

## Minute

### Orkney Local Licensing Forum and Orkney Islands Area Licensing Board

Wednesday, 16 January 2019, 11:00.

Council Chamber, Council Offices, School Place, Kirkwall.



## Present

### Orkney Local Licensing Forum:

David Brown, Barry Cockerham, Angela Crawford, Bob Mackenzie, Katie Spence, Malcolm Stout and Chief Inspector Matthew Webb.

### Orkney Islands Area Licensing Board:

Alexander G Cowie, Norman Craigie, Robin W Crichton, Barbara Foulkes, Steven B Heddle, J Harvey Johnston, Owen Tierney and Duncan A Tullock.

## Clerk

- Hazel Flett, Senior Committees Officer.

## In Attendance

- Gillian Morrison, Executive Director of Corporate Services.
- Gavin Mitchell, Head of Legal Services and Clerk to the Orkney Islands Area Licensing Board.
- Elaine Sinclair, Legal Clerk.
- Police Scotland:
  - Sergeant Bruce Gray.

## Apologies

- Orkney Local Licensing Forum:
  - Andy McGinn.
  - Kelly-Marie McGuigan.
  - Jean Tulloch.
  - Dr Louise Wilson.

## **1. Appointment of Chair**

The Senior Committees Officer asked for nominations for Chair. After a secret ballot, the result of which was as follows:

- Andy McGinn – 3 votes.
- Duncan A Tullock – 11 votes.

Duncan A Tullock was appointed Chair for this meeting and took the Chair.

Duncan A Tullock advised that he would be declaring an interest in Item 7, as a close family member was involved in an organisation which applied for occasional licences, and intimated that he would not be present during consideration of that item.

J Harvey Johnston joined the meeting at this point.

## **2. Minute of Previous Meeting**

There had been previously circulated the draft Minute of the Joint Meeting of the Orkney Local Licensing Forum and Orkney Islands Area Licensing Board held on 23 November 2016.

On the motion of David Brown, seconded by Bob Mackenzie, the Minute of the Joint Meeting of the Orkney Local Licensing Forum and Orkney Islands Area Licensing Board held on 23 November 2016 was approved as a true record.

## **3. Matters Arising**

There were no matters arising from the Minute of the previous Joint Meeting held on 23 November 2016.

## **4. Note of Inquorate Meeting**

There had been previously circulated, for information, the Note of the Inquorate Meeting of the Orkney Local Licensing Forum held on 7 November 2018, advising that, due to lack of Forum members being present, it was considered prudent to defer the joint meeting with the Licensing Board to 16 January 2019.

## **5. Proposed Establishment of National Licensing Forum**

There had been previously circulated correspondence from East Ayrshire Local Licensing Forum regarding the proposed establishment of a national licensing forum.

David Brown advised that, approximately two years ago, East Ayrshire had written to all licensing forums regarding the proposed establishment of a national licensing forum. Following consultation with the Convener of the Orkney Local Licensing Forum, he had submitted a response to the questionnaire issued in respect of the proposal advising, although supportive of the idea, there were concerns on how that forum might be funded. East Ayrshire Local Licensing Forum had since confirmed that, due to the limited number of responses to the questionnaire and the lack of interest from other licensing forums at this time, it had decided not to pursue the matter any further.

## **6. Pubwatch**

Angela Crawford provided a short update on the work of Pubwatch, including the appointment of a new Chair, Steven Groat, who, unfortunately, could not attend this meeting. The festive season had been positive, with no referrals to Pubwatch.

In response to a question from Robin W Crichton on the spread of Pubwatch, Angela Crawford confirmed that, when Pubwatch was first set up, it covered Kirkwall only. However, within the first two years, it was renamed Orkney Pubwatch, and now included two premises in Stromness and one in Stenness, as well as the Kirkwall premises.

Regarding the possibility of membership of Pubwatch being a mandatory licensing condition, Gavin Mitchell reminded those present of the reference within the Minute of the Joint Meeting held on 23 November 2016, that consultation was to be undertaken following receipt of information from the Pubwatch organisation. To date, that information had not been received. Further, Bob Mackenzie was to liaise with a national Pubwatch representative to arrange a date for a visit to Orkney. Again, no date had been forthcoming.

Angela Crawford asked what information had been requested from Pubwatch. Gavin Mitchell advised he would need to check the file, as he could not recall what specific information was requested. Angela Crawford apologised further, as she could not recall being asked to provide any information, however, should information be requested, she would ensure it was passed on.

Bob Mackenzie advised that the person he was liaising with to arrange a visit to Orkney was no longer employed by the Resilience Group, therefore that all fell through.

Robin W Crichton thought it would be worthwhile for the Licensing Board and the Licensing Forum to have further joint discussions regarding Pubwatch and to strengthen links.

## **7. Submissions from Police Scotland**

### **Drugs and Duty of Care on Alcohol Licensed Premises**

As Duncan A Tullock had declared an interest in this item and would leave the meeting during consideration thereof, he called for nominations for a Chair for this item.

Barbara Foulkes was appointed Chair for this item.

Duncan A Tullock left the meeting at this point.

There had been previously circulated a report by the Clerk to the Licensing Board regarding submissions from Police Scotland in relation to Drugs and Duty of Care on Alcohol Licensed Premises.

Gavin Mitchell advised that this matter followed a request from Police Scotland discussed at a meeting of the Licensing Board on 8 December 2018, when considering consultation responses to the revised Statement of Alcohol Licensing Policy. Police Scotland had asked that both policy documents be attached to all premises licences and occasional licences.

Police Scotland made reference to inspections in three premises which indicated suspected drug use, an incident resulting in a Formal Intervention Plan with a premises licence holder and a “further 12 recorded issues regarding the duty of care shown by licensing staff towards those who utilise their premises over the last two years within licensed premises in the Orkney Isles which fell below what should be expected”.

Gavin Mitchell also referred to discussions at the meeting of the Licensing Forum in August 2018, when Police Scotland had indicated that the policies were intended to attach to on-sale premises which were identified as “problem” premises.

Gavin Mitchell confirmed that the Council’s Licensing Service had not received any complaints in respect of licensed premises and further, that there had been no previous reports to the Board by the Police on the matters raised above.

In conclusion, Gavin Mitchell presented three options for consideration:

- Do nothing.
- Require a Drugs Policy and/or a Duty of Care Policy to be adopted in all licensed premises and premises subject to occasional licences.
- Address instances of potential drug use and issues relating to duty of care by means of formal reporting to the Board with accompanying premises licence review application.

Chief Inspector Webb introduced Sergeant Bruce Gray who was the licensing officer for the division. Sergeant Gray advised that Police Scotland had submitted the same request to all four licensing boards in Orkney, Shetland, the Western Isles and Highland and confirmed that the policies had been adopted by the other three Boards. He explained what had happened during the inspections in the three premises, which included staff and the premises manager being present. The proposed drugs policy was there to provide guidance for staff.

Regarding the Duty of Care policy, this was individual to the premises and was not considered to be onerous. He referred to one particular incident in Kirkwall where, in the opinion of Police Scotland, had the premises phoned a taxi or the Police, that situation may have been avoided. The reason for requesting the proposed policies be attached to any new licences or variations to existing licences was to support the public, licensees and their staff.

Malcolm Stout suggested that the licensed trade already trained staff, regularly, in the various issues associated with the proposed policies. However, with occasional licences being issued to clubs etc, where workers could change regularly, what would it entail for them? Sergeant Gray advised that no formal training would be required. The occasional licence would be issued with certain documents, such as no under 18s being served, which could be pinned up on the wall, and any person working behind the bar would then make reference to those documents should a situation arise.

In response to a question from Robin Crichton regarding late hours opening and occasional licences, Elaine Sinclair advised that late hours opening conditions only applied beyond 01:00 and on fully licensed premises, not occasional licences. The local policy stated that occasional licences stopped at 01:00 with the exception of weddings which could be licensed to 01:30. Regarding the suggestion that policies be pinned up on the wall at such events, each occasional licence was different and, with approximately 250

processed per annum, policies and/or additional documents would require to be issued each time.

David Brown suggested that, although each application was unique, over time, many of the documentation was very similar, therefore a suite of documents could be produced.

Alexander Cowie asked, as it was not a standard policy, who would scrutinise it to see if it was adequate. Sergeant Gray advised that, with occasional licences, it was generally the same committee members who applied, whereas a premises licence applied forever. Any person was welcome to contact Police Scotland for assistance, as well as the Alcohol and Drugs Partnership. Police Scotland was not looking for 40 page policies, just a simple A4 sheet.

Alexander Cowie then asked what powers licence holders had in preventing someone leaving the premises. Sergeant Gray advised that some, but not all, premises had incident/refusal books, which were looked at during ad hoc inspections. Any information in that could provide defence for any particular situation. The staff member should ask the patron to take a seat and call them a taxi; however, if the patron walked out, there was not much further action the staff member could take, although again, it should be noted in the incident/refusal book.

Steven Heddle suggested that the majority of those present appeared to be in favour of the Drugs Policy, however, like Alexander Cowie, he was concerned that the Duty of Care Policy appeared open ended and onerous and suggested that they could not expect every pub to ensure patrons got home safely.

Malcolm Stout advised that licensees had a duty of care in any case and all staff were trained regularly. Sergeant Gray further advised that there was a legal responsibility on licensees and referred to the licensing objectives, and in particular, public safety. Having a policy would further help protect staff.

Owen Tierney referred to the Duty of Care Policy and asked about a particular example such as a patron staggering into a premises along the harbour front at 00:50, being refused, sent out and then knocked down by a vehicle. As the patron had been drinking in other premises, where did the duty of care start and stop? Sergeant Gray advised that each incident was unique and he was more concerned about patrons pre-loading with alcohol before visiting pubs or other licensed premises.

Angela Crawford suggested there were two sides – occasional licences and premises licences. Premises licence holders were potentially dealing with situations daily, whereas occasional licence holders may only have one or two events each year. The Duty of Care Policy may introduce a fear factor where the licence holder would be unsure as to where the liability started and ended. A generic policy may help to reduce that fear factor. She thought what Police Scotland was proposing was fair, in that it covered what licence holders already did, although there remained some grey areas. Although the Police were suggesting that everything should be done to help someone physically incapable of helping themselves, as long as staff did that, the onus should then be back on the individual.

In conclusion, it was agreed that Police Scotland should liaise with the licensed trade via Pubwatch regarding their proposals in relation to draft policies. Sergeant Gray also undertook to discuss the matter further with Constable Simon Hay.

Duncan A Tullock then rejoined the meeting and resumed the Chair.

### **8. Any Other Competent Business**

Members had no other competent business to raise.

### **9. Date of Next Meeting**

It was agreed that the next joint meeting be held on 6 November 2019 at 11:00.

### **10. Conclusion of Meeting**

There being no further business, the meeting was concluded at 12:00.