

WEST DUNBARTONSHIRE COUNCIL

Report by the Clerk to the Licensing Board

Licensing Board : 8 November 2011

Subject: Re-thinking Alcohol Licensing – Report by Alcohol Focus Scotland and Scottish Health Action on Alcohol Problems

1. Purpose

- 1.1** The purpose of this report is to advise the Board of the above report and to invite the Board to consider which of the report's recommendations it wishes to support.

2. Background

- 2.1** The National Licensing Conference in September saw the launch of "Re-thinking Alcohol Licensing" a report by Alcohol Focus Scotland and Scottish Health Action on Alcohol Problems. A copy of the report is annexed as Appendix I. The report is largely based on the work of an expert workshop which considered the operation of Scotland's licensing system and how it could more effectively regulate the availability of alcohol to reduce high levels of alcohol related harm. The Clerk to the West Dunbartonshire Licensing Board is a member of this expert group. This was largely as a result of the comprehensive and innovative work done by the Licensing Board and its partners in preparation of its Overprovision Policy. Indeed, page 28 of the report praised this Board's Licensing Policy Statement in the following terms:-

"One Licensing Board's Policy Statement was a notable exception in demonstrating a systematic approach to gathering and analysing evidence and translating evidence into policy positions that related to the licensing objectives."

- 2.2** A number of the recommendations of the report are aimed at encouraging other licensing boards to adopt the evidence based model developed by West Dunbartonshire Licensing Board. A number of the other recommendations reflect legislative restrictions encountered by the Board in developing its Overprovision Policy. In short, the work undertaken by West Dunbartonshire Licensing Board on its Overprovision Policy is one of the key building blocks of this report.
- 2.3** The primary focus of the report is to assist the licensing system in reducing alcohol related health impacts in Scotland. The following points were key drivers for the report:-

- The Licensing (Scotland) Act 2005 was largely aimed at on-sales premises rather than off-sales, however the majority of health problems are driven by the sale of low cost alcohol from off-sales, particularly from supermarkets. The Act's provisions are inadequate to deal with this.
- The Health objective was added late in the legislative process and it has not been properly developed in either the Act or licensing policy statements (with the exception of West Dunbartonshire Licensing Board).
- It is difficult to evidence the effects of alcohol at a premises level because the evidence is generally at population or Board area level (the "whole population approach"). It is therefore difficult to deal with the health impacts of an individual application unless the Board has previously developed a policy. Thus the licensing system will be increasingly driven by policy, which policies need to be evidence based. The use of evidence in preparation of Licensing Policy Statements was patchy (with the honourable exception of West Dunbartonshire Licensing Board).
- The Brightcrew case has introduced a couple of particular issues. Firstly it held that the licensing objectives can only be applied where relevant to the sale of alcohol. In other words it is not enough that a condition results in a health benefit in premises, there has to be a direct link to the sale of alcohol. Secondly the Brightcrew case held that a Board's Licensing Policy Statement could be challenged in any individual appeal, perhaps years after the policy was developed. Such challenges would inevitably be on a narrow set of facts and would not allow the voice of the original consultees to be heard.

3. Main Issues

- 3.1** The report has a number of recommendations to Licensing Boards, Local Authorities, other public bodies and recommendations to the Scottish Government. These are contained at pages 30 to 42 of the report. The Board is invited to consider which recommendations it wishes to support. The recommendations are:-

Recommendations to Licensing Boards and Local Authorities

- 3.2** Recommendation 1 – Licensing Boards should prioritise formulating a comprehensive, evidence based statement of licensing policy.
- 3.3** Recommendation 2 – Licensing policy should take into account the aggregate effect of licensed premises on drinking behaviour and levels of alcohol/harm in their local population, as well as the operating conditions of individual licensed premises.
- 3.4** Recommendation 3 – Licensing Boards should determine the locality for an assessment of overprovision that is appropriate to the licensing objectives,

and define areas for assessing overprovision for which statistics are available rather than adopting areas for which no statistics are available.

Comment – These three recommendations reflect the approach taken by West Dunbartonshire Licensing Board in developing its overprovision policy. They aim to develop our approach as a standard one across Scotland.

- 3.5** Recommendation 4 – Local Authorities should ensure there are mechanisms in place to check consistency and compilmentarity of different policies of local government to ensure that due consideration of licensing policy is taken into account in other areas, for example, planning and economic development.

Comment – One of the key reasons why West Dunbartonshire Licensing Board was able to develop its Overprovision Policy was the good working relationships with other bodies, particularly Strathclyde Police, Social Work, NHS Greater Glasgow and Clyde, West Dunbartonshire Licensing Forum and the licensing trade. However there are arguably still insufficient linkages between liquor licensing and planning and economic development within West Dunbartonshire Council. One of the key issues is that a new supermarket can often be seen to be an economic driver to the regeneration of an area (e.g. a new supermarket in Clydebank and a proposal for another in Alexandria). Such supermarkets will inevitably seek a premises licence. While from a regeneration point of view, a supermarket may be a good thing, alcohol sold from supermarkets is increasingly a major cause of health problems in the community. As noted in the report to the Board on 25 October 2011, such health problems have a longer term impact on the areas ability to attract new business, to train a suitable workforce, work absence rates and in the attractiveness of the area as a place to live and work. It is also likely that any refusal of a premises licence to a supermarket under the Overprovision Policy will result in an appeal with major resource and cost implications for the Board. If the site has been promoted by the Council, perhaps even on the Council land, there is a danger that Council and Board policies will not appear aligned. The Board is invited to consider this issue.

- 3.6** Recommendation 5 – Licensing Boards should publish detailed information about licences in force in their area for the better monitoring of licensing, consumption and harm trends, to inform policy formulation, to equip local Licensing Forums, community groups and others wishing to engage in the process of shaping their local licensing environment.

Comment – West Dunbartonshire Licensing Board has been pro-active in considering statistical information and publishing this on the Board's website. The remaining recommendations of recommendation 5 should not be particularly problematic to implement.

Recommendations for other public bodies

- 3.7** Making alcohol related data accessible – public bodies responsible for the collation of statistics relating to the five licensing objectives (crime, public nuisance and disorder, public safety, health and protecting children) from

harm should ensure as far as possible that local data are available to Licensing Boards on an ongoing basis, in an accessible format, to facilitate the formulation of evidence based licensing policies.

Comment – this recommendation reflects the good practice adopted by other public bodies, namely Strathclyde Police, West Dunbartonshire Council Social Work Department and Alcohol and Drugs Partnership, NHS Greater Glasgow and Clyde and West Dunbartonshire Local Licensing Forum in making data available to West Dunbartonshire Licensing Board during preparation of its Overprovision Policy.

Recommendations to the Scottish Government

- 3.8** Recommendation 1 – the Licensing (Scotland) Act 2005 is amended to place a general duty on the Licensing Boards to promote the licensing objectives.

Comment – this recommendation is largely driven by the fact that the licensing objectives are, strictly speaking, only applicable to the preparation of a Licensing Policy Statement and the determination of applications. This seeks to ensure that the licensing objectives should underlie all of the Act. It does not fully cover the problem created by the Brightcrew case that application of the licensing objectives must relate to the sale of alcohol. Accordingly it is recommended that the licensing objectives just become objectives, not necessarily linked to the sale of alcohol. In other words if something would result in an improvement in health, crime and disorder in licensed premises, even if a direct link to the sale of alcohol cannot be proven, then it should be open to the Board to impose such conditions.

- 3.9** Recommendation 2 – the objective to protect children from harm is amended to state children and young persons.

Comment – this is intended to correct an apparent anomaly in the Act. While the objective is to prevent children from harm, the present definition of children applies only to persons under 16, excluding 16 and 17 year olds from this objective.

- 3.10** Recommendation 3 – the period a statement of licensing policy is in force is extended to five years and a statutory ouster-clause is introduced limiting appeals against an adopted Licensing Policy Statement outside its introductory period.

Comment – as a result of the Brightcrew case a licensing policy that has been the subject of a full consultation can be challenged in any individual appeal, perhaps years later, on the basis of a narrow set of facts and a legal process in which consultees have no opportunity of involvement. This recommendation seeks to limit the time within which a licensing policy statement can be challenged. This is the present position with a development plan under the planning legislation.

- 3.11** Recommendation 4 – National Licensing Policy Statement is formulated, that Local Licensing Boards are required to have regard to when drawing up their own policies.

Comment – the intention of this recommendation is that licensing should be more akin to planning. There should be over-arching national policies which an individual board's licensing policy statement should have regard to. While this might appear controversial the advantage would be that much of the evidential data underlying major policies would be gathered nationally, thus avoiding individual boards having to do their own work to justify their own policies on such matters.

- 3.12** Recommendation 5 – A statutory duty is placed on Licensing Boards to gather and assess information on each of the five licensing objectives in the preparation of their statements of licensing policy.

Comment – as Sir Crispin Agnew, QC points out at page 53 of the report, it is incumbent on a Board to obtain sufficient information to ensure that its policy promotes the licensing objectives. This suggested change is to make implicit in the Act something which is probably implied anyway. The recommendation reflects the approach take by West Dunbartonshire Licensing Board.

- 3.13** Recommendation 6 – A statutory obligation is placed on Licensing Boards to report each year on how the Board has fulfilled its duty to promote each of the licensing objectives.

Comment – this should not be a problem for this Board. It is intended to ensure that Boards pro-actively think about how they promote the individual licensing objectives.

- 3.14** Recommendation 7 – Section 7 of the 2005 Act, the duty to assess overprovision, should be amended to state that the locality for assessment of overprovision can be the entire board area.

Comment – this reflects the technical issue which came up during preparation of West Dunbartonshire's Overprovision Policy. Under the 2005 Act you cannot have an overprovision area which covers the whole of a board area. Health information is often only available on a whole population or board area. Even if it is available in smaller intermediate data zones the experience in West Dunbartonshire is that alcohol related health problems are not necessarily linked to the number of premises in that small area (the evidence of the Whitecrook survey was that people would travel up to two miles to buy alcohol from off-sales). On the other hand, the legislation presently prohibits boards from taking a whole population approach to have an overprovision area covering the whole area.

- 3.15** Recommendation 8 – off-sales hours should be reduced to 10 a.m. until 8 p.m.

Comment – this is perhaps somewhat more controversial. Off-sales hours are presently 10 a.m. till 10 p.m. As the Board will be aware, health problems are

largely driven by the sale of low cost alcohol from off-sales, generally from supermarkets. The major supermarket chains have made it clear that they will challenge, in court, many of the obvious ways to regulate their sale of alcohol, such as minimum pricing. However, reduction of off-sales hours is one of the few ways to limit supermarket sales which will not become bogged down in legal challenge. There is also clear historical evidence that limitations on the hours of off-sales will reduce overall consumption. The counter argument will be that this will stop normal people from buying alcohol along with their groceries. However this argument is itself a reflection of what this report would call the normalisation of the sale of alcohol which has been one of the key drivers in increasing consumption. As regards the 10 a.m. opening for off-sales it is recommended that this should remain. Within West Dunbartonshire, one of the key impacts of the new Act has been a reduction in anti-social behaviour and nuisance in town centres prior to 10 a.m. Dumbarton East Community Council has also promoted this change and has written to local MSPs to enlist their support for this.

- 3.16** Recommendation 9 – Section 7 should be amended to make it clear that overprovision can include an increase in capacity where there is no increase in the number of premises, and the law should also be amended to include opening hours in the assessment of overprovision.

Comment – again this recommendation reflects issues which became apparent during the preparation of West Dunbartonshire's Overprovision Policy. While the Board's policy does apply to increases in capacity, strictly speaking these could not be refused under overprovision but would instead be refused as contrary to the health objective. It is recommended that the Board support to this recommendation as increases in both capacity and opening hours affect consumption and alcohol related harm and should therefore be subject to the overprovision policy.

- 3.17** Recommendation 10 – the specific circumstances under which alcohol can be sold in garage forecourts should be clarified.

Comment – as a result of a number of cases the law on sale of alcohol in garages is now in a state of uncertainty and needs clarification. This is not a particularly big issue in West Dunbartonshire but some other Boards take a more restrictive view on granting of licences to garages, presumably based on a link between alcohol sales, garages and drink driving.

- 3.18** Recommendation 11 – licensed premises should be required by law to provide annual information on the volume of alcohol sold by beverage type as a condition of their licence.

Comment – this information would be of great assistance to boards in preparation of the Licensing Policy Statement.

- 3.19** Recommendation 12 – guidance to the 2005 Act should be updated and it is recommended that guidance to all licensing provisions contained in several different pieces of legislation should be amalgamated into one document.

Comment – it is understood that the guidance is presently under review.

- 3.20** Recommendation 13 – separate alcohol only check-outs should be introduced in large multiple retail outlets. Auto service tills should not be used for the sale of alcohol.

Comment – the argument is that the position of alcohol in stores as an every day commodity weakens the basis of the licensing system which is set up precisely because alcohol is not an ordinary commodity but is in fact a high risk product. Ensuring that alcohol is sold through alcohol only check-outs reinstates, to a degree, the separation of alcohol from other groceries.

- 3.21** Recommendation 14 – licensing fees should be applied in relation to the volume of alcohol sold.

Comment – the on-trade have consistently complained that the level of their fees is excessive compared to those of supermarkets in particular. Since the volume of problems encountered in an area is largely linked to the volume of alcohol sold there is merit in the suggestion that the annual fee is linked to the volume of alcohol sold. There is also merit in the idea that the initial premises licence application fee is linked to the volume of alcohol sold since large applications may require significantly more work for licensing boards. For example, it is now likely that this Board would wish to see a retail impact assessment for any new supermarket application showing where its trade draw was taken from.

- 3.22** Appendix II of the report details the available evidence showing the link between the number of premises and availability of alcohol and alcohol related health problems. This provides further justification for the introduction of West Dunbartonshire's Overprovision Policy to deal with health problems, as well as more traditional problems of town centre crime and disorder, outdoor drinking and anti-social behaviour.

4. People Implications

- 4.1** There are no people implications.

5. Financial Implications

- 5.1** There are no financial implications.

6. Risk Analysis

- 6.1** The report is a major endorsement of the approach taken by West Dunbartonshire Licensing Board and its partners in the evidence based approach it took to develop its Overprovision Policy. That overprovision work

identified a number of problems and risks, some of which form recommendations of this report. Most of these will need legislative change. The main local risk is that the Board's Overprovision Policy does not appear to have been fully considered during the development of specific regeneration proposals.

7. Equalities Impact Assessment (EIA)

- 7.1** Problems related to alcohol can amount to a disability in terms of equalities legislation. The approach taken by this report is to attempt to improve Scotland's health problems due to alcohol and accordingly if the recommendations of this report are implemented this can only result in equalities benefits.

8. Strategic Assessment

- 8.1** As detailed in the report to the October Board, West Dunbartonshire's alcohol related problems have an impact on the area's ability to attract new business, to train a suitable workforce, on work absence rates and in the attractiveness of the area as a place to live and work. All of these issues impact on the long term regeneration of West Dunbartonshire.

9. Conclusions and Recommendations

- 9.1** The importance of the work undertaken by West Dunbartonshire Licensing Board and its partners in its evidence based approach to development of an Overprovision Policy should not be underestimated. This Board's approach has largely been recommended as best practice to be applied across Scotland. However the report also contains a number of significant recommendations to improve the working of the Act, to allow Boards to properly focus on the health objective and to deal with some of the implications of the Brightcrew case.
- 9.2** It is recommended that the Board considers which of the recommendations it wishes to support. If so, does the Board wish officers to take any further action to promote these recommendations.
- 9.3** It is also recommended that the Board notes the links between the availability of premises, the number of licenses and alcohol related harm which are detailed in Appendix 2 of Re-thinking Alcohol Licensing.

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Appendices: Appendix I – Report “Re-thinking Alcohol Licensing” by Alcohol Focus Scotland and Scottish Health Action on Alcohol Problems.

Background Papers:

Wards Affected: All