

DEPARTMENT OF ENVIRONMENT HOUSING AND NEIGHBOURHOODS**ORIGINATING SECTION: PUBLIC PROTECTION SERVICE****REPORT TO: LICENSING COMMITTEE****15 July 2014****TITLE : REVIEW OF THE COUNCIL'S STATEMENT OF LICENSING POLICY****1. PURPOSE**

1.1 To inform members of the outcome of the consultation on the review of the council's statement of licensing policy.

2. RECOMMENDATIONS

2.1 That members note the report and make a recommendation on whether the proposals to amend the statement of licensing policy should be adopted.

3. KEY ISSUES

3.1 Every 5 years each Licensing Authority must determine a policy with respect to the exercise of its functions in the Licensing Act 2003. A statement of that policy (a licensing statement) must be published before the beginning of that period. The statement must also be kept under review and changed if deemed necessary. Blackburn with Darwen's policy was last published in 2011.

3.2 Although well within the mandatory 5 year review period the most recent revision of the policy reflects changes to legislation since 2011. A draft policy was brought before Licensing committee in September 2013 for agreement to enter into a consultation exercise. The period of consultation took place between 30th September and 30th December 2013. A copy of the consultation document is attached as appendix 1.

3.3 Details of those consulted are in section 9 of this report.

3.4 The consultation has resulted in a response from the Councils' Director of Public Health reproduced below and could be inserted into the Statement of Licensing Policy:

Blackburn with Darwen's Director of Public Health, Blackburn with Darwen Borough Council and DPHs across Lancashire and the North West have confirmed their intention to continue lobbying for a Minimum Unit Price for Alcohol.

Current licensing conditions do not always succeed in addressing local difficulties resulting from the sale of low cost or super strength beers, lagers and ciders that can have an adverse impact on licensing objectives.

Public Health wish the Licensing Authority to continue to encourage the responsible consumption of alcohol and, where there is evidence or concern that the licensing objectives are not being promoted and if representations indicate localised problems the Licensing Authority will consider imposing controls on drinks sold.

This could include controls for licensed premises where the selling of low cost and/or super strength beers, lagers and ciders has led us to believe that the Licensing Objectives are not being promoted. For the purposes of this policy super strength is equivalent to 6% alcohol by volume or above.

These controls may include restricting the sale of super strength beer, lager and ciders, the requirement to charge a minimum unit price or a minimum cost per drink. Each or all of these

controls to form part of a package of measures to deal with the concerns and problems identified.

Any such controls deemed suitable to resolve concerns and/or problems would be agreed with the holder of the licence and would constitute a mutually approved condition attached to their licence to retail alcohol.

3.5 In January 2014, by way of response to the consultation on the Borough's Alcohol Strategy, the British Beer and Pub Association sent in a letter of concern reproduced at appendix 2. In May 2014 a joint letter was received from a number of alcohol trade bodies. This letter is reproduced at Appendix 3. Although outside of the consultation period for the statement of licensing policy it is important to consider the content of the letters.

3.6 In summary, the issues raised are around the legality of licensing authorities coming to voluntary agreements with the alcohol trade or imposing blanket conditions on the sale of super strength products or the introduction of a minimum unit price. In particular the letters raise concerns about the impact of price fixing agreements on compliance with the Competition Act 1998.

3.7 The Competition and Markets Authority have recently set out their opinion on such agreements and conditions. In essence, there are risks of businesses failing to comply with the Competition Act 1998 if they enter into a group agreement on pricing, even if brokered by a third party such as a licensing authority. However, where a local authority uses a condition on an individual business basis, provided all other Licensing legislation/administrative processes are properly complied with there is a low risk of the business failing to comply with the Competition Act 1998.

4. RATIONALE

4.1 The request from the Director of Public Health is to widen the conditions available to licensing officers and elected members of the Licensing Committee to deal with those businesses who are not complying with the licensing objectives laid down in the Licensing Act 2003. These are:

- The prevention of crime and disorder
- Public safety
- The prevention of public nuisance
- The protection of children from harm

5. POLICY IMPLICATIONS

5.1 The Statement of Licensing Policy will become the Council's policy with respect to dealing with applications for licences and those holding licences to sell alcohol or provide regulated entertainment within the Borough.

6. FINANCIAL IMPLICATIONS

6.1 None.

7. LEGAL IMPLICATIONS

7.1 The Licensing Act 2003 allows licensing authorities to impose conditions on premises licence.

7.2 The Amended Guidance issued under section 182 of the Licensing Act 2003 in June 2013 states:

Conditions include any limitations or restrictions attached to a licence or certificate and essentially are the steps or actions that the holder of the premises licence or the club premises certificate will be required to take or refrain from taking in relation to the carrying on of licensable activities at the premises in question. Failure to comply with any condition attached to a licence or certificate is a criminal offence, which on conviction is punishable by a fine of up to £20,000 or up to six months' imprisonment. The courts have made clear that it is particularly important that conditions which are imprecise or difficult for a licence holder to observe should be avoided.

Conditions on a premises licence or club premises certificate are important in setting the parameters within which premises can lawfully operate. The use of wording such as "must", "shall" and "will" is encouraged. Licence conditions:

- *must be appropriate for the promotion of the licensing objectives;*
- *must be precise and enforceable;*
- *must be unambiguous and clear in what they intend to achieve;*
- *should not duplicate other statutory requirements or other duties or responsibilities placed on the employer by other legislation;*
- *must be tailored to the individual type, location and characteristics of the premises and events concerned;*
- *should not be standardised and may be unlawful when it cannot be demonstrated that they are appropriate for the promotion of the licensing objectives in an individual case;*
- *should not replicate offences set out in the 2003 Act or other legislation;*
- *should be proportionate, justifiable and be capable of being met, (for example, whilst beer glasses may be available in toughened glass, wine glasses may not);*
- *cannot seek to manage the behaviour of customers once they are beyond the direct management of the licence holder and their staff, but may impact on the behaviour of customers in the immediate vicinity of the premises or as they enter or leave; and*
- *should be written in a prescriptive format.*

Licensing authorities should not attach standardised blanket conditions promoting fixed prices for alcoholic drinks to premises licences or club licences or club premises certificates in an area. This may be unlawful under current law. However, it is important to note that the mandatory conditions made under sections 19A and 73B of the 2003 Act prohibit a number of types of drinks promotions where they give rise to a significant risk to any one of the four licensing objectives.

Where licensing authorities are asked by the police, other responsible authorities or other persons to impose restrictions on promotions in addition to those restricted by the mandatory conditions, they should consider each application on its individual merits, tailoring any conditions carefully to cover only irresponsible promotions in the particular and individual circumstances of any premises where these are appropriate for the promotion of the licensing objectives. In addition, when considering any relevant representations which demonstrate a clear causal link between sales promotions or price discounting and levels of crime and disorder on or near the premises, it would be appropriate for the licensing authority to consider the imposition of a new condition prohibiting irresponsible sales promotions or the discounting of prices of alcoholic beverages at those premises. However, before pursuing any form of restrictions at all licensing authorities should take their own legal advice.

As set out in the Statement of Policy, other than the statutory mandatory conditions the Licensing Authority may only attach conditions to a licence if relevant representations are received (except for conditions drawn from the applicants operating schedule since these are voluntary proposals). Any condition that is imposed on licensed premises will be tailored to the specific needs of the premises to which the condition relates and will be linked to one of the licensing objectives i.e. the prevention of crime and disorder; public safety; the prevention of public nuisance or the protection of children from harm

Version 1.0

8. RESOURCE IMPLICATIONS

8.1 None

9. CONSULTATIONS

9.1 Consultations have been carried out via a mailshot, with all the authorities laid down in statute listed below, and with trade organisations. Awareness of the policy review was raised through promotion on the Council's website. The Licensing Committee were consulted on the policy review at a meeting of the Committee on 23rd September.

The Chief Officer of police for the licensing authority's area

The Fire authority area

Such persons as the licensing authority considers to be representative of holders of premises licences issued by the authority

Such persons as the licensing authority considers to be representative of holders of club premises certificates issued by the authority

Such persons as the licensing authority considers to be representative of holders of personal licences issued by the authority, and

Such other persons as the licensing authority consider being representative of businesses and residents in the area.

10 . CONTACT OFFICER

Denise Andrews – Business compliance and licensing manager

Telephone - 01254 267648