

## **North Ayrshire Licensing Board**

### **The Equality Act 2010: Mainstreaming Report 2017 - 2019**

#### **1. Introduction**

1.1. North Ayrshire Licensing Board ("NALB") is:

- (a) the "Licensing Board" under the Licensing (Scotland) Act 2005 (regulating the sale of alcohol), and
- (b) the "Licensing Authority" under the Gambling Act 2005 (regulating gambling, for example, gaming such as poker, the operation of lotteries, the use of gambling machines)

1.2. The Board makes decisions about applications for licences from those who wish to sell alcohol or run premises offering gambling. The Board also deals with complaints about licensed premises and those who hold licences.

1.3. Regulation in either case is not solely a Board function. For example, the laws restricting under-18 drinking are enforced by the Police, as are laws prohibiting the use by under-18s of certain gaming machines. Some gambling activities are regulated by a UK-body, the Gambling Commission, and not by local Boards.

1.4. The Licensing Board is made up of elected members of North Ayrshire Council. They are appointed to the Board by the Council. The Board does not employ staff. The work of the Board is supported by a Clerk, Solicitor (Licensing) and support staff, all of whom are employed by the Council.

1.5. Elected members on the Board have the same opportunities as any other Councillors to receive equalities training. As Council employees, the staff who support the work of the Board can all receive training on equalities in accordance with the Council's Equalities Policies. Those involved in policy development and review are able to access training. When Reports or other documents raising Policy issues are prepared for the Board (for example, the Licensing Policy Statements required under both pieces of primary legislation) these are accompanied by Equality Impact Assessments.

#### **2. NALB and the Equality Act 2010**

2.1. NALB is a "Listed Authority" for the purpose of the Equality Act 2010. "Listed Authorities" have a "Public Sector Equality Duty" under Section 149(1) (here "PSED"). This requires public authorities to consider how, through the exercise of their functions, they can contribute to a more equal society and eliminate discrimination, advance equality and foster good relations in everything that they do, whether that is in design and delivery of services, decisions made or the policies applied.

Section 149(1) provides:

*“A public authority must, in the exercise of its functions, have due regard to the need to—*

*(a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;*

*(b) advance equality of opportunity between persons who share a Relevant Protected Characteristic and persons who do not share it;*

*(c) foster good relations between persons who share a Relevant Protected Characteristic and persons who do not share it.”*

2.2. “Relevant Protected Characteristic” (here "RPC") is defined by Section 149(7) and means:

- (a) age
- (b) disability
- (c) gender reassignment
- (d) pregnancy and maternity
- (e) race (including colour, nationality, or ethnic or national origins)
- (f) religion or belief
- (g) sex
- (h) sexual orientation

2.3. The Equality Act 2010 places two reporting duties on the Board. These are detailed in the Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012 No. 162, amended by Regulations 2015 No. 254 and 2016 No. 159):

(a) "Outcomes Report" - Under Regulation 4 each Listed Authority must publish every 4 years a set of “Equality Outcomes” which it considers will enable it to better perform the Section 149 Equality Duty. An “Equality Outcome” is defined as a result that the Listed Authority aims to achieve in order to further one or more of the needs mentioned in section 149 (the "Public Sector Equality Duty").

(b) "Mainstreaming Report" - Under Regulation 3 any Listed Authority must publish a report on the progress it has made to make the Equality Duty integral to the exercise of its functions so as to better perform that duty every 2 years.

2.4. On 13 September 2017 the Board adopted both an "Outcomes Report" and a "Mainstreaming Report" (Reports (a) and (b)). The present Report to the Board relates to

reporting duty (b).

### **3. The functions of NALB**

3.1. The work of the Board in these two areas (Alcohol Licensing and Gambling Licensing) is underpinned by principles called "Licensing Objectives":

#### **(a) Alcohol**

The objectives underpinning alcohol licensing are:

- Preventing crime and disorder
- Securing public safety
- Preventing public nuisance
- Protecting and improving public health
- Protecting Children (aged 0 - 15 years) and Young Persons (aged 16 or 17) from harm

#### **(b) Gambling**

The Licensing Objectives underpinning gambling licensing are:

- Preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime
- Ensuring that gambling is conducted in a fair and open way
- Protecting Children (aged 0 - 15 years) and other vulnerable persons from being harmed or exploited by gambling

The Gambling Act 2005 does not itself extend the Licensing Objective to the protection of Young Persons (aged 16 or 17), but in North Ayrshire the Board has done this by including Young Persons in the definition of "vulnerable persons" in its Licensing Policy Statement.

3.2. In each case (alcohol and gambling licensing) one of the Licensing Objectives approximates to the Equality Act 2010 duties towards people with the Relevant Protected characteristic (RPC) of "age", although in the period of this Report no Board decision has been based solely on that Licensing Objective.

3.3. Neither statute expressly refers to compliance with the Equalities legislation, with one exception.

The exception is under the alcohol legislation. The Law changed on 30 March 2018. An applicant for a Premises Licence (for example, for a public house, restaurant or off-sales

shop) must provide the Board with a "Disabled Access and Facilities Statement" (DAFS) in a prescribed form, containing information about —

- (a) provision made for access to the Subject Premises by "Disabled Persons" (as defined by Section 6 of the Equality Act 2010);
- (b) facilities provided on the Subject Premises for use by "Disabled Persons", and
- (c) any other provision made on or in connection with the Subject Premises for "Disabled Persons".

3.4. The Board has no power to enforce the contents of a DAFS or to require the Applicant to make alterations to the DAFS. The requirement to produce a DAFS only applies to Applications made after 30 March 2018 and does not apply to Premises Licences granted earlier.

3.5. The "reasonable adjustment" obligations imposed by the Equality Act 2010 fall on the operator of Licensed Premises (as a "service provider"). Although a Licensing Board may impose such Licence Conditions as "they consider necessary or expedient for the purposes of any of the Licensing Objectives" (Licensing (Scotland) Act 2005, Section 27(6)), this power is qualified by Section 27(6) which prohibits any condition which

*"(c) relates to a matter (such as planning, building control or food hygiene) which is regulated under another enactment."*

#### **4. Mainstreaming Report 2017 - 2019**

4.1. The Board values the diversity that exists within North Ayrshire and wishes to ensure full participation in the social, cultural and economic life of the area. The Board opposes all forms of unlawful discrimination including discrimination on the grounds of race or ethnicity, gender, sexual orientation, age, religion and disability and recognises that discrimination creates barriers to achieving equality for all people.

4.2. In Alcohol Licensing, the Licensing Policy Statement (2018-2022) includes:

*"4.15. The Licensing Board is aware of wide public concern within its area and elsewhere in Scotland surrounding sectarian conduct which focuses on the religious divide between Christian denominations, racial prejudice or other discriminatory conduct.*

*4.16. If a Licensee behaves in such a fashion, or condones such behaviour by others, he may cause offence. Members of the public may consider themselves excluded from the Premises by reason of their religious beliefs or affiliations or racial identity or possession of Protected Characteristics under the Equality Act 2010. Such conduct can also intimidate, incite religious or sectarian hatred, and constitute a threat to public order or safety. Several Licensing Objectives are engaged:*

*'Preventing Crime and Disorder'*

*'Securing Public Safety'*

*'Preventing Public Nuisance'.*

4.17. See Standard Condition A.15:

*“(1) The Licensee shall not engage in, or permit, conduct or activities on the Premises:*

*(a) which cause offence, or*

*(b) which are likely to cause offence to a reasonable person, or*

*(c) which constitute a threat to public order or safety, or*

*(d) which are likely to discourage a particular part of the community from using the Premises,*

*on racial, religious, sectarian or other discriminatory grounds.*

*(2) The Licensee shall take reasonable steps to prevent any other person from engaging in such conduct or activities.*

*(3) The association of any Licensed Premises with a particular football club or the display of football programmes or football memorabilia within the Licensed Premises shall not of itself breach this condition: provided that any such material displayed does not contain any design, insignia, word or groups of words which discriminate on the basis of race, religion or are sectarian or which could reasonably be construed as being discriminatory or inciting racial, religious or sectarian hatred or violence.” ”*

This condition therefore embeds the Board’s stance against discriminatory behaviour of all kinds and on all grounds into licences.

4.3. Because of the importance that the Board attaches to the PSED, when the Clerk prepares Reports for the Board, the potential for the application of the "unsuitable premises" rule and the Equality Act 2010 is considered. A potential reason for refusing a Premises Licence is that the Subject Premises are "unsuitable", and it is possible that the Board will consider that suitable access and facilities for Disabled Persons are necessary elements.

The PSED is referred to in the 2018 - 2022 Licensing Policy Statement (in the context of “Protecting and Improving Public Health”): LPS paras. 2.14 - 2.16.

LPS Para. 4.27(c), which refers to the use of a removable barrier to delineate an outdoor drinking area (a 'beer garden'), requires that the barrier must be designed to allow access and exit for disabled persons.

If an Applicant has failed to produce a DAFS, the Board is informed and will defer the case to a later meeting until a DAFS is lodged.

4.4. The Board is committed to ensuring that everyone with an interest can participate in the licensing process. The Board deals with all of its business in an open and transparent way. Information and assistance will be made available to those who wish to apply for a licence, to make representations or to object to an application. The Board is also aware of the need to ensure that the licensing process is accessible to all. Assistance will be available on request for those who require assistance to access any part of the process.

The Board seeks to support this general commitment by

- Providing information both in written form and on the Council's website which complies with the Council's accessibility standards
- Holding meetings in public in the Council Chambers, which are accessible to the public
- Accessing the Council's interpreting and translation services when required
- Providing face-to-face advice and support to people who are applying for licences or who want to make representations or objections to licences
- Making reasonable adjustments to ensure accessibility and participation opportunity for those with protected characteristics

4.5. The Board consults widely with the community in relation to licence applications.

Consultation generally takes place with:

- Police Scotland
- Scottish Fire and Rescue
- North Ayrshire Council
- NHS Ayrshire & Arran
- Community Councils

In addition, applications for new licences and for major variations to existing licences are advertised on the Council website, and so consultation with the wider community takes place in that way. In addition, those who reside in very close proximity to premises seeking a licence are notified of the application by letter direct from the Board. This enables any member of the community to make representations or objections in relation to a licence application.

The Board's Statements of Licensing Policy are also subject to wide consultation within the Community, including other public authorities. In the case of both policies, consultation with

the wider public took place via the Council's website.

4.6. The equality outcomes identified by the Licensing Board for the reporting period 2017-2021 are set out in the table below. The up-to-date position with each is shown "[...]".

	<b>Equality Outcome</b>	<b>Action</b>
1	Service users across the protected characteristic groups are positive and engaged with the Licensing Board and the services it provides.	<ul style="list-style-type: none"> <li>Customer satisfaction survey containing equality monitoring questions to be issued to applicants and used to identify equality issues. <b><i>[Survey forms continue to be available at the counter although there has been little use by the public. The questionnaire we issued to customers is still available but little-used since it was being completed by the same repeat customers. Their responses were favourable but they had nothing new to say. Consideration will be given to undertaking an online survey option to increase participation. ]</i></b></li> <li>The Board's new Licensing Policy Statement (due November 2018) to be Equality Impact Assessed. <b><i>[The LPS 2018-22 had an EIA]</i></b></li> <li>Groups representative of the protected characteristics to be consulted as part of the consultation process required for the Board's new Licensing Policy Statement. <b><i>[There was public consultation on the draft policy. ]</i></b></li> </ul>
2	Licensing information in North Ayrshire is easily accessible.	<ul style="list-style-type: none"> <li>Translation statement to be included on all licensing applications and guidance issued by the Board as standard practice. <b><i>[ This has not yet been actioned but will be further reviewed and the Board will be updated. There have been no requests for translation services.]</i></b></li> <li>Information to be translated when requested by service users. <b><i>[To date there have been no requests for translation services but this would be provided if requested.]</i></b></li> <li>Increase the amount of licensing information which is accessible online. <b><i>[This has been done. Material is regularly</i></b></li> </ul>

		<p><b><i>reviewed, and new material added, for example we published FAQs about the Personal Licence Renewal process]</i></b></p>
3	<p>Licensing staff have the appropriate skills and training to deliver an effective licensing service to persons with protected characteristics and have an increased awareness of equality issues.</p>	<ul style="list-style-type: none"> <li>• Customer satisfaction survey containing equality monitoring questions to be issued to applicants and used to assess the service provided to persons with protected characteristics. <b><i>[see above]</i></b></li> <li>• A specific statement regarding the general equality duty to be included in the Board's new Licensing Policy Statement to ensure the duty underpins all work undertaken by licensing staff, including Board members. <b><i>[This has been done: Paras. 2.14-2.16 of LPS]</i></b></li> <li>• Encourage and support staff, including Board Members, to identify and attend training courses on equality issues, whether available in-house or through external providers. <b><i>[The Members/Staff are part of the Council, so can access this training on that basis. The majority of Board Members have had training and the remainder will have had training within a year. Staff will have training by 31 May 2019.]</i></b></li> <li>• The Board and its officers will wherever possible work, whether through the imposition of licence conditions, advice to licence holders or through joint working with Police Scotland, seek to promote the Licensing Objectives of the Licensing (Scotland) Act 2005 (particularly those relating to securing public safety, and protecting children and young persons from harm) in a manner which protects those with protected characteristics. <b><i>[This is done as a matter of course]</i></b></li> </ul>