

## Politics, policing and licensing: Police and Crime Commissioners

Philip Kolvin QC and Rory Clarke

Cornerstone Barristers

The introduction of Police and Crime Commissioners (“PCCs”) on 22 November 2012 is the most significant change to policing in 50 years. Elections were met in the main with indifference and low turnout from the voting public. This has not, however, diminished the powers of the successful candidates. In this article, we shall consider the power and, as importantly, the influence and political drivers, of PCCs, and offer views as to the impact they may have on licensing regulation.

What are PCCs?

Introducing democratic accountability to policing was a Conservative manifesto promise and written into the Coalition Agreement. Commissioners, as the elected head of the force, will be responsible for a series of important functions

- (1) hiring and firing the Chief Constable
- (2) publishing the police and crime plan, which includes the local policing body's police and crime objectives; this is the means by which the chief constable's performance in providing policing will be measured;
- (3) holding the chief constable to account for the exercise of his own and his subordinates' functions, including the way in which he exercises his duty to have regard to the police and crime plan;
- (4) securing that the police force is efficient and effective.

Just as chief constables are answerable to the PCC, so the PCC is answerable to the electorate at the ballot box, every four years. While the PCC does not run the police force, s/he does set the agenda, and there will unquestionably be temptation on the part of the PCC to set it with one eye cocked towards local views and the local press.

The Home Office itself puts it this way:

To provide stronger and more transparent accountability of the police, PCCs will be elected by the public to hold chief constables and the force to account; effectively making the police answerable to the communities they serve.

Police and crime commissioners will ensure community needs are met as effectively as possible, and will improve local relationships through building confidence and restoring trust. They will also work in partnership across a range of agencies at local and national level to ensure there is a unified approach to preventing and reducing crime.

PCCs will not be expected to run the police. The role of the PCC is to be the voice of the people and hold the police to account.

Viewed slightly differently, the PCC is the servant of the people, and the construct of the legislation is clearly that he should be influenced by their views. Depending on the personality of the PCC there is a danger that in performing his duties, he will perform to the gallery. The check and balance of accountability to Police and Crime Panels is written into the Act. These are principally local authority-nominated members, who are likely to be subject to the same political pressures.

The radical nature of the change should not be underestimated: indeed it was intended to be radical. Put starkly, it involves a shift in the tectonic plates of policing from a force being run by a vocational policeman according to policing principles and free of outside political interference, to the force being run strategically by an elected politician answerable to other elected politicians and the general populace, with the chief constable responsible for implementing the PCC's strategic plan. That successful candidates are in the main drawn from the ranks of career politicians is perhaps no coincidence. The Senior Presiding Judge, Lord Justice Goldring, perhaps expressing disquiet at this politicisation has already warned magistrates to ensure working relationships with PCC's are kept at "a good arms length".

It is no answer to say that the PCC's influence will be constrained by the limits to their powers, for they have the ability to fire the Chief Constable. This power to dismiss is no more and no less than the Prime Minister holds over his ministers.

The Mayor of London has already shown the way. Although the arrangements in London are slightly different – involving a Mayor's Office for Policing and Crime and a Metropolitan Police Commissioner appointed by Her Majesty, we have already seen how the current Mayor precipitated the resignation of Sir Ian Blair, then Commissioner of the Metropolitan Police. While the circumstances in that case were extreme, it is a demonstration of the power which PCCs hold even more directly over chief constables.

The intention is that operational decisions are exclusively matters for the chief constable. But this notional demarcation will be difficult to apply in practice. Even the Home Office

guidance is impossibly vague. It asks “What is and what isn't an operational matter?” and answers its own question with “This is difficult to define” (!)

## Licensing

What role will PCC's have in licensing?

According to the current section 182 Guidance, PCCs:

“... will be expected to have a central role working in partnership with local authorities, enforcement bodies and other local partners to decide on what action is needed to tackle alcohol-related crime and disorder in their areas.”

How might this work? This may be considered under several headings: policy, applications, enforcement, reviews, EMROs and levies.

In relation to policy, the formal consultee on a licensing policy under section 5 of the Licensing Act 2003 remains the chief officer of police, i.e. the chief constable. However, the PCC could undoubtedly in his plan set out objectives to create or extend cumulative impact zones, resist extended licensing hours or through policy encourage the imposition of conditions regarding (for example) CCTV, polycarbonates, door supervision levels and so forth. If sought by the chief constable at the instance of the PCC, it may be difficult for licensing authorities politically to resist these kinds of restrictive approaches in their policies.

In relation to applications, again, while the consultee in respect of premises licence and club premises certificate applications and temporary events notices is the chief constable, there is no reason why the PCC could not exhort a much more interventionist approach to licensing. This may be directly at odds with a voluntary, partnership model employed at local level, but in keeping with a county-wide, overtly restrictive approach to the industry.

Enforcement is one area where we could see the biggest impact of all. In July 2012 Peterborough Police launched a crackdown on alcohol-fuelled crime in Peterborough City Centre. Operation Themis as it was called, promised a “zero-tolerance approach on disorder” which produced 50 arrests and 50 banning orders within a few weeks. There are clear strategic policing advantages to such high profile operations, but it is undeniable that they also produce big headlines, generate publicity and are likely to play well come election time. While not every town will necessarily have the particular needs of Peterborough we can expect to see a lot more such operations in the near future.

In relation to reviews, the PCC may through the police and crime plan encourage a much

more interventionist approach, perhaps based on quotas, targets or lowered thresholds for intervention. In some areas there has been concern that police reviews are being brought on crude analysis of statistics on reported crimes which pay insufficient heed to whether these are actual crimes, the type of crime concerned, the number of people passing through the premises and their dwell-time. To say that premises are the worst performing in a borough makes headlines, but may ignore that these are reported thefts in premises operating 20 hours per day with several hundred thousands of people passing through every year. However, a plan to bring in for review such “worst performing” venues may expose premises to reviews and regulatory restrictions which have perfectly good relations with front-line police officers who are experts in managing the night time economy.

The new kids on the regulatory block are late night levies and EMROs. Early analysis has not shown an onrush of eagerness amongst local authorities to implement either. However, survey work has tended to canvass unelected officers rather than members, and could not take into account what influence the new PCCs may bring to bear on the topic.

As for representations on EMROs, the responsible authority for consultations on EMROs is not the PCC but the chief constable. However, it must be remembered that the chief constable is answerable to the PCC. If the latter’s plan is for there to be more EMROs in order to released operational police officers to other areas of police work, it will be very difficult for the chief constable not to transmit his master’s urging to the licensing authority or for the authority simply to ignore it.

Finally, levies. Here, the Police Reform and Social Responsibility Act does require consultation with both the PCC and the Chief Constable. It is not easy to imagine them pulling in opposite directions on the issue, and they will have every incentive to seek a levy, which is no skin off the police’s nose, but which is a sore issue for the licensed trade and, as many authorities see it, a rather unprofitable but bureaucratic miasma for them.

The newly-elected PCCs do not want for advice on licensing. Recognising the importance of the issue, and perhaps the opportunities which this new office brings, briefing notes to candidates have been issued by the Home Office, the LGA, Alcohol Concern and the Association of Licensed Multiple Retailers.

The Home Office is keen to ensure PCCs remain 'on-message' on alcohol. Alcohol is the subject of one of the ten areas of policy on which they produced detailed briefings for candidates. These were selected as the “aspects of crime and policing that need national strategies and nationally co-ordinated operational response”, in areas “where central government input is important.” It singles out in particular a focus on “our work with the

drinks and hospitality industries to reshape our national approach to alcohol.”

The briefing itself is headed “Tackling Alcohol Misuse”. It consists of a summary of the National Alcohol Strategy and the Home Office measures to re-balance the Licensing Act. While it does not inform a PCC how he or she might approach their role in relation to licensing, it lists the powers available to the police. It is entirely focused on the negative aspects of the night time economy, with no appeal to the need for these aspects to be balanced against the positive contribution of vibrant town centres.

The Alcohol Concern briefing for new PCCs is also exclusively focused on the problems that alcohol causes, perhaps understandably given the source. It suggests that PCCs will need to take a public stance on such issues as local alcohol licensing policy, antisocial behaviour, drink driving, police/hospital liaison and minimum pricing when this comes into effect.

The Local Government Association similarly encourages a focus on the “small minority of retailers” who behave irresponsibly when selling alcohol. It is headed “Managing the Night-Time Economy”. It contains, helpfully, some suggested questions a new PCC might ask the chief constable:

- Has the force fulfilled its duty to make arrangements to effectively exercise its functions with regard to representations on licences?
- Are measures in place to identify hot spots of alcohol-related violence and disorder?
- Has due consideration been given to the creation of a cumulative impact policy or a late-night levy? What evidence is there to support it?
- If a late-night levy is introduced, what are the best ways to spend the money to tackle alcohol-related crime?
- Is income from the levy benefiting the place that contributes the money? It is not required that the money is spent in the same place, but doing otherwise may lead to challenge.
- Is your police force properly engaging with partners, including retailers, to ensure a joined-up and effective approach to reducing alcohol-related crime and disorder?

A PCC who is asking these kinds of questions will inevitably be drawn into the review of operational decisions: “What are you, the Chief Constable, doing to review your premises with the highest record of offences?”

The licensed industry is perhaps understandably concerned that the introduction of county-

wide policies does not jeopardise existing local relationships. British Beer and Pub Association Chief Executive Brigid Simmonds wrote to all PCC candidates before the elections to push the case for partnership working. She reminded them of the need to make connections with all the other bodies that operate in the licensing field: local authorities, health and wellbeing boards, and other local public sector partners. She was keen to stress partnerships such as Pubwatch, Best Bar None, Business Improvement Districts, Community Alcohol Partnerships and Purple Flag that are all capable of helping at a local level.

## Discussion

The institution of PCC does bring certain advantages to the business of licensing regulation.

First, the PCC may through his plan engender much better analysis of the relative performances of town centres. Why did Centre A have 50 glass-related attacks last year while Centre B had 10? What is Centre A doing wrong, or what is Centre B doing right? What lessons can be learned? Is it simply a difference of demographics? Or is it about polycarbonate licensing conditions? Or is it about responsible service, or quality of police response? Or is there simply a better Pubwatch scheme in Centre B which has driven out the miscreants?

Second, there are undoubtedly areas where the balance between partnership and regulation has tipped too far in favour of the former. A strategic approach involves looking carefully at where the balance lies. If there is a belief that nobody will get reviewed, this can be as unhealthy as a culture where reviews are too easily brought. Proper plans could set out better criteria and benchmarks for the consideration of such issues.

Thirdly, strategic approaches may involve the better allocation of resources across entire administrative areas, so that police energy may be focused on the places which need it most.

Against that, there are clear risks with PCCs becoming over-involved in licensing regulation.

First, the great majority of licensed premises are run by people who want to comply, and who have built up strong relationships of trust and co-operation with local police officers. While there are cultural variations from town to town, this is no bad thing – a night time economy is a living, breathing micro-culture. Everyone involved in the work knows of major reviews brought against the will of the local officer, because orders have “come from above.” While it is possible that the officer had become over-familiar with the premises concerned, it is just as likely that in fact the relationship was working well, but that the review was found necessary because of a crude approach to its statistics, or because the review itself was needed to meet some statistical benchmark. It will be a steep learning curve for PCCs if they are to avoid falling into these traps.

Second, while there are clear benefits to a county-wide approach, licensing is a local scheme of regulation dependent on individual proposals in individual places. There is a danger that new appointees, keen to hit the ground running, will take the view that “something needs to be done”, and create plans which are insufficiently sensitive to local variations. It is sincerely to be hoped that before imposing cultural changes, PCCs listen first and act later.

Third, for good or ill, licensing clampdowns are usually inspired by operational police decisions. The word “usually” is deliberate – in some cases an Alcohol Misuse Enforcement Campaign is centrally orchestrated and nationally publicised. But there is a real danger that sensitive decisions about the level of enforcement or objection activity will come to be driven by a glance towards political popularity. This may conceivably cut both ways – an attack on the licensed trade in a university town may go down like a tuition fees increase. But for the most part, and particularly where turnout is so low, licensing enforcement may be encouraged in order to attract the support of the small number of voters needed to win an election. Even if choices are not consciously made on such grounds, the influence of the Panel is such that this may inevitably occur.

There is here a distinction to be made. The Licensing Act 2003 first introduced democracy to licensing when it transferred the power to grant licences from magistrates' courts to licensing authorities. However, licensing policy as pursued by licensing authorities is

largely unaffected by party politics, with a few notable exceptions. At elections there are many things we want our local authorities to deliver, and licensing policy tends to come well down that list.

However, for PCCs, licensing provides some opportunities ripe for making headlines that will play well come election time. The introduction of an EMRO, a late night levy or a cumulative impact zone all have the potential to create noticeable impacts that may attract voters. Campaigns against sales to minors or the intoxicated can produce headlines in local newspapers that will generate publicity for a PCC. Even when licensing is not directly mentioned, an electoral promise to “crack down on crime-hotspots” or to eliminate “city centre no-go zones” will inevitably have a licensing dimension. Shutting down a few large night-clubs might only serve to distribute problems rather than solve them, but it is a tangible effect for which a PCC can claim credit. Can we expect PCCs, who are politicians, to be blind to such considerations? Those who fear the politicisation of the police will not have been reassured when three-quarters of successful candidates were affiliated to the two biggest political parties.

Early signs show that at least some candidates have focused on licensing with enthusiasm and that this has met with electoral success. Martyn Underhill, a candidate for PCC in Dorset was reported by the BBC as saying the police had to clamp down on “stag culture” and that if elected he promised to shut down more problem venues. His rival candidates disagreed, claiming that this is not the role of the PCC, or calling for greater cooperation with partners. Mr Underhill won easily with 60% of the vote. His rivals at the next election will remember this, and will likely call his record to account on how these promises translated into action.

In Cumbria, newly-elected PCC Richard Rhodes, immediately declared that he places alcohol at the heart of his strategy for dealing with crime. One of his priorities is tackling crime and disorder hotspots : bound to be a licensing issue, even if not expressed as one.

This is echoed in Devon and Cornwall, where PCC Tony Hogg went out on patrol straight away in town centres late at night in his first week in office. He stated: “Alcohol misuse, for me, is way up at the top of the list of issues because of the damage it can do in terms of wider violence, the effect on children and in terms of the load it puts on the police service. “

It would be wrong to say that candidates were exclusively focused on licensing however. In Wales, Professor Jonathan Shepherd, who directs Cardiff University's Violence and

Society research group, drew attention to the licensing aspects of crime in the pre-election debate. He said: "By far the majority of violent offences and offences of disorder happen in a very small area in the city centre at night and it's focused there between 11 o'clock at night and four in the morning so that has to be the number one priority for policing." The candidates did not appear to respond. None of them listed licensing as their priorities in their campaign material and the election was won by the Labour party candidate, a former MP.

## Conclusion

The effect that PCCs will have on licensing is necessarily speculative, and it will of course vary from force to force. But we have seen that the powers they have been given have the potential to have at least as big an impact on licensing policy as licensing authorities. Unlike licensing authorities who have many other priorities, including tourism, culture, regeneration, heritage, equality and business, licensing is likely to be a key priority for many PCCs.

A further distinction is the size of the area covered. Except in unitary authority areas, PCCs will typically cover an area the territory of 9 licensing authorities. On the plus side, there is great scope for comparative analysis of performance between licensing authority areas, and of spreading best practice from one authority across the wider policing area. But the corollary to the county-wide approach is the risk that it may result in sweeping policies which disregard local sensitivities and needs. The police will tell you that policing the night-time economy depends on establishing relationships with premises at a very local level. High-level policies risk disrupting these relationships. What works in the city centre does not always translate to more rural areas. Here, much will depend on the degree to which PCCs are willing to roll up their sleeves and engage with local partnerships, or stand back and rely on grand schemes and broad policies.

Finally, there is the burning issue. Police are an integral part of the justice system. Should their leaders be elected at the ballot box or appointed to their office? In the case of the judiciary, most people would resist elected judges, sentencing with an eye to the next election. Conceivably, the *vox populi* will enjoy the opportunity to eject their PCC and replace him with one with more, sharper teeth. Whether this will make for a more sensitive, responsive and imaginative approach to licensing or an instinctively top-down, regulatory approach is something we will be in a position to judge in the years to come. It is one benchmark against which PCCs will fall to be judged.