

The logo for the West Lothian Licensing Board is contained within a dark green rounded rectangular border. The text "West Lothian" is in a bold, dark green sans-serif font, and "Licensing Board" is in a lighter green sans-serif font. At the bottom right of the border, there are five small green dots.

West Lothian
Licensing Board

FUNCTIONS REPORT
2017/18

INDEX

Section 1:	Introduction	3
Section 2:	Licensing Objectives	4
Section 3:	Board Business	4
Section 4:	Decisions of the Board 2017/18	5
Section 5:	Licensing Forum	7
Section 6:	Reviews	8
Section 7:	Conclusion	10

APPENDICES

Appendix 1: Liquor Licensing Statistics for Year 2017-18

Appendix 2: Minutes of the Joint Board / Forum Meeting 8 November 2017

1. Introduction - West Lothian Licensing Board

1.1 This report has been prepared in accordance with the provisions of Section 9A of the Licensing (Scotland) Act 2005 ("the Act").

West Lothian Licensing Board ("the Board") is the licensing authority for the local government area of West Lothian for the purposes of the Act which makes provision for regulating the sale of alcohol and for regulating licensed premises and other premises on which alcohol is sold.

1.2 The current Board, which was formed in May 2017, comprises seven members, all of whom are elected members of West Lothian Council.

1.3 West Lothian is an area extending to 427 square kilometers bordered by the City of Edinburgh, Falkirk, North Lanarkshire, South Lanarkshire and Midlothian. The population of West Lothian has been steadily increasing over the last decade. It is currently 180,130 and it is predicted to increase throughout the period to 2035 with the population predicted to be 191,053 at 2035 (National Records of Scotland 2014 based population projections).

1.4 West Lothian has both urban and rural areas. There are five traditional towns, namely Armadale, Bathgate, Broxburn, Linlithgow and Whitburn as well as the former new town of Livingston where the council's administration is based. In addition, West Lothian also has 26 villages, some of which have significantly increased in size in recent years.

1.5 Under the Act, Licensing Boards are responsible for considering applications for:-

- premises licences (including provisional premises, transfer, variation and temporary applications)
- occasional licences and extended hours
- personal licences

1.6 The Act is an extremely complex piece of legislation which provides a rigid structure for the processing and determining of applications. It has 150 sections, 7 schedules and 40 different regulations relating to it. Unsurprisingly the Board's experience is that most applicants rely on the services of specialist licensing solicitors or licensing consultants to make applications on their behalf.

2. The Licensing Objectives

2.1 The Act sets out the following five licensing objectives ("the licensing objectives"):-

- preventing crime and disorder
- securing public safety

- preventing public nuisance
- protecting and improving public health
- protecting children and young persons from harm

The licensing objectives provide a basis for the administration of the licensing regime. Whilst the Act creates a presumption of grant if none of the statutory grounds for refusal applies the objectives provide potential reasons for refusal of an application for the grant or variation of a premises licence or an occasional licence. The Board considers the licensing objectives in determining all applications. The caselaw which has developed since the Act came into effect has been useful in illustrating how the objectives should be applied in practice. The Board recognises in refusing applications all of its decisions must be evidence based and must contain reasons why particular objectives are engaged.

2.2. Breach of the objectives may provide grounds for reviewing a premises licence. Conditions attached to a premises licence or an occasional licence may, be based, on any one or more of the licensing objectives. In exercising its functions under the Act, the Board is required to have regard to the licensing objectives.

3. Board Business

- 3.1 In the year from 1 April 2017 to 31 March 2018, the Board met on a monthly basis to determine applications not determined using delegated powers. The annual statistics are shown in Appendix 1.

Applications before the Board were dealt with in an open and transparent manner in accordance with licensing legislation and its statement of licensing policy. In dealing with applications the Board operated in accordance with its rules which were made under Schedule 1 of the Act. The Board's statement of licensing policy and its rules can be accessed via the following links:

<https://www.westlothian.gov.uk/statement-of-board-policy-2013-16>

<https://www.westlothian.gov.uk/media/1043/West-Lothian-Licensing-Board-Rules/pdf/boardrules.pdf>

- 3.2 Reports were prepared by the Licensing Team in relation to each application detailing the background to and practical effect of each application, all comments received from those who responded to notification of the application, any other objections or representations received, relevant sections of the Board's policy, any other legal or procedural issues arising from the application and the powers of the Board including reference to the licensing objectives.

These reports are issued to Board members and applicants seven days prior to each meeting and ensure that fair notice is given as well as an opportunity for all involved to focus on the relevant issues.

3.3 The aim of the Policy Statement is to promote consistency of decision making and to provide applicants with an indication of how the Board is likely to approach certain matters and deal with and determine applications. There is a presumption that the Board will follow the terms of this Policy in its determination of individual applications. It remains open, however, for an applicant to make an application which is contrary to the terms of the Policy Statement. In such circumstances, an applicant is required to evidence/demonstrate to the Board good reasons why the Board's Policy Statement should not be followed.

3.4 The Board has information regarding the various types of applications which it administers on its webpages which are part of the West Lothian Council website. Information and guidance was also made available to persons wishing to apply for a licence, make representations, lodge objections or request reviews by the Council's Licensing Standards Officer (LSO) and other members of the Licensing Team.

The Board is aware of the need to ensure that the licensing process is accessible to all. Assistance is therefore always available on request for those who require special arrangements to access any part of the process.

3.5 At the monthly meetings, the Board has attempted to make the process as informal as possible whilst having regard to the need to carry the Board's quasi-judicial function. Board members receive regular training in addition to the training prescribed by the Act and in undertaking their role are required to comply with the terms of the statutory Code of Conduct for Councillors which is enforced by the Standards Commission for Scotland. In terms of that code Board members are required not only to act fairly but also be seen as acting fairly. They must not prejudge, or demonstrate bias in respect of, or be seen to be prejudging or demonstrating bias in respect of, any decision they make in their quasi-judicial role as Board members. They are also bound to only take into account relevant and material considerations and to discount any irrelevant or immaterial considerations. In making decisions Board members are assisted by solicitors appointed by the council who provide legal advice to the Board to ensure that members are aware of the relevant legislation, statutory guidance and caselaw.

4 Decisions of the Board 2017/18

4.1 The legislation requires that each application for new premises licences, provisional premises licences and non-minor variations of licences are referred to the Board for determination. In 2017/18 all of these applications were granted. Looking back over the last year the Board considers that many of these applications were uncontroversial and could have been dealt with using delegated powers if the law was changed to allow this.

4.2 The Board considered 6 applications for new premises licences, 3 applications for provisional premises licences and 17 variation applications. An assessment of these applications has shown that 18 of these applications were entirely uncontroversial. None of these applications attracted objections and in all of these cases no grounds for refusal existed and the Board did not impose any additional conditions. The Board suggests that the Scottish Government give consideration to changing the law to allow

more applications to be dealt with under delegated powers.

- 4.3 During the course of the year, the Board received applications for both Occasional Licences and Extended Hours. Occasional licences are required to temporarily licence the sale of alcohol in premises not covered by a premises licence or to allow members clubs to sell alcohol to the public. The number of occasional licences granted was 363, none were refused. The Board is concerned about the numbers of occasional licences which are granted each year. The fee for each licence is £10 which is insufficient to cover the costs of administering these. More importantly the Board is concerned that many events take place in premises which would not be suitable for the grant of a premises licence. In addition, the Board is aware that due to the terms of the legislation it is prevented from imposing conditions on these licences that all persons involved in the sale of alcohol receive the training which is required for those carrying out the same role in premises where a premises licence is in force. The Board considers that the Scottish Government should give urgent consideration to increasing the fee and limiting the numbers of applications which can be made by all applicants in order that such licences would be truly occasional and premises used regularly for the sale of alcohol such as community buildings and wedding venues would be required to have premises licences.

The Board also processed 28 applications from premises licence holders to extend their licensed hours. All were granted.

- 4.4 A total of 7 objections were received to 4 different applications for provisional licences and non-minor variations. These objections mainly comprised concerns from neighbours over perceived antisocial behaviour, litter and parking problems in the areas surrounding the premises, possible overprovision including commercial issues and potential noise problems. After receiving advice from the Clerk the Board determined that none of these objections were relevant.

The Board notes that there has been a recent decision from South Lanarkshire where on appeal a Sheriff overturned a decision of the Licensing Board to refuse a premises licence under the licensing objectives of preventing public nuisance and protecting children from harm. Fifteen objections had been received regarding the application and the Sheriff's decision contains a detailed analysis of all the objections which had been taken into consideration by the Board when refusing the application. The Sheriff rejected all the objections as irrelevant to the licensing decision as they related to concerns about what could possibly happen. He said that the question for the Board was whether it was satisfied that it was likely or probable that events which were inconsistent with the specified licensing objectives would be a feature or characteristic of the operation of the premises if the application was granted.

The Board highlights this case as it reflects its experience that a large number of objections received in relation to licensing applications, both from members of the public and other stakeholders such as the NHS, are not based on matters that can be considered by the Board in terms of an alcohol licensing decision under the 2005 Act. Therefore legally they cannot be used to justify a ground of refusal under the 2005 Act. The Board would encourage the Scottish Government to publish guidance for members of the public across Scotland to promote a better understanding of the system.

- 4.5 A breakdown of current Premises Licences is shown in Appendix 1. Numbers of

premises licences have remained fairly static over the nine years since the Act was brought into full effect, despite the increasing population in the area. The Board has a list of all premises licences on its alcohol licences webpage

<https://www.westlothian.gov.uk/article/2011/Alcohol-Licences>

- 4.6 Most personal licence applications are determined using delegated powers where no grounds for refusal apply. Appendix 1 details that 146 applications were determined. Of these only four applications required to be referred to the Board as relevant offences were notified by Police Scotland. None of the notices included a recommendation from the Chief Constable that the application be refused, all applications were granted.

5 Licensing Forum

- 5.1 West Lothian Licensing Board has a properly constituted Forum operating in the area. However, the Forum for the West Lothian area experiences many of the same issues seen with such bodies across Scotland. There has been an increasingly difficult challenge of appointing a Chair and this is in part due to the membership of the Forum. Despite extensive attempts to encourage applications to join the Forum, there still remains a heavy imbalance toward council and health officials, with very little engagement from the licensed trade or general public itself. Many of these officials are reluctant to chair the Forum due to the commitment that would be required for the position. As such, there are concerns that the Forum is now failing to drive forward any meaningful body of work that could help shape the way licensing operates in the West Lothian Board area.
- 5.2 The Board is formally required to meet with the Forum at least once per annum. A copy of the draft minutes of the meeting held on 8 November 2017 are attached at Appendix 2. In addition the Board has had a number of meetings with Forum members and other key stakeholders during this year to discuss the policy review.
- 5.3 The role of Licensing Forum is to keep under review the operation of the Licensing Act in the West Lothian area and to give advice and make recommendations to the Board in relation to those matters as the Forum considers appropriate. The Forum is designed to be the community's voice on alcohol licensing issues. Given the role of the Forum it is a concern that training is not mandatory for Forum members, as it is for almost all others in the alcohol licensing system. As has been stated previously the Act, its many regulations and the caselaw arising from it are extremely complex. It is the Board's view that the Forum has expectation levels based on anecdotal information from bodies concerned about overconsumption of alcohol in Scotland that Boards simply "rubber stamp" applications and that having an overprovision policy is urgently required to solve this. This is not correct and the grounds for refusal of applications and the presumption of grant contained in the legislation are not understood. The Board is of the view that the role of the Forum should be reviewed and training for Forum members from an independent source should be mandatory.
- 5.4 In relation to overprovision the Board recognises that the only method by which numbers of licensed premises can be controlled by a Licensing Board is by refusal of applications on the grounds of overprovision. The legislation provides that Boards must have regard to statutory guidance issued by the Scottish Ministers in exercising

its functions and where it does not follow the guidance must give ministers notice of the decision and the reasons for that.

The guidance states that the Board has a duty to carry out wide ranging consultation prior to the formulation of an overprovision statement. It goes on to state that “the results of all consultation should be evaluated to identify robust and reliable evidence which suggests that a saturation point has been reached or is close to being reached *always provided that a dependable causal link can be forged between that evidence and the operation of licensed premises in a locality*”. This is a test which is very difficult to meet and was originally written to target on sales premises which are decreasing.

The guidance has been reviewed recently but the revised version has not been formally approved yet by Ministers. In any event although the document provides clearer guidance in some respects the test remains the same.

This test is not readily understood by Licensing Forums and NHS Boards. In West Lothian we have noted a great deal of frustration on the part of the Forum and NHS Lothian staff who are of the opinion that as there is evidence that people in West Lothian are drinking to harmful levels the Board should be able to find evidence to formulate an overprovision policy.

The Board is of the view that it is not as simple as that and whilst it shares the concerns of those working in public health about drinking habits unless overprovision can be evidenced it does not believe that it has powers to introduce measures to reduce consumption of alcohol.

The other difficulty is that as West Lothian has for several years had a steadily increasing population whilst the numbers of licensed premises has remained static. In these circumstances it is more difficult to evidence that a saturation point has been reached or is close to being reached. In addition, without a change in the law to allow Boards access to sales volumes and information about where local people purchase alcohol it is difficult to see how evidence can show that a dependable causal link can be forged between evidence of saturation and the operation of licensed premises in a locality. The Board is currently consulting regarding its policy review and will carefully consider overprovision in the light of all evidence which is received from consultees. The Board is of the view that in the longer term the overprovision legislation and guidance needs to be completely reviewed.

6 Reviews

- 6.1 The Board considers that the powers which it has to take action following premises licence reviews can be very effective when there are problems with the operation of premises. Applications for premises licence reviews can be made by anyone but in practice have only ever been made in West Lothian by Police Scotland or the LSO. In addition, reviews have been undertaken by the Board following notification under Section 44 of convictions relating to licence holders or connected persons. Police Scotland Licensing Officers work closely with local premises and operate a successful system of interventions with problematic premises to draw any issues to the attention of the licence holder at the earliest possible stage. No applications for review were made by Police Scotland this year.

- 6.2 In the period from 1 April 2017 to 31 March 2018 there were 6 reviews considered by the Board. Four of these related to notifiable convictions concerning two different supermarket chains, where the convictions did not relate to local premises. Having considered all the circumstances the Board was satisfied that appropriate remedial action had been taken to remove the problems encountered and that there was no likelihood of a similar incidents occurring in any Scottish based outlet. Accordingly no action was taken in these cases.

One review application was made by the LSO following non-payment of the annual fee by the licence holder who had closed the premises. This review did not proceed as the licence was surrendered before the hearing.

The final review was carried out by the Board after it came to light that the premises licence holder, a limited company, had been dissolved some time ago without notification to the Board. Unhelpfully the wording of Section 28 of the Act which details the period of effect of a premises licence does not provide that the licence ceases to have effect in these circumstances. It was accepted that the licence required to be revoked and an immediate application was made for a new licence which was granted a few months later as there were no concerns about the operation of the premises.

7 Conclusion

- 7.1 The Board is pleased to report that licensed premises in West Lothian have been well run and generally problem free in the last year. In this respect the Board congratulates and thanks the licensed trade in its efforts in promoting and upholding the licensing objectives and complying with the Board's policy.
- 7.2 The Board is of the view that a number of parts of the Act need to be reviewed.

This report was approved by the Board on 8 June 2018.

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Liquor Licensing Statistics for Year 2017-18 (Period 01/04/2017 to 31/03/2018)

Local Authority - West Lothian	
Premises Licence Statistics	
Licences in Force on 31 March 2018 (this should equal total of a+b+c)	388
(a) on licence only	115
(b) off licence only	158
(c) both	115
Applications received during 2017-18	
(a) on sale	1
(b) off sale	7
(c) both	1
Applications refused during 2017-18 under section 23	NIL
Applications granted during 2017-18 under section 23	9
Applications for review of premises licence during 2017-18 under S36 & S37 resulting in:-	
(a) written warning	NIL
(b) variation	NIL
(c) suspension	NIL
(d) revocation	1
(e) no action	5
Occasional Licence Statistics	
Number of Occasional Licences granted during 2017-18	363
Personal Licence Statistics	
Personal Licences in Force on 31 March 2018	1,316
Applications during 2017-18 under section 72:-	
(a) refused	NIL
(b) granted	146
Proceedings taken during 2017-18 under section 83 (notice of conviction) resulting in:-	
(a) endorsement	NIL
(b) suspension	NIL
(c) revocation	NIL
(d) no action	1
Proceedings taken during 2017-18 under section 84 (conduct inconsistent with licensing objectives) resulting in:-	
(a) endorsement	NIL
(b) suspension	NIL
(c) revocation	NIL
(d) no action	NIL
Proceedings during 2017-18 under section 86 (multiple endorsements) resulting in:-	
(a) endorsement	NIL
(b) suspension	NIL
(c) revocation	NIL
(d) no action	NIL
Revocations of personal licences during 2017-18 under section 87(3) (failure to provide evidence of having undertaken refresher training)	78
Staff employed at 31 March 2018	
Minor variation applications	149
Non-minor variations	17
Transfer applications	1
Number (full-time equivalent) of licensing standards officers employed	1

Appendix 2

MINUTE of JOINT MEETING of WEST LOTHIAN LICENSING BOARD and WEST LOTHIAN LOCAL LICENSING FORUM held within COUNCIL CHAMBERS, WEST LOTHIAN CIVIC CENTRE, LIVINGSTON, on WEDNESDAY 9 NOVEMBER 2017

Present –Councillors Peter Heggie, Tom Conn, Bruce Fairbairn, Dom McGuire, George Paul, John Bainbridge (Community), Douglas Froud (LSO), Norma McKinney (Community), Christine Melville (Education), Alan Murray (Community), Elizabeth Oldcorn (NHS Lothian), Alison Smith (Housing) PC Tom White (Police Scotland)

Apologies – Councillor Chris Horne, Helen Davis (Social Work), Mike Duncan (WL CHCP), Brian Pringle (WLDAS) Arun Randev (Trade)

1. **INTRODUCTIONS**

Introductions were made by all parties

3. **POLICY REVIEW**

The Clerk referred to the note regarding the Board Review of its statement of Policy which had been circulated.

The Clerk to the Licensing Board advised that the review of the Board's Statement of Licensing Policy was about to commence and a proposed timetable for the review had been prepared to ensure that the Board would be able to publish a new policy by October 2018.

The Clerk advised that the Licensing Forum would be part of the process as a consultee; however, the Board would welcome the views and assistance of the Forum and other key stakeholder at an earlier stage to help inform the public consultation.

The Clerk went on to advise that the Licensing Team had identified areas within the current document that would possibly require to be changed. A list of these areas was circulated.

It was noted that the review of the Policy Statement was an extensive undertaking, and the Board would welcome the assistance of the Forum by looking at areas of the statement it thought should be updated and put forward suggestions for change.

Government guidance which Boards were required to have regard to had been in place since 2007 and was available on the Scottish Government's website. The Board was aware that the Government was working on a redraft of two sections of that guidance covering overprovision and policy statements. It was not known when this would be issued and concerns had been raised at the speed at which this was being completed. The progress of the review could be affected by any revised guidance published during the course the next year.

A note of the timetable for the review was provided for information.

4. **OVERPROVISION**

The Clerk advised that Government guidance stated that an assessment of overprovision should start with the Licensing Board closely scrutinising the provision of licensed premises across the whole of its area and then proceeding to determine those localities which it proposed to examine further.

At pre-consultation stage the Board wanted to hear from the council, Police Scotland, NHS Lothian, Community Councils and the Licensing Forum as to whether they considered that there may be overprovision of licensed premises within West Lothian, what localities and types of premises were involved.

The guidance stated that information which the Chief Constable was capable of providing was a reasonable starting point which included the following:-

- Identification of “hotspot” areas where it can demonstrate that crime, disorder and nuisance were caused by customers of a concentrated number of licensed premises
- Suggested other areas in which the number of licensed premises or premises of a particular description was moving closely towards overprovision
- Provision of the geographical boundaries of those areas.

In addition it was understood that the Forum had been working on a report containing evidence on overprovision from a health perspective. It was noted that if such a report was to be produced it would be helpful if it could be submitted by 5 January 2018 to allow the Board to consider it before it made a final decision as to what include in the public consultation.

The guidance provided a number of factors which the Licensing Board may take into account in its overprovision assessment and that it would not be appropriate to arrive at a decision based on one particular factor, but consideration should be given as to whether aggregated information and evidence on a number of sources points compellingly towards a particular conclusion.

In responding members of the Forum and other pre-consultation consultees should keep in mind that the guidance and caselaw made it clear that results of consultation should be evaluated to identify robust and reliable evidence which suggested a saturation point had been reached.