



Northern Ireland
Assembly

Committee for Social Development

OFFICIAL REPORT (Hansard)

Licensing of Pavement Cafés Bill: Guide
Dogs for the Blind Association and Inclusive
Mobility and Transport Advisory Committee
(IMTAC)

17 October 2013

NORTHERN IRELAND ASSEMBLY

Committee for Social Development

Licensing of Pavement Cafés Bill: Guide Dogs for the Blind Association and Inclusive Mobility and Transport Advisory Committee (IMTAC)

17 October 2013

Members present for all or part of the proceedings:

Mr Alex Maskey (Chairperson)
Mr Mickey Brady (Deputy Chairperson)
Mr Jim Allister
Ms Paula Bradley
Mr Gregory Campbell
Mr Trevor Clarke
Mr Michael Copeland
Mr Stewart Dickson
Mrs Dolores Kelly
Mr Fra McCann

Witnesses:

Mr Andrew Murdock	Guide Dogs NI
Ms Elaine Orwin	Guide Dogs NI
Mr Michael Lorimer	IMTAC
Mr David Mann	IMTAC

The Chairperson: We have an evidence session this morning with the Inclusive Mobility and Transport Advisory Committee and Guide Dogs Northern Ireland. I formally invite to the table Michael Lorimer and David Mann from IMTAC, and Andrew Murdock and Elaine Orwin from Guide Dogs. In the interests of best practice and in support of our delegation, I ask Committee members to introduce themselves going clockwise, and I will start. My name is Alex Maskey, and I am Chair of the Committee.

Mr F McCann: I am Fra McCann.

Mr Brady: I am Mickey Brady.

Mr Copeland: I am Michael Copeland.

Mr Allister: I am Jim Allister.

Mr Dickson: I am Stewart Dickson.

Mr Clarke: I am Trevor Clarke.

Ms P Bradley: I am Paula Bradley.

Mr Campbell: I am Gregory Campbell.

Mrs D Kelly: I am Dolores Kelly.

The Chairperson: Thank you very much, members.

Delegation, you are very welcome this morning. Members, you have a copy of the section of the clause-by-clause table at page 45 of the meeting pack. You also have Disability Action's comments. They have been included as they are relevant.

First, I want to formally apologise to you for the problems that we had last week. The Committee overran significantly. We then had to seek your indulgence to reschedule the presentation for this morning. I want to record our apologies on behalf of the Committee and thank you for your patience. Without any further ado, I invite you to make your presentation.

Mr Michael Lorimer (IMTAC): Thank you, Chair, for the opportunity to brief the Committee. Speaking on behalf of both organisations, we broadly welcome the decision to regulate pavement cafes. Over the past number of years, issues around pavement cafes have become an increasing difficulty for a range of disabled people and older people. Regulation is certainly long overdue. What we will express today is, I suppose, concern that light-touch regulation might make things worse. The key message that we want to stress to members is that access for pedestrians should be the priority in anything that we do. Pavement cafes should fit around the requirements for pedestrians, not the other way round.

Elaine Orwin will speak from a personal perspective. She is a guide dog user. Her dog, Chaz, is with her today. David Mann is a member of IMTAC and has also — I hope that he does not mind me saying so — recently been elected as the next chair of the Royal National Institute of Blind People (RNIB) in Northern Ireland. He will set out the benefits of effective regulation. Andrew Murdock from Guide Dogs and I will then set out the areas of the Bill that Guide Dogs and IMTAC feel need to be strengthened.

Without further ado, I ask Elaine to give her perspective.

Ms Elaine Orwin (Guide Dogs NI): I thank the panel for inviting us here today. It is very much appreciated.

As a pedestrian, my journeys involve use of the pavements with the assistance of my trusty guide dog, Chaz. Every one of my journeys involves using the pavement. Regularly, we are faced with obstacles such as cars that are parked on pavements, uneven surfaces, litter, inappropriately placed advertising boards and street furniture that obstructs our access along the pavement. In the same way as street furniture obstructs our access to cafes, quite often, chairs are placed in an area that obstructs my access to the cafe and my guide dog cannot then allow me to access the entrance. It is a major problem. It is impossible for my guide dog to then guide me in. He has also had to take me to the kerb when I have been unable to access the pavement because of obstructions. That, again, takes away from my self-esteem and independence in getting around with my dog.

Those obstructions have a major impact on my dog, causing him undue stress, and make our journey less pleasant and problem free than it could be and should be. Those negative experiences result in loss of confidence and a reluctance to return to that particular area. As a result, it takes away from my ability to go into that area and spend time and enjoy it as a normal service user. Getting independence with a guide dog has been amazing. All that we ask is that we have free access to the pavement and the services that we are using as ordinary pedestrians. Thank you very much.

Mr David Mann (IMTAC): Thank you, Elaine. Good morning, ladies and gentlemen.

I have just a tiny amount of residual vision. I use a long cane to get around outside. Like Elaine, I encounter a whole host of unnecessary barriers to my free movement on the pavement. The pavement should be a sanctuary from the relative danger of the carriageway. Actually, the Americans have got it right for once, if I can say that, when they call it the "sidewalk", because it is for walking along, not just for walking across. It should be an area where you can exercise your right of free movement with confidence and in a relaxed manner. Far too often, it is not.

When it comes to pavement cafes, restaurants etc we have specific recommendations about how the regulations might accommodate that facility without impinging on the pedestrian area, so to speak. We like the concept of a quality walking corridor, which, I think, is a phrase that Roads Service has devised, that ensures that there will be a guaranteed area of a certain width in a straight line along the sidewalk. We recommend a corridor of at least 2 metres width of unrestricted movement. We have not just plucked that figure of the air. As you will see from our position paper, it is based on best practice elsewhere. It would enable, for example, a wheelchair user and a guide dog owner to pass without either having to give way or be squashed to the side.

It is important that cafes do not obstruct areas where people congregate, such as bus stops and pedestrian crossings. It is important that they are screened. Elaine referred to the possibility of ploughing into loose chairs and tables. It is important that pavement cafes are marshalled in that way. They would look a lot tidier as well as being less of a hazard, but that screening must be done in such a way that it does not impede access to the premises. It would be ironic if you had a restaurant that was basically accessible to, for example, a wheelchair user, but that accessibility was removed because of the way that the screens or the layout of the tables and chairs were arranged. That is in everyone's interest; the business owner's interest as much as that of the disabled pedestrian.

We want consistency across council areas. It would be confusing for everybody, businesses and pedestrians alike, if, for example, Lisburn, where I live, was thought to be a softer touch than Coleraine, for example. We want the same standards everywhere. That will help everyone.

Above all, we want effective enforcement of the legislation. If there is not effective enforcement, the whole exercise is a waste of time. Councils must have the resources and the will to ensure that the regulations are enforced for everybody's benefit.

Those are our specific requirements for the regulation of pavement cafes. Thank you.

Mr Lorimer: Thank you, David. I suppose that we will now touch on the specific comments that we have on the clauses of the Bill. I know that members have copies of our paper, but maybe to reinforce the points, I will invite Andrew to give the Guide Dogs perspective.

Mr Andrew Murdock (Guide Dogs NI): We identified a number of issues with the detail, one of which was that, when an application for a licence is being made, the proprietor should not only detail the dimension of the area that they want to apply for, but the positioning in relation to other street furniture, whether that be signposts, planted trees or anything else in the immediate environment. That would certainly impact on the minimum pavement width that is required for someone to navigate the pavement safely.

We are also looking for clarification or guidance for councils on what constitutes either "undue interference" or "inconvenience" to persons. We would very much like to see "persons" as "pedestrians" in that regard. With regard to the immediate street environment, we see issues with pavement cafes being located too close to crossing points or, as I mentioned, there are planted trees or other items in the environment. For us, that would constitute undue interference or inconvenience to the person.

The Bill allows for 25% of a cafe to be outside the planned or proposed area. We are looking for securities that the 25% that goes out of the planned area does not impact on other items in the street environment, for example, as I mentioned, being too close to crossing points or other street furniture.

Guide Dogs and IMTAC believe that every licence should be periodically reviewed and that no licensing arrangements should be valid indefinitely. It has to be reactive to changes to the street environment. We also seek clarification on what reasonable adjustments would be made so that blind and partially sighted people are aware of the notice of application, display of fees or how they can make rating submissions on licence applications.

Mr Lorimer: Finally, some of the issues from IMTAC's perspective will cover what Andrew said. Generally, we are concerned that the Bill is written in language that is generally permissive and does not provide adequate protections for pedestrians in particular. We would like clause 4(2) to be reworded and for clauses 14 and 15 to reflect that specific mention for access for pedestrians, rather than that language about "persons". We suggested that clause 6, which is on conditions, should include reference to access for disabled people and other pedestrians under the list of conditions.

Last week, I listened to the submission from the Northern Ireland Local Government Association (NILGA). We also have concerns that clause 1 is too broad with regard to what constitutes a pavement cafe. Obviously, we have a particular interest in those areas. We have started to see tables and chairs come out at places like hairdressers and convenience stores, where provision of food on the premises is not the prime function of those organisations. So, we want to see more clarity on that.

On the issue of what constitutes a pavement cafe, we do not see advertising boards and menu boards in clause 1(3). They should be included. In Belfast, for example, a lot of pavement cafes are well screened etc and then there are huge menu boards beside them, which really restrict the pavement to less than a metre in some places.

As I said, we do not want to see licences awarded indefinitely. Clause 5(5) indicates that there is potential for that to happen. There should be some sort of review of that.

That is our submission. We certainly welcome members' questions.

The Chairperson: Thank you, Michael. I remind members that page 45 of your packs contains the Department's response to various stakeholders' comments, organisation by organisation.

Thank you for your presentation. You will be aware of the Department's general response. Michael, I think that you referred to the legislation as being "generally permissive". The Department would offer the view that it wants the issue to be regulated, but in such a way that it is not more bureaucratic than necessary and that it eases the passage, so to speak — without any unfortunate pun intended. Do you have any particular response to that?

Mr Lorimer: It goes back to our response that the issue is always portrayed as something positive, which everybody welcomes, and that we want a cafe culture. I suppose that we do not feel as though the issue of obstruction of the pavement is ever raised. We made our point in our submission to the Committee that there is legislation that protects disabled people and promotes their rights. However, we believe that that should be built into legislation in the first place and it should not rely on disabled people having to fight retrospectively because the legislation is worded in such a general way. We do not see what the issue is with specifically mentioning pedestrians in the legislation. We feel that it is something that everybody should welcome.

On the issue of pavement cafes themselves, how is it in the interest of a business to block a pavement and restrict people's access? That does not make any sense. I do not know about anybody else, but I tend to avoid areas where I cannot use the pavement. We just think that it is a belt-and-braces approach, to be honest with you.

The Chairperson: That is fair enough; I appreciate that.

Mrs D Kelly: Thank you for your presentation. I am sure that we have all seen shops in many towns, particularly fruit and veg shops, that put their stalls out on the pavement, so there are already a number of obstacles. There are pavement cafes in the South of Ireland and in GB. What experiences can you draw on when it comes to this Bill? Do you believe that legislation elsewhere meets your requirements?

Mr Murdock: A lot of the evidence is based on the research that IMTAC carried out into what has been happening in council areas in the rest of the UK. From our perspective, they appeared to be inconsistent in their interpretation of the existing GB legislation. It was not consistent in each town, and, as Michael mentioned, we want consistency in each council area. Therefore, it is not good enough just to have the broad framework that councils can work within. We need to have stricter guidance on that.

Mr Lorimer: I might be wrong, but I think that we are probably the first to legislate specifically for pavement cafes. We looked at England, for example, where we believe there is a much more structured approach from local authorities and there is an awful lot of protection of access by way of policy. We feel that, because we are legislating, we should enshrine that protection in law as well.

The Chairperson: OK, thank you for that. I think David said that some places might be seen as a soft touch as opposed to other towns. You also mentioned that earlier.

Mr F McCann: I am one of the people who have seen the introduction of pavement cafes as the way forward in dealing with the increase in tourism but, unfortunately, have not taken into consideration the impact that it would have on other street users, including people who are blind or partially blind. I was arguing that, if pavement cafes were allowed, it was all to do with the type of street furniture that would be used. When the Bill was first mooted, did you have any discussions with the Department in order to give your opinion on the difficulties that it might pose? You said that there needed to be a free way of 2 metres on the pavement. There are some streets that may have a pavement that is only 2 metres wide. Do you think that there should not be any pavement cafes in streets with a 2-metre or less pavement width?

Mr Mann: Ideally, that would be the case. If the pavement is not suitable for encroachment, it should not be encroached upon. If anybody put tables and chairs on the carriageway, they would be removed in no time at all. They would be deemed not to be in the public interest because they were obstructing motor vehicles. The same principle should apply; it should not be acceptable to obstruct foot traffic. If a particular stretch of pavement is not wide enough to accommodate different uses, the needs of all pedestrians, but especially those with a disability, should be paramount.

Mr Murdock: Can I just add to that from a personal experience? For someone such as Elaine, who has to deal with those sorts of obstructions, it quite often means that she has to go round the obstacle and onto the road.

Ms Orwin: Can I add to that, Andrew? There are some streets that are very narrow. In those cases, where there are obstructions, people who would find them hard to access are effectively banned from them. That includes mums with pushchairs, wheelchair users and guide dog owners like me. All those people spend money as well. We spend money and we use those services, so obstructing those areas will make us reluctant to use them. In effect, people who could use those areas independently are being banned from them.

Mr F McCann: Did you have discussions with the Department?

Mr Lorimer: IMTAC and Guide Dogs NI responded to the initial consultation and proposals paper. We suggested that the whole thing should have been subject to a full equality impact assessment. Since the Bill was published, officials have briefed members of the committee and tried to reassure them. Therefore, there has been engagement with departmental officials. The message that you and we have got is that there are protections in the legislation, but we still do not feel that they are strong enough.

Mr Dickson: Both submissions refer to A-boards or sign boards. Such boards could just give the name of a cafe or display a menu — it does not really matter what is on them. The Department told us that, separately, those boards are subject to planning permission. My experience is that precious few of them have ever had or have ever even sought planning permission. I am sure that that is the experience of most people around the table. Your suggestion that they should be included in the list of items that constitute a pavement cafe seems to be eminently sensible, and I support that.

Mr Mann: That is interesting. If they are subject to planning permission, which is not usually sought, what does that say about the burden of bureaucracy on businesses? Do they ignore the burden of bureaucracy? As Michael or Andrew said, a screened cafe might have a board on the far side of the screen, which reduces the size of the pavement.

Mr Dickson: The Department is dodging and saying that those boards require separate planning permission. That sounds as if the left hand does not know what the right hand is doing. Proprietors will rely on planning permission to plonk a board somewhere completely separate from the enclosed area, which can be contained, and people with a range of disabilities and others can use it.

Mr Lorimer: DSD officials told us that the protection for pedestrians is the fact that Roads Service is a statutory consultee. In our experience — A-boards being the primary example — Roads Service say that it can lift and carry out enforcement on A-boards, but the boards are back out again the following week. Roads Service is being seen as anti-business and picking on businesses, and it is almost a futile effort to try to control those signs. We feel that forcing Roads Service to police pavement cafes is neither fair nor effective.

Mr Dickson: I believe that A-boards and similar boards that move in the wind need to be contained in the pavement cafe area. If someone does not have a pavement cafe but wishes to have a board, he or she should seek planning permission from the relevant authority.

Mr Brady: Thank you for the presentation. David, you mentioned sidewalks. Pavements are for walking on, and if people, particularly those with a disability as you described, are obstructed, it is incumbent on the legislation and the relevant Department — the Department for Regional Development (DRD), the Department for Social Development (DSD) or the Department of the Environment (DOE) — to deal with it on those terms. It is difficult enough for people with disabilities to get around, and it is particularly so for someone with a guide dog. If cars are parked on pavements, it is also difficult for people who do not have a problem but who may have a buggy or a pram. If pavements are for walking on, no matter what happens with pavement cafes, that has to be taken into account and pavements must not be obstructed. If signs are obstructing a pavement, enforcement has to be carried out. It seems to be a fairly simple fundamental argument.

Mr Mann: Who has the problem? Is the problem that I am blind or that someone is putting a barrier in my way? It is incumbent on society to create an environment that is as barrier-free as possible and, in so doing, an environment that is pleasant for the population as a whole. I do not think that my rights as a citizen to move about are in conflict with other people's interests. Reference was made to pavement cafes being attractive for tourists. We are not Barcelona or Brazil. People want to sit in comfort, and I do not see why the concept of a thriving cafe culture cannot also include a thriving indoor cafe culture. It does not depend on tables and chairs on the pavement in the rain.

Mr Brady: In general, it is an indoor cafe culture here, taking into account our weather. We have no choice in that. There are periods when the weather may be more suited to being outdoors, but it goes back to the fundamental issue: pavements are for walking on, and the right to do that should be respected.

Mr Campbell: I welcome your presentation. I have seen good retailers, primarily food retailers, put out small circular tables with only one chair on either side to minimise their impact on a narrow footpath. I do not know whether this is possible, but, if a narrow pavement is immediately in front of a premises, would it be helpful if the legislation spelled out that at least a sufficient width of pavement should be available to pedestrians, including visually impaired pedestrians, as to retailers for their pavement cafe? In other words, at least 50% of the width of a pavement should be for pedestrians, and if that is not doable for retailers, they simply do not get a pavement cafe.

Mr Mann: Fifty per cent of what, though? That is the issue. Fifty per cent of one metre does not leave very much room.

Mr Campbell: That is what I meant. If someone was getting half a metre, obviously he or she could not provide a table and chairs, and pedestrians would get the full metre.

Mr Lorimer: Roads Service and DSD would have a clear idea of what constitutes sufficient pavement width when they look at public realm works. Accepted research states that the minimum width for inclusive pavements is two metres. Once a pavement is two metres or less in width, we have real problems in accommodating any furniture on that pavement. All sorts of pedestrians will start to be restricted — disabled people, parents with buggies, people with lots of luggage and shopping — who perhaps will have to move onto the roadway.

Mr Campbell: Is the essence of your contention that a footway of less than two metres in width should not be used as a pavement cafe?

Mr Lorimer: If a pavement cafe is designed well, screening will come out a least a metre, which will leave very little pavement space for pedestrians. The legislation should automatically state that we should not have pavement cafes in that sort of scenario or location. I know that that is difficult for historic places such as Londonderry/Derry.

Mr Campbell: That is clear enough. Thank you.

The Chairperson: The Department will argue that one reason for the legislation is to make sure that people should not have facilities such as pavement cafes where they are not appropriate. However, the question concerns what is appropriate, and your argument is that it is two metres.

Ms P Bradley: Thank you for your presentation. I read through your submission last night and, because I know Belfast, I recognised almost every cafe in the photographs. I have probably been in almost all those pavement cafes, and I enjoy the pavement cafe culture. However, I thought back to 20 years ago when I was pushing a pram around Belfast, and there would have been no way on earth that I would have been able to get past some of those, never mind someone who is visually impaired, which is absolutely dreadful.

The more we scrutinise the Bill, the more issues are highlighted and the more I see a need for the Bill to eradicate many of the points that you raise. As one of those people who uses pavement cafes quite often — maybe on a Saturday afternoon in Belfast for a cup of coffee — we do not think about a lot of the issues and problems for people such as you until they are put in front of us. We are getting this information, and it is teaching us and telling us that we need the Bill and that it must be fit for purpose. As I read your submission last night, it probably put more things into perspective than anything else that I have heard in relation to the Bill. I agree — the Committee also agreed last week — that we need consistency across all the councils and that nowhere can be different. It was a really good submission that brought it home to me that I use these places every day and do not think about how people get in, out or around them.

Ms Orwin: If there is not enough access, I have two choices: my dog will take me to the kerb, and then I am faced with the choice of having to go onto the road or to ask for assistance. My guide dog has given me joy in restoring my independence in getting along, but when that happens, another little bit of my self-esteem goes because I have to rely on people or put myself in danger. Those are my two choices.

Ms P Bradley: You should not be faced with those choices, and neither should a mother be faced with the choice of having to wheel a pram onto a road to get round a car. There are health and safety issues involved. Thank you; your submission has really highlighted a lot for me.

Mr Allister: Last week, departmental officials suggested that a number of your issues could be addressed through model guidance that could be issued through the licensing process as opposed to statutory provision. Would you care to comment on the suitability or viability of that?

Mr Lorimer: I listened to the NILGA presentation last week, and I thought that its proposal for a group of stakeholders to agree a broad outline of policy principles was sound. My difficulty is that we will be but one voice around a table of many in that scenario. We are relying on our voice being heard and given a priority. If access for pedestrians is written into legislation, we cannot avoid the issue. We cannot reduce the gravity of the issue if it is written into legislation. That is our bottom line, and then we agree the broad principles. I thought that the NILGA suggestion to develop broad policy proposals that would be adopted by all council areas is very good.

Mr Allister: What are the minimum requirements that you would like in the legislation?

Mr Lorimer: We have left our suggestions relatively broad. We simply want access for pedestrians to be mentioned in the legislation, because there are agreed standards.

Mr Allister: What about putting in the fact that all pavement cafes must be screened? Does that need to be in the legislation?

Mr Lorimer: One thing that we wanted in the list of conditions for pavement cafes was access for disabled people and other pedestrians. That leaves us the ability to negotiate what that means when it comes to the design of a pavement cafe. I understand that the people who write legislation do not want to make it so prescriptive, and there needs to be a bit of flexibility. However, we want a wording that gives us the protections to formulate those issues, such as the design of pavement cafes. We have a raft of guidance from across the water, which is very consistent on how pavement cafes should be designed.

Mr Clarke: Like my colleague, I have found today's evidence session very useful. It has brought a perspective that none of us had thought about. I probably have a different opinion on A-boards, in that I do not think that they should be there at all. If we are to screen an area that, as Elaine outlined, would remove the obstacle of tables and chairs, that area should be large enough for a business to advertise whatever it has to sell. It is unnecessary to create a further obstruction. Even in the absence of a pavement cafe, the very presence of A-boards can be dangerous. David said that we

are not in Brazil or Barcelona, and Mickey talked about the rain, but there is also a fair amount of wind in this country. A-boards have not been useful. I enjoyed your submission and found it useful, but my only concern is that we should remove A-boards, full stop.

Mr Mann: A-boards are becoming much heavier, with solid bases and even electric currents connected to them, so they are more wind-resistant and more of a problem. It is no longer feasible, even for an enforcement official or an irate pedestrian, to pick up an A-board and move it. A-board is probably not the best generic term; they are more like sign boards or miniature hoardings.

Mr Copeland: I found your presentation extremely interesting. Maybe you could help me with a slightly different issue. If a partially sighted or visually impaired person is injured on a public footpath by a misplaced kerbstone, a crack, a pothole or whatever, is that treated differently by the public liability of, say, Roads Service? Will those operating pavement cafes have to pay particular attention to public liability insurance as it would affect a visually impaired or partially sighted person injuring themselves as a result of a pavement cafe? In other words, when it would be reasonable to assume that a fully sighted person would not injure him- or herself but a partially sighted or visually impaired person did, would the insurance details in those cases have to be enshrined in legislation to protect people who injure themselves using that public footpath?

Mr Murdock: I am not aware of any difference.

Mr Lorimer: I suppose that the requirement will be for cafes to have public liability insurance. If there were a claim, I imagine that an insurance company would want evidence that a proprietor had taken precautions to design a cafe in a way that would not cause injury. That reinforces the need for good design because if a cafe did not put in what is deemed to be good design practice, I am sure that an insurance company would be less likely to look on a claim favourably.

Mr Mann: I am not a lawyer but I think that the courts accept that a blind or partially sighted person, or a wheelchair user, could walk down any street at any time. Some streets are not more likely than others to have blind people on them. That is part of the provision, whether digging a hole in the road or displaying your wares. You have to take account of the fact that pavements are for all pedestrians all the time.

Mr Copeland: Although this sounds passé, for the purposes of the legislation, blind or partially sighted people are treated as if they had the entitlements of fully sighted people should they occasion an injury.

The Chairperson: No other members indicated that they want to speak. Does any member of the delegation want to add to what you heard?

Mr Lorimer: I do not think so. I think that we covered everything.

The Chairperson: I thank you very much, Elaine, Andrew, Michael and David, for being with us today, and I apologise again for last week. Thank you for the presentation and your responses to members' questions. Please be assured that your contribution is important in assisting the Committee in how we respond to this legislation. We very much appreciate your taking the time and making the effort to present to us. I have no doubt that your information will find its way into the legislation, hopefully in a way that assists your needs. Is that fair enough?

Mr Mann: That is great, and thank you.

The Chairperson: Thank you very much.