

Our Ref. bf/bf3340 9/30/21(c)  
Your Ref.  
Contact Brenda Flaherty  
Email licensing@aberdeencity.gov.uk  
Direct Dial 01224 522624  
Direct Fax 01224 522491



# ABERDEEN CITY COUNCIL

Legal and Democratic Services  
**Corporate Governance**  
Aberdeen City Council  
Ground Floor  
Town House  
Broad Street  
Aberdeen AB10 1AQ

24<sup>th</sup> January 2011

Local Licensing Forum  
Democratic Services  
Town House

FOA Grant Wiseman

*not licensing*

Tel 01224 522000  
Minicom 01224 522381  
DX 529450, Aberdeen 9  
www.aberdeencity.gov.uk

Dear Sirs

## Licensing (Scotland) Act 2005 Review of Statement of Licensing Policy

I refer to the Forum's response to the consultation on the Licensing Board's review of its Statement of Licensing Policy. In terms of section 12 of the 2005 Act, where the Board decides not to follow advice or recommendations given to it by the Forum, it must give reasons for not doing so. Where the Forum makes recommendations it would be helpful if it also explained its reasoning as to why the recommendation has been made. This would assist the Board in its assessment of the recommendation.

The Forum provided two responses. The Board, for a variety of reasons, may elect not to adopt recommendations from the LLF. Failure to adopt advice or recommendations does not mean that the advice or recommendation was without merit.

### Response received Summer 2010

The first response from the Forum primarily consists of a series of statements. With regard to the few specific comments raised by the Forum, the response from the Board is as follows:

In respect of the report 'Licensing Law and the Public Health Objective' produced in August 2008:

1. Page 28 states that only a small number of Boards link within their public health section an encouragement to provide food on the premises:

**Response:** See para 27.8 of the Policy Statement which provides that 'applicants are encouraged to provide food on the premises, so that patrons may eat at the same time as consuming alcohol if they wish'.

2. Page 28 states that only a small number of Boards link within their public health section a requirement for adequate ventilation and sanitary provision.

**Response:** These matters are dealt with under other legislation and therefore are outwith the Board's remit.

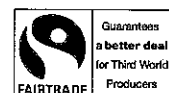


100% Recycled



STEWART CARRUTH

**AGE POSITIVE**  
scotland



Choose products with the FAIRTRADE Mark



3. A small number of Boards request the provision of free tap water for drinking.

**Response:** The provision of free tap water fit for drinking is a mandatory condition of a premises licence therefore there is no need to make reference to this in the Policy Statement.

4. The same report suggests that Boards undertake Health Impact Assessments. It is noted that Glasgow Licensing Board has undertaken such an assessment.

**Response:** at the present time Aberdeen City Licensing Board is not in a position to undertake such an assessment. There are however many initiatives which the Board is taking forward in partnership with other organisations and the licensed trade which contribute to the licensing objectives and which in turn should have a domino effect on public health.

5. With regard to the letter from Gary Cox (Scottish Government) dated 4 April 2007: Paragraph 102 of that letter states the legal position in relation to review of premises licences.

**Response:** Paragraph 10 of the Policy Statement covers the review of premises licences.

6. It is noted that paragraph 193 of the Guidance makes reference to Closure Orders and that the Policy Statement makes no reference to them.

**Response:** The Board's view is that there is no need to make reference to these Orders in its Policy Statement. The issue of Closure Orders is clearly provided for in the 2005 Act and is a legislative rather than a policy issue.

7. The Forum asks the Board to take the opportunity to canvass views from economic development bodies and tourism bodies as well as the trade if it has not already done so.

**Response:** The consultation process undertaken by the Board was very wide. This recommendation is noted for future reference.

8. The Forum suggests that the Board might like to reflect in the Policy Statement its position with regard to the decision of the Glasgow Board refusing variation applications from large supermarkets to increase capacity of alcohol displays.

**Response:** Any decisions taken by other Licensing Boards must be treated with caution as such decisions may reflect the position in an area which may be quite different to Aberdeen. In any event Glasgow Licensing Board has since changed its position on this issue.

9. With regard to the publication 'Licensing for Public Health' and page 11 'Developing a Licensing Strategy to Promote and Protect Public Health' the Forum recommends that the Board considers producing such a strategy.

**Response:** This issue cannot be considered in terms of the current review of the Statement of Licensing Policy as it requires further discussion. Perhaps the Forum would wish to consider this matter in greater depth and advise the Board how it should proceed and what should be considered in terms of such a strategy?

10. Re the 'Licensing Toolkit' produced by Alcohol Concern and the recommendation that the Board accesses statistical data from the Alcohol and Drugs Partnership:

**Response:** This issue cannot be considered in terms of the current review of the Statement of Licensing Policy as it requires further discussion. Perhaps the Forum could explain in greater detail how such information could be used in practice and what benefit it thinks can be derived from the outcome?

11. The Forum suggests that the Board lists the tasks/actions that it has endorsed in relation to the Aberdeen Alcohol Strategy 2009-2019

**Response:** the Board has endorsed the strategy and the policy states this.

### **Response received 12<sup>th</sup> October 2010**

1) layout of statement

**Response:** we consider that the layout does refer to the licensing objectives.

2) place licensing objectives earlier in statement

**Response:** This is a matter of style. Ours follows that adopted by other Licensing Boards

3) specific reference should be made to Aberdeen Alcohol Strategy, Licensing for Public Health (June 2009 and considered by LB 15/12/09), Community Safety Partnership Action Plan, Single Outcome Agreement, and input from Social Care and Wellbeing. Also Council Transportation Strategy and Single Equalities Scheme.

**Response:** The Board does not yet have a single equalities plan to refer to although this is under consideration. Social Care and Wellbeing are consulted on various matters pertaining to the Licensing Board and we would include relevant material as appropriate. Section 2 of the Policy makes reference to this.

4) Misleading to call Section 13 Enforcement & Licensing Standards Officers. Should have separate section on role of Licensing Standards Officers as their role is more than enforcement.

**Response:** Again this is a matter of style. In practice the Licensing Standards Officer's role is mainly enforcement.

5) Add a contacts section.

**Response:** there has always been a contacts section at the beginning of the document. It is contained in the preamble and has been updated.

6) add glossary of terms or a briefing paper explaining different remits and functions of Licensing Board, Committee and Local Licensing Forum

**Response:** We do not consider this to be necessary. The Licensing Committee is not involved in liquor licensing matters. Applicants to the Board, by definition should understand the role of the Board. We can add a section of the role of the Local Licensing Forum at a future review if Board Members think it desirable.

7) Use publicity about the Policy to have an alcohol awareness campaign

**Response:** the Board has no resources of any kind to launch a public awareness campaign (presumably on the misuse of alcohol). It is not part of the Board's judicial function to do this.

8) Add procedures to assist the public to make objections/representations. Add complaints procedure eg what triggers a licence review.

**Response:** The neighbour notification and display notices give details of how to object or make representation to the Board. The Board is not in a position to say what triggers a review of a licence. "Any person" can complain to the Board and trigger a review on any relevant issue. In these circumstances the complainer should be taking independent legal advice. The Board has an independent judicial role in review hearings and it would be inappropriate for it to give advice to a party on an issue it would later be adjudicating on.

9) add section on monitoring and evaluation of policy itself and Licensing Board's contribution to other strategies.

**Response:** the Board reviews the policy as necessary and issues supplementary policies as appropriate.

10) 10.4 & 25.7 of the policy regarding Door Supervisors should have their role expanded and discussed in context of risk assessment on employee safety and ratio to occupancy capacity

**Response:** Occupancy capacity is for the purpose of calculating overprovision only and the policy states this. The Board has discussed this issue and is of the opinion that it is too complex and variable to be enforceable as a policy decision. The Board has no power to insist upon risk assessments from licence holders with regard to their employees in licensed premises.

11) Section 11 review of premises licence - state what triggers a review and relevant grounds.

**Response:** the relevant grounds for review are contained in the Act and therefore need not be replicated in the Policy. See also Response 8.

12) Section 2.6 mentions Aberdeen Alcohol Strategy and Alcohol and Drugs Partnership + community safety

**Response** This has been included in the Policy.

13) Section 2.8 expand. Licensing Board to offer advice/ make recommendations to other bodies and invite them to take action or explain why they have not done so.

**Response:** We do not fully understand this point. The Board relies on other experts to give it advice eg building standards, environmental health. These bodies have their own enforcement regimes and will make their own decisions as to what actions are appropriate or otherwise in terms of their own remits. If the Board has concerns it will always draw these to the attention of its advisers. We consider that section 2.8 deals adequately with this point.

14) Section 2.10 delete ref to planning permission.

**Response** We are unsure what is meant here. We consider that section 2.10 is giving procedural advice to an applicant.

15) Section 6.3 reword to confirm model conditions adopted and state they are to have equivalent of statutory status. Attach conditions to policy.

**Response** local conditions are now spelt out in Policy. We do not have any model conditions.

16) Section 8.1 Licensing Board assessing application against licensing objectives should be more positive. Test should be does application promotes licensing objectives.

**Response** the Board do test applications against the licensing objectives when they call before it, and have refused applications as not promoting the objectives when Members consider it necessary.

17) Section 9.6 explain what evidenced complaints are and not just regarding overprovision. Clarify if a member of the public can trigger a complaint.

**Response** See response 8.

18) Section 22.5 – add a recommended template for risk assessments.

**Response:** the Board has no power to do this.

19) Section 25.3 – what are relevant representations? Add assurance re monitoring/review of compliance with licence conditions and operating plan.

**Response** Monitoring is an ongoing joint role undertaken by the police, the Licensing Standards Officer and the Licensing Team.

20) Section 20.10 – change heading as refers to more than hours of trading. Working Group for dispersal

**Response:** headings have been changed. There have been numerous attempts over the years to devise a strategy for dispersal of patrons from licensed premises and many initiatives have been instigated eg night time taxi ranks, taxi marshals, police operations, street pastors. The Council is constantly striving to address this which in any case is a corporate issue and not just one for the Board to solve. We do not see what yet another group will achieve in this area.

21) Adopt similar to Edinburgh's policy condition re ATMs.

**Response** This has not been brought to the attention of the Board hitherto. We are not aware of any licensed premises (apart from supermarkets) which have ATMs and we do not consider this to be an issue which requires a policy to be formulated.

22) Licensing Board to consider its position regarding food & non alcoholic drinks if Dundee wins its case.

**Response** The Board will take cognisance of any relevant legal precedent.

23) Establish a working group to devise a comprehensive solution to crowd dispersal in city centre at weekends.

**Response** See response 20.

24) Include conditions on pavement cafes and the Board's own position on irresponsible drinks promotions as per Dundee.

**Response** Pavement cafes, if licensed, may have conditions attached by the Licensing Board on a case by case basis. However, most are unlicensed, the permit being granted by the Council (Roads) and consumption of alcohol being allowed on an off sale basis only. Irresponsible Alcohol promotions – these are set out in the Act. Guidance is required from the Government where new types of promotion challenge the provisions. The Dundee Licensing Board has now lost its court case on irresponsible promotions.

25) Expand the policy to reflect Dumfries and Galloway policy

**Response** It is presumed that Dumfries and Galloway have specific issues they wish to address and have included these in their policy as a result. Should any

issues be drawn to our attention as problems specific to Aberdeen, they will be addressed in future statements.

26) address multiple audiences including citizens who want reassurance the licensing objectives are given prominence in decision making. Add Dumfries & Galloway statement of intent. See response doc.

**Response** (a) this matter may be better addressed when considering the terms of the Social Responsibility Levy which will be introduced later this year in the Alcohol etc Act 2010, following an extensive consultation by the Scottish Government.

(b) we consider this to be out with the remit of the Board.

(c) This appears to be a statement rather than a recommendation. The Board already takes a multi agency approach to matters within its remit.

Thank you for responding to the consultation.

Yours faithfully



**Brenda Flaherty**  
**Legal Manager**  
**Licensing Team**