL SCORES	Unweighted Composite Score for LSOA	-	2.86	2
	Weighted Composite Score for LSOA	-	2.17	4

This data is then explained in more detail, and in places related to international academic evidence, for example studies linking the density of off-licenses to alcohol-related harms. This, however, is only used in support of local evidence. A visual map of the local area with licenced premises indicated on it, similar to that in the Liverpool example, is also included. In conclusion, the representation states that:

Overall, we have assessed this LSOA within which ***** sits, as having the 4th worst levels of alcohol-related harm of the 141 LSOAs within the Tameside area. The evidence would suggest that introducing a further licensed premise into this area would increase the level of alcohol-related harm even further.

While this was not the only representation made by a responsible authority, it was thought to have been one of the primary reasons why this application was declined. In other circumstances the data within this representation may have been challenged legally, but it was not in this instance.

While the use of good local data can make a significant difference, it can of course be challenged; one factor in the failure to implement an EMRO in both Blackpool and Hartlepool was partly down to the use of national figures suggesting an increase in alcohol-related crime rates. However, locally it was found that crime had fallen, and so the narrative and the data put forward by local authorities was challenged and found to be inconsistent.³⁰

14. The potential impact of a Public Health objective

In Scotland, the shift to a policy-led approach was described as a 'sea-change' and a great deal of significance was also put on their public health objective. Yet, in practice, neither of these has done much to alter the licensing system; while some areas have used these tools, and the concept of overprovision to deny a number of new applications, the overall shape and makeup of the licenced trade in Scotland is not very much altered. Recent research into the views of public health practitioners about the Scottish public health objective has suggested that the law, from a public health perspective is:

Operationally weak because it is insufficient for a council simply to say that it believes the interests of public health are best served by denying a licence. If public health is to be used as a reason for declining a licence application, a council must have good evidence that issuing a licence poses a risk to public health. That's not easy to do.³¹

This research also found that some public health professionals 'felt that it (the public health objective) risked becoming meaningless' and suggested that:

Perhaps, in the short-term, we have been expecting a bit too much from this change in the law.³²

From this perspective it could be said that there might be few benefits to a public health objective. It does seem, however, that part of the problem in Scotland is that expectations were set far too high, without fully considering the legal mechanisms that operate within licensing law. The actual impact of the changes in Scotland on their licenced premises is perhaps similar to the same way in which CIPs in England and Wales can be used to prevent, or at least slow, the propagation of licenced premises in certain areas; while this can have some impact in specific locations, the result is far from transformational when looked at overall. One participant from the licenced trade even went so far as to say that the fifth objective in Scotland 'has not made any difference' to their licensing applications.

Comments made by a trade representative from Scotland to the 2010 Rebalancing the Licensing Act consultation also echo this view:

(The fifth licensing objective) does not appear to inform the licensing process to any significant extent. Premises licence holders are unsure how they can promote public health and the bodies responsible for the licensing objective suffer from the same uncertainty and appear to provide little effective guidance³³

However, a recent survey of public health teams by PHE found that most had quite modest expectations of the actual impact that they could have on licensing. Reflecting comments made within this project, respondents to the PHE survey also felt that the lack of a specific health objective was a significant barrier, and there was a common view that public health could have the most significant impact by providing context and background data, which could be used by the licensing team. 95% thought that they could have the biggest impact via feeding into SLPs, followed closely by developing CIPs (90%). Only 50% of respondents wanted to achieve a reduction in alcohol outlets, whereas almost all wanted to achieve a reduction in alcohol-related harms and their burden on the NHS. All of this points towards a more modest approach to public health within licensing on a regional level, with the fact that over 50% of respondents to the survey stated that they had limited capacity to engage with licensing likely to be another contributing factor.³⁴

Some participants in this project thought that the addition of a public health objective to the 2003 Licensing Act would mark a significant shift in licensing towards a more regulatory and population level approach. Those who had the most ambitious views tended to be from more nationally focused organisations, whereas those from local authority public health teams often had more modest expectations, in line with the PHE survey results. This perhaps suggests that there is a need to manage downward the expectation of some who would like to see a more significant change, as this seems unlikely.

Indeed, with the data from the PHE survey and the evidence from Scotland it seems that any change would be small in the medium term. The Home Office impact assessment for a discretionary health-related objective linked specifically to cumulative impact, a HALO CIP, also suggests that the actual impact of such as policy would be relatively small, resulting in a reduction in the number of licenses granted nationally by 544 in the first year, and an economic loss of approximately £6.9m per year. Overall the Home Office estimated that HALO CIPs would result in monetised costs of £158m, and benefits of £322m, and that:

The analysis in this impact assessment gives an **estimated overall net benefit of £164m** and suggests that this would be a potentially useful tool particularly for areas that have high or particularly fast-rising levels of alcohol-related health harm. (Original emphasis)³⁵

Figure 15.1 details these benefits to the public sector in more detail.

Figure 15.1: Reduction in alcohol-related health harms per annum for England and Wales as a result of a health-related objective linked specifically to cumulative impact

	Deaths	Hospital admissions	Direct health care costs	QALYs valued at £60,000
Year 1	-18	-740	-£3.2m	£10.5m
Year 2	-88	-2,930	-£9.4m	£43.4m
Reduction in alcohol-related crimes per annum (figures constant each year)				
	Crimes		Crime costs	
	-5,600		-£5.8m	
<i>Taken from Home Office impact assessment on a health-related objective linked specifically to cumulative impact</i>				

Academic research into the impact of licensing on alcohol-related hospital admissions backs up this view, finding that areas with more intensive licensing policies saw an additional 5% reduction in alcohol-related admissions compared with what would have been expected with no active licensing policy.³⁶

For those with an interest in reducing the burden alcohol places on local authorities and public services, this view is very encouraging, although the overall figures are modest. In the current economic climate, a reduction in police and NHS costs of the amounts suggested would be very welcome, not forgetting the increase health and wellbeing of communities and individuals who would experience less alcohol-related harms. When consulted on a 'prevention of health harm objective' in the 2010 Rebalancing the Licensing Act Consultation 38% of respondents were in favour for many of these reasons, with 25% neutral and 37% against.³⁷ These figures also suggest that a full health objective, as preferred by most participants, with a wider application than HALO CIPs, would result in greater net benefits.

It is likely though, that as with HALO CIPs, a full health objective would only be used in any meaningful way in areas of particular alcohol-related harms. In those area it could, however, make a real difference enabling local authorities with high levels of alcohol-related harm to use any new powers in a creative way. This is a key point. Just as crime and disorder issues are most relevant in areas where there are high levels of crime and disorder, health issues would also be most relevant in areas where there are high levels of alcohol-related health harms.

A number of the questions raised by participants who were opposed to public health within licensing remain valid, such as asking how confident anyone could be that a particular

premises was causing an alcohol-related health problem, and the need to evidence this. This would be one of the clear limitations to any creativity that a health objective would allow, but as mentioned elsewhere, cause and effect under the Act need only be established, not proved beyond doubt. This view leaves greater room for manoeuvre than the incorrect assumption, put forward by some, that causality needs to be established beyond doubt.

Other sceptical questions asked of a public health objective seem less valid, such as asking how you would measure and quantify the impact of premises on the objective. The existing framework of the Act means that the more proximal public health issues seem likely to be the most relevant to licensing. This puts a hypothetical objective in a similar ball park to the current four objectives. For example, only public nuisance related issues that can be seen to stem from a particular venue or location can be taken into account under that objective – why would a hypothetical health objective work differently?

15. Shifting focus from physical health to social health

It is for this reason that thinking about health in licensing using traditional physical health issues is perhaps unhelpful. Some of the best examples of public health within licensing seem to involve social health factors, particularly those related to deprivation, as the route to wide public health concerns. For example, the CIP in Kensington, Liverpool, mentioned in the previous chapter relied heavily on measures of deprivation, linked to the licensing objectives. Newcastle has also been successful in using measures of deprivation and crime, mapped together with off-licence density, as a way of evidencing their refusal of further local off-licence applications.

With this in mind, many participants who favoured the use of public health within licensing may benefit from a closer investigation of how they might be able to achieve their goals, and from clarifying exactly what it is reasonable to achieve via licensing. Some talked of longer term issues that would almost certainly be better addressed using price interventions, whereas others mentioned alcohol's impact on the local A&E, or the health of residents living close to bars. A very common theme was wanting to address the impact of the off-trade, although this was at times not properly quantified. Many also talked about being able to use a wider range of conditions related to health issues.

Given that the existing framework of the Act means that more proximal public health issues seem likely to be the most actively addressed via licensing, those from public health would probably benefit from adopting a more traditional licensing view of such health issues. By looking at smaller time periods, and smaller areas, with more of a bottom up approach, many of the public health concerns mentioned above can be linked to local social, rather than physical, health issues in an area. Given the current four licensing objectives, these concerns can be better applied and possibly provide a proxy route to addressing longer term harms. While this may be an indirect route, it could be an effective one. It is also because of this that the notion of wellbeing could be particularly useful within licensing, focusing on local quality of life issues and the 'wellbeing of the wider community', as already mentioned in non-statutory guidance.³⁸

It is arguable that these social health factors could be included under the current objectives without the addition of a health objective. This may well be the case, but the risk averse nature of many local authorities, and the contested legal environment in which they operate, mean that the full extent of all the objectives are unlikely to ever be explored. Adding an additional health objective however would give local authorities the practical ability to

address the wider social impact of licensing, in effect allowing for the more even application of the current objectives.

Some local authorities have already achieved this, and act as if there is a public health objective by squeezing health issues in via the four existing objectives. Many of the participants who had managed this reported that a specific objective would allow them slightly greater scope to do so than at present. From this perspective a public health objective could be seen more as an evolution than a revolution. This seems quite a likely outcome, given the restrictions imposed by causality and the legal framework of the Act, but by putting health more firmly on the licensing agenda, councils would probably be in a better position to ensure that the licensed trade in their area does not unduly impact upon the health of local residents, focusing on issues such as the impact of the off-trade, health inequalities, street drinkers and short and medium term health issues as identified in an area.

In reality any list of issues that might be addressed would have to evolve over time and be based upon local data and the way in which local authorities are able to use this. It may not differ all that much from the concerns that some more innovative local authorities are already trying to address. A specific health objective could give these local authorities slightly greater scope however, and would certainly give other councils the green light to engage in this area. This is a significant obstacle in many areas. A public health objective would also give local authorities a greater ability to encourage trade participation in health issues.

In addition to developing a different perspective, there is a real need for public health to identify more clearly their particular local objectives within licensing. This should be based upon a careful understanding of their particular location, and an acknowledgment that this may at times differ from the primary aims of the licensing department. In some places with acute alcohol-related harms it might be legitimate, if difficult, to try and limit the overall growth of the licenced trade. Other areas may decide to work towards a reduction in specific outcomes, such as street drinkers or particular hospital admissions. In contrast, where there are few alcohol-related health problems it may not be cost effective for the public health team to become particularly engaged with licensing. However, in general, achieving the routine consideration of public health perspectives in licensing is probably the most realistic ambition.

16. Conclusion

Even without the introduction of a public health objective there appears to be significant scope within the Act for the better engagement of public health within licensing. There are some clear barriers to this, including the capacity of local authorities and the data they are able to gather; the fact that current legislation is quite unhelpful; the differing approaches of public health and licensing, with their different cultures of evidence; and the financial and legal power of the licenced trade, who have nothing to benefit from greater public health involvement.

Despite these, some councils have already had success in addressing health related issues by producing accurate local data, and by using the Act in a more holistic and discretionary manner. This could be furthered by spreading best practice and sharing expertise between areas, and by ensuring that local authorities with an interest in this area to develop good communication between the public health and licensing teams, based upon shared understandings of what constitutes evidence and how public health can best make an impact on licensing.

Recommendation: The introduction of a health and well being objective: To promote the health and well being of the locality and local area.

This objective would clarify that locally based impacts on health and well being are a consideration in licensing, both during licensing decisions and while 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 society so as to lead to health and social hazards.

The key legal principles within the Act would limit this objective in exactly the same way as they do for the other objectives, meaning that health and well being impacts more proximal to licensed venues are more likely to fall within its remit.

The use of the term 'health and well being' rather than 'public health' attempts to emphasize the wider quality of life issues associated with strategic thinking in respect of 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 a yet further off licences in an area with health and social deprivation issues might not advance this objective.

Such an objective should be viewed as an evolutionary step and certainly not a transformation, with the legal and practical limitations clearly explained.

Recommendation: Developing a common language and understanding between licensing and public health

With or without further legislative change, licensing teams, licensing committees and public health teams should be given greater guidance on the use of public health within licensing, particularly around data and what constitutes 'evidence' within the legal constraints of licensing system. As part of this there should be an understanding of the differing approaches and perspectives outlined above, and public health teams should be encouraged to identify how they can best contribute to licensing in their area.

¹ Local Government Association & Alcohol Research UK (January 2013) Public health and alcohol licensing in England: LGA and Alcohol Research UK briefing

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³ Greenwood. W., (15th February 2014) Crime commissioner backs licensing reforms Western Morning News

⁴ Tonic Consultants (2010) Analysis of consultation responses to the Rebalancing the Licensing Act consultation. Independent report to the Home Office Alcohol Strategy Unit. p 27.

⁵ Home Office (2010) Response to the Rebalance the Licensing Act Consultation p 7.

⁶ Tonic Consultants (2010) Analysis of consultation responses to the Rebalancing the Licensing Act consultation. Independent report to the Home Office Alcohol Strategy Unit. pp 27-30.

⁷ Hadfield. P., and Measham. F., (2014) The outsourcing of control: Alcohol law enforcement, private-sector governance and the evening and night-time economy. *Urban Studies*, p 10.

⁸ Hadfield. P., and Measham. F., (2011) Lost Orders? Law enforcement and alcohol in England and Wales. Final report to the Portman Group, p 44.

⁹ Fitzgerald. N., (2015) BLOG: Just how useful are licensing laws for improving public health?

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- ¹⁹ Nicholls. J., (2015) Public Health and Alcohol Licensing in the UK: Challenges, Opportunities, and Implications for Practice. *Contemporary Drug Problems*, p 7.
- ²⁰ Fitzgerald. N., (2015) BLOG: Just how useful are licensing laws for improving public health?
- ²¹ Public Health England/Local Government Association (October 2014) Public health and the Licensing Act 2003 – guidance not on effective participation by public health, p 7.
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- ²³ Safe, Sociable London Partnership (2014) Called in for Review: London Statement of Licensing Policies, Lessons Leant and Future Developments, p 19.
- ²⁴ Safe, Sociable London Partnership (2014) Called in for Review: London Statement of Licensing Policies, Lessons Leant and Future Developments, p 32.
- ²⁵ Safe, Sociable London Partnership (2014) Called in for Review: London Statement of Licensing Policies, Lessons Leant and Future Developments, p 19.
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Chapter 16: Price and marketing

Chapter summary

There was a broad consensus that preloading and very cheap alcohol bought via the off-trade caused big problems within the night time economy, and in the home.

A number of participants argued that the Act is poorly equipped to deal with the off-trade, and that while price is probably a more significant factor, Scotland has taken far more significant steps to address the off-trade.

The majority of participants favoured introducing Minimum Unit Pricing (MUP). No one reported that the ban on below cost selling had made an impact.

While at present the outcome of the Scottish MUP case remains unknown, the Advocate General's opinion suggests that there may be scope within EU law to introduce local mandatory conditions on price, if properly evidenced for that location.

Participants' views on the impact of cheap alcohol have been mentioned at numerous points already in this report, but this chapter looks into the matter in more detail. While price is not a traditional licensing issue, almost all participants, including most from the licenced trade, acknowledged that cheap alcohol had a significant long and short-term impact on consumption and harm.

As mentioned in chapter six, there was a consensus amongst all those from a compliance and enforcement background that preloading and very cheap alcohol bought via the off-trade caused big problems for law and order in the night time economy. A number of police officers described it as the biggest problem in their area. In addition to the impact in city centres, a number of officers also thought that since the introduction of the Act, they dealt with greater numbers of alcohol-related domestic incidents due to off-trade sales and drinking in the home. The previous chapter also includes participants' views on the public health impact of cheap alcohol.

1. Participants' views

The fact that the Act is based upon an out of date assumption that most people consume alcohol within the on-trade was mentioned by a number of participants. Many argued for further changes to the Act that mirror developments in Scotland which are intended to impact solely on the off-trade. Overall the off-trade, and primarily supermarkets, were commonly seen as the biggest areas of concern in relation to cheap alcohol and the problems associated with it. One participant from a regulatory services background stated that:

Pre-loading, binge drinking and street drinking are all similar, they're led by affordability and availability (of alcohol), and this is often an off-trade issue... Price is the main factor.

Echoing this, one head licensing officer from a medium sized town reported that:

We know when Lambrini is on offer at Tesco – we find the bottles on the street.
The Act let off sales out of the box, but how to put it back in?*

Specifically regarding preloading, a number of people mentioned that research has shown those who pre load consume significantly more than those who do not, and that they are more likely to be involved in a wide range of incidents, from fights to sexual assaults. There was, however, a common view that licensing was not necessarily the best way to address all of the issues concerning price and the off trade. One participant from a public health background expressed their frustration at not being able to use well respected research which shows a link between the number of off-licenses in an area and a range of negative alcohol-related outcomes. Another head licensing officer, from a very urban area, stated that:

The Act doesn't address cheap alcohol or the off-trade, we need minimum unit pricing (MUP) at a national level for that, it would impact on street drinking and preloading, plus have long term health benefits. With the Act, it's impossible to control the off-trade to a meaningful extent, a small drop (in numbers) wouldn't make a difference, we're too saturated... but price could make a difference.

* IAS has kept a weekly supermarket alcohol price log since 2013, tracking the price of common branded and unbranded alcohol as advertised online. Lambrini is one of the more price variable products, which supports this licensing officer's comment.

One or two interviewees mentioned that since the introduction of the below cost sales ban, which was imposed as a mandatory condition, price has technically become a licensing issue. However, the ban on below cost sales was seen as 'totally ineffective' and no one reported having noticed a difference in alcohol prices as a result of it. One participant from the licenced trade did mention it as a positive step.

A clear majority of participants supported the idea of MUP set at a national level, and most of these suggested it without prompting. While local authority participants felt that they had few powers to control the off-trade, it was stated that MUP could make a universal impact by increasing the price of the very cheapest alcohol, which was commonly seen to be associated with some of the biggest alcohol-related problems. Most participants linked MUP to preloading and crime and disorder related problems. However, one academic stated that while MUP would have some impact on this area, it was primarily a health related policy.

One or two participants, from licensing and public health backgrounds, reported encouraging licensees to adopt voluntary conditions on price, and said they had had some success with this, although the take up was inevitably patchy. Others mentioned using voluntary strength reduction schemes to target high strength larger, with similarly variable results.

A number of those interviewed commented that while MUP would be very beneficial, it was not a silver bullet, and those who want to binge drink or preload would always be able to do this to some extent. Following this line of argument, one participant from a public health background reported that there was a need to challenge the social respectability of getting extremely drunk. As one police representative suggested:

People use alcohol the way they used to use drugs – to get a hit, and get drunk.

2. Supermarkets and the off-trade

There was a very strong view amongst most participants that supermarkets sold alcohol at the lowest prices, and that this played a significant part in both long and short term alcohol-related problems. The majority of participants linked them to preloading and binge drinking, while those from a public health background tended to link supermarkets with general consumption and long term health issues as well. Most participants reported that drinking in the on-trade within a supervised environment was preferable to drinking at home. One interviewee stated that:

Supermarkets are key to this; they're very good at marketing and selling more alcohol than people originally wanted to buy, it's unfair competition and has an effect on consumers and other businesses.

A number of other participants commented on the marketing methods used by supermarkets to encourage shoppers to increase the amount of alcohol they bought, such as heavily advertising cheap alcohol, placing alcohol within the store entrance, using end of aisle sales and price promotions. It was also stated that supermarkets often used alcohol as a 'loss leader', selling it at cheap prices from which they did not make a profit, but which did act to encourage people into the store and buy other things as well.

One interviewee, from a licensing background saw supermarkets as the main problem in relation to cheap alcohol, but felt that licensing needed to change to be able take their impact into account. They also reported that there was a need for more cumulative impact policies

(CIPs) focused on the off trade and for better enforcement. Another interviewee, from a regulatory services background in a large urban city, stated that:

Cheap alcohol and supermarkets is a big problem in XXX, especially amongst students, with preloading. I empathise with the on-trade, the problems start elsewhere but they often end up with the mess, but what can you do - tax supermarkets and use the money in night time economy?

One participant from a licensing background however, stated that:

The on-trade talk about preloading a lot, but use it as a scapegoat, I think the only difference it makes is that they can only sell people 5 pints before they're pissed rather than 7.

One interviewee from the licenced trade saw supermarkets as a problem in relation to cheap alcohol, noting the price difference between the on and off-trade, but most others from the trade did not. However, when talking about supermarkets' sale of cheap alcohol, a participant from a national retailer argued that the on-trade exaggerated the issue associated with the off-trade simply because they were losing sales. A different participant from the licenced trade also expressed his sympathy for supermarkets. He pointed out that whilst people might choose to buy in bulk that did not necessarily mean they drank in bulk too, and therefore they suggested that there was a limit to the role licensing could properly play in restricting this.

Another trade representative from a national supermarket also talked about the restrictions in Scotland, including multi-buy bans and off-trade hours being restricted to 10am to 10pm, as a possible solution, but stated that it was important not to impact on 'sensible' drinkers. Participants from the licenced trade tended to say that they had no view on MUP, although one reported that they were not necessarily anti MUP, but would want things the same in Scotland as in rest of UK because of logistical and administrative costs.

Some participants from a licensing background stated that price competition from supermarkets could have a very negative impact on local off-licences, and some reported that this could lead to off-licences being more likely to engage in selling counterfeit alcohol and selling to drunks and minors. Participants from public health, licensing and the police talked about a desire to limit the number of off-licenses in certain areas, including supermarkets (or at least their ability to sell alcohol), but saw this as more or less impossible under the Act.

24-hour opening within the off-trade, particularly within city centres on Friday and Saturday nights, was seen as a significant issue by many participants, particularly police representatives. 'En route loading', 'side-loading' and 'post-loading' on the way home were mentioned, and a number of licensing officers working in rural areas talked about problems with petrol stations selling alcohol to people traveling home in the small hours after a night out.

A few participants reported having used their Statement of Licensing Policy (SLP) to limit opening hours within the off-trade to a small degree, but this was seen to be difficult. A number of participants who were concerned about the off-trade suggested that the Scottish off-trade hours of 10am to 10pm could help to limit the impact of cheap alcohol. One licensing officer give his view that:

Early morning sales are just for street drinkers, late opening is for binge drinkers.

3. Preloading and the on-trade

As mentioned in the crime and disorder chapter, there was a common perception that extended opening hours within the on-trade have resulted in people heading out into the night time economy later in the evening, and that as a result they have more time at home beforehand in which to preload. Some also reported that people then spent less money in the on-trade as a result. One academic suggested the use of lockouts, as in Australia, to encourage people out earlier; these work by preventing new people being allowed into a bar or club from a certain time, such as 1am, even though the premises has a licence to serve alcohol until 3am.

One or two participants suggested encouraging different types of venue which might encourage people out earlier, and could reduce their overall consumption and mean that they were drinking in the more regulated environment of the on-trade. However, a few other participants had tried to encourage this in their areas, but had found it very difficult:

We looked at diversifying the offer in town, one area is now more pub and ale focused. There was an early opening comedy venue, but it shut, it's difficult to crack.

An interviewee from a regulatory background suggested that the ban on drinks promotions might have had the unintended consequence of more preloading, with people looking to stretch their money further. Others including licensing officers and some from a legal background, commented on the increased use of breathalysers in order to turn away those who had drunk too much at home before heading out.

A few participants had experience of this, and reported that door staff had in most cases found breathalysers to be a useful tool, making it easier and less confrontational to turn away people who were drunk. One interviewee from a legal background suggested that, if there was suitable evidence, the use of breathalysers could be attached as a condition to a licence, and it was suggested that, over time, the more widespread use of breathalysers could help to encourage a different approach to the way people consume alcohol throughout the evening. It was stated that breathalyses should only be used in a targeted way, focusing on those who appeared to be drunk.

Discussion

4. The impact of price and affordability

Many of the interviewees saw preloading and cheap alcohol bought via the off-trade as contributing to a range of problems, but were also clear that they have limited tools available to address them, and some of the best potential methods may not involve licensing.

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,¹ sexual assault² and liver disease.³ It is also known that heavy drinkers prefer cheap alcohol. In America it was found that the top 10% of drinkers by volume spent on average 79c per standard drink, versus \$4.75 for lowest 50% of drinkers.⁴

Findings in the UK have mirrored this, and patients with alcohol-related liver cirrhosis were found to pay an average price of 33p per unit of alcohol, compared to low-risk drinkers who pay £1.10 per unit.⁵ Research has also found that those who drink the cheapest alcohol are more responsive to price changes.⁶

Talking in practical terms, Simon Stevens, the head of the NHS, has commented on the 'huge' toll that cheap alcohol has on Accident & Emergency departments.⁷ The Director of Public Health in Blackpool, where they have some of the worst alcohol-related problems in the country, has attributed much of this to the fact that in many local shops a 500ml can of 7.5 per cent strength white cider (3.8 units) costs just 89p, which is less than the cheapest bottled water.⁸

5. Pricing policies

While price is not traditionally a licensing issue, it is clear from the interviews that there is widespread support for MUP from those with an enforcement, compliance and health related background. The evidence base for MUP has been supported by the World Health Organisation⁹ and pricing policies have been described by NICE as:

The most effective way of reducing alcohol-related harm¹⁰

The National Police Chief's Council (NPCC) supports the introduction of MUP,¹¹ as do a wide range of medical groups, including the Royal College of Physicians, the College of Emergency Medicine, the Faculty of Public Health, and the Medical Council on Alcohol.¹² Scotland has already legislated for MUP but at the time of writing this report is involved in a legal case with the Scottish Whisky Association at the European Court of Justice, and so has not implemented it. Ireland, Northern Ireland and Wales have also expressed a strong interest in introducing MUP.¹³

MUP was originally included in the Government's 2012 Alcohol Strategy, where David Cameron introduced it specifically as a measure to address preloading.¹⁴ The strategy also stated that:

There is strong and consistent evidence that an increase in the price of alcohol reduces the demand for alcohol which in turn can lead to a reduction in harm, including for those who regularly drink heavily and young drinkers under 18.¹⁵

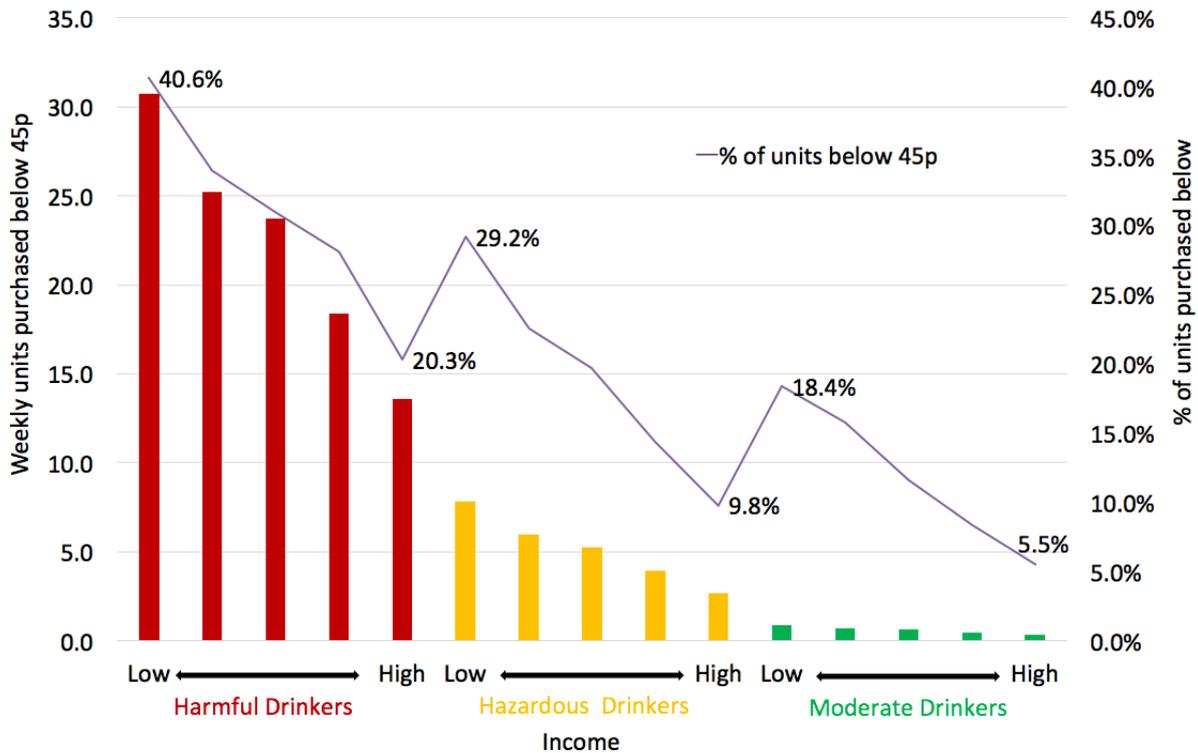
On the 27th November 2012 the Government launched a consultation on the level at which the minimum price per unit should be set. However, after strong lobbying from the drinks industry, MUP was effectively scrapped, despite the principle for its introduction not being a point on which the Government actually consulted.¹⁶

In addition to lobbying ministers, industry ran a 'Why should responsible drinkers pay more?' campaign against MUP. Despite its seemingly intuitive ring – that a minimum price per unit might hit ordinary drinkers – all the available evidence suggests that this MUP would not significantly affect drinks prices for responsible drinkers. As mentioned above, research in the UK has found that on average, low-risk drinkers pay £1.10 per unit for the alcohol they buy, meaning that MUP at 45p per unit would have only a very minor impact on them.

However, patients with alcohol-related liver cirrhosis pay an average price of 33p per unit, suggesting that MUP is a policy targeted at harmful drinkers while having a minimal impact on responsible drinkers.¹⁷ As a result MUP would impact most significantly on harmful, and

then hazardous drinkers, with moderate drinkers barely affected. While income is a factor, an individual's drinking habits are far more significant in determining how they might be affected by MUP, as figure 16.1 below shows.

Figure 16.1: Purchasing of alcohol below 45p per unit by income and type of drinker. Data supplied by the University of Sheffield Alcohol Research Group



6. Below cost sales and Minimum Unit Pricing

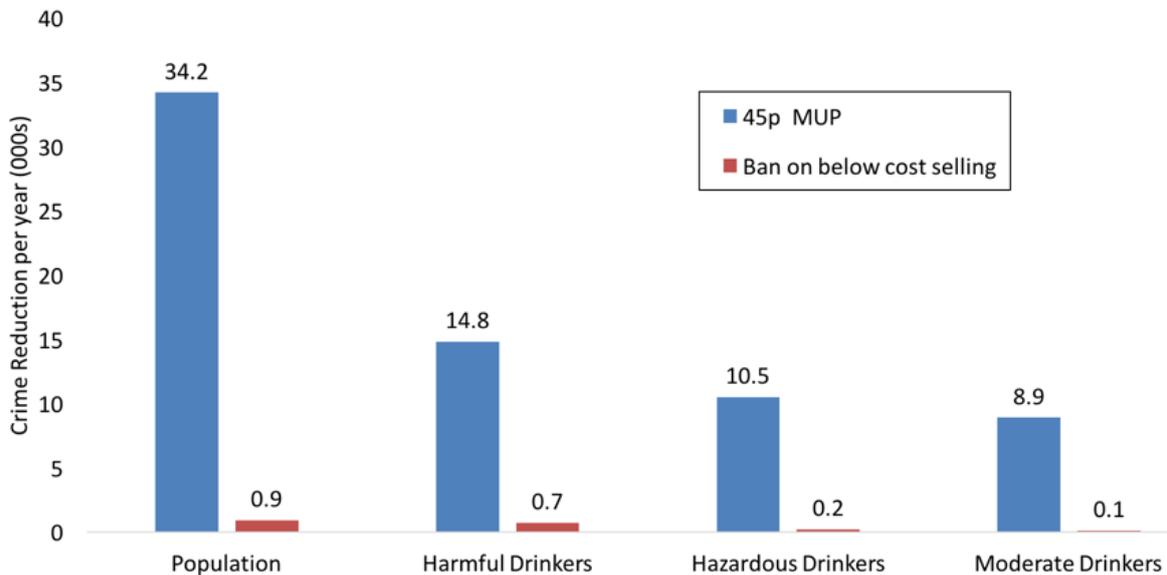
Officially MUP has not been 'ruled out', and remains a policy under consideration by the Government, although recent reductions in alcohol duty, which have made alcohol cheaper, suggest that its implementation is unlikely. In place of MUP the Government introduced a ban on below cost sales, with cost defined as the level of duty plus VAT. This policy had been included in the Coalition's programme for government in May 2010, but was abandoned in favour of MUP, before being resurrected again after the MUP u-turn.

As suggested by the interviewees, research indicates that a ban on below cost sales will have very little effect. It is estimated that only 0.7% of alcohol units sold fall below the ban's threshold, and only 1.0% of units currently consumed by harmful drinkers. 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.¹⁸ The ban does however, technically stop supermarkets using alcohol as a loss leader, although it has not made a significant difference to prices. IAS's internal tracking of supermarkets prices did not identify any noticeable price changes when the below cost sales ban came in.

All in all, this suggests that MUP set at a unit price of 45p would have approximately a 45 times greater effect than a ban on below cost sales in terms of reducing consumption and alcohol-related harms.¹⁹ Looking specifically at the comparative impact on alcohol-related crime, Table 16.2 shows that MUP at 45p would reduce crime by 34,200 incidents per year, whereas the ban on below cost selling could be expected result in a reduction of only 900

incidents. This means that MUP at a rate of 45p is 38 times more effective at cutting alcohol-related crime than the ban on below cost sales.

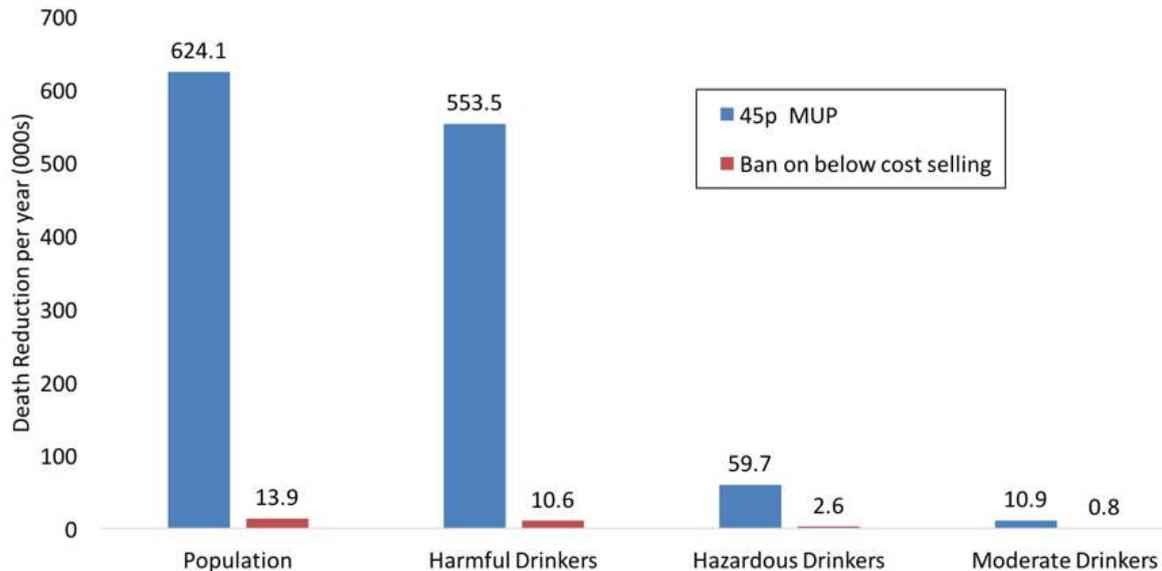
Figure 16.2: Comparison of the impacts on alcohol-related crime of a ban on below cost sales and minimum unit pricing after 10 years



Source: Sheffield University, [Addendum examining the impact of a 'ban on below cost selling'](#)

As suggested by some interviewees, MUP is actually primarily a health-focused policy. Research from the University of Sheffield suggests that after 10 years, MUP set at a level of 45p per unit, would save 642 lives per year (552 from the 'harmful drinker' category) and reduce alcohol-related hospital admissions by over 23,000 per year. In contrast the ban on below cost selling would result in a reduction of just 14 deaths and around 500 admissions to hospital per annum in the same period.²⁰

Figure 16.3: Comparison of the impacts on alcohol-related hospital admissions of a ban on below cost sales and minimum unit pricing after 10 years



Source: Sheffield University, [Addendum examining the impact of a 'ban on below cost selling'](#)

Given the comparative ineffectiveness of a ban on below cost sales, the strong evidence for MUP, and the fact that similar pricing policies in Canada have actually had a greater positive impact than originally thought,²¹ it is hard to see the Government's about-turn on MUP as anything other than giving in to pressure from the drinks industry. In this way the situation perhaps echoes many aspects of the 2003 Act.

In addition, after strong lobbying from the drinks industry, the UK Government has continually reduced taxes on alcohol, not only abolishing the alcohol duty escalator (which ensured that duty rose faster than inflation) in the 2014 Budget, but by reducing duty on a range of alcoholic drinks a year later. Because the below cost threshold is made up of duty plus VAT, a reduction in duty reduces the price at which supermarkets and other retailers can sell cheap alcohol, undermining further the impact of an already ineffective policy.

7. Licensing and price

The introduction of the ban on below cost sales as a mandatory condition has technically introduced price as a licensing issue, and the enforcement of the ban is also something that licensing officers are required to monitor.

In some areas voluntary conditions on price, that effectively equate to MUP, have been offered by applicants or negotiated by licensing officers in order to ensure that new premises will be managed to a particular standard. At times this can also help to mitigate concerns about vertical drinking establishments and their impact on the night time economy. Such agreements are being used where new licenses are applied for in areas that are deemed sensitive, such as in cumulative impact areas. These voluntary conditions appear mainly to be adopted in the restaurant sector and high end bars where it is unlikely that low cost alcohol would ever be sold due to the higher margins.

Newcastle has used this voluntary approach, where MUP conditions have helped to guarantee the development of quality premises. The Newcastle SLP also discourages the

use of alcohol promotions and offers, and states that restrictions may be imposed on the sale of high strength lager, beer and cider at premises where there is evidence that the sale of these is compromising the licensing objectives.

Blackpool Council also has an agreement with pubs to use a minimum unit price of £1.50 per drink, between Thursday and Sunday evening.²² A similar approach has been tried in Oldham, where 22 venues selling heavily discounted drinks had their licences reviewed. They were asked to use a minimum unit price of 75p per unit (equating to £1.88 for a pint of strong lager), but told that if they did not they would be asked to change the way they operated, such as having to use a 'post office-style queuing system,' providing extra door staff or only allowing people to buy two drinks at a time.²³

This scheme was featured on BBC Panorama, which reported that 16 bars had accepted either the proposals or a version of them, but that one had successfully challenged the scheme after arguing that it was unfair for them to be blamed for alcohol-related problems that happen elsewhere.²⁴ The fact that this venue was able to avoid the minimum price demonstrates the difficulties that come with applying voluntary conditions, but while it is not entirely effective, this approach is perhaps the most effective one available to local authorities in the face of government inaction on a nationally set MUP.

8. MUP implementation

The LGA has raised important issues relating to the implementation of MUP should it become a national policy at some point, stating that:

We have doubts that a minimum price can be effectively enforced without central provision of a minimum price for each and every type of product available. This in turn requires that enforcement officers be available to check each of the hundreds or thousands of products available in every licensed premise in the licensing authority area. The cost and resource implications are enormous and will need to be considered as a new burden.²⁵

The LGA is right to highlight enforcement issues given the significant pressures on council licensing teams and trading standards, and MUP would probably require additional resourcing. As things stand many trading standards teams have seen budget reductions of over 40%. Thought would also need to be given to the kind of sanction a premises would face if they sold alcohol below the set minimum price, with minimal penalties likely to do little to help compliance and make things more difficult for licensing officers. Stronger sanctions would be more likely to ensure that MUP was implemented properly, and national retailers would be in a good position to comply with changes in the law.

9. Scottish Government MUP case and its implications for licensing

As mentioned the Scottish Government has been engaged in a lengthy legal battle with the Scotch Whiskey Association regarding the legality of MUP. At the time of publication the Court of Justice of the European Union had recently released its decision in that case (C-333/14). Prior to that, on 3rd September 2015 the Advocate-General had given an opinion on the case. In finding against the Scottish Government, the Court of Judgement of the European Union explicitly adopted much of the Advocate General's reasoning. This suggested that there may be scope within EU law to introduce local mandatory conditions on price, if properly evidenced for that location.

The opinion stated that:

135. I am finally convinced by the detailed explanations supplied by the Lord Advocate in answer to the question put by the Court and at the hearing and I consider that he shows that the measure meets the objective of combating alcohol abuse in a consistent and systematic manner by maintaining, in particular, that the measure forms part of a more general strategy of combating the harm caused by alcohol, including other measures such as the prohibition of specific promotional offers, and that the targeting of cheap alcoholic beverages may be justified by the fact that hazardous or harmful drinkers, including, in particular, the young, whose protection as a matter of priority is a legitimate concern, to a large extent consume that category of drinks. (Opinion of Advocate General Bot in Case C-333/14 *The Scotch Whisky Association and Others v The Lord Advocate, The Advocate General for Scotland*)

The decision as reflected in the Advocate General's opinion suggests that there will be circumstances where legitimate objectives, including the protection of public health necessitate a proportionate level of interference with the free market.

10. Super strength schemes

Super strength schemes involve encouraging newsagents and off-licences not to sell certain high strength beer, lager and cider, typically 6.5% ABV or more, in an attempt to combat street drinking and associated problems.

As with conditions on price, these schemes have to be voluntary because of competition law, which means that premises can only be asked not to sell such products on a voluntary basis, and without any coercion. While this can greatly limit their application, the LGA has produced guidance on how to implement this type of scheme legally.²⁶

The LGA point out however that local authorities:

In this context, are unlikely to be caught by Competition Law specifically... the key point is to ensure that retailers are aware they must make individual and independent decisions about whether to participate in such schemes. Specifically, they should avoid engaging in any form of co-ordinated action or in agreements or concerted practices that would reduce or prevent competition between them... The easiest way to avoid this risk is to engage bilaterally with individual retailers, rather than with groups of retailers together.²⁷

The original super strength scheme was launched in Ipswich in September 2012, with a wide range of businesses taking part, including national retailers. It was found to result in a 23% reduction of street drinking events in Ipswich and a reduction in crime and antisocial behaviour around certain stores.²⁸

11. Licensing and marketing: Product placement

Marketing issues were mentioned by a number of participants in relation to supermarkets and the way in which they encourage shoppers to increase the amount of alcohol they buy. This includes methods such as heavily advertising cheap alcohol, using price promotions, placing alcohol within the store entrance, and using end of aisle sales.

While some areas have used the licensing objectives to restrict the way in which venues are named and represented in certain adverts, licensing is not a method that could have an impact on general alcohol advertising. However, restrictions on some of the other methods mentioned above could, and have, been considered within licensing.

Under the 1964 Licensing Act, off-licences, including supermarkets, only had certain parts of their store licenced, which meant that they could only sell and display alcohol within that particular area. The rationale for this was the fact that originally alcohol sales were only allowed at certain times (not on Sundays for example) and so these aisles could be sectioned off. The 1964 Act also included restrictions on bulk buying.

When the 2003 Licensing Act came in this changed, and instead of licencing only a section of the store, the licence changed to cover the whole store. This change meant that all off-licences could place alcohol anywhere, including store entrances and on the end of aisles, locations known to increase sales.²⁹ For example, Carlsberg suggest that retailers should:

Create stacks of your promotional beers... site stacks away from the beer fixture to drive impulse purchase³⁰

In addition to physical location within the store, alcohol promotions are also a common marketing method, and research by suggests that between 30-40% of alcohol sold by supermarkets is prompted by promotions.³¹ These figures seem to back up the views of participants who suggested that supermarkets were very good at getting people to buy more alcohol than they had originally intended.

In some areas local authorities have used conditions (both mandatory and voluntary) to place restrictions on where alcohol is placed within off-licences, with the 'South Leeds Guidance' mentioned in chapter 15 an example of this. These typically involved newsagents in areas with high crime rates or rates of underage drinking; placing alcohol behind the counter or in only one area of the store is intended to try and address these issues.

In areas where it can be judged that issues such as these will impact negatively on the licensing objectives, there is probably greater scope than currently realised to use conditions in this way. As the South Leeds Guidance suggests, this is an issues that benefits from an area wide strategic approach, and could be incorporated into an SLP.

12. Licensing and marketing: Discounting

In Scotland the 2010 Alcohol Act (Scotland) forced off-licences to limit alcohol and alcohol-related products to one part of the store, introduced bans on multi-buy discounts, and extended 'happy-hour' restrictions to off-licences.³² Nicholls described this as:

A rebalancing of licensing policy towards regulation of off-trade retail which is significantly in advance of England and Wales, where recent amendments to the 2003 Licensing Act (under the 2011 Police Reform and Social Responsibility Act) impact almost exclusively upon the on-trade.³³

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.³⁴ 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.

A second loophole is the fact that if retailers do not offer a single unit for sale they are able to discount multipacks; so for example if a single can/bottle is not on sale, an 8-packs does not have to be sold for twice the price of a 4-pack and can be offered at a discount. Anecdotally, it was reported that some retailers de-stocked single items when the Alcohol etc., Act came into force so they could keep the multi-buy discounts on larger packs of alcohol. If these issues were addressed it could be reasonably expected that the Scottish multi-buy ban would have a greater impact on alcohol consumption via the off-trade.

13. Off-trade hours

Scottish off-license hours of 10am – 10pm were also looked upon favourably by most participants, including one from the licenced trade, who thought that such a move would be beneficial within England and Wales. As mentioned in the crime and disorder chapter, when this was introduced in Scotland the licenced trade objected strongly, but primarily to the 10am start and the impact this would have on tourists.³⁵ There were no widespread complaints from industry about the assertion that allowing off-licenses to open past 10pm was likely to contribute to binge drinking and alcohol-related violence.

The exact impact of the introduction of reduced hours within the off-trade in Scotland is difficult to discern because of the fact that they were introduced alongside a range of other measures. However, research in Germany found that restricting off-trade hours between 10pm and 5am resulted in a 9% reduction in alcohol-related hospitalisations among adolescents and young adults, and a similar ban in the Swiss canton of Geneva resulted in a 40% reduction in teenage hospital admissions.³⁶

14. Preloading

Most participants within the interviews regarded preloading as a significant issue within the night time economy, linked particularly with price, and the price difference between the on and off-trades. Preloading is a growing international trend, particularly among young adults, but is not necessarily a new phenomenon.³⁷ It has been linked to increased overall consumption, increased sexual assaults and increased fights and injuries,³⁸ with one study finding that preloaders were 2.5 times more likely to have been in a fight.³⁹ It has also been found that preloaders are likely to consume higher amounts through the week.⁴⁰

Published research consistently finds wide variations in the frequency and quantity of preloading but most seem to find between 50% and 65% of people preload before a night out.⁴¹ Recent research in Liverpool found that a total of 65.4% reported preloading, with a further 20% loading en route, with preloading significantly higher in younger people and students. The median average number of units expected to be consumed throughout the

night was 15.6 units, and 13% of people expected to drink more after leaving the city centre at the end of the night.⁴²

One interviewee mentioned unpublished research in their area, a large town in the north west of England, which found that on average, people going out on a Friday or Saturday night had consumed 9 units at home before coming into the city centre. This chimes with other research, which found that the average amount preloaded was 9 units, whilst the average number of units of alcohol consumed once out in the NTE was 8.1 units.

15. Preloading and the Act

There was a very common view amongst participants that extended opening times had encouraged preloading, and this has been stated elsewhere, including by Noctis, the trade association for nightclubs.⁴³

The rationale for this view is the fact that extended opening times have allowed people to head out into the NTE later in the evening, leaving them more time before hand to drink. There is lots of anecdotal evidence for this, from both this project and other pieces of research. For example, one study reported that preloading:

Was highly bounded by club opening times and calculations that had to be made of the last possible time when entry to the club can be attempted while avoiding large queues.⁴⁴

As such it would be reasonable to conclude that if closing times were brought forward, people would head out earlier in order to have more time in the NTE and to avoid queues, having less time to preload as a result. It is however hard to definitively prove that extended opening under the Act has contributed to preloading.

Recommendation: Minimum Unit Pricing

There was very strong support for MUP from participants with experience in compliance and enforcement within the night time economy, as well as those from a public health background. No one policy can be considered a 'silver bullet', but the evidence base for MUP is far stronger than for the ban on below cost sales. Subject to the legal case in Scotland, its introduction at an effective level would help to address a number of short and long term issues identified by participants in this report related to the impact of very cheap alcohol.

Recommendation: Re-introduction of national or locally set opening / operational hours for off-licensed premises

Scottish off-license hours of 10am – 10pm were widely supported by participants in this study, and there was a strong view among participants that extended opening hours within the off-trade had increased alcohol-related problems. As one licensing officer put it:

Early morning sales are just for street drinkers, late opening is for binge drinkers.

Participants also talked of the off-trade's impact within the night time economy, including en route loading, side loading and post loading, which could potentially be off-set by controlled opening and operational hours.

While on the one hand nationally set operational hours may be more effective, the stronger use of framework hours within SLPs could be used to similar effect at the local level. Some local authorities already do this for both the on and off-trades, in places with more restrictive hours than those mentioned above.

Recommendation: Off-trade in store restrictions

Changes equivalent to the 2010 Alcohol Act (Scotland) in order to reorientate licensing to the fact that around two thirds of alcohol is bought via the off-trade. This should include limiting alcohol and alcohol-related products to one part of the store and introducing bans on multi-buy discounts.

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Chapter 17: Conclusion

Chapter summary

The influence of the licenced trade in shaping licensing to their favour can make a very significant difference, and lead to increased problems for the police and other services.

There is probably significant scope for local authorities to combat this by utilising the powers currently at their disposal. Greater attention to the s 182 Guidance, and the more frequent use of specialist legal advice would both aid this.

The current licensing objectives could be used more evenly and expansively, with decisions made in an evaluative manner.

Statements of Licensing Policy can be used as a strategic document, outlining the way in which the local authority will uphold the local public good in relation to licensing.

The Act allows local authorities to be inquisitive and to proactively question the information presented to them, as well to evaluate the way in which those decisions fit within their overall strategy.

A strategic approach could benefit all parties, including the licenced trade, by fostering collaboration in a more integrated and long term manner.

This report has looked at the working of the Act from the perspective of local authorities and the public sector. The influence of the licenced trade and the drinks industry in shaping licensing to their favour has been a running theme. For example, within chapter 8 it was reported that licensing committees often make 'safe' decisions in order to avoid the expensive appeals process. The threat of the appeals process is however certainly not a new thing within licensing. In his book *Bar Wars*, Hadfield extensively documents the use of the legal system by corporate interests under the former licensing regime:

The courtroom casts a long shadow. The *threat* of court action and its financial, personal and organisational consequences can often be a spur to agreement and concession...these spurs are felt most sharply... by local residents and public sector agencies.¹

Participants referred to the way in which the legal clout of sections within the licenced trade had influenced the implementation of the Act when replying to a range of different questions. One senior police representative from a large city commented on the fact that the licensing committee in their area had started to make safe decisions from around 2011, and that there was a clear understanding that this was directly related to reduced council finances and a pressure from council officers to avoid potentially expensive appeal hearings.

It was stated that even where all three members of the licensing sub committee had agreed with a decision, the council solicitor was frequently successful in making them change their mind and grant the application. This was usually on the basis that there was not enough evidence properly to decline the application, even though the councillors had originally judged that they had enough information on which to make a fully informed decision. The police representative was clear that a number of these applications should not have been granted, and that they had led to increased problems in the night time economy which the police been left to sort out.

Echoing chapter two, which details the development of the Act, it was commonly recognised by interviewees that the power and influence of industry was important in shaping the structure and decision making processes within the Act. Many participants reported that these had caused them significant problems. One, from a local authority in the North of England, stated that:

It's a question of power – local communities want to be able to shape their environment, but at the moment aren't able to despite obvious alcohol problems, because of the power of the market and industry.

1. The scope of the licensing objectives

This power and influence has had a significant impact on the application of the Act in its first 10 years, shifting the application of licensing in a trade friendly direction in many areas across the country. While many participants called for changes in order to boost regulatory powers within the Act, there is probably significant scope for local authorities better to understand and utilise the powers currently at their disposal.

For example, while many saw the potential benefits of a specific health objective, they frequently did not seem to grasp the full extent of the current objectives and the way in which health related concerns can be taken into account. Where health related issues are looked at in the context of licensing, these at present often relate to violence. In reality there are

other applicable approaches. Examples within chapters 14 and 15 demonstrate how the current objectives can be used in a wider manner than many local authorities currently do.

Other ways of using the existing objectives more expansively might include focusing on the less well defined 'disorder' rather than 'crime', although many police forces do not actually record disorder related issues which makes this more difficult. The fact that the protection of children from harm objective includes moral and ethical issues should also be remembered. These issues are very rarely considered, and cannot be based entirely on heavily factual evidence, but some areas have used them creatively, for example to restrict advertising and product placement within shops, as well as changing names which are sexually suggestive or might encourage excessive drinking.

A few participants argued that the Act had shifted the focus towards the crime and disorder objective at the expense of the others, particularly that of public nuisance and public safety. This was partly attributed to the 'rebalancing' of the Act when responsibility was moved from DCMS to the Home Office, but also to the overly evidential use of the Act, pushing the decision making process towards a more black and white, as opposed to evaluative, process.

As discussed in chapter 14, this could in part be a result of the fact that some local authorities are cautious or unsure about the need frequently to make a predictive judgement as part of a decision under the Act. Decisions should not only be based on whether there is currently crime and disorder etc., but whether an application might lead to a situation where this is exacerbated, and therefore lead to the undermining of the licensing objectives.

Yet where the evidential bar is raised towards a legalistic 'beyond reasonable doubt' as opposed to judgements on the balance of probabilities, which is what the Act actually calls for, the process can become far more factual and black and white. This applies to new applications but particularly to existing premises, making it harder to attribute new trends or issues to a venue. Whilst, taking this approach, it may be easier for the licenced trade to defend against broad issues related to public nuisance (e.g. noise, light and smells) and public safety (e.g. fire safety, capacity limits), crime and disorder remains a more frequently contested area because the issues are themselves often more factual and easily quantified.

It is nevertheless possible to imagine a way in which the four licensing objectives are used more effectively, which would not necessarily involve a shift away from crime and disorder issues, but perhaps a greater application of the public nuisance and public safety objectives. This would build upon the harmful (but not necessarily violent) impact alcohol can have on people other than the drinker, and by better using issues such as environmental health and child protection. For this to happen, decisions must be made in a more evaluative manner, and attention drawn to the way in which licensing impacts on the 'wellbeing of the wider community', as mentioned in chapter 4.

The addition of a health objective could go some way to allowing for a more even application of the current objectives, but may not expand the range of health issues beyond those that more innovative councils are already attempting to address via licensing. The risk averse nature of many local authorities, and the contested legal environment in which they operate, mean that the full extent of all the current objectives are unlikely to ever be explored fully. As detailed in the second half of chapter 15, an additional health objective could give local authorities the practical ability to do what they could, in theory, be able to do already if the current objectives were used more fully.

In addition, the Act could be seen to have moved towards the management of drunkenness because it generally does not recognise well the way in which context and physical location contribute to problems, primarily focusing on law and order and being able to identify problematic individuals. As mentioned elsewhere there is case law which clarifies the fact that considerations should focus on what is suitable in a particular location. Greater attention to context and area wide interactions could help better to encompass the other objectives, and to broaden the scope of licensing decisions.

2. Encouraging licensing strategies

The lack of strategic approaches to licensing, and the benefits reported by those areas that have taken a strategic approach, has emerged a key theme throughout this report, and in particular chapter 13. Some areas already use their SLPs as a key strategic document, linking them with other strategies and incorporating them into each and every licensing decision. Used in this manner to outline what is regarded as necessary for the promotion of the public good in a licensing context, some participants reported that SLPs can have a significant impact, enhancing a local authorities ability to direct licensing in its area. Such a strategic direction should be set by elected councillors, in conjunction with the responsible authorities. If used in this way SLPs enable local authorities to put into practice para 1.5 of the s 182 Guidance, which states that one of the Act's wider aims is:

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.

SLPs are not, however, typically used in this way. In many areas there seems to be significant scope for innovation in how SLPs are used, and for this to strengthen the way in which local authorities are able to influence licensing. While some participants reported deliberately leaving their SLP light on details in order to make it easier for the committee to take it into account, this approach seems likely to also reduce the authority's ability to use the Act to its fullest potential.

The guidance could be significantly clarified in order to encourage a strategic approach, and while this is already encouraged, to coordinate SLPs with other similar strategies across planning, crime prevention and wellbeing. With or without the addition of an economic objective much more could be done to incorporate economic concerns within SLPs, taking a long term perspective and balancing both economic growth with the negative impacts the night time economy can place on wider public services. More considered and proactive consultations on SLPs, perhaps combined with consultations on these other related strategies, could also bring benefits. Local authorities would need carefully to consider potential conflicts of interest, at times from residents' groups, but more particularly from the licenced trade, in reaching a balanced view around what was and was not promoted in their SLP.

- This raises the question of whether local authorities are properly equipped to balance the potential positive impact of growth in their night time economy with the negative impacts that this may have. In many cases they may not, and doing this properly with an economic objective would probably require the SLP to be developed in a far more open and collaborative way, along side other relevant strategies, before the public consultation. That way all relevant parties, including those who may favour greater development and those who may oppose it, can fully contribute to the debate. However, some participants reported

that many local authorities do not understand what they actually spend and receive from the NTE, so additional help may be needed in this area.

This could also lead to a situation where local authorities engage better with their licensed trade, fostering collaboration through championing best practice. This is of course easier said than done, but if it were possible to find common ground on ways in which the evening and night time economy could develop without unduly undermining local communities this could benefit all parties. This should, at least in theory, lead to a situation as described by the Court of Appeal where:

There is no controversy between the parties, no decision in favour of one or the other of them, but the decision is made for the public benefit one way or another in order to achieve the statutory objectives. (*Chief Constable of Nottinghamshire Police v Nottingham Magistrates' Court [2009]*).

The key problem here is that there are so many different perspectives on what might constitute the public good regarding licensing. This might relate to economic development, regulatory control, health concerns, a crime or disorder issue or principles of free trade and individual freedom; and these are all matters for the local SLPs. Managing these varied and competing concerns is a significant problem which only a few local authorities have managed successfully. In some parts of the country, alcohol and the night time economy does not result in acute and visible problems, so dealing with this is an easier undertaking, although it is probably more accurate to say that things just take their course without too much tension one way or the other.

In other places the opposite is true, and it is because of the fact that alcohol so often reflects wider social views and philosophies that it is such an interesting and contested political subject. In areas where it is contested, it is perhaps best addressed as a clearly political subject, so that issues and dividing lines are made clear and decision makers held accountable.

3. An inquisitorial approach

In his book *Bar Wars*, Hadfield makes the case for the use of an inquisitorial system within licensing as opposed to the adversarial system used at present.² He was talking primarily about the way in which individual decisions are made, but the same arguments apply to overall licensing strategies and taking a positive and informed approach to these.

While in principle the adversarial system is democratic, allowing for freedom of expression as alternative versions of the truth play out against each other, it also justifies lawyers in suppressing and distorting unfavourable evidence 'however truthful it may be.'³ Summarising his critique of this approach, Hadfield comments that:

In licensing trials each party presents what is essentially a body of half-truths reconstituted in such a way as to appear credible and persuasive. In exerting tight control over the information available to the courts, editing and moulding the evidence as they see fit, lawyers obliterate all semblance to the disinterested pursuit of knowledge.

This focus on information and its use reflects concerns mentioned within this report and perhaps links to previous comments about the way in which the decision making process within Act has too often been reduced to a black and white fact finding process. However,

as detailed here, local authorities already have the ability to take an inquisitorial approach and to question information presented to them within decisions, although few do so. While those with money and influence will always defend their interests, a greater use of these powers, particularly within a considered and long term planned approach to licensing, could benefit many local authorities. This could lead to a situation where:

Proceedings would be regarded as an attempt... to get at the truth, with the lawyers on each side required to assist the investigator in obtaining the best available evidence.⁴

If used carefully the Act more or less makes this an option, allowing local authorities proactively to question individual decisions, as well as the way in which those decisions fit within their overall strategy. Within the interviews, one licensing officer from a medium sized town referred to an approach along these lines:

I'd like (to use) a similar approach to planning, to be able to look at the amenities and what should and should not be in an area, to be able to take an informed overview of the place.

Such an approach would still require strong local evidence, but it would make explicit the fact that the licensing committees are making an informed evaluative decision, with the scope to investigate key issues themselves. It could also remove, at least partly, the legalistic struggles that so often favour the licenced trade, giving local authorities a more active role in leading partnership with the licenced trade and mediating the many varied and often conflicting ambitions and concerns around licensing. As Hadfield concludes:

The adoption of an inquisitorial approach may help to remove some of the systematic skews which advantage corporate interests in the contestation of the night. In an era in which the market ethos has attained an almost hegemonic status, it can easily be forgotten that the effective restraint of commercial ambitions is a prerequisite for the survival of vibrant and humane cities.⁵

These restraints on commercial ambitions do not need to be punitive, and can easily leave room for innovation and change. For example, a preference for a shift away from vertical drinking and towards restaurant applications was explicitly stated within the Westminster SLP, and 93% of new licences granted with their West End Stress Area CIP have been food-led.⁶ This is a clear example of place shaping by a local authority looking to allow room for development while aiming to minimise negative impacts.

4. Being assertive with the Act

This report has dispelled a number of misconceptions around the Act, which benefits from a second reading instead of relying upon the received wisdom that has built up. These have included the arguments that:

- The Act should be clearly used in the public interest, with local authorities uniquely placed to determine what this is
- The Act does not have to be overly permissive, but should be seen as a balancing regime
- Large amounts of factual evidence are not needed, with decisions made as a clear and considered evaluative judgements

- The Act does allow for a coherent strategic approach to licensing across a local authority area, and
- It is entirely feasible to incorporate some health concerns into licensing if done thoughtfully on the basis of good local data.

While all of these areas have been spun and influenced by the licenced trade, the most obvious example of this influence is the slightly mythical 'premises by premises' approach to licensing. Almost every participant interviewed for this project took it for granted that the 'premises by premises' approach was at the heart of the Act, and that because of this it was not possible properly to consider the way in which a licenced venue interacted with its local environment.

Instead it was reported that the venue had to be looked at in isolation, something that local authority interviewees saw as a significant limitation on their work. However, as mentioned throughout this report, there is nothing in the Act, the guidance or the case law to indicate that this is actually the case. On the contrary the Court of Appeal has in fact directly encouraged local authorities to take a wide consideration of the dynamic local factors that a licenced premises may impact upon in its local area.

While this report has tried to include a large number of relevant references within the guidance and case law as a useful aid, encouraging local authorities to reassess these points of tension and use the Act in a different way is likely to be a difficult process. Addressing these issues would require local authorities to change long established ways of working, and while the threat of legal challenge might change, it would remain. As mentioned previously, the best remedy against being taken to appeal is making clear and rigorous decisions in the first place; in the words of the High Court:

The fuller and clearer the reasons, the more force they are likely to carry (*Hope and Glory v Westminster [2011] para 43*)

A higher standard of decision making could be achieved by clearer training and guidance for licensing committees and the better use of specialist legal advice by local authorities. This would mean greater legal clarity and focus within licensing hearings and would narrow the gap in legal rigor between licensing committees and appeal hearings.

While this legal advice might cost more up front it may well pay for itself by avoiding appeal costs, and also by ensuring that a council's statement of licensing policy is put together as effectively as possible, resulting in better and more informed decisions where this is used properly.

¹ Hadfield, Philip Mason (2005) *Bar Wars: Contesting the night in British cities*, Durham theses, Durham University. Available at Durham E-Theses Online: <http://etheses.dur.ac.uk/2709/> p 14.

² Hadfield, Philip Mason (2005) *Bar Wars: Contesting the night in British cities*, Durham theses, Durham University. Available at Durham E-Theses Online: <http://etheses.dur.ac.uk/2709/> p 286 – 288.

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⁴ Hadfield, Philip Mason (2005) *Bar Wars: Contesting the night in British cities*, Durham theses, Durham University. Available at Durham E-Theses Online: <http://etheses.dur.ac.uk/2709/> p 287.

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⁶ Beven. T., Hadfield. P., Davis. P., (July 2015) *Westminster Evening & Night Time Economy: A Cost Benefit Study for Westminster City Council, Summary of Key Findings*

Chapter 18: Full recommendations

Taken as a whole, these recommendations would give local authorities a greater ability to be proactive and assertive in their use of the Act, using it more effectively to promote the public good in their local area.

1. Better application of the s 182 Guidance in practice

It is evident that there has been a failure to have proper regard to the s 182 Guidance and we encourage all parties to engage with it fully. As per paragraph 1.7, all those involved in licensing should be clear that:

It is a key medium for promoting best practice, ensuring consistent application of licensing powers across England and Wales and for promoting fairness, equal treatment and proportionality.

1A. The more frequent use of specialist legal advice by local authorities: As an additional step towards the better application of the s 182 Guidance, many local authorities would benefit from the more frequent use of specialist legal advice, particularly with training for licensing committee members and developing SLPs. This could help them to take more confident decisions, and with this to be more assertive and preventative in their use of the Act. While this may be more expensive in the short term, it could pay for itself overall.

1B. Regional variations: Closer attention to the Guidance could also help to address regional variation within the administration of the Act. There is a need for local authorities to ensure that they follow the administrative guidelines throughout the guidance, particularly the advice on hearings at paragraphs 9.30 – 9.40.

1C. Regular review and consultation on the advice contained in the s 182 Guidance: The Home Office (and DCMS) have provided regularly revised editions of the s 182 Guidance. The review of the Guidance could be further regularised, incorporating wider departmental discussion (for example the Health Department and the Department of Business Innovations and Skills). In addition to review, regular consultation on the effectiveness of the s 182 Guidance should be considered.

During the ‘rebalancing’ of the Licensing Act consultation, the Home Office put on a national roadshow to encourage better engagement with the guidance, and perhaps this could be repeated, as well as working with the Institute of Licensing and the Local Government Association towards this end.

2. Ensuring local authorities have a clear and coordinated strategic approach to licensing

Local authorities should be given greater steer to outline a clear strategic vision for licensing in their area, building upon the advice in para 1.5 of the s 182 Guidance and others, and coordinated with other relevant council strategies. This strategic view should be developed by elected councillors, with the input of licensing officers and other responsible authorities.

In the specific context of crime and disorder, this should be coupled with section 17 of the Crime and Disorder Act 1998, which requires local authorities to have a statement of crime and disorder and outline their plans for reducing this. Coordinating this with an overall vision for licensing would result in more coordinated planning and action on this issue.

2A. Child protection involvement in SLPs: At present there is no requirement for local authorities to consult with anyone from a child protection background in developing their SLP. This should be amended at section 5(3) of the Act, and then paragraph 13.4 of the s 182 Guidance.

3. Locally Set Fees

The ability of local authorities, and indeed all responsible authorities under the Act, to properly fund their licensing operations is a key concern. At present many struggle to do this, and locally set fees, reflective of costs, are needed to address this problem. This is also need for fees to be compliant with the EU Services Directive.

As with alcohol licensing, street trading comes under the EU Services Directive. Its fees and charges provisions have been reviewed by the Department for Business Innovation and Skills in order to ensure compliance with the Directive. Under street trading statutes the local authority is entitled to charge an application fee to recover its administrative costs in respect of the application. There is thereafter a further power to charge a fee in respect of the control and supervision arising from the operation of the licensing regime and the impact of the licences granted.

A similar approach, separating application charges from charges arising out of the ongoing operation of the licensing regime, might be used to frame the *locally set fees* debate.

The full text of our suggested amendment to s 55 of the Licensing Act 2003, which takes the street trading legislation as inspiration, can be found at the end of chapter 12.

4. The introduction of a health and well being objective: To promote the health and well being of the locality and local area

This objective would clarify that locally based impacts on health and well being are a consideration in licensing, both during licensing decisions and while 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 society and lead to health and social hazards.

The key legal principles within the Act would limit this objective in exactly the same way as they do for the other objectives, meaning that health and well being impacts more proximal to licensed venues are more likely to fall within its remit.

The use of the term 'health and well being' rather than 'public health' attempts to emphasize the wider quality of life issues associated with strategic thinking in respect of 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 a yet further off-licence in an area with health and social deprivation issues might not advance this objective.

Such an objective should be viewed as an evolutionary step and certainly not a transformation, with the legal and practical limitations clearly explained.

4A. Developing a common language and understanding between licensing and public health

With or without further legislative change, licensing teams, licensing committees and public health teams should be given greater guidance on the use of public health within licensing, particularly around data and what constitutes 'evidence' within the legal constraints of licensing system. As part of this there should be an understanding of the differing approaches and perspectives outlined above, and public health teams should be encouraged to identify how they can best contribute to licensing in their area.

5. The introduction of an economic objective: To promote sustainable economic development and the well being of the locality and local area

This objective would allow for the consideration of sustainable economic factors – both positive and negative - that should be taken into account, both during licensing decisions and while SLPs are developed. It should address issues like employment and stimulating demand, the need for licensed premises, over saturation, the importance of diversity and the economic impact of licensed premises in the locality of the premises, but also within the wider context of the wider local area.

An alternative to this objective, which may be more straight forward for local authorities to use in practice, would be introducing the concept of 'overprovision', as used in Scotland.

6. Minimum Unit Pricing

There was very strong support for MUP from participants with experience in compliance and enforcement within the night time economy, as well as those from a public health background. No one policy can be considered a 'silver bullet', but the evidence base for MUP is far stronger than for the ban on below cost sales. Subject to the legal case in Scotland, its introduction at an effective level would help to address a number of short and long term issues identified by participants in this report related to the impact of very cheap alcohol.

7. Re-introduction of national or locally set opening / operational hours for off-licensed premises

Scottish off-license hours of 10am – 10pm were widely supported by participants in this study, and there was a strong view among participants that extended opening hours within the off-trade had increased alcohol-related problems. As one licensing officer put it:

Early morning sales are just for street drinkers; late opening is for binge drinkers.

Participants also talked of the off-trade's impact within the night time economy, including en route loading, side loading and post loading, which could potentially be off-set by controlled opening and operational hours.

While on the one hand nationally set operational hours may be more effective, the stronger use of framework hours within SLPs could be used to similar effect at the local level. Some local authorities already do this for both the on and off-trades, in places with more restrictive hours than those mentioned above.

8. Better engaging local residents in licensing

While it does have cost implications, Westminster has had great success with its licensing advice project, where it funds licensing advice for local residents in conjunction with the Citizens Advice Bureau. Replication of this elsewhere seems likely to be very beneficial, and could be legitimately factored into a licensing authority's costs under locally set fees.

9. A flexible Late Night Levy

For the LNL to be a genuine option open to local authorities it needs to be made more flexible, targeting only certain geographic locations rather than the whole local authority area.

Funds raised via the LNL for both the police and local authorities should be clearly ring fenced for the night time economy, and police funds should be used to augment the existing police strategy rather than provide alternative funding for existing arrangements. Greater consideration should be given to guarantee that only activities well evidenced to address local problems are commissioned.

10. Early Morning Restriction Order

Clarifications to the s 182 Guidance in order to encourage local authorities to implement EMRO's, with a focus on coordination of the process between the local authority and the police and on the gathering and use of evidence.

11. Sales to drunks

This is a very difficult issue to address, but research consistently finds that multicomponent approaches to this, and other related issues such as serving to minors and proxy sales, provide the most effective approach. There is a need for more research into this.

The recent report One Two Many suggested a number of potentially fruitful recommendations on this issue that should be given strong consideration. These include the introduction of a mandatory condition requiring premises to produce a policy on sales to drunk customers, similar to that covering underage sales, and improved guidance on how drunkenness should be defined within the context of refusing sales.

In addition the Better Regulation Delivery Office and the National Police Chief's Council should restart negotiations and come to a resolution over when RIPA (Regulation of Investigatory Powers Act) authorization is needed for test purchasing operations. The lack of clarity in this area currently presents a significant obstacle to effective policing.

12. The use of proper evaluations in order to assess the impact of legislative changes, and inform the development of future initiatives

This has been lacking from alcohol policy in England and Wales for some time, and numerous opportunities to properly learn from policy changes have been missed. Lessons could be learned from Scotland, where the Monitoring and Evaluating Scotland's Alcohol Strategy (MESAS) programme evaluates the impact of the cross departmental alcohol strategy.

The lack of proper evaluations is a particular issue in relation to voluntary schemes. The current understanding of their true impact is extremely poor and the proper evaluation of voluntary schemes is long overdue.

Appendices can be found at our website, www.ias.org.uk.



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