



HOUSE OF LORDS

Revised transcript of evidence taken before

The Select Committee on the Licensing Act 2003

Inquiry on

LICENSING ACT 2003

Evidence Session No. 5

Heard in Public

Questions 54 - 62

TUESDAY 6 SEPTEMBER 2016

10.40 am

Witnesses: Mr Daniel Davies, Mr John Miley, Ms Marie-Claire Frankie and Mr Michael Kheng

Members present

Baroness McIntosh of Pickering (Chairman)
 Lord Davies of Stamford
 Lord Foster of Bath
 Baroness Greender
 Baroness Henig
 Lord Mancroft
 Lord Smith of Hindhead

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 Greender: I am Baroness Greender, 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 Grender: 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 meetings; 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 Greender: 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.