



City of Westminster

City
for
All

Inclusion in the Evening and Night Time Economy Task Group Report

October 2019

Chair's Foreword

Westminster has a thriving, diverse and vibrant night time economy, with over 6,000 cultural and leisure businesses providing a range of activities including food, arts and entertainment.¹ From the bright lights of Soho and the West End to the many local bars and theatres across our neighbourhoods, we have a diverse offer with something for everyone.

As a City for All, it is important that everyone is included in our night time economy, which is why this task group was established. We have tried to identify any barriers that exist and have formulated recommendations to make the Evening and Night Time Economy completely inclusive.

Although this task group was created following allegations of discrimination, the aim of the task group was to identify ways to increase inclusion, not to investigate complaints. Nevertheless, one of the key groups we wanted to engage with was club-goers who felt they had been discriminated against. Unfortunately, encouraging people to come forward with their stories was one of the biggest challenges we faced. There is no doubt that the difficult issues involved and uncertainty on how to complain are some of the reasons why people have not come forward. This is one of the reasons our recommendations reflect the need for well-promoted and transparent complaints procedures.

Discrimination on the basis of characteristics such as race, gender and sexual orientation is illegal. There is an expectation from club-goers that the relevant authorities' will be able to enforce this law if nightclubs break it. However, unless these acts are criminal, the licensing authority is currently powerless to act. Legislative changes are required to address this, and we recommend that the council lobby for these. We heard from industry representatives and have recognised that many nightclub operators already have systems in place to ensure that their venues are welcoming to everyone.

However, we did identify that these systems vary from venue to venue and we believe that clubs can do more to share best practices. We would like venues, alongside industry bodies and authorities, to drive improvement by developing and implementing a common code of conduct, as well as increasing training for staff and making use of new technology.

This can both help prevent incidents of discrimination and support the investigation of complaints. I'm happy to be able to present the task group's findings and recommendations, which we believe are practical, achievable steps that will help prevent discrimination and ensure that everyone can enjoy a night out in Westminster.



A handwritten signature in black ink, appearing to read 'M Green'.

Councillor Matthew Green
Chairman of the Inclusion in the Evening and Night Time Economy Task Group

¹ Connected Nations 2018, Ofcom – www.ofcom.org.uk/research-and-data/multi-sector-research/infrastructure-research/connected-nations-2018/data-downloads

Executive Summary

The task group was established to investigate people's experiences on inclusion within the Evening and Night Time Economy, identify any barriers to inclusion and make recommendations on how those barriers could be overcome.

The task group's recommendations focus on three main areas:

- **Best practice**
- **Legislation**
- **Training**

Best practice

It is clear to the task group that there is a great deal of good practice going on in the nightclub industry and that some venues in Westminster are inclusive. Nevertheless, this best practice is not universal, and we would like to see it spread across the city. The Council, the industry and other authorities should work together to promote best practice.

Legislation

Westminster City Council is a Licensing Authority and there is an expectation amongst the public that if a licensed venue breaks the law the council should be able to act. Unfortunately, in the circumstances that were alleged at the beginning of the task group's work, the council would not be able to act. We would encourage the council to lobby the government to amend the Licensing Act 2003 to ensure the Licensing Authority can act in these cases.

Training

Well trained staff at venues are key to increasing inclusion. Currently, there is only a requirement for SIA door staff supervisors to be trained when they are granted a licence, there is no requirement for refresher training. Inclusivity training for all staff at venues should be part of any code of conduct and best practice established across the venue. All staff, including those with an SIA licence, should receive refresher training to ensure that practice keeps pace with changes in society.

Conclusion

The task group's recommendations are a set of practical solutions aimed at increasing diversity and are actions that can be taken quickly to drive improvements across the industry and ensure that everyone can enjoy the diverse night-time offer across Westminster.



Introduction

Westminster is the hub of London's Evening and Night Time Economy (ENTE) and plays a prominent role in shaping the capital's ENTE landscape, being home to world-leading entertainment, dining, cultural and shopping experiences.

We are regarded as an international hub for ENTE innovation – what happens here can influence other major cities. The West End's ENTE alone is larger than Manchester's, Birmingham's and Edinburgh's combined in terms of gross domestic product. Westminster is a cosmopolitan melting pot, and this is reflected in our variety of ENTE offer. Given the scale, importance and diversity of Westminster's ENTE, it is important that it is an inclusive place for all. This task group was established following a number of allegations made about discrimination and lack of inclusivity in late night premises in Westminster. The task group's aims were to investigate people's experiences – from the perspective of visitors, residents and the industry.

To provide focus, the task group concentrated its investigation on nightclubs as they were the subject of the original complaints. We also limited the investigation to discrimination based on the protected characteristics defined in the Equality Act 2010. These are:

- age
- disability
- gender reassignment
- marriage and civil partnership
- pregnancy and maternity
- race
- religion or belief
- sex
- sexual orientation²

However, during the task group's work, we heard examples of people being discriminated on the basis of other factors, such as their physical appearance. We wish to make clear that this is also unacceptable and that, should they be implemented, the task group's recommendations could also apply to this type of discrimination.



We gathered information for this report through:

- an open call for evidence from members of the public;
- engaging with representative groups, such as Stonewall;
- a direct call for evidence from late night venues in Westminster;
- evidence gathering sessions with venues and industry experts; and
- engaging with Night-Time Economy experts and other interested parties such as Amy Lamé, London's Night Czar.

One of the key issues we encountered was the lack of testimonies from club goers, especially any that had corroborating evidence. Although we do not take this to mean that incidents do not occur, it has affected our ability to say how widespread discrimination may be and to identify the causes. It is important to note that anecdotal evidence within this report, whether from members of the public or from the industry, is not stated as fact.

² s4 Equality Act 2010

Legislation/Regulation applicable to the Inclusion in the ENTE

There are three main pieces of legislation that the task group found relevant to our investigation. These are:

- **the Private Security Industry Act 2001**
- **the Licensing Act 2003**
- **the Equality Act 2010**

The Private Security Industry Act 2001 (PIA 2001)

The PIA 2001 established the Security Industry Authority (SIA). The SIA regulates the licensing of door supervisors and manages a voluntary Approved Contractor Scheme (ACS), which measures private security service suppliers against independently established assessment criteria.

All door supervisors need to gain a nationally recognised and regulated qualification before they can apply for a licence. To achieve the qualification, door supervisors need to correctly answer questions on equality and diversity legislation and how this works in practice. Areas that are assessed include the Equalities Act 2010 and the Human Rights Act 1998.

If the SIA receives a complaint that a door supervisor has broken the law or a condition of their licence, they can investigate. The enforcement powers of the SIA include requiring the individual to undergo training, issuing a formal warning and suspending or revoking the licence.

The objective of the SIA's ACS is to raise performance standards and to assist the private security industry in developing new opportunities. This voluntary scheme was developed in consultation with representatives from across the industry; it only covers those parts of the industry that are regulated by the SIA and the Private Security Industry Act 2001. The ACS requires companies to provide induction training that includes equality and diversity training, and those looking for higher ratings must do annual reviews of their employees' training needs.

Licensing Act 2003

Westminster City Council, as a licensing authority, has to carry out its functions with a view to promoting the licensing objectives, which are:

- **the prevention of crime and disorder**
- **public safety**
- **the prevention of public nuisance**
- **the protection of children from harm**

The most relevant objective here is the prevention of crime and disorder. The key word is prevention because breaching the Equality Act 2010 (detailed below) is not by itself a criminal act.

The prevention of crime and disorder objective becomes relevant only where there is a criminal act or the actions of a venue could cause one. Establishing a link between a discriminatory door policy and a criminal offence (e.g. if it led to an argument and then a public disturbance) would be difficult for a licensing authority. A review of a venue's licence would not be appropriate unless there were some evidence suggesting that the alleged discrimination was undermining the crime prevention objective. Therefore, unless discrimination is, or could lead to, a criminal act, it is difficult for the licensing authority to deal with any complaints.

Equality Act 2010

The Equality Act 2010 places a legal obligation on public authorities to have due regard to the need to:

- **eliminate unlawful discrimination, harassment and victimisation;**
- **advance equality of opportunity; and**
- **to foster good relations, between persons with different protected characteristics.**

This duty supports the argument that Local Authorities have a duty to act on complaints of discriminatory door policies at nightclubs. However, there are limitations that are placed on licensing authorities, as described above.

The Equality Act 2010 states that when someone provides a service, they must not discriminate on the basis of "protected characteristics". Service providers such as venues must not discriminate against a person based on one of these characteristics. This includes providing the service on different terms to others (e.g. higher or lower entry fee).

If someone thinks that they have been unfairly discriminated against and that there has been a breach of the Equality Act, there are a number of ways in which they can seek redress. They can seek help from the Equality Advisory and Support Service which can:

- **give bespoke advice to individuals across the whole of Great Britain on discrimination issues;**
- **explain legal rights and remedies available within discrimination legislation, across the three nations;**
- **explain options for informal resolution and help people to pursue them;**
- **refer people who cannot or do not wish to go down this road to conciliation or mediation services; and**
- **help people who need or want to seek a legal solution by helping to establish eligibility for legal aid and, if they are not eligible, to find an accessible legal service or to prepare and lodge a claim themselves.**

An individual can also contact the Equalities and Human Rights Commission (EHRC) which could assist them with their complaint. The EHRC focuses its regulatory role on helping organisations to achieve compliance with their obligations. To do this, the EHRC has a range of powers. These include providing advice and guidance, publishing information and undertaking research.

When these methods are ineffective, the EHRC has a range of enforcement powers including inquiries, investigations, unlawful act notices, agreements, assessments and compliance notices. The EHRC does not get involved in every issue or dispute. It focuses its use of its powers to:

- **clarify the law, so that people and organisations have a clearer understanding of their rights and duties;**
- **highlight priority issues; and**
- **challenge policies or practices that cause significant disadvantage, sometimes across a whole industry or sector.**

The Commission might consider that there is an issue in general and seek to address compliance on a sectoral basis. This may include issuing Codes of Practice or non-statutory guidance. It may also be possible for individuals to claim damages in civil proceedings, although this is a costly and time-consuming process.



The complaints that were made

This task group was established following complaints made against a nightclub in Mayfair. The accusations from two members of the public were that they were part of a group that was charged more for entry because they were black. We have received statements from those involved in the original complaint, but they chose not to attend a meeting of that task group:

“We did feel that we were treated unfairly due to the majority of our group being black.... It’s a shame, it is a horrible feeling to experience and something needs to change.”

– Original complaint.

As part of the task group’s work we realised that, although these allegations were disturbing, we would need more evidence to be able to make firm recommendations. To do this, we issued a call for evidence from clubgoers and publicised it through the council’s social media channels, the local voluntary sector, groups that represented the protected characteristics, the press and directly invited responses.

We received 16 submissions from members of the public, of which:

- **seven alleged discrimination based on sexual orientation;**
- **six alleged discrimination based on race;**
- **one alleged discrimination based on religion;**
- **one alleged discrimination based on disability;**
and
- **one alleged discrimination based on gender.**

We also had three submissions asserting that discrimination based on protected characteristics was not an issue at nightclubs.

“The majority of clubs do not want black men and women in their establishments unless they are prepared to pay thousands of pounds for a table. I’ve often been told; the club is at full capacity yet it isn’t, I have the wrong attire, I look aggressive, or I’m just made to wait and watch multiple groups of white people enter without hassle in the hope I will take the hint and leave.”

– Open forum submission.

It should be noted that the submissions based on sexual orientation were from individuals claiming they were not allowed into LGBTQ+ venues as they were straight or ‘did not look gay enough’. We have not looked into this kind of discrimination in detail, however we would stress that, although they should be as inclusive as other venues, any action that comes as a result of the task group’s recommendations should recognise the importance of LGBTQ+ venues and ensure they are protected.

As part of our evidence gathering, we received a submission from Stonewall who told us that:

- **One in six LGBT people (17 per cent) have been discriminated against because of their sexual orientation and/or gender identity when visiting a café, restaurant, bar or nightclub in the last year. This number increases to a third for trans people (34 per cent), compared to 13 per cent of LGB people who are not trans and three in ten black, Asian and minority ethnic (BAME) LGBT people (30 per cent);**
- **LGBT young people are also more likely to experience this discrimination: 47 per cent of trans young people aged 18 to 24 and 21 per cent of LGB young people who are not trans, have experienced discrimination in these venues;**
- **One in five LGBT disabled people (21 per cent) have been discriminated when visiting these venues;**
- **A third of LGBT people (33 per cent) avoid certain bars and restaurants due to fear of discrimination. This number significantly increases for trans people, half of whom (51 per cent) avoid certain venues; and**
- **More than two in five BAME LGBT people (44 per cent) avoid certain bars and restaurants fearing discrimination, compared to a third of white LGBT people (32 per cent).³**

“A female security guard refused to search me when I was waiting in line to get in to an event. She made a fool of me in front of the entire line. She said I wasn’t a female and made me stand in the men’s mine.”

– Juliet, 37, London (LGBT in Britain: Hate Crime and Discrimination, Stonewall)

Views of the industry

During the course of the task group’s work, we also gathered information from a number of venues and industry representatives through evidence gathering sessions, an open call for submissions to all nightclubs in Westminster and attending the local ClubWatch meeting.

Some of the industry representatives admitted that there may be examples of individuals working in the ENTE who had discriminated against patrons based on protected characteristics. However, the majority of those consulted were of the opinion that racism in nightclubs was not an issue. Many said that they aspired to be as cosmopolitan as London and that there was no systemic issue within the industry, any cases occurring were down to individuals and that venues did not have policies of discrimination but in fact had zero tolerance policies against racism.

Some venues and other industry experts expressed the opinion that clubgoers had a sense of entitlement to be allowed into a venue and that they became angry when not allowed to do so. There was a feeling that accusing venues of discrimination was becoming a standard fall back “go to” response to being refused entry as a way of venting this anger. Venues also reported an increase in the number of allegations of discrimination against them.

We were given examples of complaints of discrimination that, when investigated, it was clear that the decision not to let them in was right because, for example, they were being aggressive. We had other examples of complaints against door supervisors, where the individual was eventually let in and admitted that the accusation was false.

We were also given some examples of the work the industry is doing to promote inclusion. Most of those representatives to which we spoke already had a large number of measures in place to prevent/address issues of discrimination. However, these are not always formalised and are not common across all venues.

Responding to complaints

We heard several different approaches that venues take to responding to allegations of discrimination. These ranged from having a number available to the general manager on the night to following up online allegations. One common theme was that modern clubgoers know how to complain if they wish, although we are not sure they are using the most effective or constructive channels.

We heard that responding to complaints made online almost never led to any dialogue as when venues have approached someone to offer to investigate an allegation the individual did not respond. This could be because removed from the heat of the moment the complainant has a different view of the incident. However, it may also be that they do not want to engage with the venue against which they have the complaint. Having contact details available for people to contact management could also be useful, though this could have the same issue of the complainant not wishing to engage with the venue as well as the fact that complainants are likely to be intoxicated to some extent at the point of refusal.

Venues told us that they found it frustrating that there was no meaningful way of positively responding to allegations, especially those made on social media. Venues wanted an effective means to avoid 'trial by social media' with the risk to reputation that this involved.

The licence

During our discussions with venues, the value to their business of their licence, which was described as a venue's number one asset, became clear. Several major issues came back to the licence and the licensing objectives. We were told that door supervisors make decisions based on the licensing objectives and that refusal logs only noted issues that were required to show compliance with the licensing objectives. By refusing drunk or aggressive clients, venues are trying to prevent crime and disorder and public nuisance and ensure public safety, as per their licensing responsibilities, often following specific conditions that the Licensing Authority has placed on them.

As explained above, although the licensing authority has a public-sector equality duty and venues are bound by the Equality Act, when it comes to licensing, only the four licensing objectives are relevant.





Role of door staff

One of the key themes that came from our discussions with industry experts was the door supervisors' role, which was described as poorly understood. There is an obvious expectation from the responsible authorities to vet entry to night clubs and there are many requirements regarding this on a venue's licence. However, concerns were raised about the quality of door supervisors as well as the resources that the SIA has available to do more than train and regulate them beyond the bare minimum. Venues told us that they view the door supervisors' role as being to make sure that people that might cause issues in the venue were not let in.

Door staff have to make a split-second decision on whether to allow someone into a venue. This decision is based on a dynamic risk assessment carried out in a matter of moments by door staff. These dynamic risk assessments take into account things such as the physical attributes of a person, if they were part of a group and what they might be like after drinking.

Although this is obviously an important part of the role, the process of undertaking a dynamic risk assessment remains nebulous and open to influence by the door supervisor's personal views. We heard about a cultural difference between older and younger door supervisors which may affect how

they approach dynamic risk assessments, although we were told that venues in Westminster have diverse and multi-lingual door supervisors. There is however no requirement for door supervisors to undergo refresher training once they have been licensed. This means that as society changes and the nature of clubgoers evolves, there is a risk that the factors involved in dynamic risk assessments and decisions taken regarding entry are not keeping up with societal and generational changes.

The task group also received evidence about the challenges that door staff face. We were told that over the past decade, venues' responsibilities had expanded as the police and licensing authority rely on venues to manage the area around them. We also heard that falling police numbers were an issue and that the West End was getting more dangerous, with the result that door staff had to be ever more vigilant to stop that danger getting into venues. Perceived danger has increased to such an extent that some operators in the West End have started issuing stab vests as staff feel threatened.

The role of promoters

The original complaint that led to the formation of this task group involved a promoter and so we were keen to understand their roles. We heard about venues' different approaches to promoters. These ranged from using directly employed staff to attract customers, using promoters to push social media content to a larger audience or working directly with promoters to drive customers to their venues.

Modern promoters work largely online without knowing whom they are inviting to a venue. This can cause an issue if the promoter does not properly inform potential patrons of the venue's rules (e.g. dress code) and the customers are refused entry despite expecting to be allowed in.

Venues have also reported that some promoters, especially new ones, overpromise to try and make a name for themselves, which can lead to customers having unreasonable expectations which are then not met. Promoters are also largely paid by results. We did hear examples of venues with a formal code of conduct for promoters.

Another issue was variable pricing. A number of venues use variable pricing. Some venues have a policy that leaves it completely to staff's discretion within a set price range where entry can vary from £10 – £30. Other venues have set entry fees but may attract clients through other promotions (e.g. wristbands that allow entry to multiple venues). The venue involved in the original complaint no longer has variable pricing, and instead entry is now a set fee, or free at the venue's discretion (e.g. for a regular customer). Making pricing clear and transparent would be a helpful way of showing that customers were being treated fairly and equally.

Solutions

A number of solutions were discussed during the course of the task group's work. These largely focus on three themes:

- **establishing best practice across the industry and a standard to which venues can be held accountable;**
- **avoiding situations where decisions can be misunderstood as being discriminatory and ensuring that there is contemporaneous evidence to help establish either way; and**
- **ensuring that there are proper procedures for clubgoers to bring complaints of discrimination which also allow venues to present their side.**





Voluntary Codes

Given the limited regulatory powers to address non-criminal discrimination as detailed above, any meaningful action will have to be industry-led. As part of the task group's work, we discussed voluntary codes of conduct and best practice charters.

We spoke to the national coordinator of Best Bar None, an accreditation scheme with national awards supported by the Home Office and the drinks industry. This scheme is aimed primarily at promoting responsible management and operation of alcohol licensed premises. Best Bar None already operates in Westminster, in the Heart of London Business Alliance Area (HOLBA).

The Best Bar None scheme incorporates licensing objectives, vulnerability and corporate responsibility into its accreditation. There is an audit of operational standards of each venue annually. There is also an annual review of the Best Bar None scheme's requirements to ensure they are up to date (e.g. the introduction of ask Angela or lockdown). Diversity could be part of Best Bar None.

The industry experts we spoke to highlighted that any charter needs strong engagement and buy-in from venues and all relevant authorities including the council and the police. Any charter needs to incorporate training and compliance checks.

Compliance should include an easily accessible way for clubgoers to raise complaints and see that those complaints are being acknowledged and dealt with. Venues should also ensure that clubgoers who make complaints are aware of other avenues of complaint they could pursue. A voluntary code relies on the impact to a venue's reputation, should that venue not comply with the code. Any such code would need to be publicised sufficiently widely to ensure that it is effective.

We note that, given smaller venues may not be able to commit the resources required to become accredited that may be available to larger venues, any scheme should take account of the different scales of operation in Westminster.

One way of linking a code of conduct or venue's own anti-discrimination policy to the licence is for it to be included in the operating schedule of a venue. This would not infringe or encroach on licence conditions or the legislative process but would formalise a venue's policy and commitment to inclusion.

Encouragingly, during our discussions with venues, most were receptive to the idea of a voluntary code. We would also like to see the SIA's Approved Contractor Scheme more widely adopted across Westminster.

Dress codes

Dress codes, and other door policies (e.g. pricing), were widely discussed as reasons for refusing entry that might be misunderstood. The venues that we consulted felt that displaying the policies at the door would not help avoid misunderstandings as signs would be long and customers would not read them. There will also be an inevitable element of subjectivity. Some venues publish their dress code on their website. We would encourage all venues to make their policies as available as possible so that clubgoers can understand why they have been refused entry.

Training

We agree with Stonewall's submission that training staff of the legal equality duties is crucial to increasing diversity in the Evening and Night Time Economy. As discussed above, the SIA requires a certain level of knowledge around equality to be certified, but there is no requirement for refresher training. We would like to see refresher training become a requirement for an SIA licence to ensure that door supervisors are aware of their responsibilities, especially as society and legislation changes.

Technology

During our discussions, we heard examples of where technology on the door at venues could be of assistance, particularly in gathering evidence to help determine a dispute. The majority of venues that we consulted already use bodycams for their door staff and agreed that these were useful. Although they are currently used mainly to further the licensing objectives, bodycams could also be used to provide evidence when an allegation is made.

We also heard an example of a universities student union that used technology to record refusals by door staff. The door supervisor used an iPad to make a note of when someone was refused entry. Effective reporting of the time position moment is key to being able to establish what happened and can help venues to discover patterns. We would encourage all venues to consider similar ideas.



Recommendations

1. The council's Evening and Night-Time Economy strategy should have an explicit aim of increasing inclusion and the council should encourage partners with similar strategies to do the same. This should also relate to the City for All objectives of creating a caring and fairer City as well as celebrating Westminster's communities.
2. The council should encourage the development of a voluntary local scheme developed with strategic partners and businesses that introduces a code of conduct for late night establishments to foster and encourage inclusivity. This code of conduct, with the active support of the council, would:
 - a. encourage venues to prominently advertise their dress code and any other criteria that might be a reason for refusing someone entry.
 - b. encourage venues to have a complaints procedure and to prominently advertise it, along with other relevant avenues of complaint (e.g. EHRC and the SIA)

This could be done by extending the Best Bar None accreditation scheme (including an inclusivity component) to other BID/parts of Westminster.
3. The Council will encourage and support venues and industry representatives (e.g. the UK Hospitality Industry and NTIA) to develop a best practice guide for increasing inclusion in the evening and night time economy.
4. The council should encourage HOLBA to incorporate inclusivity as part of the Best Bar None accreditation scheme currently being implemented.
5. The SIA should ensure that its training for door supervisors also contains a module on inclusion in the Evening and Night-Time Economy. There should also be compulsory regular refresher training on this subject.
6. The licensing authority should encourage applicants to provide information/details about how they will ensure and support inclusivity as part of the operating schedule attached to a premise's licence.
7. The council should, when appropriate, lobby the Government to include promotion of the Equality Act as a licensing objective in the Licensing Act 2003.
8. The council should encourage the systematic sharing of best practice for fostering inclusivity among venues and industry organisations with the council facilitating, as required.

Conclusion and next steps

This report will be presented to the Cabinet members responsible for taking forward the recommendations within it. The Task Group hope that they will accept as many of the recommendations as possible, both for action within the Council, encouraging and working with the industry and partners and to inform Westminster's lobbying priorities.

The task group would like to thank everybody that contributed to our work especially.

Appendix 1 - Membership of the Task Group

Chairman of the Task Group

- Councillor Iain Bott, (June 2018 – January 2019)
- Councillor Timothy Barnes (January 2019 – June 2019)
- Councillor Matthew Green (June 2019 – September 2019)

Other members

- Councillor Aicha Less
- Councillor Pancho Lewis
- Councillor Gotz Mohindra

