

ONE TOO MANY?

SALES TO DRUNK CUSTOMERS *Policy, Enforcement and Responsibility*



The Alcohol Academy



ALCOHOL
RESEARCH UK

EXECUTIVE SUMMARY

Under the 2003 Licensing Act, it is an offence to sell alcohol to a customer who is drunk. Similar regulations have existed for centuries, but they remain poorly enforced: while breaches of the law are routine in many cases, only a handful of prosecutions occur. The law, as it stands, poses a range of practical and ethical questions that need to be addressed if its purpose is to be achieved.

In June 2014, a conference on this issue was organised by Alcohol Research UK and the Alcohol Academy. Participants included policymakers, police, academic researchers, trade representatives and local authorities. This report builds on the conference discussions alongside a review of recent national and international research.

A number of key problems with current legislation can be identified. The responsibility for implementation falls to bar staff who often work in stressful environments, on casual contracts and with limited training. The retail environment in which staff work may implicitly encourage high levels of consumption, so run counter to the spirit of existing legislation. Furthermore, staff need to 'knowingly' serve drunk customers, creating a high evidential bar; however, the alternative of allowing prosecutions for unintentional sales raises questions over staff protection and natural justice.

Regardless of barriers to enforcement, this is an area where retailers have a clear responsibility. Recent studies using 'drunk' actors have suggested sales to people displaying clear signs of intoxication are the norm in some settings, with 'up-selling' also common. Retailers need to ensure staff are aware of the law, and that they are adequately supported to enforce it – both areas in which practice is inconsistent. Industry led initiatives such as 'Challenge 25' may provide valuable lessons for this largely overlooked section of licensing law.

International research suggests that while both staff training and police enforcement are important, they rarely achieve sustainable impacts when applied in isolation. Rather, 'multicomponent' approaches, which seek to change retail environments, improve community engagement and raise public awareness alongside changing retailer and police practices, are more effective. While these can be challenging to sustain, they provide an important model for future practice. For example, such approaches would seek to recognise the importance of related issues such as the large shift towards off-sales and possible contribution of 'pre-loading' to this complex area.

This report sets out the research evidence on this difficult issue, considers some of the key questions, and proposes next steps.

BACKGROUND

In June 2014, a conference on the sale of alcohol to drunk customers was held at the Guildhall, London. The event was organised by Alcohol Research UK and the Alcohol Academy, with support from the London Drug and Alcohol Policy Forum. Attendees included central government, police, regulatory authorities, health charities, the alcohol industry and academic researchers. Discussions were held under the Chatham House Rule and addressed three key areas: the role of policymakers in developing evidence-based approaches; the role of enforcement agencies in implementing policy; and the role of producers and retailers in supporting effective implementation of the law and staff training. This paper builds on the discussions in the conference while providing an overview of current research in this area.

INTRODUCTION

The sale of alcohol inevitably leads to the problem of how to decide when service should be refused if customers become excessively drunk. Under current licensing legislation, it is an offence to knowingly sell alcohol to someone who is drunk but this aspect of the law is, in the words of the Health Select Committee, 'scarcely enforced' (Health Committee, 2010: p237). Between 2009 and 2013 there were just 29 prosecutions for this offence in England (HC Deb, 2014 c386W).

This is a longstanding problem: the first national legislation designed to prevent sales to drunk customers was introduced in 1606, but enforcement proved difficult despite numerous legislative amendments over the following decades. In the nineteenth century repeated efforts were made to refine the law on public drunkenness culminating in the 1872 Licensing Act, which introduced a raft of new police powers. However, while prosecutions increased after the 1872 Act, implementation remained inconsistent across the country (Jennings 2012). In the 20th century, this pattern of patchy implementation, inconsistent enforcement practices and low numbers of prosecutions continued.

The 2012 Government Alcohol Strategy acknowledged this problem, and outlines a commitment to support better enforcement.

Where we identify that tools and powers are being used insufficiently, we will work with the police and others to change this. For example, it is an offence, under the Licensing Act 2003, to knowingly serve alcohol to a drunk but there were only three convictions for this offence in 2010. This could send a powerful message locally and we will work with the police to tackle the issue of serving alcohol to drunks including exploring how greater use can be made of existing powers and how test purchasing can support this. (Government Alcohol Strategy 2012, p. 13.)

While responsibility for tackling public drunkenness falls mainly to the police, responsibility for preventing sales to drunk customers fall primarily on individual servers. This creates difficulties, not least by placing the burden of responsibility for tackling drunkenness on people with often little training and who work in difficult and potentially risky environments. It also creates difficulties in defining drunkenness and distinguishing simple intoxication from behaviour that might pose risks to the drinker or other members of the public. Furthermore, prosecution depends not only on the customer being drunk, but the vendor knowing this before completing the sale. Since drunkenness has no clear legal definition, the burden of proof is further complicated.

In many contexts, sales to people who are intoxicated are the norm. Where an outlet relies on high volume sales, strict enforcement of the law may well run counter to the business model. Recent studies using 'drunk actors' have found high rates of sale to people exhibiting obvious indicators of intoxication, with 'up-selling' also common practice. Without effective training, staff awareness of both the law and strategies for refusing sales may be very low. Currently the use of training and enforcement is inconsistent, leading to wide variations in practice.

As Dingwall (2006: 76) points out, 'under-enforcement of the criminal law is not inherently problematic; one should not assume that any benefit automatically accrues from prosecution.' The law can act as a deterrent, and prosecution may be the last resort. Nevertheless, the combination of notoriously low enforcement figures and highly publicised levels of public drunkenness in many town and city centres suggests there is a substantial issue to be addressed.

There are three main areas where there is scope for further action. Firstly, legislative levers could be used to emphasise or strengthen the legal responsibilities of retailers, licence holders and Designated Premises Supervisors. Secondly, enforcement agencies and regulatory authorities can explore more effective ways of not only prosecuting offences but preventing breaches through initiatives which strengthen cooperation with retailers. Further use of Penalty Notices for Disorder (PNDs), which require far less resource or evidential burden than prosecution may also play an important role. Finally, the industry as a whole could take greater responsibility for promoting good practice, supporting bar staff and creating environments in which drunkenness is not implicitly or explicitly encouraged.

Further attention to the issue of sales to drunken customers clearly has a role to play in reducing alcohol harms, but should not be looked at in isolation. Although some sections of the night-time economy are associated with significant alcohol-related problems, the shift in consumption from pubs and bars to off-trade sales

has fundamentally changed our drinking habits. 'Pre-loading', or even off-trade alcohol sales purchased by drinkers during or after 'nights out', are also relevant. In other contexts, street drinking may present related issues to retailers who may face challenges in serving intoxicated customers.

Despite this, regulatory legislation still retains a primary focus on pubs and bars. Also, as Holder (1998) argues, single prevention issues should not be addressed in isolation from the wider retail and cultural environment. To consider sales to drunks as solely an issue of staff training, police enforcement or customer awareness is to overlook the critical role of environment and marketing in shaping drinking behaviours. This, therefore, is an issue requiring broad solutions involving all stakeholders. Any meaningful actions in this area must therefore be developed in recognition of the broader alcohol policy context.

LEGISLATION AND ENFORCEMENT

Sales to drunk customers are regulated under Sections 141 and 142 of the Licensing Act 2003. Section 141 states that:

A person [...] commits an offence if, on relevant premises, he knowingly –

- a) Sells or attempts to sell alcohol to a person who is drunk, or*
- b) Allows alcohol to be sold to such a person*

Section 142 states that:

A person commits an offence if, on a relevant premises, he knowingly obtains or attempts to obtain alcohol for consumption on those premises by a person who is drunk.

As an alternative to prosecution in the courts, a Penalty Notice for Disorder (PND) allows police constables or other authorised officers to issue a Fixed Penalty Notice (FPN) for certain offences. Under the Licensing Act 2003, a PND can be issued to anyone who 'Sells or attempts to sell alcohol to a person who is drunk'. PNDs can be issued 'where a constable has reason to believe that a person aged 18 or over has committed a penalty offence and they have sufficient evidence to support a successful prosecution' (Ministry of Justice, 20014). Despite the significantly reduced evidential burden, however, total PNDs issued also appear relatively low.

	2009	2010	2011	2012	2013
Prosecutions	6	3	5	10	5
PNDs	90	74	78	94	63

Ministry of Justice (2013); HC Deb (2014)

It has been suggested that the wording of the legislation itself needs to be strengthened in order to facilitate wider enforcement. The requirement that sales are made 'knowingly' makes prosecutions less likely but also, arguably, provides protection to servers from unfair prosecution. However, evidence from Scotland suggests that inclusion of the word 'knowingly' may not be either the main barrier to enforcement or a necessary protection to server staff. Section 113 of the Licensing (Scotland) Act 2005 states:

Any responsible person who, on any relevant premises, sells alcohol to a person who is drunk commits an offence.

Despite the lower evidential burden of not including 'knowingly', there were only four prosecutions for the offence in Scotland between 2009-12 (Scottish Government, 2013).

INTERNATIONAL RESEARCH AND EVIDENCE

Lack of effective enforcement of laws on sales to drunks is by no means limited to the UK (e.g. Graham et al., 2013; NHTSA, 2005), and a number of international initiatives to reduce harms through addressing sales to drunk customers have been evaluated in recent years. In a review of 39 international studies, Jones et al. (2011) drew a number of important conclusions. While server-oriented Responsible Beverage Service (RBS) programmes were found to have some effect in some instances, these were often short-term and strongly reliant on buy-in from bar owners and managers. Police enforcement operations, by themselves, were not effective in the studies analysed, nor were initiatives that only targeted customers.

A review by the US Department of Transportation found some evidence that 'dram shop liability laws', which 'hold alcohol servers responsible for harm caused by intoxicated or underage patrons . . . are associated with a substantial reduction in alcohol-related harm' (NHTSA, 2005: 4-5). However, such approaches – which extend a server's duty of care to people whom drunk customers may encounter after leaving the venue – imply a significantly different conception of care, responsibility and legal liability than currently operates in the UK (see Mcivor 2001).

In their review, Jones et al. (2011: 516) found that the most effective initiatives were 'multicomponent programmes, which combined community mobilisation, RBS training, house policies and stricter enforcement of licensing laws'. Multicomponent approaches ideally reflect what Holder (1998) calls a community approach to alcohol harm reduction: that is, an approach which sees harms as tied to the whole alcohol environment (retail practices, national and local policy, industry actions, media representations etc.) rather than as being isolated among specific subgroups (binge drinkers, street drinkers and so forth) that exist within communities. In the UK, Herring et al. (2011) also emphasised the importance of such multicomponent programmes in a review of 'promising approaches' to addressing alcohol harms.

A successful example of multicomponent approaches is the Stockholm Prevents Alcohol and Drug Problems (STAD) programme, which was launched in 1998 and subsequently rolled out to other Swedish regions. STAD involved an initial survey documenting levels of sales to drunk customers, dedicated training for staff, and increased enforcement by police and regulatory authorities. A critical element of the project was 'the signing of a written agreement by high-ranking officials specifying how responsibilities for different parts of the intervention were to be distributed among participating organisations' (Babor et al., 2010: 155). Initial evaluations suggested that refusals of service to drunk customers increased from 5% in 1996 to 70% in 2001, and that there was a reduction of violence in the first three years of 29%. Subsequent evaluations suggested slightly more modest effects, but confirmed the general finding that both sales to drunk customers and violence declined significantly over the period of the project (Norstrom and Troidall, 2013).

Recent research in Norway has identified some plausible reasons for difficulties in enforcing laws on sales to drunks, albeit in a different retail context. Interviewing bartenders in Oslo, Buvik (2013) found that most felt refusal was difficult, potentially dangerous and ran directly counter to the broader drinking context. In the particular instance where refusal may be considered, staff reported that 'serving customers provides a more predictable outcome than refusing to serve them' (Buvik, 2013: 4).

Reviewing international findings on enforcement, Graham et al. (2013) call for a series of strategies for better enforcement to be explored: a clear and measurable definition of what level of drunkenness constitutes a violation; clear and enforceable consequences for servers and licence-holders; the use of random observation as well as targeting known problem venues; higher publicity when violations occur to act as a deterrent; and political encouragement through better engagement with affected communities and individuals.

UK RESEARCH AND EVIDENCE

Reviews by Herring et al. (2011) and Mistral et al. (2007) confirm that multi-component approaches represent a key strategic approach to tackling specific harms associated with retail practices; however, they are often constrained by counter pressures in the wider drinking environment. As Mistral et al. put it: 'in a community systems approach . . . local efforts to reduce harm and disorder must be seen in the broader context of evolving patterns of alcohol consumption across the UK: an increasing focus on alcohol consumption within youth culture, the extremely large sums of money devoted to the promotion of alcohol, its relative cheapness and changes in licensing laws' (2007: 9).

In 2006, Moore et al. carried out an extensive study of public drunkenness in Cardiff using breathalyser and observation data to investigate how easily drunkenness (as measured by blood alcohol level) was perceptible to a neutral observer. They also investigated levels of knowledge and awareness among bar staff, and provided additional Responsible Beverage Training – the effects of which were measured by pre- and post-intervention breathalyser tests in and around relevant outlets.

This study highlighted the problematic relationship between 'objective' measures of drunkenness (blood alcohol levels) and 'subjective' measures such as slurred speech, unsteady gait and smelling of alcohol. The difficulty of reading objective measures from behaviour is well recognised in the research literature (Barry and Dennis, 2014), and there have been calls for clear, validated measures to be developed for identifying 'the most egregiously intoxicated patrons' (Graham et al., 2013: 2).

Moore et al. found that some subjective measures, especially slurred speech, did provide reliable indicators when compared to blood alcohol level. However, they also found that despite high levels of 'objective' drunkenness among survey participants, 'the great majority of respondents were happy, polite and interested in the survey' (2006: 29). Objective, but relatively low-level, drunkenness, in other words, was not a reliable measure of the kind of intoxication liable to lead to antisocial behaviour.

Moore et al. also found that bar staff felt they had a good level of understanding regarding the law on sales to drunks, and many had refused service in the preceding weeks. However, when additional RBS training was provided it appeared to have little impact on levels of drunkenness among customers. There are a number of plausible explanations for this: existing training may have achieved all that training is likely to achieve, or the retail environment was such that the additional training was not able to significantly affect day-to-day practice.

In 2008, Hughes and Anderson surveyed bar workers in Manchester to ascertain levels of knowledge, training and enforcement of Section 141 regulations. Results suggested much lower levels of staff training and awareness than in Cardiff. A quarter of staff had received no training at all, and less than half had been

trained in specific refusal skills (Hughes and Anderson, 2008: 1). As with the Cardiff study, this research found that slurred speech was a common indicator of drunkenness. Perhaps in common with the earlier finding that intoxication is not, in itself, a predictor of antisocial behaviour, Hughes and Anderson also found a disconnect between the law and the personal views of bar staff: less than half personally agreed that customers should be refused service on the grounds that they were drunk.

In 2014, members of the same team used trained students in Liverpool to study compliance in city centre pubs and bars. They concluded that 'UK law preventing sales of alcohol to drunks is routinely broken' (Hughes et al., 2014: 453). The 'drunk' actors were consistently sold alcohol, ranging from 60% on Wednesdays to 94% on Fridays, and from 78% before midnight to 96% after midnight. In 18% of alcohol sales to 'drunk' actors, servers attempted to up-sell by suggesting double rather than single spirit measures.

The report also noted that 95% of attempts to buy alcohol were successful in venues with door staff, compared with two-thirds in those without, raising a question regarding the role of door staff in preventing access to intoxicated customers. In recent years, initiatives such as Best Bar None have encouraged better use of door staff to monitor levels of intoxication among people entering venues. While this increases the likelihood drunk customers will be refused entry to premises, it has two further consequences: a possible increase in street flashpoints where individuals are refused entry (Barton and Husk, 2012), and, as observed by Hughes et al., reduced levels of refusal once entry is gained.

In 2007 the Home Office launched a Responsible Alcohol Sales Campaign (RASC) in which officers from 30 forces visited '1,741 poorly managed premises known to be associated with alcohol-related violence, crime and disorder to check compliance with the law.' During an initial awareness-raising period, 'think before they drink' posters and leaflets were distributed to draw attention to the relevant offences. This was followed by evidence-gathering and enforcement phases that resulted in 53 PNDs being issued for Section 141 offences.

The RASC demonstrated that addressing section 141 offences with PNDs was possible. However, a 15-page briefing document drew attention to difficulties in proving the vendor knew the customer was drunk. It was proposed that a simple confession of guilt (i.e. a statement that the vendor knew the person they sold to was drunk) could be sufficient, as could evidence from the officer that the person was so obviously drunk that any claim not to have known this had to be false. The briefing suggested that evidence of drunkenness should be so compelling that any reasonable person would conclude the customer was intoxicated.

This meant that evidence should be demonstrated beyond the simple 4-point test often used to identify drunkenness (unsteady gait; glazed eyes; slurred speech and smell of alcohol on breath) and include:

- A noticeable change in behaviour
- A lack of judgement
- Clumsiness and lack of coordination
- Decreased alertness
- Appearance

In proposing these criteria, however, the briefing highlighted the important caveat that evidence would also need to ensure apparent intoxication was not attributable to other conditions such as illness or disability.

RECENT INITIATIVES

Alcohol industry initiatives promoting responsible retail focus on voluntary schemes such as Best Bar None, Pubwatch and Purple Flag. Best Bar None is a regional awards programme, led by a number of major alcohol producers in partnership with local stakeholders, which promotes well-managed pubs and bars. Application criteria include the requirement that participating outlets 'must provide evidence of clear and effective policies to prevent and deal with drunkenness'.

Pubwatch is a scheme that supports local retailers in sharing information on anti-social behaviour and disorder, but has no specific remit regarding sales to drunk customers. Purple Flag is an accreditation scheme run by the Association of Town Centre Managers and sponsored by Diageo. It judges participating areas on partnership, amenity, transport, public safety and appeal. It has no specific remit concerning enforcement of Section 141 in individual bars, though it is likely that poor practice in this regard will have an impact on the assessment criteria. Community Alcohol Partnerships, led by the Wine and Spirits Trade Association, focus on prevention of underage drinking rather than sales to drunk adult customers.

The level, quality and support for RBS training remain inconsistent across the country. While many venues have signed up to schemes such as Best Bar None, in comparison to responsibilities such as refusing underage sales, ensuring adherence to s141 appears a low priority for many retailers.

According to Moore et al., a key barrier to retailer support for enforcement activities lies in the degree to which responsibility is placed on the licence holder where a test purchase fails. In the course of their Cardiff research, the Chair of the Licensee's Forum stated that licence holders were far more likely to support police enforcement operations if they could be assured that so long as they had provided server training, then they would be considered to have carried out due diligence (Moore et al., 2006: 40). In this instance licence-holder cooperation

appeared dependent on their responsibilities extending no further than having provided training of some form. However, writing in regard to RBS and underage sales, Grube and Nygaard (2005: 121) have pointed out that 'policy development and implementation within outlets may be more effective than server training in determining RBS effectiveness. Research indicates that establishments with firm and clear policies . . . and a system for establishing staff compliance' achieve more effective results.

As Stockwell (2001: 260) argues in an international review of RBS programmes, the failure to properly apply responsible practices 'is more a problem of motivation than of knowledge and skill'. That is to say, the provision of initial server training is only a first step to supporting compliance. Effective and ongoing policies with meaningful managerial support are critical to ensuring the skills developed in training are maintained and applied in the workplace.

Recently premises in some areas have explored the use of breathalysers to test the level of intoxication amongst customers before allowing entry. Between September 2013 and January 2014, 28 venues in Norwich piloted the use of breathalysers by door staff. Following positive feedback from door staff and police, the scheme was introduced permanently in September 2014. Similar schemes have been introduced in Northampton, Mansfield and Loughborough.

In all cases, breathalysers are seen as an aid to supporting door staff in identifying potentially problematic customers, rather than acting as a universal screening device for all potential entrants. In Loughborough, a reading of .70 microgrammes per 100 millilitres breath alcohol content (double the legal drink drive limit) has been identified as a justification for refusing entry. Commenting on this, a spokesperson for Leicestershire police said breathalyser readings were just one indicator amongst many that the premises could use to make a judgement as to whether or not an individual was drunk.

STAKEHOLDER PERSPECTIVES

Discussions among participants at the Guildhall conference revealed a range of perspectives, with many areas of shared concern but also divergence on issues of priority and practicality.

It was accepted by industry participants that, in addition to a responsibility to comply with the law, employers had a duty of care towards their employees. From this perspective, effective training and clear managerial support for staff in making decisions on service is key to protecting bar staff acting as the frontline enforcers of Sections 141 and 142. Retailers, therefore, have a series of concurrent duties: a duty not to create environments which encourage disregard for the law; a duty not to encourage behaviour which may lead to public disorder; and a duty to protect their staff from prosecution by law.

It was recognised that prosecution levels and numbers of PNDs are not the only measure of enforcement success. Where Pubwatch and Best Bar None schemes are effective, the need for enforcement activity may be reduced. Licence reviews, or the threat of licence review, may also be effective in improving practice. However, there is very little evaluation of these measures in regard to Section 141 and almost no channel for the sharing of good practice. Initiatives are often isolated and lack robust evaluation, making it difficult to attribute changes in outcomes (such as failed test purchases or reduced public disorder) to the particular intervention.

A key problem is the evident tension between compliance with Section 141 and the retail environment in many (though by no means all) outlets. Where outlets compete on discount offers for drinks, build promotions around drinks (especially spirits), remain open until the early hours, employ 'shooter girls' or use other 'up-selling' methods, then it is reasonable to ask how such environments are not an inducement to drink to the point of drunkenness.

Furthermore, is it reasonable to employ staff in such environments while holding them personally responsible for selling to customers who are drunk? In this regard, a number of participants asked whether existing mandatory conditions banning 'irresponsible promotions' might more appropriately be directed towards preventing retailers from creating environments that encourage or promote drunkenness. Others suggested the introduction of a new general licensing objective to 'prevent drunkenness'; though this again raises the question of whether the object of the law should be simple intoxication or intoxication associated with disorderly behaviour.

There was consensus that the requirement that sales are made 'knowingly' represented a significant challenge for enforcement. However, any proposal that 'knowingly' be dropped needs to be considered against a question of natural justice: should individuals be prosecuted for committing an offence if they neither knew they were committing that offence, nor had the intention of doing so? While a resolution to the current situation would be desirable, it may well require a more substantial reconsideration than simply removing the word 'knowingly' from the existing wording.

Presenting their research evidence, Professor Mark Bellis and Dr Karen Hughes proposed the adoption of multicomponent programmes modelled on the STAD programme. In practice this would involve establishing local programmes with high levels of community and stakeholder support, carrying out detailed preliminary analysis of compliance levels, monitoring participant engagement and involving local media in the process of awareness-raising.

A further proposal was the adoption of both campaign and policy approaches based on the relative success of Challenge 25 in targeting underage sales. In practice, this would require a dual approach: a high-visibility campaign spearheaded by the alcohol industry to not only raise awareness of the law but,

perhaps more importantly, to present the issue as one of staff protection (for example, using materials reminding customers that bar staff have a legal duty not to serve drunk customers). In addition, a written policy on sales to drunk customers could be added to licensing conditions, as is the case for underage sales. While Best Bar None schemes require a policy of this kind, there remains resistance to putting this on a statutory footing within the industry. Licensing conditions need to be proportionate, practical and enforceable, and it is argued that requirement for a policy on sales to drunks would not meet those criteria; however, so long as legislation outlaws sales to drunk customers, it seems reasonable to require retailers to draw up policies to support compliance.

CONCLUSION

Clearly there are many challenges in exploring responses to the issue of alcohol sales to drunk customers. Despite this, it is an area where action from policy, retailer and enforcement stakeholders could improve its application and thereby contribute to a reduction in alcohol-related harms.

Recognition and exploration of key issues is necessary for any sustainable action. Significant challenges include:

- *Defining workable measures for drunkenness*
- *Clarifying where and how drunkenness becomes a risk to public order*
- *Supporting consistency of training across venues*
- *Ensuring management support above and beyond staff training*
- *Targeting the role of off-sales in exacerbating public drunkenness*
- *Locating refusal-to-serve decisions within wider retail contexts which often encourage high levels of consumption*

Progress will depend on acknowledging that responsibility is shared between producers, retailers, staff and individual customers. If Section 141, or subsequent legislation designed to achieve similar goals, is to be meaningful then multi-stakeholder approaches are needed. These will need to establish consensus on what the law should target, where responsibility for both prevention and enforcement lies, and how individual-level server decisions fit into broader retail environments.

As Graham et al. point out, it may seem unlikely that existing laws on sales to drunk customers will ever be effectively enforced; however, the same was true for smoke-free workplaces 50 years ago (Graham et al., 2013: 4). The difficulties around alcohol sales are more pronounced than for smoking since some degree of drunkenness is inevitable where alcohol is sold (and is, indeed, one of the purposes of drinking). Nevertheless, the better development of ways to tackle the sale of alcohol to customers whose intoxication demonstrably poses a risk to themselves or others should continue so long as the Government considers it a serious issue, and the alcohol industry claims a commitment to responsible retail.

RECOMMENDATIONS

The following proposals do not represent the established views of participants at the Guildhall conference; rather they set out ideas that were felt to be worthy of further consideration. They should be seen as a contribution to an ongoing debate that, of necessity, must be extensive and carefully considered.

Policy

A substantial review of current legislation should address both the principles and practicality of the law, as well as the role of wider environmental contexts on individual decisions. Any review should seek to improve guidance on how drunkenness should be defined within the context of refusing sales.

The Government should consider the introduction of a mandatory condition requiring premises to produce a policy on sales to drunk customers, in line with existing requirements on underage sales.

Industry and Retail

Development of a national campaign – learning from existing programmes such as 'Challenge 25' – to raise awareness of the law among licensees, customers and bar staff.

Server training should be consistent, regularly updated and supported through ongoing managerial engagement.

Trade bodies should develop guidance on the avoidance of retail environments liable to encourage drunkenness.

Enforcement

The use of Penalty Notices for Disorder should be further explored, but with evaluation of their impact to ensure use is proportionate, well-targeted and effective.

General

Programmes to tackle public drunkenness should adopt a multicomponent approach and be designed in the light of available evidence and evaluations.

Further research should be carried out into the role of off-trade in exacerbating problems regarding public drunkenness.

Reviews of the legislation should take place in the context of a broader debate on public drunkenness, cultural attitudes to intoxication and the relationship between intoxication and harm. This should seek to establish a realistic perspective on what levels of intoxication, or types of behaviours associated with drunkenness are generally acceptable and in what contexts; the role of environment and cultural norms in influencing behaviour; and the relative responsibility of suppliers and consumers in preventing problematic consequences arising from consumption.

REFERENCES

- Babor, T. et al. (2010). *Alcohol: No ordinary commodity* 2nd ed. Oxford: Oxford University Press.
- Barry, A. and Dennis, M. (2014). Methodological and practical limitations to visually determining intoxication. *Addiction* 109.5, 851-3.
- Barton, A. and Husk, K. (2012). Controlling pre-loaders: alcohol-related violence in an English night time economy. *Drugs and Alcohol Today* 12.1, 89-97.
- Buvik, K. (2012). How bartenders relate to intoxicated customers. *International Journal of Alcohol and Drug Research* 2.2, 1-6.
- Dingwall, G. (2006). *Alcohol and Crime*. Cullompton: Willan Publishing.
- Graham, K., Miller, P., Chikritzhs, T., Bellis, M., Clapp, J., Hughes, K., Toomey, T. and Wells, S. (2013). Reducing intoxication among bar patrons: some lessons from prevention of drinking and driving. *Addiction* 109.5, 693-8.
- Grube, J. and Nygaard, P. (2005). Alcohol policy and youth drinking: Overview of effective interventions for young people, in Stockell, T. et al., *Preventing harmful substance use: The evidence base for policy and practice*. Chichester: John Wiley.
- HC Deb 30 June 2014, c386W. Licensing Laws.
Available at <http://www.theyworkforyou.com/wrans/?id=2014-06-30c.201058.h>
- Health Committee (2010). *Alcohol – first report of Session 2009-10, vol 1*. London: Stationery Office.
- Herring, R., Baykey, M., Thickett, A., Stone, K. and Waller, S. (2011). *Identifying promising approaches and initiatives to reducing alcohol-related harm*. Report to Alcohol Research UK and Joseph Rowntree Foundation.
- HM Government (2012) *The Government's Alcohol Strategy* Cm8336. London: Stationery Office.
- Holder, H. (2000). *Community prevention of alcohol problems*. *Addictive Behaviours* 25.6, 843-59.
- Holder, H. (1998). *Alcohol and the community: A systems approach to prevention*. Cambridge: Cambridge University Press.
- Hughes, K., Bellis, M., Leckenby, N., Quigg, Z., Hardcastle, K., Sharples, O. and Llewellyn, D. (2014). Does legislation to prevent alcohol sales to drunk individuals work?: Measuring the propensity for night-time sales to drunks in a UK city. *Journal of Epidemiology and Community Health* 68.5, 453-6.
- Hughes, K. and Anderson, Z. (2008). *Identifying drunkenness and preventing sales of alcohol to intoxicated customers in Manchester*. Liverpool JMU, Centre for Public Health.
- Jennings, P. (2012). Policing drunkenness in England and Wales from the late eighteenth century to the First World War. *Social History of Alcohol and Drugs* 26.1, 69-92.

Jones, L., Hughes, K., Atkinson, A. and Bellis, M. (2011). Reducing harm in drinking environments: A systematic review of effective approaches. *Health and Place* 17, 508-18.

Maguire, M. and Nettleton, H. (2003). *Reducing alcohol-related violence and disorder: An evaluation of the TASC Project*. London: Home Office.
http://www.popcenter.org/problems/assaultsinbars/PDFs/Magure%26Nettleton_2003.pdf

Mcivor, C. (2001). Liability in respect of the intoxicated. *Cambridge Law Review* 60.1, 109-27.

Ministry of Justice (2013). *Criminal Justice Statistics Quarterly: Out of Court Disposals*. Available at <https://www.gov.uk/government/statistics/criminal-justice-statistics-quarterly-december-2013>

Ministry of Justice (2014). *Penalty Notice for Disorder Guidance*. London: Stationery Office.

Mistral, W., Velleman, R., Mastache, C. and Templeton, L. (2007). *UKCAPP: An evaluation of 3 UK community alcohol prevention programmes*. Report to Alcohol Education and Research Council.

Moore, S., Perham, N. and Shepherd, J. (2006). *A multi-agency community-based intervention to reduce excessive drinking in Cardiff city centre*. Report to the Alcohol Education and Research Council.

NHTSA [National Highway and Traffic Safety Administration] (2005). *Preventing over-consumption of alcohol – sales to the intoxicated and 'happy hour' (drink special) laws*. Washington: US Department of Transportation DOT HS 809878.

Norstrom, T. and Trollid, B. (2013). Was the STAD programme really that successful? *Nordic Studies on Alcohol and Drugs* 30.3, 171-8.

Scottish Government (2013). Daily Written Answers, Thursday 11 April 2013, S4W13828. Available at <http://www.scottish.parliament.uk/parliamentarybusiness/28877.aspx?SearchType=Advance&ReferenceNumbers=S4W-13828&ResultsPerPage=10>

Stockwell, T. (2001). Responsible alcohol service: lessons from evaluations of server training and policing initiatives. *Drug and Alcohol Review* 20, 257-65.

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