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Daniel Davies
Chairman, Institute of Licensing

There's a lot to be said for longevity and for consistency. Next year will see the twentieth anniversary of the Institute of Licensing. Twenty years in which reason and erudition has dared to raise its voice; twenty years in which the forensic skills of lawyers and the detailed work of licensing practitioners dealing with the daily grind have informed one another; twenty years during which the Institute has been pre-eminent in raising standards in licensing and in representing to government the need for practical, evidence-based policy-making. A history to be proud of.

We must, however, look to the future. Work on formalising our training and qualifications will begin soon. There is a pressing need to develop a licensing practitioners' qualification as a hallmark of our professionalism. This will enhance the status of people who practise licensing in all its dimensions. The Institute's National Training Conference, held every November, continues to be a huge success precisely because of the excellence of its content. But training can't be a one-off event; we must embrace continuous professional development and expand the training we provide throughout the year. The work of our regional branch network is hugely important in this regard, as are the more formal training courses which we deliver.

I am also delighted to see that the new website has been launched and that our updated logo design features strongly. This is part of the commitment we've made to refreshing our image and modernising our communication with our members.

Never has the licensing function as a means of safeguarding the public been more important. The lessons from Rotherham, featured in the last edition of the Journal, illustrate how important it is for there to be robust procedures in place for deciding who is a "fit and proper person" to hold a taxi licence; and the work the IoL has been doing concerning the ability of licensing authorities to revoke personal alcohol licences when offences come to light is also important. In September the IoL began to deliver "Safeguarding through Licensing" courses, and this is a timely development that emphasises our relevance and our genuine social concerns.

The issue of how to draft premises licence conditions has exercised some of the Institute's finest minds and has been a mammoth task and we await the results of our consultation with you. It will be important to emphasise, when this work is completed, that a model condition isn't a standard condition.

When we look back over the last 20 years there have been huge changes in licensing. The advent of the Licensing Act 2003 continues to reverberate as does the 2005 Act in Scotland: moving licensing from courts to councils; separating the licensing of persons from premises; introducing a set of underpinning principles - the licensing objectives; replacing permitted hours set by Parliament with locally set licensing hours; and last but by no means least, mandatory training for personal alcohol licence holders.

I firmly believe that these changes have been mostly positive. It will always be possible to lament the perceived failures of any change to a licensing regime by harking back to a perfect world that never was, but modernisation means embracing change. The regime change heralding the much-maligned liberalisation of drinking hours has enabled a transformation in terms of the diversity of offerings in the night-time economy, with the creation of hybrid premises that change their offering throughout the week.

The changes to licensing have enabled a revolution of creativity in licensed retail and hospitality. We should celebrate this, yet always remain mindful of the fact that town and city centres are not leisure ghettos, but places where people work and live. Reconciling the needs of business with those of residents will always be a challenge. This is where the Institute of Licensing comes into its own. As our twentieth anniversary looms, we should take time to reflect on the tumultuous changes to licensing over this period and the role we have played, and will play in safeguarding the public while enabling change through the licensing function.

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Leo Charalambides
Editor, Journal of Licensing

In September of this year the IoL presented "Safeguarding through Licensing"; the aim of this training event was to examine the role that licensing plays in safeguarding the public interest. It is accepted that licensing "is the exercise of a power delegated by the people to decide what the public interest requires" (*Hope & Glory* (CA)[41]). How far do we understand the extent?

I was recently acting for a local authority in respect of its decision to reduce the number of pleasure boat licences on the River Avon. The District Judge had this to say:

> *All the evidence leads me to the conclusion that at times the Avon at Stratford is very congested and that in particular the area between the two bridges is a particular issue. In my view there have been an unacceptably high number of collisions between rowing boats and large passenger craft. Two of the incidents have been particularly serious with numbers of vulnerable persons ending up in the water. The Local Authority would be right to place restrictions on pleasure boat licences to make the Avon a safer place for recreation.*

The District Judge agreed that the local authority had properly identified a real concern (risk); that that concern (risk) was more than imagined and had led to actual incidents; and that the solution was to limit the number of pleasure boat licences.. His final conclusion was this:

> *I wholly agree that the number of incidents is unacceptable and the authorities are right to try and deal with it. … … … Any approach must be based on credible evidence and I have been given none. I do not find there to be any basis on which to say 60 pleasure boats is too many. … … … I did consider whether I could justify a reduction in the number of boats on a common sense basis but any reduction would simply be a guess.*

In place of "common sense" the District Judge might have considered "evaluation". The Court of Appeal has held that licensing decisions "involve an evaluation of what is to be regarded as reasonably acceptable in the particular location". Such evaluative judgements are not simple questions of fact of the "heads or tails" variety but involve an evaluative judgement of competing considerations (*Hope & Glory* (CA) [42]). It seems to me that such judgements must be weighted in favour of the wider public interest.

In the context of the Licensing Act 2003, which seeks to "promote the prevention", that public interest requires a proactive, preventative, precautionary approach. It seeks to remedy harm before it has occurred rather than react to and remedy harm after the event; reviews arise where precaution and prevention have failed. In *Avon Boating Ltd* the local authority and the District Judge parted ways on the question of credible evidence. The local authority took the view that, in the here and now, the river was congested and that accidents (some of them serious) were at unacceptable levels – the local authority was willing to make a determination in the public interest safeguarding against future accidents by reducing the number of pleasure boat licensing from 60 to 40 and thereby evaluating and reducing future risk. The District Judge found no credible evidence for any such reduction.

The authority for evidence-based licensing decisions is found in the key decision of *Thwaites* (HC). The test remains an evaluative judgement concerned with the "likely effects" of a premises upon the promotion of the licensing objectives. This is a test that is concerned with likely consequences and the avoidance of likely risks; the evidence that we marshal at hearings is to assess the likely risks that may arise and how they can be prevented.

I would argue that where there is sufficient evidence of risk but doubt as to the measures to be taken, the public interest requires that local authority licensing decisions should safeguard that public interest and promote the protection of the public interest. In my view, the approach of Avon District Council stands as an example of the proper approach to licensing decisions and one that should inform the response to *Rotherham* and the advance of "Safeguarding through Licensing".

Personal reflections - twenty years on

When 19 licensing practitioners turned up for an after-work meeting at the Travellers Rest in Cambridge 20 years ago, no one could have foreseen the organisation they were proposing would have become such an established and respected body. Founder member **James Button** looks back on an epoch-making time

As the Institute of Licensing enters its 20th year since the foundation of the Local Government Licensing Forum, the Editor has asked me to provide a personal reflection on the last two decades. I am both flattered and delighted to do this, but I am also very conscious that this will be highly personal, partial and possibly partisan, and for many people, a very boring exercise. However, I hope that for longer standing members it may rekindle some happy memories while giving new members a sense of our history.

The Local Government Licensing Forum (LGLF) happened as a result of a perceived need, unbelievable naivety and wild enthusiasm.

In the early 1990s there was no organisation that provided any form of assistance for those involved in the full range of local government licensing activity. In those dim and distant days alcohol licensing was still firmly the remit of the Magistrates' Courts, but local authorities had responsibilities for a vast range of licensing functions. While it was true that taxi licensing was well catered for by what was then called The National Association of Taxi and Private Hire Licensing Enforcement Officers (NATPHLEO), there was nothing for anybody who was involved in any of the other areas that taxed licensing minds. Of these, the largest in terms of activity (and probably concerns) were public entertainments, street trading and sex establishments, but we had colleagues who were driven to distraction by some of the more arcane areas such as pleasure boat licensing, riding establishments and zoos.

As a consequence, it seemed that there should be an "all licensing" group and as NATPHLEO was not interested in expanding its remit beyond taxis, a small group of us decided to try to form a new body. That was the perceived need.

The unbelievable naivety was that we thought it would be easy and straightforward. Oh how wrong we were! It is not possible to mention by name everybody who has been involved over the last 20 years, but there are one or two names which must be included. By doing so I hope that I don't offend anybody who is not specifically mentioned, but rest assured, without the input and effort of every member and supporter during the last two decades, the Institute would not be where it is now.

Allied to that naivety was the wild enthusiasm provided by the original group, which consisted of myself, Sharon Davidson and Tom Cook. Sharon was Licensing Manager at Cambridge City Council and Tom held the same role at North Dorset District Council. Neither Sharon nor Tom is still involved in licensing, having moved on to different things, but without their vision, enthusiasm and support and sheer hard work, LGLF would never have got off the ground.

The first meeting

Having formed the kernel of an idea, that there might be interest in such a grouping, we managed to arrange our first meeting. This was in the Travellers Rest pub in Cambridge in January 1996 when 19 like-minded local government officers turned up one evening to listen to our proposals. It seemed a very good omen that so many people were prepared to give up their free time "on spec" – we had nothing arranged in terms of refreshments and it was very much a "buy your own beer" type of evening. Bearing in mind what the Institute covers and considers now, the choice of alcohol licensed premises (although they were licensed to sell intoxicating liquor in those days) was perhaps propitious.

From the outset we were determined that the organisation would be all-encompassing within local government and all professions and local authority councillors would be welcome. It was decided that night to create the LGLF (and it got its name) and for reasons that are now lost in the mists of time, I was elected as chair. Sharon volunteered to be secretary and Tom very cleverly put forward someone he knew, Colin Love (who was not at the meeting), as treasurer! Tom did not escape responsibility, however, as he set up and was then elected chair of the South West Region.

At that point we were of the view that it would take a number of years to develop and our inspiration was largely taken from the Chartered Institute of Environmental Health. A number of our colleagues who were environmental health officers had started their careers as sanitary inspectors and for over 30 years or so had watched their profession and professional body develop to become highly regarded. We felt that was a reasonable progression, and that if we could

take licensing officers, who back then were generally a very under regarded branch of local government, forward to become as highly professional and held in such high regard as environmental health officers it would be a solid and worthwhile achievement.

The next step was to try to arrange regional meetings and we contacted friends and colleagues around the country to "persuade" them to pick up the baton and set such a meeting up. The Eastern Region has the distinction of being the first to be created, followed rapidly by the South West and then Wales. Within six months we had regions in East Anglia, the South West, the North East, the North West and Wales, and within a year there was a region for each part of England and Wales.

Regions were largely autonomous, arranging their own meetings, collecting subscriptions and passing a percentage on to the centre. Inevitably, some were more successful than others but by and large each region developed its own approach, discovering what worked for their members and what didn't.

We were very fortunate to have a large number of contacts who were prepared to give their time and effort to speak at meetings, and organise events. In addition, the support of a lot of local authorities, who hosted meetings for free, was a vital springboard in those early days when we had next to no finances, and we trying to become established. Our wild enthusiasm must have been infectious, because without that LGLF would have withered and died.

It was not all plain sailing. We did have an unfortunate experience when the treasurer of one region vanished after the first meeting, leaving local government at the same time and was never seen or heard of again. We didn't lose any money, but it was a salutary lesson to ensure full details of everyone were always obtained! Some meetings were poorly attended while others attracted audiences way beyond the capacity of the room or the catering. However, we slowly found our feet and congratulated ourselves on creating a completely new local government organisation, which was clearly addressing the perceived need.

The first conference

Flushed with that enthusiasm, the naivety sprang back into the picture as we decided to embark upon the next, to us, logical step.

This was the first conference, which is a glaring example of all three of the elements encapsulated in one ulcer-generating experience. By this time Tom had moved to new pastures and Ian Foulkes, then at the LGA, was heavily involved.

We selected the Emergency Planning College at Easingwold in Yorkshire as it provided very good facilities at an amazingly low price (something that the Institute still prides itself on, although no subsequent venue has had the singular benefit of a subsidised bar, I'm afraid). When Sharon, Ian, Colin and I signed the contract we made ourselves personally liable for the entire costs! We had never heard of event insurance, the LGLF had no legal status and we were mind numbingly amateur in our approach to things. However, it did concentrate our minds to sell places and within a very short space of time we were fully booked. As you can imagine, the sense of relief was enormous!

Although that first conference in November 1997 was small by today's National Training Conference standards, with only about 40 delegates, it has set the pattern for every conference / national training event since. There have been some changes though: we no longer position Colin Love for six hours on York railway station on a freezing cold November Sunday to direct people to a minibus; we ensure all the bedrooms are en-suite (it was one bathroom shared between two bedrooms at Easingwold); and we encourage Dave Daycock to take his dirty laundry home rather than have it delivered personally to his office in Swansea some three weeks later.

That first conference set a very high standard by attracting a wide range of high-quality speakers and providing an interesting, varied and informative programme, which is something every subsequent conference has continued. In addition, those features were supported by excellent opportunities for networking and relaxation, and again these remain fundamental elements of our conferences to this day. To our collective relief (and likewise the relief of our families and bank managers), not only did we cover our costs, we made a small surplus, again setting the precedent for the future.

Since then, the annual conferences have continued, and November rapidly became the acknowledged time for the LGLF conference. The timing gave us a significant advantage and for many years we visited seaside resorts. Our custom was welcomed in dark, quiet November days and we struck some very good deals. The idea was that we moved around the regions, so each area would have a "local" conference at some time, easing travel for some, while acknowledging it would be more difficult for others. This seemed to work well for a number of years, and the Sunday evening start allowed people to make a leisurely journey if they wished. With venues as far apart as Torquay, Gateshead, Swansea and Brighton, we visited many different parts of the country.

Of course, there were ups and downs along the way. Some hotels have not turned out to be as good as they first appeared, although others have been superb. The vast majority of our lecturers have been excellent. However, we have had one or two lecturers who have failed to turn up (which means press-ganging someone into running another session – I don't think we have ever had a "blank slot"), and a few who have been slightly below our expected standard (on one occasion the chair of the session had to ask delegates not to continue to leave during the talk!) but in general each conference has exceeded everybody's expectations.

This would never have been possible without enormous effort behind the scenes on the part of everybody who is involved, to a greater or lesser extent, in any of these events. We are also very lucky to be able to attract top calibre speakers. In the early days there were derisive comments made in some quarters that everybody who spoke at any LGLF event was "one of Jim's mates". If that was ever true (which I doubt very much), all I can say is that I was very lucky to have so many mates with so much knowledge and experience who were prepared to give up their time so willingly to support the fledgling organisation.

Model licensing conditions

Once the conferences had settled down into an established pattern (although each one involved enormous amounts of work by the team), the LGLF was then able to embark on its first big project which was the creation of the *Model Licensing Conditions for Public Entertainment Licences* in collaboration with the Association of British Theatre Technicians and the District Surveyors Association. This project was aimed at providing a clear and widely accepted set of conditions for PEL licences. Up to that point, each authority created its own conditions, leading to huge variations across the country. Not only was this confusing for national operators, it meant each local authority (some 350 plus bodies) was spending time and effort creating their own conditions. A degree of standardisation, taking the best practice from around England and Wales and consolidating them, would be to everyone's benefit. The LGLF team was ably led by Professor Colin Manchester and this project really put the LGLF on the map as far as wider acceptance was concerned, and also heralded our first encounter with Jon Collins, then involved with BEDA (the British Entertainment and Discotheque Association), of whom much more later. The PEL Model Conditions became the nationally accepted standard until the whole PEL regime was swept away by the introduction of the Licensing Act in 2005.

I am very pleased to say that a similar project is currently reaching its conclusion with the production of a set of precedent wording for conditions for use under the Licensing Act 2003. This has been a long overdue concept, and perhaps we should have tried to alter the *Model Licensing Conditions for Public Entertainment Licences* to reflect the new regime. But as anyone who worked through the transition from the old regime to the new will know, there was absolutely no opportunity for such a project.

Qualifications

With the wind very firmly in our sails, and buoyed by the success of the PEL Model Conditions, our thoughts turned to the question of a qualification. We regarded this as a vital element in our overall aim to make licensing a recognised and established local government career, because for too long it had been an all too often overlooked Cinderella occupation, and the qualification was seen as a significant way of achieving this. There was no clear or obvious career path for licensing officers. Indeed I think it can be safely said that somewhere there is or has been a licensing officer who has a background connected with every profession to be found in local government!

Again, we put together a team of volunteers who worked tirelessly to bring this about. It was once again lead by Colin Manchester, ably assisted by Roy Fidoe, Yvonne Bacon and Tony Lane. The original idea was to create our own qualification, but once again, timing and luck were on our side. Colin was at that time a Senior Lecturer at Birmingham University and the university was keen to expand its range of courses into new areas and students. As a result, our own course became the Certificate of Higher Education Licensing Law run initially by Birmingham University, and then by the University of Warwick. From the outset this was designed as a challenging and worthwhile qualification, and over the two year distance learning course with residential weekends, the students had to apply themselves with true dedication. A significant number of our members embarked on and endured the course over its ten-year life, weaving their academic activities around work and families. It was not for nothing that it rapidly became known as the Cert [of] HELL, but they persisted and achieved this qualification which has undoubtedly assisted them enormously in their careers. It is a great shame that the recession brought this much-needed course to an end, and I sincerely hope that a replacement will emerge in due course. In recognition of his expertise in this field, Colin Manchester became the first, and still possibly the only, professor of licensing law in the country.

The Institute of Licensing

By 2003 the LGLF was a fully rounded professional body for local authority officers and members involved in licensing, but we had been having enquiries from practitioners outside local government. After a period of consideration and consultation, at an EGM held the afternoon before the 2003

conference in Peterborough, the unanimous decision was taken to expand the LGLF and transform it into the Institute of Licensing.

This bold step enabled us to expand our membership beyond local government officers and councillors and laid the foundations for the broad church membership that we enjoy today. Our first president was Roy Fidoe, who had been a major support to the LGLF when he was Chief EHO at Worcester City Council. By this time the secretaryship had passed to Yvonne Bacon, and I remained as chair. The next year saw the start of our real expansion, as we welcomed those who had previously been considered "outsiders" by some into our fold. The addition of solicitors and barristers, licensing consultants and trade members has given us a unique position. The IoL speaks for licensing professionals; not the trade, not the regulators, not the general public nor consumers, but for everyone affected by licensing in its widest sense.

This did alter things slightly, and has on occasions meant that as an Institute, we have had to either limit responses to consultations or indeed occasionally decide not to respond, but those are minor points when compared to the national presence the IoL has. We are consulted by governments, trade bodies and individuals and as members of the National Licensing Forum, are able to contribute to and influence major policy issues.

The chairmen

Personnel changes continued, and in 2004 I made the decision to stand down as chair. I felt that I had reached the natural end of my leadership – creating the LGLF and transforming it into the IoL was an achievement I was very proud of but the time had come for the IoL to spread its wings and I was not the person to lead that. The entire membership was delighted when Philip Kolvin agreed to assume that responsibility, and I was confident that he would make the IoL fly as I handed over the chairmanship at the conference in Blackpool that year. I was very touched when Jim Hunter proposed that I should become President of the Institute, a post which I am still very proud to retain.

It was under Philip's leadership that the IoL successfully merged with the Society of Entertainment Licensing Practitioners (SELP). This was seen by both bodies as a natural development which would enable the merged organisation to develop a classic example of the sum being greater than the constituent parts - and that vision has undoubtedly been rewarded with benefits for the members of both bodies who now found themselves under the unified banner of the Institute of Licensing incorporating the Society of Entertainment Licensing Practitioners.

Training and education

It was also during this period that the IoL started to become a significant training organisation. Training, education and the sharing of knowledge had been at the forefront of the original aims and ambitions, but in the early days it tended to be centred on regional meetings. Competence is vital in any profession and the Institute was, and remains, ideally placed to capitalise on its collective knowledge for the benefit of individual members. This has been used to develop a long running series of imaginative and valuable training courses all aimed at improving the knowledge and professionalism of our members. The appointment of Jim Hunter as our first Training Officer was a huge step forwards, and he has now handed that baton to Jenna Parker.

The secretaryship then passed to Sue Nelson, and her baptism of fire came at the 2005 Conference in York, which fell just before the Second Appointed Day, bringing the new Licensing Act 2003 regime into force. It is probably safe to say that this was the most stressful period for all our members, but once again, the support of the Institute and the professionalism of members assisted in making the transition from one licensing regime to another work, in the face of ridiculously short timescales imposed by a Government which has never properly acknowledged the efforts of licensing authorities or licensing practitioners in the process.

Full-time head office team

At this point the IoL had grown sufficiently to consider full time staff, and Sue was our first Executive Officer. There was an interesting experiment with a Chief Executive, and Richard Denyer held that role for a time. I will leave it to those with more knowledge of that period at board level to provide greater insight into that experience.

It was under Philip's chairmanship that the IoL really became the professional body we know now. By this time the original idea of a committee to run the Institute had been outgrown and an effective and continuing structure of a board and sub-committees was created, enabling the officers (almost all of whom are volunteers) to make best use of their time and talents. In addition, we benefited from a clear legal status, together with the highly successful and beneficial split between the trading company and the charity.

Having been chair for a number of years, Philip in turn decided to stand down, and is now the Patron of the IoL. He was succeeded by Jeremy Allen, and it was a real tragedy that Jeremy was never able to fulfil his potential as chair, owing to his sudden and untimely death. This was a difficult time for the Institute, but it did enable Jon Collins to take over the helm, and we were all indebted to him for stepping into the

breach, initially for a short period, but then for a number of years. As I said, we first had dealings with Jon some 12 years previously and had remained in touch, and it was an excellent example of the effect of professional connections, which the Institute prides itself on, having a mutually beneficial effect. We are now embarking on a new era under the leadership of Dan Davies and it will be fascinating to see what the next 20 years brings.

Taxi refoms

In 2007 a fairly innocuous meeting in Hertfordshire led to the taxi trade thinking that somehow we had changed the law! At a regional meeting (if I remember correctly) I proposed some ideas for reform to taxi legislation. Those slides were obtained by members of the trade and there was a significant amount of interest. That led to us taking another unknown step. We created a Taxi Reform Working Party to consult on existing taxi law, and propose reforms. This was the first time we had undertaken a widespread survey, and the lessons we learned have been applied and refined by the IoL ever since. It was a worthwhile exercise, and nothing of its kind had even been undertaken nationally before. It is not unreasonable to think that the publication of our findings and proposals, in the *Institute of Licensing - Taxi Reform Consultation Report* in late 2010, laid the foundations for the later Law Commission investigation into taxi law.

We now have working parties for taxis (which responded on behalf of the IoL to the Law Commission), Licensing Act and Gambling Act matters, and have the knowledge and ability to be able to convene effective, ad hoc groups as and when required.

Volunteer-run organisation

It is over the last 10 or so years that the Institute has made enormous strides to become the highly regarded and respected professional body that it is today. There is so much in place now that was lacking in the early days that I wonder how we ever managed to achieve what we did. However, it is still very much a volunteer run organisation and it is really the enormous efforts made by regional officers that enables the Institute to continue to flourish as a grassroots upwards organisation representing all that is good within the world of licensing.

As with any healthy organisation, the Institute continues to develop and expand, and I am immensely proud of what the Institute has become and I'm very pleased to have had a part in its creation. All of us who have been involved over the last 20 years have learnt a lot about creating and running an organisation and those lessons are used on a daily basis by the Institute. Along the way we have met and worked with some fascinating people and I'm certain that we have achieved our original aim of making licensing a recognised profession, both within and outside local government.

In conclusion, I would like to thank everybody who has been involved in whatever capacity for making the naive dream of three disparate individuals into the leading professional body for licensing practitioners.

James Button, CIoL
President of the Institute of Licensing

2016 will be the Institute of Licensing's 20th year
Get in touch send us your stories

James's account of the birth and development of the IoL makes for fascinating reading. But as he himself notes , it's a very personal account which can't cover every aspect of the Institute's history, nor do full justice to the many others who assisted in its birth and development.

To ensure as many of the IoL's founding fathers and mothers as possible are given due acknowledgement, we will be publishing in next year's Journals a series of articles about the Institute's genesis and rise to the current day's maturity.

If, in the spirit of helping us produce as accurate a history as memory allows, you would like to contribute information to these articles, please do get in touch with the Institute via **journal@instituteoflicensing.org**. Whether it's a contribution you made personally, or someone you know of who played an important role, or even if you have an interesting anecdote you'd like to share, please do get in touch as soon as possible.

How Cornwall Council reformed and simplified its business licensing services

When Cornwall Council looked into how it could improve its approach to licensing, it found there were a host of processes that could be improved or simplified. **Angie McGinn** explains how it went about its root and branch reforms, and what Government now needs to do to allow it to implement them

In January 2014 the Local Government Association (LGA) published proposals for the reform of licensing across the country. The overall aim of the proposals is to:-

"deliver a deregulatory approach that frees up time for both businesses and councils whilst maintaining important safeguards for local communities and businesses".

The proposals include businesses being able to apply for a single licence tailored to their needs; a licence for life consistently applied with clear mechanism to address non-compliance; transparent and consistent appeal process across all licences and flexible payment options to assist businesses.

Cornwall Council, along with other local authorities, provided evidential information to the LGA to support a licensing reform. Following further discussions with the LGA, Cornwall Council approached the Better Regulation Delivery Office (BRDO), which is part of the Department for Business, Innovation & Skills, to fund a feasibility study on how the LGA's proposal might work in practice, which was successfully supported by a BRDO innovation for growth grant.

Geoff Brown, Cornwall Council's Communities Cabinet Member
Our successful licensing project application supported by the BRDO demonstrates that Cornwall Council is highly regarded and I am delighted that we were chosen to spearhead this piece of work.

Cornwall Council, a unitary authority, set up a project team, which involved various services (legal, highways, street scene, fire, trading standards, licensing, environmental health, customer contact centre, finance) across the Council, supported by a Political Stakeholder Group. The membership included the chairs & vice chairs of the council's two licensing committees together with the cabinet member who is the Council's Communities portfolio holder.

The essence of Cornwall's licensing pathfinder project was to explore how local authority licensing delivery could be simplified and made more efficient under the existing legislative regime. And, also, what the Government would need to do to optimise licensing simplification and enable further efficiency savings for local authorities and licensing applicants. The latter work was referenced in the Chancellor's 2014 autumn statement, which said:-

"The government will work with local authorities and businesses on a simplification programme, with an expectation that, by 2018, every local authority will offer a single online application process where businesses only need register their details once."

It was envisaged that the project would provide evidence to support the Government's 2015 manifesto, which aimed to cut red tape, boost start-ups and small businesses.

Learning - what Cornwall Council found out

Cornwall Council identified 90 different types of local authority licence permissions. In Cornwall these are administered by 12 different teams within different services of the council (based in several locations) dealing with in excess of 15,000 applications annually. A high proportion are repeat customers.

Many businesses need to have several licences to operate, which they have to obtain from different services within the council. This means they are providing the same information many times.

When asked what they thought of the council's website 32% said they found it to be unhelpful and confusing, stating that they could not find information on all the licences they need for their type of business in one place. One third (33%) also said that they found it is hard to get hold of the right person in the council.

Taxi Proprietor, Cornwall
It takes a long time to find things on the website which is cluttered. There are different regulations in each area and I would like one Government standard for all taxi businesses.

The council was told that licensing application forms are badly designed and full of jargon which is not helped by the fact that some application forms are prescribed by Government and cannot be changed.

Minor Variation Applicant, Cornwall
The form was an unnecessary need of words/literature making the application very confusing to complete. The guidance notes were useless. I needed to contact the office for clarity. I needed to return the application twice as I did not understand the wording.

Businesses also reported that forms for the same licence on gov.uk (electronic applications) were not consistent with those provided by the council and those that are prescribed nationally.

Street Collection Applicant, Cornwall
The licensing forms are too long and repetitive. My last application was 8 pages long. I had to fill in the address 3 times! This is by far the longest application form from any council that I have applied to.

They also told the council that not all types of licence applications can be submitted on-line and not all application forms are available on the Council's website. In some instances only a hard copy can be submitted.

Cornwall Council ascertained that a licence applicant could come back to them up to eight times with licensing queries and assistance to help them complete a single licence application form.

Private Hire Operator, Cornwall
The whole application was very well handled although I would like to use the online process to reduce paperwork. I contacted the Council many times about what can / can't be done. It mattered that the staff member could answer the queries raised in a prompt way.

Some licensing applications are required to be accompanied by various documents. An example is a plan of the premises, which is required separately for each application submitted with varying requirements as to what needs to be indicated on the plan.

To further complicate the licensing process, other permissions may also be required before an application is submitted. This includes planning consent, and a qualification or another licence issued by the council or another external body.

Many licence applications submitted to Cornwall Council could not be accepted as they were incomplete (ie "unclean"). The percentage of unclean applications varies depending on the type of licences being applied for, with as many as 90% for some licence applications.

Businesses told Cornwall Council there is inadequate co-ordination between the council's licensing services when they have to submit different licence applications to different services. It is also apparent, due to silo working, that they are not provided with complete information about their businesses total licensing requirements. The implication of this is that a business may not be compliant because the council has not advised them on all the licences they need.

Cider Producer, Cornwall
8 people were involved in my licence application, each with a specific role but it delivered a siloed service that I had to join up. Ideally I would like one point of contact.

It was also learnt that data sharing between services within the Council is ineffective and not used intelligently, which impacts on effective business support and community protection.

Taxi Proprietor, Cornwall
I would like Passenger Transport and Licensing to work together.

Businesses told the council that applying for business licences is daunting, complicated and burdensome and for many licences a renewal application is treated as an application for a "new licence".

Some licences need renewal at varying intervals which is often prescribed in legislation. Businesses find the renewal process repetitive, particularly as the renewal forms request repeat information. Delays in dealing with renewal applications (which are more often than not, "low risk") can mean a business is not authorised to continue to operate.

Holiday Park Manager, Cornwall
For renewals I would like to go on-line to confirm there have been no changes and for the licence to be automatically renewed on this information. It would support businesses if the current licence information is pre-populated.

Cornwall Council was further informed that the licensing application process is confusing since licensing application consultation periods vary considerably. This includes separate press and public notices for various applications to be published.

Holiday Park Manager, Cornwall
We have been very lucky to have access to one to one support from the Council's Licensing Team. Using your own common sense was a big must as the process and paperwork were very daunting.

Cornwall Council recognises that decision making on licence applications varies considerably depending on the requirements of legislation and delegation to officers, which lengthens the time taken to issue or approve a licence.

In some instances, licensing applicants have no right of appeal on licensing application decisions and where there is an appeal process it can often be restricted to certain criteria and appeals are made to different bodies. An appeal may not be open to all parties; often it is only the applicant that can appeal.

Working with the trade and partners

Co-design workshops were held with a selection of local businesses at which the LGA's proposals and the Council's Licensing Reform Project were explained and discussed. There were two cohorts of business representatives, and representatives from the Local Government Association and the Government's Better Regulation Delivery Office (Department for Business, Innovation & Skills).

Business feedback strongly supported a simplified licensing system, which included a single point of contact within the council for all licensing information and advice.

Cider Producer, Cornwall
The process was very manual and paper based. I would like to have done much more online with submission of all documents once to the local office.

Taxi Proprietor, Cornwall
The application could be done on-line and all vehicle checks done by an approved garage with no need to go into the office.

Cornwall Council also asked 100 of its licensing customers "what matters" to them and how it could improve its services. They said they wanted to be able to obtain licences quickly, easily and in a simplified way.

Further in-depth discussions with a number of business types provided compelling evidence that an ineffective local authority licensing system can impact on their business success.

These findings were presented to both the council's committee and to Cornwall's Better Business for All (BBfA) partnership led by the Cornwall & Isles of Scilly Local Enterprise Partnership. The BBfA membership includes the Federation of Small Businesses, Chamber of Commerce, business representatives and senior officers from the council's regulatory services (environmental health, licensing, trading standards, planning & enterprise and fire & community safety).

The work of the BBfA partnership serves to simplify and improve regulatory delivery to support economic growth. It supports simplified and streamlined business licensing, where regulatory administrative burdens are minimised to support business success, particularly so for new business start-ups and helps them to "get it right first time".

Simon Tregoning, Board Director, Cornwall & Isles of Scilly Local Enterprise Partnership
We support Cornwall Council's approach but Government needs to simplify business licensing through reform for the sake of business prosperity.

Simplifying local business licensing services

Businesses told Cornwall Council that they find local authority licensing daunting, complicated, confusing and burdensome, which impacts on their resources and potential business success. The time taken to obtain a licence from the council is one of their top five gripes.

Restaurant Proprietor, Cornwall
I contacted the Council to understand the process. Staff were very helpful but forms are confusing, lots of paperwork.

Adam Luck, St Austell Brewery Co Ltd.
Local Authority licencing is in urgent need of simplification. The present system is costly to our company and our 145 tenants who operate small businesses. We employ a full time member of staff to handle licencing administration work alone!

Cornwall Council concedes the current business licensing framework is outdated, burdensome and costly to administer. Cornwall Council secured the services of Vanguard Consulting Ltd, which specialises in helping teams study and redesign services from the customer's point of view. The council worked with them in applying the Vanguard Method to assess the effectiveness of its licensing system across various services and as part of this it:

- Undertook a "systemic" review looking at how efficiencies may be gained by licensing process re-design and joining up licensing advice in order to deliver sustainable services with ever reducing budget;

- Defined a "purpose" for its licensing system with measures which determine how well the council is meeting the "purpose" for the licensing system. Purpose was derived from "what matters" to its customers;
- Agreed that any re-design of its licensing system must concentrate on those steps which are of value to the council's customers.

Cornwall Council's agreed "purpose", from the customers' point of view, for its licensing system is:

"Make it simple, quick and easy for me to get the licence(s) I need, in a way that protects the safety and wellbeing of people, animals and the environment."

In order to re-design the council's licensing system to meet this purpose the following principles were agreed:

- At first contact provide expertise, knowledge and support that tells customers exactly what they need.
- Make it simple, quick and as easy as possible for customers to renew and maintain their licences to be legally compliant.
- Deliver transparency of the process with predicted timescales to manage customer expectations.

Street Collection applicant, Cornwall
Contacted Council to check the procedure & processing times. Speed and communication matters, it would be nice to have some communication during the submission, as to where things are, approximate timescales.

- Work hard to make applications come in right first time (clean).
- Work to minimise duplication.
- Understand "demand" and design to do only the value work in order to decide/issue at the earliest opportunity and deliver service in the most efficient way.
- Use measures that help the Council to improve its licensing system and performance.
- Challenge assumptions in its process to make sure the Council operates in the simplest, fastest and most effective way while removing / reducing unnecessary system conditions from the customer's point of view so as to be a seamless service.

Measuring achievement of "purpose"

Performance measures have been considered to determine how well the Council is meeting its "purpose" for the licensing system. These include:

- Time taken to advise what licences are required.
- Percentage of one-stop information.
- Total end to end performance.
- Percentage of clean applications received.
- Percentage of licences in one place.
- Number of applications going to hearing.

Cornwall's approach to re-designing licensing services

Cornwall Council accepts that a single application form for the 90-plus different licence permissions would be far too complicated, inappropriate and unnecessary, and this view supported by businesses. Instead, businesses support the trial of information being in one place using a cluster approach.

Holiday Park Manager, Cornwall
I would like one licence for food, alcohol and entertainment and one organisation to govern everything.

Taxi Proprietor, Cornwall
Likes the separate licences, would be a big error if the operator, driver and private hire licences were merged.

Cornwall Council agreed to re-design its licensing services around business licensing clusters via a licensing hub approach whereby advice and information and compliance is available at "first point of contact". This will mean that the licences that each cluster are likely to need can be grouped together enabling the council to supply relevant information in one place both on the website and supported by a single point of contact.

Potential clusters were identified as follows:

- Leisure, entertainment & hospitality.
- Wholesale and retail.
- Events and outdoor.
- Animals.
- Taxi and private hire transport.
- Charities.
- Industrial and environmental.
- Construction and road works.
- Highway use.
- Housing.
- Boats.
- Individual personal licences.

More work on defining these could result in fewer business licensing clusters together with changes in the combinations of activities.

The agreed approach, using the re-design principles, is that Cornwall Council:

- Establishes a single point of contact (where

practicable) within the Council that enables businesses to:

- Receive advice about all the licences it needs in order to operate legally, together with processes around them at first contact.
- Apply and pay for all the licences it needs at the same time.
- Keep licences up to date using a simplified and streamlined approach to renewals and payment of annual fees.

- Simplifies, streamlines and coordinates the current system in order to make it more efficient for applicants and the council, while also incorporating a co-ordinated approach in determining applications that are submitted at the same time by a business; the same would apply for the process to vary, renew or surrender licences.

The approach would be supported by improved:

- Website content, in one place, around what licences are needed for each business licensing cluster in order to operate legally.
- Facilities to enable applications to be made and paid for electronically, and which integrate with back office systems.

Licensing re-design implementation

Cornwall Council will be testing its agreed approach to re-design, in the first instance, on the leisure, entertainment and hospitality business licensing cluster.

The re-design will involve:

- Establishing a single point of contact with appropriate training to provide information on what licensing is needed and the process at the first point of contact.

Holiday Park Manager, Cornwall

I would like a 1 to 1 service for advice, guidance and assistance which can advise on all the licences required for a specific business. I would pay for this service to complete the application to get it right first time.

- Making information available in one place on the council's website.
- Designing a new seamless approach to enable a business to apply (and pay for) all licences it needs at the same time.
- Developing new streamlined procedures to determine applications submitted at the same time using a co-ordinated approach across the council.

Pub Landlord, Cornwall

Some co-ordination of departments would be helpful. I had to contact 3 departments as I wanted to put chairs and tables outside the pub (i.e. streetworks, planning and licencing). Is there any way the form could be combined for this sort of application?

- Making it simple for a business to renew / keep licences up to date in a co-ordinated way in the absence of legislative changes.
- Introducing new measures which will reveal what the service is like from the customer's point of view and where improvements can be made.

Establishing a single point of contact as part of transformational re-design will involve the creation of a licensing hub. The hub could be a virtual team or a real team (could be co-located) which could be specifically set up or be an existing licensing team, depending on the business licensing cluster. What will really matter is that the licensing hub must have the appropriate knowledge and capability to deliver a seamless co-ordinated service in terms of providing integrated advice, support and co-ordinated licence administration in one place.

It is recognised, however, that customer access requirements will need to be fully taken into account in order to be able to deliver an effective licensing system that supports business success, and a level playing field which protects communities.

Pub Landlord, Cornwall

The form wasn't easy to download from the website. Would be good if it was easier to download for those who are 'old school' and prefer paper copies of forms to on-line.

The licensing hub will act as the single point of contact and will be expected to assist with new business start-ups, help new owners of a business, and faciliate expansion or variation of existing business, together with managing the maintenance of licences and permissions, all in one place.

For the leisure, entertainment and hospitality business licensing cluster the following licence types will be relevant:

- Premises and Clubs under the Licensing Act 2003 (Alcohol, Entertainment and Late Night Refreshment).
- Camp site licence.
- Caravan site licence (including park homes).
- Performance of hypnotism.
- Sex establishments (ie sex cinemas and sexual entertainment venues).
- Gambling Act 2005 premises (betting shops, betting tracks, bingo premises, casinos, adult gaming centres and family entertainment centres).

- Gambling Act 2005 permits and notifications (licensed premises permits / notifications, club gaming / club machine permits, prize gaming permits and family entertainment centre permits).
- Food registration / food premises registration .
- Tables and chairs on the highway.

There are other licences or occasional events that would also be relevant to this cluster such as:

- Registration of premises for weddings and civil ceremonies.
- Safety certificates for sports grounds or stands.
- Temporary events.
- Personal licences.
- Using the highway (banners and bunting, planting, seasonal lighting etc).
- Children (employment, performing, chaperone).
- Distribution of free printed material.
- Water based activities.

Following the test period of operation of the licensing hub, consideration will be given to whether the re-design could be applied across all business licensing clusters covering all licensing services within the council.

Cornwall's "ask" of Government to reform licensing

Cornwall Council provided a report to Government proposing legislative changes required for each business licensing cluster. This included a request for freedoms, flexibilities and derogation to test and advise Government with respect to its plan to reform.

In relation to the leisure, entertainment and hospitality business licensing cluster the following legislative changes were proposed:

- Consolidation of licensing legislation in relation to entertainment. There is potential to incorporate legislation relating to all entertainment, that currently requires permission into the Licensing Act 2003. As premises licences and club premises certificates have no expiry, this would fit with the LGA's proposals in terms of a licence for life consistently applied with clear mechanism to address non-compliance. The licence would continue to be maintained via payment of an annual fee.
- Remove prescribed application forms in favour of model standard application forms for grant, variation (with transfer incorporated) and surrender. These could be used nationally but altered to suit local needs.
- The model standard forms should incorporate a number of licensing functions suitable to each of the clusters. The forms should also be available via gov.uk in a format that enables integration with back office systems.
- Extend the gov.uk facility to incorporate all areas of licensing for this cluster (ie betting, gaming and lotteries under the Gambling Act 2005).
- Remove the expiry date for all other forms of licensing for this cluster (such as tables and chairs on the highway, gambling permits, registration of premises for weddings and civil ceremonies) in favour of an annual fee to maintain the licences.
- The facility to pay for application fees and annual fees for all licences at the same time.
- Remove the requirement that you have to be either the occupier, holder of a licence, trustee or performer. As an alternative, consider allowing anyone to apply who is able to confirm that they are in a position to be able to use of the premises for the licensable activities applied for.
- Remove duplication of supporting documents - ie should only need one plan for the premises which indicates all requirements on it for all activities.
- Unified press and public notices for all activities being applied for.
- A clear consultation period from the date that the application is accepted. For example, 28 days to comment on an application together with consideration of any tacit approval if no objections / representations.
- Changes to legislation, regulations or the council's constitution that allow one decision maker (ie the committee) with suitable delegation to officers.
- Unify appeal processes so all are made, for example, to the Magistrates Court within a specified time (ie 21 days from being notified of the decision) and allow all parties to the application being permitted to appeal.
- If other permissions are required consider whether, or not, this should prevent the licensing application from being decided. As an alternative, appropriate information could be provided about not offering certain activities until the other permissions are obtained.

What next?

Cornwall Council will be attending the IoL's November 2015 conference in Birmingham, when further details of the project will be presented.

Angie McGinn
Licensing Team Manager, Cornwall Council

Gaming machines take centre stage

No decision yet on the Greene King's bingo application, but plenty of developments on fixed odds betting terminals, as **Nick Arron** explains

There has been little gambling case law to excite in recent months. But there have been a number of policy developments within gambling regulation relating to gaming machines, with fixed odds betting terminals or B2 machines, as always, at the top of the agenda. There have also been developments regarding non-complex Category D gaming machines, and skill with prize machines, which are rarely discussed in the pages of the *Journal*, but which I will focus on in this article.

Many licensing officers will either have considered or will be considering amendments to their Gambling Act 2005 Statement of Principles; and some may be waiting for the Gambling Commission's fifth edition of its *Guidance to Licensing Authorities*, which was considered at length in the previous edition. There is no update regarding the draft edition, other than to say we are expecting the final version shortly.

Nor have there been any developments regarding the litigation between the Gambling Commission and Greene King over Greene King's application for a non-remote bingo operating licence. The Gambling Commission's appeal to the Upper Tribunal was due in early October and the outcome of the appeal will be of significant interest to members, the industry and regulators. The Gambling Commission has publicly announced that it is considering amendments to the relevant licence conditions and codes of practice and that, in the event that the Commission is unsuccessful in its appeal to the Upper Tribunal, it is likely to seek changes in the law and / or amendments to the regulatory regime. The Government has supported the Commission's position. We are awaiting a further consultation from the Commission on primary activity and this may hint at these changes.

So, there will be much to consider in the next edition but for now we will now focus on the policy developments regarding gaming machines.

Fixed Odds Betting Terminals

This summer, we have also had a Private Member's Bill in England, sponsored by Lord Clement-Jones, which sought to reduce the maximum stake for FOBTs to £2. The Bill does not appear to have gained sufficient support for debate.

On the same subject, during the summer the Government rejected a request by 93 councils in England and Wales, under the Sustainable Communities Act 2007, to reduce the maximum stake on fixed or betting terminals from £100 to £2.

The Sustainable Communities Act 2007 allows councils to petition Government to make changes to legislation to help them promote the sustainability of local communities. The Government referred to a number of initiatives by both regulators and the industry in refusing the request.

Over the summer, the Scottish Parliament issued a call for evidence regarding the Scotland Bill 2015 and specifically clause 45 of the Bill, which proposes devolving legislative competence in relation to gaming machines authorised by betting premises licence where the maximum charge for a single play is more than £10.

The Bill followed the Smith Commission, set up to consider further Scottish devolution, whose recommendation at point 74 was that the "Scottish Parliament will have the power to prevent the proliferation of fixed odds betting terminals".

The proposals in the Bill would amend the Gambling Act 2005 so the Scottish Ministers would be able to vary the number of machines allowed on betting premises. As originally drafted, the amendment would only have applied to applications for new betting premises.

The call for evidence followed concern from the Scottish Government that clause 45 of the Scotland Bill did not meet the Smith Commission recommendation. A series of amendments to the Scotland Bill were lodged, on behalf of the Scottish Government, which if enacted would significantly extend the power of the Scottish licensing boards to limit gaming machines within gambling premises.

The amendments at 31, 32, 146 and 163 would, together,

create the power for licensing boards to limit machines of all categories, and allow them to introduce the limits retrospectively, will apply to all gambling premises and seek to limit the maximum stake to play B2 gaming machines to £2.

Understandably, there has been concern within the industry that the proposed amendments to the Bill would have significant impact on bingo and arcades, and go beyond the Smith Commission recommendation. The closing date for receipt of responses to the call for evidence was at the end of August and we await the outcome.

Reclassification of Non-Complex Category D Gaming Machines

The Gambling Commission, the amusements organisation BACTA and a number of gaming machine suppliers have been working on the reclassification of non-complex Category D gaming machines since 2014. They have now come to an agreement regarding the timetable for the implementation of the changes. Licensing officers may have received applications for increases to licensed premises gaming machine permits, or new applications for unlicensed family entertainment centres to allow for the reclassification.

The reclassification relates specifically to machines which operate a mechanical arm, or similar type device, which allows the player to select a prize. These machines also have a compensator unit, which determines the percentage of payout of the machine, or how often the player wins. The compensator can be set so that the machine will only allow the player to win a number of times within a set limit, for instance, one time within 50 plays. Thus, when a player approaches one of these machines, it may not be possible for them to win, even if they are most skillful, because the game has recently awarded a prize. These games, and there is a specific list available on the Gambling Commission's advice document issued in August 2015, are to be reclassified as non-complex Category D gaming machines. Previously, they had been considered to be skill with prize machines. The majority of this type of machine will be operated in adult gaming centres, or family entertainment centres; for these machines, applications to allow them to be made available to the public will not be required. You often will see these machines in shopping centres, motorway service stations and sometimes within the larger suburban pubs or bowling centres.

Applications for new permits or variations to existing permits should have been made by 31 August 2015, and the permit or premises licence must be in place by 31 December 2015.

Gambling Commission

Sarah Harrison has been appointed Chief Executive of the Gambling Commission, following Jenny Williams's departure. Sarah, who took over on 1 October 2015, was previously a Senior Partner at OfGem where she headed the Sustainable Development division. Other previous roles include Managing Director of Corporate Affairs at OfGem, Communications Director of Corporate Affairs at OfGem, Communications Director at OfGem and Chief Executive of ICSTIS, which regulates premium rate telephone services.

"During the summer the Government rejected a request by 93 councils in England and Wales, under the Sustainable Communities Act 2007, to reduce the maximum stake on fixed or betting terminals from £100 to £2."

You may also have seen the Gambling Commission publish its annual review during the summer. As well as giving an overview of the year, one highlight in Chairman Philip Graf's foreword was that the Commission will be considering to what extent anonymous cash-based play should continue to be accepted for higher stake gambling.

Finally, and directly related to anonymous cash play, in the summer the fourth Anti-Money Laundering Directive was published by the European Union. The fourth Directive is significantly wider than the third Directive, as it proposes to cover all gambling services. The third Directive, implemented in 2007, applies only to casinos. Interestingly, the fourth Directive will potentially allow member states to exempt sectors of the gambling industry if they can demonstrate that the sector poses a low risk, by the nature and scale of their services, to money laundering. It will be HM Treasury which is responsible for making the decision as to whether sectors are exempt, although it will be advised by the Gambling Commission.

The publication of the Directive begins a two-year process

during which member states will consider how to legislate for the requirements in domestic law. This is likely to result in further money laundering regulations being published in the autumn of 2016, with the aim of coming into force in the summer of 2017.

The fourth Directive will have a significant impact on businesses within the sectors to which it is applied by HM Treasury. Much gambling is based upon anonymous cash-based play and for those sectors affected by the fourth Directive, the anonymity, to an extent, is likely to end. Although we wait to see which sectors are exempt, and the detail of the regulations, for those sectors affected we are likely to see approaches to anti-money laundering similar to those which you would currently only expect within casinos.

Guidance to licensing authorities fifth edition

The final published version of the fifth edition Guidance is not significantly changed from the document put out to consultation by the Gambling Commission. One immediatley obvious change from the proposed version is the absence of the appendix of sample conditions from the final published version; instead the Gambling Commission will publish sample conditions on their website , a move which will be generally welcomed by the industry.

The significant changes, for instance the guidance on local area profiles, local risk assessments and on understanding local risk were necessary anmd followed the requirement for local risk assessments in the *Licence Conditions and Codes of Practice*. There have been some changes to the language used by the Gambling Commission, with references to "concerns" and "perceived risks" changed to refer to local risks to the licensing objectives. Further analysis will follow in the next issue of the *Journal.*

Nick Arron
Lead Partner, Betting & Gaming, Popplestone Allen

Is it safe to allow vaping inside entertainment premises?

Vaping has become very popular as a supposedly safe alternative to smoking but many venue operators are wary of permitting it on their premises, as **Julia Sawyer** explains

The practice of smoking electronic-cigarettes (e-cigarettes), or "vaping" as it is known, uses a propylene glycol or vegetable glycerin-based liquid, mixed with small amounts of nicotine and food grade flavouring. This is vaporised in a small battery powered atomiser, and is inhaled and exhaled much like cigarette smoke, hence the term vaping as opposed to smoking.

The vaporiser is made up of various components, namely:

- Battery: this is the power source and is charged through a USB.
- Tube: main console of the vaporiser.
- Cartridge: houses the e-liquid; also known as e-juice.
- Atomiser: responsible for heating up the e-liquid and creating vapor that the user inhales and exhales.
- Clearomiser: the cartridge and atomiser rolled into one, the cartridge being transparent.
- E-liquid: also known as e-juice, this is a water-based liquid infused with nicotine. It can come plain or in a variety of flavours. The e-juice comprises vegetable glycerine or propylene glycol, nicotine or flavouring.

As you puff, the battery at the far end of the device powers a tiny electronic heating element, the atomiser, contained in the clear, refillable cartridge (the clearomiser) attached to the mouthpiece. The e-liquid in the clearomiser, drawn on to the heating element by fibre wicks, disappears in a cloud of scented vapour, some of which is inhaled and the rest of which evaporates.

The e-liquid comes packed in different nicotine strengths categorised in milligrams: ultra-light (6mg), medium (12mg), regular (18mg), and strong (24mg). Individual users decide how much nicotine they want. There is even a 0mg version, which contains no nicotine and is for those who want to vape without the nicotine hit. Stronger nicotine will result in a stronger throat sensation, commonly known in the vaping world as a "throat hit" or "kick".

E-cigarettes are priced according to their size and voltage, ranging from £25 to £90 for the starter kit, which includes bottles of e-juice, the liquid mixture of nicotine, flavourings and dilutants that the devices vapourise. A single disposable e-cigarette costs about £7. There are also second-generation e-cigarettes, a step on from the disposable "cig-a-likes" – so called because they closely resemble a tobacco cigarette – which contain the "puff equivalent" of around 30 cigarettes and can be bought over the counter in corner shops and chemists.

Vaping has not been proven to be 100% safe by the many studies carried out, such as the Clearstream Air study by Utah Vapors with FlavorArt from Milan and Indoor Air Quality Studies (IVAQS) by the National Vapers Club. Additionally, a Dr Farsalinos has studied the effects of e-liquid and vaping on his website ecigarette-research.com.

Legislation

Section 2(2)(e) of the Health and Safety at Work Etc. Act 1974 places a duty on employers to provide a working environment for employees that is: "…safe, without risks to health, and adequate as regards facilities and arrangements for their welfare at work."

Smoking has been prohibited by law in virtually all enclosed and substantially enclosed work and public places throughout the United Kingdom since July 2007. Smoke-free legislation in England forms part of the Health Act 2006. Implementation followed the introduction of a similar law in Scotland in 2006 and Regulations in Wales and Northern Ireland (April 2007).

The Smoke-free (Premises and Enforcement) Regulations 2006 clearly define what enclosed and substantially enclosed means in terms of effectively classifying or identifying an area as smoke free.

The Smoke-free (Exemptions and Vehicles) Regulations 2007 explain which premises and vehicles do not legally have to be smoke free.

The Smoke-free (Penalties and Discounted Amounts)

Regulations 2007 explain the fines and penalties individuals, owners, businesses and employers face for non-compliance with the smoke-free law.

The Smoke-free (Vehicle Operators and Penalty Notices) Regulations 2007 explain the responsibilities regarding the smoke-free law for vehicle operators.

Smoking is defined in the Health Act 2006 as follows:

a. "smoking" refers to smoking tobacco or anything which contains tobacco, or smoking any other substance, and
b. smoking includes being in possession of lit tobacco or of anything lit which contains tobacco, or being in possession of any other lit substance in a form in which it could be smoked.

The use of e-cigarettes does not fall under this definition so it is legal to vape in public places. However, a property manager or owner retains the right to use their property as they see fit. They have the right to decide whether vaping is permitted on their premises or not.

Smoking / vaping in entertainment premises

Under the Health Act 2006 smoking is not permitted in premises that are enclosed or substantially enclosed. However, performers in premises defined as being smoke-free are included as an exemption where the artistic integrity of a performance makes it appropriate for a person who is taking part in that performance to smoke.

Performance is defined as from the time of dress rehearsal onwards, unless there are identified health and safety risks, in which case smoking can be completed during technical rehearsals under strict conditions. No smoking takes place in rehearsal rooms.

The director / designer will be asked for a statement regarding the use of smoking in the performance. A smoking plot should be provided for the production, detailing what smoking will be taking place and when. This should be available to any enforcing body on request. No smoking by performers is allowed in public areas in the auditorium, ie, aisles, voms (pathways) etc.

A risk assessment should be completed for any smoking and flame used within a performance and the fire risk assessment reviewed to take this in to account.

Actors should not be made to smoke against their wishes. Herbal / e-cigarettes should be used where possible. Any concerns from members of the public should be reviewed in light of positioning to the audience.

Vaping can be permitted in premises that hold a premises licence if the manager or owner allows it. However, a common approach taken by the owner/manager of public entertainment premises is either not to allow them or at least to discourage their use as it may look as though someone is breaking the law by smoking a normal cigarette.

Fire brigades across the country have had to put out fires from exploding e-cigarettes, which were caused by using incorrect chargers. The London Fire Brigade advises that chargers should not be left on overnight. It has no official stance on the use of e-cigarettes, but it generally discourages their use in public entertainment venues.

Does vaping affect our health?

As already mentioned, there is conflicting medical advice on whether vaping is harmful to health. Some evidence claims that the concentrations of toxins emitted from the vaping are too low to pose a significant health risk to bystanders under any but the most extreme conditions.[1] The worry for most premises trying to decide whether to permit or not is that this is not yet conclusive evidence. Until e-cigarettes have been used for some time, no such evidence is likely to be forthcoming.

However, it is widely acknowledged that e-cigarettes are much safer for the user than cigarettes, with as little as 1% of the risks associated with smoking, it is claimed by some. It is also acknowledged that e-cigarettes are a powerful aid to get people to stop smoking. Anti-smoking campaigners claim that e-cigarettes make smoking "normal" again. But from a public health point of view, if vaping reduces the number of cigarette smokers, that should be seen as a good thing.

The British Medical Association (BMA) and the World Health Organisation (WHO) are both worried by the lack of peer-reviewed studies on e-cigarette safety, and public health officials elsewhere have expressed concerns about the purity of the products' ingredients, the precise dose of

1 The *Daily Mail* has claimed that official advice proclaiming e-cigarettes to be "95 per cent safe" is based on research by industry-funded scientists. It wrote on 28 August 2015:

Public Health England asked for electronic 'nicotine sticks' to be prescribed on the NHS as part of a "game-changing" review of medical evidence. The agency claimed that using e-cigarettes, or "vaping", is 95 per cent safer than smoking tobacco. Now it has emerged that its assertion relied on a 2014 study conducted by scientists in the pay of the e-cigarette industry. Experts have warned that the conflict of interest raises serious questions about the report's conclusions. Research by the respected Lancet medical journal reveals that the paper relies heavily on evidence produced by industry-funded scientists.

nicotine delivered by different devices and liquids, inaccurate product labeling and an overall lack of quality control in the manufacturing process.

The WHO seems to favour regulating e-cigarettes in exactly the same way as tobacco, with strict advertising rules and heavy taxation. The EU looks to be somewhere in the middle, proposing both controls on ingredients and nicotine strength and marketing restrictions.

Some countries, such as Brazil, have simply banned them outright, while many local authorities, among them New York City, Chicago and Los Angeles, have outlawed their use in public places, as they have with tobacco.

Yet vaping shops are now popping up in all areas as it has become trendy; celebrities are using them, making them look "sexy" to be seen with. And commercial operations are offered lucrative deals for allowing e-cigarettes to be used in their venue.

Because of the conflicting evidence, the debate around e-cigarettes seems unlikely to be settled any time soon. It will be interesting to see if this is just a fad or will become as much the norm as smoking was in the Fifties.

Julia Sawyer
Director, JS Safety Consultancy

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Nicotine and Tobacco Research Michael Siegel

Reading, fast and slow: another look at the last 10 years

To suggest that the 2003 Licensing Act has reduced crime, alcohol consumption and binge drinking, as a recent report seems to claim, is to misinterpret the statistics says **Jon Foster**

On November 24 this year the 2003 Licensing Act will have been up and running for 10 years, and naturally this anniversary has prompted a fair degree of interest. *Drinking, Fast and Slow*, by Christopher Snowdon of the Institute of Economic Affairs, created a great deal of positive media attention for the Act. It seems to suggest that the Act has lead to a reduction in crime, alcohol consumption and binge drinking, but how well founded are these claims?

Let's imagine that a venue was called to review. At the hearing the police and other responsible authorities state that since the venue opened 10 years ago, crime in the area had gone up, along with local alcohol consumption and binge drinking. No specific evidence is put forward, just these general trends.

I think it's obvious that without any actual evidence to link the venue in question with these general trends, the review would be laughed out of committee. Yet this is more or less what *Drinking, Fast and Slow* has tried to do with the Act; take broad positive trends and pin them on the Act using very scant evidence. Things are presented in a particularly misleading and simplistic way within the summary and the accompanying press release. In the past the IEA has, quite rightly, criticised reports that conflate correlation and causation, making *Drinking, Fast and Slow* rather hypocritical.

Perhaps I'm being a little harsh though; if you take the time to read the report in more detail, it does contain some important caveats. For example, in the conclusion it states that the Act "coincided with a significant decline in per capita alcohol consumption, binge-drinking and violent crime, but it is impossible to tell whether these trends are linked to the Act in any way" (p 26). This, and other caveats and clarifications are underplayed and easy to miss, however, and it seems odd that the report is so easy to misinterpret.

Snowdon is not the first person to point out these positive downward trends, but others have also noted that many of them are international trends. This makes it even harder to pin them on a particular piece of legislation, and no one quite knows they have happened with any certainty. The report does make one important point - the fact that the initial predictions of disaster have not happened - thus raising interesting questions about the relationship between licensing, availability, consumption and harm, and pointing to the fact that in addition to legislation there are other important influences on consumer behaviour.

The fact that the IEA's report is rather misleading may disappoint many in the licenced trade, for whom it has been a source of good publicity; indeed this is probably what it was intended for. All things considered, I would agree that the Act has been a qualified success, but the impression that Snowdon more or less gives that the Act has had positive impacts on crime, alcohol consumption and binge drinking does not stack up. Seen more objectively, the Act has only been a "failure" as a result of the culture change idea being so overplayed, with the real debate about its merits involving issues such as the Act's day to day use and its effectiveness as a tool for the various parties involved.

So, when you read past the simplistic bullet points in the press release and the introduction, what do those caveats actually say about all these positive trends?

Talking about the overall decrease in consumption the report states that: "In recent years, factors include the recession, the alcohol duty escalator and – in pubs and clubs – the smoking ban, but the start of the decline (in consumption) preceded them all" (p13). This is true, and overall alcohol consumption has been declining since the year before the Act came in. So while the Act has more or less coincided with this decline, it is not credible to claim that the Act has caused it, and to be fair to Snowdon, when you pay attention to the details this is not actually what he says.

When it comes to binge drinking, the report simply states that rates have been falling, but gives no explanation other than the fact that young people seem more likely to abstain from drinking. Quite sensibly it does not actually claim that the Act has lead to this. The Office of National Statistics, which collects these figures, states that: "It is difficult to attribute the fall in binge drinking among young people to

any particular factor"[1], and the Act is not one of the factors that it discusses.

When you get to the details around crime and disorder, Snowdon does not actually claim that the Act has lead to a reduction, but rather that the fall in crime since the Act "should be seen in the context of a steep decline in most types of crime since the peak of the mid-1990s… violent crime – as recorded by surveys – was falling before the Licensing Act was introduced and has continued to decline at about the same rate" (p 17).

Snowdon goes on to mention the fact that the Act has shifted alcohol-related crime and disorder back into the early hours, stating that "This seems to be the only consistent trend that can be attributed to the Act" (p20). This is an important clarification to the whole report, and one that needs to be highlighted. It is also rather ironic that the only trend that can be confidently linked to the Act is in fact a negative one, and it has caused significant logistical problems for the police, although the IEA report does not mention this.

While there are a number of other points that could be challenged, there is not space to do so here. None of them however changes the fact that: "It is impossible to tell whether these trends are linked to the Act in any way" (p 26). Snowdon does go on to state that "a cautious interpretation of the data suggests that the Act may have improved public health and public order somewhat" but none of the evidence provided supports this, and overall he seems stuck between wanting to unequivocally advocate for the Act, while lacking the evidence to do this properly.

It is also worth noting which issues are missing from *Drinking, Fast and Slow,* such as the logistical problems faced by the police, the fact that many local authorities feel disempowered by the Act, and that the Act had to be "rebalanced" but despite this most Home Office initiatives have either failed completely or only partially worked.

In some ways *Drinking, Fast and Slow* is a difficult report to get to the bottom of, and a quick glance through it will probably leave you with a rather different impression to a detailed read. The fact that so much of the attention it has generated is misleading suggests that a lot of people would benefit from taking a second, closer look.

Jon Foster
Senior Research and Policy Advisor, Institute of Alcohol Studies

1 Office of National Statistics (2015) ONS Adult Drinking Habits in Great Britain 2013

Motorway pubs – should they really be there? I have my doubts

It would be helpful for local authorities if a binding judgment could be made on operators selling alcohol on motorway service stations, writes **Dave Etheridge**

The combination of alcohol and driving always raises concerns. It was therefore no great surprise when road safety and health related organisations strongly opposed JD Wetherspoon opening the country's first pub, The Hope and Champion, at a motorway service area near Beaconsfield, just off the M40 in 2014.

This article is not, however, about the moral or safety arguments of allowing alcohol to be sold at motorway service areas (MSAs), but instead looks at the legal arguments about whether it is even lawful to sell alcohol at a MSA in the first place.

The Guidance issued by the Secretary of State under s 182 of the Licensing Act 2003 appears to be fairly straightforward on this point at paragraph 5.21:

> *Section 176 of the 2003 Act prohibits the sale or supply of alcohol at motorway service areas (MSAs).*

So how is that JD Wetherspoon, a retailer with an excellent (and in my opinion deserved) reputation for compliance with licensing rules, appears to be so flagrantly acting in breach of the law?

The answer, of course, is that it is not and that the s 182 Guidance clearly oversimplifies what is in fact a far more complicated provision contained in s 176 of the Act.

Section 176 (1) states:

> *No premises licence, club premises certificate or temporary event notice has effect to authorise the sale by retail or supply of alcohol on or from excluded premises.*

Section 176 (2) defines excluded premises as:

> *a) premises situated on land acquired or appropriated by a special road authority, and for the time being used, for the provision of facilities to be used in connection with the use of a special road provided for the use of traffic of class I* (with or *without other classes); or*
>
> *b) premises used primarily as a garage or which form part of premises which are primarily so used.*

Sub-paragraph (b) is not relevant to this particular discussion; it is sub-paragraph (a) that we must try to get to grips with and understand.

Section 176 (4) goes on to state:

> *For the purposes of this section—*
>
> *a) "special road" and "special road authority" have the same meaning as in the Highways Act 1980 (c. 66), except that "special road" includes a trunk road to which (by virtue of paragraph 3 of Schedule 23 to that Act) the provisions of that Act apply as if the road were a special road,*
>
> *b) "class I" means class I in Schedule 4 to the Highways Act 1980 as varied from time to time by an order under section 17 of that Act, but if that Schedule is amended by such an order so as to add to it a further class of traffic, the order may adapt the reference in subsection (2)(a) to traffic of class I so as to take account of the additional class,*

What seems to be important is the land on which the relevant premises are located. If that land was acquired or appropriated by a special road authority (a highway authority) and is being used in connection with a special road (a motorway), then it is an excluded premises.

If, however, the land that the premises is on was never acquired by a special road authority and was in fact acquired and developed privately, as is the case with those MSAs built in recent decades, then the premises do not fall within the definition of excluded premises, so an applicant could seek a premises licence to sell alcohol from there.

So what about MSAs that are on land that was originally acquired by a special road authority, but is now in private ownership? Do they remain excluded? The answer is not clear to me. The legislation does not appear to require the land to be still in the ownership of a special road authority in order to meet the definition of excluded premises.

This particular point has been in dispute in the areas of no fewer than three district councils that I work for in relation to applications to sell alcohol at MSAs on the M5. In all three cases, all of the land on which the relevant premises are

situated was originally acquired by a special road authority in the 1960s, but all the MSAs concerned are now privately owned and operated.

We have made representations on these applications on behalf of the licensing authority citing concerns that granting a licence would encourage unlawful alcohol sales as a result of s 176. Unfortunately, none of these applications has made it before a licensing sub-committee as the applicants have always withdrawn their applications. Therefore the question has never been resolved.

What is clear is that a number of operators have secured licences to sell alcohol at MSAs up and down our motorway network, both at sites that were originally acquired by a special road authority and also, like the Hope and Champion, on land that was not.

Is it the prospect of having a binding judgment that makes clear some of those licences granted to sell alcohol at MSAs have no effect to authorise the sale of alcohol which explains why the applications in my area have always been withdrawn? I cannot be sure, but I have my suspicions.

Dave Etheridge
Senior Licensing Practitioner
Worcestershire Regulatory Services

Acupuncture, Tattoo and Cosmetic Skin Piercing 2 March 2016

This one day training course will cover in detail the legislation, licensing process and current Government advice on acupuncture, tattooing and cosmetic skin piercing.

The aim of the training is to increase delegates knowledge and practical understanding surrounding the subject of Acupuncture, Tattoo and Cosmetic Skin Piercing licensing.

The course is aimed at those officers who process and administer applications for these processes and those who carry out inspections at premises providing these services.

The training is being held in Chorley and the trainer will be Julia Bradburn.

The Institute of Licensing accredits this course at 4.5 hours CPD.

Training Fees
£145 + VAT for IoL Members
£195 + VAT for non-members

How to Inspect Licensed Premises 4 March 2016

This one day training course in Birmingham will focus on licensed premises inspections and will be delivered by Jim Hunter. The aim of the training is to increase delegates knowledge and practical understanding of the aspects surronding licensing inspections.

It is hoped there will also be input from the Gambling Commission on gaming machines and illegal gambling/poker in licensed premises., this will be confirmed at a later date.

The course is aimed at Police and Council officers who inspect licensed premises.

The course is a mixture of theory and practical elements of inspecting licensed premises. The day will be theory based in the morning with mock inspections in the afternoon.

The Institute of Licensing accredits this course at 5 hours CPD.

Training Fees
£125.00 + VAT for Members
£155.00 + VAT for Non-members

Institute of Licensing News

Website launch

We are delighted to announce the launch of the IoL's new website! Over the last year we have been working with CPL Online to develop a much more interactive and user-friendly website experience for the benefit of members.

This is a massive step forward for the IoL, and should provide a significantly advanced service for members and other users. Members will be able to view and edit their personal profiles, download invoices, receipts and certificates in relation to membership and events, view event bookings and much, much more.

There will be a member discussion facility and a vastly improved library facility which will be easily searchable and navigable, while retaining its value as an excellent information resource. At the same time, the look and feel of the IoL is updated, with a new logo and corporate branding throughout the website, e-newsletters, publications etc. Membership renewal and event bookings should be much more efficient and user-friendly.

The new website will be fully functional for members to use in early January 2016. We would encourage everyone to take the time to use and get to know the site. The team will be on hand to offer support and we intend to provide online tutorials if needed. We will value your feedback, and will continue to work alongside CPL Online to continue to develop and improve the site going forward.

Safeguarding through Licensing

In September, we held a series of training events looking at "Safeguarding through Licensing" in Manchester, Bristol and London.

These courses looked at the issues of sex exploitation following the well-publicised reports from Rotherham, Oxfordshire etc. Exploitation of children and vulnerable persons is a responsibility shared by everyone, and licensing is one area which can make a real difference. As Jim Button said during the training, taxi drivers for example, are in a unique position of trust and control – it is difficult to think of another situation where a person (vulnerable or otherwise) is so completely in the hands of a person they don't know. Equally there are issues around licensed premises including pubs, clubs and late night refreshment premises where people are vulnerable often due to alcohol consumption.

We heard from the Information Commissioners Officer at the Manchester event, that Data Protection is *not* a barrier to information sharing – the issue is that all too often it is perceived to be.

There were some excellent examples of partnership working such as the Phoenix Project in Manchester which brings together a range of partners to make a difference and to raise awareness within businesses, families and vulnerable children about sex exploitation, how to spot the signs and how to deal with it. Calderdale (Manchester) and Slough (London and Bristol) talked us through their local initiatives which includes partnership working between the police and local taxi drivers who are in a prime position to spot the signs and inform the police in order to enable positive intervention.

The events highlighted that there are examples of excellent partnership initiatives across the country which are working hard to engage with all to raise awareness, and to identify issues around safeguarding in order to intervene. Licensed premises, taxis etc., can be (and often are) a hub for exploitation activities but crucially can and should be major players in the identification of issues and interventions.

It is a difficult nettle to grasp, particularly because of the nature whereby victims are groomed by the perpetrators, and are essentially unaware that they are being exploited. It is happening across the country, and, it is not a new phenomenon. But it is our responsibility to do everything possible to identify and disrupt activities and licensing can make a difference.

The principles of protecting the public, particularly children and vulnerable people, are the core of licensing and we are planning similar training opportunities for next year, as well as exploring other ways in which the IoL can make a difference.

Join the Nightwatch – empowering the Night Time Economy to tackle child sexual exploitation.

Barnardo's are offering FREE training and guidance to the Night Time Economy on how best to protect children & young people from sexual exploitation after dark.

Front line staff within the NTE can play a key role in helping protect vulnerable young people, they may

see or suspect cases of child sexual exploitation but not know what to do with that concern. Each training session delivered is tailored towards the audience and is therefore guaranteed to be relevant and practical guidance that can be put into place in your specific line of business.

Email any enquiries to nightwatch@barnardos.org.uk and quote 'IoL' or call 01293 610689 and ask for Katie Bunting, Programme Manager.

IoL guidance on premises licence conditions

This consultation has benefited enormously from the constructive views expressed from a wide range of stakeholders including trade bodies, local authorities, police forces, licensing lawyers and individual professionals. We received well over 100 responses to the consultation and at the time of writing, the project team is carefully assessing all of the comments and suggestions made. It is clear that there is strong support in some areas for this guidance on the one hand, but also strong concerns from others that it may be used or seen as a set of standard conditions.

The primary purpose of this project is to move away from blanket or inappropriate conditions and to provide strong guidance to regulatory and industry practitioners about the proper use of conditions. The consultation provided the opportunity to comment on both the principles and the detail of our draft suggestions, and we are very grateful to all respondents that have given us constructive feedback. We are confident that as a result of our open dialogue and debate with all stakeholders that we will get a good outcome that will command broad support.

IoL's 20th anniversary

Exciting times for the IoL as we approach our 20th anniversary next year. We will be celebrating this milestone throughout the year, and plans include the introduction of a National Licensing Week in June (more on this below), to coincide with the Summer National Training Day on 22 June 2016, a special anniversary edition of the *Journal of Licensing*, and of course a celebratory 20th National Training Conference in November (16 -18 November 2016).

Both the National Training Day and National Training Conference events will take place at the Holiday Inn, Stratford upon Avon, the market town famous as the birthplace of William Shakespeare. With more than 800 years of history, Stratford is home to many historic buildings that would have been familiar to Shakespeare, as well as a thriving community offering a wide variety of leisure, accommodation and shopping experiences. The Holiday Inn is situated on the banks of the River Avon, close to the town centre, with excellent conference and accommodation facilities and plenty of on-site parking. Stratford train station is one mile from the hotel and Birmingham Airport is 20 miles away.

National Licensing Week

National Licensing Week will take place from 20-24 June 2016. The aim of the National Licensing Week is to promote awareness of the role of licensing in everyday lives to a national audience. It is intended that numerous events will take place during the week as well as a proactive awareness campaign nationally and regionally. Further information will be forthcoming as plans are finalised.

Team news

IoL Training and Qualifications Manager Jenna Parker is now on maternity leave, and our congratulations and very best wishes to her and her husband Matt on their first baby due on 9 November.

We welcomed our new Training Officer, Clare McMillan, to the team in September. Clare will be working with the rest of the team, and particularly Natasha Mounce, to continue Jenna's work in ensuring the continuation of our busy calendar of events throughout the year. Clare will also be tasked with working specifically on IoL qualifications to lead on the development of this important area of work. Clare has over 10 years' experience in local government licensing, with five of those years spent working in Environmental Health at Manchester City Council, where enforcing the Licensing Act 2003 formed a large part of her role. For the last four and a half year, Clare has been the licensing officer at Purbeck District Council, where she was responsible for managing the council's licensing function.

We also welcome Jade Craig to the team. Jade has been contracted by the IoL to assist the team in relation to membership recruitment, sponsorship and event planning. Having been in the industry for over 20 years, Jade's experience and contact list is second to none, from working with the ALMR (Association of Multiple Licensed Retailers) as a commercial business manager, to operations director for 12 late night London venues, to operations manager for 22 South Coast high street sites with sales of over £22 million, and a net profit of £3 million.

Regional news

The regional committees continue to work hard to bring regular training days throughout the year. We would encourage members to get involved with their local region. Full contact details for each regional committee can be found

on the website, along with the dates for the regional training days.

IoL training and events

The National Training Conference for 2015 takes place at the Holiday Inn Birmingham City Centre from 18-20 November this year. The event proved to be a sell out once again, making it the fourth year running that residential places sold out in September. With a packed programme of training over the three days, it promises to be as vital an event as ever. Afterwards, please let us know your thoughts about it as we use feedback from delegates to assist planning next year's event.

As always we continue to plan a varied and full programme of training across the county, and are always keen to hear from IoL members about courses which would be of interest. Suggestions should be emailed to training@instituteoflicensing.org

Would you like to be a licensing trainer for the IoL?

The IoL holds a database of experienced trainers within the licensing field. If you are a solicitor, an experienced local authority officer or an independent training provider and would like to become one of our trainers, we would love to hear from you.

We will want to know the subject areas you are competent in, your training history and your daily training fee, and will ask you to provide references. We are interested in trainers for the following subjects (not exhaustive):

Basic licensing principles
Shared services
PACE / RIPA Gambling Act 2005
Licensing Act 2003
Gambling Act 2005
Councillor training
Taxis
Caravan site licensing
Animal licensing / welfare
Special treatment licensing
Sex shops / sex entertainment venues
Street Trading

If we select you to become an IoL trainer, you can then tender for our training events. (Please note the IoL does not provide training sessions for Personal Licence Qualification.)

If you would like to be included on our database and considered for providing training for the IoL please contact training@instituteoflicensing.org

Tell us about it and get involved

One of the Institute's key objectives is to increase knowledge and awareness among practitioners. This includes up to date, relevant news and information on licensing and related matters including good practice initiatives, government proposals, statutory and non-statutory guidance, court cases etc.

If you have been involved in a case or new initiative or simply have a story to share, email us at news@instituteoflicensing.org

The IoL is always grateful for contributions from members, and there are a number of ways in which members can get more involved:

Regionally – through volunteering to serve on the region or assist the regional committee in relation to events, communications etc.

News and information – in particular we are always keen to hear about news in licensing so that we can report on happenings, initiatives, case outcomes etc. Please keep us informed by emailing news@instituteoflicensing.org and making sure you have us on your press release distribution lists!

Journal of Licenisng – if you would like to submit an article or need some advice on how to contribute to the Journal - email journal@instituteoflicensing.org

Training ideas – let us know what training you want and think others would like to see - email training@instituteoflicensing.org

Committees and Consultation Panels – if you are interested in working with our committees or sitting on a consultation panel please email sue@instituteoflicensing.org

Any other suggestions – if you have an idea on how we can improve services for IoL members or simply to enhance the role of the IoL and in doing so increase potential membership email membership@instituteoflicensing.org

Benefits of Membership
2016/17 Membership Subscriptions

The Board of Trustees for the IoL wish to give early notice to members of the decision to increase 2016/17 membership subscriptions (payable 1 April 2016).

The Board have considered the position on membership subscriptions, and while conscious of the need to ensure that membership fees are affordable and reasonable, there are a number of investment projects and changes ahead which are intended to continue to improve the benefits and services to members, including the new website. In addition, the Board consider that it is appropriate to increase the number of Journals provided to Organisation members.

With this in mind, the Board have agreed to increase membership subscriptions for 2016/17 (payable in April 2016). The new fees are shown below with the current 2015/16 fees shown in brackets:

Associate - £65.00 (£60.00)
Individual / Fellow / Companion - £75.00 (£70.00)
Standard Organisation (up to 6 named contacts) - £275.00 (£250.00)
Medium Organisations (7 - 12 named contacts) - £400.00 (£360.00)
Large Organisation (13 + named contacts) - £550.00 (£500.00)

We are pleased to note that personal memberships (Associate, Individual, Fellow etc.) have remained unchanged since 2009/10 and organisations subscriptions were last increased in 2012/13.

The number of copies of the journal provided to organisation members will increase (from March 2016) as shown below (current number in brackets):

Standard Organisation - 3 (1)
Medium Organisations - 4 (2)
Large Organisation - 6 (3)

The IoL are continuing to provide even better service and value to our members. A small selection of membership benefits are shown below, for full details visit our member benefits pages of our website **www.instituteoflicensing.org**

Discounts for Members - We have teamed up with various organisations that are offering a discount for products and services to IoL individual or organisational members. The companies that are offering the discount are all very highly valued for the services/products that they provide but now if you are an IoL member they are even better value.

Journal of Licensing - This publication, the Journal of Licensing is published three times a year, and is free of charge to IoL members. Additional copies can also be ordered, at a small cost. See inside front cover for more details.

Licensing Flashes - We know that licensing is always changing and we know members need to be kept up to date with the changes and latest court decisions. Members will receive an electronic news update, a "Licensing Flash", whenever there is a news story that will be of interest to our members.

Ask a Question - Do you ever get asked a question and don't know the answer or can't remember? Members can post questions and all members get the opportunity to reply. Again, this is a free service for members.

Membership - For more information on membership and how to apply online visit our membership section of our website www.instituteoflicensing.org or contact us at **membership@instituteoflicensing.org.**

Devolving taxi and private hire vehicle licensing powers to Wales

The UK Government has decided that regulation of taxis and private hire vehicles can be devolved to Wales but there seems little imminent prospect of legislation to enact the transfer, as **Matt Lewin** explains

When the Law Commission published its consultation paper *Reforming the law of taxi and private hire services* (Consultation Paper No 203), the Commission stated – boldly, as it later transpired – that powers to regulate taxis and private hire vehicles were devolved to the National Assembly for Wales, by reason of paragraph 10 of Schedule 7 to the Government of Wales Act 2006 (para 1.60). Consequently, its provisional proposal to introduce national safety standards envisaged the possibility that, because the Welsh Ministers would be responsible for determining those standards, there may be undesirable differences in regulation as between England and Wales (para 14.8). The consultation paper was published in May 2012.

By the time the Commission published its final report, *Taxi and Private Hire Services* (Law Com No 347), in May 2014, the Commission's position had changed. The Welsh Ministers had expressed their view, which was that the law was not sufficiently clear that regulation of taxis and private hire vehicles was a devolved subject. Consequently, the Commission proceeded on the assumption that regulation had *not* been devolved (para 1.15).

This strange state of affairs derives from what Lord Hope described as the "cautious" approach to devolution of legislative competence to the Assembly and executive powers to the Welsh Ministers, compared to the reserved powers model which operates in Scotland (*Attorney General v National Assembly for Wales Commission* [2012] UKSC 53). The UK Government has since accepted the recommendation of the Silk Commission that a reserved powers model be applied to Wales as well.

As a result, Lord Hope observed, "[n]ot surprisingly, the question where the balance has been struck between the functions of the Welsh Ministers on the one hand and the Ministers of the Crown on the other is a sensitive one."

In broad terms, s 108 of the Government of Wales Act 2006 confers legislative competence on the Assembly in relation to any of the "subjects" prescribed in Schedule 7 to the 2006 Act. As with the devolution enactments for the other legislatures, the 2006 Act defines the legislative competence of the Assembly while preserving the sovereignty of the UK Parliament. Lord Hope described the task of the UK Parliament in passing the 2006 Act as one of defining "necessarily in fairly general and abstract terms, permitted or prohibited areas of legislative activity." He recognised that the question whether a matter is within the Assembly's legislative competence is not a simple exercise; indeed, the issue before the Supreme Court in that case was whether the very first bill passed by the Assembly using its new primary legislative powers, which came into force in May 2011 following a referendum, was within its legislative competence.

Subject 10 in Schedule 7 to the 2006 Act refers to "Highways, including bridges and tunnels. Streetworks. Traffic management and regulation. Transport facilities and services." These fairly general and abstract areas of legislative competence are then qualified by specific exceptions, which are not devolved to the Assembly. It was the inclusion of "transport ... services" that encouraged the Law Commission in its belief that regulation of taxis and private hire vehicles was already a devolved matter.

The Silk Commission was established in 2011 with a remit to review, *inter alia*, "the powers of the National Assembly for Wales ... and to recommend modifications to the present constitutional arrangements that would enable the United Kingdom Parliament and the National Assembly for Wales to better serve the people of Wales." The Silk Commission took the view that legislative powers to regulate taxis and private hire vehicles had not been devolved (paragraph 7.2.17). In its evidence to the Silk Commission, the Welsh Ministers expressly requested that "[t]he Assembly's existing powers, set out in Schedule 7, should be extended ... in order to give the Assembly competence in relation to ... taxi regulation ..." (Box 7.1).

The Silk Commission supported this proposal, on the basis that it would introduce local control and improvements to service standards and, in tandem with devolution of bus regulation, encourage an integrated approach to public

and private transport across Wales. Accordingly, the Silk Commission's Recommendation R.12(f) was that "taxi regulation" should be devolved.

The UK Government accepted that recommendation in its command paper, *Powers for a purpose: towards a lasting devolution settlement for Wales* (February 2015) (2.5.16). The UK Government's view was that taxis and private hire vehicles can properly be viewed as local services and therefore were appropriate matters to be devolved. Additionally, enabling the Assembly to determine the regulatory framework in Wales would complement powers to set transport policies which have already been devolved.

So far, no draft Wales Bill has been published, although one is expected in the autumn of 2015. Nor has the UK Government indicated any immediate prospect of a dedicated Bill enacting the Law Commission's proposal. The Deregulation Bill included three fairly modest clauses relating to the taxi and private hire trade; in the event, only two made it to the statute book relating to licence duration and sub-contracting (sections 10 and 11 of the Deregulation Act 2015).

In its response to the Law Commission's consultation, the UK Government had already indicated support for some of the key proposals for reform, particularly national safety standards to be prescribed by the Secretary of State. The UK Government's formal response to the Law Commission's finalised proposals indicated broad support for the principle of reform and modernisation of the law but only a vague commitment to progression, along what it described as a "longer path of reform", suggesting that the passage of a "dedicated Taxi Bill" into law remains a low political priority.

Nonetheless, looking ahead and drawing these two threads together, it would appear that the situation envisaged by the Law Commission in the consultation paper – of separate English and Welsh regulatory frameworks – may well be the result of these legislative reform projects in combination. If this was to materialise, plainly there is good sense in the Law Commission's suggestion that there be a mandatory requirement for the Secretary of State and the Welsh Ministers to consult one another as part of the process of defining national safety standards and for them to have regard to the need to ensure compatibility between the respective frameworks.

Even in the absence of new primary legislation on the regulation of taxis and private hire vehicles, devolution of the regulation of the taxi and private hire vehicle trade to the Assembly creates the possibility that the Welsh regulatory model may diverge – potentially radically – from the English model. One intriguing possibility can be glimpsed in the Welsh Ministers' response to the Law Commission's consultation on its proposal to retain the "two-tier" distinction between taxis and private hire vehicles (bearing in mind the UK Government's clear indication of support for retention):

> *The distinction between taxis and PHVs is meaningless to consumers. ... A single-tier system would be preferable. The existence of a two-tier system appears to be a factor more of the age of the extant legislation than any particular merits that system may have.*

Matt Lewin
Barrister, Cornerstone Barristers

It was twenty years ago…

With the 20th anniversary approaching, **James Button** looks back at the changes to taxi law and practice that have occurred since the creation of the Local Government Licensing Forum and speculates on possible changes in the next two decades

In 1996 we had experienced four years of access to police records, but we were still a number of years ahead of the creation of the Criminal Records Bureau. Local authorities were grappling with previous convictions policy as based on Annex D to the 1992 Home Office circular (and a frightening number still use those guidelines). The CRB has now, of course, morphed into the Disclosure and Barring Service, and this service continues to alter and develop.

Disability delays

We were also widely anticipating the introduction of the hackney carriage provisions within the Disability Discrimination Act 1995, and although the requirements for assistance dogs to be carried came into effect in 2000, it is depressing to realise that no further developments to assist disabled people in hackney carriages or private hire vehicles have taken place.

In April 1996 the unitary authorities in Wales and in certain parts of England were created which led to decisions being made about hackney carriage zones and whether they should be retained. Many new authorities de-zoned immediately or within the next few years, but some still retain their pre-reorganisation hackney carriage areas.

In 1997 *Benson v Boyce* confirmed that outside London a private hire vehicle could only ever be driven by a licensed private hire driver. Recent proposals in the Deregulation Bill to alter that position failed to achieve fruition.

The introduction of the Human Rights Act in 2000 did not have the widespread impact that some people feared although it remains a source of potential challenge to local authority decision-making in certain circumstances.

Quantity restrictions dropped

In 2003 the Office of Fair Trading published its report *The Regulation of Licensed Taxi and PHV Services in the UK,* which urged the removal of quantity restrictions on hackney carriage numbers and led to an increase in the number of authorities that allowed free access to the hackney carriage market. Interestingly, around 25% of local authorities still limit numbers, although it was approximately 45% in 2003.

Between 2000 and 2004, there was significant change in the taxi scene in London as the licensing of private hire operators, vehicles and drivers came into effect. It had always been a source of amazement that there was no regulation in the capital, even though such powers existed in the rest of England and Wales since 1976, and this was a welcome (if late) change.

In 2006 the Department of Transport issued the first edition of its *Taxi and Private Hire Vehicle Licensing: Best Practice Guidance*, which was subsequently revised in 2010. This was a marked departure from the previous approach of issuing circulars, and although it is not "statutory Guidance" as such, it has had a significant impact on local authority thinking.

Archaic legislative terminology

During the last 20 years the Senior Courts have been busy trying to make sense of archaic (and in some cases arcane) legislation, but there are still no clear and precise definitions of vital concepts such as standing and plying for hire. As a consequence there is still much confusion as to the exact difference between a hackney carriage and private hire vehicle.

In many ways the most significant change of the last two decades has been the rise of technology. The internet was in its infancy in 1996, and email was seen as a luxury. Mobile phones were just becoming widely available (although they were still fearfully expensive) and text had yet to appear. All these things are now taken for granted and are used extensively. This has led to the rise of taxi booking online and, of course, apps on mobile phones such as Uber.

In May 2014 the Law Commission published its long-awaited report into taxi legislation, *Taxi and Private Hire Services,* which proposed some minimal changes while retaining the two-tier hackney carriage/private hire structure.

At the time of writing, the latest developments contained within the Deregulation Act 2015 have yet to come into force, but by the time you are reading this the first impact will be being felt.

2016-36 – what next?

So what will the next 20 years bring?

There is the possibility of new taxi legislation based upon the Law Commission report, but that will not bring fundamental change if it is implemented in its original form, as the distinction between taxis (as hackney carriages will be known) and private hire vehicles will remain. With the increasing advances in technology, the danger is that the distinction between the two types of vehicle will become so blurred as to be almost meaningless. However, significant resources will still be required to try to police it, thereby protecting the two different trades.

The introduction of cross-border local authority subcontracting in October 2015 will undoubtedly lead to ever-increasing numbers of very large private hire operators, with the possibility of regional or even national operators being quite likely.

Electric vehicles will be commonplace and the internal combustion engine will probably be seen as a quaint anachronism, with such vehicles being used for special and historic occasions only.

It is hoped that some if not all of the measures contained within the Equality Act 2010 relating to Hackney carriages and private hire vehicles will have been brought into force and there will be significant and suitable provision for disabled people to have ready access to these vehicles.

It remains to be seen what the future holds for taxi driver qualifications and requirements. The impact of Rochdale, Rotherham and Oxfordshire will no doubt continue to be felt and it is hoped that there would have been a widespread acceptance that standards for taxi drivers in some areas must rise from their current level.

What seems certain is that there will still be a need for vehicles and drivers to provide convenient and safe transportation to all sections of the population, whether that is for business trips, essential personal journeys such as shopping and hospital appointments or leisure use to enable people to travel to and from entertainment activities without the need for using their own vehicles.

It is therefore imperative that taxi law and practice develops as society's needs alter and technological advances bring unimaginable changes to every aspect of our lives.

In 1847 the Victorians had the foresight to draft legislation that still addresses most issues almost 170 years later, and likewise in 1976 the Elizabethan legislation was well considered. It is to be hoped that any reform of taxi law is equally robust and will enable all those affected by it (licensees, regulators, passengers and the general public) to benefit from the services offered by various types of vehicles available for hire with the services of a driver.

James Button
Principal, James Button & Co

The Night Tube - a boon for business and tourists, but a headache for residents?

Many extra people will be drawn into the West End late at night by the Night Tube. This will be good for business, late night workers and tourists, no doubt, writes **Richard Brown**, but it raises a potential challenge for local authorities, police and residents of these areas

It has been a familiar bugbear for some Londoners, visitors and tourists that the London Underground tube service shuts down around midnight, leaving late night revellers, tourists and workers at the mercy of night buses or, for those with slightly heavier wallets, taxis. In November 2013, however, Transport for London (TfL) announced that it would introduce a 'Night Tube' service, joining the likes of New York, Chicago, Stockholm, Copenhagen and Berlin in having some form of night time service.

In fact, the Night Tube will only run on Fridays and Saturdays, and only on a limited number of lines. Extending running times for the tube has happened before; TfL extended tube running times during the 2012 London Olympics, but it did not run an all-night service. The current plan is much more extensive, although by no means comprehensive, at least not yet. It will be in place on Friday and Saturday nights, from 12.30am to 6am. The lines which will be included initially are most of the Jubilee and Victoria lines, the Central line, the Northern line, and the entirety of the Piccadilly line. Trains will be significantly less frequent than during the day. However, it is forecast by TfL that average journey times will be cut by 20 minutes, it will create 2,000 jobs, provide a £360m boost to the economy, and play a vital role in opening up London's night time economy.

TfL subsequently announced on 24 September 2014 that the service would come into force on 12 September 2015, in time for the Rugby World Cup - just the sort of occasion which is a showcase for London to confirm its credentials as a world-class city.

Just as the Licensing Act 2003 sought to usher in a sea change in society's attitudes to drinking by encouraging a continental-style "café culture", so TfL's forthcoming[1] introduction of the Night Tube targets equally lofty aims. According to a Report by Volterra Partners for TfL,[2] the Night Tube will "alter the way people behave and the way that businesses operate."

Could running tube trains throughout the night have such a major social and commercial effect (on London)?[3]

'Don't wanna go down in the tube station at midnight'

Such was the refrain in Paul Weller's dystopian account of the dangers of late night travel on London Underground's tube system in the late 70s. The unfortunate narrator was set upon by a gang who "smelt of pubs" while on his way home to his wife with a curry. Society has moved on since then, yet the commonplace scenario and apprehension with which some approach night time public transport remains, although crime on public transport in general and on the tube in particular has been on a downward trajectory for years. According to TfL figures, in 2014/15 crime on the underground and Docklands Light Railway fell by 12.4%, the ninth consecutive year it has declined.

So why is this relevant to licensing? Firstly, because one of the specific reasons given for introducing the service was that it will "help grow and support London's increasingly important night time economy".[4] Secondly, because a feature of the licensing policies of both Westminster City Council and London Borough of Camden, the boroughs which contain most of the projected busiest tube stations, is that the pressure on the late night transport infrastructure is cited as a reason for their respective cumulative impact policies which together cover large swathes of the West End, the busiest entertainment hub in the country. This has in part led to a policy on hours, called "core hours" in Westminster

1 The original start date was 12 September 2015, but it has been delayed to an as yet unspecified date.

2 https://tfl.gov.uk/cdn/static/cms/documents/night-time-economy.pdf

3 Full disclosure: this piece is somewhat London-centric. In fact, it is rather central London-centric.

4 Ibid.

and "framework hours" in Camden, which happen to more or less correspond with the times of the last tubes from central London at present.

How, then, does the reasoning for this policy on hours stack up in the light of the availability of quick, efficient, affordable transport enabling revellers to seek a swift, subterranean route home, particularly when one of the anticipated impacts of the Night Tube is the "potential for longer opening hours for bars, clubs, restaurants" etc? [5]

One of the most important mechanisms for "striking a balance" among competing interests is a local authority's statement of licensing policy, and it will be interesting to see what changes, if any, are made to policies in central London as a result of the Night Tube. Quite apart from those using the service, what will be the effect on residents of the West End and other busy entertainment areas? Will they benefit from the swift dispersal of revellers, or suffer from more people being attracted into the area in the knowledge that a reliable, cost-effective route home is available?

The Night Tube has been trailed by TfL as a crucial piece in the jigsaw of consolidating London's reputation as a 24 hour, tourist-friendly city. As might be expected, the introduction of the Night Tube has been preceded by extensive modelling data and studies, in order to reach that Holy Grail of many a licensing hearing, an "evidence-based decision". The vibrant night time economy of the West End is one of the principal reasons for the introduction of the Night Tube. In June 2014, TFL published a document called *Fit for the Future*, setting out its plans for modernising public transport in London under its remit.[6] According to TfL research, "late night" tube journeys (defined as a journey beginning after 10pm) have risen by double the rate of day time journeys. Further support for the proposition that there was an unmet demand for late night transport was taken from the finding that night bus journeys have risen by 173% since 2000.

It is projected[7] that there will be 177,150 journeys on the Night Tube (defined as 12.30am to 6am on Friday and Saturday), of which 45% are journeys other than people swapping from other modes of transport to the Night Tube. If this means that up to 45% of 177,150 trips over a weekend would not have happened had the Night Tube not existed, that is a significant increase in visitors to the West End at night time. It is forecast that tube stations within th City of Westminster and London Borough of Camden will between them receive 51% of entries to the Night Tube (defined as an entry after 12.30am), which is higher than the proportion of entries to tube stations in those areas after 10pm until the current last tube, according to 2012 figures.

This strongly suggests that it is forecast that additional people will be drawn into the West End late at night. An enticing prospect for business, late night workers and tourists, no doubt, but it raises a potential challenge for local authorities, police and residents of these areas.

Impact on the West End and its residents

The impact on a wide variety of stakeholders - tourists, visitors, revellers, employees in the night time economy - has been adumbrated in TfL's studies. One of the impacts cited in the Volterra report is that licensed premises may be able to open later. TfL's *Fit for the Future* report states that the Night Tube "will benefit not only leisure-users such as clubbers and theatregoers, but also those who are employed in these and other 24 hour industries". However, one group whose welfare does not seem to have been considered in quite so much detail is the people who live in the West End, and in other areas predicted to be major hotspots for Night Tube use, and residential areas in the suburbs in the vicinity of tube stations. TfL has committed to addressing noise issues and tannoy announcements to protect residents, but this is presumably at outlying above-ground stations.

What will be the effect of the availability of affordable, quick transport public throughout the night at weekends? The Night Tube will undoubtedly enable visitors to the West End to get home more easily than before. Even those in some of the large swathes of south London without tubes will at least be able to get closer to home more easily. But it will also enable visitors to come in to the West End. This is acknowledged in the Volterra study: "It is effectively assumed that trips are only affected from midnight onwards, whereas in reality there may be a larger impact than this. As well as people staying out later in a particular area and therefore making a later return journey than they otherwise would have done, a higher number of people may travel to a particular area earlier in the evening."

Or, indeed, they could do so later in the evening. This is certainly a concern of some residents in the West End. David Kaner, Volunteer Chair and licensing representative of the Covent Garden Community Association, says: "There is a significant concern of a negative impact on the Licensing Objectives due to the likelihood of an increase in numbers in the Camden and WCC stress areas at these hours and that this will at least cancel out any perceived benefits for residents resulting from more efficient dispersal." In short,

5 https://tfl.gov.uk/cdn/static/cms/documents/night-time-economy.pdf

6 https://tfl.gov.uk/cdn/static/cms/documents/fit-for-the-future.pdf

7 https://tfl.gov.uk/cdn/static/cms/documents/night-time-economy.pdf

there could be better dispersal, but more influx.

The suggestion that any benefit to residents resulting from the Night Tube enabling swift dispersal from busy entertainment areas would be negated by more people being present in the West End later at night would seem to be supported by the data in the Volterra study. Of the top 20 tube stations for exits after 10pm in 2012, the top five places are filled by major rail termini – King's Cross, Waterloo, Victoria, London Bridge and Liverpool Street. Major hubs with serious footfall such as Leicester Square and Piccadilly trail down in 9th and 10th place respectively for exits at this time. There is no similar table for exits after 12.30am, but there are results plotted on a map showing that stations such as Leicester Square, Covent Garden, Piccadilly Circus and Oxford Circus are predicted to receive among the highest levels of station exits after 12.30am - a significant proportion of which must be people drawn in from elsewhere who are arriving and staying later than they would otherwise do. It should also be pointed out that Heathrow and North Greenwich (for the O2 Arena) tube stations are also forecast to receive significant numbers after 00.30am - which will no doubt be of great benefit to many people.

Of the predicted top 20 Night Tube stations for entries after 10pm in 2012, Leicester Square and Piccadilly Circus are 1st and 2nd in the table. Of the predicted top 20 stations for entries after 12.30am, Leicester Square and Piccadilly again rank 1st and 2nd, with almost 30,000 entries between them over the course of a weekend.

These are big numbers, but the West End is busy every weekend. If one accepts that more people will be in the West End late at night (and this is one of TfL's desired impacts) to use the many licensed facilities, will this cause an increase in public nuisance and crime and disorder? Maybe, maybe not. However, there are good reasons for at least debating whether this would be the case. Camden's licensing policy asserts that the dispersal "of evening crowds who have access to readily available modes of public transport, including London Underground services, is not comparable with the more protracted and noisy dispersal of late-night audiences. Both the age profile and behaviours of each group of visitors are different, with later-night visitors being generally younger and more heavily intoxicated." However, the theory that swift dispersal due to the Night Tube will improve matters is based upon the notion that people leaving licensed premises will rush quietly to the nearest tube station and then be on their way. This may well be the case around midnight at present, as they may be stranded if they miss the last tube. With an all-night tube, there would not be that imperative. People could linger, perhaps pick up some fast food and eat it in the street, waking up residents. And what happens if a tube line is out of action? The 8,500 people forecast to use Leicester Square tube station after 12.30am would need to seek out night buses, taxis or, dare I say it, pedicabs. Although there are plenty of tube stations located in and near busy entertainment hubs, people may well still have to pass residential accommodation to reach them.

There is considerable public support for the Night Tube, and understandably so. It will no doubt prove of great benefit to certain sections of the community, and to businesses. However, the law of unintended consequences hangs heavy over such decisions. In introducing the Night Tube, TfL has responded to a need expressed by a section of the public. It is to be hoped, however, that this is not at the expense of residents.

Richard Brown
Solicitor, Licensing Advice Project, Westminster CAB

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Kafka and sex licensing

Lap-dancing operators are discriminated against under a licensing system that is grossly unfair and needs urgent reform argues **Gary Grant**

Someone must have slandered Josef K, for one morning, without having done anything truly wrong, he was arrested. Franz Kafka, *The Trial*

Imagine, if you would, a system where your livelihood could be ripped from beneath you even though you had done nothing wrong and harmed nobody. Consider a process that can extinguish your business, and the lawful employment of all its staff, on a political whim. Where the identities of your nameless and faceless accusers are known to others but deliberately kept secret from you.

Now, what if your judges are appointed by the very person who is leading the campaign to close your business down? And, what's more, if you had no right to appeal against a subjective decision they reached?

Thank goodness we do not live in such a Kafkaesque-world. Except, in one area of licensing, we do. Because the process I have just described is that for determining applications to renew sex establishment licences. It is set out in Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982.

The fact is that lap-dancing venues provide a lawful means of entertainment to many. If they were not popular they would not exist. We may not like them or ever wish to visit personally. Some people are sincerely offended by them while others find them abhorrent and resent the perceived exploitation of female dancers who work within lap-dancing venues (although the private responses of many of these dancers is generally to identify their male customers as those being exploited rather than the other way round). But there are numerous human activities that are unpopular among a significant body of people but appreciated by many, whether it be fishing or Morris-dancing, opera or modern art, Kanye West or The Archers. The response to such activities may range from general apathy to outright loathing. However, despite our lack of sympathy, most of us will tend to tolerate these activities and adopt this attitude: "so long as it doesn't cause any real harm, and nobody forces me to partake, then live and let live".

Lap-dancing "harmless"

The actual harm caused by lap-dancing venues, in terms of public nuisance and crime and disorder, is minimal, at least relative to alcohol-led premises. A report published by the Parliamentary Committee for Culture, Media and Sport in April 2009 stated:

> *Although we recognise the concerns as to the nature of activities in lap dancing clubs, all the evidence we have received suggests that such venues are much less likely to cause crime and disorder problems than other late night venues. In oral evidence to us Chief Inspector Studd of ACPO said that he believed such establishments were low-risk from a public order perspective: "There is no evidence that they [lap dancing clubs] cause any crime and disorder. Very rarely. They tend to be fairly well run and they tend to have a fairly high staff ratio to customers. The people who tend to go there tend to be a bit older, so they do not drink so excessively and cause the crime and disorder problems outside.*

It is also right that communities, as represented by their democratically elected representatives, should have their say. But it is a dispiriting phenomenon of politics, local and national, that a well-organised, vocal and self-selecting minority in pursuit of a cause will usually drown out the silent and more tolerant majority. The great eighteenth century statesman, Edmund Burke, observed:

> *Because half-a-dozen grasshoppers under a fern make the field ring with their importunate chink, whilst thousands of great cattle, reposed beneath the shadow of the British oak, chew the cud and are silent, pray do not imagine that those who make the noise are the only inhabitants of the field….*

Generally, the answer to resolving such conflicts of interests is to appoint independent and impartial judges to do right without fear or favour. Judges, moreover, who are relieved from the subconscious or conscious pressures involved in making decisions in a highly politically charged area where the decision-maker has to answer to the electorate, informed or otherwise. Article 6(1) of the European Convention on Human Rights embodies this well-known right to a fair trial:

> *In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law…*

Article 6 adds little to the common-law rights of every individual in our land to be judged fairly and independently. The right to a fair trial has been memorably described as the "birthright" of every British citizen. It is part of the elusive concepts we call "natural justice" and the "rule of law". We celebrate it this year as part of the 800th anniversary of the signing of the totemic (but not necessarily actual) pre-cursor of human rights and due process, the Magna Carta.

Independence in question

But what if a significant local figure, say the leader of the council, is the lead campaigner to close a particular lap-dancing venue. That powerful politician will have patronage powers to which members of a licensing committee may owe their position. Despite their best and sincere efforts, can that body be genuinely "independent and impartial"? And, even if it is, will the fair-minded observer believe it is acting in such a capacity or might there be justified claims that the proceedings appear to be biased even if they are not?

What of the right to a "fair…and….public hearing"? This surely includes the right that one is told the identity of one's accuser / objector in the absence of exceptional circumstances. There may be justified and specific exceptions to the general rule of full disclosure; for example, where anonymity is required because a particular witness has a well-grounded fear of reprisals if they raise their head above the parapet. However, extraordinarily, objectors to a sex establishment licence are anonymised *by default* unless they specifically consent to have their details revealed (by virtue of paragraph 10(17) of Schedule 3 of the 1982 Act). So how does an operator properly challenge anonymous representations? How does he know whether these objectors in whole or in part are, for example, congregants of a particular church who have been encouraged to object by their pastor for moral reasons? Or perhaps they are business rivals or individuals with very real axes to grind against an operator. This crucial information may well impact on the proper weight to be placed on such objections by the tribunal of fact. However, the cloak of anonymity prevents an operator from investigating these relevant lines of enquiry. He is forced to take blind shots at hidden targets. The licensing tribunal is also handicapped as a consequence - because it is deprived of potentially relevant and potent information upon which to base its decision.

The High Court and Court of Appeal have indicated on several occasions in recent years that a renewal of an SEV licence can be refused even if matters have not changed since the last renewal (See, eg, *R (Bean Leisure) v Leeds City Council* [2014] EWHC 878.). How is an operator of a lawful business supposed to function with this level of uncertainty? Electoral winds change and the political make-up and attitudes of councillors do likewise. Those councillors' subjective opinions will then decide whether the "character of the locality" renders a renewal of a lap-dancing venue inappropriate, regardless if there has been any change in that locality. Generally, any perceived political bias in licensing proceedings can be cured by the availability of a statutory appeal to the Magistrates' Court on all matters of fact and law. But, unusually, no such appeal lies from any refusal to grant or renew an SEV licence on the discretionary grounds (for example, judgement calls relating to the "character of locality"). The only avenue is to the High Court if an error of law has been made.

"Local communities should have their say in SEV licensing, but a fairer system needs to be introduced to better protect the legitimate rights of operators."

If the authorities in Kafka's *The Trial* had concocted a system to adjudicate on SEV licences it may have resembled the existing, deeply unsatisfactory system. A system which provides an operator with no right to know his accusers, no right to demand that an independent and impartial tribunal decide his case, no avenue of appeal in most circumstances, and no need for objectors to show the establishment in the spotlight has caused any actual harm to anybody. If you or I were that business operator how might we view the system?

Local communities should have their say in SEV licensing, but a fairer system needs to be introduced to better protect the legitimate rights of operators. A starting point would be two simple changes

- A statutory right of appeal is provided to the Magistrates' Court against all decisions by the licensing authority to refuse an SEV licence or renewal.
- The default anonymity of objectors should be removed and, as in proceedings under the Licensing Act 2003, only invoked in exceptional circumstances that justify it.

The sooner this is achieved, the better and fairer the system will be for all.

Gary Grant
Barrister, Francis Taylor Building

New Guidance on gambling for local authorities covers key issues

The Gambling Commission has issued new Guidance on how local authorities and operators can best work together under the 2005 Gambling Act. The Commission's **Rob Burkitt** explains the most important points that will need addressing

The last few years have given both licensing authorities and the Gambling Commission a great deal of invaluable experience in making the Gambling Act 2005 work as a system of shared regulation. Version five of the *Guidance to Licensing Authorities* (GLA) sets out the major strands of that learning.

Firstly, the Act gives local regulators very broad discretion to manage local gambling provision, including discretion as to the level of fees set to cover the cost of administering the local system of regulation. It sets out some boundaries to that discretion, consistent with the recognition of gambling as a mainstream leisure activity.

The Act also provides scope for the Commission to act to set an overall direction at national level, while leaving licensing authorities in the lead locally, with appropriate support from the Commission.

In the Commission's view, the statutory duty to aim to permit gambling, subject to reasonable consistency with the licensing objectives, is best delivered through partnership working between industry and regulator, including licensing authorities. Licensing authorities should aim to work with local businesses to reduce the risk to the licensing objectives to acceptable levels. The Act does not envisage regulation by either the Commission or licensing authorities being aimed at preventing legitimate gambling.

Key issues

The cornerstone of the principles to be applied by licensing authorities in regulating gambling are set out at s 153 of the Act. They are as follows:

> *(1) In exercising their functions under this Part a licensing authority shall aim to permit the use of premises for gambling in so far as the authority think it—*
> *(a) in accordance with any relevant code of practice under section 24,*
> *(b) in accordance with any relevant guidance issued by the Commission under section 25,*
> *(c) reasonably consistent with the licensing objectives (subject to paragraphs (a) and (b)), and*
> *(d) in accordance with the statement published by the authority under section 349 (subject to paragraphs (a) to (c)).*
> *(2) In determining whether to grant a premises licence a licensing authority may not have regard to the expected demand for the facilities which it is proposed to provide.*
> *(3) This section is subject to section 166. (Section 166 relates to a resolution not to issue a casino licence)*

As the fifth edition of the GLA makes clear, licensing authorities have therefore got broad discretion in exercising their functions under the Act. While, as with the Commission there is a presumption of aiming to permit gambling, this is within a framework which requires a licensing authority to consider the four issues as set out at s 153.

In a similar way to the Commission, which is financed by operator licence fees, so the licensing authority is financed by premises and permit fees. Section 212(2)(d) of the Act specifically states that licensing authorities "shall aim to ensure that the income from fees… as nearly as possible equates to the costs of providing the service to which the fees relate". Furthermore DCMS *Guidance to licensing authorities on setting premises licence fees* states: "'The annual fee will cover the reasonable costs of compliance and enforcement work, including the cost of dealing with illegal gambling in a licensing authority's area". [1]

Significantly, three of the four matters set out at s 153 (the codes of practice, the GLA and the local authorities' statements of policy (SOP)) are currently subject to change, which makes the coming months particularly important for the local regulation of gambling. Earlier this year the Commission completed a consultation on revisions to the *Licence Conditions and Codes of Practice* (LCCP). Many of the changes relate to the social responsibility requirements on operators, both in the form of licence conditions and codes of practice. They include changes to the codes on such issues as gambling management tools and responsible gambling

1 In Scotland fees are set by Scottish Ministers but again are designed to cover the cost of compliance and enforcement work.

information, customer interaction and self-exclusion. While the majority of changes came into force on 8 May 2015, critically for licensing authorities one requirement, the drafting of a local risk assessment, does not come into force until 6 April 2016.[2] The social responsibility code states:

1) Licensees must assess the local risks to the licensing objectives posed by the provision of gambling facilities at each of their premises, and have policies, procedures and control measures to mitigate those risks. In making risk assessments, licensees must take into account relevant matters identified in the licensing authority's statement of licensing policy.
2) Licensees must review (and update as necessary) their local risk assessments:
a) to take account of significant changes in local circumstances, including those identified in a licensing authority's statement of licensing policy;
b) when there are significant changes at a licensee's premises that may affect their mitigation of local risks;
c) when applying for a variation of a premises licence; and
d) in any case, undertake a local risk assessment when applying for a new premises licence.

The ordinary code provision[3] states:

Licensees should share their risk assessment with licensing authorities when applying for a premises licence or applying for a variation to existing licensed premises, or otherwise on request.

The reason for this different timeframe is to allow operators to refer to the local authorities' own revised SOP. The SOP should set out what the expectations of the local authority are in relation to their local operators; this may include information about the local "landscape" and any particular risks that should be taken into account. As regards the SOP, it is safe to say that this tool has, hitherto, not been used as effectively as it might be. The vast majority have used a standard template derived from the early days of the Act's implementation. It has not been tailored to reflect local concerns and circumstances. For example, the policy approach of a seaside resort which depends on promoting itself as a safe, family-friendly destination for day trippers is likely to have different priorities to an inner city borough.

The Commission's aim in requiring operators to produce a local risk assessment and in encouraging local authorities to provide a clear framework setting out local priorities is to enable operators and local authorities to engage in constructive dialogue at an early stage, reducing the likelihood of costly enforcement action at a later date. While there is no statutory requirement for licensees to share their risk assessments with responsible authorities or interested parties, it can save considerable time and expense if they do so, as well as increase the confidence of those agencies as to the operator's awareness of their obligations. Inevitably, as with any new process, there will be much to learn about how the system works best and how to avoid it becoming simply a bureaucratic exercise in form filling or a token gesture without real value. The Commission will be working closely with local authorities over the coming months to share learning and ensure that this new process leads to real improvements in the dialogue between authorities and operators.

One subject that both local authorities and operators have raised recently relates to risk and what constitutes a local risk. The view has been expressed that if very few or no complaints concerning gambling are received, there are therefore no gambling issues to be addressed. But complaints are only one means by which one might assess risk, and are perhaps not a particularly telling one. Unlike, say, alcohol-related harm, gambling tends to be a lot less visible and is, at least potentially, much less subject to complaints and reporting. Furthermore, risk is not necessarily related to an event that has happened. Risk is related to the probability of an event happening and the likely impact of that event - in this instance on the licensing objectives. The central issue is therefore to identify local risk factors and to ensure that operators are taking sufficient steps to mitigate that risk. (To consider the matter from a different perspective, an insurance policy is more helpful before, rather than after, the burglary.)

The focus on local risk raises the question of what constitutes evidence, particularly for those local authorities which have decided to develop a local area profile. Section 157 of the 2005 Act defines responsible authorities to include the following in relation to premises:

(a) a licensing authority in England and Wales in whose area the premises are wholly or partly situated,
(b) the Commission,
(c) either—
(i) in England and Wales, the chief officer of police for a police area in which the premises are wholly or partly situated, or
(ii) in Scotland, the chief constable of the police force maintained for a police area in which the premises are wholly or partly situated,

2 The requirement applies to both existing premises license holders as well as new ones.

3 Ordinary code provisions do not have the status of operator licence conditions but set out good practice. Ordinary codes of practice are admissible in evidence in criminal or civil proceedings.

(g) an authority which has functions by virtue of an enactment in respect of minimising or preventing the risk of pollution of the environment or of harm to human health in an area in which the premises are wholly or partly situated,

(h) a body which is designated in writing for the purposes of this paragraph, by the licensing authority for an area in which the premises are wholly or partly situated, as competent to advise the authority about the protection of children from harm,

It is probably safe to say that agencies such as public health and safeguarding boards have been less involved in gambling than might be ideal. Undoubtedly given the resourcing issues that local authorities face, such cross-departmental co-operation and information sharing will present a significant challenge. However, in terms of protecting the young and vulnerable, they are potentially able to make a significant contribution to the local area profile and to ensuring that the SOP is reflective of local issues.

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Premises licence conditions

The other major issue which has caused a degree of concern is premises licence conditions. On the one hand it has been suggested that the Commission draw up a set of model conditions and on the other a perceived risk that local authorities will, as it was put to us, "pick and mix" licence conditions without due consideration as to whether they are necessary and appropriate. Sections 167 -169 of the Act address the issue of mandatory and default conditions as well as those conditions imposed or excluded by a licensing authority. As with other issues, conditions on a premises licence should be designed purposively in order to address risk. For example, a number of betting operators have been granted permission to vary their default conditions for opening hours (extending them) as the local authority decided that such an extension did not increase risk to the licensing objectives. Equally, additional conditions should be applied in the same manner. The sharing of information between operators and local authorities at an early stage - improving the dialogue between both parties, agreeing what local risks are relevant and should be mitigated - should reduce the need for additional licence conditions. Responsible operators will want to put in place the risk mitigation measures that avoid the necessity of additional conditions.

The iterative process that the Commission, operators and local authorities are participating in may at times be challenging. But it is ultimately to the benefit of all parties - in particular those who are young and vulnerable - that we work together to protect the licensing objectives, and also create public confidence in the gambling industry's ability to protect those groups in order for it to develop further as a legitimate and well regulated industry.

Rob Burkitt
Policy Development Manager, The Gambling Commission

Dodgy stats belie alcohol's true value - they must be challenged

Alcohol statistics are often selectively presented to advance a spurious argument. They should be examined carefully and critically before local authorities devise their public health strategies, argues **Kate Nicholls**

Autumn marks the start of a new session of Parliament, and with it the almost annual reassessment and review of the licensing regime. Accompanying this is a desire to make the system ever more responsive to local needs and a political imperative to be seen to be constantly on the case with the chimera of alcohol-related harm.

I use the words "political imperative" advisedly as we are in danger of failing to deliver simply because we are too quick to look to the next new initiative before the last one has been implemented - there seems to be a collective regulatory FOMO, or "Fear of Missing Out". Paradoxically, as we are dealing with a fast moving, dynamic consumer industry, we are also in danger of solving yesterday's problems.

The latest initiative - Local Alcohol Action Areas - has scarcely had time to conclude, let alone allow any meaningful learnings be drawn from it as to which interventions can work, before political attention has moved to the next idea. This time, there is a reassessment of late night levies and whether the small number of schemes in existence is evidence of failure rather than a successful outcome of strong local voluntary partnerships already tackling issues that exist. Related to this is the ever constant debate about the role of public health in licensing decisions.

This is a vexed question for stakeholders on all sides. The data is complex and the role of long-term trends in licensing decisions, which are arguably about current or immediate consumption, is moot. There is also the urgent need to take a breather from constant regulatory tinkering to allow a clear baseline to be established against which national, local and individual interventions can be assessed going forward. Almost the only thing on which all stakeholders agree is the need for an evidence-based policy.

The problem is that the official assessments of alcohol-related harms are just that. Many are best guess assessments of cost established under the Alcohol Strategy of the last Labour Government - the £21bn that alcohol costs the economy - and taken at face value. There is only a limited attempt to substantiate and back them up at a national, let alone local level, and no acknowledgement of the changing nature of consumption. More importantly, there is little clear definition of the harms being addressed, no national definition of alcohol-related crime, and differences of opinion on the fractions of health harms attributable to alcohol and how to disentangle alcohol from other lifestyle factors.

Understanding the data

All this makes it challenging - to say the least - for local licensing authorities seeking to administer a fair, legal regime and make sense of representations in these areas.

The problem is particularly acute in the field of public health, where local authorities have a new general responsibility to deliver strategy over and above their new obligation as a responsible authority. Understanding the data and, more particularly, looking back and accepting the trends in alcohol consumption and related harm will be key.

Over the course of the last decade, consumption of alcohol has fallen substantially in value and volume - with one in five young people saying they never drink. The latest figures show a reduction of more than 20% in both average and harmful consumption. More importantly, the way in which we drink has changed out of all recognition - away from the supervised environment of the pub, where strength, measures and units are controlled and behaviour regulated, towards consumption at home.

For the first time this year, more beer was sold through the off-trade (50.5%) than the on-trade (49.5%) and total alcohol sales through pubs, clubs, bars and restaurants fell to an all-time low, making up just 32% of total alcohol sales. In Scotland, almost three quarters of alcohol sales are through off-licences and supermarkets. When the Licensing Act is tightly regulated for on-sales but leaves off-sales effectively deregulated, it is vital that these trends are understood by all stakeholders before public health arguments can be deployed.

Health and benchmarks

Until recently, cumulative impact policies only applied to the

on-trade and could not take account of health considerations. Similarly, late night levies only apply to sales within a levy period, so an off-licence could trade as it wanted during the day and take the view that its responsibility for public health stopped at its threshold. That has recently changed, but the absence of a clear benchmark or assessment of the scale of the problem at the start of a policy intervention makes it very hard to judge its effect.

In Scotland, health is a fifth licensing objective, but even there, it is hard to see how long-term drinking trends and patterns can be applied to decisions about the siting and control of premises in the here and now. And the evidence which is available suggests that those controls may have unpredictable consequences.

Having established health as a licensing objective in 2009, the Scottish Government set about commissioning a study on the consumption of alcohol and its misuse. It hoped that it would demonstrate that a series of policy interventions to reduce cut-price promotions - the inability to progress Minimum Unit Pricing notwithstanding, alcohol prices have increased - had resulted in reduced consumption, particularly among vulnerable people.

An earlier Canadian study had shown that there is a tipping point in affordability. This was not the case with the Scottish survey published recently, which looked at the drinking habits of Glasgow and Edinburgh. Heavy drinking by vulnerable groups - and their admission to hospital as a result - had been tempered by measures to increase price through curbing promotions and high strength availability - but the expected drop in overall consumption had not occurred.

The study confirms that problem drinkers have simply switched products - replacing cheap vodka with even cheaper white cider - and more importantly, it highlights that the health risks associated with heavy drinking in this cohort are exacerbated by other lifestyle factors. White cider drinkers are more likely to be heavy smokers - in fact 70% of those in the study smoked more than 20 cigarettes a day - and other risk factors for problem drinking include poverty, depravation and obesity.

This is not to deny that there are very real national and local problems still arising from harmful and problem drinking. Rather it is to suggest that the cause, effect and solutions are more deep seated and require a more holistic approach than one which can be delivered through the licensing of individual premises. Licensing is about the regulation of licensable activities in licensed premises. The lack of immediacy in licensing means that as a lever, it can only close the door after the horse has bolted.

What the Scottish study highlights - and the European Court of Justice preliminary opinion confirms - is that licensing controls may help to nudge immediate behaviours (providing they are properly directed at those premises where purchase takes place) but are insufficient to turn around years of misuse.

LGA guidance

The Local Government Association has recently published guidance for the new public health teams seeking to engage in the licensing process as consulted. While there is scope for them to intervene in local premise applications and reviews, I would suggest that their role is more important in a broader, strategic context: in highlighting the complex nature of harmful drinking and the inter-related health factors of which it is a part; in highlighting the issues of concern to those who ultimately regulate provision - the planners - and ensuring that they are aware of consumption trends in the off- and on-trade; and ultimately in helping to protect those responsible operators by ensuring that legitimate concerns around health are accurately targeted and not broad-brush.

Better quality and more robust data on alcohol consumption, provision and related harms - health and crime and disorder - can and should be used to ensure better decision-making. But some changes to the framework are required before that can be delivered. At the moment, the licensing regime and evidential requirements within it are predicated on establishing a negative – that there is a problem, there is a drain on resources, and so on.

But data can and should be used to establish the positives too - and we would welcome greater guidance to licensing authorities on the need to do this, not just by paying lip service to it in their general policy setting but also in their decision-making functions. Other regulators now have a new obligation to have regard to economic growth and there is no reason why licensing should be exempt. This is not to say the business case should over-ride the public health but that there should be at the very least an acknowledgement of the positive contribution the sector makes.

I have already emphasised the importance of establishing a baseline set of statistics which are robust, evidence-based and on which there is agreement. The much vaunted figure of the cost of alcohol-related harm which I referred to at the start of this article - the £21bn - has always been quoted out of context of the economic, social and cultural net benefits which the trade delivers.

The benefits of the night-time economy

Pubs, clubs, bars and restaurants are not just night-time economy businesses. They provide valuable services

throughout the day for tourists, residents and office workers, society generally and the cultural life of the community. The sector generated 8% of net new jobs in the last year, in all regions and for all skills but crucially for young people. And the night-time businesses do already pay for street cleaning, policy and health services as over a third of their turnover is returned to the Exchequer in the form of local and national taxes as well as investment in local voluntary initiatives to tackle alcohol related harms, such as BIDs, Purple Flag and Best Bar None.

A new study, *Alcohol and the Public Purse: Do Drinkers Pay their Way?,* by Christopher Snowdon, Director of Lifestyle Economics at the Institute of Economic Affairs, looks at the factual evidence base for the £21bn cost claim. He argues that it is a myth that drinkers are a burden on the tax payer and presents economic evidence showing that, on the contrary, they pay billions of pounds more than they cost the NHS, police service and welfare system combined.

The study estimates the direct costs of alcohol use to the government to be £3.9bn in alcohol- related violent crime and in direct health costs - with revenues from alcohol taxation alone to be £10.4bn. That equates to an annual net benefit of £6.5bn. A similar study by the GLA produced a cost benefit study for each and every London borough and found that the net benefits generated by the trade more than outweighed the costs of alcohol related harm. On average, for every £1 of cost, there were £8 of benefits, but in some boroughs this rose to £25.

Even in the health field, there are health benefits from moderate consumption. Research into the relationship between various levels of alcohol consumption and the risk of premature death from all causes found that people who drink moderate amounts of alcohol on a regular basis are less likely to die prematurely than people who never drink. More specifically, they are less likely to die prematurely from cancers or heart disease. There is a very clear J curve for consumption relative to risk of mortality, where the risk of premature death only exceeds that of a non-drinker when more than two to six units of alcohol per day are consumed.

If we are to have evidence-based policy in this area, then it is vital that all the evidence is taken into account - the good as well as the bad. Selectively quoting alcohol-related crime figures or epidemiological risk factors without placing them in the context of footfall, whole population health statistics or countervailing benefits can have a distortive effect and ultimately leads to poor decision-making.

Kate Nicholls
Chief Executive, Association of Licensed Multiple Retailers

Events Calendar

December 2015
3 December 2015
London Region Christmas Training Day

10 December 2015
North East Region Training Day

10 December 2015
South West Region Training Day

11 December 2015
West Midlands Region Training Day

March 2016
1 March 2016
Taxis – Hackney Carriage and Private Hire Licensing

2 March 2016
Acupuncture, Tattoo and Cosmetic Skin Piercing

9-10 March 2016
How to Plan a Safe Event

10 March 2016
North East Region Training Day & AGM

14 March 2016
How to Inspect Licensed Premises

15-18 March 2016
Professional Licensing Practitioners Qualification

17 March 2016
North West Region Training Day

May 2016
9 May 2016
Basic Principles of Licensing

10-13 May 2016
Professional Licensing Practitioners Qualification

June 2016
9 June 2016
North East Region Training Day

15 June 2016
North West Training Day

September 2016
9 September 2016
North East Region Training Day

14 September 2016
North West Region Training Day

December 2016
8 December 2016
North East Region Training Day

14 December 2016
North West Training Day

My first licensing appeal - a public health official's account

When **Chloe Dobson**, a new public health coordinator with Blackpool Council, received a poorly presented licence application for a town centre off-licence, she had to learn very quickly how to present at the town hall hearing and give evidence at the Magistrates' Court appeal. The local licensing enforcement manager proved an invaluable ally, to her and her colleague **Rachel Swindells**, as Chloe explains

Blackpool has higher levels of alcohol-related harm, including ill health, violence and public disorder, than any other town of the same size. The levels are even more pronounced within the central wards.

The council's licensing authority has for some years recognised that the town centre and promenade area has a greater impact on the licensing objectives than the rest of the town combined. For this reason, a town centre saturation area was created across four central wards. Blackpool Council's statement of licensing policy also adopted an off-licence saturation policy, which covers the same saturation area across the four central wards.

Objection, on several grounds

During the summer of 2014, Blackpool Council Public Health Department received an application for a premises licence for a new off-licence within the saturation area. As part of the process, applicants are expected to show through their operating schedule, with supporting evidence where appropriate, that the operation of the premises will not add to the cumulative impact already being experienced within the area.

On review of this particular application, the Public Health Department (PHD) - which is where I work - submitted a formal objection on the basis that the premise was, as already stated, in one of the four central wards within the saturation area. The department also felt that the applicant demonstrated a lack of understanding of the challenges faced within this central ward and was too inexperienced to uphold the licensing objectives. The police also objected.

To support its objection, the PHD submitted evidence which demonstrated that there was a significantly higher number of hospital stays for alcohol-related harm than the national average within the ward where the new premise would be located.

Working with licensing

On receipt of the formal invitation to attend the licensing hearing, I began working extremely closely with the licensing enforcement manager. This strong working relationship was vital in establishing and submitting a robust pre-hearing evidence package for the licensing committee.

The licensing enforcement manager was fundamental in providing expert guidance and knowledge throughout the whole hearing process as I, as public health representative, had limited experience and knowledge of the hearing process, being relatively new to the licensing agenda.

The information and guidance provided by the licensing enforcement manager enabled the PHD to object under the prevention of crime and disorder and the prevention of public nuisance objectives. Additional data relating to the high rates of domestic violence police call outs within this particular ward and evidence to highlight the applicant's scant knowledge of the licensing objectives was submitted in the pre-hearing evidence package for the licensing committee.

The licensing enforcement manager was very helpful to me in providing local enforcement background information on the local demographics and previous off-licence customer base intelligence.

Another critical aspect of support was the licensing enforcement manager's extensive legal knowledge and expertise on relevant case law and the Revised Guidance issued under s 182 of the Licensing Act 2003. This additional supporting evidence and data was submitted before the hearing date to allow the committee time to review information.

Importance of health statistics

PHD submitted additional information and data in relation to the following:

- High levels of alcohol harm within this particular ward.
- High levels of domestic abuse within this particular ward.
- High levels of alcohol-related admissions within this particular ward.
- Anecdotal evidence of high level of street drinking and nuisance.
- Anecdotal background information on previous off-licence client base.

During the licensing hearing, the applicant's solicitor stated the additional evidence and data submitted by PHD was not submissible as health is not a licensing objective. However, the knowledge I gained from discussions with the licensing enforcement manager in relation to the Revised Guidance issued under s 182 of the Licensing Act 2003 proved vital in providing appropriate responses to the solicitor's questioning of the health data and public health evidence.

In paragraph 13.23 of s 182, Evidence of Cumulative Impact, a list of categories of information are suggested as good evidence to support a Cumulative Impact Policy. The third on the list states: "Health-related statistics such as alcohol related emergency attendances and hospital admissions".

In regard to the s 182 Guidance para 8.34 requires that applicants are expected to demonstrate an understanding of the layout of the local area, the physical environment, local crime and disorder hotspots, proximity to residential premises and proximity to areas of child congregation and local initiative which seek to mitigate licensing risks. Further applicant is expected to identify any risks posed by the proposed licensable activities to the local area and set out steps to promote the licensing objectives. This application was absent these considerations and information.

Paragraph 8.35 of the Amended Guidance states that applicants are expected to include positive proposals in their application on how they will manage potential risks. In this submission, there were virtually no positive proposals save for a proof of age policy, which is a mandatory condition.

Paragraph 8.37 suggests that information to applicants should be readily available. Yet neither the Public Health England (Local Health Profiles, 2014) nor the Blackpool Drug and Alcohol Needs Assessment (2014) – both of which are public documents - had not been considered by the applicant.

Paragraph 9.30 suggests it is good practice for applicants to contact responsible authorities before formulating their application. No contact from the applicant was received.

Refusal, appeal and upholding

The licensing committee decided to refuse to grant the new application. In response to this decision the applicant submitted an appeal at the local Magistrates' Court.

During the interim period before the appeal, case, I requested additional support from the licensing enforcement solicitor and enforcement manager, as I had no experience or knowledge of acting as a witness within a court setting prior to the appeal. To address this, I researched into public health representations at a licensing court appeal but could find no previous example.

To gain an insight into the process of acting as witness, I therefore attended a court case. This experience proved valuable in developing my confidence when it came to presenting evidence during the court appeal hearing. Additionally, the police licensing team was extremely helpful and supportive. Following the appeal, the magistrate upheld the licensing committee's decision to refuse to grant the new licence application.

A positive relationship

Looking back at the whole process, my knowledge, skills and confidence within the licensing agenda have developed dramatically. Without the support, expertise and positive, proactive working relationship with the licensing enforcement manager and licensing enforcement solicitor, I would not have been able to submit such a robust pre-hearing evidence package. The legal expertise of the licensing enforcement manager also proved invaluable in response to the applicant's solicitor questioning of the use of health data at the hearing. The further background information and attendance at court proved key to developing my confidence and approach to attending court.

Chloe Dobson
Public Health Co-ordinator, Blackpool Council
with
Rachel Swindells
Public Health Practitioner, Blackpool Council

Minimum unit pricing in Scotland looks a lost cause

Scotland's attempt to introduce minimum pricing for alcohol has suffered a setback in the European Courts, and although the Scottish Government is still convinced of the importance of its cause, **Charles Holland** believes that the case may be irretrievably lost

There is no doubt that alcohol misuse claims many hundreds of lives in Scotland every year - twice as many today as 15 years ago - and that it hits our poorest communities the hardest. It has become a major health, economic and social challenge for our people, a problem which is damaging families and communities across the country. We have a responsibility to do all we can to tackle it. In Scotland, we led the way on smoking and we can lead the way on alcohol misuse too.

Harry Burns, Chief Medical Officer

Changing Scotland's Relationship with Alcohol: A Framework for Action (2009)

In 2009, the Scottish Government proposed the introduction of a minimum price per unit for the retail of alcohol. This was part of a package of measures to tackle what was seen as a widespread problem of alcohol misuse. Drinking was no longer seen as a marginal problem. Fifty per cent of men and 30% of women across Scotland exceed recommended guidelines. By 2009, alcohol was 70% more affordable than it had been in 1980; consumption had gone up 19% since then; there had been significant increases in alcohol-related deaths and illnesses.

A "whole population" approach was proposed, which did not confine itself to targeting those with chronic alcohol dependencies. Other measures included regulations against irresponsible promotions and below cost sales, reviewing advice to parents and carers, and encouraging licensing boards to consider the imposition of conditions on off-licences prohibiting sales to under 21s.

While those other measures are in place, minimum pricing has proved harder to secure. Six years down the line, it remains on hold, under attack in the domestic and European Courts, and now reeling from a recently delivered blow by Advocate General Bot from which there are doubts that it will recover.

The measure has not suffered from lack of legislative enthusiasm: The Alcohol (Minimum Pricing) (Scotland) Act 2012 was passed with 86 votes for and 1 against.

The 2012 Act amends the Licensing (Scotland) Act 2005 by adding a mandatory condition to licences that "Alcohol must not be sold on the premises at a price below its minimum price". The minimum price is calculated as:

MPU (Minimum Price per Unit) x S (alcoholic Strength by volume) x V (Volume in litres) x 100

The MPU is specified by order of ministers and is subject to approval of the Scottish Parliament. MPUs of between 25 and 70 pence were considered, but in the event the proposed MPU in the draft Alcohol (Minimum Price per Unit) (Scotland) Order 2013 was 50 pence.

Were a 50p MPU to come into force:

- A four pack of 440ml cans of Tennent's Super (9%) would cost at least £7.92 (note that beer exceeding 7.5% has attracted a higher rate of duty in the UK since October 2011; the manufacturer InBev has reduced the can size from 500ml to 440ml as a result of signing a UK government pledge not to produce any carbonated product with more than 4 units in a single can).
- A three litre bottle of Frosty Jacks Cider (7.5%) would be at least £11.25 (Iceland currently retail this at £4.50, or £7.00 for 2).
- A 750ml bottle of Buckfast Tonic Wine (15%) could not be sold for less than £5.63 (it generally retails now for about £7 a bottle).
- A 70cl bottle of Glen's Vodka (37.5%) would be a minimum of £13.13 (Iceland currently retail at £13.00, although brands with a lower profile than Glen's may be obtained for rather less).
- A one litre bottle of Bell's Whisky (40%) would retail for at least £20.00 (Asda currently retails at £15.00).

On the latest (August 2015) figures, 52% of the total volume of pure alcohol sold in 2014 through the off-trade (excluding discount retailers) was sold below 50ppu. This included 63% of spirits (including 74% of vodka), 64% of beer and 74% of cider.

The implementation of the 2013 Order was put on hold

a result of judicial review proceedings brought by the Scotch Whisky Association (SWA) together with two other trade bodies, spiritsEUROPE and the Comité Européen des Enterprises Vins, which argued that the measure would be ineffective, would penalise responsible drinkers and would encourage other jurisdictions to adopt similar measures that would harm the whisky export trade.

Before the judicial review could be heard, there was an early shot across the bows as the European Commission (to which the Scottish Ministers had given notice of the draft order under the provisions of Article 8 of the Technical Standards Directive 98/34/EC) gave its opinion that minimum pricing fell within the ambit of Article 34 TFEU, being a measure capable of having an adverse effect on the marketing of imported goods (as it would prevent the lower cost of imported goods from being reflected in the selling price). While the Commission accepted that there was a public health problem in Scotland that was caused by alcohol, and that a policy of increasing prices was likely to reduce consumption, it suggested that this end could be achieved by an increase in excise duty, and that such a measure would be less restrictive of trade than minimum pricing (as lower priced imports would keep their competitive advantage).

The practical problem with the alternative of increasing duties is that the levying of alcohol duties is not a matter devolved to the Scottish Government.

Article 34 TFEU provides:

Quantitative restrictions on imports and all measures having equivalent effect shall be prohibited between Member States.

Article 36 TFEU provides:

The provisions of Article.. 34 ... shall not preclude prohibitions or restrictions on imports, exports or goods in transit justified on grounds of public morality, public policy or public security; the protection of health and life of humans... Such prohibitions or restrictions shall not, however, constitute a means of arbitrary discrimination or a disguised restriction on trade between Member States.

The judicial review came before Lord Doherty in the Outer House, Court of Session. In a judgment delivered on 3 May 2013, he threw it out. The SWA argued that minimum pricing was (1) contrary to the Acts of Union; (2) a breach of Article 34 TFEU that was not rescued by Article 36; (3) a national measure that purported to deal with a matter regulated by the Common Agricultural Policy; and (4) a restriction that trespassed on matters regulated by the Spirit Drinks Regulation (Regulation (EC) No. 110/2008.

Lord Doherty was not persuaded by any of the SWA's arguments. Insofar as the Article 34 challenge was concerned, while it was common ground that Article 34 was engaged and the provisions would be unlawful unless justified under Article 36, Lord Doherty was of the view that there was objective justification supporting the proportionality of the Act and the proposed minimum price.

The SWA appealed, limiting its arguments to those relating to EU law. This ultimately resulted in the Inner House deciding in July 2014 to make a reference to the European Court of Justice.

Within the ECJ reference, France, Spain, Italy, Portugal and Bulgaria have made submissions in opposition to the minimum pricing measure. Only Ireland made representations in support.

The ECJ will deliver its judgment within the next six months, but in the vast majority of cases, it follows the Advocate General's opinion. This was delivered by Advocate General Bot on 3 September 2015.

AG Bot's view was that, by virtue of both the provisions of the Common Agricultural Policy and Articles 34 and 36 of TFEU, minimum pricing was only an option for a national government if the objective of protecting public health could not be achieved in a less restrictive and equally effective manner by raising taxes on alcohol.

So far as the specific objective of the draft order was concerned, the Scottish Government came in for some criticism from AG Bot. He said that the objective of the measure was difficult to identify from the material provided. The explanatory notes to the draft order said it was aimed at the population in general and "harmful" drinkers in particular (50 units+ / week for men, 35+ for women). The business and regulatory impact identified aim of combating "hazardous" consumption (>21 units / week for men, 14 units / week for women). The representations provided to the court said the scheme had a twofold objective of targeting those whose health was at greatest risk and having a positive effect on the health of the entire population, but said that the justification was only based on the first objective.

Whatever the objective was, the Attorney General said the burden is on the promoter to show that increased taxation would have a disproportionate impact by comparison to the minimum pricing regime sought. And he was of the view that "no serious evidence" had been put forward to show this.

He concluded that while it was ultimately for the national court to identify the precise objectives of the measure in

question, to examine the merits and demerits of a duty increase as an alternative, and to ascertain whether that alternative presents a better cost-benefit outcome than the setting of a minimum price, he felt that, having regard to the principle of proportionality, it was difficult to justify Scotland's scheme. It appeared to him to be less consistent and effective than an increase in duty, and that it might be perceived as being discriminatory.

AG Bot's opinion was that where - as here - the national rules had not come into force, when the national court was considering those rules on a judicial review they were not confined to an examination of the material before the Government when the rules were made, but also to all the factual information existing on the date when they determined the matter.

Both sides have claimed victory.

Paul Skehan, director general of spiritsEUROPE, said: "Is it time to now move on. Instead of wasting more time debating the illegality of (the measure), we believe it would be far better to discuss useful, legal ways of tackling the alcohol-related issues that persist, not only in Scotland, but around the EU."

Nicola Sturgeon, the First Minister of Scotland, however said she would "vigorously" defend her plans to fix a minimum price for alcohol. She focused on AG Bot's view that minimum pricing *per se* was not illegal if it could be justified on the basis of a proportionate means of promoting public health, and stressed that ultimately it would be for the domestic courts to take a final decision.

Those hoping to make a killing by opening a branch of Boozebusters in Berwick upon Tweed may have to wait a while yet.

South of the border, national minimum pricing has been on the shelf since 2013, perhaps in anticipation of the same difficulties encountered by the Scottish legislators.

Locally, some authorities have historically attempted to regulate the range and price of product sold by premises they licence to remove what they consider to be the more pernicious products from the market. A "no perry" condition is common in one north-east town, despite the dubious legality of such provisions under the 1964 Act, let alone that of 2003. Over 100 authorities have adopted "Reducing the Strength" schemes, pioneered in Ipswich; but there are reports of trade fight-backs in Derbyshire and Newcastle amongst other places.

And Newcastle, a trailblazer in other areas, has the following provision in its 2013 policy statement:

> *There is strong evidence that setting a minimum unit price will have an impact on reducing alcohol consumption. The Licensing Authority would therefore like to encourage all licensed premises to apply a minimum unit price of 50p to all alcohol products sold under their premises licence. Where the premises are found to be selling alcohol below this price and there are problems associated with the premises that are negatively impacting on the licensing objectives, a responsible authority may bring review proceedings. Following the review, the Licensing Committee may decide to impose a condition in relation to the pricing of alcohol in order to uphold the licensing objectives.*

Whether conditions of this nature will lead authorities into the sort of legal quagmire that the Scottish Government now finds itself is yet to be answered. Articles 34 and 36 have been successfully relied upon to quash local authority licensing conditions in the past (*R. (on the application of Lunt and Allied Vehicles Ltd.) v Liverpool City Council*) [2009] EWHC 2356, and just because the effects of a condition are confined to a small geographical area within the UK does not mean that they are immune from an attack of this nature. The unavailability of the power to increase duties was not an answer to Holyrood's difficulties, and it seems hard to imagine how it will be a defence that a local authority will be able to rely on. And without evidence (rather than a mere assumption) that minimum pricing is a proportionate means of achieving a defined objective, a local authority that decides to pick up and run with the minimum pricing baton may well find its path strewn with hurdles that are difficult to surmount. In practice, where a particular premises is harming the licensing objectives by catering to persons who are habitually drunk and habitually cause issues on the local streets, there may be more focused remedial methods than one which penalises all who chose to lawfully purchase and consume lower priced alcohol.

Strong ale was ablution,
Small beer persecution,
A dram was memento mori;
But a full flowing bowl,
Was the saving his soul,
And Port was celestial glory.
Robert Burns
Epitaph on John Dove, Innkeeper (1801)

Charles Holland
Barrister, Trinity Chambers

Hunger wars in the on-trade

Casual dining chains keep on growing, and it's only the best managed pub groups that are able to keep up with them, reports **Paul Bolton** of CGA Peach

The top line outlet growth figure makes happy reading for the on-trade, but underneath the surface, a battle is raging in the eating out sector. Latest CGA Outlet Universe figures to July show restaurants' 6.6% growth is boosting total on-trade outlets to +0.6% versus a year ago. But their main competitor in the sector, food-led pubs, is struggling to replicate this success, with a 2.1% decline.

Competition to tempt in hungry consumers is intensifying and food-led pubs are finding it a challenge to compete with the continued success of casual dining chains. Latest figures from the Coffer Peach Business Tracker show that chains such as Carluccio's, Giraffe and Gourmet Burger Kitchen are registering like for like growth of 4.3% in July. Site expansion, innovative menus and brand redevelopments are winning consumers over who may have instead found themselves eating pub food.

Rebranding has played a huge role in bringing consumers back into familiar favourites that have otherwise fallen by the wayside. TGI Fridays and Pizza Hut, for example, have taken "Americana" inspiration from the new kids on the block like Almost Famous or Red's True BBQ to bring themselves bang up to date and on trend. And they're doing it nationwide; with the rise of the "Northern Powerhouse", outside of the M25 continues to be a success story for casual chains. Peach Coffer Business Tracker reports total sales up 12.3% versus a year ago in July, underlining the fast-roll out of new sites.

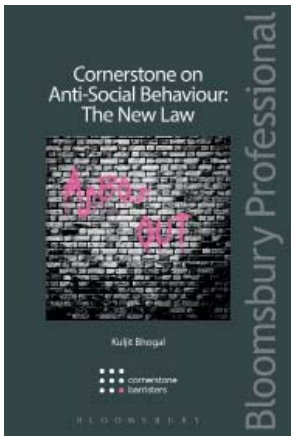
So what about pub grub? It's not all bad news. Latest CGA pub closure figures reveal how important food offerings are to pubs, given their continued decline. An average of 29 pubs closed per week between December and July, driven by free and non-managed pubs, which saw 14 and 15 closures per week respectively. Suburban pubs are the hardest hit, with an average of 17 closing a week, but it's better news on the high street, with an average of just three closing per week. Wet-led community pubs are the underlying issue, with 26 of the 29 closures per week coming from this sector.

In contrast, managed pubs are seeing better news, driven by the higher makeup of better performing food-led outlets. The number of openings balances the closures, making the sector completely flat. London may be losing the most pubs at 10 a week according to CGA pub closure figures, but Coffer Peach Tracker reports managed pubs are up 1.2% in like-for-like sales in July. Wider footfall opportunity and a younger city centre demographic, who visit the on-trade the most, are propping up the sector in the capital.

CGA Peach Vice President Peter Martin concluded in the latest Tracker report that "the public is being given more choice than ever and it appears happy to be tempted by the new and different". Pubs groups must take examples from pub brands such as Chef & Brewer, which ran a summer food festival and a VE Day inspired menu this year, or Marston's, which launched a BBQ concept for pubs in 2014. Variety and differentiation may be the only way to win the hunger war.

Paul Bolton
Researcher, CGA Peach

Book Reviews



Cornerstone on Anti-Social Behaviour: The New Law
Kuljit Bhogal, Cornerstone Barristers, Bloomsbury 2015
Reviewed by Charles Streeten barrister, Francis Taylor Building

When I was young it was all Pac-man and board games. Now they're playing Grand Theft Auto and want to live it for themselves.

So wrote the *London Evening Standard* on 8 August 2011. When the dust of the London riots settled, hugging hoodies had become decidedly less fashionable than when David Cameron gave his famous speech at the centre for social justice in 2006.

Introduced by the Crime and Disorder Act 1998, which embodied Tony Blair's manifesto pledge to be "tough on crime, tough on the causes of crime", Anti-Social Behaviour Orders (ASBOs) were a central plank of the Blair Government's campaign against crime and disorder. They created a civil sanction, breach of which was a criminal offence, targeted at preventing the serious, persistent but relatively low-level disorder that can blight communities. As a consequence, the range of behaviours covered by ASBOs was vast, ranging from public urination or the nuisance caused by playing football in a residential street through organising illegal raves to gang-related violence.

From their inception, ASBOs received a bad press. A popular, if perhaps unfounded, perception developed that rather than discouraging anti-social behaviour, ASBOs were seen by some as a badge of honour. Indeed, in 2012 a survey by Angus Reid Public Opinion showed that only 8% of the British public believed that ASBOs had been successful in curbing anti-social behaviour in the UK.

A change in the law regarding anti-social behaviour had in fact been proposed in February 2011 with the Coalition Government's White Paper *More Effective Responses to Anti-Social Behaviour. However*, the London riots and the Independent Police Complaints Commission's report on the devastating consequences of persistent anti-social behaviour against Fiona Pilkington and her children catalysed and informed the contents of what is now the Anti-Social Behaviour Crime and Policing Act 2014. The new Act has done away with ASBOs and a hotchpotch of other anti-social behaviour legislation and replaced them principally with civil injunctions and criminal behaviour orders.

Cornerstone on Anti-Social Behaviour, like other titles in the Bloomsbury Professional series, provides a practical and user-friendly guide to the Act that gives legal practitioners and others responsible for taking enforcement action a "one stop shop" for understanding how the Act applies.

The opening chapter places the Act in context, providing background to its introduction and passage through Parliament. While there is often a temptation to gloss over chapters such as these, in this instance readers are rewarded for their diligence. Extracts from Lord Hope's speech during the Bill's second reading in the House of Lords provide an insightful critique on the test of conduct capable of causing "nuisance or annoyance", which supplements "harassment, alarm or distress" under the old law. Lord Hope's remarks resulted in an amendment to the wording of the act so that that test applied only in relation to a person's occupation of residential premises and are helpful when construing the new test.

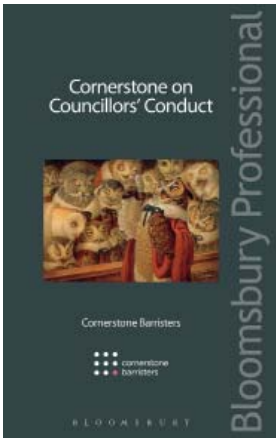
The second chapter gives an overview of the potential Human Rights and Equalities issues that may arise in anti-social behaviour cases as well as containing an interesting section on the issue of hate crime, which has a tendency to arise in this field.

The remainder of the book follows the structure of the Act, dealing first with the new Civil Injunction, then Criminal Behaviour Orders, Dispersal Powers, Community Protection Notices, Public Spaces Protection Orders, Closure Orders and finally the new powers of possession granted under the Act.

Each chapter helpfully defines the scope of the powers granted, setting out the relevant test and the necessary procedural steps for making or challenging an order with reference to relevant case law. There are worked-up case study examples of the Act's application that give a flavour of how the Act functions in practice which all together make for an eminently accessible but still comprehensive account of the legal landscape.

That this is an essential addition to the libraries of those whose practices encompass anti-social behaviour goes without saying. However, reflecting the generality of the act itself, its utility is not confined to housing and police lawyers, in whose domain anti-social behaviour cases most frequently

fall. As well as local authorities, chief officers of police and housing providers, Transport for London, NHS Protect and the Environment Agency may all now make an application for the civil injunction under the new law. This is indicative of the scope of the Act's application. Licencing practitioners, for whose clients closure orders have potential relevance, as well as those whose practices cover environmental and nuisance cases, are well served by a basic understanding of the law in this area, which may help find a remedy where others are impractical or unavailable. In such circumstances, Bhogal's book will often be a good place to start.



Cornerstone on Councillors' Conduct

Philip Kolvin QC, Cornerstone Barristers, Bloomsbury 2015

Reviewed by Charles Streeten

"Local government… about the one thing I can do nothing about. These wretched councils are run by a bunch of corrupt morons… they spend four totally unaccountable years on a publicly subsidised ego trip." With those words, Jim Hacker opens the episode of Anthony Jay's Yes, Prime Minister entitled "Power to the People".

Worryingly, the public perception today doesn't seem to be much better. Voter turnout at the most recent local elections was only 36% and, as the Editor of Cornerstone on Councillors' Conduct notes in his preface, Ipsos Mori suggests that only 16% of the population trust politicians to tell the truth. There is a gulf between the high ideals of public service encapsulated in the seven Nolan principles of selflessness, integrity, accountability etc. and the public perception of local politicians.

Despite this apparent mismatch, the Localism Act 2011 did away with the Model Code, enforced by an independent body at a national level and, save where conduct is criminal, entrusted the task of regulating councillors' conduct to councils themselves.

This second title from the Cornerstone and Bloomsbury Professional partnership contains more than a whiff of scepticism regarding the wisdom of that decision. It places a subtle question mark beside an act that disbands a system which, at the very least, appeared to involve more independent scrutiny. The vast majority of councillors are public spirited individuals who work hard for local communities. The public are far more likely to believe this, so Cornerstone suggests, if there is an independent framework to prove it.

It is perhaps for this reason that more time is spent discussing precursors to the current standards regime than the substance of the regime itself. However, the substance of the book is extremely helpful. The first half (chapters 1-3) in essence covers the standards regime and its application in decision-making. It sets out the statutory duties established under s 27 of the 2011 Act and the Nolan principles with which a local authority's code of conduct must comply, before considering a number of practical requirements that flow from this. The authors have succeeded in setting out in an accessible way most of the important information. Of particular interest, at least from a lawyer's perspective, is the discussion of the potential to bring proceedings against a local authority for failing to comply with section 27(1) and (2). While it might have been helpful to include a section setting out the "dos' and 'don'ts" of conduct at, for example, licensing and other committee meetings, in general this book is very usable.

The second half (chapters 4-6) concerns what might broadly be termed "enforcement". It gives a practical overview of the various remedies available to individuals who believe councillors are not complying with the duties imposed upon them. These are covered in ascending order according to their potency: first complaints, then challenges and lastly criminal sanctions.

Finally, and importantly given the differences that now exist between the system operating under the devolved Welsh Government from that in England, the last chapter deals with the law in Wales.

This book, like the first title in the series, is a book that will appeal across a broad spectrum. Although it is plainly aimed primarily at those working in local government, practitioners more generally will often be faced with a client whose complaint, legitimate or otherwise, is as much about the conduct of a local authority or its members as the substance of any dispute. Cornerstone's summary of the applicable principles provide a first point of reference when faced with such a client.

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