NUMBER 39 July 2024

Journal of Licensing

The Journal of the Institute of Licensing

In this issue

Institute of Licensing

Journal of Licensing ISSN 2048-9110

Journal of Licensing

The views expressed in the Journal are those of the writer and do not necessarily represent the views of the Institute of Licensing.

Registered Address: Institute of Licensing
Ridgeway
Upper Milton
Wells
Somerset
BA5 3AH

Email: news@instituteoflicensing.org
Visit: www.instituteoflicensing.org

The Institute's Journal of Licensing is available to Institute members free of charge, with individual members receiving a copy and a set number of copies being provided to organisation members as follows:

- Small Organisation member - 3 copies
- Medium Organisation member - 4 copies
- Large Organisation member - 6 copies

Additional copies are available to Institute members (price on request). Non-members may purchase the Journal for a fee of £92.00 (plus P&P + VAT) which will include complimentary individual membership at the appropriate level for the remainder of that membership year (all memberships are renewable on 1st April annually).

To order copies, please email orders@instituteoflicensing.org

This issue shall be cited as (2024) 39 JoL.

Kate Nicholls, OBE
National Chair, Institute of Licensing

It is a pleasure to introduce Edition 39 of the *Journal of Licensing* – my first as National Chair for the Institute of Licensing.

The *Journal of Licensing* is an impressive publication and a huge asset to the IoL. The membership owes a huge debt of gratitude to the editorial team for their continued dedication to the *Journal*, and to the regular feature writers and contributing authors – thank you to everyone involved.

It is a pleasure to write this foreword having previously contributed articles in Editions 4 (November 2012), 8 (March 2014), and 13 (November 2015), and it is interesting to look back on these articles now.

In 2012 we were waiting for more information on the incoming arrangements for Early Morning Alcohol Restriction Orders (EMROs) and the late-night levy. Both of these measures were a concern for the hospitality and leisure industry, but at the time of writing, there were many unanswered questions about how they would work in practice and serious concerns at the impact they might have.

Partnership was always a better approach than penalties, and that was the theme of my article in March 2014. I referred in that article to the impact that the mere threat of an EMRO had in damaging partnerships and stifling investments in local areas. Thankfully at that point the Government had published its National Alcohol Strategy, with the then Home Secretary, Theresa May, extolling the value of partnership and holding up Best Bar None, Purple Flag and other partnership initiatives as delivering better results than a regulatory or legislative approach. In 2024 the narrative remains broadly the same. Partnership is vital in licensing and can deliver far better outcomes than regulatory measures in almost every case. Partnerships require ownership, respect, patience and time to allow them to thrive, strengthen and deliver.

In November 2015 my article explored the dangers of statistics where they are used selectively to advance a spurious argument: this is a common theme for the use of alcohol statistics and hasn't noticeably changed over the years. My point then is equally relevant now; evidence-based policy must take into account ALL the evidence – the good as well as the bad. Selective use of statistics is dangerous, distorting and will inevitably lead to poor decision making.

Lots has changed since I wrote those articles, but the key messages remain the same, and partnership remains the best route to safe and vibrant town and city centres. The IoL has long recognised the value of partnerships and its broad-church approach reflects this. In addition, the IoL hosts a number of stakeholder groups including the National Licensing Forum, a similar group for taxi and private hire licensing and the Local Alcohol Partnerships Group – all designed to bring parties together to share best practice and to discuss common interests, issues and potential solutions. It has been a pleasure to see the IoL grow and thrive, and it is great to be able to be part of the IoL's future development.

It would be remiss of me not to mention that, at the time of writing, the general election campaign is just beginning ahead of the vote on 4 July. I will be ensuring through my roles with IoL and UKHospitality that our sector is a pivotal part of political conversation, given our strategic importance to the country in creating places where people want to live, work and invest.

I'm certain that there will be ample support from across licensing and hospitality in helping me make that argument and I want to thank you in advance for your efforts.

Institute of Licensing

JOURNAL OF LICENSING ISSUE 39

CONTENTS

Leo Charalambides, FIoL
Editor, Journal of Licensing

It is with great pleasure that we welcome Kate Nicholls OBE as our new National Chair of the Institute of Licensing. And given her past contributions to the *Journal* – something that may come to haunt her! – I shall speedily be adding her to my list of potential contributors who are regularly harangued and cajoled into writing articles for our readership.

With change happening all around us all the time, it's good for licensing professionals to be reminded of past attempts at tweaking and re-balancing the Licensing Act 2003. My all-time favourite initiative remains "Alcohol Disorder Zones". It was of little surprise that no local authority felt compelled to label any part of their area as an Alcohol Disorder Zone or ADZ. Say that out loud and you get "a dis-ease"! The great advantage of the Institute is its myriad diversity of heads, voices, experience and opinions – a broad church approach with partnership at its core, which allows us to challenge the latest thinking, such as ADZs, and many long-held assumptions.

The IoL's broad church was much in evidence at this year's Summer Training Conference, held in London for the first time where we were warmly welcomed and wonderfully hosted by Gareth Hughes (the London Region Chair) and Andrew Heron (the London Region Vice Chair). Although staged in London the event had speakers from across the IoL regions. And not one but two Night Czars (Amy Lamé of London and Carley Heath of Bristol).

It was striking how prominent the subject of partnership was in the talk "Business-friendly licensing" by Tim Spires from the Greater London Authority and Sylvia Oates from Six till Six. While the harms associated with the night-time economy were not overlooked, there were powerful presentations on "Harm reduction and the ENTE" (Carly Heath) and "Safeguarding in licensing" (James Button). Currently evolving and developing legislation was not overlooked with a presentation on Martyn's Law (Philip Kolvin KC) and a pavement licensing update from John Miley. Where New Labour failed to secure the much hoped for continental-style drinking with its Licensing Act 2003, Covid has left us with a legacy of al fresco dining that flourishes despite the limited availability of sunshine.

For my part, the greatest value of the Institute has always been as a source of education and training. It's the lectures, the seminars, the conferences and the *Journal* that provide the space to explore and challenge ideas and learn from each other. In the last issue Philip Kolvin KC discussed "The role of deterrence and sanctions in licensing"; in the current issue Gerald Gouriett KC responds with an opposing view. A broad church is often a happy cacophony of opposing factions, puritans and heretics. I trust that Kate will follow in the best IoL tradition and encourage this diversity of debate. The *Journal* , for sure, will certainly continue playing its part in sparking lively and insightful controversy.

Speaking of controversy, I was lucky enough to be invited to speak at the Summer Training Conference where I presented a talk on agent of change and asked, "Does it matter in licensing?" My view is that it does not! It is a planning principle offering unhelpful distraction in the licensing regime. More on that debate in the broad church of our National Training Conference in November, and in the next issue of the *Journal*.

The Terrorism (Protection of Premises) Bill – a classic case of reinventing the wheel

Instead of creating a new regulatory body to safeguard against terrorists, **Philip Kolvin KC** asks why Government didn't use the licensing regime to tackle the task?

The draft Terrorism (Protection of Premises) Bill is designed to protect the public from acts of terrorism. This article concerns the question of whether it is necessary to constitute a new regulator for the purpose. It does not concern the substantive content of the Bill. It is confined to the question of the appropriate mechanism for enforcing the obligations contained in the Bill.

The Bill

The Impact Assessment for the Bill explains that the strategic objective is to keep citizens safe and secure. The policy objectives are to: 1) reduce the impact of terrorist attacks where they do occur; 2) provide clarity of responsibility at premises in scope; 3) improve consistency of security considerations; and 4) expand the support available to help those responsible for the delivery of security in publicly accessible locations (PALs).

The Bill provides for two sorts of premises – standard duty and enhanced duty premises. Both must fulfil the use criteria set out in Schedule 1. The former have a public capacity of at least 100, the latter have a public capacity of at least 800. The legislation also provides for qualifying public events, which would include concerts and festivals with a capacity of at least 800. All of these must be registered with or notified to a national regulator.

Standard duty premises will have to carry out a standard duty evaluation, whereas enhanced duty premises and qualifying public events will have to carry out an enhanced terrorism risk assessment. The latter is more detailed, with greater focus on practicable prevention measures which will need to be adopted, together with a security plan, overseen by a "designated senor officer". All premises will need to train relevant workers.

The role of licensing

It is likely that licensed premises will form the majority of larger premises affected by the Bill precisely because they are places where people congregate with a degree of density attractive to those intent on terror.

That being so, the Bill suffers from a remarkable lacuna. It simply fails to acknowledge the role of the licensing system in protecting the public. The only mention of licensing is in Clause 38, dealing with when licence plans can be removed from the public register.

The purpose of the Licensing Act 2003 was essentially four-fold:

- To place control of licensed premises in the hands of local licensing authorities, which are obliged to have regard to national guidance issued by the Secretary of State under s 182, and also to have regard to their own statement of licensing policy under s 4, so achieving a broad consistency of approach, whether local or national.

- To bring together regulation of premises under one legislative scheme, so as to avoid duplication of regulation, with a long list of responsible authorities able to make representations on applications as well as applying to review premises which are non-compliant or failing to meet the public interest objectives of the legislation. The police, obviously, are a responsible authority.

- To set out licensing objectives, which are the prevention of crime and disorder, the prevention of nuisance, public safety and the protection of children from harm.

- To give licensing authorities power to curtail or even revoke licences using powers of review or, in urgent cases, summary review.

Clearly, The Prevention of Terrorism Act 2005 engages all

of the licensing objectives. Therefore, such prevention is directly within the scope of the Licensing Act 2003.

In practice, the prevention of terrorism is already dealt with under the Licensing Act 2003 in a number of ways.

First, at the individual decision-making level, any responsible authority, or indeed anyone else, can make a representation dealing with terrorism. Similarly, a review may be brought on the grounds that the premises are not doing enough to counter the threat of terrorism. This gives the licensing authority power, for example, to attach conditions concerning counter-terrorism.

Second, an authority may set out specific expectations regarding terrorism in its licensing policy. A good example is Westminster City Council, which sets out detailed requirements which operators need to meet on pain of facing a refusal of their application or a revocation of their licence.[1]

Third, in respect of events, authorities establish safety advisory groups (SAGs), which scrutinise pending events and work with organisers to ensure that the licensing objectives are promoted. Whether because they have a power of veto over the event under licensing legislation or because of their independent powers under health and safety legislation or police legislation, organisers need to have secured the approval of the SAG before their event proceeds. For festivals, taking one example, there is practically always a need for a counter-terrorism risk assessment, with the police playing a key role in ensuring that the measures proposed are adequate, and based on factors including the current risk level, local intelligence and factors directly related to the event.

For events taking place in sports stadia, as well as a premises licence or licences, there can be three other, separate, consents in place: a licence from the Sports Grounds Safety Authority (SGSA); a safety certificate for the sporting events there; and a special safety certificate for other types of events. SGSA's policy is to adopt a wide approach to the concept of safety, to include counter-terrorism. It can therefore attach conditions to a licence requiring incorporation of counter-terrorism measures. It can also direct local authorities to include measures in safety certificates. Its advice to authorities is as follows: [2]

4. Counter Terrorism

- *Are procedures in place to hold parts of a SAG meeting in confidence where this is required by the information to be discussed?*
- *Does the ground have contingency plans that include the different methods of people movement in an emergency situation?*
- *Does the ground have a lock down plan?*
- *Is there a specific counter terrorism plan that has been developed by the club?*
- *Are all counter terrorism documents marked in accordance with a secure documents scheme, such as the Government Security Classification Scheme?*
- *Has the ground produced a plan to deal with an increase in the threat level?*

In all of these ways, therefore, provision has been made or could be made for counter-terrorism measures to be dealt with through the licensing regime.

The relevance of this is that, not only will licensed premises form the lion's share at least of the largest premises to be regulated under the proposed legislation (such as stadia, festivals and nightclubs), they will be the most concentrated in point of location, and the most densely packed in terms of users. For these reasons, it is not easy to understand why the draft Bill simply does not recognise that there is a regime which is operational and actually and potentially capable of achieving the same ends as the legislation in view.

In Volume 1 of the Manchester Arena Inquiry Report, Sir John Saunders clearly contemplated that the Protect Duty would be enforced through existing regulatory regimes, including licensing:

> *8.46 For venues capable of accommodating large audiences, it seems to me that considerations of eliminating or reducing risk from terrorist attacks should be part of the prebuilding process. Once premises are constructed, it may be that compromises in the discharge of the Protect Duty will be reached to enable the premises to trade. For example, one of the principal reasons that SA was able to detonate his bomb was the difficulty of making the City Room secure because of its design and use.*
>
> *8.47 I consider it is important that before premises are built, or there is a change of use, consideration is given to whether the design is suitable for providing the level of security required by the Protect Duty. In the end, it*

1 Westminster City Council, Statement of licensing policy, CE 1.

2 https://sgsa.org.uk/wp-content/uploads/2018/09/Wider-Definition-of-Safety-Local-Authority-Checklist.pdf

would be better for developers to know in advance whether their building was likely to comply with any Protect Duty rather than face difficulties after they have constructed the building.

8.48 Safe means of entry and egress can be considered before the premises are built, so that security difficulties such as those caused by access through grey spaces can be resolved. The nature of the risks and threats from terrorists change, as we have seen over the past decade. While it may be impossible to consider every possibility at the construction planning stage, many could be.

8.49 There are already statutory requirements which could cater for this. It could be done as part of the construction planning or the licensing process. Considerations of public safety are already part of the licensing process and there is no reason why consideration of the vulnerability of a terrorist attack in new premises should not be part of the planning process. I understand this could come within the present planning legislation, but if a widening of the ambit of planning permission was required, there is no reason why that could not be achieved by government guidance or, if necessary, the primary legislation which will be required to introduce the Protect Duty.

8.50 Similar considerations apply to licensing permissions. Any building such as the Arena would require a licence to permit public entertainment and the sale of alcohol. Public safety has always been a consideration in the granting of licences and the clear terms of the Licensing Act 2003 mean that it still is.

8.51 I recommend consideration is given to these matters when legislating for a Protect Duty. The Home Office, in their submissions to me, indicated that they will consider reviewing the Licensing Act 2003 guidance once a Protect Duty has been brought in. An addition to that guidance is all that would be required. Any change in the guidance needs to be consistent with a new Protect Duty and there seems no reason why it should not be issued at the same time as the introduction of the new duty.

As may be seen, Sir John Saunders contemplated that the Protect Duty would find its expression through construction, planning and licensing laws.

Therefore, one might reasonably have expected to find in the Impact Assessment accompanying the draft Bill some explanation for why the licensing system (among others) was not considered to be a suitable means of protecting the public from terrorism, or at least an explanation of why it was thought necessary to bring in a new regime altogether, and how it was expected to complement existing regimes. However, the Impact Assessment is silent on the topic. It does not mention the Licensing Act 2003 at all, except in the context of Sensitive Information in Licensing Applications.

This omission is really underlined by the two options which the Impact Assessment explores. The first option is to do nothing. The second option is to introduce the legislation contained in the draft Bill. That is a clearly deficient analysis, in the context of a regulatory system which already deals with matters of security and safety.

In the case of licensed premises, there is no reason why the licensing system cannot be utilised to ensure that venues are training their staff, carrying out risk assessments and adopting measures to promote counter-terrorism.

A Protect Code

It is suggested that the Secretary of State publish a Protect Code, containing all the substantive duties on premises currently found in the Bill. This would then be imposed on all the premises covered by the Bill through existing regulatory structures.

When it comes to licensing, a light touch means of enforcing the Protect Code would be to amend the Secretary of State's Guidance under s 182 of the Licensing Act 2003 to set out expectations on licensees.

If, however, it is considered that all premises licences should simultaneously be subject to legal obligations, this could be achieved through a small amendment to s 19A(1) of the Act, deleting the words "relating to the supply of alcohol" and "relevant" so entitling the Secretary of State to publish a Protect Code and order that the code be imposed as a mandatory condition on all licences for premises with capacities corresponding to those applicable to the standard and enhanced tiers.

The same code could be imposed by the Secretary of State:

- On gambling premises under s 167 of the Gambling Act 2005.
- On stadia by s 2(2) of the Safety at Sports Grounds Act 1975.
- On all other premises by regulations under s 15 or approved codes of practice under s 16 of the Health and Safety at Work Act 1974.

In short, the Secretary of State should publish a Protect

Code, and the provisions of the code should be enforced immediately through existing regulatory structures.

Advantages of the Protect Code

There are several advantages to the Protect Code approach.

First, a Code could be published and enforced immediately. In contrast, it is understood that the process of legislation and establishment of the regulator will take at least three years. There is no need for that delay.

Second, the enforcement of a Protect Code will be through existing regimes. This will avoid conflict between the licensing regime and the Martyn's law regime. For example, in licensing, the requirements of the prevention of crime objective might cut across the Protect Code. For example, invacuation might breach a licensing condition as to searching entrants. The licensing authority can accommodate and iron out these conflicts in its decision-making. Another example is where there are existing conditions dealing with terrorism. Are they to fall away when the Protect Duty comes into being, or are they to be enforced simultaneously? The Bill does not deal with this. The Protect Code approaches avoids the difficulty altogether.

Third, by the same token, the enforcement of the Protect Code regime avoids duplication between the two regimes.

It is not only that there is a serviceable system, tailor-made to achieve the ends of the Bill but ignored by the Bill, but the Bill itself does not explain exactly how the two regimes are to sit side by side. Should authorities cut and paste the Protect Duty into licences, or must they abjure involvement? Should the Protect Duty cease to apply provided that the licence contains equivalent matters? Should licence conditions dealing with counter-terrorism be deemed null and void if the Protect Duty applies, as occurs with Licensing Act conditions replicated in a sex establishment licence, or fire safety conditions?

What if measures under the Protect Duty cut across measures under the licence? For example, a search condition under a licence may result in a queue. The Protect Duty may require the obviation of queues. Obviously, when the licensing authority has dominion over its terrain it can decide how the two aims are to be reconciled. But if there is a separate authority dealing with the matter, whose will prevails? The last to regulate, or the first, or the national regulator, or the local? No answer is given, because the question has not apparently been considered.

Fourth, the enforcement of the Protect Code through existing regimes will avoid extra burdens on business, on having to deal with two regulators rather than one, both dealing with the same subject matter.

Fifth, a Protect Code will avoid the burden of having to establish a new regulator. On 19 July 2023, in its report on the Bill, the House of Commons Home Affairs Committee said:

> *66. The regulator will be a key factor in determining the success of the Draft Bill's measures. It will have extensive powers and oversee a regulatory framework estimated to cost billions of pounds. However, the Draft Bill is currently incomplete on the identity of the regulator, its governance, and its accountability. There are no provisions setting out who the regulator will be, whether it will be independent or not, how it operates and how it should be accountable. It appears to be the Government's intention that the Draft Bill will be developed on this point once it has considered the outcome of the pre-legislative scrutiny process. However, that is misunderstanding the nature of such scrutiny; it is not for select committees to help initiate legislative provisions, particularly of such a fundamental nature, but rather to comment on draft provisions produced by Government. The Government should develop concrete proposals on the regulator within the next two months and amend the Draft Bill before introducing the Bill to the House.*

Nearly a year later, there has been no announcement as to the identity of the regulator.

Sixth, it appears that the Impact Assessment may seriously underestimate the costs of such a regulator. The assessment states at Table 1 that there will be over 303,000 premises in the Standard and Enhanced Tiers. It suggests that 5% of premises will be inspected each year, making 15,150 inspections per year. It says that each inspection will take five days to complete and write up. That implies 75,750 working days. Yet it says that this will be done by 56 inspectors. That would involve each inspector working 1,352 days per year, just on inspections.

Accordingly, its estimate of a set up cost of £14.4m and ongoing running costs of £112m appears to be a severe underestimate. Moreover, the estimate is based on just 1 in 20 premises inspected per year, or each premises being inspected every 20 years, which itself appears to cut across the very purpose of having the legislation.

Seventh, the proposed system for national regulation stands in contradistinction to most other regulation in this country, including policing, licensing and health and safety, which is enforced locally. Home Office officials have

suggested that there may be a lack of local competence to enforce the regime, but were that so, the solution is to up-skill local officials rather than replacing them with remote national officials.

The Regulatory Policy Committee's assessment was that the Bill is not fit for purpose, in that it has not provided evidence that the Bill would reduce terrorism for small venues, or that a new regulator with national inspectors would be efficient compared with local compliance. This is plainly true.

Eighth, the ability of the system to respond to risk is going to depend very much on local expertise, including understanding of the threat level locally, local intelligence, knowledge of local premises and so forth. It is hard to see the logic of removing from local agencies the control of risk in their own areas.

The local regulatory system established under the Licensing Act 2003 is bound to be superior to, and more sensitive and responsive than a national regulatory system given the knowledge of local CTSAs, local police and PCCs, local SAGs and local licensing authorities. It is unclear why it has been thought necessary to side-line the existing regime in favour of a remote national regulator. In its report on the draft Bill, the Regulatory Policy Committee said that the assessment needs to address disproportionality. The establishment of an extra regulatory system does indeed appear disproportionate.

Ninth, Clause 7 of the Bill takes out of regulation under the Act certain categories of premises, including premises subject to a transport security regime, such as railway stations. That is because the objectives of the legislation are achieved under the regimes governing such assets. It is hard to see why such a specific exemption has been made for some types of premises but not others, such as licensed premises. An appeal to consistency would suggest that the same arguments for exemption appertain, but these have not apparently been considered at all.

It is not easy to conjure significant counter-arguments. The question of enforcing the Protect Duty through existing structures simply does not seem to have been considered at all.

It is possible that there is a feeling, perhaps at ministerial level, that there needs to be an overarching "brand" to the legislation. That is achieved by terming the overarching code "The Protect Code". It does not need to result in wholly new legislation and a new regulator.

It is also possible that it is thought that there should be one piece of legislation enforceable across the UK. However, even if this is achievable in the devolved nations, it does not begin to answer the problems of new legislation cutting across existing regulatory regimes and a new regulator potentially cutting across existing local regulators. Moreover, it does not answer the problem of the significant and unjustified cost of a new regulator or the extended time for establishment of such a body.

Conclusion

Martyn's Law is important. But that does not mean that the wheel must be reinvented, or that a wholly new regulatory regime should be introduced to sit over an existing regime catering for the same things.

A better course would be for the incoming Government to publish a Protect Code and enforce it through existing legislative structures. This carries several legal, practical and logistical advantages and no significant disadvantages. It would also enable the Code to be implemented very quickly and certainly without the several years of delay and cost attendant on the establishment of a new regulator.

Philip Kolvin KC, CIOL
Barrister, 11 KBW

Professional Licensing Practitioners Qualification

9th, 10th, 17th, 19th September 2024
Online via Zoom

The training will focus on the practical issues that a licensing practitioner will need to be aware of when dealing with the licensing areas covered during the course. The training is ideally suited to someone new to licensing, or an experienced licensing practitioner who would like to increase or refresh their knowledge and expertise in any of the subject matters. The training would be suitable for Council and Police Licensing Officers, Councillors, Lawyers who advise licensing committees, managers of a licensing function and committee services officers.

Further thoughts on national conditions for private hire licences

The long-running problem of a driver being refused a licence or having it revoked in one district yet being granted it in another would be removed at a stroke if all private hire licences were granted by a principal authority, suggests **James Button**

This article builds on one in the last *Journal* in which I set out a mechanism whereby national standards for private hire licences could be easily achieved by having all private hire licences granted by one local authority, the principal authority.[1]

That last article outlined the legal framework that would enable this to take place. There are some additional factors that need to be considered which I will look at first, before examining how it would work in practice.

At present, private hire licensing is the responsibility of district councils and unitary authorities. While there is a proposal in the Government's levelling up plans to consider moving it, along with hackney carriage licensing, to combined authorities and county councils, it still would retain a local feel. Districts and counties are directly elected; combined authorities have directly elected mayors. The proposal as outlined would remove any element of local democracy, because the only elected body involved in the national private hire licensing authority would be the principal authority.

I suggest that this democratic vacuum could be overcome by establishing an oversight committee. This would be created as a joint board under the provisions of the Local Government Act 1972, and would have responsibility for ensuring that the principal authority maintained the standards detailed in its policy.

The principal authority's policy would also have to be approved by the joint board. This board would comprise a councillor from each English region, plus one from Wales. They would be nominated by the councils within their region or country and would serve on the joint board for three years. This is not direct democracy in relation to the principal authority, but it does offer a democratic solution. Boards with appointed members make many decisions, principally as planning authorities in national parks. That is seen as an acceptable approach and there is no reason why this would not be acceptable too.

Clearly, taking such a step will reduce local voters' influence on private hire licensing. Great play has been made over the last decade of private hire (and hackney carriage) licensing being essentially local in character and the Government has promoted localism. In my view, the inability of local authorities to achieve even vaguely comparable standards for private hire licensing is actually a failure of localism. As a result, in this instance, I feel that a move away from localism in the interest of public safety would be justified.

There would naturally be concern about jobs if this plan comes into effect. In fact, though, it could have a positive effect on jobs. Existing district councils would still licence hackney carriages, so there would be no need for a reduction in job requirements for that function. The existing requirements for enforcement in relation to hackney carriage offences (eg vehicles and drivers standing or plying for hire outside the district in which they are licensed, and private hire vehicles and drivers doing the same) will continue to be required. In addition, those officers in each district will, acting as officers of the principal authority, be able to undertake inspections, checks and enforcement action on private hire vehicles and drivers. As this will all be funded through licence fees paid to the principal authority and then recharged, there is no reason why there should be any reduction in personnel.

As many district councils use councillors sitting on regulatory committees and sub-committees to determine many aspects of private hire licensing, their involvement could be reduced, thereby allowing councils and councillors to use that limited resource in other ways.

In the principal authority, there will be a requirement for significant additional staff to process a significant

1. See "National conditions for private hire licences" (2024) 38 JoL, p 28.

increase in private hire operator, vehicle and driver licences. This would lead to a large increase in secure permanent local authority posts at good salaries and decent working conditions. The advantage to the principal authority's area would be significant, because these jobs would be created and maintained at no cost to the council taxpayers within the principal authority, or indeed council taxpayers anywhere in England or Wales.

All the costs could be legitimately recovered via the private hire licence fees. Under the ruling in *R (on the application of Rehman) v Wakefield City Council and The Local Government Association*[2] a local authority can recover the costs of enforcement against vehicles, drivers and operators that it licences. As all private hire licences would be issued by the principal authority, any action taken by a local authority other than the principal authority would be on behalf of the principal authority and therefore those costs could be recovered via the licence fees.

The economies of scale of the principal authority would benefit all licensees: licence fees would be reduced in many cases, for the benefit of the trade and potentially passengers.

Turning to the practical aspects, how would this work in practice?

From a particular date to be identified, the principal authority would be in a position to grant and then issue private hire licences – for operator, vehicle and driver. Existing licences issued by district councils would be cancelled once the new licence was issued, and over a short period of time all private hire licences would have been issued by the principal authority.

Private hire operators would be able to continue advertising their services in the areas in which they were originally licensed. If they wished to have a local office in their original districts, that would require an additional base to be added to their principal authority private hire licence. At present, the interpretation of the Local Government (Miscellaneous Provisions) Act 1976 is that the operator's base must be located within the district in which it is licensed (see para 12.104 of *Button on Taxis* 4th edition). There is an alternative view that s 57(2)(b)(ii) permits a base to be located outside the district. As enforcement of an out-of-district base would lie with the district council within whose area it is located (assuming that that council was part of the principal authority arrangement) there would be no need to enforce in that situation, enforcement being discretionary.

From the public's point of view, there would be the advantage of consistent standards of vehicles, and the security of knowing that whatever driver and vehicle was used to fulfil their booking, they would be assured of a consistent standard. That is demonstrably not the case at present when widespread subcontracting can lead to vehicles and drivers licensed by local authorities that have significantly lower standard than others being used to fulfil the booking.

Finally, my original view was that this would have to be agreed by every local authority in England and Wales. However, I no longer believe that is necessarily the case. If a small number of local authorities decided that this was an acceptable solution to the problem of cross-border hiring and enforcement, they could proceed. This needs to be agreed with the principal authority as it must ensure it has the capacity to licence those additional licences.

There will always be some authorities which are not prepared to join such a scheme and will insist on retaining their own private hire licensing functions. They can continue to do so, and it will be a matter of economics for the industry to decide whether the advantages of local licensing outweigh the benefits of the licences available from the principal authority. For a lot of authorities though, this will offer a pragmatic and practical solution. If the process starts, it may well be that it will then have a domino effect with other local authorities seeing the benefits and appreciating that the disadvantages, of which there are some, are outweighed by the benefits.

In my view, far too much time has been wasted in discussing and debating how national standards can be achieved, with no discernible progress achieved. This proposal offers not only national standards at a stroke, but also national enforcement powers and consistent safety standards for the public. The recurring problem of a driver being refused a licence or having it revoked in one district yet being granted it in another (despite the NR3 S) will be removed, for the benefit of the trade as a whole and the general public.

It remains to be seen whether local authorities are prepared to grasp this nettle. As I said in the previous article, if they are not prepared to do so they only have themselves to blame for the continued confusion and problems that result from different standards imposed by different authorities.

James Button, CIOL
Principal, James Button & Co Solicitors

2. [2019] EWCA Civ 2166 [2020] RTR 11 CA.

Acoustic Gym Guide

New guidance is available to help local authorities and leisure facilities establish effective noise-limitation strategies, as **Peter Rogers** explains

Gyms are increasingly being established in commercial spaces, often close to residential areas and frequently in buildings that are not ideal for containing noise. The new Gym Acoustics Guidance, primarily aimed at planning and acoustic professionals, also holds significant relevance for licensing practitioners. The following summary highlights the essential aspects of this guidance for local authority licensing teams, environmental health teams and legal professionals involved in nuisance or licensing cases.

Importance to licensing practitioners

This guidance aims not only to standardise assessment methods for acousticians but also to direct local authorities on appropriate conditions and complaint investigations. This aspect is particularly relevant to licensing practitioners.

Key elements of the guidance

1. *Noise assessment criteria:* The guidance provides detailed methods for predicting and measuring noise levels from gyms to ensure they meet acceptable standards before they begin operations. This includes the use of specific measurement parameters and criteria to assess the impact of gym noise on surrounding areas.

2. *Noise control measures:* The guidance offers guidelines on implementing effective noise mitigation strategies. These strategies are designed to pro-actively prevent noise problems, thus helping gyms operate within acceptable noise levels and avoid potential complaints.

3. *Regulatory compliance:* The guidance includes information on compliance with local and national noise regulations. It reviews and summarises relevant noise control guidelines, helping practitioners understand the legal framework and ensure gyms comply with necessary standards.

4. *Validation calculation sheets and G-curves:* These tools are used for validating noise predictions. G-curves, in particular, provide a new measure of sound that can be used to assess the impact of noise from gyms. The rating system plots measured noise levels against G-curves to determine compliance with recommended noise levels.

5. *Case studies:* The guidance includes examples of best practices and lessons learned from other gym installations. These case studies provide practical insights that can be applied to new projects and help in making informed decisions regarding gym noise management.

Practical applications for licensing practitioners

- *Impact on Licensed Premises:* The guidance is especially useful where gym noise might affect other licensed premises within the same building. Noise from heavy impacts (e.g., weights dropping), repetitive thuds from running machines, and amplified music from classes can disrupt nearby licensed premises such as bars and clubs.

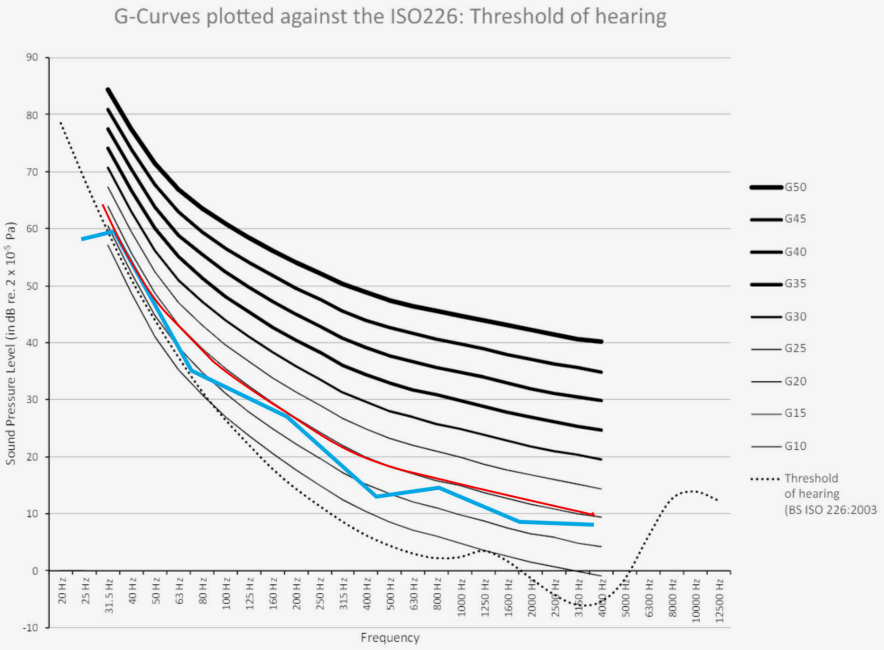
- *Noise Criteria:* The guidance recommends using G-curves in decibels rather than the more familiar dB(A) for assessing noise impact. This method involves plotting measured noise levels against G-curves to determine the closest curve not exceeded by the measured values (see example below). For example, music noise levels (Leq) and heavy impacts (LMax) are assessed using this method with up to G20 in bedrooms.

- *Applicability to Music Noise:* The inclusion of music in this guidance is due to the amplified music often played in gym classes, which can occur early in the morning or late at night. The guidance provides a benchmark for acceptable noise levels, offering a credible target for music noise emissions from gyms and other licensed premises affecting residential areas.

The Gym Acoustics Guidance was recently referenced in the *Night & Day Café* appeal against a noise abatement notice (Manchester Mags Court, 18 March 2024). The guidance informed target criteria for residential bedrooms affected by music noise, recommending a G15-20 range as the upper limit. This range represents the onset threshold of significant impact, serving as a useful proxy for potential nuisance and meeting the licensing objective of preventing

Table 2: Guidance Internal Sound Target Criteria for Gym Activity – Residential & Other Areas

Receptor type	**Guide Criteria** (for third octave band values plots against the stated G curve - see Figure 2)	
	Airborne Sound (e.g., music) $L_{eq,\ T}$ (31.5Hz to 8kHz)	Heavy Impact Sound $L_{max,F}$ (31.5Hz to 8kHz)
Commercial Offices	G25-G35	G35-G45
Retail Areas	G30-G45	G35-G50
Residential Areas	G15-G25 (day) G10-G20 (night)	G20-G25 (day) G15-G20 (night)



Note to G-Curve graph: The blue line is overlaid over Figure 2 from the guidance to show what a measured set of data might be, and how this results in this being representative of the G20 curve (in red).

public disturbance. It also tested well against the officer's subjective own judgement of what was considered not to be a nuisance.

Additional resources

The guidance also includes advice on creating noise management plans and managing complaints, applicable to both gyms and other licensed premises. Appendix sections offer examples of condition wording and summarise the agent of change principle, providing a comprehensive resource for practitioners.

Conclusion

The Gym Acoustics Guidance is a vital tool for licensing practitioners, bridging the gap between planning and licensing and defining objectively something which could be used as a guide target for music to achieve the licensing objective on public nuisance. By following this guidance, licensing practitioners and operators can not only help gyms that become licensing premises to operate harmoniously within their environments, but also provide guidance on noise that will be useful in helping other licensed premises to meet their licensing objective of preventing public nuisance.

Reference

Gym Acoustics Guidance ProPG March 2023, IOA ANC and CIEH, (accessed 24-5-24) https://www.ioa.org.uk/news/propg-gym-acoustics-guidance-available-now

Peter Rogers
Managing Director, Sustainable Acoustics

Gambling Commission responds to White Paper consultation with series of regulatory changes

Operators across the board will have to adapt working practices to accommodate new regulations being introduced over the coming months, explains **Nick Arron**

The Gambling Commission has published its response to the consultation from summer 2023 on proposed changes to the Licence Conditions and Codes of Practice and the Remote Technical Standards (on 1 May).

Other than the limit on online slot stakes, this is the first significant regulation that has come out of the Government White Paper High Stakes: Gambling Reform for the Digital Age. [see JoL: No 36, July 2023, p28-30.]

The Gambling Commission's response to the consultation outlines various changes to gambling regulation including:

- Improving customer choice and direct marketing.
- Strengthening age verification in premises.
- Financial vulnerability and financial risk assessments for online gambling.
- Extending and clarifying personal management licence requirements.

Strengthening age verification in premises

Focusing initially on land-based gambling, the most significant change is with age verification in premises.

The Commission will implement changes to the Licence Conditions and Codes of Practice (LCCP) in relation to age verification test purchasing and Think 25.

Currently under the LCCP, only the larger betting, bingo, Family Entertainment Centre (FEC) and Adult Gaming Centre (AGC) operators are required to carry out age verification test purchasing. The smaller operators, in categories A and B, are not required to do so. The Commission is now making it mandatory for all licensees to carry out age verification test purchasing, capturing both smaller and larger operators.

The Commission noted that the risk of harm from underage gambling does not differ according to the size of the licensee running the premises. The Commission's age verification test purchasing data submitted by category A and B licensees voluntarily suggests that in 45% of tests in category A and B of FEC licensees, the tester was not challenged at all. The Commission refer to this figure, and the need for licensees to make progress to improve the number of testers who are challenged.

This move will result in increased costs for smaller operators, although many of them will benefit from testing provided by their trade associations, BACTA and the Bingo Association. The Commission's view is that the implementation of this requirement is proportionate to address the risk of underage gambling and to the cost of implementation, in part because the majority of licensee premises are already tested. They therefore viewed this as a balanced way of achieving compliance in relation to age verification.

The Commission expects that all relevant premises will be tested by 31 March 2025, giving licensees a sufficient period to arrange for testing for the first time.

Think 25

The Commission has also decided it is appropriate to introduce Think 25, replacing the current Think 21. In introducing the requirement the Commission reflects on calls from both industry and campaign groups to introduce Think 25 as a standard for all gambling premises. It also mentions that the introduction of Think 25 in the retail alcohol industry was more successful in preventing underage access than Think 21.

This is an ordinary code provision and therefore good practice advice from the Commission.

These changes will come into effect on 30 August 2024.

Personal management licences

In summer 2023 the Commission consulted on a number of changes to and clarifications on personal management licences (PMLs).

It has now announced that it will implement wording on the PML role of overall management and direction of the licensee's business or affairs, clarifying that this is likely to be the chief executive officer or managing director or the equivalent. This will help licensees, in so far as it helps guide them as to who the relevant person would be for the PML.

The Commission also consulted on the requirement that for organisations with a board, the person responsible for chairing the board should hold a PML.

There was some concern within the industry regarding this proposal, and a potential conflict with the UK Corporate Code of Governance in respect of the role occupied by non-executive chairs and executive chairs, and the fact that non-executive chairs are not responsible for the day to day running of the gambling operation. Furthermore, the Companies Act 2006 does not necessarily require permanent chairs to be appointed, so many licensees will not have a chairman of a board and others may have one on a rota basis.

The Commission decided to implement the provision but to remove any ambiguity and make it clear that the provision applies to a chair who is appointed for a fixed or indeterminate term of office and not on a transient and / or a short term basis for individual meetings. The rationale is that the chair is responsible for overseeing the gambling operation and holding management account.

Finally in respect of PMLs the Commission will implement a provision requiring the head of the licensee's anti money laundering and counter terrorist financing function to hold a PML. This is likely to be the person responsible for compliance with anti money laundering regulations for the casino sector, and for other sectors the person responsible for submitting reports of known or suspected money laundering and terrorist financing.

Improving customer choice on direct marketing

The Commission in summer 2023 also consulted on changes to provide customers with increased preferences to control the gambling direct marketing they received by product type. So, for instance, they would opt in specifically to betting, bingo and casino product types, and they could also dictate the channel of that marketing, eg email or text message.

The proposal was to introduce this across all licensees who manage customers, land-based and online. The Commission says that members of the public who responded to the consultation were broadly supportive of the proposal. Similarly, gambling operators were generally supportive of improving customer choice for marketing, indeed some described how they already had such options available to their customers.

The lottery and land-based sectors raised concerns relating to the lack of account-based play and technical infrastructure systems that would make the proposal challenging and costly.

The proposal was to be that the preference will be set as opt out rather than opt in, so requiring all customers to reconfirm their marketing preferences before a licensee could continue to market to them. For online businesses this would be straightforward as it can be managed at the point of log in, but for land-based businesses this is much more difficult. The land-based industry was concerned that millions of customers had pre-existing direct marketing preferences, with consent given and legally obtained by the licensees. These would all now be opted out by the Commission proposals, causing confusion and complaints and for the land-based businesses a significant drop in revenue. Land-based customers may only visit occasionally, so their ability to opt back in is limited by that number of visits, and customer preferences would need to be checked on arrival at the venues.

There was also some confusion as gaming machines or slots were being classified by the Commission as a casino product. Of course, all land-based gambling venues for casino, bingo, betting, FEC and AGC provide gaming machines.

The Commission considered the consultation responses and decided that the scale of the task required for land-based and lottery operators to develop a solution to seek customer marketing preferences, for all existing and new customers, will be disproportionate to the benefit afforded to their customers at this time. Given the complexities faced by such operators, and the Commission's focus on remote gambling marketing, it decided not to include land-based gambling or lotteries within the scope of this requirement.

Therefore, the provisions requiring direct marketing to be based on product type and channel will only be implemented for online operators, and will come into force on 17 January 2025.

Financial vulnerability

The other significant changes the Commission announced

relate to financial vulnerability and financial risk assessments, which will be introduced in the LCCP.

The financial vulnerability checks and financial risk assessments are part of the wider debate around player affordability. This was the most debated topic of the Commission consultation, and many respondents disagreed with the overall principle of financial vulnerability checks and financial risk assessments. The Commission reports that the majority of respondents were members of the public, with large numbers of them stating that they are gambling consumers responding as individuals and that their gambling would meet one of the thresholds for financial vulnerability checks and financial assessments. These respondents shared the concern about the impact on their freedom to spend their change on what they like, often referring to other industries that are not restricted in this way, or sharing examples of other purchases they make that equate to the same amount, such as a daily cup of coffee costing more than the threshold which would have been set out for the light touch financial vulnerability checks. Some said that customers would move to the black market, or believe that others would.

Many had concerns about data and privacy, not wanting gambling companies to have access to the information that the Commission proposed. There was a general concern over how the proposals would impact on horse racing and how the proposed limits may affect people who enjoy gambling as a hobby that contributes towards their wellbeing.

The gambling businesses generally supported the principles of the consultation but did not support the detailed proposals and the limits at the levels proposed.

On financial vulnerability checks, the Commission is introducing a social responsibility code provision which would take effect on 30 August 2024. This will require licensees to undertake a financial vulnerability check for customers that meet the relevant threshold.

The check must include a minimum customer-specific public record information check for significant indicators of potential financial vulnerability. The check must include whether the customer is subject to a bankruptcy order or equivalent, or county court judgement, individual voluntary arrangements, high court judgment, administrative order or decree or a debt relief order or equivalent.

The code provision then requires the licensees to take that information into account, determine the appropriate action and record the action and the rationale for the decision. Policies and procedures must be implemented by licensees to support the checks.

The checks are not required until the relevant threshold has been reached. But licensees are not required to do so if the operator has previously conducted a financial vulnerability check or financial risk assessment within the previous 12 months.

The threshold levels have been staggered. From the implementation of the code provision on 30 August up until 27 February 2025 the relevant threshold for the financial vulnerability check is when the customer's deposits minus withdrawals exceeds £500 in a rolling thirty-day period. From 28 January 2025 this limit comes down, with the threshold being where the customer's deposits minus withdrawals exceeds £150 in a rolling thirty-day period.

Financial risk assessments

For financial risk assessments, the Commission has decided not to roll out live assessments until it is satisfied that the data sharing can work appropriately. It is therefore going to run a pilot with the largest licensees, to test the practical issues, before a final decision is made on whether and how those assessments take place. During that period consumers will not be affected.

The pilot will test out the different forms of data available to consider what is helpful and meaningful in the gambling context. The Commission reports that if the pilot progresses well, the assessments will be frictionless for the vast majority of customers who undergo them, without the customer providing documents. They will apply only to the highest spenders.

The Commission will require the three largest operators from the three highest relevant bands of operating licence categories to participate in the pilot, and a social responsibility code provision will be instituted on 30 August 2024 to affect this requirement. The pilot period is intended to be six months.

Nick Arron
Solicitor, Poppleston Allen

The ‘Fit and Proper Person’ test

In an article adapted from his talk at the IoL’s Stratford conference last November, **Gerald Gouriet KC** considers whether the ‘Fit and Proper Person’ test is a relevant consideration in decision making under the Licensing Act 2003

Before the Licensing Act 2003 came into force, a licence for the sale of alcohol was issued to a “person”, in respect of the licensed “premises”. And that person had to be “fit and proper” to hold the licence.

Since the 2003 Act came into force in 2005, both the person and the premises are separately licensed. The relationship between a personal licence and a premises licence is illustrated by s 19, which places a mandatory condition on premises licences that every supply of alcohol under the licence must be made or authorised by a person who holds a personal licence.

A personal licence is only required for the supply of alcohol, however; other regulated activities (such as regulated entertainment or the provision of late-night refreshment) do not need to be carried on or authorised by a personal licence-holder.

A discussion of the role (or otherwise) of the fit and proper person test necessitates separate consideration of personal licences and premises licences.

Personal licences

There is no express fit and proper criterion for the grant of a personal licence. The exercise of judgement by the licensing authority is all but denied them. Instead, the 2003 Act prescribes in minute detail when an application for a personal licence must be granted, must not be granted, and may be granted.

Section 120(2) provides:

The authority must grant the licence if it appears to it that—

(a) the applicant is aged 18 or over,

(aa) he is entitled to work in the United Kingdom,

(b) he possesses a licensing qualification or is a person of a prescribed description,

(c) no personal licence held by him has been forfeited in the period of five years ending with the day the application was made, and

(d) he has not been convicted of any relevant offence or any foreign offence or required to pay an immigration penalty.

Section 120(3) provides:

The authority must reject the application if it appears to it that the applicant fails to meet the condition in any of paragraphs (a) to (c)] of subsection (2).

Section 120(7) provides (in effect) that the authority *may* grant the application even if the applicant falls foul of (d) of subsection (2), if the grant would not be inappropriate for the promotion of the crime prevention licensing objective.

If anyone should be looking for an illustration of micro-managed over-regulation – to the likely detriment of sound decision-making – they could not do better than to turn to the statutory definition of “relevant offence” in the 2003 Act. Section 113 says, with disarming insouciance, that a relevant offence “means an offence listed in Schedule 4”.

In the talk I gave to the Institute of Licensing on November 16, I cited the entirety of Schedule 4 in a long sequence of ten Powerpoint slides. Rather than take up space in this published article, it is perhaps sufficient to say that there are over 100 offences in Schedule 4.

I have rarely encountered such a prescriptive check-list for the determination of what should be a relatively straightforward issue. Indeed, I cannot begin to understand why a licensing authority is not trusted to make the judgement-call itself, and issue a personal licence only to those whom it thinks are fit and proper to hold one.

Premises licences

Section 3 of the repealed Licensing Act 1964 provided:

Licensing justices may grant a justices’ licence to any such person, not disqualified under this or any other Act for holding a justices’ licence, as they think fit and proper.

The breadth of that discretion (“may grant”, and “as they

think fit and proper")[1] allowed for a degree of local control which must surely be the envy of modern licensing authorities having to make decisions under the more prescriptive Licensing Act 2003.

The fit and proper person test in Scotland

The Licensing (Scotland) Act 2005 is similar in many regards to the 2003 Act, and it is clearly intended to be so. It follows, for example, the scheme of separate "personal licences" and "premises licences". It gives the same licensing objectives, albeit in slightly different language: ("preventing crime and disorder", "securing public safety", "preventing public nuisance", "protecting children and young persons from harm"), with an additional licensing objective of "protecting and improving public health".

But in spite of the similarities, the Scotland Act expressly preserves the fit and proper criterion, which the 2003 Act does not. Section 23 of the Scotland Act gives one of the grounds for refusal of a premises licence "that the applicant is not a fit and proper person to be the holder of a premises licence."

Definition of fit and proper person

In *R v Warrington Crown Court*[2] Lord Bingham said:

> *[Fit and proper person] is a portmanteau expression, widely used in many contexts. It does not lend itself to semantic exegesis or paraphrase and takes its colour from the context in which it is used. It is an expression directed to ensuring that an applicant for permission to do something has the personal qualities and professional qualifications reasonably required of a person doing whatever it is that the applicant seeks permission to do.*

Although an express fit and proper person test has not been carried forward into the 2003 Act, the concept is far from alien to modern regulation. It is a dominant force, for example, in taxi licensing, it being a requirement of a private hire vehicle driver's licence, a private hire operator's licence and a hackney-carriage driver's licence that the holder is a fit and proper person. [3]

In *McCool v Rushcliffe Borough Council*[4] the issue was the past conduct of a private hire driver (indecent assault on a passenger), and in the course of his judgment Lord Bingham made it clear that the fit and proper person test in the context of taxi licensing went beyond a simple appraisal of his ability to drive a vehicle safely. He said that the purpose of the test in the taxi licensing regime was:

> *… among other things, to ensure so far as possible that those licensed to drive private hire vehicles are suitable persons to do so, namely that they are safe drivers with good driving records and adequate experience, sober, mentally and physically fit, honest, and not persons who would take advantage of their employment to abuse or assault passengers. (My underlining.)*

In other fields, too, the fit and proper person test is alive and kicking: the Finance Act 2010 introduced a requirement for charities to be run by "Fit & Proper Persons" if they were to enjoy the status (and tax benefits) of a charity. The fit and proper test is also the benchmark for providers of health and social care, as well as owners and managers of park home sites, and even the owners and directors of football league clubs.

It would be strange indeed if, in the field of alcohol and entertainment, unfit and improper persons were tolerated as the licensees of premises.

The licensing objectives

Obviously, if a representation is made (and accepted) that an applicant for a licence is so unfit to hold a premises licence that the licensing objectives would be undermined if it were granted to them, then a refusal will most likely follow. But strictly, it would be because rejecting the application was "appropriate for the promotion of the licensing objectives", rather than because the applicant was not a fit and proper person.

So it is that an application by a convicted drug dealer is likely to be thought to undermine the prevention of crime objective, or the grant of a licence to a known paedophile palpably inconsistent with the protection of children from harm objective. The character of the applicant – their fitness and propriety – is in truth the reason for refusal, but it has to be channelled through the licensing objectives.

The analysis is easy when the unfitness goes directly to one of the licensing objectives, but what about when the unfitness is more general, and a direct connection cannot be made? For example, when an applicant shows a total disregard for laws unrelated to the licensing objectives. I have known conduct of an applicant which amounted to contempt for the law – stubborn refusal to make maintenance payments, repeated driving while uninsured, flagrant breaches of planning laws – to be rejected as irrelevant to a determination of a premises licence application because they did not relate to the

1 See, for example, the discretion as explained by the House of Lords in *Sharpe v Wakefield* [1891] AC 173.

2 [2002] UKHL 24.

3 LGMPA 1976, ss 51, 55 and 59; Private Hire Vehicles (London) Act 1998, ss 3, 13.

4 1998 WL 1043984.

licensing objectives. Surely, if an applicant is demonstrably not law abiding, it is undesirable that they hold a premises licence, even if their disinclination to obey the law is manifest in areas not directly related to the licensing objectives?

In the unreported case *R v Preston Crown Court ex parte Cooper* (1989)[5], the Divisional Court upheld the refusal of a licence on the ground that control of the premises would rest with a family who had regularly "flouted the law in relation to mock auctions". The Crown Court had said: "We find that this application has behind it a family firm which we do not accept is law-abiding and of the integrity required…".

That was a case under the Licensing Act 1964, where an express fit and proper person criterion was in play. But I think analogous reasoning could legitimately figure in an application for a premises licence under the 2003 Act. The key is the word "appropriate" in s 18(3):

18 Determination of application for premises licence
(3) Where relevant representations are made, the authority must—
(a) hold a hearing to consider them…
(b) having regard to the representations, take such of the steps mentioned in subsection (4) (if any) as it considers appropriate for the promotion of the licensing objectives.

I think it is strongly arguable that in a suitable case, past conduct, and in particular conduct that displays a lack of integrity or habitual law breaking, may be relevant to a licensing decision under the 2003 Act, even if the past conduct or unlawful behaviour cannot be directly linked to any of the licensing objectives. That is because it may legitimately be thought inappropriate for the promotion of the licensing objectives to give a person who is not a law-biding citizen – or even a person who is of bad character more generally – the responsibilities of a premises licence.

The *Knightsbridge* case

The fit and proper person principle was stretched to its limit in this case, *Knightsbridge,*[6] which concerned the cancellation of casino licences under the Gaming Act 1968 on the ground that the licensees were not fit and proper persons. The licences had been cancelled by the licensing justices, and there was an appeal against their decision. By the time the matter reached the Crown Court, the entirety of the shares in the holding company of the various subsidiary licensee companies had been sold to new owners, against whom there was no complaint. The Crown Court dismissed the appeals. On further appeal to the Divisional Court, the issue was summarised in the judgement of Griffiths LJ as follows:

> *Whereas it might be difficult for an individual with a bad record to persuade a court that he had completely reformed, a company was in a different position for it was as good or as bad as the people who controlled and managed it, and where there had been a complete change of shareholding and management there should be no impediment to holding that the company was now a fit and proper person to hold a gaming licence, if the shareholders and managements were now respectable and capable of the proper management of a gaming club.*

The licensees won their appeal in the Divisional Court, but only because the Crown Court had failed to regard the character of the new owners of the licensee companies as relevant. The Divisional court did not say that the past conduct of the replaced owners was irrelevant: far from it. It is instructive to cite two passages in the judgment of Griffiths LJ in more detail:

> *On the question of whether or not the companies are fit and proper persons to hold the licence it is conceded that this question must be determined in the light of the circumstances existing at the time of the appeal. Past conduct will, of course, be relevant as we shall discuss more fully hereafter. …*
>
> *We have no hesitation in saying that past misconduct by the licence holder will in every case be a relevant consideration to take into account when considering whether to cancel a licence. The weight to be accorded to it will vary according to the circumstances of the case. There may well be cases in which the wrongdoing of the company licence holder has been so flagrant and so well publicised that no amount of restructuring can restore confidence in it as a fit and proper person to hold a licence; it will stand condemned in the public mind as a person unfit to hold a licence and public confidence in the licensing justices would be gravely shaken by allowing it to continue to run the casino. Other less serious breaches may be capable of being cured by restructuring.*
>
> *It is also right that the licensing justices or the Crown Court on an appeal should have regard to the fact that it is in the public interest that the sanction of the cancellation of a licence should not be devalued. It is obvious that the possibility of the loss of the licence must be a powerful incentive to casino operators to observe the gaming laws and to run their premises properly. If persons carrying on gaming through a limited company can run their*

5 Cited by Lord Bingham in *Warrington*.

6 *R v Knightsbridge Crown Court, Ex parte International Sporting Club (London) Ltd,* [1982] QB 304.

establishment disgracefully, make a great deal of money and then when the licence is cancelled sell the company to someone who because he is a fit and proper person must be entitled to continue to hold the licence through the company, it will seriously devalue the sanction of cancellation… A licensing authority is fully entitled to use the sanction of cancellation in the public interest to encourage other operators or would-be operators of gaming establishments to observe the law in the area of their jurisdiction.

In a scholarly and thought provoking article in the *Journal of Licensing* (2023) 37 JoL, pages 20 - 24, Philip Kolvin KC suggests that the Knightsbridge case “has no application to bodies which are not charged with the function of imposing sanctions.” He writes:

A licensing authority has no power to impose a sanction of cancellation. Its role is to impose measures to protect the licensing objectives in the future. Therefore, the ideas propagated in Sporting Club, including whether the licensee will “stand condemned” in the public mind, and whether “public confidence” in the licensing system would be affected by a failure to cancel the licence, have passed into history. They have no place in the modern licensing system.

What Philip seems to be saying is that although a licensing authority most certainly has the power to revoke a licence, that is not a “sanction” – it is only a “step to promote the licensing objectives” – and the *Kingsbridge* reasoning only applies to sanctions. Adopting the language of a proverbial dissenting judge in the Court of Appeal, “I have the misfortune to disagree with my brother KC”.

Surely there is as much need for the public to have confidence in the licensing regime provided by the 2003 Act as there was for them to be confident in the scheme of Gaming Act 1968 or in any other licensing regime. Loss of public confidence can lead to civil disobedience of varying scales, whether it is extreme, as in the poll tax riots, or at the other end of the scale as in the recent ULEZ lawlessness. It is by no means difficult to postulate a potential and realistic link between loss of confidence in the 2003 Act (should it occur) and the undermining of the crime prevention licensing objective, or the prevention of public nuisance objective. The reason why confidence had been lost, the scale of that loss and the likely continuance of it, would obviously be important factors.

The flaw, if I may respectfully say so, in Philip’s argument is his assertion that the 2003 Act “steps appropriate for the promotion of the licensing objectives” are not “sanctions”. I am not sure it matters what label one gives to the power of revocation.

I think that there could well be a decision on a review in which a licensing authority lawfully concludes that it is appropriate for the promotion of the licensing objectives for the public to have confidence in the licensing regime, and that in the circumstances of that review, confidence would be seriously undermined if the licence were not revoked. It would be immaterial whether that revocation were labelled a “sanction” or (more accurately) a step which is appropriate for the promotion of the licensing objectives.

Philip concludes that *Knightsbridge* “has nothing to tell a modern licensing authority under the Licensing Act 2003” and “should be allowed to rest in peace.” He should not be too sure that it will do so – certainly not while I am around!

Gerald Gouriet KC
Francis Taylor Building

Institute of Licensing News

Board and team updates

National Chair

It has been a pleasure to welcome Kate Nicholls OBE as our new National Chair of the IoL. Kate took up the position on 1 April, bringing her vast industry and business experience to the table. She will be a brilliant Chair for the organisation, and we are all excited to be working with her.

IoL Growth Review

This is an exciting time for the IoL with our Growth Review currently in progress. The review will ensure that the IoL has the right resources, systems and processes in place to enable it to continue to develop and grow as an organisation and to provide the best possible support and services to its members. We look forward to sharing more information on the findings and proposals going forward.

The team

In the last edition of the *Journal*, we talked about the role which Stephen Lonnia was taking forward in providing dedicated support for the 12 regions of the IoL. Since then, due to circumstances beyond his control, Stephen has unfortunately had no choice but to step down from his post. We are all very sad to lose him, but understand and respect the reasons for his decision, and wish him all the very best for the future.

In the meantime, it is wonderful to have Hannah back from maternity leave. Hannah's baby girl, Sienna, is adapting well to the new arrangements, and the team are delighted to have Hannah back at work and able to pick up where Stephen left off in offering support to the regions while also working with Jenna to keep things running smoothly in relation to IoL training and events.

Meanwhile, Natasha is currently unable to work for health reasons, and not expected to return for several months. We all wish Natasha the very best for a good recovery and cannot wait to have her back to full health and back at work.

A new system

This time last year we conducted membership renewals manually, and were due to launch our new website and systems shortly afterwards. The project has taken longer than we had expected, leaving us in a similar position now! Hopefully by now, all IoL members have confirmed with the team their membership renewals and received their renewal invoice. The invoices will take longer than usual because they are being done manually, but the team are making all efforts to get invoices out to all personal and organisation members promptly.

In the meantime, we continue to work with Very Connect, our new system supplier, to implement our new platform, which will integrate with our new website and our existing learning management platform. The integration is expected to work well, providing members with single log-in access to a fresh, intuitive user experience for our members and customers.

The new system will include a much-improved document library, a useable discussion forum, more access for members to update and amend their information, and a greatly improved events management system. It will all look and feel fresher and more dynamic, enabling improved communications ahead of courses and events, and delivering efficiency savings for the IoL team.

While we work to get the new website and system ready to go live, there should be very little impact on our members and customers. The existing website and system will remain in place and live until we are ready to switch over. This is likely to be several weeks away as we will need to update the new system with all the changes in our core data since the system export.

Behind the scenes, the new website is starting to look really good, and we are delighted that the new platform will enable us to re-establish regional pages which will have full information about the areas covered, as well as the regional committees and regional events, along with all the resources currently available but on a more intuitive and streamlined platform.

We look forward to implementing the new website and system and sharing it with you all once everything is ready to switch over!

Meetings, training and events

Summer Training Conference, 12 June 2024 (Grand De Vere Connaught Rooms, London)

It was brilliant to bring the Summer Training Conference to London this year. The Grand De Vere Connaught Rooms is a fantastic venue and we were delighted to welcome a stellar line up of speakers including our new National Chair Kate Nicholls OBE, London's Night Czar Amy Lamé, IoL Patron Philip Kolvin KC, Bristol's Night-Time Economy Advisor Carly Heath, Tim Spires from the Greater London Authority, Sylvia Oates from Six till Six, Katherine Blair from TfL, John Miley, NALEO's National Chair (and Vice Chair of our East Midlands region), IoL President James Button and Editor of our *Journal of Licensing*, Leo Charalambides.

The programme delivered by our speakers covered many areas of licensing with lots of focus on the evening and night-time economy in London, Bristol and across the country. It was great to hear about the business-friendly licensing in London and the harm-reduction work in Bristol. Katherine Blair gave some valuable insights into the transport provision in London by day and by night, while Philip Kolvin KC asked some key questions around the future for Martyn's Law, while highlighting the gaps and questions that remain unanswered. James Button reminded us about safeguarding issues and how licensing plays a major part in protecting children and vulnerable adults, while Leo Charalambides took us through the decision in the Night & Day case and looked at the agent of change principle in a licensing context.

The Summer Training Conference was the first opportunity for Kate Nicolls OBE to address members since she became our National Chair, and it was a real pleasure to bring the event to our capital! We were well looked after at the Grand De Vere Connaught Rooms – a fantastic location right in the heart of London and just a few minutes' walk from Trafalgar Square.

A huge thank you to our London Region for helping us to run this superb event. A special thanks too to Gareth Hughes and Andrew Heron, our London region Chair and Vice Chair respectively, who chaired the day and made us all feel very welcome.

Regional Officer Training Day, 11 June (The Hippodrome, London)

Another annual event which we always really look forward to is our Regional Officer Training Day. Traditionally held the day before the Summer Training Conference, it is an opportunity to bring our regional committee officers together to discuss the experiences, opportunities and challenges of organising the regions throughout the year. We exchange ideas across the regions as well as update regional officers about the work happening nationally.

This year was no exception, and we were delighted to be joined by so many of our regional officers, all of whom give their time and energy to making the regions work, arranging and hosting regional meetings and providing the accessible meetings and networking opportunities for our members across the country. We are sincerely grateful to each and everyone one of our regional officers and very proud of the strength of the regional network across the UK.

13 – 15 November - National Training Conference (Stratford-upon-Avon)

Planning for the NTC2024 is well underway and we are looking forward to returning to Stratford-upon-Avon for our signature three-day residential training conference. The conference is the biggest event in the IoL's calendar by far, with somewhere in the region of 75 different training sessions delivered by more than 80 expert speakers, as well as discussion panels and session workshops.

This is an unrivalled training and networking event for licensing practitioners, and we are proud to run it and incredibly grateful to everyone who makes the event possible. Special thanks to our wonderful sponsors and exhibitors for their invaluable support year on year.

We look forward to welcoming delegates, speakers and sponsors, whether seasoned attendees or new to the event. Come along and experience all that the IoL's NTC has to offer. We will see you there!

Apprenticeships – a brief update

We had previously reported (via LINK articles from Louis Krog) that the Institute for Apprenticeships and Technical Education (IfATE) did not approve a standalone Local Authority Licensing Officer Apprenticeship standard. Instead, the Institute asked us to join the trailblazer group tasked with reviewing the Regulatory Compliance Officer (RCO) Apprenticeship, which they consider as broad enough to meet the specific requirements we had outlined in our initial submissions to support the case for a Specialist Licensing Apprenticeship.

The trailblazer group for the RCO review commenced in January 2024 and aims to complete its work and report back to IfATE towards the end of the year. IfATE has been very clear that the RCO apprenticeship standard must remain broad and generic, which is important because it means the standard will be adaptable. The work with the trailblazer group has in turn led to the group working with a national RCO training provider to devise a specific programme for local authority licensing apprentices which will include some key content including the relevance and significance of representations, the use of mediation, inspections and compliance work (vehicles and premises), the relevance (and development) of local policy and preparing and presenting reports to committee.

Grateful thanks to our National Communications Officer Louis Krog for his work on the project and to other IoL members represented on the trailblazer group. Louis will provide a detailed article for the summer edition of LINK magazine, which will be published in August.

The Jeremy Allen Award 2024

Nominations close on the 6th September.

This award is open to anyone working in licensing and related fields and seeks to recognise and award exceptional practitioners.

Crucially, this award is by 3rd party nomination, which in itself is a tribute to the nominee in that they have been put forward by colleagues in recognition and out of respect to their professionalism and achievements.

The nomination period for the 2024 award runs from 10th June and nominations are invited by 3rd parties by no later than 6th September 2024.

Please email nominations to info@instituteoflicensing.org and confirm that the nominee is aware and happy to be put forward. For full details including the nomination criteria, please click here. We look forward to receiving your nominations.

Sue Nelson
Executive Officer, Institute of Licensing

Celebrating our previous JAA winners

2023
John Miley

2022
Yvonne Lewis

2021
Andy Parsons

2019
David Lucas

2018
Stephen Baker

2017
Claire Perry

2016
Bob Bennett

2015
Jane Blade

2014
Alan Tolley

2013
David Etheridge

2011
Alan Lynagh

2012
Jon Shipp

*No Award in 2020 due to Covid-19

13th, 14th, 15th November 2024

Bridgefoot, Stratford-upon-Avon CV37 6YR

We are delighted to be holding our signature three-day National Training Conference for 2024 to be held in Stratford-upon-Avon.

Residential bookings sold out last year so book early to avoid disappointment. Please book online or email events@instituteoflicensing.org to submit your booking request.

Once full we will add residential booking requests to the waiting list. We will then process requests for bookings in date order.

The programme will include the range of topic areas our regular delegates have come to expect, with well over 50 sessions across the three days delivered by expert speakers and panellists.

We look forward to welcoming new and seasoned delegates to the NTC along with our expert speakers and our event sponsors.

Early booking is always advised, and bookings will be confirmed on a first come first served basis.

The Gala Dinner (Thursday evening) is a black tie event, and this year will have an optional 'sparkly' theme. Wear something sparkly and join in the fun!

The Institute of Licensing accredits this event as 12 hours CPD. 5 hours on Wednesday and Thursday and 3 hours on Friday.

With thanks to all our event sponsors!

FOR MORE INFORMATION OR TO BOOK ONLINE, CLICK HERE

instituteoflicensing.org/events

Protecting our employees and those who visit our events - are we doing enough?

Creating a psychologically safe work environment is crucial if teams are to work to their full potential, writes **Julia Sawyer**

There is legislation and guidance in place to ensure the safety of those working at our events or at our place of work, and this extends to protect those who visit our place of work.

When accidents, incidents or near misses occur, it is often easy to see what safety rule has not been followed and to then apportion all the blame to the person not following a specific rule or point to the failure of a piece of equipment. However, there are usually many other failings and contributory factors that have led to that accident. This article explores the importance of looking deeper and assessing what benefit it is to a business to invest time and effort into promoting and creating a psychologically safe environment.

In the recent case of a death during filming of the movie Rust, Hannah Gutierrez-Reed, the armourer who handed actor Alec Baldwin a loaded gun, was found guilty of involuntary manslaughter. This case highlighted the failings in not following established safe systems of work when using firearms, and it also highlighted some key learnings around clarity of roles and responsibilities, competency and communication. Additionally, it raised the issue of how a psychologically safe environment can be created where people are able to raise concerns.

Psychological safety and mental wellbeing are different concepts, but both are important in the workplace. Psychological safety is the belief that you won't be punished or humiliated for speaking up with ideas or questions, raising concerns or pointing out possible mistakes. At work, it's a shared expectation held by members of a team that teammates will not embarrass, reject, or punish them for sharing ideas, taking risks or soliciting feedback. Mental wellbeing, on the other hand, concerns positive states of thinking and feeling. Being mentally well means that your mind is in order and functioning in your best interest. You are able to think, feel and act in ways that create a positive impact on your physical and social wellbeing.

Numerous published studies have shown that psychological safety promotes learning, performance, problem-solving, and innovation, as well as other positive outcomes. Perhaps most crucial for organisations at the moment is the vital role that psychological safety has in helping people deal with uncertainty and feel confident to change and adapt.

How we protect employees

At work, we continually assess the physical hazards within our workplace through the risk assessment process or dynamic risk assessment. In that process, we expect to see adequate prevention, detection and response protocols in place to manage the risk and protect us while we are at work. When there are discussions or decisions made within a team, there should be similar protocols in place to manage psychological risk and ensure psychological safety. In practice this means (management included) that we:

- Accept and respect our colleagues even if some characteristics make them "different".
- Respect each other's opinions; including minority views and challenges to the "we have always done it like this" mentality.
- Are comfortable raising problems that occur and asking each other for help.
- Accept that mistakes happen - especially when learning - and ought not result in criticism or resentment.

Just as with physical safety measures, these protocols need to be discussed, designed, implemented, audited and evaluated for effectiveness. So, psychological safety is not about making people feel good as such; instead, it describes

measurable values and behaviours that managers can put in place.

Leaders who learn to be more attentive, inclusive and supportive, and who coach their teams create more psychological safety.

There is various guidance available about improving people's wellbeing in the workplace, particularly around issues such as drug abuse, alcohol use, smoking and health surveillance.

How we help people who visit our workplace

Sharing of information is an essential element in public safety. Research has shown that when people have difficulty in obtaining information, they may feel unsatisfied, discontented, or even become aggressive. In turn, this may result in people becoming less likely to comply with safety instructions or, in the extreme, lead to public disorder problems.

Providing information and welfare services at an event not only contributes to the health and safety and wellbeing of the audience, but also acts as an early warning system to detect any potential breakdown of services or facilities on site. It is good practice for the range and level of information and welfare services required to be determined as part of the operational event risk assessment and management plan.

The *Purple Guide to Health, Safety and Welfare at Outdoor Events* gives guidance on welfare services including what is expected of the promoters, helping distressed people, lost people, dealing with aggression or violence, etc.

Challenges

Psychological safety is a cultural change, and creating it in a workplace cannot happen overnight. Employers need to be fully invested in trying to make this work. There needs to be motivation and dedication throughout the workforce at all levels of the organisation to want to make it work – as it can take people out of their comfort zone. Some employees will always be happy to let things go or be reluctant to rock the boat, but this can lead to many missed opportunities and sometimes contribute to an accident occurring.

With the entertainment industry, the workforce is mostly transient as a project needs to be delivered in a short space of time, and the people involved move on quickly afterwards to another project. It means establishing psychological safety is challenging to implement and see through.

"Normalisation of deviance" is a phrase used by a prominent sociologist, Dr Diane Vaughan, who defined it as "a phenomenon in which individuals and teams deviate from what is known to be an acceptable performance standard until the adopted way of practice becomes the new norm." If safe working practices are not followed and this becomes the normal way of working, it is then very difficult to make changes as people can be afraid of change, or do not feel empowered to be able make that change for fear of criticism from their work colleagues, or they may just be so inexperienced that they do not question what has become the new norm.

Competency

Who decides if someone is competent to carry out a role, and who carries out that assessment? The Health and Safety Executive defines competency as:

> *Competence can be described as the combination of training, skills, experience and knowledge that a person has and their ability to apply them to perform a task safely. Other factors, such as attitude and physical ability, can also affect someone's competence.*
>
> *As an employer, you should take account of the competence of relevant employees when you are conducting your risk assessments. This will help you decide what level of information, instruction, training and supervision you need to provide.*
>
> *Competence in Health and safety should be seen as an important component of workplace activities, not an add-on or afterthought.*

The Health and Safety at Work, etc Act 1974 requires of employers:

> *The provision of such information, instruction, training and supervision as is necessary to ensure, so far as is reasonably practicable, the health and safety at work of his employees*

It is not acceptable to employ someone and not assess and supervise their work practices, as what is written on an application or said in an interview can prove very different in reality in the workplace. However, it must be said that this assessment can be very subjective.

Benefits of psychological safety

Psychological safety leads to team members feeling more engaged and motivated, because they feel that their contributions matter and that they're able to speak up without fear of retribution. It can lead to better decision making, as people feel more comfortable voicing their opinions and concerns, which often leads to a more diverse

range of perspectives being heard and considered. It can also foster a culture of continuous learning and improvement, as team members feel comfortable sharing their mistakes and learning from them.

Further research has shown the harmful effects of not having psychological safety, including negative impacts on employee wellbeing such as stress, burnout and high staff turnover, as well as on the overall performance of the organisation.

Creating a psychologically safe environment is good management practice. This means establishing clear norms and expectations so there is a sense of predictability and fairness; encouraging open communication and actively listening to employees; making sure team members feel supported; and showing appreciation and humility when people do speak up.

When a team or organisational climate is characterised by interpersonal trust, respect, and a sense of belonging at work, members feel free to collaborate and they feel safe taking risks, which ultimately enables them to drive innovation more effectively.

If people do not feel safe to disclose or discuss problems, mistakes, or failures, these may well remain hidden. This prevents any potential learning, potentially makes the problem worse and exacerbates the impact, and causes more accidents, incidents, near misses or tragedies in the future.

Julia Sawyer
Director, JS Safety Consultancy

Institute of Licensing

Safeguarding through Licensing

30th September 2024
Online via Zoom

The Institute of Licensing is hosting this conference to look at the current issues around safeguarding, and bring expert speakers together to discuss how licensing can be utilised to best effect. Let's work together to highlight the relevance of licensing and the importance of safeguarding.

Scrap Metal

10th September 2024
Online via Teams

This course is a timely refresher for delegates involved in the administration of licences for scrap metal dealers licences regulated under the Scrap Metal Dealers Act 2013.Delegates will understand the licensing process for both site and mobile licence types including the requirement for applicants to meet the statutory suitability criteria and the need to comply with the HMRC Tax Conditionality scheme.

VAT treatment of ride-hailing services

The First-Tier Tribunal has ruled on VAT treatment of Bolt's ride-hailing services, as **Neil Morley** explains

On 15 December 2023 the First-Tier Tribunal (Tax Chamber) handed-down its judgment in *Bolt Services UK Limited v The Commissioners for His Majesty's Revenue and Customs* [2023] UKFTT 01043 (TC).

The tribunal had been tasked with hearing an appeal[1] brought by Bolt Services UK Limited against a decision by the Commissioners for HMRC. It centred on the application of value added tax to mobile ride-hailing services.

Bolt is a licensed private hire operator[2]. It had, in October 2022, sought an HMRC ruling whether the Tour Operator Margin Scheme[3] (TOMS) applied, when acting as principal[4], to its mobile ride-hailing services. Such services, namely, cover:

> *…on-demand, private hire passenger transport services ordered and paid for through a smartphone application…*[5]

HMRC in February 2023 ruled Bolt's mobile ride-hailing services are outside the scope of the TOMS. Consequently, Bolt appealed and the tribunal herein considered the core question:

> *…whether Bolt should account for VAT by reference to the total amount paid by the customer or on the margin, ie, the difference between the amount paid by the customer and the cost to Bolt of goods or services supplied by taxable persons and used directly to provide the service…* [6]

Submissions were heard from each party. Bolt contested it should be within the scope of the TOMS and, broadly, raised a number of arguments:[7]

(1) Mobile ride-hailing services are "supplied for the benefit of travellers".

(2) Mobile ride-hailing services are "of a kind 'commonly provided by tour operators or travel agents'".

(3) Mobile ride-hailing services should not be treated as outside the TOMS because to do so would lead to a "distortion of competition" between travel service providers.

(4) Mobile ride-hailing services should not be treated as outside the TOMS because to do so would lead to a "breach of neutrality" between travel service providers.

HMRC maintained it should be outside the scope of the TOMS and countered with a number of alternative arguments:[8]

(1) Bolt "is not a tour operator or travel agent".

(2) Bolt "does not make supplies of a kind commonly provided by tour operators or travel agents".

(3) Bolt "supplies fall outside the scope of TOMS because they are (i) in-house supplies or (ii) materially altered / further processed supplies".

Consideration, in addition to the above submissions, was given by the tribunal to key provisions within European Union Council Directives 77/388/EEC and 2006/112/EC.[9] This

1 Pursuant to s 83(1)(b) Value Added Tax Act 1994.

2 See para 79, *Bolt Services UK Limited v The Commissioners for His Majesty's Revenue and Customs* [2023] UKFTT 01043 (TC).

3 Pursuant to s 53 Value Added Tax Act 1994 and Value Added Tax (Tour Operators) Order 1987 (as amended).

4 See *Uber London Limited v Transport for London* [2021] EWHC 3290 (Admin) and, whilst subject to appeal, *Uber Britannia Limited v Sefton Metropolitan Borough Council & Others* [2023] EWHC 1975 (KB).

5 See para 1, *Bolt Services UK Limited v The Commissioners for His Majesty's Revenue and Customs* [2023] UKFTT 01043 (TC).

6 See para 4, *Bolt Services UK Limited v The Commissioners for His Majesty's Revenue and Customs* [2023] UKFTT 01043 (TC).

7 See para 8, *Bolt Services UK Limited v The Commissioners for His Majesty's Revenue and Customs [*2023] UKFTT 01043 (TC).

8 Ibid.

9 See paras 12-16, *Bolt Services UK Limited v The Commissioners for His Majesty's Revenue and Customs* [2023] UKFTT 01043 (TC).

also included various case law decisions of the European Court of Justice.[10] Ultimately, finding in favour of Bolt, the tribunal held:

> *…the supply of mobile ride-hailing services, without any additional elements, to a traveller is a provision of travel facilities within the TOMS…*[11]

Tribunal Judge Sinfield further stated, in the alternative, if "additional elements" are indeed necessary that, under established case law[12], "other services such as information and advice relating to holidays and the reservation of a journey would be enough"[13]. He therefore concluded:

> *…Bolt provides such other services, namely: the ability to arrange a journey with various options by using the Bolt app; help and assistance available 24/7 via the app or Bolt's website as well as by email and telephone; and information and advice on certain places served by Bolt which can be found in articles on Bolt's website and in its blog. I consider that, if required, such additional services are sufficient to bring the supply of mobile ride-hailing services within the TOMS…*[14]

It is clear, in the opinion of the tribunal, that the scope of the TOMS covers Bolt's mobile ride-hailing services. Whilst also usefully suggesting practices, some of which are existing licensing requirements[15], within the TOMS scope, it should be borne in mind this is a lower-tier tribunal and one focused, subjectively, on the services of a single business.

Moving forward, at the very least, licensed private hire operators already using the TOMS may wish to take note of this decision. Given HMRC has opened a consultation on potential VAT impacts in the private hire sector, and a Court of Appeal hearing on principal status in passenger contracts outside London is pending, it remains uncertain as to the final, wider, position on this issue.

Neil Morley
Founder, Travis Morley Law

10 See paras 17-65, *Bolt Services UK Limited v The Commissioners for His Majesty's Revenue and Customs* [2023] UKFTT 01043 (TC).
11 See para 112, *Bolt Services UK Limited v The Commissioners for His Majesty's Revenue and Customs* [2023] UKFTT 01043 (TC).
12 See C-220/11 *Star Coaches s. r. o. v Finanční ředitelství pro hlavní město Prahu* (2012).
13 See par. 113, *Bolt Services UK Limited v The Commissioners for His Majesty's Revenue and Customs* [2023] UKFTT 01043 (TC).
14 Ibid.
15 See Local Government (Miscellaneous Provisions) Act 1976, Private Hire Vehicles (London) Act 1998, etc.

For ‘noise’ to become ‘nuisance’, how many ears are involved?

Must several people complain about noise before a case of public nuisance can be mounted in Scotland? A hitherto unreported case gives the definitive answer, at least for the moment, writes **Stephen McGowan**

Bengal Dish Ltd v Aberdeenshire Licensing Board (20 December 2023, Aberdeen Sheriff Court) is an interesting little case concerning a premises in Torphins, Aberdeenshire, called the Learney Arms. I made an oblique reference to this case from the podium in the expert panel session at the end of the NTC 2023, and pondered what the outcome might be. Well, now we know … or do we? There may be a sting in the tail.

This case relates to the imposition of a variation to restrict the premises’ ability to offer live or recorded music to not later than 11pm, following a premises licence review hearing. This centres around complaints about noise from an upstairs neighbour. The review was brought by the environmental health department of the local authority.

The importance of this case is that what was well understood to be a particular aspect of what constitutes a “public” nuisance under general administrative law and UK licensing law has been adopted under Scottish licensing law, namely that nuisance experienced by a single complainant is not sufficient to meet the test of what constitutes “public”.

Sheriff Principal Pyle, who has dealt with a number of other licensing appeals over the years, puts it this way:

> *The question therefore became whether the noise experienced by the flat owner could properly be described as a public nuisance, such that the defenders were entitled to vary the conditions of the pursuer’s premises licence. In my opinion, it is obvious that they were not so entitled. The defenders state that the owner is a member of the public. That is doubtless true, but it ignores the rule that for something to be regarded as a public nuisance it is necessary to show that it affects an identifiable class of the public.*

In reaching this view he relies on long-established legal and licensing principles, citing the famous case of *R (Hope and Glory) Public House Ltd v City of Westminster Magistrates’ Court* [2009] EHWC 1996 Admin, and the older *Att-Gen v PYA Quarries* [1957] 2QB 169 decision. These two cases are very well known to Journal readers. But of course, even a Scottish case judgment which refers to these older English cases now has a bit of a health warning given the fresh decision in *Fearn v The Board of Trustees of the Tate Gallery* [2023] UKSC 4 which might cut across matters. The extent of that interaction remains unclear because Sheriff Pyle did not have the *Tate* judgment before him when he decided *Bengal Dish* and because of the discreet nature of the Scottish decision.

So before examining the case, I acknowledge the caveat that some thought must be given to comprehend how *Bengal Dish* sits within Scottish licensing law, post *Tate*. That, though, is an article for another day.

So what did *Bengal Dish* say? A “class of the public” means something more than a single person: it means a “representative cross section” and “effect on a sufficiently high number of members of the public which was sufficiently widespread or indiscriminate“. In short compass, public nuisance must be understood as a plurality. I think it is long-established, however, that the plurality can be persons beyond the customers of the premises (*Sangha v Bute and Cowal Divisional Licensing Board* 1990 SCLR 409).

This judgment may be surprising at a local level in Scotland, as it may jar to read that complaints from a single source do not, as a matter of law, engage the licensing objective of preventing public nuisance. But this is a long-established legal point which has only now found discrete voice (so far as I know) in a Scottish licensing case under the 2005 Act.

I think it is worth ventilating the view that there is a difference between what is public nuisance under the Licensing (Scotland) Act 2005, and what constitutes statutory nuisance under the Environmental Protection Act 1990,

and what may deemed to be a common law nuisance. For the avoidance of doubt, a statutory nuisance or a common law nuisance is not the same thing as decreeing it a "public nuisance" under the 2005 Act. As an aside, it is worth noting that the pursuer in this case reminds us that nuisance at common law must be more than "mere discomfort" (*Watt v Jamieson* 1954 SC 56; and *Anderson v Dundee City Council* 2000 SLT (Sh Ct) 134).

This point is, for me, a further reminder that all of us who live and work in the world of regulatory and licensing law should tread carefully in deciding what legislative framework is the correct one to follow to address an alleged mischief. If an environmental health officer fails to make a case under environmental health, it is improper to use the licensing system as a "stalking horse" to get at the alleged mischief – unless, of course, the officer can make out the case that there is public nuisance, as that term should be properly understood.

Understanding that public nuisance and common law nuisance are two different animals takes us only part of the journey. We must then remember that even if public nuisance was found in fact, in order for a board to engage steps under s 39 of the 2005 Act it would still have to be a case where the public nuisance alleged met the *Brightcrew* test; ie, that it had a sufficient nexus to the sale of alcohol. This is a test which does not exist under the licensing laws of England and Wales, where broader matters can be considered – as the 2003 Act does not just deal with the licensing of alcohol, but other matters (eg, "late-night refreshment").

I would remind readers of *Bapu Properties Ltd v City of Glasgow Licensing Board* (Glasgow Sheriff Court, 22 February 2012, unreported, but see McGowan on Alcohol Licensing (2021) - pp 26 and 31). In that case the sheriff said the following:

> *I conclude that, to the extent that the Board's decision proceeds under Section 30(5)(b) of the 2005 Act, the apprehended 'public nuisance', upon which the Board's decision was predicated, was not related to the sale of alcohol. The single function of a Licensing Board under the 2005 Act is that of the licensing of the sale of alcohol. The powers to licence the sale of alcohol cannot be deployed to effect objectives not related to the sale of alcohol, but which the Licensing Board might yet find desirable.*

This is all language linked to wider legal concepts of a body acting ultra vires; or acting with an improper purpose.

Let us also remind ourselves that nuisance may not always be noise nuisance. A person may experience, for example, "smell nuisance" from a licensed premises. But that is not a matter for the licensing board. Another example (from the heady days of a pre-social media world) might be fly-posting, which could be a form of nuisance, but is irrelevant as far as licensing goes (*Maresq T/A La Belle Angele v Edinburgh Licensing Board* 2001 SC 126).

But even with that, the journey is not yet complete, because we must also remind ourselves that the licensing objective is about "preventing public nuisance". This means it is about not necessarily that public nuisance has occurred in fact, but should be an exploration of what steps were taken to prevent it; and what steps have been taken to prevent re-occurrence. This is known in Scots licensing law as "future proofing" and is a further legal principle we must have in our minds around this discrete area.

Consider the following dicta (from *Lidl UK GmbH v City of Glasgow Licensing Board* [2013] CSIH 25):

> *The process of review is essentially forward looking. It involves examining whether the continuance of the particular premises licence in issue, without taking any of the steps listed in section 39(2) [that is, the sanctions open to a Board, e.g. suspension, revocation, etc], would be inconsistent with endeavouring to achieve the licensing objective in question. The process of review is therefore not directed to imposing a penalty in respect of some past event which is not likely to recur to an extent liable to jeopardise the licensing objective.*

Lastly, remember that this is all linked to the test as to whether a step or decision should be taken by the board only if they consider it "necessary or appropriate" (s 39(1), 2005 Act) for the purposes of licensing objectives.

Bengal Dish may have a very discrete point to make, but it is nevertheless of great utility in allowing these wider issues around "public nuisance" in the context of the Scottish 2005 Act to be explored. As ever, the case law evolves. I wonder what the NTC expert panel will throw up in November 2024. I look forward to the debate!

Stephen McGowan
Partner, TLT Solicitors (Scotland)

Using taxi licensing conditions to create an effective safeguarding system

Communities would be safer places if local authorities introduced safeguarding duties as a licensing condition for taxi drivers suggests **Jamie Mackenzie**

Licence conditions allow licensing authorities to exercise control over the way licence holders act. Conditions are a way not only of insisting on particular behaviour (for example, reporting interactions with the police) but also a way of guiding licence holders in the best way to run their businesses. For example, many authorities have a licence condition relating to the carrying of customer luggage. Taxi and private hire legislation allows for licensing authorities to place conditions on licences granted to private hire drivers. Although it is not possible to place conditions on hackney carriage driver licences, many authorities issue a dual licence meaning that conditions can also apply to those who usually drive a hackney carriage. Conditions must not be ultra vires or over-burdensome. They should not, ideally, relate to issues already covered by other laws or regulations (although many often do) and drivers must stand a reasonable chance of being able to comply with them. Other than these stipulations, licensing authorities are more or less free to apply conditions they deem suitable to achieve the objectives of the licensing regime.

The main objective of the taxi and private hire licensing regime is to protect the public and ensure safety. In connection with this broad public safety duty, local authorities also have specific duties to safeguard children and adults at risk, prevent crime and disorder and tackle serious violent crime. These duties are imposed by various laws. In terms of safeguarding there are the two Children Acts (1989 and 2004), the Care Act 2014 and the Mental Capacity Act 2005. Section 6 of the Crime and Disorder Act 1998 (recently amended by the Police, Crime and Sentencing and Courts Act 2022) deals with crime, disorder and serious violence:

6 Formulation and implementation of strategies

(1)The responsible authorities for a local government area shall, in accordance with section 5, with subsection (1A), and with regulations made under subsection (2), formulate and implement—

(a) a strategy for the reduction of crime and disorder in the area (including anti-social and other behaviour adversely affecting the local environment); and

(b) a strategy for combatting the misuse of drugs, alcohol and other substances in the area; and

(c) a strategy for the reduction of re-offending in the area; and

(d) a strategy for—

(i) preventing people from becoming involved in serious violence in the area, and
(ii) reducing instances of serious violence in the area.

In July 2020, the Department for Transport issued the statutory taxi and private hire vehicle standards. Most authorities not already requiring safeguarding training for drivers (and there were quite a number) spent the following months amending their policies to include this requirement and ensure compliance with these standards. For reasons unknown, the standards broadly mention the need to detect and report on abuse and then go on to describe one particular safeguarding topic - county lines – while omitting mention of a number of other specific safeguarding topics such as modern slavery, human trafficking, cuckooing or extremism.

Safeguarding, of course, goes far beyond even the numerous topics listed above. Safeguarding can also cover things like dementia awareness and keeping an eye out for financial abuse. In 2022 the BBC reported on a taxi driver in Gateshead who saved a passenger from being scammed over the phone. Fraudsters had asked for £2,000 but the actions of the driver, in taking the time to report this to bank staff, saved the passenger. This is safeguarding in action.

We must also ensure that messaging is as much about safeguarding the taxi driver as it is about safeguarding passengers and the wider public. It may be difficult for those not in the trade to fully appreciate some of the concerns a driver may have when reporting an issue. We mustn't make the mistake of dismissing these concerns or underestimating the impact they may have upon a driver's confidence to make a report. I was a licensing officer for 15 years. I had lots of safeguarding training. I was a designated safeguarding officer and, importantly, my confidence to act was bolstered by the knowledge that I had the back-up of a large organisation with specialist resources on hand to help me if things become difficult. It also helped me to know that I had to act: I had a legal duty. But while a local authority officer must act, a private business operator is not under the same obligation (though this can change depending on for whom the work is being done / the type of work being done).

However, we really do need everybody to do their bit and to make reports where possible. The scale of the issue demands it, with as many as 120,000 teenagers, or 1 in 25 of all teenage children, said to be at risk of exploitation. In just two years, between 2021 and 2023 referrals to the National Referral Mechanism relating to children as potential victims of modern slavery and criminal exploitation increased by 45%.

Suffice to say, training delivered to licensed drivers across the country takes a mixed approach. Some training will cover a wide range of topics in considerable detail, others will offer a broad outline of "looking out for people", perhaps listing some general indicators of risk. Some is face to face, some is e-learning. Far from all make a mention of the topic of driver safety.

The issue of specific content is important but it still isn't the key issue. Whatever the approach taken, the overriding aim of all training must be to give drivers the confidence to report any issues they see, ie whatever it is that has made them uncomfortable. If drivers do not have the confidence to report their suspicions (which may well be based less on specific indicators and more on instinct) then we risk training becoming a tick-box exercise. Professor Alexis Jay, responsible for the Independent Inquiry into Child Sexual Exploitation in Rotherham, has recently chaired another review for the charity Action for Children. The Jay Review of Criminally Exploited Children was published in November 2023. It is evident from reading this report that while we have some good reporting mechanisms in place already, we have much more to do if we want to build a connected system that truly recognises the scale of the issues and responds in a way that offers meaningful help to all victims of exploitation. If the DfT lists county lines as a safeguarding issue but omits mention of a range of other concerns, what does this say about its total understanding of the wider issues facing drivers? In the concluding section, the review states: "Children cannot be safeguarded from exploitation if we do not know where, how and to whom exploitation is happening across the country". It has long been thought that taxi and private hire drivers can be a source of valuable intelligence but the perception of what safeguarding is, and the way in which safeguarding training is currently delivered, mean that this cohort is unlikely to realise its full potential.

Many of you reading this article may now be thinking about the training provided in your area. I'd like you to also imagine that you are a lone business operator, working late at night, in a vehicle that carries abundant signage advertising who you are and how to get hold of you easily, and that there are very dangerous people sitting a few feet behind you. Would the training you have in your area give you the confidence to make a report? To whom would you report? When? Do you trust the reporting system to protect you? Most drivers want to do the right thing but it's not always as easy as that. Drivers attending our courses are honest about their concerns. There are serious criminal enterprises behind many of these issues; drug dealing, human trafficking and serious and organised crime. Would you be happy putting your name to a report if you didn't feel fully supported to do so?

It is these major hurdles of sufficient support and confidence that I have spent a lot of time considering. Having delivered hundreds of safeguarding sessions, and having had the privilege of open dialogue with thousands of drivers, I am strongly of the opinion that we need more than just training to complete the taxi and private hire safeguarding system. Our training already incorporates such themes and Unified offers driver safety support services to all those who train with us. The feedback we receive from candidates suggests our approach builds confidence among drivers. I believe that if all training across the country can be combined with similar, broader support we can clear hurdles that may be slowing down reporting, and if we can do that then we stand to create something very powerful indeed.

Which brings me to the question, do we need to consider licence conditions in relation to reporting safeguarding concerns?

We know there are barriers to reporting. Operating alone, often in dangerous circumstances, can be worrying for drivers. Being protected, being given the assurance that you are part of the team could make a big difference in how drivers react to these situations. Placing a condition on a licence may seem counter-intuitive. It adds another layer of rules (and some drivers will ignore the requirements just as

some drivers “forget” to wear a driver badge when at work) but a licensing condition shows that drivers are included, that they are considered, and that this issue is so important that it is worthwhile making a rule. All drivers would have greater incentive to report and would perhaps also feel less isolated when considering what to do. An official instruction can greatly reduce the pressure of feeling solely responsible for a decision and can help with navigating the subsequent processes and outcomes. It isn’t a case of being forced; it is a case of being encouraged. In short, I believe a licence condition could help to make drivers feel more a part of a safeguarding team, not less, and it is only by being part of that team that we can overcome the significant barriers I believe currently prevent higher levels of reporting.

We don’t want to criminalise drivers who don’t or can’t report. The wording of any condition must be carefully considered and to that end, here is an outline suggestion:

Drivers should report any concerns they have over a child or an adult who appears to be under the control, or being negatively influenced by, any person who places them or someone else in harm or at risk of committing criminal offences. Reports should be made to a relevant authority / safeguarding organisation as soon as possible and at most within 24 hours.

I’m certain improvement can be made to this wording -it is merely a starter. Introduced alongside any condition must be greater support for drivers. Support must go beyond passive solutions like CCTV (although that is a good idea). We should be providing active support; someone with whom a driver can talk things through in just the same way as I could talk things through as a licensing officer; someone who can help with making the report if necessary, who can stand beside the driver and let them know that they aren’t acting alone.

Yes, there are many fantastic organisations like Unseen, NSPCC, Barnardos and Crimestoppers, to name just a few, which will discuss issues with concerned callers and, of course, reports must get to the right place and quickly. But there are around a quarter of a million taxi and private hire drivers out there and numbers are always rising. That is a huge community safety resource comprised of DBS-checked, fit and proper people which is substantially underused. With those types of numbers, why can’t we have something that is aimed specifically at taxi drivers, something that will clarify tricky issues and keep them safe while they help to protect our communities?

If licensing authorities can get together at a regional (or at least county-wide) level to co-ordinate specific safeguarding support for licence holders in their areas, I believe we can significantly boost driver confidence to report. Such a mechanism would also, potentially, provide a way for us to measure the level of reporting from the sector, thereby allowing us to verify the value of training and to move beyond ticking boxes and hoping that something may happen. Such outcomes would only be positive for licence holders and for our communities.

Jamie Mackenzie
Managing Director, Unified Transport Systems

We are delighted to be planning our signature three-day National Training Conference for 2024 which will take place at the Crowne Plaza Hotel in Stratford-upon-Avon 13th - 15th November 2024.

13th, 14th & 15th November 2024

The programme will include the range of topic areas our regular delegates have come to expect, with well over 50 sessions across the three days delivered by expert speakers and panellists.

Confirmed speakers so far are listed on the website and a draft agenda will follow later in the summer.

Early booking is always advised, and bookings will be confirmed on a first come first served basis.

The Gala Dinner (Thursday evening) is a black tie event, and the theme is 'sparkly'.

For more information and to book your place, please visit our website or email events@instituteoflicensing.org

The interested party: Home Office pavement policy dismisses resident concerns

It was right to deregulate off sales to level the playing field during the pandemic but what's happened subsequently makes no sense, says **Richard Brown**

"Occam's razor" is a philosophical maxim of disputed origin which in colloquial terms proposes that "the simplest explanation is usually the best one." [1]

Adopted by the US Navy in 1960, a similar albeit less elegant maxim has come to be applied in modern life: "Keep It Simple, Stupid" or "Keep it Simple and Straightforward" (KISS). It suggests that most systems work best if they are kept simple rather than made unnecessarily complicated.

These principles sprang to mind when the latest Home Office consultation on regulatory easements – the deregulation of sale of alcohol for consumption off the premises (off sales) - was published on 16 May 2024. It purports to provide permanent resolution to the various "temporary" periods of deregulation of off sales of alcohol. The search for a permanent solution was trailed in May 2023 when the Home Office announced that the regulatory easements would end on 30 September that year, before changing their minds.

When I sat down to write this article I couldn't shake a nagging feeling that I had written about the Government's u-turn on regulatory easements before. Heaven forbid that I short change the Journal's readership with a lazy re-hash. It turned out I had indeed written about a u-turn on regulatory easements before but it was the 2022 u-turn (see (2022) 34 JoL), not the 2023 u-turn. Silly me.

Deregulation

I feel I should emphasise that it was right that the Government moved commendably swiftly to legislate to deregulate off sales of alcohol. Clearly, at the time, it was fair to level the playing field for all premises during the pandemic. It is right that the hospitality industry should be given help to recover from the impacts of the pandemic. It was (and had to be) a broad-brush approach, not taking into account local factors. The quibble is with what has happened post-pandemic.

A recap of the history of off sales deregulation is helpful. In July 2020 the Government deregulated off sales of alcohol by way of s 11 Business and Planning Act 2020 (BPA) as a temporary measure to "mitigate an effect of coronavirus". The deregulation was initially intended to last until September 2021 but was subsequently extended to September 2022.

The deregulation applied to licences "capable of having effect" when BPA came into force, and enabled premises with no current permission for off sales to nevertheless provide off sales to 11pm in an open container. Premises which have permission for off sales but restricted by condition – eg, an earlier terminal hour/restricted to a certain area/in sealed containers etc – would nevertheless be able to provide off sales to 11pm in an open container.

On 26 May 2022, the Home Office wrote to the Institute of Licensing stating that as there was "no legal basis" for a further extension, the deregulation would end as planned on 30 September 2022.

On 17 July 2022, the Home Office announced that in fact the deregulation would be extended for another 12 months, to end on 30 September 2023. The Home Office promised to consult on a way forward and "seek views" as to whether there is support for "streamlining the process", ie, to make some form of deregulation permanent.

On 7 March 2023, a consultation on the way forward was published. The options consulted on were:

i) Do nothing – ie, to go back to the pre-Covid position.

ii) Make the deregulation permanent; or

1 Usually attributed to William of Ockham, a 14th century theologian and philosopher.

iii) If there was permission for sale of alcohol and a pavement licence in place, the pavement licence area would automatically be included within premises licence (ie, it would be an on sale).

The consultation ended on 1 May 2023.

On 20 July 2023, the Home Office published the outcome of the consultation. It had been decided to go back to the pre-Covid position. A decisive majority (65%) of respondees had favoured this option. The temporary deregulation would therefore expire on 30 September 2023 and could not be extended again because BPA only allows such an extension to "mitigate an effect of coronavirus".

The Home Office promised instead to look at "adjustments to the licence variation process" and amend the s 182 Guidance regarding licence variations, to "advise initially to treat applications for amendments as a minor variation to the licence".

They also committed to exploring any "simplification" (my emphasis) of the licensing process to "incorporate off sales into a pavement licence", and confirmed that the Government intends to legislate for this "when Parliamentary time allows".

On 7 August 2023, para 8.65 of the s 182 Guidance was amended as follows (new wording in emphasis):

For other licensable activities, licensing authorities will need to consider each application on a case by case basis and in light of any licence conditions put forward by the applicant. ***If an on-sales only licence holder wishes to add off-sales to their licence, licensing authorities may in the first instance wish to treat applications as a minor variation, in particular when the holder took advantage of the Business and Planning Act 2020 provision and there has been no adverse impact on licensing objectives.***[2]

The language was not mandatory, nor could it be, and so didn't really add much to the existing position that any application may be treated as a minor if it is in accordance with the relevant provisions of the Act – ie, that it "could not" impact the licensing objectives.

On 14 August 2023, the Home Office dropped something of a bombshell by announcing that, in fact, notwithstanding the outcome of the consultation announced less than four weeks earlier and that the deregulation not only would not but "could not" be extended again, the deregulation would in fact be extended, and not by the usual 12 months but by a stonking 18 months to 31 March 2025.

An email to stakeholders stated that the Government wants "a unified pavement licence that includes licensing consent for consumption and sale in outside pavement area".

Some readers may have been present at the National Training Conference session run by the Home Office in November 2023 where various options were mooted and feedback requested from and provided by delegates. My recollection of the session was that some trenchant opinions were expressed by a strong majority caucus who were of the view that what the Government was trying to achieve was unnecessarily complicated and not proportionate to any benefit which may accrue.

Nevertheless, later that month the Home Office together with the Department for Levelling Up, Housing and Communities (DLUHC) (as the department responsible for pavement licensing) sent an outline of some ideas to various stakeholders. The aim was to create "a unified pavement licence that includes licensing consent for the consumption of alcohol in the outside pavement area". The outline options were:

Option 1: Amend legislation to introduce a new combined licence for businesses that wish to licence the pavement area and serve alcohol there.

Option 2: Amend legislation so that any area covered by a pavement licence is deemed covered in an alcohol licence premises plan so that an on-sales licence would enable a premises to serve alcohol in the pavement area.

Option 3: Amalgamate on-sales and off-sales licences so that there is a single licence covering sales within premises as well as pavements and takeaway drinks.

Option 4: Introduce efficiencies into the current process by amending guidance in order to streamline the process.

Consultation: alcohol in licensed pavement areas

The preliminary thoughts of stakeholders percolated within Government until the current consultation was published on 16 May 2024. It ran until 11 July 2024. Meanwhile, s 222 Levelling Up and Regeneration Act 2023 (LURA) had come into force on 31 March 2024, making permanent the "pavement licence" regime under ss 1 to 9 of the BPA.

I assist a number of community groups in central London

2 Interestingly, for reasons unknown the change to para 8.65 disappeared from the current s 182 Guidance published in December 2023.

who are very concerned about the proposals outlined in the consultation – largely because each option deprives them of the ability to safeguard residents on a case by case basis. However, there are also concerns at what are seen as deficiencies in the process, coming after the unsatisfactory and opaque way in which the 2023 consultation outcome was reversed.

The options set out in the consultation are:

1. *Option 1: Make current arrangements - as set out in the Business and Planning Act 2020 - permanent. This would mean that on-sales only licence holders would automatically be able to continue to do off-sales without the need for a licence variation. If this option is taken forward, we propose to introduce it by means of a Legislative Reform Order (LRO) under Section 1 of the Legislative and Regulatory Reform Act 2006 (LRRA).*

2. *Option 2: Amend the Licensing Act to extend the definition of on-sales so that it includes consumption in a licenced pavement area. This would mean that on-sales only licence holders would be able to automatically sell alcohol for consumption in an adjacent licensed pavement area without any need for a licence variation. If this option is taken forward, we propose it would be introduced by means of an LRO.*

3. *Option 3: Amend the Licensing Act to permit on-sales only premises licence holders the right to make off-sales to any area for which there is a pavement licence. As with option 2, this would mean that on-sales only licence holders would be able to automatically sell alcohol for consumption in an adjacent licensed pavement area without any need for a licence variation. If this option is taken forward, we propose it would be introduced by means of an LRO.*

The Home Office has said in the consultation that each option would ensure "that licensing authorities and local residents continue to have a say about what happens in their area".

In fact, each option will remove the fundamental principle of local consultation and participation which is such an important part of the licensing process. Unfortunately, none of the options now posited preserve any form of the meaningful local consultation which exists at present under LA03.

The options also contrast with the options given in the 2023 consultation, which included a "do nothing" option, meaning a return to the pre-covid status quo. This was the decision announced by the Home Office in July 2023, before the mysterious and sudden u-turn. In fact, the eventual outcome of the 2023 consultation post u-turn (to extend the deregulation again, for a longer period than previous extensions) wasn't even an option which had been consulted on.

The "do nothing" and allow the system to go back to how it has been since November 2005 would preserve one of the founding principles of LA03:

- *providing a regulatory framework for alcohol which reflects the needs of local communities and empowers local authorities to make and enforce decisions about the most appropriate licensing strategies for their local area; and*
- *encouraging greater community involvement in licensing decisions and giving local residents the opportunity to have their say regarding licensing decisions that may affect them.*[3]

It allows any premises to apply for off sales or to remove conditions pertaining to existing off sales, to be determined by councillors empowered to make those decisions. This means that premises which do not have off sales because they were refused off sales for very good reasons are not simply automatically given that right but have to apply for it.

Meaningful consultation

First and foremost, the title of the consultation is misleading. The scope of the options (see option 1) is wider than deregulation solely for consumption in licensed pavement areas.

Secondly, the proposals are founded on a fundamental misconception which is again being promulgated, for reasons unknown.

The 2023 consultation description stated that:[4]

Businesses such as pubs and restaurants are licensed to sell alcohol for customers to drink on the premises ('on-sales').

During the COVID-19 pandemic, the government passed regulations allowing them to sell alcohol for takeaway, delivery and to drink in licensed pavement areas ('off-sales'), without changing their licence.

This was and is misleading. The vast majority of pubs,

3 Section 182 Guidance para 1.5.

4 https://www.gov.uk/government/consultations/licensing-act-2003-regulatory-easements

5 https://www.gov.uk/government/consultations/alcohol-in-licensed-pavement-areas

and many restaurants and cafes, already had permission for off-sales. What the deregulation in BPA 2020 rightly did was to permit premises with on sales only, or with on and off sales but whose off sales were restricted in some way, to nevertheless provide off sales for consumption outside the premises and / or in a licensed pavement area and / or for takeaway and / or for delivery. It levelled the playing field and was the correct and fair action to take – at that time.

The current consultation repeats this inaccuracy. The consultation description states that (my emphasis):[5]

Alcohol licensing easements enabled on-sales only premises licence holders to automatically also do off-sales without any need to amend their licence. ***This meant that when pubs and restaurants were initially closed because of the pandemic, these businesses were able to sell alcohol for take-away and/ or delivery.***

This no mere semantic complaint. The Government's consultation principles require it to give "enough information to ensure that those consulted understand the issues and can give informed responses."[6]

It is difficult to understand why this important misconception has been repeated in this consultation. It mirrors briefings from Government accompanying the u-turn in 2023 where it trumpeted how it is "helping pubs". A sample of the resulting media coverage is set out below:[7]

Major change to pub laws AXED after PM Rishi Sunak 'personally steps in'

PUBS will be allowed to carry on selling take-away pints to help them boost income.

They were due to lose the right to so-called "off sales" when lockdown alcohol rules expire next month.

But teetotal Rishi Sunak was said to have personally stepped in to allow them to carry on.

It would be mischievous to point out that the good publicity this engendered from inaccurate press reporting helped to distract from the Prime Minister being heckled about changes to alcohol duties at a beer festival by a pub landlord a fortnight earlier.[8]

More to the point, the proposals will make no or little difference to the vast majority of pubs, and will benefit a relatively small proportion of premises overall.

I looked at this issue in my article in 2022 34 JoL. The most recent official Government figures for Licensing Act 2003 licences have been updated since then but the overarching points remain the same, with approximately 21% of premises being on sales only.[9]

Whilst not negligible, and whilst the proposal would certainly benefit those premises, there are perhaps other measures which the Government could take which would benefit the hospitality industry more widely and tangibly.

Where am I going with all this? Well, I repeat that it was right to relax rules and simplify the process surrounding outside tables and chairs during the pandemic. It was fair to deregulate off sales to level the playing field.

However, I think it is also right to question why politicians are making the process as complicated as possible in their quest to somehow merge two different licensing processes when each already has familiar and clearly set out and understandable parameters, checks and balances and, crucially, enable full community participation.

It is right to ask why politicians are not doing more for hospitality in more tangible ways, if the industry is as dear to their hearts as they say. Interestingly, the (non-statutory) Guidance to the off sales deregulation anticipates such criticisms, posing rhetorical questions:[10]

5. *The BPA only gives a power to extend the easement "to mitigate the effect of coronavirus" and there have not been lockdown restrictions place for the best part of two years - surely this isn't justified?*

6. *It's nonsense to say the hospitality sector is still struggling because of covid – Brexit labour shortages and the cost of living crisis are the real culprits.*

It is also right to hold the Government to account for the way in which recent developments have played out. I am

6 https://www.gov.uk/government/publications/consultation-principles-guidance

7 https://www.thesun.co.uk/money/23465745/major-change-to-pub-laws-axed

8 https://www.dailymail.co.uk/news/article-12360851/Rishi-Sunak-heckled-beer-festival-alcohol-duty-rise.html

9 https://www.gov.uk/government/statistics/alcohol-and-late-night-refreshment-licensing-england-and-wales-31-march-2022/alcohol-and-late-night-refreshment-licensing-england-and-wales-year-ending-31-march-2022

10 https://www.gov.uk/government/publications/guidance-for-temporary-alcohol-licensing-provisions-in-the-business-and-planning-bill/alcohol-licensing-guidance-on-new-temporary-off-sales-permissions#do-all-premises-that-currently-only-have-permission-for-on-sales-have-permission-for-off-sales

afraid that this does mean questioning (in circumstances where the Government consults; announces a decision; then changes its mind following lobbying from the industry; and goes against the majority view of respondents to the consultation) whether the influence of certain industry bodies had too much sway in this decision. This is not a criticism of those groups – they are protecting their interests, which is their right. It is understandable, though, if those councils and residents' groups who favoured a return to pre-Covid rules may wonder why and how the Prime Minister "personally" intervened to change a policy which has been widely consulted upon and a response communicated, and whether it is right to do so, after being lobbied by industry groups.

Community groups could be forgiven for wondering, as clients of mine are, what is the point of taking (voluntary) time engaging with consultations in good faith when the outcome can be overturned on a whim. My clients hope that a Freedom of Information Act request will shed some light on the opaque way in which these decisions have been reached, although quite frankly on the basis of the responses so far they don't hold out much hope. The answer is perhaps already in the public domain in press articles of the time.

Conclusion

Greek polymath Ptolemy exhorted the ancients to explain matters by the simplest hypothesis possible. Each option set out by the Home Office and DLUHC seems a tortuous way of furthering an article of faith to achieve a simple goal – for premises which do not currently have permission on their premises licence for off sales to be able to provide off sales. The Licensing Act 2003 has always provided the mechanism for this – include off sales in a new premises licence application under s 17, or a variation under s 34 (or a minor variation under s 41A, if it is felt that it "could not have an adverse effect on the promotion of any of the licensing objectives"); advertise the application; and a consultation period allows local residents to have their say.

If there are no relevant representations within the 28 day consultation period (for s 17 new applications or s 34 variations) then the application must be granted, subject only to conditions consistent with the operating schedule. If the application is accepted as a minor variation, there is a 10 working day consultation and a five working day period for a determination delegated to officer level. The difference between the full and minor variation procedures is therefore insignificant in terms of time frame. Obviously, if objections are received to a full variation then a hearing would need to take place and the application determined in the usual way with reference to the familiar principles which have been the cornerstone of the work of licensing authorities for nearly 20 years.

Simple.

Richard Brown
Solicitor, Licensing Advice Project, Westminster CAB

Case Digest

TAXIS

King's Bench Division
Mrs Justice Foster DBE

In contract with passenger licensed PHV operator accepts journey booking as principal

Uber Britannia Ltd -v- Sefton MBC

[2023] EWHC 1975 (KB)
Decision: 28 July 2023

Facts: The claimant held a number of PHV operator's licences granted by various licensing authorities, including the defendant, under Part II of the Local Government (Miscellaneous Provisions) Act 1976. In R. (on the application of United Trade Action Group Ltd) v Transport for London [2021] EWHC 3290 (Admin) the Divisional Court had declared that a licensed operator accepting a booking from a passenger under the Private Hire Vehicles (London) Act 1998 was required to enter into a contractual obligation with the passenger as principal to provide that journey. The claimant argued that the same question arose under the 1976 Act outside London and sought a declaration accordingly. Veezu Holdings Limited and D.E.L.T.A Merseyside Limited, as third and fourth intervenors respectively, opposed the declaration sought. The defendant licensing authority remained neutral. Point of dispute: outside London did a construction of the 1976 Act require licensed PHV operators to accept journey bookings as principal.

HELD: the central regulated arrangement was between the operator and the hirer or passenger. A person who operated under the 1976 Act was a person who in the course of business made provision for the invitation or acceptance of bookings for a private hire vehicle, meaning a vehicle with the services of a driver. The preliminary arrangement under the 1976 Act between the party accepting the booking and the hirer/passenger remained the primary regulatory relationship even though in some business models another party provided the vehicle with driver. The provision in s.56(1) made clear that the same analysis applied where an operator passed a passenger/hirer on to another operator (who might be quite unknown to the passenger). Without a contract between the passenger and the accepting operator as principal, the arrangement would fall outside the regulatory framework. The analysis in the Uber -v- TfL case applied since to operate lawfully an operator had to undertake a contractual obligation to passengers. It was central to the concept of a PHV operator that the latter would be the party accepting the booking. The court also repeated the observation made in the earlier decision that there remained a strong public interest in the imposition of responsibility on the operator. The statutory purpose of the 1976 and 1998 Acts was public protection. The issue of VAT and other economic consequences were not relevant to the declaration sought.

The declaration would be made.

GAMBLING

Court of Appeal, Civil Division

Lord Justice Green, Lady Justice Andrews and Lord Justice William Davis

Application of contract terms in online gambling

Parker-Grennan v Camelot UK Lotteries Ltd

[2024] EWCA Civ 185
Decision: 1 March 2024

Facts: Ms Joan Parker-Grennan had bought a £5 ticket for a particular National Lottery Interactive Instant Win Games ('IWG'). Prizes ranged from £5 to £1M. In order to win a player had to match a number in the "YOUR NUMBERS" section of the screen with a number in the "WINNING NUMBERS" section. After the Claimant had pressed the "play" button on her screen and then clicked on all five of the "Winning Numbers" and all 15 of the "Yours Numbers", her screen changed and she was told that she had won £10. However, on closer scrutiny the Claimant could see that she had also matched the number "1", the prize for which was £1 million. There was no corresponding message to the effect that she had won that amount, and no flashing lights. The Claimant said that she was entitled to this prize in addition to the £10 prize which the screen display had told her she had won. The Defendant has refused to pay out, saying that the Claimant did not win the £1 million and that a coding issue had generated an error in the Java software responsible for the animations. The Appellant brought proceedings against Camelot, and applied for summary judgment. She contended that she had done exactly what it said on the Game Details Screen, i.e. "Match any of the WINNING NUMBERS to any of YOUR NUMBERS to win PRIZE" and that this language did not negate the possibility of two sets of matching numbers and thus two prizes being won in a single Play. If a software error

had led to a situation in which she had won a prize when that was not intended, that was Camelot's problem. In a careful and closely-reasoned judgment, in which all the potentially relevant contractual terms and conditions were set out in detail, Mr Justice Jay found in favour of Camelot. The Appellant appealed with permission to the Court of Appeal.

Point of dispute: measures necessary to incorporate standard T&Cs into an online gambling contract

Held: (i) the Respondent's T&Cs were sufficiently incorporated in the contract between the parties. The Court of Appeal agreed with the judge that the contractual provisions on which respondent relied were clearly drafted and signposted through the various hyperlinks (ii) those terms were not rendered unenforceable by the Unfair Terms in Consumer Contracts Regulations 1999. There was nothing onerous or unusual about the provisions upon which the Respondent sought to rely; and (iii) Ms Parker-Grennan had had a real opportunity of becoming acquainted with the terms of the contract before she clicked the 'I Accept' button. As a matter of construction of the contract she had won £10, not £1 million.

Appeal dismissed.

GAMBLING

King's Bench Division
Mr Justice Cotter

Section 81 Gambling Act 2005 and impermissible or illegal credit

Aspinall's Club Limited v Lester Hui Chun Mo
[2023] EWHC 2036 (KB)
Decision: 4th August 2023

Facts: claim for recovery of a gaming debt of £589,724. Principal defence raised was that Defendant became "blackout drunk" by reason of alcohol served by the Claimant's employees. Consequently he claimed he was legally incapable of signing a negotiable instrument under the Bills of Exchange Act 1883 ("BOE Act") or of entering into any legally binding loan agreement. It was further alleged that as result of this deliberate conduct the Claimant knowingly breached the conditions (& LCCP) of its licence. It was further argued that the Defendant had been provided with impermissible/illegal credit contrary to section 81 Gambling Act 2005.

Points of dispute: whether each or any of the defences raised were good against the claim

Held: (1) Authorisation – the court accepted that the club declined Mr Hui's request for £300,000 extra credit but allowed £100,000. (2) Script Cheques - once Mr Hui indicated that he did not want his full facility (he wanted £50,000 instead) the cheque was marked void. It was later signed by a manager to show that it had been voided. (3) Should Mr Hui have been stopped from gambling? Mr Hui had exaggerated the amount he drank. The judge also found as a fact that no member of the Claimant's staff had sufficient reason to consider, that he was too intoxicated to gamble. There was no obligation to stop Mr Hui gambling and no breach of relevant policy or code provisions. (4) Lack of capacity – the court found Mr Hui he retained the capacity to enter into a contract and to understand the nature and extent of what he was doing throughout the evening. (5) Action on the cheque - the Personal Cheque was "dishonoured by non-payment" for the purposes of s.47(1)(a) Bills of Exchange Act and therefore under sub-section (2) " .. an immediate right of recourse against the drawer and endorsers accrues to the holder." (6) Loan - the Claimant had provided gaming chips to Mr Hui in exchange for the Script Cheques. The Claimant had a complete cause of action in contract, subject only to the defence as to capacity, which had not been established.

Claim allowed.

FREEDOM OF INFORMATION / SEXUAL ENTERTAINMENT VENUES

First-tier Tribunal
General Regulatory Chamber
Information Rights

Entitlement under Freedom of Information Act 2000 to withhold disputed information

MO v The Information Commissioner and Bristol City Council
[2023] UKFTT 00966 (GRC)
Decision: 14 November 2023

Facts: On 8 April 2021 the Appellant wrote to the Second Respondent and requested "all the evidence and reports that have been submitted to the council by the Fawcett Society, that show the negative impact that SEV's have and justify a nil cap policy." The so-called 'nil cap' policy would prevent the renewal of licenses for SEVs in the area. The City Council initially withheld all disputed information on the basis it was personal data (s 40(2) FOIA). Subsequently on internal review, the Council changed its position and informed the Appellant that it did not hold the information requested, on the basis

that the Bristol Fawcett Society was a different legal entity to the Fawcett Society. Following a further change in position the council indicated that it did hold information but in any event it would not be disclosable either on the basis of the personal data exemption (section 40(2) of FOIA) or on that it was confidential under section 41 (information provided in confidence). The First Respondent agreed with the Second Respondent that it had been entitled to rely upon section 41 not to disclose the information.

Points of dispute: (1) Whether the Appellant should have been entitled to see a redacted version of the report (so avoiding the receipt of personal data). 2) Whether the Appellant had ever harassed members of Bristol Fawcett and further, whether any alleged risk of harassment of those individuals was relevant. 3) Whether the public interest in maintaining confidentiality in the report outweighed the public interest in its disclosure.

Held: The Tribunal set out what it considered to be the correct approach to s 41:

(1) the authority must have obtained the information from another person (see s 41(1)(a));
(2) its disclosure must constitute a breach of confidence (see s 41(1)(b), Coco v A N Clark (Engineers) Ltd [1968] FSR 415 and HRH Prince of Wales v Associated Newspapers Ltd [2006] EWCA Civ 1776);
(3) a legal person must be able to bring an action for the breach of confidence (see s 41(1)(b)); &
(4) that action must be likely to succeed (see s 41(1)(b) and Rob Evans v Information Commissioner [2012] UKUT 313 (AAC).

As to the heads of claim: (1) disclosure of the report (whether redacted of names or not) would be likely to cause detriment to Bristol Fawcett members, such that the third stage of the Coco v A N Clark test was met. (2) the Tribunal accepted that the Bristol Fawcett members had been subject to harassment on account of their involvement in the debate around the licensing of SEVs in the area and that disclosure would risk "inciting a renewed round of harassment against members of Bristol Fawcett"; (3) the public interest in maintaining the confidentiality of the report outweighed the public interest in its disclosure. (4) It followed that the First Respondent would be unlikely to be able to successfully rely on the public interest defence to a breach of confidence claim.

The Tribunal concluded that Section 41 was engaged and the report was exempt from disclosure.

Decision: appeal dismissed.

ALCOHOL (Scotland)

Sheriffdom of Glasgow
Sheriff S Reid

Provisional premises licence: lawfulness of licensing board's policy statement regarding overprovision under Licensing (Scotland) Act 2015.

Certas Energy Uk Ltd V South Lanarkshire Licensing Board

2023 S.L.T. (Sh Ct) 201
Decision: September 2023

Facts: The local authority licensing board refused a company's application for a provisional premises licence for premises located within the board's self-styled "locality" of "Cambuslang East". The board reasoned that the premises were situated within a locality that was identified in its licensing policy statement as having an overprovision of off-licence premises; the effect of the policy was to create a rebuttable presumption that such an application should be refused on the ground of overprovision in terms of s.23(5)(e) of the Licensing (Scotland) Act 2005; and there were "no exceptional circumstances" in the application which would justify a departure from the policy. The company appealed, submitting (inter alia) that the defender had failed to follow the correct statutory procedure when consulting upon and formulating it.

Points of dispute: whether the statutory consultation process was lawful.

Held: the statutory consultation process required: (i) following the c procedure prescribed by the 2005 Act; (ii) to "have regard to" the statutory guidance issued under s.142; and (iii) compliance with the basic requirements of common law. The 'pursuer' might advance a challenge to the legality of the policy in the context of a statutory appeal to the sheriff, rather than by way of judicial review (which was a remedy of last resort). Ultimately, there had been a failure to follow the prescribed statutory consultation procedure in relation to: the "localities" in respect of which evidence was sought; to consult persons "representative of the interests of ... persons resident in" the localities; the attribution of consultees' responses to geographical areas. Further, there were multiple systemic failures including the fact that the survey responses could not be said to constitute "robust and reliable evidence" to support a conclusion that a saturation point had been reached. Additionally, the policy was not supported by adequate reasons. R (on the application of Moseley) v Haringey London Borough Council [2014] UKSC 56; [2014] 1 W.L.R. 3947; [2015] 1 All E.R. 495 and R v Brent

London Borough Council Ex p Gunning, 84 L.G.R. 168, applied.

Appeal allowed. Defender's decision reversed. Pursuer's application granted and remitted to the defender with a direction forthwith to issue to the pursuer a provisional premises licence.

Costs: Expenses to follow success.

ALCOHOL (Scotland)

Sheriffdom of Grampian, Highland and Islands at Inverness
Sheriff Principal D C W Pyle

Whether single noise complaint from upstairs flat amounting to public nuisance

Bengal Dish Ltd v Aberdeenshire Licensing Board

2024 S.L.T. (Sh Ct) 7
Decision: 20 December 2023

Facts: Appeal of licensee against decision of licensing board to curtail hours of use as live and recorded music venue after 11 pm on Fridays and Saturdays. Repeated noise complaints from owner of the flat above, which had originally been integral to the premises but had been granted change of use (despite concerns by the local environmental health department about the potential for noise disturbance). Licensing board issued a written warning and varied the terms of the licence to attach conditions 1 and 5 of its local conditions in terms of s.39(2)(a) and (b) of the Licensing (Scotland) Act 2005. Condition 1 required compliance with the respondent's policy statement. Condition 5 required that noise from amplified or non-amplified music, singing and speech sourced from licensed premises should not be audible in adjoining properties after 11 pm.

Points of dispute: Whether complaints about noise from the owner of the flat above could be described as a 'public nuisance'.

Held: No. In order for something to be regarded as public nuisance, it was necessary to show that it affected an identifiable class of the public. R (on the application of Hope & Glory Public House Ltd) v City of Westminster Magistrates' Court [2009] EWHC 1996 (Admin); [2009] L.L.R. 742; [2010] A.C.D. 12, and Attorney-General v PYA Quarries Ltd [1957] 2 Q.B. 169; [1957] 2 W.L.R. 770; [1957] 1 All E.R. 894, considered.

Appeal allowed and decision reversed.

ALCOHOL (N Ireland)

High Court of Justice In Northern Ireland
Rooney J

Did the County Court have the power to direct objectors to serve their expert reports on the applicant and other objectors if they intended to call expert evidence at the substantive hearing.

Iceland Foods Ltd -v- Lidl (Northern Ireland) Ltd and Philip Russell Ltd

[2024] NIKB 13
Decision: 4 March 2024

Facts: Prior to the hearing of the appeal the court had ruled that if the objectors wish to call expert evidence at the substantive hearing of the application for a provisional grant of licence, they must serve their expert reports on or before a specified date.

Points of dispute: Whether such a requirement was lawful.

Held: notwithstanding the fact that the Review Group's report on Civil Justice (2017) had made a recommendation that experts in licensing cases should be directed to exchange reports and attend experts' meetings pre-trial [CJ220] to date that recommendation had not received statutory implementation. Under the Rules of the Court of Judicature (Northern Ireland) 1980 the court could not order the disclosure or exchange of experts' reports, or at least part of them, until any claim for privilege has been determined..

Appeal allowed.

SECURITY INDUSTRY (N Ireland)

Northern Ireland Court Of Appeal
Treacy and Horner LJJ

Whether a District Judge had been correct in refusing the Defendant's application for a direction of no case to answer.

Security Industry Authority v Bryson

[2024] NICA 23
Decision: 10 April 2024

Facts: The Private Security Industry Act 2001 (the "2001 Act") came into effect in Northern Ireland in 2009. On 5 June 2018 an Investigations Officer employed by the Security Industry

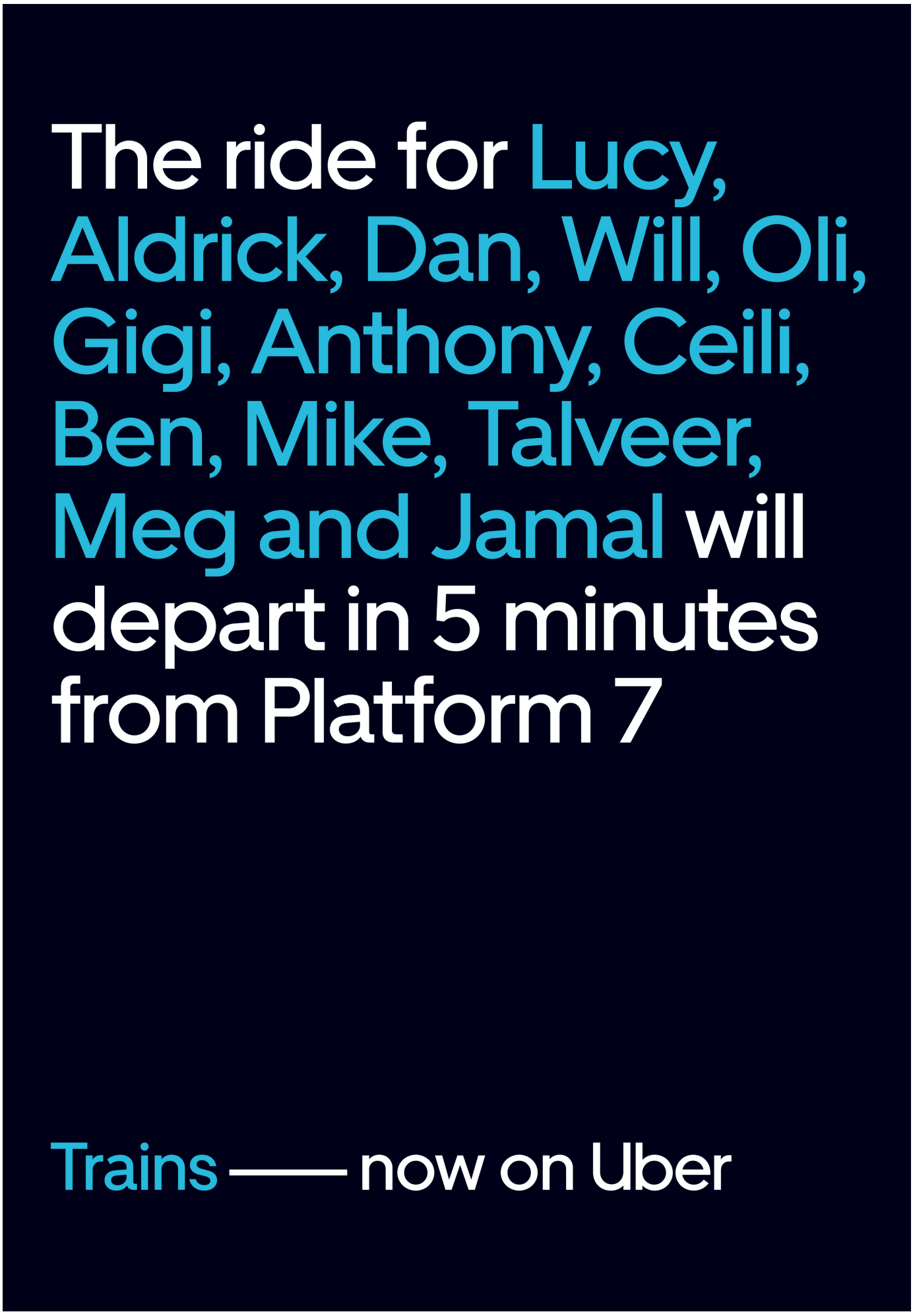
Authority ('the Authority') sent the Defendant a letter requiring him as a regulated person to provide information and documentation relating to JJ Security Services Limited. The Defendant responded stating that JJ Security Services Ltd had never traded. It was subsequently alleged that he had made to the Authority a statement that he knew to be false in a material particular or was reckless as to whether that was the case.

Points of dispute – Whether the DJ was correct in law in concluding that: (1) the delegation to the Chief Executive Officer of the section 19(2) function was invalid and that such invalidity, if any, was not corrected by Board ratification; (2) the delegation of the section 19 function to the Assistant Director of Compliance and Investigations was no longer valid when Compliance and Investigations became Partnerships and Investigations; (3) the discharge of the functions of the Security Industry Authority required, as a condition precedent, that a delegation provided prior to the commencement of the 2001 Act provisions in Northern Ireland be renewed or repeated; (4) the offence in section 22 of the Act of providing false information could not be established where the false information was provided to a person employed by the Authority rather than to the Authority itself.

Held: (1) No: the Chair did have authority to delegate the power on behalf of the Authority. (2) No: the delegation of the s 19 powers to the holder of the office of Assistant Director of Compliance and Investigations was effective. Following the restructuring of the Authority in 2013 this office was simply renamed Partnerships and Interventions and the delegation therefore remained valid. (3) No: the District Judge was incorrect to conclude that there was a doubt as to whether the delegation had effect in Northern Ireland. (4) No: a statement to an employee of the Authority who is acting in the course of his or her employment and for any purpose connected with the carrying out by the Authority of any of its functions under the 2001 Act, is a statement made to the Authority. Accordingly, the District Judge erred in law in holding that an offence under s 22 of the 2021 Act could not be established where the false information was provided to a person employed by the Authority, rather than to the Authority itself. The District Judge had been incorrect in her ruling on each point of law.

Appeal allowed and case remitted for rehearing before a different District Judge.

The preceding Case Summaries have been produced by Jeremy Phillips KC, licensing barrister at Francis Taylor Building, Inner Temple. They are based upon case reports produced by him and his fellow editors for Paterson's Licensing Acts, of which he is Editor in Chief


The ride for Lucy, Aldrick, Dan, Will, Oli, Gigi, Anthony, Ceili, Ben, Mike, Talveer, Meg and Jamal will depart in 5 minutes from Platform 7
Trains —— now on Uber

JOURNAL OF LICENSING - ARTICLE CONTRIBUTORS

JAMES BUTTON

Solicitor, James Button & Co.

James is a solicitor and runs his own practice, specialising in licensing, environmental health, public health, criminal investigations and prosecutions and human rights. He has a wealth of experience advising and representing councils, as well as the licensed trades, and is the author of Button on Taxis: Licensing Law and Practice.

PETER ROGERS

Managing Director, Sustainable Acoustics

Peter has over 25 years' experience delivering noise and vibration solutions on a wide variety of projects. He began his career in the local authority world before becoming a consultant specialising in building acoustics, environmental noise and vibration control. As well as being an expert witness, he has worked on many major projects including the Millennium Stadium, Wimbledon Centre Court, O2, Guys & St Thomas Hospital and the Olympic Park.

NEIL MORLEY

Founder, Travis Morley.

He is an accomplished legal professional who has developed his expertise over the last 20 years within roles at Erewash Borough Council, South Derbyshire District Council, Derbyshire County Council, Lawspeed Ltd, St Marys Chambers and the University of Sheffield. He specialises in Taxi Licensing Law within which he is able to offer the unique perspective of both a lawyer and former licensing officer.

PHILIP KOLVIN KC

Barrister, 11 KBW

Philip is one of the country's most eminent licensing QCs. His practice spans all fields of licensing, including alcohol and enteKtainment, gambling, sexual entertainment, taxis, sport and the security industry. He is Patron of the Institute of Licensing, a board member of the Sports Grounds Safety Authority and an Associate Fellow of Westminster University's Centre for Law, Society and Popular Culture.

GERALD GOURIET KC

Barrister, Francis Taylor Building

Gerald's licensing practice is principally in alcohol & entertainment, taxi and gambling licensing. He appears at first-instance before licensing committees and magistrates' courts throughout England and Wales, before licensing boards in Scotland, and also at Gambling Commission panel hearings. On appeal he appears before the First and Second Tier Tribunals, the High Court and the Court of Appeal.

JAMIE MACKENZIE

Managing Director, Unified Transport Systems

Jamie is Founder and Managing Director of Unified Transport Systems, a specialist training organisation he set up in August 2015 to deliver bespoke training for the taxi and private hire trade, other independent transport providers, licensing professionals and local / national government. Prior to that, he worked for 14 years as Business Compliance Officer for Watford BC.

JOURNAL OF LICENSING - EDITORIAL TEAM

LEO CHARALAMBIDES

Editor

Recommended in *Chambers and Partners*, Leo advises local authorities on all licensing issues, and niche areas such as garage forecourts and sexual entertainment venues. His licensing practice has developed to include wider aspects of associated local government law, and he recently contributed to Camden's licensing scheme for street entertainment and buskers.

ANDREW PRING

Deputy Editor

Andrew has been a freelance business editor and writer since 2009, working with a range of national publications and businesses. Prior to that, he edited weekly business magazines including Morning Advertiser, Accountancy Age, Insurance Times and Contract Journal.

RICHARD BROWN

Deputy Editor

Richard is an adviser at the Licensing Advice Project, Citizens Advice Westminster. The Project is an innovative partnership between the public sector and the third sector, providing free advice, information, assistance and representation at licence hearings to residents of City of Westminster regarding their rights and responsibilities.

CHARLES HOLLAND

Deputy Editor

Charles is a barrister in independent practice working out of Francis Taylor Building in London and Trinity Chambers in Newcastle upon Tyne. His work covers Chancery / commercial litigation, property issues and licensing. He works across a range of areas, and presently spends a lot of time thinking about taxis.

NATASHA ROBERTS

Editorial Assistant

Natasha joined the Institute of Licensing in January 2011, and played a major role in the team which launched the *Journal of Licensing* in November that year. She continues to oversee the Journal's production, progress and development. Natasha also assists with all aspects of events and is involved with the majority of the IoL publications along with managing the IoL's website and back-office systems.

JOURNAL OF LICENSING - REGULAR FEATURE WRITERS

NICK ARRON

Partner, Poppleston Allen Solicitors

Nick is a solicitor and lead partner in the Betting & Gaming Team at Poppleston Allen. He acts for a wide variety of leisure operators from large corporations to single-site operators and has particular expertise with web-based operations. He is retained as legal advisor by the Bingo Association.

RICHARD BROWN

Solicitor, Westminster CAB

Richard is an adviser at the Licensing Advice Project, Citizens Advice Westminster. The Project is an innovative partnership between the public sector and the third sector, providing free advice, information, assistance and representation at licence hearings to residents of City of Westminster regarding their rights and responsibilities.

JAMES BUTTON

Principal, James Button & Co

James is a solicitor and runs his own practice, specialising in licensing, environmental health, public health, criminal investigations and prosecutions and human rights. He has a wealth of experience advising and representing councils, as well as the licensed trades, and is the author of *Button on Taxis: Licensing Law and Practice*.

KATE NICHOLLS

National Chair

Kate is the Chair of the Institute of Licensing, a board member of Best Bar None, and a trustee of Hospitality Action and Springboard. She has previously chaired the Tourism Alliance, London Night-time Commission, and London Tourism Recovery Board.

STEPHEN MCGOWAN

Partner, TLT Solicitors

Stephen's expertise in licensing law is recognised at the highest levels. He has sat on a number of Scottish Government expert groups including those which oversaw the update to personal licence refresher training, and training for licensing board members. Stephen was appointed to the position of Chairman of the inaugural Scottish region of the Institute of Licensing in October 2016 and has been a member of the IoL since 2010.

JULIA SAWYER

Director, JS Consultancy

Director of JS Safety Consultancy, which she set up in 2006, Julia is a qualified safety and health practitioner. She spent 19 years in local government, with her last five years managing safety and licensing at Hammersmith and Fulham. Julia provided the fire risk assessment for the opening ceremony of the London 2012 Olympics.

Institute of Licensing

www.instituteoflicensing.org