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Foreword

Jon Collins

Chairman, Institute of Licensing

Those of us able to attend the National Training Event in Birmingham last November bore witness to so much of what is great about our Institute. Expert speakers addressing a similarly expert audience ensured each session was engaging, informative and, occasionally, highly entertaining. As one would expect from an Institute event, the evening sessions were similarly valuable albeit in a rather less formal way. The NTE made for a fitting end to an excellent year for the Institute - a year which began with the successful delivery of a comprehensive programme of seminars for the Home Office against a very challenging timetable.

Amidst the debate, dialogue and discussion at the NTE, it was appropriate to pause and recognise certain individuals who have contributed so much to the field of licensing in general, the activities of the Institute in particular or both. The presentations of fellowships to Roy Light and Ian Webster and companionship to Jim Button were richly deserved and warmly applauded by all present. I would like to take this opportunity to once again thank all three for their efforts to advance the cause of licensing and the Institute over the years.

All in all, delegates left Birmingham better informed, brimming with ideas and well equipped to make a strong and valued contribution to licensing matters in their own areas throughout the year ahead. And 2013 will not be without its challenges as both industry and regulators alike seek to maintain standards in the face of on-going economic difficulties. In fact, the operating climate will be further complicated by yet more change prompted by central Government. Uncertainty abounds as to the scale of impact of Early Morning Restriction Orders and the Late Night Levy, while legislation is likely to restrict retailing of alcohol in the off trade and place a greater emphasis on the health implications of licensing decisions.

Separately, a review of the mandatory conditions for the retailing of alcohol could also have a significant impact on how alcohol can be sold. The mandatory conditions could be the vehicle used by Government to tackle a wide range of issues currently under consultation from serving to drunks and off trade promotions to serve size and acceptable ID. It is therefore important that we contribute to the debate both collectively as an Institute and through our individual organisations.

More deregulatory proposals will be welcomed by many but, of course, will create more change and uncertainty. The plan to remove the need to advertise applications and variations in local newspapers should, if implemented, remove a cost that most in industry thought unnecessary in the first place. Plans to cut regulations around neighbourhood events, including removing the requirement for premises licences at certain times and to limited audiences for indoor sport activities, plays, dance performances and live and recorded music (in alcohol licensed premises), will be welcomed by many in principle. As ever, local authorities will be given the task of ensuring that their implementation does not compromise the licensing objectives.

In addition to our work on alcohol and entertainment licensing, the Institute is currently feeding into policy work across multiple departments. On transport, we are contributing to the fundamental review of taxi and private hire vehicle licensing while also considering issues of a more technical nature such as the potential removal of the requirement for insurance certificates. On gambling, we are engaging with the Better Regulation Delivery Office on its proposals for this matter to come under an extension of the Primary Authority Scheme. And through our regional representatives, we are ever more engaged in the policy debate at the Northern Ireland and Welsh Assemblies and the Scottish Parliament.

Whether it is direct contact with Departments or through our chairing of the National Licensing Forum, Institute representatives are seeking to provide a strong voice for our members whenever and wherever relevant policy matters are under discussion. Indeed, it remains our ambition to lead the discussion not merely participate (hence the revival of the National Licensing Forum). If you feel there are areas of licensing that would benefit from revision, please do not hesitate to contact the team.

The Institute is uniquely able to call on an expert perspective on licensing matters from trade and regulators alike. Our work draws strength from our core belief in a mutually respectful partnership of knowledgeable and professional equals. As a result, our proposals, tested at the local level, will put in place durable, sustainable solutions. Given the Government's current and imminent legislative and regulatory workload it is critical we are successful both in presenting this message and the tactical and strategic benefits it delivers. That way, as it states in the Institute's articles, we will be meeting our objective to advance practical achievement in the field of licensing and regulatory activity, including their application in the public and private sectors and in the framing and enforcement of laws and regulations.

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Editorial

Leo Charalambides

Editor, Journal of Licensing

It is a truth universally acknowledged that the promotion of the licensing objectives is of paramount consideration at all times. While the licensing objectives are easy to state, it seems to me that their extent and scope have yet to be properly understood and applied.[1] In *Hope & Glory,* the Court of Appeal made a significant and hitherto neglected observation: "Licensing decisions often involve weighing a variety of competing considerations: the demand for licensed establishments, the economic benefit to the proprietor and to the locality by drawing in visitors and stimulating the demand, the effect on law and order, the impact on the lives of those who live and work in the vicinity, and so on."[2] It will be immediately apparent that these comments sit uncomfortably with our accepted approach to the licensing objectives.

They challenge our accepted boundaries of the licensing objectives by introducing market considerations and/or commercial demand as relevant considerations to the determination of licensing applications – considerations which we have hitherto deemed inappropriate. Furthermore the recognition of an evaluative judgment proposes that some considerations will weigh more heavily than others, contrary to the view that all licensing objectives are equal.

In the recent case of *Taylor v Manchester City Council,*[3] Hinkinbottom J was much impressed and occupied with what he described as the "illuminative" judgment of the Court in *Hope & Glory*'.[4] (Hinkinbottom J's overview of the Licensing Act 2003 regime is itself a through and illuminating judicial overview of the Act that merits close and careful reading by all licensing professionals.) The learned judge opined (at para 92) that "... ... ... "Promoting the licensing objectives" ... requires the balancing of various strands of public interest; and in performing that balance, it is possible, of [sic] not inevitable that one of the objectives may be demoted in order to benefit another."

There can be little surprise to this statement that in order to promote the licensing objectives decision-makers may need to turn their minds to questions of priorities. This may require a fresh examination of the scope and extent of the licensing objectives and also the key aims and purposes of the regime; these are helpfully set out at para 1.5 of the section 182 Guidance and should inform any such reading. We are told that these key aims and purposes are "vitally important and should be principal aims for everyone involved in licensing work."

- Protecting the public and local residents from crime, anti-social behavior and noise nuisance caused by irresponsible licensed premises;
- Giving the police and licensing authorities the powers they need to effectively manage and police the night-time economy and take action against those premises that are causing problems;
- Recognising the important role which pubs and other licensed premises play in our local communities by minimising the regulatory burden on business, encouraging innovation and supporting responsible premises;
- Providing a regulatory framework for alcohol which reflects the needs of local communities and empowers local authorities to make and enforce decisions about the most appropriate licensing strategies for their local area; and
- Encouraging greater community involvement in licensing decisions and giving local residents the opportunity to have their say regarding licensing decisions that may impact upon them.

The tenor and tone of the *re-balancing* exercise (which is reflected in these aims and purposes) suggests that the views of civil society and of the enforcement and regulatory bodies (in particular those of the police) should be given a higher priority.[5]

Taken together, it seems to me, that there is a growing tension between the preventative approach required by the promotion of the licensing objectives, the benefits of partnership and co-operation, the proper balance of competing (relevant) interests and the prioritisation of some (relevant) interest over others. How these are resolved will no doubt be the subject of future editorials, articles and our regular features.

1 See Colin Manchester, *Alcohol and Entertainment Licensing*, 3rd Edn., 2012, pp 120 – 140.
2 [2011] EWCA Civ 31, paras 41 – 42.
3 [2012] EWHC 3467 (Admin).
4 See *Taylor* para 72.
5 See Leo Charalambides, The four licensing priorities, Local Government Lawyer, (13th February, 2013).

Determining the appropriateness of Sexual Entertainment Venues

A year-long study of the regulation of striptease and lap dance clubs in England and Wales by **Professor Phil Hubbard** and **Dr Rachela Colosi** has found evidence of divergent regulatory approaches. They suggest more attention needs to be paid to guiding applicants towards appropriate locations to ensure that the offence that lap dancing venues can cause is minimised

The emergence of lap dance and striptease clubs since the late 1990s has prompted significant debate, with the opening of such clubs routinely opposed by local resident and business groups as well as by those arguing such clubs represent a pernicious and damaging "sexualisation" of society. One well-documented consequence was the inclusion of new adoptive powers in the Policing and Crime Act 2009 which added the category of Sexual Entertainment Venue (SEV) to the list of sex establishments controlled by the Local Government (Miscellaneous Powers) Act 1982.

Under the terms of this legislation, any premises where a live performance or a live display of nudity is provided to an audience "solely or principally for the purposes of sexual stimulation" on more than "eleven occasions... within the period of 12 months" (section 27, schedule 2A) needs to be licensed in the same manner as a sex shop or sex cinema. Moreover, a licence may be refused simply if the local authority determines that "...the number of sex establishments, or of sex establishments of a particular kind, in the relevant locality at the time the application is determined is equal to or exceeds the number which the authority consider is appropriate for that locality" (Home Office, 2010: 3.34).[1] Given the definition of a "locality" is left to the local authority, the new powers give authorities a potentially high degree of control over SEVs.

As previously documented in this journal,[2] the introduction of these new powers has allowed for the emergence of an uneven geography of regulation, leaving operators facing different application procedures depending on where their club is located. Indeed, our survey of 326 licensing authorities in England and Wales suggested that around only one in ten appeared not to have adopted the new powers for regulating lap dance clubs (as of 1 September 2012). These included some rural and largely remote local authorities with no tradition of sex establishments but include some where lap dance clubs remain open (and licensed under the 2003 Licensing Act). At time of writing, these include Bolton, Charnwood, Kirklees and Norwich.

On the other hand, there are many local authorities where the new powers have been adopted where there is currently no club offering striptease or related forms of sexual entertainment on a regular basis, seemingly on a precautionary basis in case an application might be made in the future. This latter group includes some local authorities that previously had lap dancing clubs but do not have any currently (e.g. Bury, Bridgend, Cannock).

Beyond this evident variation in the adoption of the newer, and potentially more stringent, licensing regime, there are significant differences in the approaches taken by different authorities. Most state that each application will be considered on its merits, but stress there is a presumption against clubs in the vicinity of particular land-uses (e.g. shops, family housing, education facilities, transport hubs, historic districts and "areas in transition"). Yet some local authorities have gone further to suggest there are no suitable locations for new SEVs: these include Enfield, St Albans, Haringey, Harrow, Richmond on Thames, Tower Hamlets, Havant, Havering, North Tyneside, the City Corporation of London, Wellingborough, Winchester and Hackney.

The justification for the application of a "nil limit" in these local authorities varies, and where there is no existing club operating, this raises the spectre of legal challenge given it might be considered legally unreasonable to prevent lap dance occurring in the totality of a local authority area: after all, the intention of the Policing and Crime Act 2009 was

1 Home Office, Sexual Entertainment Venues: Guidance for England and Wales, 2010.

2 Sanders, Campbell and Hadfield, Dancer Welfare at Sexual Entertainment Venues, (2012) 3 JoL 4 – 9.

not to render striptease an illegal or criminal activity, but to provide local authorities with new powers to determine where it is appropriate in their jurisdiction.

This paper hence begins from the assumption that the adult population of England and Wales has the legally enshrined right to view sexual entertainment and sexually-charged performances, and that the role of local authority regulation should not be to presume refusal in all circumstances. Taking this as read, we are concerned with exploring how local authorities might determine the location and visibility of clubs in a way that mitigates the possibility for harm to residential populations and groups who live in the local authority boundaries. As this paper will detail, the evidence collected in our research suggests that the harms of lap dancing for the local community are more likely to be related to offence and disgust rather than physical harm or experiences of crime: while there is no question that licensing has a role to play in shaping the conduct and management of activities within the club, that is not our intention here. Rather it is to consider the evidence as to which populations and residents might be most troubled by the presence of lap dance clubs in their communities, and to think about how these might result in clear, proportionate and socially-just policies concerning the location and visibility of clubs in England and Wales.

The licensing of SEVs

As of the end of 2012, our research estimates there were 241 licenced premises offering striptease or similar entertainment on more than 11 occasions per year. Of these, 198 had an SEV licence and 38 operated under the Licensing Act 2003. Initial analysis suggests that the widespread assumption that SEVs are lap dancing clubs marketed at a mainly male clientele holds true, but this should not distract from the fact that some other types of venue where nudity is performed for an audience have also sought, and obtained, a SEV licence: this includes six gay clubs, two burlesque/variety venues, one sex-on-premises encounter and a "swinging" venue.

The limited number of licences granted to such venues immediately raises the question as to why some clubs and venues where nudity designed to sexually stimulate an audience is regularly performed (including some that even describe themselves as adult sexual entertainment venues!) are not being noted by the local authority, whereas lap dancing and "gentlemen's clubs" rarely escape scrutiny, with specific clubs being named in the committee discussions which deliberated on the value of adopting the new powers.[3]

However, the preoccupation with regulating lap dancing clubs is understandable given it was the emergence of such clubs in often-prominent city and town centre locations that has prompted campaigns of opposition both at the local and national level. This said, of those clubs licensed as SEVs since the introduction of the provisions of the 2009 Policing and Crime Act, 43% received no official objections at time of licence determination. In fact, the vast majority (over 70%) receive only one or two objections, and only around one in ten applications receives upwards of 30 objections. This suggests that public opposition is uneven, with a relatively small number of clubs (mainly new venues) attracting most opposition.

Where venues are opposed, the range and scope of objections varies widely, with the unsuitability of clubs in particular locations being emphasised through representations which suggest clubs may lower the tone of areas, attract unsavoury characters, add to existing problems of anti-sociality and have potentially negative consequences for women and children in particular. Where clubs are not already operating, such objections are of course conjectural, and based on stereotypes about the type of clientele venues might attract, and the kind of nuisances that might be generated. Significantly, where clubs are operating, little evidence has been presented by objectors about criminality or disorder around clubs, with the majority of representations talking about the generation of anxiety for local residents.

The idea that venues contribute to the fear of crime is of course important in the context of community safety, especially in situations where some women claim that the presence of a club makes it hard for them to feel safe in the city at night. But whether this type of position is based on a moral objection to lap dancing as a gendered form of entertainment is difficult to determine. Evidentially, it is hard for licensing authorities to distinguish between legitimate and illegitimate grounds for licence refusal, as moral objections are supposedly inadmissible under the guidance provided by the Home Office.[4] For example, in alleging that a lap dance club might be unsuitable in a location previously occupied by another licensed premises (e.g. a club or pub) it appears difficult to imagine that questions of morality would not infuse an objection, with the character of SEVs and their potential impacts on a community projected on the basis of the entertainment they provide. For instance, the suggestion that an SEV might attract "unsavoury characters" rests on the assumption that an SEV provides a form of entertainment that appeals to a particular type of audience. The idea that those whose sexual standards do not reflect those of the "moral majority" will also fail to respect other norms of behavior is then a judgement that could be dismissed as morally infused, and hence illegitimate, by those determining SEV applications. This noted, judgements of the size and character of the clientele a venue is likely to attract provides legitimate grounds for refusing a licence in a given locality.[5]

To date, 17 SEV applications have been refused: *Saints & Sinners* and *The Pad* (Bedford); Lounge@30 (Bristol); *Baby Blue*, *Panache* and *Angels* (Leicester) (the latter having been granted a licence subsequent to initial refusal); Dazzle (Ealing); *Piano Bar* (Twickenham, Richmond); *Pandoras* (South Bucks); *Kiss* (Newquay); *Shades* (Warwick) (refused twice); *Max 2* (Lambeth);*Thirst Lodge* (Oxford) (refused once, not renewed once) and *Tantric Blue* & *87*

3 In December 2012 the London Borough of Lambeth heard applications for and granted SEV licences to the majority of its gay venues that offered performance, nudity and 'sex-on-premises' encounter facilities – Editor.

4 Home Office, 2010: 3.23; see also *R v Newcastle upon Tyne City Council ex parte The Christian Institute* [2001] BLGR 165.

5 See Kolvin, P. (2010) *Sex Licensing*, London, Institute of Licensing.

Bank Street (Maidstone). Overall, there is no statistical relationship between the number of objections made and the likelihood of licence refusal. Interestingly, some clubs with large numbers of public objections, and some where police representations were made urging refusal, have been granted licences.

The fact that the discretion granted to local authorities to refuse a licence is considerable, and that only one of the refusals has gone to judicial review thus far, means that there is little case law in this area that helps us understand what considerations are given particular weight in licensing deliberations. In most cases of rejection, local authorities merely state that the granting of the licence would be inappropriate having regard to the nature of the locality and/or the uses to which buildings in the vicinity are put. Further justification or elaboration as to why a particular locality is not suitable is often lacking, and the vexed question of what the relevant locality is left undefined.

On occasion, reference is made to family housing areas or proximity of schools and other facilities, yet the potential harms or nuisances that might be created by the presence of a lap dance club are left unstated. For example, it might be questioned why it is inappropriate to allow a lap dance club on a street leading to a school if the opening hours are set so that those of school age are not around on the street at the time this club might be open. Conversely, it could be questioned why a club might be permitted near to family housing or accommodation if it opens late (e.g. after midnight) given a family home is, presumably, always a family home and does not stop being so at certain hours.

Clearly, the question of what the harms of lap dancing are, and how these might be minimised, are ones that licensing officers, and councillors, are spending much time grappling with, often without any reputable academic evidence or case law to draw upon. This means that decisions are made with reference to "common sense" knowledge. For example, the idea that lap dance clubs are unsuitable near schools appears to be a social convention that is never questioned: the idea that children might be psychologically disturbed or morally corrupted by seeing lap dance clubs in their communities is not proven, but appears widely-enough shared that ensuring some sort of buffer between schools and SEVs seems sensible.

How wide that buffer is appears to be a matter for local determination based on particular consideration of the prominence and visibility of clubs, albeit some local authorities have already determined that some wards are not suitable for clubs irrespective of how far away clubs might be from educational facilities or premises habitually used by children (without any consideration as to whether a ward is homogeneous in character or the varied nature of the uses to which premises might be put across a ward).

While we are not disputing here that "common sense" knowledge might provide the basis for making licensing decisions, there is of course the possibility that these are grounded in misconceptions and myths that would not bear legal scrutiny (or at least might be considered morally infused). It is our contention that policy in this area – as in any area of licensing – would benefit from being *evidence-based.*

Researching attitudes to SEVs in England and Wales

As noted above, while there has been some attention given to dancers' welfare within clubs, there has been no peer-reviewed research on the impacts of lap dancing clubs on the communities in which they are located. The purpose of our Economic and Social Research Council-sponsored research was therefore to explore how local authorities can best achieve the broader aims of licensing - i.e. maximising public safety, minimising public nuisance, and reducing crime and disorder – in relation to SEVs. More widely, the aim was to explore whether any generalisations can be made about where clubs may be appropriate or inappropriate.

To examine local resident perceptions of SEVs, we examined four case study locations which possessed different numbers of SEVs and had different traditions of night-life. These included an expanding market town, a small city boasting a university, a large tourist resort with a substantial tradition of stag and hen tourism, and a regional capital boasting a very vibrant and vital night time economy. In each of these case study locations, we aimed to explore the ways that the presence of SEVs changed people's experience of the night-time city, paying particular attention to questions of gender. Although all of the towns had venues such as gay saunas, swingers' sex-on-premises venues and massage parlours that could be considered to be requiring SEV licensing, all of the currently licensed clubs considered in our study were lap dancing or gentlemen's clubs providing female dancers and performances aimed principally at heterosexual men.

To explore residents' attitudes to these venues, a combination of online and paper surveys were administered, with the project being advertised through the local press in the four locations, which are nonetheless anonymised here. This survey was ultimately completed by 941 adult respondents recruited from the four case study locations (any responses from those living outside the local authority areas in question were ignored). Of the respondents, 68% were female; 40% had children under 18 living in their household; 48% lived in a home that was owned or mortgaged; 87% described themselves as white British or white English; 61% claimed no religion; 46% were aged 25-39 but only 13 respondents (1.4%) were over 65. This means our survey may not be representative of national views, and that certain groups may be under-represented despite efforts to ensure the survey did not just solicit the views of those who hold strong anti- or pro- views towards lap dancing venues, noting that those who are more ambivalent are fairly unlikely to respond to local licensing applications for SEVs.

From the survey, 46 respondents were recruited for evening walk-along events which were audio-taped and photographed. Respondents were asked to speak about their feelings about different parts of the town, with routes chosen to ensure some SEVs would be visible. Semantic rating scales were used to explore their feelings about different locations. The walk-along events were mixed gender, and included participants from a variety of age groups, again intended to be broadly representative of adult users of the night-time economy.

Key findings

Initial questions on the night-time economy explored perceptions of nuisance, and asked respondents to name particular premises that they felt caused nuisance in their local neighborhood and town centre respectively. One in five respondents identified a venue in their town that they thought caused particular nuisance: 65% of these were pubs or clubs, 20% take-aways or off-licences and 15% SEVs. This implies only around 3% of our respondents felt that an SEV was a source of particular nuisance in their town or city, a figure that might still be considered as significant given the relatively small number of lap dance venues in our case study towns. Interestingly, our survey found that 22% of respondents who lived in towns with one or more SEVs present were unaware of these premises. One in four of those who were aware of such premises had visited a lap dance venue: of the rest, most had become aware of a venue by seeing it on the street rather than reading about it in the media.

In terms of premises causing particular nuisance, lap dance clubs were identified as causing antisocial behavior, crime and noise problems, albeit that pubs were more frequently associated with the latter. In a more general sense, when asked about the impacts known SEVs were having on their local town, one quarter felt that these reduced safety, one third that these increased anti-sociality but the majority (75%) felt their presence was lowering the tone. Conversely, few cited negative impacts on property price, littering, noise or parking as significant impacts of any SEVs (contrary to some of the views given in relation to pubs and take-ways, which were more frequently identified as problem premises). Those who have children in their home appear significantly more likely to describe existing SEVs as a source of nuisance than those without.

Overall, we found some significant divergence in attitudes to SEVs in our different case study areas which were not directly related to the number of clubs present but appeared to be more shaped by the location and visibility of clubs, particularly in areas where other "problem" venues might be present (e.g. other licensed venues with reputations for anti-social behavior). Here, cited anti-sociality was primarily in the form of loud, drunken behavior (including public urination and petty vandalism), rather than sexual harassment or abusive behavior. In this sense, SEVs were seen to be exacerbating behavior which has become routinized in some spaces of night-life, and which cumulative area policies are often keen to discourage. The idea that SEVs lower the tone of particular areas appeared significant in many of our respondents' minds in identifying them as playing a role in attracting a certain "class" of clientele.

In terms of the general suitability of SEVs in different locations, 83% of our respondents thought SEVs unsuitable near schools or nurseries, 46% near universities/colleges, 65% near religious facilities, and 45% near shops. Only 3% think SEVs are suitable in residential areas, 10% in rural areas, and 15% in industrial areas, though the majority (55%) feel town centres are suitable. Around one in ten claim there are no suitable locations for SEVs at all. This group is most likely to regard SEVs as promoting sexism, and least likely to regard it as harmless entertainment. This group is also most likely to report avoiding walking past SEVs at night. However, this group does not have an over-representation of people with children in the household, even though this was the population most likely to report nuisance from SEVs.

The implication here is that SEVs are not regarded as a significant source of nuisance by the majority, but that a significant minority feel such clubs are inappropriate because they promote sexism, crime and encourage antisocial behavior. This group appears to harbor concerns that SEVs might encourage and normalise particularly negative attitudes towards women. Perceptions of SEVs therefore appear to be strongly shaped by gender, though men living with children in their household, and those over 40, also appears significantly more likely to be opposed to lap dance venues. Religion, sexuality and ethnicity appear to make no significant difference to attitudes to SEVs. Interestingly, those who had a lap dancing club within a 400m radius appeared no more likely to object to their presence, or note nuisance, than those living further away.

Overall, it should be noted that around one in three of our respondents claimed to feel reasonably unsafe or very unsafe walking in the city at night. This group was significantly more likely to say there were too many SEVs in their town than those who felt safe, and more likely than any other group to say they would avoid walking past a lap dance club at night. Women were significantly over-represented in this group, suggesting the presence of SEVs in the night-time city may have gendered effects. This was explored in our guided walks, which suggested women were more likely to note, and comment on, the presence of SEVs in their local towns than men. Here, unease about SEVs appeared more related to questions of class, morality and disgust than fear, with SEVs' contribution to antisocial behavior and rowdy behavior deemed marginal, and sometimes insignificant, compared with some other venues. Notably, SEVs that had discreet signage, were well-kept and did not overtly sexualize the public realm appeared least likely to provoke unease among participants in our walk-along events, who often spoke of their concerns about the impact of advertising on children.

Implications for licensing policy

The results of our survey and walk-along events are not consistent and at times appear contradictory, but some important messages emerge:

- The majority of people do not identify SEVs as a particular source of concern, and most consider them acceptable in town and city centres, but not in residential, industrial or rural areas. The fact that proximity to schools was seen to be an issue by the majority lends support for considering the way that clubs are located relative to facilities to children (even if there is no evidence that such clubs do cause harm to children, the concern that children should be sheltered from the sight of sex businesses was commonly supported). This implies a presumption to licensing approval in town and city centres, and refusal elsewhere, unless there are concerns about the proximity of schools whose pupils might routinely pass city or town centre venues.

- Opposition to SEVs appears mainly based on perceptions that clubs normalise sexism and promote anti-social behavior rather than any direct experience of crime. None of those claiming that SEVs cause antisocial behavior or criminality provided specific examples that suggest these venues were particularly problematic relative to other venues, albeit that there were concerns that lap dance clubs can lower the tone of certain areas of nightlife, and contribute to a general ambience that creates fear for some – especially women, who were the most likely group to argue for fewer lap dance clubs in their local town or city.

  This implies that SEVs are not to be encouraged in areas that have existing reputations for anti-sociality and drunkenness, even if these clubs do not necessarily exacerbate these problems. This might cause problems where particular areas of town or city centres are "saturated" with licensed premises given the nuisance that many of our respondents associated with pubs, clubs and take-aways. The implication here is that the town and city centre should not always been considered as a single locality for SEV licensing purposes given the perceived differences in the character of particular streets and areas noted by our respondents, especially in the context of larger towns and cities.

- This stated, not all clubs are perceived to have similar impacts on their locality. Some clubs are judged to be better managed and less likely to be lowering the tone, primarily on the basis of their external appearance. Signage or club names that implied sexual connotations were more likely to attract comments and anxiety, while blacked out windows appeared to arouse suspicion and lend some clubs a "sleazy appearance". This implies some role for licensing conditions in terms of changing the ways that clubs are visible in the landscape, noting that clubs that are less obviously SEVs are least likely to be viewed as problematic. Those viewed as "sexualising" the street are most likely to cause offence, and create fear among those already fearful of the city at night.

Conclusions

Our research suggests the majority of the population is not especially concerned about lap dance clubs in their local town or city, albeit most do regard them as problematic in residential areas or near schools, and consider that they can lower the tone of the areas in which they are located. There is, however, a significant minority – around one in ten – that considers SEVs to have no place in a civilized society, and the licensing process needs to take their views seriously given the importance of gender equity and equality and given this group mainly consists of women.

Rather than supporting a blanket ban on the basis of the objections of a minority, our interpretation suggests that licensing needs to proceed in favour of approval but must pay serious attention to lessening the offence caused to a minority by ensuring that clubs are not intimidating in appearance (noting most people first become aware of lap dancing clubs in their city by seeing them on their streets), and are restricted to locations where they cannot be accused of corrupting or influencing young people. Beyond this, it would appear that the mandatory conditions of holding an SEV licence, and withdrawing licences from clubs which are found to generate any criminality, might be sufficient for ensuring SEVs remain well run venues which have a place in our town and city centres, even if some object to them on moral grounds. Ultimately, just because some sections of society find SEVs distasteful or offensive does not provide a basis for banning them, but this does imply a need to ensure that clubs do not negatively impinge on the lives of those who want to avoid them. Certainly, until SEV licensing is able to recognise objections based on moral grounds (i.e. the idea striptease is distasteful or disgusting), any presumption towards automatic licence refusal certainly appears unreasonable given the tastes of a minority should not be allowed to dominate decisions made on behalf of the public as a whole.

Professor Phil Hubbard, University of Kent, and **Dr Rachela Colosi**, Lincoln University

Institute of Licensing *Training*

Institute of Licensing

An important element of the Institute is training, and in addition to the National Training Event we organise residential and non-residential training courses throughout the year on different subjects including licensing fees (2012), licensing hearings for all parties (2012) and outdoor events (2011/12) to provide timely and relevant training opportunities to our members, including basic training aimed at new entrants, and advanced training for established practitioners.

One of the IoL's main member benefits is the low cost good quality training courses that are available to members in each of the 11 regions and on a National level.

National Training Event

Our signature event, the National Training Event (NTE), held each November, was substantially changed for 2011 following feedback from Institute members against a background of a difficult financial climate. The result was an improved and extended programme with more choice for delegates at less cost for our members. In addition, key programmes were repeated within the event programme which enabled delegates more opportunity to tailor the programme to their individual preferences without having to miss other preferred sessions. This successful format was repeated at the 2012 National Training Event, which was a sell-out.

The 2013 NTE will follow a similar format and will be held on 20th - 22nd November in Birmingham. Keep an eye on our website for more information and how to book your place. Make sure you don't miss out on this must attend training event of the year.

Training Courses

The Institute continues to increase the number and frequency of training delivered across all our 11 regions. In 2011 for example we delivered over 80 training courses across the country, all of which were available at significantly reduced costs to Institute members.

The Training courses currently available for delivery in any of the 11 regions include:

- How to Inspect Licensed Premises
- Caravan Site Licensing
- PACE & Investigation Courses
- Taxi Licensing
- Street Trading and Pedlars
- Licensing Act 2003
- Gambling Act 2005
- Basic Licensing Principles
- Councillor Training
- Licensing Hearings for All Parties
- Sex Establishment Licensing
- Animal Welfare Licensing
- Bespoke training courses to suit your requirements

The IoL can deliver at your location; you can also email training@instituteoflicensing.org for a quote on your training requirements. Most IoL training courses can be delivered at your preferred location for the training fee of £1000 plus VAT (including expenses) for a one day course and in many cases delegate numbers are not restricted allowing the training to be opened up to neighbours which in turn can allow for the cost of the course to be fully recovered.

How best to impose sanctions on taxi drivers

Revocation or suspension of a taxi driver's licence before an investigation is completed can be the only course of action if the licensing authority is concerned at a driver's fitness, writes **James Button**

As the months pass, we get closer to the possibility of new taxi law. The Law Commission received an unprecedented response to the Consultation document on Taxi Law Reform and has been wading through well over 2,000 responses. It is quite sobering to consider the magnitude of the task that faces them: each response will have to be evaluated and then considered as part of the process of developing a draft Bill. In addition, all responses are to be published (on the Law Commission website) and before that can happen each must be assessed as to whether any sensitive material needs to be redacted.

It remains to be seen how many pages of responses there are, but on the basis that the Institute of Licensing's response ran to 40 pages, it is probably reasonable to assume that the average response will be between 10 and 20 pages, so we have around 30,000 pages of responses to wade through. No doubt somebody will read them all!

It was interesting to hear from the Law Commission at the National Training Event in Birmingham that it is not committed to two-tier licensing and has received interesting and practical suggestions for single tier systems (and it is hoped that the proposal from the Institute is one of these) so it really is an interesting question as to what proposals will emerge.

In the meantime, what is new in taxi licensing?

Suspension or revocation of a driver's licence re-examined

The fallout from the decision in the *Singh*[1] case continues to rumble on.[2]

As was made clear in the last issue, the approach used by most authorities of suspending a taxi (hackney carriage or private hire) driver's licence to allow for an investigation following a serious allegation or complaint,

James Button

with a subsequent revocation of licence if the allegation or complaint was well founded, has been ruled unlawful.

However, it has been suggested that the judge in that case, Singh J, did not intend this consequence. At paragraph 102 of the judgment he stated:

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.

Unfortunately it is difficult to see how this comment alters the impact of his judgment. The powers contained in section 61(1) are:

(1) Notwithstanding anything in the Act of 1847 or in this Part of this Act, 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—

1 *R (app Singh) v Cardiff City Council* [2012] EWHC 1852 (Admin).
2 Button, Taxi licensing: law and procedure update, (2012) 4 JoL 8.

(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.

Section 61(2B) does not alter this power, merely allowing a decision to suspend or revoke to take place with immediate effect (in contrast to section 61 (2A) where there is no effect for 21 days):

(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.

Accordingly, it would appear that any decision under section 61 must be to *either* suspend *or* revoke the licence, and once that decision has been made by the authority, no further action in relation to that licence can be taken, irrespective of whether it was an immediate suspension under section 61(2B) or a "normal" suspension under section 61(1).

There is nothing else in the judgment of Mr Justice Singh which provides any argument for distinction between the two mechanisms and it is my view that his statement in paragraph 102 is effectively a red herring.

It may well be the case that this was not the intention of the draughtsman when the legislation was first promoted, or subsequently amended to allow for immediate suspension or revocation, but unfortunately in the light of this judgment that does appear to be the situation.

What then can local authorities do where there are serious concerns about the fitness and propriety of a driver following complaints or allegations but before the investigation has been completed?

It would appear that the only approach that can be taken is to decide upon the sanction on the basis of the allegation and suspend or revoke the driver's licence (which could be with immediate effect in the interests of public safety under section 61(2B). The delegations to allow such decisions to be taken quickly need to be clearly set out.

In addition, it is essential that the driver has a chance to answer the allegations and put forward his case. This can be a short period of time, communicated by telephone, text, e-mail, fax or in person, but failure to factor this into the process would lead to a successful challenge.

If the driver then appeals, any new evidence resulting from the investigation can be adduced at the magistrates' court to justify the decision.

It is also important to have a mechanism to enable the driver to be relicensed (or the suspension lifted) if the investigation does not reveal sufficient evidence to justify the earlier decision. Clearly, a suspension can simply be lifted, although the delegation to do so needs to be clear.

In relation to a revocation, the licence cannot be re-instated and will need to be re-issued. It would seem reasonable in these circumstances to accept the pre-grant enquiries (e.g. medical tests, knowledge, CRB 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.

I would suggest these decisions should be delegated to an officer in consultation with the Chair or Deputy of the Licensing (or appropriate) committee. This will continue member involvement, while allowing for speed of decision making.

In relation to costs on a successful appeal, *Bradford MBC v Booth* [2000] All ER (D) 635 will continue to apply, and provided the authority did not act negligently, capriciously or incompetently in arriving at its decision it should not be penalised in costs even if the subsequent decision of the magistrates is to uphold the appeal. As the law now prevents suspension for the purposes of investigation, it is difficult to see how an authority that had acted in this way could be said to have acted improperly.

As I said at the end of my last update, this situation is difficult but local authorities must recognise that such mechanisms need to be put into place because public safety is paramount. In addition, the trade will want local authorities to take action to remove dangerous drivers as quickly as possible.

Once again it is a matter which it is hoped that a new legislation emanating from the Law Commission will address.

James Button
Principal, James Button

Article

What control do licensing authorities have over betting premises? Part 2

In his follow-up article on whether licensing authorities are behaving too permissively towards betting premises applications, **Gerald Gouriet QC** examines the crucial need for evidence, rather than personal distaste, in arriving at a decision

In the first of two articles about betting offices and the perceived problems of their proliferation, published in the last issue of this journal[1], I dealt with the existence of a discretion to control the number of betting offices in the area of any licensing authority that had particular concerns. (There had been a widespread misconception that new laws were needed in order to address evidenced crime and disorder and under-age gambling – the flames being fanned by sensational television programmes masquerading as responsible journalism.)

The *existence* of a discretion to take action having been established in the last journal, this article will address the *exercise* of that discretion. The discussion falls under five headings:

- The duty not to exercise a statutory discretion so as to frustrate the policy and purposes of the Act.
- The continuing duty under section 153 of the Gambling Act 2005 to "aim to permit" premises to be used for gambling.
- The need for evidence.
- The relevance of planning decisions.
- The powers on a review.

Policy and purposes of the Act

The case of *Padfield v Minister of Agriculture Fisheries and Food*[2] decided that even if a statute gives what looks like an unfettered discretion (in that case it was to a Minister) in unqualified terms, it should not be exercised so as to frustrate the policy and objects of the Act. The policy of the Gambling Act 2005 is manifestly permissive. Section 153 requires that in exercising its functions a licensing authority *shall aim to permit* the use of premises for gambling insofar as the authority think it in accordance with the Gambling Commission's Codes of Practice and Guidance, and with the authority's own statement of policy, and reasonably consistent with the licensing objectives.

It follows that the discretion described in my first article (i.e. the discretion found in the gap between "shall aim to permit" and "shall permit") must not be exercised so as to frustrate the permissive purposes of the Gambling Act. Indeed, on *Paterson's* reading (cited below), the duty is to promote those purposes, if that can be done while maintaining accordance with the Gambling Commission Codes and Guidance, and reasonable consistency with the licensing objectives, etc. With regard to the latter, it should not be overlooked that *reasonable* consistency is what is required, and not absolute consistency.

Continuing duty to aim to permit

The fact that a licensing authority has a discretion to refuse (only to be exercised where the evidence justifies a refusal – see below) does not absolve the authority from its continuing duty to try to find a way of granting if it can. The editors of *Paterson's Licensing Acts* put it in this way:

> *[Section 153] appears to place a duty upon the Licensing Authority to exercise their powers so far as is lawfully possible to achieve the position in which they can grant the premises licence and thus permit the use of premises for gambling...*[3]

It is important to remember that the "aim to permit" requirement of section 153 applies to *all* the licensing authority's functions under Part 8 of the Act. Those functions include the authority's making a representation (as a responsible authority) on a fresh application. If such a representation by a licensing authority reads like a letter of objection from a resident or the police requesting the rejection of an application (I have encountered such), it is unlikely to be held by a district judge or High Court on appeal as consistent with "aiming to permit", and to that extent may well be found *ultra vires* and unlawful. It is frequently the case that the solution to perceived problems can be found in the imposition of suitable conditions on a licence, rather than a refusal of the licence outright: any representation made by the licensing authority itself should be looking, *and genuinely looking*, for such a solution.

1 Gouriet, What control do licensing authorities have over betting premises?, (2012) 4 JoL 26.

2 [1968] AC 997 HL.

3 *Paterson's Licensing Acts 2013*, para 6.158 (page 74).

The need for evidence

The need for evidence remains the single most important consideration on any contested hearing for a new betting premises licence. I have often encountered representations that are not evidenced at all, but are merely articulated fears which, however understandable as *fears* for the future, cannot be treated as evidence of anything other than what they are – concerns as to an outcome which may or may not happen. As such, they should not be allowed, standing by themselves, to sway an application in the direction of refusal. Glidewell J said in the *Dransfield* case:[4] "[the licensing authority] cannot properly guess or simply make assumptions..." In other words, the licensing authority should not assume the worst, however understandable the fear. Much the same was underlined in the *Thwaites* case:[5] "They proceeded without proper evidence and gave their own views excessive weight... in all the circumstances their decision was unlawful."

The mere apprehension of unwelcome consequences if a new betting office is permitted – increased levels of crime and disorder, etc. – is not enough. It is no more than speculation. Whereas in the normal run of civil litigation it might be permissible to conclude, *on the balance of probabilities*, and on the evidence, that such and such a catastrophe will be the result of a given proposal, the continuing "aim to permit" requirement of section 153 of the Gambling Act would seem to make it necessary, in most cases if not all, to give the benefit of any doubt ('may or may not happen') to the applicant for the premises licence. It does not seem to me to be possible to square "aiming to permit" with giving the benefit of the doubt to those who have expressed no more than fears as to the consequences of permitting. Of course there might be cases where the *inevitability* of serious adverse consequences justifies refusal; otherwise there would be no purpose in giving the licensing authority a discretion. But in practice such cases will be few and far between.

Relevance of planning decisions

It is far from uncommon on an application for a betting premises licence for concerns about rising crime and disorder, street drinking, etc., or the proximity of schools, to have reared their heads on a planning appeal relating to the same premises. The *Dransfield* case I have mentioned above contains an important *dictum* from Glidewell J that is too frequently overlooked:

If a [planning] inspector... has specifically dealt with a particular issue, and expressed his view or conclusion on that issue, it is clear that his view or conclusion must be given great weight by the [licensing authority] and there would have to be good reason for rejecting that view or conclusion.

I have heard a planning inspector's carefully considered conclusion (on precisely the issue, and on identical evidence, as that before the licensing authority) rejected because the inspector was "probably not a local man" (I paraphrase the actual words). Whether that is what Glidewell J had in mind as a "good reason" is to be doubted.

The powers on review

The express powers of a licensing authority on a review are wider than those which by implication they have at their disposal when considering an application. If the "benefit of the doubt" has (rightly) been given to an applicant, despite the representations of local people as to the feared consequences, and if when the betting office opens those fears are realised, then not only may the residents bring a review, but the licensing authority may do so, of its own volition and independently of any residential or other complaint. The following provisions of the Act illustrate the breadth of the powers of a licensing authority on a review:

A licensing authority may review any matter connected with the use of premises in reliance on a premises licence if the authority... for any reason... think that a review would be appropriate.[6]

In considering whether to take action of a kind specified in section 202(1) [revocation, suspension, amendment of conditions] the licensing authority shall have regard (in addition to the matters specified in section 153) [the "principles to be applied"] to... any representation made at the hearing of the review...[7] [The underlining is mine.]

I cannot see the need for any further powers to be given to a licensing authority to deal proportionately and effectively with real *and evidenced* problems, should they arise after the opening of a betting office. I am unaware, however, despite having heard innumerable predictions of increased crime and disorder, etc., if a new betting premises licence be granted, of any review having been brought, whether by residents, police or the authority themselves, on the ground that those predictions have been proved all-too accurate. One has to ask, why? It is difficult to find any justification for the frequently-expressed fears as to adverse consequences arising from a grant, in the absence of successful reviews in which it has been held that those consequences have materialised.

Conclusions

The overall scheme of this legislation (along with its relation, the Licensing Act 2003) is that of permissiveness at the stage of grant, balanced by wide powers of adjustment on a review if things should not go as well in practice as was hoped on application – including the power to revoke the licence. It is important that a proper understanding of that scheme, and in particular the protective strength of the legislation given by the review regime, is not abandoned in favour of misplaced objections (and refusals) at the application stage – too many of which have had to come before a district judge on appeal to be corrected, at a high cost to the appellant and the taxpayer, which is on many occasions unnecessary, and is sometimes inexcusable.

Gerald Gouriet QC
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4 *R v Manchester Crown Court ex parte Dransfield Novelty Company Limited* [2001] LLR 556.

5 *Daniel Thwaites Plc v Wirral Borough Magistrates' Court* [2008] EWHC 838 (Admin).

6 Gambling Act 2005, section 200(2)(b).

7 Gambling Act 2005, section 201(5)(b).

Calculating the correct capacity

The potentially lethal dangers of overcrowding are well known yet there are still occasions when capacity calculations have been bungled or neglected. **Julia Sawyer** explains the correct procedures that must be undertaken to maximise the safety of a public event

Many premises licences do not specify the maximum capacity the venue can hold; and on some of those where it is specified, it leaves no room for flexibility for an event manager to increase that number if an adequate risk assessment and suitable control measures are there to put in to place, subject to the actual design and construction of the building permitting that change. Many tragedies have occurred in the past where little thought has been put in to planning the correct capacity for an event. This article looks at what should be considered when calculating the capacity.

A common problem found is that a safe capacity is set for a venue, basing those figures on an empty space. A function is then held there where a sound desk, a stage and tables and chairs are placed in that venue's space, or the width of an exit is affected by a visiting production company, which alters the capacity considerably but the original safe capacity is not changed in any way to take this in to consideration. Or, perhaps the marketing team has sold the maximum number of tickets for that particular venue/event and has not found out until nearer the event that the capacity of the space needs to be changed to accommodate the performer or artist. A further problem encountered is that the original use of a venue has changed or minor building works have taken place where an exit is compromised or has been removed but no alteration has been made to the capacity.

Calculating capacities

There are many things that should be considered when calculating capacities, for example:

- How many exits there are and what widths
- What infrastructure is in place - stages, stalls, speaker stacks, lighting rigs
- What will the crowd be doing:
  - Standing
  - Seated in rows
  - Seated at tables
  - Dancing
- The demographics of the crowd, what percentage of the crowd has limited mobility
- What hazards are present in the performance: is a safe zone needed?
- Is there anything during the performance that could possibly cause the crowd to surge?
- Is there one performance or event that is likely to attract crowds resulting in one area being overcrowded and the rest of the venue being empty?
- What is the construction and layout of the venue?

Julia Sawyer

- Any previous history on the venue or the performance
- What crowd control arrangements are in place
- Number of toilets
- The weather.

The Technical Standards for Places of Entertainment specify the following floor space factors to be used when calculating the maximum number of people in a given area to ensure there is no overcrowding:

Type of accommodation	Area allowed per person
Individual seating	Where layout known – count the number of seats Where layout is not known – allow for seats with backs and arms 0.7m² (without arms 0.65m²)
Bench seating	Where layout is known divide total length of benches by 450mm Where layout is not known - allow 0.55m²
Standing areas for spectators	0.3m²
Dance area	0.5m²
Restaurant style tables and chair arrangement	1.0 – 1.5m²
Bars of public houses and other similar premises without seating - music	0.3m²
Exhibition spaces	1.5m²
Art galleries	5.0m²

Once the capacity of a space is calculated, it is important that the capacity of the escape routes is adequate for people to escape safely in sufficient time. The capacity of the route is determined by a number of factors including the width of the route, the time available for the escape and the abilities of the people using them. For example, you may have a large room with a dance floor space area of $50m^2$, which using the above figure of $0.5m^2$ would enable you to safely accommodate 100 people. However if it only has one exit measuring 850mm wide then the capacity should be restricted to 60 people to ensure safe evacuation of those in that space. In addition to that calculation some of the detail listed above may also have some bearing on what would be a safe capacity.

Free events often need additional control measures in place to control the crowds. And it's very important to have trained staff who are able to see changes in crowd behaviour and act accordingly very quickly. People managing the crowd at these events should know the layout of the premises, their role in any emergency procedure, how to prevent overcrowding or surging in the area they are responsible for, the need to keep exit routes clear at all times, the need to avoid the accumulation of combustible litter, and the names and contacts of key persons on site and managing vehicles if present.

During any event, good communication is key. And with any large event, a Safety Advisory Group should be set up prior to the event with all of the relevant authorities to agree on a safe capacity. The Big Beach Boutique II held on Brighton Beach by Fat Boy Slim in July 2002 shows what can happen if capacity is not limited. The event demonstrated how failing to limit capacity means there is no way to design or execute a realistic crowd management and emergency response plan.

Where it has gone wrong

- On 1 January 2013 there was a stampede in Abidjan, Ivory Coast where 61 people died - many children. The crush happened as thousands left a New Year's Eve fireworks display at a football stadium. It is alleged that makeshift barricades stopped the crowds from moving along a main boulevard, which then resulted in them being crushed.
  http://online.wsj.com/article/SB10001424127887323745045782172608228408 52.html
- On 18 October 2011, two students were killed following a "stampede" at Lava and Ignite Nightclub in Northampton. The "Wickedest Wickedest" anniversary event had allegedly sold more than 2,000 tickets despite the venue's maximum capacity of 1,300. Witnesses reported that the club was extremely overcrowded to the extent that they felt uncomfortable and suffocated.
  In the early hours of 19 October 2011, it is alleged that the DJ announced that buses had arrived to collect the many students attending the event. The message to club goers was that the buses would leave without them if they didn't make their way to the entrance immediately. As a result, hundreds of revelers began pushing their way towards the entrance. It is claimed that a fire alarm was then sounded causing further panic amongst the crowd. The situation then escalated to the point where the club lost control of the premises and its capacity.
  http://www.bbc.co.uk/news/uk-england-northamptonshire-19966008
- At the 2010 Love Parade in Duisburg, the number of people attending allegedly reached 1.4 million – the original expectation was around 800,000 – whereas police believed around 400,000 people were present. Twenty-one people were killed, and more than 500 injured, in an incident near an overcrowded tunnel leading into the festival. At least 20 casualties resulted from suffocation, caused by crowd pressure.
  http://www.epjdatascience.com/content/1/1/7/ abstract D. Helbing and P. Mukerji, Crowd disasters as systemic failures: Analysis of the Love Parade Disaster. EPJ Data Science 1:7 (2012)

Further guidance

Guidance on calculating capacities can be found in:

- Technical Standards for Places of Entertainment – The Association of British Theatre Technicians/ The District Surveyors Association/The Institute of Licensing
- Approved Document B (Fire Safety) – Volume 2 – Buildings other than dwelling houses (2006 edition)
- Managing Crowds Safely – Guide for Organisers at Events and Venues HSG 154 HSE 2000
- HSG 195 'Event Safety Guide: a guide to health, safety and welfare at music and similar events' HSE
- Regulatory (Fire Safety) Reform Order 2005
- Fire (Scotland) Act 2005
- Fire Safety Risk Assessment series. HM Government 2006
- Working Together to Protect Crowded Places. Home Office 2010
- Guidance and Lessons Identified: Understanding Crowd Behaviours. Prepared by University of Leeds Cabinet Office 2009
- Safety at Sports Grounds Code of Practice. Department of the Environment 1996
- Hillsborough Stadium Disaster 15 Apr 89: Final Report Command Paper 962 Home Office 1990
- BS 8406:2009: Event Stewarding and Crowd Safety Services Code of Practice

Julia Sawyer
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Article

Alcohol and the politics of moral certainty

The drinks industry is in danger of losing the battle for the moral high ground in relation to consumption levels, and needs to refocus the debate on the economic value that alcohol and licensed retailing brings to society, argues **Paul Chase**

The current controversy over alcohol can only be understood fully if we place it in the context of the longer term processes of moral regulation that are extant in our society. In this paper I want to take a step back from the day-to-day cut-and-thrust over the issues that separate those who attack alcohol use from those who defend it. I want to share some thoughts and insights about how the politics of moral certainty have played out historically and are playing out currently in the contemporary debate about alcohol.

Historically, the "alcohol issue" has frequently demonstrated its capacity to reflect wider social anxieties. The struggle in the United States for temperance, and later for the outright legal prohibition of alcohol, exemplifies how establishing cultural ownership of a social issue enables those who do so to present their moral view as the consensus view. Where a contest of meanings over a social or moral issue takes place between one group and another, in a given society, this has a meaning that goes beyond the exigencies of the issue itself, and can come to symbolise where one group stands in relation to the other in that society's status hierarchy.

In 19th and early 20th century America, support for temperance, abstinence and the legal prohibition of alcohol was strongest amongst the Protestant, rural, "nativist" middle class – the well-established descendants of the original colonists. Their adherence to ascetic brands of Calvinist-inspired Protestantism provided the cultural and religious basis of an ideology that valued individual responsibility, self-control and abstemious lifestyles. This group felt challenged and threatened by the influx of new immigrants from countries with hard-drinking traditions, like Germany and Ireland, and whose Catholic religious beliefs centred on confessionary rituals of sin and repentance. The fact that these immigrants settled mostly in the burgeoning towns and cities of an America that was fast industrialising only served to emphasise the cultural divide.

The struggle between these two groups can be explained as a group interest status conflict to establish who would be the value-givers of American society. What better way for the established, rural middle class of America to say to the newcomers "my house, my rules" than to have their view of the alcohol issue enshrined in the prohibition amendment to the American Constitution, the founding document of the nation?

Today, in the UK, I believe that we are witnessing a similar symbolic moral crusade over alcohol. It is complex, multi-layered, and has created some unlikely political alliances. Since the 1960s there has been a fault-line running through our society between the cultural fundamentalism of the old, established middle class, and the social liberalism of a post-war generation that wanted to throw off outdated social mores.

Over the past 40 years the cultural polarities of our national life have been deeply influenced by new, cosmopolitan ideas that have reached us by global televisual media, the internet and the affordability of international travel. New fashions and lifestyles that have challenged the localism of the old, established middle class have resulted in a split that has divided it, and divided the wider society, into two main cultural groups. One group reasserts older, traditional values which have their genesis in the "producer culture" of the 19th century. The other group identifies "the modern" as the normative social order to be followed and associates this with "consumer culture". The new middle class looks outward and for them change is identified with progress and is to be welcomed. The cultural fundamentalists of the old middle class look inward. For them change is troubling, disruptive and threatening. Here we have the classic ingredients of an interest group status conflict. So whose values will prevail?

On all the major cultural issues of the past 50 years – sexual freedom, divorce, abortion, capital punishment, censorship – the status of the old, established middle class has been diminished by the successful challenge of a new middle class of salaried professionals, employed managers and skilled workers, as well as an economically

enfranchised youth culture. But in relation to alcohol the cultural fundamentalists have held the line. That is, until the advent of the Licensing Act 2003 and the invitation to those who "couldn't give a XXXX for last orders" to vote Labour! This presented a threat and a challenge to the moral hegemony of the cultural fundamentalists who felt obliged to defend one of their few remaining redoubts. Since then we have seen a relentless attack on the licensed retail sector, the partying culture of the city-centre night-time economy, and the creation of the "binge drinker" as a new and dangerous devil has been added to the pantheon of social demons that frighten middle England.

We can see this moral panic being played out in our national press. The *Daily Mail* is the newspaper of the cultural fundamentalist, fierce in its defence of old middle class values. Its ritual denunciation of the permissiveness of the "metropolitan liberal elite" is an expression of protest against the diminishing status of those who espouse self restraint and abstemious lifestyles. And it is the *Daily Mail* that has led the charge against the perceived liberalisation of the Licensing Act 2003.

So, on one level the current "alcohol issue" can be characterised as a status conflict between the old and the new middle class. But how does this explain the role of the "health lobby" in the whole controversy? Historically, the values of abstinence and temperance were espoused by clergy. But in our increasingly secular society this role has been usurped by public health professionals and doctors - the secular priests of our time. So while we have seen a divide between the cultural fundamentalism of the old middle class and the more liberal inclinations of the new one, we have at the same time seen the exponential development of a welfare state that underpins middle class lifestyles, and protects the middle class from being thrust down into poverty. "Public health professionals" are, at one and the same time, natural exponents of the traditional middle class values of self-restraint and individual responsibility, but additionally have a new, and vast set of vested interests of their own to defend.

With NHS spending just south of £110 billion annually, there is great pressure to defend the service by locating existential cost threats that are external to its structure. This effort is aided by the relentless problem-inflation of Alcohol Concern and other neo-prohibitionist groups. So we have an unusual political alliance: on the one hand cultural fundamentalists, for whom the battle over alcohol is a symbolic moral crusade by means of which they hope to resurrect their status as the "value-givers" of our society; and on the other hand, activist health professionals, piously occupying blameless niches, detached from the world of production and trade, who strive to elevate public health to the level of a societal value that trumps all other considerations.

The moral certainties of both groups create a dilemma for democratic politicians. As a "broker of interests" the democratic politician instinctively handles all political issues as matters of bargaining. He seeks to adjust one set of interests and values to another, in order to produce a compromise acceptable to both sides. However, the moraliser in politics cannot settle for an efficient search for compromise. For him, political issues are tests of virtue and vice in which those on the opposite side are immoral.

This is the reason why opinion on the alcohol issue is now more polarised than ever. It also explains why much of the Government's Alcohol Strategy reads as if it was authored by the editorial board of the *Daily Mail*. Its outline and prescriptions caricature the licensed retail sector by insisting that we view it through the lens provided by tabloid TV and red top newspapers. Our mass media create a false consciousness by holding up a distorting mirror that presents the worst excesses of the night-time economy, and invites us to conclude that the untypical is in fact all-too-typical. The Alcohol Strategy panders to this lowest common denominator of media-induced public prejudice, and represents a set of solutions in search of a problem. The real purpose of it is to appeal politically to the cultural fundamentalism of the old middle class.

We are living through a time of unprecedented economic crisis. The consumption bubble has burst and we are exhorted to re-balance our economy away from consumerism towards production. If this is to become a long-term trend it will require a major adjustment to our value system as a society. It's not difficult to see how the need to promote belt-tightening and austerity chimes with the call for temperance and responsible drinking. Value systems are cultural superstructures that rest on economic sub-structures.

The alcohol industry, when faced with policy threats that arise from political capitulation to the moral certainties of its opponents, must find a moral basis for its own defence. It must find a way of taking back cultural ownership of the "alcohol issue" from its critics. It must engage in a contest of meanings. The way forward must involve demonstrating its social responsibility as a sector – we have to kick the ball in front of us - but also to demonstrate its value as a generator of jobs, particularly for young people. If the sector can reassert the primacy of trade and private sector wealth creation as the generator of economic growth, jobs and, vitally, the taxes that fund public services, then it can balance the debate.

Paul Chase
Director, CPL Training

Is such rudeness to lawyers really necessary?

Courtesy while you are thinking what to say. It saves time. [With apologies to Lewis Carroll.]

At the last meeting of the West Midlands IoL, an unscheduled item cropped up. One of our solicitors wanted to comment on courtesy (or lack thereof) at committee meetings. It turned into a full-on impromptu debate, and it clearly struck a nerve: it was the liveliest item of the day.

The issue was the behaviour of certain councillors, and, more rarely, legal advisers and licensing officers, particularly towards solicitors, barristers and other representatives acting on behalf of clients in front of licensing committees. The anecdotes fell thick and fast, each one more hair or toe-curling than the last. You may well have your own favourite examples.

My contribution related to the time I informed a committee that the hearing would have to be aborted because the residents had not complied with a fundamental procedure, which elicited the response from the irate chair: "Why were we not notified of this before?".

My explanation was that the matter had only been identified when I had been instructed, which was shortly before the hearing had commenced.

Her retort was: "I find that very hard to believe".

I assured her that as a member of the Bar, I would never lie to the committee, and her electrifying response was: "I find that very hard to believe as well."

The room dissolved into various states.

This was by no means the most shocking incident recounted at our meeting, and there is a serious point lurking behind this issue and it is the impression this uncivil attitude has on those not used to the ways of modern licensing.

By way of illustration, I was told ruefully the other day by a lay client at the conclusion of a committee hearing: "I just couldn't do your job. I haven't got a thick enough skin".

Why should a necessary part of the job description of a licensing practitioner be that you have to have the hide of a rhinoceros, and the sensitivity of a brick? Despite outward appearances, most of us don't. And the rudeness, the pomposity and the personal attacks all take their toll eventually. When it gets to the point where it is regarded as an occupational hazard, and part of the behaviour to be expected in a committee setting, then something is wrong.

Very rarely does it seem appropriate to challenge this behaviour at the time, because it can only make matters worse. But on one occasion when the comments were so rude and extreme that I did gently point out that this was probably not the most constructive way to communicate, I was met with a chorus from the rest of the 11 strong committee "Oh, don't take any notice of X: he's always like that", as though X were a learning-challenged child that we should humour but take no notice of. As parties on the receiving end of X's decision making as well as his outrageous comments, that was easier said than done.

The interesting part of our IoL debate was that all participants were in agreement: local authority members and private practice members all said the same thing. Rudeness and aggressiveness in the committee is unnecessary and unprofessional, from any quarter. Representatives for licensees – or residents, or anyone else – have a job to do, no doubt robustly at times, but it should be done courteously and professionally. Committee members, likewise, have a job to do, and represent the face of their authority, not only to the professionals in the room, but also to the licensees and other members of the public. One of the strongest concerns that emerged at our meeting was the appalling impression that this type of abrasive or abusive behaviour left on the very constituents that the councillors were there to serve. The naked displays of megalomania and the breath-taking rudeness or bias that can sometimes be revealed in the course of a licensing hearing may be on show at the first exposure that some of the participants have ever had to their licensing authority or their local councillors in action. And many of them leave assuming this is standard behaviour and what they could expect to find in any council dealings or from any councillor in the future.

This is not the case, and is deeply unfair and damaging to the many hard-working and responsible council members and officers who behave in entirely the opposite fashion.

The issue was of sufficient concern to trigger spontaneously the debate at IoL West Midlands in the first place, and of sufficient concern to take a good chunk of time for everyone to share and ponder over. We drew short of offering counselling, but anyone who arrived thinking that they were the only ones who attracted this kind of behaviour left with a sense of solidarity and plenty of food for thought.

So, what is the message? Only the IoL's constant message – that we are all in this together, and that we are all striving for the same things ultimately: professionalism in licensing and best practice and effective regulation leading to a thriving hospitality industry in harmony with public protection. Idealistic? Possibly. But being pleasant to one another along the way is not, and it is surely the least that we can do.

Sarah Clover
Kings Chambers

Against the odds? Local residents and objections to Betting shops

Deciding whether local residents' objections are both admissible and relevant presents real problems for local authorities as the two concepts are often at odds with each other, writes **Richard Brown**

Betting shops are undeniably a hot topic at the moment. A Select Committee, the Local Government Association (LGA), councils, campaign groups and residents have all had their say, not to mention the media. Never knowingly overshadowed, individual politicians, too, have thrown their hats in to the ring; some are now performing a *volte face* after helping pass the Gambling Act 2005 in the first place. Betting shops have been the subject of a series of articles in *The Guardian* this year, as well as featuring in television documentaries.

Proliferation of betting shops and/or late night opening seems to be at the heart of the concerns of those who resist the perceived creep of betting shops on the high street, as is the use of Category B2 gaming machines, also known as FOBTs (Fixed Odds Betting Terminals) or by the sobriquet "the crack cocaine of gambling", depending on which side of the fence one sits. The emotive language in itself shows how opinion can polarise on this topic.

The purpose of this article is to examine how and to what extent residents are able to engage with the gambling licensing regime, particularly with regard to applications for extended hours.

A cornerstone of the 2005 Gambling Act is section 153, with its duty of "aim to permit".[1]

Further, two matters are explicitly stated as NOT being relevant: demand (section 153(2)) and whether appropriate planning permission has been obtained (section 210).

The standard interpretation of section 153 can sometimes frustrate residents (not to mention the licensing authority) who have objected to the grant of a new licence or applications to remove the "default" hours condition, i.e. to extend the hour to which a betting shop can remain open, because they fear that their high street is being taken over by "clusters" of betting shops. Areas often cited in the media include Haringey and Lewisham.

Richard Brown

Attention has been given to the planning regime.[2] At present, however, this is ineffective in stopping proliferation/clustering. Betting shops fall within use class A2, the same as banks, building societies and professional services. This means that no planning permission for change of use is required from the latter to the former, or indeed from restaurants and cafes (A3) or pubs (A4). An "Article 4" direction[3] is generally seen as unwieldy and expensive to implement. The LGA has called for the introduction of a new local planning use class for premises of potential future local concern.

A Private Members Bill[4] in 2011 proposed to address the problem by creating a new planning use class for betting shops which would require the granting of planning permission. Private Members' Bills, however, do not tend to progress far through Parliament – with the honourable and topical exception of the Live Music Act 2012 – and after one reading in the Commons, the Betting Shops Bill fell at the first fence.

1 See Gouriet, What controls do licensing authorities have over betting premises?, (2012) 3 JoL 26; Gouriet, What controls do licensing authorities have over betting premises?, Part 2, (2013) 5 JoL 12.

2 See Kolvin, Betting offices: are controls sufficient? (2012) 2 JoL 44.

3 Town and Country Planning (General Permitted Development) Order 1995.

4 http://services.parliament.uk/bills/2010-12/bettingshops.html.

Representations

Among issues raised by residents in representations are that there are too many betting shops on the high street, there are too many in a small area, they are "taking over" the high street, they attract anti-social behaviour and a disreputable clientele, that the use of high stakes gaming machines is harmful, etc.

For residents who are familiar with making representations under the 2003 Licensing Act, the Gambling Act 2005 contains a number of potential pitfalls, as its requirements in terms of resident representations are subtly different to those of the 2003 Licensing Act. There are a number of technical differences. For a start, residents are still referred to as "interested parties" under the 2005 Act. The licensing authority has first to decide whether a representation is from an interested party, and is therefore admissible or inadmissible, before deciding whether it is "relevant" (Guidance para 7.53). The concept of "vicinity", now removed from the 2003 Licensing Act and section 182 Guidance thereunder, remains a consideration under the 2005 Gambling Act to the extent that interested parties must live/carry on a business/represent either category "sufficiently close to the premises to be likely to be affected" by the authorised activities.[5] As with "vicinity" under the 2003 Act, what is or is not "sufficiently close" is a question of fact and degree in the circumstances of each case.

The Guidance also lists (para 8.15) a number of factors which licensing authorities are required to take into account when determining whether a potential interested party lives "sufficiently close to the premises". The factors include "the potential impact of the premises (number of customers, routes likely to be taken by those visiting the establishment)."

After deciding whether it is admissible or inadmissible, the licensing authority must determine its relevance (ie before a hearing takes place). This is important for residents because section 162(3)(c) gives the authority the power to dispense with a hearing altogether if it thinks that the representation(s) "will certainly not influence the authority's determination of the application". As to whether the representation is "relevant", the Act is silent on the matter: section 161 simply refers to the right to make representations in writing. One has to turn to the Guidance for assistance.

The section of the Guidance dealing with representations[6] states that the only representations that are *likely* to be relevant are those that relate to the licensing objectives, Statement of Principles, Guidance or Codes of Practice (my emphasis). The licensing objectives in the 2005 Gambling Act are:

- Preventing gambling from being a source of crime and disorder, being associated with crime and disorder or being used to support crime
- Ensuring that gambling is conducted in a fair and open way
- Protecting children and other vulnerable persons from being harmed or exploited by gambling[7].

There is no equivalent of the "public nuisance" objective in the 2003 Act. Unlike in that act, the content of representations is not constrained to the licensing objectives. In contrast, the 2005 Gambling Act permits other issues to be raised, as section 153 makes clear. The DCMS's document *New Gambling Act explained: Local residents* states that: "A representation is a written response to an application which outlines concerns that a local resident has about a particular application or existing licence. Representations must relate to the Gambling Commission's Codes of Practice and/or Guidance to Licensing Authorities; the new Act's objectives; or the local authority's Statement of Gambling Policy if they are to be taken into account."

The Guidance also[8] gives a non-exhaustive list of issues which would not likely be relevant (although this is in the context of responsible authority representations), including that:

- There are already too many gambling premises in the locality (although it may be relevant if it points, as a result, to rising problems in crime, disorder, underage gambling or problem gambling)
- The location of the premises is likely to lead to traffic congestion; or that the premise will cause crowds of people to congregate in one area, which will be noisy and create a nuisance.

Note that these are issues which are not *likely* to be relevant.

This creates the potential scenario where a licensing authority can accept a representation as "admissible" because it raised issues about the potential impact of the premises in terms of numbers of customers and the route to the premises (which are factors to be taken into account when deciding if the representation is made by an "interested party"), but then not be able to take account of what the representation said when reaching its decision, because it is not "relevant".

Generally speaking, the nuisance complained of or anticipated (as the case may be) seems in most cases to need to be more than "mere nuisance" and include disorder issues if it is to hold any significant weight.

Extended opening hours for betting shops

Although in some locations, residents no doubt consider disorder issues to be pertinent throughout the day, it seems clear that in areas with a problem of crime/disorder, the issues could become more relevant the later at night the premises remain open. The relevant Regulations[9] set these hours as 7am to 10pm. The Explanatory Memorandum to the Regulations gives

5 Gambling Act 2005, section 158.
6 Guidance, para 7.53.
7 Gambling Act 2005, section 1.
8 Guidance, para 7.54.
9 Gambling Act 2005 (Mandatory and Default Conditions) (England and Wales) Regulations 2007.

some context to the intention in terms of the terminal hour: "The Department considered it was necessary to attach default conditions to a premises licence where a general industry or sector wide approach is desirable in order to assist national consistency, but where licensing authorities ought to be able to respond to local circumstances by altering those conditions if necessary."

The Memorandum also states that the "aim was to establish industry norms while giving the operators the flexibility to apply to extend their hours, and licensing authorities the flexibility to extend or reduce the default hours." The Guidance (9.30) further states that: "'It is the Commission's view that the conditions necessary for the general good conduct of gambling premises are those set as default and mandatory conditions...".

The vexed question of "primary gambling activity" (PGA) could take up an entire issue of the *Journal*, but it is worth touching on in relation to extended hours. Section 172(8) GA05 provides an entitlement to gaming machines. The relevant general condition relating to PGA on operating licences[10] states that: "Gaming machines may be made available for use in licensed premises only at times when there are also sufficient facilities for betting available." Code of Practice 9 states that in order to demonstrate that the primary gambling activity for which an operating licence has been issued is being offered in each licensed premises, licensees should have regard to a number of factors, including:

- The extent to which the PGA is promoted on the premises and by way of external advertising compared to other gambling activities
- The use, either expected or actual, to be made of the different gambling facilities.

It could be argued that after 10pm, the actual use of the machines is more likely to supersede betting, although the Gambling Commission has made clear in recent Bulletins that it is not simply the case that if machine turnover exceeds betting turnover, it must fail the test of PGA. This is because of the "churn effect" of machine play.

It is interesting to note the change to the Guidance relating to PGA in the current edition. It includes a reference to the consideration of PGA in assessing applications for extended opening hours. Paragraph 19.23 states that should a licensing authority receive an application to vary a licence to extend the opening hours, it "should satisfy itself that the reason for the application is in line with the requirements on primary gambling activity. Therefore, the applicant should be able to demonstrate that the extension of the opening hours is not designed solely to benefit from the machine entitlement...".

The Commission's comments to the consultation responses state that they accept "that in certain circumstances and locations, betting shops may wish to stay open longer than the mandatory and default conditions permit. This might, for example, be to offer betting opportunities to shift workers, or for niche markets. However, such circumstances will be limited and it is important that LAs seek reassurance that applications to vary hours are genuinely catering for that market and not simply for making machines available in potential breach of licence condition 16 on PGA."[11]

The most recent pronouncement on the matter from the Commission in its November 2012 Bulletin to local authorities states that the Commission accepts "in certain circumstances" that it may be reasonable for operators to vary the default hours, it strongly recommends that if the proposed hours go beyond midnight then the application is scrutinised closely. It is unlikely to be the last time the issue is referred to in the Commission's bulletins.

Richard Brown
Solicitor, Licensing Advice Project, Westminster CAB

10 Licence Conditions and Codes of Practice December 2011.

11 Guidance to Licensing authorities 4th edition Responses, September 2012.

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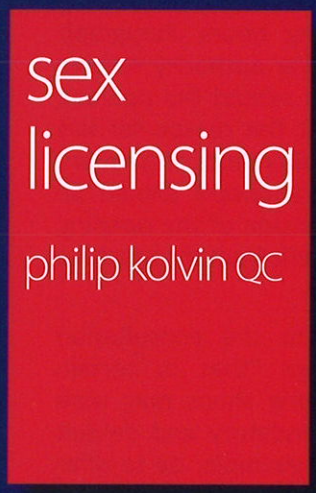

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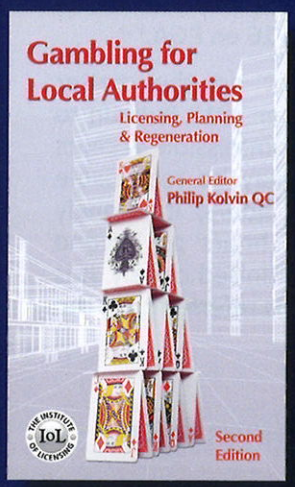

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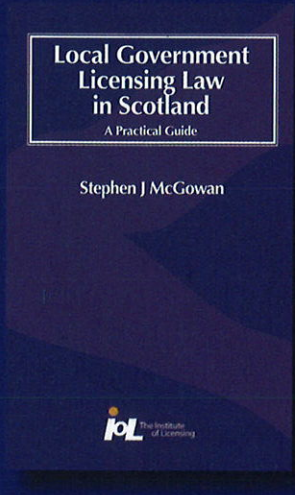

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Article

The application and enforcement of the Zoo Licensing Act 1981 by local authorities in England

The licensing system for zoos is complex and potentially open to misinterpretation say **Gemma Glanville** and **Chris Draper** of the Horsham-based Born Free Foundation, after carrying out the most comprehensive ever survey of the approach of England's local authorities to their responsibilities

The Zoo Licensing Act 1981 ("the Act") requires the inspection and licensing of all zoos in Great Britain. The Act aims to ensure that high standards of animal welfare and public safety are maintained, and that zoos make a contribution to conservation. The Act was amended by Regulations in 2003 to give effect to the provisions of Council Directive 1999/22/EC, which aimed to strengthen the role of zoos in the conservation of biodiversity.[1]

Under the Act, a zoo is defined as an establishment "where wild animals are kept for exhibition...to which members of the public have access, with or without charge for admission, on seven days or more in any period of twelve consecutive months", with the exception of pet shops and circuses. In this definition, wild animals are "animals not normally domesticated in Great Britain", and a useful list of examples is provided by Defra in Annex A of the Guide to the Act's Provisions.[2] Establishments falling under the definition of a zoo therefore need to be licensed and meet the requirements set out in the Act. The Act is supplemented by the Secretary of State's Standards of Modern Zoo Practice (SSSMZP).[3] The SSSMZP are not directly enforceable, but act as clear guidance to zoo operators and officials responsible for their inspection with regard to the Act's implementation.

The Born Free Foundation (BFF) has records of approximately 465 premises in England that keep wild animals and are believed to be open to the public. Such facilities include large metropolitan establishments attracting many thousands of visitors each year: the self-evident zoos, safari parks and the like; but also includes many smaller establishments, such as children's farms, public aviaries, falconry centres, animal sanctuaries, theme parks and even pubs with animal enclosures in their gardens, all of which may require a zoo licence. It is noteworthy that the names of approximately 7% of the facilities in the BFF database include the words "zoo" or "zoological", while the names of approximately 21% of the facilities include the word "farm". Considering just how many individual animals this wide and diverse range of premises may keep, it is imperative that the Act is enforced effectively and appropriately.

Implementation of the Act is the responsibility of district, unitary, metropolitan, City of London and London borough councils (local authorities). This involves granting and renewing licences, responding to specific complaints concerning zoos and organising special inspections. Local authorities are also responsible for the delivery of the inspection process in consultation with Government-appointed zoo inspectors and the enforcement of sanctions arising from any breach of the Act.

Zoos may be fully licensed or granted a dispensation under Section 14(1)(b) or Section 14(2) of the Act. Dispensation status affects the type of inspection and the number of inspectors required. Furthermore, local authorities can apply to the Secretary of State for individual zoos to be exempted from the requirements of the Act under Section 14(1)(a) on the grounds of keeping a limited number of animals and range of species. A guide to the Act's provisions was published to help local authorities and inspectors carry out their roles in accordance with the Act.[4]

A review of local authorities' implementation of the Act was commissioned by Defra in response to previous

1 The Zoo Licensing Act 1981 (Amendment) (England and Wales) Regulations 2002

2 Defra (2012). Zoo Licensing Act 1981: Guide to the Act's provisions. Available at: http://www.defra.gov.uk/publications/2012/09/11/zoo-licensing-act-guide-pb13793/

3 Defra (2012). Secretary of State's Standards of Modern Zoo Practice. Available at: http://www.defra.gov.uk/publications/2012/09/11/standards-zoo-practice-pb13806/

4 Defra (2012). Zoo Licensing Act 1981: Guide to the Act's provisions. Available at: http://www.defra.gov.uk/publications/2012/09/11/zoo-licensing-act-guide-pb13793/

concerns regarding zoo licensing.[5] ADAS undertook a survey of Local Authorities already believed to have zoos in their constituencies. While overall no evidence was found to suggest that changes needed to be made to legislation, a number of problem areas were identified. In the initial review, evidence was found of missed or late licence inspections and of licence conditions not being enforced. ADAS concluded that the Act can be difficult to understand and that there was a need for simplification and clarification of guidance documents, and made a number of recommendations to improve the system, for example training of local authorities on the implementation of the Act and more effective monitoring of those zoos with exemptions (under section 14(1)(a) of the Act). It was also noted that some local authorities and inspectors suggested that the inspection forms be updated to reflect the different types of animal collections.

Draper and Harris examined the assessment of animal welfare by Government-appointed inspectors in British zoos and present evidence that suggests changes need to be made to the inspection process.[6] For example, of the 192 zoos in the study, only 24% were assessed as meeting all of the animal welfare standards associated with the Zoo Licensing Act 1981; and at least 11% of inspections of zoos with a full licence did not comply with the legal requirement of two inspectors present. In addition, an association was identified between the type of zoo and the assessment of animal welfare at inspection, with farm parks appearing to perform relatively poorly.

Our study aimed to review the premises in England believed to keep wild animals on display to the public, identify licensed zoos in England, identify premises with wild animals possibly requiring zoo licences, and examine the scope and coverage of the Act. There is no current comprehensive record of the number of public premises displaying wild animals to the public in England. The Government agency Animal Health lists 217 licensed zoos across 130 local authorities (excluding those with exemptions), but this list relied on reports from local authorities and does not include details of facilities without licences that may require licensing.[7]

Survey of local authorities

In March 2012 requests under the Freedom of Information Act 2000 were sent to all local authorities in England (326 in total) for details of all public premises in their constituencies keeping wild animals, including the licensing and dispensation status for each with respect to the Zoo Licensing Act.

Any local authorities that did not respond within the period stated in their acknowledgement (usually 20 days) were contacted again. Local authorities responding to the Freedom of Information request with incomplete information were sent a follow up letter, which in some cases was treated as a second Freedom of Information request.

For more than a decade, BFF has maintained a database of all known facilities open to the public with captive wild animals, which has been continually updated by annual surveys of local authorities, reports from the public, and ongoing monitoring of visitor attractions. The information received in 2012 was compared to the BFF database and any changes such as zoo closures or new applications were added or amended accordingly. Where animal facilities in the BFF database were not included in the details sent by a local authority, a specific follow-up request was made by letter for details of the licensing status of these premises, requesting confirmation whether they were a) not thought to keep wild animals; b) licensed under other legislation (e.g. Performing Animals (Regulation) Act 1925, Pet Animals Act 1951, Dangerous Wild Animals Act 1976 etc.); c) not considered to require a zoo licence; or d) other.

All available information was collated to give the total number of wild animal facilities known to be open to the public and operating in March 2012. This included the number of licensed zoos in England, the number of premises believed to have been granted an exemption from the Act, and the number of facilities that are not licensed under the Act, which included premises licensed under other animal-related legislation.

Results

The results revealed that there are currently 233 licensed zoos in England, 58 zoos with exemptions from the Act, 11 zoos in application for a licence and 26 wild animal facilities licensed under other legislation. A total of 48 facilities were believed by their local authorities not to keep wild animals, while an additional 38 facilities were not considered to require a zoo licence. There were four facilities that did not have a licence but were under investigation by the local authority with respect to zoo licensing. Unfortunately, the licensing status of 47 facilities in the BFF database could not be confirmed as a result of incomplete information or lack of responses from local authorities. There are 205 local authorities in England which have wild animal facilities in their constituencies; and 134 local authorities in England have licensed zoos in their constituencies.

Taking into consideration the unconfirmed facilities and those that appear to meet the definition of a zoo yet are not currently licensed, up to 47 and perhaps as many as 163 facilities might need (further) consideration under the Zoo Licensing Act.

Discussion

The results allow us to make some comments on the state of licensing of wild animal facilities in England, and in our opinion confirm that the licensing system for zoos is complex and potentially open to misinterpretation. Our survey revealed more licensed zoos in more local authorities than the previous survey carried out by

5 ADAS (2011) Review of local authorities' implementation of the Zoo Licensing Act 1981 in England and Wales. Report prepared for Defra. Available at: http://randd.defra.gov.uk/Document.aspx?Document=ADASReviewoflocalauthorities'implementationoftheZooLicensingAct.pdf

6 Draper, C. & Harris, S. (2012). The assessment of animal welfare in British zoos by Government-appointed inspectors. Animals 2: 1-22

7 Animal Health (2011). Animal Health list of zoos operating in England. Available at: http://animalhealth.defra.gov.uk/about/publications/cites/zoos/list-of-zoos-in-England.pdf

Animal Health.[8] The difference in figures between our survey and the Animal Health survey confirms the need for a centralised system for up to date and accurate zoo licence records and information. Furthermore, it revealed a relatively large number of "zoo-like" facilities that are considered by BFF to display wild animals to the public in line with the definition of a zoo in the Act, yet are not licensed as zoos. It is likely that at least some of these facilities may be operating unnoticed or unmonitored by local authorities, particularly when it is considered that only a small number are licensed under other animal keeping legislation.

Zoos and other wild animal facilities do not necessarily keep constant numbers of animals or species: new animals are bred or added to collections, animals die or are sold on etc. Similarly, the availability of wild animals for sale or rescue means that public facilities that previously kept no animals or only domesticated species can quickly and easily obtain wild animals and thereby fall under the definition of a zoo. Consequently, a degree of uncertainty might be expected regarding facilities where the local authority believes it did not hold wild animals, or where the local authority considers the Act might not apply. In our experience, there are often misunderstandings relating to whether species are to be considered wild or domesticated, or whether a collection might or might not fall within the definition of a zoo and we urge local authorities to consult the Defra guidance on this matter.[9]

Obtaining information

The process of acquiring the information from the local authorities proved to be complex, which may have some bearing on the implementation of the Act. Although instances were not quantified, a number of issues arose during the study:

Missing information / misunderstanding request

A number of local authorities did not send all of the information requested. Our request specifically asked for a copy of the most recent full/formal/ renewal or periodical inspection report for zoos under the Zoo Licensing Act. Individual pages of inspection reports, and in some cases whole reports, were often missing or the requested details for each premises were incomplete. A number of local authorities sent copies of informal inspection reports or even reports from inspections carried out under other legislation, such as the Health and Safety Act 1974.

Freedom of Information response time

Only one local authority did not acknowledge the original Freedom of Information request. However, despite the obligation under the Freedom of Information Act to respond promptly, and most acknowledgements undertaking to respond within 20 days, it took a total of five months to receive at least partial responses to the remaining Freedom of Information requests. It was necessary to contact several local authorities multiple times to follow up missing information.

Conflicting licence status

The Freedom of Information request required the local authority to confirm the dispensation status for each zoo's licence from a series of options (e.g. Full, 14(2) dispensation etc.). Responses commonly indicated more than one option, for example ticking 'Full' and '14(2) dispensation'; in some cases local authorities reported the zoo had a 'full' licence when the inspection report form received indicated that the zoo had been inspected under Section 14(2).

Missed inspections

There was some evidence of missed inspections. For example, one local authority reported that it had arranged several dates for periodical inspections of two zoos during 2010 and 2011, only for the inspections to be cancelled. This meant that prior to March 2012, both zoos may not have been formally inspected under the Act since 2007. The local authority was apparently satisfied that the delay was acceptable on the basis that it had received no complaints about the zoos, there were no outstanding issues arising from previous inspections and that they "work closely" with the two zoos.

Conclusion and recommendations

The results of our survey and the inconsistencies displayed across local authorities during the process are concerning. Many facilities on the BFF database may need to be licensed as zoos: if they are not licensed, they are not inspected or required to ensure that basic standards of animal welfare, conservation and public safety are met. There could be thousands of captive wild animals in England whose welfare remains unmonitored by the authorities. The problems we faced in obtaining the information from some local authorities demonstrate a need for greater transparency and collaboration in the implementation of the Zoo Licensing Act. For the relevant departments in the majority of local authorities, zoo licensing forms a very small part of their overall responsibilities and workload, perhaps leading to a relative lack of familiarity with the complexities of the legislation and leaving little time to refer to Defra guidance.

As a result, it is perhaps inevitable that the application and enforcement of the Zoo Licensing Act is variable when examined nationally. However, we firmly believe that consistency and transparency is necessary and beneficial, and to that end we would like to make the following recommendations:

- Local authority officers should be familiar with the updated Defra Guidance on the Zoo Licensing Act.
- Communication should be increased between local authorities with respect to zoo licensing, in order to improve consistency in interpretation and application of the Act.
- Smaller animal-keeping facilities or premises previously granted 14(1)(a) exemptions should be monitored to

8 Animal Health (2011). Animal Health list of zoos operating in England. Available at: http://animalhealth.defra.gov.uk/about/publications/cites/zoos/list-of-zoos-in-England.pdf

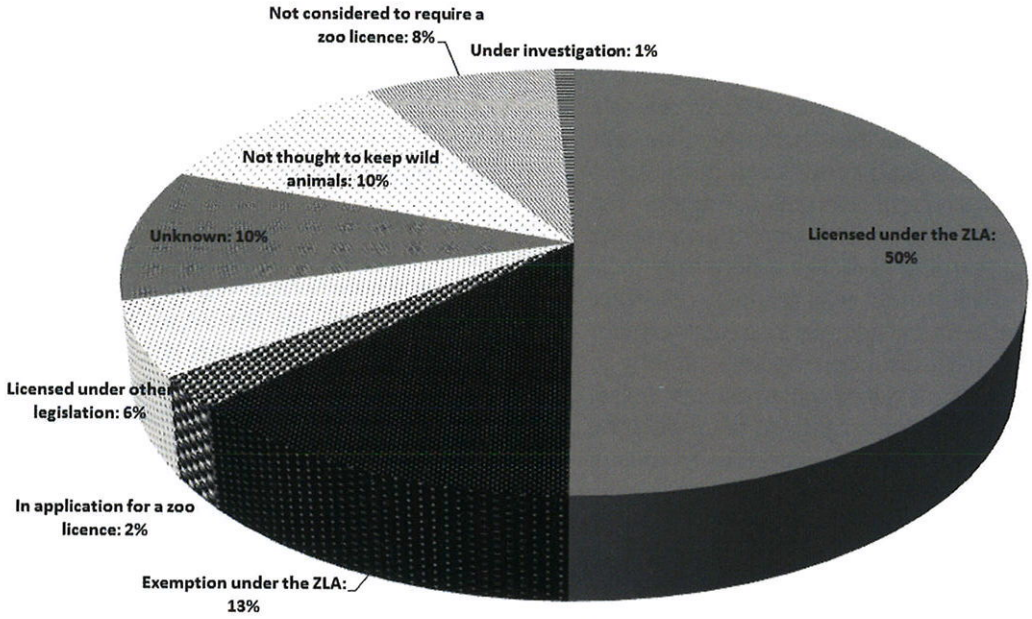
9 Defra (2012). Zoo Licensing Act 1981: Guide to the Act's provisions. Available at: http://www.defra.gov.uk/publications/2012/09/11/zoo-licensing-act-guide-pb13793/. See Annex A and B.

ensure that the size and scale of animal collections does not increase without consideration of zoo licensing.
- Increased vigilance should be applied to all visitor attractions to ensure that wild animals are not brought in for display without consideration of zoo licensing.

We are very grateful to the representatives of the local authorities across the country who responded to our requests for information. The Born Free Foundation invites local authority, Animal Health and Defra representatives to contact us at any time to discuss the information in our database or matters relating to the keeping and licensing of wild animals more generally.

Gemma Glanville and Chris Draper
Born Free Foundation

Local Authority response to the licensing status of wild animal facilities in England (%) (from a total of 465 facilties known to be operating, BFF database)



National Training Event 2013 - Birmingham

The Institute's signature annual event, the National Training Event returns to Birmingham this year to be hosted at the Crowne Plaza Hotel from 20th – 22nd November 2013.

The programme has been designed to give maximum flexibility to delegates and to allow them to tailor the training event to suit individual needs. Speakers will include James Button, Gary Grant, Susanna FitzGerald QC, Philip Kolvin QC, Sarah Clover, and many others.

Details will be updated as they are confirmed and delegates are advised to book early to avoid disappointment, last year's event was a sell-out. A full residential place for members is £495 + VAT (price includes £50 'Early Bird' booking discount).

Course Objectives

To provide a valuable learning and discussion opportunity for licensing practitioner to increase understanding and to promote discussion relating to the intricacies and practical application of the law in the subject areas and the impact of forthcoming changes and recent case law. The training structure is aimed at allowing maximum benefit to be derived by delegates in allowing them to choose the subject areas most relevant to their areas of interest.

CPD

The three day NTE will carry 12 hours CPD in total. It is intended that the event will be CPD accredited under both the SRA and Bar Standards Board schemes.

More Details

More information is available on the website www.instituteoflicensing.org/events along with a copy of the draft programme.

Institute of Licensing News

After a busy and interesting 2012, this year is already promising to be equally full with change in many areas and new arrangements bedding in.

Membership 2013/2014

It's renewal time! Members should have received their membership renewal invoice by now. We have been working hard over the past year to continue to deliver improved member benefits. We believe our membership offers great value for money with individual renewal fees staying the same again this year for the fifth consecutive year. If you have not received your invoice and wish to renew or you have any queries regarding membership, email us at membership@instituteoflicensing.org.

We are now offering a direct debit facility for membership renewals to enable members to sign up to an annual payment facility. This should be in place by now but if not it will be very soon.

We are pleased to be able to offer a number of special discounts / offers to members, and details can be found on the website: http://www.instituteoflicensing.org/member_benefits.html

IoL membership increased last year, and we are confident that our improved systems and processes will continue to have an impact along with the significant member benefits, one of which is, of course, the provision of this journal.

The quality of our membership is second to none. It includes so many key licensing practitioners from all areas of licensing practice across England, Wales and Northern Ireland, along with a growing membership base in Scotland. We will continue to work hard for you all, and would welcome your suggestions at any time on improved member benefits.

National Training Event – Birmingham 2012

The IoL's signature event, the three day National Training Event(NTE), in Birmingham last November, saw three brilliant days of training by leading licensing experts from across England, Wales, Scotland and Northern Ireland.

The 2012 NTE was our most successful so far with 200 plus in attendance. The NTE is unrivalled, bringing together as it does so many licensing professionals from different geographic and specialist areas to discuss a huge range of licensing issues, local initiatives and forthcoming changes.

Among the packed and varied programme were sessions with the Home Office talking about the [then] forthcoming consultation around the proposals within the Government's Alcohol Strategy; the DCMS updating delegates on its work and developments; the Law Commission talking about its taxi consultation and the unprecedented level of responses received; and the Gambling Commission presenting on Gambling and Community Safety. As well as all this, the NTE featured leading licensing practitioners and discussions around the implications of recent changes, case law updates, geographical variations in licensing law (Scotland, Northern Ireland and Wales), forthcoming changes and topical issues such as licensing fees (particularly relevant with the locally set fees likely to be implemented from April 2013), sexual entertainment venues, data protection, summary reviews, licence conditions and much more besides.

Sue Nelson
Executive Officer, IoL

Jim Hunter
Training & Qualification Officer, IoL

Natasha Mounce
Co-ordinator, IoL

As always, we are extremely grateful to our speakers for their time and effort in delivering the sessions and providing an exceptional training opportunity for our delegates. The theme running through the NTE was very clearly around partnership working to achieve the aims and objectives of the relevant licensing issues, and it was particularly valuable to hear about local initiatives which are in place across the country.

Special thanks must also go to the NTE sponsors. Their support allows us to keep the event affordable while maintaining its status as the "must go" licensing training event of the year.

Sponsors of the NTE 2012 were:

- Carlsberg
- Cole Jarman
- CPL Training
- Francis Taylor Building
- IDOX
- MOGO
- National Casino Industry Forum
- PRFA
- Poppleston Allen Solicitors
- RH Environmental Limited
- The Rocket Club
- Trading Standards Partnership South West
- Transport Innovation
- Victoria Forms
- VIP

Our thanks also to John Myall who once again acted as our official photographer for the event.

NTE 2013 - Date for your Diary

We are now planning the 2013 NTE which will again take place at the Crowne Plaza Hotel, Holiday Street, Birmingham this year from 20 – 22 November 2013. More information and booking details are available on our website www.instituteoflicensing.org/events.

Awards

It was our great pleasure to announce the winner of the Jeremy Allen Award for 2012 and also to present our own membership awards at the NTE Gala Dinner.

Jon Shipp – Jeremy Allen Award Winner 2012

Jon Shipp was presented with the Jeremy Allen Award 2012 in recognition of his work in Bournemouth.

Barrie Davis and Frank Fender were also in the final three shortlisted for this prestigious award for their hard work, dedication and achievements in licensing and related fields.

The award, an ongoing tribute to Jeremy Allen, the former managing partner of Poppleston Allen, seeks to identify practitioners who "go the extra mile" in working in partnership with other parties to make a real difference in the field of licensing and the night-time economy.

Presenting the award, Lisa Sharkey, partner at Poppleston Allen said: "The award seeks to recognise individuals for whom licensing is a vocation, their night and day, just as it was for Jeremy. Everyone nominated for consideration of this award should feel very proud that others have recognised their commitment and dedication".

Jon Shipp is Town Centre Manager in Bournemouth, and provides a vital link between the licensed industry in Bournemouth, the licensing authority, responsible authorities and councillors. Jon helped set up the town centre's Town Watch and two pubwatch groups, which now cover the entire town. Jon obtained the Purple Flag award for the town centre, introduced the Best Bar None scheme and also Light Nights, which is designed to bridge the gap between the early evening and the night-time economy.

Receiving the award at the IoL's Gala Dinner, Jon expressed his pride at the nomination and paid tribute to his colleagues working with him in Bournemouth.

Institute Chairman Jon Collins said: "The Institute, like many in the licensing community, remains keen to honour Jeremy's memory. We were therefore most pleased to partner with Poppleston Allen to establish the Jeremy Allen Award to recognise those individuals that are going the extra mile in the field of licensing. John Shipp is a fitting winner of this year's award given his ceaseless commitment to public-private partnership in Bournemouth - a partnership designed to deliver a safe, vibrant, diverse and successful night time economy".

This award is open to anyone working in licensing and related fields and seeks to recognise and award exceptional practitioners. The IoL and Poppleston Allen intend that the award continues on an annual basis and we will be inviting nominations in due course. Crucially, this award is by third party nomination, which in itself is a tribute to the nominee in that they have been put forward by colleagues in recognition of their professionalism and achievements.

James Button – Companion

James Button was made Companion of the IoL in recognition of his achievements as a licensing professional as well as his pivotal role in the creation and development of the Local Government Licensing Forum and subsequently its transformation to the Institute of Licensing.

Companionship is the highest grade of membership of the IoL and is limited to 12 living members. Previously there were just four Companions – Colin Manchester, Philip Kolvin QC, Roger Butterfield and David Chambers.

James was founding Chairman of the Local Government Licensing Forum, which started on 11 January 1996, and played a crucial role in the development of the LGLF and its subsequent attainment of Institute status.

James retired as Chairman of the IoL in 2004 and was made President, a post which he continues to hold today. James continues to offer outstanding support to the IoL as Chairman of the Taxi Consultation Panel (previously the Taxi Working Party), is a regular contributor to the IoL's *Journal of Licensing*, and a frequent speaker/trainer at IoL training courses and events.

For his work with the IoL (and its predecessor the LGLF) alone, Companionship would be a fitting tribute to James, who is a leading licensing solicitor, particularly pre-eminent in the field of taxi licensing with his publication *Button on Taxis* the leading work in this area.

Having co-presented the award, alongside Colin Manchester, IoL Chairman Jon Collins said: "It is truly fitting that the Institute has chosen to award one of its chief architects with its highest honour. Jim was integral to our early days as LGLF, his energy and enthusiasm providing much of our early momentum. He remains a tireless advocate of the Institute to external audiences, an expert contributor to events and policy papers and a valued adviser on strategic matters".

James said of the award: "I am honoured to have been made a Companion of the Institute. I am very grateful to my fellow members for nominating me and to Colin Manchester for his very kind words".

Roy Light - Fellow

Roy Light was made Fellow of the Institute of Licensing in recognition of his achievements as an academic and licensing practitioner.

Fellowship is the second highest membership level awarded by the IoL where, following nomination, the IoL considers that the individual has made a significant contribution to the Institute and/or has made a major contribution in the field of licensing.

Roy's academic work spans 38 years, and his work at the Bar 20 years. Having studied law at undergraduate and master's level, he completed an MPhil (on public drunkenness) and a PhD (on drink-driving). He is an established publisher with five books and 69 relevant journal articles.

Institute Chairman, Jon Collins said: "Roy Light was an outstanding candidate for fellowship given his distinguished career in licensing both as an academic and a practitioner. Respected by his peers and sought out for his advice across all aspects of licensing, Roy has made a major contribution to the shaping of policy and practice".

Ian Webster - Fellow

We were delighted to make Ian Webster a Fellow of the Institute of Licensing in recognition of his achievements as a licensing professional as well as his outstanding contribution to the development of the Institute of Licensing and his leading involvement in the negotiations which led to the merger of the IoL with the Society of Licensing Practitioners (SLP).

Ian greatly assisted colleagues during the implementation of the Licensing Act with the authorship of the *Licensees' Guide to the Licensing Act,* and was behind the conception and execution of the *Concise Guide to the Licensing Act*. He also compiled the training for the Royal Town Planning Institute training programme for the Licensing and Gambling Acts.

As a founder of the south-east region of the Local Government Licensing Forum, Ian helped develop the region into the regional branch of the Institute, and has pioneered or taken a leading role in licensing initiatives and developments. In helping to form the Institute he took a lead role in discussions with the Society of Licensing Practitioners, chairing the subsequent conference in Brighton. Ian chaired the South East region for many years, is a former chair of the IoL's management and finance committee and subsequently took the post as Director of Finance for the IoL before retiring from the Board in 2011 in order to continue his active role with the Territorial Army and its operations abroad.

Institute Chairman, Jon Collins said: "Ian has made a significant contribution to the growth and development of the Institute, early on in his roles as a founder of the LGLF, then Institute chair in the south-east region and more recently as Director of Finance. Beyond the Institute, he has always been willing to support colleagues, be that through delivering training, speaking at conferences or the development of standalone guides".

Ian Webster said: "It was a great honour to receive the fellowship from the Institute. Although still deployed with the Army I keep up to date with licensing and the affairs of the Institute. It is also great to see the Institute going from strength to strength and developing into a broad church organisation, enhancing its professional status."

IoL events

The number and diversity of training events the IoL delivers is continuing to grow and is spread right across the IoL's 11 regions.

How to Plan a Safe Event: Manchester 27 & 28 March / London 22 & 23 April 2014

This course is a two-day course delivered in the main by Prof. Dr Keith Still who is a world renowned expert in this area.

Licensing Practitioners Course – May

This is an IoL accredited course; the four-day course will have an exam at the end of each day. There will be options to attend as a day delegate or residential delegate on all days or a combination of days to suit the needs of the licensing practitioner.

- Day 1 Licensing Act 2003
- Day 2 Gambling Act 2005 Sex Establishments
- Day 3 Taxis
- Day 4 Street Trading, Scrap Metal Dealers & Motor Vehicle Salvage Operators

Licensing Hearings for All Parties – June

Building on the training course the IoL has delivered in the regions over the last three years, this course is aimed at all parties who attend a licensing hearing, and is especially useful for members of a licensing committee, officers from responsible authorities and lawyers.

National Training Day – June

A one-day course which will be an essential day's training for anyone who wants to catch up with all that is new and topical in the world of licensing.

Consultations

It has certainly been busy on the consultation front, with important consultations being released in November and December 2012. At the time of writing, we are mid way through consideration of the proposals, and details of the IoL response in each case will be published on the website once available:

http://www.instituteoflicensing.org/consultations.html

Northern Ireland: reform of liquor consultation (closed 12 November 2012)

Northern Ireland Social Development Minister Nelson McCausland launched a public consultation in July 2012 on reform of liquor licensing legislation.

The 16-week consultation sought views on a wide range of proposed changes to the law regulating the sale and supply of alcohol in Northern Ireland. The issues consulted upon included:

- Further restrictions on mixed trading in supermarkets
- Late opening hours and opening hours at Easter for public houses
- Alignment of alcohol and entertainment licences
- Formal approval of codes of practice on responsible retailing
- Changes to the law affecting private members' clubs.

Speaking about the launch of the consultation, Minister McCausland said: "Undertaking a further review of licensing legislation at this time provides an opportunity for my Department to introduce extra measures to help address some of the concerns surrounding alcohol misuse in Northern Ireland. It also enables me to respond to concerns surrounding irresponsible alcohol consumption, including the availability of alcohol and changes in drinking patterns. While tackling irresponsible drinking, I also feel it is important to recognise the contribution made to the local economy by the licensed trade, which has changed in recent years and makes a significant contribution to our tourism offering, as well as providing much needed employment".

The consultation made interesting reading for all. The current licensing has many parallels with the pre-LA03 arrangements in England and Wales but there are stark differences whereby alcohol is much more regulated than it was or is under either the 1964 or 2003 Acts.

IoL response

The Northern Ireland Branch of the Institute of Licensing responded to the consultation, raising concern about the direction and intent of the consultation. The responses stated: "It is not clear what the true intention of this review is. If tourism is to be promoted, and pubs an integral part of this, they must offer something to everyone and consider alternative means of increasing income, becoming more like their European counterparts, offering a choice of beverages and foods, in surroundings that families and tourists want to be in".

Consultation on future regulatory regime for the private security industry (closed 15 January 2013)

This Home Office consultation sought views on the Government's preferred option for reforming the regulation of the private security industry through a transition to a business regulation regime. The current arrangements for the regulation of the private security industry in the United Kingdom are set out in the Private Security Industry Act 2001. Responsibility for delivering regulation lies with the Security Industry Authority (SIA), a non-departmental public body accountable to the Home Secretary. Following the Public Bodies Review in 2010, the Government concluded that the SIA's functions should be reformed. The consultation provides a detailed proposal for a new regulatory regime for the private security industry (a business model), which has been developed in partnership with industry representatives.

The IoL worked with its Miscellaneous Licensing Consultation Panel in addition to surveying members for views in order to formulate its response to the proposals.

BRDO consultation: extension of primary authority scheme to include gambling (closed 24 January 2013)

On 14 December, the Government started a six-week consultation on plans to cut bureaucracy by widening the range of regulations included in the Primary Authority scheme. The plans would see the scheme covering age-related sales of gambling, the Housing Health and Safety Rating system for assessing potential hazards in dwellings, sun-bed tanning and Welsh regulations for single-use carrier bag charging. Business and Enterprise Minister Michael Fallon said: "Primary Authority partnerships are reducing regulatory burdens for companies and allowing them to grow. It's now time to extend the scope of the scheme

to streamline the way regulators work with businesses, improve protections to the public and help local authorities to target their resources against rogue traders". The IoL worked with members of its Gambling Consultation Panel as well as seeking views from IoL members to inform its response to the proposals.

Home Office Alcohol Strategy consultation (closed 6 February 2013)

On 28 November 2012, the Home Office released a 10-week consultation on the Alcohol Strategy including plans for minimum pricing and the introduction of a health objective linked to cumulative impact policies.The consultation sought views on a number of measures set out in the Government's Alcohol Strategy, which was published on 23 March 2012. The consultation sought views on five key areas:

1. *A ban on multi-buy promotions in shops and off-licences to reduce excessive alcohol consumption*
   This proposal would have the effect of banning offers such as "buy two get one free", or three bottles of wine for £10, but would not prevent half price offers or similar.
2. *A review of the mandatory licensing conditions, to ensure that they are sufficiently targeting problems such as irresponsible promotions in pubs and clubs*
   This section looked at each of the Mandatory Conditions with a view to assessing their effectiveness at promoting the licensing objectives. Some felt that the wording of the conditions and the use of language such as "irresponsible"and "substantially similar to" was unhelpful, and the point was made that whether or not a promotion is irresponsible is entirely down to the way in which it is managed.
3. *Health as a new alcohol licensing objective for cumulative impacts so that licensing authorities can consider alcohol-related health harms when managing the problems relating to the number of premises in their area*
   The consultation was silent on exactly how a fifth (discretionary) licensing objective would be incorporated. This is likely to be a crucial point bearing in mind the absence of any mention within the Act itself about Cumulative Impact, and the wording of the Act around the four statutory licensing objectives.
4. *Cutting red tape for responsible businesses to reduce the burden of regulation while maintaining the integrity of the licensing system*
   There were a number of proposals within this section including the introduction of a further process to authorise ancillary sales such as "complimentary" alcohol given in certain circumstances. This section also included a review of the current ban on alcohol licensing for motorway service areas, a potential relaxation around the licensing of late night refreshments, removing the requirements for newspaper adverts and questioned the current arrangements for renewing personal licences.
   It is worth noting that the grandfather rights which applied during the transition for existing licensees will not apply in 2015, and (unless changed), personal licence applications will have to fulfil all the requirements including the need for an approved qualification on renewal.
5. *Minimum unit pricing, ensuring for the first time that alcohol can only be sold at a sensible and appropriate price*
   Proposing a minimum unit price of £0.45 is potentially the most legally controversial element of the consultation. Legal challenges in Scotland will have a bearing on this proposal, and it is likely to be some time before this is implemented.

IoL response

The IoL surveyed members for views as well as working with the Alcohol & Entertainment Consultation Panel to formulate its response. We were pleased to attend the Home Office Technical Groups to discuss the key proposals during the consultation period, and details of the IoL's final response to the proposals is available on the website:

http://www.instituteoflicensing.org/consultations.html

Changes to street trading and pedlar laws for UK (closed 15 February 2013)

The UK Government, the Northern Ireland Executive and the Scottish Government are jointly consulting on proposals to ensure compliance with the requirements of the European Services Directive.

Background to consultation

The Government's interpretation of compliance with the Directive developed in the course of the evaluation of the Directive among Member States. The resulting consensus was that the retail sale of goods is generally a service activity within the scope of the Directive and since pedlars and street traders are engaged in the retail sale of goods it has been concluded that changes are required to both of these regimes.

Purpose of consultation

The consultation was intended to ensure that the street trading and pedlary regimes comply fully with the requirements of the Services Directive. The UK Government and the Northern Ireland Executive sought views from stakeholders in relation to the repeal of the Pedlars Acts and changes to their respective street trading regimes. The Scottish Government only sought views in relation to the repeal of the Pedlars Acts.

Areas for consultation

Public views are being sought specifically in the following areas:

- Repeal of the UK-wide Pedlars Acts 1871 and 1881
- A new, clear and up to date definition of what behaviour constitutes acting as a pedlar for the purposes of the pedlar exemption under the street trading regimes of England, Wales and Northern Ireland
- Changes to Schedule 4 to the Local Government (Miscellaneous Provisions) Act 1982 to ensure compliance with the Services Directive - (the street trading regime of England and Wales)
- Changes to the Northern Ireland (Street Trading) Act 2001 to ensure compliance with the Services Directive

IoL response

The IoL surveyed members for their views and worked through the proposals with its Miscellaneous Licensing Consultation Panel, which included representatives from Northern Ireland and Scotland, to formulate its response to the proposals.

Scottish Government: taxi reform consultation (closed 15 March 2013)

On 28 November 2012, the Scottish Government announced its consultation on proposed changes to taxi and private hire car licensing.

The Scottish Government has been aware of a number of concerns with the taxi and private hire car licensing regime for some time. Concerns were based around two main elements:

- Administration and enforcement of current regime: this relates to concerns about the variability in how legislation is interpreted as well as the difficulty of enforcement.
- Criminality within the trade: this relates to concerns with some firms being financed by individuals with connections to organised crime, and public contracts being awarded to businesses with such links. There is also concern about legitimate trade being squeezed out in certain locations by unfair competition from businesses with criminal links and by criminal individuals

The main purpose of the consultation is to present options gathered from the Scottish Government's discussions with stakeholders with a view to identifying the correct next steps towards a modern and effective licensing regime for taxis and private hire car services. While the current position on the options is outlined in the document, the Scottish Government states it is willing to review this in light of responses to the consultation paper.

The core proposal within the consultation concerns new powers enabling duties to be placed on local authorities and other regulations to implement national systems and standards. This aims to deliver improved consistency, efficiency and effectiveness while still accommodating local democracy and circumstance, as individual local authorities or other regulators would have the capacity to present a case for variation or opt-out.

IoL response

The IoL's Taxi Consultation Panel has worked alongside Scottish members to respond to this consultation. As always there are interesting parallels with current and proposed arrangements in Scotland compared to current and previous arrangements in England.

Scottish Government consultation on further options for alcohol licensing (closed 21 March 2013)

On 19 December 2012 the Scottish Government announced its consultation on proposals intended to address the concerns raised by a wide variety of stakeholders, including:

- Further criminalising the supply of alcohol to under 18s: extend existing criminal law to cover the supply of alcohol to under-18s in a public place
- Restrictions where disorder is likely to occur: police powers
- Restrictions where disorder is likely to occur: licensing board powers
- Enable licensing boards to apply new local licensing conditions to all existing licensed premises without the need to update individual licences
- Reintroduction of the "fit and proper" test: licensing boards are currently limited to considering relevant convictions notified by the Chief Constable when determining whether someone should be granted a personal licence
- Placing a statutory duty on licensing boards to promote the licensing objectives
- Placing a statutory duty on licensing boards to report annually on how the board fulfilled its duty to promote each of the licensing objectives
- Placing a statutory duty on licensing boards to gather and assess information on each of the five licensing objectives in the 2005 Act in the preparation of their statement of licensing policy
- Extend the period that a statement of licensing policy is in force to five years and introduce a statutory ouster limiting appeals against an adopted licensing policy statement outside its introductory period
- Consideration of English language ability.

The Scottish Government anticipates that these proposals will contribute to the overall aims of addressing the problems of alcohol misuse, while minimising the burdens on the legitimate trade and regulators.

The IoL has been working with Scottish members and members of the Alcohol & Entertainment Consultation Panel to formulate its response to the proposals.

Opinion

Summary Reviews — the imperative of judgement calls

On the morning of Sunday 1 July 1923 a limousine drove up to the entrance of the Savoy Hotel. A doorman helped out a couple who were known to the hotel as the Prince and Princess Fahmy. Ali Kemal Fahmy was a 22 year old Egyptian who had met his bride, an elegant brunette divorcee ten years his senior, in Paris the year before. She was then known as Madame Marguerite Laurent and unbeknown to Prince Fahmy had lived a chequered life as an adolescent prostitute before developing into a high-class courtesan. Unbeknown to Marguerite her bisexual husband had a predilection for sadism and, as the Old Bailey later heard, for "unnatural bedroom practices". On the evening of 9 July the couple attended the theatre in Leicester Square to see, somewhat ironically, the popular operetta "The Merry Widow". They returned to their hotel for a late supper.

In the Savoy's restaurant an argument erupted between them which degenerated to such an extent that Madame Fahmy picked up a wine bottle and threatened to smash it over her husband's head. Waiters intervened to prevent what we would now call a serious glassing. This was not the first violent dispute this unhappy couple had had in the days they spent at the Savoy.

Police forces who pull this trigger too often and in a non-targeted way risk being characterised as "the boy who cried wolf"

At around 02:00hrs a night porter was walking past the Fahmys' suite when he heard three gun shots in quick succession. When he entered the room he saw the Prince bleeding profusely from a fatal wound to his temple. Madame Fahmy was seen dropping a smoking Browning automatic pistol to the floor. She was repeatedly mumbling '*Qu'est-ce que j'ai fait, mon cher?*' (what have I done, my dear?). She was charged with murder. If convicted the only sentence was hanging. Just over two months later she appeared in the Old Bailey dock for her trial represented fortuitously by Sir Edward Marshall Hall KC, widely celebrated as "The Great Defender". Before a jury of English gentlemen he argued that Madame Fahmy - an innocent and beautiful European lady - had been drawn into the "Oriental Garden" of her perverted and degenerate Egyptian husband. When he persisted in his unspeakable marital demands she was in fear for her life when she opened fire. As Marshall Hall put it: "*This man met his death in a struggle due to his own iniquity*". She was sensationally acquitted. (The innocent Madame Fahmy later died in poverty in 1971 after fraudulently and unsuccessfully claiming she had borne a son by her late husband in order to claim his inheritance.)

The relevance of this account, in addition to its prurient interest, is this: despite the Savoy Hotel being the location of a threatened glassing, regardless that this licensed premises attracted customers who were prone to violence, and even though a gun was successfully smuggled into the hotel and used to commit a murder, the Savoy's alcohol and entertainment licences were never in jeopardy.

Accelerate 90 years to the present. Possibly change the location. What might happen today? The instinct of some might be to instantly launch Summary Review proceedings, to seek suspension of the premises licence as an interim step and then revocation at the full review hearing. Recently published Home Office statistics suggest that of the 147 valid police applications for summary review in the previous year, an interim suspension was the result in 57% of cases. Whilst there are many occasions when such a severe step is fully and entirely justified, and must be pursued robustly by officers, I wish to urge caution. Summary Review proceedings were intended by the Government to be an exceptional measure only to be used if no other mechanism could achieve the same aim. They ought not be used as a knee-jerk reaction to a single serious crime at an otherwise well-run and non-violent premises unless it is essential to do so on the facts of the particular case. The senior certifying officer must exercise his discretion with the utmost care and extreme focus. This judgment call must never be delegated and should only follow the most rigorous scrutiny of the history of the premises, an assessment of its operators and whether the trigger incident if there is one (however serious it may be) demands that a summary review be launched. Police forces who pull this trigger too often and in a non-targeted way risk being characterised as "the boy who cried wolf". They may then lose the greatest asset they have before a licensing authority – their credibility and well-deserved respect. Properly used, the summary review powers are the most powerful tool in the police licensing officer's box. But like any tool, if it is used too often or inappropriately it risks being blunted to the detriment of all.

Gary Grant
Barrister, Francis Taylor Building

The draft Gambling (Licensing and Advertising) Bill — a new regulatory approach is proposed

The Draft Gambling Bill proposes fundamental changes to the basis on which the current system of remote gambling is regulated in Great Britain. In order to protect the interests of the domestic punter, the amendments would move regulation away from the current place of supply basis to a place of consumption basis, as **Nick Arron** explains

The Department for Culture, Media and Sport ("DCMS") published the much awaited Draft Gambling (Licensing and Advertising) Bill on 3 December last year.

The Draft Bill amends the Gambling Act 2005 so that remote gambling will be regulated in Great Britain on a point of consumption basis. Currently the regime for remote gambling is licensed from the point of supply. Under the 2005 Act, remote gambling is defined as gambling in which persons participate by the use of "remote communication", being communication using the internet, telephone, television, radio or any other kind of electronic or other technology for facilitating communication.

The Government consulted on the Bill back in March-June 2010. It is therefore somewhat surprising that it has taken a year and a half to draft what is a short Bill, (although in that time the London 2012 Olympics would have been a priority for the DCMS). Of the 138 consultation responses, 57 were in favour of the proposals to amend the act and license overseas gambling operators.

Currently under the Gambling Act 2005, gambling is deemed to take place wherever the gambling operator is based (or the place of supply). Remote operators are only required to hold a Gambling Commission Licence if they have remote gambling equipment located in Britain. Advertising of gambling in Britain is restricted to those who hold an operating licence, operators licensed in EEA member states and Gibraltar and those on the white list, being Antigua and Bermuda, the Isle of Man and the states of Alderney and Tasmania. It is illegal for companies outside of these jurisdictions to advertise gambling in Great Britain.

Operators of remote gambling sites in jurisdictions who can advertise to customers in Great Britain must comply with the Broadcast Committee of Advertising Practice (BCAP) Code and the Committee of Advertising (CAP) Code, which are both supervised by the Advertising Standards Authority. The codes promote the three licensing objectives of the Gambling Act 2005: preventing gambling from being a source of crime and disorder, ensuring gambling is conducted in a fair and open way and protecting children

Nick Arron

and other vulnerable persons from being harmed or exploited by gambling. The codes are extensive and include requirements that adverts do not:

- Portray, condone or encourage gambling behaviour that is socially irresponsible or could lead to financial, social or emotional harm; or
- Link gambling to seduction, sexual success or enhance attractiveness; or
- Be likely to be of particular appeal to children or young persons, especially by effecting or being associated with youth culture; or
- Suggest that gambling can be a solution to financial concerns.

In addition to the CAP and BCAP advertising standards codes, the gambling industry has its own voluntary Gambling Industry Code for Socially Responsible Advertising. The industry code includes the requirement that adverts display the www.gambleaware.co.uk address.

Gambling on websites is becoming increasingly popular. The British Gambling Prevalence Survey 2010 estimated that 35.5 million adults in Great Britain gambled in the year prior to the survey. Of these, 14% used the internet and websites to gamble. Gambling on the internet is predominantly betting. The Gambling Commission industry

statistics for April 2009 to March 2012 estimate that the global remote gross gambling yield (the amount retained by operators after the payment of winnings but before the deduction of the cost of the operation) was £20.1 billion during 2011. This represents a 10% growth on the previous year. It is estimated that UK consumers accounted for £2 billion between 2010 and 2011, an estimated growth of 5%. As at March 2012 there were 288 remote gambling operating licenses granted by the Gambling Commission which are held by 207 operators. It is estimated that the gross gambling yield of those operators accounts for 4% of the global remote gross gambling yield.

The majority of gambling by Great Britain's gamblers is on websites operated by businesses which are based outside of Great Britain. The profits and taxation of these businesses would be of benefit to countries in which they are based rather than Great Britain. As a result, licensing of foreign gambling operators is the first step towards the taxation of the operators who benefit substantially from the Great British market.

The Government believes that foreign operators under the current system can present risks to British consumers. There are a number of reasons attributed. The Gambling Commission has become aware of new and emerging European jurisdictions from which online gambling sites have targeted British consumers where very little is known about the level of regulation and customer protection. There are also different regulatory standards and approaches by foreign jurisdictions. Some have extensive and robust regulatory regimes, others much less so. They also have concerns about the reporting of information to the Gambling Commission such as suspicious betting activity. Foreign operators, non licensed by the Gambling Commission, do not have to report to the Commission.

The Government also points to a number of different products licensed under different jurisdictions available on a single branded website and has concerns that customers, without knowing, can be inadvertently gambling with an operator that is not licensed by the Gambling Commission. This can lead to confusion and the Gambling Commission has received related enquiries about social responsibility and unfairness. The Commission cannot directly investigate these complaints or enquiries as they relate to operators whom they do not licence. The Government points to similar problems which can arise in respect of adverts that can be difficult to understand as to whether and where a service or product is regulated.

The Bill proposes fundamental changes to the basis on which the current system of remote gambling is regulated in Great Britain. If implemented the amendments will move away from the current place of supply basis to a place of consumption basis. The new regime will place the British consumer at the centre of the system. All operators selling into the British market will be required to hold a Gambling Commission Operating Licence and be subject to the Act, Regulations, Licence Conditions and Codes of Practice and the Gambling Commission's Technical Standard requirements. Operators will also have to contribute towards British problem gambling and regulatory costs. They will contribute money to organisations such as RIGT on research, education and treatment of problem gamblers and will have to pay an annual licence fee to the Gambling Commission. The DCMS proposes that existing foreign licenses are taken into consideration when determining applications by foreign operators and that the existing licenses will impact on the level of fee and charges which operators will be expected to pay and the level of Gambling Commission scrutiny they receive. The proposal is that the Gambling Commission does not duplicate the work of other regulators or place unnecessary burdens upon them. We can expect a transition period which will see operators already licensed in EEA countries and existing white listing jurisdictions awarded an automatic provisional licence so that they can continue to trade. Interestingly, as a result of the changes the British market will be open to operators worldwide for the first time.

Gambling Commission's Industry Statistics

In December 2012 the Gambling Commission published its industry statistics covering the period April 2009 to March 2012. The statistics are produced from information and regulatory returns submitted to the Gambling Commission by licensed operators and by information provided by trade bodies and regulatory partners such as BACTA and the Bingo Association.

During the period April 2011 to March 2012 the British gambling industry generated a gross gambling yield of £5.8 billion, a rise of 0.2 billion from 2010/2011. The betting sector remains the dominant market with a 52% share followed by the casino sector (15%) and the British Regulatory Remote sector (12%), although most British remote gambling activity is regulated on overseas sites. We expect the figure for the British regulated remote sector to increase dramatically with the implementation of the Gambling (Licensing and Advertising) Bill. The lottery sector has seen the largest increase in gross gambling yield during the period 2010/2011 to 2011/2012 of 36%. The growth in the lottery sector can be attributed primarily to the Health Lottery. Growth was seen across all other sectors with the exception of arcades, which saw a decrease of gross gambling yield of 10%. This continues the trend observed from the years 2009/2010 to 2010/2011.

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Article

Politics, policing and licensing: the impact of Police and Crime Commissioners

Police and Crime Commissioners are not meant to run the nation's police forces but it seems likely that they will become involved in and influence licensing and operational matters, suggest **Philip Kolvin QC** and **Rory Clarke**

The introduction of Police and Crime Commissioners ("PCCs") on 22 November 2012 is the most significant change to policing in 50 years. Elections were met in the main with indifference and low turnout from the voting public. This has not, however, diminished the powers of the successful candidates. In this article, we shall consider the power and, as importantly, the influence and political drivers of PCCs, and offer views as to the impact they may have on licensing regulation.

What are PCCs?

Introducing democratic accountability to policing was a Conservative manifesto promise and written into the Coalition Agreement. Commissioners, as the elected head of the force, will be responsible for a series of important functions:

(1) Hiring and firing the Chief Constable
(2) Publishing the police and crime plan, which includes the local policing body's police and crime objectives; this is the means by which the chief constable's performance in providing policing will be measured;
(3) Holding the chief constable to account for the exercise of his own and his subordinates' functions, including the way in which he exercises his duty to have regard to the police and crime plan;
(4) Securing that the police force is efficient and effective.

Just as chief constables are answerable to the PCC, so the PCC is answerable to the electorate at the ballot box, every four years. While the PCC does not run the police force, he does set the agenda, and there will unquestionably be temptation on the part of the PCC to set it with one eye cocked towards local views and the local press.

The Home Office itself puts it this way:

To provide stronger and more transparent accountability of the police, PCCs will be elected by the public to hold chief constables and the force to account; effectively making the police answerable to the communities they serve.

Police and crime commissioners will ensure community needs are met as effectively as possible, and will improve local relationships through building confidence and restoring trust. They will also work in partnership across a range of agencies at local and national level to ensure there is a unified approach to preventing and reducing crime.

PCCs will not be expected to run the police. The role of the PCC is to be the voice of the people and hold the police to account.

Viewed slightly differently, the PCC is the servant of the people, and the construct of the legislation is clearly that he should be influenced by their views. Depending on the personality of the PCC there is a danger that in performing his duties, he will perform to the gallery. The check and balance of accountability to police and crime panels is written into the Act. These are principally local authority-nominated members, who are likely to be subject to the same political pressures.

The radical nature of the change should not be underestimated: indeed it was intended to be radical. Put starkly, it involves a shift in the tectonic plates of policing from a force being run by a vocational policeman according to policing principles and free of outside political interference, to the force being run strategically by an elected politician answerable to other elected politicians and the general populace, with the chief constable responsible for implementing the PCC's strategic plan. That successful candidates are in the main drawn from the ranks of career politicians is perhaps no coincidence. The Senior Presiding Judge, Lord Justice Goldring, perhaps expressing disquiet at this politicisation, has already warned magistrates to ensure working relationships with PCCs are kept at "a good arm's length".

It is no answer to say that the PCCs' influence will be constrained by the limits to their powers, for they have the ability to fire the Chief Constable. This power to dismiss is no more and no less than the Prime Minister holds over his ministers.

The Mayor of London has already shown the way. Although the arrangements in London are slightly different – involving a Mayor's Office for Policing and Crime and a Metropolitan Police Commissioner appointed by Her Majesty – we

have already seen how the current Mayor precipitated the resignation of Sir Ian Blair, then Commissioner of the Metropolitan Police. While the circumstances in that case were extreme, it is a demonstration of the power which PCCs hold even more directly over chief constables.

The intention is that operational decisions are exclusively matters for the chief constable. But this notional demarcation will be difficult to apply in practice. Even the Home Office guidance is impossibly vague. It asks "What is and what isn't an operational matter?" and answers its own question with "This is difficult to define" (!)

Licensing

What role will PCCs have in licensing? According to the current section 182 Guidance, PCCs: "... will be expected to have a central role working in partnership with local authorities, enforcement bodies and other local partners to decide on what action is needed to tackle alcohol-related crime and disorder in their areas."

How might this work? This may be considered under several headings: policy, applications, enforcement, reviews, Early Morning Restriction Orders (EMROs) and levies.

In relation to policy, the formal consultee on a licensing policy under section 5 of the Licensing Act 2003 remains the chief officer of police, i.e. the chief constable. However, the PCC could undoubtedly in his plan set out objectives to create or extend cumulative impact zones, resist extended licensing hours or through policy encourage the imposition of conditions regarding, for example, CCTV, polycarbonates, door supervision levels and so forth. If sought by the chief constable at the instance of the PCC, it may be difficult for licensing authorities politically to resist these kinds of restrictive approaches in their policies.

In relation to applications, again, while the consultee in respect of premises licence and club premises certificate applications and temporary events notices is the chief constable, there is no reason why the PCC could not exhort a much more interventionist approach to licensing. This may be directly at odds with a voluntary, partnership model employed at local level, but in keeping with a county-wide, overtly restrictive approach to the industry.

Enforcement is one area where we could see the biggest impact of all. In July 2012 Peterborough Police launched a crackdown on alcohol-fuelled crime in Peterborough City Centre. Operation Themis, as it was called, promised a "zero-tolerance approach on disorder" which produced 50 arrests and 50 banning orders within a few weeks. There are clear strategic policing advantages to such high profile operations, but it is undeniable that they also produce big headlines, generate publicity and are likely to play well come election time. While not every town will necessarily have the particular needs of Peterborough, we can expect to see a lot more such operations in the near future.

In relation to reviews, the PCC may through the police and crime plan encourage a much more interventionist approach, perhaps based on quotas, targets or lowered thresholds for intervention. In some areas there has been concern that police reviews are being brought on crude analysis of statistics on reported crimes which pay insufficient heed to whether these are actual crimes, the type of crime concerned, the number of people passing through the premises and their dwell-time. To say that premises are the worst performing in a borough makes headlines, but may ignore that these are reported thefts in premises operating 20 hours per day with several hundred thousands of people passing through every year. However, a plan to bring in for review such "worst performing" venues may expose to reviews and regulatory restrictions premises which have perfectly good relations with front-line police officers who are experts in managing the night time economy.

The new kids on the regulatory block are late night levies and EMROs. Early analysis has not shown an onrush of eagerness among local authorities to implement either. However, survey work has tended to canvass unelected officers rather than members, and could not take into account what influence the new PCCs may bring to bear on the topic.

As for representations on EMROs, the responsible authority for consultations on EMROs is not the PCC but the chief constable. However, it must be remembered that the chief constable is answerable to the PCC. If the latter's plan is for there to be more EMROs in order to release operational police officers to other areas of police work, it will be very difficult for the chief constable not to transmit his master's urging to the licensing authority or for the authority simply to ignore it.

Finally, levies. Here, the Police Reform and Social Responsibility Act 2011 does require consultation with both the PCC and the Chief Constable. It is not easy to imagine them pulling in opposite directions on the issue, and they will have every incentive to seek a levy, which is no skin off the police's nose, but which is a sore issue for the licensed trade and, as many authorities see it, a rather unprofitable but bureaucratic miasma for them.

The newly-elected PCCs do not want for advice on licensing. Recognising the importance of the issue, and perhaps the opportunities which this new office brings, briefing notes to candidates have been issued by the Home Office, the Local Government Association (LGA), Alcohol Concern and the Association of Licensed Multiple Retailers.

The Home Office is keen to ensure PCCs remain "on-message" on alcohol. Alcohol is the subject of one of the ten areas of policy on which they produced detailed briefings for candidates. These were selected as the "aspects of crime and policing that need national strategies and nationally co-ordinated operational response", in areas "where central government input is important." It singles out in particular a focus on "our work with the drinks and hospitality industries to reshape our national approach to alcohol."

The briefing itself is headed "Tackling Alcohol Misuse". It consists of a summary of the National Alcohol Strategy and the Home Office measures to re-balance the 2003 Licensing Act. While it does not inform a PCC how he or she might approach their role in relation to licensing, it lists the powers available to the police. It is entirely focused on the negative aspects of the night-time economy, with no

appeal to the need for these aspects to be balanced against the positive contribution of vibrant town centres.

The Alcohol Concern briefing for new PCCs is also exclusively focused on the problems that alcohol causes, perhaps understandably given the source. It suggests that PCCs will need to take a public stance on such issues as local alcohol licensing policy, antisocial behaviour, drink driving, police/hospital liaison and minimum pricing when this comes into effect.

The LGA similarly encourages a focus on the "small minority of retailers" which behave irresponsibly when selling alcohol. Its briefing, "Managing the Night-Time Economy", contains, helpfully, some suggested questions a new PCC might ask the chief constable:

- Has the force fulfilled its duty to make arrangements to effectively exercise its functions with regard to representations on licences?
- Are measures in place to identify hot spots of alcohol-related violence and disorder?
- Has due consideration been given to the creation of a cumulative impact policy or a late-night levy? What evidence is there to support it?
- If a late-night levy is introduced, what are the best ways to spend the money to tackle alcohol-related crime?
- Is income from the levy benefiting the place that contributes the money? It is not required that the money is spent in the same place, but doing otherwise may lead to challenge.
- Is your police force properly engaging with partners, including retailers, to ensure a joined-up and effective approach to reducing alcohol-related crime and disorder?

A PCC who is asking these kinds of questions will inevitably be drawn into the review of operational decisions and may ask: "What are you, the Chief Constable, doing to review your premises with the highest record of offences?"

The licensed industry is perhaps understandably concerned that the introduction of county-wide policies does not jeopardise existing local relationships. British Beer and Pub Association Chief Executive Brigid Simmonds wrote to all PCC candidates before the elections to push the case for partnership working. She reminded them of the need to make connections with all the other bodies that operate in the licensing field: local authorities, health and wellbeing boards, and other local public sector partners. She was keen to stress partnerships such as Pubwatch, Best Bar None, Business Improvement Districts, Community Alcohol Partnerships and Purple Flag that are all capable of helping at a local level.

Discussion

The institution of PCC does bring certain advantages to the business of licensing regulation.

First, the PCC may through his plan engender much better analysis of the relative performances of town centres. Why did Centre A have 50 glass-related attacks last year while Centre B had 10? What is Centre A doing wrong, or what is Centre B doing right? What lessons can be learned? Is it simply a difference of demographics? Or is it about polycarbonate licensing conditions? Or is it about responsible service, or quality of police response? Or is there simply a better Pubwatch scheme in Centre B which has driven out the miscreants?

Second, there are undoubtedly areas where the balance between partnership and regulation has tipped too far in favour of the former. A strategic approach involves looking carefully at where the balance lies. If there is a belief that nobody will get reviewed, this can be as unhealthy as a culture where reviews are too easily brought. Proper plans could set out better criteria and benchmarks for the consideration of such issues.

Thirdly, strategic approaches may involve the better allocation of resources across entire administrative areas, so that police energy may be focused on the places which need it most.

Against that, there are clear risks with PCCs becoming over-involved in licensing regulation.

First, the great majority of licensed premises are run by people who want to comply, and who have built up strong relationships of trust and co-operation with local police officers. While there are cultural variations from town to town, this is no bad thing – a night-time economy is a living, breathing micro-culture. Everyone involved in the work knows of major reviews brought against the will of the local officer, because orders have "come from above". While it is possible that the officer had become over-familiar with the premises concerned, it is just as likely that in fact the relationship was working well, but that the review was found necessary because of a crude approach to its statistics, or because the review itself was needed to meet some statistical benchmark. It will be a steep learning curve for PCCs if they are to avoid falling into these traps.

Second, while there are clear benefits to a county-wide approach, licensing is a local scheme of regulation dependent on individual proposals in individual places. There is a danger that new appointees, keen to hit the ground running, will take the view that "something needs to be done", and create plans which are insufficiently sensitive to local variations. It is sincerely to be hoped that before imposing cultural changes, PCCs listen first and act later.

Third, for good or ill, licensing clampdowns are usually inspired by operational police decisions. The word "usually" is deliberate – in some cases an Alcohol Misuse Enforcement Campaign is centrally orchestrated and nationally publicised. But there is a real danger that sensitive decisions about the level of enforcement or objection activity will come to be driven by a glance towards political popularity. This may conceivably cut both ways – an attack on the licensed trade in a university town may go down like a tuition fees increase. But for the most part, and particularly where turnout is so low, licensing enforcement may be encouraged in order to attract the support of the small number of voters needed to win an election. Even if choices are not consciously made on such grounds, the influence of the panel is such that this may inevitably occur.

There is here a distinction to be made. The Licensing Act 2003 first introduced democracy to licensing when it transferred the power to grant licences from magistrates'

courts to licensing authorities. However, licensing policy as pursued by licensing authorities is largely unaffected by party politics, with a few notable exceptions. At elections there are many things we want our local authorities to deliver, and licensing policy tends to come well down that list.

However, for PCCs, licensing provides some opportunities ripe for making headlines that will play well come election time. The introduction of an Early Morning Restriction Order (EMRO), a late-night levy or a cumulative impact zone all have the potential to create noticeable impacts that may attract voters. Campaigns against sales to minors or the intoxicated can produce headlines in local newspapers that will generate publicity for a PCC. Even when licensing is not directly mentioned, an electoral promise to "crack down on crime hotspots" or to eliminate "city centre no-go zones" will inevitably have a licensing dimension. Shutting down a few large night-clubs might only serve to distribute problems rather than solve them, but it is a tangible effect for which a PCC can claim credit. Can we expect PCCs, who are politicians, to be blind to such considerations? Those who fear the politicisation of the police will not have been reassured when three-quarters of successful candidates were affiliated to the two biggest political parties.

Early signs show that at least some candidates have focused on licensing with enthusiasm and that this has met with electoral success. Martyn Underhill, a candidate for PCC in Dorset, was reported by the BBC as saying the police had to clamp down on "stag culture" and that if elected he promised to shut down more problem venues. His rival candidates disagreed, claiming that this is not the role of the PCC, or calling for greater cooperation with partners. Mr Underhill won easily with 60% of the vote. His rivals at the next election will remember this, and will likely call his record to account on how these promises translated into action.

In Cumbria, newly-elected PCC Richard Rhodes, immediately declared that he places alcohol at the heart of his strategy for dealing with crime. One of his priorities is tackling crime and disorder hotspots : it is bound to be a licensing issue, even if not expressed as one.

This is echoed in Devon and Cornwall, where PCC Tony Hogg went out on patrol straight away in town centres late at night in his first week in office. He stated: "Alcohol misuse, for me, is way up at the top of the list of issues because of the damage it can do in terms of wider violence, the effect on children and in terms of the load it puts on the police service."

It would be wrong to say that candidates were exclusively focused on licensing however. In Wales, Professor Jonathan Shepherd, who directs Cardiff University's Violence and Society research group, drew attention to the licensing aspects of crime in the pre-election debate. He said: "By far the majority of violent offences and offences of disorder happen in a very small area in the city centre at night and it's focused there between 11 o'clock at night and four in the morning so that has to be the number one priority for policing." The candidates did not appear to respond. None of them listed licensing as their priorities in their campaign material and the election was won by the Labour party candidate, a former MP.

Conclusion

The effect that PCCs will have on licensing is necessarily speculative, and will, of course, vary from force to force. But we have seen that the powers they have been given have the potential to have at least as big an impact on licensing policy as licensing authorities. Unlike licensing authorities, which have many other priorities, including tourism, culture, regeneration, heritage, equality and business, licensing is likely to be a key priority for many PCCs.

A further distinction is the size of the area covered. Except in unitary authority areas, PCCs will typically cover an area the territory of nine licensing authorities. On the plus side, there is great scope for comparative analysis of performance between licensing authority areas, and of spreading best practice from one authority across the wider policing area. But the corollary to the county-wide approach is the risk that it may result in sweeping policies which disregard local sensitivities and needs. The police will tell you that policing the night-time economy depends on establishing relationships with premises at a very local level. High-level policies risk disrupting these relationships. What works in the city centre does not always translate to more rural areas. Here, much will depend on the degree to which PCCs are willing to roll up their sleeves and engage with local partnerships, or stand back and rely on grand schemes and broad policies.

Finally, there is the burning issue. Police are an integral part of the justice system. Should their leaders be elected at the ballot box or appointed to their office? In the case of the judiciary, most people would resist elected judges, sentencing with an eye to the next election. Conceivably, the *vox populi* will enjoy the opportunity to eject their PCC and replace him with one with sharper teeth. Whether this will make for a more sensitive, responsive and imaginative approach to licensing or an instinctively top-down, regulatory approach is something we will be in a position to judge in the years to come. It is one benchmark against which PCCs will fall to be judged.

Philip Kolvin QC and **Rory Clarke**
Cornerstone Barristers

Don't fear the reaper

Covert surveillance operations by local government officers are now a thing of the past, following a Government decision to restrict them to more serious offences. **Andrew Eaton** and **Alan Tolley** deplore the move, and wonder what ever happened to the policy of devolved powers

I was in my workshop the other evening tinkering about with my Pinarello bike and listening to George Harrison singing *Give me hope, help me cope with this heavy load.* And while George was singing about Peace on Earth it started to make me think about the curious case of all the Government fuss about the Regulation of Investigatory Powers Act 2000 (RIPA).

Let's be fair, there were councils who thought it was fair game to provide an authorisation for covert surveillance to snoop on paper boys who were allegedly too young to deliver papers. And there were those who used them to paint up their enforcement officers in camouflage and disguise them as post boxes in order to catch dog owners allowing their canine friends to foul the parks. And quite rightly, the Surveillance Commissioner said that was out of order!

Quite just how an authorising officer, who was supposed to be a director or above, ever thought it was justified to grant such an authorisation is another one of life's conundrums! Still, years of blatant abuse by council officers, as claimed by Big Brother Watch, had given the Government all the evidence it needed to remove the powers from councils and give it to the magistrates!

Yes indeed, that would be the same magistrates that can't spot a dodgy taxi driver who appeals a revocation, when the evidence is staring them in the face. But then, if you are an embittered lawyer who's just lost such an appeal, you may not be too objective on that assessment. However, leaving that aside, under the new changes imposed upon us in November 2012 we are now to ask the magistrates to ratify our authorisations, and even worse than that, we can only ask them in cases where the offence involved in the investigation carries a sentence of at least six months' imprisonment. So paperboys are out, dog fouling is out and littering is most certainly out. And more seriously, is it to be the case that plying for hire is out, and any of the other offences in the 1847 or 1976 Acts as well?[1] George was absolutely right indeed....Give me hope, help me cope with this heavy load!

Andrew Eaton

Alan Tolley

There has always been a debate among licensing practitioners and lawyers over whether a simple request about availability for hire, made by an enforcement officer to a licensed driver who was plying for hire, constitutes the use of a Covert Human Intelligence Source (CHIS). It can't be that Parliament intended for such a relationship to exist from a simple direct question. Can it be that such a relationship may exist under RIPA when the court decided in *Loosley*[2] that "it has to be regarded as unobjectionable if a law enforcement officer gives a defendant an opportunity to break the law, of which the defendant freely takes

1 The Town Police Clauses Act 1847 and the Local Government (Miscellaneous Provisions) Act 1976.

2 *R v Loosley, A-G's Ref (No.3 of 2000)* [2001] UKHL 53.

advantage, in circumstances where it appears that the defendant would have behaved in exactly the same way if the opportunity had been offered by anybody else" and therefore could not be considered as entrapment?

Isn't it the case that the enforcement officer asking the driver if he can take him to the District General Hospital, and giving that driver a free opportunity to say no, is exactly what the court was attempting to clarify in Loosley? So why did the Commissioner think it was right to ignore that particular judgment and place a greater burden on the already overstretched enforcement officers by making him become a CHIS? Never mind the complications that a CHIS causes to the RIPA co-ordinator for handling a CHIS!

But putting that complication aside, the really disturbing thing now for councils is that there isn't a single offence in the 1847 and 1976 Acts that carries a requisite sentence of six months' imprisonment, which means the whole scope of RIPA is out of bounds! So, any form of *covert* activity designed to try to stop the local private hire trade from plying for hire at closing time outside the local club at 2am, will now have to be done overtly instead; probably with lots of Scotchlite yellow bibs on, emblazoned with the council's logo, so that the "happy" clubbers know who to swear at and who to vent their anger at when they can't get home quickly. In a nutshell, therefore, it looks like RIPA is off the agenda for taxis. But what about other areas of licensing?

Let's not forget that the Government gave councils powers in the Licensing Act 2003 to impose conditions upon licences. Conditions could only be imposed initially if they were "necessary" and "proportionate", albeit they have since allegedly watered that down to "appropriate". If we can be trusted to get that responsibility right, given all the problems arising from the sale of alcohol, then why not when it comes to deciding how and what we target our enforcement resources on? In effect, the Government is saying we can be trusted to act proportionately when dealing with premises under the 2003 Act, but not when dealing with matters involving directing surveillance under RIPA.

If we accept the basic argument that the powers under the Licensing Act 2003 were given to local authorities because the council knew what was best and right for their area, then why can't the Commissioner accept that we are similarly placed to be the judge of what we decide in respect of directed surveillance for our area as well? Correct me if I'm wrong but didn't the Coalition's re-balancing proposals recognise the excellent work councils had done in their areas?

Equally, wasn't one of the Coalition Government's promises all about "shifting responsibility"? This is why we now have locally *elected* Police and Crime Commissioners and locally *elected* licensing authorities. We do indeed, but let's say the police and the council agree to tackle a particular issue in response to concerns of local people, it will be **"*unelected*"** magistrates who will decide whether the proposed course of action is necessary and/or proportionate under RIPA!

The comments of Eric Pickles, Secretary of State for Communities and Local Government, are confusing to say the least. On the one hand, the Government wants councils to be responsible for everything that happens locally because we are "best placed to respond to local needs". But on the other hand that same Government doesn't want you to take any action that they (not you) think is unnecessary (or "not necessary for public safety" according to the Home Secretary). What on earth is the point of localism then? *Give me hope, help me cope with this heavy load!!*

Yet, it was the Home Secretary who insisted that "the first duty of the state is the protection of its citizens, but this should never be an excuse for Government to intrude into people's private lives. Snooping on the contents of families' bins and security checking school runs are not necessary for public safety and this Act will bring them to an end. I am bringing common sense back to public protection and freeing people to go about their daily lives without a fear that the state is monitoring them". I suspect she lives in a "dog-fouling-free" area!

So, let's recap: under this Government you will be able to lie your way into a catchment for a good local school, put your rubbish in your neighbour's wheelie bin and let your dog foul to its heart's content without fear (the Home Secretary's word) of being caught and punished for doing so! The only problem is that some of these issues are very important to local people in their local areas and quite reasonably they want their local council to sort those issues out.

What do the changes actually mean for officers? For the use of directed surveillance, the ground of necessity has changed. The changes now say that in order to use the grounds of preventing or detecting crime or preventing disorder, the behaviour being observed must be a criminal offence and it must carry a sentence, whether dealt with summarily or by indictment, to a maximum term of a least six months' imprisonment or specified offences under sections 146, 147, 147A of the Licensing Act 2003. Any authorisation will still need to be proportionate and, having had it signed by your authorising officer, you will then need to obtain the approval of a magistrate. They will need to be satisfied it is necessary and proportionate, and that the authorising officer was duly authorised. It appears at the moment that challenges to the magistrate's decision will be by way of Judicial Review, so that seems highly unlikely to happen in currently cash-strapped councils! Previous guidance had made it clear that authorising officers should be at strategic director level and above, including Chief Executives, but they must be significantly separate from the investigation to make them an impartial and objective scrutiniser of the merits of a request for an authorisation. We'll still be able to carry out "undirected" surveillance, e.g. no RIPA is required in an immediate response to events or situations where it is not reasonably practical to obtain it, for instance when criminal activity is observed during routine duties and officers conceal themselves to observe what is happening. And let's not forget good old fashioned "overt" enforcement; in other words, you simply observed the dog fouling, showed the offending owner your authorisation card and said "You're nicked"!

Let's face it though, it's not as if councils are using RIPA authorisations like confetti. The last study carried out showed that fewer than 50% of councils had granted five or

fewer RIPA authorisations for directed surveillance while 16% had approved none whatsoever – so what's the issue?

We can't leave this RIPA "rant" without mentioning the murky world of the CHIS, or Covert Human Intelligence Sources. So the "covert source" has changed very little in these recent changes. You will still need to obtain a magistrate's approval for the use of the CHIS and they will need to be satisfied, in turn, that it is necessary and proportionate. The scope of CHIS covers undercover officers and people who make test purchases; so those people believing that test purchasers are a law unto themselves will have to look at this area very carefully and talk to their lawyers. Certain offences under the 2003 Act apart, is a CHIS required now for every test purchase? On the surface, it would appear that way.

If so, given the proposed extension of the Primary Authority scheme to include trade associations (who could very well be in charge of their own test purchases from now on) we might as well pack up and go home!

So, where does that leave us?

Don "Buck Dharma" Roeser, lead guitarist with the band Blue Oyster Cult, wrote one of rock's defining tracks with *Don't Fear the Reaper* – a song which deals with the inevitability of death and the foolishness of fearing it. I suppose we've been battered by central Government so many times now, and by so many (unnecessary) changes to our current licensing laws, that it's enough to make us all throw in the towel. But as the Blue Oyster Cult's song says...

All our times have come...but now they're gone

Seasons don't fear the reaper

We've found ways of beating them before, and we'll definitely find ways of beating them again, so depressing though it all appears to be on the surface, our advice is...

Don't fear the RIPA after all!

Andrew Eaton
Legal Services Manager Wealden & Rother District Councils

Alan Tolley
Senior Licensing Officer, Sandwell MBC

IoL Training & Events Calendar

March 2013

6 North East Regional Meeting
7 London Regional Meeting
12-14 *Zoo & Animal Welfare Licensing Course* - Bristol Zoo
13 North West Regional Meeting
14 *Gambling Training Course* - Northamptonshire
18-19 *Investigators PACE Course* - Kings Lynn
18 *Animal Welfare Licensing Course* - Lancaster
19 *Licensing Hearings for All Parties* - Bridgend
22 East Midlands Regional Meeting
27-28 *How to Plan a Safe Event* - Manchester

April 2013

9 Home Counties Regional Training Day
16-17 *Practical Animal Welfare Course* – Kings Lynn
22-23 *How to Plan a Safe Event* - London
26 South West Regional Training Day

May 2013

14-17 *Professional Licensing Practitioners Qualification* - Swindon
15 *Gambling Training* - Preston
21 *Animal Welfare Licensing Course* - Cardiff

June 2013

4 *National Training Day* - St Albans
6 London Regional Meeting
12 North East Regional Meeting
12 North West Regional Meeting
tbc *Licensing Hearings for All Parties* - 10 Locations tbc

August 2013

16 East Midlands Regional Meeting

September 2013

11 North West Regional Meeting
12 London Regional Meeting
18 North East Regional Meeting
23 London Region - Training Day

November 2013

20-22 *National Training Event* - Birmingham

December 2013

4 North East Regional Meeting
5 London Regional Meeting
6 East Midlands Regional Meeting
11 North West Regional Meeting

Institute of Licensing

Benefits of membership

Institute of Licensing

As part of the Institute of Licensing's main aims and objectives we strive to increase knowledge and professionalism in licensing. Being a charity we do not operate as a business and we do not seek to make a profit. We aim to provide a service on a cost neutral basis.

We have a Board of non-paid directors consisting of representatives from all of our membership base, council and police officers, lawyers, licensing consultants and the licensed trade. We have 11 regions covering England, Wales and Northern Ireland. We employ a small number of staff and we have a small team of contractors.

Benefits of Membership

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A small selection of membership benefits are shown below, for full details visit our member benefits pages of our website www.instituteoflicensing.org

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The IoL are not resting on their laurels we are continuing to look at more and more ways to improve the benefits of membership and this year we have teamed up with the organisations listed below that will offer an even greater service to IoL individual or organisational members. Each organisation is offering members a discount of their normal fees/book prices ranging from 10% to 20%, (see specific discount as offered by each company on our website **www.instituteoflicensing.org**). The companies that are offering the discount are all very highly valued for the services/products that they provide but now if you are an IoL member they are even better value.

Francis Taylor Building • Horsey Lightly Fynn • Paterson's Licensing Acts 2013 • Poppleston Allen • RIAMS

Journal of Licensing

This publication, the *Journal of Licensing* is published three times a year, and is free of charge to all members. Additional copies can also be ordered, at a small cost. See inside front cover for more details.

Licensing Flashes

We know that licensing is always changing and we know members need to be kept up to date with the changes and latest court decisions. Members will receive an electronic news update, a "Licensing Flash" whenever there is a news story that will be of interest to our members.

Ask a Question

Do you ever get asked a question and don't know the answer or can't remember? Members can post questions and all members get the opportunity to reply. Again, this is a free service for members.

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(Retired membership 50% of above)

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Large Organisation (13+ persons)	- £500

The community approach to tackling underage sales

New partnerships between local authorities, police, schools, health authorities and licensed retailers are proving successful, and cost effective, in reducing underage drinking, writes **Carlo Gibbs** of the Wine and Spirit Association

Since its introduction, the Licensing Act in 2003 has caused disputes between those that seek to enforce its provisions and those who seek to abide by them. This is particularly the case when it comes to provisions to prevent underage drinking.

From the licensing objective to protect children from harm, through to the offences of selling and persistently selling to those underage, and on to closure orders, test purchases, age verification policies and penalty notices, a complex and varying standard of compliance and enforcement has developed in different licensing authorities.

This multiplicity of measures requires a significant amount of time for enforcement agencies, local authorities and police to manage. Freedom of Information requests found that nearly 40,000 test purchasing operations have taken place nationally over the past five years, the majority in the off-trade. The cost of these reviews, suspensions and administration are further burdens to financially strapped councils and retailers, many of which are having to adjust their budgets to the difficult economic times.

Up to now, the licensing authorities have been shouldering most of the administrative and financial burden of the whole licensing regime, which at times can be significant. Under new legislation, full cost recovery will soon pass to licensees. However, under neither system has the Government managed to ensure that irresponsible licensees, who cost much more to administer, pay their fair share.

In some areas, the enforcement and licensee relationship is almost non-existent. Serious levels of mistrust cause cat and mouse type relationships that add an unnecessary level of bureaucracy and cost. Poor levels of compliance cost authorities significantly, whereas poor enforcement practice costs retailer and the public through the court system.

Government, responsible retailers, the police and local authorities all remain committed to preventing underage sales, but these types of relationships mean that too often the response to the issue is fragmented, misplaced and uncoordinated.

A new collaborative approach

However, it doesn't need to be like this. Typically, when the trade, Government and enforcement agencies begin working together they can actually have significant success in reducing underage sales and the related costs. In some areas, a new collaborative partnership-based approach is doing just that.

The origin of this culture change came in 2005 with the development of the Retail of Alcohol Standards Group (RASG). Following poor performances during the Government's Alcohol Misuse Enforcement Campaign retailers agreed to come together to examine ways they could cooperate to eradicate underage sales.

Evidence that the issue of judging a person's age was the most common reason for staff to make an underage sale led to the Challenge 21 scheme being developed. Challenge 21 increased the threshold and offers a buffer zone and created a set of basic standards that all retailers and staff could follow. The uniform application and branding across all stores and the culture of management backing up the staff decisions gave frontline staff the support they needed to be able to challenge confidently.

The move to Challenge 21 was successful, yet the off-trade retailers pushed this further by launching Challenge 25 in 2009. The success of this move has been clear with a reduction in supermarkets' failure rate from 50% to around 16% today. Independent analysis has also found that the higher threshold of 25 improves the pass rate by around 10% over Challenge 21 which is still in operation in the on-trade.

Originally just a voluntary programme, provisions for Challenge 25 now regularly feature in licensing policy statements and as conditions on licences. In Scotland it is now a mandatory condition. However, despite the success of Challenge 25, a range of other issues surrounding underage sales still persisted. Particularly worrying was the increase in "proxy purchasing".

While direct underage sales tumbled from 2005 onwards in supermarkets, pubs and off-licences, a Department of Health survey into young people drinking showed the level of young people getting their alcohol through a proxy, including parents and family members, increased dramatically from 9% in 1999 to over 26% in 2010. This poses significant problems for both the trade and local authorities. Bought legally by parents and adults, alcohol is continuing to find its way to young people.

The new approach - Community Alcohol Partnerships

Given the nature of this issue, it was clear that a simple enforcement and compliance approach was only ever going to half solve the problem. Therefore a new way of thinking was developed by the Retail of Alcohol Standards Group that could look to tackle both the demand and the supply side.

At their core, Community Alcohol Partnerships (CAPs) are a partnership between the local authority, police, schools, health authorities and most importantly the retailers themselves. A panel is set up including all stakeholders who then work together to identify the specific issues relating to underage drinking and establish plans to deal with them.

While other local partnerships can have some similar features, none has the buy in of all major retailers in the UK in the way that CAPs have. Wherever a CAP is formed in the UK, the major retailers participate fully and work closely with all local stakeholders.

While CAPs change depending on the issues in particular communities, there are a number of key aspects that feature in all CAPs.

Information sharing

One of the most important aspects of the CAP approach is the sharing of intelligence and improved communication between stakeholders. The partnership meets regularly in order to share a range of information from reports of youths drinking in a park, alcohol thefts from local shops or interactions with youth services, which then informs the partnership's work overall.

Lines of communication are improved between all stakeholders with nominated liaison officers for retailers and others to contact at the authority and, most importantly, retailers are engaged as part of the solution, rather than as just part of the problem.

Training

The partnerships look to ensure that retailers in the community have a high standard of training and compliance. All retailers in the CAP will operate Challenge 25 and work together to develop consistent signage and messaging across all stores. This can be tailored to individual CAPs depending on the types of issue they face, and could, for example, focus on proxy purchasing.

Training programmes also have a significant impact. Independent stores, which do not have the benefit of a large training budget, materials or the capacity to deliver training, are supported by larger retailers who bring them in to their own training programmes. This best practice is then shared across all the retailers in a unique way. It is not unusual for a CAP to see Tesco delivering training developed by Sainsbury in a Co-op building to a group of independent retailers. This again promotes consistency, cooperation and high standards across all retailers.

To support this work, often the licensing authorities will conduct a non-punitive test purchasing operation designed to provide the retailers with feedback on where the compliance has fallen short and where improvements need to be made.

Education

Once the compliance side is has been put in place, the focus shifts towards measures that seek to reduce demand for alcohol from young people. Education forms a crucial part of every CAP with resources from the Alcohol Education Trust and Drinkaware provided to local schools. Some CAPs also fund independent teacher training to support them with delivering alcohol education programmes.

Important too, is educating parents and others regarding proxy sales. A wide range of communication materials is adopted and local press are encouraged to highlight the dangers of alcohol to young people and the punishments for proxy purchasing.

Importantly, local authorities are not expected to foot the bill for additional resources. CAP officers support the operation of the CAP and the cost for literature, posters and admin support is all covered. Depending on the nature of the CAP and the resources available, investments will also be made in youth diversionary activities supporting the work of the youth service.

Improved outcomes for all

This dual approach to Community Alcohol Partnerships has been the key to the success they have achieved. More than anything, a benefit of all of the CAPs has been the positive working relationship that has developed between enforcement authorities and licensees. CAPs have been successful across all types of community from Durham, where a marked reduction in associated anti-social behaviour (37.2%) was seen, to Barnsley, which saw a reduction in anti-social behaviour in Dearne of 30.5% and in Penistone of 29.6% compared with the control areas of just 7.4%.

Better compliance and reduced demand for alcohol has meant that underage sales and the related crime and anti-social behaviour have reduced across CAP areas. This means fewer disturbances for the police to deal with, less alcohol related litter for the council to clean up, fewer hospital admissions and, ultimately, fewer licence reviews and suspensions.

Examples of this type of benefit include Islington CAP, where a test purchase programme at the end of the training period resulted in no failures, and the Derry/ Londonderry CAP, where referrals to youth diversion officers dropped by nearly 50%.

Results like this show that a new type of positive relationship between enforcers and retailers can not only cut down on underage sales and the problems relating to underage drinking, but also significantly reduce costs and free up resources that could be better be used to focus on irresponsible retailers.

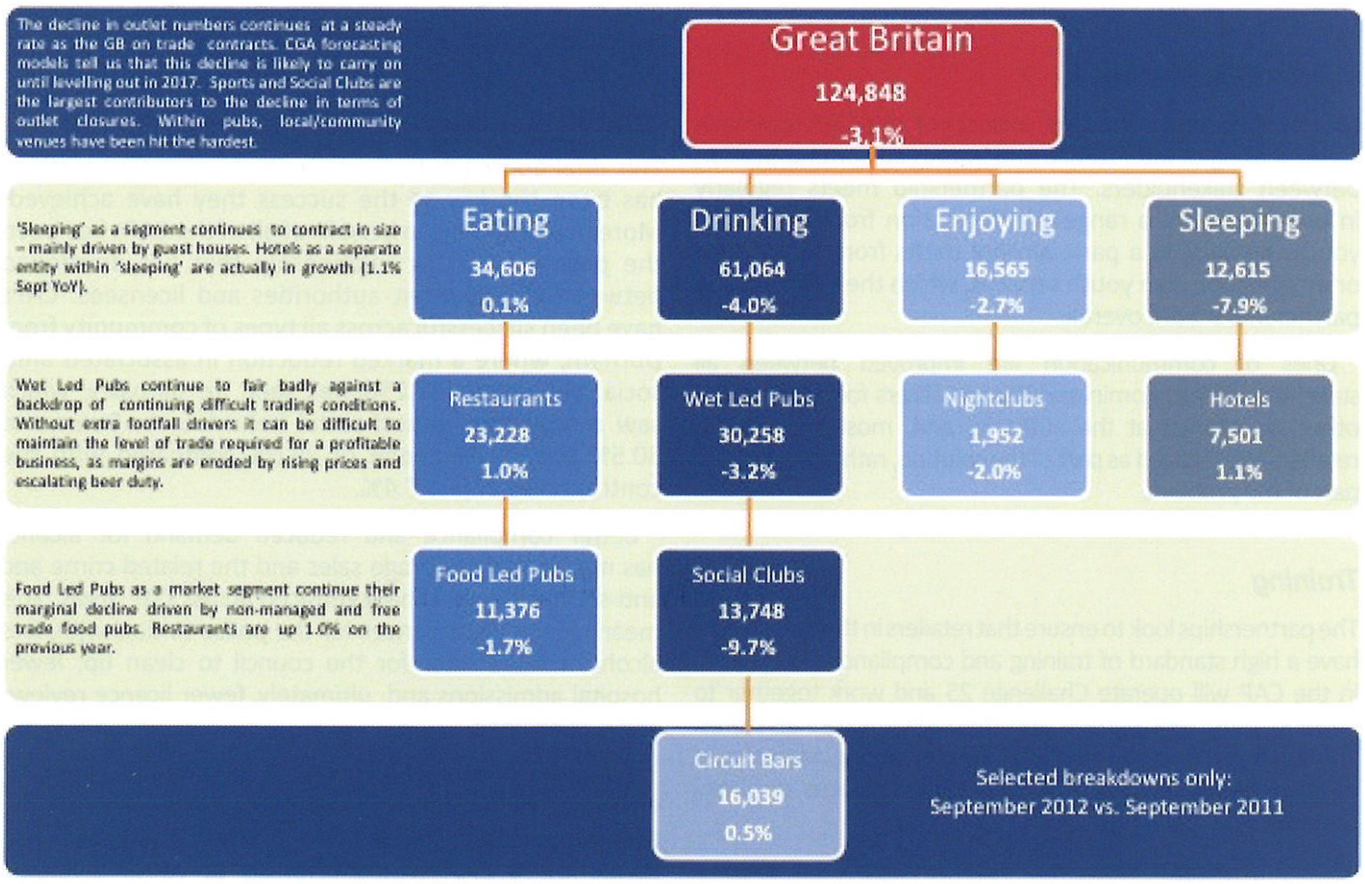
Carlo Gibbs
Policy and Public Affairs Manager, Wine and Spirit Trade Association

CGA statistical snapshot

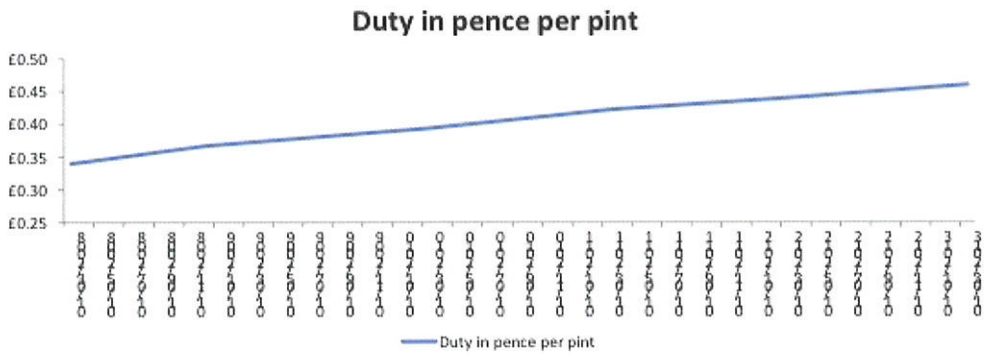
Duty continues to take its toll

There's no let up in the pressures facing licensees and suppliers in the on-trade, and the Government seems determined to maintain beer duty at its historically high levels, despite the damage this is doing to pubs. **Stuart Capel** discusses the factors bearing down relentlessly on the sector in the latest statistical snapshot from CGA

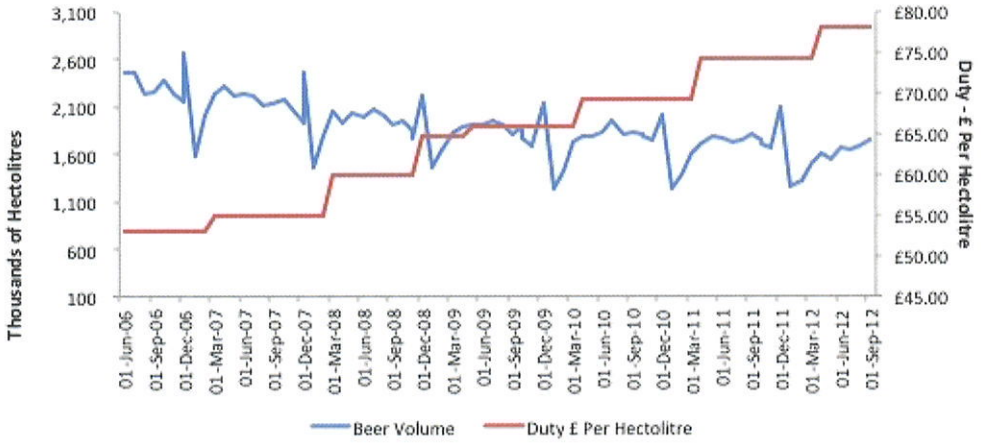
GB On-Trade Universe



△ The licensed trade continues to face a plethora of forces that make it a tougher trading environment than ever before. A combination of many factors is causing the on trade to contract at an alarming rate: the smoking ban, pubco beer ties, pricing in the off trade, and of course, the beer duty escalator. Different market sectors are affected disproportionately by different factors but sustained duty escalation affects the market equally across all sectors. This year the "Stop the Beer Duty Escalation" Government e-petition reached 106,817 signatures, triggering a Parliamentary debate. The outcome was not what had been hoped for by the trade and consumers, with the escalator likely to remain in place through 2014-15



△ Duty on a 5% abv beer has increased by 29% in the last five years and at the current rate of inflation, will go up to 46p on a single pint. It means that VAT for a £3 pint and taxation equates to over a third of the price of a pint. Outlet closures and decline in beer spend have been a continuing trend over the past five years while duty has continued to increase. Add to that supermarkets and their ability to charge much lower prices and the result is a financial incentive for consumers to spend less time in their local pub, especially as the wider cost of living continues to increase.



△ Even though it is becoming increasingly expensive to drink in the on trade it still remains the home of beer as the percentage split between on and off trade remains in favour of on sales. Total beer sold is split with 57% of volume being sold in the on trade. Lager is split 50/50 between on and off, and ale in the on trade commands 76% of total volumes. This is likely to be due to the fact that it is difficult to recreate the theatre of serve that comes with a traditional font and the traditional experience of a good pint in a great pub. Wine and spirits on the other hand are sold much more widely in the off trade than on. Total Wine in the on trade equates to 17% of total sales with spirits at 21% of total sales in GB.

Definitions

Circuit Bars (High Street) – primarily branded bars with broad value led food and drink offers. But as a broader categorisation, also includes café and wine bars with a higher end offer, often with music and later opening hours. Differentiation can be made between those in high street, town and city centre locations, and those in more affluent suburban centres (such as Didsbury, Manchester and Chapel Allerton, Leeds).

Pre Loading – increasingly common behaviour amongst primarily younger drinkers, who will drink at home prior to going out. This will often result in drinkers starting their evening out at a later time then previously.

Post Loading – a newer phenomenon, where drinkers will continue to consume alcohol at home in a social situation after they return from a night out.

Weekend Millionaires – the propensity of (especially) younger drinkers to concentrate on one "big night out" a week where they are prepared to spend additional money to enjoy a more premium experience (in terms of surroundings, drinks and entertainment).

Premium Spirits – linked to the above, there has been an increasing trend over the last few years towards the purchase of high quality and priced spirits products (initially Vodka but also spreading to Gin and Rum). Typical products in this category would include Hendricks Gin and Grey Goose Vodka.

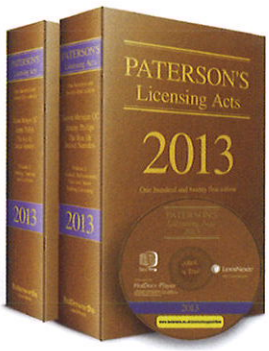
High End Venues – this classifies outlets that cater and provide for an affluent style or mainstream crowd. They will offer more opulent surroundings and a predominantly premium, broad ranging drink and food offer.

Café/ Wine Bars – often higher end and independent venues, these are differentiated from standard circuit bars by their food and drink offer/ pricing policy. Often these are more style-led venues but can also include some more premium small brands.

Wet-Led Pubs – pubs that have a high percentage of drinks sales, as opposed to food sales. Usually will also encapsulate community locals.

Book Reviews

Paterson's Licensing Acts 2013



Simon Mehigan QC, Jeremy Phillips & The Hon Mr Justice Saunders
Lexis Nexis Butterworth, 2012, hardback £290
Reviewed by Alun Thomas, Partner at Thomas and Thomas Partners LLP

A good indicator of a licensing practitioner's age is the date of their first edition of *Paterson's Licensing Acts*. In my case, the date is 1896! An impressive 110 editions later, *Paterson's Licensing Acts 2013* is as thorough as ever. In the preface to the 1896 edition, the editor mused:

The litigation on this subject is still continuing with undiminished vigour. Many difficulties have now been settled by judicial decision, but there still remain several obscure questions.

Ten Licensing Acts further on, not much has changed. *Paterson's* remains the first port of call for all licensing practitioners, addressing recent developments in legislation with up to the minute commentary on amendments to statute and the latest cases in our field. Comparing the 435 page single volume 1896 edition with the 5,000-plus pages two volume 2013 edition just goes to show how the licensing regime continues to evolve and why a full reference is invaluable to a practitioner.

Recent amendments to the Licensing Act 2003 brought in by The Police Reform and Social Responsibility Act 2011 are now in force and beginning to bite. The animal, which for the time being sleeps, is the Early Morning Restriction Orders (EMROs) and Late-Night Levies (LNLs). *Paterson's* analysis of these important developments is detailed and clear.

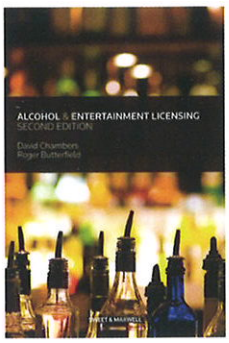
Some analysis of the LNL regime alongside *Hemming v Westminster* and the Provision of Services Regulations may have been an interesting addition to the preface. The impact (if any) of the introduction of an EMRO or LNL on licensing policies is also an area of interest I would hope to see covered in 2014.

The editors' commentary on the latest cases relating to orders for costs is a depressing read for appellants! In *Tower Hamlets v Ashburn Estates* and *Newham v Stratford Magistrates' Court,* the Court found in favour of two licensing authorities and affirmed the principles in *City of Bradford v Booth*. Securing a costs order against a licensing authority has always been difficult although *Tower Hamlets v Thames Magistrates, Lovebox* offers some hope to appellants. The case provides a helpful reminder on the indemnity principle and some useful pointers to ensure practitioners are properly prepared for a costs application.

Paterson's also provides valuable reiteration and clarification on the scope of the police's powers under section 19 of the Criminal Justice and Police Act 2001. Following some inaccurate Home Office Guidance, several police forces believed the service of a closure notice under this legislation meant a premises had to cease the supply of alcohol immediately.

The Government is currently consulting on yet another raft of changes to the Licensing Act 2003. I look forward to the editors' views in next year's edition, presuming the 2003 Act isn't repealed, re-enacted and then again repealed in the meantime.

Alcohol and Entertainment Licensing, Second Edition



David Chambers and Roger Butterfield
Sweet & Maxwell, paperback, £27.95
Reviewed by James Button, Principal, James Button & Co

This is the second edition of an extremely useful little handbook which gives a concise yet comprehensive overview of the provisions of the Licensing Act 2003, which as readers will know has been subject to constant modification since before coming into effect in November 2005.

Roger Butterfield and David Chambers are not only experts in their field, they are also well known to the members of the Institute of Licensing, having been involved in Institute activity since the creation of the Local Government Licensing Forum in 1996.

The narrative is clear and easy to follow and as an introduction to the topic this must be regarded as essential reading. However, it goes further than that as it is a very handy aide-mémoir which can easily be carried in a briefcase to enable the busy practitioner to ensure that a particular provision does cover the situation that is encountered.

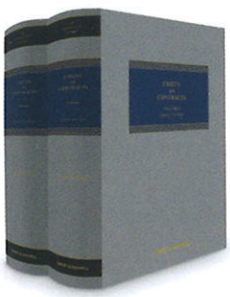
In addition, this will be indispensable reading for licensees, managers and any other people likely to be affected by the workings of the Act.

In the title's 150 pages, it is impossible to cover all the legislation in detail and the authors have taken a sensible and pragmatic approach to this problem. The book identifies the key concepts that are covered by the legislation and provides a brief explanation, without going into forensic analysis of the meaning of the legislation or the application of case law.

Cases are mentioned when particularly useful and references are given to the legislation (primary and secondary as well as the statutory guidance) throughout. In addition, there is a chapter looking at the potential impact of Early Morning Alcohol Restriction Orders and the Late-Night Levy, which have yet to make their presence felt in most parts of the country.

Provided it is recognised that this cannot be a substitute for a detailed academic reference work such as P*aterson's Licensing Acts* or *Manchester on Alcohol and Entertainment Licensing Law*, there is no doubt in my mind that this will be a widely used and popular introduction to what the authors themselves described as an "ever-changing minefield". It is highly recommended.

Chitty on Contracts 31st Edition (2012), Vol 2 Chapter 40, Gambling Contracts



Sweet & Maxwell, 31st Edition, 2012, hardback, £455 (Two Volumes)

Reviewed by Richard Brown, Solicitor, Licensing Advice Project, Westminster CAB

The chapter of the new *Chitty* relating to gaming, wagering and gambling contracts is an illuminating ride through the changes ushered in by the Gambling Act 2005 to several centuries of legislation and case law. As regards the previous legislation itself, readers are referred to earlier editions of *Chitty* for issues surrounding gambling contracts concluded prior to 1 September 2007, but the case law is discussed to the extent that the factual situations could be relevant even if the reasoning and outcome is not.

There are certainly parts of the 2005 Act which contain issues which will be more familiar to the average practitioner than the issues examined here. Tucked away toward the end of the Act in Part 17 are the provisions relating to the "Legality and Enforceability of Gambling Contracts". For me, this conjures up sepia images of frowsty gentlemen in back street boozers surreptitiously running books, or high rollers in disputes with casinos. In keeping with the permissive nature of the Act, the general rule is that the mere fact that a contract relates to gambling shall not prevent its enforcement (section 335(1)), which is a change to the previous position developed by the Gaming Acts of 1710, 1835, 1845 and 1892.

By way of introduction, the chapter runs through the different definitions of "gambling", "gaming", and "betting" and "disguised bets", eg to avoid capital gains tax, to which winnings from betting are not subject. It then gets to the meat of the matter, dissecting three strands of section 335(1). Not surprisingly, the general rule is subject to significant exceptions: unlawfulness, and the Gambling Commission's power to void a bet where it is satisfied that a bet is "substantially unfair". The chapter also takes the reader through a host of "related transactions" which are now, by virtue of section 335, enforceable in principle. The myriad possible "related transactions" underlines how far removed the provisions are from the simple act of placing a bet in a bookies. The discussion of factual situations from old case law in the context of the new law is particularly interesting. Practitioners are unlikely to come across these issues very frequently, but when they do I am sure that they would find this exposition of the law invaluable.

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