



Select Committee on the Licensing Act 2003

Oral evidence: The Licensing Act 2003

Tuesday 18 October 2016

11.50 am

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Members present: Baroness McIntosh of Pickering (The Chairman); Lord Blair of Boughton; Lord Brooke of Alverthorpe; Lord Davies of Stamford; Baroness Eaton; Lord Foster of Bath; Baroness Goudie; Baroness Grender; Baroness Henig; Lord Mancroft; Lord Smith of Hindhead; and Baroness Watkins of Tavistock.

Evidence Session No. 9

Heard in Public

Questions 90 - 101

Witnesses

I: Brigid Simmonds, Chief Executive, British Beer and Pub Association; Kate Nicholls, Chief Executive, Association of Licensed Multiple Retailers; Vernon Hunte, Government Affairs Director, British Hospitality Association.

Examination of witnesses

Brigid Simmonds, Kate Nicholls and Vernon Hunte.

Q90 **The Chairman:** I welcome our second panel. Thank you very much indeed for participating in our inquiry and being here today. You will have heard, but I just remind you that this is open to the public. The session is broadcast live and subsequently accessible on the parliamentary website. You will be sent a verbatim transcript. If you have any comments to make, please can you get them back quickly? If you wish to clarify, amplify or supplement anything you have said, please do that as quickly as possible. Thank you very much for your patience. I know that you have sat through the first panel. Overall, have you seen a change in behaviour and consumption since the Licensing Act came into effect? In particular, what has your experience been as industry participants in the licensing system since 2003?

Kate Nicholls: I will take that one first and focus just on one aspect so that we can draw out points that the other witnesses could make rather than trying to cover all those questions. If I try to sum up our members' experience of the Licensing Act over the past decade in one word, that would be variability. Where it works well, it works really well, but there is no consistent good practice across the country. There is variation in the way in which policy is envisaged at a national level and how it is applied at a local level. There is variation between local authorities in their understanding and interpretation of the national legislation and there is variability between enforcement authorities in a specific local licensing area. Licensing reform is always envisaged as being driven by localism, quite rightly. What we have now over the course of a decade where we have had about 60 changes to the Licensing Act is a very individualised interpretation and application of the law. That is down to the lack of a robust clear national framework. That leads to very inconsistent decision-making. It is not good for business. It is not good for local residents, as your Lordships have heard in previous submissions, and crucially it means that that very careful balancing act of competing interests that the Licensing Act 2003 was based on has been lost. That would be my general summing up.

Brigid Simmonds: Lord Chairman, I would like to send you a copy of the British Beer and Pub Association's submission to the Cabinet Office on enforcement of red tape, because we gave some specific evidence and examples of changes. There are three that I would like to cover quickly. The first is whether you have a full or minor variation. There is a lot of inconsistency between local authorities and there is a lot of difference in both the cost and the time it takes. So a Minor Variation can cost only £89. There is no requirement for an advertisement for a minor variation. We have been trying to get rid of advertisements in newspapers for some years with little effect—they cost £500 each time if you have to advertise in the *Standard* and they can take between 10 and 28 days. We have a local authority that rejected a minor variation to create just a new window and remove a lobby. The cost then went up to well over £400 for

a full variation and yet we have another local authority that allowed a minor change to a plan for £10.50. Then we have last minute representations by responsible authorities. There is no continuity between local authorities whether they notify the application of representations early or at the very last minute. If you do it at the last minute, you have no choice of anything other than an automatic hearing. So you have a local authority that made a representation on the last day of a 28-day period—it gave no reason why that was a representation—and another which notified a representation after the 28 day period had expired and so it went to an automatic hearing at considerable cost. The last one is the addition of blanket conditions on a Premises Licence. I could give you an example of premises which were a pub and ended up with restaurant conditions and a whole lot of irrelevant conditions. You can even have a requirement to provide lollipops. You can have requirements to provide all sorts of things and, of course, they then have to go to a hearing to have irrelevant conditions removed.

How do we solve these problems? I have two potential solutions. One we have been pushing for is the extension of primary authority to both local authorities and the police. Primary authority where one local authority takes the lead works very well in environmental health. As a trade association, we are a primary authority for fire. We would like to see that extended to local authorities and the police. We believe that would help to satisfy the requirements introduced by the Regulatory Delivery office whereby these days you have to take into account the economic circumstances of an industry as a regulator. That does not apply to the police; it should apply to local authorities. Both of those would be helpful.

Vernon Hunte: I endorse both my colleagues' opening statements, particularly with regard to primary authority. BHA has worked with BBPA. My predecessor Martin worked on these proposals as well and supports them.

The Chairman: Any views on whether there should be national or local fee setting?

Brigid Simmonds: Yes, absolutely, I would certainly have national setting. When the Home Office last consulted on changing the licence fees, there was going to be no national cap. Those of you who are familiar with the Gambling Act will know that, under that Act, there is a national cap, even though fees are set locally. A huge increase was proposed. I have members who were facing a £26,000 increase in licensing fees. There were suggestions about changes to temporary event notices. I know they are only £21 but they were going to be put up to £100. That would have been hugely damaging. For those who represent the on-trade, which all three organisations do, we want people to go and drink in the home of responsible drinking where they can be looked after. As your previous witnesses said, the multiplier applies only to the on-trade, not to the off-trade. I am not for putting regulations on anybody, but perhaps the change in circumstances whereby 70% of alcohol is now sold through the off-trade makes that something we could look at.

Overall, I think Section 182 guidance should possibly be looked at again. We should have a consultation. That would achieve more in terms of national consistency.

The Chairman: If you all agree, you do not need to say that also.

Kate Nicholls: One thing that happened was that immediately after the Licensing Act took effect, there was very detailed comprehensive guidance. Successively, when that guidance has been reviewed, it has been cut down. An awful lot of the stuff that you heard in the first session about planning, the role of planning authorities and the on-trade and the off-trade was included in the original draft of guidance, but that guidance has been successively watered down, so we need that to be revisited. It needs a comprehensive overhaul. On the point about fees, you absolutely need a national system. What businesses need is certainty and consistency. You do not have to be a very big business before you are trading across two local authority districts and you have inconsistencies and different fee levels which impose burdens just to keep on top of it.

Brigid Simmonds: And an awful lot of local authorities do not allow us to pay by direct debit.

Vernon Hunte: That is right.

Q91 **Baroness Grender:** We have had emerging evidence that a lot of local authorities run temporary event notices at a loss. If you are running a small school summer fair, £21 sounds reasonable. A body may be using its maximum temporary event notices in a year in order to do a kind of extension of licensing creep, which we have heard quite a lot of evidence of, but they are completely different creatures. Do you think there is any merit in separating out temporary event notices?

Brigid Simmonds: I think you could consider separating out temporary event notices where someone had a personal licence and all the expertise to run an event, and where perhaps there was not going to be any concern about it and therefore no concerns would be raised by the police or the local authority. However, I worry that a lot of pubs have temporary event notices when they have a wedding unexpectedly or events like that. Because of things like the late night levy, which we will come on to talk about, are restricting people's hours, they have to cut back their hours in order not to pay that levy. Then they find that they have to apply for a temporary event notice. So I think there may be some room for an increase. I accept that there has been no increase in licensing fees since the Licensing Act was introduced, and perhaps we could see a 10% increase. However, some of the increases that were put forward are letting local authorities have carte blanche on how they set those licensing fees and how central costs are apportioned to licence fees. That would not be my way forward.

Vernon Hunte: To second that, we also consider a 10% increase to be reasonable.

Kate Nicholls: Just to add to that, temporary event notices were introduced as part of a grandfather right, when the Licensing Act came through, because there were temporary permissions that existing licensees were able to use to expand their licences. So there was a grandfather provision. It is not something that is inherently new, although the way in which it has been interpreted and applied is new. Obviously, also, temporary event notices allow a local business to expand the licensable activities, not just their hours or trading conditions. We need some kind of balance here. You have local authorities that are quite restrictive. When the Act first came in, you needed a temporary event notice for live music and entertainment in pubs if you did not have that as your original permission.

Q92 **Baroness Henig:** Hello. Perhaps we can return to the licensing sub-committees, which you have already expressed reservations about in terms of consistency, and put forward one or two views. Can we look at these sub-committees in terms of whether they are fair and effective? Do you find them impartial? Do you feel they put political considerations to one side in decision-making? What do you think their strengths and weaknesses are? What can be done to improve them? You have already mentioned the system of having one leading authority as one possible way forward. Have you any other thoughts about licensing sub-committees?

Kate Nicholls: I go back to my point about variability and inconsistency. You do need some greater structure. Licensing committees are hugely beneficial because they bring a local community perspective. They are also less intimidating for a lot of small business people and residents to go in front of instead of a court. It is much more accessible, but there is a lack of a clear national framework and guidance in the treatment of witnesses and evidence and how you handle a hearing. The hearing regulations are not robust enough to give local authorities an appropriate standard for being fair and effective. It is not just about whether justice is being done and people being treated fairly. It is about justice being seen to be done. The fact that you have got witnesses from all sides presenting to your Lordships' committee that they do not feel as though they have a fair hearing suggests that there is a perception that it is not strong enough and more judicial standards need to apply to those hearings, so that you understand how you are to be treated and you can be reassured that you have had a fair hearing.

Brigid Simmonds: You might say that we would say this anyway, but some local authorities listen much more carefully to what the residents say than the businesses. You see letters being sent out to 1,800 residents and just because one complains they somehow put a condition on that particular pub. Getting that consistency is why the appeals system, which we are coming on to talk about, is very important to our businesses.

Vernon Hunte: I echo the comments about consistency.

Baroness Henig: Is there an issue about training here?

Kate Nicholls: I think there is definitely an issue about training. It is about making sure that the same training and standards are being communicated across the body. Some places do training very well and the licensing officer will train the representative members. It is not consistent. There is also a crucial point about the training of police licensing officers, which is woefully inadequate, and that needs to be addressed.

Brigid Simmonds: Training is offered by the Institute of Licensing, which offers formal training for local authorities. There are very few that actually take it up. Having some form of mandatory training would be helpful.

Q93 **Lord Blair of Boughton:** I will move away from licensing committees to responsible authorities. You have obviously made an interesting suggestion there. What is your experience of licensees with responsible authorities, the police in particular, and what are the key problems in those relationships?

Kate Nicholls: I am going to sound a bit like a stuck record, because it is about variability and inconsistency. Picking up on the police, and focusing my comments on that aspect, there are two observations here. One is that there is a real reluctance on the part of the Home Office to give any central direction and guidance to the police in the application of their powers. Particularly when it comes to very draconian powers about closure and summary reviews, where we are talking about somebody's livelihood and the livelihoods of the people they employ being taken away, there is no central direction to the police on the way they approach those powers. That really needs to be incorporated into national guidance.

The second point is a very small, apparently semantic, change that was introduced into paragraph 9.12 of the statutory guidance in about 2012. This has had a huge impact on the relationship between licensees and the police. It said that the police were the primary authority on matters of crime and their evidence should therefore be given greater weight in front of a licensing committee. The way that has been interpreted—and I think misinterpreted—is that that is a requirement on local licensing officers and committees to accept without question whatever the police say, in terms of both evidence and recommendations, without any scrutiny. That has led to some very strange decision-making and a sort of vacuum at the heart of licensing authority work, whereby the police are going without scrutiny in some of the things that are being said about matters that are very material to businesses and local residents.

Lord Brooke of Alverthorpe: What kind of numbers are we talking about?

The Chairman: Could we just have the other witnesses first?

Brigid Simmonds: I have nothing enormous to add, except that the police having to taking into account the economic impact on a business would really help.

Vernon Hunte: I concur.

Lord Blair of Boughton: Do you mean for the police to do that or for the licensing committee to take that into account?

Kate Nicholls: It is both.

Brigid Simmonds: There is a requirement on local authorities at the moment; there is no requirement on the police and it should be extended to them.

Kate Nicholls: It is a regulatory principle. Non-economic regulators should have regard to economic growth in their decision making. It applies to virtually every other regulator that deals with us. It applies to the Food Standards Agency, the Gambling Commission and to government departments. It applies to the Home Office when it is regulating, but it does not apply to local licensing authorities or the police.

Lord Brooke of Alverthorpe: Very few licence applications are rejected. What kind of scale are we talking about with these problems? Is it a handful? Is it hundreds, or is it thousands and thousands?

Brigid Simmonds: Many are not rejected because the licensee, rather than going to the cost of a hearing, actually accepts whatever condition the police or local authority want to impose. Often that is unfair but, frankly, the delay and cost of the hearing mean that it is not worth taking further forward.

Kate Nicholls: Or it is the case that you have to be accompanied by a solicitor and have legal representation, rather than being able to handle the local licensing process yourself as a small business person. There is a danger in looking at things, seeing an absence and assuming there is a problem. This has bedevilled licensing all the way through. There is no alcohol disorder zone, so we need EMROs. There are no EMROs, so we need a tightening of levy and grips.

The Chairman: I do not want to pre-empt the next question, which we are straying on to.

Q94 **Baroness Watkins of Tavistock:** I declare interests, as shown in the register, none of which are material to this.

I want to pick up the issues in the licensing appeals system. What do you think might make it fairer and more effective for all participants, not just businesses? Are there lessons we can learn from the taxi licensing appeals system or the planning appeals system? We understand that a lot of appeals are compromised informally—you have just referred to this. Is there a role for more formal mediation?

Brigid Simmonds: Mediation does take place. As ever, with good local authorities mediation works well and we would like to see that extended. One of the reasons why you have a full appeal of the whole case with the magistrates is that otherwise, the local authority would be judge and jury and we have always been against the suggestion of the LGA that the ombudsman should take that role. We are in favour of the appeal system: it works. There are some skeleton arguments that have been put forward which cause delays. There can be six to nine months before a case comes to court. However, overall, we like the appeals system but formal mediation would be a good thing. I looked at taxi licensing, which is by magistrates, but the LGA want to change it. I looked at planning appeals. The guidance on the website runs to 210 pages and I am not sure I want to go there.

Vernon Hunte: More mediation between the partners and having a sense of partnership would be welcome.

Kate Nicholls: The only thing I would add is that, from a business perspective, when you are getting into an appeal situation you want speed and you want to avoid unnecessary cost. That would be my only caveat about mediation and a formal requirement to go through it. Mediation will happen informally and does happen from time to time. We need to have a speedy appeals process.

Going back to my central theme of variability, the other thing is that you will have variations between the different courts and the directions they give in the way they are going to handle cases. Some greater standard direction at a national level would undoubtedly be helpful in streamlining the appeals process.

Q95 **Baroness Eaton:** I have no interests to declare to the Committee. Moving on to something slightly different, the Policing and Crime Bill currently before the House of Lords would facilitate the use of cumulative impact policies to limit the granting of licences and, most recently, the Home Office has proposed a new group review intervention power, which would allow licensing committees to apply licensing conditions on all premises in a particular area. Do you agree that such powers are needed to protect local communities and will these versions be effective?

Brigid Simmonds: No is the short answer. First, there have been 23 changes to the Licensing Act since it was introduced. We would like a moratorium for the rest of this Parliament on any further changes. Kate has already quite rightly said that just because EMROs did not work, we somehow need a cumulative impact policy. It is unfair. The late night levy is a tax, not a partnership. You heard earlier about some good schemes—

Lord Smith of Hindhead: Why is it not applied?

Brigid Simmonds: One of the reasons it is not applied is that if you look at Cheltenham, it had a late-night levy, and it has now decided, quite rightly, to go for a Business Improvement District. At the end of the day, we have to be careful that we do not drive people to drink at home and

stay at home. We want them to come to safe night-time economies and we want our high streets to be vibrant during the day, at lunchtime and during the evening. We will get that only if we have a good mix of retail and a safe night-time economy. Imposing regulations on the on-trade because it is based on rateable value, so they pay more, will just mean that those premises close.

The Chairman: I will ask each of the panellists to reply and then will turn to Baroness Grender.

Kate Nicholls: I was going to pick up on your final question: are these necessary and will they be effective? No. We question whether they are necessary because those powers already exist. Often, when we talk to the Home Office and local authorities, they ask for powers that already exist in the Licensing Act—they are just not being applied. You already have 270 cumulative impact policies in the UK, so that is not a power that is not being used and applied. There is no real reason to introduce further reform. Equally, if local authorities want to review a collection of premises and have the evidence that there is a problem, they can do that straightaway now. They do not need a new grip to add to the alphabet soup that already bedevils licensing. One of the reasons why we do not have late-night levies so frequently at present is not that people do not want to do it or to use the powers or that the powers are too clunky, but that there are better ways of solving the problem. Late-night levies do nothing to solve the inherent problems. They do not even have to have an evidence base that there is a problem before they impose it as a tax. It is far more effective to sit down and talk to the local business community and ask, "What problems need to be solved? We all share the desire to have a diverse, vibrant, clean, safe environment—how can we go about solving them?" Late-night levies are sometimes a catalyst for partnership working.

Vernon Hunte: It is hard to add much more to that. I completely agree. With late-night levies, it is worth pointing out the experience of our hotelier members, who often run a late-night bar within the hotel. It is rare that people go back to the hotel bar and then go out again afterwards. So hoteliers in particular would look more to the BID process rather than late-night levies as a way to look after the interests of the neighbourhood.

Brigid Simmonds: Just one final comment: the tenet of the Licensing Act is that individual premises should be dealt with on their own merits.

Q96 **Baroness Grender:** We are where we are, and currently there is a proposal in the Policing and Crime Bill to move the late-night levy so that it is not applied across a licensing or local authority district and instead can be applied in specific areas. So on that very refined question, and working on the assumption that late-night levies are introduced almost as the solution of last resort, having worked in a business improvement district, do you think that there is merit in that being introduced for a small, specific area rather than across a licensing authority?

Kate Nicholls: To take your point that they are a measure of last resort when other measures have been tried and failed, yes, there is merit in their being applied. In a smaller area, there will be a limit on how much money you will raise from that area to do things that have a material impact. I still think it would be far better to sit and talk to those businesses that would be prepared to invest in other measures. In some areas where late-night levies have been introduced, we have seen that that voluntary partnership funding gets diverted into the late-night levy, so some good voluntary partnership can go by the wayside. We do not want that to happen, because that can have an effect.

Brigid Simmonds: If we are not careful, police and crime commissioners will seek to introduce them because they need the money and they will not even use that money by applying it to these premises. As I said, if you are not careful, the premises close earlier so that they do not have to pay the tax, which means there is nowhere for people to go in our late-night economy.

The Chairman: I think you said earlier, Brigid, that the late-night levy is putting the business off, so you are applying for a TEN, which plays to what Baroness Greender was trying to say. Will you elaborate on that? You clearly said that this is happening.

Brigid Simmonds: I did clearly say that. There is a danger that you are restricting the hours of the on-licence. If you are a responsible premises which has a premises licence anyway, there should be no requirement. What is the local authority doing with the £21 that it receives other than coming back and saying, "That's absolutely fine—you can have it for 24 hours"? You could look at refining the system only where there is a problem or where somebody has never been licensed before.

Q97 **Lord Blair of Boughton:** I will ask the same question I asked the previous panel. You talk about national guidance and national arrangements. The impression that we are getting is that there are almost two completely separate sets of circumstances. There are the small county town and rural, community-based pubs and then there are the small areas that would require some kind of consideration of cumulative impact. If we do not have that, those places become unbearable.

Brigid Simmonds: Again, there are much better ways of dealing with it, such as partnership with the local authority. I can think of local authorities that would review a licence if there was any suggestion that the premises were selling to people who had drunk too much. The whole trade is totally supportive of premises that behave badly being closed down, but we need to have places for young people to go and we need to cater for that. We have a problem, which was raised in the earlier session, about people who live in town centres next to licensed premises. Some local authorities have a grip on that and we support that. However, in some circumstances, if you live right in the centre, you are bound to be interested—often people are; I have lived in London for 20 years—in living in a vibrant community.

Kate Nicholls: One observation is that, yes, we need that level of granularity and detail in the national guidance. We are all talking here about consumption of alcohol and pubs and bars. Actually, the Licensing Act deals with restaurants and with hotels, as Vernon mentioned. For town centre businesses and the more diversified night-time economy, you have to get away from thinking that the late-night economy is all alcohol-driven and all about pubs.

Kate Nicholls: We also know that pubs serve 1 billion meals a year, so they are much more food-led.

Q98 **Lord Foster of Bath:** I have a very simple question: can and should planning and licensing work more closely together? If so, how and, if not, why not?

Brigid Simmonds: They work well together in certain local authorities and, where the two talk to each other, that is hugely helpful. They are different processes and I worry, as I have said before—we have been doing this for years—that PPG6, to go back to the planning policy guidance, encouraged people to live in town centres. That has become more urgent as we have a huge housing shortage, and we need to make sure that the two can coexist. You have pubs that have been there for hundreds of years—I worry about local rate-setting—and you have to support those existing businesses, not allowing the developer rather than the premises to make that change.

Lord Foster of Bath: I understand, but your answer is to talk. For example, on Section 182, should the changes that need to be made be in the guidance, since you do not want to change the legislation?

Brigid Simmonds: I would review Section 182. I would make the two systems work better together so it is clear that when you set out your local plan you have to say where these types of premises will be. We just need to make sure that there is not prejudice on the planning side that then stops the licensing from having the right mix, as Kate has said, in a town or city centre.

Kate Nicholls: You do need to change Section 182 guidance. When it was first drafted, there was a clear section about managing the expectations of residents and local businesses. It set out clearly that planning was primarily about land use and licensing was about the regulation of licensable activities taking place on licensed premises. There is an assumption among many residents and some local authorities that planning is a panacea for all ills, but it cannot be that. You need much tighter integration of the two and there needs to be more dialogue, particularly if you are doing new-build applications. The planning and the licensing regime have to work in tandem. At the moment businesses and presumably residents who are trying to comment are caught in a sort of pinball machine where they are passed from planning to licensing and back again, so they have no idea what the output is going to be at the end. Planning and licensing need to run in tandem, but you need greater integration.

Q99 Lord Brooke of Alverthorpe: As you were here in the previous session, I do not need to repeat my declaration of interests. I am grateful to the British Beer and Pub Association for supplying me annually with its statistical handbook, because I discovered that the Government do not collect data on alcohol sales from retailers. You are the ones who do, and I thank you for that. I have probably questioned you previously on MUP and on taxation generally. Is your position that you continue to be opposed to MUP and to using taxation?

Brigid Simmonds: I am definitely opposed to MUP, but that is not only my position; it is also that of the Home Office. It is a total tax on everybody and if you are not careful it takes money from those who can least afford it when actually they are drinking perfectly sensibly. I would much rather that we used some of the very good work being done by Drink Aware, Addaction, Purple Flag, National Pubwatch, community alcohol partnerships and Best Bar None at the local level to deal with this where people really have the problem. I do not think that minimum pricing is the answer. Someone said earlier that of course it would not have an effect on the on-trade

Lord Brooke of Alverthorpe: Or taxation.

Brigid Simmonds: Beer taxation went up by 42% in four years. It has come down by 9%. We still pay 40% of the total tax in Europe but we consume only 13% of the product. I would say that we are vastly overtaxed. I will send a copy to the Committee of a very good document that we are producing with SIBA and CAMRA about the effect of beer duty cuts and how they have helped investment and creating the night-time economy that we want. I am not in favour of using taxation in that way. I would be in favour, as SIBA is, of making sure that low-strength alcohol products such as beer, the average strength is 4.2%, are treated appropriately.

Lord Brooke of Alverthorpe: So you would be in favour of graduated tax bands.

Brigid Simmonds: This is a very complicated subject and I will write to you about it, Lord Brooke. We are not in favour of equivalence by tax because of European directives. Perhaps there is the potential for doing more, but it is complicated.

The Chairman: Would anyone else like to respond?

Kate Nicholls: The Government have said that they want to see conclusive evidence not just to show that the introduction of MUP would be effective but about the scale of the problem and how it would be solved. That is an approach we would agree with. We support the Government in this because we need conclusive evidence. It is a reasonable line to take and we urge the Home Office to apply it more rigorously to all other licensing decisions.

The Chairman: Do you agree with Brigid Simmonds that it is potentially a regressive tax that would hurt those who are the least able to afford it?

Kate Nicholls: Yes.

Vernon Hunte: I would agree with those comments.

Lord Brooke of Alverthorpe: And on a graduated tax?

Kate Nicholls: It is not something that as a representative of retailers we would take a view on. We are more focused on the taxes that apply at the retail level and the fact that more than one-third of our turnover is taken up with the taxes of one sort or another that we pay into the public exchequer.

Brigid Simmonds: I am representing the only producer organisation on this panel.

Vernon Hunte: For that reason I do not have much to add, but I am always happy to speak for my members.

Q100 **Lord Smith of Hindhead:** We do not have time for me to list my interests and I have already mentioned them. How does the on-trade perceive that it is affected by the off-trade and what positive interventions could lead to legislation or guidance being achieved?

Kate Nicholls: I do not want to repeat all the statistics that the previous panel threw at you. Some two-thirds of the alcohol consumed in the UK is consumed away from licensed premises—75% in London and Scotland. The main impact is as described in the previous session. People are going out later and what they do when they go out has changed. The way they consume alcohol when they are out in the night-time economy has also changed. The main impact, we find, is that we are the front line late at night when people, having preloaded, come into a night-time environment and we have to turn them away because they are too drunk or disruptive. The problems that are on the streets are issues that we have to deal with as a society. We are doing a very good job of making sure that people do not come into premises and cause a problem, and we have to make sure that we can tackle that.

Brigid Simmonds: Of course, 50% of all beer is still sold in the on-trade; in fact it is 51%/49%, so we are in a slightly different position, particularly because of draft ale. What I would like to see is freedom to compete for the on-trade. For example, the meal deals sold in a supermarket do not pay any VAT. That is a positive discouragement to go out and eat a meal in a pub, although we now serve 1 billion meals a year, where you do have to pay VAT. It is too easy to place burdens and regulations on the on-trade. I am not particularly in favour of burdening the off-trade either, but it is too easy because of the physical premises and often they are big premises with a high rateable value. That means that you will pay more as an on-trade premises and, as has already been mentioned, under licensing fees you will actually pay more for big premises if you are on-trade. Which you will not pay if you are off-trade.

Lord Smith of Hindhead: So you do not think that it is a level playing-field.

Vernon Hunte: I would say that the way society looks at drinking and how people go out for a night has changed profoundly since 2003, so I would endorse those comments. It is also worth bearing in mind that the technological innovations in the way people agree to meet up and decide to go out have had a big impact.

The Chairman: You had a big campaign on a reduction in VAT. Is that for pubs and hotels?

Vernon Hunte: There is a legitimate argument in the view of the BHA for reducing VAT not only on accommodation and attractions but also on food in restaurants. The BHA does not see that extending to alcohol because other taxes apply to it.

Kate Nicholls: The ALMR and the BBPA have run a joint campaign and produced a joint report looking at creating a more beneficial VAT environment to allow pubs to compete. It looks in particular at eating out. We would be happy to send the report to the Committee.

Q101 **Lord Davies of Stamford:** What are your reactions to the suggestions that have been made that new criteria might be added to the licensing requirements—for example, public health criteria or compliance with the Equality Act?

Brigid Simmonds: I would be against public health criteria. Obviously it exists in Scotland but I think that there is too much general information, particularly at the accident and emergency level, which could not be applied to a specific premises. I would be really worried if, just because you had your last drink in the Dog and Duck, you said that the Dog and Duck's licence should be removed as a result. That is for all the reasons we have just discussed about an awful lot of alcohol being drunk before people actually go out. It is not at all helpful and I would be against it because I do not think that it would work in practice.

Lord Davies of Stamford: What about the Equality Act?

Kate Nicholls: I think that our four licensing objectives are the correct ones. They deal with the control of licensable activities on licensed premises. On other statutory duties, the Licensing Act gives a direction that they should be treated separately, and if there is an existing statutory obligation you do not duplicate it in the Licensing Act. For that reason we would not be supportive. The four objectives are appropriate. Where health intersects with licensing we believe is already effectively covered in the Licensing Act. There are changes to the guidance and to the Act to allow health to be a consideration in setting overall licensing policy. In that sense, it is the right place for it to be looked at. When it comes to individual decisions, as Brigid has highlighted, it is very difficult to apply it to a specific premises.

Vernon Hunte: We believe that the four objectives are correct. I endorse those words.

The Chairman: Have the number of amendments and changes to the

guidance going through, as well as amendments through the Police and Crime Act, caused concern?

Brigid Simmonds: It has caused huge cost. I shall be very polite and say that regulation is the opium of the politician. You are wonderful at imposing regulations on the industry but I am afraid that you are not very good at removing them. We talked briefly earlier about advertising regulations. We have been trying to get rid of the requirement to advertise in a newspaper, on which there is absolutely no evidence, but unfortunately we have failed.

The Chairman: What we heard from the residents is that they are not getting the same notification. That is not meant as a criticism; it is just a fact. When there is a planning application, there are posters plastered everywhere—there is a blue notice. I know from advertising surgeries as an MP how expensive that is, upwards of £200 or £300 in one small paper. But residents would counter that by saying that they are not hearing about this.

Kate Nicholls: The same notice requirements apply to licensing as to planning. There are blue notices and there are requirements for them to be shown on lampposts and on the perimeter of the premises. Most licensing authorities will write to local residents. Actually, the pendulum has swung a bit further; you are in danger of licensing authorities soliciting representations rather than not doing enough to get it through. People are very well aware of this, and I think that we have to make sure that the balance is correct.

In terms of the tinkering with the Act, we have had successive changes; each year there has been a change in the Act. If you take into account all the minor changes as well, people have had to get to grips with about 60 of them. From a business point of view, that means that you have to monitor what is going on, amend your practice and update your guidance, so a very practical, administrative burden comes into it. We are supposed to have one in, two out as a regulatory principle, although I think that it is now three out. We have never seen anything taken off on licensing, in all the changes that have come through. Burdens may be taken off, but they are taken off people who are not currently licensed or taken off local authorities. From a business perspective, the cumulative impact of these burdens is tremendous.

An awful lot of the changes to the Act have been done through a Policing and Crime Bill. The Licensing Act was very broadly based, when it was introduced. Over the course of the decade, we have had a shift in the kaleidoscope and licensing is viewed just through the prism of crime and disorder, which has a hugely distorting impact.

Vernon Hunte: It is important that when we look at licensing we bear in mind the contribution to the local economy as much as the law and order issues. We need a balance.

Brigid Simmonds: There are two minor changes being made to licensing at the moment that we both support. One would allow bed and breakfasts to serve very small amounts of alcohol without requiring a premises licence. The other one being looked at—this was in the tourism strategy announced in the summer—is to allow pubs or hotels to run a local taxi service without having a taxi licence.

Baroness Grender: To return to Lord Davies's question, why stop there with the four current objectives? Why not push for one that builds a local economy or one that facilitates having more fun? Why are you stopping at those four, if you are complaining about it as it currently is?

Kate Nicholls: I think because licensing is fundamentally a permission to trade, so it is right that it looks just at those four specific areas to do with permission to trade. There is also a question of duplication; there are other means of ensuring that that is taken into account rather than changing the licensing objectives. The reason the licensing objectives are key is that those are the criteria against which you assess applications and assess and hold the business to account. If it is very broad and they are quite grey or nebulous, that creates much more uncertainty and much more likelihood of inconsistent decision-making.

The Chairman: But the original objective was to create looser, more flexible hours and a cafe culture. We are trying to work with you here, rather than being overprescriptive and too regulatory, to recognise that you are playing a role in the broader story.

Brigid Simmonds: If the better regulation requirement that is already there to look at the economic case was properly enforced, that would create the change that we are looking for. As has been said, we do not really want any more changes at a statutory level.

Kate Nicholls: When the legislation was first introduced, the Home Secretary said that a sector as important as ours, which has such a great impact on society, culture and the economy, deserves as good a system of regulation as we can possibly get, and we are letting down our businesses at the moment, because it is not as good a system of regulation as we can possibly get.

Vernon Hunte: This industry wants to work with government to achieve a number of objectives—it is just that we do not feel that changing those four objectives in the Act is the best way in which to go about that, for very good reasons.

The Chairman: Thank you very much for accommodating the Committee and contributing. I thank Committee Members for remaining as long as they have. We thank you warmly for participating.