



SELECT COMMITTEE ON THE LICENSING ACT 2003

Oral Evidence

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Examination of Witnesses

Anna Paige, Head of Drugs and Alcohol Unit/Drugs and Firearms Licensing Unit, Home Office; **Andy Johnson**, Head of Alcohol, Home Office; **Kate McGavin**, Deputy Director of Media and Creativity, Department for Culture, Media and Sport; **Lindsay Wilkinson** Deputy Director - Drug and Alcohol Policy, Department of Health; **Rosanna O'Connor**, Director, Alcohol, Drugs & Tobacco, Public Health England

Q1 Baroness Henig (in the Chair): May I warmly welcome our five witnesses and everybody who has come here? At the outset I will explain that our Chairman is not able to be here until 11.30 am. She sends her apologies. She will come as soon as she can and I will vacate the chair and she will take over. This session is open to the public. It will be broadcast live and will be subsequently accessible via the parliamentary website. A verbatim transcript will be taken of the evidence and put on the parliamentary website. A few days after the session you will be sent a copy of the transcript to check for accuracy. It would be helpful if you could advise of corrections as quickly as possible. After the evidence session, if you would like to clarify or amplify any points made during the evidence, or make additional points, you are welcome to submit supplementary evidence. Before I ask you to introduce yourselves, I thank the Home Office for their memorandum, which we have found extremely helpful. Would you like to introduce yourselves, starting from left to right?

Kate McGavin: I am Kate McGavin. I am the head of media and creative industries policy in DCMS and have responsibility for entertainment licensing.

Rosanna O'Connor: I am Rosanna O'Connor. I am Public Health England's divisional director for alcohol, drugs and tobacco.

Lindsay Wilkinson: I am Lindsay Wilkinson. I apologise in advance that I have a cold and therefore my voice is not very good. I am deputy director for drug and alcohol policy at the Department of Health.

Andy Johnson: My name is Andy Johnson. I am head of alcohol at the Home Office and my team is responsible for the Licensing Act 2003.

Anna Paige: I am Anna Paige. I am the head of the Drugs and Alcohol Unit and the Drugs and Firearms Licensing Unit in the Home Office.

Q2 Baroness Henig: Thank you very much. There are five of you, so do not feel the need to comment on every question. We have 14 questions and we are aiming to get through them in about an hour and a half, if that is possible. Could I set the ball rolling? We know what the four key aims of the Licensing Act 2003 are. Have these key aims changed since the Act was passed? If so, how have they changed?

Anna Paige: Our view is that the aims of the Act have not changed fundamentally since its introduction, and nor has the general approach to regulating the sale and supply of alcohol with respect to the four licensing objectives, which have not

changed since the introduction of the Act. As you know, they are the prevention of crime and disorder, public safety, the prevention of public nuisance and the protection of children from harm. The licensing objectives and the measures in place to support them continue as they were at the time the Act was passed. They attempt to balance the interests of communities, the licensed trade and local partners through that local decision-making framework, as the licensing authorities consider whether to grant a licence or to vary the conditions placed on a licence. Our view is that the fundamental framework of the Act and the aims that underpin it have not changed since it was introduced.

Q3 Baroness Greender: First, I need to declare my interest as the proud holder of a temporary event notice for this Saturday for a school summer fair. You are all very welcome. My question is about getting that balance right between the punitive approach and the fun approach, for want of a better description. The Licensing Act appears to be moving along a scale from light-touch regulation towards heavier regulation through subsequent amendments, with some notable exceptions, such as the Live Music Act 2012. The Act also seems to have been moving on a scale from encouraging and fostering tourism, leisure, culture and community events to protecting local communities by restricting alcohol use and noise. Where is the Licensing Act currently on these scales, and is that a deliberate choice achieving identified aims?

Anna Paige: There are probably two parts to that question. There is the point about regulation and there is the point about the two scales; regulation and deregulation, and tourism, leisure, culture and protecting communities.

On the regulatory point first, our sense is that the Act as a whole has not moved towards heavier regulation. For some aspects of the Act deregulatory measures and amendments have been passed and in other areas there has been some tightening up. I will say a little bit from the Home Office perspective, and Kate is going to say a little bit from the DCMS side where, as you noted, there has been quite a lot regarding deregulation.

On the alcohol licensing side, temporary event notices are quite a good example of where an approach to deregulation has come in. The Police Reform and Social Responsibility Act relaxed the statutory limits on the duration of a single temporary event and extended the total cumulative period covered by temporary event notices from 15 days to 21 days per year. The regime has a sense of wanting to allow temporary events and for it to be reasonably straightforward to get a temporary event licence. Regulation has been reduced by raising the limit on the number of temporary events—from 12 to 15 a year—that can be held at a single premises. It is designed to give greater powers to licensing authorities and to communities, and to increase the flexibility of the temporary event notice arrangements.

There have been examples where things have been tightened up. The one notable example, and in fact the only new power that allows licensing authorities to restrict the sale of alcohol, is the early morning restriction order, which I know we will come back to in a later question. Kate, do you want to say something from the DCMS side?

Kate McGavin: The story in entertainment licensing has been predominantly deregulatory. Since around 2012 there has been a series of deregulatory legislative changes, and those have been on a risk-based approach, looking at the relative risks of some of the entertainments and the scale that they are taking place at. There has been deregulation around indoor sporting events, raising the audience limit to 1,000 people without requiring a licence; similarly around the performance of plays, dance, live entertainment and music, both recorded and live. That has been on the basis of looking at the relative risks and potential benefits to local communities of being able to take a more flexible approach. As we know, alcohol licensing is combined under this single regime. As I say, the DCMS has taken a risk-based approach here and will continue to monitor these levels and ensure that they are correct. At the moment we feel that this deregulation has worked very well.

Baroness Grender: Do you feel the balance is right between the two competing requirements?

Anna Paige: We will keep looking at it. One of the measures introduced fairly recently, the community and ancillary sellers notice—Andy will tell you about the detail—when it commences will make it easier for bed-and-breakfast and similar establishments to offer alcohol as part of their offer. There is always a need to look at whether we have the right balance in respect of specific circumstances and balancing up the risk of particular activities. In talking to the trade, community stakeholders and different interest groups, each will tell you a different story about whether they would prefer greater or less regulation. Broadly speaking, we get a sense that, because none of them is entirely happy right now, we probably have the balance in the right place.

On the point about the scale from leisure and tourism to protecting local communities, on one level one could say that those things do not need to be in opposition to each other. The framework of the Licensing Act—local areas making decisions in respect of the licensing objectives but looking at the local circumstances—means that licensing decisions will vary from area to area. We know from conversations with local authorities that they sometimes vary within a local authority area because of the different circumstances of pockets of different communities within the local authority. That is a deliberate choice to allow different areas to locate themselves at different places along that scale and potentially even at different points in time to say, “The right thing for us at this stage is to put the emphasis in a particular place”.

Q4 Lord Foster of Bath: My question follows on from that. Kate McGavin talked earlier about a single regime. As we know, entertainment such as cinema, theatre, sports, arts, community activities, late-night refreshments, alcohol and much else is brought together into a single regime. It was much debated before the Act came in as to whether there should be a single regime for these very different types of activity, with potentially different requirements. A small arts venue is hardly going to be concerned about crime and disorder-type activities. My first question, which I want to follow up with the data in a second, is whether, in the light of what has happened, it is still the view of each of you that having that single regime is an appropriate way to go. I would ask you to reflect on the fact that the Government

clearly do not think that, because they have put some things in one department and some in another and are no longer bringing them together, so why should local authorities have to do it?

Kate McGavin: From an entertainment licensing perspective, you are right that the responsibility now sits across two departments, but as with a lot of other government policy the fit is often not perfect. The alcohol strategy sits with the Home Office, so there is logic to having that element of the Licensing Act sit with it. It would not be a perfect fit if the whole of the Licensing Act sat with DCMS.

Lord Foster of Bath: But the Act requiring local authorities to do what you are saying is not a perfect fit for a national legislative body and national government.

Kate McGavin: There is enormous benefit for the end users—the people applying for licenses—to have a single regime as opposed to having to apply for different licences for different activities. That is the approach that the Act takes: to streamline it to the benefit of businesses and community centres that are trying to navigate this system. For us the important point is that it has saved those end-users money and time and it makes sense to them.

From a policy perspective, it is true that we operate across two different departments, but we do that across a lot of different policy areas. It is also the case that, as you say, those different activities may have different levels of risk, and the policy reflects that. For example, the limits and restrictions on indoor sporting events are different from those for live music or the performance of a play, so it is possible for us to vary those policy requirements on the basis of risk. For example, the regulatory changes that we have made for travelling circuses mean that they are not now subject to licensing for all the different activities that might take place within the tented area that they provide. For them that is a great advantage.

Lord Foster of Bath: Does the Home Office share that view about two different departments covering it yet local authorities having to have it united?

Anna Paige: Yes, fundamentally. As Kate said, all the activities covered by the Act have the potential to impact on the four licensing objectives, and to look at them with respect to those objectives certainly makes a lot of sense. In our conversations with local partners we have had no great sense that they want the two to be split apart again.

Lord Foster of Bath: That is fine. I know Lord Brooke wants to come in on the second part of the question. Looking at the memorandum that has been provided and all the research that has been done by outside bodies and Select Committees long before we started our investigation, it is quite clear that there is a mixed view on how successful bringing it all together in this way has been. Indeed, the memorandum says that it is not possible to say whether any of the identified changes were as a direct result of the Act or not.

My second question is in relation to whether or not we are collecting the right sort of data to enable us to make that judgment. If we are not, what additional data should we be collecting? For example, why do we not have a single national database of personal licence holders? Why do we not even have unanimity about the way data on alcohol-related activities in A&E units is collected? Are there changes that we should be making?

Anna Paige: To take your first point about the extent to which we can attribute changes in trends across the piece to the Act itself, I do not think that is specifically to do with the data that we collect. It is because we do not have a counterfactual; we do not know what the world would have looked like had the Act not been passed. Essentially, that is why we cannot attribute changes in crime levels or A&E admissions, or any of those things, specifically to the Act itself. There are other things that have happened over the last 10 years that could have had an impact on those. I do not think that collecting different data would allow us to say that a particular impact could be attributed to the Act.

On the point of the central licence holder database, there is always—in a sense going back to the point about regulation and deregulation—that balance to be struck in allowing local authorities, as we do currently, to collect that information in a way that works with their local processes. They are required to retain the information, but they do not have to do it according to the requirements of a central database. To date, the judgment of Governments has been that the argument lies in favour of allowing local flexibility rather than establishing a central database. I do not know whether health colleagues want to say any more about the A&E data point that you made.

Lindsay Wilkinson: Could you repeat the question about A&E?

Lord Foster of Bath: Even the way in which data is collected is not common. We have just heard that information about personal licences for a central database is not easily collected. My understanding is that, yes, we have data about alcohol-related incidents in A&E, but it is not collected in a standardised way and not everywhere does it to the same degree and so on. Should we be doing something about that?

Rosanna O'Connor: It might be worth saying that Public Health England is supporting a number of pilots at a local level, particularly where local authorities are interested in exploring the introduction of health as a licensing objective. Part of that approach is the gathering and sharing of data, as you have mentioned. One of the particular issues that has been identified is barriers such as the sharing of data across the NHS, local authorities, criminal justice partners and other local stakeholders. Public Health England has developed, and is currently testing, an analytical support package to help public health teams with their existing role as a responsible authority and to support areas in building an evidence base that could support decisions based on a licensing objective related to public health. That is a pilot that is currently under way. That seems to be the area of interest that you are talking about. We are expecting that to be evaluated and the findings to be published some time in the autumn, certainly within the timescale of your considerations, so that might be useful.

Lord Foster of Bath: Thank you very much indeed.

Q5 Lord Davies of Stamford: I apologise to colleagues and our visitors that I am going to have to leave at 11.30 am to speak in the European debate downstairs. In your studies of the Act—I am looking particularly at Ms McGavin and Ms Paige—and your monitoring of the working of the Act, to what extent have you looked abroad to see whether there are any lessons, negative or positive, that

might be drawn from other licensing regimes in comparable countries? If so, would you say a word about what those lessons might be?

Anna Paige: Because the principal approach taken in the Act is that licensing is an activity that needs to take account of local circumstances—I reflected earlier that that can mean that decisions taken in one area may not have been taken in another area—we have not looked extensively at licensing as it operates in other countries. That is partly because, as I say, that sense of what works in another country might not necessarily be readily liftable and translatable into an England and Wales context. Because the Government’s overall view is that the Act as currently framed meets its stated aim, they have not been looking to fundamentally change the way that the Act works.

We keep and will continue to keep a close eye on what the regime in Scotland looks like, how that works and the decisions taken in Scotland, which obviously have the closest bearing on how licensing operates in England and Wales. However, we have not done any explicit comparisons of licensing in England and Wales compared to other countries outside the UK.

Lord Davies of Stamford: I am disappointed by that response. I would hope that if I was in government and responsible for any particular area of policy or government activity, I would be alive to what was going on in exactly the same field in comparable countries. If you are in the private sector, you would certainly do that: you would keep tabs on what is going on among your competitors in the same industry or comparable situations. Does the DCMS have a different view, or do you take the same line as the Home Office?

Kate McGavin: No, we have the same view. I can understand the nature of your question. To some extent, it is about proportionality, how we deploy our resources and where we choose to focus our efforts. In this case, we have not had significant problems raised with us by the industry or our stakeholders, so we feel that for the moment the deregulatory measures that we have brought in since the Act and the Act overall are working well.

Lord Davies of Stamford: If I were to ask how the system works in Canada, the United States, Sweden, the Netherlands or France, you would not know the answer.

Kate McGavin: No, I would have to write to you.

Rosanna O’Connor: Would it be helpful to add that Scotland has a fifth licensing objective “to protect and improve public health”?

Lord Davies of Stamford: We are aware of that, yes.

Rosanna O’Connor: Those provisions are still bedding in in Scotland. We work with colleagues in Scotland through our national public health and licensing network and will be working closely with them through that network to understand the lessons learned of that aspect of the difference between ourselves and Scotland.

Lord Davies of Stamford: Scotland is not quite yet a foreign country, so it is not relevant to my question.

Rosanna O’Connor: I am sorry, I was just trying to be helpful.

Lord Hayward: Can I follow up with a supplementary on that? I am not sure about declarations of interest, but I have a declarable financial interest in Diageo

and a financial interest in Marston's, but it is shareholdings and nothing more. Having been chief executive of the British Beer and Pub Association for a decade, including when this legislation was introduced, I retain close friendships with a fair number of different parts of the industry. I am interested by your comments about foreign countries, because one aspect of the legislation when it was introduced was that it might introduce a café culture: in other words, that there might be a move to a French or Spanish style of operation. You are saying now that you have changed your approach to that which was linked to the introduction of the legislation in 2003.

Anna Paige: That sense of the intention of the Act in helping to bring about a more sensible drinking culture remains now just as much as it did then. Without wishing to comment on the Government's intention behind the Act at the time, expecting legislation to change culture is a tall ask. It does not do that on its own. You will be acutely aware from debates at the time of the other factors that might play a part in whether we have a café culture in this country, not least the weather, the layout of town centres and any number of other things. We know, and you will have seen from the memo, that there has been a growth in establishments selling both food and alcohol. That has been a shift over the time that the Act has been in place that perhaps mirrors more of what you see in other countries.

Baroness McIntosh of Pickering took the Chair.

Baroness Henig: Following Lord Hayward's example, I declare my interests as the non-executive chairman of SecuriGroup, which employs door supervisors. I am also president of the Security Institute, and a member of both the Beer and the Wine and Spirit All-Party Parliamentary Groups.

The Chairman: I apologise for being late, but you have been in very good hands. Could I turn to Lord Brooke?

Q6 Lord Brooke of Alverthorpe: My declarations of interest are that I am: vice-chair of the All-Party Parliamentary Group on Alcohol Harm and was its previous chairman; patron of the British Liver Trust—we are seeing increasing deaths from cirrhosis and other problems relating to alcohol; patron of the Kenward Trust, which provides rehab primarily dealing with prisoners; and a member of the All-Party Group on Obesity, which has a link with alcohol, as you are aware.

What consideration have the Government given to the proposals for additional licensing objectives, such as public health, compliance with the Equality Act 2010, and the promotion of social and/or economic objectives? Do the Government have any plans—I ask this with tongue in cheek—to amend the licensing objectives?

Before I get to that, could I say that, rather like Lord Foster, I went carefully through the papers that you provided for us and I found a major deficiency in your looking at the consequences of the Act over a broader front. Given my background, which I have just described to you, I looked particularly at the topics that related to other harms. You have a small section on that and you make a cross-reference. You look at all the individual issues in isolation, mainly related to the Home Office, but there are some issues that relate to other harms. Four of them come up, and in particular, in the middle of page 84, I discovered the 2015 statistics on alcohol

in the UK from the Health & Social Care Information Centre. If you take the trouble to look this up on the internet, you will discover in paragraph 441 that in 2014-15 there were 1,059,000 alcohol-related patient admissions to hospital. That was 5% higher than in 2012-13. Going back to 2005 when the Act came in, the figure was as low as 493,760. There has been a 115% increase in alcohol-related admissions to hospital. You mention only the figures where there has been a decline in violence that affects hospitals, yet this is a major area of change that has taken place over the past 12 years which the Home Office has failed to identify. These figures relate only to England. Wales is excluded. I would be grateful if you could find the figures for us on Wales, because my understanding is that what has happened in Wales over the past 12 years is even worse than in the UK. There is a change taking place that has not been identified by the Home Office, probably for structural reasons, because we have different departments involved.

Would you comment on that and say whether you accept that this is an issue of balance relating to the Act and which, given your overall summary on the way you feel it has worked well, is a major omission and needs to be put in the summary?

Anna Paige: On your point about whether we recognise that there are different impacts on health and other things, certainly we do.

Lord Brooke of Alverthorpe: Why have you not taken them into account?

Anna Paige: We work very closely with the Department of Health and Public Health England. We would certainly be happy to find the figures that you referred to for Wales and provide additional evidence to the Committee separately on health harms. I think Rosanna was going to deal with your particular point about the public health objective.

Lord Brooke of Alverthorpe: I am putting my question to you as the responsible department.

Anna Paige: On the question of whether we look at all the potential impacts that alcohol has on a community, yes, we do, absolutely. Do local authorities do that when they are making licensing decisions? We know that they do. Rosanna referred earlier to pilots that Public Health England is operating to look at how we can help local authorities in the sharing of data between health and other departments.

Lord Brooke of Alverthorpe: It does not figure in your report as being of importance.

Anna Paige: The report includes some evidence of health harms. I accept that it does not include all the evidence it could have done, and as I say we would be happy to put that right.

Rosanna O'Connor: Would it be useful to add that the majority of public health teams working within local authorities see licensing as a priority work stream? They want to support the licensing objectives to reduce the harms caused by alcohol in their communities and reduce the burden of alcohol harm to the NHS. Most are not looking to use the Act to reduce the number of outlets; they are more interested in the public health harms. PHE, the public health community and the Local Government Association have called for consideration of a health objective. You probably know this from the work that you undertake. Health harms are a known negative consequence of alcohol consumption, and licensing is a

mechanism for regulating alcohol retail. From a fairly recent survey we know that 90% of directors of public health support the addition of health as a licensing objective and, as I said earlier when we were talking about the gathering of different databases at a local level to support the arguments in local licensing committees, we are supporting pilots to test the feasibility of introducing health as a licensing objective, linked to community impact policies known in the trade as HALO CIPs. Overall, that work highlights some promising approaches. I have talked about the way in which we are providing support to local authorities to help them mount those arguments, and we will come back with an evaluation of that pilot. We know at a local level that directors of public health are very focused on this.

Lord Blair of Boughton: Could I repeat the question? Are you going to be open to the suggestion that a public health objective is added to the Licensing Act? That is the simple question. The evidence that Lord Brooke has produced is pretty overwhelming. Is it the Home Office's position there should be a fifth objective?

Andy Johnson: At the moment there are no plans to add to the licensing objectives. The issue is complex, so while we recognise the evidence of the extent of the health harms relating to alcohol, adding an objective on health is not as straightforward as it might seem.

Lord Blair of Boughton: I am not suggesting that it is straightforward, but you have health saying that most local authorities are interested in doing it. Is the debate live in the Home Office?

Andy Johnson: Because of the work that Public Health England is doing to look at the feasibility of using information to take decisions about individual grants of licensing applications, we are interested in it, but to date that has been the main sticking point: that when an applicant makes an application to sell or supply alcohol, the issue from a health perspective is that, in order for health harms to be considered as part of that application process, they need to be attributable to that application. That is why we are interested in the work that Public Health England is doing.

The Chairman: Can I put the question in a slightly different way? The Minister at the time rejected the amendment to add public health as an objective during the passage of the Bill. Given the weight of evidence and expert opinion, do you believe that Ministers might be minded to review the Act in the way of adding a public health objective?

Andy Johnson: I think not.

Anna Paige: With respect, Chairman, you will have to ask them that when they appear in front of you.

The Chairman: Is there anything you would like to add on compliance with the Equality Act 2010 and the promotion of social and/or economic objectives?

Anna Paige: It is important to look at the environment for licensing as a whole with respect to the four objectives and other mechanisms. As we have said, we keep under review whether the objectives are the right ones and we have statutory guidance that local authorities need to take account of, which makes it clear that local authorities need to recognise the role of pubs and other licensed premises in local communities and minimise the regulatory burden on business.

That is dealt with very clearly through the statutory guidance. Of course there is other legislation, such as the Equality Act, which they also have to take into account. You will know that the public sector equality duty has an impact on how they should take their decisions and applies to local authorities by virtue of the Equality Act. We are mindful of the need not to repeat in one piece of legislation what is already covered by another piece of legislation.

Lord Brooke of Alverthorpe: I am broadly happy, but unhappy that such a big issue is missing from your report, and I think it needs to be amended accordingly so that the public at large can see what the concerns are.

Anna Paige: We would be happy to add further information.

The Chairman: DCMS, would you like to add anything?

Kate McGavin: I do not have a commentary on the alcohol element. I would say only that similarly we have no plans to consider the objectives. In areas where we have deregulated—for example, where you do not require a licence for up to 500 people—you are still subject to other pieces of legislation, such as health and safety, so it is not that this activity is undertaken in a completely regulatory-free environment.

The Chairman: Would the Department of Health wish to comment on public health being added as an objective?

Lindsay Wilkinson: It has been more or less covered so far. It is difficult to speculate about what the Government are going to do in the future.

The Chairman: Fair comment. Thank you very much. Could we turn to off-trade sales and Lord Smith?

Q7 Lord Smith of Hindhead: I have to declare my interests. I am the chief executive of the Association of Conservative Clubs, which is the second largest club organisation in the UK. I am also the chairman of CORCA, the Committee of Registered Club Associations, which encompasses all the main club groups within the UK. I am an executive member of the All-Party Parliamentary Group for Clubs and the All-Party Parliamentary Beer Group. You might think that this is a man who has donated his liver to the Conservative cause, but I can assure you that is not the case.

We all recognise and understand that life has changed very much in the last 10 years, as have social attitudes. I am always slightly suspicious of some of the statistics that come out. It says here that the Institute of Economic Affairs says that the consumption of alcohol has decreased by 17%, yet Lord Brooke's information would tend to suggest the opposite. We know that the majority of alcohol sold now in the UK is for off-consumption rather than on-consumption, and it is primarily through supermarkets and stores. We also know that the second highest number of establishments with 24-hour licences, after hotels, is supermarkets and stores. The number of supermarkets and stores with 24-hour licences is about two and a half times greater than that of bars and pubs. The existing Licensing Act appears to treat off-trade almost as an afterthought with much lighter-touch regulation than for the on-trade. We are fascinated by whether we can establish a link or a trend to problems in the late-night economy that are caused by pre-loading: people who have bought sometimes very cheap alcohol in significant quantities in supermarkets, have consumed it at home and have gone

out and had a couple of drinks in the evening at bars where the trouble is caused. Do you believe that the licensing regime may need some reform in this area? Do you agree that the solution to these problems may lie in a reform of the off-trade?

Andy Johnson: This is an issue that comes up in discussions with our partners. They raise concerns about alcohol bought through the off-trade feeding through to problems in the night-time economy. From the perspective of the Act, what is important is that the Act focuses on the sale and supply of alcohol and that the ability to regulate that, whether through the on-trade or off-trade, applies equally. To date, we have not been presented with any evidence about people who drink alcohol at home before they go on a night out and then go on to commit acts of violence late at night.

Regarding hard evidence, studies in Cardiff looked at where people may have bought their last drink, but so far we have no studies that show that the problems that occur in the night-time economy are directly attributable to the amount of alcohol that people have consumed before they have entered it.

The second part of that is no one has presented to us so far any concerns that the powers that are already available to local authorities to regulate the sale and supply of alcohol cannot be applied to the off-trade, or in conjunction with the on-trade to address those problems. We would need to see both those aspects before we would consider looking at whether the Act is suitable to address the shift in consumption or purchasing patterns from the on to the off-trade.

Lord Smith of Hindhead: It is very interesting that nobody has come up with the evidence. Living in the real world, as we all do, we know that some people buy large amounts of alcohol, consume it at home, go out in the evening pre-loaded and intoxicated and cause trouble after that. We need to establish whether supermarkets should take a little more responsibility for what they are selling and whether some of the conditions which the late-night economy is expected to participate in, whether it is Best Bar None, PubWatch, or the alcohol responsibility deal, which always seem to lie on the on-trade, should be applied equally to the off-trade, bearing in mind that it is the off-trade that sells the majority of alcohol now in the UK. We know that heavy drinkers tend to purchase all their alcohol from supermarkets.

The Chairman: Can you keep your questions fairly short?

Lord Smith of Hindhead: That was quite short.

Baroness Goudie: Can I come in on the back of that? I do not have any interests in this world. I have lots of others but not in this one. On the off-trade, do you feel that there is anything to be said for having much tighter times when people can buy alcohol in supermarkets, including at night?

Andy Johnson: My opinion is not necessarily what counts in this area. We have to bear in mind that the number of shops with 24-hour licences is a very small proportion of the total number of licences.

Baroness Goudie: I disagree.

Lord Brooke of Alverthorpe: Are you aware that Amazon sells 24 hours a day, seven days a week, 365 days a year? They did not do that in 2005. There is a whole range of new off-trade sales taking place that is a different world entirely

from one where you are at a shop and there is a licence on it. Are you not aware of that?

Andy Johnson: I come back to the point about the suitability of the Act. There needs to be evidence to show that the way in which the Act operates, and the powers that are already available to local authorities and other responsible authorities to regulate the sale and supply of alcohol through the off-trade, cannot be made to work.

Lord Brooke of Alverthorpe: Which local authority regulates Amazon?

Anna Paige: I would be interested to know evidence of the amount of alcohol that Amazon sells. Of course it sells everything 24 hours a day, 365 days a year.

Lord Brooke of Alverthorpe: It has gone into groceries.

Anna Paige: It is going into groceries in a very, very limited area of the country. I do not think we yet have any evidence that the sale of alcohol by Amazon is contributing at any level to the problems of the night-time economy.

Lord Brooke of Alverthorpe: But it is a change.

Lord Foster of Bath: You keep saying that you have not had the information, and I would like to return to that. I asked a question earlier about what data we should be collecting that we are currently not collecting, and I had hoped you would say this very one in relation to off-sales. We live in the real world and we are all seeing it; I am sure you do. Is this not the very area where we should be collecting more data?

Lord Hayward: Before you answer that, can I ask a follow-on question? This is relevant to Amazon. I asked earlier whether you perceive online purchases as just another part of the off-trade or, given its growth, whether you now identify it as a separate element. In other words, as well as the on-trade, there is the off-trade and online trade, because it is not only pre-loading, of course, but post-loading.

Anna Paige: In respect of the data question, Lord Smith referred to what we know about the amount of alcohol that is purchased in the off-trade versus the on-trade. What we cannot do currently—and for anyone wishing to look at research this area would be ripe for more to be done on it—is identify a direct connection between the amount that is bought in the off-trade and problems in the night-time economy. Despite the increase in sales in the off-trade, we are seeing less crime and disorder and violence. I think it would be hard to say that there was a direct correlation between increased sales in the off-trade and problems with crime and disorder. Again, we do not have a counterfactual, so we could not say what would have happened.

Lord Brooke of Alverthorpe: It is not just crime and disorder.

Anna Paige: Indeed, but, again, we could not draw a direct link between one and the other. Even if we had the data, that would not allow us to say that one is caused by the other.

Lord Smith of Hindhead: Can legislation ever influence social attitudes and change fashions? The 2003 Act has not really created the café culture, although I accept that a number of pubs have closed, but premises licences have increased by 1% overall because there are more restaurants. Can legislation such as this only ever be reactive to changes in fashion and social habits?

Anna Paige: That is a wider question than this Act. There are examples of legislation that very clearly have led to changes in behaviour, and legislation can be a very powerful tool for bringing about changes in behaviour. There have clearly been changes in the way alcohol is viewed by individuals, by communities, by society. We see young people drinking less alcohol than they did 10 or 20 years ago. Legislation as part of a broader package of measures can absolutely bring about changes in views and attitudes.

Kate McGavin: The alcohol element is not directly related to the café culture, but obviously the level of deregulation in entertainment licensing has enabled a different approach to putting on arts and cultural events. It is certainly the case that has changed.

The Chairman: Mr Johnson, you said that you had no information on this specific area. Have you asked for such information?

Andy Johnson: Yes. When we engage with the police, either police forces or police and crime commissioners, this is a subject that we discuss regularly. We are interested in the attribution of incidents that may occur in the night-time economy around crime and disorder and whether they can be traced back to specific purchases of alcohol through the off-trade.

The Chairman: Could we turn to implementation and Lord Blair?

Q8 Lord Blair of Boughton: We are interested in the fact that there seems to be a disconnect between the view of Government nationally that this is coherent and the indications locally that it is not felt to be quite so coherent. In your memorandum, you state that the Act “is being used effectively in conjunction with other interventions as part of a coherent national and local strategy”. However, we know that the licensing committee is a different committee from the planning committee. How are you assessing the coherence of local strategies between licensing and planning? The Local Government Association says that the regime is “a complex maze of often historic legislation owned by a number of different government departments”. At the local level they do not see this as terribly coherent, but you appear to.

Anna Paige: Licensing and planning are two different regimes. They are overseen by the same local authority, and we know from conversations that we have had with local authority officers that those who oversee both those regimes talk to each other and engage with each other in looking at issues affecting the community. I think you are due to take evidence from DCLG officials at some point in the future, and no doubt they will talk to you more about how they see it from a planning perspective.

Lord Blair of Boughton: In your memorandum you say quite specifically that this is a coherent national and local strategy. On what basis do you say that?

Anna Paige: We see local authorities, licensing authorities, directors of public health, as Rosanna referred to earlier, police and crime commissioners and environmental health working effectively at a local level to make decisions about licensing. Clearly some of them do that more effectively than others. That is the nature of local government, the nature of everything. Some areas work more effectively than others. We have done work over the last period specifically to look at partnership working arrangements within local authorities, and Andy can give

some examples from the local alcohol action area work where we have some really excellent examples of local authorities coming together.

The point that we were aiming to make with the memorandum is that the fundamental aspects of the Licensing Act are about local decision-making, and they allow local authorities to make decisions in the context of their local strategy for a community, for business development, for diversification of the night-time economy, in a way that imposing a strict national framework would not necessarily support. Certainly in the way we work together at a national level with the Department of Health, Public Health England and DCMS, there are a number of different strategies that have a bearing on alcohol, but government departments work together in developing those.

Lord Blair of Boughton: Somebody wanted to ask a supplementary about the cumulative impact process.

Lord Foster of Bath: I did, although I was going to do it a little later. Let me ask it now, because it follows logically. You talk about everybody working together effectively. You talk about the licensing people and the planning people working together at a local level. You talk about Governments all working together and everything being nicely joined up. Given that we have a cumulative impact policy at the moment in regulation rather than law, which applies only to alcohol, has any thought been given to the possibility of having a more joined-up approach, where you could do what, for instance, improvement districts and other bodies now do, which is to bring all the different issues together and enable the local authority to take into account entertainment, late-night food, alcohol, cinemas, theatres—and I personally would want to include gambling in that—so that they can develop a proper whole night-time economy and a package around that? Why is the cumulative impact limited only to the alcohol bit of that big package of licensing?

Andy Johnson: On the point around the cumulative impact policies not being statutory, the Government have committed to put them on a statutory basis.

Lord Foster of Bath: Incidentally, do we know when?

Andy Johnson: That is a matter for Ministers, but a commitment was made in March in the modern crime prevention strategy to address that point, although that commitment is made specifically on the cumulative impact of licensed premises, not your broader point. That is designed to address some of our concerns about the effectiveness of cumulative impact policies as they apply at the moment: whether they are being used effectively, the strength of the evidence that underpins the decision by the local authority to implement them, whether they are still required in a particular location, and the ability of a local authority to object to a licence that has been made when somebody may not have raised a particular concern.

Lord Foster of Bath: In simple terms you are saying that the Government are committed to putting them on to a statutory basis to be more effective, but no thought has been given to using this as an opportunity to widen the licensed activities that are covered within a community. Has there been no consideration at all? Has it not been raised and discussed?

Andy Johnson: No. We had discussions with the licensed trade and local government in the run-up to the publication of the modern crime prevention strategy about the policy work, and following the Minister's decision to commit to put cumulative impact policies on a statutory footing, and it did not come up.

Lord Foster of Bath: It is a pity that you keep referring to crime and disorder and not the other things, but there we are.

Kate McGavin: Could I add a point? The Mayor of London has a Night Time Commission at the moment, which is considering a pillar to do with well-being and culture. We have observer status on that. We maintain an open mind and will look at any recommendations that come from this commission and this Committee and will advise Ministers accordingly. We are not proactively undertaking that at the moment, but we will look at the evidence produced. DCLG may have more thoughts on that.

Q9 Lord Blair of Boughton: With your permission, Chairman, I am going to take two questions together. The principal change in the Licensing Act was to change the control of licensing from magistrates to local authorities. How effectively do you think local authorities have exercised their powers and duties?

Anna Paige: Our overall view is broadly that they have exercised them effectively. You asked specifically about reviewing licences. We can say a little more about the review process and how that operates, if that would be helpful.

Andy Johnson: On the point about the proportion of decisions that are appealed, it is quite small. In the figures most recently available for 2013-14, there were 111 appeals out of more than 21,000 applications. That covers not just fresh applications but applications for minor or major variations in licences. There were 117 appeals against review decisions out of about 830 reviews, so about 14%. We believe that part of the reason why the number is so low is that there is a lot of discussion between applicants and local authorities through informal mediation during the course of the licensing process, where, as with any mediation, there will be a bit of give and take, so conditions may be added to the licence after the application has been submitted to address a particular concern of a local authority. We think that informal system before a decision is taken by a licensing committee is one that works effectively.

Lord Blair of Boughton: Again, this seems to be the issue about different regimes. Taxis can end up in the Crown Court but licensing cannot. Planning can go to the High Court. This appears to be an attempt by different government departments to lay down different structures and criteria for oddly similar kinds of things. If taxis can go to the Crown Court, where is the right of appeal in this? It is the lack of coherence that struck us all in the evidence that we received. That is the point I am putting to you. Do you feel there is anything worth pursuing? Are you having discussions about trying to make this work?

Andy Johnson: We have recently discussed the appeal system in licensing with our stakeholders—licensing solicitors, local government and the trade—and they are happy with the way the system works at the moment. They did not feel that there was a need for additional appellate authorities or different rights of appeal to different courts. They liked the system as it works at the moment, because it helps them to resolve problems at that local level without recourse to the courts.

Lord Blair of Boughton: What might help the committee is if you were able to produce some material that suggested that was the case. You had that consultation. Is there anything written down about that consultation that you could share with the committee?

Anna Paige: We could certainly look to write to you on that point.

Lord Blair of Boughton: I think it is quite important.

The Chairman: That would be very helpful. Before we leave this part, have you received any feedback from the consultations you have had about whether formal mediation in such disputes and appeals would be a way forward? We see the figure in the memorandum for the savings from this. I do not know what the figure is for the appeals process that have come out. Have you received any or do you have any thoughts on mediation?

Andy Johnson: As I say, no one has suggested that.

The Chairman: Could I suggest it now? Let me play devil's advocate in view of Lord Blair's question.

Andy Johnson: In the discussions that we have had with representatives of both the on and the off-trade, licensing solicitors and local government, no one has suggested that there needs to be either another appellate authority or the creation of some form of formal mediation process to resolve disputes.

The Chairman: What is the average length of time between an appeal being brought and being decided?

Andy Johnson: I would have to write back to you on that.

The Chairman: You must have that information.

Andy Johnson: Not to hand.

The Chairman: But you could write to us?

Andy Johnson: Yes.

The Chairman: We do not know where the evidence will take us, but would you be open to saving money through a mediation process that is less adversarial? As in every other walk of life, successive Governments have looked to introducing more mediation. Would you look to introducing that?

Andy Johnson: Yes.

Q10 Baroness Goudie: How effective has the guidance issued under the Act been in enabling local authorities and responsible authorities to keep up to date on the Licensing Act? Why is the Government removing the statutory basis of the guidance?

Andy Johnson: I will take the second part of that question first.

Baroness Goudie: Whichever is easiest for you.

Andy Johnson: The changes proposed in the Policing and Crime Bill will remove the requirement of the Home Secretary to publish the guidance in Parliament, but will not remove the fact that the guidance is issued under the Act, so it will still be a statutory document in that sense. The changes will simply allow the Home Secretary to decide how to publish the guidance in whatever way she considers appropriate. That would be online or through some other means. That change is designed to allow the guidance to keep up to date a little more readily with the changes that have been made. As you can tell from the memorandum, there have been quite a few changes to the Act and this will speed that process up.

We discuss the overall effectiveness of the guidance on a regular basis with our partners. Most recently we made a change to remove commentary on legal cases. Some people quite like the changes that we make, but there is always some disagreement. Some people quite like the legal commentary. There is always that tension on the amount of information that people would like to see from the guidance. The main thing that we do is try to make sure that not just changes to the guidance itself but changes to the Act are as well publicised as possible to make sure that they are signalled well to the people who will be affected by them.

Baroness Goudie: They understand why you are making the changes.

Andy Johnson: Yes.

Baroness Goudie: It is quite clear if we are making a change that we have to say why we are making it.

Andy Johnson: Yes.

The Chairman: Would you say that 16 changes to the guidance is quite a lot, considering that the Act has only been in force for 10 years? Does that strike you as a lot and rather confusing for practitioners?

Andy Johnson: The important thing is that the guidance is kept up to date, so as the Act changes, or different parts of the legal framework around which the Act is framed change, the guidance will need to change to reflect that.

Lord Brooke of Alverthorpe: Does this mean that the requirement to publish an application for a licence in a newspaper will disappear?

Andy Johnson: Ministers are not currently considering that.

Lord Brooke of Alverthorpe: Under this, will it be permissible not to go ahead? Do you think it will improve relationships between the public and the local licensing authorities?

Andy Johnson: The proposal in the Policing and Crime Bill relates only to the guidance that is issued under Section 182 of the Act. It does not relate to the way in which people are required to notify the public about the licensing applications.

Lord Brooke of Alverthorpe: So there will be no change arising from it.

Andy Johnson: No.

The Chairman: I am a non-practising Scottish advocate, but say I was a poor unsuspecting practitioner in this field, where do I go to find the guidance and what do you do to publicise the guidance updates?

Andy Johnson: The guidance is available on GOV.UK, and as well as the preliminary discussions on changes to the Act we will issue a press release. We will have discussions with some of our national partners, including the National Association of Licensing and Enforcement Officers, the Institute of Licensing, the trade press and licensing solicitors. Our approach is to try to contact as many people with as wide a coverage of this sector as possible. That said, we are always open to suggestions about how we can improve how the changes to the guidance are communicated to make sure that everybody who is affected is able to pick them up as quickly as possible.

Lord Brooke of Alverthorpe: But not Parliament.

Anna Paige: In the number of times the guidance has been updated, not once has Parliament commented on it. If Parliament wishes to see the guidance, it might have commented rather more frequently up until now.

The Chairman: Are there other areas where there have been as many changes to an Act requiring as many changes in the guidance?

Andy Johnson: I do not know.

The Chairman: We will move on.

Q11 Lord Hayward: What work have the Government been doing on the question of fees since the decision not to introduce locally set licensing fees? Do the Government plan to revisit this decision? Can I add a supplementary question, which follows on from the series of questions about the off-trade earlier? One recognises that fees can impact in two different ways. One is on the workload and would apply to very small functions and small licences in one set of circumstances, and the other is on the burden on society. I am thinking here of the off-trade selling vast quantities and a growing proportion of the alcohol but where the application is relatively simple. There is a concern around this table about the impact on society of the off-trade and its sales, and whether it is off or online does not matter.

Andy Johnson: The Local Government Association is currently doing some work. You may recall that the previous Administration consulted on locally set licensing fees. The level of responses from local authorities was quite low and the Government were unable to make a decision about whether to commence the legislation or not. The then Minister wrote to the association to ask it if it could do some work to improve the evidence base. The association conducted a survey earlier this year. The survey is now closed and we have had some initial discussions with the association about some of the headline figures. It is currently in the process of going through the information to do some more detailed analysis. No decision has been made on what to do about licensing fees pending the discussions that we are about to have with it.

Baroness Grender: When do you envisage getting more information on that?

Andy Johnson: We had preliminary discussions with the Local Government Association four or five weeks ago. I could imagine those discussions starting up again in earnest after the Local Government Association has given evidence to this Committee.

Baroness Grender: We had an informal evidence-gathering session with them, and they made it clear that there is quite a shortfall and burden, and quite a difference. They also made clear, speaking again as a proud owner of a temporary event licence, that they would like to reduce fees for those kinds of events to encourage more community activity and make sure that they are getting proper bang for their buck from the much-harder-to-monitor licences. Is that a travel of direction that you think is quite interesting and that Ministers would consider?

Andy Johnson: It is potentially interesting, but we would need to wait to see the detail of the Local Government Association submission so that we know a little more about the details. Our initial conversation was all about what the headline figures say, not the overall approach that the Local Government Association would like to pursue for licensing as a result of the survey that it ran.

Q12 Lord Brooke of Alverthorpe: We have covered this question to some extent already, but we will have a repeat. The Licensing Act presupposes the right of the public to drink alcohol. Contrary to what might be common opinion, I

support that. What is the Government's policy generally on alcohol and its impacts on society, including health, culture, leisure, tourism and crime? Is the Act supporting this policy generally? They produced a strategy in 2011, some of which has now been abandoned. We have recently seen the responsibility deal, which was at the core of that strategy, put on hold for the time being, and it is no longer operating. Given that we have been seeing reductions and freezes on duties in the last two or three Budgets with alcohol becoming cheaper, what is their approach overall?

Anna Paige: Overall, as you mentioned, Lord Brooke, they presuppose the right of the public to drink alcohol. They take the approach that alcohol is important for the UK's economy, and that pubs, bars and restaurants are an important part of community life, but that the harms associated with alcohol, in relation to both health and crime, are often high. For communities in particular it can be very high. Their approach is that people should be able to go out or remain at home, enjoy a drink if they wish to, but they should be able to do that without being afraid that they might become a victim of crime or suffer because of alcohol-related antisocial behaviour, and they should be aware of the risks that they take in doing so to themselves and to their health. That is this Government's policy on alcohol. It has been the Government's policy on alcohol for some time. Our view on the Act, as you will have seen from the memorandum and know from what we have said, is that it works well overall in securing that. It cannot do that on its own. There are things that sit outside the legislation that are concerned with both mitigating those risks and ensuring that people get the information they need. Certainly on the health side, I know that Lindsay was keen to comment at this point.

Lindsay Wilkinson: If I am able to do so, I will. From the health point of view, the Government believe in informing and empowering individuals and providing up-to-date and accurate information, hence the CMO's new low-risk drinking guidelines. They have a role in ensuring that the system provides high-quality interventions to help mitigate, prevent and treat alcohol harm effectively. That is the overall health perspective on alcohol policy.

Baroness Goudie: Where do you see airports fitting into this?

Andy Johnson: Airports are exempt under the Act. That is mainly for practical reasons. The non-travelling public do not have access to airports; they are only for people who will fly. The Government's view is that the risks—I will come back to crime and disorder, naturally, as a Home Office official—of crime and disorder in an airport as a result of the consumption of alcohol are low. That is why airside is exempt from the Act.

The Chairman: But there are incidents of airport rage and incidents on ferries. You may remember that there was an incident on a Danish ferry from Newcastle to Holland where someone set fire to their cabin. Do you think there is now cause to reconsider? First, the Committee would like to understand the reasoning behind the exemption in the first place, if you could share that with us. Is this a good time to review that in view of airport rage and people being tanked up, pre-loading and post-loading when they get on a plane or a ferry, or indeed a train? We would like to understand why it was exempted and whether that exemption still holds valid.

Andy Johnson: It is probably sensible to uncouple the trains point from the airports point. As I say, the non-travelling public do not have access to airports. There are also practical reasons around the ability of licensing teams to carry out licensing inspections of premises that sell alcohol airside. The Act works on the premise that alcohol is sold in a fixed location, so moving vehicles are not licensed to sell alcohol, with the exception of trains. The system is that if the police or a local authority are concerned about potential levels of crime and disorder on a train—the most obvious example being trains that are transporting football supporters over large distances—the magistrates' courts can issue an order to ban the consumption of alcohol on those trains.

The Chairman: Airports were advised in 2015 to impose tougher restrictions on the sale of alcohol, but our understanding is that that has not happened.

Andy Johnson: There will be by-laws that are set by airport authorities.

The Chairman: Should it not be uniform across the United Kingdom rather than having by-laws? The problem is that people get nervous. They are not allowed to smoke on a plane, they are not meant to smoke in their cabin on a ferry, so they often turn to alcohol because they are nervous passengers. Would it not be better to have a blanket law through the guidance or revision of the Act so that it is the uniform policy in every airport in the UK?

Andy Johnson: That is not the premise of the Act. These decisions are taken by local authorities in the circumstances that apply to them. We would be interested to see what the Committee finds in relation to airports, ferries and ports. Our starting point is that to treat these locations the same nationally might cut cross the nature of the Act. If it is an area you want to make a recommendation on, we would be interested in that.

Lord Blair of Boughton: Again, it is this real-world issue. It is going into an airport and finding a lot of people sitting around drinking pints of lager at 6.30 in the morning. You know they are going to get on a long flight and drink more when they are on there, and you ask yourself, "Why should this happen?" It has to be in the commercial interests of airports to sell alcohol, and they do not have to deal with the problem, which appears 3,000 feet up. You could make very simple adjustments here in the hours, pricing, and all the other things. It seems a strange anomaly, particularly at airports.

Q13 The Chairman: No one has raised it, so we might have a word after we have concluded. Could I mention my declarations of interest? I have a modest shareholding in Diageo, which is well below the registration requirement. I am honorary president of the Pickering Conservative Club. I am a member of the APPGs on beer and wine and spirits, so I suppose I will be termed a "good-time girl". Could I look at alcohol pricing as a mechanism and taxation as another? Which of the issues that the Committee has put before you today would you be most tempted as a regulator to look at: alcohol pricing, taxation, minimum unit pricing?

Anna Paige: You will know that pricing has been used as a form of control, whether in respect of taxation or, in other countries, in respect of minimum unit pricing. Historically, England and Wales have focused on taxation. In Scotland, the Government introduced a minimum unit price for alcohol, which you will know is

currently subject to legal action. The Government have no immediate plans to introduce a minimum unit price for alcohol in England and Wales. That policy will remain under review, particularly while the legal action in respect of the Scottish decision is ongoing. We are keen to look at how that is going.

Whichever of those mechanisms is used—indeed, do the Government look at using any of them at a particular point in time?—there is always a need to weigh up the impact that might have on consumption and from there on the potential for harm, against the contribution of the alcohol industry to the economy. The Government's current position is that they do not wish to use taxation or have the duty escalator in place. As I say, we are keeping the minimum unit price under review as things stand. Either one is a mechanisms that is open to Government to look at.

The Chairman: Do you believe there is any evidence that supermarkets—I think we touched on this slightly earlier—are using cheap lager and cider as loss leaders to bring people in and then charging more on wine and spirits? Could a policy on pricing or taxation adapt that?

Anna Paige: There is already a mandatory condition that they cannot sell below the permitted price. There have been successful prosecutions in the territory of not being able to sell below the price based on duty banding and the tax paid on it. We know that there are examples of trade taking steps to ensure that irresponsible promotions are not used to promote alcohol in a way that would be harmful to communities or to health. We keep an eye on that, as do the organisations that we frequently talk to about this. It is an important point.

The Chairman: Looking to health—this is a question either for Public Health England or for the Department of Health—are there parallels with taxation on tobacco, on cigarettes in particular, in guiding behaviour?

Rosanna O'Connor: It might be useful for the Committee to be aware that Public Health England was commissioned by the Department of Health a year or so ago to produce an alcohol evidence review, which we are in the process of producing. It is planned for publication later this year. In that report we will include an assessment of the wider international evidence of the impact of policy interventions on alcohol-related harms, including treatment, licensing and financial measures, both taxation and pricing. That report will be published before the end of the financial year and certainly within the timeframe of your considerations.

The Chairman: That will be very interesting. A particular concern is when you get 18 year-olds and over buying very strong cider for 12 and 13 year-olds. It should not happen. You could try to catch the 18 year-olds doing it or run after a 12 year-old, but even fit policemen would have great difficulty catching them. Is there any way we could close down that form of behaviour?

Lord Brooke of Alverthorpe: Could I ask a supplementary on that? Some of the manufacturers of white cider have voluntarily withdrawn it because it has been creating so much harm. Is this not an area where, if the manufacturers recognise it, there is a case for further re-examination of the alternatives that might be available for it to be either withdrawn or taxed in a different way? At the same time, will Brexit provide opportunities for different approaches entirely from

anything that we have had in the past? For example, there will be greater freedom on VAT to apply it in a whole range of different areas at different levels.

The Chairman: Indeed, we could go back to having a sales tax.

Baroness Goudie: I am still hopeful.

Lord Brooke of Alverthorpe: Are you taking that into account too?

Anna Paige: On the latter point, as we get greater clarity about what future regimes may look like, of course we will take that into account, as well as the opportunities that may present for doing things differently.

On the point about underage sales, I am relatively new in this role, so I have had a number of conversations recently with stakeholders about the things that they are looking at and care about, and they say that underage sales is certainly something that retailers in particular, both on and off-trade, care very greatly about. They care about it in respect of direct sales underage, which are reasonably straightforward to deal with, in that the Challenge 21 and Challenge 25 schemes are ways of making sure that you are much less likely to be selling to someone underage. They also have talked to us explicitly about how they can help to prevent indirect sales to underage drinkers through, as you say, either 18 year-olds, or even older people, and how they can look at the circumstances in which alcohol is being bought and the risk that might present to young children.

The Chairman: Could we return to crime and disorder?

Q14 Baroness Goudie: Late night levies and early morning restriction orders do not appear to be popular regulatory tools. What reasons would you give for the apparent reluctance to use these tools? How can the process for which they are designed be better achieved? How can we make a difference?

Andy Johnson: There are seven levies in existence in England, none in Wales, and no early morning restriction orders. Last summer we looked at the late night levy and some of the problems. Those discussions also touched on the early morning restriction order. The discussions identified a number of problems that local authorities felt made it difficult to introduce the levy. First, it was not sufficiently flexible and had to apply to the entirety of the local authority area, and it did not cover all businesses that operated in the night-time economy that might contribute towards crime and disorder. In relation to the first point, the order was too broad, so pubs that may stay open late at night but tend not to operate in busy town centre night-time economies will be swept up in the levy even though their impact on policing will be minimal or non-existent. There were some concerns about how the money was apportioned between the local authority and the police and crime commissioner, as well as the sorts of things that the money could be spent on. We have worked through some potential solutions to each of those, and Ministers are currently considering them. In the same way as with cumulative impact policies, there is a commitment to try to improve the late night levy in the modern crime prevention strategy.

The problems themselves might not entirely explain why there are only seven. We know that there are some local authorities that do similar things in this space but do not quite have a late night levy. Nottingham has a night-time economy business improvement district and Dalston in Hackney has a voluntary levy. Local

authorities might think that some of these things serve their purposes a little better than the late night levy.

The discussions on the early morning restriction order revealed that in a sense the value of the EMRO lies as much in its threat as in its application. Some of the local authorities that we spoke to that had considered it, although they had not quite got to the stage of consulting formally on it, and felt that it was a useful way of businesses operating in the night-time economy coming together to discuss what measures they can put in place voluntarily to address some of the crime and disorder concerns. Alongside that, it is worth bearing in mind that crime and disorder in the night-time economy has been falling.

Baroness Goudie: We are told that.

Andy Johnson: The statistics are well known. That may also explain why no local authority has decided to introduce an early morning restriction order.

Q15 The Chairman: Before we release you, we have had a very optimistic view that everything is rosy in the garden. Is that really what the departments and Public Health England think, or do you in your heart of hearts think that we could tweak the Act a little 13 years after it came into being?

Anna Paige: Our view is that, broadly speaking, the Act provides an appropriate framework for licensing. That is the picture that you will have got from the memorandum. That is not to say that government policy on alcohol should not continue to be under review and continue to be developed. On a number of occasions we have reflected that legislation is only part of that picture. We do not have a sense that the Act itself requires a fundamental rethink. That is certainly the case.

Andy Johnson: I would say the same. In the discussions that we have with stakeholders there is a clear sense that the Act is an improvement on its predecessor. No one has advocated to me seriously that they would like to see a return to the old system of licensing. They like the basic framework in which local authorities take decisions together with the other responsible authorities. They think that by and large it works well. They say there are things that they would tweak, but by and large people are happy with the fundamental basis on which the Act is framed.

Lindsay Wilkinson: From my point of view, not everything is rosy in the garden regarding health harms—not at all. However, it would be very difficult to attribute anything specific to the Act, because since 2005 consumption has continued to go down, although it has gone up since the 1950s for example. It is still double what it was then. It is not that we do not recognise absolutely that health harms are both comprehensive and bad. It is just difficult to associate them with the Licensing Act specifically. As Lord Brooke referred to earlier, last Thursday the Health & Social Care Information Centre produced a compendium of statistics on mortality and morbidity, prescriptions, hospital admissions and so on, most of which are going in the wrong direction.

Rosanna O'Connor: I said earlier that Public Health England, the public health community and the Local Government Association have called for consideration of a health objective in the Licensing Act. That is known. Alcohol has a quite significant impact on health harms, so the interests of the public health community

are focused on the Act as it is with the addition of a health objective. In fact, the Local Government Association, which I am sure you will probably be speaking to, has produced *Rewiring the Licensing Act* and is asking for some changes.

Kate McGavin: On the distinct area of entertainment licensing, the Act has been modified since 2003. We have deregulated further. At the moment we feel that those deregulations are popular, proportionate and effective, but we will continue to keep that under review, as with other policies.

The Chairman: Thank you very much. Rosanna, could you submit the publication that you say will be published by Public Health England this autumn?

Rosanna O'Connor: The evidence review, yes.

The Chairman: It would be very timely for us if we could have a formal copy. May I thank the witnesses very much indeed for being with us this morning and taking our questions? We are very grateful.

Local Government Association, Rushcliffe Borough Council, Leeds City Council, Stratford-on-Avon District Council – oral evidence (QQ 16-30)

Examination of Witnesses

Councillor Tony Page, Deputy Leader, Reading Borough Council and Licensing Champion for the Local Government Association, **Councillor Debbie Mason**, Portfolio Holder for Safety and Well-being, Rushcliffe Borough Council, **Mr David Banks**, Executive Manager Neighbourhoods, Rushcliffe Borough Council, **Councillor James Lewis**, Deputy Leader and Executive Member for Resources and Strategy, Leeds City Council, and **Councillor Peter Richards**, Chairman of the Licensing and Regulatory Committee, Stratford-on-Avon District Council

Q16 The Chairman: Good morning, ladies and gentlemen. May I give you a very warm welcome to our proceedings? We are very grateful to you for joining us. Just to remind you, the session is open to the public, is broadcast live and is subsequently accessible on the parliamentary website. Thank you all for coming. Where you agree, do not feel that you have to add anything. If you feel that something has not been said that is helpful, do please chip in. You will be sent a copy of the transcript to check for accuracy in a few days after today's session, and please advise us of any corrections that you would like to make as quickly as possible. Equally, if you wish to clarify or amplify any points that you have made during the evidence session, please feel free to provide any supplementary evidence to us. Could I ask you each in turn to introduce yourselves?

Councillor Peter Richards: Good morning. I am Councillor Peter Richards from Stratford-on-Avon District Council. I am the sitting chairman of our regulatory and licensing committee.

Councillor James Lewis: Good morning. I am Councillor James Lewis, deputy leader of Leeds City Council, and licensing is in my portfolio.

Mr David Banks: I am David Banks, executive manager for neighbourhoods at Rushcliffe Borough Council.

Councillor Debbie Mason: Councillor Debbie Mason, portfolio holder for community safety and health and well-being.

Councillor Tony Page: Councillor Tony Page, deputy leader of Reading Borough Council and lead member for transport, planning and the environment, but I lead for the LGA on licensing matters.

Q17 The Chairman: Could I just say at the outset that I have a modest shareholding in Diageo, I am honorary president of Pickering Conservative Club and I am a member of the all-party parliamentary groups on beer, wines and spirits? Under the Licensing Act currently there are four objectives. Do you believe that these are the right ones, were there any omissions and, in particular, do you consider that health and well-being should be added to this list?

Councillor Tony Page: Chairman, we do not all propose speaking on every question, for the reasons you have rightly identified. Perhaps I could ask Councillor Lewis to lead off on this. We have tried to allocate our answers to assist you.

Councillor James Lewis: In Leeds, in certain areas where we recognise that alcohol and alcoholism is a serious health concern, we have taken the approach of issuing local licensing guidance to applicants under the Act. That is not a cumulative impact policy that we have used in certain areas to restrict the number of licensed premises, and it is not an attempt to reduce overall the number of licensed premises, but it is an attempt to make it clear to people, when they are applying, what their obligations are.

To try to reduce the amount of harmful consumption, we condition applications; there can be no advertising of alcohol promotions in windows, higher-value alcohol should be placed behind the counter so that it cannot be easily shoplifted, and alcohol should not be displayed right in the door where people can grab it and run away with it, which has been a problem in a number of areas. The area that is covered is the LS10 and LS11 area of inner south Leeds. If anybody is familiar with Leeds, it is where Leeds United Football Club is; that part of the city. It is an area where we recognise that alcohol has a detrimental impact on health. Alongside obesity and smoking, it causes serious health concerns, so this is an attempt to use the Licensing Act and conditions to regulate it; it is not about taking or stopping licences outright but about ensuring that conditions are attached to the granting of licences to try to reduce the impact of alcohol in the area, particularly off-sales.

The Chairman: Do you think that is working, or would having a national objective set in the revision of the Act strengthen what you are doing?

Councillor James Lewis: I think a national objective would make it clear for all areas that this is targeted specifically on an area where the joint strategic health needs assessment has highlighted alcohol as a huge concern. If it were in an Act it would mean that this consideration could be made to all licensing applications. I do not believe that it is a burden on the process because, again, it is about conditions; it is not about granting or refusing, and it would also make very clear the responsibilities that licensees, particularly for off-sales, have to try to reduce harmful alcohol consumption.

The Chairman: Could you identify additional costs if public health or health and well-being were added as a national licensing objective?

Councillor James Lewis: I do not believe so. We have a relatively low number of appeals on licensing decisions in Leeds, which shows that my colleagues on the licensing committee generally make the right decision. This includes applications in the area covered by this policy, so I do not think it would add extra costs to the system. I think it would add some clarity right from the start, because we are seeking not to increase the number of refusals but to condition the successful applications and make sure that they are being responsible in the way they act. I do not think that will add extra costs.

The Chairman: Are you concerned that the provisions of the Equality Act 2010 as a reason for refusing a licence are held in regard by the licence applications that are being made?

Councillor James Lewis: I do not believe so in Leeds, no.

The Chairman: There is no problem with applying the Equality Act in this regard.

Councillor James Lewis: I do not believe so, no.

The Chairman: Does anybody have a contrary view?

Councillor Tony Page: I am not aware of that either, Chairman. I would make the point that an LGA survey of public health officers showed that there is overwhelming support for that fifth objective to be added, and we believe that licensing decisions could be made more effective by the addition of that objective. It is not that every application would necessarily be subject to a response from the health side, but it would enable a wider range of factors to be taken into account in a way in which they cannot at the moment. Just to quote from the survey, respondents identified that, without the subjective, objections were often unenforceable and that evidence and insight from public health was not heard, despite local health data being used effectively by public health, so there is a real need to enable that to be brought into the decision-making process.

Councillor Debbie Mason: Certainly, in Rushcliffe and in Nottinghamshire, our experience is that the four objectives are the right ones. I sit on the health and well-being board too, and when we have had talks with public health and on the health and well-being board, the evidence indicates that they can provide little firm evidence on each application. This can be a barrier, so we find that there is little evidence to help in the application process. That is not to say that there is no place for it, but when looking at specific applications we find it difficult to make it meet what it should be doing.

Q18 The Chairman: You have pre-empted a question in a sense: what is the relationship between the licensing authority and the health and well-being boards? Are many people like you on both?

Councillor Debbie Mason: I have found in Nottinghamshire that I am one of the few who do that. It makes for quite a large portfolio, but it is very interesting being on the South Nottinghamshire Community Safety Partnership and the health and well-being board and being vice-chairman of the Police and Crime Panel. Although it leads to a lot of work, there is a benefit to being at those meetings with the police. The police attend the health and well-being boards, if not all the time. They are made aware of them and have the ability to attend.

The Chairman: Would any of you like to comment?

Councillor James Lewis: On the relationship between the health and the well-being boards, there is no overlap in Leeds between licensing and the health and well-being board, but the evidence from the joint working between the council and the health services on life expectancy and preventing immature death is used to inform the approach taken to local licensing guidance and therefore to some of the conditions that are put on applications. The individual members may not overlap, but we try to reflect the priorities of the health and well-being board in the local licensing guidance in Leeds. I think that adding public health as an objective to the Licensing Act would formalise that relationship. If it is helpful, I could supply the Committee with a copy of the guidance that we send to all applicants in the area I have referred to, which sets out very clearly the evidence used.

The Chairman: That would be of interest. Lord Foster.

Lord Foster of Bath: Perhaps you could help me, as I am slightly confused. We have heard from the LGA that the majority of members want a fifth objective to be included. We have heard from Councillor Lewis that you are finding a way of doing that, but, Councillor Mason, you seem to be implying that, were that fifth objective to be there, you do not believe that sufficient data is being collected that would help you to apply and make use of that objective. Is that correct and, if so, what additional data should be collected?

Councillor Debbie Mason: Yes, I do not believe that the data is always collected to make certain that it is there and ready when an application comes in. Most of what we get from Rushcliffe and the health and well-being board and from the health agenda is more perhaps for ward level and, although it is perhaps not directly responsible, Healthwatch. We also get data from the police, but particularly from health. Certainly, from my point of view, the detail that would be needed for an application to bear serious relevance is not quite there yet.

Q19 Lord Smith of Hindhead: I will have to declare my list of interests, but it will save me having to do so at a later stage. I am the chief executive of the Association of Conservative Clubs, I am the chairman of CORCA, the Committee of Registered Clubs and Associations, which encompasses most of the club organisations in the UK, I am on the APP executive of the beer group and of the non-profit-making club group. I am the trustee of over 200 clubs and I am an honorary member of many clubs, including the Carlton Club, which makes it rather surprising that I am still alive, actually.

I have a quick question for Councillor Lewis. You mentioned that in your part of Leeds you put conditions on the licence to prevent establishments from promoting sales of alcohol. Are you saying, for example, that if Tesco or Aldi is promoting 20 cans of Carling at £10.99, which they are at the moment, in that particular patch of Leeds you will not allow them to put the posters up in their windows?

Councillor James Lewis: Yes, that is correct.

Lord Smith of Hindhead: So despite the national promotional campaigns of major supermarkets, they have to comply with that in your particular patch.

Councillor James Lewis: Yes, that is correct. In the areas that we are referring to, which is not the entire Leeds City Council area, they are not allowed to promote alcohol in their windows, and that is a condition on their licence.

Q20 Baroness Henig: To declare my interests, I am the non-executive chairman of a company that, among other things, employs door supervisors, I am president of the Security Institute and a member of the all-party parliamentary groups on beer, wine and spirits. When 24-hour licences were being discussed, the expectation was that the staggering of closing times would lead to a consequent reduction in alcohol-related crime. Has this happened? There seems to be evidence that the staggering of closing times has simply pushed the violence back into the middle of the night, so I wondered what your experience had been on this.

Councillor Tony Page: First, the number of 24-hour licences is actually very small, so it is very difficult to extrapolate from a fairly small number. I am just looking at the figures. Nearly half of all the 24-hour alcohol licensees are actually

hotel bars, and supermarkets and stores account for nearly another third. One of the problems I would identify in a city area, which has received a lot of opposition from police, is the number of petrol stations that have been applying for 24-hour licences. We have had four or five in Reading alone that have been resisted with the help of the police. The argument for selling alcohol between 2 am or 3 am in the morning and 6 am or 7 am is, in my view, pretty tenuous, but there have often been applications for 24-hour licences to cover that period. The police would take a view that that is a period of the night when there should be minimal opportunities to buy from places such as petrol stations. There has been insufficient evidence of 24-hour licences among clubs and pubs, although it is relatively limited in my experience. I do not know whether any of my colleagues want to add to that.

Mr David Banks: Certainly Rushcliffe's experience is that we had a number of applications at the outset for premises that wanted longer hours. The reality is that they have not gone on to use those hours, and most premises are shutting at around 12 am to 12.30 am, so that is our experience.

Baroness Henig: Is that true of Leeds as well, obviously being a very big metropolitan area?

Councillor James Lewis: The experience in Leeds is that it has not resulted in the staggering of opening times; it has, as you correctly identified, resulted in a lengthening of opening times. No venue is going to want its competitors to have the advantage over them of an extra hour at the end of the night or early in the morning, so the pattern in Leeds city centre has been exactly as you have identified. Also, in some of the market towns that form part of Leeds City Council district, it may not be as late at night, but certainly all the venues will seek the same licensing hours, and if one asks for an extension the rest follow suit.

Councillor Tony Page: According to our LGA figures, there are only 831 pubs, bars and nightclubs with 24-hour alcohol licences across the country, so it is not a significant sample as a percentage. There are 204,000 premises licences.

Councillor Peter Richards: Experience in Stratford, in a similar way to Rushcliffe, is that licences have been applied for to stay open longer, but the pubs and clubs do not necessarily use those licences to stay open for 24 hours. What we have found is a culture shift in the times when members of the public are enjoying a drink. Typically, we now see that they pre-load before coming out to a pub, coming in for a drink at 9.30 pm or 10 pm and then staying through until 2 am, which is a shift from where we were before, when people would be coming out to the pub at 7 pm and you would see them leaving at around midnight. If any crime and disorder does occur, that has shifted to slightly later in the evening at a point where, typically, police shifts have stopped and these crimes may not be reported as well as they would be otherwise. Similarly, council enforcement is not occurring as it should at that time of night, so I do not think that some of the reports are necessarily getting through.

Baroness Henig: So you are suggesting that data is not being recorded and that there is crime but it is not being picked up?

Councillor Peter Richards: I think there could very well be crimes that are not being picked up. Very obviously, serious crimes are reported immediately, but I am sure there are small problems that occur at pubs that are not being picked up.

Baroness Henig: This is interesting, because the Security Industry Authority—my previous area of experience—certainly seems to have data suggesting that door stewards are reporting a fair amount of violence later on in the night, but that does not seem to be reflected in the figures. That would in a sense confirm what you are saying.

Councillor Peter Richards: Yes

The Chairman: Is there any evidence of a café culture that was behind the original applications?

Councillor Debbie Mason: Yes, we do have a café culture in our main urban part, which is closest to the City of Nottingham, on Central Avenue in West Bridgford. It has been very successful and it has made our main area really quite vibrant. With that vibrancy, however, come challenges. One of the challenges when it first started was the café culture at night, but we worked with the police on public order areas and on different ways of talking to the people who have businesses there. During the day, the area where the café culture is as opposed to the bars, which tend to be further along the avenue, is very distinct. There are mothers, parents, children. It is very family-orientated. It is still fairly family-orientated until about 9 pm. Then the area changes and the café culture becomes a more vibrant evening environment in West Bridgford. This has been helped by the council working closely with the licensees, the businesses and a number of restaurants too to try to keep that café culture in some way. At night, you could say that it is quite a different part of the economy, but we have worked hard to make it vibrant and at the same time safe. We are only two miles from the centre of the City of Nottingham, so we have to keep a close eye on it, as do the police, and we have worked well with them and with the taxis and the whole night time economy.

Baroness Watkins of Tavistock: I have no relevant interests to declare. Is the environment in any of your areas significantly different during university and college term times, or is there no variation?

Councillor Debbie Mason: We have Universities near us, and certainly we have students stay within West Bridgford, and you cannot say that it makes no difference. However because of the high quality of businesses and premises in West Bridgford, they tend to go into town. If they come into West Bridgford, on the whole they do not cause too much of a problem when they are enjoying themselves, but a watch has to be kept on it. I go out, as many councillors do, with the Nottinghamshire Police licensing officer, the local police and local council officers and keep a regular check on this, because it is so important not to let it become like a city. It is a challenge all the time. The students are a part of this, but on the whole they are fairly well behaved.

Q21 Lord Brooke of Alverthorpe: My interest are that I am vice-chair of the All-Party Parliamentary Group on Alcohol Harm, I am on the All-Party Parliamentary Group on Obesity and I am a patron of the British Liver Trust and of a rehab centre, Kenward House, down in Kent. I would like to pick up the theme

of the differences in challenges for the licensing authorities between rural and city areas. Could you give us an insight into the differences that might be experienced and whether the Act, as it is presently drawn up, is sufficiently flexible to deal with the differences?

Councillor Peter Richards: The Stratford-on-Avon district is very obviously a rural district. We have areas within the district that are town centres and more rural residential areas. Our experience has been that the more rural residential areas tend to experience more problems through noise nuisance and licensees perhaps extending their hours where they shouldn't do and conducting business that they shouldn't be. They feel that they get away with that behaviour because they are far away from the town centres, and the police do not necessarily come out to enforce on these issues. With the district council, again the rural premises expect enforcement not to come out to them because they are further away from the city centre. Generally that does not tend to be a problem, but very obviously there is a cost to enforcement. As things stand, the fees associated with licences limit the amount of enforcement that we can conduct. If we could lift those fees or raise them, we might be able to reduce the issues that we experience.

Lord Brooke of Alverthorpe: Picking up on the point that you just made about licensing fees, when the 2011 Act was going through the Government intended then to cover your costs for your licensing activities and explored the possibility of devolving the right and responsibility for fixing the fees down to the local level. In the event, they did not do that. Could you comment on the latest state of play on this and what should happen in the light of the consultation run by the Government in 2015, in which the majority of the evidence was against any such changes? I understand that they are now doing a further consultation on this. Perhaps you could bring us up to date on your experience.

Councillor Tony Page: The LGA has just commissioned, and the CIPFA undertook, a survey of the Licensing Act fees. That has just been published and I will ensure that the Committee is sent a copy. The estimate in this survey—about a third of councils participated—is that licensing authorities across England and Wales have an annual net deficit of just over £10 million, and we believe there is a very strong case for local government to secure and achieve full-cost recovery. We are not looking to make money out of it, but we are looking for our fees to cover the essential parts of issuing, administering and enforcing. That is critical, as Councillor Lewis said, because the legitimate responsible pubs, clubs and premises will expect an authority to come down hard on those who do not abide by the law, and clearly that requires a properly resourced enforcement section dealing not only with licensing but with planning, although planning is a separate discussion.

On the licensing front, there is a clear need for us to be given the ability to set fees in a way that delivers full-cost recovery. It can be done transparently so that the industry locally can see that we are not making a profit and we can show how the costs are attributed to officers and other functions. Things such as temporary event notices are a real bane. Some of us object to the principle of them, because they are no longer for voluntary organisations, they are abused regularly by pubs and clubs, and for £21 they in no way cover the costs to the local authority in

administering, let alone enforcing. We can present, I think, a compelling and comprehensive case for being allowed to set our fees locally within the parameters of full-cost recovery. I will send that report to you. I do not know whether any colleagues want to add to the cry for local fee-setting.

Councillor Peter Richards: I think you are absolutely right that one of the benefits of the Licensing Act is its flexibility and the fact that councils can make decisions based on their own local context. Similarly, being able to do that for fees would be very beneficial.

Lord Blair of Boughton: On temporary event notices, if you were going to change the system in this way, would you be able to distinguish between a genuine community-based temporary event, which probably does not cost more than £21, and the abuse by licence holders? I would not want to see the fees for temporary events for communities being wiped out.

Councillor Tony Page: The original intention was for this to be used by local voluntary groups, and we could still see the regulations more tightly drawn to deliver that. I do not think any of us would want to see those groups in any way hindered by TENs. I can give the example of Reading, where we have the annual rock festival. We get floods of TENs from pubs and clubs that are looking to ride the wave of local business and dispense with all the hours and conditions that they would normally have to comply with. That was not the intention of the original TENs provision.

Councillor James Lewis: A simple change to TENs could be where they are applicable to a premises that already has a licence. The existing licence conditions could remain while the TEN is in place. That would be a simple step that would stop an abuse of the system, so that the PTA wine and cheese evening could still go ahead at a £21 charge but existing licensed premises would have to properly apply for the change that they require.

Q22 Baroness Grender: Since we are doing TENs to death, I had better declare my interests as the proud owner of a temporary event notice for last Saturday at a primary school fair, for which I paid the £21 fee. Certainly one discussion that we had with colleagues of yours at the LGA was whether, if that is the kind of thing that you want to encourage, you want more of that. This is at the very heart of Lambeth. The school has 60% free school meals. You want exactly that kind of thing with alcohol sold along with Halal chicken. It was a very diverse community moment, of course, and a triumph last Saturday. I invited you all, but where were you?

Lord Hayward: It was not on the hashtag.

Baroness Grender: That is the kind of thing that presumably you want to encourage, and almost want to go to no fee, or at least a lower fee, to encourage. Meanwhile, I suggest, the kind of profiteering side on which TENs are being misused in a way is where you want to make the money, but I would like to hear your view because I would hate the conversation to pass by with a suggestion that that in any way goes up.

Councillor Tony Page: I think we would all agree absolutely with what you have said.

Baroness Grender: That is good enough for me.

Lord Smith of Hindhead: I do not think it is quite accurate to say that TENS were introduced into the Act solely for community or other groups to hold events. There was a case against the Commissioner of the Metropolitan Police some years back that allowed private members' clubs to hold up to 12 events a year to which non-members could be invited. In fact, the original thought behind the TEN and the fact that it was originally at 12 events was the direct result of that, and it can give some licensed establishments the ability to open up. So it was not completely for that. I know that it has only recently gone to 15, but the Act allows these temporary event notices to be used and it is limited. I am just interested in how they can be abused.

Councillor Tony Page: I would say that they are being abused in the way Councillor Lewis rightly identified. Many established pubs and clubs will look to piggy-back on to other events. Some 132,000 TENS were issued last year. In my experience locally, only a handful of those would have gone to the voluntary organisations or even to the clubs that you refer to, and they cause a real headache for the local police.

The other thing about TENS, of course, is that there is a very limited period of time—I think it is only 72 hours—for the local police or our environmental health officers to put in an objection. Putting the application in on a Friday afternoon is often a very popular trick, because that time gobbles up the weekend and you have virtually no time to respond, so there are also procedural issues with TENS. If you would like more evidence, I am sure that we could arrange it.

The Chairman: A little note would be very helpful, if you could give us one.

Baroness Greender: One that sets out the data.

Lord Hayward: Can I just establish that you said that £10 million is the deficit? A pretty high proportion of that is reflected in Westminster, is it not, in that it has historically produced by far the largest deficit?

The Chairman: Do you have the breakdown?

Councillor Tony Page: I do not have that detail with me. I have the survey here.

The Chairman: Could you provide us with that?

Q23 Lord Hayward: Moving to the question of the off-trade, I assume that licensing objectives apply equally to the on-trade and the off-trade, but is it possible to trace the problems arising from pre-loading, and for that matter post-loading: in other words, people returning after nightclubs, one venue or another, to individual premises licensed for off-sales? I am sorry. I forgot to declare my interests. I have a declarable interest in Diageo and an interest in Marston's, which is not declarable in terms of the size but I will declare it. I was the chief executive of the Beer and Pub Association and I am a member of the all-party beer group, and I should perhaps observe in passing that I have known Councillor Page for probably more years than he or I would want to remember and that my most regular visits to nightclubs are actually in Leeds.

Councillor Tony Page: Not Reading?

Lord Hayward: Not Reading. I now revert to the question of the off-trade and individual premises and post-loading, et cetera.

Mr David Banks: On off-sales trade, we do some very good work with Nottinghamshire Trading Standards, which provides intelligence-driven work to

target particular premises and to undertake test-purchasing that allows us to challenge and take action against those off-licences, particularly in relation to underage sales. That is probably a more significant problem than pre-loading, certainly in our own experience.

The Chairman: Is that shared?

Councillor Tony Page: Certainly we and the local police regularly test-purchase with underage children, and it is a problem. Unfortunately, you cannot test-purchase with drunks, which is harder, so there is an enforcement issue in that aspect. I therefore very much agree with David's comments.

The Chairman: I think the old adage of "drunk as a lord" has gone and it is now "more drunk than your doctor". Would anybody else like to comment?

Lord Hayward: Following on from that, the law was originally seen as tackling on-premises, although it applied to off-premises. Given the change in the balance of sales, do you think the law is now adequate to deal with the increase in both off-sales and online sales?

Councillor James Lewis: Referring back to my previous comments, trying to condition the premises in a geographical area not to produce off-sales overall but to try to reduce the type of alcohol that is sold and the growth of it is a recognition of the impact that off-sales can have. It is very hard to tie it down to individual shops and it can sometimes be a futile wild goose chase. The ward I represent is a large number of quite close-knit villages, so the shopkeepers know who is coming in and out in relation to test-purchasing, according to anecdotal evidence, so rather than chasing individual licensees it is about using a conditions approach to try to reduce the impact. The approach that we have taken in Leeds is to try to get a more responsible approach across the industry.

Councillor Tony Page: Local government cannot substitute for what should be a national decision about the debate on minimum pricing, and there is a debate there. Some of us believe in, and would support, minimum pricing. The LGA does not have an official position on that, but it is a debate that I think is wrong to dump on local government; we cannot resolve that locally.

The Chairman: What about taxation as an alternative, as we have on cigarettes?

Councillor Tony Page: Yes, indeed. That is what I mean under the heading of minimum pricing, but how it is achieved is a matter on which central government has to have a view. Clearly the health service has a view that it feeds in at various levels nationally and locally, and we have recently had some very compelling evidence presented to us. That debate not only has to be conducted through health and well-being boards, and bringing the health objective on board would strengthen that debate locally, but ultimately it has to be a decision that the national Government accept.

Q24 Lord Smith of Hindhead: I would like each of you to give me a yes or no on whether you think pre-loading has any effect on the problems that occur in the night-time economy in your areas.

Councillor Tony Page: Yes, it does cause problems. I think most of us would say yes.

Councillor Debbie Mason: Yes.

Lord Smith of Hindhead: So you all agree that pre-loading is an issue when it comes to the problems that occur in the night-time economy.

Councillor Tony Page: The police locally, and Reading cannot be any different in this, actually have a lot of sympathy with clubs that admit somebody who appears to be sober who has already had two or three pints, the full impact of the alcohol has not set in, and they might not even buy a drink, but they may already be causing trouble and may already be worse for wear. Other than breathalysing them on the door, which I suppose ultimately would be possible, I can think of no other way of dealing with it.

Councillor Debbie Mason: We had a trial period when the security staff on the door actually had their own breathalysers. Obviously they did not test everybody who came in; they selected people whom they viewed as probably having pre-loaded either at home or elsewhere. It worked, and there was no anti-feeling, people were quite open to it, but there is a resource issue there and who takes the hit on that resource. Are we actually asking the premises to take that hit on the doormen they provide—they had armbands to identify that they were authorised—or do local authorities do that, in which case we are back to fees? When legislation comes forward to local councils, we are expected somehow to supply these resources as well as officer time. Some of it is quite hard to quantify, especially when it comes to members, because we were very supportive of that across all parties, but there is a cost and you just have to look at what is happening.

Councillor Peter Richards: I think it is fair to say that the majority of, if not all, members of the public going out to enjoy a night out will pre-load to some extent, but the issue is the extent to which they pre-load. Some will overly pre-load, some will have a couple of glasses of wine, and it is usually those who are excessive before going out who cause issues. Birmingham City Council trialled the breathalysers at nightclubs to great effect, and as Councillor Mason said very few people had any issue with being asked to be breathalysed. Typically it was the people who had excessively pre-loaded who caused a problem, in which case you have immediately singled out the people who are likely to cause a problem, at which point they can be asked politely to leave. I think that it is something that could well be supported.

Councillor James Lewis: While we are on the subject of private drinking, one issue to raise from Leeds is not just the pre-loading, and I agree with the comments that have been made. We also recognise as a city that we need to reduce the incidence and recurrence of domestic violence. In many ways, the aspect of pre-loading and the availability of alcohol for people to drink at home impacts on that agenda as well. Again, it is very difficult to tie down to individual licensees or premises, but the overall approach would be to reduce the quantity and availability of very strong alcohol.

Lord Blair of Boughton: This is just an observation from last week. Central government spoke to representatives who said that they had no evidence of pre-loading. Would the LGA be able to provide us with evidence that most licensing authorities are worried about this?

Lord Mancroft: Just listening to you, it sounds as though you regard this as a really major problem, if not the major problem—the thing about which you appear most animated. Is that right? Has the Licensing Act made it worse and is it getting worse?

The Chairman: The Institute of Economic Affairs says that overall alcohol consumption has decreased by 17%. You appear not to agree with that.

Councillor Tony Page: We can certainly provide some evidence in answer to the question about pre-loading, and we will work on that.

Councillor James Lewis: I think that the overall quantity of alcohol sales might be reducing. I have two points to make. First, the harm that we are seeing from alcohol being sold is not reducing. Recognising the health impacts of alcohol on premature death in parts of Leeds, other health indicators suggest that there are still issues to be dealt with, even though the overall quantity might be reducing. Secondly, on the night-time economy, we are seeing a shift away from people having a couple of pints three or four times a week to people having one big night out. That has an impact on the night-time economy, on the bar economy and again on people's behaviour, because they are consuming a lot of alcohol one or two nights a week, even if they are not drinking on a daily basis.

Q25 Lord Smith of Hindhead: There are a couple of questions rolled into one under item four, so I will separate them out. We have some evidence that shows that there has been a significant decline in the number of nightclubs and private members' clubs. Obviously the two establishments are very different animals operating under different parts of the Act. The nightclubs are usually under premises licences as proprietary clubs, whereas members' clubs are under Part 2 of the Act and run by the committees. There are also some statistics on the number of personal licence holders increasing from just under 300,000 to just under 600,000, but the number—

The Chairman: A short question please.

Lord Smith of Hindhead: It is relevant, my Lord Chairman. The number does not apply because, as you have already pointed out, there are only 204,000 premises licences operating and the number of personal licence holders is not relevant to that. We have seen a dramatic reduction in the number of nightclubs and also in the number of private members' clubs down from 17,000 to 15,400, but at the same time we have seen a very slight increase in the number of premises-licensed establishments being open. In your experience of these things, do you think that this reduction in nightclubs and private members' clubs and the overall slight increase in premises licences is in any way linked to the Licensing Act?

Councillor Peter Richards: In Stratford-on-Avon, we no longer have any nightclubs. When I moved there in 2007, we had seven nightclubs, so very clearly there has been a decline.

The Chairman: It is your fault. You are evidently not going out enough at night.

Councillor Peter Richards: Evidently not. I would not say that was down to stringent laws from the Licensing Act, but I do think the Licensing Act has had an impact, and that impact has come about from pubs being able to stay open longer. We talked about the café culture earlier, we now have a pub culture where pubs

can have more live music and recorded music later into the evening. I think people are more inclined now to go to a pub and speak with their friends and have a drink in a comfortable environment rather than go to a nightclub that is loud.

Councillor James Lewis: I think a night out with Lord Hayward sounds like an exciting prospect in Leeds. Our experience in Leeds, as a big city, is that before the Act nightclubs had a very specific purpose that was about people wanting to drink late in the evening. Now, when many of our city centre bars are open until 4 am, if people want a later drink they do not need to go to a nightclub specifically. It is a change in the trade that has been caused by the Act, but I do not think it has been detrimental overall to the number of venues opening; it is just that their purpose in licensing has changed.

Lord Smith of Hindhead: So it is a change of fashion and people just want to go out and have a pizza and a late-night drink. Does anybody have anything to say about members' clubs that is different from nightclubs?

Councillor Tony Page: We have the same number, so I do not think there has been any particular impact of the Act on those.

Councillor Debbie Mason: I have found in Rushcliffe and probably some of the surrounding areas that actually the members' clubs have declined. I think it is the way of life that is passing by rather than the Act. People do not go to members' clubs; they want more freedom to meet their friends in different premises.

The Chairman: Thank you. Could we turn to planning and licensing?

Q26 Lord Foster of Bath: Rather boringly, I have no interests to declare; I feel I am following Councillor Richards. The Act was meant to balance culture and tourism alongside the protection of local residents. When I had the opportunity to take Lord Clement-Jones's Live Music Bill through the House of Commons, which of course amended the Act, the biggest concern was that this was going to lead to further conflicts between local residents and licensed establishments putting on live music, and of course there are examples of that. I am interested in whether you think the current legislation, which covers noise and other things, is sufficiently balanced.

I also want to add the planning side of things and the issue of an existing licensed premises with new buildings being put around it. You will be well aware that there is already guidance that makes it very clear that councils are encouraged to consider appropriate measures, but the change that was brought in on 6 April 2016 for permitted development from office to residential was a much tighter introduction, and the agent of change was brought in. Do you believe that should apply in all cases of new residential premises near existing licensed ones?

Councillor Debbie Mason: We have found that the relationships over the differences between planning and licensing are absolutely central to it. Certainly in Rushcliffe we have looked at that. The relationship has grown and it has been effective on working with the Act rather than perhaps against it. As an example of how effective it is, prior to the implementation of the Act a number of premises in West Bridgford had planning restrictions on the use of the outside of the premises so that they could trade inside but not outside later in the evening, which helped the people and the residents around it. That changed when the smoking ban came in under the health agenda and the Health Act, so rather than smoking inside

people were legally required to smoke outside. There was nowhere to go outside on the premises, so they were outside on the streets, the pavements, everywhere. This caused noise and disruption to the local residents, and perhaps when the Health Act came in this was not fully understood. We got the planning and the licensing services to work together to tell the premises, "If you want to keep your high-level status in West Bridgford, you must work with us to try to balance out the requirements so that planning and licensing can help you to use those outside areas rather than the pavements". As I say, there was a joint approach between planners, licensing, the police and the elected members, who were very important because they had the local evidence and they knew their area, to allow them to apply for extended hours under planning to allow the public to use that outside area but to be controlled by door staff. While they were on the pavements, they could not be controlled by door staff and there was a reliance on the police who, being in a semi-rural area, were not always there straightaway. We have worked around that. We are not a city, and I have to say that we do not have the huge problems that cities sometimes have, but it worked for us. This has reduced the number of noise complaints. We worked with the residents as well so that we could try to satisfy everybody.

Councillor Tony Page: Lord Foster is quite right that the prior approval changes that were introduced, which initially were for a three-year trial period, have been disastrous in city centre areas, because the planning controls have gone. I represent the central area of Reading where long-established pubs and clubs, which have been delivering a good service, suddenly find that an office block above them has been converted into residential, people move in and a complaint is made, which I think is a bit of a cheek because if you move into the central area of a city you must expect some noise, particularly if you are moving above a pub or club. This obliges environmental health officers to take steps under the legislation that they work under, which could lead to a review of the premises' licence. That is not natural justice. I think it is very unfair on responsibly run premises. We, as the local planning authority, have no powers to control that because of the prior approval changes. We cannot require proper insulation to be put in and we do not control the size of the accommodation. It has been a disaster.

Lord Foster of Bath: I am sorry to interrupt, but let us be clear. My understanding—I raised this on the Floor of the House and I had a response from the Minister who confirmed it—is that, as from 6 April this year, you have powers to ensure mitigation measures in the case of an office to residential permitted development. I have the ministerial response here. The Minister could be wrong, but I think it is really important that we check this out.

Councillor Tony Page: We will certainly pursue that, but I think the Minister might like to review the actual fact on the ground.

Lord Foster of Bath: For new developments, I would agree with you.

The Chairman: We have your evidence about the conflict with the environmental health officers. If there is anything you would like to elaborate on, that would be very helpful.

Baroness Greender: If we can move on from the prior approval issue, which is clearly an issue, are you all confident that planning and licensing talk to each other enough? Could more be done to improve that and, if so, what?

Councillor Peter Richards: Yes, I believe that to a large degree they do talk well together. I have experience of a gentleman who has applied for an alcohol licence and it has been granted for his property, but he does not have planning permission for a change of use of that property to an event property. Very clearly, there has been a mix-up on which comes first, and I think it should be made very clear in the Licensing Act that, in order for someone to apply for a premises licence, they must have prior planning consent to do so. [All other witnesses signified assent.]

The Chairman: Thank you very much indeed. That is very helpful. Could we turn to implementation and decision-making?

Q27 Baroness Watkins of Tavistock: Case law says that the power of licensing committees is a power delegated on behalf of the people who you represent but that it might be very difficult to reach a holistic and balanced decision that considers everybody's interests. Is that how members of licensing committees see their role: trying to get a balance? Can you talk us through when that might be difficult and whether political issues have influenced decisions?

Councillor Peter Richards: As I mentioned before, I chair our licensing committee at Stratford-on-Avon Council, and I do believe that the members understand very clearly that it is our responsibility to make a balanced decision. We have members from all parties sitting on these panels, and at no stage have I ever experienced any political influences. It is made very clear by our solicitors and in our briefing documents what we are looking to achieve and aiming at and the reasons why a particular licence may be in front of us, and a decision is made based on the legal framework by which we are bound, so I think we make very good decisions. I think that is evidenced by the fact that very rarely do we have any appeals, and as and when those appeals come forward they are usually dismissed.

Baroness Watkins of Tavistock: Is it a very difficult decision, or is the guidance so clear that you can almost at a first glance see how something is going to go, or is there sometimes a real debate about the balancing of issues?

Councillor Peter Richards: It depends on the case, I think. We have had extensive debates when we have gone through these panels, so it very much depends on what is put in front of us. Again, we are very lucky in Stratford in that we have an exceptional solicitor who briefs us extremely well. Similarly, in our licensing department there are people who brief us extraordinarily well, so we can make what we believe are very good decisions based on what is put in front of us and the legal framework.

Baroness Watkins of Tavistock: It is quite interesting that you do not have very many appeals. Do you have very many complaints after you have granted licences, which would be the counterargument that you may not always get it right?

Councillor Peter Richards: The majority of the complaints that we receive in our district are noise-related, and whether they are upheld or not is a decision

made by the environmental health officer. Our most recent regulatory committee suggested that the majority are vexatious complaints rather than valid complaints.

Baroness Watkins of Tavistock: Is there a good feedback loop from the environmental health officer to the licensing committee, so that you learn from it?

Councillor Peter Richards: Yes.

Councillor Debbie Mason: I think that members are used to taking quasi-judicial decisions. We do that at development control and on all planning issues, so I think we are used to doing that. We also have compulsory training for both, whether it is development control or licensing, and you cannot be on that committee unless you have taken that training. [11:50:00]

Councillor Peter Richards: That training point is a very valid point to make. While we have compulsory training, I am sometimes concerned that it is not sufficient. We have three-hours of compulsory training per year for our licensing members. As the regulatory chairman, I encourage all our members to undertake further training so that they are fully informed and can make sound decisions, which they do, but I find that sometimes we may be lacking or the councillors may be lacking. It is important that a minimum requirement for training is introduced.

Baroness Watkins of Tavistock: Obviously, at the moment, the Act does not include a requirement to think about health. Do you think that is an important issue for training, if in the future it were to become a requirement?

Councillor Peter Richards: If it were to become a requirement, absolutely, yes.

Lord Brooke of Alverthorpe: It has been represented to me that councils often do not fight certain applications because of the cost involved in the legal process and that, if they had more cash, they would resist more than they do at the moment. Is there any fact behind that?

Councillor Debbie Mason: I have no experience of that.

Councillor Tony Page: Do you mean that we are granting licences rather than turning them down? I am certainly not because, remember, the process we are dealing with involves evidence from the police and our own officers, local residents and other organisations. If a compelling case is made for either refusing a new application or a review, the committee will take it. On cost, sometimes it is amazing to see the costs that applicants will expend with some quite expensive London QCs brought down to, perhaps not intimidate, but encourage the committee in one direction. That can sometimes be counterproductive, I would say.

The Chairman: Are you convinced, with the level of evidence permissible, that the bar is sufficiently high when apparently hearsay can be taken? Do you think the level of evidence that a licensing committee hears—

Councillor Tony Page: Our lawyers and our legal advice at committee would encourage us to be very challenging. Certainly, in my experience across licensing committees, the legal advice will always remind members that hearsay is not sufficient and there needs to be the evidence. In my area, the police have upped their game considerably on the quality of the evidence they produce. I cannot remember the technical name of the recorder—

The Chairman: CCTV.

Councillor Tony Page: The body-worn cameras, plus the wider use of CCTV, are now something that they are much more familiar with and used to deploying, and the quality of the evidence from the police is much greater than when the Licensing Act first came in.

Councillor Peter Richards: I agree.

Q28 Lord Mancroft: I do not think I have any interests to declare, except that for many years I have been interested and involved in the treatment of alcoholics and drug addicts, which I am not sure is strictly relevant to this. The concept of responsible authorities is a key means through which the licensing objectives are promoted. Do you think local authority members feel well served and supported by those responsible authorities and the information that they are expected to provide, and what consequences does that have for balanced decision-making?

Councillor Tony Page: I repeat briefly that the quality of the police evidence is critical in our decisions and they are much more conscious of the need for more robust evidence than they used to produce. The police train their staff better now in the Licensing Act and in the requirements of licensing committees. One of the reasons I strongly support the health objective being added is that I think it will act as a catalyst to the health service getting more involved in the process and looking at how it deploys its evidence, and we can then have a more robust discussion about the quality of the evidence we would be looking for in some licensing decisions.

Mr David Banks: In Nottinghamshire, we are very fortunate to have a police licensing officer who provides very good case-specific and premises-specific information to licensing authorities. That allows us often to make decisions, take action and negotiate situations before even an appeal or a hearing takes place, which can also save time and costs, so that has been very effective.

Councillor James Lewis: West Yorkshire Police has dedicated licensing officers as well, which really helps that relationship. On the wider data available, we are very strong on area data linked to health and social services, which support some of the area-based approach we talked about earlier. Sometimes it is very difficult to link that to individual applications and individual premises, which means that we quite often grant with conditions rather than refuse an application. It is good on an area basis, but does not always drill down to social data or drill down to individual licences.

The Chairman: Councillor Page, when you refer to health bodies, there seems to be a glittering array of bodies in the health service. You have referred loosely to the health service; which would you argue is the most effective body that you as licensing authorities would like to relate to for this point?

Councillor Tony Page: There is the director of public health. We would like to be able to access information from the Royal Berkshire Hospital in our case and other points of treatment. There are a number of different points.

Lord Mancroft: In what way? What do you want to access them for?

Councillor Tony Page: In treating people, hospitals do not necessarily get that information—where they come from and where the incident happened. It is a pretty hit and miss affair. A health objective and a requirement to participate more in the licensing process might focus that attention more sharply.

Baroness Watkins of Tavistock: As well as the hospitals, would the ambulance service not be a really good source?

Councillor Tony Page: Yes.

Councillor Peter Richards: The experience in Stratford District Council is that the police and environmental health frequently respond to our requests for information but other responsible authorities either do not respond at all or respond late. I am happy to take your guidance on it but I think there is a danger, if we introduce too many responsible authorities, that we are overburdening the process and I question whether we will get accurate responses back from them in a timely manner.

The Chairman: On Lord Mancroft's point, if someone was identified by the doormen at the entrance who seriously appeared to have an alcoholic problem, would they just be passed round the houses? Is there anyone to intervene to identify a service that could help an individual? I remember a time—perhaps it is not appropriate—when we had meths drinkers on the streets of Edinburgh. As a little girl, I did not know why they put purple in the methylated spirit but it was for an obvious reason because people were loading up on meths at the time. If someone has a problem, is there any service that would intervene, or do you just look at it strictly from the licensing aspect?

Councillor Peter Richards: I am not aware of any.

Lord Foster of Bath: Councillor Mason said in our earlier deliberations that if we were going to have a health and well-being fifth objective, we needed more data collected to help us. That seems to be coming up again—the responsible authority, whether a health authority or a health body, is not necessarily able to provide the information either quickly or at all, which may be because it does not collect it. Is anybody doing any work on what data would be helpful to you, and what do you suggest we recommend should be collected in that area?

Councillor Debbie Mason: Certainly, there is one health and well-being board for Nottinghamshire and another for the city, where the hospitals are, and sometimes there is not the collaboration between those two. Because our health and well-being boards are separate—

Lord Foster of Bath: Do we know what data specifically we would like them to collect?

Councillor Tony Page: We will let you have some written comments.

The Chairman: That would be very helpful.

Q29 Lord Smith of Hindhead: Under the Licensing Act 2003, it is an offence to sell or supply intoxicating liquor to anyone who is intoxicated. Do you know of any establishment that has ever been prosecuted for selling alcohol to someone who is intoxicated?

Councillor Tony Page: I cannot think of anyone in my locality. [All other witnesses signified agreement.]

Lord Hayward: I think Lord Brooke has asked my question in relation to appeals already. I would like to put on record that I am quite happy to accept Councillor Lewis's invitation to host me in Leeds in future because it would be an even more enjoyable evening if he is buying the round.

Councillor James Lewis: I am a Yorkshireman so do not get your hopes up.

Councillor Peter Richards: We have experience of one occasion where a venue's licence was put under review and that was appealed. The reason for it being appealed was purely time-sensitive in that the review happened just before the festive period, and they appealed so that they could maintain their licence through the festive period and then proceeded to close their premises. I wonder whether we can tighten up the ruling around appeals. If a review has been undertaken, I would suggest it has been done for a reason, and appealing that decision should not allow that review to be circumvented.

The Chairman: May I play devil's advocate for one moment? We had an interesting session with Home Office officials last week where they assured us they consulted widely on a lot of the issues the Committee expressed concern about and none of the stakeholders—that dreadful term—or interested parties had come up with anything we should worry about. Do you as a group, either the LGA or individual authorities, respond to Home Office consultations under the Licensing Act? Have you, and have you expressed any concerns you would like to share with the Committee at this point? You could always send that in writing. "Complacent" is a rather overused term, but it seemed a little complacent if councillors had not responded, and we think we know councillors better than that. Is there anything you would like to share with us?

Councillor Tony Page: We have certainly responded and we can let you have some comments to show that.

The Chairman: That would be very helpful indeed. That is very kind of you. Lord Blair.

Q30 Lord Blair of Boughton: I am changing now from the actual licensing process to crime and disorder associated with licensed premises. We know that overall levels of crime have been in decline for many years so there are a couple of questions here. Is it your view that crime and disorder associated with licensing itself is going down, as opposed to the overall national picture that crime in general is going down? It would also be useful for you to confirm the state of your liaison with the police.

Mr David Banks: As I said, our working relationship with Nottinghamshire Police is excellent. There is a licensing officer there whom we work with daily. Also, it is about working relationships with the trade itself. For example, the development of robust pub watch schemes has gone incredibly well in terms of developing those relationships and encouraging good business practice in the licensed trade. Those are some of the examples that have worked well in the Rushcliffe area.

Councillor Tony Page: We also have very good working relationships. One of the problems with the figures, leaving aside the issue of classifying and the way some changes have occurred, is that overall there might have been a decline. We have, however, seen an increase in more violent assaults.

Lord Blair of Boughton: You see those as associated with licensed premises?

Councillor Tony Page: They are drink-related. That is the issue. It comes back to pre-loading and people being intoxicated. To attribute that to a licensed premises—

Lord Blair of Boughton: Not necessarily to one licensed premise but in the sense that it is a licensing issue, a drinking issue.

Councillor Tony Page: It is a drinking and alcohol-consumption issue and that is a wider problem. This is the problem that police and licensing authorities have: you cannot necessarily pin it on a particular premises. It was hard enough in the old days before pre-loading; it is even harder now.

Mr David Banks: Just to support that comment, we have really good examples where responsible businesses have employed door security staff to stop problems at the door before they go into premises. That has been held as a good example, yet it still gets reported as a crime which can unfairly penalise well managed premises.

Lord Blair of Boughton: Yes, that is always true.

The Chairman: May I press Councillor Lewis? I do not know whether this is across the piece, but you referred to the increased incidence of domestic violence. Is this something you have seen increase in the intervening years since 2005 and that you would attribute to drink-related violence?

Councillor James Lewis: To clarify the point, we recognise as a city that we need to reduce the incidence of domestic violence. One of the causal factors of that is particularly home drinking and private drinking. Rather than saying it is explicitly linked to the Act, it is certainly linked to drinking at home—drinking certain types of high-strength alcohol at home—so we are trying to reduce the availability of that type of alcohol in our communities, rather than saying that we have seen an increase since the Act and need to deal with it that way. I think it is dealing with the prevalence of alcohol in parts of our communities and its clear causal link with domestic violence. That is not the way you have expressed it, Lord Chairman, but that is certainly a priority we recognise.

Councillor Debbie Mason: One of the things that is important, when we look at figures from the police at the moment, is that figures reported at least this year need to level out and be fully understood, because there has been a change in how these incidents are recorded. It would be wise to take this year and probably next year to see some of the differences that have happened.

The Chairman: To bring the threads together, given the wealth of experience you have had in implementing the Act since 2005, is there a glaring omission or anything you believe the Committee should hear about which is either going particularly well or should be reviewed in the way the Act is applied, and the guidance to the Act as well?

Councillor Debbie Mason: I cannot think of anything.

The Chairman: I thank you very much on behalf of the Committee for giving up your time to be with us at relatively short notice. We are immensely grateful to you. We look forward to receiving the note to which you referred.

Councillor Tony Page: That has been duly noted.

The Chairman: Thank you very much.

Department for Communities and Local Government – oral evidence (QQ 31-40)

Examination of Witness

Steve Quartermain CBE, Chief Planning Officer, Department for Communities and Local Government

Q31 The Chairman: Good morning. May I bid a very warm welcome to Mr Steve Quartermain? Thank you very much for participating in our Committee proceedings. So colleagues know, I remain a resident of Hambleton and remember you fondly from your days as director of planning. We are delighted that you are here today. For the record, Mr Quartermain, could you give your name and position?

Steve Quartermain: My name is Steve Quartermain. I am a chief planner in DCLG, a post I have held since 2008. I previously worked in North Yorkshire in local government where I was a chief officer for the previous 12 years in Hambleton District Council.

The Chairman: This session is open to the public. It is broadcast live and subsequently will be accessible via the parliamentary website. A verbatim transcript will be taken and put on the parliamentary website. You will have the opportunity to see that in advance for accuracy, so please let us have any corrections through the department as soon as possible. Subsequently, if you wish to clarify in writing any evidence, where you want to make additional or supplementary points to us, that would be very helpful.

Licensing is one part of an overall strategy that local government has to shape its communities. The government memorandum on the Licensing Act states very clearly that the Act “is being used effectively in conjunction with other interventions as part of a coherent national and local strategy”. Do you agree with that statement? Would you like to elaborate on it?

Steve Quartermain: I think it is a fair assessment of how the Government seeks to ensure that there is a co-ordinated approach across departments. We play an important role. DCLG’s role has been to ensure that the processes and framework are there to enable delivery at a local level.

The Chairman: To what extent do you work hand in glove with the other departments?

Steve Quartermain: We co-ordinate our policy thinking and work very effectively. For example, we changed our advice to ensure that we reflected concerns about the need for better joined-up licensing and planning. We have been working with them on the guidance that has been issued. We have reflected some of those issues in our national Planning Practice Guidance in which we reflect the importance of Section 17.

Q32 The Chairman: There have been lots of reforms and amendments to the Licensing Act. The LGA has said it is a “complex maze of often historic legislation owned by a number of different government departments”. Do you believe the regime could be more transparent?

Steve Quartermain: To be honest, I do not think so. You need to recognise that, from where I sit as chief planner, the planning system has its role in ensuring that communities have their economic, social and environmental priorities. They do their planning, make their decisions, and in so doing have regard to public safety, crime, and the like. In the NPPF that is a separate regime from the licensing regime. I think it is appropriate that it is separate.

We have tried to ensure that there is proper co-ordination at the local level. My most significant point is we need to make sure that local communities are empowered to make the right decisions. Our guidance facilitates co-ordination, co-operation and conversations between the various responsible parties. This is the approach Government wants to take. It is not a top-down approach. We co-ordinate our thinking and policy approach to a national level and its application is at a local level.

Q33 The Chairman: I failed to declare my interests. I have a modest shareholding in Diageo, I am the honorary president of Pickering Conservative Club and a member of the All-Party Parliamentary Beer Group and All-Party Parliamentary Wine and Spirit Group. In some of the evidence we have heard there appears to be a clash between planning and licensing laws, particularly where a building is converted to residential purposes alongside premises that are licensed for alcoholic beverages. Does this feature on the radar of the decision-makers?

Steve Quartermain: It is an issue that we are aware of. That is why we made it clear in the NPPF that in approving development in areas local authorities have to have regard to existing users and businesses, particularly where residential developments are being put into areas where there are existing businesses with licences. We are very clear in the NPPF that that is a factor local authorities should have regard to. Through the decision-making process they can put conditions on which might mitigate any adverse effect on existing users. The NPPF makes it clear that that is the approach. We follow that up in guidance. We do not have a lot of traffic on this issue within the department.

The Chairman: We will return to this because it comes up later. Planning appeals have specialist appeals in front of an inspector. Would you consider recommending that licensing appeals should come before an inspector?

Steve Quartermain: The Planning Inspectorate has a critical role in providing an independent and impartial view on planning matters. It deals with other casework relating to Defra work. The Planning Inspectorate does not only deal with a planning function. It would be an option to have an independent appeal process. The issue that is a challenge is whether or not that is the most appropriate way of dealing with appeals and whether or not these can be dealt with locally. We have a clear view that, if you empower local communities and local planning authorities with a responsibility, that is theirs to discharge and they are well-placed to discharge it.

The Chairman: I am going to ask Lord Davies and Lord Foster to keep their comments until we revisit this later.

Q34 Baroness Henig: My interests are as non-executive chairman of SecuriGroup, which provides door supervisors among other things. I am president of the Security Institute, committee member of the All-Party Parliamentary Beer

Group and a member of the All-Party Parliamentary Wine and Spirit Group. You have opened up this theme. Your single departmental plan sets out the aim of strengthening communities. You have said that planning is an important part of this. Are licensing policies and decisions a part of that process and seen alongside planning?

Steve Quartermain: They are separate processes. If you need licensing, you need both a licence and planning permission before you can operate. Sometimes you obtain planning permission before you go for licensing, and the system allows you to apply for both simultaneously, but you cannot operate until you have both planning permission and licensing. Through the separate processes which local authorities are responsible for, the guidance we give them—not only our guidance, the single departmental plan, but also Home Office guidance—says the two groups need to talk to each other and have a single approach to the issues that are being dealt with. From my days in local authority, you would occasionally get the question, “Why has a planning authority put a condition on requiring a closing time at 11 but licensing allows it go to on until 12?” In my experience those were rare occurrences where communication had not worked. The opportunities are there for better co-ordination.

Let us not forget that some of these things are revisited. Planning permission can be temporary, although it tends to run for a longer period, but licences are renewed. If there is an issue there is an opportunity to come back on licensing and say, “Actually, we should have made that 11”. It is not a situation where the opportunities are not there for better co-ordination between the two parties.

Baroness Henig: I will not go into the conflicts issue, because that is a later question.

Q35 Lord Hayward: My interests are that I have a declarable financial interest in both Greene King and Diageo and a financial interest in Marston’s. I was chief executive of the British Beer and Pub Association for 10 years, and therefore retain substantial links with the industry in one form or another.

You said there are occasions when planning and licensing do not work and, as you have identified, you could have one approval for 11 and one for 12, in which case you said you could revisit the licences. Is there a clear reason why? Is it because a local authority has missed this? Should DCLG give better guidance to ensure that these problems do not arise?

Steve Quartermain: That is a very good question. The question one needs to ask oneself, whenever one is faced with a potential change, in particular in a planning system, is whether or not it is Government’s role from a top-down approach to change things nationally or whether it is something we need to look at and sharpen our guidance on because the application of this system is at a local community-based level. On the balance of evidence that I have seen, it is the latter—it is a local issue. Our guidance is quite clear and talks about the need to co-operate. There are opportunities for people to ensure that such matters as my example are dealt with at that time. If there are issues, we think it is the application of the regulations to which our guidance steers. From our postbag and the issues that are raised with us, this is not raised nationally as a significant problem. We know it exists, I will not deny that. On occasion we get stories, but it is not very often raised with us as a planning issue to be addressed.

Q36 Baroness Grender: Given the desire, quite rightly, to devolve to a local level, is there any merit in a question that we are examining, which is whether fees should be devolved to a local level when it comes to licensing?

Steve Quartermain: I am probably not the best person to answer.

Lord Brooke of Alverthorpe: We will take an honest answer.

Steve Quartermain: The issue with fees is what are they for, what they cover, and whether it is a reasonable and just fee to be paying for a service which very often—I go back to my local authority days—is already paid for in council tax and business rates. The council gets paid to provide a service, so the issue is whether you need an extra fee. Having said that, fees have other roles. For example, the fact you charge a fee sometimes discourages people making applications which are frivolous and makes sure they get it right. As a personal opinion that is probably all I want to say.

Baroness Grender: I am going to push a bit further, if I may. What has been coming from the LGA to us is the shortfall between income and the amount of licence work necessary. I am not talking about the very small scale. I should have declared my interest. I am a proud owner of a temporary event notice for a primary school summer fair two Saturdays ago—still recovering. You will be aware that even a temporary event notice is used for commercial rather than the joyous community events I have just described and the disparity for local authorities, particularly when money is so tight, is becoming an issue. That must be a concern for DCLG. Are you undertaking a review into this area?

Steve Quartermain: I am beginning to think that I should declare an interest, because I drink beer and the occasional bottle of wine. It is a question that is not best directed at DCLG but at the Home Office. From a DCLG point of view there are fees applicable for planning applications. Those planning fees are not devolved; they are set centrally. The Local Government Act allows local authorities to make charges for other services that they provide, so it is open to local authorities to charge for services. From a planning point of view, those fees are set centrally. In the past there has been consideration whether those fees should be devolved. The issue that we have been in discussion with the LGA on in the past is, "If you pay more, do you get a better service and what service do you get for your fee?" That is part of the debate. The licensing issue is a question for the Home Office and not me.

Q37 Lord Brooke of Alverthorpe: I am vice-chair of the All-Party Parliamentary Group on Alcohol Harm, patron of the British Liver Trust, patron of Kenward Trust, an alcohol and drug rehabilitation centre in Kent, and a member of the All-Party Parliamentary Group on Adult and Childhood Obesity. I would like to ask for your personal opinion, because in looking at planning we have to bring a diverse group together, some with more authority and some with less, some with opinions but not able to exercise the authority that would help better planning. You indicated that fees can be used for a purpose other than simply recovering the expenditure involved in granting a licence, such as to change planning, for example. If you have a whole host of betting shops in a high street, off-licences, estate agents, a couple of coffee shops, and that looks like the high street, if you had freedom on fees, could you influence for the good of the community the appearance of the high street? I know it is not your department.

Steve Quartermain: I do not think I did say that you could use fees for different purposes. I said that local authorities could use the Local Government Act to charge fees for different functions. The appearance of the high street is an issue that is raised with us. One of the reasons behind the Government's drive to have things such as a neighbourhood planning process is for communities to have their own plan led by the community, either a parish or parish forum, to set their own policies and to deal with what their community looks like. It is an important tool in the toolbox from the DCLG's point of view.

The issue for the planning system is that it can only control what planning requires to be controlled, so it can only control development. If it is development which is set out in legislation, then it can control it. A change of use is set out in legislation as development, so if you want to change the use, you need to apply for planning permission, unless we set out in the permitted development order, "But not these changes of uses", or in our use class order, which we have to have otherwise we cannot define the changes between the uses, and we group the uses so there is no change of use between functions. That was one of the things we were looking at. We took steps to ensure that there were opportunities to have greater control over some of the issues where there were concerns. We separated the A3, which is a use class, which used to be food and drink, so we would have restaurants and cafes, drinking establishments and hot food takeaways—three separate uses. Changes of use between those became an issue. We created A4 as an establishment for drinking and A5 for hot food takeaways. Previously they were in one use, so any change of use between them was not development. By making those separate uses, they became development, which local authorities could then control.

Local authorities can control that in two ways. They can control it by making decisions on applications and saying, "No, we don't want to approve another hot food takeaway". They can also use it through their plan-making process and, in setting out their plans, they can use Article 4 directions which prevent development taking place and can say, "We will not allow this particular use in this area" and define it in their local plans. There are powers to give the opportunity for the high street appearance to be affected.

The more you put into the permitted development rights, the more flexibility you give for uses to change. There was discussion recently on having a town centre use, and anything goes. If you do that, there is no planning control and if it is within that town centre use you could change to any use, provided it is within that use class order. We have tried to prevent that, because the bigger the use class order and the more that is in it, the less you can control. It is only if there is a change of use and development taking place that you can control it. We have done what we can. By creating additional use classes we have tried to give local authorities and communities more power to influence what their high streets look like and how they control them.

Q38 Lord Davies of Stamford: In the course of your career how often have you come across what you might call perverse or contradictory policies by the same local authority in planning and licensing? We know one or two quite famous cases that have come to the courts. You said you think it is fairly rare. Is it so rare that you can remember the number of occasions when it has arisen? I have in mind a

licence that has been granted for a particular object in a particular way which is in contradiction of the planning consent that has been granted, or planning consent that has been granted which is in contradiction of the licence which is essential for the economics of the planned project. How many occasions have you come across that conflict?

Steve Quartermain: That is one of the more difficult questions. As you get older it is harder to recall. It is some years since I was in local authority. An honest answer to that question would be that I can count on the fingers of one hand when I was in local government when I had experience of any potential conflict between licensing and planning. It was some years ago. Also, I was at Hambleton for quite a long time.

Lord Davies of Stamford: Did it happen there?

Steve Quartermain: It is not that I have had lots of different local authority experience.

The Chairman: A model authority.

Q39 Lord Foster of Bath: In passing, I have the same declarations as you of wine and beer, and I would add whisky. I want to take you back to some of the conflicts, and a particular issue that you touched on of an existing licensed premises operating quite happily, perhaps with live music under the Live Music Act, and then residential premises are built round it, which can lead to all sorts of tension. You said that the NPPF and guidance issued give local authorities the ability to handle that issue. In truth, the only area where local authorities have real power—and only since April this year—is in respect of the conversion of office premises to residential and there is real power for local authorities to use effectively the agent of change principle. Has the department given thought to widening that power for other residential buildings that could be developed around an existing licensed premises? Most people do not believe that the local authorities' powers are strong enough. You said you have not had much traffic over your desk, but I would refer you to the very detailed correspondence you have been receiving, for example, from the landlord of The Fleece in Bristol, who I know has written to you on very many occasions about this issue.

Lord Brooke of Alverthorpe: Are you declaring an interest?

Lord Foster of Bath: No, I have never entered the premises in my entire life.

Steve Quartermain: I did not say that we did not have any correspondence, but we do not get much. I am sure that we will be looking at the correspondence from The Fleece in due course.

There are two issues I would like to highlight. Local authorities have control through their planning applications. If you need planning permission for a particular use, they can look at that planning application in the context of their planning policies and the guidance that we have in the NPPF and make decisions on the planning application and put conditions on as they see fit. Those conditions can control noise and opening hours. You highlight an issue which we were made aware of where permitted development allows uses to change and those controls are not available to local authorities.

One of the areas that we were asked to look at again was the issue about noise and change of use for office to residential in particular where those offices were in close proximity to existing licensed premises. In response, as you say, we changed

the way in which that permitted development right works. From April, local authorities have been allowed to take into account noise issues. In taking noise into account, they can say, "No, that's not something you can deal with under permitted development rights, you need to make a planning application", and they can put conditions on if necessary. On the other hand, if the proposal comes in and they have made suitable noise attenuation within their scheme, they might want to say, "We are happy for you as part of the prior approval to continue with that development".

We are not blind to this. We remain open to further changes if either this Committee's conclusions or the evidence you hear points us in that direction. At present, the level of concerns have been addressed by the guidance we have issued and changes we have made to the NPPF, the guidance and the permitted development rights. I accept that it has only been from April, but that shows we listen and take into account what people are telling us and, where appropriate, make changes.

Lord Foster of Bath: The big problem for the landlord of The Fleece is that this happened prior to April this year, so he, the leading campaigner, has been screwed and can do nothing about it. Can I ask one other question, going back to something you said, which was the importance of neighbourhood planning? I think all Members of the Committee will be aware this has been a huge development welcomed by local communities. The Committee would be interested if you could write subsequently with examples of neighbourhood plans that have done interesting, imaginative things in relation to licensed premises. In the ones I have looked at, very few seem to deal with them.

Steve Quartermain: I will talk to the team and see whether we can send examples.

Lord Foster of Bath: That would be helpful. Thank you.

The Chairman: When we put this to the Local Government Association and a couple of local authorities, concern was expressed that it is up to environmental health officers to take the necessary steps, particularly in city areas. Do you believe they have the right powers and are acting uniformly in such cases? I think it is more of a problem in city areas than in rural ones. Is there anything to give you cause for concern about the role of environmental health officers in this?

Steve Quartermain: No, to be honest. I can draw perhaps on my local government experience, with the caveat that it is now more dated, rather than my chief planner experience. When I was executive director in local authorities, one of the things I was responsible for was environmental health officers and planning and street cleaning—every front-line service the council provided. One of my functions was to make sure we had effective and joined-up enforcement facilities. That included the environmental health officers and planning officers. They were not operating in isolation; the point was they had to be joined up and co-ordinated. If I can do it in Hambleton, then I am sure that local authorities up and down the country can do the same.

The Chairman: As I said, a model authority.

Steve Quartermain: It was indeed.

Q40 The Chairman: Since the 2003 Licensing Act has been in place, we have had the election of police and crime commissioners and the setting up of health

and well-being boards. From where you sit in the department, do you believe there is proper regard in the setting of policy to the concerns of police and crime commissioners and health and well-being boards?

Steve Quartermain: From the chief planner's point of view, the role of the PCC is well established and the understanding of the importance of crime safety in planning and the way in which that is taken into account in planning decisions and plan making have been quite well embedded for a number of years. The issue of the health and well-being boards is still work in progress. There are better links to be made between health and planning. I believe that the planning sets out a very strong health agenda. There is a lot in our national planning framework and our guidance which promotes planning as a means by which you can create healthy environments, and the well-being and welfare of communities is taken into account. The Department of Health produces two pieces of guidance. One is a guide to the health service for planners and one is a guide to planning for the health service. The fact that guidance needs to be produced indicates there is more work to be done on joining up those two channels of thinking.

The Chairman: Would it be helpful to have health and well-being as an objective of the Licensing Act, as it is in Scotland?

Steve Quartermain: From a planning point of view, the promotion of health and well-being is at the heart of why the planning system came into being in the first place. It would be in the 1947 Act, but it started in 1909 with public health. Planning and promotion of public health is very important and licensing plays a part in that.

The Chairman: Is it required or should it be happening anyway?

Steve Quartermain: I think it should be happening anyway. That comes back to my earlier point about being aware of requirements, because to some extent you do not necessarily get the outcomes you want by regulating or legislation. It is about empowering people. There is the question, "Why aren't people doing this using the existing powers?" and that is what this Committee is trying to examine.

The Chairman: Mr Quartermain, I always thought Hambleton could spot talent. We wish you well in your work and thank you very much indeed for being with us today. If there is anything you would like to add, you would be very welcome to do so in writing. Thank you very much indeed.

Institute of Alcohol Studies and Institute of Economic Affairs – oral evidence (QQ 41-53)

Examination of Witnesses

Jon Foster, Institute of Alcohol Studies, and **Chris Snowdon**, Institute of Economic Affairs

Q41 The Chairman: This session is open to the public, broadcast live, and subsequently accessible via the parliamentary website. A verbatim transcript will be taken of the evidence and put on to the parliamentary website. A few days after this session you will be sent a copy of the transcript to check it for accuracy. It would be helpful if you could advise us of any corrections as quickly as possible. You may wish to clarify or amplify any points you make today. If you have any such points you are welcome to submit supplementary evidence to us. I bid you both a very warm welcome. Can I ask you, starting with Mr Foster, to give your name and position?

Jon Foster: Thank you. I am Jon Foster, a senior research and policy officer at the Institute of Alcohol Studies. I have been in post for just over two years. Could I very briefly make one or two other comments to clarify?

The Chairman: We normally do not take opening statements, because we have a large number of questions.

Jon Foster: It is more a declared interest than an opening statement.

The Chairman: Of course.

Jon Foster: I start by thanking everyone for the invitation. I declare the interest that IAS receives money from the Alliance House Foundation. Also, I am sure members of the Committee will be aware of some of the inaccurate media attention in relation to IAS recently, so I should state clearly for the record that IAS does not promote temperance or abstinence. Our objectives involve the scientific understanding of alcohol and policies to reduce alcohol-related harm.

Christopher Snowdon: I am Christopher Snowdon. I am the head of lifestyle economics at the Institute of Economic Affairs. I have been there for three or four years. I think the main reason I am here is I wrote something about the Licensing Act last year, called *Drinking Fast and Slow: Ten Years of the Licensing Act*. The IEA is a free-market think tank that very much believes in deregulation and sees this as a very successful example.

The Chairman: Where you agree do not feel that you both have to contribute, but where you both have something to say, do please say it. Looking at the impact of the Licensing Act 2003 on crime, disorder, hospital admissions and drinking habits, it seems inconclusive and almost conflicting. It was introduced as light-touch regulation but has since gone through a number of reforms and amendments. Do you believe it is still light touch after all the amendments—and should it be? Is the Act achieving what it aimed to, or something different? Could it achieve more?

Christopher Snowden: It was only light touch by the standards of what went before. It is not light touch by the standards of other countries. Lots of European countries do not have limits on when alcohol can be served at all, in the on-trade at least. It has to be looked at in the context of a lot of other regulation in the last 10 years. Pubs, in particular, have taken a pounding from regulation and the Licensing Act was one good thing that came along to help counterbalance that. The smoking ban caused big problems, but then there were late-night levies, early-morning restriction orders, public health directives, the national living wage that has just come in, and Brexit, which may cause problems in employment. For the pub companies you have the market-rent option, rent evaluations and the breaking of the beer ties. A lot of regulation has come in in a relatively short time. It is less light touch now than it was before. These things have had an impact. Now is probably the time to stop piling on regulation and to let pubs and the entire licensed trade get on with dealing with this and settling in. There have been huge changes to the whole night-time economy, most of which are for the better. I am not sure it was that light touch in practice, but it has become less so over time.

Jon Foster: I agree that it has become less light touch. It was too light touch and through necessity there has been a refocus towards crime and disorder issues. With community and ancillary notices and some of the changes that are coming through, there is a danger of becoming too light touch. I know that some licensing officers are worried that that is deregulation gone too far and they are going to be unable to effectively oversee CANs. For high-risk premises, those that are most likely to cause a problem, the Act places burdens and tries to manage down the risks—and quite rightly so.

On the first part of your question on the impact on wider trends, it is not inconclusive but it is a complicated world out there with lots of variables. The Act did not come in in isolation; the affordability of alcohol has changed, et cetera. There are lots of other changes in consumer preferences and social norms. So there is lots of inconclusive evidence as to what the Act has and has not done.

There is one thing in Chris's report that we can definitely tie to the Act, which is that closing times have shifted the typical night out back into the night and that this has caused problems for the police. That is the one thing which the Act has definitely impacted upon.

Q42 The Chairman: Do you believe that the implementation of the Act has made a difference to the levels of alcohol-related violent crime?

Jon Foster: That had been coming down for a long time before the Act and has continued quite steadily since the Act was implemented. There is no noticeable dip or change to that trend since the Act came in. The only thing you can say is that it has pushed those levels of crime and disorder back into the night and spread it over a longer period. A lot of police forces had to rearrange their shift patterns and put more officers on to a Friday and Saturday night to cover that. That was then felt through ambulances and A&E as well. So alcohol-related crime has come down but been displaced back into the night.

Christopher Snowden: It has come down a great deal—somewhere between 20% and 40% since 2005, depending on which figures you look at. It was going down before. There has been a huge drop in crime generally over the last 20 years. Jon is right that there has been temporal displacement. It is quite striking,

if you look at the figures, how much these incidents have dropped between 11 and midnight and between 2 am and 3 am, which were the old main peak times, and increased between 3 am and 6 am. The increase between 3 am and 6 am has been nowhere near big enough to offset the much larger drop at the old kicking-out times.

Forget about café culture and this kind of nonsense. One of the core things that Tony Blair was explicitly trying to do was get rid of this 11 pm swill. It was a real problem. It can still be a problem, because lots of pubs are kicking out at the same time, but because you have staggered times to some extent it has helped tackle the serious problem where you have people in pubs, you give them 20 minutes at most to drink everything in front of them, then you pour them out onto the street when they are not ready to go home and they hit the same taxi ranks, nightclubs and fast-food shops. So that has been a big improvement.

There has been this temporal displacement later into the night and some people in the police are not happy. On that front, bearing in mind that overall levels of crime have gone down significantly, so the police have less crime to deal with overall, the police are not the only people who have to work. Everyone has to work and some of us would like to go off and enjoy ourselves in the evening and not be tucked up in bed by 11 pm for the benefit of the police.

Baroness Watkins of Tavistock: You have been focusing on the crime issue, but there is clear evidence that hospital admissions early in the morning are admissions of people in a more serious state than they were before. You seem to have missed that element of the question.

Christopher Snowdon: That is not what I have seen in the studies that came out over the few years after the legislation came into effect. The studies that came out looking at different hospitals, different A&E departments and different incidents tended to show either a slight improvement or no change.

Jon Foster: It is hard to be definitive and it varies by local area. More recent studies, with the benefit of more years of the Act bedding in, show that there is a general temporal shift in closing times and peak times for the police. I am not sure I have seen anything that shows people are in a worse state, but there has been this shift back, which ambulance, paramedics and A&E consultants have noticed.

Q43 The Chairman: This is a particular hobbyhorse of mine. In your review of the Act, have you looked at the exclusion that was made for consumption and sale of alcohol at airports, railways and sea ports? Do you believe that this should be reviewed? I am conscious of people tanking up before they go on a plane. We have already had one fire at sea with DFDS ferries. Do you feel that this should be brought within the remit of the Act or are you not bothered?

Jon Foster: It was mentioned very much in passing by the people in my report whom I spoke to. It is not something I have looked at in too much detail. You can see how the Act has its objectives and is there for the public good, safety, et cetera—and that applies just as much in airports and elsewhere as it does throughout the rest of the country. With people being displaced in time, coming in on late or early flights, you can see how there are clear opportunities for people to drink too much at the start of a holiday, get on a plane and then there is the altitude, et cetera. So there are some additional concerns, so it bears looking at to bring that within the scope of the Act.

Christopher Snowdon: I have an opinion, which is that 24-hour pubs in airports are one of the few things that make flying bearable. I would be very unhappy to see them go. They are also probably the only 24-hour pubs that anybody actually goes to, despite all the rhetoric before this Act came in.

The Chairman: That is interesting. Thank you very much.

Q44 Baroness Watkins of Tavistock: I do not have any relevant declarations but I want to mention that I am an emeritus professor of nursing at Plymouth University and a member of the All-Party Parliamentary Group on Global Health. In Scotland, the promotion of public health is one of the licensing objectives. In England, Ministers have declined to add it to the four objectives. What are your views on that decision?

Jon Foster: As I understand it, it is pending further work on practicalities. They are under consideration and the Home Office and Department of Health are doing LAAs—local alcohol action areas—to flesh things out. In my opinion, it should be added. There were very strong calls for that from the LGA in your last evidence session. There was a legislative gap when the Act was brought together, where health was not included but should have been. It is very obvious that alcohol has big impacts on short and long-term health-related issues. There is a clear view from the LGA and the police they would like to be able to do this and that they could make it work in practice.

There are a lot of misconceptions about how a health objective would work. Some people think the normal rules of causality and evidence within the Act would apply differently to a health objective to how they do with the four current objectives, which is not the case. It would be more like having a fifth objective which overlaps those four objectives, allowing them to be fleshed out, rather than something too radical.

If we look at what has happened in Scotland, it has been far more evolution than revolution and has not turned things upside down. Understandably, health groups have been very keen to influence licensing and perhaps have gone a bit too far, too fast. Working within the constraints and limitations of the Act makes health perfectly feasible, but it is perhaps the more proximal social health concerns, the ones which in some ways are already included within the current objectives, that are hard to get to in what is a very legally contested environment. It is not always easy for authorities to use the current objectives they have. Having a health objective would help them flesh out crime and disorder in the way it could impact on domestic violence or children, et cetera, which has a health-related element.

Lord Davies of Stamford: Can you describe a concrete case of how the existence of a public health criterion would change a specific licensing application?

The Chairman: We will hear from Mr Snowdon before he does that.

Christopher Snowdon: At the moment, the licensing objectives are all about preventing harm to others and preventing harm to children. The crime and disorder objective is there to prevent harm to others. If you brought in a public health objective you would be bringing in a level of paternalism, because it would be about protecting grown consumers from their own decisions. That is ethically more difficult to justify. It opens the floodgates to a very different regime. In effect, if you have public health people involved, they tend to believe in a whole-population approach: the greater the availability, the more harm. So if you are

trying to reduce harm across the population, they assume you need to reduce availability and consumption. Of course, one of the things that the Licensing Act has shown is that you can increase availability and that can be accompanied by a fall in consumption and harms. But the effect would be that no new premises would be opened up. As your previous speaker said, there is implicitly a public health objective. Public health directors are quite heavily involved; they are sitting on councils giving their opinions.

If I can give an example from my neck of the woods in Brighton, the local council has decided no more off-licences as a blanket policy. As a result, Sainsbury's wanted to open a mini-mart type premises—not a full supermarket—but was unable to do so because it intended to sell alcohol. The theory was that, if you have another outlet selling alcohol, people are going to drink more. This outlet was also going to sell more baked beans and bread; I do not think anybody believed that more baked beans and bread would be sold in the area.

I use that as an illustration to show you what would happen if you had more of a public health approach. There would be a blanket assumption that the more premises, the worse, rather than looking at the specific issues around crime and disorder which are usually more complex and local.

Jon Foster: Chris has provided some of the more colourful misconceptions about the way in which public health would be impacted. Scotland already has this and it has had a minimal impact on the way in which new premises are opened. Some of the people in the trade who I spoke to said that the public health objective in Scotland has made no difference to them in practice whatever.

In Brighton, that case went to the magistrates' court, the magistrates looked at the evidence and upheld it within the current framework without a health licensing objective. This is an example of a local area where they have problems of deprivation, crime and disorder, and they have made a case based on the local evidence and have clearly said, "In our opinion, looking out for the good of the community, an extra premises would undermine those current objectives". The magistrates agreed with that and it was upheld.

On paternalism, this is a misunderstanding of how the Act works and is an idea that public health people sometimes fall into. It does not matter what public health people tend to believe; they have an Act to deal with. If they use the Act incorrectly it will be appealed. This has happened in Scotland, where some people have at times tried to go beyond the scope of their Act to incorporate public health, and it has failed. Brighton is a very good example of using the Act as it stands and fitting public health concerns into the current objectives to achieve meaningful health outcomes. Adding a health objective would aid this further.

Christopher Snowden: They have not; they just stopped a Sainsbury's opening up. This is the whole point. They have not achieved anything by stopping a Sainsbury's opening up. It is a prime example of what happens if public health people get involved.

Baroness Watkins of Tavistock: You are saying that there are two views on this and it is a spectrum of how things are interpreted. From my perspective, you have both answered the question. The second part of my question is, should compliance with the Equality Act 2010 be an objective—because it is not? Are there any other objectives you would like to see associated with the Licensing Act?

Jon Foster: In terms of the Equality Act, it was mentioned last week that it features in the guidance and that quite a few authorities' licensing policies refer to it. So I am not sure that there is a need to put a specific objective in there.

It is also worth noting that the Immigration Act, which received Royal Assent in May, effectively adds another objective, which is the prevention of illegal working. It makes the Home Secretary a responsible authority, and any licensee has to ensure that their employee has legal status to work in the UK. Again, effectively, that is another objective, but I am not sure that there is a need to add that in as a specific objective.

At paragraph 1.3 in the guidance we have the objectives, and paragraph 1.5, a much-overlooked piece of guidance, talks about the Act's wider aims, including the good of the community, supporting local pubs, et cetera. Perhaps a reference to both of those could be added at paragraph 1.5 to bring it to the forefront of the guidance.

Christopher Snowdon: I do not see any reason to bring in more objectives. Employers have to abide by the Equality Act whether they sell alcohol or not. I do not see what is to be gained by going any further.

Baroness Watkins of Tavistock: With some of the temporary licences, in particular, it is difficult to access the venues if you are in a wheelchair, for example. Is that something we have to live with in order to enable people to enjoy themselves?

Christopher Snowdon: I do not have a view on that, I am afraid.

Q45 Lord Brooke of Alverthorpe: My interests are as vice-chair of the All-Party Parliamentary Group on Alcohol Harm, patron of the British Liver Trust, patron of the Kenward Trust, an alcohol and drug rehabilitation centre in Kent, and a member of the All-Party Parliamentary Group on Adult and Childhood Obesity. As was observed in the answer to the first question, on-trade pubs in particular have been disappearing, which many of us regret—but, on the other side of the coin, since the Act came in, the off-trade has changed significantly in the last 10 years, in particular with the development of internet shopping and home deliveries. What issues does this give rise to, including pre-loading? It is worth observing that in the Home Office evidence to us there is information from the Health and Social Care Information Centre which indicates that there was a very significant increase in the number of people admitted to hospital for health issues related to alcohol between 2005 and 2015. That is a very big change. The Home Office is going to supply further information on that change. That can be linked to off-sales. What are your views on that?

Christopher Snowdon: I think it is very unlikely that it is linked to off-sales, pre-loading or binge drinking. If you look at the figures, the growth is mainly among older people. The number of hospital admissions of those under 40 has dropped. You have a broad measure and a narrow measure. The broad measure is extremely broad and, in my opinion, very unreliable because it includes secondary diagnoses.

Lord Brooke of Alverthorpe: Does that apply to the figures from the police on violence?

Christopher Snowdon: I do not think so, no. There you have the British Crime Survey, which is regarded as pretty reliable, and the recorded crime figures to

back it up. If you are looking for a similarly hard piece of evidence with regards to health, you need to look at mortality. It is rather like murder in crime statistics; it is the one thing that is reported correctly. Alcohol-related mortality has not risen since the Act came in, although it was rising before.

Lord Brooke of Alverthorpe: Do you agree that over 1 million admissions are due to alcohol-related illnesses?

Christopher Snowdon: I am very sceptical about the figures because of the methodology, which includes secondary diagnoses—something else you happen to have when you go to hospital. That brings in the point that doctors do not always record secondary diagnoses, but they have been recording them more and more over the years. So the narrow measure is not too bad, but my main point is that it is inevitable in an ageing society that you will appear to have a rise in alcohol-related admissions. If you hive off a large number of the heart disease and cancer cases and attribute a certain proportion as being alcohol-related, then, as more and more people die of cancer and heart disease, as will happen in an ageing society, you will see an increase in alcohol-related admissions for years even if everybody stopped drinking tomorrow. So there is no connection between that and pre-loading and the other issues you are talking about. You have more of an argument with A&E, but not with this, because it is much more long term.

Lord Brooke of Alverthorpe: Did we know about pre-loading in 2003 and 2005?

Christopher Snowdon: I was doing it in the 1990s; I do not know why people think it is a new thing. I dare say that there is more of it now than there was before. That is largely down to the smoking ban and the price of alcohol in general. Also, there has been a gradual shift over the last 100 years of people moving from the pub to the home. People have nicer homes to live in than they did 50 years ago, when, if you wanted to be in nice surroundings with a bit of warmth and company, you would go to the pub. That is a cultural change. There is nothing we can do about it. There is nothing wrong with people drinking at home. The temperance lobby's aim 100 years ago was to get people out of the pub and drinking at home. Now we seem to be doing it the other way round.

Jon Foster: I am not going to delve into statistics. The off-trade has changed significantly over the last 10 years. The Act was never in tune with the fact that most people drank at home; it always assumed in a lazy way that people drank in pubs or clubs, but it is a long time since that has been the case.

Pre-loading is an international trend. It is not necessarily new. The impact is something that people are more aware of. It is very hard to pin it on one particular thing. Terminal hour seems to be a factor and there is a reasonable consensus that the ability of premises to open up late into the night has caused problems at the end of the night, and also opened up a window of opportunity at the start of the night when people can drink more at home before they head out. So that is one potential factor.

The price difference between the on and off-trade is also a factor. There are social changes. People report in focus groups that they like drinking with their friends and socialising before they go out. If they are going out somewhere noisy, they will not be able to do it there so they socialise and drink beforehand. So it is very difficult one to get at. There is no one policy that will do it. Perhaps a policy mix

with a range of things might encourage people to go out and drink in a pub or bar and start their night there as opposed to at home. But it is a very tricky issue.

Baroness Watkins of Tavistock: I completely accept what you say about the older population, but is there not clear evidence that severe liver disease in younger people has increased in the last decade?

Christopher Snowdon: There is no doubt that liver disease has increased across every age group.

Q46 Baroness Grender: The government memorandum states that the Act “is being used effectively in conjunction with other interventions as part of a coherent national and local strategy”. What are your views on that? Is that the case? How separate should licensing and planning regimes be? Can we pull them together so there is a coherent approach, for example in a town centre?

Jon Foster: That is a very interesting question. It is worth trying to split national and local. Looking nationally, we have the modern crime prevention strategy, which came out a little while ago, which has some very good elements on data sharing and new licensing powers, which may or may not be enforceable, and some poorly evidenced policies on best practice, pub schemes, et cetera. Strategically, they are piecemeal, downstream measures. I understand that for political reasons pricing of any sort is off the table, but if you want an evidence-based approach to preventing crime, some pricing measure would be top of the list.

If you look at the Act and how it has evolved and changed, there are a lot of unstrategic examples of alterations. Many people have said that, rather than tinkering and changing bits and pieces, the Home Office would be better making sure that the basics of the Act are used and applied by local authorities consistently and that the Act is used well. That is a key point, which I talk quite a lot about in my report.

I will give a very specific example of unstrategic thinking. Looking at early-morning restriction orders, there was recognition from the Home Office that there was a need to do something in certain areas about very late terminal hours. Police and local authorities are keen on having a lever they can realistically pull, yet an EMRO has never been implemented. It is not entirely the fault of the Home Office, but the gap between legislation and implementation is huge. Local authorities and the police would love to have something that works. So, again, that is very unstrategic.

The memorandum also mentions health, and I am aware of no government strategy on alcohol and health. The 2012 one has technically not been superseded but we are now two Governments down the line and it seems at the back of the shelf. So there is not much coherence at a national level in terms of strategy.

Strategy is something we talk about a great deal in the report. Some local authorities use the Act really well and have a strategic vision for licensing policy. They set out a positive vision of what they would like and what promoting the objectives involves in the public good in their local area. Although there are notable exceptions, this is quite rare. At a local level the Act is often used in a very reactive, unstrategic manner. Authorities wait for problems to emerge and then they are addressed, as opposed to being proactive, spotting problems before they grow, preventing them.

If you were to ask a committee chairman, “What’s your strategic vision for the local area?” many would probably not be able to answer with much certainty. There are notable exceptions. They may be able to say, “There’s a problem here and a problem there”, but that is very different from having a strategy to manage down that risk and do something positive with licensing to use it as an enabler for the local community. So much more could be done to encourage a strategic approach, which would benefit everyone.

That links to your question on planning and the common lack of joined-up thinking. I did not ask too much about planning in my research, though it cropped up a great deal. I have some knowledge from what people have said, but not a huge amount in relation to the overlap. There seems to be a consensus that it is not joined-up and there is not much overlap, when clearly there is huge potential for that; not just with planning but with the health and well-being strategy, the corporate plan, what the local authority thinks should happen for the benefit of the community and how licensing fits into that, what will support the public good and what will undermine it. So there is a lot of scope to tweak the guidance, to take some of the more useful pieces of case law that talk about this and put it up front and encourage local authorities to be strategic and co-ordinated.

Christopher Snowdon: I do not have much to add. I do not think that we have a national strategy and I am not sure that we need one. The IEA believes in spontaneous order and Friedrich Hayek, so we leave these things to the markets to provide the solutions and evolve in the right way. I do not have that much of a view on planning. I am not sure how much we need.

Baroness Grender: I will give you an example, if I may. For instance, planning permission is given to convert into flats above a pub which already has a live music licence, and people then move into that accommodation and make complaints about noise. That would be a fairly typical example of a lack of joined-up planning and licensing. That is something that occurs quite often.

Christopher Snowdon: In that instance I would say, “Buyer beware”. If you are going to move into a flat above a pub, presumably you are aware that this is not going to be the quietest part of town and presumably you are the kind of person who would like that. Maybe you want to work in the pub or go there often. I do not think we should stop that being converted into flats because somebody might not like it.

Baroness Grender: On the whole, I think people would agree with that. However, because there is a lack of coherence between licensing and planning, that scenario will occur locally—let alone if there is a national strategy.

Jon Foster: That is a very good example of where markets do not always work. We are talking about a piece of regulation to avoid this kind of conflict and keep licensed premises as a public good as opposed to a public problem.

Christopher Snowdon: I am sorry, I do not want to go on about one example, but if the idea is that we get planning and licensing working together to stop somebody converting an upstairs room of a pub into a flat, it seems to me a negative thing. We do not need to do that. People are quite capable of seeing that this is going to be a noisy premises, but saying, “I don’t mind; I’m 20 years old”.

Jon Foster: It is not about stopping.

Baroness Grender: You are assuming the wrong opinion as to why that question exists. I do not think that people should move in to somewhere above a pub. Can I pursue a data point very quickly with a yes or no answer? Is there sufficient data at the moment?

Christopher Snowdon: On what?

Baroness Grender: To draw conclusions. You have both done studies. Is the lack of data in this area a problem?

Jon Foster: It is a very big question, so it is hard to say yes or no. In some parts we have good understanding; in others there is definitely a need for more. On the health objective, more is always better.

Christopher Snowdon: There is very little real data, particularly with A&E. There is not much data on what people are being treated for, so that would be very useful. But a point in my report is that there is enough data to show pretty definitively that all the scare stories and doom mongering before the Act came in, and just after, were unfounded.

Q47 Lord Foster of Bath: Can I carry on from where you left your earlier remarks, Mr Foster, and bring you both in? I want to talk about the role of local authorities which, following the Act, took on responsibility for licensing. What are your views about how well local authorities are doing? What could they do better? Examples have been given of enforcement. What are the barriers to doing better? One example might be money because they claim they do not get enough from licensing fees. I note that in your [Mr Foster's] report—and you have repeated it again—you say the gap between legislation and implementation is very wide. You have talked about some local authorities that are doing very well, but that is rare. You [Mr Snowdon] have talked about areas where they can make firmer and clearer decisions, how they should have better access to legal advice, and so on. In the institute's report there is very little reference to local authorities and the way in which they are operating. From your different perspectives, how well are local authorities doing their job?

Jon Foster: There are huge variations. I am not sure I would use the word "rare". Some take a more assertive approach, but there is a big gap. Funding and fees are key to that. I was told that some of the areas that struggle most with the Act are those which have the biggest shortfall. One of the strengths of the Act when it came in was the way in which responsible authorities could better co-ordinate and nip problems in the bud and were better able to talk to the trade. I have been told that, in a lot of areas, fee problems mean that there is less of that happening. If that was one of the big advantages, it is now being undermined. Clearly, that is a concern.

The nub of my report is on how powers and duties are operated. I meant to say at the start that, as much as I did the primary research for the report, it was reviewed with Leo Charalambides, a barrister who I believe you have all met and had a seminar with. His contribution needs to be recognised. Most of the more interesting legal arguments come from him as opposed to me.

There is a big variation and a number of misconceptions around the decision-making process and how it works. Ways in which it has been interpreted—more often than not to the benefit of the licensed trade—have put local authorities on the back foot. We hear a lot about the four objectives, but the guidance talks

about the promotion of the prevention of crime. It is not only about preventing crime, but promoting an environment where crime and the risk factors are managed down. In practice, a lot of the time people take a reactive view; they wait for a problem to emerge and then it is tackled.

The Act allows for a more forward-looking approach, which is not very often taken. There is a view that the Act is overly permissive, and that is linked to the view that you have to wait for something to become bad and then you deal with it. A very common misconception is this premises-by-premises approach which is used a lot. I am not sure whether you have come across it. It is used to convey that these premises have to be looked at in isolation, rather than that their interaction with the local environment should be considered. If you look at case law, it is very clear that considerations should involve a view of what is reasonable in a particular location. I will not go into too much detail, but there are significant mismatches. Funding, legal advice, having the money to get specialist legal advice regularly and at an early stage rather than when you have already been taken to appeal, are all big issues. Police closing times is a great example. In some areas where you may have an application for a 4 am closing time, the police will say, "We've got loads of other stuff going on and we can evidence this. We've only got so many bobbies on the beat. We can't cope with 4 am", and in some areas the local authority will say, "Thanks, but no thanks". At times incorrect case law is cited to support this.¹

Christopher Snowdon: I mainly looked at opening hours in my report, so I do not have a lot to say about the detail. The magistrates, licensing people and publicans I speak to are basically happy with the way it is going. They certainly think it is an improvement on what went before. They are very happy to see the back of some of the more archaic parts of the previous legislation. They all have little quibbles here and there. I cannot remember what they are, but hopefully you will be speaking to some of them over the course of this inquiry.

I will make one point about licensing fees. This has come up a few times. I do not have a very strong opinion about whether they should be paid by the taxpayer or the licensee. It seems to me we have to ask who we are trying to benefit with the licensing system. If we are trying to benefit only the people who own the premises and the people who drink there, fair enough, charge the people who own it, because ultimately the drinkers will end up paying for that. If it is for the benefit of the whole community, I do not see any reason why the community should not pay through taxation.

Lord Davies of Stamford: Mr Snowdon, you seem to think that the 2003 Act is a successful example of deregulation. Is that right?

Christopher Snowdon: Yes.

Lord Davies of Stamford: Could there be further deregulation?

Christopher Snowdon: I do not know. You have to leave local authorities with a certain amount of control. I live near Brighton and come to work in Westminster.

¹ The witness subsequently asked that reference should be made to the response to question 7 in the written evidence from the Institute of Alcohol Studies (available at: <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/licensing-act-2003-committee/licensing-act-2003/written/36533.html>)

It is remarkably difficult to get a drink after 11 pm in the Westminster area—apart from in this place, of course. But at the same time I believe in localism.

Lord Foster of Bath: Not any more here.

Christopher Snowdon: Oh, my word, things are going backwards. It is slightly annoying to me, but I believe that local authorities should have some control over what they do. There are no obvious areas for further deregulation. I am more concerned that we might claw back some of the liberties that have already been granted with this Act.

Lord Davies of Stamford: There is always a trade-off in life between the attraction of devolution to local authorities, encouraging local democracy, and having some degree of uniformity or reliability nationally. Do you think the balance is right in this case, or are there too many anomalies or discrepancies in the way in which local authorities interpret their powers in different parts of the country?

Christopher Snowdon: The balance has been struck, roughly speaking, but the incentives are not balanced correctly. In an ideal world you would have the local authority receiving all the alcohol duty that is raised in that area, and that would change local councils' incentives about how they deal with licensing and alcohol generally.

Lord Davies of Stamford: They would not have any restrictions at all, would they, in order to maximise their revenue?

Christopher Snowdon: That is a possibility.

Lord Davies of Stamford: Surely that would be a rather perverse outcome.

Christopher Snowdon: Not necessarily. It would be aligned with the incentives. At the moment, they see licensing fees and policing at 3 am as being a huge burden, but they do not see the £14 billion alcohol revenue that goes to government—and ultimately partially comes back to local councils.

Q48 The Chairman: Could we ask about the statutory guidance? What will the effect be on removing the statutory basis for the guidance that is given?

Jon Foster: There are very wide variations in the use of the Act and guidance. Some of them are to do with the Act being applied to local needs; some of them are the Act being applied badly. On the statutory basis I can see the practicalities—how it is easier not to have to find a spot in Parliament—but the message from some of the people I spoke to was they did not see it as weighty enough. They said, "It's guidance, but only guidance". At paragraph 1.7 it says that it should be the key medium for promoting best practice and consistency. It should, but often it is not. So there is perhaps a worry that by removing the statutory basis it becomes less weighty. There is already a question as to its legal clout.

One of the key recommendations in our report is that people should pay more attention to the guidance. It could be tweaked and focused far better. If it was given that weight and used consistently, it would help to improve that theoretical balance between national and local applied more often.

Q49 Lord Blair of Boughton: This question is about the appeals process. As you are aware, the 2003 Act moved initial responsibility for licensing from magistrates to local authorities, but then put an appeal process back to magistrates. We have heard starkly different evidence as to the number of appeals. Where the argument is that there are not many appeals, part of the suggestion has been that it is because local authorities do not want to get into the

appeals process because of cost. It also lacks completely any formal route for mediation. Can you comment on how you see the appeals process?

Jon Foster: I agree that the level of appeals is not a reliable indicator that the Act is working well and decisions are always made correctly, because it does not show those decisions which perhaps should have been taken to appeal, but were not because they were favourable to the licensed trade. Local authorities not having the financial ability or political will to pursue difficult cases and go to appeal, or to make strong decisions which could potentially be appealed, is a big factor. The influence of the trade was a big factor according to the people I spoke to. So having a low number does not tell you much.

In fact, you can imagine a world where the Act is used more assertively, more powerfully—I am not saying that you would go beyond scope, *ultra vires*—local authorities could be appealed more often because they would upset the trade more. But, assuming they do things in keeping with the Act, they would have the decision upheld. This comes back to problems with the decision-making process. What we currently have could be used far more assertively.

Within tax and planning legislation there are versions of mediation, which I am not particularly aware of because I focus primarily on alcohol licensing. It bears looking at, but I have not got personal experience to go into that.

Christopher Snowdon: I do not know anything about this, so I do not think there is any point in my wasting your time.

Lord Blair of Boughton: That is a very honest answer.

Baroness Greender: Should the setting of fees be devolved to local level?

Jon Foster: Absolutely. When the Act came in there was the intention of full-cost recovery, which has never been implemented. It was the intention not just for the licensing teams within local authorities but for all responsible authorities. I was told that those areas that struggle most are often those that have the biggest shortfall. Given the problems that alcohol can cause, there is a huge incentive for the Home Office to enable local government to do things properly and fund their licensing operations properly.

Very briefly, last week a lot was said about CANs, which I will not go into, but it costs £21 to get a community and ancillary notice. According to Westminster, it costs £120 to process that. That is a huge gap.

Christopher Snowdon: I tend to disagree, but I do not claim to be expert on this. It seems to me the pub industry could do with having national consistency rather than a patchwork quilt. I say that only tentatively.

Jon Foster: If it is to fit local need, local costs will vary, so it makes sense to have a local solution.

Q50 Lord Brooke of Alverthorpe: To what extent can and should the consumption of alcohol be regulated by taxation or minimum unit pricing? Now that we have Brexit, we will probably have a lot more freedom in other areas, including VAT. Should there be a combination of these factors? The Government have declined to introduce MUP until they have conclusive evidence that this will be effective. Is this a reasonable line to take? Should a contrary approach be taken?

Jon Foster: Alcohol consumption can and should be regulated to some degree by prices. As a key tool alongside licensing, it is very well known that it works, so it

should be up there. Minimum unit pricing is not a silver bullet; it is more of a health than a crime policy, but it should be in the mix. From what we have talked about there is more concern around the off-trade. Minimum pricing at a suggested level of 50p per unit would have a very minimal impact on the on-trade where prices are already higher, but it would impact on the cheapest products within the off-trade. So it is a well-targeted measure.

The Home Office has stated that MUP is under consideration pending the outcome in Scotland and that it is open to further evidence. This seems reasonable, assuming that they pay attention to what happens in Scotland and the further evidence and act accordingly. As for being conclusive about whether it is effective, you cannot be absolutely conclusive as to what will happen on a lot of policies before implementation, but you make a judgment in the round based on the evidence as to what is likely to happen. This is a problem that all sorts of policies come across; it is not unique to MUP. It does seem that the bar for MUP has been set very high.

There is quite a lot we can learn from what has happened in Scotland and how the evidence has been received. This Committee is going on for a considerable period of time and will be able to benefit from what happens in the next stage of the Scottish case and take that into consideration. At the first hearing of the Court of Session the court accepted that MUP was effective. It accepted that it was a legitimate public health policy and was appropriate. The court also stressed the democratic right of the Scottish Government to implement such a policy. That was appealed by the Scotch Whisky Association and taken to the EU Court of Justice.

The Chairman: We are aware of that.

Jon Foster: Could I stress the point that, as it stands, the Scottish case has accepted that it would be reasonable, based on the available evidence, to judge that MUP may be an effective policy. We will have to wait and see what happens next, but this is the situation at present. It is worth pointing out that there is a sunset clause in the legislation—so if, after six years, it is seen that MUP is having an adverse impact, it can be repealed. This does seem sensible.

Christopher Snowdon: The view of evidence is interesting. Here we are, 11 years after the Licensing Act came in, and alcohol consumption is down 20%, underage consumption is down, drink-driving is down, violent crime is down, and yet we still cannot be sure whether the Licensing Act is a success—whereas minimum pricing, which has never been tried anywhere and there is only a computer model to back it up, is an evidence-based policy.

Christopher Snowdon: In answer to your question, we should use tax to claw back the costs associated with alcohol for the police and healthcare. From that point of view, we pay far too much tax on alcohol. I believe that we pay 40% of the entire alcohol tax paid in the EU. Minimum pricing is worse than tax in a sense because there is no offsetting gain to the government, just a deadweight cost.

Jon Foster: You raise tax behind it to account for that.

Lord Davies of Stamford: Would it not be a gain to the industry?

Christopher Snowdon: Not necessarily.

The Chairman: If it was a gain to the industry, the industry would not be opposing it through the courts.

Christopher Snowdon: Some alcohol companies support it, as well as quite a lot of the licensed trade and some of the more expensive beer companies. People have self-interested reasons. It is a mistake to think that the very cheapest alcohol will suddenly sell for more; the cheapest alcohol will disappear and it will be the second or third cheapest that will become the cheapest. So effectively, you are forcing people to drink slightly better-quality alcohol for more money. People who would rather buy cheap alcohol and keep the difference would be forced to spend more money for alcohol which is better, and might be more widely advertised, but they would be happier drinking something cheaper because they are very price sensitive. That is a result of the fact that the people most affected by this are people on low incomes. So I am against that and against more taxation.

It also seems to me that, although it is a so-called evidence-based policy, there is no scientific way of saying what the minimum price should be. All we hear is that a minimum price of 45p would be less successful than 50p, and so on.

Jon Foster: That is a political decision.

Christopher Snowdon: The whole thing is a political decision. One of the misconceptions about evidence-based policy is that there is scientific evidence that compels you to do something, and if you do not there is something wrong with you. In fact, everything is a political decision that has costs and benefits. There are significant costs of minimum unit pricing in the most literal financial way to the poorest people in society, on top of the very large alcohol taxes that we already pay. The benefits are entirely hypothetical and probably overblown.

Q51 Lord Brooke of Alverthorpe: We come back to the healthcare issue and the cost of healthcare. Healthcare is the second-biggest expenditure in the country of the Exchequer and is growing at a phenomenal rate. Do you not accept that there is an area that is related to alcohol—or is it all trumped up?

Christopher Snowdon: I do. I wrote a report called *Alcohol and the Public Purse* recently, which you can download from the IEA website, which looks at the actual cost to the Government specifically—not the emotional costs or the lost productivity costs but the actual costs to public services. I estimate it could not be possibly more than £3.9 billion, which compares very favourably with the £14 billion we get in alcohol duty. So I think we should be getting about £4 billion in alcohol duty if we are going to offset the externalities to the state. I do not see any reason for it to be more than that.

Lord Brooke of Alverthorpe: You are £17 billion astray from what the health service has said. It said £20 billion is the total cost all round.

Christopher Snowdon: I know, but that is a social cost, not a cost to the state.

Jon Foster: It is a cost that is borne by somebody, though.

Christopher Snowdon: It is a cost that is borne by the individual in most cases. Lost productivity and emotional costs are borne by the individual.

The Chairman: It appears that you agree to disagree. The report of the Institute of Alcohol Studies concluded that there was strong support for MUP. Do you both disagree?

Jon Foster: Absolutely. Licensing practitioners, police and people who use the Act day to day see very clearly that cheap alcohol, as low as 13p or 15p per unit, causes significant problems. Raising that to 50p would make a big difference, but it is not a silver bullet.

The Chairman: Potentially, it is an extremely regressive tax. You are going to move the problem up the scale so that those who can afford better-quality alcohol will continue to drink it. You are not resolving the issue.

Jon Foster: They are price sensitive. They will have less money to buy a bit less alcohol.

The Chairman: Why not do it through a general taxation, as successive Governments have done with tobacco?

Jon Foster: As I understand it, to achieve similar effects, you would be looking at very large tax rises, which politically is not feasible.

The Chairman: Is that not the point of the question? The Government will not act in England until we have conclusive evidence. As you have summed up, Mr Snowden, there is no conclusive evidence.

Jon Foster: You will not get that until you have done it.

The Chairman: That is not how we make policy. We do not make policy on the basis of, "It might work, and it might not work, so let's try it". The evidence we have heard today is that the Act seems to be working.

Christopher Snowden: We have two slightly different issues here. Yes, the Act seems to be working, but it could work better in many ways if we tweak it. MUP is more of a health issue than a crime one, so we are stretching away from the argument.

The Chairman: I would argue that you would do it through taxation in a much more effective, less regressive way.

Jon Foster: With the court case in Scotland, that is not where they are; the rulings disagree that taxation is more effective. That could be appealed; we will have to wait and see.

The Chairman: I would not go down that route.

Q52 Lord Foster of Bath: We can argue about the data and analysis, but you have both admitted that the figures are coming down. The amount of alcohol being consumed, associated violent crime and health harms are all coming down. Why has it happened?

Christopher Snowden: That is a very good question. If you look at young people in general, since the turn of the millennium everything has gone down: smoking rates, drug use, teen pregnancies, suicide and alcohol consumption. They have all gone down by roughly 50%. We are talking about very different issues. No one knows why. People have talked about technology, and I would lean towards social media as having something to do with it; the fact you do not need to physically go out and drink cider with your friends when you have all these gadgets by which to make contact with people. Also, health education in schools to the point of hypochondria has probably had some part of play. Possibly there is this "Absolutely Fabulous" scenario where people are rebelling against their parents. It is not just young people, although it is most obvious with that age group. This is not just alcohol but across the board with all these risk factors.

Jon Foster: There are numerous possible explanations. It is hard to be too definitive and pick things out. There are all sorts of social trends.

Lord Davies of Stamford: The trend has to do with the recession, too.

Jon Foster: Absolutely. Affordability of alcohol is a factor. That has become less affordable over the last few years. Scotland has better data than we do which

shows consumption is starting to tip up again now because affordability has started to increase. It is a complicated picture.

Q53 The Chairman: Is there evidence of the café culture that we were promised?

Jon Foster: Not as a result of the Act. In some places there is something like that earlier in the evening, but not the way in which we were promised. Staggered closing was quite closely linked to this idea, but there is very little evidence that is widespread. Even though when the Act came in it was stressed that staggered closing would be important, there was nothing to say it had to happen; it was left to the market. But bars like to be similar to their nearest rivals, so that has not happened.

Christopher Snowdon: That is not true at all as far as I can see. I have staggered closing all over the place. I do not know if any of you were drinking in northern market towns 20 years ago. I was and it was awful when you got the 11 pm rush. Now when I go back home to Yorkshire it is very different. A lot of pubs still close at 11 pm, then you have a couple that close at midnight and a Wetherspoon's that closes at 1 am or 2 am. It has made a huge difference to all sorts of people. I appreciate it makes less difference in big cities because it was never that difficult to get a drink after 11 pm, but it has made a big difference in smaller towns and villages.

Café culture was never going to happen; we do not have the weather for it. This was one rather silly thing that somebody said. Everybody laughed at the time, and that is why we all remember it. It was an extreme and silly prediction. The difference between that and the prediction that this was going to lead to much more drinking, more drink-driving, more domestic violence and so on, was that that prediction was held by virtually the entire public health establishment, every newspaper in the land, huge numbers of Back-Benchers, most of the police and the judiciary. So we have a difference there.

Lord Brooke of Alverthorpe: Do you ever go in the A&E in Brighton from Thursday night through to Sunday? Do you go into the centre of Brighton on a Saturday night?

Christopher Snowdon: Not any more.

Lord Brooke of Alverthorpe: Why?

Christopher Snowdon: Because I am 40 years old and have moved into the suburbs.

The Chairman: Mr Snowdon, Mr Foster, you have been incredibly helpful. Thank you very much indeed for participating in our inquiry. If you wish to add anything further, you are very welcome to do so. Thank you very much indeed.

Institute of Licensing, National Association of Licensing and Enforcement Officers, British Institute of Innkeeping – oral evidence (QQ 54-62)

Examination of Witnesses

Mr Daniel Davies, National Chairman, Institute of Licensing, **Mr John Miley**, National Chair, National Association of Licensing and Enforcement Officers, **Ms Marie-Claire Frankie**, Licensing Solicitor, National Association of Licensing and Enforcement Officers and **Mr Michael Kheng**, Chair, Midlands Region, British Institute of Innkeeping

Q54 The Chairman: Good morning, lady and gentlemen. May I bid you a warm welcome on behalf of the Committee? There is a little housekeeping to begin with. The session is open to the public, the audio is broadcast live and it is subsequently accessible via the parliamentary website. A verbatim transcript will be taken of the evidence and will be put on to the parliamentary website. A few days after this session, you will be sent a copy of the transcript to check for accuracy. It would be very helpful to us if you could advise us as quickly as possible of any corrections that you wish to make. If, after the evidence session, you wish to clarify anything or amplify, I hope you will take the opportunity to do so. Any additional points you wish to make you are welcome to submit to us. Equally, there may be questions in this oral evidence session that we do not reach, and we may send out written questions to you.

Before we start formally, the members of the Committee will take the opportunity to declare their interests. I have a modest shareholding in Diageo, I am honorary president of Pickering Conservative Club, and I am a member of the APPGs on Beer and on Wine and Spirits.

Baroness Henig: I am Baroness Henig. I am non-executive chairman of a company that, among other things, employs door supervisors, I am president of the Security Institute and I am a member of the all-party parliamentary groups on Beer and on Wine and Spirits.

Lord Davies of Stamford: I am Lord Davies of Stamford. I have no interests, so far as I can imagine, that are relevant in any way to this inquiry.

Lord Foster of Bath: I am Lord Foster of Bath and I am in exactly the same position as Lord Davies.

Baroness Grender: I am Baroness Grender, a recent holder of a temporary events notice for a school summer fair.

Lord Mancroft: I am Lord Mancroft, and as far as I am aware I have no interests relevant to the matters before us today.

Lord Smith of Hindhead: I am Lord Smith of Hindhead. I am the chief executive of the Association of Conservative Clubs; I am the chairman of CORCA, the Committee of Registered Clubs Associations; I am a trustee of more than 200 clubs; and I am an honorary member of the Carlton Club and several other clubs.

I am also on the executive of the All-Party Parliamentary Group on Beer and of the All-Party Parliamentary Group on Clubs, so unlike some of the other members I have quite a list of interests to declare.

The Chairman: He obviously knows too much. Thank you all very much indeed. May I just say at the outset that, as there are four witnesses, two from one organisation, where you agree please do not feel that you have to speak? Where you disagree, obviously do speak loud and clear. I thank the Institute of Licensing for its written evidence, which we have received and will rely on as we go forward. I have a general question on the licensing objectives underlying the 2003 Act. Do you believe that they are the right ones? Should we look to extend and add objectives? If so, would you look to the promotion of health and well-being and compliance with the Equality Act 2010 as being particularly appropriate?

Michael Kheng: I think the four objectives that we have are sufficient. Introducing a further health and well-being licence objective would not necessarily address anything, because the licence objectives are there for a specific premises. I do not think you could put health and well-being down to a specific premises. It is a more global objective on several premises. We have quite a few schemes, such as Best Bar None, Purple Flag and Pubwatch, that address health and well-being, so I think that it is well addressed through these schemes and that we do not need a fifth one.

John Miley: I agree. The problem with health and well-being as an objective is that it is very subjective. As Michael said, it cannot be focused on a particular premises; it is much broader. In fact, the health authorities can object on the basis of all four current objectives anyway. They can get into the licensing issue if there is a particular premises that is causing them some concern and some facts against the premises are available to them. They can make that contribution already.

Daniel Davies: Again, I agree. The majority feel that these are the right objectives and that a fifth objective is not necessary. You have been sent figures on the consumption of alcohol, particularly in problem groups such as younger people, which is on the way down anyway. Although we have one in Scotland for health, we do not think that one is necessary in England and Wales.

The Chairman: To play devil's advocate for a moment, what each of you has said runs counter to a lot of the evidence that we have already heard and to the anecdotal evidence that one sees on the streets on a Friday and a Saturday evening. Younger age groups in particular are increasingly being treated in A&E in hospitals and are becoming increasingly abusive towards people such as the police and doctors, who are trying to help them. Those who perhaps do not agree with you would say that you would say that, because you have an interest in selling the goods. How would you respond to that?

Marie-Claire Frankie: The difficulty with the Licensing Act is proving cause and effect. To use your example of somebody who ends up in hospital having their stomach pumped after consuming way too much alcohol, there is a friend with them who says that they drank three bottles of wine before they came out at night and then had a pint in each of six pubs. Again, where would the health authorities target in order to take action? Would it be the last pub that served them? Would it be all six? Would it be the off-licence that sold them the wine? The issue is cause

and effect, and pinpointing the premises that is responsible is the difficulty with a broad health and well-being objective.

The Chairman: It does not seem to be a problem in Scotland, where it is now an objective.

Daniel Davies: Scotland is not necessarily the best example to use. It has a lot fewer licensed premises concentrated in smaller areas. Also, there is a view that health grounds could be used as way to refuse new licences, but there is already enough there and it is potentially very dangerous for towns and city centres that are struggling with the economy, jobs and investment. The hospitality sector is one of the fastest growing sectors and one of the biggest employers, and we have to take that into account. There are a lot of schemes, such as Purple Flag, that are making city centres a lot safer and are encouraging a far more diverse range of activities that can go on at night. A lot more can be looked at to make city and town centres places that are not necessarily linked just to drinking and alcohol; other things are going on. There are quite a few schemes at the moment, and there are a lot of responsible operators out there, and I just do not see the need, and our members do not see the need, to have this as a fifth objective.

John Miley: Health authorities have the ability to input into licensing policies for licensing authorities' areas, so they can help to shape how an area is monitored and run, and through partnership working with the police and the licensing authorities they have the ability to impact on the sorts of issues that you are talking about, because in the main those issues are also enforcement and policing issues.

Daniel Davies: The other thing is that those issues are already dealt with under the public safety objective.

Baroness Grender: May I ask a very direct question, which is: who is liable in the case of the girl whose stomach is being pumped out? Let me suggest to you that the place that sold her the fifth and the sixth pints is totally responsible, because if it sold them to her and she was off her head, it is responsible. There is the answer to your question, I suggest.

Daniel Davies: There are already laws to cover that though: you should not serve a drunken person.

Baroness Grender: Right, but you asked where is the welfare and where is the responsibility. I would say that the responsibility is directly there for the health and welfare of that individual.

Marie-Claire Frankie: Licensing is evidence based, so it is getting that evidence and getting the track-back of where they have been on the night out. It may well be that, actually, the first premises they went into is as responsible as the sixth one, for example. It is getting that evidence and finding out how they were served. Did she even approach the bar; did they serve a drunk person?

Baroness Grender: They will have let her in.

Lord Smith of Hindhead: Since under the Licensing Act it is an offence to serve somebody who is intoxicated, could you give us any information as to how many licensees have been fined or had licences removed—it is a serious matter—during, say, the past five years?

John Miley: I suspect, though I do not have actual figures, that it is fewer than 50, far fewer than 50. There is not an awful lot of work done in that field currently, in enforcement terms, by the police or the licensing authorities.

Lord Smith of Hindhead: So there is a provision within the Licensing Act which prevents a person who is intoxicated being served drinks but it is not being applied?

John Miley: That is right. There was some work done, in fact. A group of actors were employed by Liverpool University, I think, to go round and take a look at exactly how it interacted. There were very mixed results, as far as I am aware: some got served and some didn't.

Lord Foster of Bath: Can I just press you a bit harder? I will come back to the wider issue a bit later, but specifically on the answers you have given in relation to a health objective, Mr Miley said, very clearly, that health authorities had the opportunity to shape an area, because they have an input into the licensing committee's deliberations, but if there is no health objective, how does the licensing committee take any note of what the health authority might say?

John Miley: In the past we have done a lot of work, in Nottinghamshire in particular, where I am from, with Public Health England in the east Midlands and they have been actively involved in discussions around the shaping of the policy. We did the policy on a county-wide basis initially, so that we had some commonality in the policies themselves; they fed into the discussions and any points that were raised by them were considered by the group that shaped the policy initially and also by the councillors who were involved in agreeing the policies in the various different councils.

Lord Foster of Bath: But in relation to a specific licence application being considered by a specific licensing committee, the health authority can put in comments but there is no requirement, because there is no objective that relates to health for the committee to take any notice of if they choose not to. Whereas if there were an objective, the committee would be required to take note of that recommendation.

John Miley: Not necessarily: the representation in respect of the application has to be relevant to the application; you cannot use generalities. The problem for the health authorities is that they have great difficulty in collating information in respect of particular premises. They can get a global picture, they can get a fairly regional, local picture, but to tie it down to actual premises becomes very difficult for them and if it cannot be tied down to particular premises, it does not become a relevant representation and cannot be considered by the licensing panel.

Lord Davies of Stamford: I just want some clarification, Mr Miley. You spoke about 50 applications for licences having been turned down. Over what period and in what area?

John Miley: Sorry, I suspect that only 50 prosecutions have actually taken place over serving to drunks—it may not have affected the licence itself.

Lord Davies of Stamford: I see. And over what period was that?

John Miley: Since the Act commenced; so over the past 10 years I don't think there have been many actual convictions at all.

Lord Davies of Stamford: That is for the whole of England and Wales?

John Miley: Yes. I will have to confirm that; I cannot be exact about the figures, but there have been very few prosecutions undertaken.

Daniel Davies: I think quite often they might be wrapped up in a bigger case. There might be people who have been served who are intoxicated, but there are other things attached to that and one might go hand in hand with another and the case might come in front of the court. There are some inconsistencies, in that there isn't an objective—though health and well-being are represented, there is no objective linked to it. Having said that, we still do not think there should be one. It is the paternalistic argument: has the individual got the right to make a choice themselves? There is already protection for children; that is covered. We also feel that if you look at figures on alcohol consumption, they are on the way down. There are a lot of schemes in place at the moment. The actual consumption of alcohol, particularly among younger people, is on its way down and we think that it should pretty much be left alone as regards these four objectives. The overwhelming feeling is that we need a period of time now, after there have been a lot of amendments and changes, a period of plain sailing, if you like, to let some of these voluntary schemes and systems, of which there are plenty, come into place.

Q55 Baroness Henig: I take your point about a health and well-being objective and I hear your argument. Do you feel the same way about the Equality Act 2010? There have been suggestions that there should be another objective relating to compliance with equality, inclusion and diversity. This would, I think, be relevant in individual cases. I can see your point about health not being relevant, but you could not make the same argument about the application of the Equality Act. Do you feel the same about this, or what are your views on that?

John Miley: There is specific legislation which covers the Equality Act and licensing authorities have a duty to uphold that, as do the premises themselves; they have to provide those services. I do not think we should be duplicating legislation by creating an objective which they already have to abide by.

Daniel Davies: That is exactly the point I was going to make.

The Chairman: I would like to ask Marie-Claire for her take on that.

Marie-Claire Frankie: When a premises has to make an application they detail in their operating schedule how they are going to promote the licensing objectives, so if equality, access and inclusion was an objective, they would have to have regard to it anyway and comply with it because it is under the Equality Act. They would have to say specifically in their operating schedule what they were going to do to promote it, much in the way that they do to prevent children from harm and much in the way that they say they are going to prevent crime and disorder and promote health and safety—all things that are covered under other legislation.

Daniel Davies: Then there are things like the minimum wage: you do not need an objective for that. People know that there is a minimum wage and they apply it.

Q56 The Chairman: On the point about prosecutions, it would be very helpful, Mr Miley, if you would come back and give us more detail in a written follow-up. I turn to one area that was excluded from the 2003 Act and that has been in the news just about every summer, but through the year as well, and that is the fact

that the licensing authorities have no powers to license premises at airports, seaports and railway stations. Obviously, trains now ban alcohol for certain football matches, but people may perhaps be nervous and drink more at airports and seaports. We have certainly seen a rise in airport rage and there has been at least one incident of a fire at sea being caused by someone who was probably intoxicated setting fire to their cabin. Do you have a view that this should be reviewed and brought within the general licensing provisions under the 2003 Act?

Michael Kheng: My view on that is that bars in airports and such like should probably have voluntary schemes in place, such as Best Bar None, or something similar. I think there should be a level of training that they should put in place. I am not sure whether you could legislate that they have the premises licenses being on the air side of the airports, but I think that if they are encouraged to have some sort of formal scheme and training in place, that would probably address the situation. The staff should know when to stop serving people. I am not sure whether they are trained or not, but I think that should be reviewed.

The Chairman: Are drinks that are sold air side significantly cheaper in price?

Michael Kheng: I don't think they are.

Daniel Davies: No—they are more expensive, in some cases. Generally speaking, if you look on a plane now, they have controlled it fairly well. They limit the amount of alcohol that you can have. There are smaller measures. If there is a problem it is probably at the airport as opposed to on the plane. One of the issues they have is that they don't get a regular set of clients in, they get a very transient set of clients that are maybe stopping by for an hour or two. If it is a stag do or a hen do going off on a cheap European package, that is the time they are more likely to preload and then, in effect, pass the problem on to the staff on an airline who will then have a much bigger issue to deal with. I am generally against regulation in the airport, but I certainly think that most of the operators are big operators that operate in airports and it would be fairly straightforward to get them together and apply a lot of voluntary schemes there, just to reduce the amount that individuals take on board.

John Miley: The issue is also access for enforcement officers, both the licensing authorities and the other bodies involved. They have great difficulty getting through airport security, I suspect, in order to get involved in any actions they want to take on the other side of the fence, so to speak.

The Chairman: And the police would not be in a position to enforce it? They have badges that operate both ways.

John Miley: I suspect that they probably already have the ability to enforce against drunken behaviour.

The Chairman: But they are excluded from the Act at the moment. That is my point. No one is really policing it.

John Miley: I suspect that operators will need to make sure that such behaviour is curbed in bars, because it does their reputation no good.

The Chairman: Operators being—

John Miley: The people who run the premises. They need to run a tight ship, and, as Michael said, voluntary schemes and plans to keep a weather eye on it would be a much better way forward for them. They would also be answerable to the

Civil Aviation Authority, I suspect, to make sure that their premises are properly run.

The Chairman: So why do you think air rage is on the increase?

John Miley: I really do not know.

The Chairman: All right. That is very helpful anyway.

Lord Davies of Stamford: Before I ask a question about coherence, perhaps I could ask you, Ms Frankie, about a matter that was raised in the previous discussion. I think you advise Sheffield authority on licensing matters, and you are a lawyer, so you are doubly well placed to answer my question. In the event that a publican was prosecuted and convicted of having served a drunken person, would that automatically, in Sheffield for example, lead to a review of the licence? Would it automatically lead to the withdrawal of the licence, or would it just be one factor to be taken into account the next time the licence is applied for?

Marie-Claire Frankie: It would not automatically lead to any of the above, really. If, for example, the police were going to prosecute the premises for serving someone who was drunk, the police would then have to make an application to the licensing authority to review that licence. Those are two separate paths. They do not have to review the licence if they do not want to, much as they do not have to prosecute. If they did the review and prosecuted, it would come to the licensing committee, which would look at all the evidence. Revocation is among the tools in their armoury, but it is certainly not automatic. There are many other steps that could be taken.

Lord Davies of Stamford: So it would perfectly possible, indeed probable, that someone who was successfully prosecuted in that situation continued to have a licence.

Marie-Claire Frankie: Yes, it is certainly possible. The Licensing Act says that you cannot take any action that is more than is necessary to deal with the issue. Action might be adding conditions that required additional training. If the issue relates to a specific member of staff, often the management might say, "We've removed the staff. We've done staff training. We're going to do refresher training. We've signed up to X, Y or Z". If you think there is a problem with the management, you have the powers to remove the premises supervisor from the licence. In my experience, all those things would come before revocation of the licence.

Q57 Lord Davies of Stamford: That is very helpful, thank you. On coherence, the government memorandum on the Licensing Act says that the Act "is being used effectively in conjunction with other interventions as part of a coherent national and local strategy". We have also been briefed on some very peculiar failures of coherence. There has been clear inconsistency between a planning decision, for example, and a licensing decision. There have been crazy muddles, which of course can be very expensive and involve economic and other costs to the community. We would all therefore be interested in the panel's view on whether this rather rosy description of the coherence of local authorities and their different functions, such as planning and licensing, is in fact a true representation of reality.

John Miley: In truth, it is not currently linked at all. Planning and licensing are two separate regimes that very rarely meet. Unfortunately, when they do meet it is because someone's licence has been granted at 3 o'clock in the morning, the premises are only allowed to trade until 1 o'clock in the morning, and the person decides that he is going to take his better option and use the licensing permission to open until 3 o'clock when he should only be opening until 1 o'clock. Regrettably, generally speaking there is very little planning enforcement in that sort of field, mainly because quite often it is an out-of-hours issue and planning officers are not out at that time of night.

Lord Davies of Stamford: Do your colleagues on the panel agree with that assessment?

Daniel Davies: Yes. There is definitely scope for closer integration between planning and licensing. Obviously planning is the overall use of land, and licensing covers the use of the premises. We have all seen examples of areas gradually changing from more licensed retailing to apartments suddenly popping up everywhere around them. I have been a licensee in the past. I ran a premises. The premises behind it were converted into apartments, and suddenly there was an issue with noise nuisance, even though the apartments were brand new and were behind five late-night venues.

Lord Davies of Stamford: Sadly, such instances are not that rare. We have been briefed on other examples. Ms Frankie, if we were to change the law in this respect so as to try to create greater coherence, how could the local authorities in fact combine the planning and licensing functions more effectively? If we placed some obligation on you to do that, how would the obligation be worded so as to be effective?

Marie-Claire Frankie: It can be tackled a little more effectively at a local level without needing to change the law.

Lord Davies of Stamford: But it is not. It may be sometimes, but the evidence is that it is not as satisfactory.

Marie-Claire Frankie: Yes. In Sheffield, for example, the licensing officers are out late at night on the streets much more often than the dwindling planning department. It deals with issues mainly during the day, but we have night-time enforcement officers who are out every night of the week. When they see a premises that is trading outside its planning hours as well as its licensing hours, the licensing officers prepare the files for prosecution as they would for the licensing. So in some respects they are doing the job of a planning enforcement officer. We have sorted out our delegation so that they can do that. They then come to legal services and we prosecute on behalf of the planning department, even though the evidence has been gathered by the licensing department.

Lord Davies of Stamford: Co-operation, coherence and enforcement are clearly important, but I had in mind particularly, and probably more importantly, co-operation and coherence, and above all coherence, in actually issuing the relevant licences: the planning consent or the licence to sell alcohol. How can we best make progress in achieving greater coherence in that respect?

Marie-Claire Frankie: It is very difficult. Many of the licensing issues that we see are a review of a premises against which there have been complaints of noise

nuisance but the premises has been there for 30 years and apartments have recently been built around it. People have moved into that area in the full knowledge that there is a premises there.

Lord Davies of Stamford: So the planning consent has been given without consideration of the licensing implications.

Marie-Claire Frankie: I do not know what the consideration would be. I am sure that, in their planning considerations, they consider that there is a licensed premises there. What extent that stretches to I could not say.

Lord Davies of Stamford: I am very grateful. Thank you. I think we have revealed a rather interesting and important shortcoming in the present system.

The Chairman: Is there sufficient training for officers and other professionals before these decisions are taken?

John Miley: In respect of—

The Chairman: —managing these potential conflicts?

John Miley: For the committee members and councillors?

The Chairman: Yes, the licensing authorities.

John Miley: A lot of work is done on training councillors. Most licensing authorities make sure that all their councillors are trained before they appear on a committee hearing. The licensing committee is between 10 and 15 people. The hearings for licensing matters are perhaps panels of three, which are drawn from those 10 to 15 people. Most licensing authorities would expect those participating in a licensing panel to have undergone training in the process and the reasoning behind how they should work.

Michael Kheng: If I could just add to that, although there is a level of training for licensing committees, there is inconsistency throughout England and Wales in how that training is delivered. Some authorities will deliver it in house, some authorities will buy it in. There is no set standard of training a licensing committee member, so certainly in my experience as a licensed consultant, as I go around the country I see inconsistencies in the knowledge of some licensing sub-committees and some of the strange questions that are asked and decisions that are made.

Daniel Davies: Can I come in there? As chairman of the IOL I know that we have a number of different training programmes in place that would cover this off, and local authorities do put people through these on a regular basis. One of the challenges to be taken into account is that, with the austerity measures kicking in and a lot of local authorities suffering a brain drain of very experienced licensing officers and people who work with them—replacing them new staff who are perhaps a lot less experienced, have not had the same sort of training or are just embarking on training—there is a bit of a deficit at the moment and that is why we see some of these problems. On the other hand, we do not want to regulate too much. Under the old system, when courts granted licences, you had to prove need as well. I think it was decided that the market will prove need, and again, what has to be taken into account is the overall economies within towns and city centres. The night-time economy is very important for jobs and for tax revenue.

Baroness Greender: What is the most glaring inconsistency you have seen that you think we should be dealing with?

Michael Kheng: It is probably the knowledge of what the licensing sub-committee should be addressing. They should be focused on the application that is in front of them and not deviate from that. For example, not so long ago I had one sub-committee member asking why the colour of a door was going to be blue and not red.

Q58 Lord Smith of Hindhead: We know that since the introduction of the Licensing Act in 2005 social habits have changed enormously. While one of the designs of the Licensing Act was to create a café culture or a café society, we know a lot of people now drink alcohol at home. Just recently the amount of alcohol consumed at home exceeded that which is sold by the off-trade. With that in mind, we are aware that because of that change in the last 10 years there has also been a recent change in the development of internet shopping and home deliveries. So I have three questions on that theme. First, has training for licensees and licensing practitioners kept up with changes in the industry? Secondly, how do decision-makers apply the Act to online sales and home delivery? Thirdly, are the existing tools under the Act flexible enough, bearing in mind that the Act was introduced before internet ordering or delivery had even been thought about, for licensing authorities to manage that type of online activity and consumption?

John Miley: I suggest that trading has not changed an awful lot in the past 10 years. We have the personal licence course for practitioners which has remained very consistent and very basic in its information to those who take it. Licensing practitioners do keep up with the changes, but on a much more informal basis, I think. As they are made aware of changes, they take cognisance of them and use them when they are planning the conditions for licensed premises. The decision-makers applying the Act will, generally speaking, probably be the police, who would have a greater involvement in helping to shape the conditions for the licence, and as part of a mediation or discussion process prior to the application would agree conditions in respect of how they would manage an online delivery process, ensuring that age verifications took place at some stage in the process. Currently under the Act it is not illegal for a driver from Tesco, or even a pizza delivery man, to turn up at the doorstep with an online sale and deliver it to an under-18 year-old. That is not an offence under the Act at all. So it is quite important that these checks are put in place.

Lord Smith of Hindhead: Would it be an offence under the Act to make the order if you are under 18 years of age and pretending to be 18?

John Miley: That would be an offence, but to accept delivery if the Tesco delivery man turned up at the door and a 10 year-old opened the door and said, "Oh, thank you very much" and brought in the weekly shop including two cases of wine and two cases of beers, there is no problem with that at all under the Act, currently.

Daniel Davies: Some 64% of our members support the need for some sort of reform in relation to off sales. When you look at delivery companies, if you are using a bigger, well-run delivery company—Deliveroo or someone—they have got a number of checks and balances in place. Normally, the purchase is made by a credit card, which you generally have to be over 18 to have, it is delivered and in a lot of cases they will ask for ID as well if they are making a delivery to a home. Obviously, if you are drinking at home you are not as regulated; you have not got

somebody supervising you, in most cases, as you have in a licensed premises, so there are areas of concern there.

Lord Smith of Hindhead: But that would also apply if you were buying large sums of lager from the supermarket.

Daniel Davies: Yes; if you drink at home as opposed to in a licensed premises.

Lord Smith of Hindhead: But I am speaking specifically about the online business, rather than off sales at a supermarket.

Daniel Davies: The online side probably does need to be looked at. Our members think that it should be looked at a bit more. Probably the bigger delivery operators have got some fairly good checks and balances in place; it is whether some of the smaller ones are adhering to the same sort of level.

Marie-Claire Frankie: To support what has been said there, in general terms, your larger operators, your larger supermarkets who are delivering the weekly shop with some alcohol, are not really the concern. If you are a group of 16 year-olds at somebody's house, you are not going to do a Tesco online shop and book between 9 and 10 for it to be delivered. The concern, certainly in Sheffield, has been the rise of takeaways wanting to sell alcohol with their offer. Obviously, the only way the licensing committee can address an application is if somebody objects to it. In Sheffield we have a very active safeguarding team—well, the team is one lady but she is very good and she will object to applications. I don't know how she does it but she does, and she has objected to the four applications that we have had from takeaways who wanted to sell wine or beer with a takeaway order. This is way that the committee in Sheffield has addressed it. The concern is that you do not want people buying a bag of chips and £40 worth of wine, so the conditions that have been applied in Sheffield have been a minimum food order and then a maximum alcohol order. So there will be a minimum food order of £10, say, or £20, but a maximum alcohol order of £15. They did it looking at what the menus were which would cover a bottle of wine from these outlets. The hope was to discourage those outlets from being able to access children who were possibly unsupervised in a home. Otherwise, they could just be ordering a pizza.

Lord Smith of Hindhead: That is interesting, but how does your lady team in Sheffield make an objection to Amazon?

Marie-Claire Frankie: Well, there is the problem.

Lord Smith of Hindhead: Who licenses Amazon in Sheffield?

Marie-Claire Frankie: Exactly.

Lord Smith of Hindhead: Do you know?

Marie-Claire Frankie: No.

Lord Smith of Hindhead: Do you know how the system works? How does Amazon get its licence to supply alcohol?

Marie-Claire Frankie: I imagine the same way that Tesco Online does. I don't know if that is from the supermarket—

Lord Smith of Hindhead: For the benefit of the Committee, could you explain how that works?

Marie-Claire Frankie: I do not know how it works.

John Miley: In terms of the guidance, the issue is that the place to be licensed is "the place where the alcohol is appropriated to the contract"—those are the words

that are used. So wherever the alcohol is actually picked to go into an order has to be licensed.

Lord Smith of Hindhead: So the depot?

John Miley: Yes.

Lord Smith of Hindhead: The individual depot—

John Miley: Should be licensed.

Lord Smith of Hindhead: There will be an Amazon employee at every single depot—I am just using Amazon as the example because it is an easy one. Amazon sells alcohol, so at every depot of Amazon you are saying there will be a licence holder.

John Miley: One would hope so. They would have to have a premises licence because, as you know, it is the premises supervisor who will authorise the sale of the alcohol.

Lord Smith of Hindhead: So each one of those would have that?

John Miley: Should have, most certainly.

Lord Smith of Hindhead: Should have?

John Miley: Yes.

Lord Smith of Hindhead: And the local authority would be able to deal with a complaint made about a delivery in that particular area? So if somebody in Sheffield who was 14 was found to be consistently buying alcohol and there was a complaint made that proper checks had not been made and that alcohol was being supplied to a person under 18 years of age, you are saying that it would be the depot of that section of South Yorkshire that would be liable?

John Miley: Where the order is actually picked out would be the responsible area. They should have a premises licence and it should be shipped from there. Each seller of alcohol has to be authorised one way or another; there is no way around it.

Lord Smith of Hindhead: There does not seem to be a great amount of understanding about how this growing section of your industry actually works, does there?

John Miley: Probably not, because there are very few centres of dispatch. That is the problem: very few areas will have those in their area. If we had an Amazon in Broxtowe, for instance, where I work, I would have more understanding of the actual process.

Daniel Davies: It is the depot that is licensed.

The Chairman: We have that. Thank you.

John Miley: The information that you asked me to supply to you earlier in respect of the prosecution of drunks is in the Home Office memorandum that came to you and is very similar to the figures that I gave.

Q59 Baroness Henig: I want to move on to the statutory guidance and related issues. The Licensing Act has been in force for about 10 years, but, as I am sure you are well aware, it has been significantly amended on many occasions in its relatively short life. My first question is, therefore: how easy has it been to adapt to those changes, which have been made at fairly frequent intervals? How effective has the statutory guidance been in helping people through all those changes and in producing national consistency in decision-making? We have already heard that

individual licensing committees differ quite considerably. If you then throw into the mix all the changes that have come about, is that statutory guidance effective enough to produce consistency? How significant will the forthcoming removal of the statutory basis of that guidance be, because that will happen quite soon?

John Miley: The guidance document has been very useful to licensing authorities and other people taking part in the Licensing Act. I have to say that the Home Office has been very good of late in consulting on the changes that it makes. We have been quite impressed with the level of communication that it has developed over the last few years. It was certainly not forthcoming in the earlier days, when it gave out orders rather than listen to what we said. That was in the early days of the Act, and we were finding common ground. We have certainly found a way forward. It is very co-operative and actually listens to what is being said as well. I know of editions of the guidance that have been changed by virtue of discussions that have been had with the Home Office, which has been quite useful. So it certainly listens. We are able to adapt because the changes are not huge all the time. There are piecemeal changes, which we can take on board, generally speaking, and take notice of.

National consistency is very difficult, as has already been mentioned. The problem with making decisions on licensing applications is primarily that unless someone is engaged in the process of starting a consideration by the panel, the application does not get considered and is put through on the nod. If there is engagement—if a representation is made and it is relevant—the panel considers that application, but each one is considered on its own merits. No two hearings will be exactly the same, so there is not a lot of common ground for consistency in decision-making. There are some consistent rules on what work we should consider, as Michael said earlier, but sometimes that might be lacking. As you move further into the appeal process, you have exactly the same issue there.

So with regard to the effect of the forthcoming removal of the statutory basis, as long as they continue to consult regularly in the way they are now, I would be quite happy with that, because it will speed up the process with regard to some of the changes that might be able to be made through the statutory guidance rather than through legislation.

Michael Kheng: It is nice that the guidance has not been touched for 14 or 15 months. There have been so many revisions to the guidance and so many amendments to the law that it has sometimes become confusing. In 2004-05, when the Act came in, a lot of licensees were grandfathered over to a personal licence and had very little knowledge of the Licensing Act 2003—certainly when they did the course in 2003-04—and licence holders are probably not up to date with the changes. I think Dan referred to this earlier; we need a period of consistency and no changes, and to let what we have in place settle down and let the dust settle on it. Let us see how it goes. I think the licensees will then have a better of understanding of what the legislation and guidance are saying. If we keep having all these changes, it just confuses the end user, the licensee.

Q60 Lord Mancroft: My question moves us on to theoretical ground and the way in which licences are approved. The case law says that the power of the licensing committee is a power delegated on behalf of the people as a whole, to reach an

holistic and balanced decision, weighing everyone's interests. Is that how the members of the local authorities that your members work with see their role?

John Miley: Yes.

Lord Mancroft: Do they put all political considerations aside when they make decisions?

John Miley: I think they do. This is one of those situations where the consideration is based purely on local issues and local representations made by the police or various members of the public who get involved in these situations. Across the country, I do not think I have ever heard of a decision being made on political grounds particularly. It has always been made on consideration of the facts, as it obviously should be. I think I can safely say that, generally speaking, that is the case.

Marie-Claire Frankie: I agree. Obviously we do not know what is in their heads at the time. There is certainly pressure on officers to do certain things. Whether that same pressure is applied to members of the committee I cannot say.

Lord Mancroft: What sorts of pressures?

Daniel Davies: They could be residents' objections, especially in the run-up to an election or something like that. I have to say, though, that politics does not come into it on the whole. Our feeling is that they do not let political allegiances cloud their decisions.

Lord Mancroft: You think that, on the whole, it is a fair and balanced process.

John Miley: In terms of the holistic and balanced decision-making process, that is exactly what they have to be; they have to try to be seen to be. They listen to the case that is put forward, and making a balanced decision is a bit of a judgment of Solomon sometimes. Generally speaking, I think they are. This is reflected in the number of appeals against decisions, which is relatively low, in fact. It was certainly a disappointment to the magistrates in the first two or three years of the Act when we took over the process.

Michael Kheng: Licensees' problem is the level of evidence that the police have to submit, which is fairly low compared with evidence that goes into a courtroom. Because that level is so low, a committee can sometimes be swayed into deciding that it is fact and it can revoke a licence. Certainly about 95% of the appeals that I and colleagues of mine have dealt with are appeals against the revocation of licences. The norm is that when there is a hearing the sub-committee will give them something and the other side something, so if you apply for 4 o'clock, the police will argue for 2 o'clock, and you will probably find that the sub-committee will give you 3 o'clock. It is a very costly process, so the applicant would probably not appeal that. If their licence is revoked, it is worth them spending the money on the appeal. I think the level of appeals is low mainly because they are about the licence being revoked.

Lord Davies of Stamford: How many revocations are there each year?

Michael Kheng: I do not have that figure. I do not know whether it is in the document.

Baroness Henig: I put it to you very quickly, from long experience in local government, that there is probably not much, if any, party politics involved. I

suspect that there are very often political situations, but they are not party political. Is that right?

John Miley: I suspect that is very much the case, and that is based on local knowledge.

Baroness Henig: Absolutely.

John Miley: We try very hard to ensure that the panel members, and particularly the ward members, are not unduly influenced in the process. It is a very difficult balancing act, because that is sometimes difficult to get.

Lord Smith of Hindhead: What do you do to ensure that?

John Miley: We pick the panel carefully. We only have a pool of 15 members to choose from to hear the case, so we find out who is available first and try to avoid any clashes with the borders of the wards. Sometimes it cannot be helped, unfortunately.

Q61 Lord Foster of Bath: I want to touch on the issue of responsible authorities, such as the police, fire, rescue, local planning authorities and local health. As you know, they can raise objections to the licence application and can ask for a review, and as Mr Miley told us they can also play a role in what he described as shaping the area, which they did in Nottingham. Having listened to some of the contributions so far, we have heard from Ms Frankie that local health authorities cannot do very much because they have no data about individual premises, and Mr Davies does not even want health to be there potentially to cause a licence to be rejected. We have heard from Mr Miley that planning and licensing rarely meet, and Ms Frankie told us that they were dwindling, and in response to Lord Davies's question that co-operation and coherence among these bodies is "very difficult". Does the whole concept of responsible authorities work at all? Where is it good, where is it bad, and what can be done to improve it?

John Miley: Yes, it works, very often across the various counties. Certainly in Nottinghamshire, which I can speak on quite well, we have a group that meets every six to eight weeks. All the responsible authorities meet to discuss licensing issues in general—not particular applications, but licensing issues. So any potential areas that are going to crop up and come under scrutiny are discussed; we disseminate knowledge through those meeting; we learn an awful lot, as licensing authorities, from the various bodies as well. They do have some knowledge, but not sufficient across the board, I have to say. There is probably a gap in knowledge for a number of the responsible authorities joining in. The safeguarding board has some knowledge, but has some difficulty in interacting with the information it is given, because the information in the application does not give it much to work on. It tends to work with people rather than places to a great degree and requires a lot of information on particular people involved in licensing, and that information is not forthcoming, generally, from the licensing application.

The fire service works through the regulatory fire order now, so almost outside of the Licensing Act, although very much involved in the public safety elements of it. They have to do all their enforcement work under the regulatory fire order. That hampers them somewhat, although they are contributors to our group meetings, certainly, and very welcome contributors. We had some issue over their departure from the Act when the fire orders came in; we were a bit unhappy, because they

seemed to be abdicating authority, but in truth they were not allowed to get involved in it.

The police have sufficient knowledge, but they just do not keep hold of it. What tends to happen is that you get a police officer trained up who is very knowledgeable about licensing and he gets moved. We are fortunate in Nottinghamshire in that we have four civil support staff who are consistently available; however, sometimes their decisions are affected by their superiors in the force who have different views on how licensing should be done. You quite often get the licensing inspector or the neighbourhood policing inspector who will have a view, particularly in our case, on pavement café licences. He is of the view now that he does not want them in the area after 7 o'clock at night, which is a bit of a shame and not much good for the town centre environment. But as soon as he is replaced by a different policing inspector, he may have a different view on that matter. There are all those sorts of issues to be taken into account as well.

Lord Foster of Bath: Sorry to interrupt, but you have described Nottingham and the six to eight-week meeting. How common is that? Is it true for most licensing authorities that they bring the responsible authorities together on a regular basis?

John Miley: There are a number, but we are also working nationally, with the LGA and the National Licensing Forum, which is chaired by Dan, in fact. So we meet on a national and local basis to make sure that the knowledge is spread. It is very important that we ensure that the responsible authorities, if they are going to interact with us, know what they are doing, because they quite often say that they want to object to a licence and they cannot because they do not have any facts to do so.

Daniel Davies: It is clear from our responses that local authorities consider that the police and environmental health are mainly responsible. Regarding authorities undertaking the role within the Licensing Act, comments indicate that other RAs rarely engage and when they do, representations made are either not relevant to the licensing objectives or are so generalised that they cannot be positively linked to the premises in question. Information sharing is important and while some areas do it well, it is clear that some areas do not. I also think there is a big need for a national database as well. I hope we can have it, because we sit through numerous meetings and everyone complains that there is so much duplication—the fact that there is no national database does cause a lot of problems.

Q62 Baroness Grender: You have already mentioned the appeals process, so let us see if we can get some information from you on whether you think that the appeals process could be improved in any way, including by formal mediation or further appeals to higher courts. Officials from the Home Office told us that only a small proportion of decisions or licence reviews are appealed. Does this reflect your experience? Do you think it could improve? Do you think there should be more, for instance?

Daniel Davies: I think there should be more mediation.

Marie-Claire Frankie: It is definitely the experience: it is the chicken and egg situation. Which comes first? Are there fewer appeals or is it the fact that appeals are so costly and take such a long time that puts people off? Because that is the situation at the moment. The cost of appeals is prohibitive sometimes and we

experience licensees who would much rather walk away from a premises than appeal it, because of the cost. For local authorities, it is not uncommon for a member to say, "Should we look at going down that road, what if we get appealed?" Costs are going up and they are frequently being awarded a really large sum of money.

The cost, it seems, when you break it down, comes from the length of time that the process takes. You have your determination—to use an example of mine, we had a licence revoked last November. Come March, I am still chasing up court to ask if we have had a hearing date. The lady in the office said, "We have the application; they have appealed; we don't know how to process it". This is four months later; this application has gone nowhere. Then, after pushing it, it gets put in for a case-management hearing, which is a couple of months down the line, and the final hearing ends up being nine or 10 months after the original decision. Appeals are not just reviewing the original decision; they are a hearing de novo, so they can take into account any new evidence. New evidence that happens in 10 months can be quite a lot. That, in my opinion, is what builds up your cost. If you can cut that timeframe down, even to eight to 10 weeks, the amount of new evidence you can get in eight to 10 weeks is a lot less than the new evidence you can get in eight to 10 months. That would cut the cost, which would possibly make more people more inclined to appeal. That would then make magistrates more able to deal with licensing issues, because they are coming before them more often. I wonder if there could be something about the process. On application, for example, when you make your application for appeal, the appellant could give their witness availability. When notifying the respondent you could say, give us your availability within seven or 10 days. Then, when the date gets listed, potentially within two weeks, it is listed for a hearing six to eight weeks down the line.

I am not really sure about the idea of mediation outside of an appeal environment; I think people would always want to preserve their right of appeal. You have then got a six-week window where there could be standard directions, where some sort of contact is encouraged. It could be that someone makes a written proposal with reasons, and it is ordered by court direction that there be a response with reasons, which means that, by the time of the hearing, you might actually have resolved the issue, or you might have originally had five issues and now you have whittled it down to one.

Baroness Grender: That is great—unless one of your colleagues wants to add to that.

John Miley: I suggest that mediation is far better before you get to the appeal stage. I have to say that in Broxtowe we have never had a review yet, in 10 years, which we are quite proud of. But we get in early and mediate with applicants with issues that arise, we talk to the police, we make sure that the police and the applicant are all on the same hymn sheet and able to resolve the issues without going to a review process which gets very, very costly for the licensing authorities.

The Chairman: On behalf of the Committee, I thank each of you for being such excellent panellists and being so generous with your time. Thank you for

contributing to our inquiry. In releasing you, I invite the next set of panellists to
take their places. Thank you very much indeed.

Association of Convenience Stores, Licensing Matters, Wine and Spirit Trade Association – oral evidence (QQ 63-69)

Examination of Witnesses

Ms Gill Sherratt, Director, Licensing Matters, **Mr James Lowman**, Chief Executive, Association of Convenience Stores, and **Mr Miles Beale**, Chief Executive, Wine and Spirit Trade Association

Q63 The Chairman: I welcome very warmly our next group of panellists. We made our declarations of interest at the start, but I just want to give my thanks for previous hospitality. I also thank the Association of Convenience Stores for the written evidence that we received. You will be familiar with the fact that the session is open to the public and you will know about the transcripts. I remind you, in addition to what I said earlier, that if there is anything you wish to clarify or amplify in the points you have made, we would be happy to hear any additional points you wish to make or to take any supplementary evidence you wish to provide afterwards. I shall open this session and ask at the outset, just for our interest, are there any supermarkets that are members of your associations? Are any of the members of the Wine and Spirit Trade Association supermarkets?

Miles Beale: Thank you. Yes, the WSTA has almost all major supermarkets in its membership and a number of other retailers, including specialist retailers. I hope, by the way, that you will have received some written evidence from the WSTA as well, to which I will refer.

The Chairman: There are four objectives, currently, under the legislation, requiring licensing authorities to promote these objectives. Can I ask, how has the Act affected the businesses you represent, as well as any substantial changes to the Act, through guidance and amendments that have followed? What impact and effect have these had on your licensing and planning policies, and on the licences granted to the branches of your stores?

James Lowman: I am very happy to open on that and I am sure that Miles and Gill will say something as well. What has been interesting to note about the Licensing Act and the experience we have had of it is that it has come at a time of quite significant changes in society and in people's habits in buying and consuming alcohol. In the time since the Licensing Act came in we have seen less drinking overall, particularly among certain groups. People are more likely to eat out of their home and to drink in their home—there has been that change-around. Perhaps we used to always eat at home and always drink in a pub; that has changed in both those respects, before and certainly over the past 10 to 12 years as well.

Within our own sector, there has been a change from specialist off-licences—which still exist but in fewer numbers than there were in 2003 or 2005—and now the off trade is made up of supermarkets and, in our case particularly, of convenience stores which sell a broader range of products including food and other things and

have alcohol as part of their mix. About 12% to 15% of sales in convenience stores are alcohol. What has been positive, looking back on the first 10 to 12 years of operation of the Licensing Act, has been that it has allowed businesses to respond to those changes. As such, I regard it as a successful piece of legislation. We think it could be improved; it could have a greater focus on duty fraud and on weeding out irresponsible businesses, including retailers who deal in duty fraud products; there are administrative improvements that could be made, not least the requirement for retailers still to advertise in local newspapers when they wish to apply for a change of licence, at a significant cost; and there could be a more level playing field, particularly in relation to petrol forecourts wanting to sell alcohol. So we do not think it is perfect, but we think it has stood the test of time so far and has allowed some of those changes to be reflected in the market.

Gill Sherratt: Licensing Matters represents independent retailers in the off sector and I have to say I agree that the licensing legislation works, it is definitely fit for purpose and has everything it needs. It is a useable tool for the authorities, it is targeted and enables them to respond correctly to a particular problem. The minor variation process has helped that a lot, because in terms of mediation, mentioned before, it becomes part of a mediation process to avoid reviews and expensive committee hearings. On the other hand, the operators have the ability to obtain licences, so it gives them flexibilities for their business.

Off-licences struggled in the beginning. The big mistake that was made was not making it compulsory for them to be trained under grandfather rights; unfortunately they were just gifted their licences under a brand-new piece of legislation and they have gone along not knowing anything about it, carrying on as normal. At the same time, the authorities have been given massive powers to regulate. For me, the big problem now—things have improved a lot, with the independents learning as they have gone along—is often overregulation and the authorities' inability to see this legislation as permissive and to grant licences. Because they do have the power of review if things go wrong. They overregulate a lot of the time. We have recently had a licence revoked based on very minor condition breaches—literally the signing of a form. That is my issue, but as a whole, it works.

Miles Beale: The only thing I would add is a touch more in the realm of context. The Act was introduced in 2003. It is probably pretty unusual for people to say that, overall, this is a very good bit of legislation—

Lord Smith of Hindhead: It was commenced in 2005, although the Act was of 2003.

Miles Beale: I agree. The context I am referring to is that since that time there has been improvement across the board with a lot of the issues that I think all those interested in this Act would wish to see. For example, consumption is down by a fifth, alcohol-related harm is down by a third, the number of licences is broadly flat—up about 3% in a decade—but the volume sold by each premises with a licence is down. The other thing is that it has provided a very effective framework for collaboration. So some of the things that the industry has been able to do have flourished under the framework of the Act. Community alcohol partnerships, Challenge 25, and the Proof Of Age Standards Scheme are three

good examples related to the off trade. Finally, I would just say that there have, however, been multiple changes to this Act every year since it was introduced in 2005, with only two exceptions, and there is probably more risk to undermining an effective framework by changing it further. There is a great deal to be said for leaving it alone.

The Chairman: I have one supplementary question. Obviously, each supermarket outlet has to apply for a separate licence. Do you see any conflict or incoherence between planning decisions and licensing decisions by the local authority? Has that impacted on your business at all?

Gill Sherratt: Not at all. We put applications in and you cannot take the planning into account; it is a separate regime. That is as far as it goes.

Q64 Baroness Greener: There are four objectives in the legislation as it is currently written. As you all know, in Scotland there is an additional objective, which is protecting and improving public health. We have had quite a lot of witnesses who said that the Act should be extended to include that and there are also some calls to include some kind of equality objective within the Act. Do you think there is any merit in adding to the four objectives on those two particular issues?

James Lowman: It is worth noting that in Scotland there is no evidence yet of any impact on levels of drinking and alcohol harm as a result of that. We have a business reason and a practical reason for having particular concerns about a public health licensing objective. The practical reason is, how do you link evidence of alcohol harm to a specific premises? One key thing about the Licensing Act is that it is about regulating individual premises on their merits. On a national level, alcohol harms often take years to present themselves: someone has consumed too much alcohol in Manchester; they move to London; how does that relate to licensed premises in London? How do you draw that link across? It is very hard to do. Furthermore, even within one area, how do you tie or align health harms to specific premises? It is very hard to do that. People will drink in a number of ways and, in fact, problem drinkers will find a way to get alcohol—no one is suggesting prohibition. They will find a way to get alcohol and I do not think the Licensing Act is the right way to tackle those problems.

When we talk to members in Scotland they tell us that there is also a business reason. I give the example of an entrepreneurial retailer, a member of ours who has about eight stores, who has grown that number of stores and is a fantastically responsible retailer with high standards. When he looks at where to open new stores—and in doing so he creates jobs, makes investments and supports local communities—he avoids areas that have policies around overprovision of premises, because he knows that it will be harder to get a licence, and that even if he gets a licence it will be more expensive for him to get that shop, because the offer he makes will be conditional on getting a licence, therefore it will put the cost up. We have clearly seen how it actively disincentivises investment by businesses, and that would really concern us. Then there is a general concern about wanting to focus on promoting good standards in retailing, rather than in any way trying to limit numbers, or things like that.

Gill Sherratt: The burden on the licensing process would be massive. Public health is obviously a consultee, but if it was a licensing objective the first thing we would ask for would be their evidence. As soon as they said, “We don’t want you to open at 6 am”, we would ask, “Where’s your evidence?” It is impossible to link that evidence to a particular premises, and I do not think that the Licensing Act is the correct way to tackle the issue.

Miles Beale: The only thing I would add is that I wholeheartedly agree with the points made about evidence by both other panellists.

There was a question about whether this Act is the right vehicle for doing something about public health. The Scotland case is interesting. It is still true that, if you take a sweep of the last five years where we have figures, consumption remains 18% higher per person in Scotland than in England and Wales. Public health follows the same pattern as consumption, so the changes are mirrored but the gap remains. They have, over provision, a number of additional elements. Health is a licensing objective and it does not seem to have had any effect so far.

Q65 Baroness Henig: I preface my question by acknowledging that the evidence certainly shows that the volumes of drinking, especially among the young, have gone down substantially in recent years. None the less, I want to ask a question about preloading, because that is quite an issue. It is alleged that a major cause of excessive drinking among some young people is preloading alcohol bought from off-licences before going to the pub. Does your experience support the view that that is an issue? Do you see different patterns in sales at the weekend, and if it is a problem, what could be done to prevent preloading?

Miles Beale: Preloading is not well understood. I would not wish to suggest that there is no preloading issue at all, but the only evidence available to us suggests, for a start, that it is a phenomenon that you can observe only in the on trade. Secondly, our figures tell us that one in five—21%, to be exact—will consume before going out. Of that 21%, just under 80% drink most of what they are going to consume—so the majority of what they consume that night in the on trade. Overall, that looks to me like a 4% issue with preloading, and I do not think there is an enormous issue. The publicity around it is different and suggests that there is more of a problem than there is. I hasten to repeat that that does not mean that there is no problem; I just do not think that it is as great a problem as some people might suggest.

The Chairman: Just before we move on, could you give us the source of the figures that you quote?

Miles Beale: Yes. They are both referred to in our written evidence. One is from work by Professor Mark Bellis in 2008, and another by a suite of five or six authors in 2009. They are both annotated in the evidence.

James Lowman: The evidence that Miles has just cited is very important. On the question about sales trends at weekends and so on, there will obviously be an uptick in sales in the evenings in convenience stores, but it is driven much more by weather and by events. The reality is that the market for alcohol in convenience stores is not as glamorous or exciting as you might think. People buy it and drink it in front of the telly, or when they are having dinner with friends or with their family. That is the core market for convenience store alcohol sales. Miles is

absolutely right that some people drink alcohol from the off trade and then go out. They always have done; it is not a new phenomenon. But as Miles says, only in a minority of cases is that happening and a lot of alcohol is consumed before going out.

Baroness Henig: So there is a problem, but it is not as big as is suggested.

James Lowman: It happens, but whether it is a problem is a judgment. Clearly, it has always happened. It is not a new thing.

The Chairman: Ms Sherratt, do you have anything to add.

Gill Sherratt: Just an observation, really. Preloading has only become an issue because of the change in the hours in the Licensing Act, and youngsters these days go out at 12 and 1 o'clock, as opposed to 7 and 8 o'clock when you had to get your night in before 2 am previously. We just did our preloading in the pub itself. It is not different, really. I do not think it is just the change in society that has created this thing called preloading. It has always happened.

Lord Smith of Hindhead: Do you think that preloading has happened more recently? We think that it has, because people can buy large quantities of very cheap alcohol in supermarkets.

Gill Sherratt: No. I have to say that at university I used to have a can or two before I went to the pub. It has always happened. It is nothing new. It is just whether you do it at home or go into the pub at 7 or 8 o'clock.

Lord Smith of Hindhead: Yes, but more alcohol is sold now off trade than on trade, so the people you represent are now the major players in the alcohol business. Most of the problems with antisocial behaviour caused by drinking too much alcohol happen in the evening, so you can imagine that those in the on trade tend to think that they are the ones who are left with the difficulties and have the most restrictions under the Licensing Act. Yet some of the difficulties are caused in the off trade, which is selling in the day time and does not have the same restrictions that the on trade has. That is simply an observation of the industry.

Gill Sherratt: It is whether you see the difficulty being caused by the off trade or by the individuals who conduct themselves in that way. I do not know that it can be laid at the door of the off trade.

Q66 Lord Smith of Hindhead: The availability of cheap super-strength alcohol is said to be one of the main causes of street drinking, which harms local communities and damages businesses near the point of sale, including off-licence stores. Can this be tackled by voluntary agreement with local authorities, or do licensing authorities have a part to play by imposing conditions on the strength of the alcohol that can be sold? If I am out and about, I tend to see high-strength alcohol drinks far more in convenience stores than perhaps in supermarkets, where you do not get the large, very high-volume two-litre cider bottles, which we are all aware can be consumed very quickly and can obviously cause dramatic effects. What are your thoughts on that point?

Gill Sherratt: I have thoughts on this, having been involved in it for quite a while, because the issue of restrictions on ABV comes up again and again with applications. I will start by saying again that this is down to individual responsibility, and in my opinion the Licensing Act is not the correct vehicle for handling it; it is down to the choices that that person makes, and if you restrict

the high-strength beer and cider they will just move to the cheap vodka to get their alcohol.

On the point about the schemes, as you have quite rightly mentioned there are two ways in which the ABV issue comes up: the voluntary schemes and conditioning. The voluntary schemes are a toothless tiger. They are done very differently across the country. Some are more robust than others, but the vast majority of them—and I have been heavily involved in a lot of them—are not targeted, and they are certainly not effective because they do not involve everybody. To be effective, they have to involve every shop and supermarket in the area. I have often been asked to become involved on behalf of our clients, and have scrutinised them. We were asked to look at a shop that was three miles away from the actual issue of street drinkers. They had never seen a street drinker in their time there. There was the question of whether we would restrict all these products, but the scheme was not appropriate or targeted, and a lot of these schemes are run in that way.

We do get asked about conditions, mostly in the cities, but again there is no consistency to the requests. They are often not targeted and are very ad hoc. We were asked about a condition this week; I will not tell you where it was, but it tells you something about what in my view is overregulation. It stated, “No beers, lagers or ciders over 6.5% ABV should be sold by retail, in plastic or in metal containers, excluding premium products as agreed in writing in advance by Police Licensing”. They are saying that the police will be able to dictate what products the store can sell, which in my view is overstepping the mark a little.

Lord Smith of Hindhead: Have there been difficulties in the area of that store, or have there been problems caused by drunkenness?

Gill Sherratt: In order to establish that, we have been told that unless we accept that condition they will object to the application. In order to make the inquiries into whether that condition is merited or not, we will have to meet them to go through the evidence and, even if we put up some resistance, they will still object. We will have to accept the condition. The neighbour down the way might well not have it, so there is nothing streamlined and nothing consistent. There is a problem with these conditions across the board, be they by conditioning or the local schemes. At the end of the day, the problem is the street drinker and that problem should be targeted through health and other agencies. I do not think that the Licensing Act is right for that.

Lord Smith of Hindhead: Do you agree with that, Mr Lowman?

James Lowman: Largely, yes. One of the most publicised schemes is in Ipswich. Some of my members are very involved in it and I certainly see some merit in what was done there. But what struck me is that only a very small number of individuals—56, I think—were being targeted by the scheme. These were the street drinkers. There was not just product removal but outreach and support for those drinkers. It seems to me that that should be the starting point. The question is how we help those people who have a range of issues, many of which relate to alcohol. As Gill has explained, relating this to specific products is much more complex than it first looks. We might associate certain products with this, but they are not solely drunk by street drinkers; there would not be a market for them if

they were just drunk by street drinkers. Which products do you target? I have also heard some local authorities talk about problems with certain retailers. In a scheme in Portsmouth, the licensing officers told us that they had identified some premises that they were trying to involve in the scheme and found that some of the products that were being drunk by street drinkers there were not legally available in the UK market—that is, those retailers had illegally imported them or had got them through an illegal supply chain.

Lord Smith of Hindhead: But did they lose their licences?

James Lowman: No, they did not en masse. We think that a huge part of the issue is about retailers engaging in duty fraud.

Lord Smith of Hindhead: So these retailers were selling unlawful alcohol and they did not lose their licence.

James Lowman: They did not lose their licence but they should have. One of the weaknesses of the Licensing Act is that it is not used enough to take away licences from those engaged in duty fraud. When licences are taken away, too often the licensee comes back in another guise, through someone else being on the licence or in a different premises. That area of the Licensing Act is vastly underused. A lot of the problems that we are talking about would be addressed by far better use of the existing powers.

Miles Beale: We very much agree with that. The WSTA and the ACS have done quite a lot of work together on street drinking generally and I agree with everything that James has said. There are a couple of other things. First—and this is another one of those headlines that looks more difficult when you try to address it—what exactly is super-strength? There is a definition for beers and ciders, but that strength looks very different in relation to other products. Secondly, and probably more interestingly, to what extent is drinking in the street cultural rather than a symptom of someone who is a problematic drinker? We have done some work with a charity that suggests that it is hard sometimes to tell, particularly for a local authority that might not have the time to do it. James's point is exactly right: it is normally a very small number of individuals. The conclusion that we have come to is that you need to target the individuals. It is as much about education as it is anything else. The only other thing to refer to here is that the Act makes provision to tackle some of these issues in different ways. I may mention a few others later, but there are a couple of underused provisions in the Act that I think are also relevant, so I would not be looking at adding to it; I would be looking at using the full suite of provisions under the Act.

The Chairman: Interestingly, we heard from the Home Office when the official gave evidence that there is generally a good response to consultations. Are you consulted when there are changes to the Licensing Act provisions? As a rule, do you respond to those consultations? Do you believe that your responses are heard?

Miles Beale: Yes, yes and yes. The Home Office has been assiduous in consulting closely with the industry. That is why it works. It is also why people such as James and I are able to persuade our members actively to be involved in schemes such as community alcohol partnerships and some of the others that I have mentioned. It would not work unless it were that way.

James Lowman: Again, three yeses. The consultation with licensing professionals and local authorities—not just industry—is extremely important in making the Act workable.

Gill Sherratt: Yes, the same again.

Lord Mancroft: You have said that the powers are not being used. Who is not using them and why are they not using them?

James Lowman: On duty fraud specifically, the situation at the moment is often that information is fed in through HMRC, which wants to move the information up the supply chain to try to make big hauls at ports. I understand that; it is a perfectly reasonable policy. Information is therefore not shared with local licensing authorities and sometimes local licensing authorities are reluctant to investigate.

Lord Foster of Bath: Can I just follow on from the super-strength issue to a similar area? As everyone else has done, I acknowledge that the overall statistics are really good news. However, as Jon Foster, one of our witnesses back in July, told us, “cheap alcohol, as low as 13p or 15p per unit, causes significant problems”. First, do you agree that that is true, just like the super-strength issue? Secondly, what solutions should we be looking at? Is it again, as you said, about targeting individuals? Is it education? Is it using the full suite of provisions that are already available? Is it minimum unit pricing or is it something like the IFS’s tax proposals? I know that you could speak for hours on this, but we do not have a lot of time, so you might want to give a brief answer now and amplify it in writing to us later.

Miles Beale: I will go first and try to be brief. First, it is good to look at what works. Consumption is falling fastest among the young, which definitely has an enormous amount to do with education—schemes such as community alcohol partnerships involve schools. Secondly—and I find this a fascinating debate—there is a floor price already, after 2012, which is imposed on the industry, although it had already agreed to it. Duty plus VAT is a minimum. So some of the prices that you referred to are not legal and should not be happening. We certainly oppose minimum unit pricing as an idea more generally, because we think that it would be very unfair on the poorest, in particular. We certainly do not see that it would work, given that there is no evidence that it would. It has not been tried anywhere in the world. There are things that people refer to, but they are not minimum unit pricing. It is also quite hard to see whether it is legal. The ECJ’s judgment is that the tax system is the best way in which to do this. The UK has one of the most highly taxed regimes in the world—40% of all duty paid on alcohol in the EU, all 28 countries, is paid here by UK consumers. Lastly, minimum unit pricing would be bad news for the Exchequer and bad news for consumers, because one would lose income and the other would have to pay more. We think that it is a bad policy that would not work.

James Lowman: I do not have a huge amount to add to that. The point that I would make about duty regimes is that it is very important that everyone selling alcohol is applying the duty regime. That goes back to enforcement against duty fraud.

Gill Sherratt: I do not have anything to add.

Q67 Lord Mancroft: Can I ask you to think for a moment about home deliveries, where sales are increasing? What effect is this having on your businesses? Are the controls on home deliveries sufficiently rigorous? How do those of your members whose businesses include home deliveries comply with the requirements of the Act on the sale of alcohol to children in particular?

Gill Sherratt: A very brief response is that we do not have an awful lot to feed back to you on deliveries. We do a lot of applications for deliveries, which are sometimes linked to takeaways, late-night deliveries and independent operators. All that I can say is that we deal with an awful lot of reviews, but we have never had anything negative come back—I have never heard anything negative among all the communications that we get about delivery services. That is all that I can really tell you from our experience.

Miles Beale: The only thing I would add from a supermarket point of view is that the supermarkets are in an extremely good place to deliver Challenge 25 policies—for example, for home deliveries. They are in a very good place to ensure that it is delivered securely, which I know has been one of the concerns. Lord Mancroft, you also asked which other provisions are not used. On selling to people who are already drunk, and on prosecuting those who have provided alcohol to people who are already drunk, the numbers are in single digits and have been for five years. The second of those has been zero or one for every year of the last five years we have figures for.

Gill Sherratt: Just as a constructive suggestion on deliveries, I do not know if the pool of conditions in the statement of licensing policies covers deliveries, but certainly, when we put an application in and it is something they want to do, we make sure that they are properly conditioned, in terms of training drivers in Challenge 25 and things like that. If there is concern about that, maybe that can be looked at.

Lord Smith of Hindhead: Mr Beale, is that statistic you gave on the number of convictions in your written evidence?

Miles Beale: Yes, it is. There are a number of others as well, but those are the top two.

Lord Foster of Bath: I did some research into this which confirmed that figure, but can you just confirm that the reason the figures are so low is that it is very difficult to bring about a prosecution—the police find it difficult to be able to say whether a person was drunk before or after they have purchased that drink?

Miles Beale: I am happy to write to you about it. I cannot confirm anything. Those are the figures. It seems to me very unlikely that they should be so low; I do not understand why they would be.

Q68 Lord Davies of Stamford: The pubs in this country have had a legal obligation to make sure they do not sell alcohol to people who are below 18 for ever, almost, and they use their statutory framework. The same statutory framework apparently does not apply to off-licences and supermarkets, but there is a voluntary scheme in place, Challenge 25, which is supposed to replicate the same effect for supermarkets. Is there an anomaly here? Should the statutory obligations be the same for anybody who is selling alcohol, on or off licence? Is the present system working or not?

James Lowman: To be clear, the law is exactly the same. You cannot sell alcohol to someone under 18 whether you are on or off licence. Where there are some wrinkles is around an on-licence premises serving to people including adults and with a meal, which we have not got a comment on—that is an on-trade issue. For the off trade, you cannot sell alcohol to anyone under 18; that is an absolute offence. The Challenge 25 process is a really important part of that, because if you are put in the position of working behind a counter, or behind the bar in a pub, how do you know whether someone is 18? They do not have their date of birth tattooed on their forehead; you have to make a judgment. The Challenge 25 scheme is about giving yourself as much leeway as you can in making that judgment. If you look under 25, expect to be asked for proof of age. If that proof of age shows that you are over 18 then you are entitled to buy that product. Challenge 25 is a way of enforcing that very clear law that you cannot sell alcohol to someone who is under 18.

Lord Davies of Stamford: Why is a different procedure used in off-licences and supermarkets from that in pubs?

James Lowman: I do not think it is.

Gill Sherratt: It isn't.

Lord Davies of Stamford: Well, Challenge 25 does not extend to pubs.

Miles Beale: It is additional. The industry has taken it upon itself to make sure that it goes over and above the requirements of the law; that is what Challenge 25 is all about. What is quite interesting is that Challenge 25 was put together by the Retail of Alcohol Standards Group, which WSTA helped to set up. What we are now finding is that the on trade is considering upgrading its Challenge 21 scheme to a Challenge 25 one, partly because Challenge 25 was seen as best in class.

Lord Davies of Stamford: Is there an argument for raising the age for buying alcohol in both contexts, on and off licence, to 21?

Miles Beale: No, I cannot see one.

James Lowman: The consensus is that 18 is the right age.

The Chairman: You mentioned the difference between off-licences and on-licences. So that the Committee can be clear, is there an argument for raising the age at which alcohol can be purchased in off-licences to 21?

Miles Beale: No.

James Lowman: No, I do not see it at all.

Lord Davies of Stamford: It would be bizarre if there was a different age at different locations.

Miles Beale: It would.

Lord Smith of Hindhead: I would have been astounded if any of you had said yes.

Miles Beale: The place I would start from is, what problem would you be trying to solve? It is not clear to me that there is an issue. There is no evidence—there is no problem that has been referred to us or that any of us has seen.

Q69 Baroness Henig: Let me switch the focus to licensing decisions. The Act assumes that the power of the licensing committee is a power delegated on behalf of the people as a whole to reach holistic and balanced decisions, weighing everybody's interests, including those of local retailers and those who use the

shops. In your experience, is that how members of local authorities see their role? In your experience, do they make decisions with the ability to put party and other political considerations to one side? Are you happy with the way that licensing committees operate?

Gill Sherratt: I think this is coming to me to answer. I go into licence hearings weekly and I can report that, on the whole, we get a fair and balanced decision, but I often have to work very hard for it, mainly for training reasons, I suggest. Training of committee members is a big issue. I spoke to a councillor who told me that, in total, she had had three hours training on licensing and then she was sitting on a committee. I can tell you the different experiences that you get. I go into a hearing as a professional and someone who is used to dealing with them, I get a decision and—this actually happened—the next hearing on had pretty much the same circumstances. He was unrepresented and had not as bad a case as mine; I got conditions applied, he had his licence revoked. That does not seem very fair and it is just an example. Training is the main issue, and sometimes the committees struggle to put the business in a good position. They should look at it as being someone's livelihood, but they often do not. They often weigh in favour of the residents a lot and do not consider that these people are running a business. I often say to my clients before we go in that they have to be prepared for the fact that asking for a licence is almost seen as a negative thing. In my view, they could support businesses a little more. In terms of the decisions, I think it comes down to training.

Baroness Henig: When you say that you have to work very hard, can you give me some idea of what working hard means?

Gill Sherratt: I can tell you specifically. Often they will raise a lot of irrelevant issues. Yesterday, for example, I was in a hearing and the subject of letting bedrooms upstairs came up. It was not relevant in any way to what we were discussing, to the licensed area. They can bring up parking, or whether somebody lives close to a premises. They can ask, "Why do you want this premises when you live 10 miles down the road?" These are things you have just got to carefully manage that can be irrelevant. It comes down to training.

Miles Beale: If I might just add one thing, some of our bigger businesses would say, there is a national scheme and while there should certainly be local discussions every time, you would not want the balance to tip too far, which on occasion I think it probably has, towards local specification—i.e. you have to go through every single element of the requirement to achieve your licence every single time you apply. There is a scheme, it is broadly understood and it should be nationally comparable, so you need to get that balance right.

Baroness Henig: Sure, but at the same time there will be local circumstances, local people with voices, so there will be variations to some degree.

Gill Sherratt: Of course.

Miles Beale: Absolutely; hence my reference to balance. I am not saying you should not do it like that—in fact, I think you should—it is just that one ought to be careful that it does not tip too far. We have certainly had occasions when that is true.

Gill Sherratt: Just on that point, the residents' views are very important, there is no doubt about that, but I would just like to mention that one word, "evidence". The training, more than anything, needs to focus on a committee's ability to view the evidence correctly.

James Lowman: I would back up everything that has been said, but from the perspective that these applicants are often our members, they are often individual businesses which are proposing to invest, to create jobs, improve an area and invest in a community. Applications should be seen in that context. That is not to say that residents' concerns or other issues should not be considered—of course they should—but it is worth remembering that these are people who are applying to conduct business in a responsible way and make a very positive impact on the local community.

The Chairman: This might not apply directly to your members, but the Licensing Act does not apply to sales at international airports, seaports and other modes of transport. Do you have a view that it should apply? As part of this scrutiny, should that be reviewed?

Miles Beale: On balance, no. An airport is not based in a community in quite the same way that any other licensee might be. I would also go back to the question, what is the evidence that it needs to be different from the status quo?

The Chairman: Air rage, people being tanked up before they get on a plane?

Miles Beale: I was going to say that there is something about the consumption of alcohol by individuals in airports: I do not think that is the same thing and I do not see how the Licensing Act can realistically deal with that. It is not different from elsewhere, where it is as much about education. Interestingly, one of the drinks trade associations has been involved with a number of partners—I will not try to list them now, because I cannot remember them all, but they include airport authorities—on a code of conduct for dealing with passengers who have consumed too much alcohol or have misused it. That is a very good example of an industry reaction that has come well before any reaction from anywhere else.

The Chairman: On behalf of the Committee, I thank you very much for participating in this inquiry and for the evidence you have given today, as well as the written evidence. We are very grateful to you. In releasing you, I will ask the Committee to stay for three minutes to consider our future programme.

National Organisation of Residents Associations, Westminster Citizens Advice, Harmond, Clarence, Hartland Residents Association – oral evidence (QQ 70-77)

Examination of witnesses

Dr Alan Shrank, Chairman, National Organisation of Residents Associations, Councillor Carol Davies, National Organisation of Residents Associations, Richard Brown, Licensing Solicitor, Westminster Citizens Advice, and Patricia Thomas, Chair, Harmond, Clarence, Hartland Residents Association

Q70 The Chairman: Good morning; I welcome you most warmly. Thank you very much indeed for contributing to our inquiry and coming today to give evidence to us. The session is open to the public. It is broadcast live and will subsequently be accessible via the parliamentary website. A few days after this session, you will be sent a copy of the transcript to check for accuracy. It would be extremely helpful if you could advise us of any corrections as soon as possible after you have received the transcript. If there is anything after the evidence session that you would like to clarify, or you would like to amplify any points made during the evidence session or make any additional points, you are welcome to submit supplementary evidence to us.

Before we proceed to questions I declare my interests in the subject, as I am required to do. I have a shareholding in Diageo. I am the honorary President of Pickering Conservative Club. I am also a member of the Beer and Wine and Spirits All-Party Groups and, obviously, have received hospitality in that role.

Perhaps I may introduce the first topic. It is becoming clear to the Committee that there is a tension between those who wish to drink alcohol and residents who live near licensed premises. If you feel the correct balance is not being struck, where do you believe the fault lies, and what can be done about it? Is there a proper balance at the moment? If you believe there is not a proper balance, how could that balance be better reached?

Dr Shrank: I think it starts with the problems with applications that are registered and then dealt with unsatisfactorily from the point of view of residents. We see the Licensing Act as having dealt a raw deal to residents when it comes to making decisions on where and what premises should be licensed. There is a general impression from our members that there is a presumption of approval by licensing committees in granting the applications as they stand. This is apparent when you consider how many licensing applications there are in a year. Some data from 2014 revealed that there are nearly 15,000 such licence applications in England and Wales and, of those, 444 were refused and the others have been accepted. It supports our view that licences are awarded in spite of concerns from residents. According to the same collection of data, there were about 3,500 hearings, whereas you would have thought there would be many more than that. The

problem that our members report with hearings is that they conclude that there is this presumption of approval, and there are three factors to that. The first is that—I am talking about hearings—when you have an application for a new licence in a residential area, the residents express their concerns at some length in their evidence, but they have no hard evidence. My experience supports the view that what happens is that the legal adviser tells the licensing councillors that it is all prediction, not hard evidence, and therefore it has no weight.

The Chairman: Could I put a direct question to Councillor Davies? You are deputy chairman of the Planning and Licensing Committee at Loughton Town Council, where I canvassed in my youth. A clear strand we are picking up is that residents feel that their views are not being heard and that planning is almost taking precedence over licensing and, where there are existing nightclubs, they are seeing housing put in in the form of flats, and that poses problems. How do you see it from an elected councillor's point of view?

Councillor Davies: The views of residents are not being taken into account at all. I can speak for Loughton, but I think it will be a trend across the country. Planning does not take precedence as far as licensing goes. We are a town council committee—we give a steer and guidance and then our recommendations go to the district planning and licensing committee and then further on. We try to restrict hours of opening on planning applications. We are local: we know where the road is, where the houses are, where the residents are; and if we have no objectors at the meeting, we will have a really good idea that these hours should not go beyond a certain time. Then, lo and behold, the absolute opposite happens: there will be a licensing application which will override what we put on our planning recommendation and it goes from there. That is the case, is it not?

The Chairman: I turn to Lord Mancroft, who will pursue this a little further.

Lord Mancroft: There are always going to be competing interests between business and residential, and that is going to grow ever closer in towns and cities over the next few years. An example of competition may be a grassroots live music venue and a new block of residential flats. When striking the balance between those competing interests—and it may not be those two but other competing interests—does it matter which use was there first?

Councillor Davies: Yes.

Lord Mancroft: If it does, how should those competing be made to recognise the existing use? How do you do that?

Councillor Davies: If you have a music venue that is there—it is established; it has a clientele and is used—then that is one thing. If you have a developer who will come to put a block of flats there or develop housing around it, that needs to be taken into account. The music venue is already there and they have established their right to be there.

Lord Mancroft: How do you take that into account?

Councillor Davies: When the developer comes along, if they want to build housing there, on top, they need to take into account the noise reduction when the building is built. That has happened—

Lord Mancroft: How does that help the residents who are going to live there after the developer has gone?

Councillor Davies: They know full well where they are moving to. They are not moving to a rural place. If they are moving there, then they are expecting that it will be a busy or noisy area, but you would take that into account and expect that. If I were going to buy a property and I see there is an established music venue, I would be looking at whether my windows are going to stop the noise coming in, or I would not be buying it. That is a completely different thing. What is happening the other way is that you are living in a quiet street, you have a local pub and a normal evening use of it—regular hours, restaurants, that is fine; people go home and go to sleep—but, on the other hand, and completely out of proportion, you have pubs turning themselves into bars and nightclubs and asking for 3 am licences, which are being approved. What was an evening economy is turning into a night-time economy. Then you will have all the comings and goings, and other businesses want to open because there is a nightclub there; so you will have a takeaway place which has to have a 3.30 am licence, and that is given. It is completely in favour of the applicant at the moment and things are passed without any regard for the local community.

Dr Shrank: The residents spend a lot of time trying to get the planning conditions appropriate for any development that is taking place in their area, and the hours are sometimes fixed on those premises by planning. If it is a licensed venue, they then seek extra hours which are beyond those of the planning conditions, and it seems absolutely crazy. There is one situation where there are three regimes—the planning, the licensing and highways if pavement use involved—and they all have different remits and could offer totally different conditions. We understand that planning is paramount, but it does not stop these other bodies from making different conditions, and then there is a battle to try and change the planning. I have seen that happen in my own area in several instances where they put pressure on planning to lower the standards. They have a remit to protect the amenity and quality of life of the people in the area and they are pushed to change that remit so that they do not, in fact, stop the licensed premises from operating hours later.

Lord Mancroft: Mr Brown and Ms Thomas, do you have any evidence of the amount that is happening, the quantity of it? Secondly, carrying on from what Dr Shrank said, is there any co-ordination between highways, planning and licensing as a routine, or do they not co-ordinate their decisions at all?

Patricia Thomas: My impression is that they do not co-ordinate. Certainly I have seen no evidence that they do. One other point I wanted to make to strengthen what Carol Davies was saying is that when the developer comes along and builds a block of flats, it is true up to a point that, if you are buying, you can say, “No, I don’t want to live there because it is going to be noisy and people are going to pee in my front garden”. If, on the other hand, it is social housing, to a certain extent, you go where you are sent, which makes it even harder for residents to avoid the worst results of licensing.

Richard Brown: I do not see a great deal of it because the project I work for, at Westminster Citizens Advice, deals only with the licensing side of it although sometimes that necessarily involves looking at the planning side of it to compare and contrast. Part of the issue for residents is confusion between the different

requirements and parameters for each application. Residents can often confuse a licensing application with a planning application. Probably the most common question I get asked is to explain why a premises which has not got planning permission can apply for a licence. Of course, the answer is that the regimes are separate, which sometimes residents do not properly understand. It does involve quite a lot of work for residents. If there is a planning application going in at the same time as a licensing application, especially to co-ordinate support from residents in respect of the proposals, it is quite a lot of work and that goes back to the question of balance.

It was interesting for me to speak to my colleagues—who I have never met before today, but to speak to them outside—about their views on the balance. My view is slightly different, which is that the Act provides a framework where the right balance can be struck. The question is whether in day-to-day practice that happens. My view in Westminster, which is where I do all my work, is that generally it does. The view from my colleagues is that it does not. That is a shame because, going right the way back to the White Paper in 2000, prior to the Act, it was made very clear that one of the reasons for moving the jurisdiction from the magistrates to the local authority was to give residents more of a say and to make the decision-maker more accountable to local residents who were affected by the decision. That is explicit in the Act, with residents able to make relevant representations. It has been made more explicit with the removal of the vicinity test in 2011 and the change from decisions having to be “necessary” to “appropriate”. The difference that has made in practice is debatable, but it is clear that that is the aim of Parliament, to involve residents more, and I think more could be done.

Q71 Baroness Henig: That moves us on neatly to the licensing committee itself. To declare my interests, I am a non-executive chair of a private security company, president of the Security Institute and committee member of the Beer and the Wine and Spirits All-Party Parliamentary Groups. To turn to the licensing committee, I was interested in what you said there, Mr Brown, about striking a balance because the power of the licensing committee is obviously a power delegated on behalf of the people as a whole to reach a holistic and balanced decision, and that is what the Act has tried to ensure, weighing everybody’s interests. The question then becomes: how do the members of the licensing committee see their role and how do they operate in practice? From what you are saying thus far, the suggestion is that that is not happening in practice. I am not quite clear whether you are saying that members of licensing committees are not good at their job, or that the interests of maybe businesses are being taken more account of than the interests of residents, or that they are being led by their advisers. I am not quite sure, but clearly you are not happy about the actual performance of the licensing committees, and perhaps you could tell us why.

Dr Shrank: My initial experience was that I was at one of the first licensing applications in my town and we had a meeting which finished at lunchtime. We were given a decision by the committee that they agreed that the licence should not be extended. The chap was claiming grandfather rights and wanted to extend

the hours. It was in the middle of a residential area. The committee agreed with us that there could well be troubles and, therefore, they would refuse it. The legal adviser leaned over to the chairman and said, "Please don't confirm that now. Let's have a break and then we'll come back". So they had a break, they came back and they made the decision to approve it. That is my experience, having been to about 50 licensing hearings in my town, and that has been the effect of the legal advisers in our area. We have membership all over the country and some in Wales and that is the general expression I get. Westminster, I think, is a separate condition. I know the set-up in Westminster quite well because I used to know Audrey Lewis, who was the portfolio holder, and I attended meetings in London with her. The Westminster situation is unique. I tried to persuade my members locally, "Look, let's follow the Westminster practice", but they are very keen to be local and decide for themselves, and that is what has happened; they do not give proper weight to residents' concerns.

The Chairman: Does anybody have anything to add?

Patricia Thomas: I am a serial interested party at hearings. On the whole, in Camden, licensing committees do their job quite well, but it troubles me that it is almost a racing certainty, particularly in my area, which is a special policy area where there is a presumption to refuse applications, if you know which panel is going to consider an application, you have a pretty good idea, although you cannot be absolutely certain, of the likely outcome. That probably is not quite right. I do not know how you do anything about it, but it does not seem to be absolutely the way it should be.

Another problem in Camden, and I do not know whether this is common, is that, because the members are very busy, it has now become the norm that a panel of three can become two at a hearing. That is very different in decision-making terms from having three members. I have been present when the expectation was that there were going to be two members but one did not turn up and we were all sent home. That again seems to me not a good way of running licensing committees. On the point about the legal advisers taking a large part, I have certainly been aware of it. In the very early days, when I started going to hearings, it seemed to be the case that the legal adviser was always stopping the residents and saying, "You can't say that". Of course, it is quite likely that the residents were saying things that they should not because nobody had told them otherwise; and of course the applicant was never told anything of the sort, even if they were making the same point.

The Chairman: I would just like to bring Mr Brown in.

Richard Brown: It may well be that, in practice, it differs in different parts of the country. My experience in Westminster is that the councillors do recognise that their role is as was described in the question, and I do not think I have ever been to a hearing where I did not feel that I had had a fair hearing on behalf of my residents. The residents are given a full opportunity to address the committee, but obviously staying within the relevant parameters. Anecdotally, from what I hear around the country, it might be that a number of factors dissuade a committee from being as robust as perhaps they might be; for example, the possible misunderstanding as to the level of evidence that is required to take

robust action. The Licensing Act says that a representation is relevant if it addresses the likely effect of granting the application, so it is the balance of probabilities. It may well be, and I was discussing this with Dr Shrank and the councillor beforehand, that committees think that they need a higher level of evidence, and the reality is—it is very clear in the case law going back years, up to the Court of Appeal—that the authority has a very wide discretion to make a decision in the public interest. Within that, it can take into account any evidence that is probative to make its decision. I think the leading case says that they cannot consult an astrologer or toss a coin, but outwith that, there is a lot of discretion. Of course, the weight that you give to that evidence might differ, and hearsay evidence of a resident saying, “Well, my neighbour experiences such and such” would not be given as much weight as me saying, “I have a photograph of 10 people having a fight outside”.

Baroness Goudie: I would like to come back to Ms Thomas about having only two people. Has anybody from the residents’ association done any research on what the results of the tribunal are when it is just two instead of three—what the difference is? Three makes all the difference; one cannot do it, and I do not think two is acceptable. The local authority should have a substitute come, having been involved in those things previously.

The Chairman: Would you like to comment?

Patricia Thomas: I do not know of any research into it, but I agree with you that it is a different kind of decision-making and not a very satisfactory one.

The Chairman: Do you think there is a call to have more training for councillors? Would that be welcomed by residents and advisers?

Patricia Thomas: Yes, I do.

The Chairman: Would you like to elaborate so that we can get it on the record?

Councillor Davies: I think there is an issue. At Epping Forest District, they are quite good and try to take into account the view of residents and applicants, but, in general, you can get committee members who will be coming from perhaps a rural or quieter area and they cannot really grasp the difference between the night-time economy and the evening economy. They think it is just the general evening noise of people coming out of a pub and do not realise the numbers of people a venue can attract and the real noise and uproar that it can cause to the neighbours. I have to mention Loughton. Our lights get turned off at night in Loughton. We are at the end of the Central Line tube now, so the 24-hour tube is open, but our lights are switched off. Some of our venues have caused such problems that you have to understand the issues of a night-time economy, and they often do not. They are coming from a rural area where it is nice and quiet and there is just a pub and they do not understand it at all.

Dr Shrank: The councillors who represent the areas where the venues are, are excluded from sitting on the committees on the grounds that they might be biased, but they are the very councillors who understand the problems of the difference between the evening and the night economies. I have often heard people say, “If you live in a town or city centre, you must expect noise”. They do not seem to understand the difference between noise prior to and after 2300; they think it is the same.

Q72 **Baroness Goudie:** What are your views on the procedure governing hearings before the licensing committees? Do residents participate fully in the procedure? What are the barriers and how can they be overcome?

Dr Shrank: Are you talking about preparation for a committee meeting?

Baroness Goudie: Or, when they are at the committee meeting, do they feel comfortable to participate in the meeting?

Dr Shrank: There are usually very good regimes laid out as to the order of presentation; they go with the applicant and then the local officers and then any people who have made representations speak. I have never been to a meeting where I have been unable to speak. I may be stopped from speaking, but I will not be prevented from giving appropriate evidence. From that point of view, it is very fair. It is what they do with the evidence that is the problem. They hear it; it goes in one ear and it comes out the other.

Richard Brown: The authority has some scope to set out the procedure itself, within the Hearings Regulations, and practice differs. For example, in some authorities, the objectors go first in the hearing. My view is that that does not encourage or facilitate residents being able to engage effectively. My experience in this, which has become more and more obvious as I have been in the job longer, is that the hearing is an absolutely vital part of the process for residents. They can engage in it in that they can attend—it is a public meeting—but whether they can engage effectively is an entirely different matter. Applications can change rapidly during a hearing or five minutes before a hearing; conditions can be proposed or amended; hours can be amended; regulated entertainment can be withdrawn. All sorts of things can happen and the residents might not necessarily know or be confident enough to keep up to speed with them. Where residents can have their say, and do so, it really feeds into the overall decision that the local authority makes, even if it goes against the residents. The transparency of the process—the fact that they have attended and know that they have been listened to, and the reasons for the decision have been explained to them and they have been advised about the review process if things go wrong—is a really valuable part of the process.

The Chairman: Does anybody else wish to comment?

Patricia Thomas: I agree very much with that. I also wish that we had Richard in Camden. The point about residents going first has always worried me because the application form does not demand very much information, so the resident has to make an objection based on what is on the form, perhaps only the hours, what they know about the applicants and so on, because they do not know what the applicant is going to do but they still have to make their objection at that point. Although they have an opportunity to ask questions later and to sum up, that is their main opportunity to speak. So I quite agree with that.

On the question of the procedure at hearings, I would like to mention the problem of getting the residents there before the hearing. In Camden, I am practically the only resident who ever attends hearings—though not quite, as there are two residents associations which will turn up if the application concerns their area. I

feel that somebody has to do it and I wish it was not always me. One of the reasons is that there is very little publicity for the application.

The Chairman: How would you like to see more publicity?

Patricia Thomas: I would like to make sure that the blue notice, which should appear on the windows of the venue, is always there, because Camden does not seem to worry about it very much. Even so, I am not sure that local residents would take a lot of notice of that.

The Chairman: If you compare it with a planning application, would you like to see something similar?

Patricia Thomas: I would like to see something similar because in Camden that has improved recently. It would tell people that a hearing was coming up. There is a prior difficulty, which is that the residents cannot see the connection between taking an interest in an application and the noise that might ensue. If Camden, as well as Westminster, employed Richard, I think that would make a whole lot of difference.

The Chairman: I am not sure that we are allowed to recommend that, but it is interesting.

Richard Brown: There are only 24 hours in a day.

Baroness Goudie: That was very helpful.

Lord Brooke of Alverthorpe: Staying with Mr Brown, you said earlier that more could be done to help. Could you say what that would be?

Richard Brown: The practice that some authorities have of notifying residents of applications within a certain radius of the premises is one. Anecdotally, the blue notice, as Patricia mentioned, does not assist residents in finding out about applications. Another is having easily accessible lists of pending applications on council websites and publicity about that. It would also be useful to have a working online register where you can access application forms. Again as Patricia said, the bare pages of an application form does not really give a very good indication of what is proposed. That can work both ways: it could be a proposal that really is not particularly offensive but, in the bare pages of the application, looks like it is; and the other way round might also be the case. It can be very useful for residents to have access to information which tells them about that. In some authorities there can be a disconnect between residents wanting to know how they can get involved and actually finding the information to do so.

Lord Brooke of Alverthorpe: Lord Chairman, I apologise: I did not declare my interests. I am vice-chair of the All-Party Parliamentary Group on Alcohol Harm, a patron of the British Liver Trust and a patron of a rehabilitation centre in Kent.

Q73 **Lord Blair of Boughton:** I also should declare an interest as having been once a detective chief inspector of the wonderfully named Holmes police station in Camden which covers the Camden Lock. I want to move away from the licensing hearings to the preparation of the responsible authorities, such as the police, environmental health, and planning and licensing authorities themselves. As well as notices, are they giving adequate attention to the interests of residents, and are they reaching out to the residents if they are not hearing anything? If there is nothing coming from the residents, is there a job for the responsible authorities to say, "Oi, do you know what's about to take place?"

Patricia Thomas: I am quite sure that there is a job to be done there because the residents cannot be expected to know what is happening if nobody tells them or if people tell them in a little blue notice. I do not think Camden is doing a great job about that, although it does a great job about some things. One of the reasons is that it is going to be a bit of a nuisance if residents want to come to hearings in their great numbers. I think some people in the Council would possibly prefer a quiet life, but I do not want them to have a quiet life, and I am sure this Select Committee does not.

Councillor Davies: I think you need to start a residents' association, Patricia.

Patricia Thomas: Yes, I think I should.

Lord Blair of Boughton: Any other comments?

Richard Brown: I think they do, but it might depend how well-resourced the local authority is, including, for example, having a noise complaint line. Westminster has a 24-hour noise complaint line where you can phone and build up a pattern of complaints. I am not sure how the process works, but that presumably would be picked up on by the relevant people. Of course, the most sensitive time for noise complaints is the night-time and having a 24-hour service, which that would involve, does involve a lot of resources. My experience is that the police and environmental health are receptive. I have done a number of cases where the police have augmented my case and vice versa, and the same with environmental health, but they come from slightly different perspectives, and that is why the role of residents is so important and may be why it was made so important in the Act. The police obviously come from more of a crime and disorder angle. Environmental health is holistic, looking at the situation in general, but it is residents who can actually speak to the situation in their street and in their house if they overlook the back of the premises. There are all sorts of nuances that can be fed into it which might not necessarily be picked up.

The Chairman: Apparently, there are currently newspaper advertisements that alert people. Do you find that these work, that they are effective in notifying?

Patricia Thomas: I think they are there and likely to be in two newspapers in Camden, but I do not think anybody is looking at the little ones.

The Chairman: Of course, they are hugely expensive for a council.

Patricia Thomas: Yes, they are usually expensive.

The Chairman: I know, having advertised surgeries in my previous life, it is about £300 a shout to get a tiny advert that is so small no one can read it. People say the same about these posters on roundabouts for planning when they are going to expand the roundabout, that no one can read that. I notice that you, Mr Brown, shook your head. We cannot record that, so would you like to elaborate?

Richard Brown: No, I do not think that they are a particularly useful form of notification.

Councillor Davies: In Loughton, we have a very strong residents association and we have a newsletter where things like this will be mentioned or, if it were a major problem with a particular bar, special leaflets would be given out to all the neighbouring properties so that it could not fail to be noticed.

The Chairman: Thank you. Lord Smith, would you like to give your declaration first, please?

Q74 Lord Smith of Hindhead: I am the chief executive of the Association of Conservative Clubs; I am the chairman of CORCA, which is the Committee of Registered Club Associations; and I am on the executive of both the Beer All-Party Group and the All-Party Non-Profitmaking Clubs Group. I am a trustee of about 200 clubs, an honorary member of the Carlton Club and a member of several other clubs. I think that is everything.

I accept everything that you have said. In particular, I thought the notice point was interesting—that more people should be given notice. Is it not the case with residents that you particularly are interested in and concerned with this, and the fact that other residents do not turn up may be due to their not being notified or to the fact that they are simply not interested. Some residents are really not that engaged. You are obviously very engaged with your local communities. I see from your biography that you got a 1,000-signature petition when you were doing your thing, Councillor Davies, but some people are not that concerned about it. If they become concerned about either an application for a licensed premises or a licensed premises which is already causing a difficulty, they already have the power to get together and speak to their local councillors; and ultimately, it is the local residents who elect or deselect the councillors who are representing them or who are on the licensing application boards anyway. Ultimately, the residents are in charge and are empowered to change the people who make the decisions on whether licences are granted or not; but some residents may not be interested and may not share your concern.

Patricia Thomas: It is certainly true that some residents are not interested, but I think they could be interested if they knew the connection between their taking an interest and Camden not being such a noisy place at night-time. I think that is the case. It may be that nothing would stir their interest, but I do not think so.

Dr Shrank: I think the problem is that the blue notice system is not that obvious to the passers-by in the way that a planning notice, which is put on a lamppost, is right where you cannot miss it because it was not normally there; whereas many licensed premises will have notices on their window and the blue notice is just another notice and, even if you read it, as has been pointed out, it does not really frighten you as to what the consequence might be. When the legislation originally came out, I was a member of a group which tried to change it and said, "Look, we don't want the blue notice. We would like another white notice just like everybody else", so you would know that it was a local authority problem and not hidden away.

Lord Smith of Hindhead: But a council chamber with a packed public audience can often change a vote, can it not, so perhaps you are not packing the public audience because the local residents do not share the same concerns. I have never met a residential association yet which is pro-licensing. The only time the residential association is pro-licensing is usually when the local pub is closed and then they want a Community Asset Order to keep the pub going.

The Chairman: I think we have established that perhaps you are not being told that there is an application, which is quite helpful for us. Baroness Greender.

Q75 Baroness Greender: I need to declare an interest. I held a temporary event

notice for a school summer fair last summer—which is what I want to ask about: temporary event notices. Do you feel that residents are notably adversely affected by temporary event notices, and under what circumstances? Is there any way that you would change the current temporary event notice system?

Dr Shrank: The problem with the TEN system is that residents know nothing about it until it happens. There is no advertisement, there is no warning and it comes out of the blue. A large number of them, the vast majority, as far as I am aware, cause no problems. But when they do cause problems, it gets into the press and you hear about the ones that are awful. How many really are that awful, I do not know, but it is not a major problem. There are a few people who abuse the system, and some licensees will take advantage of the fact that they are 168 hours a week and you can have 15 of those in a year, which is tantamount to about a third of the year. It conflicts with the planning and the licensing conditions as they can extend the hours, which nobody expects. How you alter that, I really do not know, unless you advertise it.

Richard Brown: It is one of those situations where it could be open to abuse. I do not see it, but it could be because of the way it has come about. I was not around pre-Licensing Act 2003, but I understand that the temporary event notice system was not necessarily intended for premises with premises licences to have 15 a year, it was intended for something slightly different. That may be why initially only the police were able to object to temporary event notices and there was a 48-hour window for doing so. That changed and environmental health can now object as well and conditions can be put on a temporary event notice. There are two things with that that could lead to problems. One is that conditions are not automatically put on; it requires an environmental health or police objection. The second is that the conditions that can be imposed are only the conditions that are already on the licence. If the licence is an old converted licence from the old legislation, it has not really got any conditions on it which would address the nuisance from 10 pm to 4 am, for example, and conditions cannot be added by law. Undertakings can be given, but conditions cannot be added, and that could be looked at.

Baroness Greender: I would like to be absolutely clear on that, because we did a visit to Southwark recently and TENs are a big issue there. You are saying that in Westminster it is not an issue?

Richard Brown: There are lots of TENs.

Baroness Greender: There are TENs, as originally intended, for community groups, and then there are TENs that are being used for highly commercial operations?

Richard Brown: Yes—sorry, I should clarify. The point about not seeing it in Westminster is that I do not see it being abused in the way that it could potentially be. There are a lot of temporary event notices in Westminster in general, and for all sorts of premises.

Patricia Thomas: Camden may be more like Southwark. It really is a problem in Camden, particularly where I live off Chalk Farm Road, because in the market there is liable to be at least one TEN per weekend night, maybe three, and we are

not told about them; there is no means of finding out when they are going to happen. The licensing authority assures me there is nothing they can do about them—they have to go through, and there are difficulties about imposing conditions. It means that the venue can be open until 5 am, so that instead of people peeing in our front gardens and vomiting in the streets until 3 am, they can do so between 3 am and 5 am too, so residents do not get very much sleep. If you think of that happening two or three times per weekend, we do not get very much peace and quiet.

Q76 Baroness Watkins of Tavistock: I now want to turn to the issue of mediation, and in particular whether residents have an adequate opportunity to participate in licensing appeals through mediation and whether you think mediation should be more formal under such circumstances.

Dr Shrank: When the mediation goes on with the police, we often do not find out what the result is until the hearing or the appeal. The same thing applies with the mediation with the applicant; you never hear what mediation has taken place until the hearing occurs. I am not aware of mediation taking place with residents. On appeals, if an appeal is made by the applicant, the residents, or anyone who made representations, have no third-party right to appeal or to be involved in the appeal.

Baroness Watkins of Tavistock: That is partly what we would like to know, whether you would support a role for formal mediation of appeals involving residents.

Dr Shrank: The mediation may alter the conditions which then may conflict with what the original application was for, which was supported by residents, and they have no involvement. It would be very valuable if they could be given third-party rights in appearing at an appeal so that they will then be involved in the process.

The Chairman: Mr Brown, is it not the case that residents can be involved at every stage and, if they have made an objection at an earlier stage, they will have the right to be involved in mediation. So the question the Committee would like to ask is: why are they not being involved? Is it because they are not getting in at the objection stage because of not being informed?

Richard Brown: The central tenet of my written evidence was that the framework exists, whether in practice it happens, and I think it is similar here. Residents do not have the right to be involved in an appeal or the right to be joined as a party to an appeal. They can apply to the court—there was a case about this some years ago—to be joined as a party to the appeal, but the local authority does not have to take their views into account on appeal. If the local authority has refused an application because there are 20 resident objections, you would think that of course they would involve the residents in the appeal because they are defending their decision which was based on the residents' views, but they do not have to necessarily. I can think of cases I have done which have gone to appeal where a more formal mediation would certainly have been useful. In fact, I got into licensing by doing appeals. The firm I trained at did the appeals for Westminster and there were about 350 of them in 2005 on transition and there was a lot of

mediation involved in those. The majority of them settled beforehand, but I think it is useful.

The Chairman: I am advised—and I am not an expert—that the law is that anybody who makes a representation and objects is not entitled, so it is a bit worrying for the Committee to hear from Dr Shrank that they are not being involved. Is it something you want to pursue?

Baroness Watkins of Tavistock: You feel that you do not have, or are not given, the right to be called again to the appeal?

Dr Shrank: That is right. Sometimes, if the council wishes to fight the thing seriously, they will invite some residents to be witnesses and they then can be party to the appeal, but they cannot be a party on their own.

Baroness Watkins of Tavistock: I think that is very helpful.

Richard Brown: There is a distinction which should probably be made between being a party to the appeal and being a part of the authority's case as the respondent. There is the right—and I am looking to the legal adviser to correct me if I am wrong—to apply to be joined as a party, so as a separate respondent.

The Chairman: It would be good to hear what the legal position is.

Baroness Watkins of Tavistock: Clearly, there are some interesting things. I am sorry; I did not declare my interests at the beginning. I am a non-executive of a housing association, so I understand the social housing issue, and I am a visiting professor of nursing at King's College with a particular interest in mental health.

Q77 **Lord Foster of Bath:** I have no formal interests to declare, but, since I am going to ask a question about it, I should declare that I steered the Live Music Act through the House of Commons. My question is in two parts. First, what is the view of local residents on the Live Music Act, both the original one and the amendment in 2015? Secondly, attached to that, do you believe that residents are sufficiently aware of the other measures that are available in other bits of legislation that can be used to address issues of noise nuisance, anti-social behaviour and so on? Can I just place on the record that I am a huge fan of Westminster's 24-hour noise hotline, which is excellent.

The Chairman: We will all be ringing it up during the week.

Dr Shrank: Street noise from licensed premises is the major difficulty that residents have. The argument is that such noise up to 11 pm is acceptable and may be okay, but after 11 pm it is not. The Live Music Act only applies to music up to 2300, so that is not, on the whole, a particular problem. It is when the noise goes on after 2300 that it is a major problem. Lord Clement-Jones was very helpful to us. We had a long session with him and his advisers when the Live Music Bill was going through and he listened to our concerns of how much noise pollution would occur as a result. One of the difficulties is that live music, if it is unamplified, is not usually a problem, but unfortunately they have allowed backing tracks to be as acceptable as live, unamplified music, but it is not, and sometimes that can cause problems. It is not the Live Music Act itself that has given a lot of difficulty; it is the problem with noise control outside the limits of the Live Music Act, which

are covered by the Licensing Act and the Noise Acts, but they are not that easy to use.

The Chairman: Councillor Davies, would you like to comment?

Councillor Davies: Apart from the general noise that you get from the pubs which have now turned themselves into bars, we have not had issues particularly. We have had some restaurants that turn themselves into ones that have live music, but I am not aware that we have had much of a problem with that.

Patricia Thomas: We do have a lot of trouble with music. I am not aware, and I am sure residents are not aware, of the other legislation which replaces this. I agree that the problem lies with amplification because live music, generally speaking, does not carry quite so far. There is also a big problem, which I have not been able to get to the bottom of, to do with sound limiters. At one time, we all breathed a sigh of relief because we were told that Camden was ensuring that all the venues had sound limiters and everything would be all right because Camden would agree the limit to the sound that would emerge, but that all seems to have collapsed and venues' sound limiters don't work, and nobody worries but the residents.

Richard Brown: The Live Music Act, as enacted, probably went far enough in a terminal hour of 11 pm for 200 people. Subsequent deregulation may have gone a bit further than would be ideal for residents. Having said that, I have not seen a particularly adverse effect from it, no doubt because of the terminal hour, which is generally seen as a good balance. I have been involved in reviews where we have asked to reapply the conditions which have been disapplied by the legislation, but that is what the legislation envisaged, that you can do that if a problem arises.

The Chairman: On behalf of the Committee, I thank each of you on the panel for being available today and for your excellent contribution, which gives us much food for thought. Thank you very much indeed for being with us today; we really appreciate your evidence.

Campaign for Real Ale, Punch Taverns, Society of Independent Brewers – oral evidence (QQ 78-89)

Examination of witnesses

Tim Page, Chief Executive, Campaign for Real Ale (CAMRA); Stuart Gallyot, Company Secretary and Director of Legal & Estates, Punch Taverns; Robert Humphreys, non-executive Director, Society of Independent Brewers (SIBA).

Q78 The Chairman: Good morning, and a warm welcome to our panel of witnesses. Thank you for being here today to give evidence to our inquiry. This session is open to the public. It is broadcast live and is subsequently accessible via the Parliament website. A verbatim transcript will be taken of the evidence and will be put on the Parliament website. A few days after this session, you will receive a copy of the transcript and we ask you to check it for accuracy as soon as you can and let us have your corrections as quickly as possible. If after this evidence session there is anything you wish to clarify or amplify with supplementary points, please let us know as quickly as possible.

I will declare my interests. I seem to know a number of you alarmingly well. I have a shareholding in Diageo. I am honorary president of the Pickering & District Conservative Club. I am a member of the APPG on beer and the APPG on wines and spirits.

From the evidence that we have heard, and looking at the remit of the Committee, it is clear that there have been a number of changes to the Act since 2003. Has there been a change in drinking habits and practices among the public? What is your experience, as licensed industry stakeholders, of participating in the licensing system since 2003?

Tim Page: My Lord Chairman, I am Tim Page. I am chief executive of the Campaign for Real Ale. We represent 183,000 consumers. In answer to your question, it is very noticeable to us that over the past 12 years alcohol consumption has fallen considerably—by 19% or so—and that instances of drunkenness associated with the excessive use of alcohol have also fallen dramatically in that time. We therefore believe that the Licensing Act, in supporting responsible, moderate drinking in supervised environments such as traditional British pubs, has been effective.

Stuart Gallyot: We have 3,300 pubs, the majority of which are community pubs. Post the 2003 Act, none of those pubs has looked to go for 24-hour licensing. We have had the odd 11-12 or 11-1 on a Thursday, Friday and Saturday, but generally speaking, I do not think that pubs in their current guise have changed significantly since 2003. The market has moved more towards food, and community pubs generally have moved towards food. I do not think that the Licensing Act in its own right has had a significant impact. We have done about 20,000 applications since the introduction of the Licensing Act. Our general view is that it works well.

Robert Humphreys: Lord Chairman, my perspective is a little longer. I am so old that I started work in the hotel industry before the 1964 Act came into force and saw the evolution of the debate about its weaknesses through the Erroll committee and running up to the 2003 Act. I acted at that time as secretary to the All-Party Parliamentary Beer Group, from which I retired a couple of years ago, as you know. We undertook an investigation of the issues that were being debated about the weaknesses of the 1964 Act and held a series of hearings and looked at evidence. To refresh my memory before appearing today, I reread our 1999 report to the Home Office, which is quite telling. Several of the issues that we raised—for example, the problems around the so-called flashpoint at 11pm closing—clearly have been resolved and have significantly reduced. However, some of the concerns that were raised by the group at that time clearly have not been dealt with. Some of the imbalances have perhaps swung a little the other way. One issue that we looked at was the concern that local residents did not get a proper hearing in relation to complaints about licensed premises. My impression is that today local residents are given more respect in the process than local customers of the premises. In that case, the pendulum may have swung a little too far.

Q79 The Chairman: I will ask a further question which perhaps you can deal with in reverse order. What particular problems have you encountered in the processes? We heard very clearly in the evidence from residents that if it is a planning application, they are more aware. They feel that they are not necessarily made aware at the time of the process when they can actually intervene. From your point of view, where are we with placing adverts and letting residents know of a licence application? Do you encounter any problems with the variation of licences? What are your thoughts on the setting of licence fees, the fact they have not been increased and the fact that there is this debate about whether they should be set locally or nationally?

Robert Humphreys: There are several questions there, Lord Chairman. My point about local residents being heard and their voices being taken into account by licensing committees relates to the question of how a licensing committee should reach a fair balance in its assessment of the competing views of people concerned with licensed premises. I have heard anecdotally of many cases where a committee has set a very short timetable for hearing a review and then declined to hear from customers of the premises, even when a very large number have turned up to make representations. You may say that it is quite difficult to make a sensible judgment about whose voice should ultimately carry the most weight, but it seems proper that customers of premises and local residents should all at least be heard and their views be taken into account.

The Chairman: Do you have anything to say about the advertising and the variation of licences?

Robert Humphreys: With the current process, there seems to be the risk of a double-jeopardy issue with planning.

The Chairman: Planning or licensing?

Robert Humphreys: In a sense, the planning process does its business and then the licensing process almost asks the same questions a second time. This seems

inappropriate. A clearer separation of roles between the two processes would be really helpful. Second-guessing planning through the licensing process does not seem appropriate or necessary.

Stuart Gallyot: From a residents' point of view, there are a couple of points to make. Sometimes the Licensing Act is seen as an opportunity to deal with private nuisances rather than necessarily licensing issues. There is another issue from our point of view: when we have reviews, residents put in objections but do not even turn up. We have had situations where the licence has been amended following residents' objections even though they have not turned up. There needs to be some consistency. If residents put in objections but do not turn up to hearings, there should be some sort of sanction in that regard.

The Chairman: Do you think that happens a lot?

Stuart Gallyot: It does not happen a lot but it does happen on occasion. This comes to the inconsistency point, really. Local licensing authorities need to try to find some consistency. Guidance from central government on that basis would be good for licensing authorities. In terms of minor variations, again, it comes down to the point about consistency; for example, if fixed seating in a pub is removed, some local authorities see that as a minor variation, some see it as a major variation. There is a difference in time, costs and overall bureaucracy in terms of its positioning. Again, we need some consistency across licensing authorities to allow for fixed seating to be allowed or not allowed. You are absolutely right that there is an issue with fees for TENS. It is £21. There may be an issue about the fact that that has not gone up at all in the past 10 years. We accept it may well have to rise. It would be better to have a national consistency of fees.

Tim Page: My Lord Chairman, I echo what Mr Gallyot has said about consistency. For that reason, I would advocate that fees be set at a national level rather than devolved to local authorities to decide. I would make a point about the lack of consistency of approach with regard to the annual licensing fee paid by pubs—particularly the large pubs, which are subject to a multiplier fee—and off-sale establishments that are now selling a greater volume of beer than the on-trade and the fact that they are not subject to that type of fee. We would like to see a balancing, with those pubs with very low rateable value that have received a concession on the payment of rates receiving a similar kind of concession for the payment of an annual licensing fee. Some 16,500 pubs fall into that category of having a rateable value lower than £12,000 a year. Something in the region of 4,500 supermarkets paying a multiplier fee would easily cover the cost of waiving the charge on those small pubs.

Q80 **Baroness Grender:** First, I declare my interest: I was recently the holder of a temporary event notice for a school summer fair. It is with that issue in mind that I want to ask you about something that is emerging from the evidence that we have been taking. There is a stark difference, as I am sure you accept, between the original intention for temporary event notices, such as my use, and the regular use by some of the people you represent for commercial purposes. Is there any merit in having two different types of temporary event notices: one that reflects the more commercial fee and one that reflects the more community activity?

Stuart Gallyot: Clearly, there is a difference when an existing licence holder applies for a temporary event notice compared with a school.

Baroness Grender: Which they do regularly now, sometimes for a maximum of a year.

Stuart Gallyot: The other thing to mention, to give some context, is that we are talking about individual small businesses. We are not talking about large corporate organisations. We are talking about your local publican trying to put on a wedding or a beer festival. That is the context, and everybody thinks that if you pay £100 for a TEN instead of £21, that £100 is not just £100 of beer but £100 of profit. They have to be commercially viable and there should be some commercial reality around the level of fees. I accept that a school could be different from a pub. There is also the position, for example, where a temporary event notice can be put in the middle of a field and 2,000 people turn up; that could have the same effect as a school. We have to have some balance to ensure consistency of approach. That would cause us concern.

The Chairman: Does anyone want to add to that?

Tim Page: I represent a not-for-profit organisation. We run beer festivals across the length and breadth of the UK every year. All the events we run are community events, introducing people to real ale. We believe that there is scope to increase the number of occasions that can be covered by a temporary event licence to make it, frankly, easier to run those kinds of events and those to which you refer.

Q81 **Baroness Henig:** I start by declaring my relevant interests. I chair a security company which employs door supervisors, among other staff. I am president of the Security Institute and an active member of the APPGs on beer and on wine and spirits. I want to focus my question on the licensing sub-committees. Mindful of what has just been said about consistency, or perhaps the lack of it, do you feel that licensing sub-committees constitute fair and effective tribunals? Are they impartial? Do they put political considerations to one side in their decision-making? What are their strengths and weaknesses and what could be done to improve them? Clearly, they are at the heart of a lot of the decision-making.

Stuart Gallyot: On the whole, they work well. We have no experience of any political interference or bias in any of the licensing committees. Coming back to the consistency point, there are some issues around that. We could be investing £500,000 in a pub but be restricted to a five or 10-minute hearing. We could do with some consistency in that regard. Also, without a longer period of time there is a sense of injustice in some respects. You do not feel you have had the ability to put your point across.

There is also a point to be made about how committees deliberate. It is not about the decision—clearly, there needs to be a clear and unambiguous decision—but deliberating needs to be in private so that councillors can feel that they can have their say without fear of the people applying for the licence—and, indeed, residents or whoever—having some understanding of how the deliberations were made. Overall, however, they work well. I come back to what I said at the outset: overall, the 2003 Act has matured into a place where it is working reasonably well.

Robert Humphreys: Lord Chairman, an area of some concern is the proliferation of standard conditions and their use by local committees. The Home Office guidance could be strengthened usefully. Greater clarity about what is permissible in terms of the application of conditions beyond the standard conditions would be of great benefit to committees. Essentially, you are considering, among other things, the purpose of licensing, and it seems to me that it is an administrative function to enable a process to be carried out effectively in order to protect the public, particularly children, from harm; for example, not to second-guess planning or to impose generalised conditions on people's liberty in an area, which can be quite convenient from the point of view of the police, say, in a certain area because it narrows the area of concern that they have to address from day to day. Conditions seem to be more widely adopted in licensing policy, straying towards and over the line that is set by Home Office guidance. This area could be tightened.

Tim Page: The only thing I would add is that tribunals are dependent to a degree on the effectiveness of the officials who support them. I believe that we are going to be questioned about the co-ordination between the planning and licensing departments in a moment, but in our opinion, there is a lack of consistency across the country in the support provided to the tribunals.

The Chairman: Is there a case for more training for councillors who sit on licensing committees?

Stuart Gallyot: There is a balance here between cost and efficiency—training cost versus guidance from central government. It would be better to have stronger and clearer guidance rather than doing too much in the training arena. Without doubt, individual licensing officers should be trained but it would be wrong to overegg the training position.

The Chairman: You nodded but we cannot record a nod, Mr Humphreys.

Robert Humphreys: It seems to me, Lord Chairman, that any amount of training is a good thing in this regard. It is very important to understand the nature of the role and the reality of the world that they are controlling.

Stuart Gallyot: Just one last point: overall, where offices are consistent and the operators are consistent, it works very well. That is the thing, more than anything else, where good relationships are fostered. Overall, that is the critical different thing that we would encourage.

Q82 **Baroness Goudie:** I declare my interests as in the register. I have no interests in the alcohol world, or the catering world, for that matter—lots of others but not this. What experiences have you had with responsible authorities, particularly the police, and what are the key problems in these relationships? Are those responsible authorities effective in fulfilling their roles? That is quite a long question but you may want to break it up in your replies.

Tim Page: I have little direct experience, but speaking on behalf of our members—the consumers and those who enjoy the licensed premises—the main difficulty with the police revolves around where something such as a late-night levy is imposed upon a licensee. As a result, that describes an imperfect relationship that in our opinion would be better if it were a partnership between the licensing authority, the licensee and the police. We note that a number of local

authorities are turning away from late-night levies and other cumulative impact policy set-ups to voluntary partnership arrangements such as business improvement districts. We think this is a very good development, which should be reflected in the Licensing Act if it is amended.

Robert Humphreys: Lord Chairman, I have for many years been involved with the Best Bar None scheme, which is one such partnership body. I also chaired, pro bono, the Proof of Age Standards Scheme, which is the licensing authority for proof-of-age card issuers, for over a decade, until standing down in the summer. In those roles, particularly with Best Bar None, which I am currently chairing, we have had a huge variation of experience, particularly with the police. In many areas where these schemes operate really effectively in raising standards in public houses, bars and clubs within their designated area, the police are crucial partners who are really engaged and supportive right up to a senior level—which usually makes the difference, of course, between one that is engaged and one that is not so engaged. But we have had other examples of where what you might call a much more traditional approach of being rather dismissive, resorting to enforcement as a matter of disposition rather than partnership, has been the norm. Those areas have been much more difficult to engage.

By the way, the Best Bar None scheme is also pro bono—I am not paid for doing it. We are absolutely committed to making these projects work locally and where they have worked well they have been absolutely outstanding, not only in raising standards in the premises that engage with them but in reducing the number of outliers, if you like—the maverick premises—which enables police and other authorities to concentrate their resources in a more targeted way. There are cases—and I have been an expert witness once or twice at a licensing hearing—where the police have slightly blindly walked into seeking conditions without really thinking through the implications of them, perhaps for personal data storage and suchlike, and the licensing committee has rather allowed itself to be persuaded without testing the questions as thoroughly as it might have done. The picture is not perfect and uniform by any means, but the best examples are really good and well worth looking at.

Stuart Gallyot: It is a two-sided coin. We change operators and move some of our operations teams around, so it is about the relationship between those parties. It is making sure we have early engagement with the local licensing authority, the police and the EHO. Those are the main responsible authorities we deal with in any licensing application. Other responsible authorities are sometimes put into that, but very rarely.

Lord Mancroft: Mr Humphreys, in your last answer you used a phrase that fascinated me. You mentioned “maverick premises”. What do you mean by that?

Robert Humphreys: I mean those that are not compliant with the law.

Lord Mancroft: In what way?

Robert Humphreys: Perhaps they are serving after time; perhaps they are serving the underage; perhaps they are serving palpably drunk people; or they may be engaged in other activities such as turning a blind eye to drug use on the premises. These are the premises that clearly the police have to address and intervene with, and they do. I was suggesting that such premises appear to be in

a minority and they should be reduced in number, and those that are wavering about engaging with a local partnership scheme devoted to voluntarily promoting better standards should be persuaded to come off the fence in that direction, leaving a smaller problem for the authorities to enforce.

Lord Mancroft: Very quickly, in your view, does the present regime allow for that to happen? Are the authorities dealing with maverick premises or does the current system not work?

Robert Humphreys: The system does work, absolutely.

Baroness Henig: In a way, my question follows on from that. I have been discussing with some quite senior police officers in London and the City of London force the public protection angle of these clubs and pubs, in particular target hardening in the wake of the atrocities last year in Paris. The anecdotal evidence from the police was that while many pubs, clubs and brewery chains are very good in co-operating with the police, there are some that will not engage at all—these may fall into your maverick category, I do not know. My question therefore is: does anything need to change in the wording of the Act to force some of these pubs and clubs that are not co-operating to do something? In our present climate, where there are great security concerns, it is a bit of a worry if some pubs and clubs are resisting and not doing very much.

Stuart Gallyot: The current licensing regime deals with it through the four licensing objectives. The police have the ability to go in under a licensing objective to deal with those pubs and clubs, but I would suggest that the police have other powers beyond licensing that would deal with those issues. I do not think it needs to be any greater than that. There is the crime and disorder issue in the licensing objectives which can be dealt with quite quickly, I think.

Q83 **Baroness Watkins of Tavistock:** What are the issues in accessing the licensing appeals system? Is there anything that could make it fairer and more effective for everyone? Are there lessons that we could apply from the taxi licensing and planning appeals systems? Supplementary to that, given the number of appeals that are settled informally, should there be a more formal mediation system?

Stuart Gallyot: The position with mediation is a very positive one and we ought to look at that. My only concern would be, if we ended up in a mediation situation, that there would be a time delay with that. But there is an opportunity for a pre-trial review to make sure that we have narrowed down the issues and perhaps there should be a narrowing of issues at a pre-trial review for any appeal. We do not end up at the magistrates' court very often. If you look at the Licensing Act since 2003, initially, as common practice started to kick in, we had roughly 50 a year going to magistrates; now we have only one. The issues around prosecution are not significant. There is a view among some of the responsible authorities that a licensing review is seen as a sort of punishment, when actually they should be looking at the review of the licence rather than the prosecution as punishment. There is an issue around the understanding of that. There is an issue around whether the Crown Court could become involved. This touches on a question you are going to ask later. There is a difference between going to the magistrates'

court and then going for judicial review at the High Court. There needs to be a safety valve between those two systems. The Crown Court could offer that opportunity. But overall it works well.

Baroness Watkins of Tavistock: If the Crown Court got involved, how often do you think that would be necessary?

Stuart Gallyot: It comes back to my earlier answer: we have one going to the magistrates' court out of 3,300 pubs. Our estate has become smaller over the years. We were at 6,000 pubs and had 50 go to the magistrates' court. The Licensing Act has become common and settled practice and we understand how that works. In reality, all it would do is create a bit of a release valve once or twice a year.

Q84 **Baroness Eaton:** I have no relevant interests to declare. Earlier you mentioned the Police and Crime Bill, which is going through the Lords, which would facilitate the use of cumulative impact policies to limit the granting of licences. Under the present Licensing Act, they are only in guidance. The Home Office recently proposed a new group review intervention power, which would allow licensing committees to apply licensing conditions to all premises in a particular area. Do you agree that such powers are needed to protect local communities? Will these versions actually be effective?

Tim Page: No, we do not agree with the introduction of cumulative impact policies and the group review intervention power. We believe that both are blunt instruments and inappropriate in areas where there are still too many pubs closing every week. But there are also new pubs opening—micropubs and other types of public houses. If an individual looking to open an orderly establishment where consumers can drink in moderation and in a regulated environment is unable to open because of the existence in that area of other establishments and his cumulative impact is considered to be disadvantageous to the local community, we think that in principle that is wrong and there should be a more particular and specific approach to individual applications rather than having them ruled inadmissible by the application of such a blanket policy. Again, partnership and co-operation between specific individuals looking to open licensed establishments, and the local authority and the police, is the most appropriate way forward.

Stuart Gallyot: I absolutely echo the partnership point. We could not agree more with that. There are overarching principles here around process and policy which need to be set at a national level, and a local-level position which deals with individual pubs rather than looking at that area as a whole. I am sure we can all think of our high street and where the pubs are: there is an Italian restaurant, a tenanted pub, a managed pub and a local supermarket. Those should not all be wrapped into the same licensing position as the one individual pub which would be targeted by the cumulative impact position. We need to make sure that if we have overarching principles, we do not just target whole areas with one specific licensing objective. That is the issue.

Baroness Eaton: Thank you. Earlier you mentioned relationships rather than blanket arrangements, and late-night levies. In areas which the public might perceive as an issue, they might think those are successful. Only seven local

authorities actually use them; 13 have consulted on them but subsequently decided not to adopt them, on the basis that they do not work. Can you clarify how that sits with this idea of a whole area being lumped together for the purposes of licensing decisions and whether this plays into that at all?

Stuart Gallyot: Late-night levies are a double-edged sword. From our point of view, late-night levies have not been successful. You have already mentioned the numbers. Therefore, if we reduced them in size—for example, to a high street or an area—we would probably see more of them, which could be a negative but in lots of ways it would be a positive, dealing with issues along a section of a street. That could work quite well. I do not see late-night levies as an issue but overall it would be better if they were smaller and narrower. It needs to be a small area within the area.

Q85 Lord Blair of Boughton: I have no interests to declare. It is fascinating listening to you versus our previous set of witnesses, who were from the residents' side of things. Is there almost a need to think again about the concept of national guidance and whether it should be divided into two parts? Clearly, an utterly different system is needed in small villages and county towns from that which is needed in our major cities, where residents were saying that late-night levies, impact assessments and all the rest of it were needed. It is as if one group is talking about the bucolic country pub and one is talking about a large nightclub. Do you as professionals think that the guidance that may emerge out of this review needs to take account of the very different circumstances?

Tim Page: What you said, Lord Blair, makes a huge amount of sense. There is indeed a huge difference. But surely the provision exists within the Licensing Act for the local authority to deal with those large establishments that produce anti-social behaviour which irritates local residents. In many places, the residents are the very consumers who support pubs. But is provision not in place to deal with those establishments?

Baroness Grender: I will come in here if I may. In the area surrounding Camden market, which we heard evidence about last week, you have a multitude of establishments, and one of those will have a temporary event notice that goes into the early hours of the morning—we are talking 5 am or 6 am—and then another one will have one the following weekend, and another one the weekend after that. This is a group of residents for whom the market has moved towards them—they did not move in to vibrant clubland; the vibrant clubland has moved out towards them—and by the use of temporary licences and, by the way, personal licences as well, which is another issue, they get disruptive noise all the time. How do you deal with that issue?

Stuart Gallyot: You need to deal with it almost in a two-tier system. Ultimately, we own 3,300 pubs which are mainly community-led, suburban, village or outer-edge-of-town pubs which sell real ale. From memory, we do not have any licensing in Camden. The reality is that we need to get those sorts of operators into this room to give them some thought, rather than the panel you have in front of you.

Robert Humphreys: Might I add an interesting point about rural versus urban and so on? As you know, there has been much debate lately about the rights of

residents in relation to noise and nuisance, especially where blocks of flats are being built near existing businesses. It seems to me that there are three other areas of control over this issue. One is noise nuisance regulation, which is dealt with by environmental health teams. The second is the planning process, which determines the mix of businesses that is appropriate in an area, and has been used in the process that you are describing. The third is the market which, to some extent, determines whether a business succeeds or fails. On top of that, you then have the Licensing Act and the way in which that can affect behaviour. The temporary event notice and personal licence issue is certainly worth your Lordships' consideration.

Q86 Lord Foster of Bath: What you are talking about, and Mr Page has already raised it, is better integration of the various regimes. In particular, if we take licensing and planning, the Section 182 guidance seems to imply that the two should be kept separate. However, we know that, for instance, in paragraph 9.44 it says that the two should talk to each other, so there is confusion there. As you have already mentioned, the new agents of change principle has just been introduced and, of course, we have got cumulative impact. However, with the exception of that, there seems to be a total separation of the two. We would be interested in your views as to whether they work together or not and, if they should do more to be integrated, what should they do?

Tim Page: This is, we believe, the greatest area of deficiency that exists in many local authorities across the country, where the licensing and planning departments do not speak to each other and, representing the local authority, adopt inconsistent approaches. Most obviously, if there is a long-established licensed premises, a local pub, which has a housing development located next to it, the residents who occupy that development will inevitably complain about the noise from the pub garden. We think that that illustrates the short-sighted, uncoordinated approach that exists in many local authorities.

Lord Foster of Bath: Is that not covered by the new agents of change principle introduced in April?

Stuart Gallyot: I think that is right—it is. New developments should actually put the right soundproofing in place to make sure that happens. Our view is that they should be separate, but still talk to each other. There are very clear principles in planning which work and very clear principles in licensing that work. There is not necessarily the need for them to talk to each other directly, but they work in their own right. The agent of change principle works in its own right.

Lord Foster of Bath: To be absolutely clear, you are saying that currently you are satisfied with the separation of the two, but you just want them to talk to each other a bit more.

Stuart Gallyot: Absolutely.

Robert Humphreys: A factor in relation to noise nuisance is the banning of smoking in licensed premises and elsewhere in public places. This displaced customers who smoke into the gardens and that caused nuisance. Then the local authority often found itself fining the licensee as a result of the noise disturbance

caused to the neighbours, whereas the agent of change was, of course, the Government.

Lord Foster of Bath: Very good line.

Lord Davies of Stamford: This matter of the relationship between the licensing authority and the planning authority has come up on several occasions in the evidence we have had. We have heard before this morning and now, quite forcefully from you, that this is a real problem. My question is: what in practical terms can one do about it? Simply expressing the hope that these two aspects of the same local authority will talk to each other is not necessarily going to solve the problem. Do you have in mind or can you conceive of any structural changes that might be introduced, by legislation or otherwise? For example, before issuing planning consent involving a pub, the planning authority must seek the views of the licensing authority, even if the licensing authority has not yet been approached to issue a licence in that area. Would some rule like that help, or is there some other concrete, specific measure you could suggest that we might consider as an improvement to the 2003 Act if there is an opportunity to achieve that?

Tim Page: A clear definition of the relative responsibilities of each of those two bodies and their accountabilities in each other's processes would, we think, improve the current situation. There would be a requirement for the licensing authority to consult and expect to receive information from the planning authority prior to the granting or the consideration of a licence application, and vice versa. There needs to be a formalisation within local authorities of that relationship with regard to licensing applications and planning applications.

Robert Humphreys: The two bodies should not be asked to make the same decision. If one body makes the decision, the other should not be asked to second-guess it.

Lord Davies of Stamford: If someone has planning consent they do not need a licence. Is that what you are suggesting?

Robert Humphreys: In so far as the provision of a facility is dictated by the planning process, that should not be considered by the licensing committee.

The Chairman: Lady Grender hinted that situations change. One of you spoke about the smoking ban displacing customers. What you are really putting your finger on is that there is a lack of clarity about what their respective roles are and there should, perhaps, be greater understanding and guidance as to what those roles should be. Would you welcome that?

Tim Page: Yes

The Chairman: I am not putting words into your mouth, of course, I just wanted to clarify what you were saying.

Q87 **Lord Brooke of Alverthorpe:** Morning, gentlemen. I am Lord Brooke, vice-chair of the all-party group on alcohol harm. I am patron of the British Liver Trust and patron of a rehab in Kenwood House. You started by mentioning that since the Act came into play the volume of alcohol consumed has gone down; crime and disorder is less, in your opinion, than it was; and youths are drinking less. But there have been problems with health. There has been a debate running about minimum unit price. Can you give us your views on whether you feel that a minimum unit price can influence the extent of the consumption of alcohol, or

whether other duties or financial approaches might be used which would be helpful in trying to improve health?

Stuart Gallyot: I think there already are some positions in place, in terms of not selling at less than tax and duty in supermarkets. From our point of view, we commit to having no irresponsible drinks promotions. There is an element of people having to take responsibility for their own actions. A pub environment is a controlled environment so there is a limit to what people can drink within a pub because the Licensing Act deals with that.

In terms of off-trade sales and alcohol consumption, there is an issue. Tim has a view on that.

Tim Page: With reference to the detrimental effects on health of alcohol, there is rightful concern about the abuse of alcohol by some and the effect that has on their health. CAMRA's position is that that is balanced by the welfare benefits of people drinking in moderation socially and in well-run establishments.

We are opposed to the notion of a licensing objective specifically about the detrimental effects to health of drinking alcohol and more inclined to favour one that recognises the benefits to individuals, local communities and society as a whole of having—I quote from our submission to the Committee—“access to and responsible enjoyment of licensable activities by the public which enhance community life”.

If there were a licensing objective along those lines it would make a nice change from number 4, where there are negative effects against which an application is judged. This would be a positive objective, recognising that in the vast majority of cases the addition of a licensed premises in an area acts as a hub for community social activity.

With regard to minimum unit pricing and whether the consumption of alcohol should be regulated by taxation, we would say no to that. But I again repeat that there is an imbalance between the fees paid by those premises that now sell more alcohol than the on-sale establishments of which we have been speaking—public houses, bars and clubs and the like—and the fact that those premises—supermarkets and off-trade outlets—pay less fees and really should be paying the kind of multiplier fees—

Lord Brooke of Alverthorpe: I am sorry but I may have misunderstood you. I thought you said earlier that on consistency grounds you did not want a variation in licensing fees; you wanted a common one. You were opposed to any changes there.

Tim Page: I am advocating recognition of the fact that those establishments that regulate the sale of alcohol but play no part in the regulation of how it is consumed are differentiated against compared to on-sale establishments, where not only the sale of alcohol but how it is consumed on the premises is monitored and regulated, with the licensee having a responsibility in law.

Stuart Gallyot: We are looking for a level playing field so we end up in the same position. Again, if you look at alcohol sales generally, in the on-trade they are very clearly attributable to those premises whereas in the off-trade they are not. You can take it and drink it anywhere and you do not know where it has been

consumed. It is a very clear distinction of where that alcohol has come from. I agree completely with Tim about one of the licensing objectives being the promotion of community cohesion and well-being. It is about a social hub and making sure that people drink responsibly in well-controlled environments.

Robert Humphreys: I echo much of what my two colleagues have said. Speaking as a representative of 850 of Britain's smaller brewers, the consumption of beer relative to other alcoholic drinks has declined very sharply over the last 20 years and it would be very nice to see that balance restored. I take the point about taxation intervention. The tax system intervenes very significantly in alcohol consumption.

The Chairman: But because beer duty has reduced, so the price of beer has come down, and yet you are telling the Committee that consumption has fallen.

Robert Humphreys: Over the past 20 years the taxation of beer relative to the taxation of spirits has risen significantly. The proportion has changed massively from about 4:1 to something like 2:1 now. The long drink that is beer is the healthy alternative and I commend it to all. In so far as the on and off-trade are concerned, it strikes me that because the on-trade is visible and a place not only of sale but of consumption, it has attracted much more rigorous attention from the enforcement authorities than the off-trade, where most consumption is in a private place, at home or in a park or wherever.

The Chairman: This is a slightly different point.

Lord Brooke of Alverthorpe: It is whether in fact you support MUP or taxation. I take it that all of you have a common approach.

Stuart Gallyot: Minimum unit pricing will not affect much of the on-trade.

Lord Brooke of Alverthorpe: I cannot understand why the on-trade has been so opposed to minimum unit pricing when they are all selling at much higher levels. It is the retailers down the road, the supermarkets, which are undercutting it.

Tim Page: But, my Lord, it could also be seen as the thin end of the wedge. If through government intervention the minimum price is set for any commodity—correct me if I am wrong but I think that would be the first occasion that that principle has been applied—one has to ask how long it would be before a minimum unit price was set in another area. In principle, as an organisation we disagree with the notion of minimum unit pricing.

Lord Brooke of Alverthorpe: Do you charge different rates for a pint of beer in different locations around the country, and what determines that if you do?

Tim Page: We have 3,200 pubs, from Stornoway to the Isles of Scilly, and they are tenanted by individual publicans and they choose to price within their marketplace.

Lord Brooke of Alverthorpe: Pricing does work, then.

Stuart Gallyot: I think it does but as the premises licence holder we take our responsibilities very seriously. As part of our local support with our area managers, we help our publicans with their pricing.

The Chairman: You are arguing that prices reflect the marketplace and what customers can afford. I think Lord Brooke might be arguing a different point.

Lord Brooke of Alverthorpe: Can you read my mind?

Lord Mancroft: Surely you accept that the price of alcohol or anything else makes a difference to its consumption. If you were to lower the price of Rolls-Royces to £5,000 rather than £100,000, they would sell rather more.

The Chairman: What is the Rolls-Royce of beer?

Lord Mancroft: If you price alcohol or any product cheaply enough—

The Chairman: I am conscious that we have another panel and have not finished this one, and half the panellists are going to disappear.

Robert Humphreys: Lord Chairman, the answer to the question is yes.

Q88 **Lord Smith of Hindhead:** I am Lord Smith of Hindhead. I am the chief executive of the Association of Conservative Clubs. We run about 900 private members' clubs across the UK. I am also the chairman of CORCA, a group that encompasses all the club organisations in the UK. I am on the APPG beer group. I am on the APPG non-profit making clubs group. I am the trustee of over 200 clubs. I am also an honorary member of the Carlton Club and several other Conservative clubs as well.

Mr Page, you mentioned that alcohol consumption was down about 19% and that pubs were closing down but premises licences are actually up by about 1% overall and the number of premises licences specifically for off-sales has increased by 17% in that time. Last year the sale of alcohol for consumption off the premises exceeded that for on the premises for the first time.

We have heard from a lot of witnesses already about the off-trade and preloading in particular. Some of our witnesses concluded that the concept that people had a drink before they went out did not exist. We know from other witnesses that it is a major concern, and a recent survey reported that 83% of young people aged 18 to 24 admit to preloading before they go out, up from 53% in 2009. How do you think the on-trade perceives that it is affected by the off-trade, and what positive interventions—you have mentioned the multiplier already, which you might want to expand on so the Committee understands that—could legislation or guidance achieve?

Tim Page: There is no doubt that the on-trade is very concerned about the prevalence of low-priced alcohol in supermarkets and the inclination of an increasing number of people to buy their alcohol from there, take it home and socialise at home rather than in a community social setting.

CAMRA campaigns for the consumption of real ale and the availability of community pubs in every setting. We have campaigned for that for 45 years. Therefore, we believe very strongly that there needs to be something that redresses the balance between the on-trade and the off-trade, for reasons other than just the retail of real ale—draft beer—which you can drink only in a pub or another licensed social premises. Pubs serve a social purpose. They are part of the fabric of our society. When a public house closes in a village or a suburb of a town, part of that local community dies.

We do not agree with minimum unit pricing but we would like to see the price of drinks in the off-trade increase. We recognise that many supermarkets sell drinks as loss leaders and therefore at no profit to themselves. We believe that that is wrong. We think that the supermarkets enjoy considerable advantages in taxation,

VAT and the rateable value they pay on their sites. In respect of the annual licensing fee, we think it iniquitous that large pubs, which fall into either band D or band E, are subject to considerable multipliers, but that multiplier is not applied to supermarkets, irrespective of the volume of their alcohol sales. Together with an adjustment of the VAT relationship between supermarkets and public houses and other licensed establishments—in due course, when the Government are able to—that is one way in which the balance can be addressed.

Lord Foster of Bath: One very small point: when we talk about the off-trade, no one has mentioned online sales. Are changes needed to address that?

Tim Page: I have no comment on that.

Stuart Gallyot: Similarly.

Lord Smith of Hindhead: You have no comment about Lord Foster's question or mine?

Tim Page: Lord Foster's question about online sales of alcohol.

Lord Foster of Bath: You talk about the multiplier effect. Does that apply to the premises that are licensed for online sales?

The Chairman: Thank you, Lord Foster. We will move on to Lord Davies.

Q89 **Lord Davies of Stamford:** Mr Page, you have already told the Committee that you are opposed to adding public health to the criteria on which licenses are issued. Do you or your colleagues have any views on the other suggestions that have been made—and the public debate, to some extent—about potential new criteria for licences? The one I am particularly conscious of, apart from the public health one, is the suggestion that the Equality Act should be looked at by licensing authorities specifically. Of course, it is a matter of general law and applies to everybody already. In granting a licence, the local authority would have to be satisfied that the Equality Act is being observed. Do you have any views on that? Is that problematic or would it be advantageous in some way?

Robert Humphreys: I have no view on that. SIBA is opposed to the idea of the imposition of a duty to have regard to population and health effects. We think that the present obligation not to serve people who are drunk and to take proper care of their customers is sufficient for the individual licensed premises.

Lord Smith of Hindhead: Excuse me, could I just—

The Chairman: We really are going to have to move on—unless you all want to stay until 12.45 pm. Lord Smith, do you want to put your question—briefly?

Lord Smith of Hindhead: I did put my question. I do not think the other two witnesses answered at that point. We have a representative of the largest pub operator in the UK. I asked how off-sales were affecting the on-trade and we did not have an answer.

Stuart Gallyot: It cannibalises leisure spend. If you go out and you are preloaded, you are not going to spend as much in pubs. Pubs want to be a healthy, controlled environment to spend your leisure pound in. It does cause behavioural problems, absolutely, if you are going out drunk. We stop people coming into our pubs. It creates behavioural problems on the street. What we are trying to do is create a controlled environment for people to drink in. Ultimately, yes, preloading is a problem.

The Chairman: On behalf of the Committee, I thank you for being so generous with your time in answering all our questions. Please could you vacate your places reasonably quickly so that we can get the next panel in? Thank you very much.

British Beer and Pub Association, Association of Licensed Multiple Retailers, British Hospitality Association – oral evidence (QQ 90-101)

Examination of witnesses

Brigid Simmonds, Chief Executive, British Beer and Pub Association; Kate Nicholls, Chief Executive, Association of Licensed Multiple Retailers; Vernon Hunte, Government Affairs Director, British Hospitality Association.

Q90 The Chairman: I welcome our second panel. Thank you very much indeed for participating in our inquiry and being here today. You will have heard, but I just remind you that this is open to the public. The session is broadcast live and subsequently accessible on the parliamentary website. You will be sent a verbatim transcript. If you have any comments to make, please can you get them back quickly? If you wish to clarify, amplify or supplement anything you have said, please do that as quickly as possible. Thank you very much for your patience. I know that you have sat through the first panel. Overall, have you seen a change in behaviour and consumption since the Licensing Act came into effect? In particular, what has your experience been as industry participants in the licensing system since 2003?

Kate Nicholls: I will take that one first and focus just on one aspect so that we can draw out points that the other witnesses could make rather than trying to cover all those questions. If I try to sum up our members' experience of the Licensing Act over the past decade in one word, that would be variability. Where it works well, it works really well, but there is no consistent good practice across the country. There is variation in the way in which policy is envisaged at a national level and how it is applied at a local level. There is variation between local authorities in their understanding and interpretation of the national legislation and there is variability between enforcement authorities in a specific local licensing area. Licensing reform is always envisaged as being driven by localism, quite rightly. What we have now over the course of a decade where we have had about 60 changes to the Licensing Act is a very individualised interpretation and application of the law. That is down to the lack of a robust clear national framework. That leads to very inconsistent decision-making. It is not good for business. It is not good for local residents, as your Lordships have heard in previous submissions, and crucially it means that that very careful balancing act of competing interests that the Licensing Act 2003 was based on has been lost. That would be my general summing up.

Brigid Simmonds: Lord Chairman, I would like to send you a copy of the British Beer and Pub Association's submission to the Cabinet Office on enforcement of red tape, because we gave some specific evidence and examples of changes. There are three that I would like to cover quickly. The first is whether you have a full or minor variation. There is a lot of, inconsistency between local authorities and there is a lot of difference in both the cost and the time it takes. So a Minor

Variation can cost only £89. There is no requirement for an advertisement for a minor variation. We have been trying to get rid of advertisements in newspapers for some years with little effect—they cost £500 each time if you have to advertise in the *Standard* and they can take between 10 and 28 days. We have a local authority that rejected a minor variation to create just a new window and remove a lobby. The cost then went up to well over £400 for a full variation and yet we have another local authority that allowed a minor change to a plan for £10.50. Then we have last minute representations by responsible authorities. There is no continuity between local authorities whether they notify the application of representations early or at the very last minute. If you do it at the last minute, you have no choice of anything other than an automatic hearing. So you have a local authority that made a representation on the last day of a 28-day period—it gave no reason why that was a representation—and another which notified a representation after the 28 day period had expired and so it went to an automatic hearing at considerable cost. The last one is the addition of blanket conditions on a Premises Licence. I could give you an example of premises which were a pub and ended up with restaurant conditions and a whole lot of irrelevant conditions. You can even have a requirement to provide lollipops. You can have requirements to provide all sorts of things and, of course, they then have to go to a hearing to have irrelevant conditions removed.

How do we solve these problems? I have two potential solutions. One we have been pushing for is the extension of primary authority to both local authorities and the police. Primary authority where one local authority takes the lead works very well in environmental health. As a trade association, we are a primary authority for fire. We would like to see that extended to local authorities and the police. We believe that would help to satisfy the requirements introduced by the Regulatory Delivery office whereby these days you have to take into account the economic circumstances of an industry as a regulator. That does not apply to the police; it should apply to local authorities. Both of those would be helpful.

Vernon Hunte: I endorse both my colleagues' opening statements, particularly with regard to primary authority. BHA has worked with BBPA. My predecessor Martin worked on these proposals as well and supports them.

The Chairman: Any views on whether there should be national or local fee setting?

Brigid Simmonds: Yes, absolutely, I would certainly have national setting. When the Home Office last consulted on changing the licence fees, there was going to be no national cap. Those of you who are familiar with the Gambling Act will know that, under that Act, there is a national cap, even though fees are set locally. A huge increase was proposed. I have members who were facing a £26,000 increase in licensing fees. There were suggestions about changes to temporary event notices. I know they are only £21 but they were going to be put up to £100. That would have been hugely damaging. For those who represent the on-trade, which all three organisations do, we want people to go and drink in the home of responsible drinking where they can be looked after. As your previous witnesses said, the multiplier applies only to the on-trade, not to the off-trade. I am not for putting regulations on anybody, but perhaps the change in circumstances whereby

70% of alcohol is now sold through the off-trade makes that something we could look at. Overall, I think Section 182 guidance should possibly be looked at again. We should have a consultation. That would achieve more in terms of national consistency.

The Chairman: If you all agree, you do not need to say that also.

Kate Nicholls: One thing that happened was that immediately after the Licensing Act took effect, there was very detailed comprehensive guidance. Successively, when that guidance has been reviewed, it has been cut down. An awful lot of the stuff that you heard in the first session about planning, the role of planning authorities and the on-trade and the off-trade was included in the original draft of guidance, but that guidance has been successively watered down, so we need that to be revisited. It needs a comprehensive overhaul. On the point about fees, you absolutely need a national system. What businesses need is certainty and consistency. You do not have to be a very big business before you are trading across two local authority districts and you have inconsistencies and different fee levels which impose burdens just to keep on top of it.

Brigid Simmonds: And an awful lot of local authorities do not allow us to pay by direct debit.

Vernon Hunte: That is right.

Q91 **Baroness Greener:** We have had emerging evidence that a lot of local authorities run temporary event notices at a loss. If you are running a small school summer fair, £21 sounds reasonable. A body may be using its maximum temporary event notices in a year in order to do a kind of extension of licensing creep, which we have heard quite a lot of evidence of, but they are completely different creatures. Do you think there is any merit in separating out temporary event notices?

Brigid Simmonds: I think you could consider separating out temporary event notices where someone had a personal licence and all the expertise to run an event, and where perhaps there was not going to be any concern about it and therefore no concerns would be raised by the police or the local authority. However, I worry that a lot of pubs have temporary event notices when they have a wedding unexpectedly or events like that. Because of things like the late night levy, which we will come on to talk about, are restricting people's hours, they have to cut back their hours in order not to pay that levy. Then they find that they have to apply for a temporary event notice. So I think there may be some room for an increase. I accept that there has been no increase in licensing fees since the Licensing Act was introduced, and perhaps we could see a 10% increase. However, some of the increases that were put forward are letting local authorities have carte blanche on how they set those licensing fees and how central costs are apportioned to licence fees. That would not be my way forward.

Vernon Hunte: To second that, we also consider a 10% increase to be reasonable.

Kate Nicholls: Just to add to that, temporary event notices were introduced as part of a grandfather right, when the Licensing Act came through, because there were temporary permissions that existing licensees were able to use to expand

their licences. So there was a grandfather provision. It is not something that is inherently new, although the way in which it has been interpreted and applied is new. Obviously, also, temporary event notices allow a local business to expand the licensable activities, not just their hours or trading conditions. We need some kind of balance here. You have local authorities that are quite restrictive. When the Act first came in, you needed a temporary event notice for live music and entertainment in pubs if you did not have that as your original permission.

Q92 Baroness Henig: Hello. Perhaps we can return to the licensing sub-committees, which you have already expressed reservations about in terms of consistency, and put forward one or two views. Can we look at these sub-committees in terms of whether they are fair and effective? Do you find them impartial? Do you feel they put political considerations to one side in decision-making? What do you think their strengths and weaknesses are? What can be done to improve them? You have already mentioned the system of having one leading authority as one possible way forward. Have you any other thoughts about licensing sub-committees?

Kate Nicholls: I go back to my point about variability and inconsistency. You do need some greater structure. Licensing committees are hugely beneficial because they bring a local community perspective. They are also less intimidating for a lot of small business people and residents to go in front of instead of a court. It is much more accessible, but there is a lack of a clear national framework and guidance in the treatment of witnesses and evidence and how you handle a hearing. The hearing regulations are not robust enough to give local authorities an appropriate standard for being fair and effective. It is not just about whether justice is being done and people being treated fairly. It is about justice being seen to be done. The fact that you have got witnesses from all sides presenting to your Lordships' committee that they do not feel as though they have a fair hearing suggests that there is a perception that it is not strong enough and more judicial standards need to apply to those hearings, so that you understand how you are to be treated and you can be reassured that you have had a fair hearing.

Brigid Simmonds: You might say that we would say this anyway, but some local authorities listen much more carefully to what the residents say than the businesses. You see letters being sent out to 1,800 residents and just because one complains they somehow put a condition on that particular pub. Getting that consistency is why the appeals system, which we are coming on to talk about, is very important to our businesses.

Vernon Hunte: I echo the comments about consistency.

Baroness Henig: Is there an issue about training here?

Kate Nicholls: I think there is definitely an issue about training. It is about making sure that the same training and standards are being communicated across the body. Some places do training very well and the licensing officer will train the representative members. It is not consistent. There is also a crucial point about the training of police licensing officers, which is woefully inadequate, and that needs to be addressed.

Brigid Simmonds: Training is offered by the Institute of Licensing, which offers formal training for local authorities. There are very few that actually take it up. Having some form of mandatory training would be helpful.

Q93 Lord Blair of Boughton: I will move away from licensing committees to responsible authorities. You have obviously made an interesting suggestion there. What is your experience of licensees with responsible authorities, the police in particular, and what are the key problems in those relationships?

Kate Nicholls: I am going to sound a bit like a stuck record, because it is about variability and inconsistency. Picking up on the police, and focusing my comments on that aspect, there are two observations here. One is that there is a real reluctance on the part of the Home Office to give any central direction and guidance to the police in the application of their powers. Particularly when it comes to very draconian powers about closure and summary reviews, where we are talking about somebody's livelihood and the livelihoods of the people they employ being taken away, there is no central direction to the police on the way they approach those powers. That really needs to be incorporated into national guidance.

The second point is a very small, apparently semantic, change that was introduced into paragraph 9.12 of the statutory guidance in about 2012. This has had a huge impact on the relationship between licensees and the police. It said that the police were the primary authority on matters of crime and their evidence should therefore be given greater weight in front of a licensing committee. The way that has been interpreted—and I think misinterpreted—is that that is a requirement on local licensing officers and committees to accept without question whatever the police say, in terms of both evidence and recommendations, without any scrutiny. That has led to some very strange decision-making and a sort of vacuum at the heart of licensing authority work, whereby the police are going without scrutiny in some of the things that are being said about matters that are very material to businesses and local residents.

Lord Brooke of Alverthorpe: What kind of numbers are we talking about?

The Chairman: Could we just have the other witnesses first?

Brigid Simmonds: I have nothing enormous to add, except that the police having to taking into account the economic impact on a business would really help.

Vernon Hunte: I concur.

Lord Blair of Boughton: Do you mean for the police to do that or for the licensing committee to take that into account?

Kate Nicholls: It is both.

Brigid Simmonds: There is a requirement on local authorities at the moment; there is no requirement on the police and it should be extended to them.

Kate Nicholls: It is a regulatory principle. Non-economic regulators should have regard to economic growth in their decision making. It applies to virtually every other regulator that deals with us. It applies to the Food Standards Agency, the Gambling Commission and to government departments. It applies to the Home Office when it is regulating, but it does not apply to local licensing authorities or the police.

Lord Brooke of Alverthorpe: Very few licence applications are rejected. What kind of scale are we talking about with these problems? Is it a handful? Is it hundreds, or is it thousands and thousands?

Brigid Simmonds: Many are not rejected because the licensee, rather than going to the cost of a hearing, actually accepts whatever condition the police or local authority want to impose. Often that is unfair but, frankly, the delay and cost of the hearing mean that it is not worth taking further forward.

Kate Nicholls: Or it is the case that you have to be accompanied by a solicitor and have legal representation, rather than being able to handle the local licensing process yourself as a small business person. There is a danger in looking at things, seeing an absence and assuming there is a problem. This has bedevilled licensing all the way through. There is no alcohol disorder zone, so we need EMROs. There are no EMROs, so we need a tightening of levy and grips.

The Chairman: I do not want to pre-empt the next question, which we are straying on to.

Q94 **Baroness Watkins of Tavistock:** I declare interests, as shown in the register, none of which are material to this.

I want to pick up the issues in the licensing appeals system. What do you think might make it fairer and more effective for all participants, not just businesses? Are there lessons we can learn from the taxi licensing appeals system or the planning appeals system? We understand that a lot of appeals are compromised informally—you have just referred to this. Is there a role for more formal mediation?

Brigid Simmonds: Mediation does take place. As ever, with good local authorities mediation works well and we would like to see that extended. One of the reasons why you have a full appeal of the whole case with the magistrates is that otherwise, the local authority would be judge and jury and we have always been against the suggestion of the LGA that the ombudsman should take that role. We are in favour of the appeal system: it works. There are some skeleton arguments that have been put forward which cause delays. There can be six to nine months before a case comes to court. However, overall, we like the appeals system but formal mediation would be a good thing. I looked at taxi licensing, which is by magistrates, but the LGA want to change it. I looked at planning appeals. The guidance on the website runs to 210 pages and I am not sure I want to go there.

Vernon Hunte: More mediation between the partners and having a sense of partnership would be welcome.

Kate Nicholls: The only thing I would add is that, from a business perspective, when you are getting into an appeal situation you want speed and you want to avoid unnecessary cost. That would be my only caveat about mediation and a formal requirement to go through it. Mediation will happen informally and does happen from time to time. We need to have a speedy appeals process.

Going back to my central theme of variability, the other thing is that you will have variations between the different courts and the directions they give in the way they are going to handle cases. Some greater standard direction at a national level would undoubtedly be helpful in streamlining the appeals process.

Q95 Baroness Eaton: I have no interests to declare to the Committee. Moving on to something slightly different, the Policing and Crime Bill currently before the House of Lords would facilitate the use of cumulative impact policies to limit the granting of licences and, most recently, the Home Office has proposed a new group review intervention power, which would allow licensing committees to apply licensing conditions on all premises in a particular area. Do you agree that such powers are needed to protect local communities and will these versions be effective?

Brigid Simmonds: No is the short answer. First, there have been 23 changes to the Licensing Act since it was introduced. We would like a moratorium for the rest of this Parliament on any further changes. Kate has already quite rightly said that just because EMROs did not work, we somehow need a cumulative impact policy. It is unfair. The late night levy is a tax, not a partnership. You heard earlier about some good schemes—

Lord Smith of Hindhead: Why is it not applied?

Brigid Simmonds: One of the reasons it is not applied is that if you look at Cheltenham, it had a late-night levy, and it has now decided, quite rightly, to go for a Business Improvement District. At the end of the day, we have to be careful that we do not drive people to drink at home and stay at home. We want them to come to safe night-time economies and we want our high streets to be vibrant during the day, at lunchtime and during the evening. We will get that only if we have a good mix of retail and a safe night-time economy. Imposing regulations on the on-trade because it is based on rateable value, so they pay more, will just mean that those premises close.

The Chairman: I will ask each of the panellists to reply and then will turn to Baroness Greender.

Kate Nicholls: I was going to pick up on your final question: are these necessary and will they be effective? No. We question whether they are necessary because those powers already exist. Often, when we talk to the Home Office and local authorities, they ask for powers that already exist in the Licensing Act—they are just not being applied. You already have 270 cumulative impact policies in the UK, so that is not a power that is not being used and applied. There is no real reason to introduce further reform. Equally, if local authorities want to review a collection of premises and have the evidence that there is a problem, they can do that straightaway now. They do not need a new grip to add to the alphabet soup that already bedevils licensing. One of the reasons why we do not have late-night levies so frequently at present is not that people do not want to do it or to use the powers or that the powers are too clunky, but that there are better ways of solving the problem. Late-night levies do nothing to solve the inherent problems. They do not even have to have an evidence base that there is a problem before they impose it as a tax. It is far more effective to sit down and talk to the local business community and ask, "What problems need to be solved? We all share the desire to have a diverse, vibrant, clean, safe environment—how can we go about solving them?" Late-night levies are sometimes a catalyst for partnership working.

Vernon Hunte: It is hard to add much more to that. I completely agree. With late-night levies, it is worth pointing out the experience of our hotelier members, who often run a late-night bar within the hotel. It is rare that people go back to the hotel bar and then go out again afterwards. So hoteliers in particular would look more to the BID process rather than late-night levies as a way to look after the interests of the neighbourhood.

Brigid Simmonds: Just one final comment: the tenet of the Licensing Act is that individual premises should be dealt with on their own merits.

Q96 **Baroness Greder:** We are where we are, and currently there is a proposal in the Policing and Crime Bill to move the late-night levy so that it is not applied across a licensing or local authority district and instead can be applied in specific areas. So on that very refined question, and working on the assumption that late-night levies are introduced almost as the solution of last resort, having worked in a business improvement district, do you think that there is merit in that being introduced for a small, specific area rather than across a licensing authority?

Kate Nicholls: To take your point that they are a measure of last resort when other measures have been tried and failed, yes, there is merit in their being applied. In a smaller area, there will be a limit on how much money you will raise from that area to do things that have a material impact. I still think it would be far better to sit and talk to those businesses that would be prepared to invest in other measures. In some areas where late-night levies have been introduced, we have seen that that voluntary partnership funding gets diverted into the late-night levy, so some good voluntary partnership can go by the wayside. We do not want that to happen, because that can have an effect.

Brigid Simmonds: If we are not careful, police and crime commissioners will seek to introduce them because they need the money and they will not even use that money by applying it to these premises. As I said, if you are not careful, the premises close earlier so that they do not have to pay the tax, which means there is nowhere for people to go in our late-night economy.

The Chairman: I think you said earlier, Brigid, that the late-night levy is putting the business off, so you are applying for a TEN, which plays to what Baroness Greder was trying to say. Will you elaborate on that? You clearly said that this is happening.

Brigid Simmonds: I did clearly say that. There is a danger that you are restricting the hours of the on-licence. If you are a responsible premises which has a premises licence anyway, there should be no requirement. What is the local authority doing with the £21 that it receives other than coming back and saying, "That's absolutely fine—you can have it for 24 hours"? You could look at refining the system only where there is a problem or where somebody has never been licensed before.

Q97 **Lord Blair of Boughton:** I will ask the same question I asked the previous panel. You talk about national guidance and national arrangements. The impression that we are getting is that there are almost two completely separate sets of circumstances. There are the small county town and rural, community-based pubs and then there are the small areas that would require some kind of consideration of cumulative impact. If we do not have that, those places become

unbearable.

Brigid Simmonds: Again, there are much better ways of dealing with it, such as partnership with the local authority. I can think of local authorities that would review a licence if there was any suggestion that the premises were selling to people who had drunk too much. The whole trade is totally supportive of premises that behave badly being closed down, but we need to have places for young people to go and we need to cater for that. We have a problem, which was raised in the earlier session, about people who live in town centres next to licensed premises. Some local authorities have a grip on that and we support that. However, in some circumstances, if you live right in the centre, you are bound to be interested—often people are; I have lived in London for 20 years—in living in a vibrant community.

Kate Nicholls: One observation is that, yes, we need that level of granularity and detail in the national guidance. We are all talking here about consumption of alcohol and pubs and bars. Actually, the Licensing Act deals with restaurants and with hotels, as Vernon mentioned. For town centre businesses and the more diversified night-time economy, you have to get away from thinking that the late-night economy is all alcohol-driven and all about pubs.

Kate Nicholls: We also know that pubs serve 1 billion meals a year, so they are much more food-led.

Q98 **Lord Foster of Bath:** I have a very simple question: can and should planning and licensing work more closely together? If so, how and, if not, why not?

Brigid Simmonds: They work well together in certain local authorities and, where the two talk to each other, that is hugely helpful. They are different processes and I worry, as I have said before—we have been doing this for years—that PPG6, to go back to the planning policy guidance, encouraged people to live in town centres. That has become more urgent as we have a huge housing shortage, and we need to make sure that the two can coexist. You have pubs that have been there for hundreds of years—I worry about local rate-setting—and you have to support those existing businesses, not allowing the developer rather than the premises to make that change.

Lord Foster of Bath: I understand, but your answer is to talk. For example, on Section 182, should the changes that need to be made be in the guidance, since you do not want to change the legislation?

Brigid Simmonds: I would review Section 182. I would make the two systems work better together so it is clear that when you set out your local plan you have to say where these types of premises will be. We just need to make sure that there is not prejudice on the planning side that then stops the licensing from having the right mix, as Kate has said, in a town or city centre.

Kate Nicholls: You do need to change Section 182 guidance. When it was first drafted, there was a clear section about managing the expectations of residents and local businesses. It set out clearly that planning was primarily about land use and licensing was about the regulation of licensable activities taking place on licensed premises. There is an assumption among many residents and some local

authorities that planning is a panacea for all ills, but it cannot be that. You need much tighter integration of the two and there needs to be more dialogue, particularly if you are doing new-build applications. The planning and the licensing regime have to work in tandem. At the moment businesses and presumably residents who are trying to comment are caught in a sort of pinball machine where they are passed from planning to licensing and back again, so they have no idea what the output is going to be at the end. Planning and licensing need to run in tandem, but you need greater integration.

Q99 Lord Brooke of Alverthorpe: As you were here in the previous session, I do not need to repeat my declaration of interests. I am grateful to the British Beer and Pub Association for supplying me annually with its statistical handbook, because I discovered that the Government do not collect data on alcohol sales from retailers. You are the ones who do, and I thank you for that. I have probably questioned you previously on MUP and on taxation generally. Is your position that you continue to be opposed to MUP and to using taxation?

Brigid Simmonds: I am definitely opposed to MUP, but that is not only my position; it is also that of the Home Office. It is a total tax on everybody and if you are not careful it takes money from those who can least afford it when actually they are drinking perfectly sensibly. I would much rather that we used some of the very good work being done by Drink Aware, Addaction, Purple Flag, National Pubwatch, community alcohol partnerships and Best Bar None at the local level to deal with this where people really have the problem. I do not think that minimum pricing is the answer. Someone said earlier that of course it would not have an effect on the on-trade

Lord Brooke of Alverthorpe: Or taxation.

Brigid Simmonds: Beer taxation went up by 42% in four years. It has come down by 9%. We still pay 40% of the total tax in Europe but we consume only 13% of the product. I would say that we are vastly overtaxed. I will send a copy to the Committee of a very good document that we are producing with SIBA and CAMRA about the effect of beer duty cuts and how they have helped investment and creating the night-time economy that we want. I am not in favour of using taxation in that way. I would be in favour, as SIBA is, of making sure that low-strength alcohol products such as beer, the average strength is 4.2%, are treated appropriately.

Lord Brooke of Alverthorpe: So you would be in favour of graduated tax bands.

Brigid Simmonds: This is a very complicated subject and I will write to you about it, Lord Brooke. We are not in favour of equivalence by tax because of European directives. Perhaps there is the potential for doing more, but it is complicated.

The Chairman: Would anyone else like to respond?

Kate Nicholls: The Government have said that they want to see conclusive evidence not just to show that the introduction of MUP would be effective but about the scale of the problem and how it would be solved. That is an approach we would agree with. We support the Government in this because we need conclusive evidence. It is a reasonable line to take and we urge the Home Office to apply it more rigorously to all other licensing decisions.

The Chairman: Do you agree with Brigid Simmonds that it is potentially a regressive tax that would hurt those who are the least able to afford it?

Kate Nicholls: Yes.

Vernon Hunte: I would agree with those comments.

Lord Brooke of Alverthorpe: And on a graduated tax?

Kate Nicholls: It is not something that as a representative of retailers we would take a view on. We are more focused on the taxes that apply at the retail level and the fact that more than one-third of our turnover is taken up with the taxes of one sort or another that we pay into the public exchequer.

Brigid Simmonds: I am representing the only producer organisation on this panel.

Vernon Hunte: For that reason I do not have much to add, but I am always happy to speak for my members.

Q100 **Lord Smith of Hindhead:** We do not have time for me to list my interests and I have already mentioned them. How does the on-trade perceive that it is affected by the off-trade and what positive interventions could lead to legislation or guidance being achieved?

Kate Nicholls: I do not want to repeat all the statistics that the previous panel threw at you. Some two-thirds of the alcohol consumed in the UK is consumed away from licensed premises—75% in London and Scotland. The main impact is as described in the previous session. People are going out later and what they do when they go out has changed. The way they consume alcohol when they are out in the night-time economy has also changed. The main impact, we find, is that we are the front line late at night when people, having preloaded, come into a night-time environment and we have to turn them away because they are too drunk or disruptive. The problems that are on the streets are issues that we have to deal with as a society. We are doing a very good job of making sure that people do not come into premises and cause a problem, and we have to make sure that we can tackle that.

Brigid Simmonds: Of course, 50% of all beer is still sold in the on-trade; in fact it is 51%/49%, so we are in a slightly different position, particularly because of draft ale. What I would like to see is freedom to compete for the on-trade. For example, the meal deals sold in a supermarket do not pay any VAT. That is a positive discouragement to go out and eat a meal in a pub, although we now serve 1 billion meals a year, where you do have to pay VAT. It is too easy to place burdens and regulations on the on-trade. I am not particularly in favour of burdening the off-trade either, but it is too easy because of the physical premises and often they are big premises with a high rateable value. That means that you will pay more as an on-trade premises and, as has already been mentioned, under licensing fees you will actually pay more for big premises if you are on-trade. Which you will not pay if you are off-trade.

Lord Smith of Hindhead: So you do not think that it is a level playing-field.

Vernon Hunte: I would say that the way society looks at drinking and how people go out for a night has changed profoundly since 2003, so I would endorse those

comments. It is also worth bearing in mind that the technological innovations in the way people agree to meet up and decide to go out have had a big impact.

The Chairman: You had a big campaign on a reduction in VAT. Is that for pubs and hotels?

Vernon Hunte: There is a legitimate argument in the view of the BHA for reducing VAT not only on accommodation and attractions but also on food in restaurants. The BHA does not see that extending to alcohol because other taxes apply to it.

Kate Nicholls: The ALMR and the BBPA have run a joint campaign and produced a joint report looking at creating a more beneficial VAT environment to allow pubs to compete. It looks in particular at eating out. We would be happy to send the report to the Committee.

Q101 **Lord Davies of Stamford:** What are your reactions to the suggestions that have been made that new criteria might be added to the licensing requirements—for example, public health criteria or compliance with the Equality Act?

Brigid Simmonds: I would be against public health criteria. Obviously it exists in Scotland but I think that there is too much general information, particularly at the accident and emergency level, which could not be applied to a specific premises. I would be really worried if, just because you had your last drink in the Dog and Duck, you said that the Dog and Duck's licence should be removed as a result. That is for all the reasons we have just discussed about an awful lot of alcohol being drunk before people actually go out. It is not at all helpful and I would be against it because I do not think that it would work in practice.

Lord Davies of Stamford: What about the Equality Act?

Kate Nicholls: I think that our four licensing objectives are the correct ones. They deal with the control of licensable activities on licensed premises. On other statutory duties, the Licensing Act gives a direction that they should be treated separately, and if there is an existing statutory obligation you do not duplicate it in the Licensing Act. For that reason we would not be supportive. The four objectives are appropriate. Where health intersects with licensing we believe is already effectively covered in the Licensing Act. There are changes to the guidance and to the Act to allow health to be a consideration in setting overall licensing policy. In that sense, it is the right place for it to be looked at. When it comes to individual decisions, as Brigid has highlighted, it is very difficult to apply it to a specific premises.

Vernon Hunte: We believe that the four objectives are correct. I endorse those words.

The Chairman: Have the number of amendments and changes to the guidance going through, as well as amendments through the Police and Crime Act, caused concern?

Brigid Simmonds: It has caused huge cost. I shall be very polite and say that regulation is the opium of the politician. You are wonderful at imposing regulations on the industry but I am afraid that you are not very good at removing them. We talked briefly earlier about advertising regulations. We have been trying to get rid of the requirement to advertise in a newspaper, on which there is absolutely no evidence, but unfortunately we have failed.

The Chairman: What we heard from the residents is that they are not getting the same notification. That is not meant as a criticism; it is just a fact. When there is a planning application, there are posters plastered everywhere—there is a blue notice. I know from advertising surgeries as an MP how expensive that is, upwards of £200 or £300 in one small paper. But residents would counter that by saying that they are not hearing about this.

Kate Nicholls: The same notice requirements apply to licensing as to planning. There are blue notices and there are requirements for them to be shown on lampposts and on the perimeter of the premises. Most licensing authorities will write to local residents. Actually, the pendulum has swung a bit further; you are in danger of licensing authorities soliciting representations rather than not doing enough to get it through. People are very well aware of this, and I think that we have to make sure that the balance is correct.

In terms of the tinkering with the Act, we have had successive changes; each year there has been a change in the Act. If you take into account all the minor changes as well, people have had to get to grips with about 60 of them. From a business point of view, that means that you have to monitor what is going on, amend your practice and update your guidance, so a very practical, administrative burden comes into it. We are supposed to have one in, two out as a regulatory principle, although I think that it is now three out. We have never seen anything taken off on licensing, in all the changes that have come through. Burdens may be taken off, but they are taken off people who are not currently licensed or taken off local authorities. From a business perspective, the cumulative impact of these burdens is tremendous.

An awful lot of the changes to the Act have been done through a Policing and Crime Bill. The Licensing Act was very broadly based, when it was introduced. Over the course of the decade, we have had a shift in the kaleidoscope and licensing is viewed just through the prism of crime and disorder, which has a hugely distorting impact.

Vernon Hunte: It is important that when we look at licensing we bear in mind the contribution to the local economy as much as the law and order issues. We need a balance.

Brigid Simmonds: There are two minor changes being made to licensing at the moment that we both support. One would allow bed and breakfasts to serve very small amounts of alcohol without requiring a premises licence. The other one being looked at—this was in the tourism strategy announced in the summer—is to allow pubs or hotels to run a local taxi service without having a taxi licence.

Baroness Greender: To return to Lord Davies's question, why stop there with the four current objectives? Why not push for one that builds a local economy or one that facilitates having more fun? Why are you stopping at those four, if you are complaining about it as it currently is?

Kate Nicholls: I think because licensing is fundamentally a permission to trade, so it is right that it looks just at those four specific areas to do with permission to trade. There is also a question of duplication; there are other means of ensuring that that is taken into account rather than changing the licensing objectives. The reason the licensing objectives are key is that those are the criteria against which

you assess applications and assess and hold the business to account. If it is very broad and they are quite grey or nebulous, that creates much more uncertainty and much more likelihood of inconsistent decision-making.

The Chairman: But the original objective was to create looser, more flexible hours and a cafe culture. We are trying to work with you here, rather than being overprescriptive and too regulatory, to recognise that you are playing a role in the broader story.

Brigid Simmonds: If the better regulation requirement that is already there to look at the economic case was properly enforced, that would create the change that we are looking for. As has been said, we do not really want any more changes at a statutory level.

Kate Nicholls: When the legislation was first introduced, the Home Secretary said that a sector as important as ours, which has such a great impact on society, culture and the economy, deserves as good a system of regulation as we can possibly get, and we are letting down our businesses at the moment, because it is not as good a system of regulation as we can possibly get.

Vernon Hunte: This industry wants to work with government to achieve a number of objectives—it is just that we do not feel that changing those four objectives in the Act is the best way in which to go about that, for very good reasons.

The Chairman: Thank you very much for accommodating the Committee and contributing. I thank Committee Members for remaining as long as they have. We thank you warmly for participating.

Alcohol Health Alliance, Royal College of Emergency Medicine, Association of Directors of Public Health, Royal College of Psychiatrists – oral evidence (QQ 102-112)

Examination of witnesses

Professor Sir Ian Gilmore, Chair, Alcohol Health Alliance; Dr Adrian Boyle, Chair of the Quality Emergency Care Committee, Royal College of Emergency Medicine; Dr Jeanelle de Gruchy, Vice-President, Association of Directors of Public Health; and Professor Colin Drummond, Chair of the Faculty of Addictions Psychiatry, Royal College of Psychiatrists.

Q102 **The Chairman:** Good morning. I bid you a very warm welcome. Thank you very much indeed for contributing to our inquiry and coming to give evidence to us today.

There is some housekeeping before we start. So that you are aware, the session is open to the public, it is broadcast live and is subsequently accessible via the parliamentary website, audio only. A verbatim transcript will be made of the evidence and placed on the parliamentary website. A few days after this session you will be sent a copy of the transcript, and we ask you to check it for accuracy. It will be extremely helpful if you could return any corrections you wish to make as quickly as possible. If after the session you wish to amplify, clarify or add to any points you have made, perhaps you could submit supplementary evidence to us. That would be extremely helpful.

We should inform you of our declarations. We will go round the table. Today, it might be relevant to say that I am a doctor's daughter, doctor's niece and doctor's sister, but none of the doctors is practising now. I have a small shareholding in Diageo. I am honorary president of Pickering Conservative Club and a member of the all-party groups on beer, wines and spirits and possibly whisky as well.

Lord Smith of Hindhead: I am chief executive officer of the Association of Conservative Clubs, of which there are about 900 throughout the UK. I am the chairman of CORCA, the Committee of Registered Club Associations. I am on the executive of the APPG on beer, and I am on the executive of the clubs APPG. I am the trustee of more than 200 clubs, and I am an honorary member of the Carlton Club and many other clubs.

Baroness Eaton: I have no relevant interest to declare.

Lord Blair of Boughton: I thought I had no relevant interest to declare until the Chairman moved into her genealogical tree, in which case I have to admit that I have a couple of doctors lurking about somewhere, maybe a grandfather somewhere. Until that I did not think I had any interests.

Lord Davies of Stamford: I have no interests that I believe to be relevant to this inquiry.

Baroness Grender: Recently, I was the holder of a temporary event notice for a school summer fair, which I have to declare as an interest.

Lord Foster of Bath: I have none.

Lord Mancroft: I have no interest beyond the fact that my family historically has been consumers of alcohol; consequently, I have always had an interest in alcohol-related health conditions.

Baroness Watkins of Tavistock: I did not think I had any relevant interests, but I am a member of the APPG on global health. I am a mental health nurse and a visiting professor at King's, and I am married to a surgeon.

Lord Brooke of Alverthorpe: I am vice-chair of the All-Party Parliamentary Group on Alcohol Harm. I am patron of the British Liver Trust and the Kenward Trust, which is a rehab centre in Kent for recovering alcohol and drug addicts. I am also a member of the all-party parliamentary group on obesity, which in my opinion has a link to this.

Baroness Henig: I am a committee member of two all-party parliamentary groups—wine and spirits, and beer. I am non-executive chair of a company that, among other things, employs door supervisors, and I am the president of a security institute.

The Chairman: I just realised that I have a registrable interest as I advise the board of the Dispensing Doctors' Association whose headquarters used to be in the constituency I represented.

The purpose of today is to look behind the purposes of the Licensing Act 2003, to see how it is currently functioning and how policy has developed, whereby we do not prohibit alcohol in our society to persons over 18. We recognise that alcohol tends to undermine health.

The question I would like to put to you is how we can reconcile the freedom to drink alcohol with the promotion of health and well-being, and whose responsibility that promotion should be.

Dr Jeanelle de Gruchy: I am here as a jobbing director of public health and as vice-president of the Association of Directors of Public Health. With public health directors and public health teams moving from the NHS into local authorities, it has been helpful for us to get a perspective on how local authorities shape places and the importance of places in how people live their lives—how their residents live their lives.

We are keen to shape healthier environments, which is key. Although people make individual choices, they make them within the environment available to them. The availability of alcohol has gone up hugely over the past while. Just in my borough, we now have more than 900 licensed premises, which is an increase of 41%, more than 250 premises, since 2005-06. Those premises include a lot of off-licences. In my borough, we have less night-time economy but more pervasive off-licences down high streets, where there are also hairdressers, schools and so on. That presence of alcohol in our culture has hugely increased over recent times, and it is reflected in high levels of consumption.

My answer to the question is that we as local authorities are very keen to shape a much healthier environment—I believe it is our responsibility—so that people can much more easily make choices not to overconsume alcohol.

Professor Colin Drummond: I am a professor of addiction psychiatry at King's College London and an NHS consultant addiction psychiatrist, so I see first-hand the impact of alcohol on people with mental health problems and people with alcohol dependence. We did a study in south London a few years ago that looked at mental health in-patients; 50% of them drank excessively and 25% were alcohol dependent. That is six times the rate in the general population, so we are talking about a very vulnerable population who drink alcohol.

The issues I have are that, given the impact of alcohol on health generally, but particularly mental health, people who are alcohol dependent find it very difficult to make free choices about what they drink. By virtue of being alcohol dependent, their brain has adapted to the chemical effects of alcohol in such a way that they find it very hard to choose freely whether or not to drink. Any responsible society has to take account of that in making decisions about how freely available alcohol should be.

Professor Sir Ian Gilmore: I am a physician by background, not a public health doctor. After spending 30 years saving drowning people, I came late to walking upstream to see why they were falling in in the first place. I had better say that I am said to be conflicted. I was recently on the Chief Medical Officer's guideline group on safe drinking limits and was accused of being conflicted because I had an interest in improving the health of the population and reducing alcohol health harm.

We all espouse the principles of freedom and that people should have the choice to do what they do, but in a lot of cases that freedom is illusory. By the time children reach the age of 18, they are totally saturated and primed, through advertising and sponsorship, that alcohol is the norm. At 11, most children can identify different brands of vodka by the shape of the bottle with the label obscured, so imprinting goes on from an early age.

Alcohol is a psychoactive drug with dependent properties, so it is not an entirely free choice in all people. Much of the harm is not to the individual but to others, particularly children, the unborn child, victims of crime and so on. Our own choice, although we often find it hard to recognise it, is distorted by factors such as where alcohol is placed in a store. If alcohol is at the front of the store rather than in the back aisle, we know that sales go up by between 20% and 40%. We know that special offers—any three bottles for £10—encourage us to buy more, so we are all susceptible to the alcogenic environment that Dr de Gruchy talked about.

To an extent, the responsibility has to be with individuals, but it also has to be with government, both local and central, to take account of public health and promote an environment that allows free choice as much as possible. That includes indirect things such as narrowing health inequalities, because we know that the poorest are the most vulnerable to harm; protecting children; and restructuring the NHS to make it easier to tackle alcohol-related harm. There are also direct things. We are very proud of the fact that this country is the world leader in reducing the harm from smoking, so we can do it. Most of that was achieved by direct government intervention, and the Government are rightly proud of that, but other public health issues could benefit from a more interventionist approach without restricting the freedom of the vast majority.

Dr Adrian Boyle: I am an emergency physician and a pure NHS clinician. I echo a lot of my colleagues' comments. Too many people are drinking too much alcohol. We have had a slight improvement over the last 15 years, but the overall trend is that there is still a huge burden, and the opportunity cost of alcohol to our emergency departments is enormous; Professor Drummond has published work showing that about 70% of attendances at night are related to alcohol. The opportunity cost and avoidable cost this creates and the harm it creates to other people attending our overstretched hospitals is significant.

The Chairman: Professor Gilmore, you did not mention individual responsibility but you alluded to it through education. I remember seeing lectures about the inside of a lung if you smoke cigarettes. Is that what we should be looking at to educate people—showing them a liver that has been diseased—through schools, which is where most people pick up the information?

Professor Sir Ian Gilmore: I certainly meant to imply that there is an individual responsibility, and I think there is an obligation on society to make sure the facts are available to people. That includes proper labelling and health warnings on alcohol products. However, the evidence that behaviour change can be brought about solely by education, even of children, is not very strong. We should be doing it; it is people's right to know, but I do not think we can sit back and say it is all a matter of sending people into schools to tell them of the harms. It is a multipronged approach, and education alone is probably the least effective intervention we have.

Q103 **Lord Brooke of Alverthorpe:** In Scotland, the promotion of public health is one of the licensing objectives, but in England, so far, Ministers have declined to add it to the four existing objectives that came in in 2003. Health professionals tend to support a fifth objective, of promotion of health and well-being. How would that objective work in practice in a regulatory regime such as licensing, which looks at the merits of individual premises?

Dr Jeanelle de Gruchy: Our members, who are directors of public health, feel that the fifth licensing objective is hugely important. This year, in a survey of our members on all policies, the licensing objective was in the top three. We think it is really important to be able to look at licensing applications with health and well-being as one of the objectives. The fact that we are responsible authorities is important and helpful, but if we are commenting on the objectives and there is not one on health and well-being, it limits our effectiveness.

Work is being done on how it would work in practice. There are various pilots. Public Health England is doing work on how you might do that. A more general issue is that licensing decisions are made on individual licences, but often the impact is as I said; you step back and say, "What is the impact on the community of giving 900 licences in one borough?" How it would work in practice is something that needs to be worked through, but it is important that we start to look at how we can do that, and having health as a fifth licensing objective will help us to move that forward.

Dr Adrian Boyle: My experience is based on attending licensing courts and seeing presentations from other public health specialties. Public health can have a useful

effect in pulling together evidence. There are examples of good practice, particularly in Chorley in the north-west. There has been a lot of work where public health nurses collated information about applications from problem premises. That is useful, but it is extremely labour intensive and there are concerns about whether public health has the capacity to take this on at the moment.

Professor Sir Ian Gilmore: We know that there is a strong link between the density of alcohol outlets and the violence and harm in a community, and it makes sense to be able to look at the local community. If you take just one part on its own and another part on its own, you lose the overall picture. There have been attempts in things such as the cumulative impact programmes to address this, but the preliminary evidence from Scotland is supportive. They have made a difference by being able to take public health into account as a licensing objective.

Professor Colin Drummond: We need to look at the evidence base on licensing where it has been carried out in countries across the world. There is good evidence that increasing the hours when alcohol is available and the number and density of outlets all lead to increased health harm. One thing that has been missed in the current Licensing Act is that we have seen a doubling of the number of off-sales in the past 10 years. This is having a cumulative impact on the amount people are drinking, particularly as supermarkets and off-sales generally sell alcohol at much lower prices than on-trade, including in some cases selling alcohol below the cost of duty and VAT as a loss leader. In those circumstances, licensing should have a legitimate interest in reducing overall health harm by reducing the availability of alcohol.

Q104 **Lord Mancroft:** I have some difficulty in seeing a pub or licensed premises as a health centre. I cannot see that the licensing of any establishment will be a health objective. If we are to get this right, it is not about whether it is promoting public health and well-being, but whether it is negating public harm, which is slightly different. By limiting the number of licences, or their terms, you might reduce the harm, but I cannot see any way in which issuing a licence can ever promote health and well-being, much as a pub is a lovely thing. Is it the right way round?

Dr Jeanelle de Gruchy: You are right. It is about whether this will bring about more health harm. You got at it a little bit; the onus at the moment is on responsible authorities or evidence to show that there will be health harm rather than on the licensee to show that there will not be health harm. Therefore, at the moment the balance of the onus tends to be the other way round.

Baroness Eaton: You said you would like to see it as a fifth objective. How do you see it working in practice?

Dr Jeanelle de Gruchy: It will enable us to gather data to look at how we can argue the point that granting licences may impact negatively on the health of residents. There is quite a bit of ongoing work by Public Health England and various local authorities to look at how you would make those arguments.

Baroness Eaton: It is putting the cart before the horse.

Dr Jeanelle de Gruchy: The work is happening, so that is where we will be able to use the fifth objective to argue licensing cases. I do not quite see it as putting

the cart before the horse; I see it as giving us an ability. At the moment, directors of public health as responsible authorities have to use the other objectives, and try to weave arguments on meeting the other objectives, whether it is crime, nuisance or harm to children, when actually what we are very concerned about is harm to health, yet we do not have that objective to argue the case.

Q105 Lord Davies of Stamford: Anybody listening to the evidence so far this morning would never guess that in our country alcohol consumption has been falling for a number of years, as has alcohol-related crime. You might think that the trends are relatively positive, albeit that the underlying problems remain, and are real. I am concerned about two aspects of the issue of adding public health to the criteria. First, it may be very difficult to argue in a particular case that just one would-be publican coming before the committee would have a material effect on public health. Secondly, it seems to be a very ineffective and inefficient way of addressing the issue Dr de Gruchy has been describing. You may have 900 licensed premises in Haringey, and you may think there are too many, but it would take you centuries to reduce that number simply by not allowing any more, hoping that natural wastage would reduce the number. It just would not be an efficient way of achieving what you yourself state to be your objective, so I am concerned about both the equity of what is being proposed and its effectiveness.

Professor Colin Drummond: Perhaps I could tackle the issue of falling alcohol consumption, because that is really important. It is the case that alcohol per capita consumption has been falling in the UK, both England and Scotland, for some years. However, that overall fall in per capita consumption on average conceals shifts in sub-populations. The falls have been mostly among young people under the age of 30, whereas middle-aged people have been increasing the amount they drink. It is because people in their middle ages who are heavy drinkers are at greater risk of hospital admission that we have seen a 110% increase in alcohol-related hospital admissions in the past 10 years. Looking at the overall consumption level distracts one from the serious health problems that have built up through middle-aged people drinking more.

Baroness Greider: What do we learn from the young? Why have they changed, in your view?

Professor Colin Drummond: There are a few possible reasons. There is a possibility that young people are turning away from alcohol and drugs because they see how those affect their parents. The problem is that among the adult population, the baby boomer generation, we see no such change in that direction, and that is driving the health consequences.

Professor Sir Ian Gilmore: To comment on the point about consumption, it has been falling since 2008-09, but it is a very small fall against the background of a huge increase since the 1950s and 1960s. Within that fall, there are the important changes Professor Drummond alludes to. It is very difficult to have a level playing field because things are changing all the time, but the two key things that changed in 2008-09 were, first, the financial downturn and, secondly, the Government at the time imposing a 2% duty escalator above inflation on alcohol, so alcohol got more expensive in real terms in 2008, and that exactly mirrored the fall. It is

directly alcohol-related deaths, not consumption, that began to fall in 2008 and mirrored price and affordability. Without wishing to widen the conversation into other levers, price is probably the most important single lever, with availability and marketing. Today, we have talked mainly about availability, but there are very good reasons, probably regulatory ones, why we have seen that fall since 2008.

The Chairman: We will come to pricing in a moment.

Dr Adrian Boyle: If we look at rates of violent injury, which are a good measure of alcohol-related harm, but with limitations, we have seen declines throughout the UK, but the declines in Scotland have been greater, albeit from a higher peak. If we are looking at the effectiveness of the Licensing Act, there is a suggestion that what has gone on elsewhere in the UK has been more effective than what has happened in England and Wales.

Lord Smith of Hindhead: I thought the statistics were that alcohol consumption has dropped since 2004, when there was not a financial crisis, and it is down by 17% since its height. It has come down quite a lot from that peak. To go back to the specific question about getting the health thing into licensing, it will apply only to those who are applying for a licence now, and the majority of licences being applied for now are for off-trade, not on-consumption, so they are for supermarkets and stores and would apply specifically only to those. Although you say that you have seen a big increase, overall there has been only a 1% increase in the number of premises licences. There has been a huge reduction in the number of pubs, so the on-trade is going back; it is the off-trade that is growing.

Dr Jeanelle de Gruchy: I totally agree with you. Certainly, in my borough the number of off-trade licences has increased hugely. The consumption pattern is that people are buying alcohol and consuming it at home to a large extent, and it is available at every corner store.

Lord Smith of Hindhead: You are really saying that, although the consumption of alcohol has gone down nationally, a small number of people are drinking more, and that is the problem. We are talking about a very specific group who are vulnerable and perhaps drink too much, rather than the overall situation, where consumption is down.

Dr Jeanelle de Gruchy: We still have 10,000 high-risk drinkers in our borough, so it depends on how you define small. For me as a director of public health, 10,000 high-risk drinkers is a real concern.

Lord Smith of Hindhead: It is a concern for all of us.

Dr Jeanelle de Gruchy: There is a tail where there is very high consumption of alcohol, but if 6% of hospital admissions are alcohol related, we have a major problem at a population level. It is more than just a small group of people who might be having alcohol-specific problems.

Professor Colin Drummond: There is good evidence that alcohol harm is a huge health inequality issue, with people drinking the same amount at different ends of the economic spectrum. Those in the highest socioeconomic groups suffer less harm than people in the lowest socioeconomic groups, even controlling for the amount they consume. We see concentrations of very high levels of alcohol-related harm in the poorest communities in our country.

Lord Davies of Stamford: Why is that? The physiology is the same irrespective of income.

The Chairman: We are coming to a lot of this, so perhaps we can hold fire.

Lord Brooke of Alverthorpe: Is the work being done by Public Health England publicly available, or likely to be in future?

Dr Jeanelle de Gruchy: It is likely to be in the future. I am not sure it is available at the moment, but we can certainly look at that and respond in written form.

Lord Brooke of Alverthorpe: We would welcome that.

Lord Blair of Boughton: A lot of the discussion has already covered most of these questions, so I will concentrate on the assumption that the promotion of health inevitably means limiting the quantity of alcohol consumed, with all the caveats of problem communities and so on. Somewhere there has to be a limit. We will talk later about the overall number of licensed premises and so on. Is there clarity now about whose responsibility it is to impose and enforce limits on alcohol availability? Are we clear that that should be the state? Should it be through statutory roles or through local government? Who is responsible for this?

Professor Sir Ian Gilmore: It is not just limiting consumption. Patterns of drinking are linked to different sorts of harm. The night-time culture of binge drinking and so on is associated with violence, unwanted pregnancy and all the sorts of things associated with intoxication, but that does not necessarily correlate with total consumption. The biggest burden on the NHS by far is from the chronic diseases related to alcohol consumption, such as cirrhosis of the liver, alcohol dependence and mental health issues. There is no doubt at all that shifting the consumption curve down for everyone will produce considerable health gains. There are health gains from reducing someone's consumption from 30 to 15 units a week, even though that person is not necessarily running into overt health problems from alcohol.

Whose responsibility is it? At the end of the day, it has to be done through central and local government by some form of regulation. There are examples of extremely successful voluntary schemes and non-statutory tools, but the problem is making them sustainable. There are examples all over the world of initiatives. They are wonderful while one or two individuals are there to push them, but to make them sustainable they have to be within some form of regulatory framework to support them.

Professor Colin Drummond: There is very strong international evidence that reducing the whole-population level of consumption reduces the level of harm in that nation. That happens across countries and across time when there have been changes in the affordability of alcohol. In the last 25 years, there has been a 50% increase in the affordability of alcohol in the UK, so people have more disposable income to spend on alcohol relative to its price. That is one of the main drivers behind the increase in health harm. The converse is that making alcohol more expensive would be a very strong way of reducing alcohol harm, either by taxation through duty and VAT, which has been the way for many years in this country, or the approach Scotland has been looking at recently, which is minimum unit pricing. I do not know whether you want to go into that right now, because I think

there is another question later on. Minimum unit pricing would be a more targeted strategy than just general taxation.

Equally, restricting the availability of alcohol, through licensing hours and the number and density of outlets, would be a strong evidence-based approach. These are whole-population measures that do not preclude more local measures, such as enforcing laws about serving people who are already intoxicated. That would have a huge impact at local level if it was actually done. Looking at the international evidence, in some countries making people who serve alcohol legally liable for the adverse effects if they serve someone who is intoxicated has had quite a major impact.

Dr Jeanelle de Gruchy: The analogy of smoking raised by Professor Gilmore, the link with obesity and the debates and discussions about who is responsible for the massive increase in obesity are all pertinent. The state has responsibility in shaping the culture, the availability and the consumption patterns. I agree with Professor Drummond that at population level national policy tends to be the most effective, but giving powers to local authorities to shape a healthier environment for residents is very important, too.

Q106 **Baroness Watkins of Tavistock:** Public health data, which you have already alluded to, is often gathered on a national or regional basis. What data do you think would be required and what would it need to show in order to apply an objective case by case? When somebody applies for a licence, is there a way you could collect the right public health data to inform the argument? If so, what changes would we need in data collection to see whether the scale of pre-loading is a problem? I think you have already alluded to the fact that it is definitely a problem, but could you put those two things together?

Dr Adrian Boyle: On data collection, in England and Wales there is something called the ISTV programme—information sharing to tackle violence—which has been relatively successful. It is based on sharing information collected in emergency departments to triangulate police data. It is supported by what will be the next data collection set based on emergency departments, called the emergency care data system, which we hope will be rolled out by October 2017. It provides detailed information to community safety partnerships about the location, time and date of assault cases and the weapons used. The overlap between police data and emergency department data in cases of violent crime is about 25%, so the police do not know about 75% of the cases that come to hospitals.

In addition, there are pockets of good practice. There are 12 ambulance trusts in the UK; only three of them share with community safety partnerships routine data about where they are picking up alcohol-related injuries. Where that has been done, it has proved reasonably effective. The data is already collected; it is just a process and information-governance issue, to make sure that the data can be shared with community safety partnerships.

Baroness Watkins of Tavistock: I want to understand the pathway. If the information was shared with community safety partnerships, the public health

team in the local authority would have it, and it could inform the licensing committee if health were added as an objective. Is that right?

Dr Adrian Boyle: Yes, but this provides only a single perspective; it is related only to violence. The vast majority of alcohol-related problems I see in emergency medicine at the moment are injuries, mental health crises and flare-ups of chronic diseases.

Dr Jeanelle de Gruchy: It also will not address the more chronic difficulties of alcohol admissions or longer-term alcohol-related matters.

Baroness Watkins of Tavistock: How would you get the data to inform those?

Dr Jeanelle de Gruchy: It is very difficult to use that data to inform a licensing decision on one premise, so that is a greater challenge.

Dr Adrian Boyle: There is no research data around to tell us what the attributable fractions are for emergency department presentations. It is based largely on research evidence. We know that about 55% of assaults are alcohol related. We do not have nearly the same level of understanding for injuries or other presentations with which people come to hospital.

Professor Colin Drummond: We already have a lot of evidence that pre-drinking is a big problem, particularly in the UK compared with other countries. I was part of a group on the AMPHORA project funded by the European Commission. The Liverpool John Moores team led on a particular piece of research looking at pre-drinking across four European countries among 18 to 35 year-olds. They found that the UK had the highest measures on all aspects; 61% of people in the UK going into pubs had pre-loaded with alcohol before they went in, which is the highest in Europe. They had the highest blood alcohol concentrations, which on average were above the legal limit for driving, at the point they went into the pub. In addition, 82% of women and 96% of men said they expected to binge throughout the course of the evening. These are people going out with the express purpose of getting intoxicated, having pre-loaded beforehand. We have the dubious privilege of being best at that in Europe, according to that study.

Lord Foster of Bath: I want to pursue a little further the issue of data collection. Dr Boyle, I note that in the paper you very kindly sent us you say that alcohol misuse accounts for 15% of emergency department attendances, rising to 70% overnight and at weekends. I note that that is data based on 2000 and 2015 from just one inner city A&E department. You go on to comment that 10% of ambulance callouts are for alcohol-related health problems, which comes from a 2012 study in one English region. I am sure you would agree that we need more data. You have already talked about some sharing of data. Between you, could you tell us what more we could be calling for as regards the collection of data from both A&E and ambulance services? Building on what you have already said, what form, co-ordination and sharing do we need?

Dr Adrian Boyle: It is very easy for the ambulance services to share with local community safety partnerships data about date, time and location of assaults they are called to, because ambulance staff have the GPS data already; it is completely automated. That would provide a unique perspective that is not captured at the moment by the ISTV programme and is not collected by the police. That is an easy, simple recommendation. As to estimating the burden, I appreciate that the

figures were from single studies, but I suspect they have not changed very much over time. I want to follow up the further questions you raise.

Lord Foster of Bath: What I am trying to get at is whether we should propose that all A&E departments collect certain data in a comparable way across the whole country, so that we have comparable data we can use in research.

Dr Adrian Boyle: It is already being done. There is a programme—ISTV—but only for violent crime, because that is easy to measure. We do not have that for injuries. It would be useful to look at it for injuries, but probably the best way to do that would be by some primary research to establish the attributable fractions of various presentations.

Lord Brooke of Alverthorpe: Why is it only for violent crime?

Dr Adrian Boyle: Because it is easy to measure. There is what is called a minimum dataset for emergency departments that gives a list of about 40 presentations, of which assault is one. Work done by Jonathan Shepherd's group in Cardiff demonstrated that if you used this information and identified those patients, and shared anonymous information about the time, data and assault with community safety partnerships and the police, you could bring about big reductions in community violence.

Professor Colin Drummond: We conducted two national emergency department surveys, both for the Department of Health, looking at alcohol-related attendances at A&E departments. The first one was in 2003. We found that over a 24-hour cycle 40% of A&E attendances were hazardous drinkers, increasing to 70% after midnight. We repeated it in 2010, seven years later, and found that it was again 40%; it was almost exactly the same rate. We have not seen a shift in that percentage over that period of time.

Lord Foster of Bath: What about the absolute numbers?

Professor Colin Drummond: Obviously, we did not survey every A&E department in the country but, extrapolating from the 32 A&Es we looked at selected randomly across England, we thought that at weekends there were about 1.2 million alcohol-related A&E attendances across England.

Professor Sir Ian Gilmore: We have very good data on the burden of alcohol on hospital admissions for chronic conditions such as cirrhosis of the liver, and the alcohol-attributable fractions of a large number of conditions, including several cancers. Although consumption is falling, the burden of harm is not falling; indeed, it continues to rise.

Lord Smith of Hindhead: I wonder whether you could put together this very interesting data and send it to the Home Office. When we were questioning witnesses from the Home Office, they did not think that pre-loading existed, because they had no evidence to suggest that it did. Therefore, it made my line of questioning on that day rather difficult. Bearing in mind that it is the department responsible for licensing, it might be useful for all of us if the data you are collecting is sent to the correct department.

The Chairman: Ministers are coming to see us, so that will be an opportunity. We can certainly send it in advance.

Lord Blair of Boughton: Professor Gilmore, to go back to what you just said, presumably there will be outliers, but there must be an average age when cirrhosis

and other chronic conditions from long-term drinking first arise. Is there a link to the change in generations, in the sense that 10 years ago people in their 60s would have been growing up at a time when alcohol was not freely available, whereas people now in their 60s have had 30 or 40 years of alcohol? Is that what is happening?

Professor Sir Ian Gilmore: As you imply, the peak for alcohol-related deaths in this country is between about 45 and 65. That is why alcohol as a risk factor for premature death exceeds tobacco and obesity, because, although those have a bigger burden, they tend to kill people later in life. The tragedy of alcohol is that things such as cirrhosis, pancreatitis et cetera tend to affect people at a relatively young age, in the prime of life. Young people are tending to drink a little less, but whether we will see that come through in 10 or 20 years as a reduction in those deaths, only time will tell. It will depend on many factors other than the availability of alcohol. What is striking to those of us who work in the hospital service and see these patients is how relatively young they are; they are dying off in their prime.

Baroness Watkins of Tavistock: I want to ask about the reduction in alcohol intake by younger people. I may be wrong, but from what I have seen, having worked in a university, it was largely because of the change in cultures of different students. I am not convinced that a core group are not drinking just as much as they always did in that young population.

Professor Sir Ian Gilmore: You are absolutely right. There is a change in the ethnic mix of young people, and that is a factor. It is not the only factor. A very good report on why young people are drinking less has been published in the past three months by the Institute of Alcohol Studies. We will send you a copy. It is almost certainly multifactorial.

Q107 **Baroness Goudie:** It is our understanding that directors of public health in England and local health boards in Wales are currently the responsible authorities relating to public health. Is this correct? If so, how do they discharge that role, and are they effective? To add to that, perhaps they ought to link up with the Home Office on some of their findings.

Dr Jeanelle de Gruchy: The director of public health is now the responsible authority. That has helped considerably, along with public health moving into local government. In many areas, not all, the shifts and moves are reasonably recent; relationships take time to build up, and we all have a lot on. It has helped, certainly in my borough, to bring together public health with the other responsible authorities, the police and enforcement, for conversations about applications. Conversations are had, and sometimes informal discussions with the applicants happen and licence applications might change as a result. Public health is now much more party to and part of those conversations, whereas it was not beforehand. That has been really positive. Having said that, the fact that the prevention of health harm is not an objective limits the ability for a director of public health to make that argument, as we discussed previously, so it is a matter of using the other objectives and supporting conversations in that context.

Q108 **Baroness Eaton:** The Licensing Act 2003 has tended to regulate businesses licensed primarily for on or off-sales in a similar way, yet evidence

suggests that the public health risks they pose may be different. Should the regulation of those businesses in the interests of public health be approached in different ways and, if so, how? We touched on off-sales earlier in the conversation. Certainly, more beer is sold now in off-sales than on-sales. Perhaps you could tell us your thinking about the differences, and how they should be treated.

Professor Sir Ian Gilmore: You are absolutely right. This is a very important question. There has been a real shift in culture over the last 10 to 20 years, almost certainly driven by the increasing differential between the price of off-licence drink in supermarkets and off-licences and the price in bars. You said that now more beer is drunk at home. If you look at all other forms of alcohol, about 80% is consumed at home compared with 20% in bars and clubs. Often, in discussions, people say that it is nothing to do with price or availability and that we need to change the culture. That differential between on-trade and off-trade has driven a change in culture in this country; it has turned us into a home-drinking nation. I have been on the front page of the *Publican* magazine twice, once being castigated and once being praised for saying it is a bad thing that pubs are closing, often in areas where they are central to local communities. If people are drinking, it is often better in a social environment than at home. We need a different approach to considering off-licences, particularly supermarkets whose financial power is such that they can absolutely distort the market. They can demand reductions from their producers; they can bring out loss leaders. Perhaps later we may get on to the topic of white cider. I have never seen white cider being ordered in a bar or pub, but it is the mainstay of consumption for my patients and, I suspect, Colin Drummond's, too.

Dr Jeanelle de Gruchy: There are differences, but there is a huge amount of commonality—discounting in pubs, supermarkets and so on.

Baroness Eaton: It is about licences. Can we differentiate?

Dr Jeanelle de Gruchy: I do not have a strong view on that. Part of the difficulty is adding extra bureaucracy. It is hard enough as it is for local authorities to be clear on how to look at licences. When I discussed this with colleagues in enforcement, they were concerned about introducing more complexity in how licences are provided. My caution would be about how that would work. It sounds like quite a good idea, because there are differences, but are they sufficiently substantial to ensure that we look at licences in different ways? Would that not just mean it was more complex and, therefore, the arguments would be more complex? It would be good to look at it, but I am not sure whether we have a view either way at the moment.

Professor Colin Drummond: There are differences in the target populations that use pubs versus off-licences, although there is overlap between the two. People who are very heavy drinkers and are alcohol dependent tend not to drink in pubs; they would not be able to afford to do that for the amount they consume, so they get their alcohol from off-sales. They tend to trade down in the cost of the products they choose. The white cider Sir Ian is talking about is preferred by the kind of people I see in addiction clinics in south London, because that is what they can afford to drink. Unless we do something about the very low price of those super-

strength products, we will not make an impact on the amount that dependent drinkers consume. Changing licensing of pubs is not going to have an impact on dependent drinkers.

Q109 **Baroness Henig:** What is your view on the value of super-strength schemes or similar schemes? What components do you think work? What could be done to make them more effective?

Professor Colin Drummond: I think I have answered that already. There are examples where local areas have had a voluntary ban on selling super-strength drinks; for example, in Portsmouth and Ipswich. They report reductions in issues with street drinkers and in problems in the community. That is probably all very well while the spotlight is on a particular scheme. I doubt their sustainability over a longer period of time, once the cameras have gone. Probably, a more sustainable approach would be a national minimum price at which alcohol can be sold, which does not distinguish white cider or vodka; it simply applies a floor price at which alcohol can be sold. That would be a much more effective approach.

Baroness Henig: You are rather pessimistic about the voluntary type of scheme.

Professor Colin Drummond: Voluntary schemes could have an impact, but they are exactly that—voluntary, even in places like Portsmouth. I saw a presentation recently by Portsmouth City Council about its voluntary scheme. The council got four out of five supermarkets to sign up to a voluntary no-sale of high-strength cider, but everybody went to the fifth one that had decided not to be part of the scheme. That is the problem with voluntary schemes.

Professor Sir Ian Gilmore: It goes back to what I said before. Although there are some pockets of excellence and excellent examples, it is very difficult to make them sustainable. I am not an expert on the detail of how to use licensing—I have a wider perspective on alcohol and health—but it strikes me that there is a fundamental difference between being able to buy a pint of beer in a pub or club at 1 am, and being able to buy a bottle of cheap vodka at a petrol station at 1 o'clock in the morning. We need tools to attack that.

The Chairman: Lord Davies wants to come in, as long as we do not stray into areas that we are about to cover.

Lord Davies of Stamford: Professor Drummond, you say you believe that the solution is a minimum price for alcohol.

The Chairman: We are coming to that. I do not want to take the words out of Lord Mancroft's mouth.

Q110 **Lord Mancroft:** They come just as well out of Lord Davies's. Do you think minimum pricing works? Could it work? Does the level of taxation have a part to play in that in your view? How would it work in practice? So far, the Government have declined to introduce it because they do not think there is enough conclusive evidence that it will be effective. Do you think there is now enough conclusive evidence, or is there more work to be done on that?

Professor Sir Ian Gilmore: I will lead off and then hand over to the experts. One thing that has changed while this Committee has been sitting is a decision in the Scottish courts. They looked in great detail at the evidence and concluded that it was now overwhelming—I do not mean just the criminal burden of proof rather

than the civil one—and that minimum unit price was the most effective tool. Taxation and MUP are not mutually exclusive, but MUP targets the cheapest alcohol that underage drinkers and the heaviest drinkers go for. We have real-life examples of the equivalent of minimum unit price in Canada, where there have been quite remarkable benefits in health. A 10% increase in floor price led to a 30% fall in directly alcohol-attributable deaths over the following 12 months. It seems to work.

I very much hope that the decision of the Scottish courts is not appealed yet again, and I hope Scotland implements it. There is a sunset clause such that, if it does not work over a period of time, it will be repealed, so it will be an experiment. This week, a Bill before the Senate in the Republic of Ireland includes a minimum unit price. I do not want to see England and Wales dragged along behind Ireland and Scotland, as happened with smoking in public places, for example. The evidence is there in spades.

The Chairman: If I may interject, are you possibly contradicting what you said to us earlier? You said that from 2009 alcohol consumption had dropped dramatically, which you put down to the financial crisis at the time, and the fact that a duty escalator of 2% above inflation was imposed. You are arguing for price, but it could be achieved by taxation. Earlier, you argued that consumption went down, on taxation.

Professor Sir Ian Gilmore: You could use tax alone and you would get some benefit, but that is not targeted. One of the great arguments against a minimum unit price has been that it would disadvantage the moderate drinker, but all the evidence suggests that it would have very little impact even on the less well-off moderate drinker, whereas tax would; it would affect a pint of beer in a pub or a glass of wine or a decent bottle of wine in a supermarket. I am not saying that price does not have an impact in general, but the most sensitive tool, which really helps the people you want to help, is minimum unit price.

The Chairman: I am intrigued. If you take taxation, you are putting the money into the Exchequer and allowing the Government to have the funding to do all the other things that you suggested to the Committee today should be done.

Professor Sir Ian Gilmore: Yes.

The Chairman: That would not be available through MUP.

Professor Sir Ian Gilmore: It is not, although Scotland certainly discussed a windfall tax of some sort, and that could be pursued. Other potential mechanisms could be looked at, but my understanding is that, when minimum unit price was viewed in a more favourable light in the early days of the coalition Government, the Treasury estimated that it would be better off as a result of minimum unit price than without it, but I am not an expert on the finances.

Professor Colin Drummond: The good thing about the minimum unit price approach, as opposed to duty and VAT, is that it would specifically target underage drinkers and the heaviest drinkers, according to the University of Sheffield modelling exercise. Because the amount spent on alcohol relative to total income is greater for the heaviest drinkers, and they favour the cheaper drinks, it would have a greater impact on them, and very little, if any, impact on moderate drinkers, as Sir Ian said. Although it would not necessarily raise revenue for the

Treasury, unless there was some kind of windfall tax, it has been estimated that it would save up to £600 million a year in prevented hospital admissions; it would reduce them by 35,000, which I think was modelled largely on the Canadian experience.

The Chairman: But that was minimum pricing, not MUP. The difficulty for the Committee is that there is a lot of confusion about minimum pricing and MUP. Possibly, it would make sense to wait for the Scottish model to be rolled out to see whether it achieves over a two-year period all that you are telling us it would.

Professor Colin Drummond: It might, but in the meantime there will be a lot more avoidable hospital admissions and more cost to the NHS that could be prevented. I would be interested to know whether the same amount of scrutiny was applied to the introduction of the Licensing Act 2003 in terms of the evidence base. At the time, the evidence base pointed mostly in the other direction.

The Chairman: I presume the Select Committee on Health next door would have done its work.

Dr Jeanelle de Gruchy: I very much agree with colleagues. I mentioned earlier the 2016 survey of directors of public health. Among the vast array of public health issues and policy responses we deal with, directors of public health felt MUP came out as No. 1 in having sufficient evidence of impact and import. As with other issues, a national policy is very important to get population impact. With the best will in the world, we can do things locally, voluntary schemes and so on, but you do not get the same impact as you would if you introduced something like MUP nationally.

Professor Sir Ian Gilmore: People think that modelling is someone sitting with a mug of coffee and writing on the back of an envelope. It is very sophisticated and uses real-life data on sales and consumption, by age group, socioeconomic class, gender and so on. It has been enormously refined and is subject to international peer review. It is very easy to see it as some sort of nebulous thing that has not been put to the test, but it is hard to see how those conclusions are not correct. Targeting those we really want to help is the key benefit of MUP. The Scottish courts have crawled over that with enormous alacrity and come to the conclusion, with new evidence coming to light since it was first put before them, that the case is now overwhelming. It will be a real benefit to public health. I do not say that tax alone is not useful, but if you are going to tackle price, as a single measure MUP is the most important one.

Lord Brooke of Alverthorpe: How do you manage to administer it in an open border situation?

Professor Sir Ian Gilmore: We may well find out shortly.

The Chairman: One question springs to mind from some of the evidence we have heard from the industry. The smoking ban, which obviously you welcomed, was in the public domain, yet we were told quite categorically that it led to a number of bar closures and additional noise, with people having to smoke outside. It points to what you said to us today; it has led directly to more people possibly drinking and smoking at home. You seem to be telling us today that that was a logical consequence of a very good medical and public health reason for banning smoking, but it has led directly to consequences that you have put before us today.

Dr Adrian Boyle: We need to think about that, but the MUP is generally supported by people who work in the on-trade, because it will encourage people out of their homes and back into city centres, which is good for our night-time economy.

The Chairman: But you have not addressed the question of the smoking ban having unintended consequences. My concern is what you are not telling us today about the unintended consequences of MUP. Obviously, you do not know that, but how many hospital admissions have been prevented by the smoking ban? Have we seen a radical reduction? It is something I care passionately about. I lost my mother to lung cancer. When she was young, smoking was de rigueur; it was cool to smoke. Have you seen a direct reduction in hospital admissions through the smoking ban in public places?

Professor Sir Ian Gilmore: I am probably not the person to answer that, but I would be very surprised if there has not been.

The Chairman: That is not evidence.

Professor Sir Ian Gilmore: I would be surprised if there was not evidence strongly to support it.

Dr Jeanelle de Gruchy: There is definitely evidence, although I do not have it to hand or in my head. A Scottish study conducted recently showed reduction in heart attacks after the smoking ban. There is quite a lot of other work. It is one of the single most important public health interventions this country has made, and it has shown a huge impact in health benefits. These are complex issues, and it is difficult to show cause and effect. There is a lot going on in society, not just the smoking ban, as regards pubs closing. To claim that increasing pub closures are due just to the smoking ban is a bit simplistic. It would be interesting to see exactly what evidence there is for that claim. I am not saying it is not correct.

The Chairman: The drink driving ban has not helped in rural areas.

Dr Jeanelle de Gruchy: There are a lot of other reasons. I know that in London it is property prices more than anything else. I would take it with a pinch of salt. Of course, you are right to consider unintended negative consequences of policies, but the evidence on MUP is that it is quite a targeted policy decision, and that is an important focus.

Lord Smith of Hindhead: Now that we do not smoke we are all fat and drink too much.

Baroness Eaton: I do not want to sound facetious, but if you have minimum pricing to help the heaviest drinkers on the lowest incomes, would they not be driven to find an alternative?

The Chairman: Can we turn to Baroness Grender?

Q111 **Baroness Grender:** Shall I give my question a whirl? That might cover it. Throughout the evidence you have been giving, you have referenced what is called the alcohol harm paradox. Professor Drummond, you talked about the highest level of harm to the poorest. One of the questions we need to get to the root of is whether this can be dealt with in isolation, or whether we are talking about a much wider socioeconomic issue. For instance, mental health issues are tied in. In that context, we are looking at a much smaller issue, which is the licensing regime. Do you believe the licensing regime has a role to play, or is there a much wider issue we need to tackle, in particular relating to the people who are harmed the most

in poorest communities?

Professor Colin Drummond: A question was asked earlier about why people in lower socioeconomic groups might suffer more alcohol-related harm. We do not entirely know the answer, but potentially people living in poor neighbourhoods and on low incomes have a worse diet; they may be unemployed; they may be living in poor housing conditions; they may be more stressed; they may have physical and mental health co-morbidities and obesity, plus their alcohol-related harm. This is quite a vulnerable group. Probably no single thing will solve their problems. However, one thing they really do not need in their lives is excessive alcohol use on top of everything else. If we could do something to make it harder for them to drink as heavily as they do, we would be doing them a great service. Equally, we need to put in more support; we need our hospitals to be geared up to identify the problems at an early stage, through screening and brief interventions in primary care and acute hospitals where these folk present with health issues; and we need better treatment and support services for people with severe alcohol problems. At the moment, we have about 1.6 million people with alcohol problems in England, of whom about 100,000 a year access specialist alcohol treatments. That is only 6% of the potential population. By comparison, a recent study we did on primary care found that, per annum, 50% of smokers receive advice or support in primary care. It seems we are much better on all levels at tackling smoking, from the policy level right through to the clinical practice level. The smoking experience shows that no single measure has had an impact on reducing prevalence. All those things combined in a concerted and co-ordinated way have had an impact. You are right to say that licensing is not the only solution; it is one of a whole series of solutions that all have to move in the same direction.

Professor Sir Ian Gilmore: As Colin says, it has to be a multifaceted approach. We sometimes get accused of being a one-trick pony and just talking about MUP. That is not the case, but with something like MUP it is easier to quantify what we think the effect will be, whereas with licensing it is much harder to say that if you did this thing you would save this much money or save that number of lives. It is part of the exercise to try to re-norm alcohol in society. We are not trying to stop alcohol; we just do not want people to be bombarded with cues at the end of every aisle in the supermarket or be able to buy a bottle of whisky at two in the morning in a petrol station. Not only could you put things in place that you know would have a positive impact, but it could be part of a wider strategy.

To me, the title of the recent review of alcohol policy, *Alcohol: No Ordinary Commodity*, gives the game away. Do we really want a mind-altering drug with dependent properties that we all enjoy—including me, and I see the potential for harm every day—to be dealt with in the same way as soap powder in an off-licence or corner shop? I think the answer is no. It is a matter of how far we go in treating it differently, but we cannot treat it the same. By looking at changes in the licensing laws, there is an opportunity to send a message about how we feel about living in an alcogenic environment.

Dr Jeanelle de Gruchy: After smoke-free workplaces, it was interesting to see how many smokers really welcomed them. People who objected before the ban went through said afterwards, “Well, absolutely” about smoke-free restaurants. When you go to a country where there is smoking, it feels really strange. That shift in the norm has happened here and has been welcomed by smokers who are trying to give up. It is about what kind of environment and society we want. It is really important to look at it at population level. In what way can we make our environments healthier? There is a danger of saying that it is down to individuals’ moral ability to withstand the scourge of heavy drinking or whatever. People do not necessarily want to be confronted by alcohol, in the same way as they did not want to be confronted by smoking when they went into a restaurant, but alcohol is much more commonly available and evident in the society in which we live. As directors of public health, we are very keen to look at the way we can support a much healthier environment, where residents are not constantly having to make a decision, in the same way as for fast food, not to buy a six-pack of this or that. In current society, the choice is almost not to do something.

Dr Adrian Boyle: It is difficult to distinguish all the problems that a very dependent drinker has and how much alcohol is contributing to them. I have yet to see a problem drinker who does not have a whole bunch of social problems, and they are made worse by his alcohol, so it is contributing to all of those. We may not be able to distinguish cause and effect, but we know that alcohol is exacerbating almost all of those problems.

Q112 **Baroness Eaton:** You were talking about helping the most dependent. Would they not be driven to drink meths or illegally brewed alcohol and all of those things? Are we not in danger of driving it underground?

Dr Adrian Boyle: The dependent drinkers I look after usually start drinking at about 9 o’clock in the morning, and by the time they have run out of money, which is a bit later in the day, they are not capable of finding alternative forms of alcohol.

Baroness Eaton: But what if it was not there in the first place?

Dr Adrian Boyle: If it was a bit more expensive, they might run out of money a bit later. I do not know. I see very little illegal alcohol use, because it is so easily available.

Baroness Eaton: I was thinking about home-brewed vodka; it goes on to a considerable extent.

Professor Colin Drummond: One of the drivers for the increasing health harm, the deaths from liver disease and the increase in alcohol-related hospital admissions we have seen over the past 20 years is that alcohol has been more affordable for the heaviest drinkers—the people most at risk of those health consequences. That suggests there was a time when they were not drinking as much as they are now. In countries where they have increased the price of alcohol, the heaviest drinkers cut down as much as lighter drinkers.

Professor Sir Ian Gilmore: There is a notion that the people who are “alcoholics” will be unaffected, and will steal and kill for alcohol. The international evidence is that they will reduce. That alone will not stop them drinking, and it needs to be combined with proper support services for people with alcohol-dependency

problems. If somebody is drinking, for example, three litres of white cider a day and they cut down to two or one, it brings about health benefits. If you reduce a nation's consumption, the death rate from cirrhosis drops within 12 months. It probably takes 10 years to get cirrhosis through heavy drinking, but there are a lot of people just on the edge of the cliff. If you can get them to reduce their consumption a bit, they come back from the edge, so the impact can be immediate and dramatic.

Lord Brooke of Alverthorpe: Did we not have similar problems with cheap alcohol at the beginning of the last century? All parts of society, particularly the working class, were drinking alcohol, and licensing was used to call a halt. People did not turn to meths and other alternatives. We had a change of culture. It is possible to use licensing; it is just that perhaps our Licensing Act is a little limited at the moment.

Baroness Watkins of Tavistock: As you are so in tune with it, could I ask how much three litres of cider cost and how many units of alcohol it is? I have not got that concept.

Professor Sir Ian Gilmore: The usual strength is 7.5%, so that is about half the strength of a very strong wine, or three-quarters of the strength of ordinary wine. There are 7.5 units per litre, so three litres would have between 22.5 and 23 units. You can get almost twice what the Chief Medical Officer recommends as an upper limit in one bottle that would cost between £2.50 and £2.99.

Baroness Watkins of Tavistock: Therefore, just doubling that would halve the amount some people could afford and bring them within much safer limits.

Professor Sir Ian Gilmore: The bottle I described is about 12p per unit. Increasing it to 50p as a minimum unit price would multiply that fourfold, whereas it would not affect the price of a £5 bottle of wine or a pint of beer in a pub.

The Chairman: Do you think there is evidence that supermarkets are using cider as a loss leader?

Professor Sir Ian Gilmore: I do not know whether or not that is the case.

Lord Smith of Hindhead: Small off-licences sell that type of stuff. Our Chief Medical Officer has set the recommended daily amount, which is almost half that of Spain and much lower than every other country in the EU—we are still just about in the EU. Do you think our Chief Medical Officer is right, or are all the others wrong?

Professor Sir Ian Gilmore: I was on the advisory group.

Lord Smith of Hindhead: Perhaps you are not the person to ask.

Professor Sir Ian Gilmore: It is not out of kilter with those who have looked at this in an evidence-based way recently. In particular, Canada and Australia have come out with very similar levels, so it is evidence based and it was reviewed because of new evidence that the protective effect of alcohol, if there is one, was less than previously thought for cardiovascular disease, which fits in with the fact that there was falling incidence of heart disease anyway, and increasing evidence of the link between alcohol and certain cancers. That was new. Those were the two things that caused the chief medical officers of the four UK countries to review it and they came out with the best evidence available, which is guidance.

Lord Smith of Hindhead: The chief medical officer of every other EU state is wrong on that.

Professor Sir Ian Gilmore: I think they—

The Chairman: I do not think you are responsible for the other chief medical officers, but it is an interesting concept. How much did you reduce the limits?

Professor Sir Ian Gilmore: Women stayed the same at about 14 units a week and men came down from 21 to 14.

The Chairman: Probably not best all drunk in one go.

Professor Sir Ian Gilmore: Exactly.

The Chairman: Thank you very much indeed for being with us and for helping us with our inquiry. We are very grateful to you for being so generous with your time and for sharing your knowledge and expertise.

Professor Sir Ian Gilmore: Thank you for giving us such a polite and intelligent hearing.

The Chairman: You are very welcome. Thank you very much.

John Gaunt and Partners, Poppleston Allen, Professor Roy Light – oral evidence (QQ 113-123)

Examination of witnesses

John Gaunt, Partner, John Gaunt and Partners; Andrew Grimsey, Solicitor, Poppleston Allen; and Professor Roy Light, Barrister, St John's Chambers.

Q113 **The Chairman:** Gentlemen, good morning and welcome. Thank you very much indeed for being with us and giving evidence this morning. The list of Members' interests relevant to the inquiry has been sent to you, and copies of our declarations are available today. This session is open to the public. It is broadcast live and is subsequently accessible via the parliamentary website. A verbatim transcript will be made of the evidence and put on the parliamentary website. A few days after the session you will be sent copies of the transcript. Perhaps you could check it for accuracy and revert to us with any corrections as quickly as possible. If after this evidence session you wish to clarify or amplify any points in your evidence, or you have any additional points, you are welcome to submit supplementary evidence to us, again as soon as you possibly can.

What impression do you have of the way that the Licensing Act 2003 is currently functioning?

John Gaunt: As licensing practitioners, we are here to make it work. We have clients to represent. It has had its challenges, certainly in the early days, but my overall impression is that the system works. Certainly, our clients understand how it works and that is a reassurance to them, because they know the environment in which they have to trade. In my Yorkshire expression, it gets a bit frayed at the edges. It has always been frayed at the edges, and the fraying is probably in the areas on which you are concentrating as you consider the implications of the Act, but generally it works, with a few wobbles here and there.

Professor Roy Light: Thank you for inviting me here. It is very exciting to come to see you all. The Licensing Act before this one was rather complicated. It dated from 1964 with about 20 different Acts to consider, and it had labyrinthine complexity. We could navigate through and make plenty of money because no one could understand it all. When the newer one first came out we were all slightly disheartened. We thought, "There goes our income", because applications were not opposed any more; they would be granted, and all that sort of thing.

It started off well, because it was a clearly signposted, streamlined system. It had clearly defined licensing objectives and one licensing authority, whereas before you had to go before the local authority and the magistrates' court to get various permissions. There were no triannual renewals for alcohol licences and public entertainment licences, so it was all much more straightforward and clearly signposted. The regulations came out a bit late, and the guidance came out even later, so it took two years to come into effect, from 2003 to 2005, but when that had all happened, we thought, "This looks quite good. We can come to terms with that". It all seemed rather confusing then, but we all understand it really well now.

We could probably quote sections of the Act that we never thought we would be able to in the past, but I agree with John that there are problems around the edges with various bits and pieces.

There are more serious problems. Under the old Act, each magistrates' court had its own licensing policy statement. It varied as you went round the country. It could not be right that something in Bath was different from something in Bristol. Under the new Act, we have national guidance in Section 182, but each local authority also has its own statutory licensing policy. Some of them run to a few pages, some to hundreds of pages, and they all have different requirements for different things. That causes issues and problems, even as far as that if there is something in the Act it has to be followed, and if there is something in the regulations it has to be followed; but if there is something in the guidance, you need to follow it unless you can say why you are not going to follow it. The same thing goes for the policy document from a local authority. Local authorities are almost legislating by putting things in their policy documents with which we then have to comply. That is one issue broader than fraying.

The other is that the Section 182 guidance over the years has had a number of mistakes in it, and there are legal issues in it that it is not really entitled to put forward. Those have been changed, but, even now, there are issues in it that cause problems. For example, there is a new section on planning and licensing.

The Chairman: We are coming to that.

Andrew Grimsey: I agree with John and Roy. Generally, the Act has been a success. Residents have more say, and it is a simpler system. We used to sit around in court waiting to get on, which we tend not to do nowadays. Hearings are quicker and they are dedicated to licensing applications. Generally, it has been a success. We have what we call niggling issues across the country. We act for about 6,500 licensed premises and make about 7,500 applications of any type in a year. There are about 80 councils that still do not accept electronic applications. That is a big problem for us, because we have to print out all the plans and serve nine authorities. There are always problems with the post. Sometimes trading standards will say they have not received the application. Being able to send something electronically is much better and cheaper for everybody, so there are little niggling things like that.

The minor variations procedure, which was brought in a few years after the Licensing Act came into force, was a great idea, but we have problems with councils that do not take a liberal view, if you like. For example, they may say you are not allowed to use the minor variation procedure to move fixed seating. Most councils would say, "Of course; that is exactly what it is there for". Another big issue for us is time-limited hearings. You go to a hearing on a £1 million investment and find that the solicitor for the council has a stop watch and is telling you four and a half minutes into your five minutes, "You have 30 seconds left, Mr Grimsey". It is a bit strange. In one particular case, the chairman let us say everything we wanted to in questions, so it was not a problem, but you have to ask yourself what you are doing there. It is not very realistic, but generally I agree it has been a success.

Q114 **The Chairman:** In the written evidence we have been given and the oral

evidence we have heard, we have picked up that the level of expertise among members of licensing sub-committees is variable. They are accused of bias towards either police evidence or residents' evidence or of helping the applicant too much. There is probably a need for more formal training. Do you see that as a problem, and how do you believe the Licensing Act could work better to cover those points about bias, lack of training and variable expertise?

Andrew Grimsey: My firm assists with training around the country, through the Institute of Licensing, particularly licensing hearing training. Anecdotally, I am always quite disappointed at the proportion of elected members who are not at that training. It is designed mainly for councillors, but most of those who attend are police officers, licensing officers and environmental health officers. The training we offer with the Institute of Licensing is pretty cheap, so I am a bit disappointed by that. We would like to share their experiences—the training is very interactive—as much as download our legal knowledge.

I do not believe the system is hugely politicised. I have done hearings at about 100 different licensing authorities over the past 12 years. Councillors try to find a middle ground and to be sensible. There is the odd shocking decision, but that will always happen. I do not think there is a problem that things are too politicised or partial, but there may be a problem with basic training on evidential standards and what to expect. Sometimes there are issues with according too much weight to police evidence. Sometimes, particularly in London boroughs, residents have a greater say than they might outside the capital. I am not able to analyse that; I just know it from colleagues who do a lot of work in London. It is in our written submission that, if a circular goes out to 2,000 residents, one resident objects; nobody else does. The resident does not turn up at the hearing, but the condition they want is put on. There is a slight worry about the balance.

Professor Roy Light: I agree with all that. The standard varies unbelievably from one end to another. Some licensing committees I have been to almost bore the marks of a pantomime; they have been so ludicrous, for example a councillor putting her fingers in her ears and saying, "La-de-dah-de-dah. I am not listening to you", when I was trying to put a legal argument. Two weeks ago a councillor said to me, "Do not give us any case law, Mr Light. That is not for you to do; our legal adviser gives us case law. Take it back; we are not having it". The legal adviser said, "Well, it is for Mr Light to give you case law, and please take it". The standards are hugely variable, among not just members but the other people involved in the licensing hearing. The poor legal adviser has to advise on licensing law as well as every other law the local authority has to deal with.

All of them need training. I am going to the south coast next week to do a day's training with a licensing committee. I have had the same experience that has just been mentioned. At one all-day training session, half of them said, "We are not staying here until 4 o'clock. It is 10 o'clock now; we are going home at lunchtime; we are not interested in staying here all day for this". It was so great of course that they did stay all day and they enjoyed it.

Lord Blair of Boughton: Obviously, you had to lock the doors.

John Gaunt: The committees appear impartial, and they probably are impartial. Undoubtedly, as you approach election time, residents seem to have a little more sway than perhaps they would just after an election. That is noticeable. There is a problem with attitudes towards police evidence, but based on the questions sent in advance, we may come to that later. The role of the legal adviser is critical. In some cases, the legal adviser proactively advises the licensing committee, which is helpful because it keeps them on a relative straight and narrow. In other experiences, the licensing adviser is entirely meek and mild and is there almost as a token. On Roy's point, when I am putting a case to a licensing committee I always say, "I am sure your legal adviser will confirm" and then say it, and hope the legal adviser's head goes up and down and not sideways. Generally, there is huge variety.

Licensing statistics came out last week, or the week before. Interestingly, more than 3,000 new licence applications went to a hearing in the year to last March. Only 271 were refused. You could use that statistic either way and say they are disproportionately biased in favour of the applicant or against the applicant. It is probably a reflection of the quality of the application, not to mention the advocate of course.

Q115 **Baroness Henig:** We will come back to the point Professor Light touched on: the planning as against licensing issue. Licensing is a regulatory regime that sits alongside other regimes, including planning and environmental protection. The Government's view is that the Licensing Act "is being used effectively in conjunction with other interventions as part of a coherent national and local strategy". Do you think that is right? Should the licensing regime work more closely with other related regimes, particularly planning? We have come across examples of big issues in that area.

Professor Roy Light: Planning and licensing are separate regimes. They have similar but different criteria. What tends to happen is that the local policy document will say something about whether or not that particular committee sees them as separate or not. Again, we have a problem with different licensing committees around the country taking different approaches, and different policies saying different things. Generally, they need to be separated at the moment. If you go for a licence until midnight but you have planning consent only until 11, that does not mean you can open until midnight; it means you can open only until 11, but you can apply to have your planning consent changed, whereas if you were given 11 you would have to apply for both to be changed. There may be a way forward, and the Section 182 guidance suggests that. I wrote it down somewhere so that I would remember it. They seem to be trying to merge the two together in the way it is written.

The Chairman: While you are looking for that, would the other panellists like to come in?

John Gaunt: There should be a separation, and I think there is a separation. The committees perform different functions. One is about the use of land—you have heard this in evidence before—and the other is about how the premises should operate under the Licensing Act in accordance with the licensing objectives.

Planning is a responsible authority, so it has the opportunity to make a representation at a licensing application. That does not happen very often. When it does, normally it is only to reinforce the fact that planning is not yet in place or what have you. I am not sure that the planners necessarily understand the licensing regime itself. The question that came to me originally also talked about other responsible authorities. I do not know whether I can touch on those very briefly.

The Chairman: We might be coming to those, but perhaps you would like to deal with them briefly.

John Gaunt: There are a number of responsible authorities. Fire does not engage at all now because there is a separate regulatory regime, and it is up to us. Interestingly, child safeguarding takes a more active role, which is perhaps a sad reflection on society. We act for a lot of hotels, and they are very interested in policies about the avoidance of possible sex exploitation there. Of course, health is a consultee. Its involvement at the moment is in its infancy; there is very little involvement, but as far as planning and licensing are concerned the separation should be maintained. They perform very different functions.

Andrew Grimsey: At the moment, apart from a bit of confusion among some of our clients who think they have licensing permission and forget about planning—sometimes residents take the same view—the licensing authority seems to keep the two regimes separate, and planning very rarely gets involved in applications. We had a strange example in one city where the planning policy was very pro the late-night economy and, on the back of that, our clients made an application, but it was in a cumulative impact area, so the licensing policy was against a late-night environment. We tried to argue, “Your planning supports this”, and the committee said, “We are not bound by that”. Of course, they were not, but it was a bit strange. However, those examples are few and far between.

Q116 **Lord Davies of Stamford:** You and others over the past few months have given interesting examples of lack of coherence sometimes between the planning and licensing functions in the local authority. I was bestirred by your colleague’s statement that a lot of planners do not understand the licensing regime. Could some statutory change be conceived that might compel the two functions to maintain a greater degree of coherence, such that they have to consult each other at certain critical moments and they have to take on board, or report to each other, any particular problem that is likely to arise that could conflict with the other’s functions, or something of that sort?

John Gaunt: I think I commented on the lack of understanding. Perhaps I did not put it as clearly as I might. A representation from the planners will be planning-related rather than licensing-related. It does not concern the licensing objectives or anything like that, so it is irrelevant to the licensing process. When I said they did not understand, I really meant that they did not understand the framework within which they should be making representations to the licensing authority.

Lord Davies of Stamford: The citizen is entitled to think that, when he is dealing with the local authority, it is acting in a coherent fashion and is not saying one thing through one department and another thing through another department.

That seems an essential general principle, and obviously it is not being observed sufficiently often in this case.

Professor Roy Light: That is absolutely right.

Lord Davies of Stamford: What do we do about it?

Professor Roy Light: In the Section 182 guidance, paragraph 9.44 states: “Where businesses have indicated, when applying for a licence under the 2003 Act, that they have also applied for planning permission or they intend to do so, licensing committees and officers should consider discussion with their planning counterparts prior to determination with the aim of agreeing mutually acceptable operating hours and scheme designs”, which is exactly what you are suggesting.

The Chairman: We are coming to the guidance.

Professor Roy Light: But this is a planning issue, and Lord Davies is quite rightly raising the dysfunction between the two.

Lord Davies of Stamford: But we have just agreed that that solution is not effective.

Professor Roy Light: That solution should not be there, because it suggests that the planning decision is decided with someone from licensing behind closed doors, and vice versa. There are different criteria under both regimes. Therefore, it would be open to all sorts of challenges because the applicant would not know how his or her planning application was decided if it was discussed with licensing, but that is an avenue for the development of this into something workable, along the lines suggested.

Lord Davies of Stamford: We would be grateful for your solution.

Professor Roy Light: You could have a regulation that mirrored that and made it a statutory obligation to have those discussions beforehand.

John Gaunt: With transparency.

Professor Roy Light: It would have to be transparent; otherwise, it would not work.

Q117 **Lord Brooke of Alverthorpe:** In relation to consultees, Mr Gaunt observed that the health aspect was very minimal. I think the phrase was “in its infancy”. Do you think there should be closer collaboration? The question was, should the licensing regime work more closely with other related regimes? Should they work more closely with health?

John Gaunt: That is a much wider topic. I know that one of the things you have discussed is the health objective. I am conscious, because I had a conversation with your clerk, that we have experience in Scotland where health is the fifth objective. He specifically asked me to deal with that separately and to write to you with my views on the subject. The trouble with health as a licensing objective—I may be straying on to the wrong ground, and, if so, I apologise—is that it does not sit comfortably within licensing. In Scotland, where the licensing law has been running for the best part of seven years, the boards, the licensing agencies and advisers are still not comfortable with how health is dealt with. There is great tension. The trouble is that health evidence is statistically and regionally based, and it is very difficult to condescend that to the individual application being

considered by the licensing committee at the time. That is a problem I have seen countless times in Scotland before licensing boards.

Lord Brooke of Alverthorpe: Given that the Act has generally worked quite well in your opinion, and that this is an emerging aspect that is in its infancy, and given the problems you have just mentioned, how would you see its being tackled?

John Gaunt: Health, unless it can be specifically attributed to premises, should not form part of the licensing objectives under the Licensing Act. The Licensing Act can be a very blunt animal for hitting various social ills and problems, unless a specific problem is related to specific premises—in circumstances where something arises and can be addressed. At a more general level, it is very difficult and fraught.

Andrew Grimsey: I know you have heard the argument before, but there has been a golden thread running through the licensing system since 2005, which is that every application and operator is treated on their own merits. I can say that having made applications for all sorts of different premises, from off-licences through to festivals and everything in between, and dealing with them at hearings. As it stands at the moment, there is an acceptance that you cannot really be blamed for things beyond your control. The problem lawyers and perhaps other parties might have is that you cannot argue against general health data. That is the difficulty. I am not saying whether I agree or disagree with it, but in the way the system has worked to date, that is one of the difficulties we have.

Professor Roy Light: It is interesting that previous attempts to change the licensing regime to liberalise it, like the Errol Committee report, raised huge public health issues. This one did not at all when it was going through. The public health lobby was absent for some reason.

When considering licensing, we are looking either to control it or to liberalise it. We go through phases of liberalisation and control. We had Victorian control and then liberalisation in the 1960s. One of the main problems with this Act is that, before it came into its liberalising phase, we were already in a more restraining phase, and we have seen a period of what the Webbs called “legislative repentance”. We have seen endless ways of backtracking from liberalisation. Twenty four-hour drinking never happened. Licensing law exists to control alcohol, which has benefits and disadvantages. We all know that. It seeks to control alcohol and the pleasure it gives and the damage it does in various ways. The way our licensing system is operating, whether that is right or wrong, is that it looks for problem premises and problem people. We are looking at problem drinkers and premises that cause trouble. We look for a particular premises in a particular area and its particular clientele, and we introduce more legislation to cover them—more closure orders for them and so on. Public health is a general societal issue and it is probably not susceptible to reduction to a licensing objective. It is an objective we all have, and there are wider issues about supply, pricing and all those sorts of things that probably should be addressed, but looking at it narrowly under the Licensing Act is not the way to address it.

Q118 **Baroness Eaton:** We would probably say that the Act was long enough when enacted, but the Licensing Act 2003, as amended, with its associated regulations and guidance, has arguably become more complex. Is it beneficial to

have complex and detailed rules within the legislation and guidance to deal comprehensively with every potential scenario, or would a simplified system be better, and if so, how would it work?

John Gaunt: I may be controversial, but I would say leave as is. I do not think there is any appetite in the licensed world out there for wholesale change. We went through change in 2005. We know the system. When I say “we”, I mean the people we represent who understand the system and work with it, so to speak. The difficulty is that you cannot make it so comprehensive as to cover every possible scenario. That is almost the point Roy made previously. We have a framework that gets tweaked this way and that way. It has been tweaked and, hopefully, might be tweaked a bit less in future, but ultimately guidance cannot replace local decision-making on the application’s individual merits and the facts. I certainly would not go for oversimplification, but equally I would not go for much more complication, because ultimately, if this is about localism and local authorities making decisions with local democracy, you have to leave them a decision to make; otherwise, if you go too far, there will never be a decision to make.

Baroness Eaton: Are you saying that as a local authority it can use more common sense?

John Gaunt: Local authorities should properly apply the guidance largely as it is now. I am sure it could be tweaked in minor respects, but I would not go for wholesale more or wholesale less; we should leave it roughly as it is.

The Chairman: Do you all agree?

Andrew Grimsey: We probably do. The guidance could be very much beefed up. It used to have a lot of helpful examples and references to law and other things. It has been cut away over the years and I can see the reasons for that, but we have got down to the bare bones, and the guidance could clarify a lot of matters that currently cause us some angst on a day-to-day basis.

Professor Roy Light: The guidance is an issue for me. As has been said, there was law in it and there should not have been, because it is not for the guidance to make the law; it is for the courts and Parliament to make the law. There are errors in the guidance and problems with it. One slightly concerning thing is that the guidance used to have to be laid before both Houses of Parliament when it was amended, and it is amended quite frequently. That has been taken away. There needs to be some sort of oversight of the guidance. When the Home Office produces the guidance, there needs to be somebody somewhere to look at it. I do not know what the mechanism would be; I am not a parliamentarian. It is not for the trade or local authorities to campaign for it to be changed in a certain way, but there should be some sort of check on it, perhaps not before both Houses but something along those lines.

In addition, some of the local policy guidance is hundreds of pages long. I do not know whether there could be any guidance to local authorities on how to produce their guidance. Then we would have even more guidance.

Q119 **Lord Mancroft:** One suggestion that has been made, on which we would like your views, is that there may be issues about the way in which the police

perform their responsible authority functions. Do you think there are any issues about the way the police present their evidence, and are there specific issues that may or may not give rise to a requirement for training? Does paragraph 9.12 of the Section 182 guidance strike the right balance?

Andrew Grimsey: The relationship between my clients and the police on the ground is usually very good, and that might be both police officers and the licensing officers themselves. Sometimes, there is pressure from above. To quote one very brief example, a few years ago there was a nightclub in the north of England that had turnstiles at its door because it had some very, very dodgy people in there. Gangs used to go there. I had never heard of the place. One night there were multiple stabbings. Within 48 hours, using the summary review procedures, the chief superintendent had it closed down, which was all well and good. He told me that the reason he did that was that he was telephoned by the Home Office saying that that particular city was on a watch list for crime figures, and they had just shot up and he had to do something about it. The gangs team in the same police department was apoplectic, because the gang turned up at the place the next night, when it was shut, and wreaked havoc in other late-night bars in the city that were not used to dealing with those types of individuals ripping tills out of pubs and nightclubs and doing various other things. By the way, the club is closed and does not house anybody now. I use that example because sometimes there is a breakdown between what my clients agree to do in partnership work with the police on the ground and statistics from higher up. Clearly, those premises had to be closed, but whether the right way was to do it quite so quickly is another matter.

Perhaps I may talk briefly about evidence, which is perhaps more to your point. We have an issue about inconsistency with police evidence. There are two scenarios. There may be a review based on crime and disorder incidents at a premises and there is a summary of those incidents. Another review is brought by the police in a different area, and they disclose all of what you might call the first-capture report—the 999 calls, the whole lot. One will be several lever arch files thick; the other will be just a summary. The problem with the summary approach is that you cannot trust the data, because sometimes in those incidents there will be an A-board falling over or a refusal at the door—good compliance, if you like—and we cannot trust that; but, equally, if we are served with all the first-capture material, it costs thousands of pounds for a lawyer to go through it, so it is a difficult situation for a typical licensee to deal with.

Philip Kolvin QC issued a manifesto for the night-time economy. I believe you requested a copy. On page 9 there is a regulation chapter that lists some of the issues that police evidence should not contain. It is the other way around. I commend that to you as a list of things that we do not want to see in police evidence—where they use premises merely as geographical markers for incidents that take place, rather than incidents caused by licensable activities that are taking place on the premises. I am sorry I have gone on rather too long, but it is close to my heart.

The Chairman: We have two panels and we are extremely challenged for time.

John Gaunt: The question referred to paragraph 9.12 of the guidance. To deal with that specifically, I am not unhappy with paragraph 9.12, subject to one very clear proviso. I printed it out just to make sure I was word perfect, but I am very familiar with it. It is a double-edged sword; if you have a licence application and no police objection, 9.12 works for you because, if you are confronting, dare I say, local residents or somebody else, you can say that if the police had a problem they would be there, but they are not, so they do not have a problem. It can be a positive, if they are not there. There is a problem with evidence from the police, and it is widely accepted and documented. The most significant sentence in paragraph 9.12 is the last one: "However, it remains incumbent on the police to ensure that their representations can withstand the scrutiny to which they would be subject at a hearing". That is the critically important point. Yes, let them be a fountain of knowledge, but let the licensing committees be alert to the fact that they are not always right, and if properly their evidence is challenged, it should be properly scrutinised and licensing committees should hear it. If there is any bit of emboldening of the guidance that I would recommend, it is that that last sentence is amplified to make clear that it is the committee's responsibility to ensure that that evidence is looked at.

Professor Roy Light: The last thing you want is for the police to object to your application. Applicants will do anything they can to negotiate with and talk to the police, which is what licensing should be all about anyway, but sometimes the police will say, "You have to have this condition about super-strength alcohol"—I know we are coming to that—"and CCTV", and people agree; otherwise, they will have the police against them.

The Chairman: That is very helpful.

Q120 Lord Smith of Hindhead: As you know, there have been numerous changes to closure powers since the inception of the Act. Are there any continuing issues? Are the powers of closure under Section 19 of the Criminal Justice and Police Act 2001 being used correctly? Do the amendments of the Licensing Act 2003 by the Anti-social Behaviour, Crime and Policing Act 2014 work effectively?

Professor Roy Light: It is very difficult to answer that. There are now so many closure powers and powers available to authorities and the police to intervene when there are troublesome premises—reviews and so on—that it is difficult to say whether they will work any better or carry on working as they are. The main problem always is the balance between protecting the public from troublesome premises and protecting businesses from having their business stopped and their profits undermined. As far as I am concerned, I will wait and see how those work out in practice.

Lord Smith of Hindhead: Section 19 was designed specifically to give police the power to close premises that were not licensed. The evidence we have is that it is increasingly being used, incorrectly, to try to close premises that have not complied with a particular part of their licence.

Professor Roy Light: I have not dealt with that.

John Gaunt: There are two issues. One is that they are extending the Section 19 closure notice to "minor breaches of licensing conditions", but one of the great

misunderstandings out there in the wider world—I am sure not in this room—is that a Section 19 notification says in terms, “You are in breach of your licence”, and what it should then say is, “If you do not put it right within seven days, we will apply for a closure order to shut you”. The police commonly and increasingly say, “You are in breach of your licence. Here is a closure notice. You must shut”. That is wrong in law.

Andrew Grimsey: It was dealt with conclusively in the High Court. Everybody in the trade knew you could not close down premises with a Section 19 closure notice. That was a few years ago, and my firm is now seeing the odd example of police officers misunderstanding that law again.

Lord Smith of Hindhead: Is there nothing under the other amendment under the Licensing Act?

Andrew Grimsey: Since 20 October 2014, when those provisions came into effect, I think we have had two examples of those closure powers being used. My only other observation about those powers is that the test is for nuisance or disorder, not serious crime or serious disorder, but under the 2014 powers a closure notice really does mean that you are closed for 48 hours. It seems an interesting comparison.

Lord Smith of Hindhead: I think it remains closed until it goes back to the magistrates.

Andrew Grimsey: That is quite right.

Q121 **Lord Davies of Stamford:** Does the appeal system work well? The Home Office states that there are few appeals annually, because the quality of licensing authority decision-making is good. Other evidence suggests that the reason why there are not many appeals is that it is a very expensive and time-consuming activity and an awful lot of issues are settled by negotiation between the licensee and the authority. Do you feel that the appeal procedure is working effectively? Should it be changed in one direction or another?

John Gaunt: If I may start with the statistics that came out the other day, which I thought were quite interesting, 3,068 new licence applications went to committee in the last year, which resulted in 72 appeals. One statistic I may have given earlier is that by far and away the majority of applications are granted anyway. It is very unusual for either a responsible authority or local residents to take a grant to an appeal. The first point is that, if there is a problem with the appeal process, it is quite a peripheral one because there are so few appeals. I am not sure I necessarily agree that it is because the system works so perfectly well; more probably, there are so many grants because licensing committees are making the right decisions.

We have had limited experience of appeals. We have had two in the last two years, and in both cases we appealed against a restriction imposed on a new licence application. It never got as far as the magistrates, because we engaged with the council—the licensing authority—by way of informal mediation. In the nicest possible way, it conceded the point we were appealing, we got what we wanted and the appeal was withdrawn.

Lord Davies of Stamford: On the whole, do you feel that justice is being done?

John Gaunt: Yes.

Lord Davies of Stamford: Therefore, the issue of whether or not there should be a more complicated appeal process, with appeals from the magistrates to the county court or a specialist tribunal, does not arise because you think the present system is largely satisfactory.

Professor Roy Light: There is a serious problem with appeals, and that is cost. I sometimes represent residents. Generally, they cannot look at the cost of going to an appeal at a magistrates' court. They are told, which is right, that, even if they win, they probably will not get their costs, as the local authority is protected in costs, because its duty is to be able to resist those appeals. That is right, too; local authorities should be protected in costs, but that makes it very difficult for residents. If I am acting for a large corporation, they appeal; they have deep pockets. If I am acting for a small business they might not appeal, because they do not have deep pockets, so there are issues with that.

Lord Davies of Stamford: What is the solution?

Professor Roy Light: The solution may be something like the planning appeal system. As you may know, in that system there are three ways the appeal can be heard, and they are all more or less expensive. It depends on the complexity. The first one is that you just do it on paperwork.

The Chairman: Thank you. We really must tighten up the answers.

Andrew Grimsey: I agree with what Roy was saying.

Professor Roy Light: At the moment, there is nothing but a full-blown hearing. I did an appeal a couple of weeks ago to decide whether or not Subway could heat up a sandwich at 11 o'clock. We spent two days in the magistrates' court, with tens of thousands of pounds of costs, to decide whether or not Subway could heat up a sandwich, which is ridiculous. There is a problem with late-night refreshment, which we have not looked at, but there is also a problem with the cost of appeals. The other problem is that, when a committee makes a decision and it is appealed, the decision is often suspended pending the appeal. I did a police review where I acted for the premises. Conditions were put on the licence and we appealed. It was suspended and we won the appeal because there was a procedural problem. Something that should have been dealt with in a few months took more than two years. All those issues are raised in appeals. With planning, you can do it on the papers, which is cheap; you can do it in a round table, which is not so cheap; or you can have a full tribunal like an inquiry, which is perhaps like the courts. I do not know whether it would work, but it may be something to think about.

Q122 **Lord Blair of Boughton:** The Government propose to place cumulative impact policies on a statutory footing by way of amendments to the Licensing Act through the Policing and Crime Bill that is currently passing through this House. The intention is to enhance certainty and transparency. Are those amendments the right ones, and will they work?

Professor Roy Light: I like them. They look like an improvement on something that was tacked on. It was the first act of legislative repentance; it was put in the guidance and mirrored need, which was a concept under the old Act about how many off-licences, pubs and so on you could have. It is an example of a local

policy document legislating itself for what it will allow in cumulative impact areas. In one area, I won an appeal on three bases and the authority then changed its policy and covered those areas, which are now no longer relevant to appeals. It should be centrally covered, and I think the policies are good, transparent and workable.

John Gaunt: The first thing I like is that it will be on a statutory footing that they must be reviewed every three years, and the evidence must be transparent. The second important point is that it is fairly clear from the legislation that it is not mandatory for licensing authorities to have a cumulative impact policy, but if they choose to adopt one they must do it on a more transparent basis than they do at present.

Andrew Grimsey: Generally, I welcome the proposal but I am concerned about the three-year review. Some cumulative impact policies can be just one street, which is great because it is very targeted, but if one nightclub on a street closes down, 1,000 people are not going into that street every weekend, and it might be three years before the licensing authority has to take that into account. You cannot provide that they have to review it every month, but three years is a long time in some cumulative impact scenarios.

Q123 **Baroness Watkins of Tavistock:** Evidence from 15 local authorities identified that super-strength alcohol is a prime cause of concern to local communities near the point of sale. Some of them, following guidance from the Local Government Association, have introduced schemes inviting or requiring off-licences to stop selling alcohol over 6% by volume. Are these schemes lawful?

Professor Roy Light: We could not possibly give you legal advice here without our insurance policies to cover us.

The Chairman: We could not afford it, by the sound of it.

Professor Roy Light: The Portman Group, on which I sit as a member of the independent complaints panel, has recently wrestled with this. It may be worth contacting the Portman Group. There are four initiatives at the moment. There is one government initiative looking to take 1 billion units of alcohol out of the system. They suggest that people continue to drink as much but at lower alcohol levels, so everyone benefits and no one loses. There is a responsibility pledge by the industry to try to lower the levels. The Portman Group recently said that 500-millilitre cans of high-strength lager are against the Portman code, because the code says it must not encourage immoderate drinking. If you open the top of one of these cans you cannot reseal it, and it is more than your daily limit. The Chief Medical Officer has just changed the limits. There are no longer daily limits, as you know; there are now weekly limits, so that basis does not exist any more. That is being looked at again.

As far as schemes in local areas are concerned, if there is a problem with particular premises and perhaps street drinkers in an area, and it is properly researched and done, as the first one was, in Ipswich, it can probably be justified as a condition, but if it is just the police saying, "We would like to see that on your licence", probably it is not.

Baroness Watkins of Tavistock: We have had clear evidence presented to us over the last couple of months about not only the lager or beer you are talking about but white cider and its availability, in particular that young people and those with alcohol problems are tanking up on it before going to licensed premises. It seems to be a real problem. Although you cannot give us legal advice, do you see it as a problem for society and one that somehow we should find a way round?

Professor Roy Light: It is certainly something that warrants further investigation to see whether or not it is a problem. It is highlighted and flagged by several institutions; in particular, some people from Portsmouth are very vociferous about it. The Portman Group has looked at it and may be helpful. The issue with licence conditions is that they have to be targeted specifically on the premises and have an evidential base. If you have that, you probably are okay as far as the Licensing Act is concerned, but are you okay as far as competition law is concerned? The authority suggesting it may be in breach of competition law, and if retailers agree to impose one of those conditions they may be in breach of competition law. Local authorities owe a duty of care to businesses in their areas, so they may be in breach of that duty, too. As the Local Government Association guidance to local authorities says, before they think about introducing one of these, they should get legal advice. I will leave my card, but may I suggest you get legal advice?

John Gaunt: If you read the LGA guidance, it is full of "You must get legal advice". A quarter or a third of the advice is "Take legal advice", which probably answers your question in part. It is a very difficult area. The question I would pose is a slightly wider one. Is the blanket approach of a community scheme the right one? The alcohol—the beer, wine or white cider—is being sold by specific premises. If it is a cause of crime and disorder, or whatever it may be, why not address that with the individual premises concerned? That has been the approach used in my home city of Sheffield very effectively.

Andrew Grimsey: I agree. Craft beer is wholly different from White Lightning or whatever the brand is. Going back to the point about the golden thread, every application must be treated on its own merits. As long as there is room for an operator to say, "I am different; I am not part of this problem. In fact, I might be part of the solution because my beer has a high price and it is for connoisseurs", I imagine there is legality.

The Chairman: Gentlemen, thank you so much for being excellent witnesses and for being so generous with your time and answering our questions so fully. Having had an all-male panel, we are now going to have an all-female one. Thank you very much for being with us today.

Senior District Judge Emma Arbuthnot, District Judge Elizabeth Roscoe, Magistrates' Association – oral evidence (QQ 124-132)

Examination of witnesses

Senior District Judge Emma Arbuthnot, Chief Magistrate; District Judge Elizabeth Roscoe, Westminster Magistrates' Court; and Sheena Jowett JP, Deputy Chairman, Magistrates' Association.

Q124 **The Chairman:** Ladies, good morning, you are most welcome. I extend a warm welcome to you and thank you for being with us and giving evidence to our inquiry. A list of Members' interests relevant to the inquiry has been sent to you, and copies are available for you today. This session is open to the public and is being broadcast live in audio, and is subsequently accessible via the parliamentary website. You will be issued with a verbatim transcript of the evidence, which we will ask you to look at. It will then go on to the parliamentary website a few days after the session. Perhaps you would check the copy of the transcript for greater accuracy and inform us of any corrections. If there is anything you would like to amplify or supplement, let us know afterwards. We were expecting a photographer but they are either not coming or have been delayed, and it should not delay our proceedings.

To start the questions, from where you sit, are you content with the way the Licensing Act 2003 is currently functioning?

Senior District Judge Emma Arbuthnot: Yes. Initially, there was an upsurge in appeals, but that appears to have settled and we are getting many, many fewer, probably in the last five years. We did a bit of research before coming here today. For example, Westminster, which is a pretty busy area for licensed premises, is running about one effective appeal a year. We checked in one or two other areas. I think Cornwall has one a year, and in Norwich there are one or two a year. We are not talking about very many.

District Judge Elizabeth Roscoe: I agree. There was a big change and there were a lot, and then things settled down; it became a bit clearer and dropped off.

Sheena Jowett JP: The area I sit in is in west Wales: Ceredigion and Pembrokeshire. We see very few appeals, and in those we do not seem to have any evidence that magistrates' decisions are being queried.

The Chairman: When there is an appeal from a licensing committee, do you believe there is uniform knowledge among those hearing the appeal? For example, planning appeals go to professional inspectors who are appointed and trained for that specific purpose by the Secretary of State. Should there be a similar procedure for licensing cases, given that the bulk of your work is, from what you say, more criminal?

Senior District Judge Emma Arbuthnot: The problem with training is that we do it so rarely that I am not sure it would be worth doing it for the few cases we have. Those cases are always very well prepared by counsel. Judges certainly have reading time and get into reading. There are one or two cases the judges would

be aware of when trying cases, and they have judgment writing time at the end, so in my view it works well.

District Judge Elizabeth Roscoe: You said we do not do a lot of quasi-civil work. In fact, we do a surprising amount. When I was at a different court, a referral court, I was probably doing 40%-plus of civil jurisdiction. The most obvious is family court work, which is all civil. We do forfeitures and football banning orders. I have a long list. We do a lot of quasi-civil work. In that sense, doing civil work is not particularly unusual.

As for training, it is difficult. Even if you had, say, four appeals in a year, they could be on such very different points that the training would have to be quite wide. Then you have no idea when the case is going to be heard and what the Bench tribunal availability is going to be. The information is out there, and counsel are usually prepared and only too happy to provide you with previous judgments that support their arguments one way or the other.

Sheena Jowett JP: Magistrates are used to looking at evidence being presented to them for the first time, so we can weigh up both sides of an argument and come to a decision on what we have in front of us. It is not unusual for us to have cases that we do not see very often. I sit in an area where sometimes we get fishery cases. We do not see them very often, but we still deal with them more than adequately.

Q125 **Baroness Henig:** If you do not think that more training is the route forward, should appeals be heard only by district judges with particular experience of licensing matters?

Senior District Judge Emma Arbuthnot: I think Sheena hit the nail on the head. It is often factual. It must be said that occasionally it is very complicated law. For today, I read a recent judgment of Judge Roscoe and thought, "Blimey, I would not like to have decided that". It was very complex. Otherwise, they are often bits of detailed facts that the justices are more than able to deal with. It really depends. You would have a justices' clerk, or deputy justices' clerk, who would look at the sort of case it is and then make that decision.

District Judge Elizabeth Roscoe: To a certain extent, the decision-making affects the public community, and of course that is what JPs are, and indeed all of us are. It is a follow-through from that. Judges and magistrates alike may well have considerable local knowledge. I cannot say I know what the West End is like at 4 o'clock in the morning.

Senior District Judge Emma Arbuthnot: Come on.

The Chairman: It could be arranged.

District Judge Elizabeth Roscoe: Thank you, but no. Most magistrates will have some idea of what is going on in their local area.

Sheena Jowett JP: In the area where I sit, we do not have a district judge sitting regularly. A district judge comes in for certain cases, particularly youth cases, where we need that level of expertise. What might be useful is guidance. The Judicial College is strapped for cash, as everyone is these days, and some guidance on relevant questions and previous decisions is always useful. As we have heard, we often get that anyway from the briefs that have been prepared.

Senior District Judge Emma Arbuthnot: It might also be useful to have a pack that goes to justices' clerks. They could determine and then send the pack to the legal adviser dealing with the case or the judge or the Bench.

Sheena Jowett JP: Indeed.

District Judge Elizabeth Roscoe: It is only uniformity of approach that you want, not a decision.

Q126 **Baroness Eaton:** If the initial route of appeal is to continue to be to magistrates' courts, is there a case for a further appeal to the Crown Court, as in the case of taxi appeals? Why should licensing appeals not go to a circuit judge at the county court? You have partly touched on this. They have more experience of dealing with civil issues. You touched earlier on experience of civil issues. Perhaps you could look at taking it to the Crown Court like taxi drivers.

Senior District Judge Emma Arbuthnot: It depends on what your witnesses are telling you. If at the end of the day you think the system is not working, there is a reason to look at other ways of having appeals. We probably have about one a year and fewer would go to the Crown Court or county court, and I suppose there will be the same problem of lack of expertise. If there is another layer, it will be costly and cause more delay. That is all I can say about it.

District Judge Elizabeth Roscoe: Negotiated appeals are the ideal, because the licensed trade, the local authority and the public at large have to work together to get what the parties want. If there are persistent appeals, there is no real incentive to negotiate. People may think—although they might not because of the cost—“Well, I may as well chance my arm. I will go for it, and if I lose I can negotiate because I still have another appeal”.

Sheena Jowett JP: There is judicial review. In that respect, if we have not done things properly or judicially, there is a layer of judicial review of our decision, but, generally speaking, we get very few. We have no evidence in the Magistrates' Association that our appeal decisions are not accepted by the parties involved.

Q127 **The Chairman:** There seems to be a bit of a mismatch between the evidence from you and evidence from the Home Office, practitioners and others on the ground.

Senior District Judge Emma Arbuthnot: In what sense?

The Chairman: You say that there are very few appeals. The practitioners from whom we have just heard say that when there are appeals they take a long time and are very costly. While an appeal is going on the decision is stayed, obviously, so there are a number of reasons to prevent appeals going forward.

District Judge Elizabeth Roscoe: Once the licensing authority has refused, changed or reviewed whatever it is, if there is to be an appeal there is a 28-day time limit. The appeal has to be put in within that time limit. Many more appeals start than actually finish with a court hearing. A lot are put in as a holding position, or indeed as a proper appeal prospect. It will take a certain amount of time. Hearings before licensing authorities are, as far as I can tell, comparatively short. I am not an expert; I just look at the paperwork on the appeals I have done of licensing authority decisions. A small licensee might not be represented, so the

hearings are comparatively short, and there are not large amounts of evidence being put in. Ours are the full hearing, if you like.

The Chairman: Can I play devil's advocate? We have heard from residents that often they do not hear that an application has been made, whereas if it is planning it is much more in their face. They do not hear about the first stage of the process. The cost of an appeal to an individual resident, or even a street of residents, who may not be very well off, is absolutely prohibitive. We are picking up that there are no rules of evidence and decisions are taken on a haphazard basis by licensing committees. Some are accused of bias one way, some are accused of bias another way and some do not turn up for training. It is haphazard. Are you not asking yourselves whether there is an underlying reason why there are not more appeals?

District Judge Elizabeth Roscoe: I have wondered about the review procedure, because initially I thought that we would have a big flurry of changes, a quiet period and then there would be lots of review applications. It is not for me to look into that; I do not know how these things are working on the ground and whether they are satisfactory, but I thought there would be review applications. That has not happened. I cannot give you the reasons why it has not happened. If it has happened and there have been lots of review hearings before the local authorities brought by local residents, I accept that they have not appealed, but I do not know whether that is because applications have not been made or because they are satisfied with the answer.

Senior District Judge Emma Arbuthnot: I do not think we can help with costs. I am afraid it is so outwith what we are doing.

The Chairman: Thank you. I thought it was worth putting the question.

District Judge Elizabeth Roscoe: It is difficult for us to judge why something has not come to us.

Baroness Eaton: Judicial review is such an expensive process that it would be prohibitive for most of the people we are talking about.

District Judge Elizabeth Roscoe: It is, but if you are putting in another layer, and the case goes to the Crown Court, it can also be judicially reviewed. Generally, the Crown Court is considered to be more expensive than we are. I am not sure. It may be of value, but personally I am not sure what it is.

Q128 **Lord Blair of Boughton:** My question is in two halves. First, there has been criticism by witnesses about the length of time appeals take to be listed and heard. The second question, which is more specific, is whether or not there should be an immediate ban on the sale of alcohol even though an appeal has been lodged. Should you be closing premises pending an appeal or should there be some kind of interim process to get to that point? I am thinking of a case, which is still sub judice, related to deaths in a nightclub. In cases such as that, it seems we just close down the premises and wait for the appeal, but there are no interim steps and no hearing to work through that.

Senior District Judge Emma Arbuthnot: I will deal with the first part on the length of time for appeals to be heard. There are delays in the courts, and these sorts of cases are multi-day cases. The parties have not had what I call a full hearing at review stage in front of the local authority, and they have to prepare

their case properly for a full hearing, including all their experts and everything else. At Westminster, Judge Roscoe and her colleagues have brought in a series of case management directions, which I think we might have sent to the Committee in advance. That gives a timetable that brings it up to about three and a half months, and we would expect to list it thereafter. I suspect it varies around the country, because it is difficult to get the three or four days required together. We are extremely busy courts, and it is difficult to prioritise this over, say, allegations of domestic assault or something like that. I appreciate that it is a matter of prioritising, but it is difficult because of the length of the hearing.

Sheena Jowett JP: Magistrates' courts are changing. A lot of our work will be taken out of magistrates' courts with the single justice procedure. In time—it will not happen immediately—there will be more space in magistrates' courts possibly to hear licensing cases. We need to embed the decisions being made at the moment before we make decisions on where licensing appeals ought to go. I firmly believe that they ought to stay in magistrates' courts. We are local; we know the local situation, and we can weigh the evidence put before us.

District Judge Elizabeth Roscoe: If you go through the directions, of which I think you have a copy, the practice should result in the case being ready for hearing, if they are adhered to, in about 10 weeks, because we start very promptly. Those are the directions used in Westminster. We found that there were very long delays, and about a week before getting to the hearing the parties would settle, and then you had five days of court time you were not able to use. From our point of view, it was important to front-load the directions so that things got ready quicker. We do that, and robust case management helps.

There was a suspicion—I have no idea whether it was true—that if, say, there was a review of licensing that was moved from 3 o'clock to 11 or 12, certainly in Westminster if someone managed to keep that going for 12 months, they could be making fairly hefty profits during the appeal process. They had that extra licensing time, so it was worth putting in an appeal, even though they knew it would perhaps be unsuccessful, and withdrawing it at the last minute because of the costs. That was why we instigated those directions. That means you get to the two and a half or 10 weeks, but then you need time for Bench availability.

Senior District Judge Emma Arbuthnot: The second part of the question was about an immediate ban on the sale of alcohol.

District Judge Elizabeth Roscoe: I will go on to that. An immediate ban on the sale of alcohol is a problem because it is a livelihood and there is a right of appeal. It is quite a short hearing, as far as I am aware, at the local authority. Unless there is a very good reason, it could be quite prohibitive to have, say, a complete ban on the sale of alcohol. If there has been serious crime or disorder, there is the interim steps procedure. If it is a closure order, in 48 hours there has to be a hearing before the local authority for interim steps—I think it is still 48 hours. The authority can then suspend the licence, alter the conditions, close the premises, get rid of the licensee and all sorts of things. There is a review within 28 days. The judgment Emma is talking about was one where the review closed the premises and there was an appeal. The licensed premises said that, because they had appealed, all the conditions came back and so they could sell alcohol. The ruling I

gave was that the interim steps continued. As far as I have been told, I have not been overturned on that, and that was a couple of years ago. If there are interim steps and there is a ban, as far as I am aware it will continue until the appeal. That depends on the interim steps, so there is a procedure for doing that.

Q129 Lord Foster of Bath: We know that magistrates' courts are not courts of record and decisions are not treated as precedents, but Judge Arbuthnot talked earlier about the need to be aware of one or two cases that one would want to take into account. Judge Roscoe talked about the need for uniformity of approach, if not of decision. Clearly, that is very important, for instance, to multiple retailers. Very often, decisions are not written down and recorded. Do you believe that to get consistency there would be merit in having all the decisions and the reasons for them recorded and published online?

Senior District Judge Emma Arbuthnot: The majority of these decisions are written down; we give formal judgments that are handed down, so paper documents are available. I suspect it is the same for the Bench as well.

Sheena Jowett JP: We give our reasons and they are recorded. It is always good to have them to refer back to. We can look at what has happened previously. Transparency is essential; people need to know what decisions have been made.

Lord Foster of Bath: To be clear, you are saying that most but not all are recorded, and there is not an easy method of getting this information, or is there?

District Judge Elizabeth Roscoe: Perhaps the fundamental point is that they do not have to be written out and handed down. Certainly, when I have done them I have found it easier to do that, which means that I too have a record if I am judicially reviewed. That is always helpful. Generally speaking, longer cases especially are written down, but there is no record of the evidence other than the note of the legal adviser or court associate.

Lord Foster of Bath: Do you believe that it should always be done, not normally be done, and should it be more easily available?

District Judge Elizabeth Roscoe: I think you are asking rather a political question about which I probably have views.

Lord Foster of Bath: Can we hear them?

District Judge Elizabeth Roscoe: I think there are arguments, if you want to go that way, for recording in magistrates' courts—I do not know whether or not the chief agrees with me; I am here on a limb by myself. There is a cost to that and there will be downsides. I suppose you could bring it in just for licensing hearings, but if you do that you may find there is pressure to bring it in for all the other semi-civil jurisdictions that we do. I do not know. I would not necessarily argue against it. I do not have a problem with it.

Senior District Judge Emma Arbuthnot: The cases that might not be put down in writing are the very short ones involving a minor tweak, perhaps a one-hour difference in the licence or something like that. Then I could see a reason for not doing it, because the parties are not going to take it any further and it is fact based. For anything more complicated, my practice would always be to prepare a written judgment. As to the way we spread it around, obviously counsel have it and essentially it then goes back to whoever is paying their bills, but it would be

a good idea to have that sort of information sent to justices' clerks through the JCS so that they could spread it, particularly on matters of principle rather than individual detailed cases that do not matter quite so much. As a matter of principle, it would be useful to send it.

District Judge Elizabeth Roscoe: I was certainly helped initially when the Act first came into force, because Westminster was very clued up; it had a very good licensing department. The people who worked there were excellent; one young lady, a Ms Davies, is still there. They instructed very experienced licensing counsel, and often the opposition were licensing counsel. It is a little group, certainly in the London area, so they all know one another. If there is a new decision it is referred to, so we got information through them. Occasionally, decisions are published in licensed trade magazines or whatever, so there is a certain amount of dissemination there. I do not know whether there is any dissemination among local authorities. Westminster does a lot, but local authorities in west Wales may not. Westminster has people who are very knowledgeable; Ms Jowett's local authority might not. Ideally, yes, there should be dissemination, but there comes a point when you are bombarding people with a lot of information that they just file because it is not relevant and they do not read it.

Sheena Jowett JP: It is essential that the parties understand why we have made the decision on an appeal, and that our reasons are given in open court in plain English and are written down by the parties involved. Our legal advisers record those decisions, so people can look back and see them if they have not understood on the day.

Q130 Lord Davies of Stamford: It seems to me that a highly problematic situation has been revealed to us this morning. I would like to direct my question to Judge Roscoe, who obviously has experience of dealing with these appeals, and to Judge Arbuthnot as chief magistrate. Magistrates' courts are not courts of record. It follows that their decisions are not part of the jurisprudence of the common law, so you are not bound to be guided by them. You are bound to judge each case that comes forward on its own merits, taking account of the general principles of the law and any statute law that may be relevant. That is a different matter.

On the other hand, you have given us evidence this morning that in practice you are anxious to hear about such precedents and that you take account of them, and that sometimes they are properly and officially recorded and sometimes not. Sometimes you have to find them in licensing journals, or whatever you just quoted. That seems to me a very haphazard system. It also seems to be very unclear for the public, because in theory the decisions of magistrates' courts are not part of the law of the land, which we are all supposed to know about, but we have heard this morning that in practice they are guiding magistrates in their decisions; in other words, anybody with an interest in this matter, or who potentially wants to make an appeal, must study the precedents as far as they are available. There seems to be a very fundamental contradiction.

District Judge Elizabeth Roscoe: Perhaps I have not explained myself clearly. I was saying that that was how practitioners and local authorities disseminate it. If we hear a case, we do not refer to trade journals or magazines. If there is an authoritative textbook we would refer to that clearly and in court; we would say we were referring to it.

As to cases we take account of, even if they are at the same level, they are not binding; we consider them, but only if they are produced to us by the people in court, whether lawyers or private individuals. If we know of a case that is perhaps contradictory and we are going to take account of it, without doubt we have to produce it with copies to hand to the people in court, so that they know what we are considering and have a chance to address us on it. We never consider anything other than the evidence before us in the court, along with the law, the statement of licensing policy and Section 182 guidance. We do not refer to trade manuals.

Lord Davies of Stamford: You are guided in practice by precedent.

District Judge Elizabeth Roscoe: Precedent from a higher court.

Lord Davies of Stamford: Is it only from a higher court, not previous magistrates' court decisions?

Senior District Judge Emma Arbuthnot: We have regard to them; we read them. The example in point is Judge Roscoe's judgment that I referred to earlier, when she decided quite differently from an earlier judge who had looked at the same point. She was not bound by that earlier judgment, but the parties in front of her, as I understand from her judgment, referred her to it. She said in terms, "I do not agree with that earlier judgment". You have regard to it; you read it, and you may decide completely differently that that judge got it wrong, and that was what she did.

Lord Davies of Stamford: Do you think it is a satisfactory situation? Is it clear to what extent precedent is having an influence on the law and to what extent the public should take account of precedent, taking account of the law? Do you think it is acceptable that the source of these precedents is haphazard, to use my word, because sometimes these things have been recorded and sometimes not? Sometimes they are brought forward by counsel and you do not know about them; sometimes counsel may choose to ignore precedents that they know about but do not suit their case.

District Judge Elizabeth Roscoe: They should not. Precedents which are decisions of a higher court are binding on us, and we always take account of that, assuming we know about it. We deal with a vast swathe of work. If you have qualified lawyers, you expect that if you miss something they will bring it to your attention, because when you are dealing one day with a civil aviation Act, and then with a fishing Act, a dentists Act or all sorts of Acts, some of which I admit I do not hear about until I get to deal with them, you have to look it up. You expect to have precedents from higher court authorities produced before you. You read those and you have to take account of them.

The Chairman: There is the possibility of a judicial review, so the fact there have been no judicial reviews probably means that—

District Judge Elizabeth Roscoe: But there have.

The Chairman: It is up to people to quote the authority. You are required to look at the merits of each individual case, so in a case in, say, 2014, a judge may have reached a different conclusion from an earlier judge.

District Judge Elizabeth Roscoe: At my level, yes.

The Chairman: If people are not happy with the outcome, it is up to them to review it judicially before the High Court, and that is not happening.

District Judge Elizabeth Roscoe: Not as far as I am aware, but at the early stages there were judicial reviews because it was a new Act and people were not quite clear how things were going to work. I am not aware of any large numbers, but we do not always get told.

Sheena Jowett JP: From the information I have been given, I believe there have been no more than three judicial reviews per year. Appeals to the magistrates' courts are rare; judicial reviews are even rarer, but obviously we take those into account. As magistrates sitting in court, we seek the advice of our legal advisers on whether there are any precedents. We look at the evidence before us and the way it is presented in court.

The Chairman: Exactly. One thing that concerns me is that it is not written down and recorded by, say, a clerk in the magistrates' court, unless I have misunderstood what has been said.

Senior District Judge Emma Arbuthnot: A clerk or court associate writes or types a note of all the evidence, so there is that record.

District Judge Elizabeth Roscoe: And the submissions and the decision.

Senior District Judge Emma Arbuthnot: We are just not a court of record.

District Judge Elizabeth Roscoe: There will be a note. They will not do it if you have written it out yourself, but there will be a record of the evidence, and it should be fairly full.

Lord Davies of Stamford: Is that just in Westminster or generally throughout the country?

District Judge Elizabeth Roscoe: Everywhere. Westminster brings their own person, who takes a shorthand note, so it is verbatim, but everywhere in every case before the magistrates' court there should be a note of all evidence and what is said.

Lord Davies of Stamford: It is a slightly curious situation.

The Chairman: Can we move on to the cost and delay of appeals? If there is time, we will come back to that.

Q131 **Baroness Greener:** We have talked quite a bit about delay in appeals and the lack of appeals. I think you said there was about one a year. Judge Roscoe said that far more seemed to start than finish, which leads to questions about mediation. Clearly, there is informal mediation. Is there any argument for a more formal process of mediation? Could residents and other third parties be involved? If the answer is yes, how would it work?

District Judge Elizabeth Roscoe: It is not a question I am particularly qualified to answer. In a sense, the best mediation is negotiation that takes place between the parties directly. Certainly, that happens between the licensing authority and the licensee. Whether or how a resident could get involved in some form of formal

mediation, I do not know. I am not qualified to say whether that is useful or workable, but certainly the idea of negotiation between the licensee and the local authority seems to me absolutely what the Licensing Act is supposed to do, which is to transfer responsibility for licensing from what used to be a licensing Bench, which, although very good, was unelected, to the elected local authority. If there are negotiations between people working in a community and the people managing it, that seems fine. Mediation is a bit outwith my knowledge. If a case has been withdrawn and there is a consent order, I assume that negotiations have been entirely successful. If you tell me that all the residents are up in arms, clearly it has not been, but I do not know.

Baroness Grender: There is an argument that an appeal, even for a small business, is prohibitively expensive. Although a small business may wish to appeal, it does not, so a formal mediation process might help in that respect.

District Judge Elizabeth Roscoe: The appeal is not expensive. I do not know how much it costs.

Baroness Grender: I understand that to initiate an appeal costs £400.

Senior District Judge Emma Arbuthnot: Counsel and preparation is the real cost.

District Judge Elizabeth Roscoe: If someone puts in an appeal, they have the £400 cost, and everyone knows there needs to be time to negotiate. There is a certain amount of preparation and they can come to the court and say, "Please do not make us incur extra costs. We just need two weeks to sit down and sort this out". I do not think a court would be unsympathetic, depending on what was going on. Big premises and people fighting in the street, or a little corner shop that wants to sell a few bottles or cans of beer are different cases. The four weeks mean they have to put in their appeal to hold the door open for that negotiation. There is nothing to stop them negotiating in the four weeks and putting in the appeal on the last day. If they can sort it out in two weeks and everyone is happy, they will get it back before the licensing committee. That is a tall order, but there is nothing to stop it. I am afraid that was a long non-answer.

Sheena Jowett JP: In other areas, for example the family court, mediation works exceedingly well. It is not for the Magistrates' Association to say whether mediation should be brought into licensing, but it could resolve the situation before it went to appeal, or at least clarify the areas of dispute, which would reduce the amount of time needed for the appeal. Mediation could easily be considered.

District Judge Elizabeth Roscoe: It could be, but it also has a cost, and if it does not work you are back where you started.

The Chairman: But for residents it might be appealing because it would be less expensive than the £400 fee.

District Judge Elizabeth Roscoe: It could be, but if you have mediation and it does not work the problem is: what happens then? Unless you have some way of making that final, there will always be some form of judicial review. You might go straight to judicial review, but it will be very difficult to have either a judicial review or any other High Court hearing, unless you have had an absolutely full hearing, with witnesses and so on, at mediation. It is a bit clumsy. I am not sure how it

could possibly work, but I do not have any problem with mediation. It is not really for us.

Sheena Jowett JP: If mediation in family court cases does not work, it comes back to the family court. I surmise that the same may happen, if it is deemed possible, in licensing. If mediation does not work, the case will go on to the formal appeal procedure.

Baroness Grender: To examine that further, it might feel more accessible, especially to a resident in this arena, if mediation is there as another stage to go through.

District Judge Elizabeth Roscoe: Yes, but that is not something I am particularly qualified to answer. I do not think there is any particular objection to it; it is just not a matter for us.

Sheena Jowett JP: It is seen as less formal than attending court, and possibly less stressful for the people involved.

Q132 **The Chairman:** You may have heard during the previous evidence session that lawyers quote case law to licensing authorities, which then turn round and say, "Do not quote case law at us". Would you be surprised if that is happening?

Senior District Judge Emma Arbuthnot: It depends on the level of case law. If it is our decision it is not binding, but if it is the High Court or a Divisional Court I would not be surprised if they did. It is a matter for them.

The Chairman: Something is vexing me and I would like some clarification. An interim step was taken and District Judge Knight on one set of circumstances reached one conclusion, and District Judge Roscoe, presumably on a different set of circumstances, reached a completely different conclusion. Is that not confusing for people?

Senior District Judge Emma Arbuthnot: It was very much on the law and it was a very technical point, if I may say, but I will leave it there.

District Judge Elizabeth Roscoe: I am afraid this is one of those decisions where at the end of it you are going to say, "Well, she would say that, wouldn't she?" The fact is that, having done a fair bit of licensing law and gone through the law with a fine-toothed comb, I thought, I am afraid, that Judge Knight got it wrong.

The Chairman: But neither decision is binding on any successor court.

District Judge Elizabeth Roscoe: No, but I rather like to think that mine was better argued.

Senior District Judge Emma Arbuthnot: Hers was very detailed. If I had the point in front of me, I would read it.

District Judge Elizabeth Roscoe: I went through it in rather more detail than she did, with a bit more analysis. I was considerably helped. I had two Silks and a very senior junior making a lot of representations to me, but it was very tricky. It is not authoritative; it has not been judicially reviewed. I like to think it has not been judicially reviewed because, if it was, I would be upheld and then it would be a precedent, but I may be entirely wrong about that. I think mine was more grounded in showing the basis for the decision.

The Chairman: Therefore, there could be a third case and another decision on interim steps.

District Judge Elizabeth Roscoe: That was certainly a decision I circulated among my colleagues, but I do not know how many of these cases come up. That was two years ago. Even if they had a quick skip read and it came up, the chances of them saying, "Oh, yes, Judge Roscoe did a judgment on that", are slim. But it is there, and I hope and expect that there would be some distribution among local authorities perhaps, or that licensing councils would research it.

The Chairman: Do you think local authority councillors who sit on licensing panels have sufficient training?

District Judge Elizabeth Roscoe: I do not know; I have no idea what training they have. Given the appeals we get, which are quite few in number—I heard the percentage earlier—it does not appear that too many people are disgruntled about the decisions.

The Chairman: There is conflicting evidence on that.

District Judge Elizabeth Roscoe: It is not something about which I have any knowledge. I do not know what their training is; I do not know how they are picked at Westminster, let alone anywhere else.

The Chairman: Thank you, Ms Jowett, Judge and Chief Magistrate, for being with us and for being so generous with your time and answering our questions so fully. We are very grateful to you.

Police Superintendents Association, National Police Chiefs' Council, Police and Crime Commissioner for Devon and Cornwall – oral evidence (QQ 133-143)

Examination of witnesses

Chief Superintendent Gavin Thomas, Police Superintendents Association of England and Wales, Assistant Chief Constable Rachel Kearton, National Police Chiefs' Council and Alison Hernandez, Police and Crime Commissioner for Devon and Cornwall.

Q133 **The Chairman:** Good morning, ladies and gentlemen. I bid a very warm welcome to our witnesses. Thank you very much for being here today and for agreeing to give evidence to the Committee this morning.

A list of Committee members' interests relevant to the inquiry has been sent to you and is available to you this morning. The session is open to the public, it is being broadcast live and is subsequently accessible via the parliamentary website. A few days after the session, you will be notified of the transcript and a copy will be sent to you. Could you check it for accuracy and notify the Committee of any corrections as quickly as possible? After this session, if you wish to clarify, amplify or supplement any of the points you have made, if you could do so as soon as possible, that would be great.

I will ask a general question at the outset. Could you each give the Committee a general impression of the impact of the Licensing Act on the police and emergency services over the past 11 years? Is it working as well as it should be? Are there areas where you believe there is room for improvement?

Alison Hernandez: A number of areas of impact of the Licensing Act have become apparent to me, particularly since I was elected in May. I will highlight a broad range of things that have come to my attention. One is that last year policing was undergoing a police funding formula review, which was paused, and we are now under another police funding formula review of how money is allocated to police forces. The impact of bar density in an area of policing is recognised as having an impact on policing or crime and disorder in that area. It is interesting to highlight that, when looking at the police funding formula and how money is allocated to forces, the number of bars and bar density is definitely an element that was considered last year and is being considered as part of the review this year. It shows that there is an acceptance by government that there is a direct correlation between bars, crime and disorder and policing.

On general issues, I have been consulting on my police and crime plan for the summer. It has come out quite interestingly that the public feel that they would like more visibility of police officers where they live. The reality is that police officers spend a lot of time on shift in the night-time economy on Friday and Saturday nights in towns and cities, rather than in the communities where people live. Considering that domestic abuse is becoming a bigger and bigger issue to

police, it is becoming a challenge for police forces to offer a response regarding the way the Licensing Act has impacted on towns and cities across our patch. One of the other areas that is really critical and has really affected us is the increase that has come through in health and medical costs. Queues at A&E and things like that, which have been an impact of late-night drinking particularly, have affected the cost to the NHS, to the extent that it has created streets triage, whereby people can get help on the street, rather than having to go to A&E. We have had to look at different processes with our health colleagues. That has created real effort from local communities. We have had volunteers such as street pastors, who see the effect of the Licensing Act particularly in the late-night economy, and I congratulate them on their efforts. They are well trained and well considered, and they play a great role in ensuring that those who are the most vulnerable, who are out drinking late, are supported. Those are some of the general things that I would like to set out for you. My colleagues will be able to answer for you on the more specific policing elements.

Chief Superintendent Gavin Thomas: Good morning, and thank you for the opportunity to speak to you today about a very important area not only for policing but for public services in communities. I consulted a number of my colleagues across the country before coming to you today, so I can support some of the things that I shall say. In direct answer to your question, we are broadly supportive of the intent of the Licensing Act, which was brought in in 2005, but there are areas where I think the Act can be strengthened to support communities. The three broad areas I would focus on are consistency, training or development of those involved in this through their knowledge and approach, and partnership working.

The Chairman: Do you mean consistency in decision-making?

Chief Superintendent Gavin Thomas: Consistency in decision-making and, from what I see, consistency in application of licensing matters, particularly within an area. To amplify that point, a policing area may operate under six local authorities, for example, and those six local authorities may apply a different interpretation or a different application of the licensing legislation. That produces some complexity in how we apply the law to communities within that policing area. The strengths are—certainly from the feedback I have had from my colleagues—that the Act is seen as an enabler. A good example is that, in a big city area, a nightclub that holds in excess of 2,000 people was badly managed over a period of 18 months, and was high risk in that city area. That resulted in firearms incidents and stabbings. In excess of 40 officers were deployed during some peak periods to police it by way of high-visibility policing. I emphasise high-visibility policing, because demand goes beyond just visibility on a Friday or Saturday night. The legislation allowed an expedited review, the premises were closed down and the demand has been zero, not only on police resources but, as Alison has just said, on other public services as well. There are positives in what the legislation is delivering across the country.

Assistant Chief Constable Rachel Kearton: Thank you for the opportunity to speak to the Committee today on behalf of the National Police Chiefs' Council. I will reinforce a number of the points that have just been made by the other two.

Some of the positive impacts of the Licensing Act 2003 are that it has given the opportunity for a number of responsible authorities to come together and share responsibility. It is not just a police-focused approach. It is a combined consideration of the impact on the community and on the commercial opportunities that an application for a licensed premises might have. It is a bringing together, and there has been some extremely positive partnership working.

On the other side of that, the intention was, as I understand it, to be more flexible in the opportunities available for licensed premises. It was intended to stretch the hours of operating and to give much more flexibility in the issuing of licences. In reality, it is a competitive and commercial environment, and when a licence for extended hours has been applied for, it has encouraged other licensees, quite naturally, to apply for one, too.

There has been a concentration in hours. In the policing context, we have had a reduction in police officers over this period, with an increase in the complexity of what we work with. The social environment is important. People's drinking habits have changed over the period; we can probably cover that in more detail later. All of that, taken together, has complicated the picture. There are opportunities. It is a matter of working within the context of the Licensing Act. With more rigour, we can develop it further for the benefit of communities to keep them safe.

Q134 Baroness Grender: I want to talk to you about the late-night levy. It was introduced in 2011 and was taken up by only seven local authorities, and 70% of the income raised goes to the police. It does not specify that the 70% should be spent on late-night issues. Do you think that the late-night levy should be changed in some way to ensure that the money is spent in that area?

Assistant Chief Constable Rachel Kearton: Do you want to direct that to one of us specifically?

Baroness Grender: No.

Assistant Chief Constable Rachel Kearton: I will kick off. Policing is a 24-hour, seven-days-a-week business across 365 days of the year, and the impact of alcohol can be felt throughout that whole period of time. Late-night hours and the night-time economy extend over the night time, but the policing impact is often picked up the next morning when people are sober. Witness statements can be taken, victims come forward, and so on. People find damage on premises that they own next door to licensed premises, or whatever it might be. First and foremost, we are looking at the totality of the impact of alcohol and what may come from licensed premises.

On the other side, if the late-night levy had more rigour in its conditions, to give confidence to licensing authorities that it would be spent on policing, which it does not have at the moment, that would be an opportunity, because, as I said, the strongest part of the Act is the partnership working that we have seen develop over the period. It would give confidence to other authorities that the levy would be focused on challenging the impact of alcohol and on the licensing objectives to deal with that.

Chief Superintendent Gavin Thomas: To amplify that point, when the late-night levy was introduced, it was at a time when we did not really understand what the implications of the legislation were. What do I mean by that? In the night-time economy, the demand on policing has shifted significantly. The ONS statistics show that alcohol-related violent crime in the early part of the evening is about 23%. It goes up to 84% between midnight and 6 am. Manchester—GMP—has done a lot of work around this. Between 3 am and 6 am, 21% of all recorded crime is alcohol related. That has risen from 8% in 2003. There has been a significant change in demand as regards the timescale for violent crime over the 24-hour period.

The other point, to which I alluded in my opening statement, is that things have become more complex. A violent incident that takes place in a licensed premises or on a street is not just a straightforward investigation about somebody who has been assaulted, for example, and the perpetrator and witnesses. There is now a large amount of digital evidence, with people who have photographed it and downloaded it. It is a more complex investigation than we were perhaps used to between 2003 and 2005. There is a focus on high-visibility policing in the late-night environment, but the complexity of policing goes beyond that. The resource implications for policing go beyond that pinch point on the street outside licensed premises during dark hours.

Alison Hernandez: Some of the reasons why late-night levies have been challenging to implement are that, if there is a business improvement district in the area, people are already paying a levy for business costs, and it becomes a bit more complicated. There are lots of business improvement districts. I think the businesses that are running those and contributing to policing some of the night-time economy through their funds.

I do not think that the legislation needs to change. In my view, it is about how the police and crime commissioner and the chief constable lay out, with the local authorities in the area for which they are responsible, how they would spend the money. It could be different in different local authority areas, depending on their needs. I would not want to be restricted; I would want the flexibility to have a conversation about how it would work for us in a local area. For example, it might be different in Torbay, in my patch, compared with Barnstaple. It is a matter of thinking about what we want to do differently. Would we want to spend it all on policing or all through a community safety partnership, which would be my personal preference—looking at how we use the money for prevention rather than for enforcement? I am really keen to see the inclusion of food establishments in the late-night levy, so that it is not just alcohol premises. An opportunity to expand it to other premises for the whole evening and night-time economy would be helpful.

Baroness Grender: Do you see the necessary rigour that you talked about in reporting, and therefore trust between the two parties—the 30% and the 70%—as a necessary evil in order to get higher uptake of late-night levies? Would you want local authorities to increase the number that adopt the late-night levy?

Assistant Chief Constable Rachel Kearton: I would personally like to see an increase in the number that adopt the late-night levy. That rigour will give

confidence to the other parties involved that it would be spent on a more community perspective. It would be a multiagency objective to provide the assurance that it was directed at managing the night-time economy better.

Lord Blair of Boughton: I want to pull something out of what you said, Mr Thomas, about the Manchester data. You were talking about a very large amount of alcohol-related violent crime in the early hours of the morning.

Chief Superintendent Gavin Thomas: Yes.

Lord Blair of Boughton: Geographically, is that in and around licensed premises, or are you talking about people going somewhere else and getting into alcohol-related violence?

Chief Superintendent Gavin Thomas: I do not know that level of detail.

Lord Blair of Boughton: Otherwise, you would suddenly have a huge increase in violence in a city centre, if it was all in the city centre. This is very much Rachel's point: the spread of the impact on policing goes on into the early morning and then the next day.

Chief Superintendent Gavin Thomas: All I can say is that there was a stark rise—8% in 2003 to 21% now—for Manchester city. To reinforce that with evidence, the ONS supports that stark percentage increase. Demand on police resources, which is what I am talking about today, has shifted from what we were traditionally used to pre-2003 or 2005 to later in the morning.

I support the preventive element in the measure. If the levy is to be applied consistently, there is an opportunity to look at the partnership element; instead of unilaterally making a licensing decision, we could have wider understanding of the implications of that decision on the health and well-being of the community in the longer term and the impact that it has, not only on policing but on other partners in the community, too.

Q135 **Baroness Henig:** I want to pursue further the issue of violence. The evidence that we have had so far is that there has not been greatly increased violence but that it is being pushed further back into the night. Now the suggestion is coming forward that there is increased violence, too. Anecdotally, I have been told by some door supervisors that they think there is more violence, but we have not seen that in the evidence that has been presented to us. Could I push you a little further on that?

Chief Superintendent Gavin Thomas: I think there has been a change in alcohol-related violence from what we would understand as public space to the private space. What I mean is that people are buying alcohol and consuming it at home. We are seeing a demand on policing—in fact, we were talking about this before coming into the Committee today—such that if you went to the high street on a Friday or Saturday night, where it is well managed and well policed and you have professionally trained door staff managing licensed premises, you would see high-visibility policing, probably just engaging but not actually running to incidents. Where you see the actual demand is when police are attending private premises, where there is domestic violence and violence within the private space.

The Chairman: From a policing point of view, if you have to move people from daytime duty to night-time duty, what are the cost implications? Are you paying overtime?

Chief Superintendent Gavin Thomas: Quite probably. I cannot answer that specifically, Chairman. There is some strong context. To remind the Committee, the measure was envisaged in 2003 and it came into action in 2005. A lot has happened in policing since 2005. We have had significant cuts in resources, with 19,700 fewer police officers across England and Wales. There is an impact, given the available resources, on managing the new and complex demands that I have just detailed. For context, in my association alone there are 28% fewer superintendents and chief superintendents since 2012. There are a lot fewer of us now than there were when the legislation came in.

The Chairman: I have grasped that, but are you allowed to pay overtime? I thought one of the reforms was that you cannot pay overtime. How are you incentivising police officers to go out and do night-time duty?

Assistant Chief Constable Rachel Kearton: On the back of what Chief Superintendent Thomas said, yes, there is flexibility to respond to an unforeseen incident by adapting to pay some overtime. That has not disappeared. Of course there is an increased cost. It is not a particularly efficient way to run the business. I would argue that, working with the on-licence premises, most of the time we can predict what happens; for example, on New Year's Eve. We all know that New Year's Eve is a national celebration, and it is a time when licensed premises tend to stay open. Traditionally, we would have had reflective jackets and police officers standing outside licensed premises to deal with the impact at those on-licences. This year—I was there to experience it personally—a number of police officers were standing outside extremely well-run on-licence premises. What most of my staff were actually doing, either single-crewed—double-crewed, if they were lucky—in individual cars, was buzzing around responding to domestic assaults. Now, unfortunately, we are in a situation where 20% of my staff respond to domestic assaults as their daily bread-and-butter business. More often than not, they are alcohol fuelled. As for where that alcohol comes from, we need to look at this in the whole, at the off-licences and the on-licences. There is the whole question of pre-loading, where people drink from an off-licence and go to an on-licence. In a sense, does it matter? If it is the alcohol that is causing the vulnerability, that is what we need to target.

The Chairman: That leads neatly to Lord Brooke's question.

Q136 **Lord Brooke of Alverthorpe:** As we know, there has been a big shift in the sale of alcohol from the on-trade to the off-trade. Those in the on-trade claim that the police unfairly target pubs and clubs because they find it easier than dealing with the off-trade, which, as you have just been advancing, is arguably responsible for fuelling a significant proportion of alcohol-fuelled crime and disorder, yet is significantly less targeted by the police. Is that a fair assessment? With more alcohol now sold through the off-trade than the on-trade, should the police be rebalancing their efforts to focus more on the off-trade? If so, how could we facilitate that?

We have had evidence indicating that some people do not see a problem in this area, but listening to you this morning and reading some of the other evidence, I am aware that people have recognised that things are changing with the off-trade. How would you see changes being effected to help you in that regard? Also, could you answer the allegation that you focus too much on the on-trade rather than the off-trade?

Assistant Chief Constable Rachel Kearton: I can start the answer, and I am sure that my colleagues will have something to add. Going on from what I was just saying, to some degree we have dealt well, in partnership, with on-licence premises. There are a number of very successful initiatives, many of which are run and supported by the business and the industry, such as Pubwatch, Best Bar None and various other initiatives, which work very well in on-licence premises. One of the issues in this area is evidence and research. It is incredibly difficult to research the impact of somebody buying a crate of alcohol from one of the corporate supermarkets and the impact it has two months later when they decide to drink it. We need to do some work in this area to build the evidence base so that we are better informed. That is something that I have been looking at from a national perspective, as I hold the national portfolio for policing in this area. There is a lot of anecdotal evidence to suggest that alcohol impacts on behaviour whether in the home or outside the home. Probably the healthiest approach is to consider the successes we have had in partnership in some of the previous initiatives and see how we can apply them to the off-licence trade to work together to instil a better sense of corporate social responsibility around its sales and commercial approach.

Alison Hernandez: I would add to that the real importance of the consideration of a public health objective in licensing terms. Obviously, it is indirect. There is not as immediate an impact from a sale from an off-licence as there is from one in on-licence premises. How do we ensure corporate social responsibility on the part of those establishments? The public health objective will make a huge difference. Let us be frank about the pre-loading that happens in the night-time economy. All the effort is seen and exploded at the pub and club end of the spectrum. That is where all the effort goes, but the impact actually all comes from the pre-purchase and the pre-effort that happened before, and we cannot show that direct link, even though we know it. If we put the public health objective into licensing, it will help to bring that responsibility to those establishments, so that they have to do things to educate the people who are buying from them, and it will make sure that effort is going in at those levels. Businesses and the industry in my area are very proactive, and they are very happy with the police response. I have not had any complaints about that. They are very supportive and work very well in partnership with the police to deliver a successful evening and night-time economy, but the public health objective would make a huge difference.

Chief Superintendent Gavin Thomas: To answer the question directly and to add to what has already been said, and in the context of where we are—our resources and the cuts that have been made in policing—I think policing absolutely works in partnership with the licensing trade. Where it works well, it is very

effective in ensuring a safe environment for people to go out in and enjoy. It is a great economy within the local community as well. Let us be frank, however. There will be licensed premises that are not being run appropriately or properly, and they will have the focus of policing resources to ensure that they are brought back in line with the requirements of the legislation and that they are safe places that do not have an impact on local communities. If premises continue to be detrimental on those two points—I fundamentally support health and well-being as a fifth objective in the legislation—rightly, policing will focus on those premises. I gave the example in my opening statement about a club—a big licensed premises—that started to experience firearms incidents and stabbings. That gets to the point where policing has to step in and police it.

Baroness Grender: If resources are limited—as they are everywhere—but this is a source of income, and if more than a paltry seven local authorities are to take up the late-night levy, why have you not tried to maximise that system of income since 2011?

Assistant Chief Constable Rachel Kearton: Regarding the late-night levy specifically, applications have been made to have it brought about, and they have been unsuccessful. It is a joint decision. We are one of nine responsible authorities, and the police put across their approach. Those are the benefits and knock-on effects of a partnership approach. We do not always win. We are not a single voice on this.

Baroness Grender: But you are saying that you do not want it to change; you think it can be changed if there is further integrity in the reporting between relevant parties, but all evidence suggests that that is not going to happen, because it has not been taken up, yet it is a source of income for you.

Assistant Chief Constable Rachel Kearton: Going back to your previous point, the reason it has not been taken up is that we have not been able to persuade the other authorities that we will spend it on the night-time economy. There is naturally concern that it may go to other areas of policing. It would not come to the police officers—the chief constable. It would go to the PCC, who was not in place, of course, when the late-night levy was designed under the original Act.

Baroness Grender: Why not push for the legislation to be changed, just so that we are really clear on that?

Alison Hernandez: It comes down to the strength of relationships with PCCs and their local authorities. If they believe it is the right thing to do, they will work hard on it. In my area, we have a lot of business improvement districts. The businesses in those areas are already levied and are already paying towards policing in some areas as well. Perhaps some of the research around the late-night levy needs to consider business improvement districts as well. I cannot speak fully on behalf of PCCs—I have been in post only since May—but I am aware that my predecessor, who was very much a lead for alcohol in the area and was pushing with PCCs for late-night levies, struggled to do it, but there were lots of other things to be done as well. It may not always have been a focus, because it was not a priority in the police and crime plans that they produced.

Q137 **Lord Mancroft:** We have thought about and looked at the idea of adding a public health objective, so it is interesting to hear you talk about it. For various

technical reasons, my nightclubbing days are quite a long time ago, so I am not familiar with how clubs work nowadays—my children tell me, constantly and horrifyingly—but I cannot see many of the nightclub owners of my day being able to implement a public health objective. How would it actually work in practice? If it does not work in practice, it is pointless.

Alison Hernandez: We have piloted in my area something called the Drinkaware crew. They were called club hosts at one point. The licensed premises employ people to go around the pubs and clubs with information and leaflets, looking after people, checking that they are okay and starting some interaction. That was led by the industry, rather than by the police. The Drinkaware pilot has been quite interesting, and we will get our evaluation of it soon. We did it in about five pilot areas across Devon and Cornwall. We are getting it next month, so, if you would like, we can feed it into the process, if you have not finished. That might be helpful. Schemes such as Best Bar None are starting. If we could get to the point of having better-quality food in premises while they are serving alcohol as well, it helps with the public health objective—ensuring that people are properly refreshed, rather than just drinking alcohol. There are some opportunities that will aid a better, pleasanter environment for those sales.

Chief Superintendent Gavin Thomas: I think it will help directly, referring to what I said at the outset, with the element of partnership working across the piece; not only policing but health and education, concerning not only the short-term implications of alcohol in the community but the longer, more sustainable interventions that can be done to reduce demand on finite resources. Without that objective, I cannot see how you can introduce and deliver that partnership.

Assistant Chief Constable Rachel Kearton: I fully agree with the health and well-being objective. For me, it is about individual responsibility and understanding the impact on the individual—the individual's understanding of the impact that it is having on them. That is a really important point. It is health and well-being: "What is it doing to me if I choose to partake and have alcohol?" This has been done incredibly successfully in other areas—for example, the cigarettes and smoking campaigns. We can learn lessons from elsewhere. People want that information, and they want a really good experience. To be honest, I believe that, if they were better informed and better educated about the impacts of alcohol and what impact it has on their behaviour, we would have a better overall experience for everybody concerned.

Lord Davies of Stamford: I do not think that the panel has actually addressed the question. It may be desirable to have public information campaigns about alcohol and its dangers, but that is not the issue of adding a fifth public health criterion to the licensing committee's obligations when it is giving licences to off-licences or licensed premises. You are asking people to decide whether one additional licence for a supermarket to sell beer or wine, or an additional licence for someone to open a pub, is a threat or not a threat to public health. It is not clear to me how they could possibly take that decision. It is easy to say that we do not think that a particular individual, given his or her background, is suitable to have a licence. That is something that the police have done for many years

quite successfully, and it is important that they should do it. It is easy for the police to say that, for a nightclub in the middle of the town, there ought to be metal detectors so that they can pick up daggers or knives going into nightclubs, or that there ought to be CCTV cameras. Again, that is a responsibility that the police have, and expertise that the police have—

The Chairman: Could we keep the questions short?

Lord Davies of Stamford: But to say that one particular licence is going to reduce public health or increase public health seems to me something that a licensing committee cannot really do.

The Chairman: Would anyone like to comment?

Chief Superintendent Gavin Thomas: This is something that I feel fairly strongly about. It is around public policy. I go back to my opening statement. We make unilateral decisions as a licensing committee to grant licensing to a community to sell alcohol in that community but have no cognisance of the wider effect it may have on the community itself and on society. To give a very practical example, if I am policing an area where a high number of women are being attacked because they are making themselves vulnerable because they are drinking large amounts of alcohol within that area, there is a more systemic, longer-term initiative, not only in the decision by the licensing committee but more widely, with the partnership, on how to mitigate that risk to those vulnerable young women, so they are not drinking alcohol and placing themselves at risk. There is a fundamental—

The Chairman: But that does not go to the health question.

Lord Davies of Stamford: No, it does not. You have not understood either.

The Chairman: Who are you asking to implement the health objective? That is my concern. You have already rehearsed before the Committee this morning how you have the powers to do exactly what you suggest should be done to stop certain types of behaviour. To pursue Lord Davies's question, how would adding a fifth objective progress matters?

Lord Davies of Stamford: Chief Superintendent, you have not understood my question. How is a licensing committee to know whether an additional licence—on-licence or off-licence—is going to take market share away from existing suppliers, whether it is not going to increase the consumption of alcohol at all, or whether it is going to increase the consumption of alcohol by adding to total consumption? That is the sort of decision that you are asking the licensing committee to take. How is it going to decide that?

Alison Hernandez: Local authorities are now responsible for public health—it has moved from the NHS. Local authorities should be considering that in their day-to-day decision-making anyway, so it makes sense to add it as an objective, in my view, to licensing. It adds strength to the corporate responsibility for public health that local authorities hold.

Lord Davies of Stamford: But how do they apply it to the licensing regime?

Alison Hernandez: I do not know if you have received a report from Public Health England before, or as part of your input into this. Public Health England is keen to look at and accept that things such as domestic abuse and child protection are part of public health. This is about what the drivers—

Lord Davies of Stamford: Ms Hernandez, this is about a licensing committee taking a decision on a particular licence. How is it going to interpret that?

The Chairman: I will allow Lady Eaton to come in.

Baroness Eaton: As with many things in strategies and policies, it is just a statement, but it does not tell me how the practicalities of a licensing committee can make any difference by adding the statement that you make to that decision. How do they know?

Assistant Chief Constable Rachel Kearton: I believe, Lord Davies, that there is a central part around public health information. It is about individuals understanding what they are doing to themselves, to their bodies and to their health. There is a responsibility on the licensees, I would argue, or there should be under this objective, to make people aware; just as we have put on cigarette packets exactly what happens to you if you choose to smoke, we should say what happens to you if you choose to drink and, if you choose to drink a certain amount, what effect that might have. That might be calories. It might be to indicate the number of calories that you are taking in. It might be a public health information service that describes the impact of sustained drinking over a period of time. It may be that it affects the cost of the alcohol sale, because if you have cheap alcohol and you can buy so much at a certain price, and come under the effects of alcohol over a shorter period of time for that amount of money, it will have that effect. It is about information to the individual, which they then take into account to make a decision as to whether they choose to partake in excess drinking or whatever it might be.

Lord Davies of Stamford: You have still not quite grasped the point I am making. You are talking about public health campaigns. You have referred to calorie intake and to smoking, for example. We have had very successful public information campaigns on those two things, but they have nothing to do with licensing. You do not have to get a licence in this country to sell sugar or tobacco, but you do for the sale of alcohol. That decision is taken by a quasi-judicial committee, a licensing committee, which has to follow the legal rules involved robustly and strictly. It has to decide whether one particular individual has a right to a licence or not. It is quite unclear to me how the committee would apply a public health criterion in doing that.

Assistant Chief Constable Rachel Kearton: I believe that those committees have a responsibility to have a public health information service. That is where I believe that responsibility lies.

The Chairman: We have made it more difficult, but you do not stop newsagents selling cigarettes and tobacco, so how would adding a fifth objective—

Lord Davies of Stamford: It is the wrong instrument.

Alison Hernandez: Cigarettes are now hidden behind a screen, and there are now very clear warning signs on the packets that you will die if you smoke them. Let me just give you an explanation of my Saturday night out this week, to show how well controlled the night-time economy was, but it is an example that shows the need for the public health objective. While I was out in a city in my patch, I witnessed late-night drinking in a very large public house, which had professional

door staff. It was a very busy evening. As I walked into the premises, somebody was being sick outside.

The Chairman: I think we are going to have to—

Alison Hernandez: I sat in the premises and witnessed two men being ejected for violence.

The Chairman: Could we stick to the question?

Alison Hernandez: I watched a woman pass out in the street.

The Chairman: We are looking at the Licensing Act.

Alison Hernandez: The issue is that the effect of how those premises, in terms of the sale of the alcohol—

Lord Davies of Stamford: It is nothing to do with public health. Violence is nothing to do with public health. If a pub has a reputation for violence, you can close it.

Alison Hernandez: But to help people recognise what they are drinking and have it more in their face, there is a really good opportunity, through licensing.

Lord Mancroft: I do not think that the Committee needs any persuading about the dangers and the potential damage, and about the great effect that public health campaigns of various sorts could or could not have. Those are all desirable things. We have some difficulty in grasping how a licensing body, a group of people who have to decide whether they are going to dish out a licence, can make that decision based on the possible pros or antis or the advantages or disadvantages to public health of a particular licensee having a licence or not. Even if they are given the criteria—even if it says you have to take into account public health when giving Mr Smith the licence, it would be very difficult to judge whether Mr Smith could do that or not, and what particular steps he could take. Although everything you say is deeply desirable, I cannot see how you can implement it in issuing licences. That is the difficulty we have.

Alison Hernandez: I have not been on a licensing committee, to know the subtle nuances of how it works, but conditions could be put on a licence, ensuring that information is available or about the way things work in the establishment. Local authorities are responsible for public health in all their decision-making. Why do we exclude it from this particular area when we can strengthen it?

Lord Brooke of Alverthorpe: This goes back to what you were just observing. A licence can be granted, but is it not possible that conditions can be attached to the licence that can educate and change? Is that what you are seeking?

Chief Superintendent Gavin Thomas: Yes. You could have a local community running a campaign around alcohol reduction and the impact of alcohol on the community, yet the licensing committee would be acting unilaterally and not taking cognisance of those facts and would be granting more licences to sell alcohol. If it is not taking cognisance of how to apply those conditions, what is the impact on the local community?

Lord Davies of Stamford: There might be better premises that are run better, providing a better appeal to the community.

Chief Superintendent Gavin Thomas: They could be.

The Chairman: We could do it by conditions.

Chief Superintendent Thomas: Yes.

Q138 Lord Blair of Boughton: I do not normally say that I have any particular interests to declare, but obviously I have 35 years of police service, so I had better declare it now.

I want to get to a couple of bits of practicality. The first—I do not mind who answers this—is about police licensing officers and their existence. Are they in decline? Why do we have no national accreditation of standards for police licensing officers? Secondly, when we are targeting rogue premises, why are we not using some of the simple powers against people being drunk on licensed premises? Why are we not doing anything about the supplying of alcohol to people who are obviously already drunk? We are looking to partnership working, but we are missing some of the obvious things that the police should be doing. When you ask the Home Office how many people were arrested for being drunk on licensed premises, it cannot tell you.

Chief Superintendent Gavin Thomas: I can probably assist you on the first part of your question, around training standards. This falls fairly and squarely to the College of Policing. There is a space or gap at the moment in knowledge, education and standards around licensing, not only regarding police licensing officers but around the licensing committee members. My understanding is that, before the legislation changed, there were licensing magistrates, who had knowledge of the legislation in some detail, and who were able to make informed decisions on licensing matters. From what I have been told, that is not necessarily the case now in the committees meeting and making those decisions. It is wider than just licensing policies; it is about responsible authorities, too.

To assist the Committee, the current Bill that is going through, the Policing and Crime Bill, which will allow a chief constable to designate authority to people within his or her organisation—apart of course from arrest and stop-and-search powers—could be part of the approach to professionalising them, if I may use that expression. Rather than having a warranted police officer per se, they could recruit or train somebody who has that specialist level of knowledge, and who can apply their licensing knowledge and powers in policing.

Assistant Chief Constable Rachel Kearton: There is a national standard, which I have recommended with my national lead, in the British Institute of Innkeeping. I encourage all forces to aspire to that for the standards of their licensing officers. You are well aware of some of the changes in make-up of force employees—who is a police officer and who is a member of police staff. The addition that Chief Superintendent Thomas refers to will, hopefully, allow a police staff member to enter licensed premises, which they currently cannot do if they are not a police officer. If they do not have warranted powers, they cannot go into licensed premises unless they are invited. Bizarrely, when we are trying to develop people with expertise and the continuity of knowledge and level of detail that we have referred to this morning, we need specialist police staff—employees—for those roles.

As regards the national picture, there is development to be done. That is recognised. I have set standards, but, as you are aware, the fact that there are

43 different police forces across England and Wales means that they are recommendations, not requirements. That is my position at the moment.

Alison Hernandez: I do not have anything to add.

Q139 **Baroness Goudie:** It has been suggested by other respondents that the introduction of police and crime commissioners has led to the politicising of licensing, in particular on whether or not to implement late-night levies or early-morning restriction orders. Do you believe that PCCs are able to consider those issues fairly and impartially, especially when they may face considerable pressure from the local residents they are answerable to?

Alison Hernandez: I suppose I had better answer that one.

Baroness Goudie: There is control by the council, too.

Alison Hernandez: Yes. Because the local authority has the power and responsibility for pushing it forward, it is at that level where the political challenge may be. In my area, chairmen of licensing committees have spoken to me about needing better support from the police as regards the evidence base, and helping them a bit more. On politicisation, PCCs will do what they need to do to raise funds, but I have not witnessed that. The power and control is with the local authorities.

Chief Superintendent Gavin Thomas: I do not think that I can add to that.

Q140 **Baroness Henig:** The Commissioner of the Metropolitan Police has repeatedly suggested that the number of licensed premises in central London should be actively reduced in order to reduce alcohol-related crime. The police were closely involved in the closure of Fabric, and many pub and nightclub owners across the country claim that they are being unfairly burdened with expensive conditions, which are making their businesses financially unviable. How can the night-time economy and the right of individuals to enjoy themselves be reconciled with the need to control crime and disorder?

Assistant Chief Constable Rachel Kearton: I will not go into detail about Fabric—I do not work for the Metropolitan Police—but I am aware that six people lost their lives in those premises.

Lord Blair of Boughton: I think the matter is still sub judice.

The Chairman: Could we keep to general points on that?

Assistant Chief Constable Rachel Kearton: I will happily keep to general points. In a number of premises where we have reached the point of closure, some serious crime is being committed. That is not just a police decision; it is a total decision. We go through a number of processes before we get to that position. To put it into perspective, in excess of 200,000 licensed premises exist in the country and of those, in the last year, 73 were closed. That is nationally. Only 25 of those closures were brought about by the police. Putting it into perspective, that is 25 police-brought-about closures in the context of more than 200,000 licensed premises. We are on the side of having a responsible, well-run, licensed business in a community, which benefits that community, is safe and prevents crime and disorder from happening. That is the approach of the police service.

Chief Superintendent Gavin Thomas: I am not sure that I can add much.

Alison Hernandez: In my area of Devon and Cornwall, the establishments work closely with the police. I have not had any complaints from them that we are overburdening them with anything. They are very happy to work in partnership, and we have some excellent, industry-led initiatives, such as Best Bar None, which has just been relaunched in a number of areas in my patch. The actual industry is taking responsibility for some of this. As I said, I have no complaints in my area. We have a very large number of bars in our area because of our coastal towns. We are a leisure and holiday area. At any one time, we might be closely watching between only four and seven pubs or bars. It is a minority that we are talking about, which we really need to be tackling.

Lord Davies of Stamford: And they do not know that you are watching them.

Alison Hernandez: Usually. I do not know; it is not me watching them.

Baroness Henig: I am sure that the panel will be happy to hear that our Chairman will be engaging in more research in that area, in due course.

The Chairman: In a private capacity. Do you want to ask any more questions?

Baroness Henig: No, I have asked my question.

Lord Mancroft: If there are 200,000-plus premises and you have closed down 23, is that more premises than there used to be, or fewer? Are there more closures than there used to be, or fewer? Does it mean that the closure system is working, or is it a complete disaster? Should you be closing more? Should you be closing none at all? Could you elaborate a bit?

Assistant Chief Constable Rachel Kearton: Those are very good questions. The total number of licensed premises is on the increase. We have more now than we did before. On the trend, which I believe is what you are really asking about, I do not have that level of detail at the moment. I cannot compare that with previous figures, because I do not have the information to hand.

I return to the point that this is not just about the police service. Even when I talk about 25 police-brought-about closures, it may be that the police have brought it to the licensing authority, and everybody else then brings about the closure. It is a combined approach with the other responsible authorities that makes that decision, not just the police service.

Lord Mancroft: Do the three of you think that the system is working, or is it a system that is not working?

Chief Superintendent Gavin Thomas: I lead a staff association. I have had fed back to me some context around that. The legislation requires that, when there is concern about a premises, a senior officer in that policing area can place a review on that premises to mitigate the risk there and then, and they should then go through a process. That might mean that the premises turns around and improves its management; it does not necessarily denote that it ends up being closed in the longer run. I do not have detail on the numbers, but there may be a far larger police interaction with licensed premises using the legislation to improve them, rather than de facto closing them in the longer run.

Alison Hernandez: In Plymouth some time ago, they developed what they called a cumulative impact or saturation policy, because they wanted to stop having more licensed premises in a particular area, but they could not turn them down just because of numbers. They tried to create a cumulative impact zone, which

they could utilise as part of their evidence for licensing committee decisions. The number of premises has grown over time; we have so many that bar density was considered in the police funding formula review last time, and it is still on the cards for this time. There is acceptance that it has an impact on policing.

Lord Mancroft: I am sorry, but could you just—

The Chairman: I think we need to move on.

Lord Mancroft: But we have not really had an answer to the question, Lord Chairman.

The Chairman: Lord Foster.

Q141 **Lord Foster of Bath:** Assistant Chief Constable Kearton said earlier that one of the great benefits of the Act was the partnership working that had been created. We have heard about industry-led partnerships, and obviously one of the big partnerships is the coming together of the responsible authorities. You said earlier in your evidence that there are some good examples—indeed, some very good examples. Collectively, could you share your thoughts on how we could spread that good practice and what improvements are needed? Perhaps you could use the three headings that we were given at the beginning: consistency, training and partnership working.

Assistant Chief Constable Rachel Kearton: In terms of those three headings, consistency is as with any relationship: the better we know each other, the better we work with each other. It is about recognising the difference in role. The police are primarily concerned with the crime and disorder approach. Other people are concerned with the public nuisance and child protection issues, and the other objectives. It is about understanding those roles, yet coming together. Joint training adds opportunities to develop, as does learning from other partnerships that have been successful. I see communication as a large part of my role—communicating good practice that has occurred across the country. It is like building on any good relationship, learning from experience and thinking about where we want to go in the future.

Chief Superintendent Gavin Thomas: I will start off with the three key areas of consistency, training and a partnership approach. To add to what has already been said, one of the areas that affects consistency when applying the legislation, from what I have been informed, is a risk-averse approach, to a degree, in some areas. If you are a small local authority, there are significant cost implications if you lose an appeal. From what I understand of the application of the legislation itself—I am not talking from a level of expertise on this, Chairman, so please bear with me—the de novo process means that, where the local authority puts in an appeal against a premises, the appeal allows the licensee to adduce evidence or facts after the appeal has started. Effectively, they can bring in improvements that were not prevalent at the time of the original appeal. Small local authorities are losing appeals and are starting to say that it is not cost-effective to apply the legislation. Whether that is an area that the Committee has looked at in its deliberations I do not know, but I offer it as an observation from what has been fed back to me by my colleagues.

Lord Davies of Stamford: Is it not a good thing if there are improvements?

Chief Superintendent Gavin Thomas: Absolutely, but in the appeal process, the costs of the appeal go back on to the local authority.

The Chairman: We need to speed up, because we have another panel.

Chief Superintendent Gavin Thomas: We are talking about tens of thousands of pounds of public money.

My last point is about partnership. There is an element that goes back to my original point about where decisions are made, which fundamentally relates to the wider impact on local public services and on communities themselves—the consideration of joint outputs and outcomes, with decisions made in those communities. Legislation accommodates that up to a point, but it could be addressed a bit more than it is now. We have touched on that already.

Alison Hernandez: In my area, across the two counties that we police, I have identified inconsistency in how we support licensing committees. Some people say, “You are really good. You support us loads”, but then I find that the police are not supporting them as well in another area. As part of a police force and as a PCC, I have a responsibility to ensure consistency within our local policing area. We will not get it nationally until we can get it right ourselves in-house.

Q142 **Baroness Henig:** One of the licensing objectives is public protection, on which police advice is obviously significant. Given that we are told about the high likelihood of terrorist attacks, which may be targeted at late-night venues, should the objective of public protection be expanded explicitly to include measures to combat terrorism, such as target hardening, for example? Is that something that should be looked at?

Assistant Chief Constable Rachel Kearton: I have not had it brought to my attention, but clearly a late-night economy can be the target of terrorism. We have seen that happen elsewhere in the world, and we would be naive to think that it would not be a viable target. In our approach to the whole of licensing, focusing on the objectives that we have, we are going pretty well towards that. If it happens to be terrorism or some lone individual who is going to cause harm, by sticking to our licensing objectives we will meet the needs of communities and of licensed premises. The danger of looking at one particular type of crime is that we become overfocused in that area and underfocused elsewhere.

Q143 **Baroness Eaton:** We have heard from some members of the industry that they feel that there is lack of scrutiny by licensing committees of police evidence. Paragraph 9.12 of the Section 182 guidance is often taken by licensing committees to mean that police evidence to licensing committees is given an enhanced status, which it may not deserve, particularly when police data is presented in a way that is unfiltered or misleading. Do you believe that prioritising police evidence is justified? If so, why? Could steps be taken to improve the quality of police evidence to licensing committees more generally?

Assistant Chief Constable Rachel Kearton: I would like to start on this area—I know that we are short of time. First, I operate in the world of evidence, as do my staff and the people I lead, so I expect there to be rigour around the evidence that is presented. Putting that into the context of our partners and the other responsible authorities, it goes back to my point about recognising the role and

responsibilities of each of those responsible authorities. That is not to give us a bigger position around the table than anyone else. I have stressed that point throughout the last hour. It is about equal partnerships working together in a multiagency approach. I would not expect there to be overemphasis on the police evidence.

Training and expertise fall within the national portfolio, and there is a programme of development for people working in this area, which brings people up to speed and keeps them up to scratch and knowing what is expected of them. The last conference was held just at the point when I took over this portfolio, and, from having been there, I am well aware that the level that is delivered is very high. It emphasises the points that are required on the gathering of evidence and what is required to go through the licensing process. I am comfortable that we have a system in place to deliver that professionalisation, but I am not naive enough to think that there are not areas and gaps that need further development. That is why there is a national programme that runs on an annual basis to deliver that.

Alison Hernandez: People's safety and security is obviously paramount, which I would say as an elected police and crime commissioner. As for how the evidence is supplied to licensing authorities to make those decisions, that certainly needs to be much more consistent and clear.

The Chairman: On behalf of the Committee, I thank each of you for giving up your time so generously and for being with us today. We really appreciate it. If there is anything supplementary that you would like to say, please let us know; there may be a couple of extra questions that we feed through as well. Thank you very much indeed for being with us.

Gerald Gouriet QC, Andrew Cochrane, Paul Douglas – oral evidence (QQ 144-154)

Examination of witnesses

Gerald Gouriet QC, Andrew Cochrane, Senior Partner and Head of Licensing, Flint Bishop Solicitors, and Paul Douglas, Managing Director, Douglas Licensing (NW).

Q144 **The Chairman:** Gentlemen, thank you very much for being with us this morning to give evidence in our inquiry. I bid you a very warm welcome. I have a bit of housekeeping. A list of Committee members' interests relevant to the inquiry has been sent to you. Copies are available this morning. The session is open to the public, is broadcast live—sadly, in audio only—and will be accessible subsequently via the parliamentary website. A verbatim transcript of the evidence will be taken and placed on the parliamentary website. A few days after today's session, you will be sent a copy of the transcript. We ask that you check it, for greater accuracy. It would be helpful if you could advise us of any corrections as quickly as possible. If after the evidence session you wish to clarify or amplify any points that you made during the evidence, or have any additional points that you wish to submit to us as supplementary evidence, that will be welcome—again, as soon as you possibly can.

I will ask a couple of general questions at the outset. Could you give the Committee your view on how effectively the Licensing Act 2003 has operated over the last 11 years? What do you think has worked particularly well? What do you think could be improved?

Gerald Gouriet: The Licensing Act 2003 has failed where the previous legislation succeeded—in stemming the proliferation of licensed premises. The demand test has been removed. The demand test was a very good filter that made sure that there was not an excess of supply over demand. The current regime requires a grant, if no one has objected, and even where there are objections limits the reasons for refusal to something arising under the licensing objectives. Overall, I think that has been bad. I have often had complaints from residents' associations and individual residents who wish to stop yet another bar or late-night club opening in their area that there does not seem to be any mechanism for doing so.

Andrew Cochrane: Generally, I think it has worked well. As a solicitor, I focus quite a lot on the procedure behind the applications. The Act has allowed a lot more engagement and has made it easier for both the trade and local residents to engage in the process. The vast majority of what goes on never comes before a panel or a hearing; something like 136,000 temporary event notices are applied for every year, and there are numerous transfers, DPS changes, minor variations and so on. Under the previous regime, all that stuff would have required some sort of attendance at a court. The Act has made it much easier for the licensed trade to engage.

From the residents' point of view, a magistrates' court was a slightly more forbidding forum in which to get involved. A local authority is perhaps more familiar to them. They are able to engage the services of their local councillor, if they want to try to make a point to committees. It is much more accessible, and from that perspective, it has worked extremely well.

There have been some welcome reforms to the Act as we have gone along. I will not list them all. I can give you a shopping list of a few more, if that is desired, but they are not particularly major. One concern is that the electronic system of applications over the internet is not working as well as it could. Secondly, sometimes the product that you get at the end of the process—a paper licence—can be a bit impenetrable. Some of the licences that exist out there are not always as good as they could be, and can be quite difficult to understand and interpret. For example, yesterday we were looking at a licence that had a condition preventing roller-skating. As it was for a two-room bar, that was perhaps a slightly surprising addition to find.

Paul Douglas: The Act started off very well. It alleviated a number of problems. We finally did away with the 2 am thousands on the streets, which was good. Unfortunately, the 2 am thousands on the streets rapidly became the 2.30 am, 3 am and 4 am hundreds and hundreds on the streets, which has caused the police some problems.

Without a shadow of doubt, a good part of the Act is the review procedure. Prior to that, when it was before the magistrates, it was revocation or nothing. We have a good review procedure, with various sanctions. I feel that of late, however, the whole licensing system has been hijacked, to a point, certainly by a lot of local councillors with whom I deal. They make objections when nobody else—neither the police nor the responsible authorities—is making any, but on the basis of looking after their constituents, they lodge objections to curry favour with their voters.

Unfortunately, the Licensing Act is also being hijacked by the police in certain areas. It is being used as an attempt to bring in early morning restriction orders via the back door. Early morning restriction orders have failed. I have noticed licensing reviews for premises that trade until 6, 5 or 4 in the morning, where the theme is to bring their hours back to 2 am or 3 am. The evidence produced as a result of that has been far from satisfactory. They have not achieved the early morning restriction orders or the reduction in hours.

Gerald Gouriet: One area of concern that has developed recently—in the last two or three years—is the extent to which decisions are being made, or effectively being made, not by elected councillors but by unelected council officials and/or representatives of the police behind closed doors. Often I get residential complaints; people find that what had been an objection has been withdrawn and they do not know why, and they were no part of the process that caused it to be withdrawn. Indeed, my attendance at licensing committees and magistrates' courts indicates that frequently the court or the licensing committee does not know either. It is simply given the bare fact that there is no police objection and no objection from the licensing authorities.

The Chairman: Mr Gouriet, in your written evidence, you say quite a lot about residents and their views not being heard. When we have heard from residents

and have had supplementary written evidence from them, one of the issues they raise is that the blue notice is simply not widely available. Do you think that the Act has the balance right on the way residents are forewarned and can go along to object? You draw many parallels with the planning procedures, as they did.

Gerald Gouriet: If there is substantial complaint from residents that they do not know about an application in advance, and therefore cannot make representations, it follows automatically that something is wrong. I do not get involved in that stage of the process, so I cannot give personal experience. Clearly, if that is a recurring complaint, something needs to be done.

Andrew Cochrane: I may be able to help a bit more on the blue notice, because that is more my end of the situation. The notice itself can sometimes appear to be a little unhelpful. Particularly before significant deregulation of entertainment, it can give a completely false impression of the sort of premises that you are trying to license. Of course, there are fairly strict statutory criteria for how these notices should be displayed. In my view, if they are adhered to, it will come to people's attention. A lot of local authorities go out to check that a notice has been displayed, so I am surprised that that is a serious point of contention.

Gerald Gouriet: The requirements are perhaps overly prescriptive. There has already been litigation in the High Court as to whether the font was the right size. Lawyers are often accused of feathering their own nests, but from the lawyers' perspective, it is wonderful when the law is in a slight mess, because we get up to the High Court.

The Chairman: I am a non-practising Scottish advocate, so I have no interest. Mr Gouriet, you mentioned the difficulty of closing and reducing the proliferation of premises. What do you feel about a cumulative impact policy and its potential effect?

Gerald Gouriet: It is a very good idea. I go back to what I was saying earlier, which illustrates the point that you are asking me to answer. This scenario often arises. There is a cumulative impact policy. An application is made for a new licence within that area. According to the policy, the applicant has the burden of establishing that he will not add to the cumulative impact problems. There is a meeting behind closed doors with the authorities and the police, who simply say, "We do not object". That is taken by the licensing authority as support for the application and, because of Home Office guidance, as something to which it has to give great weight.

In fact, as I have seen for myself, because we do not know what the police and the licensing authorities—I keep saying that; I mean "the responsible authorities"—are being told, there is a lack of transparency. From time to time, we get an inkling of the version that seems to have been given to them by the applicant. I have popped along, when I have had the opportunity, and seen for myself what is going on and it is perfectly clear to me that the police and the responsible authorities may not have been given the entire picture, or even been told the truth—I am not going to mince my words. The police themselves have told me that they have these meetings and do not have the resources to check whether or not they are being told the truth. In fact, the lack of a representation by them means no more than, "If what we are told is true, there will not be any

problems”, but it is taken by the licensing authority to be an endorsement of the application, which is sometimes impenetrable and impossible to overcome.

Q145 **Baroness Henig:** My question is about the hearings before the licensing committee, so it clearly follows on from what we have already heard, particularly from what Mr Douglas said. The case law says that the power of the licensing committee is a power delegated on behalf of the people as a whole to reach an holistic and balanced decision, weighing everyone’s interests. Is that how individual members see and perform their role? We have already heard suggestions that perhaps it is not. How easy is it for members of local authorities to put the interests of their voters to one side and make a dispassionate legal decision?

Paul Douglas: It is near impossible in some areas. Voters and committee members go hand in hand. They are councillors, after all. I have certainly noticed that the other persons or the residents are in a position of great power, sometimes more than the responsible authorities. Licensing committees give great weight to local residents.

Gerald Gouriet: I had a refusal after which a committee member came up to me and said, “Do not worry. You will get it on appeal, but we could not go against the residents”.

Andrew Cochrane: I am not quite negative about this. The local licensing committee is a body of councillors, not all the councillors. The point that Paul was making was that individual councillors themselves can make representations. My perception is that, if such committees are well chaired and well clerked, a lot of those issues can be put to one side. There are occasions when you have to take a bit of a gasp. We have had instances when I was standing talking to a police officer only for a local councillor to come up and say, “We are all right on this one, then”. You have instances when you go into a committee meeting a bit like this one and find councillors who are making a representation talking to councillors who are going to make a decision. I am not saying that that sways them, but at times it creates a perception issue that could be better managed.

Q146 **Baroness Grender:** A host of witnesses have claimed that members show undue deference to licensees, so that there is a presumption of grant, at the expense of local people. Given the number of licences granted, all the evidence suggests that that is correct. We have also had a host of witnesses who say that members unduly favour residents and, therefore, too many preconditions are added. Which side do you agree with, and why?

Gerald Gouriet: There is an element of both. One encounters both. Whenever an applicant loses in an application against residential objection, he says, “The council has unfairly and unduly given precedence to the residents”. Stepping back from it, and going just from my own experience, I think the balance is very much in favour of the argument that residents are suffering a raw deal. There are occasions when too little evidence from the residents is given great weight. They occur, but because of the structure of the Act, and the way our appeals are now conducted, with the Hope and Glory case dictating how appeals should be decided, the balance is in favour of the industry against residents.

Paul Douglas: I disagree. It is firmly balanced towards the residents.

Baroness Grender: But so many licences are granted. Something like 5% are not.

Paul Douglas: There are areas where I operate where I know that I can submit an application and would be surprised if it were even read, because applications will go through, whereas in an adjacent area a far less controversial application will be examined. It is a bit of a lottery. It is like a postcode lottery, based on which area you operate in. Basically, some areas just let things go through. I do not know the internal workings of the organisations, but I get the impression that the applications are not being considered, whereas in other areas they are.

Andrew Cochrane: There is some force in what has been said. If you are on the winning side, you tend to think that you have been favoured by the committee. If you are on the losing side, you tend to think otherwise. For example, a few years ago, I did a big project that was quite well publicised at the time, when more than 100 licences were applied for in one go. They generated a whole host of objections—106 was our maximum on one of them—but nearly all the licences were granted at the end of the day. They were all granted, but we withdrew one or two for various reasons. It is fair to say that I have not heard anything about the residents' concerns coming back. They were articulated. I made the points that one would expect to be made—"You cannot necessarily say that there is going to be a problem. What evidence have you got?" and that sort of thing—and licences were granted.

It is seen in slightly binary terms; either you win or you lose. Of course, what quite often happens at a committee is that you wind up with a compromise—a grant, but subject to conditions. I am not quite sure that residents often understand that. When the decision is read out, they hear that the licence is granted. They do not understand that the committee has sat, listened to what they have said and to their concerns, and tried to address them by way of conditions. Perhaps residents also do not understand that, as part of the engagement process, they can talk to the applicant's solicitor or representative—whichever it is—and try to come to some sort of compromise. My experience of my professional colleagues is that they are more than willing to have those sorts of discussions.

Lord Mancroft: This is a slightly unfair question. On balance, were the 100-odd licences you applied for reasonably treated? Should they have gone through in that way? Was it a pretty good process?

Andrew Cochrane: Yes. I thought it was fair enough. The notices went up. With any sort of application, be it a planning application or whatever, there is a fear of the unknown, is there not? You are trying to change the status quo. As I said earlier, sometimes the blue notice can have the effect of giving an artificial impression of what you are seeking to achieve from the process. At the end of the day, everybody was given the chance to have their say. In most cases, the concerns that were articulated to the committee were addressed by the committee, albeit that the licences were granted.

Gerald Gouriet: I have spoken substantially in favour of residents, and said how hard done by they are. I would not want it to be thought that I do not appear for the trade and the industry as well. I have been instrumental, not improperly, in many cases at the end of which my private thoughts were that the residents had

a raw deal. It was not because of anything naughty that I had done, but I thought that overall they did not get the opportunity that they should have had. The forces that residents sometimes meet—I do not include myself in those—are considerable, compared with what their resources can afford and what they can do themselves.

The Chairman: If there is an electronic application, at what stage is the resident informed?

Gerald Gouriet: I simply do not know.

Paul Douglas: Through the blue notice and on the council's website.

Andrew Cochrane: And the advert in the paper.

Paul Douglas: Yes.

Gerald Gouriet: I have only once told my commercial client in writing that there is no prospect of success on an appeal and that he should save his money. I wanted to avoid criticism afterwards, so I put it in writing. I will never do it again, because when we won I had to explain to him that the only reason we won was the inadequacy of the presentation by the other side.

The Chairman: Who were the residents, and who do not of course have any representation.

Gerald Gouriet: I had not bargained on its being quite as bad.

Paul Douglas: Because of the position the residents are in, you have to enter negotiations with them. To that extent, I depend on local authorities. I ask local authorities, "If representations are received within a 28-day period, please let me know about them". If I can, I try to negotiate with people, to find out what their concerns are. Sometimes the concerns are quite simple: "We do not want you to open at 6 o'clock in the morning", or, "We do not want you to close at 12 o'clock at night". That being the case, we can go back to the client and say, "Look, we can keep the residents happy by opening an hour later". There are no objections, and the application goes through.

The Chairman: If the residents are saying, as they are, that there is a serious problem of conflicting conditions imposed by planning, licensing and highway authorities, would a way around it be for everyone to follow the planning conditions that are set?

Gerald Gouriet: The current position, which I encounter often, is that planning permission is given with hours, say, to 1 o'clock, and licensing permission is given with hours to 3 o'clock. I do not understand why that can be so, and why that subsequent decision could be made. As I said in my written submission, too often we have just the glib mantra, "Planning and licensing are different regimes. This is licensing. You should not have regard to planning". I think that that is wrong.

The Chairman: Are you saying to the Committee that two different departments of the same local authority may not be aware of conditions being set?

Gerald Gouriet: They are very often not aware of it. Sometimes when they are, there is an incorrect assumption that they are different regimes and that we should leave it to planning enforcement to deal with if they are operating after hours. As we know, planning enforcement is often a little trickier than it is imagined to be.

Q147 **Baroness Grender:** One of our witnesses was from the group that represents residents at Camden market. A whole load of licensed premises have almost grown up around them—they did not move into that area. Each one has a

temporary event notice each weekend that extends into the early hours of the morning, because there is a cluster of clubs and venues. I would like to hear from you about that kind of situation, which impacts on residents. What do you think the solution to something like that would be? You have been a long-term resident. It has moved towards you. A whole load of temporary or personal licences are being swapped across premises.

Paul Douglas: If temporary notices are being granted, the issue is whether the premises are undermining the licensing objectives when they use them. Are they causing crime and disorder? Are they causing public nuisance, thereby upsetting the residents? If that is the case, when those premises apply for another temporary event notice, the authorities have it within their power to object.

Gerald Gouriet: Surely the real problem is that it is often not known that those particular premises are causing a particular harm. All we know is that they contribute to the general *mêlée*, so nothing can be done afterwards.

Q148 **Lord Mancroft:** Can I take you back to the comments you made a couple of minutes ago? Surely a licensing authority recognises that on the one hand there may be a large company with very impressive counsel and legal advisers assisting it, whereas on the other side there may be half a dozen rather unhappy residents with no legal advice at all. Surely a sensible and reasonable licensing authority can weigh up those two. Are you telling us that it is not weighing them up and cannot weigh them up, or that there is a real problem of authorities not being able to balance those interests?

Gerald Gouriet: It is weighing them up insufficiently. When appeals went to a Crown Court, a Crown Court judge would fill in the gaps, by and large. To be candid about it, in front of a Crown Court judge one could not get away with what we can get away with in front of a magistrates' court or a licensing authority.

The Chairman: We are coming to that.

Q149 **Lord Mancroft:** Regulations 22 and 23 of the hearings regulations, which I have no doubt are engraved upon your soul, state: "At the beginning of the hearing, the authority shall explain to the parties the procedure which it proposes to follow at the hearing", and, "a hearing shall take the form of a discussion led by the authority". In your experience, do licensing committees follow that practice? Do they follow it well or not?

Andrew Cochrane: In my experience, they do. As regards the informal discussion, it rather depends on what sort of hearing it is. If it is a hearing where a couple of residents have turned up because they are not happy about an application, it will probably take the form of a more informal discussion. If my learned friend turns up, the chances are that it is going to be a fairly weighty matter—possibly a complex review or a complex new premises licence application—and it will proceed rather more like a trial. It rather depends on the circumstances, in my experience.

Paul Douglas: I have been party to very few discussions at licensing committee. They comply with the statutory requirements and explain everything, but most of the time it is quite formal.

Lord Mancroft: Is that a fair process or not?

Paul Douglas: It is not following the regulations, if it is supposed to be a discussion. I have just hit on this now. For residents, if there are a lot of legals involved, it can become a little awesome.

Gerald Gouriet: Yes and no. Some of us try as hard as we can to make it casual and informal and to have a discussion, but we are simply not allowed to, because there is adherence to the procedure and the agenda: "Mr Gouriet, you are not allowed to speak now. You are allowed to speak at item 7".

The Chairman: Somewhere you say that committees allow conditions to be rehearsed that are not relevant.

Gerald Gouriet: That was one major example. I tried desperately to stop the legal adviser and the council going through some 30 conditions at 11 o'clock at night, or thereabouts—as did the chap against me, for the police—because all the conditions were agreed. Several attempts to come in were just slapped down. An hour and a half later, we had to say, "All these are agreed, chair".

The Chairman: We have some other questions that probably broach that.

Q150 **Baroness Goudie:** Mr Gouriet, I noticed that in your evidence you say that the calibre of licensing panels varies from admirable to indifferent, and that, even if there was some form of training procedure in the background, you are not sure whether it would make any difference. What do you see as the alternative to having local authority representatives as members—not as officers?

Gerald Gouriet: If I am right, and it is thought that there are some really bad councillors who it would be idle to think can be improved, one needs a much better appeals regime, as I say in my submission. Right now, there is an inhibition under the appeals regime. The words are very difficult for most lay magistrates to apply correctly. They have to look at whether the decision below was wrong. They do not look at all at the merits of what is before them.

Whether I am right or wrong—it is a matter I must be delicate about, or I will never be able to appear in a case again—there are some councillors who it may be thought are unlikely to be improved by training. To give an extreme example, I was involved in a case where the only representation against was from the chairman's wife. He would not stand down, and indulged in what I would call a pantomime of asking his wife questions as though she were at arm's length. That should not happen. It cost the local people a lot of money, because we won on appeal and got our full costs. I gave an anecdotal example a while ago, but I have often heard—just fed back to me informally—that a council decided as it did, knowing that the decision was wrong, because it could not face certain people if it decided otherwise. Such councillors will not be improved by training.

Andrew Cochrane: We have 350 licensing authorities in the country. They probably have between 10 and 15 members who can sit on them. It is inevitable that, in a pool of many thousands of potential committee members, you will get a few of the nature that Mr Gouriet describes. My experience is that they are few and far between. It is usually resolved by a stern nudge from the chair or the clerk as to their behaviour. I agree that there will be those whose behaviour cannot be changed by any amount of training, but it is not my experience that it is a systematic problem.

There are issues of the type that have been referred to. Sometimes you turn up and think that it must be a gaffe. For example, occasionally ward members may

be sitting. I am not sure that that is always advisable, if the premises are in their ward and there are residential objections. Again, it is not a huge problem. It comes back to the point that, with a good chair and a good committee clerk, the problems can usually be prevented.

Paul Douglas: If we have weak committees, obviously something has to be done, but what do we have at this moment in time? We have the committee solicitors advising the committee. What I find is that the solicitors advising the committee almost become a fourth member of the committee. They ask so many questions that it gets to the stage where you almost want to say, "Excuse me, but it is nothing to do with you. It is down to the committee members", but if you will be back before that committee in a couple of weeks' time, you cannot afford to upset them. In some areas, the solicitors are really taking over.

Gerald Gouriet: Because I disagree with Andrew Cochrane, I would not want it to be thought—

The Chairman: You will not get many instructions.

Gerald Gouriet: After today, I may have to retire. What I have said by way of complaint about licensing authorities and some people sitting on committees is by no means to be diminished as referring to a renegade few. It is far too frequent, in my experience; I would pitch it as approaching half. I am not prepared to say on which side of the borderline the approach falls.

Baroness Eaton: I have a specific question about councillors on committees, but I want to follow up what you have just said. Clearly, there was totally improper behaviour by the chairman of that committee. My background is in local government. I cannot remember the title of the officer in every authority—I am having a senior moment; it may be the 147 officer or the 157 officer—who is not the chief executive but has responsibility for the ethics and behaviour of the authority in respect of what is legally acceptable. I find it staggering that that situation could arise without the legal adviser working on the committee referring the matter and having it dealt with officially.

The Chairman: It is the monitoring officer.

Baroness Eaton: Thank you—there is a number attached to it. That really staggers me, and I am amazed that it can happen, but obviously it did.

The Chairman: That is a comment rather than a question.

Q151 **Baroness Eaton:** It is a comment rather than anything else. My question is this. As we have heard, members do not always behave terribly well on panels. Currently, members of councils can, and often do, sit on licensing panels, with only a few hours of training, to decide issues that may have important consequences for both businesses and residents. Should they be prevented from sitting until they have had more training? Are there circumstances in which some councillors should be prevented from sitting at all?

Gerald Gouriet: Yes to both. Of course they should be trained. I do not think that it is at all a good idea for people with no training to adjudicate in these matters. The commercial and social implications are enormous. Sometimes I have been told by all three, "We have never sat on one of these hearings before". It arises more in betting and gaming, but that is just as bad. They say, "We have never sat on an application such as this. Can you help us with X, Y and Z?" In the limited

time available for the hearing, one does not feel for a moment that the thing has been properly ventilated, on either side.

Of course, training is only as good as the training that is given. I have given training, as some of us here have done. We are asked to do so. It is a bit of PR and we do it, to do ourselves good the next time we appear in front of them. I have had members of a licensing committee that I was training sit with their arms folded, staring at me hostilely, because they did not like for one moment what I was telling them, which represented what their limitations were—what the statute demanded that they did not do. They did not like hearing that at all and rejected the training that I was giving them.

The Chairman: Are you indicating that perhaps local authorities do not take licensing as seriously as they take planning?

Gerald Gouriet: I am not sure that it is a question of whether they take it seriously. I think they assume that they have powers that they do not have. They do not like the limitations that are imposed on them. As far as taking it seriously is concerned, I have been involved in very few planning applications, but they were a few minutes only. The flaws of the planning regime are solved by the planning inquiry, which is extensive—huge—compared with the few minutes that are given to the initial decision. In licensing, we have nothing that is the equivalent of the planning inquiry to put things right—nothing at all.

The Chairman: Is the mandatory training only three days?

Lord Blair of Boughton: Three hours.

The Chairman: In Scotland, apparently, no one is allowed to hear unless they have received mandatory training. Three hours? What do you recommend should be the minimum for mandatory training?

Gerald Gouriet: I will be plucking a figure from the air if I do.

The Chairman: You are experienced in giving training.

Paul Douglas: The least that the licensing committee should do—it is the same for police officers as well—is to put themselves in the shoes of the people who are running the premises, and do a day's personal licence training. It is quite elementary, but it is the only training that an awful lot of people get.

Andrew Cochrane: It is difficult to be overly prescriptive about the amount of training that a councillor should do, save to say that it should take place. I am a great believer in on-the-job training.

The Chairman: Three hours?

Andrew Cochrane: I agree that three hours is too little. There are various types of applications that come before a committee. Like everything in life, if it is properly done, you start off with the more straightforward stuff and then move on to the more complex things. I agree with what Paul said. It is probably to be recommended that people do some training in the industry itself.

Baroness Henig: Are we not skirting over another issue that lies beneath this? I come from local government, but I was also a magistrate. In both those forums, I came across opinionated and prejudiced people. A magistrate once said to me, "I do not believe a word a police officer says". That was before quite an important trial. I was open-mouthed. I would not want us to overexaggerate the problem. There is an issue with training, but there are problems with opinionated people right across the spectrum. I feel that we should acknowledge that.

Gerald Gouriet: That is so. Without being specific, one also gets opinionated people at higher levels of court than the magistrates, and one has to deal with it as best one can. It is a question of degree. One sees far too much of it. My bottom line on this is that we will always have these problems. We can solve them to some extent through training and experience, but they will always be there in decision-making at that level. It is vital that we have a better appeals procedure, to put things right.

The Chairman: That is very helpful.

Q152 **Lord Davies of Stamford:** Mr Gouriet, you have had a very interesting career.

Gerald Gouriet: I think I may have confessed rather too much.

Lord Davies of Stamford: It is unusual for someone to come before us with a background in Hollywood. You said something at the outset of proceedings with which I strongly disagreed—that under the present, post-2003 regime there was no mechanism for controlling the number of licensed undertakings. There is one; it is called the market, and some of us believe in it. However, you said something in your written evidence to us with which I strongly agree. I will read it out: “A repeated mantra (at licensing hearings) is that planning and licensing are two different regimes, and that, accordingly, planning considerations are irrelevant to licensing. That mantra is difficult to overcome, even though there is a wide overlap between planning and licensing”. You say further on, “I think that an integration of the two regimes, under the authority of Guidance or Law, would be of great benefit”. We have received quite a lot of evidence from different people in the same direction. I am convinced that you are right, and that we need to make sure that licensing and planning decisions in future are more coherent than they have often been in the past and that these two functions talk and relate to each other in local government, which has not always been the case.

For our benefit, if we were to recommend to our colleagues a change in the law in this matter—guidance, of course, would be for the Home Office—and eventually push one through, what form do you think it should take? Do you think that before a planning authority issues any planning that provides for licensed premises it should check with its colleagues on the licensing committee, or that the licensing committee should have a statutory obligation to discuss every year with the planning committee how they should work together? What particular form of obligation should we impose to try to address the problem that you have identified?

Gerald Gouriet: My approach ducks an answer to that question, in a sense. As you may have gleaned from what I put in writing, I heartily wish that those who make decisions are given the authority to do what is right, without being too prescribed by conditions. It would be lovely if the first tier of decision-making in licensing was entitled, and knew that it was entitled, to have a look, if it wished, at the planning situation, and to grant a licence that accorded with the planning permission that had already been given. That would be a huge benefit. Right now, they are told in terms that there are two separate regimes and they should not muddle one with the other.

The Chairman: Mr Cochrane, do you have a view?

Andrew Cochrane: It is a question of looking at how it pans out in practice. If somebody comes to me and says, “I want to apply for a licence until 1 o’clock in the morning, and I have a planning restriction that stops me trading beyond 11 o’clock at night”, I have to say, “You will have to resolve your planning issue”. It may be that, as Gerald says, I will go to the committee and say, “Planning is planning and licensing is licensing”; indeed, I would. Equally, sitting behind that, my client still has the problem that they have to resolve the planning issue at some point, so that they can trade lawfully.

Lord Davies of Stamford: You waved your arms. We have identified a problem. We should try to solve it, so I would like your practical suggestion as to what the right remedy is.

Andrew Cochrane: If you wanted a solution, perhaps the way to do that, as Gerald said, would be to make it obligatory for the licensing committee to look at the planning position on any grant of a variation or new premises licence.

Gerald Gouriet: I wish it had that authority. Frankly, I wish that the licensing objectives were not there and that licensing committees could simply look at what needed to be done and do it, as licensing justices used to do. Their decision could be upset only if it was unreasonable to the extent that no reasonable person could have taken it. I wish that a licensing committee was entitled to look at everything, including the current planning permission, the likelihood of the grant of planning permission or building regulations, and to do what it thought was the right thing.

Lord Davies of Stamford: That puts up a whole lot of issues. Personally, I would not like to go down that road. It is useful to have the clear discipline of four established criteria. I am very much in the market for practical solutions to what is clearly a difficulty at the moment.

Andrew Cochrane: I would be reluctant to see a regime that said, for example, “You have to have planning before you can apply for licensing”. It may well be just because of the timing of the way things are working. As long as the licensing committee had been mandated to consider, and had considered, the planning implications of what was going on, it might be able to say, “We know from the planning officer that this is likely to be granted, but it has not yet been granted and may take some time”. As long as the committee has a look at it, I do not see that that will be an issue.

Lord Davies of Stamford: You are saying that we should have guidance or law that, before taking decisions on licensing, the licensing committee must consult its planning colleagues to make sure that any decisions it takes are consistent with the planning guidelines on which the authority is working.

Andrew Cochrane: If the Committee feels that the two regimes need to be brought more closely together—personally, I do not—that would be a good way of doing it.

Paul Douglas: Planning committees or planning departments are already a responsible authority, so the link is there as far as planning is concerned.

Lord Davies of Stamford: The planning authority has to take into account licensing considerations.

Paul Douglas: I used to wonder why an application would be made to trade until 2 o’clock in the morning when there was planning permission only until midnight.

Lord Davies of Stamford: I am still wondering about that.

Paul Douglas: I could not really understand why planning never objected. To keep it simple, if the licensing committee receives a representation from the planning committee saying, "You do not have planning permission to do it", you sort out the planning permission first and then do it.

The Chairman: Should there be a role for mediation? What should that role be?

Gerald Gouriet: My concern about mediation, which I have raised already, relates to the behind-closed-doors aspect of it. If there is to be mediation, it should be transparent.

Andrew Cochrane: Is this in a general context or a planning context?

The Chairman: In licensing.

Andrew Cochrane: In licensing in general? Yes, there is a role for mediation. It would help local residents, in particular. For instance, if I make an application, they may feel that I am the hired gun coming to act for a company or somebody, so they are naturally wary of me. If there was some method of mediation, it would be helpful. I had an example recently in the north-east, where there was a bit of an issue over a pub, but probably not enough to generate legal action for a review or an enforcement notice. The local councillors got involved and brought the parties together to have a discussion about how the thing might move forward, and that worked very well. I encourage mediation wherever possible.

Gerald Gouriet: I will give a brief example of where it seems to me to be going wrong. Recently, I was asked by a local authority to attend a meeting with the licensing officer that was requested by an appellant, to see whether they could come to some agreement. I was asked to attend when the licensing authority became concerned at being given a list of who were to attend on behalf of the appellant. There were two licensees, two solicitors, a sound expert, a licensing consultant and Queen's Counsel. I attended and stopped happening what I think would have happened if I had not attended, which would have been, in effect, a hearing, with a decision, to which people who were interested residents were not invited. I was very concerned about that.

Paul Douglas: There is an issue with residents as well. The vast majority of my clients are, quite literally, the corner shop; they want to open a corner shop. I mediate with residents, if they are willing to talk to me, but an awful lot of the time, people say, "You are representing the other side. Is it safe to talk to you?" When I talk to them, through mediation, we always iron out the problems.

The Chairman: Provided that the residents—

Paul Douglas: Provided that they are willing.

Q153 Lord Foster of Bath: As we have taken evidence, we have heard lots of dissatisfaction with the initial decision-making processes of licensing committees. We have also heard dissatisfaction with the appeals process and magistrates' decisions there. In relation to magistrates, one of the concerns that we have heard is lack of consistency of decisions around the country. What are your thoughts on that? Given that we know that magistrates' courts are not courts of record, and that decisions are not always even written down, do you think that we could at least improve consistency, share information better and help with training if it was a requirement that all magistrates' decisions in relation to licensing were written down and made available, possibly on the internet?

Gerald Gouriet: I do not think that would be a good idea, simply because many decisions are already written down—they are handed down in writing—and some very bad decisions are being hoicked around and used to try to influence another bad decision. It is too inferior a level of decision-making to be treated like a court of record or a High Court judge's decision. A bad decision by a lay Bench, or even a district judge, should not be used to persuade another court to come to the same decision.

Lord Foster of Bath: That is very interesting. We have heard somewhat different views from others, in other positions.

Andrew Cochrane: In practice, a lot of these decisions are out and about anyway, through the Institute of Licensing or through counsel who have sat on them. Sometimes they can even be found on the internet as well. The more interesting ones certainly tend to get out and about. I had not really considered Mr Gouriet's point of view beforehand. Having reflected on it momentarily, I can see that it has some force.

Lord Foster of Bath: Can we hear a final bit of evidence? Can you comment on what is clearly the view of your colleagues—that we should not rely on magistrates' courts as able to give decent appeal decisions anyway?

Paul Douglas: From my perspective in the pecking order—the nature of my business is very small—I deal with individual people. As Andrew pointed out, decisions come out through the Institute of Licensing or whatever. My simplistic approach is that if a decision is made—this happened a number of years ago—right away it sets the wheels in motion for everybody to try to sort out what is wrong with it. I am talking about the summary reviews and interim steps. That went one way and then another, and it is still ongoing. If decisions are made with which Gerald may not agree, we have the processes available to remedy that.

Gerald Gouriet: Can I quickly put an end to that? I have never used a magistrates' court decision, and several of my contemporaries do not do so. We do not think it right to do so, because magistrates' court decisions are so fact-dependent.

Lord Davies of Stamford: Mr Gouriet, my problem with what you have suggested is that it might lead to a false market in precedents and information. Some people will always know about precedents, some precedents will be well known in the trade and so forth, and some people can discover precedents by careful research, but others will not be able to discover them very easily. It would be very difficult to challenge the nature of the precedent that someone was quoting, because you would not have an authoritative record available to you. If everything was published on the internet, as my colleague Lord Foster suggested, at least the same information would be available to everybody, and there would be a single record of each decision that had been taken.

The Chairman: Can I move the argument along slightly? I think you have answered that point. Am I right that the answer is a no?

Gerald Gouriet: Yes.

Q154 **The Chairman:** You said earlier that you would like to see a proper appeals procedure. Are you able to set out how the procedure could be improved, in your view? Should it go to the Crown Court, the county court or a professional tribunal for this purpose? You alluded to it, but you have not shared with the Committee

what you would like to see.

Gerald Gouriet: I was happy when it went to the Crown Court. I am told—I do not know what the facts are—that that is impracticable now, possibly because of the number of criminal offences being committed that take up Crown Court time. I just do not know.

Baroness Goudie: There is a shortage of judges.

Gerald Gouriet: A shortage of judges?

The Chairman: We are being very nice to judges this week.

Gerald Gouriet: Really?

Baroness Goudie: There is a shortage of judges because of funding for the legal profession and for judges. That is quite clear.

The Chairman: I do not think that is evidence. That was a comment.

Gerald Gouriet: I and a number of others I have spoken to would be interested in appeals going up our tribunals ladder—to first-tier and upper-tier tribunals.

The Chairman: Specifically for this?

Gerald Gouriet: Yes. Gambling appeals, for example, go to the tribunals. I would have thought that was a considerable improvement over magistrates' court appeals.

Lord Davies of Stamford: Who would sit on the tribunals?

Gerald Gouriet: I think that judges sit on the tribunals.

Lord Davies of Stamford: You still have the problem that there is a shortage of judges.

Gerald Gouriet: There may be a shortage of judges who are willing to appear in Crown Courts, as opposed to willing to appear elsewhere.

The Chairman: These are tribunals. It is a different concept. Do the other panellists agree?

Andrew Cochrane: I share some of the reservations about the decisions becoming a sort of record on which everybody can rely—as Gerald said, they are very fact-specific—but my own experience of dealing with magistrates has been fine. Often, although not always, district judges sit on the cases. Although it is an area of law they are often not familiar with, they seem to be able to grapple with the issues and to come together with a good decision. When we have had a lay Bench, again often with very fact-specific cases, perfectly reasoned decisions have been found. As lawyers, we appear before forums all the time. You get decisions that you think are good and decisions that you think are bad. I am not sure that the propensity to get decisions that I think are good or decisions that I think are bad will be less simply because it is being dealt with by a Crown Court judge, rather than a district judge.

The Chairman: It comes back to where they are flatly contradictory and do not have the status of being a precedent. If it were a tribunal—possibly together with mediation—that would make it more formal.

Gerald Gouriet: I have this recurring problem with how mediation is conducted.

The Chairman: If residents were properly informed—

Gerald Gouriet: Yes. As I said, the little experience I have had of them was that there was considerable browbeating, or attempted browbeating, by one side of the other. That is not so easy in front of a formal tribunal, whether it is a court or otherwise.

The Chairman: Mr Douglas, do you wish to make a comment?

Paul Douglas: As far as the appeal is concerned, it may be magistrates or whatever. I agree with Andrew. You might not necessarily like the decision, but I have confidence in the panel as such. To introduce a tribunal where people are dedicated specifically to licensing can only be a good thing.

The Chairman: I thank you all very much on behalf of the Committee for being with us, giving up your time so generously and answering our questions. If there is anything that you would like to say in supplement, that would be very helpful. Thank you very much indeed.

Sainsbury's Supermarkets Ltd, Waitrose, Ocado — oral evidence (QQ 155-165)

Examination of witnesses

!: **Nick Grant**, Head of Legal Services, Sainsbury's Supermarkets Ltd; **James Brodhurst-Brown**, Manager, Regulatory Affairs and Trading Law, Waitrose; and **Mark Bentley**, Customer Operations Director, Ocado.

Q155 **The Chairman:** Good morning, I welcome you most warmly. Thank you for participating in our inquiry and for coming to give evidence to us. A list of Members' interests relevant to the inquiry has been sent to you, and copies are available. I have two interests that are relevant to today's proceedings. I am a member of the All-Party Parliamentary Group for Food and Drink Manufacturing and of the APPG on Scotch whisky, and I receive hospitality in connection with both. I have worked with one of the directors from the Scotch Whisky Association, who was previously my researcher in Brussels. We meet for briefings and we have lunch and dinner, which apparently I am required to declare.

The session is open to the public. It is broadcast live and is subsequently accessible via the parliamentary website. A verbatim transcript will be taken of the evidence and will be put on the parliamentary website. A few days after the session you will be sent a copy to check for accuracy, and it would be immensely helpful if you could advise us of any corrections as quickly as possible. After the evidence session, if you wish to clarify or amplify any points you made, or if there are additional points you wish to make, it would be helpful if you could submit supplementary evidence to us as soon after today's session as possible.

How do you think the Act has worked over the last 12 years? Is it working as it was intended to do? Has it reached its objectives?

Nick Grant: On behalf of Sainsbury's, we regard the Act as broadly effective. If we think back to the regime that existed before, there was certainly a greater degree of inconsistency among licensing justices. Although there is still inconsistency in application, we none the less think the Act has been effective. The use of conditions helps to flex particular licensed premises towards the particular concerns and needs of a locality. That is important to Sainsbury's. There are problems. The regime is still overly antiquated in its reliance on paper and formal notices. It still feels rather like the 1964 Act in some ways. Many businesses are digitalising and we think that many authorities could do more to make it easy for us to respond quickly to the full requirements of the Act. That is a practical concern. As a thematic concern, there is a tendency for blanket solutions. We are particularly concerned about the growth in use of cumulative impact policies and areas, because they do not sufficiently distinguish what we regard as the right direction for the retail industry—responsible retailing—and those who do not care so much.

James Brodhurst-Brown: I agree predominantly with Nick—there is a first time for everything. From the Act's introduction, its stated aims—one of the main ones

is to protect children from harm—have been relatively successful. We have seen every statistic on children accessing alcohol go down significantly. I echo the point about the use of technology; updates and new applications can be quite laborious. We are seeing some moves, but even with card payments and suchlike there is still a lot of inconsistency. On the whole, we are broadly happy with progress.

Mark Bentley: I agree. We have only three licensed premises and they are not open to the public. We have had no experience of inconsistencies.

Q156 **Baroness Greender:** A lot of witnesses say that there is a lack of consistency between different licensing committees. With stores and warehouses in different parts of the country subject to different licensing and planning policies, has that had an impact on you? What are your views on it?

Nick Grant: There is some inconsistency. It is better than it was under the previous regime. There is a balance. As a nationally based retailer with lots of outlets all over the country, it is obviously better for us that there is absolute consistency in decision-making. It occurs to me that the only way to get that is to have a national licensing committee, which would be inconceivable. Although it is occasionally irritating, and there will always be anecdotal examples of where it has gone wrong for a particular applicant or authority, in general the committees are well advised; they have a legal adviser and, broadly, in our view, they get things right. It does not always go our way but that's life. The balance is local flex, which we believe in, because one of our strong values as a company is to make a positive difference to the communities our shops are in. Broadly, we think the balance is correctly struck at the moment.

James Brodhurst-Brown: It is important that things that can be consistent are consistent but that things that need to be tailored to the locality are considered. The Act does that relatively well. We have seen an increasing trend in blanket approaches to retailers that is sometimes problematic for us, because we have varying levels of diligence and training. The problem from our perspective since the Act came into force is that as a responsible business we have spent millions of pounds on training and technology to assist us to make sure that we do not sell alcohol to anybody we should not, and on voluntarily changing labels to include various bits of information, but none of that is taken into account and we just get the standard list that anybody gets when they put in an application. That is sometimes problematic. It is not inconsistent; it is consistently applied to us, but the circumstances of our business are not taken into account.

Mark Bentley: I refer to my previous answer. We have only three licensed premises and we have never had any inconsistency.

Baroness Greender: It is interesting that you raised the blanket imposition of legislation. For instance, the 5p charge for a plastic bag was imposed by government, and there was some anticipation that it would have an adverse impact on retailers. The last time I checked, Tesco had made an £11 million profit. Sometimes, there might be anticipation of problems that in reality retailers can work with—for instance, food reuse and sell-by dates, where all of you have done great campaigns. Sometimes, government imposes things and the outcome is good. Is that possible?

Nick Grant: Is it possible for the Government to do good things?

Baroness Grender: Can there be a blanket imposition that it is sometimes anticipated will have an adverse effect on your industry but in fact has a good one?

Nick Grant: The answer must be yes. In general, the approach of business will be slightly nervous about change, because, as James said, we invest a huge amount of money in a particular direction, and we get used to a particular regime. I was not involved at the time, but anecdotally, under the 1964 Act, it was very patchy with justices all around the country, but we understood. We hired people and trained them. We developed expertise in the nooks and crannies of the system as it was, so when the new Act came in, business was bound to take a step back and ask what it really meant. Would it be—the usual refrain from business—the law of unintended consequences? Time after time after time, with the best will in the world, a Government will legislate in a particular way and we as a business then have to adapt and change. It will cost us money and may cost jobs. Yes, you could argue that the reaction is often overdone, and good things happen, but it is the obligation of a well-run business to consider the full ramifications of a proposal. We adjust. We implemented duty plus VAT on alcohol. We did that quickly and wholeheartedly, and it is in force. No complaining, no whingeing: we just got on with it. But we have a duty to shareholders, employees and colleagues to say what we think might be some of the unintended consequences in all proposals.

Q157 **Lord Brooke of Alverthorpe:** Could you tell us how many full rejections of applications for licences your companies have had in the last 10 years—not Ocado? If you do not have the evidence with you, could you send it afterwards?

Nick Grant: We will send it to you.

James Brodhurst-Brown: I am happy to send that too.

Lord Davies of Stamford: Have you ever lost a licence? The question probably does not apply to Ocado. At Sainsbury's and Waitrose, what were the circumstances in which your licence was taken away, and what lessons or conclusions did you draw from the experience?

James Brodhurst-Brown: We have had no licences taken away.

Nick Grant: We have not had any removed. We have had applications where we could not come to terms on the conditions.

Lord Davies of Stamford: That I understand; it is part of the planning process and part of the licensing process, too.

Nick Grant: One of the points I want to get across to the Committee is that I think much more could be done to enforce the existing regime. We believe that we invest a lot in responsible retailing. I personally have invested quite a lot of my career in the idea of responsible retailing and have been allowed to do so by my company. If a group of responsible retailers operates at a high standard, it is only right that those with the obligation to enforce should pay more attention to the retailers that do not care so much.

Lord Davies of Stamford: In answer to my question, you are saying that you have not lost licences, but you think there are people around who ought to have lost licences and have not.

Nick Grant: I think that is right. I do not want to come across as making a fairly mean-spirited point about anyone else, but it must be true, in a world in which we are prevented in certain areas from obtaining a licence, where we would bring to

that licensed area all our investment in skills, training and responsibility, that existing licence holders are not scrutinised to a sufficiently high standard. Some of them do not care; some of them might be persuaded to care.

Lord Davies of Stamford: That is a clear point and we take it on board. On responsible retailing, do any of the three of you sell white cider or any equivalent high-alcohol product?

Nick Grant: No.

The Chairman: Can we hold off from that? Those questions are coming later. May I go back to your point about enforcement, Mr Grant? It goes to a key part of the Act. Are you saying that, when you and others have received a licence, the conditions attached are not properly scrutinised and that councils just accept them and let them run unless there is an objection from residents or a competitor?

Nick Grant: Yes. I do not want to get too anecdotal, but there are examples where we have to fight like mad to get a licence and there are a lot of conditions, some pointing to local problems. That is what we do. We negotiate local conditions that we think are evidence-based and reasonable. That is a fair balance, but once we have fought to get a licence, it is undoubtedly true that there are existing licensed premises that could be more closely scrutinised. There is a failure of understanding. Our view is that the police do not really understand the full extent of their powers to review. That is where we start to get the emergence of cumulative impact policies; they are adopted as an overall approach to damp down volume in an area, whereas we say that the responsibility of individual premises should be the goal.

The Chairman: I hope we will be able to pursue that further. It was very helpful.

Q158 **Baroness Henig:** I hear the points about nervousness about change and so forth, so I am a bit nervous about asking this question, but I will anyway. The law governing the granting of on and off-licences is the same at the moment. One of our witnesses told us that the price differential, which is often a pretty big one, between on and off-sales has turned us into a home-drinking nation and therefore a different approach is needed to licensing the off-trade. Do you agree and how would it differ?

James Brodhurst-Brown: I do not agree. The retail world is very different from when the Act came in. There have been lots of changes. People shop more often; it is all about convenience, whereas historically they would have done a couple of big shops. There are lots of different elements. I do not think it is purely down to price. Responsible retailers will always take into account the price of their products and will not market them irresponsibly. I do not think price is the point.

Nick Grant: Home drinking is a pejorative term, is it not? It implies a whole set of images about what it means, but the last time I had a dinner party with a bottle of wine, or there was a barbecue, I did not regard myself as home drinking. We have to be wary of overloaded terms. I agree with James that the world has changed since 2003. Home entertainment is a totally different thing. On the train this morning, I was wondering what the average size of a television screen is now compared with 10 years ago. People invest in their homes; we are all Netflixed and networked. People learned some behaviours about drinking at home slightly more in 2008. There was an enormous crunch and recession, and people changed their behaviour. That has all happened since the Act came in, and we are in a very

different world. On the other hand, to put the balance point, there is evidence, with some sign of the economy picking up, that people are starting to go out again, so I counsel against snap judgments as to whether a thing that happens at home is bad and that people will always be at home drinking. It is flexible; people are going out to restaurants more. It will change over time.

Baroness Henig: I think our figures are that more than two-thirds of alcohol are off-sales, not from sales on licensed premises. That is quite a significant amount. The suggestion that there could be two different regimes is not that outrageous. Earlier, you drew the line in a different place; you said it was between responsible retailers and those who were not responsible. That is a different way of drawing the lines.

Nick Grant: You would have to ask why you would change the regime. It is possible to romanticise the on-trade. Not all pubs are on a village green with responsible adults taking care of the young guns. It is not like that. To say home drinking in a pejorative way is too simplistic. There should be one regime that fairly reflects in the way it incentivises new licences the people who have the most responsibility to execute the licence.

The Chairman: Does anybody else wish to comment?

Mark Bentley: I agree, but I might broaden the observation. Pubs and clubs do not sell non-alcoholic drinks or food at the same price as supermarkets. Consumers might be up in arms if we decided to change our pricing strategy to that of a restaurant. From Ocado's perspective, we are lucky in that our average basket tends to be the traditional weekly shop. We hear that is fading in sales, but we still maintain a traditional weekly shop. Our customer base tends to be families. We are lucky in that respect and are not perhaps as exposed as some competitors.

Baroness Grender: The question is driving towards the issue of pre-loading.

The Chairman: We are just coming to that. Baroness Goudie has some questions about it.

Q159 **Baroness Goudie:** A major cause of excessive drinking, especially among young people, is said to be pre-loading with cheaper alcohol bought from off-licence premises before going to the pub. Do you see different patterns in sales of alcohol, and particular types of alcohol, at weekends? More importantly, what could be done to prevent pre-loading?

James Brodhurst-Brown: From a Waitrose perspective, we have no evidence to suggest that our sales of alcohol change throughout the week. There are no trends. The volumes are greater purely because more people do their shopping at the weekend, but there is no evidence that they buy different things or larger amounts, percentage-wise.

Nick Grant: I support that. I have asked the question, and it is difficult to pull out from sales data anything that would support the contention that weekends are a focus for pre-loading at Sainsbury's. The vast majority of our sales are with food. Our mission is universal appeal, which is people from all walks of life, families, et cetera, so it is not possible to pull anything out to support that in particular. Where there is a particular example, where police come to us and say that we have a shop close to a club, say, and there is evidence of a certain type of product being bought before going into that club, we work with them. On one occasion, we took a product out, because of that link, but you cannot universalise those things.

Mark Bentley: I agree, and I refer to my last answer.

Baroness Watkins of Tavistock: To some extent, Nick, you have just answered my question. There is some evidence that some small local stores, particularly in university towns, are used quite extensively to purchase alcohol on Friday and Saturday nights. Although I can understand that your big data would not show that, you are saying that if you have clear evidence of something like that happening you work with the police to try to resolve the problem.

Nick Grant: Yes, we would need clear evidence, and evidence of harm. This is where we need to switch the debate to education. Over the last 10 years, the industry has done a huge amount to support Drinkaware and community alcohol partnerships, to educate younger people about some of the harms of drinking. It seems to me that that is a better way to go. My son is in his first year at university and, like it or not, I imagine that he would economise and budget by buying alcohol in one place rather than in an expensive club. It is rational behaviour. He would be buying it lawfully. It would be very difficult for a retailer to control that at the point of sale, because it is a lawful sale. If there was collaboration locally on what to do about it, I would say that Drinkaware should be in the university doing an education event about the harms of drinking, but there must be limits on how we can control a lawful sale.

Baroness Goudie: We now have a huge change that affects you all, with Deliveroo or Amazon, for example, able to deliver alcohol at short notice, without food; quite often people just get it delivered, at offices and so on, before going out. Do people get in touch with you for such deliveries? I know that you are online, but have you found that there are more deliveries of alcohol only? Is more of that happening?

Nick Grant: I do not think so. We do some alcohol-only deliveries, but they tend to be around promotions; people buy a number of bottles of wine. We would not identify that as supplying a party. Last week, I was made aware of a website called Party Hard Party On; the clue is in the title, I submit. There is a growth in such organisations and a particular type of need is being fulfilled. I shall not cast doubt on their ethical position, but you might want to get them in and have a chat with them about their business model. That is what I mean about the increasingly important division between responsibility of approach and volume of approach. It is a red herring. It is about how you sell the bottle and what you invest in educating the people who might buy it.

The Chairman: Is there anything you could be doing to prevent pre-loading, which, from the evidence we have heard, is increasing? I am not advertising, but Marks & Spencer does a special rate with a bottle of wine included.

James Brodhurst-Brown: I have seen no evidence to suggest that pre-loading is actually an issue. I am not denying it if the evidence is there, but it has never been brought to my attention. It is one of those terms, like home drinking, that becomes standard for anybody who buys something to drink before they go out. From the responsibility perspective, and echoing Nick's point, it is difficult at the point of sale to know why people are buying alcohol and when they are going to consume it. It remains a legal way to purchase a product.

Nick Grant: I have been confused about the concept, because it seems to be based on the idea that someone would buy alcohol from the off-trade and drink

enough of it that they would not have to drink much in the pub or club. We are then talking about the most unenforced law in the country, which is the law against serving people who are already drunk. There were five prosecutions of that offence in 2013. It seems slightly unfair to blame the retailer for making a lawful sale to a person who is sober, and at the same time say that every day of the week people can be admitted to pubs and clubs and—let us face it—served while drunk. It may be true that we have come to a cultural acceptance of the unenforceability of that law, but it still needs to be said.

Lord Smith of Hindhead: I imagine that intoxicated people go to a supermarket and buy alcohol as well.

Nick Grant: But they will not get served.

Lord Smith of Hindhead: I am sure that would be the case in yours. The Act is about licensing management rather than social engineering, and we have to work out what we will recommend, knowing that the amount of off-sales has increased dramatically and is now higher than on-sales, and that people drink a significant amount of alcohol before they go out in the evening. They cause trouble in the night-time economy and somebody else is left to pick up the tab. I accept that pre-loaders probably do not go to Waitrose to buy their product of choice, because you, and Sainsbury's and Ocado, are not in that market. I know you said that Ocado has only three depots, but you are nevertheless a significant player in alcohol delivery. Do you think that the off-trade generally has a responsibility to try to help on the issue of pre-loading and the trouble caused in the night-time economy by people who have purchased and consumed drink earlier?

Nick Grant: We are happy to accept responsibility in the sale of alcohol. It is difficult to know what that would look like practically in a policy or training programme that we could implement in stores. We have invested a lot of money in Drinkaware, which is an educational charity. I was a trustee for the first seven years of its existence; we worked hard to take money from those who made and sold alcohol, and we tried to connect with the key groups. As I understand it, the key group you are thinking about are the 18 to 21 year-olds. One would think intuitively that it is that area. Drinkaware has outreach to the National Union of Students, so there are things we can do, but in practical shop-operating procedure it is difficult.

Lord Brooke of Alverthorpe: I come back to Lord Smith's point. The entire focus of Drinkaware, which is funded 87% by the drinks industry, is on education and making people aware of the facts relating to alcohol and abuse. You support that, which is good, but it is all about the responsibility of the individual. We now have a very big change—a different world, to use your phrase—where two-thirds of the alcohol being sold is sold by yourselves in off-sales, rather than by pubs, the on-trade. What responsibility, if any, do you accept that the supermarkets have in that? For example, in the last quarter, Tesco made a profit by selling cheap champagne for three months, to boost its profits. You sell at a much lower price than the on-sales. Do you not see a connection with the change that has taken place, and why?

Nick Grant: With respect, I am not clear what your remedy is in this case.

Lord Brooke of Alverthorpe: I am asking whether you accept that there is some responsibility on you. For example, we have an increase of well over 100% in the

number of people now being admitted to hospital with alcohol problems of one sort or another, compared with 10 years ago. That is a big change. Who is responsible? Yes, the individuals, but how do they become ill in the way they have? How were they supplied? Do you accept that there is responsibility on the retailers? I know that you are good retailers. I had quite extensive correspondence with Justin King previously and I have corresponded with one of your colleagues. I am not criticising you; I am asking about the whole of the retail operation. What can be done? Do retailers accept some responsibility? If so, what should happen?

Nick Grant: Everyone who is engaged in manufacturing and selling alcohol has a responsibility to take steps to ensure that they behave responsibly in the way they do it. We do. We take numerous actions, invest a lot of money and take a lot of care in how we sell; but you are talking about a lawful sale to an individual.

Lord Brooke of Alverthorpe: I am not disputing that.

Nick Grant: If the Committee has ideas and evidence about how it might be done differently, there are lots of organisations. My company would work collaboratively to improve a situation where we thought we had a part to play. We have a very open mind. We invest and we take many steps to do this thing responsibly. I am still not clear about whether you think that people's health will be better if you drive them to drink in the on-trade.

Lord Brooke of Alverthorpe: I am not saying that you drive them to drink in the on-trade; I am saying that we should try to persuade people not to abuse alcohol. Part of the way they might abuse it is that it is extraordinarily cheap compared with what it was. It is cheaper than it was in 2000, but that is another question.

The Chairman: Can we move on? We will tease out some of those issues.

Q160 **Baroness Watkins of Tavistock:** The availability of cheap super-strength alcohol, normally defined as 6% by volume, is said to be one of the main causes of street drinking, which harms local communities and damages businesses near the point of sale. Can that be tackled by voluntary agreement with local authorities to restrict the alcoholic products that can be sold in areas experiencing particular trouble with street drinking? Is it appropriate for licensing authorities to impose conditions on the strength of the alcohol that can be sold? Is it the responsibility of the retailer to control it at all? I note that the written feedback from Sainsbury's contains some of that; for example, you do not sell white cider. The big question is how we get the balance right in particular areas. Most of us recognise that they exist.

James Brodhurst-Brown: When approached, Waitrose, like Sainsbury's, always wants to work collaboratively with communities where we have a branch. On several occasions, we have been approached and have looked at evidence of some kind of link with accessing higher-strength products. We do not sell white cider. The majority of our higher-strength products are traditional ales and more premium products. When authorities come to us with evidence to back up what they are asking us for, we are quite happy to look at it.

Baroness Watkins of Tavistock: Do you think that is how it should be managed, or do you think that licensing authorities should have the opportunity to restrict?

James Brodhurst-Brown: I hope never to get to the point where we have anything imposed upon us. It is difficult to imagine a scenario where we would get

to the point where we needed a condition, because we are always happy to work collaboratively. In the past, we have done so. We have shown that.

Baroness Watkins of Tavistock: What about online? I have never tried to buy white cider online, but perhaps you can.

Mark Bentley: I am sure you can somewhere, but not from Ocado. I asked the question and then had a look at the website myself. Sometimes you ask a question and find something else when you look yourself. I looked at super-strength beer. We sold one particular item of super-strength beer—Special Brew.

Lord Davies of Stamford: What beer is that?

Mark Bentley: Carlsberg Special Brew. It is a high-percentage-alcohol beer. I cannot remember what the percentage is, but it was the only one I could find. We sold 88 units last week, for a grand total of £642, which is actually quite expensive, in weekly sales in excess of 25 million. We do not see a problem.

Lord Smith of Hindhead: Weekly sales in excess of 25 million units?

Mark Bentley: Sorry—pounds. It is £600, on the back of £25 million. We have a minimum basket of over £40. We deliver only to known customers. They register with us and have to commit to being over 18. We have a follow-up policy—Challenge 25—so we check customers' identity.

Lord Davies of Stamford: You check that.

Mark Bentley: We will. If customers look under 25, our drivers are trained to ask them to prove that they are over the age of 18 by identity cards, passports or driving licences. If they do not or cannot, all the age-restricted items are removed from their shopping. We warn customers that, if they are lucky enough to look under 25, they will be approached and asked to prove that they are over the age of 18.

The Chairman: We will come to that.

Lord Blair of Boughton: Chair, why do we not just finish that? I want to ask the other two witnesses the same question. What do you do about underage drinking as regards deliveries?

Nick Grant: Our system is based around doing the Think 25 check on the doorstep. The slight difference from Ocado is that, if the delivery driver is not satisfied that the person is the right age, they remove the entire shop. That puts in quite a deal of jeopardy for somebody who leaves their child to accept the delivery, but it is the simplest and cleanest way for us to do it.

The Chairman: Before we leave the issue, what about older siblings purchasing strong or even ordinary cider in a supermarket or online for younger ones? When I was MP for Thirsk, it was a particular issue. They could still run faster than the police, who were trying to catch them.

Nick Grant: Do you mean a proxy sale?

The Chairman: Yes.

Nick Grant: It is a lawful sale to a person who goes on to provide the product to somebody who is underage.

The Chairman: Particularly if it is delivered. It is a problem in market towns. I have seen it for myself on a Friday night patrol in Thirsk. There is a legitimate, lawful sale, as you would call it, to an 18 or 22 year-old. As soon as they get out of the supermarket and are at home, they allow their younger sibling or friend to drink it.

James Brodhurst-Brown: That is a difficult one from our perspective, because we would not know. The policy we follow is part of the Retail of Alcohol Standards Group guidance in relation to proxy sales. If any of our partners in a branch knew, they would refuse the sale. If it is delivered, the problem is that there is no way for us to know what will happen to it once it has been legally purchased.

The Chairman: Are you arguing that the guidance could be reviewed?

James Brodhurst-Brown: It would be difficult to put in place regulation to deal with that. It would need to come from an education and an enforcement perspective, things like asking somebody who is found to be underage where they accessed it.

Nick Grant: This area of the law is difficult. As I understand it, it is lawful for an adult to buy alcohol for themselves and, in the home, for the child to have some. It is unlawful for someone merely to act as an agent for somebody. It is quite tricky. We have "how to go about" guidance on it, because it is quite tricky for shop staff—forget deliveries. If an adult presents, and there is a 15 year-old behind them, what level of scrutiny do you require of your checkout operator? Should they eavesdrop on the conversation? According to the last research that I saw, the biggest source of alcohol for those who probably should not have it is parents, I am afraid. It is just a fact—again, from research that I recall—that parents have clung to the view—

The Chairman: It is not parents behaving badly in market towns. Mr Grant, earlier you made a great point of talking about education. I remember as a youngster in school being told about the dangers of smoking, and it scared the living daylights out of me. What education is there at the moment? Are you involved in advising under-18 students of the dangers of irresponsible drinking?

Nick Grant: There are two routes to that. One, for the over-18s, is support for Drinkaware and its work with the NUS, et cetera. It is very effective. The other route, for the under-18s, is our work in community alcohol partnerships. I have an impact report—one copy for each of you—that I can leave with you at the end. I will hand it round. That is all about local collaboration to try to work out what the problem is with kids in an area. Do they need some diversion? Where are they getting alcohol? Can we support smaller independent retailers to up their game to prevent those sales? The results are pretty impressive. Those are the two channels.

Baroness Watkins of Tavistock: Can I come back on one issue? It is very clear to me that the three of you restrict your own sales of super-strength alcohol, and because you are very big companies, it probably does not affect your margins. It also probably keeps out of your shops some people you would rather did not linger in them, to be honest, so I can see the benefit. Because of your voluntary approach, do you think the problem is pushed into small shops, which become very dependent on that income and therefore do not control in the way that some of us might like to see? I live in a city in the south of England, where I know exactly which are the three or four shops.

Nick Grant: One unfortunate effect of having responsible retailers in an area may be to incentivise cashing in by people who do not care about the products. I do not think that is our fault because we are being responsible; it is just an effect. It links to one of my overall themes, which is that we must take the opportunity to

raise all the boats and get all the responsibility up as much as we can. One thing that we do in CAP is to help to train small shops in Think 25. They may not have the resource or the understanding to do it. We supply a manager or trainer who will train them, to bring them up as well; all the supermarkets involved in CAP do that. That is useful, because if they say no to joining in, it is a big clue to the enforcement community that it is a shop that may be profiting from high-strength drinks, White Lightning, et cetera. Incidentally, I was told the other day that White Lightning contains no apple. It is a chemical concoction. Do not think that it is cider.

The Chairman: That is anecdotal, so we cannot accept it as evidence.

Baroness Grender: Do you report outlets that say no to a responsible authority?

James Brodhurst-Brown: It will be apparent in the CAP areas. When the CAP is set up, it probably defines a geographical area and invites all the retailers. The bigger retailers that are CAP members and funders are usually the main supermarkets. It will then look for and access all licensed premises in the area, to try to bring them on board. That is done in partnership with enforcement, so people will be quite aware if somebody does not participate.

Baroness Grender: If they do not participate, the authorities know.

James Brodhurst-Brown: It is almost like putting your hands up and saying—

The Chairman: The Committee has heard the term "CAP" before. We just cannot quite remember what it stands for.

Nick Grant: Community alcohol partnership. Shall I pass some of these reports round now, so you have some light reading?

Q161 **Lord Smith of Hindhead:** I have a sneaking suspicion that I will probably be able to write the minute for the answer to this already, but let us go through the motions. In 2012, the former Prime Minister, David Cameron, said that the Government would introduce minimum unit pricing. In 2013, the present Prime Minister, then Home Secretary, said that the introduction of MUP would be delayed until there was conclusive evidence that it would work. Would minimum unit pricing be effective in tackling the abuse of cheap super-strength alcohol, as well as in helping problem drinkers?

Mark Bentley: I am not sure that we have seen enough evidence to suggest that minimum unit pricing would help. I have read through some of the evidence presented to the Committee, and there are conflicting opinions. Until we see evidence, I cannot comment on that.

Lord Smith of Hindhead: You would like to see the outcome of more evidence.

Mark Bentley: I think so.

Lord Smith of Hindhead: You can look at the evidence once it is put in place, can you not?

Mark Bentley: Having read through some of the evidence that was presented to the Committee—

Lord Smith of Hindhead: We have to introduce it somewhere to get the evidence, do we not?

Mark Bentley: Yes. I agree with you, but it has been conflicting.

Lord Smith of Hindhead: Where do you think that we could introduce it?

Mark Bentley: Introduce the evidence?

Lord Smith of Hindhead: Introduce MUP to get the evidence to see whether we should roll it out.

Mark Bentley: I see. Sorry, I misunderstood. I am not sure that introducing minimum pricing and then seeing what happens is the best approach.

Lord Smith of Hindhead: So we will not get the evidence.

Mark Bentley: By doing what you are doing now, you will flush it out, hopefully.

The Chairman: Can I pursue this a bit further? Mr Brodhurst-Brown, you said that pricing is not driving behaviour, that it is not the driving force behind what people buy at Waitrose. That begs the question of what does drive behaviour in purchasing alcohol from Waitrose.

James Brodhurst-Brown: I would like to clarify that. I said that it was not the only driver.

The Chairman: What do you believe is the main driver?

James Brodhurst-Brown: Various factors drive the responsible purchasing of alcohol. It can be preference or quality. There are various things. We have no evidence of it in our stores, although that does not mean that it does not exist. We retail and promote our alcohol as part of a bigger offer, to do with food and entertaining. It is never just about slashing prices and saying, "Come and buy it". We have alcohol promotions—they are a part of the industry we work in—but we only ever seek to do them responsibly.

The Chairman: Do you think that taxation could drive more responsible drinking? Mr Grant, you are nodding, which we cannot record.

Nick Grant: It could help. It could be used to incentivise and promote lower-alcohol products, for example. It could be used sensibly to achieve that. There are some other requests that we have with the Government at the moment to try to work on the definitions of lighter alcohol, because you are very restricted in what you can say when you promote. There are very technical terms that are allowed. A wine stops being a wine at a certain percentage and you have to call it something unattractive. There are lots of practical things the Government could do to get the lower-alcohol market going.

Lord Smith of Hindhead: To go back to the question, do you think that minimum unit pricing could be an effective way of tackling that?

Nick Grant: I agree with you, Lord Smith, that it would be an experiment and we would not know the outcome. It would be a big step to take. I think you are right; until it is put into practice, no one will have the evidence. Scotland said it will review after six years. It will be tricky to disentangle the effectiveness from wider population trends. Over the last 10 years, most of the alcohol metrics on harm and consumption have gone down, without minimum unit pricing, as a result of education and wider cultural changes, so it will be tricky to see whether it has worked. There is certainly no way of knowing now whether or not it would.

From our point of view, we remain sceptical that a whole-population approach will do much to change the behaviour of very committed problem drinkers. On the other hand, we know that it will raise prices for what are now called JAMs—just about managings, on a budget, in difficult times. Perfectly responsible drinkers will have a higher cost of living as a result. We know that. As a retailer with universal appeal—all walks of life come into a Sainsbury's—we do not think that is right and we are sceptical about its efficacy.

The Chairman: But you believe that tax could work from day one, if the Government were looking at a way of—

Nick Grant: Government could do more to help to stimulate the lower-alcohol market.

Lord Brooke of Alverthorpe: When we had representatives of the on-trade here, I asked them about variations in pricing around the country. They freely conceded that they practised differential pricing in different parts of the country, because they sold better more cheaply in some places and could sell at higher prices in others. Do you have a standard price for the same product throughout England and Wales, or do you vary your prices?

Nick Grant: We have a national pricing approach. There is one price.²

Lord Brooke of Alverthorpe: National?

James Brodhurst-Brown: We do the same.

Lord Brooke of Alverthorpe: Do all the supermarkets have that?

The Chairman: I do not think you can answer for other supermarkets.

Nick Grant: I suspect so.

The Chairman: Do you use alcohol as a loss leader in any shape or form, to bring people in?

Nick Grant: No. In fact, when duty plus VAT as a proxy for cost came in, we had to make no changes to any retail prices, but we had to change our colleague discount scheme. Our colleagues get a discount by virtue of being employed by Sainsbury's. I am sure they do in other companies, too. That, on occasion, might have brought the cost of alcohol below duty plus VAT, so we took it out of their scheme, which they were not terribly pleased with. For actual shelf prices, the answer is no, we do not. There is a floor at which we work.

James Brodhurst-Brown: It is the same for us.

Q162 **Baroness Eaton:** We now have a change of topic area. A number of consultees gave the opinion that it was quite ridiculous that it was possible to obtain a premises licence before planning permission had been secured, and a number of witnesses criticised the lack of co-ordination between the licensing and planning functions of local authorities. Has that caused you any problems in your business?

James Brodhurst-Brown: No, it has not caused us any problems.

The Chairman: Mr Grant, are you more exposed to this, as the legal adviser?

Nick Grant: Mercifully, I have avoided planning issues in my job. Planning officers are able to input to the licensing process, so there is a connection, but we think they are different processes. They should communicate sensibly with each other, but they do different things. We have not had huge problems.

Baroness Grender: You do not have problems, for instance, if there is a Sainsbury's Local with flats on top of it, and a bit of a night-time economy naturally builds up because there may be one or two other off-licences in the area. Does that not impinge on planning at all? You have not come across that as an issue.

² The witness subsequently explained that Sainsbury's operated two national pricing policies, one for supermarkets and one for smaller format convenience stores ('Locals'). This was due to the differences in operational requirements and running costs associated with the two types of retailing.

Nick Grant: No. It has not been raised with me ahead of today's session—let us put it that way.

Q163 **Lord Davies of Stamford:** This follows directly from the previous question. A number of our witnesses have expressed—as you have this morning—general satisfaction with the present system, but some have compared it unfavourably with the planning system. They suggest that the planning system is better resourced and has strengths, in that it has inspectors and so forth. It is proposed that the two systems might even be merged—that the licensing function would be carried on with the same kind of committee structure, inspectors and appeals process that currently apply in planning. Do you see any advantage or disadvantage in that? Have you thought about it? Do you have any views on it?

Nick Grant: We regard licensing committees as increasingly well run. They are accruing expertise. We understand the way they work, so we would be nervous of merging them with the planning process. We would be particularly nervous about delays, et cetera. People have said that the appeals around licensing are difficult, but in general we think they are well run, and we do not have objections.

Lord Davies of Stamford: Do the other witnesses agree?

James Brodhurst-Brown: I agree from Waitrose's perspective.

Mark Bentley: I concur.

The Chairman: You will accept that possibly you are not subject to the same frequency of objections as licensed bars and clubs. You tend to have a licence application that lasts for some time.

Nick Grant: It may be partly functional. We have a licensing team that understands licensing and the best way to communicate with licensing authorities, and we have a very effective planning team. At the moment, both understand each other's expertise.

Lord Davies of Stamford: They work together.

Nick Grant: They work together as they need to.

Lord Davies of Stamford: There are suggestions that the licensing sub-committee and the planning committee do not always work together on the other side. You have not come across that.

Nick Grant: No. I can believe it.

Q164 **Lord Brooke of Alverthorpe:** Witnesses have suggested that the promotion of health and well-being should be an additional licensing objective. Mr Grant, in your evidence, you point out the difficulties of correlating "the impact of one licensed premises with health issues". Earlier you spoke about your unease over cumulative impact assessment approaches. Do the other panel members share that view?

Mark Bentley: I have the same view.

Lord Brooke of Alverthorpe: I thought you might.

James Brodhurst-Brown: I do as well, predictably.

Lord Brooke of Alverthorpe: That is that question out of the way. To go back to what we were talking about earlier—the responsibility of the retailing industry—I have been encouraged by some of the suggestions that you made. Are there any other points? Earlier, you mentioned the use of conditions, and that they could be better implemented than they are at the moment, which is something we will

no doubt look at. Are there other areas where you feel that conditions might be usefully applied that might have a relationship with health and well-being? You do not have to answer now. You might want to think about it.

Nick Grant: We think that the existing four licensing objectives are the right ones, because there can be meaningful discussion about the role that a licensed premises plays in each of those four. Our concern with the fifth objective, public health, is that it becomes a general, quite expensive abstract debate; for example, trying to attribute general ambulance data to a shop where people buy and consume at different times and in different locations. It is very difficult, as a matter of standard and burden of proof, for applicants.

In general, if there is energy and initiative to be had, we would prefer it to be put into the idea of enforcing greater responsibility among the widest possible group of retailers. My ambition when I was part of the groups that work on responsible retailing of alcohol is that every shop that sells alcohol should have a Think 25 policy, for example. I was on the committee, X years ago, that designed the Think 21 policy, which became Think 25. We still do not have universal coverage of Think 25 in every type of shop around the country. That would be a good practical thing to do. If there is energy to be had, that is what I would urge you as a Committee to look at—how we spread responsibility and best practice around.

Lord Brooke of Alverthorpe: It is a voluntary approach, of course.

Nick Grant: It is a voluntary approach, and an approach that has worked well.

Lord Brooke of Alverthorpe: What do we do when we get good ideas if there is a voluntary approach? Asda, for example, changed the display of alcohol in many of its shops, but then discovered that nobody else had changed, so put it all back, and now it is right in your face. What do you do when you find that the voluntary approach is not working because others take advantage of it?

Nick Grant: I suggest that we build on all the good voluntary work that is taking place—there are lots of examples, from lots of companies—and use that to shine a light on retailers that are not so responsible. That is the entry point for enforcement, or the non-voluntary approach.

Lord Brooke of Alverthorpe: What if they still say, "No, we are not doing it"?

Nick Grant: Then you have to look at licence review and removal, in the end.

Q165 The Chairman: When the 2003 Act went through the House of Commons, we were told that it would lead to a café culture and 24-hour licensing. It does not really seem to have happened. Do you believe that you, in your trade, have benefited from the fact that the café culture and 24-hour licensing have not taken off?

Lord Davies of Stamford: You have quite a lot of 24-hour licences.

James Brodhurst-Brown: No, Waitrose does not open 24 hours. We would apply only for the relevant hours. It is difficult to comment on that one. I do not know what it was like before, so I cannot really comment. We have seen no discernible shift in patterns, when we have looked into it.

Nick Grant: The 24-hour thing has been a bit of a red herring. It has been used as a symbol for the excesses—

Lord Davies of Stamford: Do you have 24-hour licences? Tesco does, does it not?

Nick Grant: There is a slight disconnect. Sometimes we apply for them, to give ourselves some flexibility, but we never operate them. We are not currently operating a 24-hour, buy alcohol at 2 o'clock in the morning type of thing.³ It just does not happen. The effects of the café culture have been overstated.

One of the achievements of the Act was for the first time to enable the off-trade to engage in detailed work with communities around conditions. That is something that has worked well and has helped to foster voluntary responsibility. It is not necessarily always an out-of-the-blue charitable act; it is a complicated system of incentives. Responsibility needs to be more heavily incentivised across a wider spread of retailers.

The Chairman: Thank you very much for being with us today, and for sharing your thoughts and being so generous with your time. Could you vacate the chairs for the next group of witnesses?

Nick Grant: Do you all have your CAP impact reports now?

The Chairman: We will have them.

³ The witness subsequently explained that out of Sainsbury's 1,385 stores across the UK there were 14 that opened 24 hours a day, and were licensed to sell alcohol during this time.

Emms Gilmore Liberson Solicitors, Association of London Clubs and Working Men's Club and Institute Union — oral evidence (QQ 166–172)

Examination of Witnesses

I: **Peter Adkins**, Director of Regulatory Services, Emms Gilmore Liberson Solicitors, **Paul Varney**, Association of London Clubs, and **George Dawson**, Union President, Working Men's Club and Institute Union.

Q166 **The Chairman:** Gentlemen, thank you for your patience. I welcome you most warmly. Thank you for joining us this morning and coming to give evidence to us on the Licensing Act 2003. A list of members' interests relevant to the inquiry has been sent to you. I understand that copies are available today.

The session is open to the public, is broadcast live and is subsequently accessible via the parliamentary website. A verbatim transcript of the evidence will be taken and will be put on the parliamentary website. A few days after the session, you will be sent a copy of the transcript to check for accuracy. It would be helpful if you could advise us of any corrections as quickly as possible. If after the evidence session you wish to amplify or clarify any points that you make during the session or have any additional points that you wish to make, you are welcome to submit supplementary evidence to us—the sooner, the better.

Could I commence by asking a general question? Can you give us a general view of how effectively you think the Licensing Act 2003 has operated over the last 11 years? Has it operated in the way you believe it was intended to operate, or otherwise?

George Dawson: I am George Dawson, president of the Working Men's Club and Institute Union.

The Chairman: You are very welcome.

George Dawson: Generally it has worked very well. There has been a bit of row-back on the flexibility that was originally intended—the 24-hour opening—especially with the late-night levies, et cetera. When we applied for our licences in 2005, all eventualities were covered by having licences until 2 o'clock. Most of my clubs claim for 8 in the morning until 2 in the morning, every day of the week. They do not use it all the time, but they do it to have flexibility over periods of celebration—100 years of the club, et cetera. A lot of clubs—it is only in some areas—now have to do a variation, because six authorities decided to do the late-night levy. They get charged a late-night levy if the club premises certificate says, "until 2 o'clock", even though they may not use it all the time, and they may use it on only two occasions in the whole year. Then they have to apply for a temporary event notice. The flexibility seems to be going from the idea of what was originally intended, but generally it is working well.

The only problem that the union has with different authorities is inconsistency. Different authorities interpret the law in different ways. We have a difficulty with

advising our clubs in one area about something that we feel is not part of the Licensing Act, and trying to educate the licensing officer in that respect. In other areas, we have no difficulty whatsoever. If you have no trouble in your club, they just leave you alone to get on with it. The inconsistency is the worst part of the Act.

Paul Varney: I am Paul Varney from the Association of London Clubs. We have adapted to it now. It works very well for the London clubs. Unlike George, we deal with just three authorities, with a majority in Westminster. Other than costing us all an awful lot more money each year than the 10 year Club Registration certificate that we used to have, it works well. We would prefer the least amount of change, or no change at all. As not-for-profit clubs, we would not like to be lumped together with the commercial elements. We have the hours that we need. Temporary event notices are regularly applied for and granted. We do not have many of those. Normally they are for celebrations or regular club events. The licensing works very well for us.

Peter Adkins: In general, it seems to work very well. It is certainly an improvement on the old system. Although you get some strange licensing officers and police who interpret the law in different ways, generally across the country we have a fairly pragmatic and consistent approach to the law. When we deal with people who are all over the country, it is fairly easy for us to advise them on how things should be implemented. The approach of the legislation, in combining late-night entertainment and late-night refreshment, is a good one, although it seems that they are now being split again. It brought in those three regimes. Putting licensing with councils was also a good idea. After all, they were more used to licensing systems generally, and it was not a judicial function. I also like the default nature of the application process. If it goes through and there are no objections, that is it; there are no hearings. That helps to keep the costs down for my client base. In general terms, I like it. It seems to work very well.

Q167 **Lord Brooke of Alverthorpe:** Good morning, gentlemen. You seem to be reasonably content with the way it is working. Do you think there is an argument for removing the special category of club premises certificates completely and moving members' clubs into alternative, more flexible categories, such as CANs—community and ancillary sellers notices—if and when they come along? Have you given any thought to that?

Paul Varney: We do not change how we use the licensing very much at all. The clubs are very traditional and do the same things each year. We would prefer to stay on our own and not be subject to all sorts of chopping and changing that is likely to come. There would be no advantage at all to us in moving. In fact, it would be a disadvantage.

George Dawson: I agree with Paul. It is a system that is working. When the new system came in, I had quite a number of long-standing secretaries of clubs pack up, because they found it too difficult. That lost a lot of experience in the clubs. Some of them came back after we had shown them how to fill in the forms, et cetera. The system is working at the moment. There are problems that I have pointed out, with extra things such as the late-night levy and things that been

tried before like alcohol disturbance zones and EMROs—I cannot remember what the acronym stands for. I have always thought that those extra things were quite unnecessary. They have an impact, but the system should be left as it is, instead of chopping and changing again and moving to a different system.

Peter Adkins: When this question came up, I started to do a little research into community and ancillary sellers notices. Of course, there are no regulations out, but the main drive seems to be for bed and breakfast people, community events and so on. It does not seem to fit very nicely with what clubs do. Clubs have always had a separate licensing regime. One of the best things at the moment is that we do not need a DPS—a personal licence holder. I am not certain that this regime would fit well with clubs. I am with my colleagues here; there is no need to change the system. It seems to work reasonably well. We are used to it. We have been using it for 11 years. To change it all around will just cause more problems.

Earlier, Mr Varney commented on the annual costs. That may well be a high factor for the London clubs, but for most clubs out in the regions we are talking £190 a year. It is not a huge factor that this would be a cheaper route.

Lord Brooke of Alverthorpe: It is, of course, a self-certificating system, if it comes.

Peter Adkins: Absolutely.

Lord Brooke of Alverthorpe: You would not have to go through the process of being examined by others, unless you got into trouble.

Peter Adkins: Yes. We would probably need the same system for the club premises certificate to fall back on, so we would be introducing a third level.

Q168 **Baroness Grender:** Your use of temporary event notices is very different from that of a commercial operation right in the heart of Camden market, for example, that uses a regular temporary event notice system. Then different clubs next to one another do exactly the same to extend into the early hours. That has a significant cost for local authorities, whereas the temporary event notices that you use are rare and are predominantly for community events. Do you think that there is any merit in feeling a bit sorry for local authorities—according to the LGA, temporary event notices are run at a significant loss—and separating them and having some kind of change? Should there be a different system for that kind of high-end, commercial use of temporary event notices, rather than the £21 local event notice system?

George Dawson: In my experience, when a temporary event notice is used by a private members' club that has a club premises certificate, it is usually when the club would like to advertise and invite the general public to a charity function or something like that, so that it can raise more money for whatever charity it is supporting. It may be an event that is put on to celebrate a local person who has just got an OBE. In that context, it is used only to allow us to supply the public with sale by retail, as opposed to mutual supply to a member. In my experience, that is what most of them are used for. We have been given the flexibility to operate until midnight or 1 o'clock in the morning, which we originally applied for 10 years ago, although I know that six authorities have the late-night levy. Most

clubs took that up, so they do not need a temporary event notice for extensions. I do not understand why a premises licence individual—a public house or a commercial enterprise—has not already used the advantages of the Licensing Act to apply to operate until 2 or 3 o'clock in the morning in their normal premises licence.

Baroness Grender: The evidence is that they do not. They use TENs in a highly commercial environment.

George Dawson: That was not the function of TENs when they came in. Talking from the mutual side, the temporary event notices were brought in so that we could have a wider audience coming to our clubs on odd occasions. Commercial properties should have taken advantage of the 24-hour opening that the Government wanted in the first place. I do not think it is a correct use of them. If they were separated, a mutual would have the 15 temporary event notices for special functions that you have in a private members' club. It should be treated differently from a commercial exercise where a pop group is on until 4 o'clock in the morning. Then the council would have to decide which one was which. Given the ignorance of the law that some licensing officers have, I hope they would not make the wrong decision and that a private members' club would not end up paying £100, instead of £21, and getting the wrong type of temporary event notice. I agree with you. The commercial premises should have put it into their licence in the first place.

The Chairman: Mr Varney, do you agree?

Paul Varney: Yes, exactly that. We would not want to be lumped together with the commercial market, if there was a differential. What we do is social—it is for members and their guests—so it would be wrong to lump us in with a commercial enterprise. If it was split, there would need to be very clear guidance that the clubs were in the lower category. We have very few of them, anyway.

Peter Adkins: Generally I would agree, particularly with Mr Varney. The main problem is in the definition of what is commercial and what is not. A social club may well run a major event on New Year's Eve, for instance, which will bring money into the club and raise the club's coffers. Is that commercial or not? They are not-for-profit clubs, obviously, but there is money coming in. I can see various other premises licence holders thinking, "They are holding that event and paying £21. We are paying £150. What is the difference?" There may have to be a blanket exemption for CPC holders, for instance. It will be in the interpretation, more than anything else. I am for anything that will reduce the costs for clubs.

The Chairman: For "social", you would read "community".

Peter Adkins: Yes.

The Chairman: You would differentiate them in that way.

Peter Adkins: Yes.

The Chairman: That is very helpful.

Q169 **Baroness Goudie:** Some private members' clubs have faced declining numbers and have opened their doors to the public, for which a standard premises licence is required. Have those clubs experienced any problems with the wider licensing system? If so, are there amendments that you would like to see that would help to rectify them?

Paul Varney: For our clubs, that is not quite the case. Our memberships are increasing, rather than declining.

Baroness Goudie: That is a London syndrome—a City syndrome.

Paul Varney: It is a fortunate position. Very few have a full licence. Some do, but our needs are perhaps slightly different, in that we enjoy a degree of success and increasing memberships. We are very fortunate.

Baroness Goudie: You are fashionable.

Paul Varney: We are going to have to be.

Baroness Goudie: New ones are starting up as well.

The Chairman: That seems very well informed.

Peter Adkins: We do not have the advantages of Mr Varney's membership, because clubs are decreasing in number rapidly. I think that there are now 5,500 fewer clubs than there were five years ago.

Lord Smith of Hindhead: It is 3,500.

Peter Adkins: Sorry—3,500. Most clubs like to hire out rooms as a way of bringing in income, so I would always advise them that they must have a premises licence. The difficulty is that sometimes the neighbours, who have put up with the club being there for ages, use it as an excuse to have an argument about it and we end up in hearings. That drives up the costs, of course, even though they are looking for exactly the same hours. The police tend to jump on the bandwagon as well and to want more security—CCTV. Those are all good reasons, but they tend to drive up costs.

Most clubs have an arrangement whereby they keep their club premises certificate and have a premises licence only for particular rooms, such as a function room, so that they can keep the club separate. They may use it two or three times a week or two or three times a month, but because they use it more often than the TENs limit, they need that premises licence. That leads to their paying two lots of fees. They keep their CPC and their premises licence, so annually they pay two lots of fees. It also causes a problem as to who will be the designated premises supervisor—the personal licence holder. I always advise clubs that they need at least two, because in clubland it is normally the steward, and stewards have a habit of leaving. You have events organised, but suddenly you have no personal licence holder, so no premises licence. There have been changes in the Licensing Act to exclude the need for some premises to have a DPS. If that could happen for clubs with a premises licence, it would be a positive move.

Paul Varney: I agree.

George Dawson: I have experience of this, because my own club has a CPC and a premises licence. The steward is the designated licence holder, which you need for a premises licence. We use it mainly for the function room, which holds 350. We cannot always fill it, but because it is near the town centre, quite a lot of people want to use it for functions. Our club would not survive if we did not have that. Out of the 1,600 clubs in the union, getting on for 600 have both a CPC and a premises licence, for the same reasons that have been indicated. A lot of them built up large concert rooms in the 1960s and 1970s when, if you did not get there at 7 o'clock, you would not get a seat. With the change in social life, people are

sitting at home and watching telly, instead of going out, and buying cheap booze from supermarkets—

Lord Brooke of Alverthorpe: Well said.

George Dawson: People do not have the social life that they used to have and that we all wish they still had, so a lot of clubs have had to survive in that way. Personally, I have found no difficulty with the idea of treating us differently on a premises licence. We put ours in quite early, so we got it for between 8 and 2 o'clock in the morning, with no objections. Most of the clubs that I advised on it have had premises licences for six or seven years, so there has not been the opportunity to object. As Peter said, there are a lot of vexatious people about these days. One individual can stop something going on, even though the 120 who live round about are quite happy with it.

I cannot see that much of a change needs to happen. The system changed so that the personal licence holder does not have to get their licence renewed every three years; they have it for life. That has been a very good improvement. I cannot see a problem with it. We might get more advantages from being treated differently, but I do not know how it would work if you treated one premises licence differently from another. You might as well keep it all the same. Then it will not confuse people.

Q170 **Lord Foster of Bath:** Incidentally, Mr Dawson, I know that until 2004 your members had their own brewery and got their beer from that. I want to move on to the current situation, but you might want to reflect on that and the ties you have.

I am interested in the whole business of the rules of the game that say that, to meet the requirements, a club has to be acting in good faith. In one sense, that is clearly about the provisions in relation to the buying of alcohol. It is quite clear that exclusivity agreements, whereby a club is tied to a brewery, could be considered by many to be an example of not acting in good faith, based on the rules. What are your thoughts on that?

George Dawson: We had a special exception with the Federation Brewery and the Crown Brewery. They did not come into it because both of them were co-operative or mutual societies.

This has been in subsequent Licensing Acts, since the 1896 or the 1906 Act. The issue is interpreting whether or not it is a tie. If your barrelage is going down and you have gone from 500 to 300 barrels, to get the best deal from a brewery, instead of having two breweries in and getting an £80 a barrel discount, you might have to go to one brewery to get a £100 a barrel discount. That would not be exclusivity, unless you started to borrow money from it. There is not much funding available. Banks have not wanted to lend money to clubs for 20 years. In fact, a lot of breweries do not want to lend money any more. To me, that is a tie-in. The breweries write the agreements in such a way as to set you a barrelage target, but they also have clauses that allow you to purchase from outside, rather from them exclusively. You can have a guest beer, for example. They are quite canny about not taking it as a tie-in, as surely that would be a tied house. There are laws against that, under the 1989 beer orders.

Lord Foster of Bath: I want to be absolutely clear. In Section 63, it says that one of the matters that will be taken into account is “any arrangements restricting the club’s freedom of purchase of alcohol”. You are saying that your members will enter a deal with a brewery for it to provide you with the vast majority of the beer, but there is always a clause that allows the club to get beer from somewhere else.

George Dawson: Yes.

Lord Davies of Stamford: Does it allow you or require you?

Lord Foster of Bath: The beer order allows them to.

George Dawson: It allows you to. It would defeat the object of the agreement if you were not hitting the barrelage.

Lord Smith of Hindhead: If you do not hit the barrelage, you get a penalty.

George Dawson: You get a £50 penalty. That is how they try to get around its being a tie.

Lord Foster of Bath: Yes. With respect, it is also you, as the club, trying to get around its being a tie and therefore losing your licence.

George Dawson: Yes. I have known only one club—a club in Barrow-in-Furness—where that section has been used, but that club had 20 other offences as well. It was one of 20 offences. That is the only club, to my knowledge.

Lord Foster of Bath: I would be interested to hear the views of the other two panel members on this issue. Do you think there is a need to change?

Paul Varney: I have heard what Mr Dawson has just said. We do not have any such arrangements in our clubs. We have a wine committee, which is responsible for the selection of wines and beers. We are not tied at all. We would not have only one supplier; we would have a number.

Peter Adkins: I do not see any problem with this. It is still the case, unfortunately, that some clubs are desperate for money, and that brewery loans are available. I do not like it, but they still do it. If you remove certain arrangements with brewers, those loans do not become available.

Again, it is a question of interpretation. I was speaking to one of my clients, at the Austin Sports and Social Club, which used to have 10,000 members. Obviously that went wrong. He was saying, “What if I get in four brewers, make them tender for the job and we do the best deal with them, through a proper tendering process? Will that cause problems with good faith?” It is the same thing, but a different way around. I do not really see it as a problem. My clubs do not really see it as a problem either. I am with Mr Dawson. I have never heard of any club being challenged on the basis of good faith. That is the least of their problems at the moment.

Q171 **Baroness Watkins of Tavistock:** Under Section 62(2), an interval of at least two days must lapse between nomination or application for membership and admission to membership. That two-day requirement is no longer applied to establishments such as casinos. Do you think it should still apply to clubs operating under club premises certificates?

Paul Varney: It should remain very much in force. It is what differentiates us from casinos and profit-making clubs.

Baroness Watkins of Tavistock: It is a quality standard.

Paul Varney: Yes. It gives other members a chance to see who is being elected. There is then a process either to admit or not to admit members. It is very important that that stays and differentiates us.

Peter Adkins: In reality, it is quite unusual for a club to have as a rule that you can become a member within two days. Most club rulebooks would require 14, approval by the committee and so on. That is because clubs are social entities. It is the old Groucho Marx comment; you want people there who you know will fit in. The other problem with having almost instantaneous membership is that a lot of clubs still own their premises. You may have someone turn up and become a member. If two years down the line the club closes and you have someone who came one night, became a member and has never been seen since, what happens? Tracking those people would be almost impossible.

George Dawson: I am pretty sanguine about it, because all club rulebooks usually say seven, 10 or 14 days. From the point of view of equality or standardisation, if casinos have the two-day requirement removed, why can we not have it removed? The two-day provision appears in rulebooks, when you have temporary members. You can have temporary members and temporary affiliates who have moved into the area for a holiday for one or two weeks. I have one club in a walking area that uses it quite a lot—if anybody knows Hebden Bridge—because it has people who come around walking, are there for a week and are made members for two days.

Lord Davies of Stamford: Are they members of corresponding clubs already? Is that how they come in?

George Dawson: Not necessarily. If they were a member of an associate club, they would just sign in as an associate. It would not bother me if the provision was removed and it would not bother me if it was left in.

The Chairman: You are ambivalent. You are not bothered.

George Dawson: As with the example I gave to Lord Foster regarding the beer tie, I have had only one licensing officer where it was an issue—it was either in Coventry or on the south coast. The licensing officer sent a letter saying, "We are not accepting your rulebook because it does not say 'two days' and the law says 'two days'". The union wrote a letter pointing out that 10 days had to elapse before someone was made a member. We said, "They are well within the law, so why are you asking them to move it down to two days?" The licensing officer got the message and stopped bothering the club.

Q172 **The Chairman:** Excellent. How is your average current membership of clubs looking? Do you believe that the closure of clubs is due to a change in drinking behaviour, if more people are drinking at home?

George Dawson: I became a treasurer at 18—a week before my 19th birthday—so I have been involved in clubs for 34 years. There has been a decline in the on-trade generally over 34 years. It has been a steady decline. The biggest decline—you will know from this that I am a smoker—was when the smoking ban came in. That was the most massive decline that every club has had. That is why we are looking more to TENs for commercial reasons, to keep a club open. Previously we would not have needed to do that, because we had enough people coming in.

There is also cheap beer from supermarkets. However, I point out that, 25 years ago, we had a discussion with John Smith's Brewery at which quite a number of us derided one of the directors who was there because somebody could go down the road and get four cans of John Smith's at the supermarket or the off-licence more cheaply than the club could buy in the beer. It is not a new problem with supermarkets. It has always been the case that they have been cheaper, but more people are now staying at home watching "The X Factor" and other such programmes.

Lord Brooke of Alverthorpe: Ed Balls.

George Dawson: Yes. I suppose he has to do something.

The Chairman: Mr Varney, do you agree?

Paul Varney: It is probably not so relevant to us. Members come to the clubs for a number of reasons. The smoking ban has certainly affected us.

Peter Adkins: There is no doubt whatsoever that club membership is declining in working men's clubs generally across the country. Those that are doing reasonably well are normally sports and social clubs or have good sporting teams associated with them, rather than the old-style clubs. Miners' clubs, for instance, have effectively evaporated.

A lot of the major manufacturing industries used to have social clubs attached to them and have cut them loose. They may still be there, but industries do not support them any more. Earlier, I mentioned the Austin Club. It used to have a regular payment from everybody who worked at Austin. Of course, that has just evaporated. Socioeconomic changes have meant that people are not going to those kinds of clubs any more. There is an ageing membership. They find it harder and harder to get younger people through and, sadly, they are declining. We can debate the figures, but it is bad.

Lord Smith of Hindhead: I apologise for the earlier comment. I am not giving evidence today.

Peter Adkins: I currently act for five or six clubs that are in the process of dissolution. That is a sad thing, but I am not certain that there is anything that we can do here to help. It is a different environment we have to look at.

George Dawson: Peter is a solicitor. He is painting a very grim picture of private members' clubs. We have had a considerable amount of difficulty, but we are still a significant part of the on-trade. There is £21 billion in the on-trade in beer. CIU probably accounts for 5% of that by itself, but the ACC has 900 clubs. There are also British Legion clubs. We are still a significant player in the on-trade. The on-trade has shrunk tremendously, but it is not all depression and everybody closing down.

Paul Varney: Far from it.

George Dawson: We are looking at different avenues to keep our clubs open. Do not think that we are all going to close down tomorrow.

The Chairman: I thank you most warmly on behalf of the Committee for participating, being so generous with your time and giving evidence today. We are very grateful to you. Thank you very much. In releasing you, I ask the Committee to stay back for a few moments of private business.

George Dawson: Thank you for inviting me to come and represent my clubs' interests at the Select Committee.

The Chairman: You are very welcome. We will all come to Hebden Bridge.

Wilkes Partnership LLP, Kuit Steinart Levy LLP, Derby City Council and Sustainable Acoustics — oral evidence (QQ 173–182)

Examination of witnesses

I: **Leenamari Aantaa-Collier**, Wilkes Partnership LLP; **Anthony Lyons**, Partner, Kuit Steinart Levy LLP; **Karl Suschitzky**, Environmental Health Officer, Derby City Council; and **Peter Rogers**, Managing Director, Sustainable Acoustics.

Q173 The Chairman: My Lords, Ladies and gentlemen, good morning and welcome. I bid our witnesses a very warm welcome. Thank you very much indeed for coming this morning to give evidence to us. A list of interests of Members of the Committee relevant to the inquiry has been sent to you, and copies are available today for your information. The session is open to the public; it is broadcast live and is subsequently accessible via the parliamentary website. A verbatim transcript will be made of the evidence and will be put on the parliamentary website. A few days after this session you will be sent a copy of the transcript to check for accuracy. It will be immensely helpful if you could advise us of any corrections as quickly as possible. If after the evidence session you wish to clarify or amplify any points made during your evidence, or you have any additional points to make, you are welcome to submit supplementary evidence to us.

May I ask a general question at the outset? What is your view of how effectively the Licensing Act 2003 has operated over the past 11 years since it was introduced?

Anthony Lyons: I am honoured to be a witness before this Committee. I am Tony Lyons. I practise in Manchester. I have a broad-based specialist licensing practice, and I see licensing across the country, not just in Manchester. On the whole, the Act has been an advantage. We no longer have to prove a demand; we do not have public entertainment licences; we do not have to create noise to stay open later, which of course was a bugbear under the old regime. However, we were assured at the outset that it would be a light-touch approach. I did a lot of work with the Federation of Licensed Victuallers Associations, which welcomed the new Act, but in reality the unforeseen consequence, as it has progressed, is that we now have the notion of cumulative impact, which has been adopted around the country. My clients and I have found that to be an inhibitor to growth, employment, regeneration and development in a totally disproportionate way. They may want to create new premises in an area of cumulative impact that will raise the bar. We are absolutely convinced about that. My city, Manchester, is the only one that does not have a cumulative impact policy. We benefit from that by having a fantastic range of different types of restaurants and bars, and they do not cause a problem. We have pragmatic and thoughtful police; they police the city in a very good way, and therefore there is not antisocial behaviour, crime or disorder, which is always the concern of the authorities where those policies are.

Karl Suschitzky: It is probably useful to give a small amount of background so you can see my perspective and where I am coming from. I am a senior environmental health officer with Derby City Council, so my experience of the Act is as a consultee. I am also a consultee in the planning process and have a lot of experience of that, generally on noise-related matters for both. Obviously, I deal with it right through to the other end: enforcement and regulation, receiving and responding to complaints and that sort of thing. We see the process from start to finish.

My experience probably does not extend particularly into the old public entertainment licensing system, so it is difficult for me to compare the two, but in the way the Licensing Act 2003 has worked from the noise perspective, the extension to hours creates problems. The idea that places seem to be open a lot later causes conflict in certain situations, but overall the process of early negotiation on a new application to come up with an agreed approach is effective. It is quite a good approach.

Overall, the Act itself and the regulation work quite well. The biggest hindrance for us in the local authority—this is probably outside the scope of the Committee—is the lack of resources in local government, which is quite a strain. The powers are there to deal with premises causing issues from that perspective, but in order to do so we have to gather a lot of evidence. Needless to say, it has to be justified, and given the resources we have, that makes life quite difficult, particularly witnessing noise late at night and that sort of thing, but overall the Act itself seems to work quite well.

Peter Rogers: I am an acoustic consultant, so I see both sides of the situation. For me, the Licensing Act is an area that has created some confusion around the test for public nuisance in particular. I do not believe it has served the public well in the balance between the need for positive change for licensees and the communities they are in. It has also resulted in the need for things such as the Live Music Act, which, effectively, have deregulated that element, while not extending things like the Noise Act that could be used to control the impact. There are some opportunities that have developed so far and unintended consequences that need to be looked at quite carefully. Crucially, the bigger picture is the link between planning and licensing where there is some crossover and an opportunity to save money, be more consistent and achieve a better outcome for both parties.

Leenamari Aantaa-Collier: I am mainly a planning lawyer, but my experience is also in public authorities where I have dealt with licensing matters. The Act works, but there is always room for improvement. Having heard what my colleagues said, I concur with all of it. In particular, it would be helpful to have planning and licensing synchronised. It is very simple.

The Chairman: Thank you very much indeed.

Q174 **Baroness Eaton:** My question follows very well from your last comment. The licensing system is supposed to be about the regulation of licensable activities. The planning system is supposed to be about controlling the use of land. Case law indicates that licensing and planning decisions should be considered separately. Are they separate in practice? Where both types of authorisation are required, is it preferable to grant one type before the other?

Leenamari Aantaa-Collier: They are separate regimes, but there is the possibility that, for example, a situation may arise where there are already licensed premises and residential premises are put close by. People can put in objections and say that it will affect their premises, but they would have to provide a huge evidence base to stop the planning permission from going ahead. We have been talking about this. We think it would be helpful if the planning regime came first because it has a lower standard than for licensing.

Peter Rogers: From my perspective, the test applied during the planning process is primarily about health and well-being. It is a very tight, low threshold that must be achieved to protect amenity and quality of life. From a noise perspective, it means that the question of how loud is too loud and how loud is too much is considered early on. That is helpful. If there could be a situation where the planning regime applied the health and well-being test at that stage, there would be no need for the health and well-being element to be considered under the Licensing Act beyond that point, because it would have been properly considered. Going through to the licensing process, if there was, for example, a back-to-back licence that went with a planning permission, which would be a time-limited version that expired unless it proved to be acceptable, you would enter the licensing regime process in that way. That threshold is a slightly different test. I suggest it would be little different from public nuisance; it should be based on the existing national policy for noise, which should be implemented. That looks at the “significantly adverse” test. That is already defined; it is already there.

Karl Suschitzky: I probably have to disagree with my learned colleague Mr Rogers. I certainly agree with the initial suggestion that the sensible way for the system to work is to deal with planning first and licensing later. It is logical to decide what goes on a particular piece of land before deciding on exactly the activities that are to take place on it, because the planning use categories are slightly broader. A particular use class gives an opportunity to run various types of business. I probably disagree with the suggestion that, if, in effect, noise levels have been agreed through planning, they can almost be disregarded later because they have already been dealt with. That is where the Licensing Act is useful, because you can agree and scope out much more detailed control over the activities of a specific premises through conditions. Although we can apply conditions in planning, they tend to be a bit more broad brush and less detailed than the sorts of conditions agreed under the Licensing Act, certainly under noise—things such as noise limiters on music systems and hours restrictions. We can apply hours restrictions in planning, but the more detailed activity controls seem to be much better under the Licensing Act.

The other big factor with planning, and part of the reason I believe the threshold is set ever so slightly higher in planning at “significantly adverse”, is that the other considerations are far broader. We are not considering just amenity; we are talking about the economy and the provision of housing. One of the biggest issues from our perspective is allowing residential development near licensed activities, and vice versa, because there is such pressure now for housing. Planning policy favours housing, so housing is being given permission in areas where there are conflicts, particularly noise. Because of that broader spectrum of considerations

under planning and all the other things related to land use, it is important that licensing has separate and slightly more detailed scope in considering each particular premises on its merits.

Anthony Lyons: My view is that there is no cart or horse. I come from perhaps a commercial perspective. My clients may be looking to develop a new site and they want practical advice. Are they going to get licensing and planning for that site? I get those calls daily. Of course, it differs around the country, but they are looking for some degree of certainty and consistency. At the moment it is not certain and it is certainly not consistent. Ideally, what they would like to do—I do not think there is a downside—is to go for both planning and licensing simultaneously, because it makes sense to get the wheels in motion. I do not think that either should necessarily come first.

At first blush, to combine the two seems a really sensible arrangement, but when I thought about it at length, having received the questions, I thought that actually there are totally separate regimes: different legislation; different policies; different application processes; different hearings and different professionals in planning committees on one hand and in licensing committees on the other; and different appeal procedures. There is a debate to be had. Applicants often say, “Why do I have to tick the same box twice? I have to do a crime impact statement on my planning application and I have to go through how I avoid crime and disorder in my licence application”. There is an element of desire to remove that red tape and streamline the processes, but they are separate and should be kept that way.

I look at a licence as a living document. It changes all the time. One day, a bar can have a 2 am licence; the next day it could be a restaurant. The designated premises supervisor changes. The licence is always changing. If there is an issue, responsible authorities or residents can attack the licence and it can be reined in hours-wise, or even revoked, whereas planning permissions are more dormant documents. They can be changed, but it is a different process. To go forward, a lot of thought needs to go into that.

Baroness Eaton: If the processes were similar, rather than having differences in appeals and all the things you outlined, would that make a difference, or is it just because that is the existing process and therefore you would not want to see it changed?

Anthony Lyons: As my colleagues, who are far more knowledgeable on planning, would say, there are other considerations. For example, Leenamari is a planning lawyer in a firm that does not specialise in licensing. I am a licensing lawyer in a firm that does not specialise in planning, so there are two separate skill sets and considerations. How you merge those, I am not sure. It is a big question.

The Chairman: We will tweak it a little further.

Q175 **Lord Foster of Bath:** I want to try to tease a bit more out of you. The Government’s memorandum on the Licensing Act says that it “is being used effectively in conjunction with other interventions as part of a coherent national and local strategy”. Rather like Mandy Rice-Davies, they would say that, wouldn’t they? What all of you have said in different ways is that it is not working as a coherent strategy. You have given the example that noise could be considered partly in planning but in more detail in licensing. Some of you said they come

together. Could you explore for us in a bit more detail how we as a Committee could make proposals about how to move forward with this when everybody tells us that it is not working as a coherent system?

Peter Rogers: I suppose I sit between both sides because, as far as I am concerned, if a resident has a problem with noise, it is a problem with noise. In context, it has to be looked at from the point of view of societal vibrancy. Do we all want to live in quiet, dead areas? How you decide that is potentially a local issue. It can be considered as part of a journey. Viewing the Licensing Act in isolation is not helpful to those who are building communities and the premises to serve them, so something is lost for the vibrancy of the community. The positive economic and social benefits that premises bring have to be balanced against the impact and burden on residents. There is a sensible process by which it can be considered early in planning and passed through for more detailed consideration at the licensing stage. The two do not have to be mutually exclusive, and the bridge that links them is the national noise policy document that can be implemented and referenced within the Licensing Act.

Leenamari Aantaa-Collier: There is definitely room for synchronising some of the policies. There is no reason why licensing and planning cannot work together. In particular, the issue of noise comes up all the time. It is very difficult for an applicant to understand that they have to go to one regime and then another regime in a local authority, and that the standards are different. There is no reason why you could not synchronise those standards and have the same policies for licensing and planning.

The Chairman: I think you are alluding to lack of co-ordination, so it is good to get that on the record.

Q176 **Lord Blair of Boughton:** My question has almost been covered. Is there anything else you would like to say about what happens when a new residential development is proposed near long-established licensed premises? We have heard quite a bit about that example. People change the use of an office block above a pub garden and that sort of thing, so that it becomes residential. Is there anything specific about what happens with new residential development and established licensed premises?

Leenamari Aantaa-Collier: There have been examples, particularly in Birmingham, where the night-time economy has been disappearing for that reason. When licensed premises are already established in a place and you put in residential premises, you cannot get enough noise insulation to make it acceptable, unless it has been considered at the early stages of the process. There could be some compensatory system where the licensed premises would get money to put in new systems to lower the noise levels, but other than that it is difficult.

Peter Rogers: There are two things. One is the mitigation that can be put in place at the planning stage, and primarily being aware of the fact that, if you move to a nuisance, that is not a defence. The idea of nuisance is somewhat hindering the situation. In one case in London, a club was put in exactly that situation. Consequently, it moved because of the significant impact on its operation. That

potentially forces vibrancy out of central points. To achieve a balance requires the whole process to work together. It requires consistency from planning through to licensing and for the loop to start again, because as more people move into our cities there is an urgent need to maintain the balance.

Karl Suschitzky: I agree that there are conflicts between the two systems, and they are not necessarily working together. It stems more from the planning process than from the licensing process because of the other influences on land use planning. I have probably already made the point that there is so much pressure on housing now that houses are being built in conflict areas. It is probably difficult for the Licensing Act to resolve those conflicts once they have already happened. Once people are living in a location near premises that, quite rightly, need to be able to operate and be a successful business, someone, either the residents or the business, ends up suffering. The decision to put them there in the first place has caused the problems, and I am not sure that the Licensing Act is necessarily the place to point the finger at how we can help to resolve the problems. It is more to do with the planning system and the situation we are in because of the need for additional housing.

Anthony Lyons: It is a very interesting and difficult question to answer. I endorse the agent of change principle, which I know you have discussed in previous meetings. It is always a question of striking a balance between competing interests. Years ago, I acted for a West Indian community centre. It was a brilliant place, but those who visited it did not do so until perhaps midnight and they had to leave at 2 am. The council granted planning permission for housing right up to and adjacent to the centre. The effect of that was that the centre's licence was reduced in hours and it was no longer viable. It is something that needs to be and is being addressed. My starting point is that it is a shared environment, and each party needs to respect the views of the other.

Q177 **Baroness Henig:** Continuing the theme of the two regimes and what we should do about them, many witnesses have been critical of the operation of licensing sub-committees. We have taken a lot of evidence on that. Some people have compared them unfavourably with planning committees. Trying to think logically, perhaps radically, would there be any advantage in making the licensing function an integral part of the planning process with a single committee of the local authority dealing with both licensing and planning?

Anthony Lyons: There are completely different procedures at the moment. I cannot contemplate it, but I would like to see the debate around it before we get to that position. My comment to this Committee is about wanting to see consistency around the country. I visit committees nationwide, and it is inconsistent. For example, you may as an applicant have to suffer the objectors putting their case first before you explain your application. That puts you on the back foot. You may be limited to five or 10 minutes to explain what your case is about before a sub-committee, yet you have no such limitation when you go to appeal. As a starting point, it would be helpful to have a national procedure that should be followed by licensing sub-committees. Each council has its own

procedure. It would be very helpful to have a degree of consistency around the country.

Baroness Henig: Do you think that inconsistency on the licensing side is because the licensing committees are relatively new? People have talked about the inconsistency in licensing, and there is an implication that in planning the inconsistency is not there so much. Why do you think that is?

Anthony Lyons: It is relatively new. We are 10 or 11 years on. My view is that the dust is just settling, and it should be allowed to settle more. There was a 40-year period between the Licensing Act 1964 and the Licensing Act 2003. The industry has had so much upheaval over the last few years with the new guidance and so forth, which you have heard about, that the dust should be allowed to settle. It is a debate, but it is one for the future; now is not quite the time to do that.

Leenamari Aantaa-Collier: The difference is that in a planning situation the planning officer takes consultation responses, basically. He gathers them together and makes a recommendation to the committee as to how the matter should be decided in his professional opinion, whereas a licensing committee deals with the matter afresh. When a planning officer takes the case, the committee considers the matter in detail from every aspect; members have time to consider objections from the public and they can have discussion and dialogue prior to the committee hearing. It is well prepared before it gets to the committee. Licensing does not work that way. That is the difference. Maybe there is something to learn.

Peter Rogers: Having attended both, my view is that the planning process is probably far more prepared and helpful to achieve the outcome we are striving for. The licensing committee environment seems somewhat inconsistent—that is one word for it—and perhaps unhelpful in what we are trying to achieve. The single best thing that could be achieved is to remove the Chinese wall between licensing and planning to enable both things to be considered. When I give expert evidence at those committees, whether I am representing a member of the public or a premises, they simply want to know clearly how loud is too loud and what they must do. To do that, we need to allow both regimes to have a flow of information. Currently, that does not work.

Karl Suschitzky: I agree with some of the comments already made about the differences between the two. One of the other issues with licensing sub-committees versus planning committees is that they tend to have fewer members, and the membership seems to change quite regularly, which causes problems. Each time there is a local election, we end up with different members on the committee. Planning committees, because they are wider, have more members in the first place. Derby City Council has between 12 and 15 members on the planning committee, whereas there are only three on the licensing sub-committee. We have established members on the planning committee; they have been on it for many years and they are experienced in planning matters. One of the issues is that we have a day's training with the new members and suddenly they are thrown to the wolves. That potentially causes problems. They have legal advice, but having long-term, established members would be really beneficial.

Q178 **Baroness Watkins of Tavistock:** On a similar theme, when residents are

given an opportunity to argue their points, how do planning committees compare with licensing committees?

Leenamari Aantaa-Collier: That goes back to the answer I gave earlier. When a planning officer has taken the consultation responses, including objections to or representations in favour of a development, the officer has time to consider those issues, and put them in the right way to the committee. They can say, “This is how much weight you can give to this application; this is how you can consider it; this is right; this is wrong; this is not a planning matter, or this is not a licensing matter”. There is a time element. In a licensing committee, you do not have that; it is just there, and there is no time to consider the issues in detail.

Baroness Watkins of Tavistock: I am asking particularly about the opportunity for residents. You answered that the planning officer would represent residents.

Leenamari Aantaa-Collier: The residents have a further opportunity to make their voice heard through the planning committee in addition to having had a discussion with the planning officer, so it is quite a comprehensive approach.

Baroness Watkins of Tavistock: In comparison with the licensing committee.

Leenamari Aantaa-Collier: In comparison with the licensing committee, it is there and then, and that is it.

Peter Rogers: In my experience of both scenarios, I have seen perhaps more opportunity in the planning process for residents’ concerns to be addressed early on. They may still have an issue that they want to express. They can do that to the committee and it will be considered. In the licensing situation, I see almost a lost opportunity to have dialogue before, and we end up with a situation that is far more charged in the committee environment, where residents want to be heard, and rightly so. There is an opportunity to learn from planning committees, ultimately to give the public a clear and consistent way of being treated.

Anthony Lyons: I have represented residents as well as applicants. Residents have every opportunity to lodge their representations either individually or in concert against any application in licensing. I am not a planning practitioner, but I think residents have, if they are minded to use the process, the correct avenue to object and be heard in those objections. We often see residents’ associations forming together to object to and bring balance to an application.

Karl Suschitzky: I agree across the board. Residents have a good opportunity to raise concerns through both systems, but I agree that the planning system allows additional dialogue at the pre-committee stage to resolve some of the issues, and licensing does not seem to. The way licensing seems to work is that residents can put in written representations at great length and they are presented to the committee for discussion, whereas in the planning system, as has been mentioned, there is a planning officer who has expertise in planning matters and there will be an opportunity to respond to some of those matters. As a consultee, I am quite often asked to respond before a committee hearing to consultation and representations that have been submitted on a planning application, whereas in licensing you almost have to send in a representation that you hope covers all the issues; otherwise, there is in effect just an off-the-cuff discussion at the committee. There is slightly better preparation in planning.

Q179 **The Chairman:** You have rehearsed today a number of objections that we have heard from other witnesses. Residents, applicants and objectors appear to be deeply unhappy about the process as it is—that there is not really enough throughput of licensing applications in many local authorities. What you appear to be moving towards, if I can spell it out, is having one authority to look at all applications, planning and licensing. They would still have training to do licensing, but the same local authority planning committee would look at licensing. We have had a torrent of unhappiness. Residents say that they do not like going first because they do not know what the applicant is saying, so how can they object to something? It would be really neat if potentially we could move towards a system where one and the same local authority is responsible for both, front-loading both issues at the same time, and on a planning committee there could be people responsible for licensing. We are hearing that there is so much unhappiness at the moment. If we carry on with the system as it is under the 2003 Act, we will get more of the same. Are you looking at that as a possibility? Could you live with a situation where the two procedures were merged under the planning committee and certain individuals would be trained to deal with licensing? I entirely take the point raised by Mr Suschitzky, I think, about licensing conditions being attached. I do not think it would be the wish of the Committee to lose that, and I do not believe the Government would agree, but it would streamline the whole situation and lead to much happier people all round.

Leenamari Aantaa-Collier: It is definitely something to be explored seriously. There may be some hiccups, but there are things that could definitely be concurred.

The Chairman: Can you see any reason not to?

Leenamari Aantaa-Collier: No.

Peter Rogers: I do not think there is any reason why that should not be explored. There should also be the opportunity to look at dealing with things such as the Noise Act to give residents some support, and allowing environmental health to have the tools, not necessarily a full statutory nuisance process, whereby we can check against a permitted limit, or something we consider a good starting point. That would make it about the premises and would carry on the spirit of the Licensing Act, which is promotion to prevent, and for the premises to be part of the community in which they work and operate. It would enable that to happen much more fairly.

Karl Suschitzky: I would like to clarify one question. I may be going into more detail than has necessarily been thought about on this issue. Is the suggestion that the same committee would deal with licensing and planning matters for a particular site at the same time, or just by the same committee at different times?

The Chairman: I do not think you can put one time on it. I take the point that there is no cart and horse, but I do not think we can have a situation whereby a vibrant nightclub, say, has already met some conditions and then a residential block is plonked in it. It would tick a number of boxes. There are two reasons why I would be concerned, and I would like you to address them: would it lead to additional cost, and be more expensive, or would it take a longer time. We will

come to appeals in a moment, but it strikes me that in the initial application it would streamline the process and probably be less expensive. It would not seek to undermine the requirements of the Licensing Act—quite the reverse. Mr Lyons, would you like to respond?

Anthony Lyons: I am convinced that by far the majority of applications pass through licensing without an objection. I am not that enthusiastic, but I would like to listen to debate on this. We all acknowledge that inevitably there is currently an overlap between licensing and planning. I would like the dust to settle on the existing regime before we get into this, but let us debate it; let us see how it would arise. Karl asks whether it would be one committee or two committees with time limits, expense and so on. There are so many different parameters around it that it needs careful consideration.

Karl Suschitzky: One positive aspect would be the streamlining of the process and getting it through one system. However, on the flip-side, from the point of view of enforcement and the prevention of noise nuisance, I and certainly residents would not want a watering-down of that issue because lots of other issues are being discussed. It can already happen at planning that noise is just one of many different issues. There are many consultees. Sport England and Natural England are consultees; there are different issues to do with diversity, ecology, archaeology and so on. Sometimes, because there are so many different things to discuss, the issue that I see as important, noise, which I am responsible for consulting on, gets watered down slightly. I would not want that; I would have some concern about that.

To go back to a point I made earlier, it makes more sense to me to do planning first and licensing later, because land use allocation is in a sense a bigger, more long-term issue. Because the licensing system is a bit more flexible and can be chopped and changed, depending on different operators, it feels that naturally it ought to come later.

The Chairman: You do not see the licence as being a use of land and the economy. Other countries have developed their night-time economy, yet we hear that in London 50% of nightclubs have closed. Having been an MP, I am well aware of planning issues and residents' concerns. It is a question of trying to reach a balance.

Karl Suschitzky: Not for me personally. I think the land use issue is dealt with under planning. The other thing we deal with in environmental protection is environmental permits for certain operations. Licensing sits more with that. It is a regulatory control over the process—the activities going on. Planning is a bit more broad brush; it is, broadly speaking, about the use of land. The use classes are quite broad: offices, professional services and so on, and where those sorts of things can go. We can focus under the Licensing Act on the specifics of the particular application.

Peter Rogers: I have two fairly quick points. Without the training to deal with the distinction, there could be a problem of not having clear understanding as to what the two different regimes are expecting, but there is an opportunity. Noise is used as a proxy for many things; it can be an issue that has built up over a lot of time. I agree that planning would be the first point. I have seen scenarios where

a licence is gained first and then used in a planning application to suggest that planning might be granted. That is wrong. To enable that planning be considered first and a licence then develops from that use makes complete sense. It deals with the concerns of communities that if we are to have a thriving late-night economy, it has been properly considered; that mitigation has identified that it can be conditioned at planning; that it can be further conditioned with detail in the licensing phase; and that when the next planning application comes along all those things can be considered.

Q180 **Lord Brooke of Alverthorpe:** I am trying to get the perspective in my mind. The number of applications for licences that are turned down is relatively small in the context of the whole of the UK. I am looking at the number of applications made for planning that have no link whatsoever to licensing, and I do not know what the relationship is. Can either Mr Rogers or Ms Aantaa-Collier give us any idea of what we are talking about there? Is the number massive or very small indeed?

Leenamari Aantaa-Collier: Most planning applications go through, because there is favour for development, as you probably know. It is a similar kind of approach. Most licence applications go through, just as most planning applications go through, and they are dealt with by the officer.

Lord Brooke of Alverthorpe: I am thinking about the interrelationship, where a planning application also has a link to licensing, and vice versa. Often, many planning applications have nothing whatsoever to do with licensing activity.

Peter Rogers: In my experience, to give you a rough figure, about 10% of what I deal with is in that scenario, but many other planning applications may have nothing to do with licensing. When we see society generally moving into built-up areas and we can no longer say, "You are a noise maker, so you go here; you are a sensitive receptor, so you go there", people have to deal with it through good design. The opportunity for that goes across the board to achieve a sustainable outcome that can work for everybody. With good design as the link between the two, we can achieve closer proximity and the balance can be achieved.

Lord Brooke of Alverthorpe: Do the other witnesses want to comment?

Anthony Lyons: Not as a licensing solicitor.

Q181 **Lord Smith of Hindhead:** I apologise for being slightly late for your evidence. I have been given the last question to ask you today, although you almost summed it up following the Chairman's last question to you. I think we would struggle to find a question on this subject, because we have teased out most of it. During our evidence process there has been criticism of the appeals process. Magistrates hearing licensing appeals often have no knowledge or experience of licensing matters. They used to deal with licensing under the old Act but times have moved on since then. There are delays and cost involved in it. However, planning appeals go to specialist inspectors. Would there be an advantage in having a similar system for licensing appeals, and, importantly, could the same inspectors deal with both?

Anthony Lyons: I am not that familiar with planning appeals. My area is licensing. I recognise the concern of the Committee with regard to the expertise of

magistrates who have no licensing experience. After the Act was introduced, many magistrates' courts had magistrates who had sat in that role as members of licensing committees. That waned as the years progressed. Currently, from a licensing perspective I think it would be preferable to have a professional dealing with the matter. District judges are available. In my experience of appeals before district judges, even though they may not have specific licensing experience per se, they certainly grasp the legal arguments far better than lay magistrates might. We can condense what may be a three-day hearing into two days because we are dealing with that professional individual. At the moment, that is where I would come from. I do not know where the future would lie with regard to an inspector-type person who would deal with both. Again, that is for debate.

Lord Smith of Hindhead: But magistrates' courts are not courts of record, so it is difficult to get precedent case law, is it not?

Anthony Lyons: That is right. You would perhaps recognise a district judge's decision with more authority than that of lay magistrates, but you could go from there on a point of law to a higher court.

Karl Suschitzky: The idea of having decision-makers on appeal with experience in the field is quite appealing to me, for the same reasons I gave about experience in committees. It is always an advantage. The idea of having a similar system to the one in planning, with planning inspectors, people dealing with appeals, or even committees themselves, having much more experience of dealing with licensing matters can only be a good thing.

Lord Smith of Hindhead: Do you think the same inspectors could do both with some training?

Karl Suschitzky: You would have to ask them. The regimes are different. We have talked about the extent of the different issues surrounding planning. Licensing is a four-issue system, whereas planning has many more than that. Licensing is obviously based on the four licensing objectives. In some ways, bolting it on is, I suppose, possible, but from my perspective the more expertise someone has and the fewer other things they have to think about, the better.

Leenamari Aantaa-Collier: A holistic approach would be much better, such that inspectors would look at both regimes. You have probably realised that there are links between the two regimes. An inspector would be perfectly capable of looking at licensing as well as they look at conservation, highways or environmental issues. They are used to looking at different things, gathering together the information and making a decision. There is no reason why an inspector could not do the same with licensing.

Peter Rogers: With training, it is possible, and it would be helpful to the process. It would streamline the situation and, crucially, make it consistent.

Q182 The Chairman: The original proposal of the Government at the time, in 2000, suggested that appeals should be to the Crown Court. That was dropped. I do not know whether it was done on the grounds of cost. I would not like to put ideas into their head. Would you consider that a better way forward?

Anthony Lyons: I would have no issue with the Crown Court sitting with two justices to consider appeals, except for the expense involved. We have delay with

appeals. An appeal can take four to six months. You go through a case management meeting, and then a hearing can take one, two or three days. That is itself expensive, but in a Crown Court scenario it would be even more expensive.

The Chairman: The numbers we are talking about are quite small.

Anthony Lyons: The number of appeals.

The Chairman: Yes.

Anthony Lyons: They are, but highly significant to the appellant.

The Chairman: It would get round the problem of magistrates' court judgments not being recognised as precedents.

Anthony Lyons: I agree. I always regretted the fact that you could not have a decision properly tested by a judge, with or without councillors in this case, but it was magistrates in those days.

The Chairman: It would obviously rule out many residents being able to appeal on cost grounds.

Anthony Lyons: We have known residents to do that.

The Chairman: On behalf of the Committee, I thank you for participating this morning and for being so generous with your time. You have been a great help to us in our deliberations. Thank you very much indeed.

Night Time Industries Association, The Deltic Group, Shoosmith's on behalf of McDonald's and British Kebab and Retail Awards — oral evidence (QQ 183–196)

Examination of witnesses

[!:](#) Alan Miller, Night Time Industries Association, Peter Marks, Chief Executive, The Deltic Group, Ron Reid, Shoosmith's, on behalf of McDonald's, and Ibrahim Dogus, British Kebab and Retail Awards. [Click here to enter text.](#)

The Chairman: Gentlemen, I bid you a warm welcome. Thank you for coming to give evidence to the Committee this morning. A list of Members' interests relevant to the inquiry has been sent to you, and copies are available for your information. The session is open to the public. It is broadcast live and is subsequently accessible via the parliamentary website. A verbatim transcript will be made of the evidence and will also be put on the parliamentary website. A few days after this session you will be sent a copy of the transcript to check for accuracy. It would be helpful if you could advise us of any corrections as quickly as possible. If after the evidence session you wish to clarify or amplify any points made during your evidence, or you have any additional points to make, you are welcome to submit supplementary evidence to us, again being as timely as you possibly can.

Perhaps I may ask a general question at the outset. Could you give the Committee an overview of how effectively you think the Licensing Act 2003 has operated in the past 11 years?

Ron Reid: I am a solicitor, here representing McDonald's restaurants. You may wonder why a lawyer is sitting here. I have represented McDonald's in relation to all its late-night licensing since before the Act came into force. Effectively, licensing has been outsourced to my firm and that is why I am here. I am also here to represent McDonald's as a business with significant experience of the licensing process. Unusually, in relation to a lot of the witnesses you have heard, McDonald's does not sell alcohol. This is not the licensing part that deals with alcohol; it is specifically late-night refreshment.

McDonald's has some 1,300 restaurants across the UK, a lot open 24/7, and they contribute substantially to the late-night economy. They employ more than 14,000 people overnight, which may be a slightly different situation from what you have seen before. They provide a service throughout the night in an increasingly 24/7 world. The use of the Licensing Act to regulate the sale of food is often overlooked; indeed in my experience, it is often an afterthought when it comes to the Licensing Act itself. People immediately equate licensing to alcohol rather than to that situation. There are few other countries—we will probably come to this later when we look at it globally—that regulate the sale of late-night food in this way, so it is almost unique. Another thing the Committee might want to be aware of is that

McDonald's is a franchise business, not all of it but a substantial proportion. There are more than 160 franchisees. Some of them are small and medium-size enterprises, or they may be only one small restaurant.

I know that you are considering putting a health and well-being objective in the Licensing Act. My view on that is that the objective of the Licensing Act, from the point of view of selling food and drink—non-alcoholic drink—has been about preventing noise and disturbance to residents. That is primarily where the issue arises. I would not have thought the proposal was in line with those objectives. I know you have had evidence from other people as to how difficult it may be for a health and well-being objective to be put in. North of the border, in Scotland, where there is a health and well-being objective, it is in relation only to alcohol. I suggest to the Committee that such separation should be maintained were there to be any change to the objectives.

We have already heard that premises are controlled through planning, and there has already been an interesting debate on that this morning. Obviously, I have views on that. I just wanted to make the point from the very beginning that this is very different from what you have been talking about generally with regard to alcohol. I practise in that area as well, and by and large on alcohol the Licensing Act has worked reasonably well and has taken a lot of time to bed in, as you said, Madam Chair.

The Chairman: McDonald's was one of the favourite venues for my surgeries when I was an MP. I felt very deprived for the last five years that I had no McDonald's in my constituency.

Ron Reid: One tends not to think of this, but McDonald's does a lot of work in the community outside.

The Chairman: They were daytime, not night-time, surgeries, but thank you.

Ron Reid: Of course.

Ibrahim Dogus: I am Ibrahim Dogus, the founder and director of British Kebab and Retail Awards. It is a different world from McDonald's and other restaurants and outlets. The British kebab industry employs tens of thousands of people; it is a strong and important part of the night-time economy. I personally run three restaurants in London. For our industry, the Act has been a qualified success. Being able to open for more hours has meant that food outlets on very small margins have been able to increase their sales and generate more income for the local economy. The key issue for our members is that it has been quite challenging for those small businesses to get a licence to sell hot food. At the same time, it is not consistent in all parts of the country. There have been different approaches to licensing issues across the country by different local authorities.

Peter Marks: Thank you for inviting me. I represent, in effect, the night-time economy at its sharpest end. I have spent 35 years running nightclub companies throughout the whole country. I have dealt with businesses as far north as Inverness down to Devon, Cornwall and Kent. I have a view over 35 years and everywhere. The Act has been pretty good. It is better than what was there before, when there was a bit of a hotchpotch and a mess; you needed three licences to operate and it was difficult to get a licence. Nowadays, it is better and simpler. It is easier to get a licence for our premises, but it is more difficult to keep it, which

is interesting because investment is important. The late-night economy—a lot of it is alcohol-based—employs more than 400,000 people and is worth £66 billion. It is a big part of our business. It is not just nightclubs; it is anything that opens from 6 pm through to 6 am.

While I run businesses that are at the sharp end and so on, there are plenty of others that rely on the Act, the ability to serve alcohol and the ease, or otherwise, with which you can get a licence. I agree with Ibrahim that it is not perfect and one issue is the unevenness of application and how it varies enormously from one town to another.

Alan Miller: I am Alan Miller from the Night Time Industries Association. We represent a network of bars, clubs, festivals and people in the music industry. I think the Licensing Act 2003, which came into effect in 2005, brought a lot of sensible measures, and for several years it worked very well. If we look at the report of the Institute of Economic Affairs, *Drinking, Fast and Slow*, we see that, contrary to some recent discussion, we should be celebrating much success in a number of areas. A&E levels seem to have stabilised; the level of serious crime in Britain is down, including around nightlife; and, whether or not one wants to celebrate it, almost 30% of young people consider themselves to be teetotal. That stands in contrast to some debate and discussion in the past three to four years. It strikes me that the pressure on resources for both councils and the police has meant that part of the discussion around alcohol in broad terms—issues such as anti-social behaviour and alcohol-related crimes, which are not specific crimes in Britain—often occurs in the conversation about licensing and it muddies the waters. It ends up putting enormous pressure on licensees.

Licensed premises see themselves as part of the community; there should not be a dichotomy between residents, businesses and visitors. They very much see themselves as partners with the council and police. They know that their survival cannot remain intact if, in that context, they are not a safe and professional place in which to operate. Yet at times it seems that the discussion has had a negative impact on everyday activity. As the very understandable pressures on the police increase, with demands on them to do ever more work, from terrorism to paedophilia and cybercrime, and their resources are cut, there has also been increasing pressure on licensed premises. Although serious crime has decreased, conversations about crime stats for the night-time economy, often around things like cellular phone losses, end up being about increased crime and anti-social behaviour in relation to licensed premises. That led some of the discussion in the recent period and has meant that, although many of the measures under the Licensing Act have been very good, those things have come to bear in a disproportionate way. As you know, over the past 10 years, almost 50% of nightclubs across the UK have closed.

While the provision for things like 24-hour licensing is legally and formally available, it is rarely enacted. I know we will come on to talk about issues like the night Tube in London and other things, but we can look at international examples and what happens when you have tiers.

The Chairman: I am sorry to cut you short. We are coming to that.

Q183 **Lord Mancroft:** Can we turn to London? The arrival of the night Tube

creates new opportunities and challenges for the night-time economy in London. What do you anticipate those to be, and what do you think will be the implications for the licensing system specifically?

Alan Miller: The 24-hour Tube is an enormous contribution to London, and it will bring huge benefits. Studies by TfL and other organisations have shown an improvement in dispersal times compared with buses, which means that dispersal for congregations in a whole range of areas, whether for a minicab or a bus, or to get a kebab or anything else, or simply to leave, is much more professionalised. People move very quickly. Staff have the ability to travel quickly and safely; people in the suburbs are able to come and go affordably. You do not have to rush from the theatre to get the last Tube, which I am sure everyone has experienced. It will bring enormous benefits.

In any human endeavour, whether it is a shopping centre or an airport, there are questions about what it means in terms of noise and movement. It strikes me that the benefits far outweigh the costs now. If authorities are minded to provide 24-hour licences, or tiered licensing, it can be commensurate with the way the night Tube works. You can have different operational times throughout the day and night. Indeed, in cities like Paris, you can have some wine and a baguette at six in the morning. It provides a safe and sensible mechanism. Where there are questions about noise, dispersal is far quicker; people can be moved much quicker on the train and underground. Questions about safety on the Underground have been raised, but it strikes me that the benefits far outweigh the costs.

Peter Marks: I do not want to go over everything Alan said. The only thing I would add is that there will be some cost or loss to towns or areas around London. I have a club in Uxbridge, for example. Uxbridge will lose people to Westminster. It has happened in Manchester. In effect, Manchester is like London; the centre of Manchester has trams running all night from all the surrounding towns, such as Rochdale, Bury, Eccles and Ashton-under-Lyne. Those towns have died. It is fantastic for Manchester city centre but bad for the areas around it. There will be some of that here, but I agree that on the whole it is a good thing, and it has certainly helped with dispersal and so on.

Lord Smith of Hindhead: Do you have any nightclubs in London or Manchester?

Peter Marks: The answer is no to Manchester. I used to own businesses around Manchester, but they all closed, bar in Oldham. Oldham struggles like mad. In London, I have nothing in the centre. I have one in Uxbridge, two in Kingston, one in Romford and, if you press it, one in Watford.

Lord Smith of Hindhead: The Tube staying open will not really affect your business.

Peter Marks: I think it will take from those areas, especially if they are not strong. Croydon is not particularly strong at the moment. People will want to travel into the middle of London.

Ibrahim Dogus: There are a number of benefits one can talk about, as Alan mentioned. The night Tube means practically that people are dispersed throughout the night rather than when pubs and clubs are closed, which helps to prevent large groups of people congregating in one particular area and pinch points in

restaurants and takeaways. That potentially generates some extra income for local authorities and the local economy, but it is also providing choice for the consumer, although just because restaurants can open later it does not mean that they will necessarily open until late. I own a restaurant with a licence until 1 am, but I take last orders at 11.30. I am based in a residential area and there is a huge demand from consumers, but my local neighbours are also regular customers, so to be fair to my local area we take last orders at a certain hour of the night. I guess many other restaurateurs follow the same code of conduct.

Ron Reid: It is early days, but McDonald's anticipates that it will have a positive impact on the night-time economy, particularly pertaining to noise and anti-social behaviour with the dispersal that has already been mentioned by others.

As to challenges, McDonald's has processes and investment in place to make sure its restaurants have responsible operations overnight. One must remember that the people who use the overnight service provided often have nothing to do with alcohol; they work at night. It is often places open 24/7 that cannot be accessed generally by people who want a hot drink or food. They are nowhere near alcohol. In London in particular, the change may move more trade to outlying areas, but, other than that, we do not anticipate serious problems with disorder or anything of that nature. There are good systems in place in all McDonald's restaurants in relation to that.

Q184 **Lord Davies of Stamford:** Many cities around the world, such as New York, Amsterdam, Berlin and Sydney, have large and diverse night-time economies, and quite different approaches to managing and licensing the businesses that operate in them. Are there things that the UK could learn from them, and if so, what are they?

Ron Reid: McDonald's has spoken to a number of global colleagues in preparation for this question. The outcome of that is that most regulation elsewhere in the world is based on planning conditions, and there is not a separate regime for the sale of food. Alcohol is dealt with elsewhere, but not in relation to the sale of food and drink. I have already mentioned in passing Scotland, where there are distinct licensing regimes for alcohol and late hours, and the public health objective is related only to alcohol and not food.

We cannot comment on a lot of areas around the world in relation to alcohol because we do not sell it in a lot of places. There are jurisdictions where the culture is quite similar to ours, if I can put it that way—for example, Australia and Ireland—but we have not moved to the 24-hour café culture in the same way as anticipated when the legislation was brought in. Australia is interesting. Late-night hours are regulated through various means at state level, but predominantly planning. Times are given for planning, and they relate to noise, lighting and things of that nature. Sydney has an interesting tiered approach. It has a more onerous approach to licensing, depending on the nature of the business. Alcohol is tier 1, and selling just food, as we do, is the lowest possible regulation and is usually dealt with by planning-type considerations. There is a need for a licence in Sydney itself, but not elsewhere in Australia.

In Ireland, any trade beyond 11 pm is dealt with entirely by the planning system, so we are unique. In the US and Canada, again it is planning. There is nothing in relation to food. We are probably unique in our approach. That was a view you were considering with previous speakers in relation to where those things could be dealt with. As far as McDonald's is concerned, we believe that the planning application is the right place to deal with food, because there are things you can do within that application. I will not carry on about it too much, but there are restrictions under planning; for instance, the proximity of takeaway restaurants to schools and so on can be dealt with on the planning side if that is an area of concern.

Ibrahim Dogus: We do not have members in other European cities, so it is difficult for us to compare countries. In our experience, the key to a successful night-time economy is that people feel safe at all times. Another point is about the sale of hot food. The Licensing Act should be reconsidered as regards hot food. The sale of hot food should not be licensed; you can sell cold food after midnight, so you should also be able to sell hot food. That should be reconsidered.

Peter Marks: My knowledge is limited to knowing other operators throughout the world. I know quite a number in Asia, Australia, Europe and North America. As regards 24-hour licensing and equalising us with the rest of the world, frankly, the rest of the world does not have 24-hour licensing. I remember sitting down with Tessa Jowell before the Act went through asking where that idea had come from. Of course, it does not really exist in this country either. Very few premises open past 4 am, unless it is for something like New Year's Eve. I have nothing to add on the international situation.

Alan Miller: The examples put forward are very good ones. Recently, with City Hall and the Mayor of London we formed the Night Time Commission, on which we serve. We brought the night mayor of Amsterdam, Mirik Milan, and Lutz Leichsenring from Berlin's Clubcommission to come to speak with us. They had slightly different examples. We seem to have tried to combine both for London in an attempt to bring all stakeholders together, which I think they do very well in certain cities across the Netherlands where there is a kind of ambassadorial role for night life, mixing with and talking to councillors, police, transport and housing. Of course, both Amsterdam and Berlin are far smaller than London. Berlin has a particular historical experience which meant that its real estate was very cheap and a lot of artists went there. It has created a particular type of demographic and dynamic. They now talk madly about techno-tourism, but it generates a huge amount of revenue from destination traffic. They have a conversation that is similar to ours about gentrification and what it means.

New York provides some interesting insights and warning signs. On the one hand, most premises are open until about 4 am, but some of the cabaret licensing laws and restrictions introduced under Mayor Giuliani mean that you cannot do certain things in various places across Manhattan. Some people would argue that it has ended up extinguishing some of the liveliness of Manhattan, but the other boroughs may have picked that up.

As to what we can learn from them, there are over 300 million visits after 8 pm in the UK. It is not just about alcohol; it is about food and everything from crèches

to theatres, museums and salons. We live in a global city where people work online with people in different countries, whether it is São Paulo or Beijing. To reflect that in a real 24-hour licensing regime would be sensible, so that people could think about what would best furnish our cities. In that context, it is also about urban planning. What they have done particularly well in Amsterdam and Berlin is to understand the relationship between urban planning and nightlife in a 24-hour city and how they work together. That is what our approach should be in the UK.

Q185 Lord Davies of Stamford: We are all particularly grateful for the international perspective you have brought today. Obviously, you have a great deal of knowledge about what goes on in comparable countries, and that is very helpful to us. I thought the general drift of your remarks was consistent with the idea that we ought to try to merge the planning and licensing systems, which was a point dealt with in the previous session. Our brief reveals that in Berlin they have either recently introduced, or at some time have had, a rule that if you move to a new address you cannot complain about the noise already there from some installation that has a licence. Is that a good principle? Do you think it should be transferred here, because, as you know very well, we have the opposite principle in this country?

Alan Miller: Indeed. It is called the agent of change principle. It denotes that, whoever is the agent of change, whether it is someone who wants to put new musical premises on a street or build apartments, it is incumbent on them to sound-insulate and take measures that prevent an impact on the immediate vicinity. That is a very sensible proposition. It applies in countries such as Australia and Canada. With that, new tenants or residents in the area are informed that the activity already exists. It is either a very quiet zone or a very lively one; that is why it has its identity. We definitely think we should have the agent of change principle in the UK. One thing that should be understood about it is that it is about the premises and residents' understanding of it, and that is very sound, but there is also the question of a certain frisson about what happens in the city. People ask about New York. There is noise generally the whole time in Manhattan, but people still think the quality of life is high. There is a question about when people come and go. Once the agent of change principle is embedded, if it is an area of high density and activity, that is presumed to be a virtue rather than vice, and anything that goes along with it is then seen as bringing economic benefits and culture rather than problems. The agent of change principle is really good. As to people coming and leaving, that still needs to be understood. Some of the ways we have handled things recently have been problematic, but it would help with that as well.

Peter Marks: I agree totally with Alan. For me, it would be magnificent for something like that to come in. I have premises in Exeter that have been surrounded by student flats over the past five years. Five years ago there were none; there are now more than 1,000, and I am being taken to task for that. It is crazy. We do not, as people think, make lots of money from nightclubs, and you have to take a long-term view to invest. Your investment may be at risk because there is a view locally that more residents are a good thing. It may be student residents who are saying it; it may be that offices above shops have been turned

into accommodation. In Kingston upon Thames, property is so expensive that it makes sense for nearly everything to be knocked down and turned into residences, but it causes a problem.

The Chairman: Pursuing what Lord Davies said, do you think there would be more chance of achieving the agent of change principle if planning and licensing were merged?

Peter Marks: Very much so.

The Chairman: That is helpful. Does anyone else wish to comment?

Ron Reid: I talked about the Australian system being controlled by planning. In Sydney, which is the area where times for food outlets are regulated, they set planning conditions. At the same time, they give a temporary licence for a year. Effectively, they say that if it runs without problems over that year you can have a full licence. That might be a matter to be considered were the two to be merged. There could be a situation where, if the application was dealt with by some form of merged committee in the way you suggested earlier, the licence could be granted for a limited period with a right to review after that. If there are no problems, it carries on. If not, it could be reviewed. The concerns are slightly different considerations in relation to planning and licensing. That seems to work very well according to our colleagues in Sydney.

Alan Miller: Sydney and Australia have some sensible plans, but they also have ludicrous ones, like the lockout laws. There was a sad and tragic incident when somebody in the street was punched, fell over, cracked their head and died subsequently. Across all Sydney's nightlife a rule was imposed that people were not allowed into a premises after 2 am. That impacted the whole industry. It does not stop anyone punching anyone before, after or inside, but it has an effect. On the provision for a year—just to contextualise this—Peter said that people do not make much money in the industry. It is now difficult to invest, particularly in a city such as London or elsewhere, because if you have to risk millions of pounds and any incident either inside or outside your premises—

The Chairman: I think we get it.

Alan Miller: A temporary period would be very problematic; it would reduce further investment.

Q186 **Lord Brooke of Alverthorpe:** You began by generally welcoming what had happened with the changes that had taken place since the 2003 Act came into force. I share the view that there have been some beneficial changes. There are some downsides, however. We have seen a major shift from on-sales, where pubs and clubs sell most of the alcohol, to off-sale premises, such as supermarkets, which invariably sell it much cheaper than on-sale premises. As a result, we now have the phenomenon of pre-loading, which I am sure you have all heard of. I do not think it was around in 2001, 2002 or 2003. Why do you think it has come about? What experience do you have of it? What do you think we might try to do to reduce the problems that arise from pre-loading and, in turn, the difficulties we may encounter with late-night complaints from so many quarters?

Peter Marks: I certainly remember that before 2001 when you went to a supermarket the drinks occupied half a small aisle in the corner at the back,

whereas now they probably occupy three aisles. Deals to bring you into the supermarket are no longer special offers on toilet rolls or baked beans; they are nearly all alcohol-based. There is no question: the fight for supermarket customers has been led very largely through alcohol. It has got cheaper and cheaper; it has been sold for many years under cost price, and every attempt to try to impose minimum pricing has been floored by European legislation, anti-competitiveness legislation, et cetera. Built into the structure of the profit and loss account of each operator, whether it be McDonald's, a cinema, a nightclub or bar, are increasing costs through the living wage, rates, cost of product, et cetera. You probably end up with an inflationary cost base of 10% or 20% over 10 years, so you have to put up your prices, but all the time you are keeping an eye on what people can buy at the supermarkets. The difference between drinking at home and drinking out has got wider and wider since about 1995. It is largely about cost.

Alan Miller: One interesting thing pre-2003 was the real concern in certain quarters that the new regime would lead to an enormous increase in binge drinking. That was the term used all the time. There was reference to alcopops and crime being out of control. That never happened. People just spread their drinking over an hour and a half or two later. The term "pre-loading" is a tricky one. It is absolutely the case, as Peter says, that you can buy alcohol much more cheaply in premises beforehand, but when I was at university everyone used to get a couple of cans before going to a gig and it was just called having a couple of drinks before you went out. Now we have "pre-loading", which tends to demonise everyone. The people we represent are very concerned about some of the issues, but one of the issues to do with off-licences, if they are open late, is that sometimes people get drinks, either before or after, and then there is noise or incidents. That often ends up being pinned on the licensed premises—a nightclub or bar—because it is the one that is most noted. That happens often in the stats.

As to pre-loading being a concern, I again reference the increasing demographic of young people who are now teetotal. Studies by the ONS and others of alcohol consumption in Britain show that it is not the case that suddenly we are in the grips of a terrible thing. Behaviour is good when people are out.

Lord Brooke of Alverthorpe: You do not see pre-loading as an issue.

Alan Miller: That is right.

Ibrahim Dogus: For the British kebab industry, the issue is quite different. We see it as a problem. The issue for members around pre-loading or intoxication is about safety, but there is also a problem for businesses themselves. There is a problem with taking orders, getting payment and asking people to leave when they have finished their food. It is a problem for many small businesses that do not have the capacity to employ somebody to deal with people individually on the doorstep and so on. As a restaurant owner—I cannot speak for the nightclub industry—we have a strict policy of not serving people who are drunk or intoxicated. That helps our businesses.

Ron Reid: Similarly, at McDonald's we do not have experience of pre-loading. We do not sell alcohol, but we have strict rules about not having open containers in restaurants; people are not allowed to have open containers of alcohol. They are

not allowed to bring it in. There is good training of staff on security issues, as you would expect, and those matters can be dealt with accordingly should there be an issue, but we do not really experience pre-loading in the way you suggest.

Q187 Baroness Henig: Moving on more explicitly to security, since last year's terrorist attacks in Paris, particularly at the Bataclan, there have been heightened concerns about security, particularly because in the UK the terrorist threat level remains very high. Some have suggested that some UK venues are not taking security seriously enough. Is that fair comment? If you think it is, what improvements could be introduced in this area?

Alan Miller: I do not think it is a fair comment. Licensed premises recognise themselves as part of the community, with an ever-increasing raft of requirements and measures that they often spearhead themselves. Going to pubwatches around the UK, sometimes sitting with the police and discussing terrorism in particular, I see that we are the eyes and ears on the street and we are able to communicate with the police, who understandably have limited resources. We absolutely want to work in the spirit of partnership and collaboration. However, partnership and collaboration, particularly on such an emotive issue, is the case across the board with these things. There is a discussion about partnership, but we are often held responsible when incidents occur. We very much want to work with the authorities as much as possible. We also recognise that when police resources are stretched there is pressure on licensed premises. Sometimes, people think that perhaps they could just take up all the slack with everything. One has to ask where the jurisdiction and parameters exist for all of those different things, with a finite amount of resources.

Peter Marks: We take it seriously. We have training for our supervisors and managers. We send them on courses regularly. We are nearly always the largest premises in each of our towns, so it is easy for us because we have the infrastructure to be able to do it. I feel sorry for the guy who may be running his own tenancy in the middle of a town centre, because he does not have the wherewithal, finances or training easily at hand.

Ron Reid: Obviously, I can comment only on the measures that McDonald's has taken in recent years in relation to the increased threat of terrorist activity and so on. McDonald's has undertaken training programmes for staff at particularly high-risk restaurants, such as those in central London and places like that. The company continues to work closely with the National Counter Terrorism Security Office, which is the government department set up to protect crowded places and support businesses, including those operating in the late-night economy.

Q188 Baroness Watkins of Tavistock: The Committee has heard from a great many local residents and their representative groups about the nuisance and distress caused by late-opening premises. Many of them believe that the licensing system as it currently stands is fundamentally biased in favour of licensed premises and against local residents. Some people from Camden, for example, spoke eloquently about that. How can the interests of the night-time economy be best reconciled with the legitimate concerns of local residents about noise and disruption, recognising that not everything is legitimate?

Peter Marks: It is a perception problem, because I feel that it is skewed against us. London is different. I am not really in London. In London, everything is on top of everything else, whereas for me there are very few places where residents are an issue; I mentioned Exeter. In many respects, to be fair—referring back to the agent of change principle we talked about earlier—who was there first matters. It is then up to the other to try to fit in with who was there first. I cannot think of a fairer system. I understand why residents may feel that way. I live on a high street in a Northamptonshire town. Late on a Friday night, if I am ever at home, I hear people walking past my door shouting and screaming at each other if they have had too much, but it comes with the territory of living in the town centre. Not once have I ever complained about it, because most of the time it is a joy to live there; it is just one small element. I get where some residents are coming from, but I revert to the agent of change principle as the fairest way of dealing with it.

Alan Miller: It is a really important question that goes to the heart of the matter—the kind of tapestry that we want in our cities and country. Let us compare the 32 boroughs in London with some other cities such as Glasgow and Manchester. In places like Hackney, Tottenham, Peckham, Croydon and other areas, bars, nightclubs and activities often generate new destination traffic; they bring in a lot of young people. Boroughs like Tower Hamlets have been transformed in many ways. New investment comes in. Developments such as the Old Truman Brewery bring in a number of bars and clubs. There is new investment in creative industries. Councils then make money from property prices. Real estate developers do that too. New people move in, and some older people are there as well. You get a whole new influx and transformation of the area, often in beneficial ways. Sometimes, there are costs.

The issue of who complains is striking. Recently, there was a discussion in the London Borough of Hackney. Sometimes, councillors are minded to think that the few vocal residents they hear from represent all residents. They say, "The residents have had enough and we need to have a controlled zone". When we sampled, and went out to the residents of Hackney, we had a response from 5,500 people, which is almost three times the number who voted for any councillor. They said they loved the nightlife; some were employed by it. They thought there should be more, not less, and 95% of them were residents of the London Borough of Hackney.

Legally, councillors have to respond to one complaint. We have many members who can give examples of one very upset or belligerent person when there are thousands, or tens of thousands, of local residents who love what they do. That is not to dismiss the concerns. The agent of change principle matters, but we have to reflect overall on what is brought in both day and night. When a crime is committed or there is an incident during the day, no one says that Asda has to go because there was a crime there. We have to deal with it appropriately and in context.

We encourage every professional licensed premises to have an active relationship with their residents, and most of them do. There is a hotline to managers and licensees to report noise pollution and incidents, because they recognise they are one or two incidents away from losing their licence. It is not like farming or

biomedicine. In no other industry in Britain can you be so close to losing your livelihood and all your staff as in the licensed regime. That is the context.

Ibrahim Dogus: This is always a tricky situation, especially now when more and more people choose to live in town centres due to work or other issues. The principle of the agent of change is sensible and useful. It is important that locals know when they move to an area what the licensing arrangements are during trading hours, and that restaurant owners or nightclub owners and so on are respectful to residents, particularly outside trading hours. It is important to involve estate agents, because when they promote a property in an area they talk about transport links, schools, the proximity to shops and so on, but perhaps they should also be talking about licensed premises near properties so that the individual who prefers to live in a certain street has that information, because we cannot expect everybody to do their research and find out what sort of licensed premises there are around an area. Local authorities have noise schemes, but the problem is that they are not funded properly, so they may not be in a position to enforce noise violations. That is a matter to be considered as well.

Ron Reid: The objectives of the Licensing Act already allow for the legitimate concerns of communities. They are consulted as part of licensing applications, and that will include all the relevant authorities, as you are aware. Local authorities are able to review or revoke licences if they believe that a particular premises is causing issues for local residents, and they do that in consultation with the police and other stakeholders.

McDonald's communicates and consults with communities before bringing forward any type of planning or licensing application. It does that in line with the expectations of the local authority. That will usually involve consultation with the local community and residents' associations, and speaking to local councillors, the police and environmental departments before the applications go forward. McDonald's invests a considerable amount of time in ensuring that its restaurants are good neighbours to local communities, and includes all sorts of issues around that. Litter patrols and so on are often a condition on a licence for a McDonald's restaurant. This does not have a great deal to do with licensing, but it is often a condition that is imposed. As a result, they apply licence conditions. All restaurants do at least three litter picks a day within a 500-metre area. They have been doing that since 1980—long before the legislation—but now we find that, because we do it, it becomes a condition of the licence, but it is not a condition on other people's licences.

Baroness Watkins of Tavistock: There seems to be a juxtaposition. For example, Mr Marks thinks the system probably favours residents, and you were talking coherently about the argument that people who already live there should perhaps have a right to a greater say. When there is a dramatic social change, as Mr Miller described in a particular borough, that is quite difficult to contain too, because they are probably not the majority. You are saying that the balance is about right but you recognise that it is never going to be perceived as perfect by everybody. Is that right?

Peter Marks: I guess that is where I am on that. We must remember that London is very different from the rest of the country, with everybody on top of each other.

The rest of the country, which is largely what I am about, does not have anything like the issue, but it is encroaching. We need to be sensible. The agent of change principle is the only way I can think of to be fair.

Alan Miller: It always depends on the specifics of who is doing what and what the complaint is. It is the case that in places like Camden, for instance, which is the highest destination for tourism in Britain, there is a whole new development of the market. There are different parts of Camden. The bits round Primrose Hill are particularly quiet and then there is the central area. A lot of it is to do with thinking about a joined-up urban planning approach and how we have quiet areas alongside bustling areas. A lot of people have moved into the area because of the bar and live music arena in Camden, and they love it. Others want a different quality or experience, but many have made a lot of money out of properties there because they have become so successful, and sometimes their circumstances have changed; they go on to have children or whatever. The nuances need to be looked at.

Q189 Lord Blair of Boughton: We received statistical evidence that a very large amount of violent crime is connected with alcohol abuse, not necessarily around licensed premises. A number of police chiefs, including the present commissioner, have called for the number of licensed premises to be reduced. Of course, the police were involved in the closure of Fabric, and presumably have been involved in the conditions under which it is to be reopened. Do you think that your industry is doing enough to help to reduce violent crime?

Peter Marks: I understand the police are under enormous pressure because of budget cuts. I have never seen fewer police on the street other than on a Saturday night. I remind everybody that I have done 35 years of this; 25 have been spent on the road knowing everywhere. I have never seen with my eyes so little trouble as exists today. I do not think there is anything like the number of incidents. How we record, manage and measure them—everything is on CCTV—might lead people to say otherwise. Most town centres are dead other than on Saturdays, but according to the statistics and *Mail* readers, everything is so much worse. That is not my view. The police, who have a horribly difficult job to balance the budget, are using their stretched resource to try to suggest that things have never been worse. I just do not believe it strongly.

Lord Brooke of Alverthorpe: You do not accept that A&Es are exceptionally busy, with 70% alcohol-related cases, from Thursday through to Sunday.

Peter Marks: I do not know how those measurements have been made or for how long. Maybe it has always been 70%; it may have been 80% in the past.

Lord Brooke of Alverthorpe: No, the figures were not.

Peter Marks: I do not want to dispute the NHS, but what I see with my own eyes is that town centres are not as busy as they used to be. Footfall suggests that investment in the late-night economy has gone down throughout the country, because it is more difficult to make money, and that there are fewer people involved in violent incidents. That is not to say the A&Es are not full of people who have had drink, but a lot of the drinking is done at home through supermarkets. It is difficult to extract one from the other. I know that sometimes the police ask,

“What was the last premises you actually had a drink in?” Those premises will often get the blame. That could be crackers, because somebody might have had 10 drinks at home and gone out to have a drink in the local pub, and the pub will get the blame.

Alan Miller: To give one impressionistic example, a journalist walking home from the opera was mugged, and when the police took the details they asked, “Have you had anything to drink?” He said that he had had a glass of champagne: alcohol-related crime. It sounds ridiculous, but the stats-obsessed approach of policing today, rather than the moral claim for policing, means that everything is put into an incident report that is often very vague. Is alcohol related to it in some fashion somewhere? If so, you then have all those spikes in alcohol-related crime, even though the ONS and other figures over the past 10 years demonstrate that serious crime in Britain is decreasing, and A&E levels have stabilised.

Lord Brooke of Alverthorpe: No.

Alan Miller: In the report we submitted we gave evidence based on some of the statistics from the ONS and Institute of Economic Affairs that relay that.

Lord Brooke of Alverthorpe: What about the IAS figures?

Alan Miller: I am aware of the IAS, but it is a particular organisation.

The Chairman: Can we come back to the question about what you can do to reduce crime? Sir Bernard Hogan-Howe would probably say we should close all the premises and then there will not be a problem with crime. You probably would not agree with that.

Lord Blair of Boughton: Nor would I.

Alan Miller: Indeed. When Sir Bernard Hogan-Howe made those comments, it was in the context of how to have policing in a community in the face of enormous cuts.

The Chairman: I do not want to take Lord Blair's words, but I think he is trying to say, “The police are doing their bit. What are you doing?”

Alan Miller: What we have done already is to make our streets much safer; we have lit them up; we act in partnerships.

The Chairman: The councils light them.

Alan Miller: For licensed premises, yes, indeed; otherwise, there is a Detroit effect where there is a vacuum on the high street and no one is there. Roy Smith, the borough commander of Lambeth, makes very good points. The night-time economy is reducing crime by employing people, working in partnership with the police and creating revenue streams. Often, it is looked at as a drain on police resources when incidents occur. Our industry is doing lots of things, from training to ensuring that people are safe in their environment, and down the road we have all sorts of measures such as business improvement districts where we have pastors and other elements.

The British public voted against private policing. The important fact, which I will come back to, is that Sir Bernard Hogan-Howe made that comment because of concern about managing resources. It is partly a perception issue. Night-time activity is not a drain on resources; it generates lots of business rates and revenue and employment; it lights up our high streets and prevents crime. It means that there are eyes on the street; people partner with the police and are willing to

notify people that there are safe places to go to enjoy things. That is our contribution. If you take that away and impose measures that suffocate night life and close it down, there will be no one on the street and that creates a real problem.

Q190 Lord Smith of Hindhead: Would it help if establishments did not sell intoxicating liquor to people who are already intoxicated, which is an offence under the Licensing Act, so the person who has had 10 drinks at the supermarket does not get served?

Peter Marks: Absolutely. Of course, there are laws, and responsible operators do their best to make sure they do not do that, because it is bad business to serve alcohol to someone who is drunk or to encourage someone to get into such a terrible state. You do your best as an operator. You do not always get it right. Someone can have a lot to drink and get straight in because it has not had an effect yet.

Ibrahim Dogus: The issue for us is not the number of licensed premises but how well they are managed. The majority of responsible premises are managed well, and if rules are not enforced, they need to be. As stated before, local authorities need to be properly funded to take care of enforcing noise and licensing rules effectively, and there needs to be two-way communication between authorities and businesses. That will help local issues.

Ron Reid: McDonald's makes substantial investments in security, safety, protecting the local environment and that sort of thing. It trains its people. There are systems within stores—CCTV and something called staff safe, where if somebody is misbehaving in a queue for instance, it is monitored remotely and a voice says, "You in the grey jacket, behave yourself". That usually puts an end to it. We spend a lot of money doing that. We have a lot of franchisees, and it is a considerable amount of what they do. It is about how premises are managed. I agree with that comment. The focus should be on those who are doing well in that space, and they should be given the freedom to carry on, but for those who are not, there should be some form of enforcement. It is not a level playing field in the late-night economy, even outside alcohol.

The Chairman: The current law is not being enforced.

Ron Reid: I do not think a lot of the current law is being enforced, but in certain areas McDonald's has to have security door staff, properly badged and all the rest of it, as part and parcel of conditions on licences. In vast areas of the country, the restaurants are nowhere near where alcohol is served, and they are certainly not dependent on alcohol-fuelled people for their business; they serve a much wider community base—people who keep the country going during the night and that sort of thing. It is a service industry from their point of view.

Q191 Lord Smith of Hindhead: This question is very similar to the one that has just been asked. Late-night levies and early morning alcohol restriction orders, or EMROs, have been strongly opposed by many licensees, although only seven licensing authorities have introduced a late-night levy. Proposed changes in the Policing and Crime Bill would make late-night levies similar to cumulative impact policies, allowing councils to target them at particular problem areas, such as city

centres, without applying them to the entire area. The late-night economy generates considerable public expense in terms of policing, safety and street cleaning. How can the costs be mitigated, and who should pay for them?

Ibrahim Dogus: We are mainly small businesses. We already pay quite a lot of taxes, including business rates, income tax, national insurance contributions, VAT and so on. The margins in the industry are already quite tight. Another indirect tax introduced as a late-night levy, or under a different name, is a problem for businesses. We do not want to see further increases in taxation.

Ron Reid: I would echo that. Obviously, McDonald's makes substantial investments in security, safety and protecting the local environment. Extending the late-night levy to its businesses means that they will pay for the actions of a small number of others who do not operate to those standards. Our view would be that those businesses should be encouraged to hold themselves to that higher standard and do some of the things that we do in the local community to address the issues, rather than just putting a blanket charge on everybody. I remind the Committee that a lot of the people who operate a McDonald's are small businesses because they are franchisees.

Peter Marks: To go back to my friend here, it is about affordability. I used to make about 26p for every pound, and after that I would take off head office costs and the cost of finance, and there would be something left to reinvest in the business and for the shareholders. That is now about 14p or 15p. Eight per cent of my turnover goes to security and door staff, so we are paying for it. Although they are not my numbers, Tim Martin, chairman of Wetherspoons, has always said that for every pound they take, 70p somehow ends up in tax and back with government. We are already paying and we are squeezing the pips. It is not that we are all driving around in huge cars, enjoying lavish lifestyles and everything is great. Everything—mind you, I think this is true of nearly every industry—is squeaking and there is no capacity to take on more cost.

Alan Miller: I echo all those points. One issue is that business rates, which are increasing massively, particularly in London, have been going up nationally, so the conversation has been: how do you generate more revenue locally? As well as underlining all the points that have been made, the discussion around late-night levies and EMROs perceives nightlife as a series of problems rather than generating revenue for the council and local community, a brand value for tourism, and a place where people want to invest in properties from which they make taxes. There is a whole multiplier and regeneration effect. Business improvement districts and business rates are mandatory and are already contributed to, but in addition—this is linked to the previous point—there is the cost of security personnel and CCTV. Some places that do not even sell alcohol have to have breathalysers to check people on the way in. Increasingly, there are measures at every level where more cost is being imposed because resource is presented as an issue. Ironically, more senior, older police often say to us, "Do you remember Friday night back in the 1980s? We do not have anything like that now".

Q192 **Lord Foster of Bath:** I too want to touch on the late-night levy. I think it is widely accepted that, although late-night food vendors often do not themselves

sell alcohol, the problems of noise, crime and disorder often congregate around them. We have already heard that in London—you were all very keen to say this—one of the great advantages of the night Tube is that it helps dispersal away from such places, but in many parts of the country, not least market towns, there is no such facility to aid dispersal. Do you believe that late-night food vendors should contribute more to the cost of dealing with the problems of the late-night economy? We have heard from McDonald's about litter-picking and staff training. You have also talked about working with councils and others, but do you believe they should be doing more? In particular, what is your view about the proposal that the late-night levy would also apply to late-night food vendors?

Ibrahim Dogus: I briefly touched on it. Many of our smaller restaurants and takeaways operate on very small margins. With business rates, especially in London, likely to increase or double, this is going to impose a huge extra burden on those small businesses. Properly run restaurants and takeaways, which account for all their income and expenditure, will be paying business rates, VAT, income tax and national insurance for their employees. They are already contributing to meeting the costs of policing, safety and the cleaning of their areas. This will be something extra. There must be another way; there must be others who would be interested in contributing more to the cost.

Ron Reid: I do not disagree with anything that has been said. A number of fees are levied, from business rates right through to the annual fees one has to pay to keep the licence, which are not inconsiderable. The fees are based on business rates, and business rates are high enough. Well-run businesses should not have to pay an additional burden. Organisations that invest in security and so on, and spend a lot of time making sure they are well respected in the community and deal with issues—in conjunction with residents, which McDonald's does a lot of—should not be additionally penalised by a tax across the board, which is effectively what it would be, that does not differentiate those well-run businesses.

Q193 **Lord Brooke of Alverthorpe:** Gentlemen, some of you have identified that cheap booze is a source of some of the problems. Do you think those who sell cheap booze should be required to pay an extra charge to meet some of the problems?

Peter Marks: We are talking about the supermarkets. They are rather powerful, are they not? No one has ever successfully tackled the problem, but I would welcome that. That is where I see so much of the issue and change over the past 30 years. Those of us who have been grown up for more than 30 years—dare I say the over-50s?—have seen enormous change. The biggest change of all has been the amount of alcohol sold in supermarkets and the cheapness of it. That has to be part of the problem and part of the solution.

The Chairman: It could be taxed and priced.

Peter Marks: Yes.

Q194 **Lord Davies of Stamford:** Do the members of the panel sometimes feel that the comments in the press and politics about the nightlife economy are all about complaints and problems? It all sounds very miserable and difficult; the police get worried and want to cut you back and so forth, but in fact, what we are

missing is not only that you are making money but that a lot of people are having a very good time, meeting new friends, enjoying music and contributing to the civilisation, life and vigour of our capital city and other big cities in this country.

Peter Marks: I agree. The trouble is that good news does not sell newspapers. There was once a good news channel in America and it closed down after three months. Therein lies a big part of the perception problem. If ever I go on holiday and let slip what I do for a living, I get virtually attacked by everybody around me because they perceive that I am the nub of every ill in the town centre, but that is not the case. Needless to say, we run a professional company. There are lots of professional businesses out there, with a lot of money reinvested, a lot of people employed and a lot of enjoyment being had. We would be a lot worse off if we did not have it.

Lord Smith of Hindhead: We all have the same problem when we let slip what we do.

Peter Marks: I understand.

Alan Miller: I agree. The comments in the world press and from other people about the tragedy of Bataclan were that we would not allow nihilists and evil people to suffocate and stamp out what we do, where we go, where we fall in love, meet our friends, network and relax. This is who we are; it is our way of life. That is very important.

In the post-war period, everything about British culture has been interrelated with nightlife, from the Beatles onwards to Adele and Tinie Tempah today. It is incomprehensible to imagine them without the dance floor and nightlife. That goes for British fashion, London Fashion Week, design, advertising and our film industry. How do you get music and innovation? It is where the next cultural phenomenon is hatched. It is a foundation, platform and university for new talent. If we limit, suffocate and prevent nightlife and continually overregulate it, we run the real risk that people vote with their feet and go to cities such as Berlin and Amsterdam, which invite that nightlife and use it as an example. Slightly ironically, the British Council internationally talks about it as a great part of our culture, but in some places across Britain we have been making further impositions, unfairly I think, and limiting some of that success.

Ron Reid: We must not forget the wider night-time economy. There are people who work during the night and need to be serviced with hot drink and food. If you are someone who keeps our infrastructure going by resurfacing a road in the middle of the night, why should you not be able to get hot food and drink? That overnight economy is worth £70 billion to the British economy. In McDonald's alone, in an average year that overnight economy employs 14,000 people and produces some £250 million in revenue. We must not forget that it is not just about clubs and that sort of thing. We have to remember that it also affects the supply chain. For instance, McDonald's buys British produce; it buys British meat and those types of thing. That has an added benefit to the daytime economy—a kick-on, if I can put it that way. We are sometimes in danger of losing that by looking at night-time industries as only around alcohol and that sort of issue.

Q195 **The Chairman:** I think Mr Miller mentioned the night mayor in Amsterdam.

We now have a night tsar. We are having great difficulty getting her to appear before the Committee, which is a note of regret. I understand that the night mayor, whom I met recently in Amsterdam, is introducing an experiment whereby one single resident can phone the police to complain about an incident during the night. As we know, they employ young people as hosts. If we were to look at something like that in this country, who would pay for that sort of activity?

Alan Miller: The quick answer is that it depends.

The Chairman: Not you, you are saying.

Alan Miller: I do not want to get on the line for it personally. We already have stewards and patrons in certain areas like Camden. That is usually part of a business improvement district, and part of the rateable value that the businesses pay towards that, so that could be part of the discussion. As to having a hotline, most venues, particularly professional ones, have correspondence with residents already. People can call the council. The council is legally obliged to take action on any complaint. That is already mandatory, and that is why we see some of the actions implemented. There may be a perception gap, in that some residents think they complain a lot but nothing ever gets done, but we already have that facility.

The Chairman: On behalf of the Committee, I thank you all for being so generous with your time, and answering all our questions and contributing to our inquiry. We are immensely grateful.

UK Live Music Group, Music Venue Trust and Musicians' Union — oral evidence (QQ 197-207)

Examination of witnesses

Witnesses: **Paul Latham**, UK Live Music Group; **Mark Davyd**, Music Venue Trust; **Alex Mann**, Musicians' Union.

Q196 The Chairman: My Lords, ladies and gentlemen, good morning. I bid our witnesses a very warm welcome to the Committee. Thank you very much for appearing before us today to give evidence to our inquiry. A list of Members' interests relevant to the inquiry has been sent to you. Copies are available today. The session is open to the public, is broadcast live and will be accessible subsequently via the parliamentary website. A verbatim transcript of the evidence will be taken and put on the parliamentary website. A few days after the session, you will be sent a copy of the transcript to check for accuracy. It would be helpful if you could advise us of any corrections you wish to make as quickly as possible. If after this evidence session you wish to clarify or amplify any points made during your evidence or you have any additional points that you wish to make, you are welcome to submit supplementary evidence to us.

Before we start to put questions to you, I note that it is a matter of great regret to the Committee that we must record the inability or unwillingness of the recently appointed night tsar of London to give evidence to the Committee. We gave her a number of opportunities to do so in person. It is a key appointment, and we regret that she has not made herself available to the Committee.

Could I open the discussion this morning by asking a general question? How do you believe that the Licensing Act 2003 has operated over the last 11 years? Has it operated much as you imagined it would and in the way it was intended?

Paul Latham: Thank you for the opportunity to speak. As the chair of Live Music, I represent most of the interested parties across the piece, so I get to learn of most of the issues that arise. In general, all the changes to licensing tend to be progressive and start with the good intention of making things better. From an operator's point of view, the more standardising and clarification of licences, the better. When you are working on multisite operations, as I do in my real job as chief operating officer for Live Nation, standardisation and the highest standards are the best things. Most licensing changes since that time have tried to do that, but as with all things, there is the law of unintended consequences. It is not intended obfuscation, but interpretation.

There is general appreciation of the work that has been done through the Licensing Act and the various amendments, but there is a lot more that can be done to ensure that it gets down to the lowest common denominator as regards local officers in licensing authorities. One of the things that we strive to do is to have the best standards across our estate. Most operators want that and shared learnings. It is not always the case that that filters down to the local interpretation.

We welcome the work that you have done so far, but we believe that there is more work to be done to make sure that there is consistency of application.

Alex Mann: I echo my colleague's comments. Likewise, the MU welcomes the work that has already been done. We feel that when the Licensing Act was brought in it was intended to improve, and effectively create an explosion in, live music. Unfortunately, that was not the case. Despite the fact that there has been some deregulation over time, with the introduction of the Live Music Act and the amendments that followed it to allow venues with a capacity of 500 not to require a live music licence, we have noted some problems that were created by the Licensing Act before it was amended. I would like to cite a couple of those for you, just to give some context.

In November 2009, Kettering Borough Council started legal proceedings against an HMV store for allowing a "Britain's Got Talent" finalist called Faryl Smith to sing during an album signing at one of its stores. The council dropped proceedings after HMV agreed to donate the retrospective costs of the licence, which were a total of £21. A Northampton school was forced to scrap a big musical production after the head teacher was told that he faced a £20,000 fine and possible imprisonment if the production went ahead without a licence. There were clearly issues that could arise, until the Act came in.

The union represents 30,000 musicians who work either full time or part time across the UK. A good number of them work in the area of live performance across all levels, but they all start out in the grass-roots sector, working in smaller venues. There is no doubt more that can be done. We feel that live music should not necessarily be licensed. We are willing and more than happy to work with you to improve that condition, in the interest of live performance. One of the things that we would like to discuss today is the potential provision for a cultural and artistic element to be included as a fifth pillar of the Licensing Act to serve that purpose.

Mark Davyd: Good morning. I would like quickly to make plain which sector we are talking about on behalf the Music Venue Trust. It is a very specific part of the music industry, rather than a general comment on how the Licensing Act may be affecting live music. The Music Venue Trust is a registered charity that seeks to protect, secure and improve the grass-roots music venue sector. There are roughly 450 such music venues in the UK. They play a very specific role in the music industry and in their communities. They are the starter motor of the music industry engine. They present the first concerts by fledgling artists and provide a platform for those artists to develop their skills, build their audiences and begin their careers. They are different from both pubs and other spaces with music and from concert halls or larger music venues generally, with a capacity of over 1,000. Their actions are what we really promote, talk about and want to reference in any evidence we give you about the impact of the Licensing Act.

It is very important to understand that most of them are not profit-making entities. They are not making any profit out of the activity. In fact, a recent study that we did showed that they are investing in the development of cultural activity; roughly 129% of the cultural ticketing money spent in those venues is spent on delivering the cultural activity, which shows that they must be doing something

else in order to be able to deliver that cultural activity. Principally, the other thing they are doing is selling alcohol. The Licensing Act therefore has a very specific impact on their ability to deliver culture in those spaces. That is why it is important to us.

At face value, there seems to be a lot of good intent behind the streamlining imagined by the Licensing Act. The Act would appear to provide a level playing field for premises licences. Subsequent work to deliver the Live Music Act 2012 reinforced that intent, specifically to recognise the value of live music. That contributes to a picture where we think that, generally speaking, the Licensing Act is very positive. Both Acts together should be achieving a clear set of conditions and parameters that create a level playing field for live music venues in comparison with other live music spaces or, specifically for us, other cultural institutions.

Without any intended criticism of who is responsible, that parity of approach across licensed premises, cultural activities and live music venues has definitely not been achieved. Paul and Alex have already brought that up. A grass-roots music venue, where the sale of tickets for cultural events is the main intent of the business, is likely to have a premises licence that contains conditions on its trading specifically designed to limit the provision of live music by control measures. A public house, where the sale of alcohol—the main intent of the business—is intended to be managed and controlled by the premises licence, will not have any such conditions.

More importantly, cultural parity within the licensing regime has not been achieved. A grass-roots music venue will always have tighter controls and restrictions than a local theatre, an arts centre or anywhere else that is doing cultural activity of which the sale of alcohol is a part. I will quickly give five licensing examples to illustrate that.

The Chairman: If you could give just a couple, it would be helpful.

Mark Davyd: Okay. As far as we know, the 100 Club is the oldest music venue in England. It has a 12-page licence, which includes additional conditions that restrict the sale of alcohol specifically related to the live music offer, including a condition that people at the 100 Club must be “decently attired”. It also has a condition about the number of seated patrons and about how much people must have paid to get in before they can be served a drink.

The Marquis of Granby is less than 200 metres from the 100 Club. The main purpose of its business is the sale of alcohol. It has a 10-page licence, with no additional restrictions. As a result of the Live Music Act, the Marquis of Granby can stage a live music concert at any time, without recourse to its licence. The Vaudeville Theatre, whose main business is the sale of tickets for cultural activities, has a 10-page licence that has no restrictions on the performance of live music and no additional restrictions on the sale of alcohol. You can see that, within those three premises, there is a ladder of risk being considered. Grass-roots music venues are at the bottom.

Q197 **The Chairman:** That is very helpful. Mr Mann, are you requesting a fifth objective for cultural activities?

Alex Mann: It is certainly something that we hope the Government can consider. It is very important to us to create a balance between the four pillars that already exist. It speaks to live music and allows it the opportunity to exist in itself and not be subjected so rigorously to the licensing conditions that local authorities put on music venues. As Mark said, the scenario for live music venues is quite different from that for some public houses.

The Chairman: Do you agree, Mr Latham?

Paul Latham: Absolutely. It is something that we discuss regularly.

The Chairman: It should be happening at the moment, but you are saying that it is not being achieved.

Paul Latham: Not quickly enough. It has been debated, but the inequities in licensing are a constant thorn in our side. We believe that music is equal in cultural reference to all other forms. Some of the licensing requirements seem punitive.

The Chairman: Do you agree, Mr Davyd?

Mark Davyd: Yes. It is about local interpretation and the driving reasons behind that, which are not always very clear, and how that results in conditions on a premises licence that may not provide the clarity that enables somebody to comply with them. As Paul mentioned, we see very disproportionate aspects of just some licences. It may happen in the same authority, frankly.

Baroness Greender: Is changing objectives the only way of achieving your aim? Is there another way?

Mark Davyd: There are two ways that we can see of doing it. For the specific sector we talk about, there could be the calling in and review of licences. We did some work on what music venues think about their ability to have a licence review and to get the provisions in the Live Music Act 2012 in compliance with their own licence, where there should not really be conditions. We managed to get 51 responses in 24 hours; 76% of those venues have conditions on their licence that relate to controlling live music, but 96% of them said that they would not dream of going for a review to have those conditions reviewed. There were very definite reasons why they would not do that.

Lord Mancroft: What were they?

Mark Davyd: I need to find my notes.

Paul Latham: Fear of more draconian—

Mark Davyd: Yes. No expectation of success was mentioned many times, as was fear of additional conditions being put in place, no confidence that the local licensing authority understands the Live Music Act and poor relationships with the local council.

Lord Mancroft: Are there examples of people who appealed and then had further conditions put on their licences?

Mark Davyd: No, I cannot find any. It is a perception thing. It relates to something else we should be very honest about—the possibility that it will look like criticism of the local authority. In fact, what we are finding is that it is the law of unintended consequences, to repeat Paul's phrase. Environmental health officer hours have been cut in local authorities. Quite often, because the music is late at night, there is no environmental health officer who can review the case and bring expertise to it.

The Chairman: Can I clarify that, when you say review, you mean variation?

Mark Davyd: Yes.

The Chairman: That is helpful.

Baroness Grender: In evidence that we have had, the overwhelming majority of witnesses are highly resistant to any change in the overall objectives. If there is a different mechanism by which you can help in your particular 100 Club example, which I love, surely that is a more practical way forward for you than asking for an objective, simply because it goes against the prevailing wind of every other objective.

Mark Davyd: You are probably right; I am certainly aware of a lot of resistance to it. It is very important that messages go out from Committees such as this one that this is a very serious issue that has an impact on some of our most vital live music spaces. Whether that could then be translated into, effectively, a campaign of information and better guidance for local authorities—

The Chairman: We will probably work through some of those points. That has been very helpful.

Baroness Grender: Finally, if you think there is a different mechanism by which you can achieve those needs, will you undertake to write to us with that?

Mark Davyd: Yes.

The Chairman: That would be helpful.

Q198 **Lord Foster of Bath:** Can I move us on a little? As you are well aware, in April this year changes to permitted development regulations introduced a requirement to take into account the impact of noise from existing commercial premises, such as licensed premises, on the intended occupiers of permitted developments, where previous office buildings have been converted into residential use. I know that all three of the organisations that you represent welcomed that “agent of change” being introduced. Do you think that we can go further with it? Is there anything else that we could do to protect the interests of live music?

Alex Mann: I entirely agree. The industry has been extremely welcoming of the measures that agent of change has been able to bring in so far. There is certainly more that can be done. At the moment, the partial measures that agent of change created affect conversions—existing buildings that are converted into domestic residences. There is a lot of development still going on in the UK. A lot of new properties are being built, and a lot of people are looking to move into new homes. The venues that exist in the spaces already are at a bit of a disadvantage. If you build a block of flats next to a venue that already exists, the first thing a tenant might consider doing is complaining about noise.

To bring in an example that is offset from music, recently I read that the Tate Modern had some problems when a new housing development was built next to it. It is made almost entirely of glass, so it as if you are living inside a very expensive fishbowl. Residents were concerned that people in the members' bar of the Tate would be able to see directly into their living rooms. That analogy shows you how problems can arise. It is the same for music venues. I am sure Mark and Paul will agree that, if you are developing a new building, the amendments that

can be made to allow for protection and insulation against noise are very straightforward. It is a very simple budget line and not a huge, significant cost to a developer. Agent of change could go further in making sure that developers and existing venues collaborate, work and exist side by side.

Paul Latham: We have three very live issues. In Bristol and Birmingham, properties have been converted above and around venues that have existed for 30-odd years. One of them is student accommodation, so they assumed that it would be great for us, because it would be our target market. However, students have only 12 hours of study and 100 hours of sleeping. Sometimes their sleep patterns do not exactly fit with our rehearsals and the like. At the very famous Manchester Apollo, they are just about to build a new residential block across the road. We are already considering issues of noise objections to a building that has been doing shows for over 50 years. The agent of change provisions were very welcome, but they can go a lot further. Property developers are not quite as scrupulous as they might be in their material—

Lord Foster of Bath: I am confused. If we stick with agent of change in relation to noise—I accept the visual impact issue—what are you saying should be done further?

Paul Latham: We already know that developers are not taking it as seriously as they should. Not many of them are making provision. We are already challenging these things. It is not just the noise; it is also the ambient issues. Because of the venues that we operate, we get those on a fairly regular basis. It is good when you bring in agent of change provisions, because you recognise the issues that are coming through. The issue is whether they go far enough and you are able to enforce them. When it comes to the rest of the provision of the music venue stock, it is important to push on with those changes.

The Chairman: Mr Davyd, do you agree?

Mark Davyd: Yes. On what specifically could be done, we recommend explicitly using the phrase “agent of change”, because although the Act was amended it was amended without that phraseology; informing local authorities about the intent of national policy and guidance, which picks up what we mentioned before; and explicitly describing grass-roots music venues as a sector within cultural planning and licensing policy, as was successfully done with small adjustments to supplementary guidance in London, so it is very achievable. We recommend eliminating opaque language, such as “cultural spaces”, which is very subjective and open to interpretation, and replacing it with specific descriptions of what is meant, so that people are empowered to protect their music venues.

Finally, the big one would be to expand the requirement to include new build, as well as permitted development rights. To be clear, sound is a manageable factor in new builds. As Alex said, it is a line in the budget for a development that is either there or not. If we ask for it, developers are ahead of us on this. We have regular meetings with developers now, and we present to groups of developers. They would be very happy to comply with reasonable measures that encouraged them to do things, but it is a business. They will not do it out of the kindness of their hearts; they will do it because it is part of the process of building the flats.

The Chairman: Would you use the Australian model?

Mark Davyd: Yes, I would. Specifically, one of the measures in the Australian agent of change strategy that was not very widely understood was that it was a region-wide overlay, with local interpretation. That meant that people could create music zones within towns and cities and designate specific streets on which agent of change would be applied. They could even designate specific buildings. An overall agent of change, bluntly applied as an instrument to the legal framework, would not work. It would have the other effect: if somebody wanted to build a music venue, people would be able to say, "Well, there was no music venue here before". These are things that need to be done carefully, but as an overlay concept it could definitely be expanded.

Q199 **Lord Blair of Boughton:** Some local authorities have argued that the Live Music Act 2012 has created confusion, as it is not always clear which music-related activities now require a licence and which do not. Do you believe that is the case? If so, are there ways of remedying it?

Paul Latham: This goes to those who are actively engaged in discourse over things changing. Organisations like ours and Mark's disseminate the information to our members. The flip-side is that I am not sure whether that happens for the enacting officers, and that tends to be where the confusion is, in our experience. It is not those who have to trade through these things and look to work with them. I encourage all my venue managers to have a good working relationship with their local authority and to be good neighbours. It is a little disconcerting when we know the legislation better than they do, which is difficult.

Lord Blair of Boughton: Would you see the Kettering example that you gave, of the headmaster being threatened with a huge fine, as an example of the local authority not understanding its own legislation?

Paul Latham: Indeed.

Alex Mann: I entirely agree with Paul's comments. The intention of the Live Music Act was to create exemptions to regulation of live music, and clarity on how the Licensing Act worked when delivering live music. The problem is that there is not enough awareness and reach within local authorities as you get further away from London. Mark will be able to give you examples of one or two local authorities that have said that the Live Music Act does not apply as a licence condition. We are concerned that, again, this appears to be a communication issue.

A potential remedy is that the bringing in of city mayors might form a useful layer of communication to help to share that information, so that local authorities can understand better not only how their own licensing works but how their own venues operate within their cities and boroughs. It may help to foster that relationship, share that understanding and show how the Live Music Act and any subsequent amendments can be correctly and appropriately implemented.

Mark Davyd: To pick up on what Alex mentioned, when we did a very quick survey in preparation for this session, there were three music venues that had a condition on their premises licence that exempted them from the Live Music Act, which is actually imagined within the Live Music Act. Two of those were the result of a call for the licence to be reviewed. Both resulted in the effective dismissal of the complaint, as there was not enough evidence that there was noise, but

conditions were still put on the licence. The other one was for a new licence. Before they would grant a premises licence, exemption from the Act was brought in. I can illustrate the point with another example. There is an ongoing case involving a venue that should be covered by the Live Music Act. It has a capacity of 120. The local authority has had quite serious issues with the person running the business, which is understandable—there are issues around the business. However, the recommendation from the local council and from the police officer, both quoted in the local media, is that it needs to apply for a live music licence.

Paul Latham: This is one of the consistency issues that are brought to Live Music on a regular basis.

Q200 **Baroness Eaton:** The Committee has heard from local residents and their representative groups about the nuisance and distress that can be caused by nearby music venues, with many believing that the licensing system as it stands is fundamentally biased in favour of licensed premises and against local residents. What is your perspective? How can the interests of the live music industry be best reconciled with the legitimate concerns of local residents concerning disruption and, in particular, noise?

Paul Latham: My thought on that is that it works the other way in practice. Residents now have a voice that they did not have previously. In many instances, lone wolf appeals and complaints tend to stymie what was a good relationship with local residents' committees and the like. We work very actively with residents' committees, because the long-term future of our businesses relies on working with the local community. The issue is the mavericks. Someone may move in who is a night worker and wants to sleep during the day when the get-ins are coming in. We have found that it has got worse, from our point of view, rather than that it favours us. We deal with those issues very seriously and work very proactively. It is a little frustrating that there is a new voice that shouts very loudly in the wilderness, I am afraid.

Alex Mann: The live performance sector is looking for a degree of proportionality in the power of the voice that those residents have. Obviously, they are more than entitled to share their views on what is happening in their local area, but we are concerned that a single complaint can generate a full-scale review and put an entire live music venue in jeopardy. That is a concern. Maybe that is something that agent of change will help to balance.

To give an example of where that has become problematic, there was a noise complaint from a new resident who said that they could hear drumming from a venue at 8 pm on Tuesday evenings. It was not fully investigated by licensing officials. Their office was 30 miles away from the venue and they went home at half past 5, so it was not possible to conduct a proper and full investigation, but they were still able to issue notifications to the venue threatening fines of £20,000 and loss of licence. In fact, the venue located the source of the noise—a samba band that had been rehearsing there out of its performance of music hours, between 6 pm and 8 pm on a Tuesday night. That was the source of the noise. The venue did the right thing and wrote to them to explain the problem. It turned

out that the licensing authority eventually declined to issue a formal instruction. So there are other ways.

Mark Davyd: I will pick up on Alex's word "proportionality", which goes back to what I said at the beginning. There is a perfectly reasonable expectation that residents have the right to be able to enjoy their premises quietly and everything else. However, as Alex said, quite often there is one resident, and that can result in a full review. The letter that goes out from local authorities to notify you that you have a noise complaint is terrifying to those venues. It contains references to fines of up to £20,000 or £35,000, almost as an instruction that "this may be your liability if you do not deal with the issue". That is slightly out of proportion. I want to be quite plain; it may all be dealt with locally, so that there is never a review, but that may cost the venue up to £5,000 in legal fees. Quite often acoustic fees are requested. That all falls on a venue that, as I have already described, is not profit making in any way and is often sitting in its community as a cultural space. We are placing those venues under a disproportionate weight in enforcing this provision, compared with their ability to respond. That is not very well understood.

Q201 **Baroness Grender:** I want to ask you about things like late night levies, temporary event notices and early morning restriction orders and their suitability for purpose. Let me be quite specific, following the examples that you have just used. We have had witnesses from Camden market. I accept that not all of it is live music, but clubland has encroached and moved out towards residents. They have lived in the area for a very long time, but temporary event notices are being used by one club, then another and then another. They are all in a cluster. What happens is that the neighbourhood is massively disrupted on a daily or biweekly basis. I want to ask particularly about the use of temporary event notices in that kind of context, especially for high commercial gain. Is there merit in any kind of change? Do you come across late night levies and early morning restriction orders at all? Do you believe that they are fit for purpose?

Paul Latham: We have a different portfolio of venues. We run live music and clubs, so we get involved in this on a regular basis. In some circumstances, we are encouraged to use TENs as a means of trading.

Baroness Grender: Do you think that that is the right thing to do?

Paul Latham: Again, it is about the way they are interpreted. For every event that we do, we do a risk assessment. We do all the things that will impact on licensing, because that is the best way to operate. We are happy to fulfil the criteria. If that is what gets you to a position where you can operate the event safely, properly and taking full cognisance of the environs, so be it. However, it is the combination of the different licensing terms, where it becomes a multiple issue, as opposed to anything else. I am not averse to TENs, if used properly. I do not see them as a means of escaping licensing and controls—quite the opposite. If they are used properly, there is good dialogue and liaison with the local authority and good liaison with local residents. That is what we strive for.

Baroness Grender: A TEN does not have liaison with local residents, unless it becomes a fait accompli at the end of the year: "There were TENs and nobody objected, so now we can extend our licence".

Paul Latham: That is certainly not our experience, and it is not the way we trade. It would be a shame if that was how they were used.

Baroness Grender: It is, in some cases.

The Chairman: Does anybody else wish to comment?

Alex Mann: The union was concerned to note that temporary event notices are being put in place perhaps because the licence that the venue already has does not serve its requirements. To put that into context, one of the issues that venues regularly cite to us is that they have only a very small window of time in which to operate and earn the money that they require to run their business. Having to take out a temporary event notice suggests that there is a bit of a problem already. With all the caveats about local residents and operating as a cultural space within your community, which means being part of your community, we think that it would be helpful if a venue were given the opportunity to remain open for longer, to allow it to operate its business properly and to make money within the short time that it has. To cite a brief example, the Jamboree club in north London has a closing time of 11 pm from Sunday to Thursday. On Friday and Saturday, it is allowed to open until midnight. It challenged that decision unsuccessfully, despite having no noise complaints in the seven years in which it had been operating. Apparently, the reason was that a residential block of flats was due to be erected opposite its building. It turned out that it was never built, but the condition on the club's licence remained. The club says that it needs more trading hours to be able to survive. Having a licence until 1 am would make a huge difference.

The Chairman: I think we got that. Thank you.

Mark Davyd: This is not a thing that is widely used in the grass-roots music venue sector, where people would be very happy just to run live music concerts, if we could make it economically sustainable. The late night levy is one of the things we have burdened venues with that are making it economically not sustainable. We have also created disparity in the marketplace, frankly. Venues do not pay the late night levy if they sit on one side of the border, but venues on the other side do, and because they have those other costs, it affects their ability to pay musicians.

On TENs, I do not have a lot to say. There are over 260 venue members in the Music Venues Alliance. Some of them feel obliged to have temporary event notices because of the economic model. That points towards what I would really like to push forward, which is that we need an overall solution to the problems that face grass-roots music venues. We cannot simply rely on the fact that, if we come up with one solution on something in the Licensing Act, it will solve all the other problems. If we can make it economically and culturally sustainable and give it parity with other theatre spaces, they will not use temporary event notices. It is a circle of behaviour.

Lord Foster of Bath: Do you mean that you simply think that there should be longer hours allowed in licences?

Mark Davyd: No. I would like the entire legal, licensing and planning framework around these venues and the music industry itself to be addressed. We are part of the music industry, but we are a very specific sector. We have lost 40% of those venues in the last 10 years. We need to stop that decline. The way to do that is

to address all the problems that face them. I will pick one specific example, if I may—

The Chairman: Could I put a very quick question? Would it help you if licensing became part of the planning process? Is that what you are saying? We will come back to this at the end.

Q202 **Baroness Watkins of Tavistock:** My question may well link to that. Is complete deregulation under the Licensing Act desirable or achievable for music performance?

Paul Latham: We are all responsible operators. When we got involved in the last amendment, there was a suggestion about no capacity. We said, "Hang on. We have all run events. We have seen other people run events that may not be as professional as our operation. We have to legislate for that". This is the music business. It is a responsible business. It is not the wild west, where you just take the shackles off us and let us get on with it. You have to legislate for the worst, as well as the best. It is not just a question of taking all the shackles off. We want to work responsibly and we want everybody in our industry to work responsibly. We are not so cavalier as to say, "Just take it all away". It is about simplifying it and equalising all the cultural elements across the piece. That is what we push for most.

Baroness Watkins of Tavistock: Is there big variation across the country?

Paul Latham: Big variation in interpretation?

Baroness Watkins of Tavistock: Yes.

Paul Latham: Absolutely, even within local authorities. There are different officers, and they all have different specialities and experience. We understand that in certain cities there have been things that have challenged them in the past. Where there have been known disasters, people start to get more fraught, because they do not want that to happen again. For companies that trade across the piece—Mark represents the whole country—when you know what best practice is because you operate it, it is frustrating when you are not able to do that elsewhere because a local authority does not particularly want you to.

The Chairman: Mr Davyd, would you like to comment?

Mark Davyd: Yes. Again, I will use a very specific example. The Village Underground has 74 conditions on its licence, including how it will run the cloakroom. That expresses a measure of control.

Baroness Watkins of Tavistock: Is that historical, or has it happened recently?

Mark Davyd: It has been there since it was set up, which was fairly recently—about eight years ago.

Lord Davies of Stamford: It would not happen now, under the present Act, would it?

Mark Davyd: Technically, it would. You asked a question about capacity. In fact, it has a capacity of over 500.

Lord Davies of Stamford: Cloakroom management?

Mark Davyd: Cloakroom management should not really be on it. This is the question. It goes to what Paul said about the standards of best practice that we

have in the industry. It is an incredibly well-run venue. The local authority, the police and everybody else would agree with that. It is an example.

Baroness Watkins of Tavistock: You say that it was eight years ago. I thought that this particular Act came in in 2012. Would the club, if it is a club—I am sorry, but I am not quite certain what it is—be able to take its current licence back and ask for it to be reviewed, to reduce some of the restrictions? It might choose not to, because it might feel that it would get more, but there is a process that it could use.

Mark Davyd: There is a process that it could use. It is reluctant to use it.

Baroness Watkins of Tavistock: I can understand that. Mr Mann, is there anything you want to add?

Alex Mann: Only very briefly. The union has maintained that live music does not need to be licensed. We remain of that view. The Licensing Act, the introduction of the Live Music Act in 2012 and the subsequent changes that have happened, all of which have been moves to relax regulation, have presented no ill effects and no negative consequences that we have been able to see. In that case, we see little reason why that process should not be continued, in the interests of supporting live music.

Lord Davies of Stamford: I detect—correctly, I think—a difference between Mr Mann and Mr Latham. Mr Latham is saying, “We need some regulation. We are the good guys. We are happy to have set high standards. We do not mind the conditions on the licence that remain and we want to make sure that we do not have too many cowboys in our industry, giving us a bad reputation, so regulation is good”. I think that is a fair summary. Mr Mann is saying, “This Act is better than the previous regime. We are going in the right direction. We should go further. Ideally, we would have complete deregulation”. That would mean that someone could come into my next-door neighbour’s garden and have a live concert at 5 in the morning, and I could do nothing about it, except perhaps through the environmental protection mechanism. I could do nothing at all through licensing. I am told that south Australia has gone down that route. Have you examined the consequences in south Australia of doing that, and do you have any conclusions to draw from that particular regime?

Alex Mann: I have to admit that I do not have any specific examples from south Australia. We talk about deregulation within the realm of venues operating on the basis that they are running as a business. They work within a commercial framework, so they would behave sensibly. As you said, there is existing regulation that ensures that venues operate properly and safely. You mentioned the example of somebody coming into your garden to perform—

Lord Davies of Stamford: The next-door neighbour’s garden, not my garden.

Alex Mann: You would expect that there would be an existing framework of regulation to prevent that happening. That should operate effectively.

Lord Brooke of Alverthorpe: You would get a TEN for that.

Mark Davyd: I will try to harmonise the two positions.

Lord Davies of Stamford: I have distinguished fairly between the two positions, have I not?

Mark Davyd: I think so. Essentially, the question is: is the Licensing Act the correct way of regulating that? Other Acts of Parliament provide a basis for regulating events and festivals. The Environmental Protection Act 1990 makes provision for noise abatement notices. The Control of Pollution Act 1974 sets restrictions on the timing of loudspeakers. The Regulatory Reform (Fire Safety) Order 2005 ensures fire safety. There is the Health and Safety at Work etc. Act 1974, because they are workplaces. There is the Anti-social Behaviour Act 2003. We already have regulations that are applicable in all the circumstances where we require them. Again, this goes to the core of our point. Is there anything specifically dangerous about somebody who wants to dance to live music? Is there anything about their doing that that is a danger to society? I do not believe there is. It is a great activity. It is exercise, it is cultural and it is socially engaging. We have plenty of provisions to support best practice in our industry. Do we need any more?

Lord Davies of Stamford: Your argument is also for complete deregulation.

Mark Davyd: Certainly in the spaces we represent. A space that was not compliant with all the other Acts that I listed would not be running—

Lord Davies of Stamford: The protections are there in other contexts anyway. What about south Australia? Have you looked at that?

Mark Davyd: Yes. A number of things are being done all around the world. San Francisco is a good example. Toronto is just bringing in an ordinance. Austin is working on some statutes that it is going to bring in. In all cases, deregulation of live music and reference to other Acts and control measures are being used.

Lord Davies of Stamford: Could you send us some material on that?

Mark Davyd: I certainly can.

The Chairman: Lord Mancroft has a question.

Q203 **Lord Mancroft:** I think we have covered my question, which was whether there are countries where regulation is done in a slightly better way. Can I add a bit of my own? The primary bit of protection we need—putting aside fire and safety and goodness knows what else—is neighbours not being disturbed by what your customers would describe as lovely music and what they might describe as a bloody awful noise. That is what you have to protect against. Who does it better than us?

Paul Latham: I do not think there are many. We trade internationally. The UK standard of operation is second to none in my experience, and I have worked all over the world. That is why we should be proud of what we do and continue doing it. The only clarification is that, because the legislation is in different formats, there should be one page of dos and one page of don'ts, from all the best bits of the legislation, to say, "That is it. Just adhere to those and do not do those. Do not mess about". We are there. We have the legislation at our disposal. It does not have to be compounded by the Licensing Acts as they currently are, because that is gilding the lily somewhat.

The Chairman: Do the other witnesses wish to comment?

Mark Davyd: We probably have the best practice in the world. Consequently, we have the ability to deliver the best result to local residents. I question whether we

have the best legislative framework to support people in doing that. It is very complex. There is a lot of subjectivity in it. When you are talking about commercial businesses and their ability to trade within the law, subjectivity is very unhelpful.

Lord Mancroft: I accept what you say. I also accept what you said earlier about intrinsic good; dancing is excellent and does not really need to be regulated. The reality is that the businesses you are talking about cannot keep their heads above water on music alone, which is why they sell alcohol. That is where there is an interest in public health and public safety. Indeed, if people come to your venue, enjoy their dancing and take drugs, that too becomes an issue of public health and public safety. There are also things like fire and crowding. There are issues that go beyond the actual music, are there not?

Paul Latham: But to take drink in particular, ultimately you can get a can of Stella for 40p around the corner at the supermarket. When you are paying £5 for the same thing at one of our venues, you are not going to our venues to get drunk, unless you take out a mortgage.

Mark Davyd: Statistically, the numbers are in. Audiences spend an average of £6.80 per head on alcohol in one of the grass-roots music venues that we represent. According to the *Morning Advertiser*, they spend £17 on alcohol in a pub. You could argue that we should open more music venues to cut alcohol intake.

Lord Mancroft: You have just put forward two separate scenarios. One is that you are overregulated. In some ways, I can see why you say that. On the other hand, Mr Latham says that we have the best regulation in the world. There is an element of truth in the statement that, if you get a new law, it will probably do you more damage than the last one. That is just a fact of life.

Paul Latham: It depends on whether you select the best things and take out the worst. Ultimately, the issue now is that the licensing provisions overcomplicate what is already there elsewhere. Nobody wants to run an unsafe venue. Nobody wants anybody to come to harm. We are investing in all our businesses and buildings, because we are competing for the leisure pound.

Lord Mancroft: How do you balance that with what you previously said, which was that we have the best licensing regime and we had probably better not change it? What you have just said is that it needs some changing.

Paul Latham: That is the clarification I was trying to make about the disparity between Alex and me, where Alex says, "Do not regulate". There are regulations in the different Bills on health and safety, et cetera. Those need to be crystallised. They should be up there above the safe in every venue and ticked off on a show-by-show basis. That is the legislation that keeps us at the forefront of the entertainment industry. The issue is all the little idiosyncrasies like, "You must wear this", "You have to have a cloakroom like this", and, "You have to stand on one leg on a Thursday night when you have an Irish band". That does not help anybody.

The Chairman: Mr Mann, you have been very patient.

Alex Mann: Paul raised a very good point. It speaks to the way the Licensing Act is applied to live venues, which creates some of the confusion. Perhaps the lack of a point in the Act that refers to social and cultural activities gives some

indication of where the confusion may arise. Perhaps there is some lack of understanding of what happens in those venues—the sorts of activities and the social and cultural behaviour. Generally, somebody may go to a gig and have one or two drinks. Most of the time, they will be engaging with the performance. In much the same way, if you go to see a production of “Tosca” at the Royal Opera House, you might have a drink before, in the interval and afterwards, but most of the time you will be engaging with the performance. It is extremely rare for one of our members to report to the union that they have been working at a music venue and there has been an incident of drunken behaviour that disrupted a performance, caused a threat to the performers, the staff or the public, or reached the point where one of the existing pillars of licensing was infringed or threatened in any way.

Baroness Grender: Some of the evidence that we have received is about preloading and people being served drunk. From your data, do you have any knowledge of people being turned away because they arrive at the venue drunk or being refused service when they try to buy alcohol?

Mark Davyd: We do not have data on the number of people who are turned away. However, security and entry into venues is very tight. These days it is all SIA registered, so there are control measures in place. I guess that it would be possible to do some sort of survey of that. There are quite a lot of surveys of practice in the industry going on at the moment that could be quite helpful.

Paul Latham: It certainly forms part of our event reports if we turn people away in advance.

The Chairman: Are you saying that it is not on a grand scale?

Paul Latham: No.

Baroness Grender: Has it increased or decreased?

Paul Latham: We are more mindful of it and we manage it better, because that is part of the operation. We do not even let them through the front doors if they are visibly intoxicated.

Lord Mancroft: Do you get a lot of noise complaints at established venues?

Mark Davyd: We recently set up what we call an emergency response service, partly to try to manage that more centrally and to build evidence about what is happening.

The Chairman: We are just about to come to that point. Could we turn to Lord Brooke?

Q204 **Lord Brooke of Alverthorpe:** Can I turn our attention to larger-scale venues and arenas? What has happened since the Act came into force? We are aware that a number of places have closed, but could you tell us whether it extends to the same degree to larger ones? Are there problems that we should address there?

Paul Latham: There are by definition, when there may be 10,000 or 12,000 people in an arena, with bands playing to that number of people. Wembley Arena, for example, had residences built above it. The NEC has had residences built around it. In Cardiff, the profile of events has changed since the retail was there. The arenas, too, are affected. They have the same inhibiting finish times. When

you have Madonna or Axl Rose, who do not always turn up on time, there will be mitigation problems. They are not even in the building at 10.30, let alone finishing their set. You cannot ignore the fact that those buildings are impacted as well. From a noise point of view, with the residential developments that are happening around most of the arenas, there is a constant issue. On the point about how many noise issues you have, there are 12,000 people inside and four or five people complaining outside. That tends to be the ratio at arena level. That is not just my arenas; it is representative of the National Arenas Association, which is also part of our group. We have those challenges.

The Chairman: Mr Mann?

Alex Mann: I have nothing to add. Mr Latham has summed up my thinking entirely.

Lord Blair of Boughton: I seek a bit of clarification. Where these big venues are getting residential units, it is following on from a pre-existing large venue. In a sense, if the venue is building the things, it must accept that it will have trouble.

Paul Latham: Yes, but it is not the venue that is building them; it is local developers, quite often utilising the fact that they are in the proximity of a very nice conference centre-cum-events centre-cum-concert venue. Then the residents who buy residences on top of Wembley Arena suddenly do not like the noise that is there. Go figure.

Lord Brooke of Alverthorpe: Lots of pop-up raves tend to be outside city centres. Has there been any development of music venues away from centres, given that we can expect probably 1 million new houses to go into city centres, primarily, in the coming years? Is there any evidence of movement outside?

Mark Davyd: Within the grass-roots music sector, that would be fundamentally against the concept of what they are trying to deliver. Essentially, they are trying to bring artists to the doorstep of new audiences who do not currently know them. As soon as you put it on the industrial estate, for example, five miles out of town, you start to ask, "Who is going to travel five miles out of town?"

Lord Brooke of Alverthorpe: Raves prove that thousands travel.

Mark Davyd: They travel for a very specific musical experience, featuring known DJs. I am talking very specifically about the grass-roots music venue sector. Thousands of people do not travel outside their city centre to see an artist they have never heard of.

Paul Latham: My company is not involved in raves, but the club Cream does a lot of large warehouse party events. Every single one of them is licensed. They do not pop up. We do not abuse the local residents in any way, shape or form. It is not good business. Cream, which was there for 30 years, is no longer in existence, so we will have to put it somewhere else and consider the impact of that. Accordingly, we are looking at spaces that will complement where it is so that people can come and go, because it is a late-night business.

The Chairman: Mr Mann, is there anything you wish to add?

Alex Mann: Only that events on the scale you are talking about and that operate in that way—presumably, licensed events—largely have a huge amount of extensive risk assessment and management of the event itself, to ensure the health and safety of everyone attending it.

Q205 **Baroness Henig:** Can we turn to security? Since last year's terrorist attacks in Paris, there have been heightened concerns about security at licensed premises, with some people suggesting that some venues are not taking security seriously enough. For example, police in the London area offer a lot of advice on target hardening and bringing premises into schemes such as Project Griffin, but some venues do not take them up on it. Do you think that is a problem? If so, how can you make some of the venues that are not engaging engage?

Paul Latham: It is absolutely not my experience. As a venue manager for 32 years, I had the misfortune to be running venues when the IRA was regularly taking pot-shots at us. There is absolutely no complacency within the industry. The Bataclan was quite personal to us. One of our artists and one of our merchandisers died, so nobody is being complacent.

The public perception may have been that for a while afterwards they were a little concerned about public places. As a point of information, the Bataclan had previously been identified as a viable target because of its ownership and its support for certain factions. The local community had warned the previous owner that they did not want it to carry on doing certain fundraising. Unfortunately, the security services in France and the new owner did not heed those warnings. We have far better relationships. The security services in this country do great work to avert those types of things. It is all part of the regular liaison we have with the security services and local authorities. I assure you that, among responsible venue operators, there is not a single venue that takes these things lightly. I say that as somebody who has a vested interest. We have a security company as part of our company, so we are involved in all the protocols.

Our doors have always been more secure because of the type of artists we have. Every risk assessment we do for every gig identifies the audience profile and how they are likely to act, from a health and safety point of view. Can we go to airport scanners? I do not think so. If you look at the licensed buildings that we have, a lot of them are very antiquated, with very small spaces. Do you do pat-downs, use wands and do bag checks? Absolutely. I suggest that our industry is better served than a lot of others. I ran West End theatres. The Dominion was one of mine, and the IRA targeted Charlie and Di in the royal box. We averted it. We did then, and we will now. We will continue to do that. We are very vigilant. I would be amazed if anybody did not take it seriously. If people do not take advice from the forces that are there to do that job, more fool them. We certainly do.

Mark Davyd: Project Griffin specifically was represented at venues day this year, which was attended by more than 200 venues. It was very heavily engaged, for precisely the reasons that Paul has just outlined. It is more about opportunity than it is about resistance on the part of the sector to measures like that. It is about getting the message out there. We seem very authoritative when we come to these meetings, but we have been in existence for only two years. Prior to that, there was no mechanism whereby you could contact such a large body of venues. Our existence is helping to solve that problem. That is certainly the feedback that we have had from the counterterrorism department and Project Griffin.

Baroness Henig: I am interested in that. Clearly, it is not the well-regulated end of the venues that will be the problem, but the very small venues—those that may not be in an organisation or chain. If an organisation like yours was able to reach out to them, it would be a very beneficial thing.

Mark Davyd: It was very positively received at venues day; I am waiting to get a fantastic quote from the Met about the experience. They are very open to getting more advice. As Paul outlined, they have best practice on security and entry anyway. We can generate more of that.

Q206 **The Chairman:** Can I ask one last question? Picking up what you said earlier, are you saying that the Licensing Act and the revisions are not necessarily the best way of regulating the live music sector, and that the original pieces of legislation that apply directly would be better? Is that what we can conclude from what we have heard this morning?

Mark Davyd: Overall, our feeling is that as a package of measures that we should take to support grass-roots venues, which are in serious decline, addressing the way they are directly dealt with in the Licensing Act is something we really want to push forward. If that could be done through the fifth pillar that has been discussed, recognising them for the value of their cultural and social activities, we would support that. If it could be done by a review of all the licences, we would support that. However, as my closing remark, this is not the only measure we need to take for grass-roots music venues; we need to consider every aspect of legislation and the economics of the music industry.

Paul Latham: We need to take pride in the work that everybody has done. As the Licensing Act has evolved, it has tried to help. Unfortunately, there is other legislation that sits alongside it. It is about simplifying that. If it is simplified, more people can adhere to it, because they understand it. That goes for the enforcing officers too. It is not about deregulating everything; it is about showing the conditions that are appropriate at this time for responsible businesspeople and making them adhere to those.

Alex Mann: As regards the cultural agenda, we normally think of theatres, cinemas, the opera house and other such spaces as part of a cultural community. I am very pleased that there are now movements within government and within our own music industry infrastructure to bring live music venues into that cultural sphere as well. It would certainly help if more venues were recognised for the culture that they provide for their community and our society in general. Addressing these issues is a really helpful way of doing that.

The Chairman: On behalf of the Committee, I thank you most warmly for being with us, being so generous with your time and answering all the questions we put. It has been very helpful. In thanking you, could I ask you to leave, so that we can continue with our private business? You have been most welcome and we have benefited greatly. Thank you very much.

Home Office and Department of Health — oral evidence (QQ 208–227)

Examination of witnesses

I: **Sarah Newton MP**, Parliamentary Under-Secretary of State for Vulnerability, Safeguarding and Countering Extremism, Home Office, and **Nicola Blackwood MP**, Parliamentary Under-Secretary of State for Public Health and Innovation, Department of Health.

Q208 **The Chairman:** Good morning, my Lords, ladies and gentlemen. I bid our witnesses, the two Ministers, a very warm welcome. Thank you for giving evidence to us on behalf of the Government this morning. We understand that Gavin Barwell, the Minister responsible for planning at the Department for Communities and Local Government, cannot be present this morning, but we have been told that you are fully briefed on planning issues.

A list of Members' interests relevant to the inquiry has been sent to you, and copies are available this morning. This session is open to the public, is being broadcast live and will subsequently be accessible via the parliamentary website. A verbatim transcript of the evidence will be taken and placed on the parliamentary website. A few days after the session, you will be sent a copy of the transcript to check for accuracy. It would be helpful if you could advise us of any corrections as quickly as possible. If after this evidence session you wish to clarify or amplify any points made during the session or there are any additional points that you wish to make, you are welcome to submit supplementary evidence to us. If there are any questions on planning issues that have not been fully answered, it may be helpful if Mr Barwell could write to us. We would hope to receive any such further evidence before the Christmas recess.

Could I open the proceedings with a couple of general questions? I will address you first, Minister Newton. In your general view, how effectively has the Licensing Act 2003 operated over the last 11 years?

Sarah Newton MP: First, can I say how much we welcome the Committee's inquiry? As you rightly say, colleagues cannot be with us this morning, so we will be very happy to follow up in writing any detailed questions that we are unable to answer. We will absolutely aim to meet your deadline of before the Christmas recess, although that gives us just a few days.

Overall, as long as the measures in the Act are properly utilised and used by licensing bodies, it has worked pretty well. It is from some time ago—2003—so there have been significant changes in people's behaviour and the development of the off-trade. I know that you will be taking, and have already taken, evidence from a group of stakeholders who undoubtedly want to see improvements to aspects of the implementation of the existing Act and have come up with recommendations or suggestions for how it could be improved, but overall it has worked pretty well.

Nicola Blackwood MP: I do not know whether it has already been referred to in evidence that you have received, but there was a recently published Public Health England review of the issue. It sets out quite a complex picture of the public health

burden of alcohol. Some indicators—for example, on hospital admissions relating to alcohol—show an increased level of harm, but in other areas there are some positive trends. We are seeing a reduction in alcohol consumption among under-18s. It is important that we look at the picture in the round and respond to the evidence in a nuanced way. It is also important when we look at that evidence to note that it is quite difficult to attribute health harms directly to the Licensing Act and, therefore, to look at how we can amend the Act to address the evidence that came forward in the review. As I am sure you have heard in evidence before, behavioural changes such as affordability also play a role.

Local authorities are well placed to address the local issues associated with alcohol consumption. There have been some really good examples where public health teams have used the Licensing Act, as well as the other powers that they have, to address local concern. For example, in Liverpool, they worked in partnership with the police and ran a very successful local campaign to reduce the sale of alcohol to people who were drunk. My officials will provide some more examples of good practice. It will be helpful if those can be shared in your report, so that we can spread that good practice and make sure that we see some benefits across the country.

Q209 The Chairman: I am sure that we will be able to explore those issues this morning. My next question is more specifically to you, Minister Newton. How flexible do you believe the Act, the guidelines and all the amendments to the Act have proved in changing behaviour and circumstances since the Act came into effect? I link that to the concern that has been expressed by a number of witnesses in both written and oral evidence about the resources that have been made available to local authorities, especially to the police, who are primarily responsible for duties under the Act?

Sarah Newton MP: As you quite rightly point out and, I am sure, evidence has shown, it is a dynamic situation. We must be evidence-based policymakers. Although the four principles of the original Act are as relevant today as they were back in 2003, in order to give people on the front line—whether law enforcement officers, councillors or licensing bodies making decisions—the tools that they need, amendments have been brought in, based on evidence from front-line people and others as to what extra tools and powers they need. It has shown itself to be flexible. Members of the House of Lords are now considering amendments to various pieces of legislation that aim to provide additional tools and responses to enable communities to balance the desire for sensible drinking and realising the economic benefits of alcohol with protecting the public from the harms, whether they are public health harms or harms related to crime.

It is well worth noting that the number of violent crimes associated with alcohol has been falling. When the public are asked about their own experiences, we find that their experiences of rowdy or anti-social behaviour associated with alcohol have also been declining. The evidence suggests that people in communities, from councillors to licensing authorities to the police, have the tools that they need. If they use them well and if we see the good partnership working that my colleague has mentioned, they are effective.

The Chairman: You are saying that the Home Office has no concerns about the level of resources available to local authorities to enforce and apply the Act, given

the crisis we have in the care system and the underfunding there. We have to accept that there have been reductions in policing budgets as well. You wish to say that you have no concerns at the Home Office about the resources available to enforce the Act.

Sarah Newton MP: I have been given no evidence to suggest that there are issues along those lines. I absolutely accept what you are saying: local authorities have had reductions in their funding, as part of the deficit reduction plans, and police budgets are now frozen. However, by innovative partnership working—by using data better, for example—they are able to pool resources and use their resources more smartly to tackle issues. If you look at the evidence from the partnership working that is going on, you will see quite substantial abilities to reduce harm in local communities, both from a health point of view and from a crime point of view.

The Chairman: We will explore those issues further.

Q210 **Baroness Eaton:** Planning and licensing are separate regimes. We have heard a lot of criticism from people who have given evidence about that. The licensing system is supposed to be about the regulation of licensable activities. The planning system is supposed to be about controlling the use of land. Case law indicates that licensing and planning decisions should be considered separately. Are they separate in practice? Where both types of authorisation are required, is it preferable to grant one type before the other?

Sarah Newton MP: You raise a very important point, which is about the relationship between the planning system and the licensing system. From what I have seen, the best examples are where local authorities make those decisions separately—because councillors need to be trained to take into consideration the legislation that pertains to those separate decisions—but do so in a co-ordinated and joined-up way, so that the people making the planning decisions take very much into consideration the concerns and issues raised by the people on the licensing committee, and vice versa, and there is good, joined-up co-ordination. In some parts of the country, they have joint planning and licensing decisions. In others, they have a very co-ordinated approach. The National Planning Policy Framework is clear about the need for those two parts of a local authority to work well together.

Baroness Eaton: What incentives are there to make them work together? Planners are not supposed to take into account things such as proliferation. That is not supposed to be part of their ability to decide matters. When you put the two things together, is it not a rather complex and difficult thing to deal with?

Sarah Newton MP: I know that a number of members of the Committee, including yourself, spent a long time in local government. You will understand that planning is a complicated area, by necessity. It needs to weigh up many different factors, not least environmental factors such as the impact of flooding—let alone impacts on the health and well-being of a local community. The system is set up to ensure that people making planning decisions do so in a way that is based on evidence and information gathered from a range of statutory consultees—the community as a whole—to enable them to come to the best decisions. Inevitably, there will be some conflicting priorities. That is why it is so rooted in local democracy and accountability through local authorities.

You asked me about incentives. What better incentive will the councillors have than to make sure that they are making decisions that are in the best interests of the communities they serve? They have to balance a complex range of issues when taking those decisions, but the structures are in place to enable them to do that.

Baroness Eaton: You get silly situations where you get a licence until midnight and planning permission only until 11 pm. Those kinds of arrangements are highly problematic.

Sarah Newton MP: I totally agree with you that some poor decisions are taken when the left hand and the right hand of the council do not seem to know what the other is doing and there is not a good dialogue. Our response would be to work very carefully, as we do, with the Local Government Association and other national bodies, such as those responsible for licensing, to make sure that councillors are properly trained—both those making planning decisions and those making licensing decisions—so that they are up to date with not only the latest legislation but the best practice that is available. We spend a lot of time in the Home Office and across government making sure that we are updating guidance based on the best available evidence, so that councillors can make good decisions.

Baroness Eaton: You mentioned the Local Government Association, which produced its report *Rewiring Licensing* a number of years ago. Is the Home Office aware of that? Is it using it in its deliberations?

Sarah Newton MP: Yes. I often meet a whole range of stakeholders, as you would imagine. Officials in the Home Office work across the different partners and stakeholders, as we need to do, to make sure that we are always providing and updating good tools for people to use. In the crime prevention strategy launched in March, the whole approach in the Home Office is about partnership working, from industry to the various statutory bodies to law enforcement, to make sure that we provide people on the front line with the tools they need to do the job as well as they possibly can.

Lord Blair of Boughton: I have a very short supplementary. Section 182 guidance on this matter specifically says that the two regimes should be kept watertight and separate. Are the Government going to reconsider that?

Sarah Newton MP: No. If that was the impression I gave, I am very grateful to have the opportunity to clarify this. They need to operate separately. However, they should also relate to each other. As Baroness Eaton said, those decisions need to be made against the criteria by which people are making them, but it does not stop the different parts of the council talking to each other. That is an important separation; they have to make those decisions based on the requirements, but it does not prevent them liaising. In the development of local and neighbourhood plans, there are opportunities within those frameworks to set up aspirations for communities in relation to the balance of types of businesses and housing—the types of community—that they want to see.

Baroness Grender: You said that some parts of the country did this well. Could you direct the Committee to what you think is the best example for us to look at?

Sarah Newton MP: Yes. I would be happy to write, following up from today, with examples of where there is best practice, showing the different ways in which councils have responded to their communities.

Q211 Baroness Henig: Can I follow up on some of those points? Many of our witnesses have been critical of the operation of licensing sub-committees, particularly as regards inconsistency from one licensing sub-committee to another. Some have compared them unfavourably with planning committees, where the regime is much more uniform. Would there be any advantage, as one of our witnesses suggested, in making the licensing function an integral part of the planning process, with a single committee of the local authority dealing with both licensing and planning?

Sarah Newton MP: I do not think so. It would require a huge upheaval in the planning system. There would have to be primary legislation and a huge amount of training to enable people to make those decisions. The planning system has undergone considerable changes in the last couple of years; you have the neighbourhood planning legislation before you in the House of Lords at the moment. It is important that the current regime settles down. If there are issues with poor performance and poor decision-making, it is better to tackle them with education and training, to make sure that councillors understand the powers they have and use them well. That would be a much preferable way of doing it. In some areas, the licensing committee is thought to be doing a really good job and the planning committee is not thought to be doing a very good job. It is not a uniform picture at all.

Baroness Henig: So inconsistency clearly exists. As you yourself said, some local authorities appear to be much more effective in this area than others. Does the Home Office have any specific ideas about how to lessen some of that inconsistency and to make sure that all local authorities come up to standard in that area?

Sarah Newton MP: Your colleague Lord Blair mentioned the 182 guidance. There is also guidance across government that pertains to this. As you know, magistrates hear the appeals to licensing decisions. Guidance was recently updated by HM Courts & Tribunals Service. We work across government to make sure that the people making the decisions have all the tools they need for that. It is a process of continuous improvement.

Nicola Blackwood MP: Given the health impacts of alcohol consumption and the increasing role that local authorities are playing in public health, Public Health England has been looking at how it can increase resources to local authorities in the way that they consider that. We have produced guidance tools, including licensing guidance, joint strategic needs assessment packs and the alcohol CLear self-assessment tool. We also produce locally specific data—it has a great acronym, LAPE—that is now widely used by local authority alcohol partnerships to assist in targeting. Research from the University of Bristol demonstrates that local authorities that produce more stringent local policy around alcohol licensing have fewer alcohol-related hospital admissions and less alcohol-related crime, so we see a direct line between producing that guidance, local authorities having better training and using those tools to produce better local policy, and cutting the health impacts of the abuse of alcohol. So we encourage the more effective use of those tools.

The Chairman: Can we revert to what you said, Minister Newton? If the law is not working as it is intended to work, the fact that we would need primary

legislation is neither here nor there. We are here as legislators. We have been tasked by this House to see what improvements to the legislation could be made. We have received evidence that it could be done by guidelines and does not necessarily need primary legislation. We are picking up that in any one year there are a great number of licensing cases before a licensing authority. Those who are tasked by the local authority with sitting on the licensing sub-committee are given only one day's training before they are let loose on making those decisions. Do you feel comfortable with that as a background for cases to be heard? They do not have legal advisers, there is rigid adherence to procedure and time limits, there is bias in favour of applicants and the interests of residents are being overlooked. Would it not seem sensible to review that?

Sarah Newton MP: Obviously we keep legislation under review, but I think the legislation is absolutely fine. Of course, there are instances where councillors are not doing a good job. That will always happen, but we have mechanisms in place—not least, the appeals process—where people can get remedies and seek justice. I do not have evidence that there is widespread maladministration in the way you are describing. We will look at the findings of the report very carefully. If there is evidence of systemic, widespread maladministration, that is a separate matter, but I think that the approach we take—making sure that there is guidance and training and working carefully with the Local Government Association—is appropriate.

Councillor training is very much a matter for the councillors and the local authority that they represent. I have been a councillor myself. I certainly would not have allowed myself to be put in the position of being asked to make such important decisions about licensing or planning matters unless I had satisfied myself that I was adequately trained.

Lord Foster of Bath: A few minutes ago, you said that councils that had “more stringent” policies were more successful in dealing with alcohol-related problems in their area. What did you mean by more stringent policies?

Nicola Blackwood MP: As I understand it, they have set specific policy parameters around the way they make decisions, rather than making them on a case-by-case basis. As I said, we will be very happy to send you examples of successful councils that have worked in this area. My DoH officials are assembling that list to send to you.

Lord Foster of Bath: Thank you. I would be very grateful if you could identify the examples that you believe are more stringent, to use your word.

Q212 **Baroness Grender:** It is good that you mentioned the appeals system, because that is the next subject. There has been criticism of the appeals system. As you will be aware, it is not a well-used system in the area of licensing. Magistrates hear the appeals, and there has been some criticism of magistrates doing that, because they do not have the same level of experience; comparing it with the planning system, for example, planning appeals go to specialist inspectors. There is some concern that not many people take up appeals; in some cases, it is because they are deemed to be too expensive, especially for an SME, and in other cases it is because the system is just not fit for use at the moment. Given that, do you think that the planning model would be an interesting one to look at in the context of appeals for licensing?

Sarah Newton MP: You raise an important point about who is most appropriate to hear the appeals. The Planning Inspectorate is a well-regarded system that works pretty well. I have not seen a huge amount of evidence to suggest that the magistrates' system is not an equally effective route for considering those particular cases.

You raise a couple of points. On the cost threshold for people seeking remedy, it is a relatively inexpensive matter to take an issue to the magistrates' court in the first place. Although magistrates have to consider a wide range of cases, in my experience, and the evidence will bear this out, they are highly motivated individuals who take their responsibilities very seriously. They have access to good training and often have mentoring arrangements. If a new magistrate is coming on board, they will sit with magistrates experienced in particular areas. Often on a bench, different magistrates take leads in particular areas and become specialists themselves. The magistrate is a really good example of how we can have both the relevant level of expertise and the flexibility for people to make informed decisions about the best interests of their community, in the context of the law they are making decisions about.

Baroness Grender: One London borough told us that the current appeals system is "unfair to all concerned because the knowledge of the law is not present and some of the arguments are very technical and legally advanced. Magistrates are not trained in licensing and it is unreasonable to expect them to grasp the ... significant volumes of evidence, law and case law". There was quite a level of dissatisfaction with how the system currently works. Another witness suggested that we should look at the family court as a possible model. That has quite a lot of advanced discussion before you reach the appeals system, so you could resolve issues between residents and licence applicants. The take-up is so small in comparison with planning issues that there is strong evidence taking us in the direction of saying, "Right now, appeals do not work".

Sarah Newton MP: I will be very interested to read your report and the evidence that is there. From what you have said, the issue seems to be how the system is functioning in a particular area. That is where guidance and training are very appropriate. Although the Courts & Tribunals Service has issued more guidance, it seems from what you are saying that we could look again at the guidance that the Magistrates' Association gives magistrates themselves, to make sure that magistrates are properly briefed and trained before they make those decisions. You made an interesting point about conflicts between residents and licensed premises. I know that a number of you have been involved in local government. You will know that this is where councillors play an incredibly important role. Any good councillor will be in a very good position in their community, before things even go to the licensing committee, to sit down with the person seeking the application and the local residents and have a meeting to discuss the issues. Often councillors mediate in that way and get agreement that those seeking the licence will moderate themselves, because they want good community relations. Any business seeking a licence does not want to alienate its customer base and the community. Where there are good, strong, effective councillors, the system works well.

The Chairman: On the last point, there is no mechanism that currently caters for that. Would the Home Office consider introducing such a mechanism?

Sarah Newton MP: If you are talking about a mechanism to enable an applicant to meet residents to try to iron out, for want of a better word, something acceptable to all parties before an application is made, I think that mechanism does exist. It is in the representation of a local community by their councillors.

Q213 **Baroness Goudie:** The Home Office has said that, until March this year, there were only 193 licensing appeals across the whole of England and Wales—a fraction of the number of planning appeals. Would a merger of licensing and planning have significant cost implications? Would there be savings on administrative costs as well?

Sarah Newton MP: You make a very good point about the logistics and whether there is any evidence that it would either improve the situation or be cost effective. There is no evidence, and we would not be prepared to make a decision without an evidence base. There would need to be primary legislation and huge amounts of new training, and we do not know whether it would improve the situation at all. That is why we are more interested in working tirelessly—I am sure the Committee's findings will contribute to this—to improve the current situation and regime, than in creating a whole new one.

The Chairman: The numbers are so low. In many authorities, there were no appeals whatever. I hope that this is something that the Home Office will keep under review. Have you given any thought to the role of mediation?

Sarah Newton MP: I can absolutely reassure you that we keep every part of our policy under review. We have very proactive stakeholder engagement. If we have evidence that there are problems, of course we will act. One interpretation of the relatively small number of appeals is that there is good decision-making. We should not necessarily think that, because there is not a huge number of appeals, there is not good decision-making. One could argue that the decisions are being well made, so there is no need to have recourse to appeals. I believe that the best way to conduct mediation is within communities—for councillors to be active members of their communities, to hold discussions with the people seeking licences and make sure that the right decisions are made locally. No two communities are the same. That is why I firmly believe that the decisions need to be rooted in local authorities.

The Chairman: We will pursue this a little further later.

Q214 **Baroness Goudie:** In Scotland it will be a requirement, when the amendment to Section 20 of the Licensing (Scotland) Act is brought into force, for applicants for a premises licence to provide a "disabled access and facilities statement" with their licensing application, without which they will not get a licence and will not be able to proceed. Should there be a similar provision in the Licensing Act 2003?

Sarah Newton MP: You raise a very important point about access to licensed premises. As you know, I represent a rural community in Cornwall. Pubs are the hubs of our communities. Sometimes they are the only commercially available facility left in a village. They provide local library services, postal services and a

social facility, as well as the traditional services of a licensed premises, so I absolutely understand how important it is.

I understand that when this was debated in the House of Lords the approach taken was to seek a voluntary agreement with the industry. That was felt to be a more sustainable and effective way forward. I have followed it up. I have noticed that new codes have come into effect and that licensed premises have taken this very much on board as something that they want and need to do. That is the best approach—to get people who are licence holders for pubs and other premises to understand that people with disabilities are an incredibly important part of their community, have a lot of money to spend in the local community, alongside everyone else, and are customers who should be made welcome. As well as the wider social and moral responsibilities that they face, it is in their commercial interests to do so. I would like to give time for the new voluntary agreements to come into place before reaching for a legislative measure.

Baroness Goudie: How much time would you and the Government think to give? There are still a number of premises that do not have disabled facilities. It is not correct in any way.

Sarah Newton MP: There is the Equality Act to think about as well.

Baroness Goudie: I did not want to come on to that. I took it that you would know that.

Sarah Newton MP: Absolutely. The Equality Act gives them very clear responsibilities to make sure that their premises are accessible to everyone in our society and community. They have those obligations, and it is important that the law is enforced.

Baroness Eaton: Most disabled people I know are extremely distressed that, after the length of time that has passed since the Equality Act, they still have this issue. They feel that as we have had the Act for so long and, presumably, there has been little or no enforcement of the requirement to make facilities accessible, why should a code at this stage make any difference? How long will it take before it makes a difference? There is a lot of dissatisfaction about it from people with disabilities. You seem rather confident that the code will work. I would like to pursue a bit more what a reasonable length of time is for something to be embedded to the point where it is totally the norm.

Sarah Newton MP: I completely understand the point of view of people with disabilities who get frustrated that they still cannot access individual premises. I think it is best to get not just licensed premises, but shops on the high street—every aspect of our society—accessible to people with disabilities. It will be more sustainable if the business owners themselves see the economic benefits to their business of doing that. That is not at all to say that laws that currently exist will not be enforced. I will keep this under careful scrutiny. If we are not seeing progress, we will of course look at what more can be done.

Baroness Eaton: There is such a lack of resources for enforcement in all these areas. One of the concerns is that there is nobody doing the enforcing.

Sarah Newton MP: What sort of enforcement do you have in mind?

The Chairman: As an MP, you would not have a surgery in premises that did not allow disabled access.

Sarah Newton MP: You are absolutely right.

The Chairman: You would make every effort, otherwise you could be prosecuted under the law. Why should the onus, under the current law, be in favour of the premises being given additional time? This goes back to the 1990s. It was a flagship Conservative policy at the time. It was then completely rewritten under the Equality Act 2010. Is it not grossly unfair to leave it to a disabled person to have to rail against the system for not allowing them in? Quite frankly, if I were heavily disabled, I do not know that I would have the confidence to do that. Will the Home Office perhaps not allow further time and get a bit more heavy-handed in this regard? If the rules look good, can we not import into English law the guidelines that have been written for Scotland?

Sarah Newton MP: I absolutely agree that any of us should have facilities or premises that are accessible to people with disabilities. I am proud that we introduced that in the Equality Act, and it is important that we see rapid progress. I think there has been progress. I do not have in front of me the data for the percentage of premises that are now accessible.

The Chairman: There is a human aspect. There were very heated debates. You say that the Government do not want primary legislation, but they brought forward a number of amendments to the Policing and Crime Bill, so obviously you are not that displeased with primary legislation. I put it to you that the onus should be on the premises. If it is a grade 2 listed building and the costs are prohibitive, I can quite understand; many of us would accept that. But if it is a bog-standard pub and it is being difficult, would it not be best for the onus to be on the premises when licences are issued?

It goes back to an earlier point that you made—that the Home Office or you, Minister, have no evidence that sub-committees are not working well. We have masses of evidence. It is there on our website. I encourage you to read it before we write our report. All of it—both the written and oral evidence that we have received—is there for everybody to read. It tells us that sub-committees are not working well and that magistrates' courts are not working well. We would like to know what the Home Office or the DCLG response is to enable licensing sub-committees and the appeals process to work better.

Sarah Newton MP: You raised a huge number of questions. I will go through them one after the other. I think I was half way through saying that it is really important that, as you rightly say, existing laws about access to premises for people with disabilities are enforced and we see rapid progress. I do not have in front of me today the percentage of properties that comply with the legislation. That is something that I will take away, to see how I can get from my colleagues across government what progress we are making there. It is something that I take very seriously.

As you have raised the issue, if new measures are introduced in Scotland, we will see how those go. If there is a review of them and there is good evidence that they were useful in making progress, of course we will consider them. Later, there will be questions around a minimum unit price for alcohol, which is something we work on with the Scottish Government. Of course we work with the Scottish Government. If they are learning things that we can take on board, we will be very happy to do so. I will absolutely do that.

When speaking previously about the functioning of licensing committees and magistrates in relation to appeals, I said that I was sure that there were cases of individual licensing committees making poor decisions or individual councillors not doing their job, but my concern is to look at systemic failure. I said that I had not seen evidence of systemic failure. Of course, I will be very happy to read the report and to take into consideration that body of evidence, to see whether there is something that is systemic, rather than individual lack of training or lack of implementation of powers that are already there.

Nicola Blackwood MP: The Committee has put its finger on something important that we in the department have noticed more broadly—a widespread attitude that dismisses the disability community as irrelevant. We need the disabled community to be seen as a relevant customer base, just like every other customer base, not differentiated but automatically provided for as part of the business plan. In the department, we are trying, along with DWP, to tackle the disability work gap, which has stubbornly remained in place over successive Governments and over decades. As you rightly noted, the Equality Act has been in place since the 1990s. Primary legislation has not addressed the disability work gap, just as it has not addressed a number of other injustices that disabled people in the UK have been trying to tackle. The question is whether legislative change will address the problem, or whether there are other measures that need to be put in place.

The Chairman: The Scottish law points in that direction; there are guidelines.

Nicola Blackwood MP: Exactly. The question is, what needs to be put in place? The Committee might consider the health and work Green Paper we are putting forward to try to address the disability work gap. It has all sorts of different steps, across a range of measures, to try to bring in, effectively, culture change. That is what is needed to bring in a lasting and, as my colleague said, sustainable change in this area. We cannot allow this kind of discrimination to continue.

Baroness Watkins of Tavistock: I particularly welcome the intervention on the sustainability of the disabled being fully included, not only as customers, but as workers in licensed premises. Some supermarkets have been really good at taking very severely disabled people, working relatively short hours, to suit the needs of both. As an academic, I have heard from you that we are waiting for Scotland. If you were doing a big research trial in drugs, you would just increase your sample and get your results more quickly. Why are we waiting for Scotland all the time? That is how it feels to me.

Sarah Newton MP: Are you talking about the changes to the conditions of the licence—that premises have to have disability access?

Baroness Watkins of Tavistock: Yes, and some other issues relating to Scotland that we will talk about later.

Sarah Newton MP: When we talk about minimum unit pricing, there are some specific benefits.

The Chairman: We will talk just about disability at this point.

Sarah Newton MP: Okay. You are conflating the two issues, so I will probably talk about that in detail. I assure you that we are not waiting on Scotland for all our decisions.

Baroness Watkins of Tavistock: That is how it has begun to feel, it is fair to say: “Let Scotland do this test on people with disabilities, and then we will know what the evidence is”—whereas I think the evidence is pretty clear.

Sarah Newton MP: We are not waiting for anything, really. We are constantly seeing what more we can do. The real engagement with the industry is to get it to take this responsibility on itself, to see that this is an important customer base, to want to do something about it and to push it forward. That is progress. The point I was making is that we are always looking at what more we can do. We are always considering changes in policy, whether in other parts of the United Kingdom or overseas, and what more we can learn to bear down on our overall aims in the Home Office, which are, quite simply, to keep people safe. We have that open-minded, evidence-based approach to all our policy areas.

Baroness Grender: You talked about culture change and our wanting to generate that. If we consider drink-driving and driving with mobile phones, sometimes culture change simply does not happen unless there is significant legislation to force the culture change to take place. I think that you both accept that that is the case. It may be that it is the case in this instance.

Sarah Newton MP: You are absolutely right. To tackle the harms of alcohol overall, we need a huge culture change.

Baroness Grender: Sometimes the only way of introducing culture change is to have it backed by legislation.

Sarah Newton MP: I accept that. Sometimes legislation plays a very important role in changing culture, but an overall reduction in harm from alcohol requires a substantial culture change. Speaking very positively, in the work that Public Health England and the Department of Health have been doing, particularly with young people, on communicating what is safe consumption of alcohol and promoting the harms of alcohol, we are starting to see that young people are consuming alcohol in less harmful quantities. We are beginning to see some quite substantial culture changes as a result of proper, evidence-based public health interventions.

The Chairman: It is disappointing to hear that 20 years after the initial Disability Discrimination Act came in we are waiting for a Green Paper. The congestion time from a Green Paper even to guidelines will be a minimum of two, three or five years.

Nicola Blackwood MP: It is specifically on health and work; it is not on issues to do with licensing. I wanted to refer you to it because I thought it was relevant to the principles that we are discussing today. I am sorry if I have disappointed you, but I think it is a positive step in the right direction. We brought it forward as a Green Paper because we wanted it to be developed by co-production, to use that terrible word—I do not know whether you have heard of it.

The Chairman: It goes along with “stakeholder” for me. It should be put in a box, with the keys thrown away.

Nicola Blackwood MP: Let us bring out all our jargon and get it off our chests. We wanted to develop those ideas very carefully with the disability community and the business community to make sure that there was complete buy-in for the policies we were going to bring forward, so that it was sustainable policy. We are asking for some quite significant changes, and for a real culture change, as I said, in employment of people with disabilities. We saw no value in moving more quickly

than having a Green Paper and proper consultation, and then going forward. There are some significant and chunky proposals in it, such as changes to statutory sick pay. Rather than having a cliff edge, we would have it tapered. That would mean that people could come back into work more slowly but still receive some statutory sick pay, which is very beneficial for people who are trying to come back in. I realise this is not the subject of today's discussion.

The Chairman: I am sure that we can return to it.

Nicola Blackwood MP: We are trying to do the right thing by that particular community.

Q215 Lord Smith of Hindhead: We have just been speaking about culture changes. Since the introduction of the Act 11 years ago, there has been a significant culture change, although not perhaps one that the Act envisaged at the time. It hoped for a café society, but we seem to have come to an area where we are a stay-at-home culture society. I would like to speak to you about the off-trade and the fact that recently—in the last year—sales of beer in the off-trade exceeded those in the on-trade for the first time. In other forms of alcohol, the ratio split between consumption off and consumption on is about 80:20. There has also been an increase in online purchasing of alcohol. The verb “to google” is 10 years old, but the Act is 11, so the Act did not have that mind when it was introduced.

There is a feeling, particularly among those representing on-trade businesses, that the Licensing Act 2003 is now unfairly and ineffectively weighted towards regulating the on-trade, as compared with the off-trade. I wonder whether the Government would consider specific regulation of the off-trade, as in Scotland—again—where, for example, multibuy promotions are banned and alcohol products are restricted to one part of a store. This is quite a wide-ranging question. There are all sorts of ancillary points that come in, not least the concern about pre-loading, which is very much connected to the off-trade and what some people have described as irresponsible promotions.

Sarah Newton MP: First, the Government never subscribed to the view that the legislation was about creating a café society. It was a different Government who described it in that way. Attitudes towards alcohol in northern European countries are quite different from those in southern European countries. It is certainly not a view I have ever subscribed to myself, having lived in Italy for four years and seen the relationship that Italians have to alcohol, which is very different from that which British people have to alcohol. There is a very different social context.

You make a very important point about the changes that we have seen since 2003. You are absolutely right about the amount of alcohol that people are buying in the off-trade, whether it is online, through their supermarket purchases, or directly in supermarkets. I believe that the Act gives flexibilities for local communities to address any harms or crime that arise from perceptions about people purchasing alcohol in those outlets, whether it is pre-loading or the sorts of multipack offers that you mention. We are seeing some really good examples, through the alcohol partnerships you will be aware of. Hopefully you have seen evidence from those. In communities experiencing anti-social behaviour or violence associated with alcohol, where people feel that it is to do with off-trade access to alcohol, they

have come together to tackle that, including voluntary bans on multipack promotions, putting alcohol at the back of the store and limiting the hours when supermarkets or other outlets are open. There has been some excellent work in communities to create safer communities where people can enjoy alcohol socially, and to take actions to reduce some of the harmful behaviour and effects that we have seen.

Lord Smith of Hindhead: There have not been too many of those examples. There have been one or two, but they are very isolated. We have heard evidence of them, but it is not a widespread thing for supermarkets to put everything towards the back of the store and not have multibuy promotions.

Sarah Newton MP: A growing body of areas are using the powers they have, enabled by the promotion of local action areas, promoting the powers in the Licensing Act and piloting. I am sure that my colleague will talk about the pilots that we have been doing with local authorities to try to look at the harmful health impacts in certain communities. We have been piloting to get evidence bases, so that public health can have a greater voice and a bigger part in making licensing decisions. We have been doing a lot of local action area pilots. Where we have found things that work and there is an evidence base for them, we encourage the rollout of those. We have just received applications for a second round of local action area pilots. We have 20 in the country so far. There is momentum behind this. It is driven by giving better toolkits and more information to local areas, showing them how they can use the powers and showing examples of best practice. They are not isolated instances now; there is a growing movement of people using the new powers they have. Hopefully, we will see changes to the night-time levy, which will enable and provide resources for more local, joined-up partnership responses to problems.

Lord Smith of Hindhead: If you witnessed a fight in a town centre at 10.30 pm on a Saturday night, do you agree that your reaction would probably be that those people had been drinking in the pubs, not that they had been buying huge slabs of lager from the supermarket earlier in the day? It would not be your first thought that the supermarket might be responsible for that massive amount of intoxication.

Sarah Newton MP: There is growing awareness of pre-loading. That is a commonly understood view in society, and people making decisions for their local community are well aware of that. I do not want to take up too much of the Committee's time—I am certainly prepared to follow up in writing—but I have visited areas such as Newcastle that had substantial problems in the city centre on a Saturday night, with quite considerable violence and anti-social behaviour. They have taken a partnership working approach between licensing, law enforcement and those providing services for people who have alcohol or substance abuse problems—a really united effort in those communities—to understand what is driving the behaviour, the criminal activities and the harm being seen there and how they can prevent it, with substantial effect. I am told that you can go into Newcastle city centre now and have a very pleasant night out on a Saturday, whereas some time ago it would have been quite a frightening experience and most people would have stayed at home. The tools that people are using are bearing considerable fruit.

Nicola Blackwood MP: Lord Smith, you have made a very important point. Some stand-out local authorities are leading the way. The question is how we share that best practice across those that are not doing as well and assist them to raise their standards. We have a body that is specifically designed to do that: Public Health England. It developed a package of support as a result of the local alcohol action areas. We identified some key ways in which we thought that we could help them: improving their data, improving data-sharing agreements in those areas and making sure that they had sufficient analytical resource to use the data properly. One of the problems is that you give them all the data, but then it just sits there and nothing is done with it. The initial findings are that the support package was useful. It helped them to use the data properly and led to some effective changes in the alcohol plans of those areas.

Seven local authorities took part in what they called, snappily, the analytical support package pilot—the ASP. They were chosen specifically to reflect a range of rural and urban areas, which face different kinds of challenges. They developed and disseminated the learning from the ASPs across all the different local authorities so that they could benefit. They showed how it maps on to current licensing objectives, so that all local authorities can learn from it, and at what geographical level it is available. We are very happy to write to the Committee so that that can go into evidence in time for the report. It is clear that the objectives of engaging with alcohol licensing and using the data properly are of real benefit to both public health teams and licensing teams. As my colleague said, we will roll out the pilot to 20 further local authorities going forward. We have not chosen them yet, but we will step it up for the next set of pilots. We are challenging local areas to look at how they can improve collection, sharing and use of data between A&E departments, local authorities and the police, so that it is even more beneficial in the next round and we can improve the impact.

One of the things we have concluded from that is that to include health as a specific licensing objective would not be beneficial. We have analysed what has happened in Scotland. One of the problems is that it is very difficult to link causality between a particular location, whether it is a supermarket, a nightclub or a pub, and a health outcome. Although you can identify where someone is having a fight, you cannot link chronic liver disease with a specific pub. They have found that problem in Scotland, so we think that having a specific health line would not really work. The route that we are taking with these pilots is proving to be very effective and beneficial. We think that we can go a lot further with it, so we will keep exploring it. We are very happy to report to the Committee on progress.

The Chairman: We will come on to that.

Nicola Blackwood MP: I am sorry; I have just answered a different question. I did not mean to.

Lord Brooke of Alverthorpe: I will be brief, Lord Chairman. I would like to go back to Lord Smith's question. We had the supermarkets in front of us a couple of weeks ago. They left us documents on community alcohol partnerships. There is hardly any mention of health in the work that is being done by the supermarkets. There are certainly improvements taking place with regard to crime and disorder and with children. When you went to Newcastle, Minister, did you go to the hospital and find out why they have more people going into hospital there? Did you ask

the supermarkets what they might do about that and how it might impact on all the exercises that are taking place around the country, none of which is addressing those issues?

Sarah Newton MP: Community alcohol partnerships have been really effective in the ways you described, particularly on crime and underage drinkers, but they are not the only thing that we are doing. We talked about the areas we are working with, which are integrating health as well. That is one approach, but it is not the only one.

When I went to Newcastle, and when I have gone to see other examples of what communities are doing as a whole between health, the police and local authorities, I found that there was extremely good partnership working. It includes—

Lord Brooke of Alverthorpe: You are working with off-trade premises.

Sarah Newton MP: I would just like to answer that question. When people go into A&E, they are asked a series of questions about where they had their last drink—whether it was on licensed premises or at home—and where they got the alcohol. That data is collected in A&E so that appropriate action can be taken, including by the licensing authority. A&E admissions are important, but remember that only a minority of admissions to hospital are through A&E, although there is a huge burden on A&Es. I have spent time in my local hospital doing shifts on a Saturday night to see the impact. I have been out with police officers in my city and constituency to see the impact on policing and other emergency services of people who are drinking to excess, so I am really aware of the problems. That is why we now have a very co-ordinated approach across government, to gather the data and give local people the information they need to take the appropriate decisions. Licensing authorities can restrict access to alcohol in supermarkets. They can make decisions to take licences away altogether or to restrict their hours of selling. There are some good examples—

Lord Brooke of Alverthorpe: You just argued that we cannot do it on an individual basis.

Sarah Newton MP: We said that it is very difficult to make those linkages, but where the evidence is there, they will. For example, in some areas, when there are big football matches in a particular centre and they know that there is a high likelihood that people will go to particular supermarkets and buy alcohol before or after a match, there can be closures, so that those supermarkets are not allowed to sell alcohol between certain hours. There are good examples of when there will be interventions by the licensing authority, in partnership with the police and the local health service.

The Chairman: Does it not prove that the Act is not really being flexible and is not addressing the issues that were relevant in the build-up to 2003? In rural areas of north Yorkshire, which cannot be dissimilar to Cornwall, the pubs that are surviving are the ones that sell food. If 80% of the alcohol consumed at home, and a lot of drink generally, is not being taken with food, do you not think that the Act should be reviewed generally, to make it more fit for the circumstances in which we are now living?

Sarah Newton MP: As I said in my introduction, there is no doubt that things have changed since the Act was put in place. That is why we keep it constantly under review, to make sure that we can adapt it. It has been amended. It is in

the process of being amended at the moment, through the issues around the night-time levy. We believe that by amending the Act, we have kept it current and we are giving people the tools they need. A lot of the time, it is about working in partnership, as we are doing, to make sure that we strike the right balance between enabling people to enjoy socially a night out and a drink and keeping people safe from the crimes associated with excess alcohol.

Lord Smith of Hindhead: The late-night levy will affect the on-trade, not the off-trade.

Sarah Newton MP: We can come on to that.

Nicola Blackwood MP: Can I intervene for a moment? It is important to remember that we are seeing a reduction in alcohol drinking among the under-18s, but we are also seeing a reduction in A&E admissions for the under-40s. Where we are seeing the increase is with the over-65s. We want to see targeted policies.

The evidence shows that the most effective intervention comes through the health profession. In the Department of Health, we have introduced a whole range of measures to try to make sure that that is working as effectively as it can, because until now it was not seen as a particular priority for the health profession to do that intervention. Recently, we published the Chief Medical Officer's low-risk guidelines, which gathered together all the latest evidence on drinking. That will lead to specific labelling on drinks and will educate a bit more effectively about the real impact and the consequences; as all of you know, it can lead to cancers and so on. We have also integrated questions about alcohol consumption into the NHS health check, which is for all adults aged between 40 and 74. It is an ideal opportunity to trigger GPs to ask questions about drinking that lead to follow-up questions. At the moment, we are also developing high-risk guidelines for clinicians, so that they are able to identify those at high risk of negative consequences from drinking, and to intervene. We have integrated interventions to reduce risky behaviours and to prevent ill health through alcohol and tobacco consumption in CQUIN—commissioning for quality and innovation.

The Chairman: That is very interesting. Perhaps you could write to us about it.

Nicola Blackwood MP: Okay—so not that interesting.

The Chairman: We are not even half way through yet. We do not want to be detained too long.

Nicola Blackwood MP: It will be one of the most important interventions to prevent unhealthy behaviours and the consequences you are worried about on this Committee.

The Chairman: I am sure that you will write to us. We must get through the questions.

Baroness Watkins of Tavistock: What I am hearing is that health is making progress, through CQUIN and in other ways, to try to influence young people, in particular, against excessive alcohol.

The Chairman: Can we do this as part of the questioning, please?

Baroness Watkins of Tavistock: Yes—but what I am saying is that, again, we have things working in tandem, Lord Chair.

Q216 **Lord Blair of Boughton:** Almost all the witnesses we have heard or whose evidence we have read say that early morning restriction orders—EMROs—have

proved impossible to implement in practice. What do the Government intend to do about it?

Sarah Newton MP: They are quite a new measure. There has not been a big uptake of them yet. I understand that there were some issues around the practicalities, and the process has been streamlined. We are hoping that the improvements to the process that we have put in by consulting licensing authorities will enable them to be used more often. They are quite a new measure, so we do not have a lot of evidence yet.

Lord Blair of Boughton: You will not have much evidence, because they have been successfully challenged in the courts. Since the challenge, none has been introduced. So what are we going to do? Do you want to bring this back in a different form? The EMRO itself is impossible in its current form, according to the legal challenges, which have been successful. If we want to do this—it has been used very successfully in Australia, in different ways—something has to change, because at the moment no orders are being applied for.

Sarah Newton MP: We can write to you in far more detail, but it is my understanding that the challenges were around the process—that the way the consultations were done was inadequate. The aspects of the processes that were identified as problematic have been addressed. That is my understanding. If you want more detail on that, I will definitely write to say what the legal challenges were, what we have done and how we think that will now enable people to use the orders more effectively.

The Chairman: What we heard orally and had in writing was that all those who wished to introduce early morning restriction orders said that they are just not in an effective form at the moment. Not one local authority introduced such an order—even before the fund was set up to contest them. Of course, that may not be the case. I do not know how many incidents there are between 3 am and 5 am in Newcastle, Britain, as opposed to Newcastle, Australia. It may not be the appropriate instrument.

Sarah Newton MP: I am very happy to write with more details. There are other powers that local authorities are already using. There are voluntary agreements. There are often agreements to restrict early hours. They can be conditions of licensing applications, anyway. We are not at all complacent about this area. Clearly, enabling those restrictions is very important. We will write with the details of the improvements that have been made to the process.

The Chairman: Who polices a voluntary agreement?

Sarah Newton MP: The community is the strongest possible police force. The police locally, working with the trade locally—

The Chairman: Let us pause for a moment. The community is the local authority, which often goes home at 6 o'clock. Most of these incidents are between the hours of 6 at night and 5 in the morning, and they are not there.

Sarah Newton MP: I said that it was the police. There are partnership arrangements, where a community has come together—the local council, the police, the health service and civil society as a whole—and said, "This is how we want to manage the situation in our town or city. These are the measures that we are putting in place". A range of local partnerships is working well. They are not isolated instances. We will write to you with examples of good practice in areas

and show how it is spreading across the country and how we are working hard, with the Department of Health, to spread this best practice. As you said, rural and urban areas are different. You need different models in different places. What I have seen work really well in Newquay in Cornwall is different from what I have seen in Newcastle, but the principles are the same. Those principles are strong partnership working and the determination of the community to tackle the issues together.

Q217 Lord Foster of Bath: Can we move from one strategy and measure to help manage the late-night and early-morning economy that nobody has taken up to one that very few people have taken up—the late-night levy? We have already heard that councils are best placed to address the problems related to alcohol consumption, with other partners, and the late-night levy was designed to help with that, yet only seven out of 174 local authorities have chosen to take it up. At the moment, 70% of the money goes to the police, but they do not necessarily have to spend it on dealing with problems related to the night-time economy. Only 30% goes to councils, and in 2015 Home Office guidance said that the police and crime commissioner could have the power to vary that.

I have three very quick, interrelated questions. Lord Davies then wants to come in. First, should all the money that is raised through the late-night levy be spent on dealing with problems associated with the night-time economy? Secondly, do you think that it is appropriate that there is a different way of splitting the money—for example, allowing all the relevant partners to decide between themselves, as happens with BIDs? Finally, do you think that the basis for raising the money, which is currently rateable value, is the right one, or should we be looking at one based, for example, on the amount of alcohol sold by relevant premises in the relevant area?

Sarah Newton MP: Those are three very good questions. It is disappointing that more councils did not take up the late-night levy. I was a strong proponent of it in my own community. It was very disappointing, because the resources could really help to tackle some of the issues.

I am pleased with the reforms that the Government are bringing in. For example, my own area is a unitary authority. The problem with the levy, as you know—I am sure that you have had evidence on this—is that it would have had to be levied across the whole of Cornwall when, in fact, there are only certain places where there is a night-time economy and any sort of issue. The reforms will enable a certain geographical area to be chosen, so that the levy can be levied there and money spent in that community to tackle the issues. That is a really positive step forward.

Lord Foster of Bath: To be clear, money spent to tackle—

Sarah Newton MP: I am coming to that. I agree with you that it should work in the same way as BIDs. I am a big supporter of BIDs as well. If local businesses in a community are paying an extra tax and making an extra contribution, the money should be spent to the benefit of that local community. There is flexibility in the new proposed arrangements to allow the police and crime commissioner to work with the area—the mayor of the town or city where the levy will be charged, the business improvement district, or the chamber of commerce if there is no business

improvement district, and representatives of the community—to develop a plan for how they are going to spend that money.

I see it as providing the resources for the sorts of plans that we have already seen working so well in enabling that sort of partnership working to go ahead. They will be able to spend the money on things such as having additional paramedics or first aiders working in town centres on a Friday or Saturday night and looking after people who are intoxicated, rather than have them going to A&E. That would be a very good use of night-time levy funding. It could be used for additional police officers, if that was felt to be appropriate. Picking up the theme of my previous comments, it is about local partnership working and deciding for each community the best way of spending the money that is levied.

On the mechanism, at the moment probably the fairest way of doing it is off business rates, because they take into consideration the volume of alcohol sold on premises, and the extent to which space is related to the volume of alcohol sold. This will cover all licensed premises, so supermarkets within the catchment area of the levy would be included, as well as individual pubs, off-licences or convenience stores selling alcohol. All the licence holders in the area would be charged. As you know, the Government have business rates under review—the way they are levied and calculated. That is a very important reform that the Government have under consideration. I am sure that, over time, we will always be looking at whether there are better and fairer ways of doing these things.

Lord Foster of Bath: If there is no relationship between the volume or quantity of alcohol sold and the rateable value of premises, will you be willing to look at alternative models?

Sarah Newton MP: We always have an open mind for the best possible evidence and the best possible way of prosecuting our aims. Our aim in the Home Office is very clear: to keep people safe. If we can find better ways of doing it, we will consider them.

Q218 **Lord Davies of Stamford:** Is there not a perversity and illogicality at the heart of this late-night levy concept, because, as I understand it, every pub, supermarket or other licensee in the area whose hours permit them to trade in the hours that are relevant for the late-night levy is charged the levy whether or not they utilise that opportunity—in other words, whether they are open for all the hours and on all the days when they would be allowed to under their licence in the late-night levy period? That surely induces anybody in that situation to make sure that he remains open for business during that period, because otherwise that particular business would have incremental cost but no incremental revenues to match. You are therefore incentivising people to sell perhaps more alcohol than they otherwise would in an area where you want people to serve less.

Sarah Newton MP: That is a perfectly valid argument. I think the opposite would happen. If I was a business owner and I was going to have to pay extra money for something that I was not going to use, which would be of no benefit to my business, I would not do it. Businesses can seek a variation on their licence. If they have a licence that permits them to sell in the hours that would be caught up in the night-time levy and they decide not to do that because it is not in the interests of their business, they can change their licensing arrangements. They can make sure that they are exempt from that.

Lord Davies of Stamford: In many cases, they will decide that they want a licence to be able to trade on occasion in the late-night period, but they do not necessarily want to trade every night.

Sarah Newton MP: Each business will absolutely have to look at its own balance sheet. Each business will have to make decisions about how it wants to trade and make its own decisions accordingly.

Lord Davies of Stamford: If a licensee has decided that it is necessary for the business to remain open on, say, Friday and Saturday nights in a late-night period but the licence is such that they could open on other nights, they are incentivised to open on those other nights as well, because if they get the licence changed and they are not in a late-night period at all, they will not be able to open on Friday and Saturday nights. This is a real problem, is it not? You do not acknowledge that this is a problem.

Sarah Newton MP: I think I have already answered the question. Each business would have to look at the costs of doing business compared with the benefits of doing business and make their own decision on that.

Lord Smith of Hindhead: Bearing in mind that it is seven out of 174, why do we not just scrap the late-night levy?

Sarah Newton MP: Certainly, in consultations that have been run on the original policy and consultations in regular meetings with stakeholders, people feel that there is a value in it and it would be beneficial, so I think it is worth pursuing.

Lord Smith of Hindhead: That is interesting.

Q219 **Baroness Henig:** The Government tabled amendments relating to cumulative impact and late-night levies in September, four months after this Committee was set up. We had undertakings from the Leader of this House that the provisions, if enacted, would not be brought into force before the Committee had reported, which we were relieved about. Can you further undertake that Ministers will not bring the provisions into force until they have considered and responded to our report?

Sarah Newton MP: The undertaking was given by the Leader of the House, and by Baroness Chisholm in answer to questions in the House of Lords, that we would definitely take into consideration the findings of this Committee before the measures were enacted. Saying anything above and beyond that would be purely hypothetical because I do not know what you are going to recommend at all—but we have given that undertaking.

The Chairman: I am going to push you a little further, just playing the lawyer for a moment. Could you give this Committee a categorical assurance that the Government will not bring into force the amendments in the Policing and Crime Bill before you have had time, in all the departments concerned, to consider and respond to our recommendations contained in the report, which has to be published before the end of March? Will you give us a categorical assurance?

Sarah Newton MP: Yes, we have given that assurance. We will definitely consider the findings before they are enacted.

Q220 **Baroness Grender:** Temporary event notices are used for very different purposes: school fairs, with one of which I am deeply familiar, or commercial clubs and pubs. There seem to be two very different uses. Do you think there is any merit in separating what is clearly and categorically highly commercial use from

community use?

Sarah Newton MP: The TENs have proven themselves to be useful. I am pleased to see that in your capacity outside the House you have found them useful. We do not really have any plans at all to change the current arrangements. We have looked at the report given to us by the Local Government Association about the cost structure around the fees. That is certainly something I am carefully considering at the moment, but the actual operation of the TENs, from the evidence that I have seen and the feedback that I have received, seems to be working well.

Baroness Grender: Let me give you a “for instance” of where it is not working well for residents. If you are a resident, say, in Camden Market, in effect venues have moved towards you. You have been a long-term resident; you did not move into clubland, but clubland has moved towards you. Imagine that 20 different premises are each using their maximum of 15 TENs a year. It means that your life is not your own on a nightly basis and it is through the use of TENs. I would suggest that, under that kind of scenario, the system is not working, and it is highly costly to the local authority involved. You are not getting bang for your buck for 21 quid.

Sarah Newton MP: I can see that, but there are restrictions. You mentioned the 15 permitted events. There is the 168 hours restriction.

Baroness Grender: The extra hours.

Sarah Newton MP: No more than 499 people in attendance at any one time and there is a maximum duration period. There are safeguards, and there is an application process, so they can be turned down. It is not automatic that every TEN is granted. There is a process. Obviously, it was meant to be a lighter-touch regime, but with those restrictions in place, if you are experiencing the situation you describe—and I can understand from the residents’ point of view how that must feel—there are powers for them to raise the matter with their councillor and local authority.

Baroness Grender: Which are what?

Sarah Newton MP: Not to approve all those individual TEN applications and to consider the impact on residents.

Baroness Grender: But there is an assumption that a TEN will go ahead unless there are—

Sarah Newton MP: Reasons, yes.

Baroness Grender: The reasons are not in the hands of the residents.

Sarah Newton MP: The residents can make representations through their councillors. Their councillors can make representations, and I know, for example, from my casework as a Member of Parliament that admissions to A&E, objections from the police and associated particular festival-type events are all taken into consideration in an application. Local knowledge can be captured in the decision-making process.

The Chairman: Can I clarify? The residents cannot object. It is a notice; it is not an application in the normal way. The only people who can object are the police or environmental health officers.

Sarah Newton MP: But they can contact their councillor or a Member of Parliament, and through them they can make representations. They can make sure that the voice of the police is heard.

The Chairman: All within three working days?

Sarah Newton MP: I know myself as a constituency MP that the process can be made to work effectively.

Baroness Grender: With respect, where you are a Member of Parliament, it is not like the Camden Market experience that I described to you. I have not even loaded in on top of that the personal licence, which is a different can of worms. Let me give you another example. I am a commercial licensed premises and I am right next to an estate of residents. I use my maximum 15 TENS; then I apply to extend my licence, and because nobody has objected in the period when I used my maximum of 15 TENS, I get the licence awarded almost automatically. I would suggest that that use of TENS is very different from encouraging a community to use TENS.

The Chairman: That is not correct, apparently. It is not automatic.

Baroness Grender: I apologise. It is not automatic, but one of the things that comes up in that scenario—I apologise for the use of the word “automatic”—is that the licensed premises holder will say, “I have used 15 TENS and there have been no objections”.

Sarah Newton MP: Perhaps the best way I can answer that is to go back to the basic objectives of the Licensing Act, because a TEN falls under the criteria of the Act. The overarching objectives of everything that is licensed or enabled in the Act are to prevent crime and disorder; public safety is a key consideration; there is prevention of public nuisance and the protection of children from harm. When licensing decisions are made, they must bear in mind, and comply with, those four criteria, which are clearly set out as objectives in the Act. Although I accept that those decisions may not be made in the way you would wish them to be, the objectives and the powers are clear.

The Chairman: Is that something on which the Home Office would keep an open mind?

Sarah Newton MP: As I say, we always look at evidence from stakeholders.

The Chairman: Is that a yes?

Sarah Newton MP: We always look at what you have to say on these issues. You may come up with some really good proposals, which we will clearly take into consideration.

Q221 **Baroness Eaton:** The Deregulation Act 2015 introduced community and ancillary sellers notices, known as CANs, which would partially deregulate alcohol licensing for small organisations and businesses not primarily aimed at selling alcohol, such as bed and breakfast places and village halls. Why have those provisions not been brought into force and when will they be? They came on to the statute book in 2015, but since then no announcement has been made.

Sarah Newton MP: You are right to mention CANs. They are aimed at specific groups and are a very targeted measure for community groups, say, who want to have activities in a village hall, where they want to sell some alcohol, and, as you say, bed and breakfast providers or cottage owners where people are going on holiday. There is no particular reason why they have not come into effect other

than finding parliamentary time. There was proper consultation on them. It is just going through the process of government.

The Chairman: You do not need parliamentary time for a commencement order. Are you saying that the Government are not prepared—

Sarah Newton MP: It is just a question of finding the time to do it. There is no objection to them. We just have not done it yet.

The Chairman: You think they are a good thing, but you just have not done them.

Sarah Newton MP: Yes. They have gone through all the proper processes, and we just have not enacted them yet.

Baroness Eaton: There is no specific reason for saying, “No, we are not going to”.

Sarah Newton MP: No.

Baroness Eaton: Maybe after this, attention will have been drawn to them.

The Chairman: When do you expect them to come into effect?

Sarah Newton MP: I really do not know when they will come into effect.

The Chairman: We are available to sit on Fridays, if you wish.

Q222 **Lord Blair of Boughton:** There appears to be a real lacuna in the licensing law about airside, and indeed shipboard side, sales of alcohol. There is much evidence of an increased level of air rage. One in five passengers reports that they have a drink at the airport before they get on to a plane. We will be seeking a commitment from the Government to apply the Act to seaports and airports. There seems to be no reason why they should be exempt from the Licensing Act. It can be enforced by the police at the airport.

Sarah Newton MP: You raise a really important point. It is sad to see how people abuse alcohol before they get on an aeroplane. We have all seen pretty horrific images of what happens on some flights—even some flights having to be diverted and landed. There is harm to other passengers and to staff at the airport and on the aircraft. It is a really important point. Our concerns have been about the practical application of how we could enforce licensing in that context, so I would welcome any evidence you have taken from any of your witnesses as to how we could do that. In the interim, being not at all complacent, we have been working very closely with the industry on the UK aviation industry code of practice on disruptive passengers.

The Chairman: It is a voluntary code.

Sarah Newton MP: It is a voluntary code but very much supported and backed up by police who are already available at the airport. That measure has been welcomed by airports and the aviation industry, and seems to be having a really good impact. There has been a reduction in the bad behaviour that we have seen. If you feel that there is more that we can do rather—

The Chairman: With respect, it is not working. Can I make a practical suggestion? In the major airports and seaports where this appears to be a problem—press cuttings as well as our report will guide you—issue the licensing authority with a pass so that they can pop through to airside or shipside, at airports and ports, to see what the problem is. It is not beyond the wit of the Home Office to do that. This is a growing problem. I understand that it is more difficult on planes, and I presume that the airlines give their staff special training, as ferries would as well, one would hope. The explanation that we have received from the Home Office is

that the exemption of premises serving alcohol airside is one of practicality and inspection; but it just involves issuing a security pass, the same as baggage handlers have to have. If you are telling me that people doing licence applications fall into a different category from baggage handlers, I would like to know why.

Sarah Newton MP: I completely accept the issue but I do not accept what you said about it getting worse. The code of practice was launched in the summer. My officials and I have taken a keen interest in it. I am a regular passenger myself and in the past have seen some appallingly bad behaviour. Actually, it is working. There is a whole series of practical measures that are flightside. Somebody has to be the designated premises supervisor, who has to check on the responsible sale of alcohol. There are the same measures in bars flightside as there are on the high street. The police are involved flightside. The aviation industry itself is training, as you mentioned. We are seeing a reduction.

The Chairman: Can you give us a fundamental reason why airports and seaports, given the conditions we see, are exempt from the 2003 Act? That is what we are looking at.

Sarah Newton MP: If we can take a step back and look at the whole approach that the Government take to crime prevention and reducing harm, which is clearly set out in the strategy, it is about doing what works and working in partnership. By taking on that issue, and getting around the table all the people who can make a difference, including licensed premises, we believe that the code and all the measures it sets out, which are now being implemented, are the way to tackle this.

Lord Blair of Boughton: The licensing authority could say to the restaurants and bars—almost invariably the outlets of large companies that run restaurants and bars outside airports and seaports—“No, you cannot have a 24-hour licence”, because there is no purpose in having passengers drinking at 5 in the morning. By exempting them from the licensing law, you leave it absolutely open to them as to how much alcohol they serve. There is not even a legal provision to prevent them serving it to people who are drunk. It is a simple issue of saying, “By the way, you are now subject to the Licensing Act. We will give you 12 months’ run-up to this, but you have to have a licensed premises supervisor”.

Sarah Newton MP: I can send you all the detailed provisions of the code, which is working now.

The Chairman: But Minister, can you give us the reason why the Government exempted licensing authorities from the 2003 Act airside and portside? We would like to know why.

Sarah Newton MP: Because we think the code is a better way of dealing with the problems that you have identified. We think the comprehensive code is a more effective way of dealing with them. We absolutely recognise the problem that you describe, but we think this is the best way of dealing with it.

Lord Davies of Stamford: I am afraid to say, Mrs Newton, that we still have not heard a single reason from you as to why the Licensing Act should not be applied on the airside as well as the landside of airports.

Sarah Newton MP: As I say, we believe that the measures we have taken are the measures to tackle the issue.

Lord Davies of Stamford: That is not an answer to my question. You said there were practical reasons why the Licensing Act could not be extended to the airside. What are those practical reasons?

Sarah Newton MP: You are obviously very disappointed with the response that you have had, but I have nothing further to add.

The Chairman: To be fair, you quoted, in response to my question, the voluntary code, and we have heard a lot about voluntary codes during the course of the evidence this morning. I think you are detecting that the Committee is not much impressed by voluntary codes.

Sarah Newton MP: Yes.

The Chairman: We would like to know the reason why those areas have been excluded, when the incidents are increasing. I would not like to be on a plane or a ferry with all those incidents. It is not fair to subject members of the crew to them. We had an incident from Newcastle on a Danish ferry where this happened. We just want to know why they are excluded.

Sarah Newton MP: I feel I have answered the question. I understand that you do not feel that I have. I accept that you feel that I have not, but we will have to leave it there, because I have nothing further to add.

The Chairman: How long are you prepared to give a voluntary code that does not appear to be working to act?

Sarah Newton MP: I do not accept the premise that it is not working. Of course we always keep everything under review, and if we need to take further actions, they will be taken.

The Chairman: You are happy for premises landside to be inspected and you do not think there is a problem landside, but you think that we need a voluntary code airside, where perhaps there is a code, but they would still be exempt from the Licensing Act.

Sarah Newton MP: As I said, the code specifies a responsibility on all premises that sell alcohol flightside.

Lord Foster of Bath: Can I ask a simple question?

The Chairman: Briefly, and I mean briefly.

Lord Foster of Bath: Minister, if you are so confident that the voluntary code is a good way of doing it, would you be prepared to scrap the 2003 Act and simply apply voluntary codes to all licensed premises that are not airside?

Sarah Newton MP: No.

Lord Foster of Bath: Could you explain why?

Sarah Newton MP: As I said, what is in place at the moment is having the impact that we all want to see. If we do not see that continuing, of course we will see what more we can do.

The Chairman: Minister, we will reach our own conclusions, I am sure.

Q223 **Baroness Watkins of Tavistock:** My question is no. 14 and I know you have partly answered it, Ms Blackwood, but to reiterate, we have heard from many public health officials, police and local authorities that the addition of a fifth licensing objective of the promotion of public health and well-being would be useful. Many others have claimed, and you explained earlier, that it would be quite difficult to operate in practice. What is the Government's view on this, particularly in relation to licensing retail outlets?

Nicola Blackwood MP: The Government's view, which is based on observing Scotland's experience, is that it is not really enforceable and that the situation at the moment, which is that directors of public health are specifically consulted and asked for their evidence, is the most effective form; but that must be allied with very effective provisions within the health system locally, which we are attempting to strengthen with the measures I have mentioned, allied with the sharing of best practice, as in the evidence from the University of Bristol, on stronger local alcohol policies. I should probably send you that research along with the examples of best practice from across the country.

The problem is that associating individual health harms, or even community health harms, with individual premises is very difficult for local authorities, and they would probably lose on appeal. That is why we do not believe that it would be an effective change to the Licensing Act. There are routes through planning where local authorities can take action, and through public health interventions taken by local authorities, and we are attempting to provide every support we can to local authorities, and to GPs, to increase their public health interventions in the local area. We are seeing improvements in those areas. In fact, in a difficult time for funding, funding for alcohol services is one area that has increased in recent times.

Baroness Watkins of Tavistock: My second question is related. How do the Government believe the licensing system could be used to combat the health problems associated with alcohol? I was interested to hear that the late-night levy might purchase extra paramedics. I have been a non-executive on the South Western Ambulance Trust for seven years and I know the extent of the work that has been done in that area, but I would like to understand where the health promotion comes in, rather than the solution after somebody has had too much to drink.

Nicola Blackwood MP: There is partnership working—as in some of the examples that you have heard about from my colleague where there are problems identified—which is stepping in and intervening, having discussions, putting alcohol to the back of the shop, or changing the way those retailers work. That has been successful in some areas. We are going to send you those examples.

Baroness Watkins of Tavistock: Are you saying that the public health position in the local authority is influencing that?

Nicola Blackwood MP: The directors of public health rather than public health positions, I think, because they can present those examples to the local authorities. Police, too, are able to identify where there are problems, and that is where the partnership working comes in. That is why Public Health England is trying to intervene to encourage directors of public health to play a more active role in this area. We recognise that it is an area that needs to be strengthened and can be extremely effective. That is why the pilots that we have run with seven local authorities are now being scaled up, and we are working to make sure that data is being shared more effectively between A&Es, the police and the local authorities. We are putting in the capacity to make sure that the data is being used effectively to develop local authority policies, which would go not just to licensing but to planning. That is what we are working towards.

I accept that there is frustration that we are perhaps not where we would want to be at this point, but we also have a good evidence base to use in the recent PHE

alcohol review, which has pointed us to some really good evidence and policy that we can build upon. That is our strategy. We have seen evidence from the first stage of the pilot that it has been effective, and we have every intention of making sure that the second stage of the pilot is even more effective. Through PHE, we have a good mechanism to make sure that learning is shared across local authorities, and because we can look at the data and see which areas have the most concentrated areas of problem drinking, we can make sure that the areas of the country that show the most significant problems are those that we target first. We are working to make sure that we use our resources smartly and most effectively.

Q224 Lord Brooke of Alverthorpe: Thank you very much for that reply. It has been a long morning, and you are batting very well. The sticky bit of the wicket, as I see it, is the health aspect. You pointed to the Public Health England report and the evidence that came out two weeks ago, which shows conclusively that we have a cultural problem. In fact, we are now drinking more in this country than we were 50 years ago. It is true that recently drinking has declined, as you said. Younger people are drinking less, and this is all good news. Crime and disorder are down marginally. But the figures on admission due to ill health related to alcohol directly into hospitals have grown astronomically since the Act came into play. Whether it is linked to the Act is a different issue entirely, but do you accept that we have a problem with health, and what does the Home Office intend to do about it, given that the central theme of the PHE report is that pricing counts, the licensing objective is about retailing, and retailing in turn must affect pricing?

Sarah Newton MP: You are really talking about the MUP.

Lord Brooke of Alverthorpe: The MUP or pricing in general.

Sarah Newton MP: Absolutely. It is a really important principle that policy-making should be evidence based. It is an area that we keep under review. We are working with the Scottish Government, and we noted the rulings in Scotland; we do not want to go ahead with a policy that we would not be able to implement because of rulings in the courts. We are waiting to see what happens. I expect it will go to the Supreme Court, which will make a ruling as to whether the Scottish Government were right and were able to introduce MUP. We will wait to see what results from that. We keep the whole alcohol pricing area under review.

Lord Brooke of Alverthorpe: The evidence that the Home Office presented to us in the first instance barely mentioned health; there was a two-line reference to it. We raised it, and some evidence was sent to us subsequently indicating the scale of the health problem. If the Scotch Whisky Association is successful in the Supreme Court, do you accept that we will still have a major problem with health-related issues linked to alcohol, and in those circumstances what is plan B for the Home Office to act on?

Sarah Newton MP: We work very closely across government, as I hope you will have seen from some of the evidence we have given today. When the Home Office is asked to respond to an inquiry such as this, it looks at it from the point of view of the Home Office, knowing that you will be taking evidence from the Department of Health and any number of other government departments as well. I would not read into the two lines in the submission that you received from the Home Office—

Lord Brooke of Alverthorpe: I am sorry, but you were ultimately responsible for the Act.

Sarah Newton MP: I may be taking a little while to answer the question but it is important to set the context. We work right across government.

Lord Brooke of Alverthorpe: I am aware of that.

Sarah Newton MP: There is a whole series of policies on which we work together. Because it was only a two-line mention does not mean that we do not understand and that we do not take it very much into consideration.

With regard to the pricing of alcohol, if the evidence is there to show that changes in pricing would have a positive benefit on public health, of course that is something we will review across government. It will not be a policy for the Home Office alone; it will be a policy across government.

Lord Brooke of Alverthorpe: Do you yourself see that pricing has an impact?

Sarah Newton MP: I do, and since I was elected I have supported measures to tax the strongest and most harmful types of alcohol more highly. The first statutory instrument I was involved in was to define the apple content of cider so that we could protect our West Country artisan cider industry while making sure that the very cheap, incredibly harmful alcohol that is sold as cider, and has probably never seen an apple, could be appropriately taxed. We have brought in other measures such as that alcohol cannot be sold for less than the cost of production plus VAT. They are all measures the Government have taken on duties and tax to recognise the harmful effects of certain alcohols taken to excess.

Nicola Blackwood MP: These are obviously matters for the Treasury, which you might want to ask them about directly. It is worth noting that Brexit will have a bearing on this, because it will be possible to have much more differentiated and targeted taxation of alcohol following Brexit, which has been a particular challenge and one that was noted in the PHE report. While there are all sorts of challenges that we might note with Brexit, this might be a benefit.

Lord Brooke of Alverthorpe: Does the PHE have a view it would want to put to the Treasury on variation of taxation?

Nicola Blackwood MP: I have absolutely no doubt that, should the issue arise, PHE will be vocal in its views.

Q225 **Lord Davies of Stamford:** Mrs Newton, many witnesses have been critical of the out-of-date processes by which licence applications have to be made. In particular, they have criticised the requirement to advertise new licence applications in local newspapers, and the inability to submit electronic applications in many local authorities. Do the Government think there is some force in those criticisms?

Sarah Newton MP: Thank you for that question. The last time that the Home Office consulted on the advertising regime for licences, there was strong support for adverts in local newspapers. I know that applicants for licences consider that a costly burden, but it enables the community to understand what is going on. We have heard from other discussions earlier this morning the importance of residents understanding what is happening in their community and using the opportunities they have either to work with their councillors or make direct representations on applications. I support the need for advertising in local newspapers, accepting the costs that it will have for licence applications.

Some local authorities are moving in the direction of electronic applications. They have moved some of their planning online and they can move their licensing online as well. Inevitably, with the advent of new technology, we have to keep apace, and allowing more electronic applications can be beneficial, although I am always very keen to make sure there are paper-based options, especially for people in remote rural communities, people on low incomes or those who rely on public transport, who may not have access to the internet or to the offices where the papers are held. Making sure that people are not excluded from having their voice heard and having the information they need to make decisions is really important, and we must not lose sight of that in our march for ever-greater efficiency.

Lord Davies of Stamford: Thank you. I will end it there.

Lord Foster of Bath: Could I ask one more question?

The Chairman: Briefly.

Lord Foster of Bath: Minister, you said that the reason why you wanted to keep advertisements in newspapers was that the public really wanted them. It would be very helpful if you could provide evidence of that to this Committee, because certainly when the matter was discussed in the deregulation committee chaired by Oliver Letwin the reason given for retaining them was to provide continued financial support to local newspapers, not because there was public support for them. If you have evidence that that is incorrect, we look forward to receiving it.

Sarah Newton MP: I can send the responses to the last consultation.

Baroness Goudie: Local newspapers are now going online, but not everybody reads newspapers online, so we need to look at a completely different way of putting the notices out there.

The Chairman: We heard in evidence that planning notices are more noticeable and that licensing notices were not.

Sarah Newton MP: I would be very interested to hear your recommendations on that.

Baroness Goudie: We need to look at another way. Local newspapers are going down because of costs and so on.

Sarah Newton MP: I would be very willing to look at your recommendations.

Q226 **Lord Brooke of Alverthorpe:** Local authority licensing fees are well below the level of cost recovery, and many local authorities have told us they want the fees increased to reflect that, or to be able to set the fees themselves; indeed, in 2012 the Government agreed with that view. They want to do it on a local basis. Do the Government accept that licensing fees are currently too low and, if so, how do they believe this should be rectified and when?

Sarah Newton MP: I am very sympathetic to the concerns raised by the Local Government Association. As you know, quite recently it published a report, produced by the Chartered Institute of Public Finance and Accountancy, *Making the Case*. I have read the report and I am carefully considering the response at the moment, but I am very sympathetic. It is highly desirable that they should be able to recover their costs. However, I want to be very careful about this, because we have seen some very poor practice in some local authorities in relation to other fees that they can charge, particularly on parking, where, rather than working on a cost-recovery basis, they see it as a cash cow and charge huge amounts to the detriment of local businesses and the local community. So although I am very

sympathetic, I want to make sure that we introduce something that is strictly cost recovery and does not encourage or enable local authorities to treat it as a cash cow.

Lord Brooke of Alverthorpe: Does that indicate that you would not be too happy about it being devolved to local authorities to fix the fee themselves?

Sarah Newton MP: I would not encourage you in any direction at all other than to wait for my response, which I will do as soon as I can.

Q227 **Lord Smith of Hindhead:** This could be the best left until last, although that is possibly for you to determine. Minister Blackwood, in your opening remarks you spoke about a successful pilot scheme in Liverpool that had taken the step of not serving alcohol to people who were drunk. Under Section 141 of the Licensing Act 2003, it is in fact an offence to sell or attempt to sell alcohol to any person who is drunk, yet on average there have been about 73 fixed penalty notices a year put through on that. It is really not part of the Act that is properly understood, and certainly not one that is enforced. If this section of the Act, or perhaps the Act on a wider basis, was understood more properly and implemented by enforcement officers, do you think that many of the things we have spoken about today, such as the late-night levy, EMROs and MUPs—all the difficulties—would be avoided if people were not served alcohol when they were intoxicated?

Sarah Newton MP: You raise an incredibly important point. Nobody should sell alcohol to somebody who is intoxicated. It is an offence and it should be prosecuted. I know from my work in the areas I visited that have strong partnership working that this is something the police in those areas take really seriously and it has been of huge benefit. I visited Consett in County Durham where they had enormous problems related to alcohol. Partnership working, including specifically taking licences off licence holders who were selling alcohol to people who were intoxicated, has literally transformed Consett. I went out with the street pastors—they are not called street pastors there; they are called “street angels”—and saw for myself how the community had been transformed by active prosecution of that particular aspect of the Licensing Act and all the really good partnership working that we have heard about. It is really important. The College of Policing is working on that to make sure that all police officers properly understand all the provisions of the Act and are given best practice on how to implement it. It is a very important feature of the Act.

Lord Smith of Hindhead: We would be very interested to have some statistics on how many licensed premises have lost their licence as a result of breaching Section 141, because in previous evidence we have really struggled to get anybody to admit that there have been even one or two. We would like that.

Sarah Newton MP: I will make sure you are sent that evidence.

Nicola Blackwood MP: This is something that comes up commonly across legislation. Often you get calls for new laws, when actually if you just enforced effectively the existing powers that are in place, you would find a transformed landscape. With the Licensing Act, plus planning powers, plus using effectively health, policing and all the other resources that are in place in local communities, we would find ourselves in a very different place. That is the whole point of the PHE pilots; it is the whole point of all the health measures we are bringing in; and it is the whole point of all the different bits and pieces of guidance that are in

place. Local authorities and all the others are dealing with a cluttered landscape, so we are doing whatever we can to try to assist them, and I am sure that the Committee's report will be another piece of assistance to help drive forward the change we are trying to see in alcohol consumption and alcohol harms.

The Chairman: Minister Newton, you said that the College of Policing is looking at this. In what context, and what is the evidence of that, because that is not what we heard?

Sarah Newton MP: I have ongoing conversations with the College of Policing about ensuring that police officers have good training and good guidance. It is part of my conversation with them to look at what more needs to be done on that.

The Chairman: There is a lot to learn from other countries and cities such as Amsterdam, New York and Berlin, which integrate the night-time economy quite effectively into their way of life. You spoke earlier, Minister Newton, about different ways of consuming alcohol in other countries. Do you think that we can learn from the experience of other countries?

Sarah Newton MP: Yes. We should always be looking to see what we can do, what the evidence base is, and look at different countries as well as what is working here. Reports such as the one you will produce will be very welcome and will help to inform our policy as well. My only slight caveat about making comparisons in this particular policy area is the huge cultural differences that exist in different nations' attitudes towards alcohol, even with our nearest neighbours in the continent of Europe, where people have quite different cultural and historical relationships with alcohol. While of course we should always be doing that, we need to bear in mind that in this policy area what may have worked well in Australia is not necessarily going to work well here.

The Chairman: A constant theme that we heard in both the written and oral evidence was how out of the picture many residents felt in the process. Have the Government given any consideration as to how residents might feel more involved in the licensing process?

Sarah Newton MP: As with the answers to other questions, it is about making sure there are advertisements, accepting technology and that we go online, and bearing in mind those communication channels. It is an ongoing endeavour to make sure that citizens have all the information they need to be informed and active citizens.

The Chairman: On behalf of the Committee, we are very grateful to you for being so generous with your time and for endeavouring to answer our questions, and particularly for the commitment that you will consider and respond to our report and the recommendations therein before anything is enshrined in law. We thank you very much indeed for being with us this morning, and we will now adjourn. This is our last evidence session. We take this opportunity to wish you a rest over Christmas and a happy Christmas and a good new year.

Sarah Newton MP: Thank you very much indeed.