

Summary of responses received and the Northamptonshire Licensing Liaison Group (NLLG) considerations

Respondent Details	Comments made	Response
<p>Punch Taverns Limited</p>	<p>4. Strategies We feel that this policy would benefit from a more details relating to Integrating other guidance, policies, objectives and strategies into licensing decisions. Licensing policies works best when they reference, and indeed work with, other council strategic plans and policies. For instance, planning strategies and local cultural strategies often inform applicants for either new licences or variations to licences as to what the council are looking to do in terms of promoting culture, leisure use and night-time economy uses in a particular area.</p> <p>Often it can be difficult to find these documents online and therefore reference to them and indeed a general statement that the authority will take into account other strategies is both a pertinent and of benefit to applicants and responsible authorities alike. Links to specific strategies, will also assist new potential businesses to understand and factor in the likely costs of entry into the city.</p> <p>6. Objectives</p> <p>Prevention of Crime and Disorder</p> <p>The prevention of crime and disorder is one of the 4 licensing objectives and clearly a major pillar of licensing legislation. However, we have become increasingly concerned that licensed premises are sometimes being unfairly held to a higher standard when it comes to prevention of crime and disorder than other public premises. For instance, when Police present evidence of crime and disorder in relation to licensed premises, they will often include references to any crime that is associated not just with the premises in terms of its operation as licensed premises but generally. For instance, the Police will often include reference to all calls where those calls have</p>	<p>This is a Northamptonshire County wide Statement of Licensing Policy (SOLP) so it would be difficult to link to all relevant Northamptonshire guidance, policies and strategies. It would also require constant review as and when policies and strategies are updated/removed etc. The Licesning Act 2003 also relates to specific licensing objectives which are not relevant to the strategies referred to.</p> <p>Section 11.7 of the S182 guidance states that any application for review must relate to the premises and be relevant to the licensing objectives. The purpose of the SOLP is not to repeat the S182 guidance. Nor is it the Licensing Authorities responsibility to check and censor police submissions however</p>

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	<p>referenced the premises as a local landmark which can include anything from criminal activity from people who have not been customers of the premises, offences in relation to taxis, or general disturbance and noise nuisance in a town centre where it cannot be said to be relevant to the premises.</p> <p>Premises licence holders will also often find reference to offences that are not relevant to the licensing objectives themselves. So, for instance, robberies at residential premises above a licensed premises are sometimes included. We feel it is important that the council recognise in their policy that these are matters that are not relevant to the prevention of crime and disorder licensing objective and that the licensing authority's expectation is that they will only be presented with evidence where it directly relates to the licensable activities being provided within the premises themselves.</p> <p style="text-align: center;">Prevention of Public Nuisance</p> <p>The prevention of public nuisance licensing objective is to be widely interpreted, as set out in the Statutory Guidance. However, we often come across conditions imposed on licences, as well as the investigation of complaints that do not relate to public nuisance. For instance, conditions that refer to 'nuisance', rather than 'public nuisance', set a significantly higher barrier- one that was not intended by the Licensing Legislation. We also see this in terms of enforcement action where often enforcement officers will allege that a nuisance, often a private nuisance, has occurred and demand action under the terms of the premises licence. Clearly this is beyond that which was intended by Parliament and therefore we suggest that your policy reflects the need for public nuisance to be demonstrated and for conditions relating to nuisance to relate to public nuisance rather than any wider definition. In particular, we suggest that expressly stating that private nuisance is not a licensing objective would assist in all parties understanding what is and is not the remit of licensing legislation.</p>	<p>licensing panels and other parties can raise and consider any concerns relating to evidence accordingly.</p> <p>This issue is covered in the S182 guidance in sections 2.15 and 2.16 where it states that public nuisance is not narrowly defined in the 2003 Act but retains its broad common law meaning. This is reiterated in paragraph 6.3 of the policy.</p>

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	<p>Protection of children from harm</p> <p>We note that responsible authorities often request 'Challenge 25' as a standard condition. Many premises (especially multiple operators) operate Challenge 21 policies and have training and signage for this. To change it can be expensive and/ or time consuming. As such, we would suggest that the licensing authority would not expect responsible authorities to suggest a change to Challenge 25 where a premises is already trading with a different challenge policy, unless there have been identified risks to children at the specific premises. It would assist if the policy reflected this.</p> <p>10. Planning</p> <p>We would also urge you to clarify in your policy that where conditions are stipulated on a planning permission, such as restriction on hours or activities, these do not need to be repeated in the premises licence, unless there is good reason to do so. Often conditions relating to extract systems, closing times of external areas, etc. appear on both permissions and on occasion they do not even mirror the other. This leads to additional and unnecessary expense for licence holders should such conditions need to be amended.</p> <p>14. Cumulative Impact and Special Policies</p> <p>We note that your cumulative impact policy section does not reference cumulative impact assessments ('CIA's'). It would assist if this section were expanded to explain more about CIA's and the effect of them, including that cumulative impact policies need to be reviewed every 3 years, rather than the 5 for the policy itself.</p> <p>We note that there are no cumulative impact policy areas identified, but that this will be kept under review.</p> <p>We understand that there are occasions where CIP's provide a valuable tool to local authorities in regulating the night time</p>	<p>The role of Responsible Authorities (RA) is detailed in 9.11 and 9.12 and it is their responsibility to determine if they have appropriate grounds to make representations and incumbent on them to ensure that they can withstand scrutiny at any hearing. It is not the role of the Licensing Authority to direct RA's.</p> <p>Conditions are only adopted with agreement of the applicant or through the committee process.</p> <p>The Licensing Authority do not deem this appropriate as we don't have any cumulative impact policy areas in places.</p>

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	<p>economy. However, our experience is that they can also be an impediment to businesses and the development of a thriving night time economy.</p> <p>Punch, as a promoter of entrepreneurship within our estate of leased pubs understands very well the challenges that small business operator's face when looking to enter a new market or adapt their offer.</p> <p>Cumulative impact policies can have the effect of dissuading operators from even attempting to get a licence. This unintentionally penalises operators considering smaller more novel applications (simply because of the prohibitive cost), often resulting in them looking to take their ideas elsewhere and thereby wasting a chance to develop a more rounded and vibrant economy in the CIP. For the same reason, such policies also promote ubiquity and stagnation as the only operators willing to take on the risk and outlay of applying in cumulative impact zones are larger established chains with the financial backing to fight for a licence. Given the plight of the pub market 7 years ago and now the casual dining market, in part because their offers failed to change as the market developed around them, the use of CIPs needs careful oversight.</p> <p>17. Conditions</p> <p>Whilst Punch Taverns recognise the importance of conditions on premises licences in certain circumstances, such as to prevent or to mitigate the potential risk of certain activities undermining the licensing objectives, we have a concern that more and more conditions are being placed on a licence that are then enforced as breaches of the licence in their own right. Licensing authorities are obliged to promote the 4 licensing objectives. Breaches of condition in and of themselves are an offence under Section 136 of the Licensing Act and on summary conviction can lead to an unlimited fine and/or up to 6 months in prison. It is important that this distinction is recognised in your policy and that breaches of</p>	<p>Licensing conditions are adopted with agreement of the applicant or through the committee process.</p> <p>Section 17.1 of the policy states that conditions may only be applied following receipt of relevant representations where they</p>

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	<p>condition in and of themselves are a matter for the Courts; whereas an undermining of the licensing objectives, which can happen with or without conditions being on the licence in any event, are the province of the licensing authority to deal with. We would suggest that this distinction is made in your policy as it will re-enforce the message both for responsible authorities and for operators who hold premises licences in your area.</p> <p>Punch has always been happy to work with licensing authorities in relation to conditions being imposed on a licence where they are necessary and proportionate to achieve an identifiable aim. However, we are concerned with the prevalence of standard conditions being used across all licences within any particular class, This has taken over from a proper analysis of the need for such conditions in the first place.</p> <p>In particular, we have seen a rise in conditions being imposed upon premises licences by responsible authorities, irrespective of the nature of the application being made. For instance, a variation to the plans attached to a licence to effect a simple alteration in layout and where there is no change in licensable activities, increase in customer area, or removal of internal lobbies, for instance, sometimes result in officers seeking to ride on the back of that application to impose conditions that are in no way relevant to it. The case of Taylor v Manchester City Council makes it clear that any conditions imposed on a premises licence when it is varied must relate to that application itself and should not stray into other areas that are not part of the application. It is important again that this is referenced in policy in order to prevent unnecessary hearings and often additional expense to applicants seeking to make simple changes to their licence but are then held to ransom by responsible authorities who know that operators are unlikely to challenge their right to impose such conditions where the cost would be send the matter to a hearing.</p> <p>We submit that the imposition of large numbers of conditions</p>	<p>have been agreed by all parties concerned or have been applied by the licensing committee to avoid disproportionate and burdensome conditions.</p>

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	<p>on a premises licence is self- defeating. Premises licences form one part of a significant number of regulatory requirements that must be observed by publicans and this is often forgotten by regulators who often only think in terms of their one area of expertise. This means that they often do not see the wood for the trees. Policies that set out an expectation of long operating schedules or worse, require officers to object to applications unless the applicant applies their standard conditions, place an unnecessary burden on operators without necessarily helping to promote the licensing objectives. The City of London licensing authority, for instance, will only impose conditions if deemed absolutely necessary. It is not unusual to see licences with only a handful of conditions.</p> <p>The reason for this is that they expect operators to promote the licensing objectives, not go through the motions of complying with conditions because they have to. Also, licences grandfathered in 2005 would, likely have few or no conditions on them. We have seen no evidence to suggest such premises have undermined the licensing objectives more than "conditioned licences."</p> <p>We would challenge any authority to suggest that this approach leads to more issues with licence holders undermining the objectives. If anything this clarity of approach means that operators are freed up to adapt their businesses as the demands of the market change, freeing up officers from having to undertake lengthy inspections of licences and then having to send out enforcement letters relating to conditions that are breached in the observation without any real evidence that the breaches themselves undermine the objectives. This in turn frees up resources for enforcement against poorly behaving premises and dealing with unlicensed operators.</p> <p>19. Minor Variations</p> <p>We are pleased to see details about the minor variation</p>	

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	<p>procedure in your policy. However, we would suggest that a little more detail in terms of the bullets might assist in clarifying for both officers and applicants what might be considered a minor variation. We would propose that the following bullets are added to the list of what minor variations can be used for:</p> <ul style="list-style-type: none"> • Make changes to layout that do not increase the customer area (beyond a de-minimis increase of, we would suggest, 10%). • Removal of conditions that are no longer relevant to the operation of the premises or are redundant following imposition of new law, such as the Regulatory Reform (Fire Safety) Order 2005. <p style="text-align: center;">OTHER MATTERS WE WOULD ASK YOU TO CONSIDER REFLECTING IN YOUR POLICY</p> <p>On and Off-Sales</p> <p>Recently we have become aware that the definition of on and off-sales has caused some confusion. In particular there appears to be confusion around whether an off-licence is required for customers to take drinks outside of a premises, for instance onto the pavement, and consume their drinks there.</p> <p>We contend that such a sale is an on-sale. If one considers the nature of the offence of selling alcohol without the appropriate licence, it is clear that the intention is that the person making the sale is the one who would be charged with the offence, rather than, say, the purchaser. Therefore, in selling a drink in an open container for immediate consumption, it cannot be argued that the publican has made anything other than an on-sale. It is inconceivable that the law intended that should this person step outside the</p>	<p>This is detailed in section 19.6 of the SOLP and any changes to layout will be considered in the light of impact on the licensing objectives as per section 8.62 of the S182 guidance.</p> <p>The Licensing Authority will have regard to the S182 guidance in respect of on and off sales.</p>

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	<p>premises, or indeed take that drink away with him, that this would somehow transform that on-sale to an off-sale. The terms 'on' and 'off' sales originate from the Licensing Act 1964. Analysis of the legislation (by reference to off-sales) demonstrates that all off-sales had to be intended to be sold for consumption away from not only the licensed premises but any land associated with that premises or land immediately adjoining it for them to be considered an off sale. The intention was to ensure that in a situation where a seller makes an on-sale, that on-sale does not become an off-sale simply by means of it being consumed in the immediate environment of the premises, such as an unlicensed garden or on the pavement outside the pub.</p> <p>As such, we feel that this needs to be clarified in the policy. We would propose a statement along the following lines:- "On and off-sales are defined by reference to the intention of the seller at the time of sale. A sale in an open container for immediate consumption at the premises is an on-sale. This extends to where the person who has purchased the drink at the bar and then consumes it either in a pub garden or on the pavement immediately outside the premises.</p> <p>An off-sale is a sale designed for consumption away from the premises and its immediate environs. This will usually be in a sealed container such as a bottle or can and the seller when selling that drink had no intention for the purchaser to remain at the premises to consume it".</p> <p>GDPR</p> <p>We note that the policy does not make reference to the GDPR</p> <p>One of the most significant changes in recent times has been the change to data protection legislation introduced via GDPR. Whilst the obvious effects of this regulatory change relate to protecting personal data held on behalf of individuals, such as social media, mailing lists, email data</p>	

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	<p>bases and various other forms of storage of someone else's data, there are other effects that need to be reflected in licensing policy.</p> <p>For instance, the requirement for CCTV at a premises licence is not only expensive to install, but we question the value of such systems in terms of crime prevention and detection, especially in smaller community pubs. However, it is now commonplace for police to demand CCTV in almost all premises and to insist upon complicated and demanding CCTV conditions to be added to premises licences. In addition, operators of CCTV systems have to consider the GDPR implications. In particular, anyone who stores data, including CCTV footage of individuals, which is classed as data for the purposes of GDPR, must be responsible for its safe collection, storage, usage and disposal. Handing over CCTV footage to Police officers in the active investigation of a criminal offence, such as a fight, would obviously be a legitimate reason for providing data. However, a condition with a general requirement to hand over CCTV at the behest of a licensing officer or police officer would arguably breach GDPR were it to be enforced. This means that there are numerous CCTV conditions on licences that would likely, were one to try and enforce them as they are written, cause an operator to breach GDPR.</p> <p>Similarly, club scan conditions need to be thought about in terms of GDPR and the obligations of the data holder. For instance, the time for which any data is stored and the purpose for storing that data needs to be made clear to people handing over their data.</p> <p>Again conditions that require such data to be handed over at the behest of an officer other than in investigating a criminal offence would in all likelihood breach GDPR.</p> <p>We feel therefore that this need to be addressed in the policy in order to ensure that conditions are updated to ensure compliance and that CCTV in particular is not being</p>	<p>S 10.10 of the 182 guidance states that conditions should only be imposed where necessary for the promotion of the licensing objectives. GDPR is a matter for the data controller.</p>

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	<p>universally required where there is no real and pressing need for it.</p> <p>Agent of Change</p> <p>Whilst we recognise that the principle is currently being debated in terms of planning, it is equally as important in licensing. We recommend that the licensing policy expressly recognises that developers of new residential developments need to protect their buyers from potential sources of noise disturbance, not expect existing licensed premises to have to adapt their offer to accommodate the new development. In particular, small pubs often rely on live or recorded music, provision of social events and other community based promotions, such as beer festivals, in order to survive and thrive.</p> <p>We have, unfortunately, seen a rise in complaints and reviews directed at existing premises that have often been at the heart of the community for over a century, from residents moving into new properties nearby. Whilst it is incumbent upon licence holders to promote the licensing objectives, it is iniquitous and arguably a breach of their Article 1, Protocol 1 human right to peaceful enjoyment of property, which includes their premises licence, to have their livelihood threatened and sometimes taken away because of poorly designed and constructed residential property built next door.</p> <p>Tables and Chairs licences</p> <p>External areas, especially gardens and enclosed spaces laid out to tables and chairs, are often attractive in their own right, as well as promoting businesses. Where they are on council land, they can be useful sources of revenue for local authorities. We would ask that your policy refers to any tables and chairs policy in place, with links to where application forms can be found on the council website etc. Whilst not strictly related to the Licensing Act 2003, the council policy</p>	<p>The SOLP is not aimed at developers.</p> <p>This is not a matter for the Licensing Authority.</p>

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	<p>document is a useful guide to licence holders and the more information that can be provided about ancillary matters, the more likely it is that licence holders and applicants will use this resource.</p> <p>20 Enforcement</p> <p>We suggest this policy specifically references the Regulator's Code and provides a link. This is useful for all parties to licensing matters and recognises the important role that businesses play in local communities.</p>	<p>Thank you for this suggestion, the link has been added to the guidance documents section of the policy.</p>
<p>Public Health – NCC Richard Holley</p>	<p>Overview The Northamptonshire Public Health team greatly appreciates the opportunity to comment on the Northamptonshire Statement of Licensing Policy 2019 – 2024.</p> <p>The aim of public health is to improve quality of life through prevention and treatment of disease. The activities of public health may not always directly relate to the licensing objectives, but can often indirectly impact upon them.</p> <p>Although we understand that public health is not one of the four objectives, the consumption and sale of alcohol has significant knock on effects to the primary aims of public health. It is for these reasons that we would appreciate a wider acknowledgement of the health implications relating to alcohol, and how licensing is in a prime position to positively improve local health outcomes.</p> <p>Other Areas Licensing authorities from other areas have previously used this platform to address the health implications of licensing:</p> <p>Bolton's statement explicitly recognises the areas above average level of alcohol related health harms.</p> <p><i>6.1 Bolton Council recognises that the instances of alcohol-</i></p>	

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	<p><i>related health harms across the borough are high and that Bolton ranks highly both regionally and nationally in respect of alcohol-related health harms. It also recognises the relationship between alcohol intoxication and violent crime and that violent behaviour is a public health and a crime and disorder issue.</i></p> <p>Coventry's policy comments on the detrimental health effects of alcohol, and the way in which alcohol related harm disproportionately impacts lower socio-economic groups.</p> <p>13.8 In line with the principles of the Marmot Review 'Fair Society, Healthy lives' Coventry City Council has agreed to develop common policies to reduce the scale and impact of health inequalities across the city. This includes focusing interventions such as alcohol reduction on reducing the social gradient in health. There is a social gradient in the harms from alcohol consumption, but not in alcohol consumption itself. Quantities and patterns of drinking differ across socio- economic groups, as do harmful outcomes. According to the Marmot Review, those people from more deprived areas who consume alcohol are more likely to have problematic drinking patterns and dependence than those from more affluent areas. Binge drinking in under 18s is associated with deprivation and unemployment is associated with alcohol consumption.</p> <p>York have dedicated part of their licensing policy to discuss local factors, which includes an overview of alcohol related harm in the city:</p> <p>5.6 30% of York adults reported drinking more than the recommended limits of alcohol, this is in line with the national average. This means that 30% of York adults are putting themselves at an increased risk of alcohol related disease and other long term harm. The excessive use of alcohol is an important public health problem in York, not only because of the health conditions associated with long term alcohol misuse, but also the immediate effects such as accidental injuries, violence and anti-social behaviour.</p> <p>We appreciate the policy highlighting some of the data the public</p>	

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	<p>health team can provide. However, we feel it would be beneficial to provide a brief overview of the kind of data we can offer. It will also give the reader a better understanding of the potential implications of increasing the supply of alcohol:</p>				
	Indicator	Period	England	East Midlands	East Northants
	Percentage of adults drinking over 14 units of alcohol a week	2011-14	25.7	25.5	27.9
	Hospital admissions for alcohol related conditions (per 100k people)	2017-18	632	669	702
	Hospital admissions for alcohol specific conditions (per 100k people)	2017-18	570	505	485
	Hospital admissions for alcohol specific conditions – under 18's	2015-16 2017-18	32.9	29.2	35.3
	Alcohol related mortality	2017	46.2	46.6	45.4
	Hospital admissions for mental & behavioural disorders due	2017-18	69.2	78.1	74.9

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	to use of alcohol					
	Hospital admissions for intentional self-poisoning by & exposure to alcohol	2017-18	46.2	49.9	66.7	
	Hospital admissions for alcohol related unintentional injuries (per 100k people)	2017-18	144.3	141.9	151.5	
	<p>Chapter 8 Health as a responsible authority</p> <p>We would recommend expanding this section to explain why Public Health is a responsible authority, and how licensing can be used to tackle alcohol related health matters. It may also be worth noting that although the protection of public health is not a specific licensing objective, it can where appropriate permeate each of the licensing objectives.</p> <p>Annex 3 Other policies, legislation, and guidance sources</p> <p>This section of the statement highlights a variety of strategies, policies, and legislation that complement the licensing policy. Although many have been included, we note the absence of the following:</p> <p>Northamptonshire Health and Wellbeing Strategy 2016 - 2020</p> <p>The priorities of which are as follows:</p> <ul style="list-style-type: none"> • Every child gets the best start 					<p>As noted public health is not one of the four licensing objectives however chapter 8 has been amended to acknowledge that the introduction of public health as a responsible authority has gone some way towards starting to reduce alcohol related harms and the mechanism by which this may occur.</p>

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	<ul style="list-style-type: none"> • Taking responsibility and making informed choices • Promoting independence & quality of life for older adults • Creating an environment for all people to flourish <p>As several of these priorities are relevant to the licensing objectives, we would greatly appreciate this important strategy being included within the list of relevant documents.</p> <p>Director of Public Health Northamptonshire Annual Report 2018/19</p> <p>Each year the Director of Public Health publishes their annual report. This report details local public health priorities and makes recommendations for future work.</p> <p>The 2018/19 report comments on the recent increase of alcohol related hospital admissions, and the impact alcohol has on the finances of those living in areas of deprivation. The former is most certainly relevant to the licensing objectives, and the DPH explicitly notes the importance of the licensing regime in our attempts to reduce alcohol related harm.</p> <p>For these reasons we believe the DPH's annual report should be included in the list of strategies/documents.</p> <p>Conclusion</p> <p>As we have noted throughout, we are well aware that public health itself is not one of the four licensing objectives. However, given the harm caused by alcohol in Northamptonshire, we would like to see health related matters be discussed in greater depth.</p>	<p>Thank you, these documents have been added to Annex 3.</p>

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