

Case study. Application for a premises licence for a home delivery service in Bury.

Background

In April 2013, Bury public health received an application for a premises licence for a 24/7 home-delivery service to be based in Bury, a district council of Greater Manchester. The proposed off-licence unit was to be sited in an industrial estate in an area of Bury that has a particularly high prevalence of alcohol-related hospital admissions. While the unit would not provide a public-facing service, it would offer a delivery service across Bury and potentially into neighbouring boroughs such as Bolton and Salford.

The applicant was an individual living in the local area who planned to use the premise to store alcohol and other goods (light snacks) before delivery. The sale of alcohol would be for consumption off the premises; however, the application stated that the premises would be open to the public from midnight through to midnight, seven days per week.

In the application a number of steps were described with the intent of promoting the four licensing objectives:

General

There shall be no public access to the licensed premises.

Preventing crime and disorder

Staff shall be trained in how to recognise and refuse service to customers who are intoxicated, and in how to handle potential troublemakers and defuse difficult situations.

All refusals shall be logged, and a refusal book shall be kept in the delivery vehicle.

Public safety

All deliveries of alcohol shall be delivered to a premise with a valid post code.

A written record shall be kept of all sales and the address of all deliveries.

Preventing public nuisance

Company policy shall be that only one person will be permitted to collect purchases from the van upon receipt of delivery.

Protecting children from harm

When placing internet orders for products, a warning is to be displayed to purchasers that by placing the order they confirm they are over 18. When placing an order over the telephone the seller will ask for verbal confirmation that the purchaser is over 18.

The age of the purchaser is to be confirmed before the goods are handed over at the point of delivery.

The business will operate a Challenge 25 policy, which will be advertised on the website and emphasised when any orders are taking place. All staff will be trained in the Challenge 25 policy and the forms of acceptable ID.'

Public health case

There were immediate concerns that the proposed off-licence would be situated in an area of Bury with high levels of alcohol related harms, and three lower super output areas (LSOAs) that are in the top 10% of most deprived areas in Bury and in England. The alcohol related hospital admissions for the area were higher than the Bury average and second highest in Bury. At that time, the area also had the second lowest life expectancy and the second highest mortality rates in Bury.

When the licensing legislation that made public health a responsible authority was implemented in April 2012, the public health department¹ looked at this as an opportunity to influence decision-making that could positively affect the health of Bury residents. As such, the department used information from the joint strategic needs assessment and local 'township profiles' to determine whether to respond to an application with a representation. Using this intelligence, informal discussions were then held with the local police licensing officers, Bury Council's licensing service and other responsible authority representatives.

As a department, we generally look at population level data, whereas licensing representations require premises-specific data, which in this case did not exist as the proposed premises was a new business venture.

Through the informal discussions, it became apparent that the police had concerns about this proposed delivery service. A decision was made by public health and Greater Manchester Police to make representations requesting that this licence was not granted.

The representations were written independently of each other, but were supportive of each other, and the public health representation supported the licence conditions suggested by GMP, should the licence be granted.

In the absence of premises-specific information, public health sought research evidence on home delivery services and young people accessing alcohol. The public health case was made under the two objectives: public safety and protecting children from harm.

The application was deemed not to support the licensing objective for public safety due to the geographical location of the premises and the nature of the proposed business. The information submitted under this section described the relative harm caused by alcohol as outlined in the local township profile. There was referral to a document called 'Alcohol in Europe' (Institute of Alcohol Studies UK, 2006), which cited the World Health Organisation (WHO) as having modelled the impact of alcohol being less available from retail outlets. This was used as evidence to support the notion that the "provision of a 24/7 delivery service will contribute to the years of disability and premature deaths in Bury, and to the associated costs of supporting people who become ill as a result of their alcohol misuse".

¹ At this time, Public Health was a department within Bury Primary Care Trust. The Public Health team now sits within Bury Council Department for Communities and wellbeing.

This same report provides examples of how an increase in numbers of off-licences increases the availability of alcohol and its consumption. Furthermore, there is reference to how an increase in the capacity of licensed premises in Manchester city centre between 1997 and 2001 correlated with an increase in the number of assaults reported to police.

The type of proposed business was particularly significant when demonstrating that the licence application did not support the objective of the protection of children from harm. In this section of the representation, public health used demographic information to demonstrate that the area where the proposed premise was to be sited had more children under 16 compared to the national average and an overall younger profile than the rest of Bury.

The section described how a delivery service such as this could increase accessibility of alcohol to children and young people. As the delivery service accepted debit cards as a method of payment, despite identification checks, this could potentially allow children and young people under 18 to purchase online or over the phone. A screen dump of a Google search for “fake ID for children” showed how easy it would be for children who looked old enough to use fake ID.

The Joseph Rowntree Foundation document, ‘Young People, Alcohol and Influences’ (Bremner, P. et al, 2011) was referenced as it states “young people are more likely to drink, to drink frequently and to drink to excess if they... have very easy access to alcohol”. It also says that “...the odds of being an excessive drinker increase... if a young person is buying their alcohol” and that “buying their alcohol increases the likelihood that they have been drunk more than once”.

There was a paucity of research papers on alcohol home delivery, and those available tended to be from the US. A study of alcohol home delivery services called Alcohol home delivery services: a source of alcohol for underage drinkers’ concluded that “purchasing delivered alcohol was associated with male gender, high risk drinking (drinking five or more drinks on an occasion), more recent and more frequent drinking”. The report concluded “home delivery is a previously unidentified source of alcohol for underage drinkers that could be curtailed with effective alcohol policies” (Fletcher L.A. et al, 2000).

This supported the notion that a home-delivery service would encourage higher risk drinking and underage drinking, and therefore would not promote the licensing objective of the protection of children from harm. This combined with the demographic data built a stronger public health case against granting the licence.

Greater Manchester Police case

The police contacted the applicant prior to the hearing and discussed their concerns should the licence be granted. After discussion with public health, it was agreed that according to the application the measures taken would not sufficiently promote the licensing objectives and so the police and Bury public health should submit representations.

The hearing

Two days before the hearing, the applicant's solicitor forwarded a number of documents in support of the licence application. These were:

An article from the Guardian called 'With 8% growth, social media still on the rise – as Facebook users get older' from 2009.

A copy of a licence granted by Manchester City Council in 2011 for a similar type of delivery service.

Case law '[*123 R. v Secretary of State for Health](#)' from 1999 and relating to 'Appeal against the decision of Moses J. in the matter of judicial review of the decision by the Secretary of State to make an emergency control order under [s.13 of the Food Safety Act 1990](#).'

The applicant's solicitor presented the application and supporting papers to the panel, with further input and responses to questions from the applicant. The applicant described how this was his first business venture and the first time he had worked for himself. He would be the sole member of staff, taking telephone orders and delivering them. He would operate 24 hours a day, seven days a week and would usually work alone.

This caused concern, particularly for the police, as a person providing this level of service without cover from other staff may put themselves and others in danger by driving when tired. They would also be more susceptible to abuse by customers collecting deliveries from the vehicle.

The acceptable methods of payment were also a concern. Public health raised the issue of debit cards being legitimately available to children. Numerous websites offer fake ID to children, so any children who looked old enough could purchase from this service. The point was made about a potentially exhausted member of staff possibly having difficulty in assessing a person's age or whether the ID was genuine.

After making representations, opportunities for questions were provided. The applicant's solicitor suggested that public health had not provided evidence and that the research reports referred to in the representation were dated. He also stated that "public health is not a licensing objective".

The paucity of research on the matters described in this case meant that some of the public health evidence used was dated. However, the point to remember is that it does not necessarily mean it is out of date or inadmissible. Sir Richard Doll was the first scientist to pronounce the link between smoking and lung cancer as long ago as 1950. His research was carried out in the 1940s and this public health evidence is still used as a basis for tobacco control policy throughout the world.

In terms of the evidence base, we must remember that a solicitor's definition of evidence and a public health definition are likely to be incomparable. A solicitor may look for documents or material objects to determine whether a belief is true or not. Public health evidence is likely to consist of guidance, systematic reviews of research, and evaluation documents. While the expression may be the same, the characterisation of "evidence" is likely to differ. As public health is a relatively new concept to many in the licensing world, it is important that we seek to understand the language of each other's professions and gain an acceptance and mutual respect for the contributions each can make to licensing.

The applicant's solicitor referred at length to case law and a document he had circulated to responsible authorities two days before the hearing. He focussed on two paragraphs of the 21-page document declaring that as in the case law document, it would be disproportionate not to grant a premise licence to protect the public from harm.

As the public health representative at the hearing, I was nervous to the point of feeling intimidated at the thought of being questioned by a solicitor, having never experienced this before. Despite the highlighting the two paragraphs the solicitor referred to, I had read the whole document a number of times. I wondered why such a document would be used to demonstrate proportionality as it seemed the secretary of state's case was upheld and the court did not rule in favour of the company making the appeal. When I questioned the solicitor about this at the hearing he agreed, and no further reference was made to this case law.

To say that the process was a learning curve would be an understatement. I have learned to accept that this is a fair process that must be followed to ensure adequate measures are in place to promote licensing objectives. I have also learnt that solicitors are paid to do a job, the same as I am, and while we have different agendas, in some ways we are similar. As a public health professional, I look for evidence to support decisions that reduce health inequalities and improve quality of life. A solicitor also uses evidence to support his or her case. We have a different understanding of evidence, but ultimately we both want our evidence to be strong enough for the right decision to be made by the licensing panel, so do not be discouraged or intimidated by the solicitor's evidence.

The outcome

The applicant was clearly enthusiastic about his business venture. In the current climate, it is difficult not to empathise with someone who is creating employment for himself. That said, public health is about prevention and protection, and often for the greater good rather than the individual. From a public health perspective, while this business would have created employment for an individual, and would have addressed other wider health determinants for him, it would also have had a detrimental effect on the local population. The business would have provided yet another alcohol outlet in an area that was already a concern for the police and the NHS. It may have inadvertently made alcohol more accessible to a young population, supporting the binge drinking culture that is a problem for the town as a whole. Furthermore, delivery services affect a wider area than the one where the business is based. This could affect the neighbouring boroughs of Bolton and Salford.

The licensing and safety panel considered all the information that had been presented to them on the applicant's proposed business venture and the way it would promote the four licensing objectives. The decision notice of the panel stated:

"However, the Panel found, on balance and after due consideration, that the control measures and proposed additional conditions would not sufficiently promote the four licensing objectives and that there was sufficient evidence that the grant of the Licence would materially impact on the promotion of the four licensing objectives, namely;

- Crime and disorder
- Public safety

- The prevention of public nuisance
- The protection of children from harm

“In relation to crime and disorder, the Panel were satisfied that the grant of the licence would provide a further outlet for the sale of alcohol which, based on the evidence from both GMP and the local Public Health Department, could increase the incidents of alcohol related crime and disorder and domestic violence in the areas to which deliveries are to be made. The Panel was also concerned as to the risk of crime against the Applicant himself in view of the proposed method of sale and delivery in that this was intended to be by the Applicant working alone and undertaking business through his vehicle window.

“In relation to public safety, the Panel were satisfied that the grant of the licence would provide a further outlet for the sale of alcohol which, based on the evidence from both GMP and the local Public Health Department, could increase the incidents of alcohol related crime and disorder and domestic violence in the areas to which deliveries are to be made. The Panel also felt that those delivering alcohol and those attending the Applicants vehicle to accept a delivery would be put at risk as to their safety if disagreements arose as to the recipient’s age, identification, levels of intoxication and the like. The Panel was also concerned as to the method of sale and delivery proposed by the Applicant, in that this was intended to be by the Applicant working alone and undertaking business through his vehicle window. Further, the hours the Applicant intended to work, in the Panel’s view increased the risk to both the safety of the public and the Applicant himself.

“In relation to the prevention of public nuisance, as well as the evidence of a potential increase in alcohol related crime and disorder, the Panel was also concerned as to the potential nuisance that may be caused by the Applicant making deliveries late at night and in the early hours of the morning. The Panel was satisfied that most deliveries were likely to take place during that period and members of the public may be affected by the noise of the delivery vehicle and any associated noise and disturbance from the delivery and possible refusals.

“In relation to the protection of children from harm, the Panel found that the control measures and procedures proposed by the Applicant to prevent sales to persons under 18 were not sufficient, taking into account the fact that purchases could be made through a system that allows debit card purchases. This is because the Panel was satisfied that debit cards could be issued to persons under 18 and no checks could be made via the system as to the user’s true identity or age. The process for checking identity late at night and in the dark and the prevalence of fake forms of identity concerned the Panel. Therefore the Panel was satisfied there was a serious risk that purchases could be made by or for persons under 18 and the proposed control measures did not deal with that eventuality.”

Licensing Hearings Panel, 24 May 2013

The panel decided not to grant the licence and no appeal was made against this decision.

Conclusion

In public health terms, the evidence was clear that by granting a licence for a home-delivery service, in this area of Bury, the health consequences and other alcohol-related harm would be costly in

terms of life-years lost and financial costs to organisations such as the police, fire, social care and housing services.

However, there is much ground to be covered in promoting the acceptability of public health research and evaluation as viable evidence that can be submitted in licensing representations. Bury Council has made great strides in embedding public health into the culture and ethos of the organisation. There are other organisations though, for whom public health is still an unknown quantity. By working with other responsible authorities it is possible to make the public health case in a licensing arena, and it is only by doing so that public health teams can learn from others and lead the way.

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6. Alcohol-Related Admissions

Bury

The effects of excessive alcohol consumption are a major cause of avoidable hospital admissions. Hospital admissions for alcohol-related harm are calculated using 'attributable fractions': for each condition, the 'fraction' is calculated from the proportion of admissions which are identified as being attributable to alcohol. These fractions are then applied to hospital admissions data.

Figures published in the 2012 APHO Health Profiles show that Bury's hospital stays for alcohol-related harm in 2010/11 (2,272 per 100,000 population, age-sex standardised) was **significantly worse** than the England average

Radcliffe Township

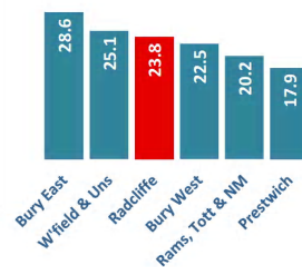
Township	No. of admissions* 2011/12	Rate per 1000 pop
Bury East	975	28.6
Whitefield & Unsworth	750	25.1
Radcliffe	800	23.8
Bury West	492	22.5
Rams, Tott & NM	634	20.2
Prestwich	612	17.9
Grand Total	4,263	23.0

*sum of alcohol attributable fractions for each admission
excludes 343 records where postcode could not be attributed to a ward

Radcliffe has **slightly more** alcohol related admissions per 1000 population than Bury overall.

Radcliffe has the **3rd highest** rate of the six townships.

Comparison of Alcohol Related Admissions per 1000 population (2011/12):



Radcliffe by Ward

Radcliffe East has the **5th highest** rate of admissions, and with a rate of 26.8 per 1,000 population is **worse** than the Bury average of 23.0 per 1,000.

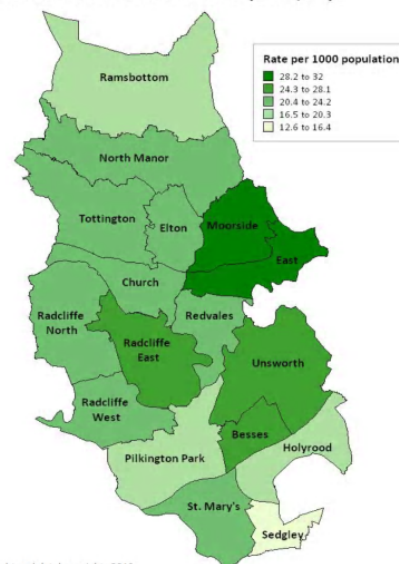
Radcliffe North has a **lower** rate of admissions than the Bury average at 22.5 per 1,000 population.

Radcliffe West has the **10th highest** rate of admissions, and at 22.1 per 1,000 population is **slightly better** than the Bury average.

Ward	No. of admissions* 2011/12	Crude rate per 1000 population
Moorside	383	32.0
East	318	30.1
Besses	296	27.8
Unsworth	259	27.3
Radcliffe East	302	26.8
Redvales	273	23.8
St. Marys	240	23.6
Church	244	23.6
Radcliffe North	251	22.5
Radcliffe West	247	22.1
Elton	248	21.6
Tottington	208	21.2
North Manor	209	21.2
Pilkington Park	195	19.9
Holyrood	209	18.7
Ramsbottom	218	18.6
Sedgley	164	12.6
Total	4,263	23.0

*sum of alcohol attributable fractions for each admission
excludes 343 records where postcode could not be attributed to a ward

Alcohol Related Admissions (2011/12)



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Ordnance Survey 100051019

Data Source: SUS (via GMBHS Data Warehouse, 2012); Census 2011