



Select Committee on the Licensing Act 2003

Oral evidence: The Licensing Act 2003

Tuesday 1 November 2016

10.45 am

Watch the meeting

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 Greender; Baroness Henig; Lord Mancroft; Lord Smith of Hindhead; Baroness Watkins of Tavistock.

Evidence Session No. 11

Heard in Public

Questions 113 - 123

Witnesses

John Gaunt, Partner, John Gaunt and Partners; Andrew Grimsey, Solicitor, Poppleston Allen; and Professor Roy Light, Barrister, St John's Chambers.

Examination of witnesses

John Gaunt, Andrew Grimsey and Professor Roy Light.

Q113 The Chairman: Gentlemen, good morning and welcome. Thank you very much indeed for being with us and giving evidence this morning. The list of Members' interests relevant to the inquiry has been sent to you, and copies of our declarations are available today. This session is open to the public. It is broadcast live and is subsequently accessible via the parliamentary website. A verbatim transcript will be made of the evidence and put on the parliamentary website. A few days after the session you will be sent copies of the transcript. Perhaps you could check it for accuracy and revert to us with any corrections as quickly as possible. If after this evidence session you wish to clarify or amplify any points in your evidence, or you have any additional points, you are welcome to submit supplementary evidence to us, again as soon as you possibly can.

What impression do you have of the way that the Licensing Act 2003 is currently functioning?

John Gaunt: As licensing practitioners, we are here to make it work. We have clients to represent. It has had its challenges, certainly in the early days, but my overall impression is that the system works. Certainly, our clients understand how it works and that is a reassurance to them, because they know the environment in which they have to trade. In my Yorkshire expression, it gets a bit frayed at the edges. It has always been frayed at the edges, and the fraying is probably in the areas on which you are concentrating as you consider the implications of the Act, but generally it works, with a few wobbles here and there.

Professor Roy Light: Thank you for inviting me here. It is very exciting to come to see you all. The Licensing Act before this one was rather complicated. It dated from 1964 with about 20 different Acts to consider, and it had labyrinthine complexity. We could navigate through and make plenty of money because no one could understand it all. When the newer one first came out we were all slightly disheartened. We thought, "There goes our income", because applications were not opposed any more; they would be granted, and all that sort of thing.

It started off well, because it was a clearly signposted, streamlined system. It had clearly defined licensing objectives and one licensing authority, whereas before you had to go before the local authority and the magistrates' court to get various permissions. There were no triannual renewals for alcohol licences and public entertainment licences, so it was all much more straightforward and clearly signposted. The regulations came out a bit late, and the guidance came out even later, so it took two years to come into effect, from 2003 to 2005, but when that had all happened, we thought, "This looks quite good. We can come to terms with that". It all seemed rather confusing then, but we all understand it really well now. We could probably quote sections of the Act that we never thought we would be able to in the past, but I agree

with John that there are problems around the edges with various bits and pieces.

There are more serious problems. Under the old Act, each magistrates' court had its own licensing policy statement. It varied as you went round the country. It could not be right that something in Bath was different from something in Bristol. Under the new Act, we have national guidance in Section 182, but each local authority also has its own statutory licensing policy. Some of them run to a few pages, some to hundreds of pages, and they all have different requirements for different things. That causes issues and problems, even as far as that if there is something in the Act it has to be followed, and if there is something in the regulations it has to be followed; but if there is something in the guidance, you need to follow it unless you can say why you are not going to follow it. The same thing goes for the policy document from a local authority. Local authorities are almost legislating by putting things in their policy documents with which we then have to comply. That is one issue broader than fraying.

The other is that the Section 182 guidance over the years has had a number of mistakes in it, and there are legal issues in it that it is not really entitled to put forward. Those have been changed, but, even now, there are issues in it that cause problems. For example, there is a new section on planning and licensing.

The Chairman: We are coming to that.

Andrew Grimsey: I agree with John and Roy. Generally, the Act has been a success. Residents have more say, and it is a simpler system. We used to sit around in court waiting to get on, which we tend not to do nowadays. Hearings are quicker and they are dedicated to licensing applications. Generally, it has been a success. We have what we call niggling issues across the country. We act for about 6,500 licensed premises and make about 7,500 applications of any type in a year. There are about 80 councils that still do not accept electronic applications. That is a big problem for us, because we have to print out all the plans and serve nine authorities. There are always problems with the post. Sometimes trading standards will say they have not received the application. Being able to send something electronically is much better and cheaper for everybody, so there are little niggling things like that.

The minor variations procedure, which was brought in a few years after the Licensing Act came into force, was a great idea, but we have problems with councils that do not take a liberal view, if you like. For example, they may say you are not allowed to use the minor variation procedure to move fixed seating. Most councils would say, "Of course; that is exactly what it is there for". Another big issue for us is time-limited hearings. You go to a hearing on a £1 million investment and find that the solicitor for the council has a stop watch and is telling you four and a half minutes into your five minutes, "You have 30 seconds left, Mr Grimsey". It is a bit strange. In one particular case, the chairman let us say everything we wanted to in questions, so it was not a problem, but

you have to ask yourself what you are doing there. It is not very realistic, but generally I agree it has been a success.

Q114 The Chairman: In the written evidence we have been given and the oral evidence we have heard, we have picked up that the level of expertise among members of licensing sub-committees is variable. They are accused of bias towards either police evidence or residents' evidence or of helping the applicant too much. There is probably a need for more formal training. Do you see that as a problem, and how do you believe the Licensing Act could work better to cover those points about bias, lack of training and variable expertise?

Andrew Grimsey: My firm assists with training around the country, through the Institute of Licensing, particularly licensing hearing training. Anecdotally, I am always quite disappointed at the proportion of elected members who are not at that training. It is designed mainly for councillors, but most of those who attend are police officers, licensing officers and environmental health officers. The training we offer with the Institute of Licensing is pretty cheap, so I am a bit disappointed by that. We would like to share their experiences—the training is very interactive—as much as download our legal knowledge.

I do not believe the system is hugely politicised. I have done hearings at about 100 different licensing authorities over the past 12 years. Councillors try to find a middle ground and to be sensible. There is the odd shocking decision, but that will always happen. I do not think there is a problem that things are too politicised or partial, but there may be a problem with basic training on evidential standards and what to expect. Sometimes there are issues with according too much weight to police evidence. Sometimes, particularly in London boroughs, residents have a greater say than they might outside the capital. I am not able to analyse that; I just know it from colleagues who do a lot of work in London. It is in our written submission that, if a circular goes out to 2,000 residents, one resident objects; nobody else does. The resident does not turn up at the hearing, but the condition they want is put on. There is a slight worry about the balance.

Professor Roy Light: I agree with all that. The standard varies unbelievably from one end to another. Some licensing committees I have been to almost bore the marks of a pantomime; they have been so ludicrous, for example a councillor putting her fingers in her ears and saying, "La-de-dah-de-dah. I am not listening to you", when I was trying to put a legal argument. Two weeks ago a councillor said to me, "Do not give us any case law, Mr Light. That is not for you to do; our legal adviser gives us case law. Take it back; we are not having it". The legal adviser said, "Well, it is for Mr Light to give you case law, and please take it". The standards are hugely variable, among not just members but the other people involved in the licensing hearing. The poor legal adviser has to advise on licensing law as well as every other law the local authority has to deal with.

All of them need training. I am going to the south coast next week to do a day's training with a licensing committee. I have had the same experience that has just been mentioned. At one all-day training session, half of them said, "We are not staying here until 4 o'clock. It is 10 o'clock now; we are going home at lunchtime; we are not interested in staying here all day for this". It was so great of course that they did stay all day and they enjoyed it.

Lord Blair of Boughton: Obviously, you had to lock the doors.

John Gaunt: The committees appear impartial, and they probably are impartial. Undoubtedly, as you approach election time, residents seem to have a little more sway than perhaps they would just after an election. That is noticeable. There is a problem with attitudes towards police evidence, but based on the questions sent in advance, we may come to that later. The role of the legal adviser is critical. In some cases, the legal adviser proactively advises the licensing committee, which is helpful because it keeps them on a relative straight and narrow. In other experiences, the licensing adviser is entirely meek and mild and is there almost as a token. On Roy's point, when I am putting a case to a licensing committee I always say, "I am sure your legal adviser will confirm" and then say it, and hope the legal adviser's head goes up and down and not sideways. Generally, there is huge variety.

Licensing statistics came out last week, or the week before. Interestingly, more than 3,000 new licence applications went to a hearing in the year to last March. Only 271 were refused. You could use that statistic either way and say they are disproportionately biased in favour of the applicant or against the applicant. It is probably a reflection of the quality of the application, not to mention the advocate of course.

- Q115 **Baroness Henig:** We will come back to the point Professor Light touched on: the planning as against licensing issue. Licensing is a regulatory regime that sits alongside other regimes, including planning and environmental protection. The Government's view is that the Licensing Act "is being used effectively in conjunction with other interventions as part of a coherent national and local strategy". Do you think that is right? Should the licensing regime work more closely with other related regimes, particularly planning? We have come across examples of big issues in that area.

Professor Roy Light: Planning and licensing are separate regimes. They have similar but different criteria. What tends to happen is that the local policy document will say something about whether or not that particular committee sees them as separate or not. Again, we have a problem with different licensing committees around the country taking different approaches, and different policies saying different things. Generally, they need to be separated at the moment. If you go for a licence until midnight but you have planning consent only until 11, that does not mean you can open until midnight; it means you can open only until 11, but you can apply to have your planning consent changed, whereas if you were given 11 you would have to apply for both to be changed. There

may be a way forward, and the Section 182 guidance suggests that. I wrote it down somewhere so that I would remember it. They seem to be trying to merge the two together in the way it is written.

The Chairman: While you are looking for that, would the other panellists like to come in?

John Gaunt: There should be a separation, and I think there is a separation. The committees perform different functions. One is about the use of land—you have heard this in evidence before—and the other is about how the premises should operate under the Licensing Act in accordance with the licensing objectives. Planning is a responsible authority, so it has the opportunity to make a representation at a licensing application. That does not happen very often. When it does, normally it is only to reinforce the fact that planning is not yet in place or what have you. I am not sure that the planners necessarily understand the licensing regime itself. The question that came to me originally also talked about other responsible authorities. I do not know whether I can touch on those very briefly.

The Chairman: We might be coming to those, but perhaps you would like to deal with them briefly.

John Gaunt: There are a number of responsible authorities. Fire does not engage at all now because there is a separate regulatory regime, and it is up to us. Interestingly, child safeguarding takes a more active role, which is perhaps a sad reflection on society. We act for a lot of hotels, and they are very interested in policies about the avoidance of possible sex exploitation there. Of course, health is a consultee. Its involvement at the moment is in its infancy; there is very little involvement, but as far as planning and licensing are concerned the separation should be maintained. They perform very different functions.

Andrew Grimsey: At the moment, apart from a bit of confusion among some of our clients who think they have licensing permission and forget about planning—sometimes residents take the same view—the licensing authority seems to keep the two regimes separate, and planning very rarely gets involved in applications. We had a strange example in one city where the planning policy was very pro the late-night economy and, on the back of that, our clients made an application, but it was in a cumulative impact area, so the licensing policy was against a late-night environment. We tried to argue, “Your planning supports this”, and the committee said, “We are not bound by that”. Of course, they were not, but it was a bit strange. However, those examples are few and far between.

Q116 **Lord Davies of Stamford:** You and others over the past few months have given interesting examples of lack of coherence sometimes between the planning and licensing functions in the local authority. I was bestirred by your colleague’s statement that a lot of planners do not understand the licensing regime. Could some statutory change be conceived that might compel the two functions to maintain a greater degree of

coherence, such that they have to consult each other at certain critical moments and they have to take on board, or report to each other, any particular problem that is likely to arise that could conflict with the other's functions, or something of that sort?

John Gaunt: I think I commented on the lack of understanding. Perhaps I did not put it as clearly as I might. A representation from the planners will be planning-related rather than licensing-related. It does not concern the licensing objectives or anything like that, so it is irrelevant to the licensing process. When I said they did not understand, I really meant that they did not understand the framework within which they should be making representations to the licensing authority.

Lord Davies of Stamford: The citizen is entitled to think that, when he is dealing with the local authority, it is acting in a coherent fashion and is not saying one thing through one department and another thing through another department. That seems an essential general principle, and obviously it is not being observed sufficiently often in this case.

Professor Roy Light: That is absolutely right.

Lord Davies of Stamford: What do we do about it?

Professor Roy Light: In the Section 182 guidance, paragraph 9.44 states: "Where businesses have indicated, when applying for a licence under the 2003 Act, that they have also applied for planning permission or they intend to do so, licensing committees and officers should consider discussion with their planning counterparts prior to determination with the aim of agreeing mutually acceptable operating hours and scheme designs", which is exactly what you are suggesting.

The Chairman: We are coming to the guidance.

Professor Roy Light: But this is a planning issue, and Lord Davies is quite rightly raising the dysfunction between the two.

Lord Davies of Stamford: But we have just agreed that that solution is not effective.

Professor Roy Light: That solution should not be there, because it suggests that the planning decision is decided with someone from licensing behind closed doors, and vice versa. There are different criteria under both regimes. Therefore, it would be open to all sorts of challenges because the applicant would not know how his or her planning application was decided if it was discussed with licensing, but that is an avenue for the development of this into something workable, along the lines suggested.

Lord Davies of Stamford: We would be grateful for your solution.

Professor Roy Light: You could have a regulation that mirrored that and made it a statutory obligation to have those discussions beforehand.

John Gaunt: With transparency.

Professor Roy Light: It would have to be transparent; otherwise, it would not work.

Q117 **Lord Brooke of Alverthorpe:** In relation to consultees, Mr Gaunt observed that the health aspect was very minimal. I think the phrase was “in its infancy”. Do you think there should be closer collaboration? The question was, should the licensing regime work more closely with other related regimes? Should they work more closely with health?

John Gaunt: That is a much wider topic. I know that one of the things you have discussed is the health objective. I am conscious, because I had a conversation with your clerk, that we have experience in Scotland where health is the fifth objective. He specifically asked me to deal with that separately and to write to you with my views on the subject. The trouble with health as a licensing objective—I may be straying on to the wrong ground, and, if so, I apologise—is that it does not sit comfortably within licensing. In Scotland, where the licensing law has been running for the best part of seven years, the boards, the licensing agencies and advisers are still not comfortable with how health is dealt with. There is great tension. The trouble is that health evidence is statistically and regionally based, and it is very difficult to condescend that to the individual application being considered by the licensing committee at the time. That is a problem I have seen countless times in Scotland before licensing boards.

Lord Brooke of Alverthorpe: Given that the Act has generally worked quite well in your opinion, and that this is an emerging aspect that is in its infancy, and given the problems you have just mentioned, how would you see its being tackled?

John Gaunt: Health, unless it can be specifically attributed to premises, should not form part of the licensing objectives under the Licensing Act. The Licensing Act can be a very blunt animal for hitting various social ills and problems, unless a specific problem is related to specific premises—in circumstances where something arises and can be addressed. At a more general level, it is very difficult and fraught.

Andrew Grimsey: I know you have heard the argument before, but there has been a golden thread running through the licensing system since 2005, which is that every application and operator is treated on their own merits. I can say that having made applications for all sorts of different premises, from off-licences through to festivals and everything in between, and dealing with them at hearings. As it stands at the moment, there is an acceptance that you cannot really be blamed for things beyond your control. The problem lawyers and perhaps other parties might have is that you cannot argue against general health data. That is the difficulty. I am not saying whether I agree or disagree with it, but in the way the system has worked to date, that is one of the difficulties we have.

Professor Roy Light: It is interesting that previous attempts to change the licensing regime to liberalise it, like the Errol Committee report,

raised huge public health issues. This one did not at all when it was going through. The public health lobby was absent for some reason.

When considering licensing, we are looking either to control it or to liberalise it. We go through phases of liberalisation and control. We had Victorian control and then liberalisation in the 1960s. One of the main problems with this Act is that, before it came into its liberalising phase, we were already in a more restraining phase, and we have seen a period of what the Webbs called “legislative repentance”. We have seen endless ways of backtracking from liberalisation. Twenty four-hour drinking never happened. Licensing law exists to control alcohol, which has benefits and disadvantages. We all know that. It seeks to control alcohol and the pleasure it gives and the damage it does in various ways. The way our licensing system is operating, whether that is right or wrong, is that it looks for problem premises and problem people. We are looking at problem drinkers and premises that cause trouble. We look for a particular premises in a particular area and its particular clientele, and we introduce more legislation to cover them—more closure orders for them and so on. Public health is a general societal issue and it is probably not susceptible to reduction to a licensing objective. It is an objective we all have, and there are wider issues about supply, pricing and all those sorts of things that probably should be addressed, but looking at it narrowly under the Licensing Act is not the way to address it.

Q118 Baroness Eaton: We would probably say that the Act was long enough when enacted, but the Licensing Act 2003, as amended, with its associated regulations and guidance, has arguably become more complex. Is it beneficial to have complex and detailed rules within the legislation and guidance to deal comprehensively with every potential scenario, or would a simplified system be better, and if so, how would it work?

John Gaunt: I may be controversial, but I would say leave as is. I do not think there is any appetite in the licensed world out there for wholesale change. We went through change in 2005. We know the system. When I say “we”, I mean the people we represent who understand the system and work with it, so to speak.

The difficulty is that you cannot make it so comprehensive as to cover every possible scenario. That is almost the point Roy made previously. We have a framework that gets tweaked this way and that way. It has been tweaked and, hopefully, might be tweaked a bit less in future, but ultimately guidance cannot replace local decision-making on the application’s individual merits and the facts. I certainly would not go for oversimplification, but equally I would not go for much more complication, because ultimately, if this is about localism and local authorities making decisions with local democracy, you have to leave them a decision to make; otherwise, if you go too far, there will never be a decision to make.

Baroness Eaton: Are you saying that as a local authority it can use more common sense?

John Gaunt: Local authorities should properly apply the guidance largely as it is now. I am sure it could be tweaked in minor respects, but I would not go for wholesale more or wholesale less; we should leave it roughly as it is.

The Chairman: Do you all agree?

Andrew Grimsey: We probably do. The guidance could be very much beefed up. It used to have a lot of helpful examples and references to law and other things. It has been cut away over the years and I can see the reasons for that, but we have got down to the bare bones, and the guidance could clarify a lot of matters that currently cause us some angst on a day-to-day basis.

Professor Roy Light: The guidance is an issue for me. As has been said, there was law in it and there should not have been, because it is not for the guidance to make the law; it is for the courts and Parliament to make the law. There are errors in the guidance and problems with it. One slightly concerning thing is that the guidance used to have to be laid before both Houses of Parliament when it was amended, and it is amended quite frequently. That has been taken away. There needs to be some sort of oversight of the guidance. When the Home Office produces the guidance, there needs to be somebody somewhere to look at it. I do not know what the mechanism would be; I am not a parliamentarian. It is not for the trade or local authorities to campaign for it to be changed in a certain way, but there should be some sort of check on it, perhaps not before both Houses but something along those lines.

In addition, some of the local policy guidance is hundreds of pages long. I do not know whether there could be any guidance to local authorities on how to produce their guidance. Then we would have even more guidance.

Q119 **Lord Mancroft:** One suggestion that has been made, on which we would like your views, is that there may be issues about the way in which the police perform their responsible authority functions. Do you think there are any issues about the way the police present their evidence, and are there specific issues that may or may not give rise to a requirement for training? Does paragraph 9.12 of the Section 182 guidance strike the right balance?

Andrew Grimsey: The relationship between my clients and the police on the ground is usually very good, and that might be both police officers and the licensing officers themselves. Sometimes, there is pressure from above. To quote one very brief example, a few years ago there was a nightclub in the north of England that had turnstiles at its door because it had some very, very dodgy people in there. Gangs used to go there. I had never heard of the place. One night there were multiple stabbings. Within 48 hours, using the summary review procedures, the chief superintendent had it closed down, which was all well and good. He told me that the reason he did that was that he was telephoned by the Home Office saying that that particular city was on a watch list for crime figures, and they had just shot up and he had to do something about it.

The gangs team in the same police department was apoplectic, because the gang turned up at the place the next night, when it was shut, and wreaked havoc in other late-night bars in the city that were not used to dealing with those types of individuals ripping tills out of pubs and nightclubs and doing various other things. By the way, the club is closed and does not house anybody now. I use that example because sometimes there is a breakdown between what my clients agree to do in partnership work with the police on the ground and statistics from higher up. Clearly, those premises had to be closed, but whether the right way was to do it quite so quickly is another matter.

Perhaps I may talk briefly about evidence, which is perhaps more to your point. We have an issue about inconsistency with police evidence. There are two scenarios. There may be a review based on crime and disorder incidents at a premises and there is a summary of those incidents. Another review is brought by the police in a different area, and they disclose all of what you might call the first-capture report—the 999 calls, the whole lot. One will be several lever arch files thick; the other will be just a summary. The problem with the summary approach is that you cannot trust the data, because sometimes in those incidents there will be an A-board falling over or a refusal at the door—good compliance, if you like—and we cannot trust that; but, equally, if we are served with all the first-capture material, it costs thousands of pounds for a lawyer to go through it, so it is a difficult situation for a typical licensee to deal with.

Philip Kolvin QC issued a manifesto for the night-time economy. I believe you requested a copy. On page 9 there is a regulation chapter that lists some of the issues that police evidence should not contain. It is the other way around. I commend that to you as a list of things that we do not want to see in police evidence—where they use premises merely as geographical markers for incidents that take place, rather than incidents caused by licensable activities that are taking place on the premises. I am sorry I have gone on rather too long, but it is close to my heart.

The Chairman: We have two panels and we are extremely challenged for time.

John Gaunt: The question referred to paragraph 9.12 of the guidance. To deal with that specifically, I am not unhappy with paragraph 9.12, subject to one very clear proviso. I printed it out just to make sure I was word perfect, but I am very familiar with it. It is a double-edged sword; if you have a licence application and no police objection, 9.12 works for you because, if you are confronting, dare I say, local residents or somebody else, you can say that if the police had a problem they would be there, but they are not, so they do not have a problem. It can be a positive, if they are not there. There is a problem with evidence from the police, and it is widely accepted and documented. The most significant sentence in paragraph 9.12 is the last one: "However, it remains incumbent on the police to ensure that their representations can withstand the scrutiny to which they would be subject at a hearing". That is the critically important point. Yes, let them be a fountain of knowledge, but let the licensing

committees be alert to the fact that they are not always right, and if properly their evidence is challenged, it should be properly scrutinised and licensing committees should hear it. If there is any bit of emboldening of the guidance that I would recommend, it is that that last sentence is amplified to make clear that it is the committee's responsibility to ensure that that evidence is looked at.

Professor Roy Light: The last thing you want is for the police to object to your application. Applicants will do anything they can to negotiate with and talk to the police, which is what licensing should be all about anyway, but sometimes the police will say, "You have to have this condition about super-strength alcohol"—I know we are coming to that—"and CCTV", and people agree; otherwise, they will have the police against them.

The Chairman: That is very helpful.

Q120 **Lord Smith of Hindhead:** As you know, there have been numerous changes to closure powers since the inception of the Act. Are there any continuing issues? Are the powers of closure under Section 19 of the Criminal Justice and Police Act 2001 being used correctly? Do the amendments of the Licensing Act 2003 by the Anti-social Behaviour, Crime and Policing Act 2014 work effectively?

Professor Roy Light: It is very difficult to answer that. There are now so many closure powers and powers available to authorities and the police to intervene when there are troublesome premises—reviews and so on—that it is difficult to say whether they will work any better or carry on working as they are. The main problem always is the balance between protecting the public from troublesome premises and protecting businesses from having their business stopped and their profits undermined. As far as I am concerned, I will wait and see how those work out in practice.

Lord Smith of Hindhead: Section 19 was designed specifically to give police the power to close premises that were not licensed. The evidence we have is that it is increasingly being used, incorrectly, to try to close premises that have not complied with a particular part of their licence.

Professor Roy Light: I have not dealt with that.

John Gaunt: There are two issues. One is that they are extending the Section 19 closure notice to "minor breaches of licensing conditions", but one of the great misunderstandings out there in the wider world—I am sure not in this room—is that a Section 19 notification says in terms, "You are in breach of your licence", and what it should then say is, "If you do not put it right within seven days, we will apply for a closure order to shut you". The police commonly and increasingly say, "You are in breach of your licence. Here is a closure notice. You must shut". That is wrong in law.

Andrew Grimsey: It was dealt with conclusively in the High Court. Everybody in the trade knew you could not close down premises with a Section 19 closure notice. That was a few years ago, and my firm is now

seeing the odd example of police officers misunderstanding that law again.

Lord Smith of Hindhead: Is there nothing under the other amendment under the Licensing Act?

Andrew Grimsey: Since 20 October 2014, when those provisions came into effect, I think we have had two examples of those closure powers being used. My only other observation about those powers is that the test is for nuisance or disorder, not serious crime or serious disorder, but under the 2014 powers a closure notice really does mean that you are closed for 48 hours. It seems an interesting comparison.

Lord Smith of Hindhead: I think it remains closed until it goes back to the magistrates.

Andrew Grimsey: That is quite right.

Q121 **Lord Davies of Stamford:** Does the appeal system work well? The Home Office states that there are few appeals annually, because the quality of licensing authority decision-making is good. Other evidence suggests that the reason why there are not many appeals is that it is a very expensive and time-consuming activity and an awful lot of issues are settled by negotiation between the licensee and the authority. Do you feel that the appeal procedure is working effectively? Should it be changed in one direction or another?

John Gaunt: If I may start with the statistics that came out the other day, which I thought were quite interesting, 3,068 new licence applications went to committee in the last year, which resulted in 72 appeals. One statistic I may have given earlier is that by far and away the majority of applications are granted anyway. It is very unusual for either a responsible authority or local residents to take a grant to an appeal. The first point is that, if there is a problem with the appeal process, it is quite a peripheral one because there are so few appeals. I am not sure I necessarily agree that it is because the system works so perfectly well; more probably, there are so many grants because licensing committees are making the right decisions.

We have had limited experience of appeals. We have had two in the last two years, and in both cases we appealed against a restriction imposed on a new licence application. It never got as far as the magistrates, because we engaged with the council—the licensing authority—by way of informal mediation. In the nicest possible way, it conceded the point we were appealing, we got what we wanted and the appeal was withdrawn.

Lord Davies of Stamford: On the whole, do you feel that justice is being done?

John Gaunt: Yes.

Lord Davies of Stamford: Therefore, the issue of whether or not there should be a more complicated appeal process, with appeals from the

magistrates to the county court or a specialist tribunal, does not arise because you think the present system is largely satisfactory.

Professor Roy Light: There is a serious problem with appeals, and that is cost. I sometimes represent residents. Generally, they cannot look at the cost of going to an appeal at a magistrates' court. They are told, which is right, that, even if they win, they probably will not get their costs, as the local authority is protected in costs, because its duty is to be able to resist those appeals. That is right, too; local authorities should be protected in costs, but that makes it very difficult for residents. If I am acting for a large corporation, they appeal; they have deep pockets. If I am acting for a small business they might not appeal, because they do not have deep pockets, so there are issues with that.

Lord Davies of Stamford: What is the solution?

Professor Roy Light: The solution may be something like the planning appeal system. As you may know, in that system there are three ways the appeal can be heard, and they are all more or less expensive. It depends on the complexity. The first one is that you just do it on paperwork.

The Chairman: Thank you. We really must tighten up the answers.

Andrew Grimsey: I agree with what Roy was saying.

Professor Roy Light: At the moment, there is nothing but a full-blown hearing. I did an appeal a couple of weeks ago to decide whether or not Subway could heat up a sandwich at 11 o'clock. We spent two days in the magistrates' court, with tens of thousands of pounds of costs, to decide whether or not Subway could heat up a sandwich, which is ridiculous. There is a problem with late-night refreshment, which we have not looked at, but there is also a problem with the cost of appeals.

The other problem is that, when a committee makes a decision and it is appealed, the decision is often suspended pending the appeal. I did a police review where I acted for the premises. Conditions were put on the licence and we appealed. It was suspended and we won the appeal because there was a procedural problem. Something that should have been dealt with in a few months took more than two years. All those issues are raised in appeals. With planning, you can do it on the papers, which is cheap; you can do it in a round table, which is not so cheap; or you can have a full tribunal like an inquiry, which is perhaps like the courts. I do not know whether it would work, but it may be something to think about.

Q122 **Lord Blair of Boughton:** The Government propose to place cumulative impact policies on a statutory footing by way of amendments to the Licensing Act through the Policing and Crime Bill that is currently passing through this House. The intention is to enhance certainty and transparency. Are those amendments the right ones, and will they work?

Professor Roy Light: I like them. They look like an improvement on something that was tacked on. It was the first act of legislative repentance; it was put in the guidance and mirrored need, which was a concept under the old Act about how many off-licences, pubs and so on you could have. It is an example of a local policy document legislating itself for what it will allow in cumulative impact areas. In one area, I won an appeal on three bases and the authority then changed its policy and covered those areas, which are now no longer relevant to appeals. It should be centrally covered, and I think the policies are good, transparent and workable.

John Gaunt: The first thing I like is that it will be on a statutory footing that they must be reviewed every three years, and the evidence must be transparent. The second important point is that it is fairly clear from the legislation that it is not mandatory for licensing authorities to have a cumulative impact policy, but if they choose to adopt one they must do it on a more transparent basis than they do at present.

Andrew Grimsey: Generally, I welcome the proposal but I am concerned about the three-year review. Some cumulative impact policies can be just one street, which is great because it is very targeted, but if one nightclub on a street closes down, 1,000 people are not going into that street every weekend, and it might be three years before the licensing authority has to take that into account. You cannot provide that they have to review it every month, but three years is a long time in some cumulative impact scenarios.

Q123 **Baroness Watkins of Tavistock:** Evidence from 15 local authorities identified that super-strength alcohol is a prime cause of concern to local communities near the point of sale. Some of them, following guidance from the Local Government Association, have introduced schemes inviting or requiring off-licences to stop selling alcohol over 6% by volume. Are these schemes lawful?

Professor Roy Light: We could not possibly give you legal advice here without our insurance policies to cover us.

The Chairman: We could not afford it, by the sound of it.

Professor Roy Light: The Portman Group, on which I sit as a member of the independent complaints panel, has recently wrestled with this. It may be worth contacting the Portman Group. There are four initiatives at the moment. There is one government initiative looking to take 1 billion units of alcohol out of the system. They suggest that people continue to drink as much but at lower alcohol levels, so everyone benefits and no one loses. There is a responsibility pledge by the industry to try to lower the levels. The Portman Group recently said that 500-millilitre cans of high-strength lager are against the Portman code, because the code says it must not encourage immoderate drinking. If you open the top of one of these cans you cannot reseal it, and it is more than your daily limit. The Chief Medical Officer has just changed the limits. There are no longer

daily limits, as you know; there are now weekly limits, so that basis does not exist any more. That is being looked at again.

As far as schemes in local areas are concerned, if there is a problem with particular premises and perhaps street drinkers in an area, and it is properly researched and done, as the first one was, in Ipswich, it can probably be justified as a condition, but if it is just the police saying, "We would like to see that on your licence", probably it is not.

Baroness Watkins of Tavistock: We have had clear evidence presented to us over the last couple of months about not only the lager or beer you are talking about but white cider and its availability, in particular that young people and those with alcohol problems are tanking up on it before going to licensed premises. It seems to be a real problem. Although you cannot give us legal advice, do you see it as a problem for society and one that somehow we should find a way round?

Professor Roy Light: It is certainly something that warrants further investigation to see whether or not it is a problem. It is highlighted and flagged by several institutions; in particular, some people from Portsmouth are very vociferous about it. The Portman Group has looked at it and may be helpful. The issue with licence conditions is that they have to be targeted specifically on the premises and have an evidential base. If you have that, you probably are okay as far as the Licensing Act is concerned, but are you okay as far as competition law is concerned? The authority suggesting it may be in breach of competition law, and if retailers agree to impose one of those conditions they may be in breach of competition law. Local authorities owe a duty of care to businesses in their areas, so they may be in breach of that duty, too. As the Local Government Association guidance to local authorities says, before they think about introducing one of these, they should get legal advice. I will leave my card, but may I suggest you get legal advice?

John Gaunt: If you read the LGA guidance, it is full of "You must get legal advice". A quarter or a third of the advice is "Take legal advice", which probably answers your question in part. It is a very difficult area. The question I would pose is a slightly wider one. Is the blanket approach of a community scheme the right one? The alcohol—the beer, wine or white cider—is being sold by specific premises. If it is a cause of crime and disorder, or whatever it may be, why not address that with the individual premises concerned? That has been the approach used in my home city of Sheffield very effectively.

Andrew Grimsey: I agree. Craft beer is wholly different from White Lightning or whatever the brand is. Going back to the point about the golden thread, every application must be treated on its own merits. As long as there is room for an operator to say, "I am different; I am not part of this problem. In fact, I might be part of the solution because my beer has a high price and it is for connoisseurs", I imagine there is legality.

The Chairman: Gentlemen, thank you so much for being excellent

witnesses and for being so generous with your time and answering our questions so fully. Having had an all-male panel, we are now going to have an all-female one. Thank you very much for being with us today.