

Licensing update

Purpose of report

To update the Board on key licensing developments.

Summary

This paper provides Board members with information on work taking place to support those councils considering the introduction of early morning restriction orders (EMROs) or a late-night levy and update members on the recent Court of Appeal judgement in response to the Hemming V Westminster City Council case, which has implications for cost recovery through licence fees.

Recommendation(s)

For information only

Action

Officers to proceed as directed

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Late-night levy and early morning restriction orders

Background

1. Both the late-night levy and early morning restriction orders (EMROs) were introduced as part of reforms under the Police Reform and Social Responsibility Act. The LGA expressed concerns about the flexibility of the tools and secured some significant amendments, but was not entirely satisfied by the changes.
2. The late-night levy is a tax for all alcohol retailers between 12am-6am, covering the whole council area. 70% of the income must be passed on to the local Police and Crime Commissioner, although the council can recover all its expenses before determining the financial split.
3. The EMRO introduces a fixed closing time for alcohol retailers in a designated area, which can be tightly drawn by the council.

The issues

4. Around six councils have begun formal consultations on one or other of the tools, and a dozen more have expressed interest in doing so. Of these six, two councils have finished their consultations and chosen not to proceed with introducing the tool.
5. One of these, Northampton, was an unexpected decision as it was recommended by the ACPO lead on alcohol harm and supported by the local police and crime commissioner. The Licensing Committee received significant industry representation about the negative impact that these tools would have on the night time economy and employment.
6. Of the remainder, Newcastle has closed its consultation and has recommended to its full council that a levy be introduced. Blackpool is the most advanced council considering an EMRO and their consultation launched on 13 June.
7. Councillor Canver has hosted two workshops attended by 12 council areas and police representatives to share good practice, discuss strategies for business and resident engagement, and to identify key pieces of evidence. The workshops have generated an interest in working with local businesses on more flexible, voluntary approaches, such as night time Business Improvement Districts. Notes from both workshops are available to members on the LGA website and Knowledge Hub.
8. There have been clear benefits from the workshops for delegates and several councils have incorporated this learning into their own consultations. Despite this, we continue to see some consultations launching with limited evidence or factual inaccuracies. It is vital that councils recognise the need for a robust evidence base and open engagement with all parts of local communities, because any weaknesses in evidence or about how the consultation process has been undertaken are being exploited by industry representatives, who continue to conduct an active campaign both nationally and locally against these tools.

Hemming V Westminster City Council

9. Timothy Hemming, owner of Simply Pleasures Ltd, led a case on behalf of various sex shops contesting that the level of licence fees charged by Westminster City Council for sex shops could not be considered reasonable. The original court ruling about this case was given in 2012, but this was subject to appeal and it is the Court of Appeal judgement made on 24th May 2013 that has now been established as case law on licences fees.
10. The Court of Appeal made it clear that where a licensing regime is covered by the European Services Directive councils can only recover reasonable and proportionate costs associated with the 'authorisation procedures' for that licensing process. In practical terms, this means that councils cannot include the cost of addressing illegal activity taking place outside the licensing regime in their fee structure. Costs for providing advice, addressing issues and carrying out enforcement action against those businesses that do have a licence can continued to be recovered through the local licence fee.
11. The LGA is currently working with our own legal team and Westminster City Council to finalise a brief for all members about the implications of the ruling and to request feedback about any significant cost implications for councils. The cost of tackling illegal sex establishments in Westminster is significant and the council has been ordered to repay over £1 million in fees collected since 2010. However, we recognise that the level of 'illegal activity' will vary between licensing regimes and from area to area so we are keen to hear from members about the implications of the case for them.
12. The Westminster case provides a timely reminder that councils should have robust and transparent means in place to calculate and regularly review all local licence fees. This process needs to ensure that costs are effectively being recovered through the fee structure and ensure any decisions can be scrutinised by both businesses and residents. To help councils understand the detail of what can be included within locally set fees, including the limitations introduced by the Westminster case and the Services Directive, the LGA plan to release practical guidance for councils imminently.