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Daniel Davies, MIoL
Chairman, Institute of Licensing

After what has been an eventful 12 months, to say the least, I would like to thank you for your perseverance and strong support.

The review of the Licensing Act 2003 has been one of the most pressing issues we've faced, yet it brought many positive recommendations to the table. And while we hold reservations regarding the merger of planning and licensing committees, we do see the benefit in reviewing each side by side in order to streamline the process.

With the opening of the new office in August, we have made positive steps in providing additional support and guidance to members nationwide. I'd like to offer a warm welcome to Helen O'Neill and Bernie Matthews, who are based at the office as full-time administrators.

We also hosted the second annual National Licensing Week in June, which garnered excellent coverage and awareness across the board, from authorities to operators. As well as raising the public profile of licensing, it was encouraging to see collaborative working between the trade, the legal practitioners and the authorities. Since taking over as chairman, promoting partnerships has been one of my core objectives.

At recent IoL events, we have welcomed presentations from the business leaders of multi-site operators, including Tim Foster from Yummy Pubs, Peter Marks from Deltic and Phil Thorley of Thorley Taverns. Not only were these presentations well received, but it was a rare opportunity for regulators who deal with licensing at ground level to hear from responsible operators. I'm keen to see more of this. The more regulators are exposed to responsible operators, the more they will realise the benefits of working together.

As 2018 edges closer, it's always a pleasure to conclude the year with our flagship annual event. The National Training Conference is now in its 21st year, and as usual, this edition of the *Journal* has been published to coincide with the three-day event. Covering a diverse range of licensing and related subjects, we have a host of speakers from across the licensing spectrum, the whole event offering a packed and informative programme. With delegates travelling from each corner of the UK to attend, we look forward to delivering a dynamic learning and networking experience.

In terms of content for this issue, we begin with the thoughts of Leo Charalambides. Our editor picks up on a very interesting area – how far environmental issues can be considered to be covered by the four licensing objectives. He concludes that the particular circumstances of the specific case will always be the paramount factor, and says it's exactly the kind of issue that delegates at the National Training Conference will enjoy discussing, among so many others.

It would be surprising if the latest developments with Uber in London aren't among these topics, so I'm delighted this issue features a joint piece on licensing Uber from Richard Hanstock and Matt Lewin of Cornerstone Barristers, who summarise the three decided cases in this jurisdiction, and cover a fourth upcoming case in the European Court of Justice. Interim taxi licence suspensions are also examined in depth by James Button and Charles Holland. In addition, Rob Burkitt examines local gambling compliance and the Statement of Principles, David Daycock looks at the codes of conduct for elected members' behaviour and Julia Sawyer has a fascinating article on how theatres must try to reconcile conflicting guidance on stair safety. As usual then, a very packed and informative issue.

Finally, I'd like to conclude my comments by thanking the IoL staff who dedicate their time to produce the Institute's *Journal*. We are fortunate to have this team supporting the organisation and our objectives.

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We Need YOU!

If you would like to submit an article to be considered for inclusion in a future issue of the Journal or would like to discuss an article you would like to write, please contact us at journal@instituteoflicensing.org

Leo Charalambides, FIoL
Editor, Journal of Licensing

In this issue we have a particular focus on taxi and private hire licensing. It's a sector where we are observing different statutory licensing regimes having to address economic, social and technological changes that were unimaginable when the regimes were first enacted. We are, again, fortunate to have the views, clearly expressed, of so many experienced practitioners. This lively debate is a timely and pointed reminder that on-going training and continued professional development remain paramount for the effective application, administration and regulation of local authority licensing regimes – a factor, quite rightly, highlighted by the House of Lords scrutiny report (April 2017).

The House of Lords suggests a guide as to minimum training for local councillors – and I would add, all others – involved in licensing. Minimum training is only the start: it seems to me that we need the input of licensing professionals from all "sides" who are not only familiar with the basics but are able to think and apply the basic principles towards the public interest of the particular regime. For example, this September JD Wetherspoon joined a growing number of operators which are phasing out and eventually banning plastic straws and replacing them with biodegradable paper straws instead. These developments are part of an ongoing environmental awareness on the part of operators.

This policy invites further consideration of the extent and scope of the licensing objectives under the Licensing Act 2003, in particular the *promotion of the prevention of public nuisance*. The s 182 Guidance reminds us that "public nuisance" is "not narrowly defined in the 2003 Act and retains its broad common law meaning. It may include in appropriate circumstances the reduction of the living and working amenity and environment of other persons living and working in the area of the licensed premises" (emphasis added) (para 2.16).

Litter is listed in para 2.15 of the s 182 Guidance as an example of a public nuisance issue; litter that might be associated with plastic straws includes the plastic and paper wrappers that these straws are supplied with, quite apart from the straws themselves. As well as such litter being a public nuisance there is a growing awareness and acceptance that these items cause environmental harms.

Can the administration and application of the local licensing regime address such environmental harms? Does the Licensing Act 2003 provide an opportunity to "Think Globally, Act Locally"? There are now numerous examples of local authorities taking into account the Wildlife and Countryside Act 1981 and considering whether any such Wildlife and Countryside Act offences impact upon and engage the crime and disorder objective.

It will always depend on the particular circumstances of any given case, above all (as identified by the Court of Appeal in *Hope & Glory* [42]) the "particular location". It seems to me that a location within, for example, an area of outstanding natural beauty, provides an opportunity to think about the environmental aspects of public nuisance under the Licensing Act 2003.

Equally, the state of the local high street, parks and recreation areas etc, or the public car park on the morning after the night before, invite an assessment of public nuisance that might engage wider environmental issues. Location, it seems to me, invites us to consider the local environment in the fullest sense of the word. Practically, could a licensing authority impose a condition that limits the use of plastic straws within its licensed venues? It seems to me that only a working knowledge of the basics provides a platform to provide theoretical and practical answers to such questions.

The National Training Conference provides a singular opportunity not only to acquire a basic understanding of local authority licensing but also to engage in the critical discussion and debate over the specific and specialist application of the basic principles to ever-changing circumstances. And with that in mind, I wish you all a good Conference 2017.

Interim suspensions of taxi driver licences - still lawful?

Singh v Cardiff, and its finding that s 61 does not give local authorities an interim power of suspension, should have no implications beyond the specific situation of that case, argues **Charles Holland**

Here is the scenario: a local authority licenses a hackney carriage or private hire driver. The authority becomes aware that a serious allegation, say a sexual assault upon a passenger, has been made against the driver. A criminal investigation is underway. The driver has been arrested, has exercised his right to silence (on legal advice) and has been released on police bail and is yet to be charged. The passenger's identity is being kept secret. Can the local authority immediately suspend the driver's licence pending investigations, with a full hearing to take place at a later date, when it can consider whether to revoke the licence?

Until the case of *R (on the application of Singh and others) v Cardiff City Council* [2012] EHWC 1852 (Admin) it was thought that the answer was yes, it could.

Obiter dicta in *Singh* by Singh J, said the answer was no. As a result of *Singh*, many local authorities do not consider they have the power to suspend on an interim basis. Others, Leeds being a notable example, continue with the practice.

The *dicta* in *Singh* has been given fresh legs by what was in effect a test case brought by the local authority in *Reigate and Banstead Borough Council v Pawlowski* [2017] EWHC 1764 (Admin). In this case, the *dicta* in *Singh* was treated as being correct, with HHJ Keyser QC (sitting as a High Court Judge) providing, *obiter*, some "limited observations of a general nature" in the "hope of providing a small measure of assistance for the future".

I will argue in this article that Singh J's comments in *Singh* were *obiter dicta* that should be easily distinguishable in the vast majority of cases, and furthermore that this part of the decision was *per incuriam* and is wrong. The correctness of *Singh* does not appear to have been argued in *Pawlowski*, and - if anything - the necessity for the "observations" in that case demonstrate the incorrectness of the supposed ruling being followed.

Both cases highlight the dangers of judicial intervention on *obiter* matters. Hopefully at some point soon, a case will come where the *Singh* fallacy can be put to bed.

The statutory power to grant and then to suspend, revoke and refuse to renew

A local authority cannot grant a hackney carriage driver's licence or a private hire vehicle driver's unless it is "satisfied that the applicant is a fit and proper person to hold a driver's licence": ss 59(1)(a) and 51(1)(a) of the Local Government (Miscellaneous Provisions) Act 1976 respectively.

Once the licence is granted, s 61 (as amended by s 52 of the Road Safety Act 2006[1]) gives the local authority a power to suspend, revoke or refuse to renew:

> *(1) ... a district council may suspend or revoke or (on application therefor under section 46 of the Act of 1847 or section 51 of this Act, as the case may be) refuse to renew the licence of a driver of a hackney carriage or a private hire vehicle on any of the following grounds:—*
>
> *(a) that he has since the grant of the licence—*
>
> *(i) been convicted of an offence involving dishonesty, indecency or violence; or*
>
> *(ii) been convicted of an offence under or has failed to comply with the provisions of the Act of 1847 or of this Part of this Act; or*
>
> *(b) any other reasonable cause.*
>
> *(2) ...*
>
> *[(2A) Subject to subsection (2B) of this section, a suspension or revocation of the licence of a driver under this section takes effect at the end of the period of 21 days beginning with the day on which notice is given to the driver under subsection (2)(a) of this section.*
>
> *(2B) If it appears that the interests of public safety require the suspension or revocation of the licence to have immediate effect, and the notice given to the driver under subsection (2)(a) of this section includes a statement that that is so and an explanation why, the suspension or revocation takes effect when the notice is given to the driver.]*
>
> *(3) Any driver aggrieved by a decision of a district council*

1 Which inserted the words shown in square brackets.

under subsection (1) of this section may appeal to a magistrates' court.

The express statutory basis for revocation, etc ("any other reasonable cause") is wider than the express statutory qualification for a grant ("fit and proper person to hold a licence").

Suspensions and revocations having immediate effect

Section 77(2)(b) of the 1976 Act provides that if any decision of a district council against which a right of appeal is conferred by the act (so including a s 61 decision) makes it unlawful for any person to carry on a business which he was lawfully carrying on up to the time of the decision, then, until the time for appealing has expired, or, when an appeal is lodged, until the appeal is disposed of or withdrawn or fails for want of prosecution, that person may carry on that business.

This generally (although not inevitably[2]) meant that notwithstanding a suspension or a revocation, the driver could carry on driving pending the appeal process.

Sub-subsections 2A and 2B to s 61, and a new subsection (3) to s 77 were introduced by the Road Safety Act 2006 with effect from 16 March 2007. These provisions remove the driver's ability to drive pending appeal where the decision notice includes a statement that (and an explanation why) the interests of public safety require the suspension or revocation of the licence to have immediate effect.

Similar provisions had been in place in London since the passage of the Private Hire Vehicles (London) Act 1998, s 17 of which provides (as amended):

(1) Where the [licensing authority] has decided to suspend or revoke a licence under section 16—

(a) [the authority] shall give notice of the decision and the grounds for the decision to the licence holder or, in the case of a London PHV licence, the owner of the vehicle to which the licence relates; and

(b) the suspension or revocation takes effect at the end of the period of 21 days beginning with the day on which that notice is served on the licence holder or the owner.

(2) If the [licensing authority] is of the opinion that the interests of public safety require the suspension or revocation of a licence to have immediate effect, and [the authority] includes a statement of that opinion and the reasons for it in the notice of suspension or revocation, the suspension or revocation takes effect when the notice is served on the licence holder or vehicle owner (as the case may be).

(3) A licence suspended under this section shall remain suspended until such time as the [licensing authority] by notice directs that the licence is again in force.

(4) The holder of a London PHV operator's or driver's licence, or the owner of a vehicle to which a PHV licence relates, may appeal to a magistrates' court against a decision under section 16 to suspend or revoke that licence.

Section 17(2) of the 1998 Act is the source of s 61(2B) of the 1976 Act. Section 17(3) of the 1998 Act contemplates open-ended suspensions.

When the relevant amendments to the Road Safety Bill were introduced in the House of Commons, the minister said:[3]

New clauses 6 and 7 deal with taxis and private hire vehicles, sometimes known as minicabs. Both clauses have the same objective: to make travel safer for people who use those modes of transport. Against the background of the Bichard report and the legislation that we have brought forward in that regard, we have considered carefully whether we should use the opportunity presented by the Road Safety Bill to deal with any urgent safety concerns relating to taxi and PHV legislation. The result is these new clauses to deal with two worrying aspects of the legislation that we identified.

New clause 6 addresses our concern about a taxi or PHV driver's right to continue working while appealing against a decision to suspend or revoke his licence, even if he is considered to represent an immediate threat to public safety. The new clause gives local licensing authorities in England and Wales, outside London, a new power which will enable them to suspend or revoke a taxi or PHV driver's licence with immediate effect on safety grounds. That power has been available to the licensing authority in London—Transport for London—for a number of years.

Drivers' automatic right to continue working pending appeal has been a source of justified concern to many taxi and PHV licensing authorities. They want to use their licensing powers to ensure that passengers are safe using local taxi and PHV services. They play a tremendously important role in protecting residents and visitors who use taxis and PHVs in their areas. The new clause will enable them to do so even more thoroughly in some

2 If the business is not being carried out lawfully at the time of the decision (say there was no insurance in place) then s 77(2) does not apply.

3 HC Deb, 9 October 2006, c 51. http://www.publications.parliament.uk/pa/cm200506/cmhansrd/vo061009/debtext/61009-0008.htm#06100913001249

circumstances—for example, when a driver has committed a serious offence or is suffering from a medical condition that makes it unsafe for him to continue working.

And later: [4]

There will be no new powers to suspend or revoke a licence. One would still have to satisfy the grounds for a suspension or revocation of a driver's licence as under the present legislation. The difference is that at the moment if the individual whose licence is suspended appeals against that suspension, they can continue to drive people around while they await the hearing of the appeal. If someone is accused of a serious offence—as serious as rape or some other sexual offence—it would be horrendous if they were allowed to continue to drive a private hire vehicle while waiting for the appeal against suspension to be heard. Under the new clause, when the licensing authority takes the view that the offence is serious, it will be able to suspend the licence.

The argument that was put to us by some taxi drivers was that it might leave them open to false allegations and they might lose their livelihood over a trivial allegation while awaiting the hearing of appeal against suspension. However, in the experience of the use of the power in London, where it has been in place for some time, it has not been abused. Drivers have had their licences suspended pending appeal only in cases in which a serious allegation has been made against them. Given the seriousness of the offences that might be involved, I think that the new clause is a proportionate response to the situation. No driver should lose their livelihood lightly even for a short time, but when someone is accused of an offence of sufficient seriousness to justify the revocation or suspension of their licence, it is appropriate that they should not continue to drive pending an appeal.

Interim suspensions before *Singh v Cardiff*

Before 2012, it was commonly thought that it was lawful to suspend a licence on an interim basis pending investigation. So, *Button on Taxis*, 3rd edition (2009) provides:

6.39 The question of suspension of any licence raises an interesting point. A legitimate use of the suspension powers would be when the council has serious concerns about the fitness of a driver as a result of evidence which has come into their possession but which the council needs to take time to investigate before a final decision can be made.

6.40 In many cases, a decision is made by officers under delegated powers to suspend a licence following allegations of serious misconduct or criminal activity. The investigation may continue thereafter, resulting in the licensee being brought before a committee to answer the allegations.

In these circumstances, to avoid any suggestion that there are two punishments[5] arising from one set of circumstances, it must be made clear that the initial suspension is without prejudice to any further action that may be taken on the conclusion of the investigation. Even then, there is an argument to say that the decision of the council has been to suspend the licence, and that therefore no further action can be taken. However, the process of suspension to allow an investigation, and possible further sanctions by means of additional periods of suspension or revocation is a method widely used by local authorities....

It is not difficult to see the very useful purpose that this process serves, for example, my scenario at the beginning of this article. A serious allegation is made, but because of the criminal process, much has to stay under wraps. At that stage, it is very hard for a licensing authority to know the truth of the matter. The allegation could be true but it could be malicious. The driver's legal representatives in the criminal proceedings may well have advised him not to answer questions on the matter. Much may come out in the criminal trial. If a s 61 decision has to be once and for all, then there is a risk that it will be the wrong decision. Yet delaying a decision until the conclusion of criminal process risks endangering the public in the meantime.

Indeed, an interim suspension was the process adopted in *Leeds City Council v Hussain* [2002] EWHC 1145 (Admin). There was an incident of violent disorder, involving a number of private hire drivers. H was charged. The council suspended his licence as "a temporary measure pending the resolution of [the] criminal proceedings".[6] The magistrates' court dismissed an appeal. However the Crown Court allowed an appeal, finding, *inter alia*, that "it would have been preferable to have awaited the outcome of the criminal proceedings against [H] before taking any action in relation to his private hire licences" and that "there was not sufficient information before us to say that there was a reasonable chance of [H] being convicted of the offence of violent disorder". The local authority appealed by way of case stated to the Administrative Court.[7]

4 *Ibid*, c.55-56. http://www.publications.parliament.uk/pa/cm200506/cmhansrd/vo061009/debtext/61009-0009.htm

5 This is an unfortunate word. Neither a suspension nor a revocation is a "punishment", a point Mr Button implicitly recognises elsewhere in his text (see, eg, 10.115).

6 Case stated, [5].

7 Where only one party was represented, meaning, again, in theory, that the decision should be treated with some caution. In fact, this is an oft-cited authority, applied in *Cherwell DC v Anwar*

Silber J held that the phrase "any other reasonable" cause within s 61(1)(b) meant that the council had a wide discretion [12] and it was not necessary for there to be a conviction [11] nor indeed for there to be a reasonable chance of conviction [14, 27]. Indeed in other reports, authorities had gone behind acquittals [15-16].

He referred to *McCool* v *Rushcliff Borough Council* [1983] 3 All ER 889 where Lord Bingham CJ stated the objectives of the licensing regime as including:

> *... to ensure as 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 take advantage of their employment to abuse or assault passengers.*

Silber J relied on this passage to find that [at 25] "the council, when considering whether to suspend a licence or to revoke it, is focusing on the impact of the licence-holder's vehicle and character on members of the public and in particular, but not exclusively, on the potential users of those vehicles". No criticism was levelled at the local authority for suspending on a temporary basis, and, although the judge made no express finding that interim suspensions were permissible, the entire basis of his judgment is consistent with such an approach.

Singh v Cardiff

However, then there came *R (on the application of Singh and others) v Cardiff City Council* [2012] EHWC 1852 (Admin).

Cardiff had a penalty points scheme. It had formed the view that, in practice, the decision under s 61 was whether a driver was fit and proper to hold a licence. If the driver was not fit and proper, then the only real avenue was to revoke. This meant that action was not taken against licensed drivers who were guilty of misconduct, the magnitude of which did not warrant revocation. It was suggested that a penalty points scheme where the accumulation of a certain number of points over a given period of time, would result in an automatic revocation of the licence. The authority's policy stated: "The accumulation of 10 or more points in any period of three years will normally result in the automatic revocation of the licence".

Two drivers, S and M, challenged revocations flowing from the penalty points policy in judicial review proceedings. Singh J found that the points scheme, providing as it did for automatic revocation upon the accumulation of a certain number of points without any discretionary consideration of the particular circumstances of the case, was unlawful. He quashed both decisions.

M had been involved in two separate incidents on 25 and 27 May 2011. The matters were brought before the committee on 5 July 2011. M did not attend. As a result of this failure, the committee suspended his licence until he attended a committee meeting to answer the report against him. M was informed in standard form of his right to appeal. He appealed. At a committee hearing on 9 August 2011, 16 points were imposed on his licence and, applying its penalty points policy, the local authority revoked it.

Singh J dealt, *obiter*, with M's suspension and found as follows:

> *100. The claimant submitted that in any event, quite apart from his other arguments what happened in this case was that on 5th July 2011 the defendant decided to suspend his licence rather than to revoke it. It was submitted, as it were, that the defendant authority was therefore "functus officio". It was submitted there is no power of interim suspension in section 61 of the 1976 Act.*
>
> *101. I would accept those argument on behalf of the claimant Mr Morrissey, in this case.*
>
> *102. Returning to the language of section 61, I remind myself that this was not a case in which any attempt was made to activate the suspension of the licence to have immediate effect pursuant to the interest of public safety basis in subsection (2B). The notice sent to Mr Morrissey did not purport to invoke that provision or to make the suspension immediately effective.*
>
> *103. In my judgment, the way in which the concept of suspension is used by Parliament is section 61 of the 1976 Act is not, as it were, to create a power of interim suspension, it is rather after a considered determination in other words a final decision on whether ground for either revocation, or suspension of a licence is made out, for there to be either revocation or, as a lesser sanction, a sanction of suspension.*
>
> *104. By way of analogy, one can envisage for example in a professional context a solicitor or a barrister can be disciplined on grounds of his conduct. The relevant disciplinary body may conclude that even if the misconduct has been established, that the appropriate sanction should be something less than complete revocation of the practising certificate for the relevant lawyer. It may be, for example, a suspension for a period of 1 year, will constitute sufficient sanction in the interests of the public.*
>
> *105. It is in that sense, in my judgment, that Parliament uses the concept of suspension in section 61 of the 1976*

[2011] EWHC 2943 (Admin) and *Pinnington v TfL* [2013] EWHC 3656.

Act. It does not use, as it were, to create an interim power, before a reasoned determination has been made, that the grounds in subsection (1A) or (1B) have been made out. It is not, as it were, a protective or holding power. It is a power of final suspension, as an alternative to a power of final revocation. For those reasons I accept that aspect of Mr Morrissey's claim for judicial review also.

Is *Singh v Cardiff* binding?

This decision has been interpreted by some as preventing interim suspension; for example, Mr Button's *Bulletin* of 18 October 2012[8] ("this... judgment will prevent local authorities suspending a drivers' licence pending further investigation") and Professor Roy Light's *Local Government Lawyer* article of 18 December 2013[9] ("This decision now seems to make such an approach unlawful as Singh J decided that s 61 does not confer a power of interim suspension").

Mr Button proposed a workaround solution involving a rapid final decision with immediate effect followed by a re-licensing if allegations turn out to be false. Leaving aside its unwieldy nature, this solution has with it the issue that the "rapid" final decision needs to be Article 6 compliant.

In *Singh*, Singh J [at 102] distinguished M's suspension from one where the suspension has immediate effect because the notice complies with the requirements of s 61(2B).

Aside from Cardiff's eccentric treatment of M, it is hard to think (since the amendments brought about by the Road Safety Act 2006) of an interim suspension that would not include a s 61(2B) notice. The very purpose of an interim suspension is to protect the public by preventing the driver from driving a taxi pending a full investigation. It would be pointless if the driver could carry on driving pending the resolution of an appeal.

The facts relating to M in *Singh* were unusual and extreme. It seems extraordinary (if not just plain wrong) to suspend a driver for not attending a committee meeting: the more normal actions would be to adjourn to a further date, or to proceed in the driver's absence.

I suggest that the *obiter* statement of the judge, if it has any persuasive weight at all, should be confined to the very unusual facts of the case. Singh J did not say what his view would have been had an interim suspension decision contained a s 61(2B) notice. It has to be accepted that he goes on to express a view in [103] that can be interpreted as a reading that *any* interim suspension is unlawful. But why did he observe there was no s 61(2B) notice unless he thought that this made a difference?

If a local authority decides to impose an interim suspension under s 61 with a s 61(2B) notice on it, then it is entirely open to that authority to say (as the council does) that such a decision does not conflict with *Singh* because *Singh* is not even persuasive authority in relation to such a decision.

Was *Singh v Cardiff* rightly decided on the issue?

Furthermore, it can be forcefully argued that Singh J's *obiter dicta* is, in any event, *per incuriam* and wrong.

First, Singh J approached s 61 as if it was a disciplinary provision. He was not helped by Cardiff's policy referring to "a deficiency in the legislation relating to the discipline of drivers" and the word "penalty" both in the policy and in the name of the scheme itself. Section 61 is in fact not a punitive provision, but part of a regulatory scheme, the objectives of which include public protection: *McCool*. The reports do not reveal whether *McCool* was cited to the court.

A common trap for barristers (and barristers who become High Court judges) to fall in to is to think that everything in the world is analogous to being a barrister. Singh J's analogy of s 61 with the powers deployed by regulators for barristers and solicitors is a bad one because - in the context to which the judge was referring to them - they are each (to use his phrase) a "disciplinary body".

This is a bad analogy because taxi driving is not a profession, and, unlike a profession, there is no concept of "disciplining" taxi drivers. They are subject to the criminal law of the land, and their licences can be subject to revocation, suspension or refusal to renew under s 61 as part of a regulatory (not disciplinary) regime.

Not only it is a bad analogy, it is also not an accurately applied analogy, because as well as being disciplinary bodies, the Bar Standards Board and the Solicitors' Regulation Authority have regulatory functions, and, by virtue of such, both can in fact impose interim suspensions (or actions that have that effect). So:

(1) the Bar Standards Board can impose an interim suspension in the public interest;[10]

(2) the Solicitors Regulation Authority can impose conditions on a solicitors' practising certificate as a

8 http://www.jamesbutton.co.uk/Subscriber/Bulletins/JB&Co.%20October%20Bulletin%202012.pdf

9 http://www.localgovernmentlawyer.co.uk/index.php?option=com_content&view=article&id=16667%3Asuspension-of-taxi-drivers-licences&catid=61&Itemid=29

10 See now the BSB Handbook, rE267, although at the time of *Singh* there were equivalent rules in the then prevailing Bar Code of Conduct.

> *protective measure where it considers it in the public interest to do so.*[11]

And there are numerous other professions where the relevant regulatory body can impose interim suspensions - for example, doctors,[12] nurses and midwives,[13] dentists[14] and health care professionals.[15]

And, even for the non-profession of selling alcohol or providing regulated entertainment or late-night refreshment, suspension (and, in relation to summary reviews, interim steps) are actions open to the regulatory authorities under the Licensing Act 2003 regime.

A "reasonable cause" within s 61(1)(b) could be a medical cause. Needless to say, any action taken under s 61 on a medical cause is not a disciplinary action - you cannot be "disciplined" for being sick. And there is no reason why an interim suspension should not be the appropriate step to take. Say a driver has a contagious disease, and this comes to the attention of the licensing authority: is not the appropriate step to suspend for the interim with immediate effect, pending further investigation including investigation as to when and whether the driver will get better?

Taxi licensing aims to protect the public. How the public is protected is not a once and for all question, but one that changes over time. Vehicles become old and broken down, drivers become old and broken down, drivers sometimes get into trouble, and are sometimes subsequently exonerated. It is entirely appropriate and sensible to give the licensing authority a flexible power to react in a timely and proportionate manner to new circumstances arising in relation to a particular driver.

Second, there is no indication that *Leeds City Council v Hussain* was cited to the court in *Singh*. As detailed about, that case involved a suspension made on an explicitly interim basis which received no judicial criticism in the Administrative Court (in contrast to the Crown Court) and indeed was implicitly approved by it. That case further emphasised one of the objectives of the scheme of taxi licensing as being to protect the public. Singh J's reasoning appears to omit this fundamental point.

In *Singh*, it was "common ground" [69] that "any other reasonable cause" "in substance, for present purposes ... means whether a person continues to be a fit and proper person". As was pointed out in *Hussain*, in fact "any other reasonable cause" is very wide [12 and 13]. Why cannot "any other reasonable cause" mean "to protect the public in the interim while an investigation into whether the driver is indeed fit and proper is conducted"?

Third, there is nothing in the language of s 61 to suggest that it needs to be a final decision. Indeed, the provisions of s 61(2B) indicate the opposite. One might ask why would Parliament have allowed suspensions to have immediate effect "in the interests of public safety" unless they were contemplating suspensions being used as interim remedies? On what possible basis would the interests of public safety require there to be, as a final determination, a suspension with immediate effect? Surely if the interests of public safety required, on a final determination, the driver not to drive, then the sanction would be revocation?

The ministerial statements (see above) are helpful up to a point, in that they show the provisions contemplated immediate suspensions on the basis of a "serious allegation". The statements do, however, refer to suspensions "pending appeal", whereas the mechanics of an interim suspension is that although there is a right of appeal, an appeal would not be necessary for the suspension to do its work, because the suspension could be lifted at a later point and either replaced with a revocation (if the allegations are made out) or a return of licence (if they are not). This is perhaps fine detail which escaped the minister; his statements should not be read as suggesting there has to be final decision at the point of the immediate suspension, not least for the reasons set out in the previous paragraph.

Fourth, Singh J did not touch upon the human rights consequences of his approach. Although it is perhaps doubtful that licences are "possessions" for the purposes of Article 1 of the First Protocol of the ECHR (A1P1), goodwill associated with licences is: see *Crompton (t/a David Crompton Holdings) v Department of Transport for North Western Area* [2003] RT 34 and *R (Malik) v Waltham Forest NHS Primary Care Trust* [2007] EWCA Civ 265, *per* Auld LJ [at 46].

Under A1P1, persons cannot be deprived of their possessions except "in the public interest and subject to the conditions provided for by law".

A revocation (which, as per Mr Button's workaround, is the route local authorities are forced down if they have no power to impose interim suspensions) is more draconian than an interim suspension. Once a licence is revoked, it can

11 http://www.sra.org.uk/consumers/solicitor-check/controls.page

12 The General Medical Council under s 41A of the Medical Act 1983.

13 The Nursing and Midwifery Council under Article 31(2) of the Nursing and Midwifery Order 2001.

14 General Dental Council under s 36U(1) of the Dentists Act 1984.

15 Health Care Professions Council under Article 31 of the Health and Social Work Professions Order 2001.

only be got back by a new application, with the burden of proof back on the applicant (*Kaivanpor*) and the potential for pre-grant checks to be re-done. There is the issue that the *status quo* shifts from the driver being licensed to the one not being licensed. The effect of a strict reading of [103] *et seq* of *Singh* is that drivers who have a serious allegation made against them are worse off: rather than a suspension that is expressed to be without prejudice to any finding on the underlying allegations, they face a rapid "final decision" on a matter that is still in its early investigatory stages.

If a measure (such as the revocation of a licence) is to be ECHR compliant, it needs to comply with the concept of proportionality. So, as per Lord Reed in *Bank Mellat v Her Majesty's Treasury (No. 2)* [2014] 1 A.C. 700 [at 74] (whose formulation the rest of the Supreme Court adopted):

> *It is necessary to determine (1) whether the objective of the measure is sufficiently important to justify the limitation of a protected right, (2) whether the measure is rationally connected to the objective, (3)* ***whether a less intrusive measure could have been used without unacceptably compromising the achievement of the objective****, and (4) whether, balancing the severity of the measure's effects on the rights of the persons to whom it applies against the importance of the objective, to the extent that the measure will contribute to its achievement, the former outweighs the latter.* [author's emphasis]

Singh J's construction of s 61 seems to have taken no regard of the principle of proportionality, and can be criticised on this further basis.

Reigate and Banstead Borough Council v Pawlowski

I now come to the *Pawlowski* case. The facts are straightforward. P was licensed by Reigate and Banstead (R&B) as a PHV driver. On 2 August 2015 he was arrested on suspicion of being drunk in charge of a vehicle, and subsequently charged with that offence. On 4 August, R&B were informed of the charge. On 5 August R&B revoked his licence with immediate effect. On 28 October 2015, P was found not guilty at trial. P's appeal against the revocation came before the magistrates on 2 February 2016 where it was allowed with costs.

R&B appealed to the Crown Court. It did not seek to set aside the quashing of the revocation, but rather sought a ruling that it had been wrongly criticised by the magistrates in comments that it would have been more appropriate to suspend, rather than revoke P's licence. R&B said, in effect, that its hands were tied by the ruling in *Singh v Cardiff*.

The magistrates effectively made two findings. Firstly, they found that the decision to revoke was not appropriate, saying "suspension, whatever its limitations, would have been the appropriate action". Secondly, they found that as P had no convictions, nor any other complaints against him, "revocation is not now appropriate and, on the balance of probabilities, allow the appeal".

It appears that the magistrates were directing their minds to the test in *R (Hope and Glory Public House Limited) v City of Westminster Magistrates Court* [2011] EWCA Civ 31, and in essence were asking whether the revocation was wrong at the time (yes) and whether it was wrong now (yes) - albeit with some misguided application of a "balance of probabilities" test as the one they had to apply.

It is less clear whether the High Court had the *Hope and Glory* test in mind - it appears to have treated the appeal as a pure rehearing as at the date of the appeal [14]. This, combined with the fact that R&B did not seek the quashing of the magistrates' decision and the reinstatement of P's revocation lead the court to come to the conclusion that the criticism of R&B's decision by the magistrates was *obiter* and of no relevance on appeal between R&B and P [17].

Certainly, it is plainly right that the issue was entirely academic for the purposes of the appeal and therefore *obiter.* The court did, however, go on to cautiously make "limited observations of a general nature".

P's counsel acted in the role of *amicus curiae*, the outcome having no effect on his client. It appears to have been common ground between him and R&B's counsel that *Singh v Cardiff* was rightly decided and a correct statement of the law. That is entirely understandable so far as its non-effect on P was concerned, but it is unfortunate for the wider readership of this case, because a full-frontal attack on the applicability of the decision may have avoided some of the more tangled logic that the court found itself forced to perform.

A suggestion from P that a local authority could make a decision to suspend on charge and then a further decision to revoke upon conviction (the conviction being a new circumstance amounting to a reasonable cause under s 61) was - although perfectly sensible and obviously correct approach within the statutory scheme - rejected by the judge as being contrary to *Singh v Cardiff*, which prohibited the use of suspension "as a holding operation pending further investigation". Instead, the judge postulated a scenario whereby facts emerging during the criminal trial would re-engage the authority's jurisdiction. It is very difficult to see how an underlying fact appearing at trial is a new matter but the result of that trial is not. The distinction without a

difference underlines how wrong the approach of *Singh v Cardiff* is.

In the end, rather depressingly, the learned judge effectively re-iterated the supposed principle of *Singh v Cardiff*: "to suspend the licence merely because of the charge and revoke it merely because of the ensuing conviction" is not lawful.

Conclusions

The suggestion in *Singh v Cardiff* that s 61 does not give local authorities an interim power of suspension is *obiter* and any persuasive weight that it has should be confined to the very peculiar facts of the case in question (where the driver was suspended for not attending a committee meeting, the suspension notice not taking immediate effect).

If, which is not accepted, *Singh* has wider application, then I suggest it was decided *per incuriam* and is wrong. In particular:

- the court does not appear to have had any regard to the purpose of the licensing scheme as explained in *McCool*, and wrongly treated s 61 as a disciplinary (rather than a regulatory) provision;
- it does not appear that the court was taken to *Leeds v Hussain* and thus was unaware of an interim suspension decision which had survived a judicial challenge;
- the judge's reasoning around s 61(2B) is contradictory and fails to appreciate that the only basis on which a suspension should have immediate effect is if it is an interim step; and
- the judge did not deal with the human rights consequences of his decision on drivers.

Some local authorities, Leeds City Council being one, have decided (in my view, rightly) not to follow the *dicta* in *Singh v Cardiff* but instead to publish an interim suspension policy setting out, transparently, how they will use interim suspensions to protect the public in circumstances where allegations and other factual scenarios arise that need to be dealt with urgently, while reserving the position for a full hearing at a later date. It is to be hoped that other authorities follow their example until an appeal arises where the courts can give a definitive answer.

Pawlowski is not that answer. Like *Singh v Cardiff*, it is *obiter* in what it has to say about interim suspensions. The fact that the issue was academic in that appeal perhaps meant that it was not subject to the usual degree of adversarial scrutiny. The *dicta* in *Singh v Cardiff* has been misapplied to rob a perfectly sensible and proportionate regulatory provision of its efficacy.

It is unfortunate that *Pawlowski* did not stop the rot, but that is no reason to abandon the fight. The safeguarding ramifications of blunting this important tool in the regulatory regime are too serious to ignore.

Charles Holland, MIoL
Barrister, Trinity Chambers

Finally, bingo in pubs a no-go says Court of Appeals

The culmination of Greene King's litigation with the Gambling Commission, a record financial penalty paid by a licensed operator and the latest on Phillip Ivey's battle with Crockfords Club as to whether he cheated. **Nick Arron** reports

As you will have probably read over the previous few years in the pages of the *Journal,* Greene King and the Gambling Commission have been engaged in litigation regarding the Commission's refusal to grant Greene King a non-remote bingo operating licence, permitting it to provide commercial bingo and gaming machines within its pubs (*Greene King Brewing and Retailing Ltd & Anor v The Gambling Commission* [2017] EWCA Civ 372).

Greene King applied for two operating licences to provide unlimited stake and prize bingo in up to eight of their pubs. The application was considered by the Commission at a panel hearing on 12 March 2014 when the panel concluded that, although they were satisfied as to the suitability and competence of Greene King to offer the proposed activities, providing gambling in pubs as proposed would be harmful to the licensing objectives of the Gambling Act 2005.

There then followed a series of appeals, with the last, on 9 March 2016, seeing Judge Levenson granting permission to Greene King to appeal to the Court of Appeal.

The Court of Appeal decision

Greene King's grounds of appeal in the Court of Appeal were firstly that the suitability of premises is essentially a matter for local licensing authorities when it comes to considering whether a premises licence should be granted.

Its second ground for appeal was that in the First Tier Judge Warren took into account the proposed operation and its environment, including the busy pub premises, at which the bingo was to take place. Judge Warren had made a factual finding that Greene King's proposals were reasonably consistent with the licensing objectives. Greene King argued that Judge Levenson, in the Upper Tier, erred in ignoring or overruling the First Tier Tribunal factual finding.

The third ground was that Judge Levenson erred in allowing the appeal without taking into account and dealing with Greene King's alternative grounds for upholding the First Tier Tribunal decision – namely, that the Commission's refusal of the Greene King application gave effect to a blanket prohibition on operators of pubs obtaining operating licences. Greene King asserted this was unpublished policy not subject to consultation, which is inconsistent with the general scheme of the act and that there was no evidential basis for the policy. Consequently, the panel failed to comply with its own statement of principles which requires it come to evidence based and appropriate decisions.

Expanding on the first ground, Greene King argued that the act established "a fundamental division of regulatory powers and responsibilities between, on the one hand, the Commission (as national regulator) and, on the other hand, licensing authorities (as local regulators)".

Referring to s 70, it argued that the Commission must focus on the suitability and competence of the person wishing to provide gambling facilities, and not upon the suitability of providing those facilities in a specified place, eg, in their pubs; this role being the function of the local licensing authority when considering a premises licence.

Lord Justice Hickinbottom, in his Court of Appeal decision, looked at the context more broadly. His view was that considering the statutory obligations placed upon the Commission to have regards to and pursuit of the licensing objectives, it had a wide discretion. Indeed, it was required to consider the proposed operating model as to whether it would be reasonably consistent with the licensing objectives, and this must include consideration of the nature of the premises.

He did not consider that the panel or, subsequently, Judge Levenson erred in finding that the Commission did have the power under s 70 to consider the suitability and proposed operation of full commercial bingo in a busy pub environment, and whether this was consistent with the licensing objectives. He referred to a two-stage approach,

which he felt was open to the panel, firstly to consider its suitability and secondly to consider the operating model. He did not believe that the act created a rigid approach at s 70, stating that it simply sets out matters to which the Commission must or may have regard when considering an operating licence application. He stated that the manner in which the Commission does this is a matter for it, and it does not have to be formulaic or necessarily multi-stage.

Greene King argued that s 84 helped in the construction of s 70, as it provided evidence that Parliament's intention was that the Commission should not consider premises when determining an application for an operating licence. Lord Justice Hickinbottom's view was that there is no statutory provision in the act to the effect that all aspects of the premises from which facilities are offered must be left out of account by the Commission in its consideration of an operating licence application. If this had been the legislative intention, then Parliament would have been more specific, as in s 72 of the act, which explicitly prohibits the Commission from considering the area which is proposed to provide facilities, and the extra demand for those facilities.

Greene King submitted that Judge Levenson was influenced by a floodgates argument that to grant these operating licences for full commercial bingo in pubs would result in a large number of premises nationwide. Lord Justice Hickinbottom concluded that Judge Levenson in the Upper Tier Tribunal was entitled to conclude it could not have been the intention of Parliament to require the enforcement of national policy in relation to bingo in pubs through licensing authorities.

Considering the argument put forward by Greene King that many bingo halls already have drink readily on offer, Lord Justice Hickinbottom decided that the Commission is entitled to take the view that there is a difference between a bingo hall, where the primary function is gambling, and a pub where the gambling is likely to be ancillary, occasional and using ambit activity.

On the first ground, Lord Justice Hickinbottom concluded that having determined that Greene King was suitable to offer the proposed licensed activities, the panel was entitled to consider and find that the proposed operation was not consistent with the licensing objectives.

Regarding the second ground - namely that Judge Warren did take into account the proposed operation and its environment, including the premises at which the gambling was to take place, and concluded that this was reasonably consistent with the licensing objectives - Lord Justice Hickinbottom decided that on any fair reading of the determination Judge Warren did not analyse the matter in that way or draw that conclusion and, therefore, that the ground failed.

Regarding the third ground, Judge Levenson was unpersuaded that the Commission erred in law in the manner suggested. He found that the panel was faced with a novel operating model, and it was therefore not surprising that no policy had been devised or published on the operation of gambling or bingo within pubs, of a nature proposed by Greene King. The panel had therefore considered the proposal as required by the act, in the light of the licensing objectives, and had the discretion to decide that the model proposed by Greene King was not reasonably consistent with the pursuit of those objectives. The Commission was required to, and did, consider the operating model, and those operating models are of a finite variation. The appeal was dismissed.

The impact of the decision

Pubs can have bingo and gaming machines. The exceptions found at 279, 282 and 283 of the act, do allow limited non-commercial bingo and the provision of category D and C gaming machines, with a maximum jackpot of £100, in licensed premises. The Commission's finding on the suitability of the pub environment, with the Court of Appeal defining its wide discretion to uphold the licensing objectives, makes it hard for future successful applications to provide commercial bingo and high stakes gaming machines in pubs, without at least a significant deviation and improvement on the model proposed by Greene King. In effect, we do have a blanket ban on commercial bingo in pubs, even if that was not the intention of the Commission.

We have already seen changes to the Commission's licence conditions and codes of practice, at least in part due to the litigation with Greene King. Primary purpose has been removed and instead we now have greater control on when gaming machines can be provided in gambling premises.

The Commission now attaches a code provision to all non-remote betting, bingo and casino operating licences, which provides that licensees must ensure that the function along with the internal and / or external presentation of the premises are such that a customer can reasonably be expected to recognise that it is a premises licensed for the purposes of providing betting, bingo or casino facilities. This control mechanism, applied to licensed commercial gambling premises, emphasises the Commission's intention that ambient gambling, which is ancillary to the primary purpose of a premises, should remain low-level and non-commercial in nature and that customers should be able to make clear choices when entering a commercial gambling

environment.

888.com's record fine

888 UK, one of Britain's biggest online gambling firms, is to pay a record penalty package of over £7.8 million as a result of serious failings in its handling of vulnerable customers. This is significantly the largest penalty package to date following a Commission licence review and the sheer scale of the failings reveals why.

888 failed to effectively self-exclude customers, with over 7,000 customers who had chosen to exclude being subsequently allowed to gamble on 888 websites, depositing £3.5 million over a 13 month period before 888 rectified the issue, by which time £50.6 million had been gambled through deposits and gambling winnings. The error was the result of a technical issue which allowed those who had self-excluded to open and access accounts on the 888 bingo platform.

888 breached social responsibility code provision 3.5.1.1, self-exclusion requiring it to put into effect procedures for self-exclusion and take all reasonable steps to refuse service or to otherwise prevent an individual who has entered a self-exclusion agreement from participating in gambling.

888 accepted its failings and is returning all deposits, amounting to £3.5 million, made by the self-excluded customers so that no customer will have lost out financially from the failings and 888 will not have profited.

The review also revealed a customer who stole £55,000 from their employer and gambled over £1.3 million, spending more than three hours per day over a 15 month period in gambling. 888 did not undertake any customer interaction with the customer despite the length of the sessions and volume of gambling, with 850,000 bets placed.

888 accepted it breached social responsibility code 3.4.1.1.(e)(i) customer interaction, requiring licensees to put into effect policies and procedures for customer interaction where they have concerns that a customer's behaviour may indicate problem gambling. The policies must include specific provision for making use of all relevant sources of information to ensure effective decision making, and to guide and deliver effective customer interactions, including in particular provision to identify at risk customers who may not be displaying obvious signs of, or overt behaviour associated with, problem gambling: this should be by reference to indicators such as time or money spent.

The payment includes compensation to the employer from whom the customer stole £62,023, this being 888's net gain following the failings. Furthermore 888 will pay in lieu of a financial penalty £4,250,000, being £4 million for the self-exclusion penalty and £250,000 for the failure to interact with the customer stealing from their employer.

Nick Arron
Solicitor, Poppleston Allen

National Training Day 20 June - Oxford

The Institute's summer training day has moved to Oxford for 2018. The National Training Day will take place at The Oxford Belfry Hotel, which is conveniently located near the M40 motorway.

The aim of the training day is to provide a valuable learning and discussion opportunity for licensing practitioners to increase understanding and to promote discussion in relation to the subject areas and the impact of forthcoming changes and recent case law.

Full details of the agenda and training fees can be found in the Licensing Flash emails and on our website - www.instituteoflicensing.org.

Codes of conduct for elected members' behaviour set the tone

The general public is entitled to expect that elected members go about their business with probity and in a manner befitting of their position. As this is not always the case, rules and procedures have been created to help ensure less impressive sides of human nature are kept in check, as **David Daycock** explains

Councillors, or members, play a vital role in the administration of the licensing process. They are involved in the granting of licences, the imposition of conditions, the review and revocation of licences and the shaping and revision of licensing policy. They may even be called to defend their decisions in court. The members', and particularly the chair's, demeanour, reactions and comments form an integral part of the mini-drama that can be a typical licensing hearing, and their input can be the key factor in the ultimate decision reached.

It is often assumed that in reaching a decision, members are paragons of virtue: temperate, reasoned, sage public servants, they are always fully prepared, attentively listening to every word uttered by the applicant, officers or advocates, intervening only to ask cogent, pertinent questions, never showing a hint of bias or favour and coming up with concise, legally watertight decisions that are admired as things of wonder by all present.

Well, perhaps not. In truth, the reality is sometimes less than ideal, and members have been known to reach perverse, bizarre, even incomprehensible decisions.

Framework of rules

The role of seeking to ensure good decision-making, and an orderly hearing, is generally entrusted to the chair and the clerk / legal adviser to the committee. Speaking from personal experience, this is not an easy task. However, the law does lay down a framework of rules and principles to help the process, and this article aims to outline the main general provisions that, for good or bad, govern and regulate member behaviour at licensing hearings.[1]

The traditional starting place for the regulation of member behaviour is the rules of debate or standing orders of the local authority. They may differ slightly from council to council, and may also differ from one committee to another, but in essence tend to embody the same basic principles. These will generally regulate the proceedings, and will govern the length of speeches, the moving of amendments and provide that members can resolve not to allow an unruly member to speak further, or require them to leave the meeting and, if they ignore these resolutions, suspend the meeting.

A significant and useful provision is that the chair (under schedule 12, paragraph 39 (2) of the Local Government Act 1972) has a second or casting vote, and that "all rulings of the chair regarding the interpretation of the constitution or procedure rules shall be final and not open to challenge at the meeting.'' It should be noted that this does not preclude challenge after the meeting by means of appeal, or even judicial review.[2]

All councils in England and Wales should have a members' code of conduct, which should supplement or buttress the rules of debate set out in standing orders in seeking to regulate members' conduct. However, in England, the codes are governed by the Localism Act 2011, which does not impose specific enforceable sanctions for a breach of the code, though in Wales there are specific sanctions available by virtue of the provisions of the Local Government Act 2000 (which used to be the position in England before the Localism Act 2011). Again, codes can vary from council to council, but they are often broadly similar, and tend to embody the Nolan Principles of good behaviour in public life (named after Lord Nolan, the chair of the committee set up by the government in 1994 to advise upon ethical standards in public life).

Commonly found provisions are as follows:

That members show and treat others (including other members, officers, applicants and the public) with respect.

Examples of behaviour by members that infringed this provision include that of Councillor C, Tewksbury, who

1 The Licensing Act 2003, or taxi licensing matters, may involve different rules or provisions and specific guidance should be sought in those circumstances.

2 Traditionally the courts view the chair as the prime regulator of member behaviour, and this is sometimes re-enforced by guidance to similar effect.

pushed another councillor over in the chamber and said "If you report me, I will chop your f…… hands off"; Councillor P, East Riding of Yorkshire, who commented on Facebook "I will be donating the steam off my p… to X" (a deceased MP); and Councillor H, Flintshire, who said "You won't like the man I'll become if I don't get what I want".[3]

That members do not conduct themselves in a manner that could reasonably be regarded as bringing the authority into disrepute (this can include conduct away from the council). Examples of members who transgressed this provision include Councillor B, Swansea who had over 70,000 pornographic images on his council-issued laptop; and Councillor B, Wigan, who used a council-issued mobile phone to call premium-rate sex chat lines, at the cost of over £2,000 to the council, and also texted sexist messages to a female officer.

That members reach decisions on the basis of the merits of the circumstances involved, and in the public interest, and have regard to the advice provided by the authority's officers. An example of a failure to do so is Councillor J, Hull, who told the council solicitor 'If you seek repossession I will have your guts for garters".

That members avoid accepting gifts or hospitality which might place them under an improper obligation. Most codes also require members to declare whether they have an interest in a matter. If it is a "personal" or "non prejudicial" interest the code will generally allow a member to stay and participate in the meeting. If however it is a "prejudicial interest" the member must declare the interest and then leave the meeting and take no part in it or seek to influence its outcome.[4]

A prejudicial interest would arise in most codes of conduct if, to take a typical wording, "a member of the public would reasonably regard it as so significant that it would be likely to prejudice the member's judgement of the public interest". The test to be applied would be the judgement of a reasonably well informed third party considering the business being transacted at the meeting. Examples of prejudicial interest would include decisions affecting the well-being or financial interest of the member or their family or a close personal associate.

Different sanctions in England and Wales

So far, so good. However, a significant problem in England is that there are no formal sanctions (other than criminal ones) for non-compliance with the code. The only sanction following a breach of the code would be the adverse publicity a member might attract if he or she were found in breach. Unfortunately, it can be observed that some members with their judicially recognised "thicker skins" (see footnote 3) might not find this much of a deterrent to improper behaviour.

In Wales, members face the real sanction of disqualification from office of up to five years, or suspension up to two years, or written censure, in addition to any resultant adverse publicity. Whether this makes Welsh members better behaved than their English counterparts is a moot point, and as yet, it would appear that there has been no attempt to research or investigate this issue further.

Fortunately, or not, depending on your standpoint, the Localism Act 2011, which swept away the former standards regime in England, introduced limited but potentially more draconian sanctions against English councillors (but not Welsh ones, as its provisions do not apply in Wales) in the form of a legally binding requirement to disclose "disclosable pecuniary interests". Under the 2011 Act and associated regulations, if English members have a "pecuniary interest' under the Localism Act 2011 (eg, the matter being considered relates to any "employment, office, trade or profession of the member, or to any contract between the member and the authority, or any land in which the member has a beneficial interest"), then the member should declare and register the interest and not be involved in the decision. Failure to do so, or to knowingly or recklessly provide false or misleading information regarding the interest, is a criminal offence punishable by a fine and / or disqualification from being a councillor. Again, whether this has kept English members on the straight and narrow is open to debate, and there would appear to have been only one conviction for the offence to date (see *Flowers*).[5]

However, misbehaviour, or acting in an improper way in carrying out his or her duties, may also leave a member open to prosecution for the once relatively obscure but

3 However, the Calver case (*R (on the application of Calver) v The Adjudication Panel for Wales* [2012]EWHC 1172 Admin) gives greater latitude to members to indulge in "robust political debate" with one another, which can include "robust and even offensive statements", and also expects them and senior officers to have " thicker skins" than others (including less senior officers).

4 See *Adjudication Panel for Wales v Councillor L* [2015] where a member who had sold an interest over her land to a wind farm company did not declare this interest and stayed during the debate, taking no part in it, remaining silent and not voting. The councillor was held to be in breach of the code and given a three-month suspension.

5 *R v Flowers* (2012). Councillor F failed to declare a pecuniary interest in a planning matter involving a company from which he had received over £20,000 in remuneration and was given a six month conditional discharge.

now increasingly popular offence of misconduct in public office. This will generally involve quite serious improper behaviour by a member before, during or even after a decision, and broadly covers a situation where a member (or officer) "neglects to perform his or her duty and / or wilfully misconducts himself to such a degree as to amount to an abuse of the public's trust in the office holder, without reasonable excuse or justification".[6]

Misconduct in public life

While prosecutions for misconduct in public office can be difficult due to the problem of identifying specific misconduct, as opposed to perceived mishandling of matters (see *R v O' Sullivan and Others* (unreported))[7], the sanction is severe - possible life imprisonment. There is also the related tort of misfeasance in public office, which is similarly difficult to prove, involving a need to show conscious wrong doing and bad faith by the officers or members involved (see *Jones v Swansea City Council)*.[8]

Members need also be aware that accepting money or some form of reward or advantage may involve an offence under the Bribery Act 2010. The Act, which is applicable to both England and Wales, makes it an offence to, *inter alia*, offer, give or accept money or other advantages in order to induce or reward the improper performance of public or other functions. The maximum penalty is 10 years' imprisonment.

Finally, in the context of potential criminal liability, members need to be reminded that their actions as a councillor, even in the committee room, may be subject to the general provisions of criminal law, and accordingly, physical or verbal assaults on officers, other members or the public may result in prosecutions for grievous or actual bodily harm, common assault, or a breach of the peace. Extreme views or language may also amount to racially or religiously aggravated offences under the Crime and Disorder Act 1998, as amended, or under related legislation. Members should be aware that liability in this context can extend to comments made on social media.

Judicial review

Members need also to behave in a proper manner in order to avoid their decisions being challenged by means of judicial review, if the wrongful conduct brings the decision within the traditional grounds of challenge as set out by Lord Diplock in the GCHQ case, namely, that the decision is illegal, procedurally improper, or "irrational" or "Wednesbury unreasonable".[9]

Accordingly members should avoid conduct which suggests that a decision maker is biased, or has predetermined a decision, as doing so may result in a challenge. However, merely expressing an opinion on a matter or standing on a political platform relating to a matter will not necessarily be evidence that the decision maker had a closed mind in relation to the decision in question (see s 25 of the Localism Act 2011: "a decision maker will not be considered to have had a closed mind, or to have given the appearance of a closed mind, just because the decision maker had previously done anything that indicated what view the decision maker took or might take in relation to a matter relevant to the decision.").

Likewise, members should avoid irrational decisions or behaviour, and ensure that the relevant procedures are adhered to. Failure to do so may result in their actions rendering the council liable to challenge by means of judicial review, though generally in licensing matters, the more likely avenue of challenge would be an appeal before the magistrates' court (though there are exceptions to this principle).

Members should also be aware that improper conduct in carrying out a decision-making process may be the subject of a complaint to the Local Government Ombudsman for maladministration. Improper conduct may include unnecessary delay, failure to follow procedure, or failure to act or to provide information. Any such finding by the Ombudsman may also result in an award of compensation being made against the council, and resultant bad publicity.[10]

Social media awareness

Finally, in our media driven world, members should be mindful that inappropriate or inaccurate comments, either at a meeting or on social media, may not only result in a breach of their council's code of conduct, or even the criminal law, but also render them liable to an action for defamation, which may result in an award of damages and significant costs.[11]

6 See the Attorney General's Reference 2003 (No 3).

7 *R v O'Sullivan and Others* 2015 (Bristol Crown Court - unreported): officers were present at a meeting where members decided to approve significant pay awards to the officers and their colleagues. A key question was whether this conduct was unlawful, or just not good practice.

8 *Jones v Swansea City Council* (House of Lords) (1990) 1 WLR 1453.

9 See *Associated Provincial Picture Houses v Wednesbury Corporation* [1948] 1KB 223 CA.

10 See *Breckman and Roberts v Carmarthen Council 2012*. (Public Services Ombudsman for Wales.)

11 See *Talbot v Elsbury* 2011, (unreported), where an incorrect comment on Twitter that a councillor had been removed by police from a polling station resulted in an award of damages of £3,000 plus costs.

Members' behaviour at meetings is likely to be in the public gaze. Most councils broadcast their proceedings, often live, on their websites, so an ill-advised comment or gesture can be seen and recorded by anyone. This applies to virtually any setting, as ostensibly private or "off the record" comments may be recorded both in pictures and by audio recordings, and be used as the basis for complaints or even proceedings. Members may, however, draw some comfort from the ability of a council to indemnify them for the costs generally of defending proceedings brought against them under the Local Authorities (Members and Officers) Order 2004.[12]

Conclusion

While there has been an element of de-regulation with regard to member conduct in England as a result of the Localism Act 2011 and the removal of formal sanctions, coupled with the sanctioning of more robust political debate under the *Calver* judgment, it is nevertheless the case that members of local authorities in England and Wales still remain subject to a variety of complex and stringent legal and regulatory restrictions upon their behaviour and actions.

In an ideal world there would be no need for formal control of member behaviour, and certainly some members feel that the sanction of the ballot box is the only constraint upon their freedom of action and speech that should apply. However, the sanction of electoral judgement is a very blunt instrument, which only comes into play every four years at a municipal elections, and which unfortunately sometimes does not effectively deal with issues of improper conduct, as electors may choose to vote for a candidate for a multiplicity of reasons and be unaware of or even ignore (or support!) improper conduct. Accordingly members still have to operate within a framework (hopefully one as light and proportionate as possible) that governs their conduct and prescribes reasonable standards of behaviour.

In the light of this, members need to be aware of the panoply of rules that govern their conduct, and work closely with their monitoring officers and legal advisers to comply and be seen to comply with the rules. They thereby demonstrate clear adherence to the principles of accountability, openness and transparency, and the recognition of and respect for the rights of others. In achieving this laudable aim, members can be empowered to deliver the high quality, fair and effective decisions that the public expects, and that they themselves aspire to.

David Daycock, MIoL
Barrister, Iscoed Chambers

12 This whole area is complex and developing, especially in the light of the "Right to be forgotten" under the General Data Protection Regulations 2018.

Events Calendar

November 2017
30 East Midlands Region Meeting & Training Day, Nottingham

December 2018
4 Caravan Site Licensing, Llandrindod Wells
4 Safeguarding through Licensing, Carlisle
6 Investigators PACE Course, Dorchester
7 North East Region Meeting & Training Day, York
12 North West Region Meeting & Training Day, Warrington

February 2018
6-7 Public Safety at Events, Harlow
7 Wales Regional Meeting, Llandrindod Wells
23 Street Trading, Reading

March 2018
13-14 Zoo Licensing Course, Bristol
14 North West Region Meeting & Training Day, Preston

March 2018 cont.
20-23 Professional Licensing Practitioners Qualification, Nottingham

April 2018
18 Taxi Licensing for Beginners, Basingstoke

May 2018
15-18 Professional Licensing Practitioners Qualification, Birmingham

June 2018
6 Wales Regional Meeting, Llandrindod Wells
13 North West Regional Meeting & Training Day, Blackpool
20 National Training Day, Oxford

Singh revisited, and upheld

An important recent judgment reinforces the view that suspension cannot be used as an interim measure, argues **James Button**

The decision of the High Court in *R (app Singh) v Cardiff City Council* [1] has continued to cause concern amongst licensing practitioners.[2]

While some authorities now routinely revoke driver licences with immediate effect when there are serious allegations made against the licensee, others continue to suspend with immediate effect, and then seek to revoke that licence when the investigation has been completed.

That latter approach was ruled unlawful in *Singh* [3] in 2012, and now, some five years later, that decision has been has been revisited and upheld in *Reigate and Banstead Borough Council v Pawlowski.* [4]

Pawlowski was a licensed private hire driver who was arrested and charged with drink-driving in August 2015, following which the council revoked his driver's licence with immediate effect. Following a criminal trial, he was found not guilty. He had appealed against the revocation of his driver's licence and that hearing was held after his acquittal. The appeal was successful, the magistrates concluding that Pawlowski was a fit and proper person to hold a private hire drivers' licence.

They took the view that revocation was not an appropriate sanction, but that suspension would have been, thereby flying in the face of the judgment in *Singh.*[5] The council appealed by way of case stated to the High Court.

Judgment was given by HH Judge Keyser QC sitting as a judge of the High Court, and the material part of the judgment is to be found at paragraphs 21 to 26 where he stated:

21 However, in the light of the views expressed by the Justices and the concerns expressed by the Council, and in the hope of providing a small measure of assistance for the future, I offer some very limited observations of a general nature.

22 The decision in R (Singh) v Cardiff City Council [6] *caused a degree of consternation among local authorities. A fairly widespread practice appears to have developed, whereby a licensing authority that learned of a criminal charge or summons or other allegation of wrongdoing against a licence-holder would impose a suspension of the licence pending either determination of the criminal proceedings or investigation of the allegation and would then, in the light of the outcome, take such further action as might appear to be merited, perhaps involving revocation of the licence if the charge or allegation were proved. The decision in R (Singh) v Cardiff City Council* [7] *shows that suspension of a licence pursuant to section 61(1) can only be achieved by a substantive decision on the basis that one of the grounds in that subsection is made out. Suspension cannot be imposed as a holding exercise, pending consideration whether a ground is made out. In that sense, suspension is a final decision.*

23 In his skeleton argument, Mr Douglas-Jones on behalf of Mr Pawlowski submitted that, despite the prohibition on interim suspensions in R (Singh) v Cardiff City Council,[8] *it would be open to a local authority, in a suitable case, to make a substantive decision to suspend on learning that a licence-holder had been charged and to make a further substantive decision to revoke on learning that he had been convicted on the charge: the fact of the charge would amount to a "reasonable cause" under section 61(1)(b), and the fact of conviction would amount to new circumstances entitling the local authority to exercise afresh its judgment and discretion under section 61. Although it would be inappropriate for me to attempt to say anything definitive about that suggestion, in circumstances where my observations are not made with reference to specific facts and are unnecessary for my decision, I am of the view that*

1 [2012] EWHC 1852 (Admin), [2013] LLR 108.

2 I have previously considered the case in (2012) 4 JoL, p8-9 and (2013) 5 JoL, p8-9.

3 *R (app Singh) v Cardiff City Council* [2012] EWHC 1852 (Admin), [2013] LLR 108.

4 [2017] EWHC 1764 (Admin) 13 July 2017 unreported.

5 *R (app Singh) v Cardiff City Council* [2012] EWHC 1852 (Admin), [2013] LLR 108.

6 [2012] EWHC 1852 (Admin), [2013] LLR 108.

7 Ibid.

8 Ibid.

the suggested approach is not helpful as a general guide to local authorities' conduct.

24 R (Singh) v Cardiff City Council [9] establishes that it is unlawful for a local authority to use suspension as a holding operation pending further investigation. So a council cannot lawfully suspend by reason of a criminal charge on a "wait and see" basis. It follows that it cannot use the cloak of a substantive decision to suspend to achieve the same holding operation. If it suspends the licence, it must do so by way of a substantive decision on the fitness of the driver to hold the licence, after giving the driver a proper opportunity to state his case, not merely as a means by which to maintain a position pending the final outcome of the criminal proceedings. Once it is seen that suspension is not a holding operation but a substantive decision, it becomes apparent (in my view) that suspension will rarely be the appropriate course where a driver is charged with a matter for which, if convicted, he would be subject to revocation of his licence. If such a charge merits action, and if the action is not by way of an interim measure pending determination of the facts at criminal trial, revocation will generally be the appropriate course. To suspend a licence because an allegation is made and then revoke it because the allegation is proved is, as it seems to me, contrary to the decision in R (Singh) v Cardiff City Council [10] , even if the former decision is dressed up as a substantive rather than a merely provisional or holding decision.

25 This is not to say that, once a decision has been taken to suspend upon notification of a charge or allegation of wrongdoing, no subsequent decision to revoke can ever be taken. Although the submission accepted by Singh J in R (Singh) v Cardiff City Council referred to the council being functus officio, a licensing authority will never be functus officio with respect to section 61 in the sense that it no longer has duties to discharge and powers to exercise. The point rather is that any decision to suspend, though in one sense final, can only be made on the basis of the information available at the time the decision was made. When faced with a decision under section 61 , the council must fully consider the available information, afford the licence-holder the opportunity to state his case, and exercise the judgment and discretion identified by Singh J. Thus, as Mr Douglas-Jones submitted orally when acting in the role of an amicus curiae , it is possible to envisage a case where, although the information provided to a local authority concerning a criminal charge leads it to consider that suspension is a sufficient sanction, facts thereafter emerging in the course of the criminal trial put a different complexion on the matter and require revocation. It does not seem to me that the initial suspension would necessarily rule out a subsequent revocation in such circumstances, having regard in particular to the fact that the council's powers are conferred for purposes of public protection. Such a case, however, is very different from the case considered in R (Singh) v Cardiff City Council [11], where suspension is simply in the nature of a holding measure pending a substantive decision as to what if any sanction is appropriate.

26 The effect of this is that, although the decision in each case will be one for the judgment and discretion of the council, where a licence-holder is charged with an offence the commission of which would be considered to render him unfit to hold a licence, the council is likely to consider it appropriate to revoke the licence at that stage. For reasons already stated, to suspend the licence merely because of the charge and revoke it merely because of the ensuing conviction would in my view conflict with the decision in R (Singh) v Cardiff City Council [12] as to the scope of the power under section 61 . Any decision to revoke will be subject to a statutory right of appeal. Further, if it should later transpire, for example by reason of acquittal at trial, that the former licence-holder is indeed a fit and proper person to hold a licence, provision can be made for expeditious re-licensing.

This is an important judgment which reinforces the view expressed in *Singh* [13] that suspension cannot be used as an interim measure. The judge considered all the arguments put forward against the decision in *Singh*, and found them wanting. He also emphasised that if the grounds for revocation are subsequently found to be unsubstantiated, a mechanism must be available to allow the licence to be reinstated as quickly as possible.

In the circumstances, the licence cannot be re-instated and will need to be re-issued following a fresh application. It would seem reasonable in these circumstances for the local authority to accept any pre-grant enquiries (eg, medical tests, knowledge, DBS checks etc) that existed in relation to the previous licence, up to the point at which they would have required renewing had the licence not been revoked. Again, the delegation to enable this decision to be taken quickly is important, as in both these cases there is no justification in preventing the driver from working.

James Button, CIoL
Principal, James Button & Co Solicitors

9 Ibid.

10 Ibid.

11 Ibid.

12 Ibid.

13 *R (app Singh) v Cardiff City Council* [2012] EWHC 1852 (Admin), [2013] LLR 108.

Local gambling compliance and the Statement of Principles

Licensing authorities will find their Statement of Principles helpful in setting the tone for gambling activities in their local area, as **Rob Burkitt** explains

It is a legal requirement under s 349 of the 2005 Gambling Act for all licensing authorities to prepare a Statement of Principles that they propose to apply in exercising their functions under the Act. The Statement must be reviewed every three years. A revised Statement is due to be published in January 2019, even if amendments have been made during the three years.

No powers?

One misunderstanding, which, thankfully, we hear less of now, is that licensing authorities have no powers to control gambling. The most recent edition of the *Guidance to Licensing Authorities* (2015)[1] makes clear that this is not the case, stating: "Licensing authorities have a broad discretion to regulate local provision of gambling and the Act gives wide-ranging powers to do so (Section 1.23)."

This discretionary power is informed by the four principles set out at s 153 which guide licensing authorities as to how they carry out their duties, namely:

- The codes of practice[2] issued by the Gambling Commission. (These apply to licensed gambling operators and also to pubs and clubs. Many relate to social responsibility concerns such as the protection of the young and vulnerable.)
- The *Guidance to Licensing Authorities* issued by the Commission.
- To be reasonably consistent with the licensing objectives.
- To be in accordance with the licensing authority's Statement.

The last of these, the Statement, is to reflect *locally specific* gambling concerns and circumstances, to reflect the council's wider strategic objectives[3] and to provide a point of reference for gambling activity. The active and iterative use of the Statement can play an important role in setting expectations about how gambling will be regulated locally. The effectiveness of having a Statement which works in this way is well demonstrated by its use under the Licensing Act 2003 and the Licensing (Scotland) Act 2005.

The Statement is one means by which a licensing authority can make clear its expectations of gambling operators which have premises in their area or others such as pubs and clubs with gaming machines. This allows operators to respond to locally specific requirements and adjust their own policies and procedures. It also reduces the risk of matters being escalated to a licensing committee and further regulatory action. It saves resource and costs for everyone. Finally, it is also aligned to the Regulators' Code requirement (BEIS 2014)[4] [5] - "Regulators should ensure clear information, guidance and advice is available to help those they regulate meet their responsibilities to comply." (Pg 5.)

No complaints

At this point some may be asking themselves whether the Statement really matters a great deal if no complaints about gambling have been received, and all is quiet. This is something we still hear a great deal. Truth be told, licensing authorities are highly unlikely to hear complaints about gambling. Unlike other regulated areas, such as alcohol or drugs, gambling is much less visible as a concern for residents. The problem gambler, the vulnerable person or the under 18 who is gambling, are very unlikely to contact the licensing authority or their local councillor to complain. Unless a licensing authority proactively conducts inspections, it will not know what the true compliance picture looks like.[6] Importantly, unless inspections and enforcement

1 http://www.gamblingcommission.gov.uk/PDF/GLA5-updated-September-2016.pdf

2 http://live-gamblecom.cloud.contensis.com/PDF/Gambling-codes-of-practice-Consolidated-for-all-forms-of-gambling.pdf

3 For example, Leeds Council's Statement includes this reference: "Leeds will be a child-friendly city where the voices, needs and priorities of children and young people are heard and inform the way we make decisions and take action."

4 http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/300126/14-705-regulators-code.pdf

5 http://www.gov.scot/Topics/Business-Industry/support/better-regulation/BetterRegulationBillConsultation/CodeofPractice/StrategicCodeofPractice

6 The Commission will be publishing details of some recent joint inspection findings shortly in most cases where the licensing

against illegality and non-compliance are conducted, it unfairly penalises those which are compliant. The compliant business suffers a potential loss of income at the hands of the non-compliant business(es) in the area. More importantly, without conducting visits, one has no means of knowing whether the necessary protections, especially for the young and vulnerable, are in place and working effectively.

Responsible authorities

In terms of protecting the young and vulnerable it is worth remembering that the Act specifies a list of responsible authorities which the licensing authority must consult (s 157). One of these concerns the protection of children from harm (s 157) (h): "A body which is designated in writing for the purposes of this paragraph, by the licensing authority for an area in which the premises are wholly or partly situated, as competent to advise the authority about the protection of children from harm."

It is for this reason that a number of authorities have specified their Safeguarding Board as a consultee. (Given that one of licensing objectives concerns the protection of the young and vulnerable people, Safeguarding Boards are well positioned to fulfil this function.)

Another body which, while not listed as a responsible authority, can also help to inform the strategic picture and approach as well as inform the local area profile (see below) is Public Health.[7] Again, a number of authorities have made significant advances in engaging in this way. (Given the range of co-morbidities associated with addictions it is likely that some of those presenting with one specific health condition may be experiencing gambling-related harm as well.)

Local area profile

To accompany the Statement the Commission is encouraging licensing authorities to develop a "heat map" or local area profile (LAP)[8] of their council areas. Completion of a LAP is not a requirement on licensing authorities but there are significant benefits for both the authority and operators in having a better awareness of the local area and risks (both potential and actual).

An effective LAP is likely to take account of a wide range of factors, data and information already held by the licensing authority and its partners. An important element of preparing the LAP will be proactive engagement with responsible authorities as well as other organisations in the area that can give input to map local risks in their area. These are likely to include police, public health, mental health, housing, education, community welfare groups and safety partnerships, and organisations such as GamCare[9] or similar counselling services.

Good LAPs will increase awareness of local risks and improve information sharing, facilitate constructive engagement with licensees and produce a more co-ordinated response to local risks as well as enabling operators to better understand the local environment and therefore proactively mitigate risks to the licensing objectives.

The LAP will also help to inform specific risks that operators will need to address in their risk assessment (see below). For example, an area might be identified as high risk on the basis that it is located in close proximity to a youth centre, rehabilitation centre or college.

A LAP also meets one of the requirements of the Regulators' Code: "Regulators should share information about compliance and risk."

However, the management of risk is primarily the responsibility of operators. The Commission's *Licence Conditions and Codes of Practice* (LCCP)10 formalise the need for operators to consider local risks.

Local risk assessments

Social responsibility code 10.1.1 requires licensees to assess the local risks to the licensing objectives posed by the provision of gambling facilities at each of their premises, and have policies, procedures and control measures to mitigate those risks. In undertaking their risk assessments, they must take into account relevant matters identified in the licensing authority's Statement. A licensing authority can request that the licensee shares a copy of its own risk assessment, which will set out the measures the licensee has in place to address specific concerns. This practice should reduce the occasions on which a premises review and the imposition of licence conditions are required.

Where a licensing authority's Statement sets out its approach to regulation with clear reference to local risks and hot spot areas - for example, using a LAP - it will help

authority had not received any complaints.

7 There is already scope for this as one of the responsible authorities listed is described as "an authority which has functions by virtue of an enactment in respect of minimising or preventing the risk of pollution of the environment or of harm to human health in an area in which the premises are wholly or partly situated" (s 157 (g)).

8 Both larger and smaller local authorities have developed local area profiles. Examples are included in the licensing authority toolkit on the Commission website.

9 http://www.gamcare.org.uk

10 http://live-gamblecom.cloud.contensis.com/PDF/LCCP/Licence-conditions-and-codes-of-practice.pdf

operators better understand the local environment and proactively mitigate risks to the licensing objectives.

Finance

Next is the vexed issue of finance. The Act (s 212 (d)) sets out that local authorities "shall aim to ensure that the income from fees… as nearly as possible equates to the costs of providing the service to which the fees relates". [11]

This was supported by guidance from the Department for Culture Media and Sport[12] when the Act was introduced: "The annual fee will cover the reasonable costs of compliance and enforcement work, including the cost of dealing with illegal gambling in a licensing authority's area." (In Scotland all fees for gambling licences and permits are set centrally by Scottish ministers but again are designed to cover the costs of compliance and enforcement work.)

11 In England and Wales.

12 Gambling Act 2005: *Guidance to Licensing Authorities on setting premises licence fees.*

Similar issues arise with the use of fee income. Firstly, compliant operators would rightly expect their fees to be (partly) spent on the pursuit of the non-compliant and the illegal. Secondly, unless a licensing authority can provide the necessary justifications, where income exceeds expenditure, or vice versa, there should be an adjustment of fee levels to bring them into balance. Fees should be reviewed annually in any event.

Further information

The licensing authorities section of the Commission website provides toolkits on the topics mentioned above as well as examples of how other authorities have approached these issues.

Rob Burkitt

Lead - Shared Regulation and Better Regulation, Gambling Commission

A useful reminder of the need for over-provision policies

At a time when public health bodies are increasingly engaging with the licensing process, two recent cases serve as a reminder that firm evidence of likely harm, rather than supposition, is essential for any successful objection, as **Michael McDougall** explains

Martin McColl (McColl's) has been involved in a number of appeals against licensing refusals under the Licensing (Scotland) Act 2005 in recent years. The latest two appeals tackle issues that on the face of it are unrelated - public health and public nuisance. However, together they underline the importance of the licensing boards' overprovision policies in promoting the licensing objective of protecting and improving public health.

Martin McColl Limited v West Dunbartonshire Licensing Board reinforces the wide discretion afforded to licensing boards when dealing with applications falling within an area of overprovision (provided the policy itself is robust). *Martin McColl Limited v South Lanarkshire Licensing Division No 2 (East Kilbride Area)* on the other hand acts as a reminder of the high bar that has been set for licensing boards when refusing an application owing to perceived inconsistency with the licensing objectives.

Martin McColl Limited v South Lanarkshire Licensing Division No 2 (East Kilbride Area)

The most recent of these decisions dealt with a refusal of a provisional premises licence to allow the sale of alcohol for consumption off the premises of the McColl's store at 25-27 Loch Shin, East Kilbride on 10 March 2017.

In reviewing the matter, the local licensing board considered submissions in support of the application, a petition in favour of the application containing over 100 signatures, 15 written objections, the applicant's licensing record and an anti-social behaviour report provided by Police Scotland.

The board determined to refuse the application on the basis that granting it would be inconsistent with the licensing objectives of preventing public nuisance and protecting children from harm.

A statement of reasons was requested and received in which the licensing board - while noting the submissions in support of the application, ranging from an extensive staff training programme to the store's CCTV system - identified the following concerns, which were then reviewed at appeal:

- A board member, Councillor Maggs, had knowledge of the local area as she had been a local resident for a number of years and was aware of issues with the premises before McColl's had taken up occupancy. Furthermore, she claimed those complaints had been made to the local housing association rather than the police, thereby explaining the lack of offences noted in the anti-social behaviour report by Police Scotland.
- The training procedures were not as rigorous as the applicant had submitted, which the board claimed was in part demonstrated by issues that had arisen outside of Scotland.
- Only one member of staff was on duty at any time, despite cigarettes being for sale. The applicant's agent advised that a condition could be added requiring a second member of staff to be on duty but this did not quell the board's concern.
- Various matters regarding public amenity, which were narrated in the letters of objection.

McColl's appealed the refusal by way of a summary application at Hamilton Sheriff Court. Given the facts were not in dispute, no evidence was led and matters were dealt with by submissions from the respective parties.

The Sheriff identified the key issue as being whether there was sufficient factual basis to support the board's decision. With regard to the statutory test at section 23(5)(c) of the 2005 Act and also *Risky Business Ltd v Glasgow City Licensing Board*[1] the Sheriff determined that the question for the licensing board was:

> *…whether they were satisfied that it was likely or probable that events which were inconsistent with the specific licensing objectives would be a feature or characteristic of*

1 2000 SLT 923.

the operation of the premises if the licensing application was granted.

In his examination, the Sheriff found that while the licensing board was entitled to draw inferences from the material before it - for example, its own local knowledge or letters of objection - this material must be factually capable of supporting a causal link between itself and an inconsistency with the licensing objectives. To say that there is a risk of alcohol-fuelled issues is not sufficient; there must be a factual basis for the board to find a likelihood or probability of issues arising from the sale of alcohol at that premises.

In summary, it was found that the only factual matters that the licensing board should have had regard for were two English convictions relating to the sale of alcohol to underaged persons. However, the Sheriff was of the view that no reasonable licensing board would have found that to be sufficient grounds to refuse an application. Given the lack of relevant material (notwithstanding the convictions), the licensing application was granted by the Sheriff.

Martin McColl Limited v West Dubartonshire Licensing Board [2]

This appeal dealt with the West Dunbartonshire Licensing Board's decision to refuse a provisional premises licence application made by the McColl's store at 19 Sylvania Way South, Clyde Shopping Centre, Clydebank. This licence, if granted, would have authorised the sale of alcohol for consumption off the premises between 10am and 10pm.

The material in front of the licensing board consisted of an objection from the Alcohol and Drug Partnership and a representation from Police Scotland detailing the applicant's previous convictions.

Crucially, these premises were situated within a designated overprovision area meaning that there was a rebuttable presumption against the grant of a licence.[3] Despite the applicant's agent restricting the hours to 10am to 8pm in response to the board's refusal, the board maintained its position on the following grounds: (1) inconsistency with the licensing objective of protecting and improving public health; and (2) overprovision.

A key component of this application was that at the same meeting the board granted a licence to a Co-Operative store at 2 Sylvania Way South, Clydebank for what was a broadly similar operation.

The Sheriff had to consider three matters:

1. Irrationality – the granting of the Clydebank Co-Op's licence: the licensing board's reasoning for the grant of this licence was on the basis that it created jobs and therefore benefited the health of those employed. This was in accordance with the board's statement of licensing policy which at para 28 said:

The board recognises the positive health benefits associated with increased employment opportunities as a factor that applicants may use in support of their application and a factor that may in appropriate circumstances rebut such a presumption.(Emphasis added.)

The statement of reasons drew a distinction between the Clydebank Co-Op's licence, which created jobs, and McColl's proposition, which would secure existing jobs. The Sheriff held that "this may be a fine distinction [but] it is nonetheless a distinction between the applications" and in coming to this view found that the board was entitled to (1) create this policy with its foundations in the statutorily created licensing objective of protecting and improving public health; and (2) attribute to it what weight it thought fit.

2. Overprovision: as noted, this application faced a rebuttable presumption against grant as it was situated within an area of overprovision. Accordingly, the applicant had to demonstrate that the grant would not compromise the licensing objectives. The applicant in this case did not seek to challenge the formulation of that policy.[4]

However, the Sheriff posited that the statement of reasons issued by the board was unclear as to the exact grounds on which it found there was overprovision. The statutory test at s 23(5)(e) of the 2005 Act says it is activated by overprovision of either (a) licensed premises, or (b) licensed premises of the same or a similar description as the subject premises. The Sheriff held that, notwithstanding the lack of detail, there was no dispute as to the existence of overprovision or that the policy was in place.

By way of interest, the Sheriff noted that it was not necessary for the board to indicate to the applicant that overprovision was a matter of concern during the hearing itself.

3. Inconsistency of the licensing objective of protecting and improving public health: the Sheriff turned his mind to the difficult subject of linking this licensing objective to

2 This decision could still be appealed.

3 Para 56 of the Scottish Government's *Guidance for Licensing Boards and Local Authorities.*

4 See *Aldi Stores Limited v Dundee Licensing Board* as example of an overprovision policy being attacked.

a live application.[5] The board asserted in its reasons that the grant of the application would be inconsistent with the aforementioned licensing objective as it would result in increased alcohol sales, availability and consumption and given with the relationship between availability and alcohol-related harms. The Sheriff was not convinced that "…the results of 'studies' may be said to sufficiently link this application and its effect with the general objective of 'protecting and improving public health'."

In short, while the Sheriff was not satisfied that a causal link could be established between the application and an inconsistency with the licensing objective of public health, he found that the licensing board's refusal on the basis of overprovision was lawful.

Conclusion

While these cases engage quite separate issues, they do reiterate the high bar that must be passed for an application to be held to be inconsistent with the licensing objectives, and secondly that there must be an evidential basis for this.

This demonstrates the importance of the licensing boards' overprovision policies, which is particularly relevant given their imminent refresh. The West Dumbartonshire case demonstrates that a refusal with regard to the overprovision policy will be far easier to defend given the inherent difficulty in establishing a link between health harms and an application as shown by the difficulty in activating the licensing objective of preventing public nuisance in the South Lanarkshire case. This is especially relevant given the NHS's engagement with a number of licensing boards where applicants will be faced with objection letters narrating various statics. Licensing boards must satisfy themselves that the material contained within said objection "…implies that there must be more than a risk or possibility of the occurrence of something which is inconsistent with a licensing objective".[6]

It is important to note that all licensing objectives are created equal and therefore a refusal on the basis of inconsistency with the licensing objective of protecting and improving public health will need to meet the same test as a refusal on the basis of any of the other licensing objectives.

Judicial reminder of this causal link will be important with the Scottish Government reviewing the statutory guidance in relation to overprovision. It has been suggested that elements of the health lobby are keen to remove the reference in the Scottish Government's *Guidance for Licensing Boards and Local Authorities* for the need for a causal link to be established between the evidence gathered and the operation of the licensed premises when creating overprovision. These two cases act a useful reminder that the causal link is enshrined in licensing jurisprudence.

Michael McDougall
Solicitor, TLT Solicitors

5 As acknowledged in the Scottish Government's consultation paper *Further Options for Alcohol Licensing Consultation document 2012.*

6 *Martin McColl Ltd v South Lanarkshire Licensing Division No 2 (East Kilbride Area),* p 15.

Institute of Licensing News

National Training Conference 2017

Issue 19 of the *Journal of Licensing*, the November edition, coincides with 21st National Training Conference, once again being held at the Crowne Plaza in Stratford-upon-Avon. We are very much looking forward to a packed conference with excellent speakers and sessions throughout the three days.

The NTC programme once again covers a huge range of licensing and related subjects, and boasts an impressive range of speakers from industry, local authority, police and the legal world. We are indebted to our speakers for allowing us to offer such a wealth of training and discussion opportunities, and equally to our sponsors who support the event year on year. It is always a great pleasure to attend this event, welcoming delegates from all over the UK for a fantastic learning and networking experience.

Team news

As previously announced, the IoL have now established an office leased from Egerton House Wirral Limited, in order to provide a 9-5 manned office facility and customer contact centre. We are delighted to to welcome to the IoL team Helen O'Neill and Bernie Matthews, who are based the new office. They both join the team as full-time administrators, providing for the first time a customer contact centre and a much-needed admin resource for the team. The office number is 0151 6506984 and both Helen and Bernie will be on hand to assist callers. This is part of our drive to continue to develop the IoL, and its services to members including the ongoing development of training and qualifications and our core objectives of raising the professionalism in licensing.

National Licensing Week 2017

This year saw the second National Licensing Week, which took place from 19-23 June.

National Licensing Week (NLW) is the only initiative of its kind. It seeks not only to raise public awareness about the role of licensing and the part played by all, but also to promote positive partnerships, and it actively encourages practitioners to walk a mile in someone else's shoes, and in doing so increase mutual understanding. It is the only initiative aimed at raising awareness with the public about the role licensing plays in their lives.

Participation this year was more extensive and went deeper, with increased understanding and involvement generally from both organisations and individual practitioners. There were some outstanding examples of local authorities in particular who took the opportunity to showcase their licensing service, initiatives and partnerships. There were more job swaps, and more press interest within the trade and local press as well as much more social media interaction. North Somerset and Shepway are two examples of local authorities who went the extra mile, and provided some fantastic case studies on how to make the best of the week, showcasing their services and raising awareness locally about the work they are doing for their communities and how that work serves to protect the public in their daily lives, whether travelling, working or socialising.

The Institute of Licensing is committed to continuing National Licensing Week and we already have a significant amount of interest from people and organisations wanting to be part of the initiative for 2018. For more information and to get involved, email NLW@instituteoflicensing.org.

House of Lords review of the Licensing Act 2003

As previously noted, the House of Lords Select Committee published its report on the review of the Licensing Act 2003 in April following a comprehensive review of the Licensing Act 2003. The report was critical of the implementation of the act and the subsequent volume of amendments since the act commenced in 2005, and there were many recommendations within the report, including the recommendation that a merger of licensing committees with planning committees should be trialled with a view to abolishing licensing committees and transferring the function to planning.

The findings and recommendations within the report have been the subject of much discussion since publication, and the IoL has been involved in many of those discussions. It's also taken the opportunity to survey members to achieve a clear picture of views on all of the recommendations.

As expected, there are strong views within the membership in relation to key recommendations and findings, particularly around the question of planning and licensing integration with fewer than 10% of responders agreeing with the recommendation to transfer the functions of local authority licensing committees and sub-committees to the planning committees. In summary, the IoL considers that there would be considerable merit in a wider discussion about the relationship between planning and licensing, and there are other considerations which should be borne in mind.

There were other recommendations in relation to

mandatory training for councillors sitting on licensing committees, appeals being moved to the planning inspector, dedicated police staff and appropriate nationally consistent police training and many more besides. There was a great deal of unease about the report initially, and after extensive discussions between the Board, the IoL published its initial response stating it did not agree with the proposal to merge licensing and planning committees, and felt that there was a wider discussion to be had about the integration between planning and licensing. That position is unchanged and has been strengthened by subsequent discussions and other considerations as set out below.

The report also considered the role of the licensing officer, comparing it with the role of the planning officer. Planning officers are professionally qualified. They collate and analyse consultation responses, using their professional judgement to reach a planning balance overall and either determine the application under delegated authority, or where a hearing is necessary, provide a detailed analysis and reasoned recommendation within their reports. In contrast, licensing officers were seen as more administrative by many, with some considering it inappropriate to do any more than set out the bare facts of the application, record the representations submitted and recite relevant law and policy. The report noted a lack of consistency in this area (and in other areas too).

The IoL's initial response did not focus on this part of the report, but it is very relevant in conversations comparing licensing and planning. Conversations with the Planning Officers Society, together with the ongoing Raynsford Review give a strong indication that discussions on the relationship between planning and licensing are set to continue and that perhaps the best way to improve both services may be to review them side by side.

Planning Officers' Society

The IoL was approached by the Planning Officers' Society (POS) ahead of the publication of the Lords' report to discuss the (then draft) manifesto of the Planning Officers' Society. This manifesto looked at the potential to simplify the planning use classes, streamline the role of planning and potentially to realign the planning and licensing regime. The manifesto envisaged planning as "place makers" with licensing in the role of "place managers", and in doing so taking on the regulation of some activities and considerations that currently fall within the planning regime.

This manifesto had been drafted without any knowledge of the Lords' review of the Licensing Act. Discussions between IoL and POS concluded that while the recommendation to merge licensing committees into planning committees would be unlikely to find favour with many, there is a clear argument for a more comprehensive review of both, side by side. This would enable clear distinctions between the two, with planning taking the place maker role, and licensing the place manager, utilising its ability to regulate and ensure compliance with conditions, as well as its adaptability to changing circumstance, business models and the like.

As a result of these discussions, a joint manifesto was agreed between IoL and POS and has been presented to the DCLG.

The Raynsford Review

More recently, the Raynsford Review has been announced. It has been set up to perform a comprehensive review of the planning system so as to "identify how the Government can reform the English planning system to make it fairer, better resourced and capable of producing quality outcomes while still encouraging the production of new homes".

Chaired by former planning minister Nick Raynsford, the task force will collect evidence over an 18-month period from June 2017 and aims to formally present its findings in the autumn of 2018. There are three stated aims of the review:

- Engage constructively with politicians and council officers, communities, housing providers, developers, consultants and academics - all those interested in the built environment - about how we can deliver better placemaking through a fairer and more effective planning system.
- Set out a positive agenda following the outcomes of the general election and planning hiatus.
- Set out a new vision for planning in England and rebuild trust in the planning process by communicating with the public as well as professionals.

It is likely, given the Lord's report, that the Raynsford Review will also consider the question of licensing / planning interaction.

IoL member survey

Over 200 responses were received to the survey, which asked for views on all the findings and recommendations of the House of Lords report. Of these, 55% were from local authority practitioners responding with their own views or on behalf of their organisation. Since the report had also considered the role of the licensing officer, as set out earlier in this report, the survey included questions about the suggested role of licensing officers within the report with a view to ascertaining current approaches and perceptions.

A summary of responses is available in the IoL's online library, on our website, and responses show strong support

for the recommendations concerning mandatory training for councillors, with some comments suggesting that the requirement should be enshrined in law rather than included in the guidance.

On the subject of the police licensing role, there was a fairly even split between those that stated the role is currently diluted and those that felt it isn't - a clear illustration of inconsistency if nothing else. Responses were extremely supportive of a national police training programme with 87% agreeing or strongly agreeing.

The report focuses on the more controversial recommendations as far as our local authority and police members are concerned. There are varying views on the remaining recommendations and findings within the report, but no big surprises. As noted in IoL's initial response, there are many things to be taken from the report, and areas such as training, good practice guidance and better / wider interaction are all things IoL can focus on in the immediate term.

IoL training development

Whether or not the Government decides to accept the recommendations on training (at the time of writing the Government has not published its response), the IoL is working to develop properly structured courses, both online and face to face, aimed at councillors and police practitioners in particular. Our intention is to make these courses available nationally with clear learning outcomes and assessment criteria and with pre-learning and refresher courses available online where appropriate.

Conclusion

The IoL welcomes the review and subsequent report relating to the Licensing Act 2003. We consider there are many good recommendations within the report, and while we have concerns about any suggestions to merge planning and licensing regimes, we recognise that there would be considerable merit in reviewing both regimes side by side with a view to clearly distinguishing the respective roles, removing duplication and overlap and potentially streamlining the processes.

Minister's taxi / private hire working group

The Government has announced the creation of a new taxi and private hire working group. The announcement follows a Westminster Hall debate on taxis in August that the Institute reported on. Following that debate, the Minister of State, John Hayes, announced the establishment of an informal working group "to consider the adequacy and efficiency of legislation and guidance concerning the licencing of taxis and PHVs in England."

The Local Government Association said: "The objective of the task and finish group will be to make recommendations for actions to address priority issues in this area. In particular, the group will focus on identifying what the priority concerns around regulation are and the adequacy of licensing systems to address these, as well as looking at the Law Commission's recommendations. It is anticipated that the first meeting will be in September with a view to developing a report on their advice/recommendations before the end of the year."

The IoL has been declined a place on the working group (the Department of Transport cited the need for diversity of views and limit on the size of the working group), although the working group Chairman, Professor Mohammed Abdel-Haq, is asking a range of interested parties (including the IoL) to provide an executive summary of approximately 500 words, in order to help the group focus on the most important issues including the most important challengers facing the sector, and what should be done to address those challenges.

We have been assured that the IoL, along with the other organisations that are not represented on the group, will have opportunity to influence the outcome of the report which may include invitations to address the working group.

Welsh Government – taxi consultation

The IoL responded to the consultation by the Welsh Government in relation to the reform of taxi and private hire licensing in Wales. Questions within the consultation concerned many of the recommendations published by the Law Commission in 2014 including:

- The merits of a single-tier licensing system versus the existing two-tier regime
- Record keeping of journeys
- Retention of the "fit and proper" test
- Licence conditions
- Fee setting
- Data publishing / information sharing
- Licence trading
- Appeals system.

The IoL response reflected the views submitted to the Law Commission in 2014, giving support to the merits of a single-tier system, record keeping for all journeys, ability for local conditions with national minimum standards, local fee-setting based on cost recovery of administration and enforcement and retention of an independent system for appeals. A full copy of the IoL response is available in the library resource on the website.

NAFN database revocation and refusal taxis

The Local Government Association (LGA) and the IoL have been exploring options for establishing a national database of

taxi and PHV licence refusals and revocations. We are aware that a number of different regions have also been developing their own local approaches to information sharing on this issue.

Following discussions between the National Anti-Fraud Network (NAFN), groups of authorities in South Yorkshire and Greater Manchester, LGA and IoL, the LGA commissioned NAFN to begin development of a national register of taxi licence refusals and revocations to be managed, maintained and hosted by NAFN on behalf of all local authorities. The register will be available at no extra cost to all local authorities already signed up to NAFN's existing data and intelligence services (reportedly 86% of English and Welsh councils), and will enable a national response to an issue that extends beyond individual regions.

Although a register of refusals and revocations cannot on its own solve the many challenges facing councils in regulating taxis and PHVs, it will be an important sector-led step to tackling the problem of individuals making applications in different areas following a refusal or revocation elsewhere.

The project is likely to be complete by the end of 2017. A project board comprising the LGA, IoL and NAFN is overseeing the project and a user group comprising council officers is providing advice on specification, testing and acceptance.

Regional Officer Focus

Myles Bebbington, IoL Vice Chair and Eastern Regional Chair

My interest in licensing was tweaked in 1997 when I was asked to attend a day's training on taxis licensing run by Jim Button - simply because we had a rank outside the office and I saw what went on. It was thought a good idea that if I knew a bit on the licensing side, I could keep an eye on what was happening. Well, as anyone knows, Jim is very engaging and I was hooked!

Why did I join the IoL? Quite simple really, I hadn't got a clue about taxi licensing and the IoL (LGLF as it was then) offered what I needed. My IoL involvement really began in 2002, when I was in the first group to take the CERT HELL course with Professor Colin Manchester. This exposed me to the movers and shakers in the LGLF and for reasons that still mystify me today I was "volunteered" to be regional chair for the Eastern Region, a position I still hold today. Little did I know what would follow.

As the longest serving director of the IoL and a vice chair, I have great pride in what the IoL stands for and its journey since 2003. We have undeniably shaped the course of legislation at all levels, whether it be by shaping government approaches or influencing local policies and decisions. I was initially dubious about the move from a local government-led organisation to embracing these "outsiders". Who wanted a solicitor sitting at the same table as us local government officers! What did they know? Despite my initial suspicions, however, I quickly saw those outsiders knew a lot and my misgivings were totally unfounded. The broad church that we became is the cornerstone of our development in recent years. It has brought robust discussions to board meetings, and the eclectic mix of people has allowed for very detailed examination of a wide range of topics. It has proven to be an invaluable asset to our growth.

My local authority, South Cambridgeshire District Council, strongly supports and encourages engagement with bodies such as the IoL. This allows me to be involved in a range of national groups, such as the Public Health Licensing network, looking at the "health" objective, regulatory development, the Excellence Forum looking at regulatory issues across a wide range of bodies including trading standards, environmental health, fire, the Food Standards Agency and many more. I'm also involved in the LGA Licensing Forum and a "task and finish group" looking at a national taxi database, revocations and refusals of drivers. (Watch this publication for further news soon.)

The Eastern region has a great team and particular thanks should be given to Marie Malt at King's Lynn and Christine Allison at Huntingdonshire who have guided me over many years and without whom the region would be far less active. I do as they say and know my place! They work hard to organise events, about four times a year, that reflect the needs of members. As ever, with a day job to do, it's not always easy. Organising events is made easier with the support of the officers in the central IoL, who help with speakers and take bookings and so on. I urge the regions to make full use of their support - they are really good!

The future of the IoL is exciting. I hope to continue to be a central part of its development over the coming years, further improving our offering to you, the members, and strengthening even more our influence at local, regional and national level.

Licensing Uber: where have we got to and what happens next?

The Employment Tribunal's finding that Uber's relationship with its drivers is one of employer and employee and a similar ruling by the Advocate General suggests the company may well need to seek licensing approval as a private hire operator. **Matt Lewin** explains the latest thinking

The legal controversy surrounding Uber continues to be global in scale. This article summarises the three decided cases in this jurisdiction, and a fourth upcoming case in the European Court of Justice. Each of these cases provides support for the proposition that the degree of control that Uber retains over the service provided through its platform means that it is licensable as a private hire vehicle (PHV) operator under the 1976 Act. We conclude by identifying some likely areas of future controversy.

Does Uber use taximeters?

It is a crime for a PHV to be equipped with a taximeter: see s 11(2) Private Hire Vehicles (London) Act 1998. In *Transport for London v Uber London Ltd* [2015] EWHC 2918 (Admin), the High Court ruled that:

a. the driver's smartphone app was not a "taximeter" for the purposes of section 11 of the 1998 Act; and
b. Uber vehicles are not "equipped" with the driver's smartphone.

Ouseley J ruled that the prohibition "is intended to catch all devices used for the calculation of fares" (at [32]). However, the court went on to find that although the driver's app provides time and distance data essential for the calculation of the fare, that calculation was in fact carried out by an Uber server, and not by the driver's smartphone. This meant that the smartphone (even with the driver's app) was not a prohibited taximeter.

Furthermore, the court found (at [45]) that it is the driver, not the vehicle, that is "equipped with" the smartphone, given its portability, meaning that there was no breach of s 11 for that further reason.

The judge was not impressed by an argument based on consumer protection, advanced on behalf of the Licensed Private Hire Car Association. His comment (at [29]) may have wider significance in the debate about whether Uber's model is compatible with the law:

> *There is nothing in the Act, the purpose of which was to protect the public, to suggest that the mini-cab passenger was not to enjoy any improvement which technology, for all its unregulated imperfections, might bring in the speed and accuracy of their fare calculations, and breakdown of the bill, so long as the fare was not calculated by a taximeter, broadly defined. I cannot see what consumer protection purpose there can be in preventing the passenger knowing the fare swiftly at journey's end, and that it was not just an amount the driver thought up, or which the operator thought he could get away with, and instead represented an automatic calculation, explained by reference to objectively verifiable data, and a fare structure which they might have been able to read on the operator's website – even if the driver's ignorance meant that the route had been longer or slower than it needed to be, and his measuring devices were untested and to a degree unreliable. Mr Saini's consumer protection submission on behalf of his client was odd indeed.*

It would appear from the above passage that Ouseley J was impressed by the fact that Uber platform calculates the fare in a way that is beyond the ultimate control of the driver, to the ultimate benefit of the travelling public.

Are Uber drivers employed or self-employed?

In October 2016, the Employment Tribunal found that Uber drivers were "workers": see *Aslam and others v Uber B.V. and others* (Case No. 2202550/2015). This meant that they were entitled to various protections, including payment of the minimum wage, sick pay, and paid holidays. Uber was granted permission to appeal and the two-day hearing took place at the end of September 2017.

The Employment Tribunal criticised what it called "fictions" and "twisted language" deployed by Uber in support of its case – in particular its description in its (then) standard terms of drivers as "customers" of the Uber platform. Uber's terms provided that each booking was carried out under a contract between the passenger and the driver – Uber's role was limited to acting as the driver's agent.Applying

conventional rules of employment law, the Tribunal found that the degree of control exercised by Uber over its drivers meant that the "true relationship" between Uber and its drivers is one of employer and employee, rather than that of a platform across which Uber accepts bookings only as "agent" for its "partner" drivers. Hallmarks of this control were said to include the setting by Uber of a default route, the imposition of conditions on drivers and their vehicles, the setting of fixed fare tables and its exclusive handling of passenger complaints.

Those of us more familiar with licensing, rather than employment, law might have looked to the terms of the Private Hire Vehicles (London) Act 1998 for help with the answer to the question before the Tribunal. Uber was (at the time of the Tribunal's decision) licensed as an operator by TfL, pursuant to section 3 of the 1998 Act. Section 1 of the Act defines an "*operator"* as "*a person who makes provision for the invitation and acceptance of, or who accepts, private hire bookings"*. By contrast, a driver's role under the scheme of the 1998 Act is simply to drive the vehicle, for which she must hold a London PHV driver's licence: section 12. The characterisation of the drivers', passengers' and Uber's responsibilities under its standard terms is inconsistent with its status as a licensed operator under the 1998 Act.

Uber has run a similar argument in a Spanish case presently awaiting judgment before the European Court of Justice: see *Asociación Profesional Elite Taxi v Uber Systems Spain, SL* (C-434/15). This relates to the UberPOP service in Barcelona, marketed as a ride-sharing platform which Uber said could lawfully operate outside the licensing system altogether. In support of that argument, Uber relied on EU law to argue that a requirement to obtain a licence was an unlawful restriction on its right to provide "IT services" through its platform.

The CJEU has yet to give its ruling, but the opinion of the Advocate General is in similar terms to the analysis of the Employment Tribunal in *Aslam.* He said that Uber does not offer merely an IT platform for connecting drivers and passengers: Uber's service "… amounts to the organisation and management of a comprehensive system for on-demand urban transport." Therefore, in the Advocate General's opinion, it is not unlawful for EU member states to require Uber to obtain a licence in order to operate in their jurisdictions. A formal ruling is expected later in 2017.

The English language test

The case of *R (Uber London Ltd) v Transport for London* [2017] A.C.D. 54 concerned three requirements imposed by TfL upon PHV drivers, operators and vehicles respectively: (1) all drivers must demonstrate that they can read and write in English to a minimum prescribed level; (2) all PHV operators must provide a round-the-clock telephone service; and (3) all PHVs must be continuously insured for hire and reward.

The headline finding was that the English language requirement was proportionate: as well as needing to be able to communicate with passengers about their requirements, explain safety issues, and discuss a route or fare, drivers also needed to understand regulatory requirements and other communications with TfL. In the absence of a specific language test catering to the taxi industry, TfL was entitled to rely on the generic test that it had adopted. Uber has been granted permission to appeal against this finding and a hearing in the Court of Appeal is fixed for February 2018.

Uber found success in other grounds of challenge. The telephone customer service requirement was held to go beyond what was necessary to achieve the aim of passenger protection, the court noting that the Uber app already had an impressive customer contact facility which allowed staff to speak with passengers where necessary, typically in an emergency.

TfL conceded Uber's challenge to the continuous insurance requirement, as it had wrongly assumed that passengers injured in circumstances of no insurance would not be protected but for this blanket requirement. In fact, there was already a legal requirement that either the insurer or the Motor Insurance Bureau would step in: see *Bristol Alliance Partnership v Williams* [2013] RTR 9.

Future areas of controversy

Cross-border hiring

It has long been established that it is lawful for a licensed PHV operator to accept bookings that start and end outside the operator's licensing district, and that a PHV driver can undertake journeys starting anywhere in England and Wales: see *Adur District Council v Fry* [1997] RTR 257.

However, Uber operates on a national scale and its drivers regularly undertake journeys in areas in which it is not licensed as an operator. There is, in our view, nothing unlawful about that. However, the result is that many licensing authorities are now seeing an influx of drivers carrying out Uber bookings within their districts without the power to enforce licensing rules against them, because the driver and operator are regulated by a different authority.

Many authorities have adopted "intended use" policies which restrict the area in which a vehicle can be used, such that it is "predominantly" used in the area in which it is licensed. Most of these policies apply to hackney carriages only, following the case of *R (Newcastle City Council) v Berwick-upon-Tweed Borough Council* [2008] EWHC 2369

(Admin), which concerned the extent of a licensing authority's discretion to licence hackney carriages under s 37 of the 1847 Act. That case said nothing about the discretion to licence PHVs under the 1976 Act.

As far as we are aware, only Knowsley Council has adopted an intended use policy which applies also to PHVs. Both Uber and Delta Merseyside have brought a claim for judicial review of the policy on the basis that the council had no power under the 1976 Act to restrict the location in which a PHV can be used. Interestingly, there is no definition of "predominantly" in the council's policy itself.

"Greyballing"

In March 2017, the *New York Times* reported that Uber was using "greyball" software to frustrate or circumvent attempts to regulate its service. Although developed for legitimate purposes, it was reported that the software was also being deployed to "greyball" certain users who could be linked to law enforcement or local authorities, manipulating the app on those users' smartphones to the effect that no (or only "ghost") cars appeared to be available, or by cancelling their bookings.

While the *New York Times* reported that the software had been deployed "worldwide" and that "it remains in use, predominantly outside the United States", there have been no reports that it has been deployed in the UK.

Plying for hire

A further area of controversy lies in the rather ambiguous common law definition of "plying for hire": see *Cogley v Sherwood* [1959] 2 QB 311. In some quarters, it has been said that Uber's vehicles are effectively plying for hire by exhibiting themselves as being available for hire through the app, albeit in a digital environment rather than in the street. Those on the other side of the debate have pointed out that the 1976 Act does not require any amount of time to elapse between the booking and the beginning of the journey; the process can be lawfully carried out almost simultaneously. We understand that, finally, this controversy is to be resolved by way of a test prosecution brought by Reading Borough Council against two Uber drivers licensed by TfL, who were waiting by the roadside while logged into the Uber app. The trial takes place in November.

*TfL licence renewal*Uber's operator's licence in London was due to expire in May 2017. At the end of May, TfL granted Uber a licence, but only for four months, to give it time to pursue "further enquiries". On 22 September 2017, the world of licensing was suddenly caught up in an international media frenzy when TfL announced in a press release that it had decided not to renew Uber's licence. It has refused to publish its full reasons, but the press release expressed TfL's concern at a "lack of corporate responsibility in relation to a number of issues which have potential public safety and security implications". Greyball was cited as one such issue as was Uber's approach to reporting serious criminal offences.

Uber has lodged an appeal which means it is able to continue operating until its appeal rights have been exhausted. In the meantime, Uber has fought back: it has publicly apologised, mobilised hundreds of thousands of customers to sign a petition in support of the company and is reported to be working on a new crime reporting policy in collaboration with the Met Police. Even the Prime Minister has criticised TfL's decision. Discussions between the company and TfL are ongoing.

Conclusion

Uber's model has radically disrupted the licensed hire marketplace and the legal effects of that disruption are far from being resolved, as the number of outstanding cases highlighted above demonstrates. The crucial question, and the one of most relevance to those actually using Uber's service, is whether the safety of the travelling public can be ensured. At the end of the day, it seems to us that many of the technical objections made about Uber do not significantly undermine that fundamental policy objective.

Matt Lewin
Barrister, Cornerstone Barristers

Stairways and handrails in a theatre - do tread carefully

Theatre designers and managers have a real dilemma when deciding the dimensions and placement of handrails. **Julia Sawyer** examines the contradictory guidance and explains how best to observe it and stay safe

We turn to regulations and guidance to help us comply with the law and keep people safe but what happens when guidance gives you conflicting information, and how liable could a company be if it follows one regulation and not the other?

Take, for example, a theatre and the position of handrails within it. In different pieces of legislation and guidance, varying handrail heights are given: eg, a theatre under construction would need to have handrails at a minimum height of 950mm when working on a balcony to comply with the Work at Height Regulations 2005, but when open to the public the height can be reduced to 750mm (in the Technical Standards for Places of Entertainment) or 800mm (in the Building Regulations).

Regulations protecting employees working on a construction site state that the handrail should be 950mm in height from the platform that is being worked on to prevent the person from falling. However, when the same theatre is open to the public, this can be reduced quite considerably to 750mm if certain criteria are met. Is that enough to protect the public and employees working there?

Another example of conflicting directions is where the Building Regulations state that there should be a minimum width between handrails on each side of wide stairs of 1,000mm, yet the Technical Standards for Places of Entertainment state that the width without a handrail should not be less than 1,100mm. Would 100mm increase the risk of someone falling? Is there any flexibility in the regulations? And would you be liable if there was no central handrail on a staircase more than 2m in width?

With this confusion, what should a company to do to show that appropriate controls have been put in place?

Height of handrails

When we look at the height of handrails on balconies in a theatre, the following information is available to us:

Building Regulations Approved Document K
Handrail height is:
Places of assembly - 800mm
External balconies - 1,100mm
Public building - 1,100mm

Technical Standards for Places of Entertainment
Sited not more than 530mm away from the fixed seating - 800mm
With certain criteria met - 750mm
Barrier at the foot of a gangway - 1,100mm

HSE website
In the absence of an operational guidance - 950mm

The Work at Height Regulations 2005
When construction taking place - 950mm

Canadian Centre for Occupational Health and Safety (CCOHS)
Handrail height: between 8,650mm and 1,070mm
(Values are from the 2015 National Building Code of Canada, although there may be different requirements in each local area.)

BCA (Australia)
Handrail height - 1,000mm

The handrail height that has been deemed safe for people to work near during construction activities is 950mm (in the UK). When open to the public, this is not a construction site therefore the Workplace Regulations would be applied: they state that the "handrail should be of sufficient dimensions, of sufficient strength and rigidity for the purposes for which they are being used".

The Workplace Regulations do not give specific detail on height. The Building Regulations and the Technical Standards for Places of Entertainment do, but their heights are given to enable adequate sight lines for the audience rather than considering the area as a workplace.

Looking at a theatre auditorium as a workplace rather than an entertainment space, an assessment must be made on the balance between aesthetics, adequate sight lines and the risk of someone falling.

If a company chooses to install handrails at the front of seating on a balcony between 750mm-949mm, then it would need to show in its risk assessment process how it had concluded that that level is high enough to protect someone at work from falling. Stating that Building Regulations were followed is not quite enough.

It should be borne in mind that maintenance work being carried out in the theatre on that balcony could be defined as construction work and therefore anything under 950mm would not be acceptable, so the risk assessment would need to be reviewed.

Width of stairways – is a handrail required?

When we look at when a handrail is required on a stairway in a theatre (and this is also applicable to other places of entertainment) the following information is available to us:

Building Regulations Approved Document K

Stairways should have a handrail on at least one side if they are less than 1m wide and on both sides if they are wider than 1m.

If a stairway is more than 2m wide it should be divided, and there should be a minimum width between handrails of 1,000mm.

Technical Standards for Places of Entertainment

Stairs and steps of 1,100mm width or wider should be provided with a handrail on both sides. Stairs wider than 1,800mm should be subdivided into sections not more than 1,800mm wide and not less than 1100mm wide.

The Workplace (Health, Safety and Welfare) Regulations 1992

Handrails should be provided on both sides if there is a risk of falling, for example where stairs are heavily used or are wide and have narrow treads, or where there are liable to be spillages on them. Additional handrails should be provided down the centre of particularly wide staircases where necessary.

Three recognised standards state that handrails and an additional handrail should be provided if the stairway is above a certain width. There is much evidence to demonstrate that many accidents occur on stairways and that a handrail does prevent people from falling and injuring themselves.

The regulations and guidance stated above generally state the same thing, but give different measurements. A company would therefore need to show on its risk assessment why a specific handrail had or had not been used. The assessment must be made on the balance between the risk of someone falling, emergency exit routes not being compromised and aesthetics. A company would need to be able to show good reasons for not following guidance, which can be done. However, to ignore guidance purely for aesthetical reasons would not stand up as a defence in a court of law.

Case law

Jaguar Cars v Coates [2004] EWCA Civ 337

The claimant, who was employed by the defendant, tripped as he was going up a flight of steps at the defendant's factory. The flight consisted of four steps and the claimant tripped on the third. The judge at first instance found the defendant negligent in failing to provide a handrail. Had the defendant considered the risk, that risk would have been safeguarded against by the provision of a handrail. However, the defendant was not found in breach of Work Place (Health Safety and Welfare) Regulations 1992 Regulation 12(5) on the basis that the steps did not amount to a "staircase". The defendant appealed and the claimant appealed the finding in respect of Regulation 12.

The appeal found that the effect of the judge's ruling was that no steps of this sort, which were common place, could be said to be safe unless a handrail was provided. There was no evidence that the steps posed any particular risk if they were ascended or descended with a normal degree of care. There had been a wrongful equation by the judge of foreseeability of risk with the finding of duty to install a rail.

The appeal was allowed and the cross appeal dismissed.

Broadfield v Meyrick Estate Management Ltd [2011] EWCA Civ 1135

The claimant sustained spinal fractures when she fell down a staircase at work. Her office was on the first floor of an old cottage. There was a single steep staircase leading up to a landing. From this landing there was a further staircase which included two steps up to the claimant's office. On the day in question, as the claimant made her way out of the office, at the threshold of the office doorway, she missed her footing and tripped and fell onto the landing. Her momentum carried her down the straight staircase. Her claim was brought on the basis that if a handrail had been present along the two

top steps, she would have been able to use it to regain her balance. At first instance the claim was dismissed.

Lady Justice Hallett gave the leading judgment in the Court of Appeal, dismissing the claimant's appeal.

She observed that Regulation 12.5 of the Workplace (Health, Safety and Welfare) Regulations 1992 imposed a duty on the defendant to provide "suitable and sufficient handrails … on all traffic routes which are staircases except in circumstances in which a handrail cannot be provided without obstructing the traffic route".

Reading the regulations and the relevant statutory code of practice together, the duty imposed is to provide a secure and substantial handrail on at least one side of every staircase, which in this case included providing a handrail on one side of the top two steps.

With regard to the statutory exception, the burden of proof is on the employer. The applicable standard is impossibility. The employer's evidence on this point was inadequate – proper measurements and information on the various forms of handrail now available would have assisted.

The failure to provide a handrail was not causative of the accident. On the claimant's own case, she was hurrying and lost her footing before she stepped down onto the step. At first instance she had given a visual demonstration of how she fell, which led to a finding of fact by the trial judge that, even if a handrail had been present, the claimant would not have been in a position to use it.

It does not necessarily follow from this decision that every set of steps would constitute a "staircase" for the purpose of Regulation 12.5. The number and nature of the steps in each case would need to be considered, as in *Jaguar Cars*, where it was found that four external concrete steps did not constitute a staircase within the meaning of the regulations.

The decision highlights the importance of ensuring adequate and appropriate evidence is available when considering whether the statutory exception applies. The applicable standard of impossibility is onerous for employers. The starting point for the court is likely to be that stairs are inherently dangerous and, while much will depend on the facts of each case, a handrail should be provided.

Julia Sawyer
Director, JS Safety Consultancy

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The Night Time Commission for London has a vital role to play

Philip Kolvin QC, Chair, Night Time Commission for London, outlines the Commission's role and why it's so vital to the economy and vibrancy of the city

Across the globe, from San Francisco to Berlin, from New York to Kazan and from Paris to New Orleans, city authorities are waking up to the benefits of the night-time economy. Some are creating night mayors. Some are establishing night-time commissions. In London, our Mayor Sadiq Khan is doing both. The Night Czar, Amy Lamé, is an ambassador for the night-time economy and a spokesperson for the industry in City Hall. The Night Time Commission, meanwhile, is charged with formulating policies and programmes for the long-term sustainable development of the night-time economy in London.

This is no small exercise. We are talking about an industry worth £26 billion, which employs one in eight workers in the Capital, and is cited as one of the main reasons to visit London from the UK and abroad. At the same time, the night-time economy divides opinion. For some, it is a ceaseless source of joy, diversion and celebration: a key reason to live and work in London. For others, it is a thorn in their side or worse: a noisome, threatening drain on London's amenity and public resources. This is a difficult circle to square. And it is not only London which has to do so. But if we can pull this off in our densely occupied and still growing city of 9 million people, any city can.

But why now? Well, the Licensing Act was important in taking the regulation of leisure out of the conflict setting of the magistrates' court to the policy forum of the council chamber. And it did try to set an agenda for sustainable growth by mandating grant except where a green light would harm one of four specific policy objectives. Paradoxically, this may have harmed well-ordered growth. For it means that the entire focus of the regime is on the negative. It makes licensing a form of place-keeping. By way of contrast, planning acts as a form of place-making or place-shaping. Development plans don't just say "allow new houses to be built unless they are harmful". They require a strategy, one which defines a city's needs over many years and sets out to meet it through locational policies. If we are to plan our night-time economies we must do much the same thing. We must ask ourselves what goes where, at what hours and according to what conditions? In London we have lost practically half our nightclubs and small music venues in the last decade. We might individually have a view whether this is a good or a bad thing, but licensing doesn't: it is largely blind and deaf to the benefits of the night-time economy.

Of course, the day-time economy is based on need, for housing, transport, waste management and retail. The night-time economy is based on wants. I would argue this does not make it less important but more. If the day-time economy is the city at work, the night-time economy is a city at play. And play is a mark of our civilisation, our imagination, our sociability, our freedom and our social cohesion. It is impossible to envision an enlightened city without a great, diverse night-time economy. It is something precious, as important to nurture as every other part of the economy. And, since its constituent parts are not a matter of objective calculation but an expression of our creativity, we can afford to dream a little: in fact we must do so.

The basic question for city authorities planning their night-time economy is, what is our vision? How can we make our city an even more interesting and entertaining place to be at night? And how can we do this without harming other important interests, including those of residents who want to sleep at night. In London, there is no single answer to that question. There are 33 boroughs. Some of them have mature economies and may be seeking to diversify without necessarily expanding. Others, particularly in outer London, are at an earlier stage of their trajectory. Each must be able to write its own story. This cannot result from top-down diktat. It must be from the ground up.

So we have founded a night-time economy champions network, comprised of senior officers and councillors from all the boroughs. Their job is to share good practice, feed ideas to the Commission and to act as sounding boards for the Commission's work. Our meetings have been lively affairs. We have watched training videos from Norway and discussed models of consultation. We have considered heritage-based development of leisure economies, and analysed different kinds of street guardianship. We hope to learn from each other and from best practice elsewhere, and so advance understanding of the possibilities among London's policy-makers.

At the same time, the Mayor has published *From good night to great night: a vision for London as a 24 hour city.* This has preceded the formation of the Commission and sets out 10 high level principles for the Commission's work. At root, the Mayor wants a night-time economy which broadens access for all of London's citizens, whatever their means, age, gender, ethnicity, sexuality or ability, and whether they adore or abhor alcohol. This means looking far wider than pubs and clubs. We must consider all elements of the economy, including retail and services at night.

The Commission itself is a large, diverse body. It comprises figures from the arts, the hospitality industry, public protection and politics and, of course, from inner and outer London. I like to think that if the Commission members can agree on the fundamentals, we have a good chance that the great majority of Londoners will do so too. However, we are leaving nothing to luck. We will be carrying out structured survey work of London citizens. And of course, we will be consulting a very wide range of stakeholders, including the Institute of Licensing.

Our aim is to produce a report to Mr Khan at the end of 2018. This will be an intensive exercise, but we are trying to provide a steer to him, not the final word. London's night-time economy faces many challenges, of which rising land prices, gentrification, squeezed wages, rates increases, the effect of Brexit on the hospitality labour market, pre-loading and the growth in home entertainment are just a few. We hope to suggest some solutions, some of which will be steps for him, and some for other players in the civic realm. The London Mayor has no powers over licensing. But he can convene thought leaders and influence action at local level.

For me, the prime job of the Commission is to change the conversation. We risk getting stuck in a stultifying debate about whether the night-time economy is a benefit or a threat, and a narrative, often driven by lazy journalism, of town centres as a reprise of Sodom, peppered with photographs of comatose females. Enough already. Let's ask ourselves what a great night-time economy looks like. And then let's use all the powers we have, pull all the policy levers available to us, and inspire all the entrepreneurs and creatives among us, to achieve it. That economy must be sustainable. By that I mean that it must not come at the expense of other things we value, such as peace, rest and safety. But these things are not alternatives, but concomitants. Drawing from our own experience and international best practice, and applying our expertise and judgment, we must simply plan it better. We will be watched and, inevitably, judged. We are ready for the task.

Philip Kolvin QC, CIoL
Chair, Night Time Commission for London

The strange case of the dramatic fall in resident reviews

Resident reviews have reduced by more than half since 2010, but what that tells us about resident activity in the licensing process is by no means as clear-cut as the figures seem to suggest, writes **Richard Brown**

There are things known and there are things unknown, and in between are the doors of perception. Aldous Huxley.

We don't see things as they are. We see them as we are. Anais Nin.

Unsurprisingly, issue 18 of the *Journal of Licensing* read almost as a House of Lords Select Committee special edition with articles from a wide range of commentators from across the Institute's broad church. The tenor of most of the articles was consistent in expressing dissatisfaction and disappointment at the Select Committee's findings regarding licensing committees.

It is hardly surprising that any action the Government may have been minded to take following publication of the report was forestalled by the general election in May. There is also the small matter of Brexit to occupy minds in the corridors of power. If the report has not been kicked into the long grass, it has certainly not been put in the box marked "urgent".

The variety of views expressed in the evidence read and heard by the House of Lords Select Committee conducting post-legislative scrutiny of Licensing Act 2003 was wide, but not surprising. My main focus was the comments from and about residents' involvement in the licensing process. To some, residents had too much power and exercised it accordingly. To others, residents get a raw deal and their views do not weigh heavily in the balance.

We are approaching the time of year when the (almost)[1] annual Home Office alcohol and late-night refreshment licensing statistics for England and Wales are released. Indeed, by the time this edition is printed statistics for 2016-7 may well have been released, thus possibly rendering the suppositions in this article irrelevant and / or entirely wrong.

As with any statistics one could perceive any number of conclusions which may or may not have a basis in reality, but nevertheless one can see a number of trends. The one I will focus on is the number of completed reviews. To what extent if any, do the raw Home Office statistics assist in picking a way through the morass?

Each responsible authority and "interested parties" (now "other persons") was given review powers in cognisance of the particular specialist viewpoint and experience they each bring. As Baroness Blackstone said when the Licensing Bill was passing through the House of Lords in 2003: "Judgement of the merit of an application against the licensing objectives should be left to the experts. The experts on crime and disorder, and the protection of children from harm are the police, and so the police have a voice. The experts on public safety are the health and safety and fire authorities, and so they have a voice too. The experts on public nuisance are the local environmental health authority. It follows that they should have a voice too, and the bill provides them with one. The experts in what it is like to live and do business in a particular area are local residents and businesses. As I have said on a number of occasions, we are providing them with a voice in the licensing regime for the first time."[2]

The total number of premises licences has gradually crept up from 202,000 in 2010 to 210,000 in 2016. However, the number of reviews of premises licences has decreased startlingly.[3]

The House of Lords Select Committee report was the culmination of the most in-depth scrutiny of the act as a whole since it shuffled on to the statute books, but the Department for Culture, Media and Sport (DCMS) had undertaken a similar inquiry (albeit on a much smaller

1 No statistics were produced for 2010-11 and 2014-15.

2 HL Deb 27 February 2003 vol 645 cc379-416 379 The Minister of State, Department for Culture, Media and Sport (Baroness Blackstone).

3 https://www.gov.uk/government/publications/alcohol-and-late-night-refreshment-licensing-england-and-wales-31-march-2016/alcohol-and-late-night-refreshment-licensing-england-and-wales-31-march-2016

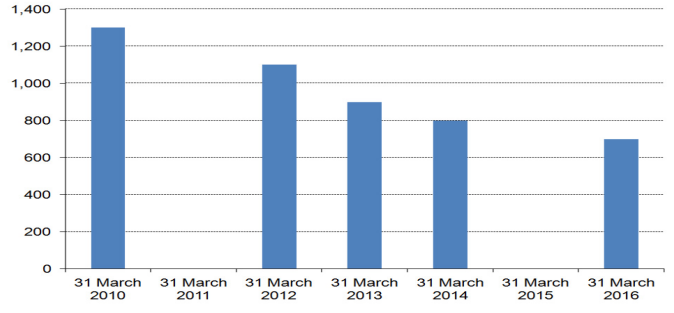
scale) in 2008. The DCMS concluded in its *Evaluation of the impact of the Licensing Act 2003* that "people" are not using the "considerable powers granted by the act".

In fact, there was a general upward trend in numbers of completed reviews from 2005-6, the first year for which data was collected,[4] when there were 600 review applications, until 2009-10 when there were over 1,300 review applications. Of these, 120 (9%) were recorded as being resident-led. However, since 2009-10 the upward trend has reversed as quickly as it rose.

In the year ending 31 March 2016, 700 reviews were completed, representing a decrease of 13% (down 100) compared with the year ending 31 March 2014 (no data was produced for year ending 31 March 2015). Of these, 44 (just over 6%) were resident-led. This continues the decline seen since 2009-10. Clearly, "people" were using the review power far more extensively in 2008, 09 and 10 than they are now.

Residents accounted for 44 of the reviews in the year ending 31 March 2016 (just over 6%). The total number of reviews has therefore almost halved since 2009-10, and the number of reviews by residents has decreased significantly (from 120 to 44, or 63%) and decreased as a proportion of the overall total (from 9% to just over 6%). Moreover, according to the statistics, in the year ending 31 March 2016, no reviews at all - responsible authority or resident-led - were completed in 154 authority areas. Even if one assumes that the 44 resident-led reviews were spread over 44 local authorities (they weren't, as I acted on a number in Westminster) that leaves a minimum of 306 licensing authorities which did not see a completed resident-led review in 2015-16. If the figure stays stable in the future, many local authorities could expect to see a resident-led review only once in a blue moon.

Even allowing for the caveats with the data which the publication makes clear, these are meaningful reductions in both total numbers of reviews and reviews led by residents. The overall totals can be seen below, and demonstrate the trend.



4 It should be noted that response rates in 2005-6 were relatively low, and some figures each year include estimates for non-responding authorities.

Chart notes

1) Source: Home Office, *Alcohol and late night refreshment licensing, England and Wales*, 31 March 2016 tables (table 1).
2) Data were not collected for years ending 31 March 2011 and 31 March 2015.
3) Figures for all years except 31 March 2014 include imputed estimates for non-responding LAs.

I do not presume to draw any conclusions from the data, merely to point out the marked downward trend. These figures struck me because, wearing my residents' hat, my main interest in the House of a Lords investigation resulted from the call for evidence about whether the correct "balance" exists and whether residents and local communities engage effectively with the regime.

The decrease seems to be contrary to Government expectations and is surprising in the context of messages coming from Government at the time and developments in the law. The period after the consultation[5] in 2010 which sought to "rebalance" the Act saw a marked move to give more "power" to residents and communities, at least in theory by, for example, removing the vicinity test and by changing the requirement for steps to be "necessary" for the promotion of the licensing objectives to "appropriate", which the Government perceived to be a lowering of the evidential burden required for a licensing authority to take action and, by extension, the burden on residents to call for a review. However, from the high of over 1,300 reviews in 2009-10 (120 resident-led), by 2011-12 the total had fallen to 1,100 (about 77 resident-led).

The Government stated in the 2011-12 figures that the "requirement to live in the vicinity was removed on 25 April 2012 and therefore may impact on the next year's figures". In fact, the number of reviews declined again very significantly to 900 (47 resident-led) in 2012-13, and then to 800 (53 resident-led) in 2013-14. No figures were produced for 2014-15. As seen, the number has reduced further in the 2015-16 figures. It remains to be seen whether this will continue with the 2016-17 report.

If reviews led by residents have reduced by 63% since 2010, the category of "other persons" surely cannot be using their powers effectively? Of course, it is by no means as simple as that, and indeed the opposite could be said to be the case; perhaps residents are leveraging their influence and using the experience gained by licensing authorities to resolve

5 https://www.gov.uk/government/consultations/rebalancing-the-licensing-act-a-consultation-on-empowering-individuals-families-and-local-communities-to-shape-and-determine-local-licensing

problems outside of a review process. From my experience, I have drafted far more review applications on behalf of residents than I have submitted. Effective partnership working may resolve problems informally. Perhaps parties are more proactive in resolving issues. Perhaps there are fewer troublesome premises, after 10 years of review powers being available.

An example of how the stark statistics in a field as nuanced as licensing can be misleading is the figures for grants and refusals of licences. According to other Home Office statistics, anything from 97% and above licence applications and variations are granted and only 3% or fewer refused.[6]

Evidence was given to the Select Committee by the National Association of Residents Associations that some residents feel that although they can have their say, they are ignored when a decision is reached. Looking at the bare statistics might, at first blush, appear to show a one-sided picture. However, that statistic tells us nothing, as it does not record how many applications were granted as applied for. As practitioners are well aware, and as I emphasise to residents *ad nauseam*, scope for negotiation and compromise abounds and is to be encouraged.

Of course, there are bound to be applications made which could perhaps be justifiably said to be premature, notwithstanding the right afforded by the act to do so "at any time". However, the total of 44 reviews when seen in the context of the 200,000-plus premises licences is an almost infinitesimal number – 0.02%. It is clear that in general, residents do not tend to load the review gun and pull the trigger lightly.

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6 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/530664/Cm_9278_-_Post-Legislative_Scrutiny_-_Licensing_Act_2003.pdf

Taxi licensing and the burden of proof - a plea for clarity

When it comes to adjudicating on taxi appeals, too many magistrates seem oblivious to the legal arguments set out in *Hope and Glory*, says **Ben Williams**

Over the last year or so during taxi appeals, I have been continually faced with having to deal with the unfortunate divisional court authority of *Kaivanpor v DPP* [2015] EWHC 4127 which, it is said, purports to shift the burden of proof in such cases. I, together with most licensing practitioners, had considered that the issue of where the burden lies had been clarified fully in the leading case of *R (on the application of Hope and Glory Public House Limited) v City of Westminster Magistrates' Court* [2011] EWCA Civ 31.

To date, despite arguing the matter a large number of times, only one court has been brave enough to determine *Kaivanpor* as a point of law, in a case concerning the revocation of a PHV driver's licence as a result of his arrest for a sexual assault, which he had not reported to the local council. Regrettably, despite making all the points I will go on to make within this article, the justices found favour with the approach cited in *Kaivanapor*, despite then going on to dismiss the driver's appeal. In a written judgment dated 23 August 2017, the justices stated:

> *17. We find that Hope & Glory can be distinguished on the appeal before us. We find the dichotomy as stated by Wilkie J in Kaivanpour (sic) is logical and persuasive in these types of appeals…..*
> *18. The clear distinction of the type of appeals under s 61 of the 1976 Act does not exist under the scheme which was being considered in Hope & Glory ie the Licencing Act 2003. It is therefore evident, in our judgement, that appeals under the 2003 Act should be treated separately, on this point, compared to the treatment of appeals where a clear statutory scheme exists as contained in s 61 of the 1976 Act.*
> *19. We therefore conclude that the burden of satisfying us that the appellant is not a fit and proper person, on the balance of probabilities rests with the respondent in this appeal.*

While this decision is entirely wrong in my view and will have little relevance to any case law development going forward, it does illustrate the difficulty one faces when arguing such matters in the Magistrates' Court and particularly before a lay bench. They are often easily persuaded by an emotive challenge from a driver who will dwell on the significant financial impact his loss of licence will have. I have encountered magistrates who have criticised a local authority for not attending at a criminal trial as a noting brief when a driver has ultimately been acquitted. This caused the local authority to have to appeal the matter to the Crown Court, and caused one particular Crown Court judge to remark, "We all know that not guilty before a jury does not mean that he is entirely innocent".

Taxi appeals need to be run in the correct way. Magistrates' and Crown Courts ought to be presented with skeleton arguments as to the process. In my view, reliance on *Kaivanpor* ought to be strongly resisted through clear legal argument before the Court. I shall consider *Kaivanpor* in detail, together with other relevant case law authority, which I trust will assist in any such appeal.

Kaivanpor discussed

The Divisional Court sought to resolve an apparent tension between two Court of Appeal authorities, namely *Canterbury City Council v Ali* [2013] EWHC 2360 (Admin) and the earlier decision of *Re Muck It Ltd v Merritt* [2005] EWCA Civ 1124, as to where the burden of proof lay where a licensed driver was fit and proper in an appeal against revocation. While the facts of those two cases are not pertinent here, it is somewhat ironic that one of the reasons *Muck It* was preferred, was that in *Ali*, the decision was reached with only one party present and represented and was also determined on an absence of relevant Court of Appeal authority (see *Practice Direction: Citation of Authorities* (2012)).

Only Kaivanpor's counsel appeared before the Divisional Court, and unfortunately there was absolutely no mention of *Hope and Glory* in the judgment, so one can safely assume that it was not cited before the court. Had both sides been fully and properly argued, then I am certain that the same decision would not have ensued.

It is altogether unclear as to why K did not exploit the right of appeal to the Crown Court, a factor that ought to have weighed more heavily before the magistrates agreed to state the case, and seemed to escape criticism by the Divisional Court. K sought to have his HC and PHV licences reinstated

after they had been revoked by the council following his collision with a cyclist. The justices accepted that it was up to the driver to show that he was fit and proper. He appealed by way of case stated, and the court asked:

> *Were we right in all the circumstances….to place the burden on the Applicant to show that he was a fit and proper person when considering his appeal under section 61(3)..?*

To this, the High Court answered "No".

K asserted that *Ali* was wrong and relied on *Muck It*, which concerned the licensing of goods vehicles and the statutory scheme provided by the Goods Vehicles (Licensing of Operators) Act 1995. It was properly argued that the application process necessarily required the applicant to show he was fit and proper. However, the statutory scheme in relation to revocation provided that the licence may be revoked or must be revoked if certain things had happened or if circumstances have changed. K therefore argued that the burden shifted to the council. To this Wilkie J stated:

> *In my judgment looking at the two statutory schemes, it is clear that…. there is a clear and principled dichotomy between the application stage where the onus of proof is sensibly, properly and clearly on the applicant to satisfy the statutory requirements. Once that person has a licence then the schemes, again sensibly and on the basis of proper principle, require the licensing authority which wishes to revoke or suspend a licence or not renew the licence to be satisfied of certain matters. The burden is therefore on the licensing body to establish to its satisfaction that those changes of circumstance or prohibited circumstances have arisen; it is not for the licence holder endlessly to prove that they continue to be fit and proper person or a person of good repute.*

Why this decision is wrong

I respectfully disagree with the court. The 1995 Act is plainly different in its formulation. Section 13 deals with the applications stage and requires the traffic commissioner to be satisfied that the applicant is of good repute and appropriate financial standing and that he is professionally competent. Section 26 provides the facility to suspend or revoke where it appears to the commissioner that the driver no longer fulfils those requirements. The court was wrongly directed to consider that scheme when it needed only to concentrate on the 1976 Act and true taxi licence regulation.

The 1976 is always underpinned by the overriding concern of public safety. It provides that a local authority shall not grant a driver's licence "unless they are satisfied that the applicant is a fit and proper person to hold a driver's licence". There is no statutory definition of 'fit and proper'; however the words of Bingham CJ in *McCool v Rushcliffe Borough Council* [1998] 3 All ER 889, QBD are often cited:

> *One must, as it seems to me, approach this case bearing in mind the objectives of this licensing regime which is plainly intended, 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.*

The burden to establish fitness and propriety is on the driver as K accepted and as previous case law confirms (see *R v Maidstone Crown Court ex p Olson* [1992] COD 496 and *Ali* at paragraph 25, per Carr J).

Section 61 of the 1976 Act states:

> *(1) …a district council may suspend or revoke or … refuse to renew the licence of a driver of a hackney carriage or a private hire vehicle on any of the following grounds—*
> *(a) that he has since the grant of the licence—*
> *(i) been convicted of an offence involving dishonesty, indecency or violence; or*
> *(ii) been convicted of an offence under or has failed to comply with the provisions of the Act of 1847 or of this Part of this Act; or*
> *(b) any other reasonable cause.*

It is not open to a driver to impugn any convictions he has, nor is it open to the court to go behind those convictions (*Nottingham City Council v Farooq (Mohammad*) [1998] EWHC Admin 991 applied). Further, it has long since been understood that the words "any other reasonable cause" (s 61 (1) (b)) give a district council a wide discretion in deciding whether to revoke or suspend a driver's licence and indicate that something other than a criminal conviction would justify a suspension (see *Leeds City Council v Hussain* [2002] EWHC 1145 Admin).

Any other reasonable cause is necessarily wide in its application as it may be relied upon to justify a suspension, revocation or refusal to renew where a health issue has presented and the driver awaits medical information. Further, I had a case recently where there was an unfortunate delay with the driver's DBS check and this provided a reasonable cause to suspend the licence which was later reinstated.

It must be right that having granted a permission (the

licence), a local authority cannot require a driver to continually show that he / she is fit and proper. The licensing authority must act reasonably. Something needs, on the face of it, to have occurred which calls into question the driver's fitness and propriety. This may be a conviction, a charge, an arrest, or simply a complaint. That is all the local authority need be satisfied of. If a serious complaint comes in that may lead to an immediate suspension or revocation, the driver ought to be provided with an opportunity to present his version of events, given that he will remain off the road until all rights of appeal are exhausted.

The net effect of *Kaivanpor* would be that a local authority is forced to run some sort of "mini trial" to establish that, in light of whatever has been alleged to have happened, whether the driver had in fact done what was alleged or complained about, before then moving to prove on balance that he was no longer fit and proper. This would be an entirely unworkable state of affairs. Regardless of the disproportionate costs, there may be parallel criminal proceedings meaning the police and others may not wish to share information. This will cause significant problems for the council and its officers.

The correct approach to appeals

In my view, the court in *Kaivanpor* failed to fully understand the mechanism of appeals to the magistrates' court and became focused on the impact of a first instance decision by a council, rather than the process of appeals. This was due to the absence of any reference to the most relevant case law authorities.

The question posed for the opinion of the High Court was erroneous as *Hope and Glory* had already provided the answer:

> *48. It is normal for an appellant to have the responsibility of persuading the court that it should reverse the order under appeal, and the Magistrates' Courts Rules envisage that this is so in the case of statutory appeals to magistrates' courts from decisions of local authorities. We see no indication that Parliament intended to create an exception in the case of appeals under the Licensing Act.*

Contrary to the findings in my recent Magistrates' Court case, *Hope and Glory* applies to all licensing decisions (see *Gateshead Council v Crozier* [2014] EWHC 2097) and therefore provides that the salient question in taxi appeals is "was the council wrong to conclude that [the appellant] was not fit and proper?" The appellant driver bears the burden of establishing that the decision was wrong.

This approach has been reaffirmed in subsequent case law (see *R (Developing Retail Ltd) v East Hampshire Magistrates' Court* [2011] EWHC 618 (Admin) at paragraphs 28 and 29 and *R (Townlink Ltd) v Thames Magistrates' Court* [2011] EWHC 898 (Admin)), albeit these are both cases where only one party appeared and presented argument.

Appeal hearings are *de novo* (*Stepney Borough Council v Joffe* [1949] 1 KB 599, DC and *Sagnata Investments Ltd v Norwich Corpn* [1971] 2 QB 614, CA applied). To that end, the court can take account of any matters that have occurred since the decision under challenge, was made.

The hearing is effectively a repeat hearing of the original decision made by the council and, as such, the court exercises the same functions as the local authority and the normal rules of evidence, either criminal or civil, do not apply. Hearsay evidence is plainly admissible (*McCool* applied).

It can therefore be seen that such appeals are well geared towards allowing drivers to present all they can to discharge the burden upon them. Not only does the civil standard of proof apply, but drivers are able to explain why a complaint is inaccurate or false, and why an arrest does not mean they are no longer fit and proper. In my experience, far too many appeals are run on the basis that because there was no arrest, or no arrest but no charge, or a charge but an acquittal, this means that the driver is still fit and proper.

I should add that there is often poor case management leading up to such appeals. It is not appropriate for appellants to come and give all sorts of evidence that a council is unprepared for. It is entirely right that once the complaint is presented, the appellant needs to present his evidence as to why the decision was wrong (including the inevitable last minute character references); then the council can respond appropriately. Dates ought to be provided for service of skeleton arguments as appropriate.

The quality of appeal hearings is a topic for another day; however, it is pertinent to note that the House of Lords Select Committee on the Licensing Act 2003, which published its results in April of this year, noted that a transfer of the appellate function of such appeals to a specialist committee was required as soon as possible. It may be that taxi appeals follow suit for similar reasons as those raised before that committee. I should add that where the immediate suspension / revocation provisions are instigated, appeals ought to be dealt with expeditiously. That same committee acknowledged that a revocation through the summary review procedures in the Licensing Act 2003 necessarily threatened the livelihood of the licensee, and accordingly that the Magistrates' Courts should list appeals for hearing as soon as they are ready. I see no reason why the courts ought

not to be urged to do the same for taxi licensees.

My recent case awaits an appeal to the Crown Court. It will be interesting to see if the Crown Court judge is prepared to rule fully on the matter, which may then present an opportunity for the High Court to settle the matter once and for all. Of course, this will depend on the appetite for such litigation by either party. In the meantime, we are stuck with *Kaivanpor* and advocates need to be in a position to deal with this unfortunate decision when it is placed before a court.

Ben Williams
Barrister, Kings Chambers

Stay on the ball in the on-trade

Screening sporting events, and particularly football, can be a winner for licensees, but they have to really understand what sports fans are after, as **Paul Bolton** explains

The domestic football season is now well underway, and with a World Cup next year many licensees will be rubbing their hands at the opportunity sport represents. Recent statistics from CGA have revealed just how popular visits for sporting occasions are: nearly a quarter of UK consumers visit an on-trade venue to watch them, with football being the most popular sport to watch in a pub or bar.

From a sample of nearly 5,000 consumers, the CGA BrandTrack research reveals that 22% visit a pub or bar to watch sport with 73% of those watching football and 20% watching rugby union. Boxing is also highly rated by those watching sport in a bar or pub, particularly among a younger audience. Sports fans visiting the on-trade to watch live events do so relatively frequently with 20% watching a fixture about once a week and a further 20% doing so at least two or three times a month. Avid fans among the sample (9%) admit going to a pub or bar to watch a sporting event at least several times a week.

"The research reveals how crucial sporting events are to the on-trade, with fixtures appealing across the age groups," comments Phil Tate, CGA's chief executive. "Consumers who go out to enjoy sport can be very loyal to particular venues."

According to the research, going out to watch a game is most prevalent in those aged 18-34, with 33% of this age group watching sport in the on trade versus 24% of 35-54 year olds.

Lager is the most popular drink when watching live sport (44%), with 21% drinking cider. Average spend on a sporting occasion is £16.75, with Arsenal fans spending the most - £18.64 - followed by Chelsea supporters who spend an average of £17.63 per visit.

"Consumers go out to watch sporting events partly because many key fixtures are screened on subscription-only channels, but watching sport in a bar also gives fans something of the camaraderie they would get at a live game – so they visit for the atmosphere and the chance to enjoy the game with friends," says Tate. "The on-trade needs to recognise the importance of screening various sporting events and use these opportunities as an effective marketing tool."

But with expensive licences and concerns around security staffing in some areas, is it all really worth it? A 2016 report from CGA in collaboration with Match Pint found the Premier League alone is worth more than £30,000 a season to the average outlet. But the report also found that operators can do more to harness the appeal of live sport. The data showed that only 27% of sports fans always visit the same venue for their screenings, so loyalty is up for grabs.

The key to ensuring fans stay with a venue is understanding what consumers want from their experiences. Are they eating food before, during or after the game? What sort of atmosphere do they like and how long are they staying there afterwards? Tailoring the offering accordingly will keep customers in and ultimately help licensees to score a crucial goal to stay ahead of their rivals.

Paul Bolton
Senior Client Manager, CGA

Phillips' Case Digest

ALCOHOL AND ENTERTAINMENT

Supreme Court (Judicial Review)
Lord Neuberger PSC, Lord Mance JSC, Lord Clarke JSC, Lord Reed JSC, Lord Toulson JSC

Basis upon which fees charged in licensing regime. Recovery of enforcement costs. Effect of unlawful element on remainder of charging scheme. Consideration by Supreme Court of ruling of the European Court of Justice following referral of a question.

R (on the application of Hemming (t/a Simply Pleasure Ltd.) & Others) v Westminster City Council [2017] UKSC 50

Decision: 19 July 2017

Facts: Appeal concerned fees charged on applications for sex-shop licences for three years ending 31 January 2013. The issue was whether it had been lawful for the local authority to include the costs of enforcing the licensing scheme against unlicensed third parties who ran sex shops, when setting the relevant fee. The Court of Appeal held that the *Provision of Services Regulations 2009*, which gave effect to *Directive 2006/123/EC*, meant that the local authority could only levy charges relating to the administrative costs of processing the relevant applications and monitoring compliance with the terms of the licence. As a consequence of that decision, the local authority had repaid £1,189,466 to the respondents. The Supreme Court drew a distinction between two types of licensing scheme (types A and B). Type A concerns applications for licences which are made on terms that the applicant has to pay relevant fees in two stages: (i) on making the application, the costs of the authorisation procedures and formalities, and (ii) on the application being successful, a further fee to cover the costs of the running and enforcement of the licensing scheme. Type B concerned applications for licences which were made on terms that the applicant had to pay, (i) on making the application, the costs of the authorisation procedures and formalities, and (ii) *at the same time* a further fee to cover the costs of the running and enforcement of the licensing scheme, *but on the basis that it was refundable* if the application was unsuccessful.

The Supreme Court had held that the local authority was entitled to operate a scheme of type A (reported at [2015] UKSC 25; [2015] AC 1600). It referred to the ECJ the question whether the local authority was entitled to operate a scheme of type B. The ECJ responded that Article 13(2) of *Directive 2006/123/EC* on services in the internal market must be interpreted as precluding the competent authority of a member state, when calculating the fee due for the grant or renewal of an authorisation, from taking into account the cost of managing and enforcing the authorisation scheme. That was the case even if the part corresponding to that cost was refundable where the application for the grant or renewal of the authorisation in question was subsequently refused.

Following the judgment of the ECJ, the local authority argued, at a restored hearing of the appeal, that it was entitled to be paid or repaid the sums which it had refunded to the respondents following the Court of Appeal's order. The licensees, on the other hand, submitted that they were entitled to retain the repayment made to them in full, because the original fees had been charged in a way for which there was no authority.

Point of dispute: (1) Was the local authority entitled to be paid or repaid the sums which it had refunded to the licensees following the Court of Appeal's order.

Held: The invalidity of the scheme which the local authority operated was limited and only defective in so far as it required payment up front at the time of the application. European law did permit a fee to cover the costs of running and enforcing the licensing scheme becoming due upon the grant of a licence. Even under purely domestic law principles, a test of substantial severability was appropriate. Although it was wrong to charge the enforcement element of this fee conditionally at the time of any licence application, under the scheme this element was due unconditionally once a licence was granted. There was no answer to the local authority's claim to be paid or repaid the sums which it had reimbursed the licensees. The local authority was entitled to recover the enforcement costs for the year to 31 January 2013, subject to corresponding reduction if and to the extent that the Administrative Court determined the enforcement costs to have been unreasonable. In respect of the two earlier years, the Supreme Court must be able to restore the parties to the position they should have been in, by now ordering repayment by the licence holders of the enforcement costs, to the extent that they meet the criterion of reasonableness. The issue potentially remaining was the reasonableness of the sum identified as enforcement costs, and now to be repaid to the local authority. This issue should

be remitted, as agreed, to the Administrative Court, together with other case specific matters identified by the Supreme Court, including the question of interest payable. In respect of some of those issues, the licence holders' right to raise such points, as well as about their merits, would be remitted to the Administrative Court.

Costs: The parties at liberty to make submissions in writing on costs

ALCOHOL AND ENTERTAINMENT

Court of Appeal (s 288 TCPA 1990)
Laws LJ McFarlane LJ and Christopher Clarke LJ

Planning permission granted for mixed commercial and residential development adjacent to public house. Upheld in the High Court. Planning permission quashed by the Court of Appeal: harm development might do to viability of the adjacent public house was a material consideration.

Forster v Secretary of State for Communities and Local Government [2016] EWCA Civ 609; [2016] JPL 1220 (CA (Civ Div))

Decision: 29 June 2016

Facts: Planning permission allowed by an inspector on appeal for demolition of a single-storey building in Stepney and the erection in its place of a three-storey building with commercial uses on the ground floor and six flats on the floors above. Objection had been raised by the George Tavern, which was adjacent to the existing building: Stepney's Nightclub. Activities at the George included live music on Friday and Saturday nights until 3 am. There was a risk that the trading hours would be reduced and the live music licence would be lost due to noise complaints from the proposed nearby residential development. If this happened, the George would no longer be financially viable. Closure would mean that the local community would lose yet another local live music and performance venue.

Point of dispute: whether impacts on adjoining business capable of being 'material considerations' (i.e. relevant) to any decision on the grant of planning permission.

Held: (1) Whilst the issue of noise adversely impacting *upon* a new development by an existing licensed business was potentially a material consideration "if such an argument is to be advanced it should be clearly raised before the Inquiry Inspector (if there is an appeal to the Secretary of State) with a sufficient degree of particularity and supporting evidence to enable the Inspector to reach an objective and reasoned conclusion on the point." No such case was presented by the appellant to the Inspector. (2) Loss of light caused *by* a new development: the Inspector was bound to deal with the appellant's apprehensions concerning light and did not do so. For that reason, the High Court had not been entitled to conclude that the Inspector had sufficiently considered this aspect of the George's objection. The grant of planning permission was quashed.

TAXI AND PRIVATE HIRE

Administrative Court (Case Stated)
HH Judge Keyser QC sitting as a Judge of the High Court

Respondent charged with being in charge of a motor vehicle having consumed excess alcohol. The local authority revoked his licence. Respondent later found not guilty and appealed against the revocation of his licence (LG(MP)A 1976 s.61(3)). Justices considered respondent was a fit and proper person to hold a private hire vehicle driver's licence and allowed his appeal. Local authority appealed by way of case stated against the decision to allow the appeal against revocation of the private hire vehicle driver's licence and order that it should pay costs.

Reigate and Banstead BC v Pawlowski [2017] EWHC 1764 (Admin)

Decision: 13 July 2017

Facts: On 2 August 2015, Mr Pawlowski was charged with an offence of being in charge of a motor vehicle having consumed excess alcohol. On 4 August 2015, the Council was notified of the charge and the following day decided to revoke Mr Pawlowski's PHV driver's licence with immediate effect. At trial on 28 October 2015 he was found not guilty of the charge.

Mr Pawlowski appealed to the Justices against the revocation of his PHV driver's licence. It was common ground that the appeal was not a review of the Council's decision but a hearing de novo. The question for the Justices was whether Mr Pawlowski was a fit and proper person to hold a PHV driver's licence. They concluded that he was and allowed his appeal.

Points of dispute: (1) In the light of *R (Singh) v Cardiff City Council* [2012] EWHC 1852 (Admin), [2013] LLR 108, did the Justices err in law in deciding that the Council's decision to revoke was wrong and that the Council ought to have suspended Mr Pawlowski's private hire driver's licence? (2) Did the Justices err in law in failing to provide adequate

reasoning for their decision that the said licence ought to have been suspended rather than revoked? (3) Absent any finding that Mr Pawlowski would suffer substantial financial hardship if an order for costs were not made in his favour, did the Justices err in law in making an order for costs against the Council? (4) In the light of the relevant authorities, did the Justices err in law in failing to give adequate reasons for making an order for costs against the Council?

Held: (1) & (2) The question whether the Council was wrong to revoke Mr Pawlowski's private hire vehicle driver's licence and ought rather to have suspended it did not properly arise for the decision of the Justices and their observations in that regard constitute neither the substantive decision they made nor the ground of that decision. Notwithstanding that position, the decision in R (Singh) v Cardiff City Council showed that suspension of a licence pursuant to section 61(1) of the Local Government (Miscellaneous Provisions) Act 1976 can only be achieved by a *substantive decision* on the basis that one of the grounds in that subsection is made out. Suspension cannot be imposed as a holding exercise, pending consideration of whether a ground is made out. In the present case, the court was of the view that any other approach would not be helpful as a general guide to local authorities' conduct. Further, given that suspension was not a holding operation but a substantive decision, it became apparent that suspension would rarely be the appropriate course where a driver is charged with a matter for which, if convicted, he would be subject to revocation of his licence. If such a charge merits action, and if the action is not by way of an interim measure pending determination of the facts at criminal trial, revocation will generally be the appropriate course. To suspend a licence because an allegation is made and then revoke it because the allegation is proved would be, the court considered, contrary to the decision in R (Singh) v Cardiff City Council, even if the former decision was dressed up as a substantive rather than a merely provisional or holding decision. Although the decision in each case will be one for the judgment and discretion of the council, where a licence-holder is charged with an offence the commission of which would be considered to render him unfit to hold a licence, the council is likely to consider it appropriate to revoke the licence at that stage. For reasons already stated, to suspend the licence merely because of the charge and revoke it merely because of the ensuing conviction would conflict with the decision in R (Singh) v Cardiff City Council as to the scope of the power under section 61. Any decision to revoke will be subject to a statutory right of appeal. Further, if it should later transpire, for example by reason of acquittal at trial, that the former licence-holder is indeed a fit and proper person to hold a licence, provision can be made for expeditious re-licensing. (3) & (4) The issue of costs. The conclusion of the Justices could reasonably mean only one thing, namely that the reasons advanced on behalf of Mr Pawlowski were accepted. The Council cannot seriously have been unclear about the basis on which the decision was made and could not properly claim to have been seriously prejudiced by the economical way in which the Justices expressed their decision. In the present case, the case advanced on behalf of Mr Pawlowski was that the temporary loss of his licence and his resulting inability to work for several months had caused him financial hardship. The Justices clearly accepted that the hardship had been suffered and that it was sufficient to make an award of costs just and reasonable. There is no error of law in that approach. The appeal was dismissed.

Costs: Reserved (Council to show why an order should not be made in favour of the Respondent).

TAXI AND PRIVATE HIRE

Administrative Court (Case Stated)
McCOMBE LJ and KERR J

Driver of a Hackney Carriage guilty of unlawfully plying for hire outside his licensed area was not also guilty of driving without insurance, because the provisions of his insurance certificate which were intended to geographically limit the cover in line with his Hackney Carriage licence were of no effect.

Oldham Borough Council v Sajjad (2016) EWHC 3597 (Admin)

Decision: 19 December 2016

Facts: The respondent was the driver of a vehicle with the benefit of a Hackney Carriage licence issued by Rossendale Borough Council, entitling the vehicle to be plied for hire within that local authority's area but not elsewhere. The respondent was charged with two offences alleged to have been committed on 23 January 2015. They were first, plying for hire in the Oldham area and (b) driving without insurance, contrary to section 143 of the 1988 Act.

Driver pleaded guilty to the "plying for hire" offence but maintained a plea of not guilty to an offence of using the vehicle without insurance. Acquitted by the Justices. Appellant Borough Council appealed against that finding.

Points of dispute: Whether unlawfully plying for hire outside the licensed area of a Hackney Carriage licence invalidated the insurance for that vehicle.

Held: Whether a policy covers a particular risk and therefore

whether there is in force a valid insurance covering that risk will usually be a matter of construction of the insurance policy in question, rather than a matter of evidence (per *Telford and Wrekin Borough Council v Ahmed and Others* [2006] EWHC 1748 (Admin)). However, having regard to *Singh v Solihull Borough Council* [2007] EWHC (Admin), the decision of the Court of Justice of the European Union in *Ruiz Bernaldez* and s 148 of the Road Traffic Act 1988 (which prohibits "so much" of any insurance policy as purports to restrict cover by reference to activity in a particular area), the Court held that the Justices had been correct in acquitting the Respondent of driving without insurance. Appeal dismissed.

Costs: awarded to Respondent

GAMBLING

Court of Appeal
Arden LJ Simon LJ and Hickinbottom LJ

Appellants ("Greene King") wished to provide facilities for playing unlimited stake and prize bingo in their pub premises. They applied to the Respondent ("the Commission") under Part 5 of the Gambling Act 2005 ("the Act") for operating licences authorising them to provide such facilities ("operating licences"), in up to eight of their pubs. Even with such licences Greene King would still have to apply to the relevant local licensing authority under Part 8 of the Act for the necessary premises licence, before providing bingo in any pub. The Regulatory Panel of the Commission ("the Panel") refused the licence applications, because it considered that it would be harmful to the statutory licensing objectives to provide gambling in pubs as proposed. Greene King's appeal to the First-tier Tribunal (General Regulatory Chamber) was allowed by the Chamber President, Judge Nicholas Warren. On appeal, the Upper Tribunal (Administrative Appeals Chamber), Upper Tribunal Judge Howard Levenson, allowed the Commission's further appeal; but granted Greene King permission to appeal to the Court of Appeal. Appeal dismissed.

Greene King Brewing and Retailing Limited, Greene King Retailing Limited v The Gambling Commission [2017] EWCA Civ 372

Decision: 25 May 2017

Facts: The Applicants belonged to the same Greene King group of companies which, at the relevant time, had owned or operated 1,000 premises with on-licences, including pubs, bars and restaurants. That figure had risen to 3,000. In 2012, Greene King applied for an operating licence to enable up to eight Greene King pubs to pilot full commercial bingo with higher level gaming machines. The applications were accompanied by an "operational plan", which became a very substantial document during the course of the application. It was proposed that the pubs would not be converted into bingo halls but would rather continue to operate as pubs, although with ancillary full commercial bingo together with gaming machines up to and including those falling within Category B3. It was central to Greene King's proposal that the gambling operations would be introduced into a busy pub environment. The proposal was novel: an operating licence had never before been granted for full commercial bingo in a trading pub. Following substantial discussion between Greene King and the Commission, the latter's officers were satisfied as to the suitability and competence of Greene King, and the individuals who would carry out the proposal, to offer the proposed licensed activities; but had serious concerns about the operating model. In its decision dated 12 March 2014, the Panel agreed and refused the application, mindful that one of its core principles for licensing and regulation was to adopt a 'precautionary approach'. On appeal to the First-tier Tribunal, in his determination dated 2 December 2014, Judge Warren acknowledged a respectable school of thought which held that there was merit in commercial gambling being restricted to what are obviously 'gambling destinations' such as a betting shop, bingo hall or amusement arcade and that it should be discouraged as a casual attraction. However, Judge Warren also considered there was a flaw in the Panel's thinking, because, having accepted Greene King's suitability and competence to offer the proposed gambling activities, in being overly concerned about premises the Commission was trespassing on territory which the Act assigned to licensing authorities. On appeal by the Commission to the Upper Tribunal, Judge Levenson agreed with the argument of the Commission. The combined effect of sections 1(c), 22 and 70(1)(a) was really to place on the Commission the main responsibility for ensuring compliance with the licensing objectives and, in particular, the protection of vulnerable persons. The provisions of sections 159(3) and 169(4) made it clear that primacy was to be given to the decisions of the Commission on whether to grant an operating licence. In light of these provisions, it could not really be the case that when such matters are at issue, the Commission is then required to step back in individual applications and let the 'multitude of local licensing authorities deal with these national policy issues on a case by case basis'. He thus allowed the appeal and remitted the matter to the First-tier Tribunal for redetermination on the merits.

Point of dispute: when exercising its discretion as to whether to grant an operating licence, was the role of the Commission limited by the Act to considering the suitability

and competence of the operator, so that the suitability of premises was essentially a matter for local licensing authorities when considering premises licenses. By refusing operating licences on the basis that Greene King proposed to provide bingo facilities in pubs, had the Commission therefore acted outside its powers.

Held: there were three Grounds of Appeal:
(1) The UT erred in finding that the First-tier Tribunal determination was wrong. The Court of Appeal held that this ground had no force. The refusal of the licences did not circumvent s 84. Further, the prevention of Greene King applying for premises licences was not the *purpose*, but *a consequence*, of the refusal of the operating licence applications. The purpose of refusing those applications was clearly to prevent the licensing objectives being compromised, the Panel having come to the view that the operating model was not consistent with the pursuit of those objectives. Further, Judge Warren had *not* (as contended) taken into account the proposed operation and its environment, including the busy pub premises at which it was to take place; and concluded that it was reasonably consistent with the licensing objectives. Rather, he had accepted the submission Ms Fitzgerald made to him, that the Panel, having concluded that Greene King were suitable and competent, erred in considering the suitability of premises. He had clearly considered this jurisdictional point to be determinative.
(2) The UT erred in its interpretation of the Act and particularly section 70, which set out the matters to which the Commission was required to have regard when determining an operating licence application. The Court held that whilst it accepted that the Commission and local licensing authorities had discrete functions under the Act, in exercising those functions there were some common or overlapping relevant factors. Neither the Act nor the Statement of Principles expressed any principle of procedural exclusivity in favour of local licensing authorities in respect of premises. There was no force in the contention that s 70(1)(a) was anything less than a freestanding requirement, imposed upon the Commission when considering an application for an operating licence, to have regard to the licensing objectives. It could not have been the intention of Parliament to require the enforcement of national policy in relation to bingo in pubs through local licensing authorities because, as emphasised in *Gibraltar Betting*, it was an object of the statutory scheme to control betting activities in a consistent and systematic manner. The Panel were entitled to consider and find that the proposed gambling operation was inconsistent with the licensing objectives; conclude that the weight of that factor was determinative of the applications for operating licences; and refuse the applications on that ground.
(3) The UT erred in allowing the appeal without taking into account, and dealing with the alternative grounds for upholding the First-tier Tribunal's decision, namely: (i) The Commission erred in law in purporting to create a blanket ban on full commercial bingo in pubs. (ii) There was no evidential basis for such a blanket ban. (iii) In allowing the appeal, the Commission failed to follow its own published policies, in the form of the Statement of Principles. The simple answer to this ground was that, when the matter is returned to the First-tier Tribunal, Greene King would be able to raise each of these matters and it would be for that tribunal to determine them on their merits. In relation to each contention: The Panel were faced with a novel operating model and so it is unsurprising that no policy had been devised or published and considered the proposal, as required by the Act, in the light of the licensing objectives. It considered that the model was not reasonably consistent with the pursuit of those objectives. That was well within its discretion. If an applicant applied for an operating licence for mixed premises, then the Commission would have to consider it on its merits. If the operating model included full commercial bingo in pubs to the concern of the Commission, then the Commission might refuse the application; but, on the facts of a particular case, it could alternatively grant an operating licence and leave the issue to be determined on the premises licence applications in which the Commission would be entitled to intervene. The Panel were able to draw upon their own expertise and experience of the relationship between gambling and alcohol and that of the Commission's officers and the historic data and reports such as the Budd Report. They were entitled to concur with, and place weight on, the view of their own officers as to the "different expectations of those frequenting pub or bingo premises as to their primary purpose" (see paragraphs 49 and 69 of the Panel decision) upon which the recommendations of the Budd Report were based. It was clearly open to the Panel to conclude that visitors to a pub, after consuming alcohol, might be vulnerable to high stake gambling which is available on the premises. Whether, in this case, upon remittal, the First-tier Tribunal would agree with those conclusions on their merits would, of course, be a matter for the tribunal.

CARAVANS

First-Tier Tribunal Property Chamber (Residential Property)
Judge Tildesley OBE, Mr R Wilkey FRICS

Application to transfer site licence under s 10 of the Caravan Sites and Control of Development Act 1960. Licence granted subject to additional conditions. Condition 29 imposed a maximum length of stay of no more than 21 days, the maintenance of a register of the users of each pitch, and a closed season with the caravan park open only during the summer months.

Appeal against the condition on the grounds that: (1) it was unduly burdensome, (2) it improperly withdrew land use rights conferred by planning permission and (3) the requirement to keep a register was unreasonable and unnecessary. Appeal dismissed.

Matthew Dighton (Meadowview Caravan Park) v Rother District Council (Unreported - case ref. CHI/21UG/PHS/2016/0003, 13 March 2017)

Facts: Appellant owned a caravan park known as Meadowview Park. The park had been licensed as a caravan site under the Caravan Sites and Control of Development Act 1960 since at least 1986. There were three planning permissions associated with the park, all of which restricted the use of the park to 36 touring caravans only, and two of which restricted the operation of the park to the period between 1 March and 31 October each year. The caravan site was gifted to the Appellant, Matthew Dighton, by his parents in April 2013. Mr Dighton applied to the Council in October 2015 under s 10 of 1960 Act for the transfer of the site licence to himself. Rother District Council transferred the licence to Matthew Dighton subject to additional conditions. Condition 29 imposed three separate requirements: a maximum length of stay of no more than 21 days; the maintenance of a register of the users of each pitch; and a closed season with the park open only from 1 March to 31 October each year. Mr Dighton brought an appeal under s 7 of the 1960 Act on the basis that condition 29 was unduly burdensome. He advanced three grounds of appeal. (1) The loss of seasonal touring caravan pitches by virtue of the 21-day requirement would have a dramatic effect on income and cash flow resulting in the potential closure of the business (the 'hardship ground'). (2) The three requirements in condition 29 were planning issues and, as a matter of law, site licence conditions could not be imposed to remove land use rights created by planning permission (the 'planning ground'). (3) The requirement to keep a register of names and addresses of persons using the park was unreasonable and unnecessary (the 'unreasonable and unnecessary ground').

Points of dispute: whether the local authority had evidence that the conditions were of public benefit and whether the burden on the applicant outweighed that benefit; with regard to the planning ground, whether the site licence conditions had been imposed for reasons which were fairly and reasonably relevant to the use of the site as a caravan site and not for purely planning considerations.

Held: (1) The Tribunal found that the Council had been applying a 21-day maximum occupation requirement and a requirement to maintain a register of users for pitches since 1975. Although it was common ground that the 21-day maximum occupation requirement would spell the end of seasonal touring caravan pitches for the park, the Tribunal held that any financial hardship caused was as a result of the decision by the Dighton family to operate the site in contravention of the longstanding 21-day rule. The Tribunal decided therefore to attribute no weight to the plea of financial hardship, with the effect that the first ground of appeal was dismissed.

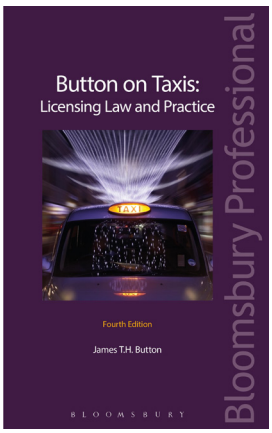
(2) The Tribunal set out the existing-case law on the interrelationship between the planning and licensing regimes: that the conditions imposed by the 1960 Act must relate to matters that are fairly and reasonably related to the use of the site as a caravan site and that there may be some overlap with factors that are relevant to planning considerations *(Edsell Caravan Parks Ltd v Hemel Hempstead Rural District Council* (1967) 18 P & CR 200); that a condition cannot be imposed under the act that is based solely on planning considerations such as visual amenity *(Babbage v Norfolk District Council* (1990) 59 P & CR 248); and that, albeit some degree of overlap is inevitable, care needs to be taken in respect of the extent to which site conditions are used to limit existing use rights under planning law (*Goodwin v Stratford-upon-Avon District Council* (1996) 73 P&CR 524). The Tribunal accepted that the local authority's justification for seasonal closure, namely that this avoided caravan owners negotiating wet and muddy conditions and was necessary for environmental reasons, was consistent with the use of the site as a touring caravan park. The Tribunal also held that the 21-day maximum occupation requirement, justified on the basis that it prevented the site from slipping from a touring caravan site into a static site, was consistent with the permitted use of the site as a touring caravan park. This in turn was said to help ensure sufficiency of touring caravan sites in the area to meet demand and to ensure that the facilities and services offered at the site were commensurate with those set down in the model standards for such sites. Furthermore, the requirement for the licence holder to keep a register of the users of each pitch on the site was also held to be justified as related to the internal management of the caravan site rather than being associated with planning considerations.

(3) Finally, the Tribunal found that the act of keeping a register of users of the park was not unduly burdensome as Mr Dighton already maintained information on the users of the park and that doing so assisted with the internal management of the park.

Jeremy Phillips, MIoL
Barrister, Francis Taylor Building

Phillips' Case Digest by Jeremy Phillips is based upon the case reports produced by him for *Paterson's Licensing Acts*, of which he is Editor-in-Chief.

Book Reviews



Button on Taxis, 4th Edition
Author: James Button
Publisher: Bloomsbury Professional
Price: £115.00

Reviewed by **Leo Charalambides,** Barrister, Francis Taylor Building

The fourth edition of *Button on Taxis* is an eagerly awaited update to the small, well-thumbed specialist library of licensing books, and an unrivalled work within the yet smaller canon of genuinely useful licensing books.

It is not just that *Button on Taxis* provides an exhaustive and authoritative commentary on the hackney carriage and private hire vehicle licensing regimes but it does so within the context of local authority licensing generally. Chapters two through to five provide a detailed distillation of general principles of local authority licensing law. Chapter two deals with the principles of local authority decision making. Chapter three covers appeals in the Magistrates' Courts and the Crown Court but also case stated and judicial review. Surprisingly, chapter three does not consider the judgment in the *Kaivanpor v DPP* [2015] EWHC 4127. Chapter four covers local authority licensing fees including a careful and practical consideration of the *Hemming* case law, while chapter five considers the Rehabilitation of Offenders Act 1974. Chapters two to five provide the most current consideration of these general principles, which are of application across the range of local authority licensing.

This edition is also the first since the *Rotherham* inquiry and the greater appreciation and application of the safe-guarding agenda. It is no surprise that the opening paragraphs of the new volume grapple with the concept of the public interest, of which the author, at paragraph 1.3, provides a vivid definition:

> *The 'public' is not a homogenous mass, but is comprised of many individuals with different needs, abilities and, in some cases, disabilities. It is important that the service provided by hackney carriages and private hire vehicles can cope with this variety. The rationale behind a licensing regime covering this important part of the public transport of the country is the provision of a service to the public that is accessible and safe, and seen to be so. Public safety is paramount in the licensing regimes that govern these vehicles, their drivers and operators. It is the basis of decisions made as to whether or not a particular person or vehicle should be, or remain, licensed. Public safety encompasses not only the prevention of direct danger to the passenger from the driver of the vehicle or a slightly direct danger to the passenger and other members of society from the vehicle itself or the way in which the vehicle is driven. Public safety includes the general perception that hackney carriage and private hire vehicles provide a safe reliable form of transport. In addition, it must not be overlooked that the hackney carriage and private hire trades employ a great many people, who also have a right to expect a fair and reasonable licensing regime to govern their activities.*

A striking development in the fourth edition are the examples of how and why the public interest is engaged in the particular circumstances. The effect of this provides an arresting reminder of the importance of a regime that might otherwise seem mundane and routine. Licensing law and practice is populated with curious characters and outrageous tales, many of them gleefully recounted at the IoL meetings. *Button* reminds us that decisions taken by sub-committees in town halls up and down the country have direct, and often immediate, impacts on their local communities.

The considered and thorough methodology of *Button on Taxis* is familiar: the text book sets out the legislation, explains the practical application of the legislation and highlights the questions and challenges raised by the practical application of the legislation. Where the courts have considered these questions, *Button* examines each in turn: every case is briefly summarised in a boxed heading, followed by relevant ample extracts from the cases and summaries of the principles established.

This approach is generous. *Button* clearly and consistent sets out the narrative of his thinking. Thus a reader who does not agree with the conclusion and analysis can see the reasoning leading to the conclusions, and in language accessible to all, not just a cabal of lawyers.

Jim Button has been and continues to be a dedicated servant and officer of the Institute of Licensing. A regular and popular speaker at regional and national events, he regularly contributes his unique wealth of knowledge and expertise to the *Taxi Update* in the *Journal of Licensing*.

Save for *Paterson's Licensing Acts* and the *Journal of*

Licensing, the familiar texts books regularly relied upon by licensing practitioners are now becoming dated. A fresh current edition of *Button* is thus most welcome as it stands as the sole in-depth commentary on the practical application of taxi and private hire regimes. Undoubtedly, the fourth edition will become as eagerly and regularly used as the third edition it replaces. Let us hope the wait for a future fifth edition is nowhere as long as the one endured for this.

Club law and management

Authors: Philip R Smith and Charles Littlewood
Publisher: The Association of Conservative Clubs
Price: £10.00

Reviewed by **David Lucas,** solicitor, Fraser Brown

The number of club premises certificates has decreased from 17,000 in March 2010 to 14,700 in March 2016. In evidence given to the House of Lords Select Committee on the Licensing Act 2003 last year it was said that 3,500 clubs had closed in the previous five years. Nevertheless, private members' clubs continue to be an important asset on both a national and local level.

There is a lack of specialist books on the subject of the legal aspects and management of private members' clubs so this work is particularly welcome.

Philip Smith, also known as Lord Smith of Hindhead CBE, has a wealth of knowledge and experience which he has accumulated since joining the Association of Conservative Clubs in 1987. He is currently the Chief Executive of the Association and has held that post since 1999. In addition, he is Chairman of the Committee of Registered Clubs' Associations.

Charles Littlewood joined the Association of Conservative Clubs in 2009 and is currently the Assistant Chief Executive. He assists clubs with issues relating to the law, management and general conduct of their business.

The topics covered by the book include membership, committees, meetings, licensing, employment, gambling, finance and tax.

The format of the book is questions and answers which are based upon actual queries that have been received by the authors. In this sense, the reader is provided with practical solutions to a number of situations that may arise in the day-to-day affairs of a private members' club.

The book will be beneficial to all those involved in the management of private members' clubs including officers, committee members and external advisers.

2018 Dates for the Diary

National Licensing Week
18-22 June 2018

National Training Day
20 June 2018

National Training Conference
14-16 November 2018

(Please note dates may be subject to change)

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