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Official Report

LOCAL GOVERNMENT AND REGENERATION COMMITTEE

Wednesday 18 February 2015

Session 4

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LOCAL GOVERNMENT AND REGENERATION COMMITTEE
6th Meeting 2015, Session 4

CONVENER

*Kevin Stewart (Aberdeen Central) (SNP)

DEPUTY CONVENER

*John Wilson (Central Scotland) (Ind)

COMMITTEE MEMBERS

*Clare Adamson (Central Scotland) (SNP)
*Cameron Buchanan (Lothian) (Con)
*Willie Coffey (Kilmarnock and Irvine Valley) (SNP)
*Cara Hilton (Dunfermline) (Lab)
*Alex Rowley (Cowdenbeath) (Lab)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Andrew Mitchell (City of Edinburgh Council)
Peter Smith (Glasgow City Council)

CLERK TO THE COMMITTEE

David Cullum

LOCATION

The David Livingstone Room (CR6)

Scottish Parliament

Local Government and Regeneration Committee

Wednesday 18 February 2015

[The Convener opened the meeting at 10:00]

Air Weapons and Licensing (Scotland) Bill: Stage 1

The Convener (Kevin Stewart): Good morning and welcome to the Local Government and Regeneration Committee's sixth meeting in 2015. I ask everyone present to switch off mobile phones and other electronic devices, as they interfere with the broadcasting system. However, some committee members will refer to tablets, because we provide papers in digital format.

Agenda item 1 is our eighth oral evidence session on the Air Weapons and Licensing (Scotland) Bill. We will take evidence from local authority witnesses on general licensing provisions. I welcome Andrew Mitchell, community safety manager with the City of Edinburgh Council, and Peter Smith, senior licensing officer with Glasgow City Council. Gentlemen, would you like to make any opening remarks? Maybe you could tell us a little about your jobs.

Peter Smith (Glasgow City Council): On behalf of Glasgow City Council, I again thank the committee for inviting us to give evidence. My role in the council's licensing team is in essence to oversee the service delivery aspect of the business and to ensure that we deliver the correct level of service to our customers and our communities.

As we have outlined in previous evidence sessions, the council supports the proposals in the bill in and of themselves, although we give a caveat or qualify that by again raising the issue that the licensing system and in particular the Civic Government (Scotland) Act 1982 are not fit for purpose as they stand—consolidation or revision of the act is required to improve the licensing service that is delivered to the businesses and communities that we serve.

The Convener: What is your role?

Peter Smith: I oversee service delivery in the licensing section. That involves dealing with the legal aspect of the business and the operational side, such as dealing with agents and businesses and ensuring that applications are processed timeously and that the legal and administrative processes of the role are fulfilled by the team.

Andrew Mitchell (City of Edinburgh Council): Thank you for inviting me. I am the City of Edinburgh Council's community safety manager. I have responsibility for the council's licensing functions, from policy through to the administration of processing applications. I am also responsible for the council's regulatory functions that relate to licensed premises, which includes managing the licensing standards officers.

The council broadly welcomes the bill, but we take a similar view to that of Glasgow City Council, in that we believe that the 1982 act has probably passed its sell-by date. Quite a few other bits of legislation out there that deal with licensing need to be tidied and brought into a consolidated act. We are particularly interested in the training of private hire car drivers, which is essential. We are also concerned about the provisions in the Licensing (Scotland) Act 2005 that relate to occasional premises. I am happy to go through the details of those issues to help the committee. We broadly support the bill as far as it goes.

The Convener: You have both said that the 1982 act is outdated and no longer fit for purpose. What are the main flaws in that act and how will the bill resolve some of those difficulties?

Peter Smith: We have to begin with the fact that the 1982 act was drafted more than 30 years ago. It deals with a variety of activities that require to be regulated, from obvious things such as taxis and private hire cars to more obscure things such as window cleaners and boat hire licences.

The act has served its purpose over the years but, as Scotland has moved on and business has changed, the provisions have not kept pace. The 2005 act represents what is probably the benchmark for how licensing should work in 21st century Scotland. When we compare the two acts, we can see that the 1982 act is deficient in several areas.

The lack of licensing objectives is a major concern about the 1982 act. We are charged with granting licences and setting conditions, but those conditions do not go as far as setting objectives for licence holders. We might condition a licence. For example, with scrap metal dealers, we might be given the power to condition a licence for non-cash payments, but that is not backed by a requirement for the licence holder to meet objectives such as preventing crime and disorder and securing public safety.

I guess that I am talking about the technical minutiae of how the two acts work, but the lack of objectives is a major concern for us. The 2005 act creates an expectation about how licensing authorities should deal with businesses and we do not have the same powers under the 1982 act.

Specific provisions in the 1982 act for things such as street trading were drafted to deal with burger vans and people selling hats, scarves and badges at football matches. We have to use that legislation in 21st century Scotland to regulate everything from car washes to pedicabs, and it is clear that the 1982 act was never intended to regulate such activities. As we move on, it becomes more apparent that the act is not suitable for dealing with that type of thing.

Andrew Mitchell: I can give the committee an example of what the public think. The 2005 act and planning legislation contain quite a sophisticated system for neighbour notification, but there is no equivalent in the 1982 act. One of the most common complaints that we get from residents and members of the public is that premises spring up beside them and they have very little chance to become aware that premises are likely to apply for a licence before they open. Such examples show how, when compared with other pieces of legislation, the 1982 act, which was passed more than 30 years ago, has fallen well behind what one would expect for public involvement and people's awareness of what is going on in their community.

The Convener: What do you consider to be the advantages and disadvantages of creating a new civic licensing standards officer role?

Peter Smith: The advantage is that the role creates a single point of contact for communities that are concerned about activities that are licensed under the 1982 act. At the moment, officers in councils are spread across different teams, such as trading standards and environmental health, and they deal with aspects of activities that are regulated under the act. There is no single point of contact for someone who has an issue with a licensed premises, so creating the role is helpful for dealing with a specific issue.

In reality, I am not confident that every local authority will create a specific licensing standards officer role for civic licensing. The responsibility might simply be divided up and given to the different officers who deal with different aspects of licensing. An environmental health officer might also be a civic licensing officer, rather than an individual position being created. We will not know whether that will happen until the provisions are put in place.

On disadvantages, the creation of a civic licensing standards officer creates an expectation that someone in the council can deal with licensed premises issues. The reality is that the officer would not be able to do that. They would be charged with dealing with breaches of licence conditions. Because there are no objectives under the 1982 act, if the premises were creating a public nuisance, a civic officer could not deal with that. They could deal only with a breach of a specific condition under the act, because there is no overriding objective to which businesses have to adhere.

There are advantages to creating the role, because it will give communities comfort that there is someone for them to contact. At the same time, I am concerned that such a role might create the expectation that a local authority can deal with issues that it is not charged with dealing with.

I will give an example to contextualise that. If a street trader suddenly swung up outside someone's front door with a burger van, the civic licensing standards officer could deal with a breach of that street trader's conditions, but if the community did not want the street trader to be there or if the street trader was creating a public nuisance, the officer could not deal with those issues, because there is no objective to tie them to. The officer could deal only with the physical licence conditions—for example, does the trader have suitable bins for any waste that they are producing? Are they operating within the licence's terms?

I have mixed feelings about the creation of the civic licensing standards officer role. Overall, I think that it is a good idea but, in the context of the 1982 act, there are flaws.

The Convener: Basically, you are saying that the public's perception will be, "Yes, we have these new officers, but they are not going to deliver what we want." Is that right?

Peter Smith: The officers will be able to deliver aspects of what people want, but they will not be able to deliver the overall service that the public would expect them to deliver.

The Convener: Will the officers be able to help the public and guide them on dealing with objecting to licences in the future?

Peter Smith: Yes—absolutely.

The Convener: Will they help with objecting to a burger van being in a specific place or whatever it may be?

Peter Smith: Not with the burger van because—unfortunately—there is very little chance under the 1982 act that the community would know that the burger van was going to turn up before the licence was granted.

The Convener: Under the new provisions, will the public be more likely to know about the licence application of the said burger van?

Peter Smith: The public might be more likely to know, but that is not guaranteed under the provisions. We come back to what the officers will be able to do, compared with people's expectations of what they will be able to do.

The Convener: So we might be boosting the public's confidence in all this only to dash their confidence when it becomes a reality.

Peter Smith: That is well put.

Andrew Mitchell: Local authorities across the piece will take different views on civic licensing standards officers. Smaller authorities might struggle to find the resources to create the role. My authority has put all the expertise in dealing with the area in one team, and we would be likely to assign an existing officer such as an environmental health officer to carry out the functions.

It is important that the bill envisages a mediation role. Most local authorities try to mediate to resolve difficulties between the public and licence holders. However, like my colleague Peter Smith, I do not think that the officer role in itself will solve every problem under the 1982 act. To go back to my point about neighbour notification, it is highly unlikely that the officer role as it has been created would resolve that difficulty to any great extent.

Cameron Buchanan (Lothian) (Con): Good morning. I was interested in the example of the burger van, not per se but in terms of who would deal with it. Would people be able to phone the police to ask them to get rid of such a van if it was outside their house or causing a nuisance in their area? What party would deal with those issues?

Peter Smith: There is no party—that is one of the 1982 act's fundamental flaws. Once the licence is granted, unless there is a breach of conditions—or a criminal matter, when the police can get involved—there is no route for communities to say, "This is a public nuisance and we want the committee to reconsider whether this application should be granted."

If there was an issue about food smells, we could ask environmental health to look at that or at a breach of conditions, but the overarching idea that a licence holder who is creating a public nuisance can be dealt with is wrong. That cannot be dealt with. Under the 1982 act, there is no provision to deal with that.

Cameron Buchanan: Will the new bill close that loophole?

Peter Smith: No. Really addressing the issues would involve going back to the beginning and looking at the 1982 act on a fundamental level. If that was done, something that was much more like the 2005 act would probably be created in the end. Many of the activities that are regulated under the 1982 act could move to a model like the 2005 act or even become part of the 2005 act.

That would create a system that was more in line with the one that operates in England and Wales, where a premises licence comes under one licence that licenses multiple activities. That licence includes a sensible level of objectives that the licence holder and the local authority are tied to ensuring. Without that—if we continue with the 1982 act—the problems will continue.

10:15

Andrew Mitchell: In practical terms, the only realistic opportunity that the community would have to object in the situation that has been described would arise when the licence came up for renewal. If the community became aware of the renewal—that is a big "if"—it could seek to object at that point. However, if the operation had been there for the previous year or however long without any problems or breaches of conditions, I would have thought it unlikely that, even at the renewal stage, the committee would take the view that renewal was inappropriate.

John Wilson (Central Scotland) (Ind): Given those responses, what is required to be included in the bill to satisfy Edinburgh, Glasgow and potentially other local authorities throughout Scotland that what we are doing will deliver the public's expectation and make that a reality? What I have heard and what I picked up from Mr Smith is that the bill does not go far enough to meet the public's expectations, which we might be raising, as the convener said. What do we need to do to meet those expectations?

Peter Smith: Any change would have to be substantial. I am teetering on the brink of saying that I do not think that enough amendments could be made to the bill to address the issues. The fundamental issue is that the 1982 act has been in place for more than 30 years. It has served its purpose; it has had its time. It needs to be rebuilt from the ground up, in line with the 2005 act, and to set out an entirely different framework for how we approach licensing.

The provisions that would have to be put into the 1982 act to implement objectives, the removal of fixed-term licences, the missing review procedures that would allow people to bring issues to a local authority at any time, and annual fee proposals instead of three-year fixed renewals—that is, all the provisions that exist in the 2005 act—would require changes that were so substantive that you would almost be writing a new piece of legislation. That is why Parliament would have to go right back to the beginning and start again with the 1982 act, so that it could pass legislation that is fit for purpose in a modern Scotland.

Andrew Mitchell: I agree. The City of Edinburgh Council's view is that introducing a form of the licensing objectives is essential if the 1982 act is to be retained. The act has been amended

so many times that it has become a question of how many times Parliament can keep on amending it.

I will give an example of how far behind other bits of legislation the 1982 act is and how it hampers local authorities' ability to deal with problems. We can revoke a licence under liquor legislation, we can revoke a house in multiple occupation licence and we can even revoke a sex shop licence, but there is no power to revoke a licence under the 1982 act. A council can suspend a licence for the unexpired portion but, even if someone can say that there is a problem or that there has been serious misconduct by the applicant, there is no power under the act to revoke a licence, which is fairly fundamental. That shows how far that act has drifted behind other pieces of legislation.

The Convener: Willie Coffey appears to be desperate to come in.

Willie Coffey (Kilmarnock and Irvine Valley) (SNP): I want to ask about burger vans and where they can and cannot operate. My understanding is that East Ayrshire Council, which is my local authority, applies conditions on where businesses such as burger vans can operate. For example, it does not permit them to be located within a specified distance from schools. Is not the solution to the problem in the conditions that the local authority can apply to prevent such things from happening—to prevent someone setting up outside a person's front door or window? Councils have the powers, through the conditions that they can set, to be a bit more prescriptive about where such businesses can operate.

Peter Smith: I suppose that the answer is yes and no. Conditions are applied to a licence once it is granted, so that councils control their operation. The local authority could set policies around not wanting licences to be granted near schools or particular establishments, but how legally sound those policies would be is open to debate. Street trading is a very good example of—

The Convener: You say that the legality "is open to debate", but how many times has Glasgow City Council faced challenges in relation to such policies?

Peter Smith: I do not have an exact number, but over the past 30 years, the council has been challenged hundreds of times in respect of policies and conditions.

Street trading is dealt with in four paragraphs in the 1982 act. No two authorities in Scotland approach street trading in the same way: some authorities license street traders on a mobile basis, some license for localities, some license in specific locations and some license individuals or businesses. There is an incredible mix, and traders who operate across Scotland face multiple different licensing regimes.

Conditions and policies can tackle some issues, but it is entirely conceivable that a person could apply for a licence that does not fall within policies, that the consultation might just be with the police, and that the licence would be granted and the business would start to operate suddenly, which is the point at which the community would ask why the business had been licensed.

The activities of street traders are dealt with under the 1982 act, but there is no mechanism by which to take a licence away if it is causing a problem, unless it is a matter of criminality or there is a breach of a specific condition.

That situation is not analogous with the powers that we have under the 2005 act, which give communities, the police and local licensing standards officers powers under the review procedures to bring an issue to the licensing board at any time, whether it is a breach of conditions or of the licensing objectives.

The Convener: Why would you want to remove a licence if there had not been a breach of conditions?

Peter Smith: That would be about public nuisance. A community may not want a licence that has been granted to remain in force, because the business is causing definable public nuisance, so it is right that communities should have the power to bring the issue to licensing authorities and allow them to make a decision. At the moment, communities do not have that power, but they have a similar power under the 2005 act, in respect of licensed premises.

The Convener: I like playing devil's advocate on the committee. A number of years ago, my father had an ice-cream van, which was dealt with under the licensing legislation. The van served several communities, as defined in the licence. There were one or two individuals who did not want an ice-cream van in their area, so time and again they would report a breach of the conditions on use of chimes—in relation to a van that did not actually have any chimes.

Can you give me an idea of how many complaints about licences there are from individuals who may not reflect the views of entire communities?

Peter Smith: The lack of a review process in the 1982 act means that we do not deal with many complaints in relation to licensed premises, because at the initial inquiry we realise that there is nothing that we can do. However, we deal with objections regularly, through the application process. It is probable that 10 per cent of licence applications garner some form of objection. That

process allows individuals to bring a matter to the licensing authority and for the licensing authority to deal with it. If an individual does not represent their community, the licensing authority can establish that through the application process, and can determine the relevant weight to attach to that individual's view.

If we had a review process, the authority would have the ability to treat repeat complainers as frivolous or vexatious and so would not have to deal with them continually. That is an example of where the 1982 act does not have the robust provisions of the 2005 act to deal effectively with repeat complainers.

It is, of course, important to balance both sides. Communities need a route to raise issues about licence holders and licensed activities, but effective legislation will also contain measures to ensure that, where complaints are repeated or vexatious, or are raised by one individual and are not representative of the community's view, that can be established and appropriate mechanisms can be put in place to address the issue. We have that broadly in the 2005 act, but there are no equivalent provisions in the 1982 act.

Andrew Mitchell: Our local experience is that we receive quite a large volume of complaints about licensed businesses and how they interact with individuals. It can be difficult for the licensing authority to come to a view about the point at which somebody's individual grievance with a particular licensed premises that they happen to live next door to or above becomes representative of a wider community concern about an impact on the community. The grounds for refusing under the 1982 act, which in essence are the grounds on which we could consider taking action such as suspension, are fairly limited. There is a fairly high standard.

I welcome the introduction of mediation as a means for civic licensing standards officers to resolve issues. I do not think that it will resolve all the issues, but it will at least give us a formal route that is similar to the one that LSOs use under the 2005 act to mediate between individuals and licensed premises.

The Convener: What kind of licensed premises are most complaints about? Is it hot food takeaways, for example?

Andrew Mitchell: That question is quite topical. We use street-trading provisions to license pedicabs. Individual pedicabs are not a particular issue, but we now have a problem in the city with the volume of pedicabs in areas where they operate at night, which is causing significant community concern. We are struggling to use the powers in the 1982 act to control the collective impact of those licences. Individual licence holders might technically be breaching the act, but the problem is the cumulative impact. In certain streets in Edinburgh at night, there is a congregation of pedicabs blocking pavements and so on. The 1982 act is not particularly adept at dealing with that kind of issue.

The Convener: That is interesting.

I will be devil's advocate again. How many times do you find that somebody moves into a community and then starts moaning about a licence that is in place? For example, someone might buy a house above a Chinese takeaway and then suddenly start moaning about noxious smells. I ask about that because, many years ago, in my old council ward, a woman moved into a house next to a playground and then started a campaign to remove the playground.

Peter Smith: More often than not it is the other way, in my experience; community councils and established residents who have lived in an area for a long time complain about new licensed activity that springs up in their area. Any licensing authority will have examples like the one that the convener mentioned of somebody moving into an area and then complaining. In that situation, part of you thinks that the business was there beforehand, so it should not come as a surprise to that person. Because of the lack of community engagement and because the legislation does not really empower communities to shape licensing, we are not empowered to do anything about such issues when they spring up.

Andrew Mitchell: The City of Edinburgh Council sees a similar pattern, although we also see issues such as the convener raised. For example, a topical issue for us is the impact of live music in premises that are licensed under the 1982 act and the 2005 act. There is an issue about the impact of the noise on neighbours in residential premises. Music promoters have raised concerns with the council that those who complain are often people who move into areas where there are long-established venues that have been there for many years. In some circumstances, the pattern that the convener outlined exists in our city.

10:30

Cameron Buchanan: I want to take up the issue of pedicabs, without going into too much detail. Who are you licensing? Are you licensing the cab or the driver? Are there many problems with them? They seem to be prevalent in Edinburgh; are they prevalent in other cities? The committee has not dealt with the issue to any great degree before.

Andrew Mitchell: For pedicabs, we use the street trading provisions—I know that Glasgow

takes a very different approach. We license the pedicab operator and the individual pedicab drivers—I say "drivers" for want of a better word. For us, the problem is the volume of them; we now have several hundred operating in the city. Standards of behaviour are also an issue—some operators have recently been called to the licensing sub-committee to discuss the standards of behaviour of the drivers with regard to issues such as blocking of pavements. There is a zone within which they are supposed to operate—roughly speaking, it is the world heritage site map—but they can often be found outside that area. That is a clear breach of their conditions, although I suppose that they are going where the market takes them.

Cameron Buchanan: Are you limiting the amount of pedicabs? I have not used them myself, but they seem to be providing a service.

Andrew Mitchell: We take the view that we have no power to limit them, so the issue is how we manage what we have.

John Wilson: For a burger van, a community council would, as a statutory consultee under planning legislation, be notified if a planning application was submitted and considered by the council, and neighbours within a certain distance would be notified that a planning change was taking place. Do you see any value in a neighbour notification condition or statutory consultee condition applying to the issuing of licences for things such as burger vans in particular areas?

Andrew Mitchell: Certainly, that is worth exploring. There is an issue around how that would be administered and the associated logistics, but that aside, we would advise the police of the burger van application and we would, as a courtesy, tell elected members and community councils, even though we are not under a statutory obligation to do so. Beyond that, for members of the public who happen to live beside the potential site of a burger van, unless they check our online registers or happen to see the site notice, there is no way of knowing that an application has been considered, up to the point at which a licence is granted and the burger van becomes a reality in their street.

Peter Smith: I absolutely agree with my colleague's comments on that. We would welcome a statutory requirement to ensure that community councils and local elected members were engaged. The neighbourhood notification is technical and complicated but, again, we can make statutory provision to do that work. It would certainly help with regard to engagement, which would be helpful within the application process. Of course, that does not address the other side, which is that once a licence is granted there is not much in the way of powers to deal with issues that arise.

Willie Coffey: In a situation in which neighbours within a certain radius must be notified, there is nothing preventing the authority from also notifying people outside that radius. A common fault that is raised with me in complaints that I receive concerns situations in which someone who is five steps over the line received no notification. Surely local authorities have the power to extend the area in which notification is given to cover people whom they decide might be impacted on by a new shop or other facility. Councils do not need an amendment to legislation to enable that; they can use discretion to decide that neighbours will be impacted on and will therefore be notified. Is that your understanding of the position?

Peter Smith: Our solicitors would shift uncomfortably if they heard that suggestion.

The Convener: Do they not always?

Peter Smith: They can be reasonable sometimes.

On that specific issue, we are always conscious that we have to work within the lines of the legislation. Where we might say that it would be reasonable to go outwith those lines, we run the risk of seeking objections and overstepping our boundaries as a body that is dealing with an application in an open and transparent way. If we go seeking objections, does that not taint that process?

The Convener: Why would providing notification amount to seeking objections? If I hark back to my days as a councillor, there were probably times when I—I am sure that other members who have served on councils would say the same—told folk in large swathes of an area about applications that had come in without telling them whether they should object or what they should do. What is so wrong with simply letting people know what is happening?

Peter Smith: I am looking at the issue from the perspective of the licensing authority. There is legislation that instructs licensing authorities on what they should do. If an authority goes beyond what it should do, an assessment has to be made about whether that authority is seeking objections.

If we pass the matter on to the local members for the ward—

The Convener: Do you do that?

Peter Smith: Yes—in some instances we pass such issues on to local members and community councils for them to take further, but if we have legislation that says that we should only consult within 4m and we decided to extend that to 5m for some applications, the solicitors who are prone to

shift uncomfortably would say that that would be overstepping the mark and seeking objections.

Andrew Mitchell: Notwithstanding legal issues, there is no mechanism in the 1982 act for neighbour notification, so if local authorities were to provide neighbour notification, they would be doing so entirely voluntarily. The biggest barrier would be cost; the authority would have to find the staff to work out which premises to notify, to prepare the letters, to send them out at cost—

The Convener: Let me play devil's advocate again. If you notified people more widely, might not that save on complaints and officer time in the long run? Extending the notification process might end up saving you a great deal of money.

Andrew Mitchell: Under the 1982 act, there is no neighbour notification obligation, so it is not a question of providing further notification. To answer your question directly, in my experience the more we make people aware of such premises, the more likely we are to get complaints and objections.

The Convener: At the beginning.

Andrew Mitchell: It happens at any point in the process. If an authority were to advertise that an application or a renewal was pending, I suspect that it would get complaints and objections.

I will give an example. Houses in multiple occupation are not dealt with in the 1982 act, but we have people who have complained about individual HMOs for 10 years in a row. They complain year after year, despite the fact that the committee has heard their complaints and ruled on them. I would certainly advocate some form of neighbour notification, because it would deal with some aspects of the public's disengagement from the licensing system. However, it would generate a volume of work. To go back to Mr Coffey's question, I think that that is probably the biggest barrier to local authorities choosing to do that.

The Convener: John Wilson has a supplementary. Could you be brief, please? I want to move off this topic.

John Wilson: Yes. The financial memorandum says that local authorities would be able to recover any costs associated with applications through licensing fees. In the situation that you outlined, surely any additional costs to do with consultation could be recovered through the application process.

Andrew Mitchell: Absolutely—that is where the costs would be recovered. The costs would translate into a cost on business, because the applicants who pay the fees would have to pay extra in order to pay for neighbour notification.

The Convener: Do you have anything to add, Mr Smith?

Peter Smith: From Glasgow City Council's perspective, if the legislation were to impose neighbour notification requirements on the authority, we would implement them—we would engage with communities, which would help to raise their awareness. The costs would be passed on to business, but the legislation is structured such that that is how the model works. If it was the will of the committee that we should engage in neighbour notification, we would be able to do that.

The Convener: The Convention of Scottish Local Authorities has suggested that licensing standards officers should be given additional enforcement powers under the Gambling Act 2005. Would that be helpful?

Peter Smith: I would not find that helpful at all. The Gambling Act 2005 is United Kingdom-wide legislation, but certain regulations were enacted to give local authorities in Scotland specific powers. However, the regulations to give local authorities the power to inspect gambling premises were not enacted correctly and local authorities do not have any powers to do that. To extend the remit of those officers to deal with gambling would be somewhat pointless, as we have no powers to inspect gambling premises in Scotland.

The Convener: Because the legislation was written wrongly.

Peter Smith: Yes. There was misdrafting in one of the regulations.

The Convener: Thank you. Mr Mitchell, do you agree with that?

Andrew Mitchell: I am not sure how we got here, because I am not particularly an expert on gambling, but we are finding that we are having to do the work and go out and check the premises in the absence of explicit statutory powers. Anything that can be done to address that would be useful.

There are some issues with the powers in the 1982 act. For example, only the police have powers in relation to unlicensed premises. If you are creating a new role, I suggest that that needs to be looked at, because the police may or may not pick up on unlicensed premises. To create a role for council officers to deal with licensing issues without giving them powers to deal with unlicensed premises seems to be an obvious gap.

The Convener: Okay. I move on to how information is shared between the council's various licensing functions. Are there formal links in your councils between the licensing board and the licensing committee?

Peter Smith: They are both administered by the same team, so there is an underlying—

The Convener: Sometimes that means nothing. They may be administered by the same team, but often information is not shared within teams. Is there sharing of information in Glasgow?

Peter Smith: Absolutely, at the administrative level. I am not sure whether there are specific examples that you could give me—

The Convener: I could probably give you numerous examples, but I will not do that, Mr Smith. I am just interested to hear what you have to say on the issue.

Peter Smith: On the administrative side, committees and boards tend to be dealt with by teams that will be integrated to some extent. In Glasgow, there is complete integration; it is one team, and that information is available to both. When we go outwith that, we find different set-ups in different local authorities, with enforcement teams and licensing standards teams. As my colleague explained, Edinburgh has an integrated model. In Glasgow, our taxi enforcement and licensing standards teams sit within entirely separate services in the council, and if we have civic licensing standards officers, they will sit in an entirely different part of the council.

We have well-established links to share information and we continue to make sure that they are improved so that there is a level of joined-up thinking, but in essence the administrative side of licensing will hold the information and it is our responsibility to ensure that there are effective links to the enforcement teams to share that information—and that there are suitable links to give external bodies such as Police Scotland that information as well.

The Convener: We have heard from folks that members of the public who call to try to get a problem resolved will be moved from pillar to post and from one person to another. Does that happen in Glasgow with the situation that you have there?

Peter Smith: That will happen in every local authority, given the licensing set-up and the fact that local authorities deal with so many disparate parts. A good example is the licensing standards officers who deal with alcohol, especially when we bring Brightcrew Ltd v City of Glasgow Licensing Board into the mix. If someone has a problem with noise coming from a licensed premises, they will contact either the licensing board or licensing standards officers. In either case, they will eventually be directed to licensing standards officers, but those officers in Glasgow may take the view that it is a noise issue, and there is specific legislation to deal with noise, so the matter then has to be transferred to the noise team, which will deal with the noise issue. It might then bring the case back to licensing standards if it believes that a licensing issue is contained within the noise issue, and the case might then come back to the board.

Certainly people will be directed from pillar to post; it is a complicated system. Liquor and civic standards officers are a good idea and would give the public a single point of contact to engage with the process, but the reality is that they may still be directed elsewhere. If someone contacts a civic enforcement officer about an issue with late-hours catering premises, and it is a food complaint, the issue will have to be transferred to environmental health to be investigated.

As you understand, councils are large structures. It is important to give people single points of contact to come into the processes, but sometimes the reality is that once they engage with the council they will have to be directed elsewhere.

10:45

The Convener: Should the single point of contact not be the liaison for the entire process, so that the matter can be dealt with in a single manner? The committee has heard about complaints about sexual entertainment venues. In some cases there have been licensing board and licensing committee matters, and beyond that there have been advertising matters that fall within the remit of the council as the planning authority. Would it not be much easier if there was a single point of contact, which acted as the sole liaison to deal with the complaint? Further than that, maybe it would be wise to bring sexual entertainment venues, for example, under one regime—maybe the licensing board, rather than all the rest of it. Do you have a view on that?

Peter Smith: That is entirely sensible. To achieve that would require that to be in legislation and to have the statutory guidance that supports that legislation. Without that clear guidance, local authorities will not consistently take that view.

As I said, the enforcement teams in the council do not sit within the licensing remit, so even if I did share your view, dealing with complaints in the manner in which they are dealt with is the decision of a completely separate part of the council. I can certainly understand the frustration of a community that engages with a licensing standards officer, perhaps on a noise complaint, and is told that the issue must be dealt with by the noise team. However, without clear guidance on the Brightcrew case or what a licensing standards officer should do with a noise complaint—which is something that I imagine will be dealt with fairly regularly across Scotland—there will be different

approaches between councils. That could be addressed through the guidance.

Andrew Mitchell: Across Scotland, different authorities will take different views. Part of the reason why Edinburgh put all the licensing functions under one service grouping and one manager was to address some of the issues that you have outlined, convener. I say honestly that we are making progress, but I would not say that we are all the way to making it a streamlined system.

Adult entertainment and sexual entertainment are an interesting example. I would take the view that the adult entertainment provisions are fairly much redundant, post Brightcrew. Our experience in Edinburgh is that licensing standards officers are trying to manage a regime with very few powers to do so. We are one of the authorities that have had complaints about adverts and the impact of these types of premises on the community, and I can honestly say that communities are probably frustrated partly because there are very few powers—planning, trading standards, licensing or otherwise—to deal with those types of issues, outside of what is being proposed in the bill.

The Convener: That is extremely useful. The public often feel that they will contact someone and get very little response, which is commonly known in the north-east as the slopey-shoulder scenario: it is not my job; I will pass it on to somebody else.

If we can move on, I will ask you—

Clare Adamson (Central Scotland) (SNP): Sorry, convener.

The Convener: Clare, I am sorry—I did not notice you. On you go.

Clare Adamson: Will the bill's provisions make any significant change to the way that sexual entertainment is dealt with? Will bringing together the granting of alcohol licences and sexual entertainment licences under one body help with some of the problems that you have experienced?

Andrew Mitchell: I take a slightly different perspective from that of my colleague, because I think that licensing boards are not suited to dealing with such issues. The City of Edinburgh Council's view is that local authorities are best placed to do so, and we welcome the provisions regarding sexual entertainment venues and the use of schedule 2. It needs some updating but it is certainly more effective than most other things that we have at present. For example, schedule 2—if that is where sexual entertainment will be dealt with—would allow us to control the form and content of adverts by means of condition and whether or not people can see into premises. I do not think that the adult entertainment provisions have been at all successful, partly because boards exist largely to regulate the sale of alcohol and are not suited to deal with such wider community issues. However, that is just my personal view.

The Convener: Why could they not be adapted to cover all the issues?

Andrew Mitchell: I suppose that they could, and Parliament will have to make that choice. However, our view is that local authorities have a broader base of responsibilities and are more accountable to the community for sexual entertainment venues. That is why we suggest that the licensing of those venues should be part of a council's function and that the boards should be left to get on with licensing alcohol.

The Convener: Yet, from the evidence that we have taken, it seems that communities do not feel that councils have done what they need to do to deal with the issues that communities have raised with them.

Andrew Mitchell: At present, councils have no powers. The creation of the new licensing scheme would, for the first time, give councils—as opposed to boards—the power to deal with such premises.

The Convener: Mr Smith, do you have a view on these issues?

Peter Smith: I do. I think that we need one licensing authority. There is no real need to have two distinct licensing authorities—a licensing committee and a licensing board. In Glasgow, we have racked our brains for many years to understand why there is a licensing board and why there is not just one licensing function.

On the specific issue of alcohol and sexual entertainment venues, the reason that you are having to introduce sexual entertainment licensing is the Brightcrew decision that the Licensing (Scotland) Act 2005 is about regulating just the sale of alcohol and not the other activities. You would not have to introduce sexual entertainment licensing if you fixed Brightcrew. If you created a licence scheme that dealt with not just the sale of alcohol but a range of activities flowing from a premises, you could easily regulate alcohol and sexual entertainment under one licensing scheme and one licensing body.

It comes back to the fact that the overall system is just not right. You would have to go back to the beginning and create something that was singular and coherent. There is no real need to have two licensing bodies.

John Wilson: In a previous evidence session, I said that I had served on a licensing board and on the licensing committee of an authority. They were two separate bodies but the same members were on both bodies. One would make decisions on

licensing applications and the other would deal with, for instance, private hire car and taxi licences. What would be the problem in bringing those two functions together? I understand that the licensing board was seen as a quasi-legal body whereas the committee was seen as just one of the council's committees. What would be the practical difficulties in bringing all the licensing under one body, whether that was a licensing board or an authority's licensing committee?

The Convener: In Aberdeen City Council, those were deemed to be quasi-judicial bodies.

Peter Smith: I agree that they would both have been quasi-judicial. I imagine that they would not have treated an application for a private hire licence any differently from the way in which they would have treated an application for an alcohol licence. They would both have been considered in the same way under the legal frameworks.

I do not want to give an off-the-cuff answer and say that it would be easy to amalgamate the two bodies; I think that there would probably be a lot of legal issues in the minutiae of how that would work. However, as an overall concept, from a local authority perspective, it is unclear why we have two distinct licensing bodies—a committee and a board—dealing with two different aspects of licensing. If they were merged into a single, coherent structure with the right regulatory framework around it, that would be a far better model than what we have at the moment. I feel that the licensing board is a historical thing that has been kept going for years and years.

Andrew Mitchell: My perspective is probably similar. I am sure that licensing board clerks up and down the country will be quite agitated at this point.

The boards are a separate legal entity and have been for a number of years. For practical purposes, the same council staff and councillors deal with the licensing board and, in our case, the regulatory committee and the licensing sub-committee. We have a number of councillors who sit on both. My experience is that that is not well understood by the public. People think that their licensing board is just another council committee, whereas in law it is not. The only practical difference is that the council can formulate overall policy to which committees should have regard, and that does not impact on the licensing board because it is entirely separate.

The Convener: The bill would remove some of the connections between the licensing requirements that are placed on second-hand dealers and metal dealers. Do you have any concerns about that?

Peter Smith: No, those specific aspects are well drafted. I return to my comments that they are trying to fix a system that is, for want of a better word, broken. I do not have any concerns about the interrelationship that those changes will make.

Andrew Mitchell: The strengthening of the metal dealer provision is long overdue. Some of the current aspects cause concern. For example, a metal dealer who is above a certain financial threshold is exempt from the requirement to obtain a licence. I have never quite understood why that particular legislation was set up in that particular way. Anything that strengthens that part of the legislation would be welcome.

The Convener: Willie Coffey has a brief question.

Willie Coffey: I wanted to ask the witnesses for their views on taxi licence applications. An example was covered in the media in which a person who had had a string of complaints and allegations made against them moved to another local authority area and made an application for a taxi driver's licence without that information being brought to the table. How do we resolve a problem like that?

Peter Smith: In the past couple of years, Glasgow City Council has looked at the integration of enforcement teams across different local authorities to ensure that they work in partnership so that if a driver from Renfrewshire comes into Glasgow, or a driver from Glasgow moves into Renfrewshire, that can be dealt with. Moving on from that work, we need to look at better sharing of information between those processes.

The 1982 act is structured in such a way that an application will go to the police and, if there is a query about a conviction, or intelligence to some extent—let us not go there—the issues can be brought to the committee. There is probably a gap between local authority enforcement teams when it comes to a concern being passed from one team to another. As we move forward with integration and look at new technology solutions, we will look to address that.

However, I do not think that there is a mechanism in place to address that problem right now. It is about looking at cross-border enforcement of that sector and at technical solutions to ensure that the information can be shared. There might be challenges if the information is not about a conviction but about something that is being investigated by another local authority; questions could be asked about how much weight can be attached to that enforcement but, as we move forward and technology advances, it is only right and proper that we ensure that local authorities have such information available to them when they make decisions in future.

Andrew Mitchell: The move to a single police force has helped in some ways, but there are still variances across the country. A police team might object in one part of the country but not in another.

We have a particularly high turnover of private hire car drivers and we recognise the phenomenon of people from England and Wales, for example, who have been refused licences by their authorities. They are almost shopping around and trying to obtain a private hire car driver's licence so that they can move to where that licence to work operates. Local authorities' powers in relation to private hire car drivers do not help. For example, because we choose to put taxi drivers through an element of training, that discourages people who are not serious about moving to an area. We recognise that there is a problem because local authorities' powers in relation to private hire car drivers are relatively weak.

Willie Coffey: Thank you.

The Convener: Thank you for your evidence today, gentlemen. It has been very useful.

11:00

Meeting continued in private until 11:21.

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