

LICENSING POLICY STATEMENT 2013

STEP-BY-STEP GUIDANCE TO PREPARING AN EVIDENCE BASED OVERPROVISION ASSESSMENT

Notes by West Dunbartonshire Licensing Board Clerk

1. An evidence based Policy or not?

Consider whether you either want or need to get the evidence to support a policy. On the one hand it might be perceived that an evidence-based policy ties the Board's hands. Thus there is an attraction in having wide policies, perhaps stressing the importance of local knowledge and potentially giving something to hang any decision onto. On the other hand, the arguments for an evidence based policy are:-

- Section 3 provides that the Board must ensure the policy promotes licensing objectives. At least one Senior Counsel has given the opinion that a Board cannot ensure without gathering evidence. Arguably the evidence should underlie all of the policy, not just the overprovision section of it;
- in determining individual applications the onus is on the Board to demonstrate that any issue flows from the sale of alcohol in the particular premises. This may be very difficult to do. For example, it is very difficult to show that alcohol related deaths and other health problems are linked to one particular premises. By way of contrast the development of a policy can result in wider issues being fully considered, then reversing the onus onto the applicant to demonstrate why the policy should not be followed;
- there is an increasing focus from the Scottish Government and others on changing Scotland's relationship with alcohol. Liquor licensing, being the sole means of controlling the availability of alcohol is increasingly being viewed as a key part of this. The joined up thinking arising out of the Community Planning agenda will increasingly put pressure on Board members to look at the wider issues arising through the use of alcohol in their communities;
- a vague 'catch all' policy still needs to be clearly linked to the decision in question – *Watson v Western Isles LB* 18 January 2011;
- decisions made 'on the hoof' using local knowledge are more likely to attract challenge than those made on the basis of an evidence based policy. Different Sheriffs can easily come to different decisions on the use of local knowledge – contrast the two recent cases of *Tesco v Glasgow LB* 15 October 2012, and *Sabti v North Ayrshire LB* 24 August 2012.

2. When to start?

9. Choosing a comparator

- local surveys – these might include surveys on where alcohol was bought, analysis of test purchase failures etc;
- national data on the volume of alcohol sold in Scotland, the trends in sales relating to the On-Sales and Off-Sales sector – MESAS (Monitoring the Effectiveness of Scotland’s Alcohol Strategy). Data was prepared by the NHS in 2011 and 2012. This is freely available on the internet;
- studies showing the link between alcohol related problems, the availability of alcohol and the number of licence premises – Alcohol Focus Scotland have done work on consolidating the information available and this can be found in their fact sheet 1 at www.alcohol-focus-scotland.org.uk/licensing-toolkit;
- trend analysis is also useful to obtain. In other words, it is useful to ascertain whether the problem is getting better or worse. For example, this trend analysis might include a graph showing hospital admissions attributable to alcohol misuse for successive years;
- local Police surveys taken during inspections of the number of patrons in on-sales premises, comparing this to capacity to measure the extent to which premises were trading to their capacity;
- in September 2012 Alcohol Focus Scotland published details of the cost of alcohol to each local authority area. Again, this is available on the Web.

Not all of this information may be available, check with the ADP, Police and Social Work to see what they can provide.

12. Categories of Licensed Premises

Determine the categories of licensed premises which are to be examined. Use of the categories detailed in the Statutory Guidance is not recommended for an Overprovision Policy. It is essential to be able to clearly determine whether a particular application fits within the relevant category. The Statutory Guidance classifications are not sufficiently clear. For example, its use of ‘vertical drinking establishment’ might imply that an application with a 51% seated area was outwith this, but not within any other category. The use of the ‘hybrid premises’ category is also problematic. For this reason it is recommended that the categories used are tied to the Planning Use Classes. This could result in the following categories Th:‘S–L‘JD4D–

in Whitecrook and the number of premises in that area. In most areas customers are likely to travel up to 2 miles to buy alcohol from supermarkets. The way that West Dunbartonshire Licensing Board got round the 'causal link' problem was to

26. Update the information regularly

Once a policy is in place, continue to provide updated statistical information to the Board.

27. Considering applications against an Overprovision Policy

When applications are received contrary to policy it is helpful to applicants (and avoid future challenge) if the applicants are directed to the publicly available evidence which underlies the Board's Licensing Policy Stat