

12 September 2016

## **Update paper**

### **Purpose**

For information and direction.

### **Summary**

This report provides an update on LGA policy work and developments affecting the priorities agreed by the Safer and Stronger Communities Board.

### **Recommendation**

That the Board note the activities outlined.

### **Action**

Officers to progress as directed by members.

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## **Update Report**

### **Hemming v Westminster: Setting of Licensing Fees**

1. The introduction of the EU Services Directive 2006 changed the basis upon which fees for certain licences and permissions could be charged by the issuing authorities which are, in the main, local authorities. This affected the majority of licensing systems, except for gambling and taxis.
2. In 2012, Timothy Hemming and a group of sex shop operators challenged Westminster Council over their setting of fees; in particular over whether or not the costs of enforcements against unlicensed operators could be included within the fee. This progressed through the court system (with the LGA acting as an interested party in the case at one stage), with both sides winning various stages of appeal, culminating in a decision by the Supreme Court in 2015. The Supreme Court ruled that the EU Services Directive was silent on this matter and that UK legislation did grant the power to charge for enforcement costs; this was a positive result for local government. However, the Court was unsure as to whether this enforcement charge could be levied as part of the original application fee or was required to be charged separately so referred this matter to the European Court of Justice.
3. In July 2016, the European Court issued its preliminary judgement on the matter. In the ruling, the judge observed that the Supreme Court had erred in their judgement that the Services Directive permitted enforcement costs to be recovered through a fee. The judge therefore declined to rule on the timing of the charge, and referred the matter back to the Supreme Court for them to adjust their ruling.
4. This has two significant implications for local government if the European Court confirms the preliminary judgement:
  - 4.1 Enforcement costs can no longer be recovered and must be subsidised from councils' general funds; and
  - 4.2 Council are potentially liable to pay back the money that was charged to cover these costs.
5. The Home Office are aware of the implications of this decision on the nationally-set Licensing Act 2003 fees, and for other fee-charging licensing systems, and are consulting with their lawyers. Westminster's legal team are also considering the implications for local government licensing.

### **Gambling licensing and Sustainable Communities Act (SCA) negotiation**

6. The issue of gaming machine stakes continues to attract parliamentary and media attention. A newly established APPG on Fixed Odd Betting Terminals (FOBTs) chaired by Carolyn Harris MP has launched an inquiry into the issue; Cllr Lower will give evidence to the second inquiry hearing on behalf of the LGA on Wednesday 14 September.

7. After a significant delay, the second round of negotiations to discuss Newham council's SCA proposal to reduce FOBT stakes to £2 took place between the LGA (as SCA 'selector') and government officials at the end of July. The meeting considered the issues raised in Newham's submission. Although there is still no agreement on the issue of Newham's proposal to reduce stakes in order to tackle betting shop clustering, there was a useful discussion about recent research relating to gaming machines and betting shops (which indicate higher rates of problem and at risk gamblers near clusters of betting shops), and how councils use local data to support licensing decisions. It was noted that the Minister has recently stated that Government hopes to be able to announce details of a triennial review of stakes in due course although officials could not confirm a date. In line with the purpose of the meeting, there was also a discussion about alternative options within the licensing framework for dealing with betting shop clustering.
8. As no agreement has been reached, the LGA as selector confirmed that it would seek a third, political level meeting to conclude the discussions.
9. Following the presentation by GeoFutures at the last Board meeting, we have commissioned the company to undertake a short piece of work that will help us assess the potential for rolling out the tool to all councils via the LGA's LG Inform tool. There is scope to do so using a version of the tool based on national data. However, given the potential costs involved in doing so, we are keen to assess whether the loss of specific local data (which could not be incorporated to LG Inform) would substantially undermine the value of the tool. GeoFutures are therefore redoing the Westminster and Manchester maps based on national level data, and we hope to be able to review these shortly.

#### **Follow up to trading standards review /National Audit Office**

10. Following the conclusion of our trading standards review earlier this year, the University of Birmingham have been commissioned to produce a document outlining the benefits of trading standards services. This document should be available shortly, and will be followed up later this year by guidance on developing shared services in trading standards and regulatory services.
11. The Chartered Trading Standards Institute published an updated workforce survey in early August. The survey found that very few councils are actively exploring the options for larger services, and warned that the future of trading standards could be at risk if more councils did not do so.
12. The National Audit Office (NAO) are currently conducting a review into consumer protection in England, in follow up to their earlier 2011 review which led to the creation of the Competition and Markets Authority and National Trading Standards. It is expected that the review will highlight cuts to trading standards as a clear risk to national consumer protection, although the NAO have provided assurances that the audit is of the role of national government, rather than councils.

#### **Environment, Food and Rural Affairs (EFRA) select committee**

13. In June, Cllr Blackburn gave evidence to an EFRA Select Committee hearing held as part of an inquiry into the welfare of domestic animals. In a lengthy session, Cllr Blackburn spoke alongside an officer from the National Companion Animal Welfare Group and representatives of the National Police Chiefs Council to outline councils' work in this area.

### **House of Lords Select Committee into the Licensing Act 2003**

14. The House of Lords is conducting an enquiry into the impact of the Licensing Act 2003, which is due to report in March 2017. Cllr Tony Page gave evidence as LGA Licensing Champion on 12 July, outlining the LGA's calls for a public health objective and locally-set licensing fees. The LGA also assisted the Committee to identify and invite other local authorities; and Cllr Peter Richards of Stratford upon Avon, Cllr Debbie Mason of Rushcliffe, and Cllr James Lewis of Leeds gave evidence alongside Cllr Page.
15. The LGA has also submitted written evidence to the Committee, which reiterates our key messages and identifies a number of technical changes to legislation that would assist licensing authorities to deliver their services more efficiently and effectively. The Committee also invited the LGA to collect evidence on pre-loading as an issue for councils and we have conducted a survey to this effect. The results (which have now been sent to the Committee) reveal that while a clear majority of councils believe that pre-loading is an issue in their area, few councils have data to demonstrate this. Both the submission and research are available on the LGA website.

### **Taxi Licensing - events and CLG select committee report**

16. The LGA's Principal Advisors have requested a series of regional improvement workshops to tackle ongoing risks and weaknesses in the taxi licensing system and help equip Leaders and Portfolio Holders to scrutinise and challenge the performance of these services. The workshops will also provide Chairs of Licensing with the latest information on case law and best practice, including sessions on preventing child sexual exploitation, promoting disability equality, and having difficult conversations. Events are being held in the South West (Exeter/Taunton), South East (London), North East (Gateshead), and East (Cambridge) throughout the Autumn and dates will be circulated to board members when they are confirmed.
17. Alongside the workshops, the LGA Councillor Handbook on Taxi and PHV Licensing is being updated. Copies for all members of licensing committees will be circulated to both leaders and chief executives via a letter from Lord Porter and LGA Chief Executive Mark Lloyd outlining the critical importance of licensing to local places - and to councils' reputations.
18. In its report on the interventions in Rotherham and Tower Hamlets councils, the CLG Select Committee highlighted concern that the ability of taxi/PHV drivers licensed other than by Rotherham council to operate in the area undermined the council's efforts to strengthen and improve local licensing. The committee argued that this loophole should be addressed, and urged government to publish statutory guidance or legislate on the issue. We have used this intervention to write again to Transport Minister Andrew Jones urging him to take forward a taxi licensing reform Bill and offering the LGA's support in doing so.

### **Policing and Crime Bill**

19. The Policing and Crime Bill returns to Parliament in early September. The LGA supports existing clauses relating to powdered alcohol, interim steps for reviews, and new councils

powers to revoke a licence for relevant offences, which all remain unchanged and are expected to pass without difficulty.

20. New clauses have been proposed for a health and wellbeing objective, and separately for an Equalities Act objective. The LGA expects to brief in support of the health and wellbeing objective, which we believe adequately encompasses disability issues.

### **Association of Police and Crime Commissioners**

21. Following the police and crime commissioner (PCC) elections in May, the Chair of the Board was invited to speak at the national briefing session the Association of Police and Crime Commissioners (APCC) ran for new PCCs in June. Cllr Blackburn spoke alongside Her Majesty's Chief Inspector of Constabulary, the National Police Chief's Council, the National Crime Agency and the Independent Police Complaints Commission. In his speech Cllr Blackburn outlined the common areas of interest between PCCs and local authorities including child protection, domestic abuse and work with troubled families, as well as the future governance of the fire and rescue service. He suggested that there should be closer work between the two associations going forward to shape the national policy agenda and promote good practice. This meeting was then followed by a between the APCC and LGA chief executives at which it was agreed to explore areas of mutual interest to both associations. Further updates will be brought to the Board on any discussions with the APCC.

### **Anti-social behaviour**

22. Local authorities' use of the tools and powers to tackle anti-social behaviour introduced in the Anti-Social Behaviour Crime and Policing Act 2014 has attracted recurring attention in the media recently, especially the use of public space protection orders (PSPOs). Civil liberties organisations have criticised councils for the sorts of issues PSPOs have been drafted to deal with, the wording used in the orders and the process by which they are approved within a council. These concerns have also been picked up in Parliament and there will be a debate on the tools and powers introduced by the Act in early September. The Home Office will be reviewing the statutory guidance issued in relation to the use of the tools and powers over the autumn to see if it needs amending. Officers will feed in views to the Home Office, and also share with them LGA guidance currently being prepared for councils on the use of PSPOs. This will include examples of good practice PSPOs developed by councils. We hope to finalise the guidance in September.

### **CCTV**

23. After speaking at an Inside Government event on CCTV the Board's chair Cllr Blackburn was asked by the Information Commissioner's Office for assistance in raising a number of issues with councils around data protection and privacy with councils. These issues included the use of surveillance technology with a specific emphasis on the use of CCTV in cameras, data breaches, data sharing and the need for effective data protection training. Officers have been in discussion with the Information Commissioner's Office about how these issues can be publicised to local authorities.

## Counter-Extremism

24. Following the last Board meeting, at the end of June the LGA's Chairman and Lord Ahmad, the then Minister for Counter-Extremism, hosted a roundtable discussion with a small number of councils about the support the Home Office would be able to provide on counter extremism. This was followed by a session at the LGA's Annual Conference on preventing extremism at which the Home Office talked about councils' role in delivering the Counter-Extremism Strategy, and how the Office of Counter Extremism would be looking to work with councils going forward. Annual Conference also heard from Louise Casey about her review of integration as part of the Counter-Extremism Strategy, and the importance of local leadership in addressing the attempts by those spreading hate to divide communities. Work continues with Luton Council and DCLG to establish a special interest group to enable councils to share good practice around tackling extremism.

## Prevent

25. The changes in the ministerial team at the Home Office after the EU Referendum vote has meant that plans for an initial ministerial roundtable with elected member Prevent Champions have had to be postponed. Officers have therefore been in discussion with Home Office officials about delivering a series of regional events for members in the autumn as had been planned, and the Board will be updated on dates for these events and the likely programme when more details are available.

## Medical Examiners

26. The Consultation on reforming the death certification process ended on 16 June. The LGA responded to the consultation and our response can be found on the LGA's website: [http://local.gov.uk/documents/10180/11779/alyson+morely+-+8+june+2016+-+Introduction+of+Medical+Examiners+and+Reforms+to+Death+Certification+Consultation+-+LGA+Response+\(002\)/bee92ad1-5bc9-4224-824d-cbaca1828205](http://local.gov.uk/documents/10180/11779/alyson+morely+-+8+june+2016+-+Introduction+of+Medical+Examiners+and+Reforms+to+Death+Certification+Consultation+-+LGA+Response+(002)/bee92ad1-5bc9-4224-824d-cbaca1828205). Our response agreed in principle with the need to reform the death certification process, but highlighted a number of concerns with the introduction of the medical examiner service as proposed in the consultation:

26.1 **We urged the Government to reconsider introducing a compulsory charge for death certification** - The three primary objectives of introducing a medical examiner are: to ensure timely and appropriate referral of deaths to the coroner; to improve the accuracy of the medical certificate of the cause of death; and the early detection and appropriate referral of clinical governance concerns. We outlined that we felt strongly that since the objectives of this new service relate specifically to improving clinical governance, they should be seen as a core quality assurance measure for health services and should not be funded by a compulsory charge on bereaved families. We urged the Government to reconsider introducing a compulsory charge for death registration and instead fund this new duty centrally.

26.2 **Liability for payment** – If the Government chooses to fund the service through the imposition of a national fee, we said that local authorities and members of the public need clarity on who will be liable to pay the fee. Moreover, local councils and the Department of Health (DH) will need to promote awareness that a mandatory fee is to be introduced.

26.3 **Level of the fee** – We urged the Government to reconsider the level of the fee, proposed as being between £80 and £100, in order to ensure that it covers local authorities' costs. Several of the cost assumptions in the impact assessment were questioned by the LGA. Running costs, assumptions about time taken to deal with each case and the amount of work involved in processing each case have been significantly underestimated. There are also additional costs that have not been included in the impact assessment. A previous cost analysis undertaken by DH estimated the costs per case to be £160.

26.4 **National voluntary agreement on collection** – The LGA committed to continuing discussions with the DH and national representatives of funeral directors regarding the possible development of a national voluntary agreement for fee collection. However, ultimately the method of fee collection is for local councils to decide and if they do wish to pursue this option, they will need to reach an agreement locally with their funeral directors.

26.5 **Time to prepare for effective implementation** – We proposed that preparation to implement the new duty will take time and careful planning and that this will not be possible within the current proposal for implementation by April 2018. We recommended that the DH postpone implementation for at least six months, to October 2018 at the earliest.

27. Following the end of the consultation LGA officers have continued to engage with the Department of Health, sector advisers and other stakeholders around the implementation of the new medical examiner service, in particular in relation to the assumptions in the impact assessment.

### **Improving the community safety response from councils**

28. Following the discussion at the June Board meeting, the LGA's research team has been commissioned to undertake a survey of council community safety teams across England and Wales. This work will help map changes to CSPs over recent years and build an understanding of how council teams currently operate. Drawing on the outcomes of the survey and other work, two stakeholder workshops are planned for late November to discuss the emerging themes.

### **Next steps**

29. Members are asked to note and comment on the issues above.

### **Financial Implications**

30. None.