



Select Committee on the Licensing Act 2003

Oral evidence: The Licensing Act 2003

Tuesday 22 November 2016

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

Evidence Session No. 16

Heard in Public

Questions 166 - 172

Witnesses

I: Peter Adkins, Director of Regulatory Services, Emms Gilmore Liberson Solicitors, Paul Varney, Association of London Clubs, and George Dawson, Union President, Working Men's Club and Institute Union.

Examination of witnesses

Peter Adkins, Paul Varney and George Dawson.

Q166 **The Chairman:** Gentlemen, thank you for your patience. I welcome you most warmly. Thank you for joining us this morning and coming to give evidence to us on the Licensing Act 2003. A list of members' interests relevant to the inquiry has been sent to you. I understand that copies are available today.

The session is open to the public, is broadcast live and is subsequently accessible via the parliamentary website. A verbatim transcript of the evidence will be taken and will be put on the parliamentary website. A few days after the session, you will be sent a copy of the transcript to check for accuracy. It would be helpful if you could advise us of any corrections as quickly as possible. If after the evidence session you wish to amplify or clarify any points that you make during the session or have any additional points that you wish to make, you are welcome to submit supplementary evidence to us—the sooner, the better.

Could I commence by asking a general question? Can you give us a general view of how effectively you think the Licensing Act 2003 has operated over the last 11 years? Has it operated in the way you believe it was intended to operate, or otherwise?

George Dawson: I am George Dawson, president of the Working Men's Club and Institute Union.

The Chairman: You are very welcome.

George Dawson: Generally it has worked very well. There has been a bit of row-back on the flexibility that was originally intended—the 24-hour opening—especially with the late-night levies, et cetera. When we applied for our licences in 2005, all eventualities were covered by having licences until 2 o'clock. Most of my clubs claim for 8 in the morning until 2 in the morning, every day of the week. They do not use it all the time, but they do it to have flexibility over periods of celebration—100 years of the club, et cetera. A lot of clubs—it is only in some areas—now have to do a variation, because six authorities decided to do the late-night levy. They get charged a late-night levy if the club premises certificate says, "until 2 o'clock", even though they may not use it all the time, and they may use it on only two occasions in the whole year. Then they have to apply for a temporary event notice. The flexibility seems to be going from the idea of what was originally intended, but generally it is working well.

The only problem that the union has with different authorities is inconsistency. Different authorities interpret the law in different ways. We have a difficulty with advising our clubs in one area about something that we feel is not part of the Licensing Act, and trying to educate the licensing officer in that respect. In other areas, we have no difficulty whatsoever. If you have no trouble in your club, they just leave you alone to get on with it. The inconsistency is the worst part of the Act.

Paul Varney: I am Paul Varney from the Association of London Clubs. We have adapted to it now. It works very well for the London clubs. Unlike George, we deal with just three authorities, with a majority in Westminster. Other than costing us all an awful lot more money each year than the 10 year Club Registration certificate that we used to have, it works well. We would prefer the least amount of change, or no change at all. As not-for-profit clubs, we would not like to be lumped together with the commercial elements. We have the hours that we need. Temporary event notices are regularly applied for and granted. We do not have many of those. Normally they are for celebrations or regular club events. The licensing works very well for us.

Peter Adkins: In general, it seems to work very well. It is certainly an improvement on the old system. Although you get some strange licensing officers and police who interpret the law in different ways, generally across the country we have a fairly pragmatic and consistent approach to the law. When we deal with people who are all over the country, it is fairly easy for us to advise them on how things should be implemented. The approach of the legislation, in combining late-night entertainment and late-night refreshment, is a good one, although it seems that they are now being split again. It brought in those three regimes. Putting licensing with councils was also a good idea. After all, they were more used to licensing systems generally, and it was not a judicial function. I also like the default nature of the application process. If it goes through and there are no objections, that is it; there are no hearings. That helps to keep the costs down for my client base. In general terms, I like it. It seems to work very well.

Q167 **Lord Brooke of Alverthorpe:** Good morning, gentlemen. You seem to be reasonably content with the way it is working. Do you think there is an argument for removing the special category of club premises certificates completely and moving members' clubs into alternative, more flexible categories, such as CANs—community and ancillary sellers notices—if and when they come along? Have you given any thought to that?

Paul Varney: We do not change how we use the licensing very much at all. The clubs are very traditional and do the same things each year. We would prefer to stay on our own and not be subject to all sorts of chopping and changing that is likely to come. There would be no advantage at all to us in moving. In fact, it would be a disadvantage.

George Dawson: I agree with Paul. It is a system that is working. When the new system came in, I had quite a number of long-standing secretaries of clubs pack up, because they found it too difficult. That lost a lot of experience in the clubs. Some of them came back after we had shown them how to fill in the forms, et cetera. The system is working at the moment. There are problems that I have pointed out, with extra things such as the late-night levy and things that been tried before like alcohol disturbance zones and EMROs—I cannot remember what the acronym stands for. I have always thought that those extra things were quite unnecessary. They have an impact, but the system should be left as

it is, instead of chopping and changing again and moving to a different system.

Peter Adkins: When this question came up, I started to do a little research into community and ancillary sellers notices. Of course, there are no regulations out, but the main drive seems to be for bed and breakfast people, community events and so on. It does not seem to fit very nicely with what clubs do. Clubs have always had a separate licensing regime. One of the best things at the moment is that we do not need a DPS—a personal licence holder. I am not certain that this regime would fit well with clubs. I am with my colleagues here; there is no need to change the system. It seems to work reasonably well. We are used to it. We have been using it for 11 years. To change it all around will just cause more problems.

Earlier, Mr Varney commented on the annual costs. That may well be a high factor for the London clubs, but for most clubs out in the regions we are talking £190 a year. It is not a huge factor that this would be a cheaper route.

Lord Brooke of Alverthorpe: It is, of course, a self-certificating system, if it comes.

Peter Adkins: Absolutely.

Lord Brooke of Alverthorpe: You would not have to go through the process of being examined by others, unless you got into trouble.

Peter Adkins: Yes. We would probably need the same system for the club premises certificate to fall back on, so we would be introducing a third level.

Q168 **Baroness Grender:** Your use of temporary event notices is very different from that of a commercial operation right in the heart of Camden market, for example, that uses a regular temporary event notice system. Then different clubs next to one another do exactly the same to extend into the early hours. That has a significant cost for local authorities, whereas the temporary event notices that you use are rare and are predominantly for community events. Do you think that there is any merit in feeling a bit sorry for local authorities—according to the LGA, temporary event notices are run at a significant loss—and separating them and having some kind of change? Should there be a different system for that kind of high-end, commercial use of temporary event notices, rather than the £21 local event notice system?

George Dawson: In my experience, when a temporary event notice is used by a private members' club that has a club premises certificate, it is usually when the club would like to advertise and invite the general public to a charity function or something like that, so that it can raise more money for whatever charity it is supporting. It may be an event that is put on to celebrate a local person who has just got an OBE. In that context, it is used only to allow us to supply the public with sale by retail, as opposed to mutual supply to a member. In my experience, that is

what most of them are used for. We have been given the flexibility to operate until midnight or 1 o'clock in the morning, which we originally applied for 10 years ago, although I know that six authorities have the late-night levy. Most clubs took that up, so they do not need a temporary event notice for extensions. I do not understand why a premises licence individual—a public house or a commercial enterprise—has not already used the advantages of the Licensing Act to apply to operate until 2 or 3 o'clock in the morning in their normal premises licence.

Baroness Grender: The evidence is that they do not. They use TENs in a highly commercial environment.

George Dawson: That was not the function of TENs when they came in. Talking from the mutual side, the temporary event notices were brought in so that we could have a wider audience coming to our clubs on odd occasions. Commercial properties should have taken advantage of the 24-hour opening that the Government wanted in the first place. I do not think it is a correct use of them. If they were separated, a mutual would have the 15 temporary event notices for special functions that you have in a private members' club. It should be treated differently from a commercial exercise where a pop group is on until 4 o'clock in the morning. Then the council would have to decide which one was which. Given the ignorance of the law that some licensing officers have, I hope they would not make the wrong decision and that a private members' club would not end up paying £100, instead of £21, and getting the wrong type of temporary event notice. I agree with you. The commercial premises should have put it into their licence in the first place.

The Chairman: Mr Varney, do you agree?

Paul Varney: Yes, exactly that. We would not want to be lumped together with the commercial market, if there was a differential. What we do is social—it is for members and their guests—so it would be wrong to lump us in with a commercial enterprise. If it was split, there would need to be very clear guidance that the clubs were in the lower category. We have very few of them, anyway.

Peter Adkins: Generally I would agree, particularly with Mr Varney. The main problem is in the definition of what is commercial and what is not. A social club may well run a major event on New Year's Eve, for instance, which will bring money into the club and raise the club's coffers. Is that commercial or not? They are not-for-profit clubs, obviously, but there is money coming in. I can see various other premises licence holders thinking, "They are holding that event and paying £21. We are paying £150. What is the difference?" There may have to be a blanket exemption for CPC holders, for instance. It will be in the interpretation, more than anything else. I am for anything that will reduce the costs for clubs.

The Chairman: For "social", you would read "community".

Peter Adkins: Yes.

The Chairman: You would differentiate them in that way.

Peter Adkins: Yes.

The Chairman: That is very helpful.

Q169 **Baroness Goudie:** Some private members' clubs have faced declining numbers and have opened their doors to the public, for which a standard premises licence is required. Have those clubs experienced any problems with the wider licensing system? If so, are there amendments that you would like to see that would help to rectify them?

Paul Varney: For our clubs, that is not quite the case. Our memberships are increasing, rather than declining.

Baroness Goudie: That is a London syndrome—a City syndrome.

Paul Varney: It is a fortunate position. Very few have a full licence. Some do, but our needs are perhaps slightly different, in that we enjoy a degree of success and increasing memberships. We are very fortunate.

Baroness Goudie: You are fashionable.

Paul Varney: We are going to have to be.

Baroness Goudie: New ones are starting up as well.

The Chairman: That seems very well informed.

Peter Adkins: We do not have the advantages of Mr Varney's membership, because clubs are decreasing in number rapidly. I think that there are now 5,500 fewer clubs than there were five years ago.

Lord Smith of Hindhead: It is 3,500.

Peter Adkins: Sorry—3,500. Most clubs like to hire out rooms as a way of bringing in income, so I would always advise them that they must have a premises licence. The difficulty is that sometimes the neighbours, who have put up with the club being there for ages, use it as an excuse to have an argument about it and we end up in hearings. That drives up the costs, of course, even though they are looking for exactly the same hours. The police tend to jump on the bandwagon as well and to want more security—CCTV. Those are all good reasons, but they tend to drive up costs.

Most clubs have an arrangement whereby they keep their club premises certificate and have a premises licence only for particular rooms, such as a function room, so that they can keep the club separate. They may use it two or three times a week or two or three times a month, but because they use it more often than the TENs limit, they need that premises licence. That leads to their paying two lots of fees. They keep their CPC and their premises licence, so annually they pay two lots of fees. It also causes a problem as to who will be the designated premises supervisor—the personal licence holder. I always advise clubs that they need at least

two, because in clubland it is normally the steward, and stewards have a habit of leaving. You have events organised, but suddenly you have no personal licence holder, so no premises licence. There have been changes in the Licensing Act to exclude the need for some premises to have a DPS. If that could happen for clubs with a premises licence, it would be a positive move.

Paul Varney: I agree.

George Dawson: I have experience of this, because my own club has a CPC and a premises licence. The steward is the designated licence holder, which you need for a premises licence. We use it mainly for the function room, which holds 350. We cannot always fill it, but because it is near the town centre, quite a lot of people want to use it for functions. Our club would not survive if we did not have that. Out of the 1,600 clubs in the union, getting on for 600 have both a CPC and a premises licence, for the same reasons that have been indicated. A lot of them built up large concert rooms in the 1960s and 1970s when, if you did not get there at 7 o'clock, you would not get a seat. With the change in social life, people are sitting at home and watching telly, instead of going out, and buying cheap booze from supermarkets—

Lord Brooke of Alverthorpe: Well said.

George Dawson: People do not have the social life that they used to have and that we all wish they still had, so a lot of clubs have had to survive in that way.

Personally, I have found no difficulty with the idea of treating us differently on a premises licence. We put ours in quite early, so we got it for between 8 and 2 o'clock in the morning, with no objections. Most of the clubs that I advised on it have had premises licences for six or seven years, so there has not been the opportunity to object. As Peter said, there are a lot of vexatious people about these days. One individual can stop something going on, even though the 120 who live round about are quite happy with it.

I cannot see that much of a change needs to happen. The system changed so that the personal licence holder does not have to get their licence renewed every three years; they have it for life. That has been a very good improvement. I cannot see a problem with it. We might get more advantages from being treated differently, but I do not know how it would work if you treated one premises licence differently from another. You might as well keep it all the same. Then it will not confuse people.

Q170 **Lord Foster of Bath:** Incidentally, Mr Dawson, I know that until 2004 your members had their own brewery and got their beer from that. I want to move on to the current situation, but you might want to reflect on that and the ties you have.

I am interested in the whole business of the rules of the game that say that, to meet the requirements, a club has to be acting in good faith. In one sense, that is clearly about the provisions in relation to the buying of

alcohol. It is quite clear that exclusivity agreements, whereby a club is tied to a brewery, could be considered by many to be an example of not acting in good faith, based on the rules. What are your thoughts on that?

George Dawson: We had a special exception with the Federation Brewery and the Crown Brewery. They did not come into it because both of them were co-operative or mutual societies.

This has been in subsequent Licensing Acts, since the 1896 or the 1906 Act. The issue is interpreting whether or not it is a tie. If your barrelage is going down and you have gone from 500 to 300 barrels, to get the best deal from a brewery, instead of having two breweries in and getting an £80 a barrel discount, you might have to go to one brewery to get a £100 a barrel discount. That would not be exclusivity, unless you started to borrow money from it. There is not much funding available. Banks have not wanted to lend money to clubs for 20 years. In fact, a lot of breweries do not want to lend money any more. To me, that is a tie-in. The breweries write the agreements in such a way as to set you a barrelage target, but they also have clauses that allow you to purchase from outside, rather from them exclusively. You can have a guest beer, for example. They are quite canny about not taking it as a tie-in, as surely that would be a tied house. There are laws against that, under the 1989 beer orders.

Lord Foster of Bath: I want to be absolutely clear. In Section 63, it says that one of the matters that will be taken into account is "any arrangements restricting the club's freedom of purchase of alcohol". You are saying that your members will enter a deal with a brewery for it to provide you with the vast majority of the beer, but there is always a clause that allows the club to get beer from somewhere else.

George Dawson: Yes.

Lord Davies of Stamford: Does it allow you or require you?

Lord Foster of Bath: The beer order allows them to.

George Dawson: It allows you to. It would defeat the object of the agreement if you were not hitting the barrelage.

Lord Smith of Hindhead: If you do not hit the barrelage, you get a penalty.

George Dawson: You get a £50 penalty. That is how they try to get around its being a tie.

Lord Foster of Bath: Yes. With respect, it is also you, as the club, trying to get around its being a tie and therefore losing your licence.

George Dawson: Yes. I have known only one club—a club in Barrow-in-Furness—where that section has been used, but that club had 20 other offences as well. It was one of 20 offences. That is the only club, to my knowledge.

Lord Foster of Bath: I would be interested to hear the views of the other two panel members on this issue. Do you think there is a need to change?

Paul Varney: I have heard what Mr Dawson has just said. We do not have any such arrangements in our clubs. We have a wine committee, which is responsible for the selection of wines and beers. We are not tied at all. We would not have only one supplier; we would have a number.

Peter Adkins: I do not see any problem with this. It is still the case, unfortunately, that some clubs are desperate for money, and that brewery loans are available. I do not like it, but they still do it. If you remove certain arrangements with brewers, those loans do not become available.

Again, it is a question of interpretation. I was speaking to one of my clients, at the Austin Sports and Social Club, which used to have 10,000 members. Obviously that went wrong. He was saying, "What if I get in four brewers, make them tender for the job and we do the best deal with them, through a proper tendering process? Will that cause problems with good faith?" It is the same thing, but a different way around. I do not really see it as a problem. My clubs do not really see it as a problem either. I am with Mr Dawson. I have never heard of any club being challenged on the basis of good faith. That is the least of their problems at the moment.

Q171 **Baroness Watkins of Tavistock:** Under Section 62(2), an interval of at least two days must lapse between nomination or application for membership and admission to membership. That two-day requirement is no longer applied to establishments such as casinos. Do you think it should still apply to clubs operating under club premises certificates?

Paul Varney: It should remain very much in force. It is what differentiates us from casinos and profit-making clubs.

Baroness Watkins of Tavistock: It is a quality standard.

Paul Varney: Yes. It gives other members a chance to see who is being elected. There is then a process either to admit or not to admit members. It is very important that that stays and differentiates us.

Peter Adkins: In reality, it is quite unusual for a club to have as a rule that you can become a member within two days. Most club rulebooks would require 14, approval by the committee and so on. That is because clubs are social entities. It is the old Groucho Marx comment; you want people there who you know will fit in. The other problem with having almost instantaneous membership is that a lot of clubs still own their premises. You may have someone turn up and become a member. If two years down the line the club closes and you have someone who came one night, became a member and has never been seen since, what happens? Tracking those people would be almost impossible.

George Dawson: I am pretty sanguine about it, because all club rulebooks usually say seven, 10 or 14 days. From the point of view of equality or standardisation, if casinos have the two-day requirement removed, why can we not have it removed? The two-day provision appears in rulebooks, when you have temporary members. You can have temporary members and temporary affiliates who have moved into the area for a holiday for one or two weeks. I have one club in a walking area that uses it quite a lot—if anybody knows Hebden Bridge—because it has people who come around walking, are there for a week and are made members for two days.

Lord Davies of Stamford: Are they members of corresponding clubs already? Is that how they come in?

George Dawson: Not necessarily. If they were a member of an associate club, they would just sign in as an associate. It would not bother me if the provision was removed and it would not bother me if it was left in.

The Chairman: You are ambivalent. You are not bothered.

George Dawson: As with the example I gave to Lord Foster regarding the beer tie, I have had only one licensing officer where it was an issue—it was either in Coventry or on the south coast. The licensing officer sent a letter saying, "We are not accepting your rulebook because it does not say 'two days' and the law says 'two days'". The union wrote a letter pointing out that 10 days had to elapse before someone was made a member. We said, "They are well within the law, so why are you asking them to move it down to two days?" The licensing officer got the message and stopped bothering the club.

Q172 **The Chairman:** Excellent. How is your average current membership of clubs looking? Do you believe that the closure of clubs is due to a change in drinking behaviour, if more people are drinking at home?

George Dawson: I became a treasurer at 18—a week before my 19th birthday—so I have been involved in clubs for 34 years. There has been a decline in the on-trade generally over 34 years. It has been a steady decline. The biggest decline—you will know from this that I am a smoker—was when the smoking ban came in. That was the most massive decline that every club has had. That is why we are looking more to TENs for commercial reasons, to keep a club open. Previously we would not have needed to do that, because we had enough people coming in.

There is also cheap beer from supermarkets. However, I point out that, 25 years ago, we had a discussion with John Smith's Brewery at which quite a number of us derided one of the directors who was there because somebody could go down the road and get four cans of John Smith's at the supermarket or the off-licence more cheaply than the club could buy in the beer. It is not a new problem with supermarkets. It has always been the case that they have been cheaper, but more people are now staying at home watching "The X Factor" and other such programmes.

Lord Brooke of Alverthorpe: Ed Balls.

George Dawson: Yes. I suppose he has to do something.

The Chairman: Mr Varney, do you agree?

Paul Varney: It is probably not so relevant to us. Members come to the clubs for a number of reasons. The smoking ban has certainly affected us.

Peter Adkins: There is no doubt whatsoever that club membership is declining in working men's clubs generally across the country. Those that are doing reasonably well are normally sports and social clubs or have good sporting teams associated with them, rather than the old-style clubs. Miners' clubs, for instance, have effectively evaporated.

A lot of the major manufacturing industries used to have social clubs attached to them and have cut them loose. They may still be there, but industries do not support them any more. Earlier, I mentioned the Austin Club. It used to have a regular payment from everybody who worked at Austin. Of course, that has just evaporated. Socioeconomic changes have meant that people are not going to those kinds of clubs any more. There is an ageing membership. They find it harder and harder to get younger people through and, sadly, they are declining. We can debate the figures, but it is bad.

Lord Smith of Hindhead: I apologise for the earlier comment. I am not giving evidence today.

Peter Adkins: I currently act for five or six clubs that are in the process of dissolution. That is a sad thing, but I am not certain that there is anything that we can do here to help. It is a different environment we have to look at.

George Dawson: Peter is a solicitor. He is painting a very grim picture of private members' clubs. We have had a considerable amount of difficulty, but we are still a significant part of the on-trade. There is £21 billion in the on-trade in beer. CIU probably accounts for 5% of that by itself, but the ACC has 900 clubs. There are also British Legion clubs. We are still a significant player in the on-trade. The on-trade has shrunk tremendously, but it is not all depression and everybody closing down.

Paul Varney: Far from it.

George Dawson: We are looking at different avenues to keep our clubs open. Do not think that we are all going to close down tomorrow.

The Chairman: I thank you most warmly on behalf of the Committee for participating, being so generous with your time and giving evidence today. We are very grateful to you. Thank you very much. In releasing you, I ask the Committee to stay back for a few moments of private business.

George Dawson: Thank you for inviting me to come and represent my clubs' interests at the Select Committee.

The Chairman: You are very welcome. We will all come to Hebden Bridge.