



LEGAL

Clifton Davies Consultancy Ltd

Clifton Davies Consultancy Limited specialises in all licensing, gambling and regulatory issues affecting the pub and bar industry. The views expressed by David Clifton and Suzanne Davies are given without any assumption of liability on their part. If you have any questions, do get in touch and they will be pleased to provide answers, either via this page or direct. **E: dc@cliftondavies.com / sd@cliftondavies.com W: cliftondavies.com**

Keep your premises drug-free

Suzanne Davies recommends that you read the recently updated BBPA guidance on drugs to ensure you are equipped to tackle drug-related issues in your pub or bar

Last year, two 18-year-olds died at the London nightclub Fabric after taking drugs. Islington Council subsequently revoked Fabric's premises licence, stating that it had a "culture of drugs that the management cannot control".

After a four-month closure, Fabric was permitted to re-open for business, following negotiations between its lawyers and the council that led to agreement on 38 new licence conditions to reinforce a zero-tolerance approach to drugs.

That case served to focus attention on how important it is that premises licence holders and Designated Premises Supervisors ensure that they are rigorous in attempting to deter drug use and supply, as failure to do so could well result in a review of the licence. Heavy penalties can also be imposed under the Misuse of Drugs Act 1971 on those who permit drug-related activities on their premises. In addition, the police have powers under the Anti-Social Behaviour Act 2014 to close, for a period of up to six months, premises where there is evidence of the sale, use or production of class A drugs, and where there is related serious nuisance or disorder.

The BBPA has helpfully updated its guidance entitled 'Drugs and pubs: a guide to keeping a drug-free pub', which is available as a free download on its website. Its 13 pages are well worth reading, including information on signs of use of eight different commonly used drugs and a summary of the law on psychoactive substances.

The guide explains the clues to identifying not only general signs of drug use in your premises but also whether someone is suffering from drug abuse or is under the influence of illegal drugs, recommending that you should notify your staff immediately if you suspect that to be the case. You may then refuse that person service and ask them to leave the premises immediately, politely and calmly stating your policy on drugs. If they refuse to comply or become aggressive, or if you feel the situation is otherwise unsafe, you should contact the police immediately for assistance to avoid putting your staff or customers in any unnecessary risk.

You should not be nervous about contacting the police. If you are suspicious that your pub or bar is being used by drug dealers or is being used for consumption of drugs, it is important to seek advice and assistance from the police, on the basis that a zero-tolerance drugs policy and early reporting of such suspicions should not be viewed as detrimental to your licence by them or by the licensing authority.

The guide recommends measures to prevent drug use on your premises, including enforcement of a robust drugs policy, staff training, maintenance of high standards of cleanliness and service, getting to know your customers and active membership of your local Pubwatch. You should also consider, as deterrents, use of

CCTV and implementation of a search policy by door supervisors.

It also stresses the importance of keeping a record of all drug finds and seizures and agreeing with the police how and when any seized drugs will be stored (ideally in a 'drug safe' to which only the police will have access) before they are collected for destruction. 

QUESTIONS & ANSWERS

Q: How are legal highs affected by the collapse of the recent laughing gas cases?

A: The Psychoactive Substances Act 2016 makes it an offence to, among other things, produce, supply, offer to supply, or possess with intent to supply, a psychoactive substance, which is defined as any substance intended for human consumption that is capable of producing a psychoactive effect. Until recently, it was thought that this definition included nitrous oxide (often referred to as laughing gas) which can be transferred from small silver canisters into balloons and inhaled. However, the Act provides an exemption for medical products and, because nitrous oxide is used by doctors and dentists for its pain-relieving properties, two courts have recently considered it falls within that exemption. Nevertheless, the government still says that 'nitrous oxide is covered by the Psychoactive Substances Act and is illegal to supply for its psychoactive effect', so you would be well advised to continue to prevent its use (and use of other so-called legal highs) on your premises.

Q: My personal licence has been suspended. Can I still be a Designated Premises Supervisor (DPS)?

A: No. It is a mandatory condition on all premises licences that no supply of alcohol may be made under a premises licence not only at a time when there is no DPS in respect of the premises licence, but also at a time when the DPS does not hold a personal licence or his/her personal licence is suspended.

Q: A neighbour is complaining that a party at my bar has caused a statutory noise nuisance. What does that mean?

A: For noise to be considered a statutory nuisance under the Environmental Protection Act 1990, it must be ongoing or repeated noise emitted from your premises that unreasonably and substantially interferes with the use or enjoyment of a home or other premises, or that injures health or is likely to injure health. This means that a one-off event would not usually be considered such a nuisance.

