

**SUPPLEMENTARY DOCUMENTS FOR
LICENSING COMMITTEE
Tuesday 7 September 2021 at 7.30pm
Council Chamber - Civic Centre**

The attached documents are due to be considered at the meeting listed above. The agenda item to which the documents relate is noted below.

AGENDA

7. Options to Address Street Drinking from within the Licensing System
(Pages 2 - 26)

REPORT TO: LICENSING COMMITTEE

DATE: 7 SEPTEMBER 2021

TITLE: STREET DRINKING AND LICENSING CONTROLS

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RECOMMENDED that:

- A** The Licensing Committee note and approve short term measures to address concerns about street drinking set out under Proposals at paragraphs 22 and 23 of the report.
- B** Example licence conditions to address issues discussed in this report to be adapted to individual premises by future Licensing Sub Committees be drafted by the Licensing Team in consultation with the Chair of the Committee
- C** Following consultation with Responsible Authorities, the Council's Community Safety team and relevant agencies a report to a future licensing Committee be presented on options for a more extensive voluntary scheme to mitigate the harms of street drinking through a responsible approach to alcohol sales.

BACKGROUND

1. Street drinking may cause an adverse effect on the sense of security and wellbeing of users of public spaces which may in turn impact the viability of business seeking to trade in such spaces.
2. Harlow Council is a licensing authority for the purposes of the Licensing Act 2003 (the Act) which regulates the supply of alcoholic beverages, and in this capacity may have an influence on the availability of alcohol to people engaging in street drinking.
3. Street drinking is a complex issue often connected with social exclusion which spans many disciplines, and which is thus unlikely to be resolved in its entirety by regulatory intervention. Public Health interventions in some cases, and other controlling measures affecting public space, now chiefly Public Space Protection Orders, may be relevant if not directly within the Committee's remit. However, measures intended to reduce the impact of street drinking on users of public spaces may lie within the remit of the Licensing Authority.

ISSUES/PROPOSALS

Formal measures under the Licensing Act 2003

4. In implementing its functions under the Act, the Council must of course act within the legislation, and in accord with section 4 of the Act must have regard to statutory guidance issued under section 182 by the Secretary of State (the Guidance).’
5. The legislation establishes four licensing objectives:
 - a) The prevention of crime and disorder
 - b) Public safety
 - c) The prevention of public nuisance
 - d) The protection of children from harm
6. The Act defines Responsible Authorities who are expected to consider licences and applications in relation to the objectives and where appropriate make representations.
7. Some of the concerns that may arise from street drinking clearly fall within one or more of these objectives.
8. As set out in the Guidance, where an application for a premises licence or club premises certificate has been made lawfully and there have been no representations from responsible authorities or other persons, the licensing authority must grant the application, subject only to conditions that are consistent with the operating schedule and relevant mandatory conditions.
9. The Guidance directs that licence conditions, amongst other stipulations.
 - a) must be appropriate for the promotion of the licensing objectives
 - b) must be tailored to the individual type, location and characteristics of the premises and events concerned
 - c) should not be standardised and may be unlawful when it cannot be demonstrated that they are appropriate for the promotion of the licensing objectives in an individual case
 - d) should be proportionate, justifiable and be capable of being met; and
 - e) cannot seek to manage the behaviour of customers once they are beyond the direct management of the licence holder and their staff, but may impact on the behaviour of customers in the immediate vicinity of the premises or as they enter or leave
10. All licences are subject to certain mandatory conditions. In other respect each licence must be considered on its own merits, and “standardised conditions should be avoided and indeed may be unlawful where they cannot be shown to be appropriate for the promotion of the licensing objectives in an individual case” (the Guidance). Some of the concerns that may arise from street drinking clearly fall within one or more of these objectives.

11. Once granted a licence remains in force as issued unless surrendered, revoked, or modified on review. A licence may be reviewed on the application of a Responsible Authority or an interested party.
12. The conclusion that may be drawn in relation to addressing street drinking through formal licensing powers is that it may well be lawful to do so where it can be shown to be appropriate, but the case would have to be made for appropriate conditions in relation to each premises individually; that different conditions could not be applied to existing licences in the absence of a formal review; and that no “blanket” policy ought to be adopted.
13. It may however be helpful to provide to future Licensing Sub Committees examples of workable conditions that might be tailored to individual circumstances and applied in appropriate circumstances where concern arises conditions.
14. It will also be helpful to ensure that licensees and their staff are aware of the mandatory condition regarding alcohol pricing: alcoholic beverages may not be sold at below the rate of duty and VAT that is payable.
15. Further, it should be noted that it is an offence to knowingly sell alcohol to a person who is drunk. As this is in its own right an offence, it is not an issue to which conditions should be applied; and unfortunately, it is a matter which it is notoriously difficult to prove. However, any conviction would of course put at a licence at risk of review.

Discretionary Approach to Voluntary Cooperation

16. A number of licensing authorities have sought to gain the cooperation of licensees in ensuring the responsible sale of alcoholic drinks through voluntary schemes.
17. The Local Government Association (LGA) have provided support to licensing authorities in the form of their “Reduce the Strength” guidance, aimed at ensuring that certain types of low cost high alcohol content beverages associated with alcohol misuse are not available in areas where issues have been identified. A copy of the LGA’s guidance is set out in Appendix A to the report.
18. The core objective of case-study schemes in the LGA’s guidance is voluntary agreement to ending sales of beers lagers and ciders with over 6.5 per cent alcohol by volume (ABV).
19. Measures that may support or form part of such a campaign include
 - a) Ensuring that containers sold are individually marked to identify the premises from which they come
 - b) Ending sales of alcohol in smaller volumes – e.g. of single cans of cider/beer
20. The LGA however in its guidance makes clear that schemes that are likely to be successful are developed
 - a) After fact finding

- b) In collaboration with agencies having a range of insights
 - c) With the cooperation of the majority of businesses affected
21. Clearly a scheme of this nature could not be delivered by the licensing team alone, as contributions from businesses, the relevant Responsible Authorities, and others would be critical to success. However, where schemes have been carefully planned and broadly based it appears that they have had positive results.
22. It is proposed that Officers from the Licensing Team liaise with Essex Police and the Council's Community Safety team to identify any premises connected with perceived street drinking issues.
23. These premises will be visited by officers in the short term to
- a) Raise the issues
 - b) Reiterate that it is an offence to sell to people who are drunk
 - c) Reiterate and check on minimum pricing requirements
 - d) Propose voluntary measures including:
 - i) ceasing "single can" sales
 - ii) marking containers to show where they were bought
24. It is proposed that example licence conditions to address issues discussed in this report to be adapted to individual premises by future Licensing Sub Committees be drafted by the Licensing Team in consultation with the Chair of the Committee.
25. It is proposed that the Licensing Team consult with Responsible Authorities, the Community Safety team and relevant agencies on options for a more extensive voluntary scheme such as those described in the LGA's "reducing the strength guidance", and report to a future Licensing Committee on the outcome

IMPLICATIONS

Environment and Planning (Includes Sustainability)

The short term steps to address the issues raised lie within the remit of the Licensing team. A more comprehensive approach as illustrated by the LGA would require involvement of stakeholders within and external to the Council.

Author: Andrew Bramidge, Head of Environment and Planning

Finance (Includes ICT, and Property and Facilities)

None specific.

Author: Simon Freeman, Head of Finance and Deputy to the Chief Executive

Housing

None specific.

Author: Andrew Murray, Head of Housing

Community Wellbeing (Includes Equalities and Social Inclusion)

These proposals will help ensure that the council does all that it can to reduce street drinking in the town, which can have a negative impact on the wider community.

Author: Jane Greer, Head of Community Wellbeing

Governance (Includes HR)

Any additional conditions imposed would be subject to consultation as part of the application process. Any breach of conditions would be considered as part of a site specific under existing review processes.

Author: Simon Hill, Head of Governance

Appendices

Appendix A - Reducing the strength – Guidance for councils considering setting up a scheme: Local Government Association

Background Papers

Licensing Act 2003: Parliament <https://www.legislation.gov.uk/ukpga/2003/17/contents>

Amended Guidance issued under section 182 of the Licensing Act 2003: Home Office <https://www.gov.uk/government/publications/section-182-of-the-licensing-act-2003-amended-guidance>

Glossary of terms/abbreviations used

ABV - Alcohol By Volume

LGA - Local Government Association

Reducing the strength

Guidance for councils considering setting up a scheme



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Introduction

Councils have multiple roles in relation to the sale, consumption and impact of alcohol in their local areas. As licensing authorities, they are responsible for authorising the sale of alcohol by licensed premises in accordance with the four licensing objectives, a role that extends to working in partnership with businesses, the police and others to ensure that alcohol is enjoyed safely and responsibly. Since 2013, when responsibility for public health returned to councils, they have also assumed responsibility for reducing the harmful health impacts of alcohol misuse on individuals and communities. The challenge for councils is to find the right balance between these different objectives.

There is scope for developing innovative approaches in this area, and many examples of projects seeking to address these objectives. One such project is an approach to tackling the harmful effects of strong and low cost alcohol products through 'Reducing the Strength' campaigns.

Reducing the Strength refers to initiatives designed to tackle the problems associated with street drinking by removing from sale low price high-strength alcohol products through voluntary agreements with local retailers. Suffolk was the first area to adopt the approach back in 2012 and since then a number of other places have followed. The models used vary from place-to-place, but tend to target alcohol products above 6.5 per cent alcohol by volume (abv), although some have focused on a slightly lower abv or lower cost products.

The early success of the scheme in Suffolk generated significant interest in Reducing the Strength schemes, with former Crime Prevention Minister Norman Baker MP praising councils' 'initiative and determination to find ways to tackle the harms associated with high volume super-strength alcohol.' However, there have also been a number of concerns raised about them, particularly by retailer and producer associations.

The primary concerns raised have been whether such schemes breach competition law and/or whether councils have breached the Licensing Act by seeking to put in place blanket licensing conditions. Concerns have also been raised about whether more recent schemes have adopted the evidence based, holistic approach of the original Suffolk scheme, which aimed to tackle a particular problem in a specific area through a joined up approach with other agencies. Finally, there are concerns about unintended consequences, such as the removal of products that were not a target for such schemes.

The aim of this guidance is to help ensure that Reducing the Strength schemes are designed and established in a way that addresses these concerns and complies with relevant legislation. We have worked closely with industry associations, as well as the Competition and Markets Authority, to understand the risks associated with these schemes and identify how they can be best addressed, so that anyone implementing a Reducing the Strength scheme can do so on a fully informed basis and taking account of best practice drawn from elsewhere, in particular Suffolk and Portsmouth, who have shared case studies for this document.

In producing this guidance, we are not seeking to encourage councils to adopt Reducing the Strength schemes; individual councils and their partners will reach their own decisions based on local circumstances, and the decisions reached will vary from place to place. However, in light of ongoing concern about these schemes among some sections of the industry, and the risk that a producer trade body may yet seek to challenge these schemes in court, we urge any council that is considering embarking on a Reducing the Strength scheme to familiarise themselves with the issues outlined in this document and seek their own legal advice before implementing a Reduce the Strength scheme.

Alcohol consumption and street drinking

Councils face a challenge in terms of their public health role and alcohol. On the one hand, the vast majority of people who enjoy alcohol do so responsibly and without causing immediate harm to either themselves or others. Furthermore, alcohol and the wider hospitality industry make an extremely significant contribution to the national and local economies through bars, pubs, clubs and restaurants.

Yet there is also a clear body of evidence demonstrating that drinking habits are harming the nation's health as well contributing to problems on the streets of towns and cities. The Health and Social Care Information Centre estimates that about 1.6 million adults in England are dependent on alcohol, and alcohol misuse can lead to a wide range of conditions, including cancer, heart disease, strokes and, of course, liver disease. It is also believed to be a factor in about half of all violent crime and domestic abuse and is estimated to cost the country £11 billion a year in terms of criminal justice (or £21 billion when health and loss of productivity is taken into account).

To balance these two realities, the most effective approach for councils to take in managing alcohol will be to use their health and licensing roles to target specific issues and problems arising from the consumption of alcohol, rather than taking a universal approach that affects those who are drinking responsibly. Reducing the strength schemes are a good example of this targeted approach and are one of a range of tools used to tackle alcohol related harm.

Defining street drinking

A street drinker is defined as a person who drinks heavily in public places and, at least in the short term, is unable or unwilling to control or stop their drinking, has a history of alcohol misuse and often drinks in groups for companionship (Lamb, 1995). People who are street drinkers are likely to be at increased risk of causing harm to themselves or others and may be involved in antisocial behaviour such as begging, or rowdy drunken behaviour that can be intimidating or even violent. Street drinkers are often, although not exclusively, associated with homelessness; homeless charity Thames Reach has stated that strong and cheap alcohol is responsible for more deaths among the homeless than heroin or crack cocaine combined.¹

Street drinking can have an extremely damaging impact on local communities and peoples' perception of them, including on businesses in close proximity to places where street drinkers congregate.

Street drinkers often consume high strength alcohol. The definition of high strength varies, but for the purposes of Reducing the Strength schemes has tended to refer to products from around 6.5 per cent abv upwards. There is a wide range of beers available around the 8 to 9 per cent abv mark – as well as a number of high-strength white ciders – and a single 500ml can of high strength lager can contain over four units of alcohol, more than the daily lower risk drinking guidelines for both men and women. A recent ruling by the Portman Group Independent Complaints

¹ www.thamesreach.org.uk/news-and-views/campaigns/super-strength-drinks

Panel² found that 500ml cans of 9 per cent abv Tennents Super 'encouraged immoderate consumption', as a single can contained more than the government guidelines and contents are encouraged to be consumed by one person in one setting. The product was therefore found to breach Rule 3.2 (f) of the Portman Group Code, which states that 'a drink, its packaging or promotion should not encourage illegal, irresponsible or immoderate consumption, such as binge drinking, drunkenness or drink-driving.' Consequently, licensees have been asked not to place orders for stocks of the product after 31 December 2014

The Portman Group issues alerts with their latest decisions, and councils may wish to sign-up for these alerts and encourage local retailers to do the same.

Clearly, not all high-strength products are consumed in the same way. A number of high-strength products are targeted at the luxury end of the market and are rarely associated with street drinking and/or alcohol-related violence. Any scheme will need to make provision to exclude premium and craft products that are not associated with street drinking or other anti-social behaviour being targeted by schemes.

However, low price high-strength products are most commonly associated with street drinkers and rough sleepers, and are therefore linked to some of the specific issues experienced by these groups and the communities where they are based.

Tackling street drinking

Initiatives to deal with street drinking have included controlling mechanisms such as by-laws, public space protection orders, or anti-social behaviour orders. The government's public health responsibility deal – its voluntary partnership with industry – is also having an influence. In July 2014, it was announced that from December 2014 those

signing up to the agreement would not sell alcohol products with more than four units per 440ml can. Tesco and Morrisons were among the early retailers to sign up, although it is unclear what level of support there is in the wholesale retail market, which supplies the vast majority of off licence premises.

A partnership approach: the Responsibility Deal

The Responsibility Deal aims to tap into the potential for businesses and other influential organisations to make a significant contribution to improving public health by developing a more collaborative approach to tackling the challenges caused by our lifestyle choices.

Since its launch in March 2011, the Public Health Responsibility Deal has harnessed the potential for businesses to play their part in shaping an environment which supports people to make healthier choices. To date, over 600 companies have made commitments covering alcohol, food, health at work and physical activity.

However, it is local initiatives that can really tackle problems associated with street drinking, through a series of targeted measures involving a range of different services or interventions. Since many street drinkers will be alcohol dependent or have entrenched problems with alcohol misuse, effective solutions will include the offer of support services to tackle alcohol dependency.

For example, Suffolk's approach to street drinking involved the provision of treatment, education and alternative accommodation in addition to removing selected products from the shelves. It is this comprehensive package that has achieved the significant reductions in street-drinking and alcohol-related violence in the town; one measure in isolation would not have been as effective.

² www.portmangroup.org.uk/docs/default-source/complaint-decisions/rab-flyer_tennentssuper-vfinalA7E479E8F3F8.pdf?sfvrsn=2

Setting up a ‘Reducing the Strength’ project

Core principles of good schemes

There are many shared characteristics of successful Reducing the Strength schemes, but they can be summarised under three broad headings.

Using the evidence base to agree clear, targeted objectives

The most effective schemes will be underpinned by a clear, localised evidence base that provides the rationale for both the scheme and its specific objectives, in terms of targeting particular issues, products or areas. Starting with a solid evidence base will also enable councils and their partners to monitor the impact of the scheme and evaluate its success.

Engaging and communicating

Good schemes will be characterised by early and ongoing communication with partners such as the police, public health teams and local support services / third sector organisations (eg, those working with the homeless, or people with substance addictions), as well as with local businesses, who are pivotal to a scheme’s success. Treating businesses as partners, managing the competition law risk to them and understanding businesses’ concerns and constraints are all important elements of a scheme.

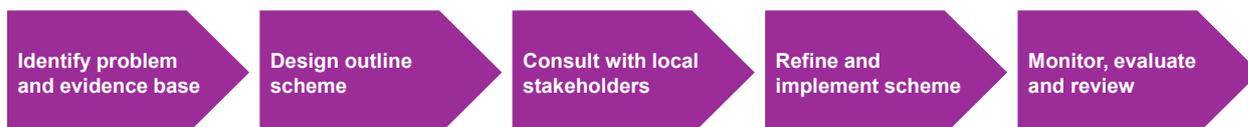
Taking a holistic approach

The original Suffolk scheme was a success in part because it applied a comprehensive approach to tackling street drinking, rather than using a single isolated measure. Schemes are more likely to be successful

if they apply a range of different tools in a collaborative, comprehensive approach to the problem of street drinking, based on engaging with and involving the partners identified above.

Designing and launching a scheme – step by step guide

There are five key steps to launching a Reducing the Strength scheme:



Identify problem and evidence base

- **Determine whether there is a problem that needs addressing, what it is and what the evidence shows.** The areas that have shown most interest in Reducing the Strength are ones where street drinking and anti-social behaviour are serious problems in specific places. If this is an issue in your area, the council and partners are already likely to know where the problems are, but a review of crime statistics and homeless reports as well as A&E figures will help to evidence this. You may want to use the metrics available on LG Inform³ to profile your area and compare with other areas with similar demographics.
- **Talk to businesses, the public and local partners (including the police, health teams and charities) to see if they identify the same problems, and what solutions they might suggest.** What are the issues of concern to local residents and businesses? Are there other issues that could be tackled at the same time as the issue you want to address? What support might others be able to provide? If there is a local Business Improvement District, can it provide support in any way?
- **Consider alternative approaches that may be cheaper, easier, and more practical for retailers and other stakeholders.** For example, if a small number of street drinkers have been identified, would it be possible to work with retailers to ensure that those individuals are not served?
 - For instance, a recent survey by the Association of Convenience Stores (ACS) found that retailers often felt intimidated, or risked physical assault, if they refused to sell to a person who was drunk. Provision of community safety and policing support may help them to refuse sales, immediately improving the situation on the streets; Usdaw's 'Freedom from fear' campaign also has some useful information on this.⁴ Your local pubwatch, Purple Flag Board, Community Alcohol Partnership or Chamber of Commerce may be a good starting point for addressing these issues.
 - Similarly, there are many other schemes that can be effective at tackling issues such as underage sales, violence in licensed premises, or reducing conflict at closing time. These schemes are outside the scope of this guide, but more information can be found on the British Beer and Pub Association website www.beerandpub.com/industry-briefings/local-alcohol-partnerships.

3 www.local.gov.uk/about-lginform

4 www.usdaw.org.uk/campaigns/freedom-from-fear

- A sound evidence base is essential for most licensing decisions or partnership work, and you may be able to use the evidence to introduce a cumulative impact policy, late-night levy, or even build the case for a health objective in the Licensing Act 2003.
- **Weigh up your options for addressing the issues and decide whether Reducing the Strength is the best solution.**

Design outline scheme

- If you decide there is a role for Reducing the Strength in your area, you should use the available evidence, supported by early discussions with local partners and businesses, to **design an outline approach** covering the:
 - **street drinkers and problem drinkers you are seeking to influence**
 - **products** being consumed by street drinkers
 - **places where these products are available** – including retail outlets but also the black market and informal supply that could be missed by focusing only on shops
 - **geographic area you wish to apply this to**
 - **proposed terms** you would like people to sign up to eg, voluntary removal/ targeted licensing conditions etc
 - different **elements of the scheme that will support the product-focused element** eg, outreach support for street drinkers, detox programmes, alcohol nurses in A&E etc.
- You will need to be clear **about the products that evidence indicates are associated with the local problems you are trying to address.**
 - For example, before establishing their scheme, **Suffolk mapped out which specific products were associated with street drinking or incidents of violence** and was consequently able to narrow down their action to target a very specific, evidence-based set of high strength products. Other high-strength products, mostly those at the luxury end, were therefore exempted from the scheme as they didn't contribute to street drinking or violence.
- Similarly, **Portsmouth identified products found at the scene of violent crimes, domestic abuse and alcohol related disorder**, all of which had an ABV of 6.5 per cent or higher. Their work with the homeless and homeless charity Centrepont also identified that homeless people are more likely to drink alcohol from plastic bottles and cans, due to the risks of glass packaging breaking in areas where they plan to sleep or being used as a weapon.
- **It would be sensible to conduct a similar review of products as part of the design stage of a Reducing the Strength scheme.**
- Equally, the available evidence should be used to help **identify the specific geographical area that the scheme will focus on.** In some places, this may be just a few places within a much wider area; alternatively, there may be a rationale for taking a broader approach. The key issue is that the evidence supports your approach, as this is likely to increase participation in the scheme. You should also consider the risk of displacing the problem, either to different locations or on to different products.
- A third key feature of **the scheme will be the approach you are expecting to take with local retailers;** while some places have opted for a simple voluntary removal of certain products, others have sought to add this as a condition to licences.
 - **Businesses may have different views about whether they wish to participate in the scheme and whether or not they are happy to add a formal condition to their licence.** If you can, it will help to take a flexible approach on this – verbal agreements have worked in many places and formal conditions may not be necessary.

- Based on earlier and ongoing discussions with partners, **you should identify the additional elements of the scheme that will help achieve the overall objective**, whether that is support and/or enforcement by licensing teams and the police; health and third sector support for individuals used to accessing these product; or retailers being given support or training or retailers helping to train one another etc. There may be other things that retailers can do to support these objectives if you discuss this with them and give them the opportunity.
- When you have an outline approach, you should **seek legal advice**. The next section of this guide sets out the main issues you will need to consider under Competition Law and the Licensing Act, but **you will always need to obtain your own legal advice and undertake a risk assessment to ensure the detail of your scheme is legal in relation to both**.
- You may wish to **develop a brand for the scheme, as well as a communications plan to implement once the scheme is formally launched**. In order to avoid breaching competition law, it would be prudent to ensure these are not actually used until the scheme has been launched – more detail is provided on this in the following section.
 - The communications plan **should communicate what you are trying to do**. Use launch events, meet retailers face-to-face, talk to community groups and work with local media. You need to explain your reasoning to your residents, and secure their support for what you are doing. Councillors will be key players in achieving this.
- Schemes should be designed so that the **objectives are clear and measurable** and you should agree at the outset how the scheme, supported by the enforcement of current policies and licensing conditions, can help to meet these objectives. The design process should also include **identifying measures or metrics to evaluate the success of the scheme once it is finalised**.

Consult with local stakeholders

- It is **advisable to engage with local retailers and businesses throughout the design process, and you may also wish to build in a formal consultation process when you have an outline design of the scheme**. The most successful approach with retailers is likely to be one that sets out the evidence base and rationale for what you are trying to, and treats them as a partner in the scheme that actively encourages feedback. **Equally, it is important to engage with local partners including the police, health services, support agencies and the third sector** to get their involvement and buy in upfront. These partners will be crucial to ensuring that complementary elements of the approach, particularly in terms of support for street-drinkers, can be provided. Additionally, partners can also provide additional resource in terms of engaging with local businesses.

Refine and implement scheme

- Following consultation with local stakeholders, you may wish to refine the scheme before it is formally launched.
- The first and most important step in implementing the scheme is **working with local businesses to encourage them to participate**. Outlining the potential benefits to businesses from the scheme, rather than just the wider objectives, is likely to be helpful; evidence from earlier schemes suggests that there can be significant benefits to businesses, their staff and families, as well as the wider community.
 - It is important to **recognise that different businesses take decisions in very different ways, and that this will affect how individual stores are able to respond to the proposal**. Some retailers will be able to take a local decision on whether or not they participate; others may need to seek a view from a regional or national head office. In all cases, locally focused evidence of why the scheme is being proposed will increase the likelihood of a decision to participate.

- Similarly, it is also important **to understand the different ways that supplier logistics work**. When taking decisions about what products to stock, some retailers are able to differentiate stock in different places; others cannot. This helps to explain both why it may be difficult or time-consuming for some local retailers to take decisions on certain types of products, and also why some producers are very concerned about this type of scheme.

The business rationale for participating in Reducing the Strength schemes

Licensees who support the positives associated with the campaign recognise the huge benefits that can result from removing low price products from their shelves. For example:

- retailers engaged in schemes have reported dramatic drops in verbal abuse experienced by staff
 - retailers have reported a reduction in assaults on staff
 - retailers report improved community relations as disruptive customers no longer access their shops
 - retailers have reported a reduction in risk of breaching licensing conditions by not selling alcohol to drunken people
 - retailers have reported increased takings as alcohol for sale has higher profit margin
 - retailers have reported happier customers as groups of drunken individuals are no longer in vicinity of shops
 - retailers have reported a reduction in the incidence of shoplifting.
- In some schemes, face to face engagement with retailers has proved to be an effective way of encouraging them to participate in the scheme; in other places, the approach has been to send letters to different tiers of management at local companies. **The**

approach that you take to encouraging participation may be determined by the resources available and the breadth of the scheme; however, whichever approach you choose, it is sensible to consider how it is likely to be perceived by businesses.

When is a voluntary scheme not voluntary?

Concerns have been raised by sections of the industry that supposedly voluntary schemes have involved councils or their partners trying to force or even bully businesses to participate in local Reducing the Strength schemes.

Fostering a partnership approach with local retailers in relation to these schemes should help to avoid this, but you should consider how your approach to retailers might be perceived, and potentially who is best placed to make it (council officers, police, etc), in order to avoid accusations of forcing retailers to participate.

Some retailers may believe that the risk of participating in the scheme is too great, or may simply not want to, and they are entitled to reach that decision. This should not necessarily be interpreted as meaning they are not committed to partnership working, and should not mean that they are treated differently by licensing officers or the police, unless there is evidence linking problems to specific premises that have not signed up to the scheme.

- **The formal launch of the scheme needs to be handled carefully, as this is one of the areas where it would be possible to inadvertently breach competition law.**

In broad terms, while there is no problem under competition law with having a visible brand and communications, these should only be used in the sense that they identify participants once the scheme has been formally launched. Naming or identifying individual participants before the scheme

is up and running could be deemed to be encouraging agreements between retailers by influencing the decision of others to participate in the scheme.

Monitor, evaluate and review scheme

- Once the scheme has been launched, the onus is on the council and its partners to support it. **Don't be afraid to get tough if problems linked to certain products persist:** there is scope to use the powers police and local authorities have, such as designated public place orders, dispersal or confiscation powers and drinking banning orders. Similarly, if a voluntary ban is not proving to be effective and there are specific problems that can be linked back to specific premises, you could add conditions to licences: Suffolk have done this in relation to a small number of premises. However, **do not apply Reducing the Strength conditions as part of a blanket approach, even if local retailers ask for this to create a level playing field: conditions should always be directly relevant to the individual premises.**
 - **Don't be afraid to alter the scheme to ensure the maximum impact.** However, in doing so, you should keep an open door: **always be prepared to discuss the issues with retailers, community members, councillors, the media and partner agencies.**
- **You should monitor progress against the key objectives and track changes to the evidence base over time.** It will be important for both the lead council, partner agencies and the public to understand the effect the scheme is having; additionally, government has indicated that it is helpful to have evidence about whether these schemes are effective.

Checklist/summary

- identify problem
- research evidence base and confirm problem / options with partners
- evaluate options
- agree solution.

If solution is Reducing the Strength:

- conduct competition law self-assessment
- secure legal advice
- brief councillors
- engage industry, police and charities
- plan branding and launch event
- plan monitoring and evaluation
- launch scheme
- review scheme against milestones and metrics.

Legal issues

Legal considerations – competition law and the Licensing Act

Competition law and Reducing the Strength schemes

It is highly unlikely that a council, in the context of introducing a Reducing the Strength scheme, will be deemed to be acting as an ‘undertaking’ within the meaning of the law (including the Competition Act 1998 and the corresponding articles on the Treaty of the Functioning of the European Union). Competition law only applies to ‘undertakings’, broadly defined as firms or other entities that are engaged in commercial activity. Therefore, the activities of **councils and their staff themselves, in this context, are unlikely to be caught by Competition Law specifically.**

Local retailers, however, clearly are undertakings within the meaning of competition law. They must, therefore, ensure that they are not engaging in anti-competitive behaviour otherwise they could face significant penalties, including significant fines. Specifically, this means that they must not engage in restrictive agreements or concerted practices, within the meaning of competition law. Since many of the retailers that councils would like to involve in local schemes may be smaller businesses that do not have detailed knowledge of competition law, councils have a duty of care to ensure that they are not asking them to breach the law and/or do not put them in a position where they might inadvertently do so. Moreover, it is possible that if a local authority encouraged or facilitated breaches of competition law, this could, in certain

circumstances, possibly lead to a breach of European Union law by that authority.

While there is a certain competition law risk to retailers arising from some aspects of Reducing the Strength schemes, the risk is manageable if councils build in certain features to their schemes. **The key point is to ensure that retailers are aware they must make individual and independent decisions about whether to participate in such schemes. Specifically they should avoid engaging in any form of co-ordinated action or in agreements or concerted practices that would reduce or prevent competition between them. In particular, retailers should avoid discussing or sharing sensitive commercial information (eg about prices, costs, volumes, future commercial strategies) with competitors.**

This risk is mostly likely to emerge at the start-up of a scheme, as you work with retailers to seek their participation, and should be considered in the design and implementation of the scheme. **The easiest way to avoid this risk is to engage bilaterally with individual retailers, rather than with groups of retailers together.** This may have other benefits, in terms of being a more effective approach in terms of engaging retailers. However, it is a resource intensive approach. If you do decide to meet with retailers jointly in the course of setting up a scheme, it would be sensible to **set out the competition law risk upfront**, including what is not permitted during the meeting (eg sharing of commercially sensitive information between competitors). You should then ensure that you:

- set out the intended approach
- set out why this is being done

- set out what the benefits to the area/ residents/businesses will be (ie the public policy message)
- offer the opportunity to ask questions
- **close down any conversation which appears to give rise to coordination** (eg a retailer indicating during the meeting, in front of its competitors, its future commercial strategy regarding high-strength alcohol).

But do not:

- invite people to indicate publically if they will sign up to the scheme there and then. It is acceptable to ask them to inform you privately if they will join up, but a public commitment in advance of a scheme being launched could be interpreted as collusion
- inform retailers, collectively or individually, of other businesses that have indicated they will, or might, join the scheme.

It is also **sensible to be mindful of the competition law risk when thinking about communicating the launch of the scheme**. It is fine to hold a launch event and develop branding for the scheme and once the scheme is live, you may wish to name businesses involved and provide branding and promotional materials for participating businesses to display if they wish. However, **participating businesses should not be named or advertise their participation before the scheme is formally launched. Councils should also avoid encouraging people to sign up by naming (or mentioning in bilateral discussions with retailers) other businesses which are participating or plan to participate** – retailers should be convinced to join by the public policy message only.

These actions should help to protect retailers from falling foul of competition law. It would be sensible to demonstrate, as part of a due-diligence approach, that you have considered and taken account of these issues through a simple competition law self-assessment undertaken during the design stage.

Guidance on competition issues regarding Reducing the Strength and competition law more generally is available on the CMA website⁵.

Licensing conditions and Reducing the Strength schemes

If you are including a licensing approach in your scheme, you can only do what is permitted by the Licensing Act 2003. Although appropriate in individual circumstances, Reducing the Strength conditions on licences should be approached with caution and never as part of a blanket approach. Two key considerations are that:

- conditions should promote the licensing objectives.
- standard conditions should be avoided: conditions should relate to individual premises.

If these two criteria are met, then the wording of the clause should be carefully considered. It must be:

- appropriate
- proportionate
- understandable
- achievable
- enforceable
- not duplicated in other primary legislation
- **individual and tailored to the premises**
- self-contained.

⁵ <https://www.gov.uk/government/collections/competition-and-consumer-law-compliance-guidance-for-businesses>

Case studies



Suffolk – perhaps more than any other area – has led the way with tackling the consumption of high-strength, cheap alcohol.

The campaign was launched in Ipswich in September 2012 in a partnership between Suffolk County Council, Ipswich Borough Council, Suffolk Constabulary and the East of England Co-operative Society after complaints from the public and businesses that street drinking was getting out of hand.

The scheme is three-pronged. Off licences have been asked to agree to stop selling cheap high-strength alcohol of 6.5 per cent abv and above, while the police have taken action where regular street drinking causes disturbances and the county council has invested in outreach workers to encourage drinkers into treatment.

The campaign was kick-started with a launch event for retailers at Ipswich Town Football Club where a short film was shown about the damaging effects of street drinking from an individual's and a business' point of view. The latter included such issues as loss of custom from people being put off by street drinkers congregating outside shops. This event was accompanied by media coverage and followed up by the partners visiting local businesses to discuss the benefits of supporting the campaign.

The responsible authorities have also used the licensing process to nudge retailers into taking part. When applications are approved the council visits businesses to ask them to consider signing up to the campaign outlining the benefits to the local area and potential gains for traders – although the scheme remains voluntary. The only situations where the council might impose restrictions on the sale of cheap strong alcohol are if there is evidence of sales of high-strength alcohol to drunk persons, which is an offence, and/or there is a direct link to problems in the wider area which can be attributed to such. In these cases competition law does not apply and a restriction on sale of certain products can be enforced. However, this has only been used four times.

The campaign has proved incredibly successful. Ninety out of 138 off-licence premises have signed up, including big chains like Tesco, Sainsbury's and Morrisons.

In terms of street drinking; numbers have dropped from a total of 70 individuals before the campaign was launched to just over 20. Street drinker events – defined as incidents in which the public have contacted the police – fell by nearly 25 per cent in the year after the launch of the campaign.

This success has led to the initiative being expanded to other urban areas in Suffolk, such as Lowestoft.

Public health engagement manager Simon Aalders says: "We have been delighted with how it has worked out. The most important principle is that you work together. The police have a dedicated officer for the campaign, while public health has funded two outreach workers for it. One type of intervention alone

– enforcement, restricting supply or enhanced treatment – doesn't work, for schemes to be successful all three elements must be implemented. You will need to have medium to long term commitment from all partners.”

Mr Aalders believes the effect has been more far-reaching than the initial aim of the scheme, as cheap high-strength alcohol is not just consumed by street drinkers. Sales figures from the East of England Co-operative Society, before it became involved, show in some very deprived areas sales of 6.5 per cent abv and above accounted for nearly a fifth of alcohol sales. The Co-op and other stores have observed that profits from alcohol sales have not decreased as consumers purchase different, weaker alcohol products. The premium alcohol product market remains unchanged.

He also says the campaign seems to have changed behaviour. “People haven't just switched to the next strongest brand, for example 6.4 per cent, but actually to 3 or 4 per cent abv brands.”

Case studies



Portsmouth is one of the UK's most densely populated areas. With more than 180 off licences in the city, people are never far from somewhere they can buy a drink.

But the easy availability of alcohol is causing problems. Over 40,000 people – one in four adults – drink at harmful levels and alcohol-related admissions are well above the national average. Overall alcohol misuse is estimated to cost the city £74 million a year.

Like many areas, Portsmouth has tried a combination of education and sensible drinking promotion as well as using dispersal orders to tackle anti-social behaviour.

But last autumn the Safer Portsmouth Partnership decided to take a different tack by targeting the sale of high-strength alcohol.

The Reducing the Strength campaign focuses on the cheap sales of beers, lagers and ciders over 6.5 percent abv.

Retailers were initially sent questionnaires by the council officer and police officer who run the scheme. But after little response the two officers started visiting shops to discuss the plans face-to-face.

This proved more effective. Six months over half of the city's 180+ off-licences had signed up and agreed not to sell the high-strength alcohol. Some of the agreements have been made verbally, while others have agreed to have written conditions on their licences.

Exceptions are made for premium products, such as speciality ales and ciders.

Importantly, in communication with retailers, Portsmouth has been very aware of its competition law responsibilities. No confidential retailer information has been shared and it has been clear throughout that it is for the retailers themselves to determine whether or not to sign up to the scheme

Community safety project officer Rob Anderson-Weaver, who leads the project for Portsmouth City Council's Safer Portsmouth Partnership, says: "Once we got out there we found retailers were much more open to discussing the idea. We talked to them about the effect this high-strength alcohol has. It is not just the street drinking, but the health impact. These shops are part of the community and when we put it to them we found many were willing to take it on board."

To ensure that all businesses are treated equally, Portsmouth has started suggesting during the licensing process that people sign-up too. The aim now is to try to have 100 retailers signed up by the end of the year.

Want to know more?

Competition and Markets Authority (CMA)

www.gov.uk/government/publications/high-strength-alcohol-schemes-competition-law-advice

Suffolk's Reducing the Strength campaign

www.suffolk.police.uk/safetyadvice/personalsafety/alcoholawareness/reducingthestrength.aspx

LG Inform

www.local.gov.uk/about-lginform

Local alcohol profiles for England

www.lape.org.uk

Street level crime maps for England and Wales

www.police.uk

Alcohol Strategy (published by the Home Office in 2012)

www.homeoffice.gov.uk/drugs/alcohol-strategy

Public Health Responsibility Deal pledge relating to high-strength alcohol

<https://responsibilitydeal.dh.gov.uk/pledges/pledge/?pl=54>

Government guidance on 'below cost sales'

www.gov.uk/government/publications/banning-the-sale-of-alcohol-below-the-cost-of-duty-plus-vat

Local alcohol partnerships

www.portmangroup.org.uk/responsibility-programmes/landing_page/local-partnerships

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