

## **Item: 5**

**Orkney Islands Area Licensing Board: 5 March 2020.**

**Licensing (Scotland) Act 2005.**

**Statement of Alcohol Licensing Policy.**

**Local Conditions – Membership of Pubwatch.**

**Report by Clerk to the Board.**

### **1. Purpose of Report**

To consider whether the Board should carry out a consultation exercise on requiring that membership of Pubwatch be a local condition attached to premises licences.

### **2. Recommendations**

The Board is invited to note:

#### **2.1.**

The options in respect of considering what action to take with regard to a consultation exercise on requiring that membership of Pubwatch be a local condition attached to premises licences, as detailed in section 10 of this report.

#### **2.2.**

The preferred option being Option 2, namely not to undertake such a consultation exercise and instead to continue to encourage licensees to become members of Orkney Pubwatch, having regard to their particular type of premises and/or licensable activities, as reflected in the Board's Statement of Alcohol Licensing Policy.

**It is recommended:**

#### **2.3.**

That the Board should not undertake a consultation exercise on requiring that membership of Pubwatch be a local condition attached to premises licences.

#### **2.4.**

That the Board should continue to encourage licensees to become members of Orkney Pubwatch, having regard to their particular type of premises and/or licensable activities, as reflected in the Board's Statement of Alcohol Licensing Policy.

## **3. Policy Aspects**

### **3.1.**

In terms of its Statement of Alcohol Licensing Policy, the Board encourages membership of Pubwatch.

#### **3.1.1.**

Section 6.2 of the Statement of Alcohol Licensing Policy (Conditions Attaching to Licences) provides:

“Where relevant representations are made, the Board will make an objective judgement as to whether other conditions may need to be attached to a licence to secure achievement of the licensing objectives. Any conditions arising as a result of representations will primarily focus on the impact of the activities taking place at the licensed premises, on those attending the premises and members of the public living, working or engaged in normal activity in the vicinity of the premises, and will cover matters that are within the control of the licence holder. The Board will seek to avoid the imposition of disproportionate conditions. In this connection, the Board may consider attaching a condition requiring the premises licence holder and / or designated premises manager to take-up membership of any Pubwatch or similar scheme operating in the area and to participate fully in its operation, including the effective sharing of information.”

#### **3.1.2.**

Section 20.16 of the Statement of Alcohol Licensing Policy (Hours of Trading, On-sales) provides:

“The Board will continue to support local schemes such as Pubwatch, Safer Towns initiatives, Shop-watches, Best Bar None, radio-links and Door Safe Schemes. The Board recognises that such schemes help to reduce public disorder and nuisance offences taking place within local communities, thereby promoting the licensing objectives. The Board encourages responsible licence holders to participate in such schemes.”

#### **3.1.3.**

Section 22.5 of the Statement of Alcohol Licensing Policy (Licensing Objective – Preventing Crime and Disorder) provides:

“The following examples of control measures are given to assist applicants, having regard to their particular type of premises and/or licensable activities: ...

- membership of any local Pubwatch schemes or similar organisations; ...”

### **3.2.**

The full policy document is available from the Related Downloads section of the following Council webpage:

<https://www.orkney.gov.uk/Service-Directory/L/licensing-board-policies.htm>.

## **4. Background**

### **4.1.**

During the statutory review of the Board's Statement of Alcohol Licensing Policy in 2013, the Local Licensing Forum responded with a suggestion that, amongst other things, the Policy should be amended to indicate that the Board expected all licence holders to be a member of Pubwatch.

### **4.2.**

The Licensing service researched the implications of requiring mandatory membership of Pubwatch by premises licence holders and reported to the Board on 5 December 2013 as follows:

#### **4.2.1.**

Licensing colleagues in the Society of Local Authority Lawyers and Administrators in Scotland were consulted on the question of whether a licensing board could attach a local condition to premises licences requiring membership of the organisation known as Pubwatch.

#### **4.2.2.**

The responses indicated that no licensing board routinely applies such a local condition. One licensing board has applied such a condition to specific premises, which have been reported to the board as "problem" premises and the board has indicated that it will consider removing the condition should the premises cease to be regarded as problematic. No premises in Orkney have been reported to the Board in this manner.

#### **4.2.3.**

In one licensing board area, premises have dropped out of membership of local Pubwatch schemes and / or have permitted "banned" clientele to use their premises, due to economic difficulties. This has initiated intervention by Police Scotland, meeting with the licence holders to discuss their responsibilities in running well managed premises and to discourage problematic behaviour which could result in premises being reported to the licensing board for review of their licence and / or criminal prosecution. The Police also visit these known premises more frequently than others, to underline their concern about any possible misbehaviour by the staff or clientele.

#### **4.2.4.**

Adoption of a general local condition attaching to premises licences, requiring membership of a Pubwatch scheme, is not practised by other licensing authorities and has not been legally tested. Membership of such schemes is encouraged by other licensing authorities rather than required.

#### **4.2.5.**

Several responses [to the 2013 review of the Statement of Alcohol Licensing Policy] referred to the possibility of the Board attaching a local condition to premises licences, requiring membership of Pubwatch. Given the advice narrated above, the Board may wish to consider alternative means of promoting the licensing objectives. Further reports may be necessary.

#### **4.3.**

The Board agreed that its Policy should include a reference that the Board may apply a condition to premises licences requiring premises licence holders and/or designated premises managers to take up membership of any Pubwatch or similar scheme operating in the area and to participate fully in its operation, including the effective sharing of information; and the Statement of Alcohol Licensing Policy was amended in the terms detailed at section 3.1 above.

#### **4.4.**

The Convener of the Local Licensing Forum wrote to the Chair of the Licensing Board on 16 October 2014, requesting the Board to consider making membership of Orkney Pubwatch mandatory for all licence holders across the Mainland of Orkney.

#### **4.5.**

The information detailed at sections 4.1 to 4.4 above was reported at the Joint Meeting of the Orkney Local Licensing Forum and the Board on 19 November 2014.

#### **4.6.**

The request detailed at section 4.4 above was considered at the Joint Meeting of the Orkney Local Licensing Forum and the Board on 19 November 2014 and at the meeting of the Board on 11 December 2014, when the Board resolved that the Clerk to the Board should undertake a consultation exercise on requiring that membership of Pubwatch be a local condition attached to premises licences throughout Orkney.

#### **4.7.**

The Licensing service communicated with Pubwatch, including attending a Pubwatch Annual General Meeting, through 2015. Pubwatch were advised that, as part of the consultation process, it was important that people knew the full implications of Pubwatch membership so that they could make a fully informed response to the consultation. The Licensing service therefore wished to publish information about Orkney Pubwatch online as part of the consultation process or be able to direct consultees to the organisation for detailed information.

##### **4.7.1.**

Pubwatch advised that their documentation, including their Constitution, required to be reviewed at that time to ensure that it was fit for purpose. They confirmed that they would contact the Licensing service when they were able to provide detailed information. Although the Licensing service subsequently requested the information again, no further information was received.

#### **4.7.2.**

Police Scotland advised, during a presentation at the Joint Meeting of the Orkney Local Licensing Forum and the Board on 6 November 2019, that the Orkney Pubwatch documentation had been reviewed from November 2018 onwards. The documentation is published on a new website for the Orkney Pubwatch at <https://orkneypubwatch.co.uk/> within the Members section i.e. not public facing.

## **5. Other Licensing Boards**

### **5.1.**

In late 2019, the Licensing service again consulted licensing colleagues in the Society of Local Authority Lawyers and Administrators in Scotland on the question of whether a licensing board could attach a local condition to premises licences requiring membership of the organisation known as Pubwatch.

### **5.2.**

The Licensing service also researched all current Statements of Alcohol Licensing Policy by Scottish licensing boards with the following results:

- Of the 32 Statements, 3 do not include any reference to Pubwatch.
- Of the remaining 29 Statements, membership of Pubwatch is encouraged, supported or suggested, but none require membership as a condition of licence.
- One board encourages premises to consider membership of their local Pubwatch scheme “having regard to their particular type of premises and/or licensable activities”. They encourage premises which operate specifically as “public houses” to participate in their local Pubwatch scheme “if they feel it beneficial” i.e. the suggestion is envisaged to refer specifically to one type of premises and membership of the scheme is not perceived to be mandatory.
- One board supports Pubwatch schemes which it perceives as providing “safe drinking environments for customers and contributing in a meaningful way to the overall community safety in local areas” i.e. the scheme is understood to relate to on-sale premises.
- Another board refers to Pubwatch schemes as “... voluntary schemes amongst licensees ...” i.e. the scheme is not envisaged to be mandatory.

### **5.3.**

With regard to section 4.2.2 above, one licensing board which previously advised that it had applied a local condition requiring membership of Pubwatch to specific premises, which had been reported as “problem” premises, had not done so for a considerable number of years. That board’s position is currently to support and encourage the use of the Pubwatch scheme.

## **5.4.**

With regard to section 4.2.3 above, the current position of one licensing board which previously reported difficulties where premises had dropped out of membership of local Pubwatch schemes and / or had permitted “banned” clientele to use their premises, due to economic difficulties, resulting in increased involvement from Police Scotland, is to support and encourage use of the Pubwatch scheme.

## **5.5.**

One licensing board advised that, in terms of the European Convention on Human Rights (ECHR), it would not be appropriate for a 'Public Authority' under the Human Rights Act 1998 to impose a condition requiring membership of a third-party organisation (ECHR Article 11 (Freedom of assembly and association)). A freedom to choose with whom to associate implies an equal and opposite freedom to choose with whom not to associate. Whilst business competitors may choose to associate, there is no clear right of the State to require them to do so. The board also pointed out that in Trade Union law, a 'closed shop' has been held incompatible with ECHR (Young, James and Webster v UK 1981 ECHR 4): the European Court of Human Rights held that it was not 'necessary' for all workers to be members in order for trade unions to be effective in promoting workers' interests and the argument would extend to indicate that it is not necessary for all "pubs in a town" to be members of a Pubwatch scheme in order for it to be at least partly successful.

# **6. Relevance of Pubwatch Membership to Premises**

## **6.1.**

With regard to section 4.4 above, the request from the Convener of the Local Licensing Forum to the Licensing Board in 2014 was to consider making membership of Orkney Pubwatch mandatory for all licence holders across the Mainland of Orkney.

## **6.2.**

With regard to section 4.6 above, the decision of the Board on 11 December 2014 took account of advice from the Clerk that, in terms of natural justice, all premises licence holders should be treated equally before the law and that this made it difficult to differentiate between premises located within one part of the Board's area (Mainland), as requested by the Convener of the Local Licensing Forum, and premises in the other parts of the area (all other areas of Orkney), unless there was clear justification for the distinction. The Board resolved that the consultation exercise should relate to requiring that membership of Pubwatch be a local condition attached to premises licences throughout Orkney.

## **6.3.**

The relevance of Pubwatch membership for licensed premises other than on-sale bars is uncertain.

### **6.3.1.**

With regard to section 5.2 above, two of the current Statements of Alcohol Licensing Policy by Scottish licensing boards envisage membership of Pubwatch schemes to relate to on-sale premises or those which provide drinking environments.

### **6.3.2.**

With regard to section 5.3 above, one licensing board advised that it would have concerns about the types of premises to which membership of a Pubwatch scheme would be relevant, as they operate in a large, diverse area and do not envisage that it would be reasonable to impose a blanket condition on restaurants, cafes, gin distilleries, etc. The scheme is understood to relate to on-sale premises.

### **6.3.3.**

With regard to section 4.7.2 above, Police Scotland provided the licensing service with copies of Orkney Pubwatch documentation which is published within the Members' section of the Orkney Pubwatch website. The documentation reads as relevant to on-sale licensed premises, particularly bars. Paragraph 1.1 of Orkney Pubwatch's Constitution, for example, a copy of which is provided for members' information, states:

“Orkney Pubwatch is a voluntary partnership of licensees who have agreed to work together to promote good practice, share information, prevent crime and anti-social behaviour; with the intention of creating a safer drinking environment in members premises.”.

### **6.3.4.**

The above information regarding Orkney Pubwatch has implications for any steps to make membership mandatory rather than voluntary and indicates the intention to address problems encountered within on-sale licensed premises, rather than off-sales licensed premises where no “drinking environment” would be permissible.

### **6.3.5.**

The current membership of Orkney Pubwatch consists only of on-sale licensed premises.

## **7. National Pubwatch Approach**

### **7.1.**

The Licensing service researched an article from 2015 published on the national Pubwatch website indicating that a Scottish Local Licensing Forum intended to send a letter to the then Scottish Government Health Secretary, asking her to make the Pubwatch scheme a necessity for all premises i.e. a national requirement. No steps were taken by the Scottish Government to introduce such a requirement.

### **7.1.1.**

The article includes a comment from the National Pubwatch Editor, as follows:

“Pubwatch has always been a voluntary activity, with local schemes run by licensees for their own benefit. Recent legal challenges have focused on how much involvement the Police and other public authorities have in the management and processes of the scheme. If the claimants had succeeded in convincing the High Court that there had been undue influence then they would have opened up the schemes to Human Rights legislation.

Should membership of a scheme became compulsory it might prove difficult to argue that the purpose of a Pubwatch and decisions taken to ban a troublemaker is purely for the benefit of the licensed trade, rather than say the Police or criminal justice system?

We can see the attraction of trying to encourage reluctant licensees to engage in a local Pubwatch scheme but the interference of the State, no matter how well intentioned, could damage the power of the trade to collectively exclude troublemakers and in the long run prove counterproductive.”

### **7.1.2.**

Information published in the Frequently Asked Questions area of the National Pubwatch website reiterates the voluntary nature of membership and possible negative unintended consequences should membership be compulsory.

## **7.2.**

Following the Joint Meeting of the Orkney Local Licensing Forum and the Board on 6 November 2019, Police Scotland contacted the National Pubwatch Chair and forwarded his comments to the Licensing service, with his permission, by email dated 7 November 2019, as follows:

“Pubwatch schemes are voluntary organisations, which are primarily run for the benefit of members premises, even though the wider community might be safer as a result of their activities. I do know that some councils make membership a condition but I have never seen anyone’s licence revoked because they didn’t attend meetings etc.

I wonder how the forum would respond if the pubwatch committee decided they didn’t want a particular premises in the scheme because he was serving people excluded under their Common Law banning scheme?

We did have a Judicial Review where someone tried to overturn a pubwatch ban in the High Court. Part of the claimants case was based on the fact that local council had a condition of membership for some premises. This claim only failed because the pubwatch was able to show that the police and Council never forced members to attend meetings etc. So condition of membership is fairly pointless if they are not going to enforce and if they do it might have unforeseen consequences.”



### 7.2.1.

When asked which “councils make membership a condition”, the Chair, Mr Baker advised, by email from Police Scotland dated 8 November 2019, that the local authority involved in the Judicial Review referred to above was Haverhill in Suffolk, but that National Pubwatch do not maintain a list of authorities who attach such a condition.

## 8. Judicial Review

### 8.1.

There have been two reported judicial review applications, founded on human rights legislation, against bans imposed by local pubwatch schemes:

- *Proud, R (On the application of) v Buckingham Pubwatch Scheme and Anor [2008] EWHC 2224 (Admin).*
- *R (on the application of Boyle) v Haverhill Pubwatch [2009] EWHC 2441 (Admin).*

### 8.2.

In the *Buckingham* case, an application for permission to bring judicial review was refused. The Court noted that human rights legislation applied only to public authorities or to authorities which exercised public functions. The case centred on the question of the identification of the proper defendant to the proceedings. Without reaching a concluded view on whether the Buckingham Pubwatch scheme was a person exercising public functions for the purposes of section 6 of the Human Rights Act 1998, the Court held that it was unlikely that an entity which had no constitution, no finances, no fixed membership, no rules and whose decisions were binding on its members only to the extent that they treated them as binding, on which again there were no rules, was an entity of a sort that could be amenable to judicial review or could be a person exercising public functions under section 6 of the Human Rights Act 1998. Not only was there no evidence of a collective responsibility imposed on licensees, but there was no collective capable of being described a decision-making body, whatever the appearance may have been in terms of the documents that emanated from individuals acting apparently on behalf of the Scheme.

### 8.3.

In the *Haverhill* case, the claimant sought to challenge by way of judicial review a decision of the Haverhill Pubwatch scheme to ban him from all member premises in the town. He alleged, in particular, a breach of natural justice in that he was never told the nature or the source of the case against him. The Pubwatch scheme members argued that the banning decision was not reviewable by the Court because it did not involve the exercise of a public function; it was merely the collective exercise by the licensees of something that licensees long had the right to do at common law – namely to decide, free from challenge (albeit subject to anti-discrimination legislation), whom to let on to their premises. The claimant’s case relied, in particular, on the role played by the operation of public authorities, including the relevant licensing authority, in the operation of the scheme, which, he argued, was integral and indispensable to it.

## **8.4.**

The Court held that the banning decision was not reviewable in the courts because the Haverhill Pubwatch scheme could properly be said to have been run by the licensee members with the role of public authorities, such as the police, being that of support only; and therefore their decisions, such as banning, did not involve the exercise of a public function.

## **8.5.**

Nonetheless, it is possible to discern in the above judgment two broad circumstances in which the role of licensing authorities in the operation of a Pubwatch banning scheme are likely to increase the risk of a successful legal challenge.

### **8.5.1.**

The first circumstance is where the licensing authority's role exceeds that of a support and advisory role. For example, the attendance by licensing officers at a Pubwatch banning meeting could support a finding that the Pubwatch scheme exercises a public function, particularly if the officers contribute to a banning decision.

### **8.5.2.**

The second circumstance arises where the licensing authority imposes conditions on premises licences requiring membership of the local Pubwatch scheme. In such a case, a person's ban could be said to be attributable to the existence of the condition on the licence (and therefore to the licensing authority), and not to the licensee, who may be perfectly content for the individual to patronise the premises. This would also support an argument that the Pubwatch exercised a public function.

## **9. Scottish Legislative Background**

### **9.1.**

Section 4 of the Licensing (Scotland) Act 2005 (the Act) provides that the licensing objectives are:

- Preventing crime and disorder.
- Securing public safety.
- Preventing public nuisance.
- Protecting and improving public health.
- Protecting children and young persons from harm.

## **9.2.**

Section 6 of the Act requires licensing boards to publish statements of licensing policy. The introduction of a local condition requiring premises licence holders to become members of the local Pubwatch scheme would constitute a revision of its Statement of Alcohol Licensing Policy. Policies are subject to challenge through the courts by judicial review.

## **9.3.**

Section 27 of the Act makes provision for mandatory conditions to apply to premises licences in terms of Schedule 3 to the Act. It also provides discretion for licensing boards to attach conditions, either from pool conditions which may be (but have not yet been) prescribed by Scottish Ministers or by devising their own local conditions for the purposes of any of the licensing objectives. Local conditions must be reasonable and proportionate. Licence holders would have a right of appeal to the courts against the attachment of local conditions.

## **9.4.**

Section 27A of the Act provides for licensing boards to make, in relation to any prescribed matter, a variation of the conditions to which a premises licence is subject. No matters have been prescribed by Scottish Ministers.

## **9.5.**

Section 39 of the Act provides for licensing boards to make a variation of a premises licence at a premises licence review if the board considers it necessary or appropriate for the purposes of any of the licensing objectives. This would include a variation of the conditions of licence. The premises licence holder or the person making the application for premises licence review is afforded a right of appeal to the courts in terms of section 131 and Schedule 5 to the Act in relation to a decision to make a variation of a premises licence.

## **9.6.**

Section 40 of the Act provides for a licensing board which has made a variation of a premises licence under section 39 of the Act to revoke the variation. Any person making an application to revoke a variation of premises licence is afforded a right of appeal to the courts in terms of section 131 and Schedule 5 to the Act in relation to a refusal of the application.

## **9.7.**

In general terms, where there is no right of appeal to the courts defined by the Act, judicial review may remain an option to challenge a decision.

## **10. Options**

### **10.1.**

There are two options to be considered in respect of considering what action to take with regard to carrying out a consultation exercise on requiring that membership of Orkney Pubwatch be a local condition attached to premises licences.

### **10.2.**

**Option 1:** Proceed to undertake a consultation exercise on requiring that membership of Orkney Pubwatch be a local condition attached to premises licences throughout Orkney, as agreed at the meeting of the Board on 11 December 2014.

#### **10.2.1.**

There are legal and reputational risks to the Board and Orkney Pubwatch associated with applying a local condition to premises licences, requiring membership of Orkney Pubwatch, as detailed below.

#### **10.2.2.**

A requirement by a licensing board for licensed premises to become members of a third-party organisation as a standard condition of licence could be held by a court to be ultra vires or, in any event unreasonable and disproportionate, in terms of licensing and human rights legislation.

#### **10.2.3.**

The two cases cited in section 8 of this report highlight the need for separation between the roles of (a) groups of licensees voluntarily making decisions and (b) licensing authorities, otherwise the actions and decisions of the schemes and the relevant licensing authority would be more vulnerable to successful challenge in the courts.

#### **10.2.4.**

The nature of membership of a local pubwatch scheme is considered to be voluntary by its national body and Scottish licensing boards. Making membership mandatory would run counter to public and industry expectation and could therefore have reputational consequences.

#### **10.2.5.**

The membership conditions of a local pubwatch scheme might not necessarily be appropriate for all types of licensed premises and, unless some flexibility is provided for, could give risk to an additional ground of challenge to the proportionality of the scheme if made mandatory.

#### **10.2.6.**

Licensing boards have no control over the constitution of local third-party organisations and, with regard to section 10.2.3 above, it would not be appropriate for them to have such control. Boards could not, by way of licence condition, seek to enforce the membership rules of another legal entity without the likelihood of challenge in the courts.

#### **10.2.7.**

Any condition requiring membership of a third-party organisation could not be applied to existing premises licences as standard without the likelihood of challenge in the courts. A condition requiring such membership could only be applied to existing premises licences on a case by case basis as and when premises were reported to a licensing board as problematic. The board would be expected to take into account the individual circumstances of each case and demonstrate that any additional conditions applied were appropriate, reasonable and proportionate. This approach is reflected in the Board's Statement of Alcohol Licensing Policy, as detailed at section 3.1.1. above.

#### **10.2.8.**

Natural justice requires that all premises licence holders should be treated equally before the law. Arguably, given that the condition could not be inserted into existing premises licences, except in the cases mentioned at section 10.2.7 above, a similar process should apply to any new licences approved. In other words, the condition could only be attached where the Board had reason to believe that it was appropriate, reasonable and proportionate based on the individual circumstances of each particular case, otherwise the imposition of the condition could be challenged in the courts. This approach is reflected in the Board's Statement of Alcohol Licensing Policy, as detailed at section 3.1.1. above.

#### **10.2.9.**

With regard to section 10.2.8 above, it may also be argued that, in order to treat all premises licence holders equally before the law, no distinction should be made between premises within one part of the Board's area (Mainland) and premises in the other parts of the area (all other areas in Orkney) unless there is clear justification for the distinction. The distinction should take into account the individual circumstances of each case and demonstrate that any additional conditions applied were appropriate, reasonable and proportionate or there would be a risk of challenge in the courts i.e. all premises should be regarded separately on their own merits, removing the suggestion of blanket or standard application of potentially unreasonable conditions. This approach is reflected in the Board's Statement of Alcohol Licensing Policy, as detailed at section 3.1.1. above.

#### **10.2.10.**

Licensing authorities recognise the benefits afforded to members of local Pubwatch schemes in providing safe drinking environments in licensed premises through sharing of information about actual or potential troublemakers and determination of individual or collective decisions to refuse entry to those persons in their premises. Authorities also recognise the wider social benefits of the successful operation of local Pubwatch schemes.

#### **10.2.11.**

However, the recognised benefits arising from operation of successful voluntary local Pubwatch schemes as detailed at section 10.2.10 above are outweighed by the legal and reputational risk factors associated with compulsory membership, detailed at sections 10.2.1 to 10.2.8 above. Accordingly, the purpose of undertaking a consultation on requiring that membership of Orkney Pubwatch be a local condition attached to premises licences throughout Orkney is negated.

#### **10.2.12.**

If Option 1 is resolved by the Board, further reports will be required at future meetings.

### **10.3.**

**Option 2:** Do not undertake a consultation exercise as detailed at section 10.2 above and continue to encourage licensees to become members of Orkney Pubwatch, having regard to their particular type of premises and/or licensable activities, as reflected in the Board's Statement of Alcohol Licensing Policy, as detailed at sections 3.1.1 to 3.1.3 above.

#### **10.3.1.**

With regard to section 5.2 above, no Scottish licensing board requires membership of local Pubwatch schemes as a mandatory local condition of licence. Three are silent on the issue and the majority – 29 out of 32 – encourage, support or suggest membership, including the Board.

### **10.4.**

The preferred option is Option 2. This would eliminate the legal and reputational risk factors detailed at sections 10.2.1 to 10.2.8 above.

## **11. Financial Implications**

There are no direct financial implications to the Board arising from the recommendations of this report.

## **12. Legal Aspects**

The legal aspects are contained within the body of this report.

## **13. Contact Officers**

Gavin Mitchell, Clerk to the Board, extension 2233, email [gavin.mitchell@orkney.gov.uk](mailto:gavin.mitchell@orkney.gov.uk).

Elaine Sinclair, Legal Clerk, extension 2232, email [elaine.sinclair-hill@orkney.gov.uk](mailto:elaine.sinclair-hill@orkney.gov.uk).

## **14. Appendix**

Appendix 1 – Orkney Pubwatch Constitution – members only.

## **ORKNEY PUBWATCH CONSTITUTION**

### **1.0 Aims & Objectives**

- 1.1 Orkney Pubwatch is a voluntary partnership of licensees who have agreed to work together to promote good practice, share information, prevent crime and anti-social behaviour; with the intention of creating a safer drinking environment in members premises.
- 1.2 The Pubwatch will work in partnership with the police, local authority and other agencies responsible for delivering Community Safety, for the benefit of the licensed trade and in order to improve the safety of staff and customers.
- 1.3 The Pubwatch will at its discretion collectively exercise its Common Law right to ban any person who the members believe may pose a threat to their businesses or the safety of their staff and customers.

### **1.0 Membership**

- 1.1 Membership will be drawn from within KW15, KW16 and KW17 postcodes
- 1.2 Membership shall be open to include any licensed premises that hold a Premises Licence or Club Premises certificate.
- 1.3 Membership fees will be set at £50 per annum.
- 1.4 Any changes to nominated contacts with individual members should be communicated to the Chair or Co-ordinator

### **2.0 Decisions**

- 2.1 All members must agree to abide by decisions made at the meetings.
- 2.2 Decisions (including banning decisions) will be agreed upon a majority vote.
- 2.3 Each premise shall have 1 vote.
- 2.4 Any member who consistently fails to follow the decisions of the Pubwatch may be excluded (all fees paid to date may be subject to forfeiture). Only a General Meeting (Annual or Extraordinary) of the members where the matter has been circulated on an agenda at least two weeks in advance can take this decision.



- 2.5 Any breaches in confidentiality by members or their representatives may be subject to sanctions by the Orkney Pubwatch Committee and a temporary withdrawal of Pubwatch data until the issue has been resolved.
- 2.6 The period of any 'ban' may be decided on a case by case basis or subject to any specific 'tariff' in use at the time.
- 2.7 No police officer or member of a public agency will have any vote in relation to banning persons, or any other decision of the Pubwatch. The role of the police or any other public agency will be limited to the provision of information, encouragement and advice.
- 2.8 All personal data received, retained and disseminated by the Pubwatch will be handled in accordance with the provisions of the General Data Protection Regulations (GDPR) and the Data Protection Act 2018.
- 2.9 Persons subject to a banning decision will, (if reasonably possible), be sent a '**banning notice**' informing them of the decision and how to appeal. The banning notice will also set out their rights as a data subject in accordance with GDPR. The rights of data subjects will be respected. These rights include:
1. **The right to be informed** of the following:
    - a) the identity and contact details of the controller;
    - b) the purpose of the processing and lawful basis for the processing;
    - c) the legitimate interests of the controller or third party, where applicable
    - d) categories of personal data;
    - e) any recipient or categories of recipients of the personal data;
    - f) the retention period or criteria used to determine the retention period;
    - g) the existence of the data subjects rights; and
    - h) the right to lodge a complaint with a supervisory authority.
  2. **The right to access** their personal information;
  3. **The right to have inaccurate or complete data rectified;**
  4. **The right to have their personal data erased** in certain circumstances
  5. **The right to restrict the processing** of their personal data in certain circumstances; and
  6. **The right to object to the processing** of their personal data

### **3.0 Meetings**

- 3.1 An Annual General Meeting (AGM) will be held on the anniversary of the inaugural meeting.
- 3.2 Meetings will be held at regular intervals at least bi-monthly.
- 3.3 Each member premises will ensure a representative attends all meetings.
- 3.4 An agenda will be published and a copy sent to all members at least one week before each meeting.
- 3.5 Items for the agenda will be submitted to the secretary via the relevant coordinators.
- 3.6 The committee will meet prior to each general meeting and at other times as deemed necessary; minutes will be taken and published prior to the next meeting.
- 3.7 Police and local authority representatives are invited guests at all meetings and should the membership wish to discuss issues in their absence they will be invited to vacate for that purpose.

### **4.0 Finance**

- 4.1 A auditor shall be elected from the membership. The auditor shall not be an officer of the Pubwatch or member of any committee set up by the Pubwatch.
- 4.2 The auditor shall audit & check all books, accounts, statements of receipts and payments in connection with the Pubwatches affairs annually; and to certify as to his/her findings.
- 4.3 The auditors will certify their findings direct to the Chair, the certificate will be submitted to the AGM.
- 4.4 Membership fees will be set by the officers and ratified at the AGM by the members.
- 4.5 The income and assets of the Pubwatch shall be applied to its stated aims and no members shall receive payment for their services.
- 4.6 Any reasonable expense incurred by an officer or committee member for the benefit of the Pubwatch may be reimbursed at the discretion of the committee.
- 4.7 A bank account in the name 'Orkney Pubwatch' will be kept at the Clydesdale Bank.

- 4.8 All monies received in connection with the Pubwatch will be paid into this account. At least two officers will be authorised signatories.

## 5.0 Data Sharing and Security

- 5.1 All information and intelligence discussed or held by Orkney Pubwatch is confidential. No disclosure of information will take place that is not in accordance with this Constitution and the relevant statutory provisions.
- 5.2 The data may only be accessed and shared by scheme members, or any responsible authority which has entered into a data sharing agreement with the Pubwatch.
- 5.3 All Pubwatch members allowed access to personal data will sign the Orkney Pubwatch '**Data Integrity Agreement**' and will maintain appropriate levels of security in respect of hard copy or electronic information in their custody, in accordance with good practice and the requirements of legislation.
- 5.4 The Orkney Pubwatch Committee is the 'Controller' of data held by the Pubwatch in accordance with General Data Protection Regulations. The Committee shall be responsible for and be able to demonstrate compliance with the GDPR Principles which are that personal data shall be:
1. **processed lawfully, fairly and in a transparent manner** in relation to individuals;
  2. collected for **specified, explicit and legitimate purposes** and not further processed in a manner that is incompatible with those purposes;
  3. **adequate, relevant and limited to what is necessary** in relation to the purposes;
  4. **accurate and, where necessary, kept up to date**; every reasonable step must be taken to ensure that personal data that are inaccurate, having regard to the purposes for which they are processed, are erased or rectified without delay;
  5. kept in a form which **permits identification of data subjects for no longer than is necessary** for the purposes for which the personal data are processed; and
  6. processed in a manner that ensures **appropriate security of the personal data**, including protection against unauthorised or unlawful processing and

against accidental loss, destruction or damage, using appropriate technical or operational measures

5.5 The Orkney Pubwatch Committee and/or any representative authorised on their behalf will periodically monitor and audit the Pubwatch procedures to ensure:

- a) banning decisions and retention of subject data is still relevant
- b) individual members are complying with the data integrity agreement

5.6 Any personal data breach will be:

1. Reported to the Information Commissioners Office without due delay, but not later than 72 hours after the Orkney Pubwatch Scheme has become aware of it, unless the personal data breach is unlikely to result in a risk to rights and freedoms of natural persons;
2. Reported to individuals without undue delay if the breach is likely to result in a high risk to the rights and freedoms of individuals;
3. Recorded (whether or not it fails to be reported to the Information Commissioners Office); this record will include the facts relating to the breach, its effects, the remedial action taken and decisions around reporting.

## **6.0 Complaints and Appeals**

6.1 Any formal complaint or representation received from an individual regarding his/her ban or any aspect of the processing of their personal data shall be forwarded to the Chair or Co-ordinator who will decide on the most appropriate response.

6.2. Where an individual, challenges the accuracy of information held about him/her by the scheme, consideration will be given as to whether the information should be amended, corrected or deleted. Where appropriate a note will be inserted into the relevant

## **7.0 Additional Conditions**

7.1 Any correspondence, letters, badges and other such items will only display the Logo of the scheme and any sponsors as appropriate.

7.2 The committee members (coordinators) will ensure that members within their geographical area abide by the rules of the Pubwatch and report any

breaches of these Rules, in writing, to the Chair, who may then consider disciplinary action. Such action may include verbal or written warnings, suspension of membership for a fixed period of time, or exclusion from the Watch.

- 7.3 Additional rules may be added at the discretion of the committee and after ratification of the members at the AGM or an Extraordinary General Meeting.

## **8.0 Acceptance Document**

- 8.1 It is a condition of membership that a representative of each member must sign the scheme's acceptance document.