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11 am

Witnesses: Jon Foster and Chris Snowdon

Members present

Baroness McIntosh of Pickering (Chairman)
 Lord Blair of Boughton
 Lord Brooke of Alverthorpe
 Lord Davies of Stamford
 Lord Foster of Bath
 Baroness Greender
 Lord Hayward
 Baroness Watkins of Tavistock

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 definitively 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 Snowden: 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 Greender: 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 Snowden: 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 Snowden: 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.

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>)

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. 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 taxi 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 Grender: 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 Snowdon, 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 Snowdon: 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 Snowdon: 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.