

North Ayrshire Licensing Board

The Equality Act 2010

Mainstreaming Report 2019-21

1. Introduction

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

- (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 make decisions about applications for Licences from those who wish to sell alcohol or run premises offering gambling. The Board also deal with complaints about licensed premises and those who hold licences, and have other functions in relation to Licences, such as the variation or transfer of 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. Despite having distinct legal personalities, the Licensing Board and the Council are closely linked. The Licensing Board are made up of Elected Members of North Ayrshire Council. They are elected from the Members of the Council. The Board do 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. The close connection between the Board and the Council means that the Board is able to benefit from actions undertaken by the Council to advance equality and comply with specific duties.

1.5. The Council has published equality and mainstreaming reports which set out how the Council is advancing equality and meeting its obligations in terms of the specific duties. These reports can be viewed on the Council's website:

<https://www.north-ayrshire.gov.uk/council/strategies-plans-and-policies/equality-policy-and-performance.aspx>

Many of the actions described in these reports apply equally to the Licensing Board and its discharge of specific duties as a listed authority. In particular, any actions undertaken by the Council in respect of its employees and access to Council services and facilities

equally apply to the Licensing Board.

1.6. 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"). 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" (duties (a) and (b)) and on 8 April 2019 the Board adopted a further "Mainstreaming Report". The present Report to the Board is a further "Mainstreaming Report". All adopted Reports are on the Board's website:

<https://www.north-ayrshire.gov.uk/business/licences-and-permits/food-alcohol-gambling-licences/licensing-board.aspx>

under the heading "Mainstreaming Equality and Equality Outcomes".

2.5. A Listed Authority has a further obligation. Regulation 6 requires a Listed Authority to gather information on its employees and their RPCs. NALB do not have any employees:

(a) their staff, both legally qualified and administrative, are employed by North Ayrshire Council ("NAC") (the "Relevant Council" under Licensing (Scotland) Act 2005, Schedule 1, Paragraph 8);

(b) the Licensing Standards Officer is an employee of NAC, not NALB: (2005 Act, Section 13(1)).

Regulation 6 is implemented by NAC, which is itself a Listed Authority and complies with the requirements of the Equality Act 2010. The 2010 Act is relevant to the operation of the Board in the same way that it is relevant to the Council as a whole, for example in how the Board treats members of the public using Licensing services.

Since NAC are also a "Listed Authority" and publish their own Reports, reference should be made to NAC's Reports as well as to NALB's Reports. NAC's Reports may include wording about NALB's Equality duties.

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) In alcohol Licensing

Section 4(1) of the Licensing (Scotland) Act 2005 is:

"4(1) For the purposes of this Act, the Licensing Objectives are—

- (a) preventing crime and disorder,*
- (b) securing public safety,*
- (c) preventing public nuisance,*
- (d) protecting and improving public health, and*
- (e) protecting Children and Young Persons from harm."***

(b) In gambling Licensing

Section 1 of the Gambling Act 2005 is:

"In this Act a reference to the Licensing Objectives is a reference to the objectives of—

- (a) preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime,*
- (b) ensuring that gambling is conducted in a fair and open way, and*
- (c) protecting Children and other Vulnerable persons from being harmed or exploited by gambling."***

3.2. In each case (alcohol and gambling licensing) the **highlighted** 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.

3.2. Both sets of Licensing legislation distinguish between "Children" (aged 0-15 years) and "Young Persons" (16-17):

- (a) the alcohol Licensing legislation applies Licensing Objective (e) to both; but
- (b) the Gambling Act 2005 only extends Licensing Objective (c) to the protection of "Children". However in North Ayrshire the Board has extended this to "Young Persons" by including them in the definition of "vulnerable persons" in its Licensing Policy Statement.

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

The exception is under the alcohol legislation. 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".

3.5. The Board have no power to:

- enforce the contents of a DAFS
- to require the Applicant to make alterations to Premises to improve access by Disabled Persons

The requirement to produce a DAFS only applies to Applications made after 30 March 2018 (when the Law changed) and does not apply to Premises Licences granted earlier.

3.6. 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."

3.7. Licence holders are prohibited from engaging in or permitting conduct or activities on licensed premises which are likely to discourage persons with a protected characteristic from using those premises on discriminatory grounds. The standard conditions also required that licence holders take steps to prevent any person using the premises from engaging in discriminatory conduct or activities. The Board's standard conditions mean that all licence holders are required to consider the general equality duty as part of the operation of licenced premises.

4. Mainstreaming Report 2019 - 2021

4.1. The Board value 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 oppose all forms of unlawful discrimination and recognise that discrimination creates barriers to achieving equality for all people.

4.2. In Alcohol Licensing, the Licensing Policy Statement (2018-2022) includes Paragraphs 4.15 - 4.17:

"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. *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 standard condition embeds the Board’s stance against discriminatory behaviour on all grounds.

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.

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 are informed and will defer the case to a later meeting until a DAFS is lodged.

4.4. The Board are committed to ensuring that everyone with an interest can participate in the licensing process. The Board deal with all their business in an open and transparent way, in so far as consistent with the Scottish Government Coronavirus guidance and the Council's own responsibility for the health and safety of their employees and Members.

The Board seek 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;
- Prior to the Coronavirus Emergency, the Board transacted business at regular meetings in public in the Council Chambers in Irvine, which are accessible to the public. During the Emergency, the position has changed, since the emergency legislation has temporarily removed the Board's duty to transact business in public (Coronavirus (Scotland) Act 2020, Schedule 5, Paragraph 4(5)(d)) but it remains the case that Applicants, Licence-Holders and other parties can participate fully in Board meetings using video-conferencing;
- Enabling people to access interpreting and translation services when required. If appropriate, the Licensing Board’s Convenor would be informed and invited to defer the case to another date to allow suitable arrangements to be made;
- Prior to the Coronavirus Emergency, Board staff provided face-to-face advice and support to people who were applying for licences, held licences, or who wanted to make representations or objections to licences. During the Emergency, this is no longer possible as Board staff are all working from home, but on a daily basis they

are communicating with the public by email or telephone;.

- Making reasonable adjustments to ensure accessibility for those with protected characteristics.

4.5. The Board consult widely with the community in relation to Premises 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. People 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. The Board uses North Ayrshire Council's Equality Impact Assessment procedures when developing and adopting policy.

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

	Equality Outcome	Action
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">• Customer satisfaction survey containing equality monitoring questions to be issued to applicants and used to identify equality issues. <p><i>[Prior to the Coronavirus Emergency and the resulting closure of the public counter in March 2020, survey forms were available at the counter, although were in fact rarely used by the public. The survey tended to be completed by the same repeat customers. Their responses were favourable but they had nothing new to say. Post-Coronavirus, the questionnaire would be issued to customers on request, but has never been requested.]</i></p>

		<ul style="list-style-type: none"> The Board's Licensing Policy Statement (2018-22) was to be Equality Impact Assessed. <p><i>[An equality Impact assessment was completed in 2019. No direct impacts were identified on protected characteristic groups (or relevant information from the screening form).]</i></p> <ul style="list-style-type: none"> Groups representative of the Protected Characteristics to be consulted as part of the consultation process required for the Board's new Licensing Policy Statement. <p><i>[Public consultation was undertaken and no direct impacts on protected characteristic groups were reported.]</i></p>
2	Licensing information in North Ayrshire is easily accessible.	<ul style="list-style-type: none"> Increase the amount of licensing information which is accessible online. <p><i>[This was done even before the Coronavirus Emergency, and a large amount of information is online, as well as many Licence Application forms. Material was regularly reviewed, and new material added. During the Emergency we have published FAQs specifically about how the Emergency affected the Licensing process.]</i></p> <ul style="list-style-type: none"> Information to be translated when requested by service users.
3	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.	<ul style="list-style-type: none"> Customer satisfaction survey containing equality monitoring questions to be issued to applicants and used to assess the service provided to persons with protected characteristics. <p><i>[Prior to the Coronavirus Emergency and the resulting closure of the public counter in March 2020, survey forms were available at the counter, although were in fact rarely used by the public. The survey tended to be completed by the same repeat customers. Their responses were favourable but they had nothing new to say. Post-Coronavirus, the questionnaire would be issued to customers on request, but has never been requested.]</i></p>

		<ul style="list-style-type: none"> • 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. <p><i>[This has been done: Paras. 2.14-2.16 of LPS]</i></p> <ul style="list-style-type: none"> • Encourage and support staff, including Board Members, to identify and attend training courses on equality issues, whether available in-house or through external providers. • <i>[The Members/Staff are part of the <u>Council</u>, so access training on that basis. In addition Members have received training in their capacity as elected Members of North Ayrshire Council.]</i> • The Board and its officers will wherever possible, whether through: <ul style="list-style-type: none"> - the imposition of licence conditions, - advice to licence holders or - through joint working with Police Scotland, <p>seek to promote the Licensing Objectives in a manner which protects those with protected characteristics.</p> <p><i>[This is done as a matter of course]</i></p>
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