

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

Response from Dumfries and Galloway Licensing Board

1. Public health actor as a consultee (local NHS/ADP in D&G)

Clearly the public health actor is a statutory consultee in the Licensing Process yet Dumfries and Galloway (D&G) Licensing Boards rarely receive a public health response with regard to various licence applications. Likewise, they are also a statutory consultee with regard to review of the Statement of Licensing Policy but - other than the considerable work undertaken by them to date with regard to the Overprovision Policy – their feedback with regard to the rest of the Statement has been minimal.

This perceived lack of engagement by the public health actor gives rise to concern that time and resources are being expended by the Boards' staff in consulting and engaging yet rarely is a substantive response received.

This perceived lack of engagement is not a criticism of the local NHS or ADP in D&G as it is accepted that they may have their own reason/s for non-engagement in the Licensing Process.

2. Difficulty with evidence linked to this objective

Q. How to give meaningful effect to the public health objective?

Whilst the Board must refuse an application if granting of that application is inconsistent with a licensing objective, the public health objective gives rise to difficulty in that the Board requires factual material before it to support refusal, and acquiring factual evidence linked to this objective is rather difficult. Board decision making is an evidenced based approach and this objective is difficult within this approach.

If statistical evidence (e.g.; routinely collected evidence by the ADP) is received in support of this licensing objective, the legal need for there to be a direct nexus between that statistical evidence and the operation of a licensed premise – and indeed, the public health objective – is very difficult. This direct evidential link is difficult to achieve. Particularly with the rise in home drinking. For example, if the Health Board puts forward evidence that there is increased alcohol misuse statistics and a greater number of alcohol harm related admission to hospital in D&G than any other data zone in Scotland, in law there is great difficulty in finding a nexus between this data and the operation of specific licensed premises in D&G. The statistical data may be relevant to public health harm, but it is difficult to establish an evidential link to the operation of specific premises, particularly as there is a change in social drinking habits with more people consuming alcohol at home. Clearly, the Boards have no jurisdiction over home-drinking. and this change in social drinking habits make the public health objective an increasingly difficult objective on which to safely legally rely with regard to refusing an application or reviewing a licence.

Moreover, the causal link between consumption of alcohol and the place where it was sold is also difficult to prove and this difficulty again dilutes safe legal reliance on the public health objective as a ground for refusal of a licence. For example, sales could take place online and/or at an outlet out with a Board area.

With regard to addressing public health problems in D&G, the Boards are also aware that the sale of alcohol is only one factor in this consideration. Other factors are also relevant including poverty, deprivation, illicit drugs, social isolation, smoking, substandard, poor housing - this non-exhaustive list of other factors is clearly out with the legal remit of the Boards' when determining public harm and health.

Overprovision

Whilst the Health Board is a vital actor in drafting and submitting to the Boards a report on Overprovision which clearly forms part of the Statement of Licensing Policy, there has been difficulty to date in D&G with regard to acquiring from the NHS/ADP relevant, direct statistical evidence pointing to health harm and linking that to the operation of licensed premises within a locality. Increased availability of alcohol and/or an increase in the number of licensed premises within a locality is not necessarily of itself linked to increased public harm. The difficulty of proving a dependable causal legal link between alcohol related harm and overprovision of licensed premises within a locality gives concern with regard to safely relying on overprovision as a vehicle for addressing public health concerns.

Conclusion

Because of the difficulties above, the public health objective as a ground of refusal and for promotion within the LPS remains challenging for Dumfries and Galloway Licensing Boards to rely on as a ground of refusal. It seems opaque and is not easily understood and crucially gives rise to difficulty with regard to establishing a robust causal link in terms of evidence.

Thought should be given to perhaps removing the health board as a statutory consultee – this removal would not necessarily exclude the public health actor from the Licensing Process as their right to object to a licensing application under the 'any person' criteria remains and, as there is a statutory procedure for advertising an application (including advertising notices of application on the Boards' website) this public advertising of applications would ensure that applications could still come to their attention.

Moreover, as 'any person' may also request a Review of a premises licence, the Health Board's participation continues with regard to reviews and, furthermore, via them nominating a member to represent them on the Local Licensing Forum.

Whilst it is commended that the Scottish Government has attempted to address alcohol related harm via the licensing system with the implementation of the public health objective, given the challenges as above, perhaps thought should be given to removing this licensing objective entirely to bring in line four licensing objectives only as per England and Wales.