Item 7c - Westminster City Council response to the House of Lords Select Committee on the Licensing Act 2003's 'Call for evidence'.

The Council's response was submitted prior to the 2 September deadline.

Licensing objectives

1. **Are the existing four licensing objectives the right ones for licensing authorities to promote? Should the protection of health and wellbeing be an additional objective?**

It is the view of Westminster City Council that the existing four licensing objectives allow for an appropriate balance to be achieved between commercial and other interests. There may however, be scope to improve the operation of the Licensing Act through the introduction of other, well thought through, objectives. Vitally, it must be possible, for the Licensing Authority to measure the impact an individual application has on the objectives on a case-by-case basis as is required by the Act.

This suggests a potential problem with the introduction of health and wellbeing as an additional objective, which requires consideration. Whilst the impact of licensable activities, particularly the sale of alcohol, on health may be demonstrable in broad terms, it is not necessarily the case that the presence or actions of individual premises can be linked to particular health issues. This does not mean that Westminster City Council opposes the introduction of a health objective, but would urge any government seeking to go down this route to carefully consider exactly how this would operate in practice.

As noted in the 2014 Alcohol Research UK report 'Using licensing to protect public health: From evidence to practice', *"public health considerations tend to concern population level indicators and long-term trends, whereas licensing operates in an environment characterised by case-by-case decision-making, negotiated settlements and complex legal argument"*. It goes on to state that:

"Policies had to be founded on a sound factual basis and fall within the legal parameters of the Act, therefore the promotion of the health objective must be linked to the effects of the sale of alcohol. The opinion acknowledged that it is difficult for a board to promote the health objective in relation to any individual license application because it is so difficult to evidence ill effects on health at individual premises level , because the evidence is generally at population or board area level".

As such, in practice, it would be extremely difficult to judge why an individual premises selling alcohol is likely to be more or less of a threat to health than another since both are selling the same product. In this scenario there may be reasonable grounds to refuse every application as a threat to health or, as is understood to be the case in Scotland, to not to reject any on health grounds because the legal basis for refusal is considered to be weak and likely subject to challenge. The report shows that, whilst the introduction of a health objective in Scotland has improved understanding and engaged of public health in the

licensing process, the extent to which health considerations have actually influenced decision making is unclear.

It would also be important to recognise that there is not always a direct geographical link between consumers and license premises, thus making it difficult to prove health impacts. For example, the West End has the highest concentrations of licensed premises in the country, and yet, the majority (exact number unknown) of the patrons of these are not Westminster residents. Similarly the impact of alcohol purchased via off-sales from a supermarket in outer-London and consumed at home before patrons visit the West End is largely unknown. It is therefore extremely difficult to show that the concentration of premises (both on and off-sales) in the West End has a significant impact on the health of the local population. It would be equally difficult to show, given the nature of the availability of health data, the West End concentration as contributing to any overall adverse effects in health throughout London or the wider UK.

It may however, be possible to apply a health objective in a concentrated area where the vulnerability to alcohol abuse is higher amongst local populations. This could be delivered in the same way as current cumulative impact policies, albeit using a different evidence base, or could operate in a similar manner to local areas risk assessments in the Gambling Commissions updated Licensing Conditions and Codes of Practice (see Westminster's recent studies for more information[1]). This would bring England into line with Scotland's policy approach to 'overprovision'. Consideration may also need to given to the difference between on and off-sales in contributing to alcohol-based health harm. It is likely for example, that a health objective would be more relevant to off-licenses in areas where street drinking is particularly prevalent and contributes, not only to anti-social behaviour, but also health concerns amongst consumers. This would not necessarily mean that a health objective should only apply to off-sales but it may influence the way in which many local areas choose to implement such a change.

It should be stressed that health authorities and professionals can, of course, already make representations under the Act should they be relevant to the existing objectives, possibly using A&E data or ambulance callout data. The fact that this may not happen particularly often should not be seen as a failure of the system (see question four below), but should instead be understood as a reflection of the reality that health authorities are generally less interested in the existing objectives as indicators of problems. As such, this question actually boils down to whether or not there should be another basis (health) on which to control licensable activities? Of course, such a move would appear to strengthen the ability and regularity with which health authorities would be able to make representations on licences and would therefore improve engagement with the process, as has been seen in Scotland, but it is not clear that it would result in a positive shift in decision making in the vast majority of cases.

In summary, Westminster would welcome the introduction of a health objective; particularly as mental health issues have become ever more apparent in conjunction with the use of alcohol. However, any objective given must be accompanied by guidance on relevant representations to the new objective and additional provisions relating to concentrations, cumulative impact or overprovision.

[1] https://www.westminster.gov.uk/gambling-research

2. **Should the policies of licensing authorities do more to facilitate the enjoyment by the public of all licensable activities? Should access to and enjoyment of licensable activities by the public, including community activities, be an additional licensing objective? Should there be any other additional objectives?**

   The policies of licensing authorities are matters of sovereign local interest and, as such, the extent to which policy seeks to promote wider enjoyment of licensable activities should remain a local decision. It is unclear what the introduction of a new objective linked to the enjoyment of licensable activities by the public would add to the existing regime, but there is a risk that it would introduce a significant level of conflict and tension between objectives. This would be unhelpful to practitioners and may lead to heightened levels of legal dispute over the outcome of certain applications. At present, all of the objectives are designed to provide the public with a form of protection from harm. Licensing Authorities take decisions based on these objectives but are also aware of a wider set of factors, including more positive considerations around the local economy and public enjoyment.

   If there were an ambition from government for the licensing regime to be further used as a tool for the promotion of economic or cultural activities, serious consideration would need to be given to how this would be implemented. As noted above, there is a risk that such a move would simply lead to more legal challenges and increased cost of decision making to the taxpayer, as a result of tension between newly competing objectives. Perhaps one method through which this could be more effectively implemented would be to introduce a second tier of licensing objectives or ambitions. These objectives or ambitions could have less weight against the existing four objectives, but place an obligation on the applicant. The Licensing Authority, to show or understand the impact on an application, may have included certain additional issues such as economic vibrancy or public enjoyment.

The balance between rights and responsibilities

3. **Has the Live Music Act 2012 done enough to relax the provisions of the Licensing Act 2003 where they imposed unnecessarily strict requirements? Are the introductions of late night levies and Early Morning Restriction Orders effective, and if not, what alternatives are there? Does the Licensing Act now achieve the right balance between the rights of those who wish to sell alcohol and provide entertainment and the rights of those who wish to object?**

   Westminster City Council considers the current provisions around regulated entertainment as appropriate to create a suitable and fair balance between the competing interests. Our experience and feedback from engaging with the local entertainment industry is that the challenges facing venues, in putting on live music, are less to do with the regulatory environment and more to do with the lack of commercial viability. This is driven mainly by fewer people being willing to pay to watch live music, particularly at the smaller end of the spectrum, rather than increased costs as a result of overly burdensome regulation. It is notable however that in Soho, an area where this issue is perhaps perceived as most acute,

the number of licenses involving music rose from below 100 to over 250 between 2003 and 2013.

With specific regard to the late night levy, Westminster City Council has considered this option as a potential solution to the management issues facing the city but it has not, for a variety of reasons, deemed the late night levy suitable at this time.

If a levy were to be applied across the whole of Westminster, the total revenue generated would be £2,782,620 p.a. from 1,877 businesses. This is considered the 'best case scenario' for Westminster, because, in practice, many premises would argue that they are not liable to pay the multiplier on grounds that they are not 'alcohol-led'. Recent experience has shown that this argument can be made successfully by a surprising diversity of premises.

We believe that the levy, as currently constructed in legislation, would unfairly penalise premises which operate responsibly or have little or no systemic connection to crime and anti-social behaviour, such as individually owned pubs in residential neighbourhoods. There is a marked contrast between these types of operators and those operating in high concentrations in the West End. The revenue calculations, if it were possible to apply a levy in the West End Cumulative Impact Zone only, suggest that the total revenue generated would be £1,187,457 p.a. from 758 businesses. This suggests that, under the current legislative framework, 1,119 businesses would have to pay the levies which are not contributing to cumulative impact in the West End, and are therefore not, broadly speaking, a source of management problems. This additional £1.5m burden on the industry would, in Westminster's opinion be unfair in the vast majority of cases.

The approach to charging, the inability to target in a geographical area and the potential that funds generated in the West End could be used elsewhere in London by the Metropolitan Police were the primary reasons why Westminster chose not to introduce the levy.

The alternative may be to introduce a more flexible approach to the levy, which allows local authorities to target the levy at problem premises or groups of premises, based on particular characteristics. Such an approach could involve the ability to geographically target the levy within a borough (not currently possible), an open approach to exemptions (currently exemptions have to be picked from a long-list determined by government) and introducing a new approach to charging (away from the unsophisticated and unfair use of rateable values). Reforms like this would make the levy more effective in tackling bad behaviour, without penalising unnecessarily responsible operators. The government has promised to examine reform of the levy as part of the 2016 Modern Crime Prevention Strategy, but it remains unclear how ambitious such reforms will be. We would therefore, urge the committee to make comment on this matter.

4. Do all the responsible authorities (such as Planning, and Health & Safety), who all have other regulatory powers, engage effectively in the licensing regime, and if not, what could be done? Do other stakeholders, including local communities, engage effectively in the licensing regime, and if not, what could be done?

The main responsible authorities that regularly make representations to applications in Westminster are the Metropolitan Police and the Council's own Environmental Health Department. It is extremely rare to receive representations from other responsible authorities

for applications. The Council's Planning Department does not tend to make representations, as planning requirements cannot be taken into account when considering Licensing Act 2003 applications. If there were however, to be no compliance with planning law whereby enforcement action has been taken that constitutes a crime, then the Planning Department may make a representation to inform the Licensing Authority of the operator's non-compliance and criminal convictions.

The Fire Authority uses their own powers under the Regulatory Reform (Fire Safety) Order 2005 and rarely will make a representation to a licence, as it duplicates their own powers. Like Planning however, when there is a need to make a representation, then the Fire Authority will make a representation.

The lack of responses from some responsible authorities should not be seen as a failure of the Act, or indeed that changes are required to promote authorities to make more representations to applications. The nature of the types of responsible authorities under the Act means that some will be able to make general views and comments based on the main concerns for the operation of the premises, such as the Police and Environmental Health Departments. Other responsible authorities, such as Planning, Fire Authority, Environment Agency, etc. will make representations when there is a clear need to due to the proposed operation of the premises, any specific policies or requirements that are relevant and when they deem it necessary having regard to any concerns or issues associated with one or more of the licensing objectives.

It is our experience that local communities do come together and make representations to applications when there are significant local concerns regarding the operation of the premises. We also find that resident and amenity societies take an active role in informing their members of applications and also making representations on behalf of those members.

It is also true however, that individual local residents and small groups often feel unsure of their rights and powers under the Act. Residents often have concerns about attending a hearing, their safety if the premises they wish to make a representation about is seen to be operated by people they perceive to be violent and the view that their concerns may not be taken seriously by the Licensing Authority. Such concerns can put some residents off from making representations to applications or submitting a review application against premises that are operating badly.

Westminster City Council does engage and support local residents and communities. The Council will actively publish notifications of the application beyond that which is required by the Act. The Council will inform local communities, within the vicinity of the premises, to which applications have been submitted. This is usually done via letter and notices on street furniture, such as a lamppost outside or near the premises. These letters and notices provide a very basic description of the application, the date when representations must be received by the Council and how to submit a representation.

In addition to the letters and notices, the Council also funds a dedicated Licensing Solicitor via the Citizens Advice Bureau. The solicitor, who acts independently from the Council will advise and support local communities in submitting representations, preparing and submitting a review application and will also represent them at a Licensing Sub-Committee hearing. This service has proved to be very effective in supporting the local communities

surrounding licensed premises. It removes many of the residents' concerns referred to the above and enables them to be confident that their views are being presented to the Licensing Authority.

As far as Westminster is aware, this is the only example of such a service being provided within the United Kingdom. We believe that it is effective and is a key enabler for local communities to voice their concerns and sometimes support for licensed premises applications. This service does of course cost the Council money to fund however, and we would like to see the ability to fund such support services for local communities via a surcharge or supplementary fee on top of the application and annual licence fees that are paid by the licensed trade. Such reforms to the funding model would further enable other local authorities to implement an independent service for local communities, such as the one provided by the Citizens Advice Bureau in Westminster.

Licensing and local strategy

5. Licensing is only one part of the strategy that local government has to shape its communities. The Government states that the Act "is being used effectively in conjunction with other interventions as part of a coherent national and local strategy." Do you agree?

Yes, our experience in Westminster is that the Act can be used in conjunction with other pieces of legislation and tools to deliver a coherent local strategy for the place and communities. In order to deliver this, it is important to have a shared understanding of what all partners, including the licensing authority, the planning authority, other parts of local government, other public bodies, residents and businesses want from an area. There will of course, often be tension between partners in the construction of such a vision and the strategy to deliver it, but with effective governance it is possible.

The West End Partnership[2] provides a good example for a shared vision for an area which actually spans two local authorities (Westminster and Camden) and feeds into the ambitions for each in terms of the construction of local policy. Further commentary can be provided on this subject if necessary but, for the purposes of this call for evidence, we feel it is sufficient to agree that the Act is being used in conjunction with other policy tools and practices in Westminster, but it is difficult for us to comment elsewhere for obvious reasons.

6. Should licensing policy and planning policy be integrated more closely to shape local areas and address the proliferation of licensed premises? How could it be done?

Yes, planning and licensing policy should be more closely aligned, but this is not something that can or should be delivered via changes to national legislation, instead local authorities should be supported, where possible, to develop complementary policies. The underpinning structures for licensing and planning are based on fundamentally different rationales and it is therefore possible, and reasonable, for inconsistencies to exist between policies at a local

[2] https://westendpartnership.london/publications/

level. This may mean that premises may have different operating hours as far as the Licensing and Planning authority are concerned, but this shouldn't be seen as a particular problem, as it is widely understood by the industry.

The aims and objectives for both regimes could, of course, be harmonised by amending the primary legislation which underpins each, namely the Licensing Act 2003 and the town and Country Planning Act 1990. It is difficult to say how such an alignment would or should look in reality, but it is likely that the positive emphasis of the Planning system, and particularly the presumption in favour of sustainable development, would influence the structure of national licensing policy which, as noted previously, is based primarily on negative objectives and protecting the public from harm. This may involve taking into account the impact of licensing decisions on economic, social and environmental outcomes, and thus changing the evidence base on which policy is formulated. As previously noted, such an approach would, under the current system, create unhelpful tension in the licensing process between objectives. To deliver such an approach, it would therefore be necessary to review the whole Licensing Act 2003 and re-think the approach to evidence, the process and the objectives which underpin it. Whilst this fundamental reform approach may be considered desirable by this or a future government, this would, in Westminster's view, be a disproportionate response to this issue at this time, especially as it would require a significant cross-government policy programme to be delivered between the Home Office and the Department for Communities and Local Government.

It may be possible however, to achieve closer alignment without fundamental reform by encouraging both licensing and planning to be aware of the circumstances with regard to premises under the other system. Whilst licensing decisions could not be taken on the basis of the planning situation, it would give sub-committees more information about the wider circumstances surrounding the premises.

Crime, disorder and public safety

7. **Are the subsequent amendments made by policing legislation achieving their objects? Do they give the police the powers they need to prevent crime and disorder and promote the licensing objectives generally? Are police adequately trained to use their powers effectively and appropriately?**

   No specific comment to make

8. **Should sales of alcohol airside at international airports continue to be exempt from the application of the Act? Should sales on other forms of transport continue to be exempt?**

   No specific comment to make

Licensing procedure

9. The Act was intended to simplify licensing procedure; instead it has become increasingly complex. What could be done to simplify the procedure?

Unfortunately, the Act has become more complex in some areas due to regulatory reform, deregulation and other amendments since it was introduced in 2005. The deregulation of certain types of licensable activities, if they do not exceed certain thresholds, does create confusion for applicants and sometimes for the enforcing bodies.

There have also been some examples of when an amendment to the Act has made a process easier. An example of one of these was the introduction of a minor variation process. This enabled licensees to amend their licences to take into account these minor changes. Previously there would have been a need to go through a full variation process which could be costly for businesses and delay the granting of the variation.

Temporary Event Notices were introduced as a system to permit temporary activities, under which licensable activities could be carried out on a temporary basis without the need for a premises licence or club premises certificate. The idea of these notices was sensible and originally, they were intended for use by small events and for communities, thus the fee was set at such a small amount, reflecting the level of work that the Government believed Licensing Authorities would have to do to administer this process. Westminster City Council will process over 3100 of these notices a year. However, since the introduction of this scheme, we have seen that the vast majority (85%) of these notices submitted each year in order to extend licensable activities in licensed premises.

The only responsible authorities that can make an objection to a Temporary Event Notice are the Police and, more recently Environmental Health. The extension of licensable activities beyond that already permitted by a licence requires consideration as to whether this would impact on one or more of the licensing objectives. This has a significant resource implication for licensing authorities and costs considerably more than the current £21 fee. There is also a considerable amount of pressure on resources, due to the limited time permitted for Responsible Authorities to submit an Objection Notice (three working days). When there are considerable volumes of these notices received, the ability to adequately assess them and their potential impact on the licensing objectives is diminished.

The other concern is that a premises licence or club premises certificate would have been properly considered by the Licensing Authority when the licence was granted. In most cases, conditions would have been put in place to ensure that the premises operation will not impact on the licensing objectives. Although there is a power to impose the licence conditions from the premises licence, if the notice is brought before the Licensing Authority, most events will operate without any conditions in place. Most good operators who are extending their licensable activities will comply with their conditions. However, there are no requirements for them to do so and they can then operate under the notice without complying with these conditions.

As stated above, only the Police and Environment Health Department can object to a notice. As there is no requirement to advertise the notice or inform local communities, local

residents will not be aware of the Temporary Event Notice proposed activities and when it is in effect. Local residents also cannot oppose these events, which then can cause frustration and problems for residents. In such cases, the only recourse for residents will be to complain to the Council if the event is causing a public nuisance relating to noise or to call the police if there are crimes being committed.

We would like to see the introduction of a scheme, for temporary extensions of permissions to premises licence and club premises certificate, which is separate from Temporary Event Notices. These temporary extensions should be dealt with in a similar way to the minor variation process. This would enable the Licensing Authority to determine who it consults and also provide sufficient time (14 days) to consider the application. This temporary extension would then, if granted, permit the premises to operate within the remit of the permitted temporary extension subject to the conditions of the licence or any new conditions attached for the purpose of that temporary extension. Such a scheme would not necessarily need to then limit the licensed premises to a specific number of extensions a year, as the extensions would only be permitted and conditions attached if it was deemed that the extension would not adversely impact one or more of the licensing objectives.

It is our view that a temporary extension process, similar to the minor variation application process, would enable responsible authorities and local residents the ability to comment and if necessary, oppose an extension. By removing the requirement on the number of permitted temporary extensions that premises can have per calendar year, it would then enable operators to have extensions when they need to and these will only be permitted if the extension will not harm one or more of the objectives. Although this would add another formal approval scheme to the process, it would enable a better approach to dealing with the need for premises to extend their operation on occasions, whilst balancing the needs of the local community.

10. What could be done to improve the appeal procedure, including listing and costs? Should appeal decisions be reported to promote consistency? Is there a case for a further appeal to the Crown Court? Is there a role for formal mediation in the appeal process?

The experience in Westminster is that the existing appeal process works well.

In relation to listing, Westminster City Council has found the local Magistrates Courts to be flexible enough to be able to list urgent hearings where necessary (e.g. in relation to appeals against Temporary Event Notices, or decisions to revoke on summary review). Costs in the Magistrates Courts should continue to be dealt with in accordance with the general principles which apply to appeals against administrative decisions taken by local authorities – there is no case for any special treatment of licensing appeals.

In relation to publication of appeal decisions, it is important to note that Magistrate Court appeal decisions are not legally binding on a Licensing sub-committee (or indeed other Magistrate Courts), and in all cases the decisions have to made on the individual circumstances of the case (including the local licensing policy). Whilst not legally binding, Magistrate decisions can however, be relevant factors which the sub-committee can consider if they are aware of them. In the interests of transparency for all interested parties,

we feel it is important to make the default position to publish appeal decisions. We feel transparency of information is particularly important when some parties (solicitors representing licence holders) to a hearing are well placed to have access to such information and other parties (residents) are often not.

We would oppose the introduction of a further right of appeal to the Crown Court. Our concern is that such a right would enable “bad” operators to delay the coming into effect of Licensing Sub-Committee decisions by tactical appeals. We have had experience of such tactics in relation to the street trading regime in Westminster (regulated by the City of Westminster Act 1999) where an appeal to the Crown Court is provided for. In practice, appellants are more than adequately protected by the right to ask for a case to be stated to the High Court, and by the availability of Judicial Review. It is also important to note that local Magistrates Courts can acquire an experience and expertise in dealing with licensing appeals, which will not necessarily be replicated in the Crown Court.

In relation to mediation, Westminster City Council has reservations about both its practicality and its utility. We have dealt with well over 400 appeals, and mediation has been suggested by an operator only once. We rejected the proposal, because of the difficulty in ensuring that the interests of all parties (not just the licensing authority and the appellant, but also the responsible authorities and local resident objectors) were adequately protected.

Another area where we feel there may be scope for the appeals process to be amended is with regard to Section 52 (11) of the Licensing Act 2003, which states that the review decision shall not have effect before the end of the 21 day period allowed to bring an appeal or, if an appeal is lodged, until the appeal is disposed of. This is only the case for standard reviews; whereas expedited reviews, in the event of serious crime or disorder, can be invoked within 48 hours to allow the licensing authority to quickly deal with the matter by imposing “interim steps” prior to a full review hearing.

Our experience of standard review procedures is that the delay in making the licensing authority decision effective can undermine the effectiveness of the review procedure itself. It is relatively cheap and easy to lodge an appeal to the Magistrate Court. Delays in Court listing means that appeal hearings will typically not be listed for 6 to 12 months, during which none of the measures that the licensing authority considered appropriate to promote the licensing objectives are implemented. Unscrupulous licence holders can, and sometimes do, choose to abandon their appeal shortly before an appeal hearing and, although they can be liable for the council’s costs in defending the appeal to that point, this can be an insignificant amount compared with the benefits of continuing to trade unrestricted for many months. There is however, case law where the Courts have been very clear about licensees who try to extend the appeal procedure by seeking questionable adjournments. The Courts have recognised that such adjournments are to the disadvantage of residents and have refused them.

For these reasons, we would suggest that this situation be reversed, and specifically Section 52 (11) of the Licensing Act 2003 should be amended, so that the decision of the Licensing Authority takes effect immediately and are not undermined by the appeals procedure.

We do however recognise that whatever approach is adopted, either the Licensing Authority or the licensee is potentially at a disadvantage and that this is a balance between the rights

of the licensee and the rights of those seeking a review. We would therefore suggest that the Committee consider this proposal alongside the fact that the right of appeal is crucial to meeting the wider legal requirement (specifically the Human Rights Act 1998), that a party is entitled to a hearing by an independent and impartial tribunal. In certain other situations, this means that the status quo is maintained until the appeal has been heard, i.e. in this case, that the licensee gets to keep the existing licence free of any of the steps determined by the Sub-Committee. Furthermore, from a commercial point of view, it would mean that licensees could be compelled to comply with expensive requirements which may be adjudged on appeal to be unnecessary, leaving a need for greater clarity over compensation in such a situation. On balance however, our preference would be for a reversal of the current situation.

Sale of alcohol for consumption at home (the off-trade)

11. Given the increase in off-trade sales, including online sales, is there a case for reform of the licensing regime applying to the off-trade? How effectively does the regime control supermarkets and large retailers, under-age sales, and delivery services? Should the law be amended to allow licensing authorities more specific control over off-trade sales of "super-strength" alcohol?

As noted above, in answer to question one, there is a significant difference between off-sales and on-sales which requires careful consideration. This is especially the case in a hyper-connected city such as London, where alcohol purchased via an off-sale in one area may not be consumed in the same area. Furthermore, the impact of that alcohol sale may also not be felt by the area in which it takes place. For example, alcohol may be drunk at home with a group, then on a train from outer-London to the West End, in order to carry on their night already having consumed a quantity of cheaper alcohol in an uncontrolled environment. This is not a situation which requires a direct solution, and indeed there may not be a simple remedy, but it does highlight the fundamental differences between on and off-sales from a licensing perspective which suggest a need to review the regime.

With regard to the specific issues highlighted in the supplementary questions, Westminster City Council considers that sales of "super-strength" alcohol may require specific controls in areas where it can be demonstrated that street-drinking is particularly prevalent. Whilst action can be taken to restrict the consumption of alcohol on street through controlled drinking zones, these could be further enhanced by limited the sale of certain types of alcohol in and around that area.

Pricing

12. Should alcohol pricing and taxation be used as a form of control, and if so, how? Should the Government introduce minimum unit pricing in England? Does the evidence that MUP would be effective need to be "conclusive" before MUP could be introduced, or can the effect of MUP be gauged only after its introduction?

No, Westminster City Council does not consider pricing and taxation and appropriate or effective forms of control for alcohol.

Fees and costs associated with the Licensing Act 2003

13. Do licence fees need to be set at national level? Should London and the other major cities to which the Government proposes to devolve greater powers, have the power to set their own licence fees?

No, license fees do not need to be set at a national level and these should be set by the Licensing Authority in each area based on detailed local understanding of costs incurred as a result of administering a licensing system, but also the impact on the economic vibrancy of the area.

Going back as far as 2006, when the independent Elton Review demonstrated that existing fee levels did not result in full cost recovery, successive governments have given commitments that fees should be set at a level that permits full cost recovery. The Police Reform and Social Responsibility Act 2011 actually allows for locally set fees to fully recover costs, but the government have not brought forward proposals to implement this. The reasons previously given by government, not to implement this approach, relate to the Hemming vs. Westminster City Council case which considered the acceptable level of fees in the Services Directive. However, any such reservations should have now been laid to rest by the decision of the Supreme Court made in April 2015.

Westminster City Council has also long argued that, since the introduction of the Licensing Act in 2005, it is not possible to recover the cost of the resources that we channel into administering and managing the licensing regime. The LGA have previously estimated that the current system results in local authorities and local taxpayers subsidising the licensed trade by up to £1.5m per month as a result of the current, nationally-set system. CIPFA recently undertook a survey of participating local authorities which further suggests that the national system does not allow for cost recovery with the country-wise deficit estimated at between £9.2m and £11.4m p.a.

In Westminster, we understand that our own local deficit is approximately £1.387m per annum, based purely on the costs of administering the system without any wider consideration of costs incurred. Many of the most significant costs linked to licensed premises and incurred by the licensing authority fall outside the scope of the 2003 Licensing Act e.g. street cleansing and community protection. A full analysis of costs relating to the evening and night time economy as a whole in Westminster estimated that the local authority incurred somewhere in the region of £26m worth of costs every year when taking everything into account[3]. Whilst, it is not the purpose of licensing fees to recover such costs, it does highlight a wider funding issue which requires consideration, perhaps as part of analysis of late night levy provisions as suggested above, in response to question 3.

Furthermore, the current structure of licensing fees can be unfair and damaging to business. As an example, in the current fee structure we have wide ranging variances in terms of what

[3] https://www.westminster.gov.uk/evening-and-night-time-economy

businesses pay the local authority in annual fees. A nightclub licensed until 3am with a capacity of 1,050 currently pays £350 while a local pub in Pimlico that closes at 00:00 with a capacity of less than 50 people is charged £1,050. Furthermore, we have hairdressers with occasional on sales until 21:00 paying the same as nightclubs with 3am terminal hours and capacities of greater than 1000 patrons.

Rateable value as a criterion for fee setting is not one which Westminster supports. We recognise the need to have a benchmark on which to assess premises, however the rent ability of premises should not be a factor on which to determine a fee, see the above example. There are also intensive administrative tasks in ensuring rateable values are up dated on our system and chasing the VOA for rateable values for new premises. Westminster also has the issue of parks and open Spaces which have no rateable value but do have Premises Licences.

Local conditions could be better managed and such irregularities ironed out fairly, if decisions on license fee levels were made at a local rather than national level.

Finally, it is important to note that, in London, it is the boroughs that are the Licensing Authority and not the Mayor or the GLA. As such, it would not be appropriate to devolve license fee setting powers to the Mayor as they powers should rest at the same level as the administrative costs are incurred.

International comparisons

14. Is there a correlation between the strictness of the regulatory regime in other countries and the level of alcohol abuse? Are there aspects of the licensing laws of other countries, and other UK jurisdictions, that might usefully be considered for England and Wales?

No specific comment to make

Other issues

One other area that Westminster City Council would suggest the Committee consider is the emerging issue of ‘shadow’ licenses. This involves a situation whereby a freeholder of a property will seek to acquire a premises license on the exact same terms as that which is held by the actual operator. When such an application is made, it can be very difficult to find grounds to refuse such an application because, as it is a direct mirror of the existing license, there are often no grounds on which to find that it would either fail to promote the licensing objectives or, where such policies apply, add to cumulative impact.

Whilst not a problem in and of itself, the reasons behind this and the issues it can cause become apparent when a premises license is reviewed and conditions apply or the license revoked only for the shadow license to then be immediately activated allowing the premises to continue operating on the same terms as was the case before the review took place. This

is clearly in the commercial interests of landlords to protect the value of their landholdings as licensed premises.

Whilst we do not currently know the exact number of shadow licenses that exist in Westminster, our experience is that this is a growing trend which clearly represents a threat to the ability of the Licensing Authority to take meaningful action to review premises licenses and uphold the licenses objectives set out in the Act. We do however limited experience of taking action on both the ‘active’ and the ‘shadow’ license at the same time following a review, but the legislative framework has not yet caught up with this phenomenon sufficiently and we therefore consider it appropriate that the Committee give some thought to the matter.