

Date: 22 August 2019

James Dornan MSP  
Local Government and Communities  
Committee, T3.60  
The Scottish Parliament  
EDINBURGH  
EH99 1SP

Dear Mr Dornan,

### **Alcohol Licensing and Local Communities**

I refer to the above and to your letter of 10 April 2019 and thank you for extending the response date to 2 September 2019. I am responding in my capacity of Clerk of the East Dunbartonshire Licensing Board (the “Board”). I note from your letter that the Local Government and Communities Committee (the “Committee”) has been in-gathering evidence on the topic of using alcohol licensing to improve health outcomes in local communities and that the Committee has identified key themes. I am happy to provide a response to the questions that you pose in your letter.

*Q1. What Boards see as the main challenges and opportunities to delivering public health objectives via the licensing system.*

There are a number of issues which face the Board when attempting to deliver public health objectives via the liquor licensing regime contained in the Licensing (Scotland) Act 2005 (the “Act”).

When the Board receives an application for a premises licence the NHS, via the East Dunbartonshire Health and Social Care Partnership (the “HSCP”), is always consulted. The Board require to carefully consider the nature of any objection or representation that is received from the HSCP when deciding upon an application before it. The Board is also required to consider other issues which may compete or conflict with the position of the HSCP. For instance the Board has a key role in the delivery and maintenance of a successful and thriving economy in East Dunbartonshire. Therefore, public health considerations are but one aspect that the Board must balance when arriving at decision regarding licences.

One issue that requires clarification is the legal status of the licensing objectives and how far

the Board can rely on these in support of other objectives, such as public health objectives. Case law has introduced a degree of uncertainty as to how far a Board can go when promoting a licensing objective, with the courts holding that the licensing objectives are not to be seen as freestanding public interest objectives. Therefore, the Board may be reticent to attempt to control behaviour through conditions relating to a licensing objective for fear of overstepping the extent of their powers and being challenged on that ground. Legislative certainty on the status of the licensing objectives would aid the Board to understand the extent to which it can act in promoting those objectives.

In its most recent Statement of Licensing Policy, the Board extended the area of deemed overprovision of off-sales licences in East Dunbartonshire to include part of the Kirkintilloch West area. This step was taken after consideration of the consultation response received from the HSCP. The Statement of Licensing Policy makes it clear that this presumption is rebuttable on cause shown, as it would be unlawful for the Board to fetter its discretion by adopting a policy which automatically refused all applications for off sales licences in that area. The Board is provided with legal advice at all times and this would be provided should the Board be faced with this question.

*Q2. The Committee would welcome views from Boards on what role, if any, Boards could have in working with CPPs to advance public health objectives.*

The Board makes every effort to make the experience of interacting with the licensing regime as straightforward as possible. However, the Board does exercise a quasi-judicial function and a certain degree of formality is required. The Board does try to keep formalities to a minimum, recognising that some of those who appear before it may not be used to speaking in public before such a body. The Board also provides to all those appear before it an explanatory sheet detailing the procedure that will be followed and the order in which the hearing will be conducted.

The Board is not a member of the East Dunbartonshire Community Planning Partnership (the “CPP”) but works closely with the HSCP, which is a member, and which contributed to the drafting of the Local Outcome Improvement Plan (the “LOIP”). The HSCP is a statutory consultee on all premises licence applications received under the Act and can provide input into these applications that the Board receives. As mentioned above, the Board consulted extensively with the HSCP seeking its views on overprovision during the consultation on the Board’s most recent Statement of Licensing Policy. The Board took cognisance of health data provided by the HSCP when formulating the new Statement of Licensing Policy, leading to the Kirkintilloch West area being deemed to be an area of overprovision of off-sales licences. This approach supports the LOIP Outcome 5 “*Our people experience good physical and mental health and wellbeing with access to a quality built and natural environment in which to lead healthier and more active lifestyles.*”, and the applicable work stream flowing from Local Outcome 5 of “*Alcohol Misuse Prevention and Control*”. While the Board has no formal part to play in the CPP there is already a synergy of outcomes in the public health area through HSCP input to both the Board and the CPP.

*Q3. Licensing Standards Officers: the Committee heard positive evidence about the role of LSOs. The Committee would be interested in obtaining more information about LSOs in your area.*

East Dunbartonshire has two Licensing Standards Officers (the “LSOs”). The LSOs have a positive working relationship with licence holders and are a first point of contact for them. The LSOs often are able to provide advice directly and to assist licence holders with issues that may arise. This has the advantage of providing early intervention, potentially avoiding enforcement issues arising. At least one LSO attends each Board hearing to provide input into applications that call. Feedback to the Board on the role of the LSOs is positive and our LSOs are routinely consulted by potential applicants in advance of a licence application being lodged to seek advice on proposals.

I hope that you find this information useful and should you require anything further please do not hesitate to contact me.

Yours faithfully

**KAREN M. DONNELLY**  
**CLERK TO THE LICENSING BOARD**  
**CHIEF SOLICITOR AND MONITORING OFFICER**  
**LEGAL & DEMOCRATIC SERVICES**