

# **Lost Orders?: Law Enforcement and Alcohol in England and Wales**



**Final Report to The Portman Group**

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**Executive Summary**

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## About the Authors

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The authors previously worked together as consultants for the Home Office *Review of Social Responsibility Standards in the Alcoholic Drinks Industry* (2008), conducted in association with KPMG. Hadfield and Measham managed the fieldwork, which included observations and informal interviews at over 600 licensed and off-licensed premises across eight locations in England, in order to evaluate the voluntary SRS and existing laws in relation to the sale and consumption of alcohol in 2008.

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This report is solely the work of the two authors.

# Executive Summary

In assessing the effectiveness of law enforcement and regulation governing the consumption and supply of alcohol in England and Wales, our research points to the importance of a number of factors:

- In responding to excessive drinking, legal compliance and corporate social responsibility, enforcement activities in England and Wales are directed toward the symptoms of some aspects of drinking culture and retail practice. Enforcement is necessary, but not sufficient, in that it is unable to address the causes of unlawful or excessive demand for alcohol. In order to be effective in reducing alcohol-related harms, law enforcement and regulation works best when embedded within community focused multi-component programmes (MCPs) that encompass broader approaches to harm reduction. National government provides an overarching statutory framework for governing the supply and consumption of alcohol: however, our research underlines the importance of allowing space within this framework for local innovation, with bespoke initiatives, in order to provide 'local solutions to local problems'.
- In practice, effective community focused programmes involve partnership working between agencies, organisations and individuals. These partnerships include, but go beyond, formal statutory partnerships. For example, in addition to local authorities and the police, they might include Primary Care Trusts, Trading Standards, fire authorities, and HM Customs and Excise. At a day-to-day level they would also vitally include representatives of the licensed trade (both on- and off- sales), together with residents' groups and NGOs working in the fields of substance use harm minimisation and outreach work. In urban areas with high concentrations of licensed premises, there is good reason to include representatives of the private security industry (door staff agencies), town/city centre management, and public transport providers. The most effective local programmes are both imaginative and pragmatic. They consider who might have the necessary knowledge, skills and resources to help tackle a particular local problem; these organisations or persons are then invited to participate in the programme and full use is made of their experience and potential contributions.
- In the case of the licensed trade, many interviewees favoured the establishment of an autonomous working group such as a 'Pub and Club Watch' scheme or some local variant of this model. It was acknowledged that contrary to popular and media perceptions, the licensed trade had a clear interest in helping to reduce alcohol-related harms. This was because the side effects of excessive drinking could have a direct effect upon the working environments of their staff, the sustainability of their businesses and relations with regulatory authorities.

- However a local partnership is constituted, our interviewees felt it important that the various partners ‘buy in’ to the programme by making a sufficient investment of time, personnel and (where necessary and available) financial resources. This required a clear understanding of the symptoms and underlying causes of alcohol-related harm locally and the necessary division of labour to effectively address these factors in terms of areas of responsibility. Despite being components of a ‘partnership’ agreement, many agencies continued to work in ‘silos’ to the extent that they understood their own areas of responsibility very well, but had much less of an insight into how they might draw upon the capacities of their partners in order to approach a problem more holistically. Once questions of ‘who does what?’ had been answered so as to avoid duplication of effort, it was necessary for each partner to reflect upon the range of powers and/or resources at their disposal and to decide how best to apply them. There also needed to be clear understanding as to the desired outcomes and how these might fit with and benefit the aims and objectives of the partnership as a whole. For example, despite the existence of a ‘Cardiff Model’ for data sharing between hospital Accident and Emergency Departments and Community Safety Partnerships, interviewees expressed the view that setting up working protocols of this kind were a particular ongoing challenge.
- Although some national multiple retailers bemoaned the variety of local interpretations of the licensing laws which were seen as a drain on their staff training and legal resources, much of our data points to the inevitability and desirability of ‘local cultures of regulation’. Our previous research has highlighted the importance of key personnel acting as ‘champions’ for particular local issues. The negative flip side of this energy for change might be seen where local enforcement and regulatory causes are pursued for personal or political reasons and local regimes could take unpredictable changes of course when key personnel moved on. Yet, change is an inevitable aspect of the regulatory landscape reflected in the experiential knowledge of both regulators and regulated. Our understanding is that as long as enforcement decisions are made primarily upon the grounds of evidence, fluctuations in approach and local divergences are in principle justifiable and beneficial.
- The necessity for regulatory and enforcement decisions to be made on the basis of evidence emerged as one of the strongest lessons from this research. Individual initiatives around alcohol enforcement at the local and also the national level had rarely been subject to formal scientific measurement and evaluation, less still those involving multiple components. Nonetheless, many of our interviewees spoke of their enforcement activities as being based upon a clear theory or hypothesis about ‘what works’, about there being empirical evidence as to what had happened as a result, and some measure of assessment as to effectiveness of outcomes. As a result, interviewees often felt that

their efforts were effectively 'targeted'. Evidence for such targeting was primarily derived from local statistical sources such as crime data, pre- and post-hoc surveys of public perceptions, stakeholder consultation exercises, and other measures such as pedestrian and litter counts. Local qualitative evidence from focus groups, interviews, and structured observational studies of the ways in which areas and facilities were used was also important. Such monitoring and documentation was particularly crucial where initiatives depended upon time-limited funding streams with opportunities to apply for follow-on funding. National enforcement campaigns, for example from the Home Office, which had ring-fenced funding and centrally-defined objectives were criticised, both for their short-term nature and also for their capacity to ride roughshod over locally devised and approved ways of working.

- In relation to certain offences, notably underage drinking, proxy sales and the serving of alcohol to intoxicated persons, our research found a clear propensity amongst enforcement agencies to target the suppliers of alcohol, rather than the consumers. At the same time it was recognised that servers had a difficult job to do, especially in small off-licensed shops where they could be subject to intimidation by customers. The more progressive agencies had adopted an 'advise and educate' approach in their dealings with licensed outlets, the aim being to establish relationships of trust wherein problems with customers could be reported without the fear of reprisals in terms of incidents being used as ammunition with which to Review their licence. Confusion was expressed as to the divergent guidance governing test purchase operations, as published by LACORS and the Home Office.
- In general, our interviewees regarded the prosecution of members of the public for breaches of the Licensing Act 2003 to be too expensive and time consuming to pursue. There was a perception that the courts would not support such prosecutions, or that the fines imposed would be minimal. Also, the commitment of resources required to obtain the necessary evidence for conviction was seen as disproportionately great, involving authorisation from RIPA. When surveillance techniques were used, these were invariably, in our data, linked to the testing of compliance by licensed outlets. In one instance, however, a local authority licensing enforcement officer described how evidence of proxy sales was obtainable through surveillance operations, together with the use of CCTV footage. In her area, persons observed in RIPA operations purchasing alcohol, which was then passed on to under-18s were issued with Fixed Penalty Notices. Furthermore, local retailers had been recruited to assist in imposing informal bans, excluding from their premises individuals caught making proxy purchases.
- The issue of imposing various forms of 'banishment' from licensed premises on identified consumers of alcohol was one of a number of issues on which opinions varied, often as a result of differences in experience and context when comparing metropolitan, tourist, small

town and rural areas. In locations which did not have a large and transient visitor population, Drink Banning Orders and more informal area-specific bans imposed by door staff were reported as being particularly successful, with effectiveness in some cases monitored by ID scanning technologies which were able to show the continued presence within licensed premises of repeat offenders, formerly subject to a ban, who had subsequently changed their behaviour. However, in metropolitan areas and holiday resorts, opportunities to impose such bans through the sharing of intelligence between police and licensed premises were much less apparent due to the large, transient and more anonymous nature of the customer base which rendered the presence of identifiable 'troublemakers' less predictable.

- Overarching area-based regulations and powers, for example, the ability to designate Dispersal Zones or Cumulative Impact Areas, were notably more important and relevant in large urban areas. In smaller towns, enforcement activity was more often focused around the establishment of personal relationships between regulator and regulated (in the case of licensed premises) and the police and the policed (in the case of alcohol-related offenders).
- In the case of police powers applied to the consumers of alcohol in public places, a number of interviewees expressed concern regarding the possibilities for displacement, the tendency to recidivism and the general inability of area- and person-specific powers to address many of the underlying causes of drink-related crime and disorder. Many of the recent 'anti-social behaviour' powers fell into this category. They offered important advantages for police officers and PCSOs tasked with responding to or preventing imminent alcohol-related disorder, however, the nature of the penalties – which often involved summary fines – did not allow for the identification and monitoring of an offender's possible drink-related problems, nor did the forms of disposal provide for direction toward services which might assist in helping individuals obtain advice or treatment to address their relationship with alcohol. Consequently police in one of the fieldwork sites utilised arrest rather than summary fines as an opportunity to direct offenders with drink-related problems towards health and treatment support services. At a more general level, this contrasted with the disjuncture in most fieldwork sites between the core remit and priorities of the police, and those of public health, with the focus of anti-social behaviour powers being very much upon the behavioural symptoms of excessive drinking as manifested in criminal or uncivil acts. The skewing of alcohol policy toward criminal justice concerns and the 'management of drunkenness' was widely regarded as an institutionalised feature of the current regulatory and enforcement landscape given the omission of any statutory objective relating to public health within the Licensing Act 2003.
- The proposals contained in the Home Office consultation on drafting of the Police Reform and Social Responsibility Bill 2010-11 – headlined

by the Coalition Government as an attempt to ‘rebalance’ the Licensing Act – were regarded by some interviewees as symptomatic of a continued focus upon the most public manifestations of our nations’ alcohol-related problems. One interviewee was of the opinion that the document might more accurately be described as a consultation on licensing the urban night-time economy, as the proposed legislation had much less relevance to other contexts. Whilst epidemiological and criminological research reveals how nightlife visitors drink more than average for their age groups (also taking into account regional differences), the focus on the ‘bingeing’ and ‘brawling’ of a small minority of this group was regarded by some as symptomatic of a fragmented and individualised approach fostered by nationally-imposed legislative priorities. Community-based multi-component programmes integrating regulatory and enforcement activity with local efforts to influence drinking culture, social norms, diversity of local facilities and urban design and services, were regarded as more progressive and potentially effective. It was local partnerships, however, that were taking the lead in developing such approaches in the face of daunting centrally imposed budgetary constraints. A key obstacle for partnerships adopting a proactive stance was that of ensuring that their programmes were sustainable and sustained. A lack of continuous funding and political commitment were the two main obstacles to achieving many objectives, yet the fruits of some interventions gathered momentum only over longer periods of time.

- Many interviewees were acutely aware of the need to influence prevailing drinking cultures within local social scenes. However, off-the-shelf promotional materials and brief intervention programmes from national agencies (such as ‘Drinkaware’) were not always considered to have been designed, or written, in ways which could effectively engage the local target audiences.

# Conclusions and recommendations

## Conclusions

Following expansion of the NTE in the mid-1990s to mid-noughties and implementation of the Licensing Act 2003 in 2005, licensing and alcohol-related issues have become a greater priority for policing. In one of our metropolitan areas, police crime figures for 2008/09 show that 69% of all serious violent crime occurs between the hours of 11pm and 4am with the peak time for serious violent offences being 1am-2am. Such statistics are likely to be borne in mind by partnerships considering the use of forthcoming tools such as the Early Morning Restriction Orders applicable between midnight and 6am<sup>1</sup>.

The interviews underlined the extent of progressive partnership working in many areas, including that between the licensing authority, its partner agencies and the licensed trade. Some interviewees mentioned the variations in enforcement regime within metropolitan areas and between larger cities and other areas of England and Wales. There is a need to build in a greater degree of flexibility for local partnerships in order for them to apply the powers as best befits the issues that arise in their areas.

Successful regulation and enforcement often involves the establishment of good working relationships. In the case of repeated non-compliance it remains important, however, to ensure that powers such as Licence Review and Cumulative Impact Zone restrictions are used. Most enforcement targets the illegal supply of alcohol rather than unlawful demand,<sup>1</sup> with sufficient Government funding for police forces in England and Wales earmarked for enforcement provided only on short-term bases (with the exception of sales to underage drinkers) as part of high profile campaigns.

Yet, a key message of this research is that successfully balancing the sale, supply, use and demand for alcohol requires an integrated multi-component approach. Enforcement powers alone can only operate as 'sticking plasters' to bigger challenges regarding the role of alcohol in British society, which individual agencies cannot be expected to address. Shifting the legislative balance away from the current focus on crime and disorder and towards greater inclusion of health priorities was regarded as having clear benefits for partnership working. Given the present emphasis on crime and disorder, perhaps a key role of Community Safety Partnerships is to act as a conduit for

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<sup>1</sup> Now included in the Police Reform and Social Responsibility Bill 2010-11 these powers allow for restriction of the sales and supply of alcohol between midnight and 6am (previously proposed to be for the 3am-6am period only) regardless of the trading hours stated on a Premises Licence, Club Premises Certificate, or Temporary Event Notice.

information and initiating change by lobbying outside agencies such as the transport and roads authorities for their assistance and in educating members of the public, communicating risk assessments and so forth.

Various stakeholders expressed the view that there were 'enough tools in the box' in terms of enforcement powers and that the current focus should be on allowing the existing complex legislation to 'bed down' and become more effective rather than embarking on another major legislative overhaul. Whilst some sort of late-night levy was welcomed if the resources would then be used to invest in infrastructure for the NTE, partners across the board saw licensed leisure as a vital part of local economies, struggling in the current economic climate, and therefore were resistant to the imposition of further financial penalties. In general, interviewees felt that the removal of licensing restrictions had led to customers drinking later into the night rather than extending their night out, with resultant problems of dispersal, disorder and litter spreading into the early morning yet without a resultant increase in customer expenditure in the NTE. Linked to this extension of the 'night out' were concerns about the availability and price of alcohol, with cheap off-trade alcohol and the growth in off-trade sales from non-specialist corner shops and supermarkets, as well as the negative impact of the smoking ban on the licensed leisure trade, together encouraging home drinking and pre-loading. On the other hand, representatives of the major supermarkets pointed to the extent of their self-regulatory activity and their pivotal position in ensuring that the laws preventing sales to under-18s and of selling to adults who were purchasing on behalf of under-18s, were upheld. Whilst many stakeholders would welcome attempts to shift the pattern of on-trade consumption back to earlier in the evening, it was thought by most interviewees that the 'genie was out of the bottle' and that we are currently in a transition phase in terms of leisure time trends.

Local residents, whilst sometimes highly vocal, articulate and informed in expressing their opinions on licensed premises and alcohol-related issues, often saw themselves as 'voices in the wilderness' whose concerns were not acted upon. There were considerable obstacles to individual residents making and being identified in formal decision-making, both for those living near their local community pub and for the growing numbers of city centre residents within mixed business and residential areas. Conversely, licensed operators expressed the view that unrepresentative residents' views exerted a disproportionate influence upon the decisions of councillors on the licensing committee.

A key issue is that of enforcement priorities and resources. Some powers, particularly those relating to the licensing laws, are used much more than others<sup>ii</sup>. In relation to offences against the Licensing Act the onus is placed more heavily on the suppliers (particularly on-trade suppliers) rather than the consumers of alcohol. This is comparable with other countries where enforcement is more focused on the consumer, for example, on penalties for underage drinkers<sup>iii</sup>. On the other hand, the core police priorities for the NTE remained the maintenance of public order requiring a heavy emphasis on the activities of consumers occupying public spaces, rather than the responsibility

standards of licensed premises. Different areas of England and Wales varied greatly in the extent to which alcohol-related crime was a key priority for police Safer Neighbourhood Teams and this was strongly linked to community sentiment and the general level and seriousness of other types of crime.

Larger multiple retailers expressed concerns regarding Home Office plans to empower licensing authorities to set their own agendas in relation to licensing. This was seen to create the risk of a 'post code lottery' in terms of regulation and enforcement which would have perverse consequences for consumers, place unnecessary restrictions on businesses and undermine partnership-working by promoting a culture of litigation wherein local test cases would occur over interpretation of the law. Local residents and their representatives held the opposing view in supporting the principle of localism, with local solutions to local problems being devised by local people, including members of the community whose lives are affected by alcohol policy. In this, the fundamental problem remained that of the regulatory agenda being captured by professional bodies with access to the types of evidence required by law to be presented in order to justify regulatory action. In removing the requirement to provide extensive evidence in order to justify local strategies – thereby to some extent, de-professionalizing licensing – the Home Office would, however, run the risk of sacrificing the natural justice rights of licence applicants and licence holders in pursuit of increasing the democratic element of licensing decision-making.

## **Recommendations**

Across a range of agencies and stakeholders, the view was that the current regulatory framework is complex; experience is growing in how best to apply the current powers; and the priority is to provide time for the existing framework to 'bed in' and best practice to develop. Therefore no urgent change is recommended. However, some minor recommendations emerge from this study. The current regulatory emphasis upon the most public manifestations of alcohol problems – primarily crime and anti-social behaviour in public places – reflects a failure to fully integrate public health approaches into the statutory objectives of the Licensing Act 2003. In the absence of better public health integration current approaches are primarily directed towards finding more effective ways of managing public drunkenness. Public health input into partnership working currently lacks both the requisite integration and the statutory 'teeth' to help address either the public manifestations or more hidden and long-term consequences of excessive drinking and other alcohol-related problems.

- i Alcohol partnership working needs to more effectively include a broader range of interests including balancing criminal justice concerns with public health;
- ii Local partnerships require flexibility in order to best respond to local priorities and local needs;

- iii Community Safety Partnerships could be used more productively by acting as a conduit for multi-agency collaborations which stretch beyond statutory partners;
- iv Disparities between the on-trade and off-trade in terms of both regulation and enforcement need to be addressed according to identified local needs;
- v Further moves towards increasing the democratic influence over licensing decision-making need to be balanced against the natural justice rights of licence applicants and licence holders;
- vi Greater efforts should be applied to ensuring that offenders subject to fines related to their drinking behaviours are offered opportunities and information concerning the availability of support from alcohol services in their local area;
- vii Whilst many stakeholders would welcome attempts to shift drinking hours back to earlier in the evening, balancing the competitive trading pressures to remain open with changing leisure trends more generally means that broad-based legislative change in trading hours would be unhelpful in this area;
- viii There is a need for more robust evidence-gathering and evaluation of regulatory and enforcement initiatives, alongside robust models for data and intelligence sharing. However, this study identified some excellent local approaches and these could form the basis of transferable models of benefit to other areas.<sup>iv</sup>
- ix The existence of important evidence gaps for alcohol strategy in many areas revealed the risks involved in any de-professionalisation of licensing;
- x Given the growing expertise and experience in dealing with the existing regulatory framework, further changes should now be minimal and fully justified.

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<sup>i</sup>WSTA, *ibid.* p.12.

<sup>ii</sup>Hadfield, P., Lister, S., and Traynor, P. (2009) 'This Town's A Different Town Today: Policing and Regulating the Night-time Economy', *Criminology and Criminal Justice*. 9/4: 465-85 (with open access). <http://crj.sagepub.com/cgi/reprint/9/4/465>

<sup>iii</sup>Hadfield, P. (editor) (2009)*Nightlife and Crime: Social Order and Governance in International Perspective*. Oxford: Oxford University Press.

<sup>iv</sup>Hadfield, P. and Newton, A.(2010) *Alcohol, Crime and Disorder in the Night-time Economy*. Factsheet. London: Alcohol Concern.  
<http://www.alcoholconcern.org.uk/publications/factsheets-and-booklets/nite-factsheet>