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Celebrating 20 years

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

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

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

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Daniel Davies
Chairman, Institute of Licensing

Welcome to the first edition of the *Journal* for 2016 – the IoL's twentieth anniversary year. At the time of writing this introduction (December last year) I am still reflecting on my first National Training Conference as the Institute's Chairman. Looking back over the three days at the range of topics covered, what strikes me is how licensing touches the body politic at some of its most tender spots. We covered everything from the Anti-Social Behaviour, Crime and Policing Act 2014 to gambling licences, sexual entertainment venue licensing, public health in licensing, immigration enforcement and licensing, super-strength alcohol schemes, Local Alcohol Action Areas and much more besides.

I was gratified to see the wide range of presentations, contributions to the debates and Q&A sessions covering all parts of the licensing community - licensing lawyers, police licensing officers, council licensing officers, trade bodies, outside experts, the Home Office and the Gambling Commission. There were contributions from both sides of the debate about alcohol and health, with Chris Snowdon from the Institute of Economic Affairs giving the keynote address, as well as a couple of head-to-head confrontations between Jon Foster of the Institute of Alcohol Studies and Paul Chase, well known scourge of the health lobby! So, no lack of variety and a wealth of excellent, detailed content that widened our horizons and informed our understanding.

I always marvel our speakers' expertise – on subjects ranging from taxi licensing to alcohol licensing through to gambling licensing and the keeping of wild animals! The breadth covered by licensing is astonishing.

Looking ahead for this year there will be a number of events to celebrate the milestone of our twentieth anniversary: National Licensing Week runs from 20-24 June and in the middle of this, on June 22, is the National Training Day. Our signature event, the National Training Conference, will take place from November 16-18 and this year the location has been moved from Birmingham to Stratford-upon-Avon. All of this will be augmented by our regular regional meetings and an enhanced schedule of training courses delivered around the country. Such a catalogue of activity testifies to the fact that the Institute is a vibrant organisation with an engaged membership that cares passionately about delivering on the objectives and purposes of licensing in all its dimensions.

Over the course of the year I will endeavour to attend regional meetings and to talk to members to gauge what you want from your Institute. Times are tough and local authority and police budgets are under pressure, despite a relatively benign Autumn Statement from the Chancellor in which he suddenly discovered £27 billion that he didn't previously know he was going to receive! We will aim to keep costs and therefore fees down so that membership and training events remain an affordable option.

We've also now delivered our new IoL website, which will make it easier for you to get information, see what is going on and book for training courses and events. Over the next year we will look at our training offering and ensure that we formalise our units of learning and create branded, high-quality learning support materials. Our aim is to increase the presence and the influence of the Institute of Licensing so that we enhance our reputation as being the go-to body on all matters licensing - for Government, practitioners and the various sectors that operate in a licensing environment.

Licensing is where we have to square the circle between conflicting interests. Traders want to trade; the police want to maintain order and reduce crime; residents want a tolerable existence even if they live in a city centre environment. And in all this we all want to see vibrant night-time economies which generate visits, support employment and add value to local areas and to the national economy. Squaring that circle is often not easy, which is why the support of a broad church Institute of Licensing is so necessary. We should enjoy our twentieth anniversary and reflect with some satisfaction on the past; at the same time, we need to evolve our services and our infrastructure to ensure the Institute remains relevant and fit for purpose for the next twenty years.

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Leo Charalambides
Editor, Journal of Licensing

The safeguarding agenda invites a consideration of the extent and scope of the licensing objectives, and none more so than that of promoting the protection from harm. Paragraph 2.21 of the s 182 Guidance sets out aims and objects of this objective in unequivocal terms:

> *The protection of children from harm includes the protection of children from moral, psychological and physical harm. This includes not only protecting children from the harms associated directly with alcohol consumption but also wider harms such as exposure to strong language and sexual expletives (for example, in the context of exposure to certain films or adult entertainment).*

Paragraph 2.21 is emphasised in the advice to health bodies acting as responsible authorities at para 9.22 where the directors of public health are reminded that "this objective not only concerns the physical safety of children, but also their moral and psychological well being".

Paragraph 2.21, in light of recent licensing related investigations (Rotherham etc), has been recently amended to now include the following sentence:

> *Licensing authorities must also consider the need to protect children from sexual exploitation when undertaking licensing functions.*

Sexual exploitation and its seriousness has been previously recognised in paras 11.27 and 11.28 of the s 182 Guidance, which considered the use of licensed premises by organised groups of paedophiles to groom children was within the spectrum of criminal activity that might arise in connection with certain licensed premises and was to be treated with particular seriousness - so much so that revocation, even at first instance, should be seriously considered.

The question of how to effectively meet the requirement to protect children from sexual exploitation is of key consideration. It raises important questions about the nature of the licensing regime:

- To what extent should the licensing regime be preventative?
- To what extent should the licensing regime be proactive?
- What level of risk is unacceptable?
- What weight of evidence is required to take action?

It seems to me that the balance we have hitherto struck in relation to licencing decisions may need to be reassessed in respect of safeguarding and promoting the protection of children from harm.

Numerous local licensing authorities have concluded or are in the process of concluding the latest edition of their statements of licensing policy. Many of these draft and fresh statements of licensing policy contain well intentioned statements in respect of protecting children from the scourge of child sex exploitation – though I question the extent to which the practical considerations have been fully considered, perhaps understandably as this is, naturally, an area of concern we have only just started to grapple with within the licensing world. The focused training and consideration of the issue which the Institute is now providing is sure to become increasingly valuable

Jon Foster of the Institute of Alcohol Studies recently pointed out to me the lacuna between the following legislative provisions: first, s 13(4)(f) of the Licensing Act 2003, which recognises the child protection body as the responsible authority in respect of protecting children from harm; and secondly, he points out that s 5(3) of the Licensing Act 2003 contains a list of statutory consultees in respect of the local statement of licensing policy – but that this list does not include the body responsible for child safety. He rightly suggests that this is a gap that ought to be closed and that to do so would be an important and useful step in the advancement of the safeguarding agenda that licensing authorities are now responding to.

Greyhounds, high rollers and poker aces – never a dull moment in court when the stakes are high

Three dramatic cases highlight the issues faced by bookmakers and casino operators when dealing with professional punters and the super-rich. **Susanna FitzGerald QC** finds a wealth of legal matter to consider in their outcome

Film moguls have a rich source of inspiration in some recent cases on gambling law. One could be made into a gritty British film, another a Hollywood movie and a third is just pure theatre. I have not met any of the individual parties, and I hope I will be forgiven for allowing my imagination to flow, so the comments in brackets are purely my imagination in setting the scene, but the facts themselves come from the judgments.

The first case is not that recent but the issue is topical: was there duty of care owed to a gambler by a gambling operator? The case is *Calvert v William Hill Credit Limited* [2008] EWCA Civ 1427, and it was a sad case, indeed a tragic one, and could make a tough British film. Mr Calvert, a married man with two children, was a professional trainer of greyhounds, a business that he ran with his mother, and he was a respected man in his field. (Imagine a grey rainy British day, out in the country, with Mr Calvert in his country clothes and wellies, going to the dog kennels.) Mr Calvert was also a compulsive gambler and a successful one, earning about £50,000 per annum net from his gambling, and the money supported his lifestyle (his and his family's). He was mostly betting on greyhounds about which, of course, he had a considerable knowledge.

However, because of his success at betting, the bookmakers started limiting his betting on greyhounds (what should he do now?) so he began betting on other things and, as he did not have the detailed knowledge that he had on the dogs, he became less successful. During 2006 matters got out of hand, and he became first a problem gambler and then a pathological one, gambling considerable amounts in a variety of bookmakers, including betting by telephone with William Hill. He did have moments of clarity (What am I doing? What have I done?) and closed accounts with several bookmakers. Finally, at the end of 2006, he ran out of money and, in the words of the judge, he ruined himself. (Despair and guilt.)

There were at least a couple of occasions when he attempted to self-exclude from William Hill. As this case was before the Gambling Act 2005 came into force, there were no conditions on William Hill's licence requiring policies and procedures about self-exclusion, but William Hill sensibly had adopted its own social responsibility codes which provided, *inter alia*, for a self-exclusion policy (and a specific self-exclusion agreement with a disclaimer of liability in it), and Mr Calvert based part of his claim on that. The relevant attempt to self-exclude was with a William Hill employee called John. (Imagine an inexperienced young man doing his best.) John assured Mr Calvert that he was self-excluded, the account was closed, and could not be reopened for six months. However, John failed to implement the self-exclusion, or the self-exclusion agreement, and Mr Calvert was able to continue betting with William Hill. At the same time he was also betting with a variety of other bookmakers. After he ran out of money, Mr Calvert sued William Hill on the basis of a breach of duty of care owed to him, partly based on William Hill's own codes, and he claimed his losses.

However, the judge did not find that there was any general duty of care owed to Mr Calvert. Just because William Hill had a social responsibility policy did not mean it had voluntarily assumed responsibility for all its problem gambler customers, in the sense of assuming responsibility to take care, with a concomitant liability to compensate customers injured in their mind or their pocket by any failure to take care. The judge said problem gamblers do not uniformly have such an impairment that they are so vulnerable as to require special treatment, even in the absence of a request for it. A bookmaker cannot be expected to recognise a pathological gambler, which is essentially a medical diagnosis, in the ordinary course of business.

The judge went on: "In my judgement the law should be very slow to recognise a sufficient proximity to justify a requirement to take protective steps to restrain a gambler from exercising his liberty to gamble on his own responsibility,

where his status as a problem gambler may mean no more than that he is experiencing mild and occasional difficulties of control.

"Again, I emphasise that the broad submission advanced by (Mr Calvert's counsel) assumes a duty of care to all problem gambler customers, regardless of whether they seek the bookmaker's help. Such a duty would, in relation to a problem gambler who did not seek a bookmaker's help, be *an invasion of his autonomy*, in relation to an activity for which he is primarily responsible for the consequences." (Para. 172.)(Emphasis added.)

So there is no general duty of care. However, John had led Mr Calvert to believe that he was self-excluded, but then had failed to implement it, and there was also no specific disclaimer of liability, and in the specific circumstances of the case, the judge found there was a duty of care, and William Hill were in breach of it. But, having thoroughly looked at a great deal of evidence, the judge came to the conclusion that Mr Calvert would have carried on gambling with other bookmakers, and also with William Hill's betting offices in cash, and so would have ruined himself anyway. Therefore his claim failed and his appeal to the Court of Appeal also failed.

Now we move to some of London's top end casinos and the world of the international "high rollers". We start with the Ritz Hotel Casino. This is another duty of care case: *The Ritz Hotel Casino Hotel Limited v Noora Al Daher* [2014] EWHC 2847. The Ritz in London sued Mrs Al Daher for £1,000,000.

Mrs Al Daher was described as a woman of "great wealth", and a high level gambler. She regularly gambled at the Ritz, in increasingly large sums, and she also gambled in other top London casinos. On the relevant night, she signed cheques for a total of £2 million at the Ritz. By that time, the Ritz was allowing her to pay by cheques for chips to gamble with, up to a value of £1.7 million, and, on the night, increased this by £300,000. All the cheques were dishonoured. Later she paid in £1 million in partial satisfaction, but that still left £1 million outstanding, on which the Ritz sued.

The case provides a remarkable insight into the world of the high rollers. Mrs Al Daher's total drop at the Ritz from 1999 onwards was £20,339,000 and her total losses were £7,047,000. The rate of drop and losses had increased substantially in recent years: in just over two years from early 2011-2012, she gambled £10.7 million and lost £6.47 million. The judge was obviously stunned by the amounts of money she had access to and frequently referred to her wealth. There is a lovely comment from Mrs Al Daher in cross-examination, which is repeated in the judgment, that in ten days in 2012 she had received a total of £6 million, "because I needed the money to pay for the kids, you know."!

The Gambling Act requires there to be a condition on all non-remote casino licences that the casino does not give credit in connection with gambling; this includes any form of financial accommodation, but not cheques which are not post-dated, and for which full value is given (ss 81(2)(a) and 81(4)). Mrs Al Daher argued that the Ritz's normal practice of tearing up or not presenting cheques at the end of a gambling session if the gambler had won more than he had lost, and presenting other cheques, where the gambler overall had lost, on the following business day, meant that credit was being given. The judge dismissed that argument.

She then tried to argue that she was a gambling addict, and that the Ritz staff must have realised that on the relevant night because of her behaviour, and so, she said, the Ritz owed her a duty of care, and had breached it. On the facts, the judge was not having any of that either. On the night, she did not express or convey unease, distress or a wish to stop gambling. Further, she could not produce any worthwhile medical evidence to support her contention that she was a problem gambler, let alone a pathological one. Clearly, the judge preferred the evidence of the Ritz staff to that of Mrs Al Daher. Further, apart from a brief blip some years before, her cheques had always been met, and she had equivalent size cheque-cashing facilities with other London casinos, which were also always met (the Ritz had checked up).

The case is interesting for several things. The dictum from *Calvert* (above) was quoted with approval and the judge agreed with *Calvert* that there was no general duty of care owed by the Ritz to Mrs Al Daher (paras. 120, and 124-126), even when the licensee had to comply with the Gambling Commission's Codes of Practice under s 24 of the Gambling Act (which by then was in force), and where the Ritz's own codes recognised that "while the responsibility for an individual's gambling is his or her own, there is an obligation on casino operators to act in a socially responsible way and exercise a duty of care towards customers and staff".

The case is also noticeable because after the Gambling Act came into force it supports the further dictum of the judge in *Calvert* that the law should be very slow to recognise a sufficient proximity to justify a requirement to take protective steps to restrain a gambler from exercising his liberty to gamble on his own responsibility (see para. 115). Going on from there, the judge stated that the Gambling Act expressly recognises gaming as a lawful and proper activity, where it is for the individual to choose to engage in or refrain from participating in it. Finally, he found that the act was a liberalising one, illustrated by s 335, which makes gambling

debts enforceable.

Mrs Al Daher lost all round.

One of her associates was a Mr Al Gaebury, who was the defendant in another case taken by the Ritz shortly afterwards (*The Ritz Hotel Casino v Gaebury* [2015] EWHC 2294). Mr Al Gaebury also managed to lose £2 million in one night at the Ritz, and his cheque for that amount was also dishonoured, and the Ritz sued him on it. Again, the issue of a duty of care and a claim in negligence came up, but again the defendant lost.

This case is pure theatre. The facts are messy and intricate, but the bottom line is that Mr Al Gaebury was not only a high roller but a difficult man who did not like to lose, although his capital assets, (inclusive of his art collection) were worth in excess of US$1 billion – fairytale stuff for the rest of world. During the case he gave evidence. In court, he came over as an "intemperate witness"; he became "irritated" or "heated" at times, refusing sometimes to answer questions and occasionally he lost his temper for no reason, shouting and gesticulating. If this were a show on television, everyone would say it was unrealistic and over the top.

He clearly fell out with staff, and if he felt that they had been rude to him, not only at the Ritz but at at least one other London casino, his reaction was to demand to self-exclude, and then try to get the self-exclusions revoked. This is what happened at the Ritz: he signed a self-exclusion form for five years, and then tried to get it revoked.

However, when he did, the Ritz staff refused to let him back in, quite properly. Eventually, after he persisted over a period of months, the Ritz spoke to Gambling Commission officials about it. He had repeatedly told the Ritz staff that he was not in fact a problem gambler, and, in the specific circumstances of the case, the staff believed him. The Commission officials' bottom line was that it was up to the customer how long he wanted his self-exclusion to last, and that it was possible for the customer to change his mind, provided that six months had elapsed since his exclusion (para. 50). Although the exclusion here was for five years, as more than six months had elapsed, the Ritz let Mr Al Gaebury back in, provided that he signed an "end of self-exclusion waiver" in which he acknowledged that he had only signed the self-exclusion form because of a problem with a member of staff, in this case a dealer. So he returned to gamble at the Ritz and, subsequently, wrote the cheques on which he was sued.

One of Mr Al Gaebury's defences concerned the effect of the Commission's codes of practice and in particular the code about self-exclusion. Part of that is a social responsibility code; compliance with such a code is a condition on the gambling operating licence, and breach of a condition is an offence. The relevant code provisions were set out in paragraph 2.5 (now 3.5) of the licence conditions and codes of practice set by the Commission. The judge's conclusions on the meaning of those, and on the revocation, was that there was no prohibition on revocation of a self-exclusion agreement, provided at least six months had elapsed since it was entered into. She said that revocation of a self-exclusion agreement is a bilateral process: the customer must request it, there must be a "reasoned" decision by the operator whether to agree to it or not and any revocation must only be on reasonable grounds. Raising a self-exclusion on this basis, said the judge, reflects the individual's autonomy.

It was a major part of Mr Al Gaebury's case that he was a gambling addict and out of control, but, as with Mrs Al Daher, he could not produce any cogent medical evidence to support that, and, on the evidence, the judge did not believe him. One of the Ritz staff with forty years' experience, spoke about the profile of a problem gambler in her experience:

"Well, we're trained to recognise symptoms of a problem gambler. There's quite a few, but the main ones are that a customer will come in and he will ask for help, he will say he has a problem. His friends and family will say: this man's got a problem and you should be stopping him. He will show remorse for the amount of money and time he's spent in the casino. He will – you will see that his mood swings a lot, and he will – sometimes when he's having a really bad problem, he will look depressed and he won't speak to anybody, he will look down, he will come in. They get a bit – their personal hygiene goes out the window and they become very scruffy when they're on a low. They get a bit anxious when they can't get money. They will start to pester the other customers for more funds, become a nuisance. Also another indicator is a person who comes in and thinks gambling is a way to make money…. One or more (of these indicators), but generally speaking you can spot them straight away" (para. 19).

Later the judge set out the *Diagnostic and Statistical Manual of Mental Disorders 5th Edition* (DSM-5) criteria of the problem gambler, and did not consider that Mr Al Gaebury came within any of them. They are:

a. Needs to gamble with increasing amounts of money in order to achieve desired excitement.
b. Is restless or irritable when attempting to cut down or stop gambling.
c. Has made repeated unsuccessful efforts to control, cut back, or stop gambling.
d. Is often preoccupied with gambling (eg having persistent thoughts of reliving past gambling experiences, handicapping or planning the next

venture, thinking of ways to get money with which to gamble.
e. Often gambles when feeling distressed (eg helpless, guilty, anxious, depressed).
f. After losing money gambling, often returns another day to get even (chasing one's losses).
g. Lies to conceal the extent of involvement of gambling.
h. Has jeopardised or lost a significant relationship, job, or educational or career opportunity because of gambling.
i. Relies on others to provide money to relieve desperate financial situations caused by gambling.

The judge again agreed with the judge in *Calvert* that there was no broad common law duty of care owed by the Ritz to Mr Al Gaebury. She said that, in the *Calvert* case, the autonomy of the individual gambler was held to be paramount (para 140) and she repeated the words of the judge in the Al Daher case that "Gambling is an activity which has been legalised by Parliament. ... The choice of Parliament has been to permit casinos to be licensed and gamblers to gamble in them, as a matter of their own autonomy" (*Al Daher* para 116).

So the cases emphasise an individual's autonomy to make his own decisions, that Parliament has legalised gambling and indeed that the Gambling Act is a liberalising act. There is no general duty of care owed by a gambling operator to a gambler, but one can arise if the licensee has specifically assumed the responsibility that creates one, in all the circumstances. Even then, the gambler may have no remedy if, through his own actions, he has damaged himself. As is clear from the dictum in the *Calvert* case, the Court should be very slow to take protective steps to restrain a gambler from exercising his liberty to gamble on his own responsibility: all three judges agreed with that.

Now for the Hollywood movie: (Glamour, Glitz, Gambling and, some would say, Greed). It is the case of *Philip Ivey v Genting Casinos UK Limited* [2014] EWHC 3394, trading as Crockfords Club. This was an even larger claim, for £7.7 million, made by an American professional gambler against the casino. Mr Ivey was acknowledged as one of the finest professional poker players in the world. He had a female Chinese assistant, Ms Sun (pick your favourite Hollywood male actor and elegant Chinese female actress).

This is the first case about cheating. The judge declared there were no English cases at common law as gambling debts were not enforceable until the Gambling Act 2005 came into force. The case revolves around s 42 which says:

> *(1) A person commits an offence if he – (a) cheats at gambling or (b) does anything for the purpose of enabling or assisting another person to cheat at gambling. (2) For the purposes of subsection (1) it is immaterial whether a person who cheats – (a) improves his chances of winning anything, or (b) wins anything. (3) Without prejudice to the generality of subsection (1) cheating at gambling may, in particular, consist of actual or attempted deception or interference in connection with (a) the process by which gambling is conducted or (b) a real or virtual game, race or other event or process to which gambling relates.*

As can be seen, the section defines deception and interference as cheating, but there is no attempt to define the overall concept of cheating; for example, it is not obvious whether dishonesty is a necessary element of the offence, or if it is, how that works in practice.

Mr Ivey was suing the casino for his winnings, because, as far as he was concerned, he had not cheated. Indeed, the judge found him to be not only a truthful witness but a frank one as well. What was happening was something called "edge counting" in Punto Banco, a form of Baccarat. Neither Mr Ivey nor his assistant ever touched the cards, and there is no suggestion that any of the staff at the casino colluded with them or were dishonest. The backs of many decks of cards are patterned, and this was the case at Crockfords in London. Although it was a symmetrical pattern, there was a 0.3mm difference in border width of the pattern between one side and the other, and if turned through 180 degrees, it could be recognised if one were able to spot the tiny difference. The judge went into great detail about how Punto Banco was played, and for those of you who do not play it, the players and the croupier are dealt cards by the croupier from a shoe. The aim is for the value of the cards to add up to as close to 9 as possible; cards up to 9 are valued at face value, but higher than that count as nothing. Any cards together that add up to more than 10 have 10 points deducted from the total so, for example, cards of 6 + 5 (11) equal only 1. The bets are placed before any cards are dealt, and there is, of course, a house edge. The crucial point is that cards with a face value of 7, 8 and 9 are high value cards and, if dealt to the player, it is more likely that the player will win, but if dealt to the croupier, he is more likely to win. It was agreed that the knowledge of who has those cards will give a long-term edge of roughly 6.5% to the punter over the house if played perfectly accurately. Obviously, if the casino knows what is going on, so as not to lose its edge, it will take steps to prevent it.

For the punter to get that knowledge, three conditions need to occur: (1) the same shoe of cards must be used more than once; (2) cards with a face value of 7, 8 or 9 must be turned through 180 degrees in comparison with the other cards (this is edge sorting); (3) when re-shuffled, no part of the shoe must be rotated.

In Crockfords, if a player touches the shoe, it and all the cards in it are discarded, so there must be no touching. Therefore, the changing of the orientation of the cards was done by persuading the croupier to turn the high value cards 7, 8 and 9 through 180 degrees so that they could be spotted by the minutely different border. The way this was done was by playing on the fact that many gamblers are notoriously superstitious and, per the judge, casinos "play" on quirky and superstitious behaviour by customers and humour them.

It is important to get the same shoe of cards over again, and Mr Ivey asked, on the basis of "If I win, can I say I want the same cards again?", if he could. The casino humoured him and agreed. Then Ms Sun persuaded the croupier Ms Yau that certain cards were "good" and should be turned "to change the luck", so the "good" cards were turned by the croupier. Many of the conversations were in Cantonese (subtitles). Mr Ivey made sure through all this that he did not get any particular benefit during that shoe. He then asked for that shoe, on which he declared he had "won", to be used again, and the casino, in all innocence, agreed. It was re-shuffled, but by a machine, again at Mr Ivey's request, as that keeps the orientation of the cards the same. When play recommenced, he started to win (imagine the camera close up on the edge of the cards as they were in the shoe and then being dealt) and eventually won, as we know, £7.7 million.

Crockfords always investigates big wins, saw what had happened on the CCTV and refused to pay on the basis that Mr Ivey had cheated. He denied it.

A survey of seven of the eight biggest casino operators in the UK was done. Four said it was cheating, two said it was not a legitimate practice and one said it was neither cheating nor an illegitimate practice. Mr Ivey said it was legitimate gamesmanship (what do you think?). The judge found it "not determinative" that Mr Ivey considered he was not cheating, and that it was agreed by others in the industry. He said that one should look at the consequences: (1) the player gave himself an advantage by knowing or having a good idea whether the first card was or was not a 7, 8 or 9. That, thought the judge, was quite different to card counting, which he considered legitimate; (2) the gambler did this by making the croupier an innocent agent or tool, ie he was not simply taking advantage of a croupier's error; (3) he was doing so when he knew that neither the croupier nor the casino realised what was happening, so he changed a game in which the knowledge of both sides (the croupier and the player) as to who would win was equal, ie neither knew, into one where he knew more than the croupier and more than the croupier would expect him to know, as the player could see while the card was in the shoe, and before he bet any money, whether the card was likely to be a "good" card or not. The judge considered that that was cheating.

Mr Ivey has been given leave to appeal to the Court of Appeal.

Susanna FitzGerald QC
Barrister, One Essex Court

Now & Next

The course intends to bring delegates up to date with the latest changes and case law that have taken place across several areas of licensing including gambling, alcohol and taxis.

Each session will be led by a member of the Cornerstone Barristers Licensing Team and the aim is for lively interaction from both delegates and other members of the Cornerstone Barristers Team to discuss.

The course is aimed at everyone with an interest in licensing, including Licensing Officers, Police Officers, Councillors and legal advisors of the licensing committee.

The training will be held in various locations across the UK including:

- 18 April - London
- 24 May - Birmingham
- 6th July - Leeds

Full details of the course including training fees will be on the Events page of website in the coming weeks.

My love affair with the IoL

Philip Kolvin QC explains how passion, pride and professionalism turned a talking shop into the voice of the licensing profession

My old sofa has witnessed the two most important proposals of my life. The outcome of the first is, 25 years on, a work in progress. The outcome of the second is for others to judge. This is my case for the defence.

It was in 2004 that I got an unsolicited phone call at home. It was from James Button, whose greatest professional distinction, aside from being The Taxi Law Oracle, was that he had had the foresight to imagine a time when licensing might be a profession rather than a Cinderella job in local authorities, and the energy to do something about it. Way back in 1996, with a small band of dedicated pioneers, he had established the catchily named LGLF (Lug Love to its friends), aka the Local Government Licensing Forum, being a trade union of Cinderellas who might console and support each other, learn best practice and speak with one voice. I had been lucky enough to address some of their early national conferences, and had been delighted and curious to find a large cadre of professionals, largely unacknowledged by the outside world, sharing their expert knowledge and ideas, with Jim at their helm. So when Jim called, I listened.

"Look, Philip, I have been doing this for over seven years, which is quite long enough. We want you to take over." I said I would think about it. Which I did. For the shortest time capable of measurement by humans. Let's be clear. I never thought it would be a sinecure. I knew instinctively that it would take over my life, that I would obsess about it, that there would never be a moment when I could say "job done" and reach for a self-congratulatory pair of slippers. But on the other hand, when would such a worthwhile challenge come along again? Ever? The chance to continue Jim's work. To elevate the status of the profession. To create standards. To bring together all those working in and around licensing and leisure under a single umbrella. He had made me an offer I couldn't refuse.

There was something else too. I was writing my first book at the time. As a result of the Licensing Act, licensing was being transferred from Magistrates' Courts to council chambers. And there were going to have to be policies to translate the higher order licensing objectives into local settings. And all the disciplines involved – planning, licensing, public safety, environmental health, child protection - were going to have to cluster around and pool their knowledge. As I was writing, I felt strongly that licensing policy could be a hub where all these ideas could be melded into a strategic vision for towns and cities. What do we want? A safe, vibrant, diverse leisure economy! How are we going to get it? Like this…! But all this would need a local champion to make it happen. Step forward the licensing officer. No longer a functionary stapling sub-committee reports together, but a strategist, instrumental in fostering the sustainable development of our town centres at night. And the shortly to be renamed Institute of Licensing would be the forum where these ideas could take root and be nurtured. So yes Jim, yes. And thanks.

I believe that Jim had already put in train the renaming of the organisation as the Institute of Licensing. That was crucial. A forum is where ideas are shared. An institute is a public repository of knowledge, standards and education, and an authority in its sector. The formal structures going with the nomenclature seem tedious but were essential. A company limited by guarantee, so that all can see that the body is established in the public interest with no profit to be made by anyone. Articles of association setting out the educational objectives of the body. And charitable status, not just for the tax reliefs but to send out a message to the world that the organisation has important charitable objectives to pursue, that it is non-political, non-partisan and non-exclusive. If we wanted to be trusted by everyone as an authoritative, neutral voice, these were essential steps along the way.

Jim had already put in place a good regional structure. As a board, we were anxious to foster and support this. Not everyone can afford to come to national conferences, and there is a huge amount of good to be done by way of networking, professional support and dissemination of best practice through regular regional meetings. The board had to make important decisions about the balance of funding between the regions and the core, to ensure that the organisation could work and speak nationally while functioning locally.

Perhaps one of the most sensitive topics was broadening our membership. While we were perhaps a little nervous about broaching it, in the event we found we had unity. How could we be a national institute and hope to gain the respect of industry and Government if our membership was confined

to local government officers? In my mind, the Institute simply had to be, and be seen as, a broad church. So the membership criteria were changed to ensure that all those with an interest in the topic and relevant experience and expertise could join. I remember a moment of great pride when JD Wetherspoon joined as corporate members. It felt like a huge endorsement for what we were trying to do.

We had another brave decision to take: staff. We had so little cash but, as we felt, so much potential, if we could only wean ourselves off having to rely solely on the kindness of volunteers. We believed we could improve the web-site, increase our communications, strengthen the support to the regions, run more seminars, establish educational programmes, if only we had in place paid employees. It was a risk. It occasioned quite a bit of debate. But I remember Dom Stagg saying "you have to spend a little to earn a little". And that was pretty much it. We were to have a paid chief of staff! After a false start, I remember looking around the organisation and noticing someone reliable, knowledgeable, loyal and motivated in the shape of Sue Nelson, and asked her whether she might not like to apply for the job. She has, of course, proved to be the backbone of the organisation. Among her great qualities is getting people to do things, usually by making out that it was their idea all along. I have no idea where we would be without her. When we needed a training officer, that was just as easy. The entrepreneurial, funny, garrulous Jim Hunter was pretty well doing the job anyway. He kick-started the role. And more have followed as our needs have grown. All seamlessly absorbed and excellent.

It was obviously essential that we were the pre-eminent disseminators of information on all things licensing. For many years this fell to Jeff Leib, who took a huge burden on his shoulders. Heaven knows how he squared it all with his demanding job and family commitments. But he bore it with good humour and unceasing commitment. As time wore on, others stepped in, and I am gratified that since my time the Institute has appointed a national communications officer. I was responsible for insisting that only members would get our e-shot information service. This was not to keep people out of the fold but to bring them in as active members and contributors. I was also insistent that we should have a professional journal – how could we call ourselves a professional body without one? - and it has been a source of pride and pleasure to me to see this publication develop under the expert stewardship of Leo Charalambides. It was also a privilege to publish a couple of books under the Institute's banner, and I am glad that the family of books has grown a little since.

Over the years, I have so many happy personal memories of the Institute that it seems invidious to set any down here, lest I omit others which equally merit inclusion. I can't forget, however, being taken on a run by the insanely fit Julia Sawyer, from central Gateshead uphill to the Angel of the North, which just about finished me off, as did an enforced speed-yomp through a Cardiff blizzard in the jet-stream of Andy Eaton, as did being twirled round Flares in Leeds in a 1980s frizzy wig, as did doing a rockaoke version of My Way (Jonathan Smith said I was more Sid Vicious than Frank Sinatra), not to mention the sheer terror of compering the Game Show of Enforcement in a flashing bow tie. Although my terror was nothing to that of the wonderful Sharon Degiorgio, whose penalty for losing the game was the ice bucket challenge, which she gamely undertook, all in the name of fun, fellowship and charity.

I want to make special mention of the Board of Directors. There were fixtures and temporary installations. Space does not permit me to name them individually. They were fantastic: supportive, public-spirited, collegiate and wise. They are the *eminence grise* of our organisation.

Towards the end of my tenure, I felt that we needed to mainline some industry expertise. It needed to be someone who understood the sensitivities of broad church organisations, who would win trust and deal with issues calmly, rationally and carefully. The Board agreed that Jon Collins fitted that particular bill, and so he became a Vice Chair. The rest, as they say, is history.

After seven years, I knew my time was up. Nothing happened in particular. You just know in your bones it is time to go. I felt that I had done my bit and that the organisation would benefit from new leadership, new energies, new ideas. Just typing this makes me well up, since the Institute has been one of the greatest loves of my life, and resignation is such a terminal word. I was deeply grateful for my time, and more than honoured then to be named a Patron. I have striven hard not to interfere but to support my successors and offer my help when called upon, something I hope to do for a long time to come.

Pretty soon after the first proposal, I planted a little, literal, oak. It is now a flourishing, sturdy young tree, which I feel happy and privileged to visit from time to time. After the second, I was given stewardship of a figurative sapling for a while, which has grown into something really rather splendid, hasn't it? It is still some way from its glory years, and I shall take pleasure in watching it grow in stature and renown, for the whole of the rest of my life.

Philip Kolvin QC, CIoL
Barrister, Cornerstone Barristers

Much change north of the border

Licensing law in Scotland is diffused and ununified, creating many problems as **Stephen McGowan** explains in his analysis of the "almost miscellaneous" 2015 Air Weapons and Licensing (Scotland) Act, which introduces significant licensing changes

In considering an article on the latest Scottish licensing developments, I find myself unfailingly quoting a line from Jeff Wayne's *War of Worlds* musical when, in Richard Burton's sombre tones, the protagonist declares… "And yet, across the gulf of space, minds immeasurably superior to ours regarded us with envious eyes and slowly, but surely, they drew their plans against us".

I have lost count of the number of times that I have described licensing law in Scotland as unrelenting. While the dubious notion that wave after wave of legislation is akin to invaders from Mars may betray my choice in musicals, I and other licensing practitioners do at times feel like we have been beamed up. Licensing law is now scattered across that gulf of space, embodied in five primary Acts, countless regulations, 32 local policies, and more.

In fact, primary legislation seems to have been continually on the horizon since the Licensing (Scotland) Act 2005 came into force back on 1 September 2009. However, in this instance I will focus on the Air Weapons and Licensing (Scotland) Act 2015. The name of the act itself appears somewhat alien, focusing on the licensing of air weapons. But be assured that this is a weighty piece of law, which can almost be considered as a "miscellaneous provisions" act. The 2015 Act makes significant changes to alcohol licensing, taxi and private hire licensing, theatre and public entertainment licensing, sexual entertainment venue licensing and more. Rather than provide an analysis of the whole act, below I've outlined in detail the changes on alcohol licensing:

1. *Introducing "young persons" to the licensing objectives.* One of the current licensing objectives north of the border is "protecting children from harm", which is to be amended to "protecting children and young persons from harm". It seems now rather odd that young persons were not included in the act when it was originally drafted. The change was sparked as a result of *Tesco Stores Ltd v Midlothian Licensing Board* [2012] Scot SC 48. In this case the suspension of the licence followed a failed test purchase. This was overturned on the basis that the board had regard to the licensing objective of "protecting children from harm" when the test purchaser, being 16, was not a child.

2. *Statements of licensing policy.* The current shelf life for a Scottish licensing policy statement is three years. This is to be reconfigured to bed in with local council elections, meaning the period will be extended to five years. The current round of policies are due to expire in November 2016.
   This comes about largely as a result of criticism by successor licensing boards, which perceive they may be "shackled" by a policy approved by their predecessors. And in particular the incumbent Edinburgh Licensing Board, which took the view that the policy it inherited was too restrictive in a number of areas. For example, the insistence on observing the old 12.30pm commencement hour for alcohol sales on a Sunday.
   Extending the policy period to five years means it will be less flexible. But the 2005 Act does allow interim statements of policy to be introduced, although I cannot recall an example of that power being exercised. On the other hand, some commentators will argue that the five year period creates more certainty one way or another.

3. *The fit and proper test.* This is likely to create a significant increase in work for boards, Police Scotland and licensing practitioners as it will introduce a subjective "fitness" test that will apply to applicants and existing licence holders.

   The old Licensing (Scotland) Act 1976 contained a fit and proper test, as does the existing Scottish civic licensing regime under the Civic Government (Scotland) Act 1982. But fitness in this sense is a new concept as far as the 2005 Act goes. It was removed from the law because of the views of the Nicholson Commission, whose report led to the 2005 Act. Even Sheriff Principal Nicholson expressed the view that the old fit and proper test would be redundant when you separated out premises and personal licence holders. This was on the basis that the bricks and mortar of a premises could not offend the licensing objectives, but the way a premises is run could.

   The reality is that many licensing boards still struggle with the concept that a premises licence holder may

not employ the staff or run the premises on a day to day basis. Moreover, the real pressing concern for fitness in this context was Police Scotland, which perceived an inability for them to object to licences on matters such as spent convictions, *sub-judice* allegations, associations and other general matters.

The fit and proper test under the 2005 Act is not the same beast as the 1982 or even 1976 version as it is explicitly tied to the five licensing objectives. This, it can be argued, means that the scope of fitness which could be taken into account is more limited than the other fitness tests. This is because the unfitness has to be viewed within the prism of the objectives; and the objectives are not general public objectives but more objectives specifically related or flowing from the sale of alcohol (see *Brightcrew Ltd v City of Glasgow Licensing Board* [2011] CSIH 46; *Kennedy v Angus Licensing Board* (unreported, Forfar Sheriff Court; 22 August 2012)). They are also not about matters regulated under other enactments (see *Bapu Properties Ltd v City of Glasgow Licensing Board* [2012] SC 26; *Northset Ltd v City of Glasgow Licensing Board* (unreported, Glasgow Sheriff Court, 22 March 2012)), and of course such unfitness has to be based on probative evidence (see *Ask Entertainment Pub Ltd and Ask Entertainment Nightclub Ltd v Aberdeen City Licensing Board* 2013 SLT (Sh Ct) 94).

Taking all this together, there are bound to be considerable debates over whether someone is fit or not, once the law has commenced. The fit and proper test will also be a ground of review and if the board finds on that ground, then the licence must be revoked. As a corollary to the fit and proper test, spent convictions are to be capable of consideration by a licensing board for the first time under the 2005 Act.

4. *Personal licence reviews and licensing standards officers (LSOs).* LSOs are to be given a power to call a review of a personal licence based on inconsistency with the five licensing objectives. This is a welcomed change and allows LSOs to target the perceived mischief maker directly rather than by way of a full premises licence review. There are a number of cases I have been involved in where LSOs have instigated a premises licence review in order to have the board examine the actions of an individual personal licence holder. In these instances it was acknowledged that the premises licence holder is not the villain of the piece.

5. *Transfers of premises licences.* I appeared before the Scottish Parliament in order to give evidence when this act was a bill, on behalf of the Institute of Licensing. One of my key messages to the MSPs was about the "Space Oddity" of s 34 of the 2005 Act, which deals with transfers to persons other than where the applicant is the existing premises licence holder. Section 34 has more holes than a slice of Swiss cheese and in particular only allows an incoming purchaser or tenant to take a licence where there has been a "transfer of the business". In many cases there is no transfer of the business because the business has stayed the same; or there was no business to transfer because the premises had been closed down. This and other gremlins such as the absence of an "interim effect" provision, has created havoc across the country with perfectly common purchase/sale transactions being stymied. I requested that Parliament review this and adopt a better, more realistic transfer process.

The Institute and the Law Society of Scotland both offered to draft such a cosmic provision but in essence all we were asking for was the equivalent provision to be lifted from the Licensing Act 2003! Parliament listened, as the 2015 Act will abolish s 34. But it did not listen as keenly as one would hope. A new s 33A has been created, which to all intents and purposes, is a cut and paste of the transfer provisions not from the Licensing Act 2003 but from the Gambling Act 2005. This includes the most cumbersome provisions surrounding competency in the absence of "consent" or, to put it more correctly, where consent is purposefully withheld. The new s 33A will only allow a transfer under any circumstances where the existing licensee consents or "cannot be contacted". What if he can be contacted, but will not co-operate? What if he is insolvent? The new transfer provisions have thrown a grenade into a minefield.

The Act also introduces a nine month processing deadline, a new offence of supplying alcohol to a child or young person in a public place and much more. On the horizon, another bill which sought to ban caffeinated alcoholic products and a lot more beside, sponsored by Labour's Dr Richard Simpson, appears to have fallen into a Parliamentary black hole but if the SNP do lose the minimum pricing case, who knows what they will turn to. Beam me up, Scotty!

Stephen McGowan
Partner and Head of Licensing (Scotland), TLT LLP

What does the future hold for the regulation of street collections?

Progress is being made on a new regulatory regime for charitable street collecting, but there is still much uncertainty over how local authorities can control street collections and, in particular, face to face fundraising. **Louis Krog** and **Alex Greaves** explain the latest thinking and propose some solutions

Charitable street collections have long been an iconic feature of high streets up and down the country. Over many decades we have all become familiar with volunteers shaking collection buckets at passing members of the public in hope of some change.

The way street collections are conducted has not really changed much for decades, but the world has. So what does the future hold for high street charitable street collections? How will it respond to and be affected by modern challenges thrown at it?

This is an important question because, historically, licensing regimes have struggled to embrace change. There are plenty of examples of this: the current taxi/Uber "wars", the licensing of sexual entertainment venues in 2009 and, of course, not to forget the Licensing Act 2003.

What are some of the challenges faced by street collections? There are external challenges, such as the increasing popularity of online fundraising and donation services, where it is now easier than ever to make charitable donations online and it is likely that online giving will continue to grow, particularly thanks due to the ever increasing use of smart phones.

One report has claimed that donations through websites, social media and apps now account for more than £26 in every £100 donated in the UK, with an annual figure of £2.4 billion now being donated online and by mobile.

There is also the economic challenge. Street collections suffer when times get harder.

A report published post the 2008 recession reported that 59% of charities said that they were adversely affected by the recession. Charity Commission research suggests that larger charities – defined as those with incomes over £100,000 - are hit hardest, with 79% affected.

Most significant, however, is the lack of effective regulation which has seriously undermined public confidence in the fundraising industry and threatens to destroy it from within. In 2015, this became most apparent through a number of high profile cases reported by the media where aggressive fundraising tactics had tragically led to the death of prospective donors.

Ostensibly, high street charitable collections are regulated by the Police, Factories, etc. (Miscellaneous Provisions) Act of 1916 ("the 1916 Act"), which permits local authorities to make regulations to control where, and under what conditions, persons may be permitted to collect money or sell articles for the benefit of charitable purposes. Model regulations are then provided in the Charitable Collections (Transitional Provisions) Order 1974. However, as explained in a previous article in this journal,[1] the 1916 Act does not apply to the most common forms of face to face fundraising. This is because the collection of direct debits, or contact details to facilitate future fundraising campaigns, does not constitute the collection of money. As a result of this anomaly, the most prolific and controversial forms of face to face fundraising largely fall outside the scope of statutory regulation. Although there have been a number of attempts to rectify this, including part 3 of the Charities Act 2006 ("the 2006 Act"), these provisions have never been implemented. Instead, there has been a continued emphasis on self-regulation.

In 2006, the industry, led by the Institute of Fundraising (IoF), set up the Fundraising Standards Board (FRSB) to take forward sector-wide self-regulation of fundraising and drive up standards and practice. Nevertheless, the IoF continued to be the standards setter, retaining control of the production and maintenance of the codes of fundraising practice. In addition to these two bodies, the Public Fundraising Regulatory Association (PFRA) was set up to deal with non-cash face to face fundraising, producing standards, investigating complaints and enforcing sanctions. However,

1 Dr Toby Ganley and Ian MacQuillin, What is the right regulation for face-to-face fundraising? (2013) 6 JoL, p4-9

these bodies were restricted by limited membership and resources, and lack of effective sanctions.

In November 2011, as part of a wide-ranging review into the operation and effectiveness of the 2006 Act commissioned by the Government, Lord Hodgson of Astley Abbotts was asked to look at fundraising and, in particular, the self-regulation of fundraising and the public charitable collections.

Lord Hodgson's review recorded that surveys of public trust and confidence in charities continually identify poor fundraising practices as a cause for concern, noting that the existing approach to self-regulation had largely failed. Nevertheless, Lord Hodgson concluded that effective self-regulation still remained preferable to statutory regulation, considering the implementation of the entire regime from the 2006 Act to be unaffordable and potentially ineffective. Instead, he recommended that work be undertaken to "address the confused self-regulatory landscape, and agree a division of responsibilities which provides clarity and simplicity to the public, and removes duplication", along with creating an expectation that large charities become members of the FRSB.

Regarding charitable street collections, Lord Hodgson noted that evidence suggested that what was perceived as the aggressive tactics of "chuggers" could discourage people from going to nearby shops, or visiting high streets at all. As a result of the evidence of public irritation being caused, he emphasised how important it was that this form of fundraising be brought clearly within the regulatory scheme. However, again he favoured self-regulation, noting the effectiveness of the PRFA's voluntary site management agreements (SMAs), and encouraging more local authorities to sign up to the scheme. In his view, further statutory regulation represented a last resort, should problems persist.

Lord Hodgson's review was followed by a report by the Public Administration Select Committee,[2] which raised similar concerns, noting the "very significant levels of public concern about face-to-face fundraising, or 'chugging'" and that "it is clear that self-regulation has failed so far to generate the level of public confidence which is essential to the success of the system". However, the Public Administration Select Committee agreed with Lord Hodgson that self-regulation should remain, but be placed on notice and subject to a further review.

In its response to these two reports,[3] the Government accepted the recommendation that self-regulation be given more time with further review to assess progress within five years. The Government also accepted the need to reform the licensing system for public charitable collections, agreeing that stronger self-regulation should be the first resort before statutory regulation is considered.

Nevertheless, the anticipated improvement in self-regulation failed to take effect and, following a series of high-profile cases, culminating in the tragic death of Olive Cooke, and the intense public interest surrounding the issue, the Government commissioned a further review into the effectiveness of the current self-regulatory system: *Regulating Fundraising for the Future*, chaired by Sir Stuart Etherington. The Etherington review acknowledged that the current approach was not working and recommended sweeping reforms including the replacement of the FRSB with a new regulator, The Fundraising Regulator. This body would be resourced through a levy on fundraising expenditure of over £100,000 and would have a universal remit to adjudicate over all fundraising complaints coupled with stronger sanctions for non-compliance. It would also seize control of the code of fundraising practice from the IoF. In addition to this, the review recommended that the PFRA and the IoF merge to simplify the complex regulatory landscape and eliminate unnecessary duplication. Ultimately, however, the Etherington Review agreed that some form of self-regulation should still prevail, albeit with the relevant statutory regulator acting as third line of defence in cases that raise regulatory concerns that fall within their remit.

Progress is now being made, with a fundraising summit held in December 2015 to discuss the implementation of the reforms recommended by the Etherington Review and the appointment of a chair and chief executive of the new Fundraising Regulator. Other changes are also being progressed through the Charities (Protection and Social Investment) Bill, which will require third party fundraisers to indicate standards for protecting vulnerable people, and charities with income over £1m to set out their approach to fundraising in their annual trustees' reports. However, these changes will take time and it remains unclear whether they will prove to be effective. The critical question of whether there is an alternative route which local authorities can take to control street collections and, in particular, face to face fundraising therefore remains.

One option is the use of SMAs regulated and administered by the PFRA, which have received praise for their effectiveness from the various reviews. However, where that option has not been effective or is not considered appropriate, a stricter alternative might be to take advantage of the new public space protection orders (PSPOs) introduced by ss 59 – 75 of the Anti-Social Behaviour, Crime and Policing Act 2014.

2 *The Role of the Charity Commission and "public benefit": Post-legislative scrutiny of the Charities Act 2006.*

3 Government Response dated September 2013.

PSPOs can be made by local authorities seeking to restrict anti-social or problem behaviour taking place in certain public spaces. The advantage of PSPOs is that they can prohibit a wide range of behaviour within a specified area and could, for example, be used to prevent face to face fundraising in parts of a high street where the issue was considered particularly problematic.

In order to issue a PSPO, a local authority must be satisfied on reasonable grounds that two conditions are met. First, that activities carried on in a public space within the authority's area have had a detrimental effect on the quality of life of those in the locality; or it is likely that activities will be carried on within a particular area and that they will have such an effect. Second, that the effect, or likely effect, of the activities: (a) is, or is likely to be, of a persistent or continuing nature; (b) is, or is likely to be, such as to make the activities unreasonable; and (c) justifies the restrictions imposed by the notice.

In addition to satisfying these two conditions, any local authority considering the use of PSPOs to prevent face to face fundraising from taking place in certain areas is also required to have special regard to articles 10 and 11 of the European Convention of Human Rights, which concern freedom of expression and freedom of association/assembly. However, given the extent of some of the problems which have been reported and the lack of effective regulation of this matter to date, it is not difficult to see how local authorities with particular problem areas may be justified in issuing a PSPO.

It is clear that street collections and, in particular, face to face fundraising, is an area that is crying out for more effective regulatory control. Only time will tell whether the reforms recommended by the Etherington Review and the introduction of the new Fundraising Regulator will have the desired effect. However, in the meantime, local authorities facing serious problems without effective remedy may want to give serious consideration to the use of PSPOs to restrict nuisance and over-zealous face to face fundraising.

Louis Krog
Licensing Team Leader, Cheltenham Borough Council

Alex Greaves
Barrister, Francis Taylor Building

Crime prevention, machine location and local enforcement

Plenty of significant gambling developments for **Nick Arron** to analyse and comment on in this issue's round-up. But still no Greene King decision

Policy developments continue to come thick and fast, with the Gambling Commission issuing its 5th edition Guidance to licensing authorities last year, which contained a revised provision in respect of operators' preparation of local area risk assessments and the potential for the development of local area profiles. Many authorities have also been revising their statements of licensing policy to include commentary on the new requirements, which take effect from April this year. The Gambling Commission has also reinforced its position in respect of the location of gaming machines and completed its recent review of the current regulatory regime with regard to providing improved clarity regarding additional measures to address the prevention of crime associated with gambling.

Greene King

The outcome of the Gambling Commission's appeal to the Upper Tribunal in respect of Greene King's application for a non-remote bingo operating licence was announced in February. The impact on operators and local authorities of that determination will be discussed in detail in the next issue of the *Journal*.

Controlling where machines are played

Back in November 2015 the Gambling Commission issued its consultation on the control of where gaming machines can be played. The Commission has stated that what is fundamental to the control of machine gambling under the Gambling Act 2005 is the regulation of the type and number of gaming machines provided in particular types of premises.

The consultation seeks to add conditions to the licence conditions and codes of practice which apply to holders of operating licences.

The consultation aims to address the Gambling Commission's concerns as to whether category B gaming machines can be provided in premises other than licensed betting, bingo and casino premises. It remains the Gambling Commission's position that other than for limited low risk gambling, all gambling activity such as higher stake machines should be restricted to venues where the gambling is not ancillary to another primary purpose, such as the provision of alcohol, food or other regulated entertainment.

The Commission has confirmed that, regardless of the outcome of the pending Greene King operating licence application, it intends to prevent premises such as pubs and restaurants from obtaining gambling premises licences, as the provision of gambling is not their primary purpose.

The Gambling Commission first announced its intention to revisit this area of regulation as part of its consultation on strengthening social responsibility back in October 2014. The Commission has confirmed that continued discussions with the Department for Culture, Media and Sport have affirmed that distinctions between the varying types of gambling premises should be maintained to enable the strict control of the provision of category B gaming machines. The Gambling Commission has also affirmed that should it be unable to achieve its aims under the current regulatory framework, additional regulations may be needed under the Act to effectively control the circumstances under which gaming machines can be made available for use.

The Commission has stated that in order to achieve its objectives, betting, bingo and casino premises should be distinctive in appearance and function while providing their specific gambling activities. Therefore, the sum of all gambling activity should be clearly identifiable as the principal purpose of the premises to ensure that potential customers are aware of the nature of premises and the gambling activity provided. The Gambling Commission's approach appears consistent with its prior stance on primary gambling activity, albeit it is now identified as an appropriate licensing environment.

The amendments to the social responsibility provisions may mean that within licensed premises machines may only be used where there are substantive facilities for named non-remote gambling activities.

In the light of the proposed changes, there could be a significant impact upon a number of licensed operators, particularly e-casinos and those providing licensed bingo services, such as in holiday parks, where the provision of bingo is combined with other entertainment facilities within combined park complexes. This could be of especial concern when reviewing the primary purpose of designated premises and the evaluation of any ancillary services.

Responses to the consultation were due by 22 February 2016.

Crime and disorder consultation

In September 2015 the Gambling Commission issued a consultation on proposed amendments to the Licensing Conditions and Codes of Practice (LCCP) that would apply to all operators in respect of keeping gambling free from crime and being associated with crime. The Commission has stated that it accepts that the ongoing development of the industry's understanding of the potential manifestation of crime from gambling activities and how risks can be managed will continue although the current review intends to strengthen the industry's defences against potential crime.

The review was instigated in consideration of the implementation of the 4th European Union Anti-Money Laundering Directive, which was discussed in a previous article.[1]

The Commission has stated that it intends to provide clarification on its reporting requirements as current provisions may provide a disincentive for some operators to share information relating to crime. The Commission is aware that additional reporting measures will have an impact upon operators and that a number of potential criminal offences and investigations may have little or no impact upon the delivery of the licensing objectives. The consultation has therefore sought to obtain views on the most proportionate and effective way to balance reporting requirements with the potential regulatory burden.

Proposed changes include:

- The reporting of defined key events that could have an impact upon the nature of licensees' businesses, such as criminal investigations by or against licensees, employees or third parties. Conditions have also been proposed which require some operators to conduct appropriate assessments followed by an annual review of the risk of their business being used for money laundering purposes.
- Implementation of appropriate policies to identify and monitor gambling activities and the accounts of customers identified with heightened money laundering risks.
- Notification to the Gambling Commission where a licensee discontinues a business relationship with customers following determination of heightened money laundering risks.
- Increased obligations regarding the monitoring of cash based transactions and the use of payment services.
- Implementation of suspicious activity reporting requirements within terms of employment and measures to prevent the misuse of information acquired by employees for the purpose of placing bets either with their own employers or with external operators.

The consultation also contains extensive revision of its guidance to remote and non-remote casinos for the prevention of money laundering and combating the financing of terrorism, providing further assistance with regard to record keeping and the assessment of risk and reporting guidelines.

Consultation responses were due by the end of last year and the Gambling Commission aims to introduce its new or amended provisions during 2016.

Local authority enforcement

There have been a number of recent cases following failed test purchases and association with crime which have resulted in subsequent enforcement proceedings including prosecution and review issued by local authorities.

In Blackpool, two premises owned by the same operator were failing to prevent under-age volunteers from entering premises and placing bets on fixed odds betting terminals. Both premises were brought to review although ultimately no sanctions were implemented. In both cases it was determined that due to the positioning of category B2 machines, staff members could not effectively monitor and supervise their use. Before the review hearing the operator improved the layout of both premises and built barriers to direct the flow of customers past the customer counter to ensure that effective supervision could be maintained. Further cases in Blackpool have involved the prosecution of an operator's CEO for the failure to implement effective age-verification processes within licensed betting premises and also enforcement against operators of adult gaming centres.

Westminster City Council brought a William Hill premises to review following continued association with anti-

1 Nick Arron, Gamblng licensing: law and procedure update (2014) 9 JoL, p24-25.

social behavior and alleged alcohol consumption within the premises and association with criminal activities concerning drug dealing and exchange of stolen goods. Having considered revocation and measures implemented by the operator to address concerns raised, the licensing authority determined to vary the premises licence, attaching 31 conditions which included improved CCTV provision, minimal staffing requirements, the provision of a licensed security guard from midday to close of business each day, improved training, review and reporting procedures, improved security measures on site and a limitation on the placement of marketing information to ensure a clear line of site to external areas.

The increased level of enforcement activities carried out by regulators shows that operators must maintain vigilance of their operational policies and procedures. Risks must be regularly assessed at premises with particular emphasis on staff training and the implementation of effective supervision and monitoring of gaming areas and gambling activities.

Nick Arron
Solicitor, Poppleston Allen

with additional material by
Richard Bradley
Solicitor, Poppleston Allen

Important changes to taxi law bring some uncertainties

Fee levels, licence periods and the burden of proof – all topics that are being rethought, as **James Button** explains

Several months have now passed since the alterations were made to taxi law. Readers will recall the changes: three or five-year licences being the norm for drivers and operators respectively;[1] cross border sub-contracting being permitted.[2]

To date there do not appear to be enormous problems resulting from these changes, but there does remain uncertainty over the powers of councils to issue licences for shorter periods. There was a suggestion that the Department of Transport (DfT) was to publish some Guidance on the changes, but to date none has been forthcoming.

The legislation is reasonably vague: it allows a local authority to issue a licence for either three years for a driver, or five years for an operator or "for such lesser period, specified in the licence, as the district council think appropriate in the circumstances of the case".

What does this mean? It clearly gives the council a discretion. The next question is: in what circumstances should they exercise that discretion?

If an applicant wants a licence for a shorter period, it must be possible for the authority to grant one. I think it is acceptable to have a limited range of shorter licences, eg one-year and three-year driver's licences, one-year, three-year and five-year operator's licences. The reasons why the applicant wants a shorter period are immaterial.

From the authority's perspective, there may be reasons to grant a shorter term licence. In relation to drivers, doing so to enable future renewals to coincide with triennial Discloure and Barring Service (DBS) checks would make sense. Likewise, where an authority has yet to set a licence fee for a three or five-year licence, shorter term ones could be granted, although this should be resolved from April this year.

The further question concerns the fees that authorities are levying for the extended licences. Generally, licence fees cannot be used as a revenue raising tool and should only cover the costs of the licensing regime (see *R (on the application of Hemming) and others v The Lord Mayor and Citizens of Westminster*[3] in the High Court, Court of Appeal and Supreme Court). In relation to taxi licence fees levied under ss 53 and 70 of the Local Government (Miscellaneous Provisions) Act 1976, there are further restrictions on what can be recovered via the licence fees (see below).

As a result of this it is quite apparent that a three-year licence fee cannot simply cost triple the one-year fee, or a five-year one five-fold the cost of an annual licence. While there can be some increase over the basic annual fee, it must be carefully calculated to fall within the limitations imposed by ss 53 and 70.

Taxi licence fees

Taxi licence fees are levied under the Local Government (Miscellaneous Provisions) Act 1976, s 53(2) in respect of drivers' licences and s 70 in respect of vehicle and operators' licences. Both of those sections are very prescriptive in relation to what expenditure can be recovered.

Section 53(2) states:

> *(2) Notwithstanding the provisions of the Act of 1847, a district council may demand and recover for the grant to any person of a licence to drive a hackney carriage, or a private hire vehicle, as the case may be, such a fee as they consider reasonable with a view to recovering the costs of issue and administration and may remit the whole or part of the fee in respect of a private hire vehicle in any case in which they think it appropriate to do so.*

1 Section 53(1) in relation to private hire and hackney carriage drivers' licences; s 55(2) in relation to private hire operators licences.

2 Sections 55A & 55B in relation to sub-contracting over a local authority border.

3 [2012] EWHC 1260 (Admin); [2012] P.T.S.R. 1676; [2013] EWCA Civ 591 and [2015] UKSC 25.

and s 70 states:

(1) Subject to the provisions of subsection (2) of this section, a district council may charge such fees for the grant of vehicle and operators' licences as may be resolved by them from time to time and as may be sufficient in the aggregate to cover in whole or in part—

(a) the reasonable cost of the carrying out by or on behalf of the district council of inspections of hackney carriages and private hire vehicles for the purpose of determining whether any such licence should be granted or renewed;

(b) the reasonable cost of providing hackney carriage stands; and

(c) any reasonable administrative or other costs in connection with the foregoing and with the control and supervision of hackney carriages and private hire vehicles.

One question that has come up in relation to taxi fees is whether it is possible to recover enforcement or compliance costs. The distinction between enforcement and compliance is important as was made clear in the *Hemming* judgments.[4] Compliance is ensuring that those who have licences comply with the requirements of those licences, while enforcement is action against those who do not have licences. *Hemming* concerned different legislation (schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982) relating to a very different activity (sex establishment licensing), but it is clear that the principles can be applied to other licensing regimes.

In *Hemming* the view was that compliance costs could be recovered by the licence fee, but enforcement costs could not, although under the provisions of the specific legislation the Supreme Court took the view that an additional maintenance fee could be levied to cover enforcement costs.

Taxi licensing differs from sex establishment licensing in a number of ways. Firstly, it is not covered by the European Union Services Directive, and secondly the fee levying powers are considerably more restrictive than the ability for a local authority to simply levy "a reasonable fee" for a sex establishment licence.

Where then does this leave the question of compliance and enforcement costs in relation to taxi licensing?

It must be stated at this point that the law is not entirely clear. As can be seen, s 53 specifically excludes the cost of enforcement and s 70(1)(c) only allows the costs of "the control and supervision of hackney carriages and private hire vehicles". Accordingly, on the face of it, the fee levying provisions of the 1976 Act do not allow recovery of enforcement costs other than in relation to vehicles. Has *Hemming* altered that apparently clear position?

As explained above, in *Hemming* the Court of Appeal was prepared to accept that the overall costs of "authorisation procedures" could also include the costs of enforcement against existing licensed operators. This has become known as "compliance" and must be contrasted with "enforcement", which is action against unlicensed operators (see paragraphs 101 to 104 of the Court of Appeal judgment).

Does this mean that compliance costs for drivers and operators can be factored into the licence fee? This is by no means certain, and seems unlikely. The reasons for this are that the *Hemming* case concerns different legislation (see above) and was primarily concerned with the application of the European Union Services Directive as applied by the Provision of Services Regulations 2009 SI 2009/2999. In that case the relevant legislation was Article 13 of the Directive which states:

Authorisation procedures and formalities shall not be dissuasive and shall not unduly complicate or delay the provision of the service. They shall be easily accessible and any charges which the applicants may incur from their application shall be reasonable and proportionate to the cost of the authorisation procedures in question and shall not exceed the cost of the procedures.

The arguments against the application of the *Hemming* approach to taxi licensing are that the legislation is different, and much more prescriptive for taxi licensing as opposed to sex establishment licensing. In addition, taxi licensing is not subject to the provisions of the European Union Services Directive.

It is therefore difficult to sustain the argument that the reference in *Hemming* to "authorisation procedures" means the same as "the costs of issue and administration" (s 53) or "administrative or other costs" (s 70).

Accordingly, it does not seem possible for a local authority to recover general compliance or enforcement costs for taxi licensing via the licence fees, other than in relation to licensed hackney carriage and licensed private hire vehicles which are licensed by that authority. However, until this matter is addressed by the senior courts, the alternative argument exists.

Burden of proof in taxi licensing decisions

It is well accepted that a local authority cannot grant taxi

4 *R (on the application of Hemming) and others v The Lord Mayor and Citizens of Westminster* [2012] EWHC 1260 (Admin); [2012] P.T.S.R. 1676; [2013] EWCA Civ 591 and [2015] UKSC 25.

licences unless it is satisfied that the applicant is safe and suitable to hold them.[5] It is also well accepted that on application for a new licence the burden of proof lies with the applicant to demonstrate that they are safe and suitable.[6] Does this proposition hold good once the licence has been granted?

This was the question raised in the High Court in *Kaivanpor v Sussex Central Justices DC.*[7] Unfortunately, as yet there is no transcript of the judgment available but a reasonably detailed digest has been published. The court determined that once a licence has been granted, if the local authority wished to take action against that licence, at that point the burden of proof switches and it is for the authority to demonstrate that the licensee is no longer safe and suitable to continue to hold the licence, rather than the licensee being required to demonstrate that he or she still is.

At first glance this may seem peculiar, and does apparently fly in the face of the earlier High Court decision in *Canterbury City Council v Ali.*[8] However, it does follow the earlier Court of Appeal decision in *Muck It Ltd v Secretary of State for Transport.*[9] That case concerned goods vehicle licences, but may have a wider application in relation to licences generally. Clearly, the Administrative Court felt that it did so in *Kaivanpor.* It appears to have been particularly influenced by the fact that the *Canterbury* decision was made on the basis of representations from only one party, and have taken the view that it is bound by the Court of Appeal's decision in *Muck It.*

The legislative requirements are quite different: *Muck It* concerned the provisions of Goods Vehicles (Licensing of Operators) Act 1995 rather than the Local Government (Miscellaneous Provisions) Act 1976. Goods vehicle licensing is also covered by an EU directive.[10] However the proposition does seem reasonable. A person unknown to the authority (a new applicant) must demonstrate their safety and suitability in order to be granted a licence.

Once that licence has been granted, however, it would appear to be unreasonable for them to have to continue to demonstrate their safety and suitability in relation to any potential challenge to the continued existence of that licence. The local authority (as licensing authority) would have to have evidence to show that they no longer comply, and it does appear to follow as a logical conclusion that it must then be for the authority to show that such evidence is sufficient to demonstrate that they are no longer safe and suitable. It would appear perverse if the burden still remained with the licensee who, when faced with a complaint or allegation, was then required to demonstrate that notwithstanding that, he or she remained an acceptable licensee.

This decision has generated some discussion, and it remains to be seen what the consequences will be. This may become clearer if and when a full judgment is available. In the meantime, however, there is a clear indication from the High Court that this is the approach to be taken, which is backed by the earlier Court of Appeal decision. It would be a brave lower tribunal which ignored both of these precedents.

James Button, CIoL
Principal, James Button and Co

5 James Button, Taxi licensing:law and procedure update (2015 11 JoL, p9-12, also (2015) 12 JoL, p13-16.

6 See *R v Maidstone Crown Court, ex parte Olson* [1992] COD 496 at 498.

7 28 October 2015 (unreported).

8 [2013] EWHC 2360 (Admin), [2014] L.L.R. 1.

9 [2005] EWCA Civ 1124, [2006] R.T.R. 9.

10 Directive 96/26/EC.

Alcohol - the other side of the story

Alcohol gets a bad press but so many criticisms levelled against it are based on false information dressed up in pseudo-scientific language. **Susanna FitzGerald QC** and **Paul Chase** explain the flaws in the critics' thinking and point out some of the more positive aspects of drinking and the licensed trade

It feels as if a week never goes by without yet another media story highlighting problems generated by the licensed trade and the night-time economy and painting alcohol and drinking as a social evil. Given this barrage, which seems designed to encourage puritanical attitudes, it is not surprising that myths have grown up about alcohol and its dangers which are inaccurate and misleading. In this article, we explode some of those myths and suggest a few of the benefits of the trade.

Myth: Alcohol is cheaper than ever before

Fact: Despite examples of cheap alcohol in supermarkets, the price of alcohol overall has increased by 25% since 1980 in real terms, when measured against the Retail Price Index. But average earnings have doubled since 1980, so alcohol is now more affordable, not cheaper. And actually even that is only true for people on average earnings or above. For people on benefits, pensions, or student grants, whose income has not exceeded inflation, alcohol overall is neither cheaper nor more affordable.

Myth: A minimum price of 50p per unit would significantly reduce alcohol misuse in the UK

Fact: The Sheffield University Review predicts that a 50p minimum price would mean that a young binge drinker will drink 0.8 units of alcohol fewer per week – about one-third of a pint of lager or beer over a seven-day period. Or, they would need to spend all of £1.14 per week to maintain their drinking at the same level as before. Only an epidemiologist would believe this.

Myth: Medical campaigners claim that there are 1.2 million alcohol-related hospital admissions a year

Fact: Nobody knows how many hospital admissions are actually alcohol-related! If you believe that someone stands at the door of every hospital in the land counting-in all the alcohol-related admissions, then you have been misled. Actually, the figures are all estimated by using a modelling technique developed by the World Health Organisation over 15 years ago on the basis of international, not British, research. This technique produces an estimate, known as the Alcohol Attributable Fraction, or the proportion of hospital admissions attributable to alcohol. In fact the Department of Health has abandoned this methodology and now estimates around 333,000 hospital admissions each year are attributable to alcohol. But because of "frequent flyers" – people who regularly get admitted – this equates to around 75,000 actual people admitted.

Myth: Britain has one of the worst rates of liver disease in the world

Fact: We are not even one of the worst in Europe. England is below the European average and 16 out of 27 countries have worse rates of liver disease than us.

Myth: Underage and teenage drinking is getting worse

Fact: They are getting better.

- The proportion of young people in England (11-15 year olds) that has tried alcohol fell from 59% in 2000 to 39% in 2013.
- The proportion of young people in England (11-15 years olds) who think it is ok to drink alcohol once a week fell from 46% in 2003 to 26% in 2013.
- The proportion of young people in England (11-15 year olds) who think that everyone their age drinks has fallen from 9% to 4%.
- The proportion of young people in England (11-15 year olds) that do not think alcohol is used by their peers has increased from 12% to 20%.

Myth: We're drinking more and more each year

Fact: We have been drinking less each year since 2004 and our alcohol consumption is falling at the fastest rate for more than 60 years and is now at the lowest level this century.

- The UK consumed an average of 9.4 litres of alcohol per adult (15+) in 2013, down 19% from the 2004 peak and 10% lower than 2000. The OECD average is 10.4 litres.
- The percentage of frequent drinkers fell between 2005-2012, men from 22% to 14% and women from 13% to 9%.
- The percentage of those drinking over the

recommended guidelines on their heaviest drinking day also fell from 2005-2012, men from 41% to 34% and women from 34% to 26%.

Myth: Alcohol misuse costs the taxpayer £21 billion a year

Fact: The £21 billion a year cost of drink-related harm is a figure derived from a study done in 2003 for the UK Cabinet Office, which actually calculated the cost as being £19.7 billion at 2003 prices. A large part of what is being calculated as a "cost to the taxpayer" cannot be regarded as an economic cost in any real sense and certainly does not accrue to the taxpayer.

The Cabinet Office study calculates five separate costs. The costs highlighted in bold are those borne by the taxpayer as opposed to private costs (borne by individuals), as follows:

Intangible costs	4.7
Lost productivity	5.5
Healthcare costs	**1.7**
Crime/fire (private costs)	5.1
Crime fire (public costs)	**2.2**
TOTAL	19.7
Amount paid by Government (Cost in £bns and percentage of total costs)	3.9 (20%)

One could take issue with all of these calculations, but let us just focus for a moment on "intangible costs". It turns out that intangible costs are subjective valuations of lost years of life, emotional distress and pain and disability arising out of alcohol misuse. A cost of £100,000 is attributed for every year an alcohol misuser spends with illness, pain or disability; this combined with loss of life years is what has enabled the construction of astronomical "intangible costs" for alcohol misuse. How can anyone seriously claim to monetise emotional distress and keep a straight face when they describe this as a cost to the taxpayer?

The benefits

Turning to the other side of the argument, the production of alcohol and the licensed trade bring very real economic benefits to the country as a whole and to local areas, both in revenue terms and in jobs. The night-time economy generates £66 bn in revenue and amounts to 10% of GDP, 8% of all businesses and 6% of employment. Alcohol duties raise about £10.4 bn annually.[1] Seventy-five per cent of licensed hospitality outlets are Small and Medium Size Enterprises (SMEs) and contribute 42% of their turnover to local and national taxes.[2] A third of all town centre turnover is generated by the late-night economy.

So far as wine and spirits are concerned, in 2013 there were 210 registered distilleries in the UK[3] and 448 commercial vineyards;[4] 93% of the value and volume of gin sold in the UK was domestically produced; and British spirit products are being exported all over the world. The number of English wine producers is increasing, and they produce wines that compete with the best in the world,[5] with a significant number of medal winners: it is an industry that we should be proud of. In 2012/13 the wine and spirit industry directly or indirectly supported over £40 bn of economic activity in the UK.[6] Figures from Oxford Economics in 2009 show that 650,000 people were employed in the production and retailing of alcohol and 1.1 million UK jobs were supported in the wider economy.

In 2013/14, the licensed hospitality sector employed 590,000 people directly and 450,000 indirectly (8% more than in the previous year), providing jobs in all regions, for all ages and at all skill levels[7] and generated 1 in 8 of all new jobs. The sector (not the off-trade) generated 37,000 new jobs (7% of all net new jobs in the UK) and 1 in 6 of the new jobs generated were for 18-24 year olds. It is also the fifth largest supplier of apprenticeships in the country,[8] and the number of apprenticeships doubled in 2014 with 80% completion rates.

In 2013/14 licensed hospitality grew by more than 3.5%, with a turnover of £21.6 bn, and contributed £8.25 bn to GDP. The growth accelerated and turnover was up to 7.4% in Q1 in 2014. Each outlet generated on average £209k GVA (gross value added) for its community and employed 22 people.[9]

Much has been published and discussed about the very real social benefits of the licensed trade, especially local pubs, where the local pub is the centre of a community; we have all heard the expression "The Pub is the Hub", and it is. Despite this, the number of pubs, according to the BBPA, has fallen from 60,100 in 2002 to only 51,900 in 2014, with the wet-led pubs being particularly affected. The vast majority of pubs are now serving food, up to 20 million meals a week, and plentiful coffee.

So, the trade contributes vast amounts to the Treasury

1 Report of Institute of Economic Affairs.

2 Association of Licensed Multiple Retailers 2014.

3 HMRC Registrations, September 2013.

4 UK Vineyard Register, 2013, Census 2011, WSTA analysis.

5 Supporting a Great British Industry, 2014 WSTA.

6 Alcohol Duty Escalator Economic Impact Assessment, Ernst & Young, October 2013.

7 The Association of Multiple Retailers 2014.

8 The Association of Multiple Retailers 2014.

9 The Association of Multiple Retailers 2014.

and in local taxes, generates new jobs, is a major employer, including of young people, and is a considerable supplier of apprenticeship places. Furthermore, according to a Pub Age survey carried out in 2009 and 2011, the total funds raised for charity by pubs was over £100 million. The trade is also a great supporter of various initiatives such as Best Bar None. In 2013, the Home Secretary praised Best Bar None, stating how violent crime had gone down as a result of it, and the late-night economy had been enjoyed by more people because of the improvement in the late-night environment.

We hope that this article has helped to restore the licensed trade and producers of alcohol to their proper place as a significant generator of wealth to the country, but in all these statistics, let us not forget the simple pleasure that a favourite tipple can provide to millions of people, (drunk in moderation, of course!): where would most social events be without a touch of alcohol?

Paul Chase
Director, CPL Training

Susanna FitzGerald QC
Barrister, One Essex Court

2016/17 Fee Increase

The Board have considered the position on membership subscriptions, and while conscious of the need to ensure that membership fees are aff ordable and reasonable, there are a number of investment projects and changes ahead which are intended to continue to improve the benefits and services to members. In addition, the Board consider that it is appropriate to increase the number of Journals provided to Organisation members.

With this in mind, the Board have agreed to increase membership subscriptions for 2016/17 (payable in April 2016). The new fees are shown below:

- Associate - £65.00
- Individual / Fellow / Companion - £75.00
- Standard Organisation (up to 6 named contacts) - £275.00
- Medium Organisations (7 - 12 named contacts) - £400.00
- Large Organisation (13 + named contacts) - £550.00

We are pleased to note that personal memberships (Associate, Individual, Fellow etc.) have remained unchanged since 2009/10 and organisations subscriptions were last increased in 2012/13.

The number of copies of the journal provided to organisation members will increase (from March 2016) as shown below:

- Standard Organisation - 3
- Medium Organisations - 4
- Large Organisation - 6

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A guide to applications in cumulative impact zones

Cumulative impact zones are not "no go" areas for new operators but a strategic application approach is essential to winning a new licence, as **Niall McCann** explains

The spread of cumulative impact zones (CIZs) throughout England and Wales has been a significant trend in recent years. Also known as "stress areas" and "special policy areas", the crux of a CIZ policy is that there is a rebuttable presumption to refuse applications for new licences or substantial variations unless the applicant can demonstrate that a grant will not add to cumulative impact.

While such a policy can be a difficult hurdle to overcome, the presence of a CIZ is not an absolute bar. As advocates often lament, if all applications in CIZs are refused it simply allows the existing operators to continue trading without competition, thus ensuring that the problems which prompted the adoption of a CIZ remain unabated. Nevertheless, applications in CIZs should not be made lightly and generally require additional thought and different tactics to the norm.

Here are a few points to consider:

- *Knowing the attitude of the local licensing sub-committee and statutory authorities is crucial*

Although the wording of CIZ policies can be rather generic their interpretation is anything but. In some parts of the country the presence of a CIZ is, in reality, barely discernible with applications for all different types of premises (including pubs and bars) being granted, often by way of delegated authority. The other extreme are almost "no go areas" when it comes to new licences or later hours. The norm is somewhere in-between. Some councils will look favourably on applications provided that a premises will operate as a restaurant and agree conditions to this effect (ie, that the sale of alcohol will be ancillary to the provision of food). Others look to limit the number of patrons standing at any one time to avoid "vertical drinking" or are prepared to grant applications provided that licensable activities terminate within certain prescribed hours.

These "unwritten rules" are not always obvious and, where practitioners are unfamiliar with a council area, a review of recent decisions on the online portal or a conversation with a friendly council officer can pay dividends.

- *Look for the exceptions.*

Some council policies contain specific exceptions to cumulative impact. For example, Camden Council's policy states that an exemption to policy may include, but it not be limited to:

  - small premises with a capacity of fifty persons or fewer which only intend to operate during framework hours;
  - premises which are not alcohol led and operate only within framework hours, such as coffee shops; and
  - instances where the applicant has recently surrendered a licence for another premises of a similar size and providing similar licensable activities operate in the same special policy area.

Clearly, if the premises in question falls into one or more of these exemptions, the likelihood of a grant is increased.

- *Do not ignore the exclusions*

In addition to citing possible exemptions, council policies often state what will not be considered an exemption. Again, using Camden Council's policy as an example, it states that examples of factors the licensing authority will not consider as exceptional include:

  - that the premises will be well managed and run;
  - that the premises will be constructed to a high standard; and
  - that the applicant operates similar premises elsewhere without complaint.

The reason for such matters not to be "officially" considered is that a council would expect all operators to meet such standards. That is not to say that submissions should not include reference to such matters. In fact many licensing sub-committees would find it odd if the reputation of the applicant was not expounded.

- *Read the small print*

When scanning a council policy the eye is naturally drawn to sections or paragraphs headed "cumulative impact" or "stress area" and appendices showing mapped out areas or a list of roads to which they apply. However, the devil is in the

detail. Many policies have a section which specifically states that cumulative impact will be considered where relevant, regardless of geographical area. Others have a general policy that the council will "look to grant" to a certain time. By way of example, this is what the new licensing policy of the Royal Borough of Kensington & Chelsea says:

> *There are very few solely commercial areas within the Royal Borough (those that are have residential areas in close proximity) and, taking into account the high level of existing noise complaints, the limited availability of late night public transport and police records of crime and disorder, it is appropriate to generally limit opening hours to midnight in order to maintain the balance between residential and commercial interests. The licensing authority will generally expect licensable activities to cease sufficiently before midnight to ensure the efficacy of such a limitation. However, this is a general policy and does not automatically mean that all applications, when the discretion of the licensing authority is exercised on receipt of valid representations, will result in premises licences being granted until midnight or that no applications will be granted with a terminal hour after midnight. The licensing authority highlights the fact that each application will be considered on its own merits and an individual application may result in a terminal hour being set for either before or after midnight dependent on the particular circumstances of that application. The licensing authority considers that, generally, a terminal hour of 12 midnight will, in this particular area, be a better method of promoting the two licensing objectives of the prevention of crime and disorder and the prevention of public nuisance, than extending terminal hours.*

In other words, there is a quasi-CIZ policy which relates to hours rather than geographical location.

- *Consultation*

Councillors are political animals who are often elected by a surprisingly small number of voters. Many are, understandably, anxious to uphold the wishes of the more vocal members of their flock by refusing applications which attract strident representations from local residents. Although some local residents are against licence applications *per se,* consultation by way of correspondence or, even better, a residents' meeting, can neutralise opposition or even garner support for an application by way of positive representations.

- *Give and take*

As every operator knows, trade varies enormously depending on the day of the week and the season. For example, a bar might have a premises licence with a terminal hour of 1.00 am seven days a week, but the trade early in the week barely justifies it staying open to such an hour. If an application is made for a later terminal hour at the weekends, an offer to reduce hours during the week (thereby ensuring the total number of hours remains the same) can be persuasive.

- *Cover your back*

If you have a client looking to acquire a licenced premises in a CIZ the golden rule is that, if at all possible, the property transaction should be subject to the grant or variation of a premises licence. Furthermore, it is not sufficient for the conditionality to be restricted to obtaining any old premises licence: it should be one free of onerous conditions. What counts as an onerous condition depends on the proposed style of operation, but can include restrictive times for opening and licensable activities, having to have door supervisors, restrictions on the use of an outside area and the imposition of "restaurant style" conditions whereby sales of alcohol have to be ancillary to the consumption of substantial food. The exact wording of the onerous conditions listed in the agreement for lease will depend somewhat on the commercial bargaining strength of the parties. However, careful wording of the onerous condition clause can result in a tenant being able to negotiate more favourable rent provisions if a listed onerous condition is placed on the premises licence but they still wish to proceed to completion.

- *Appeals*

A refusal before a licensing sub-committee is not necessarily "game over". Of course, successfully appealing an unfavourable decision is more difficult if the premises is located in a CIZ. It is not impossible, though, as shown by the often cited Magistrates' Court judgment of District Judge Anderson in the case of *Brewdog Bars Limited v Leeds City Council*[1] in which he stated:

> *It cannot be the policy of the cumulative impact policy to bring the iron curtain down to allow such clubs to continue to trade while shutting out Brewdog which attracts more discerning customers who do not engage in binge drinking, though I do accept the requirement of the cumulative impact policy is to ascertain specifically where there will be an impact.*

Before going on to say…

> *I accept that the committee and the police did their best but their application of the policy was too rigid. They seemed to take the view that man was made for the policy, when the policy should be made for the man.*

1 Leeds Magistrates Court, 6th September 2012

The appeal was upheld much to the delight of operators throughout the country. The *Brewdog* case is not unique – appeals of refusals in CIZs have been granted across England and Wales. It must, of course, be remembered that Magistrates Court decisions cannot be relied upon in setting a precident and are no more that an indication of a local decision taken on its facts.

Unlike other legislative attempts to curb crime and anti-social behaviour, CIZs have been a "runaway hit" with local councils and are here to stay. Whole swathes of London including Soho, Covent Garden, Shoreditch and the wider East End are in CIZs. Operators are attracted to areas which have a certain concentration of licensed premises and hence the percentage of applications made which trigger a CIZ policy will no doubt increase with operators and practitioners alike having to find increasingly sophisticated arguments to secure valuable grants.

Niall McCann
Partner, Joelson Wilson LLP

2016 Events Diary

April
18 April - Now & Next - London
26 & 27 April - Zoo Licensing - Chester Zoo

May
9 May - Basic Principles of Licensing - Nottingham
10-13 May - PLPQ - Birmingham (SOLD OUT)
24 May - Now & Next - Birmingham
Dates TBC - Safeguarding events

June
22 June - National Training Day - Stratford-upon-Avon
20-24 June - National Licensing Week
28 June - Councillor Training: Licensing Hearings & Safeguarding - Manchester (further dates and locations tbc)

July
6 July - Now & Next - Leeds

September
19-23 September - Councillor Training: Licensing Hearings & Safeguarding - (dates and locations tbc)
27 & 28 September - PLPQ (LA03 & Scrap metal etc) - London

October
5 & 6 October - PLPQ (Gambling and Taxi licensing) - London

November
16-18 November - National Training Conference

Planned

An important element of the Institute is training. We provide residential and non-residential training courses throughout the year on a variety of subjects relevant to the field of licensing. All our training is accessible for members and non-members. A benefit of being a member is reduced training fees for IoL training courses. For details of our planned training events, please go to the events page on our website.

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The training courses would be for your employees / councillors etc and closed to general bookings. We are in the unique position of being able to provide tailored training courses that meet your needs including tailoring the course content and choosing the most suitable trainer.

If you would like to obtain a quote please email your requirements to training@instituteoflicensing.org

A dedicated follower of fashion

Fashionably late, as usual, I consider I am still in time to wish a Happy Anniversary to the Licensing Act 2003 (I don't know who is wedded to it, but it is a capricious spouse). Ten years – where did they go? It is a long time in fashion and celebrity marriage. But fashions come, and fashions go, and then, as far as licensing is concerned, it seems, they come right on back again. Let's revisit some of our favourite licensing no-no's of the last ten years, that have been firmly relegated to history at some time or another in the past decade, and watch with wonder the ones that have re-emerged, like dry rot or Japanese knot-weed, in a most unwelcome fashion in recent times.

Hands up who remembers bottle marking? In the olden days, before anyone had coined the phrase "super strength", bottle marking was all the rage. From petrol stations to corner shops, you couldn't move for natty hand-held labelling guns, furiously pumping little sticky markers onto every individual alcoholic unit that the shop hoped to shift. It was, we were solemnly told, the panacea to all street drinking pandemics, and would infallibly highlight the source of the sauce to the vigilant authorities who would doggedly follow the sticky trail and mark the card of the culprits. Well, that went well, I thought. I wonder how many hapless shopkeepers are still grimly gunning their stock, item by item, and I wonder how many additional cases of repetitive strain injury GPs saw as a result. Fascinating stuff. But we have evolved, and have now found the real cure - banning super strength alcohol. So all is well, and the scourge of street drinking is finally solved. Wait, no, err… anyway. Moving swiftly on.

"Fascinating stuff. But we have evolved, and have now found the real cure - banning super strength alcohol. So all is well, and the scourge of street drinking is finally solved. Wait, no, err… anyway. Moving swiftly on."

Then there was Section 19. How we laughed. There was a belief, honestly held or otherwise, that merely filling in and handing out a closure notice under s 19 of the Criminal Justice and Police Act 2001 was enough to enforce compliance with whatever licensing transgression had been identified, from greatest to least. Section 19 was used manically for a while as the blunt weapon to resolve anything from dodgy CCTVs to blocked fire exits and more. There were some truly poignant touches to this story – but the best bit was that the Home Office was training the police on how to do it wrong. It was all sorted out in Wakefield as long ago as 2012 - so quickly and quietly, by way of a hasty consent order, that it must have gone under the radar. The order – while a binding ruling of the court – does not show up on legal website searches either, and so, like the lost books of the Bible, people eventually forget that it ever existed. Until one day, some bright spark trying out their licensing wings suddenly has this great idea about what a wheeze it would be to serve a s 19 closure notice, to scare the living bejabers out of some hapless licensee, but never actually bother going to court. And perhaps suggest that they are committing a criminal offence if they don't comply with the notice immediately, and maybe they would like to close voluntarily in the meantime or, alternatively, get arrested: entirely their choice, no pressure. It happened in Dartford last year to the licensee of an off-licence, which was a spectacular example, since the section expressly does not apply to off-licences at all. But why let the law get in the way of a perfectly good strong-arm tactic? It is disappointing to see s 19 back in full swing again, but memories are dim, and the order is available on the IoL website for all to see.

Disclosing police incident logs – will I ever stop banging on about this one? No. Even the lure and temptation of putting me substantially out of business is not inducement enough to certain police forces to serve reliable information (if not the very logs themselves) about the incidents that they allege against premises in any licensing hearing. A failure to disclose is not so much an intermittent fashion as a permanent fixture. Like the Little Black Dress, or straight leg jeans, or fungal nail infection – it never really goes away. On what planet and in what legal jurisdiction or regime is it acceptable to try and make things look worse than they really are to get a result? (For the avoidance of all doubt, failing to serve information that proves that things are better than they would otherwise look is exactly the same thing.) Does it make me cross? Yes. Does it pay for my holidays? Yes. Let that be the Anniversary resolution if nothing else. If fair play and justice and human rights are insufficient inducement, then just try and make Clover take her holidays on the Norfolk coast. (Nothing wrong with Norfolk – it's where I'm from: just don't make me swim in the North Sea.)

Sarah Clover
Barristers, Kings Chambers

Institute of Licensing News

New website

After much anticipation the new IoL website was launched in January. www.instituteoflicensing.org

We hope you agree that the new website is a vast improvement on the old one, providing a much better user experience, combined with greater functionality. Members will be able to view their personal profiles, update their information, view event bookings for forthcoming and past events, as well as download invoices and certificates for both membership and events.

The new website library has an excellent search facility allowing searches on words contained in the document content as well as the title. Going forward, we aim to have a summary attached to case law documents to allow users to see instantly what the case was about.

The new member forum allows members to post their own questions which other members will then be able to view and comment on.

Your feedback on any aspect of the new website is valuable to us so please let us know what you think by emailing info@instituteoflicensing.org

Jane Blade wins the Jeremy Allen Award

Nick Arron from Poppleston Allen and Daniel Davies, Chairman of the Institute of Licensing, presented Jane Blade with the 2015 Jeremy Allen Award at the IoL National Training Conference's Gala Dinner in November last year.

Jane Blade has recently joined the Gambling Commission but at the time of nomination was a Senior Licensing Enforcement Officer at the London borough of Redbridge.

Nick Arron, Jane Blade and Daniel Davies

Jane was nominated because of her enormous contribution to the IoL's work and her extensive licensing knowledge. Her contributions to the sector include a statement of principles for gambling policy and the Licensing Act 2003, as well as input into regulations for special treatments licensing in accordance with the London Local Authorities Act 1991.

Jane said she was "overwhelmed" to receive the award saying: "I was always impressed by Jeremy's presence, vision, spirit, humour and incredible breadth of expertise. The creation of the Jeremy Allen Award was a testament to Jeremy and his values, so to win it - when the other candidates were outstanding - is an enormous honour."

The two other finalists were:

Meryl Williams - Licensing Manager, Rhondda Cynon Taf County Borough Council

Meryl joined as Senior Licensing Officer in 1998 and retired at the end of 2015. She led the licensing authority through the transition of licensing in 2005 and was a keen member of the Institute of Licensing Wales Branch for many years, serving as one of its officers.

Among her many achievements, she was the first to introduce the Best Bar None scheme in Wales, she led the "Cowboy Cabs" campaign targeting unlicensed vehicles / drivers in the borough and she introduced child-protection training for taxi drivers in the borough.

Councillor Marianne Fredericks - Chairman of Licensing, City of London Corporation

Marianne has had a significant influence on the City of London's licensing. In particular, she has played a big part in improving the City's statement of licensing policy, which is now backed by a code of good practice and a risk-rating scheme. She has also been very active in seeking to integrate licensing policy across the operations of the City's police, licensing, environmental health and fire brigade. She is soon to become the City of London's Planning Chairman.

Jon Collins IoL Patron

Jon Collins was confirmed as IoL Patron at the National Training Conference's Gala Dinner in November 2015. His appointment is in recognition of Jon's exceptional contribution to the IoL, and particularly his achievements during his time as Chairman.

Jon said he was "truly honoured" to take up the position

of Patron, saying: “It puts me in prestigious company and is conferred by a Board for which I have the utmost respect. The Institute of Licensing has an informed and important role to play in shaping licensing policy across the United Kingdom. Of course, that policy then has a very real effect on so many aspects of our day to day lives making our work both intellectually stimulating and of real value. I will do all I can to see that our Institute, with the wealth of knowledge held by its members, continues to be recognised and listened to by policymakers at all levels.”

Jon is the IoL’s second Patron alongside existing Patron, Philip Kolvin QC, who commented: “It would be wrong to describe Jon as part of the furniture at the IoL - he is part of the superstructure. Imported for his lobbyist’s ability to triangulate between opposing positions, through his calm demeanour, positive outlook and careful words he demonstrated how there is far more for protagonists on the licensing stage to agree about than to argue over. He has led the Institute into a new space in which parties can discuss standards of good practice in government, local government and industry in an atmosphere of mutual support. He has also helped achieve greater national recognition for the Institute of Licensing, so that it is treated more and more as a credible contributor to national policy debates. He is an apt Patron of the Institute of Licensing, and I am delighted to welcome him to the club.”

Philip Kolvin QC, Jon Collins and Daniel Davies

James Button, Roger Butterfield and Daniel Davies

IoL Chairman Daniel Davies added: “I’m delighted that Jon has accepted the role of Patron of the IoL alongside Philip. Jon has played a pivotal role within the IoL for many years as the previous Chairman and I have no doubt that he will continue to support the IoL’s growth and success in this new role.”

Jon is Chief Executive of CGA, the marketing information company specialising in the on-trade. He was formerly Chief Executive of BEDA, and his involvement in the late-night industry has given him a firm knowledge of both the retail and supply areas. He was heavily involved in the formation of legislation surrounding licensing reform, the smoking ban and door supervisors and has been on the advisory boards for nearly all of the proposed regulation involving the licensed on-trade for the last decade.

Jon originally joined the Board as Vice Chairman in February 2010, and became Acting Chairman in August 2011. His appointment as Chairman followed in 2012. Under his chairmanship, the IoL has developed significantly with a growing membership, increased training and events, and a far greater profile as a result of effective engagement with other organisations and Government. Developments under Jon’s Chairmanship have included the launch of the IoL’s *Journal of Licensing*, the introduction of the Jeremy Allen Award (in partnership with Poppleston Allen) and the re-establishment of the National Licensing Forum, providing a round table forum for industry, regulators and Government stakeholders.

Roger Butterfield’s career recognised

Senior licensing practitioner Roger Butterfield, who recently retired, was recognised for his outstanding career in licensing during the Awards presentation at the Gala Dinner.

IoL President Jim Button made the presentation to Roger and said: “Roger has been a major influence within the Institute since the earliest days when the Local Government Licensing Forum was created.

“As the founding Chair of the North East Region he was instrumental in laying the foundations of a nationwide organisation. Throughout his involvement as Chair, and also his continuing presence as a speaker at regional and national events, he provided a constant source of sound advice backed by an encyclopaedic knowledge of licensing matters. Unfailingly cheerful and always welcoming, he has been a tower of strength to the Institute. It has been a pleasure to know him as a friend and professional colleague, and he will be sorely missed by all of us.”

In response, Roger said: “It was very humbling, a great surprise and an honour to receive the award from such a well-recognised and respected organisation as the Institute of Licensing. I have been involved with licensing for 50 years. It has been a privilege to meet and work with a large number of licensing experts and be involved with the LGLF and then the IoL since its inception. I have made many good friends and will keep in touch with them and the Institute.”

Consultations

Gambling Commission Consultation - Controlling where gaming machines may be played consultation
(closes 21 March 2016)

Ensuring that category B gaming machines are only made available in accordance with the licensing objectives is a priority for the Gambling Commission. This consultation includes proposals for a revised regulatory framework with the aim of achieving the following policy objectives:

- with very few low-risk exceptions, gambling should be confined to dedicated gambling premises ie casino, betting or bingo premises
- distinctions between different types of licensed gambling premises are maintained
- gambling activities are supervised appropriately
- within bingo, betting and casino premises gaming machines must only be made available in combination with the non-remote gambling facilities named on the operating licence.

The Gambling Commission have prepared a collection of regulatory proposals aimed at ensuring the above objectives are embedded consistently across the gambling industry. This has been a contentious area of policy in the past and the Commission are seeking views from all interested parties on how best to achieve the above policy objectives.

The Consultation will close on 21st March 2016.

DEFRA consultation on the review of animal establishments licensing in England
(closes 12 March 2016).

DEFRA is proposing to introduce new secondary legislation under the Animal Welfare Act 2006, as had been anticipated when the Act was originally enacted. This would introduce a single animal establishment licence for animal boarding establishments, pet shops, riding establishments, and dog breeding. The consultation document can be found on the DEFRA website.

The proposed Regulations would:

a. Create a single animal establishment licence for these activities that reflects current knowledge on animal welfare, the diversification of the sector (including operation on the internet), and refers local authorities to the existing bespoke model conditions.

b. Update the legal requirements for each licensed activity, including clarifying standards around the sale of puppies, the licensing threshold for dog breeding, and the provision of information alongside pet sales.

c. Allow licences to be issued at any point in the year for a fixed term (as opposed to within the parameters of a calendar year), allow licences to be transferred to new owners of premises and require licence-holders to notify local authorities of major changes.

d. Increase the maximum length of time that a licence can be issued for by a local authority (up to a maximum of three years), and encourage them to use risk-based assessment to assess the suitable length of a licence.

e. Allow an exemption from licensing requirements for businesses affiliated to a UKAS-accredited body, provided that the accreditation scheme enforces, at a minimum, the standards required of non-accredited businesses referred to in the regulations.

The IoL will be responding to this consultation and has sought member views to inform the response. At the time of writing the survey was still open to members, with the closing date 26 February. DEFRA's consultation closes on 12 March.

Department of Health consultation on proposed new guidelines to limit the health risks associated with the consumption of alcohol
(closes 1 April 2016)

The consultation launched by the Department of Health entitled "How to keep health risks from drinking alcohol to a low level: public consultation on proposed new guidelines" is seeking views on three recommendations:

- A weekly guideline on regular drinking.
- Advice on single episodes of drinking.
- A guideline on pregnancy and drinking.

The proposed recommendations were made by a group of medical experts at the request of the UK Chief Medical Officers (CMOs) who asked the experts to evaluate evidence about the levels and types of health harm that alcohol can cause.

The IoL plans to submit a formal response to the Department and invites comments from members to be included in the response. Please email sue@instituteoflicensing.org with your comments before Friday 25 March.

Sports Grounds Safety Authority (SGSA) consultation on the latest version of its Guide to Safety at Sports Grounds, commonly known as the Green Guide
(closes 18 March 2016)

The Green Guide was first published in 1973 and has become

the world's leading guidance for the safety of spectators at sports grounds and is used by professionals to inform the design and management of sports grounds around the world.

The SGSA is undertaking a review of its current edition (5th) which was published in 2008 and is seeking views and comments on improvements to the guidance which will be incorporated in the 6th edition of the guide. The 6th edition will reflect changes in regulatory regimes, together with recognition of developments and improvements in stadium design and safety management.

The IoL will be submitting a formal response to the SGSA.

What being a Regional Officer means to me: James Cunningham, Northern Ireland Branch Chair

I once heard the Institute of Licensing referred to as a "multinational company run from the kitchen table". The person who said it meant it as a great compliment to the IoL and I think it's an excellent description of the organisation. Yet while we have a core of great staff, it must not be forgotten that the efforts of all regional officers make the Institute what it is and their contribution is on a voluntary basis and often done in our own time at home and probably from the kitchen table. So what do I get out of being a member of the Institute and as a Regional Officer, Director and Trustee?

One of the main reasons I joined the Institute was for the opportunity to interact with fellow members who have a passion for licensing and to take the opportunity to learn from each other by sharing our experience and knowledge. Whether it's through the many networking opportunities, such as at regional officer training days, the National Training Conference, regional meetings and also in my case, at meetings of the Board, it has allowed me to access advice and guidance from fellow members who are leading experts in the licensing field.

This was paramount in drafting the Northern Ireland Region's response to the consultation on pavement cafés. This response was widely used by fellow Northern Ireland members and by non-members who had obtained a copy in preparing their response to be used by their respective council in Northern Ireland. The net effect was that in October 2013, I was asked to lead on giving oral evidence to the Northern Ireland Assembly's Social Development Committee on the Pavement Café Bill. This also helped to raise the profile of the Institute with the Northern Ireland administration.

I also wanted to be kept informed of the trends, changes, challenges and opportunities that impact on licensing, the profession, business and industry. While all members get licensing flashes and copies of the *Journal of Licensing*, as a regional officer I have found that I get to hear things before others. For example, when the Northern Ireland administration was considering changes to licensing, it approached me as Chairman to "sound out" the views of the region without formal consultation. This kind of dialogue enables the politicians to be better informed, and it allows us to be there shaping the future of licensing locally. I know that this also happens on the national stage.

What else have I got out of being a member? As a local government officer in my day job, I have little experience of business accounts and investment strategies. But through my time on the Board, I have learnt so much. For example, I now have a much better understanding of business accounts and how they work and what level of scrutiny is required, by learning from some of my fellow directors who are forensic in their scrutiny (which is obviously a good thing). I have learnt much and continue to do so and I have been able to bring that learning back into work, which hopefully benefits my employer. So for me, serving as Northern Ireland Region Chairman and also as a Director and Trustee of the IoL has been extremely rewarding.

How it all started

The Institute of Licensing's Executive Officer **Sue Nelson** looks back on eight years of astonishing progress by the Institute and highlights some key events and outstanding individual contributions

In October 2007 I left the comparative safety of an 18-year career in local government to take the position of Executive Officer for the Institute of Licensing – the only paid employee of the organisation at that time.

My involvement with the IoL had begun some years before when I had joined the Local Government Licensing Forum (LGLF). One of my first experiences of the IoL was a South West Regional meeting which took place at the Osborne Clarke offices in Bristol, at a time when the Security Industry Authority was rolling out the new licensing scheme for door supervisors in the South West, having completed the initial pilot in Hampshire and the Isle of Wight.

At that time, when there was a great deal of uncertainty, anxiety even, it was great to be able to meet and talk to colleagues from other areas to compare experiences and exchange ideas. Those connections made at the first and subsequent meetings have stayed with me ever since. In those days I was Licensing Manager for Restormel Borough Council in mid Cornwall – now a part of Cornwall Council following the re-organisation in 2009. Long before "One Cornwall", the network of licensing officers across the six Cornish districts worked together through the Cornwall Licensing Officers Group (CLOG), a network which proved invaluable at times (especially throughout the transition and implementation of the Licensing Act!). The IoL expanded the reach of CLOG, giving us more support and resources for information, ideas and professional networking.

The Broad Church

I distinctly remember my police licensing officer colleague, Graham Eva, approaching Roy Fidoe at one of the early meetings to ask if the LGLF would accept a non-local authority member – and his reply (an unequivocal yes). At that time, the LGLF was predominantly local authority practitioners, but even then had its doors wide open for all licensing practitioners to join.

The LGLF became the IoL in 2003, a clear indicator of its aims to be an inclusive, broad church organisation encompassing all areas of licensing and open to all licensing practitioners. There were some definite pockets of doubt among some of our local authority members in the beginning, but over the years this has dissipated and I've had many conversations with new and long standing members who have commented on the benefits and appeal of the broader membership.

The broad church approach, in my opinion, is one of the IoL's major strengths as well as occasionally being one of its greatest challenges. Our job is to manage the challenges and develop the strengths to the benefit of members.

Company Secretary

In 2004, the then South West Regional Chair, Jim Hunter, rang me to ask if I would consider being Company Secretary for the IoL. I seem to remember him commenting that this would involve getting the sandwiches at Board meetings – a prediction which turned out to be true if short of the mark overall! I was fortunate to have very supportive management at Restormel, who viewed this as an opportunity for me personally but also an opportunity for the council and so I was able to accept and take on the role that Yvonne Bacon had previously made her own.

The National Conferences

My baptism of fire was the York Conference in 2005, but my first conference as Company Secretary was the year before in Blackpool, where I sat with colleagues and very much enjoyed the programme, the sessions and the networking opportunities, blissfully ignorant of the work and effort that had gone before and was still going on behind the scenes. John Fletcher chaired the event with distinction and I left the conference still mostly blind to all the effort behind it.

That all changed at York. The dates for the York Conference had been agreed even before the previous conference, and a long time before the 2nd Appointed Day had been set to coincide with it! It was a definite wake-up call, involving as it did a great deal of hard work in the run up to and then during the event. That said, it was a delight to see that work pay off and to have been involved from the outset alongside other Board members. My experiences of the National Conference to date have been along similar lines – a great deal of work and effort, paid back in dividends over the three days. It really is a fantastic training event with unrivalled networking opportunities, bringing new and seasoned licensing practitioners together to discuss, debate and learn.

York was followed by Brighton (possibly my favourite

location to date), then Bristol, Leeds, Cardiff, and Manchester before settling in Birmingham for the last four years. It is exciting now to be on the move again with the National Training Conference, our 20th, booked in Stratford-upon-Avon from the 16 - 18 November this year.

The next steps

So many people have given so much to the IoL over the years. Jim Button, Sharon Davidson and Tom Cook, without whom the organisation would never have been conceived, are towering figures in our history. Jim Button continues tirelessly as President working with the IoL in so very many ways as well as being an inspirational speaker / trainer, and sterling champion of the IoL. Philip Kolvin QC is our Patron now, but was previously Chair of the IoL for seven years. Philip took on the role of Chair just before I started as Company Secretary (although that was not an influencing factor I promise – at least not the only one!). Philip's dedication to the role was unquestionable and he was instrumental in setting up our Gambling Conference held at City University in London, together with the Gambling Surgeries which followed in York and London and the first Night-Time Economy Conference, all these being major national events outside of our (then) normal event pattern. Philip gave the IoL his all during his time as Chairman (and since) including its first three licensing publications.

"The IoL is unique in its ability to pull together different (even opposing) views and come out with a rounded response to consultations and proposals. When there is a consensus and a need for a strong voice, the IoL is uniquely placed to provide it."

Another significant achievement in the early days was of course the merger with the Society of Licensing Practitioners, broadening the membership, with the added advantage of bringing onto the Board, Susanna FitzGerald QC and David Chambers together with Richard Nash.

Crucially, these events enabled the IoL to step up a gear and become an employer for the first time, and as a result advertise for an Executive Officer. For my part, I was by now fully committed to the IoL and keen to play a full time role in its development - a desire fuelled in part by the impending decision to re-organise Cornwall's local government structure to form a unitary council. There are many arguments for and against local government re-organisation and the case in Cornwall was no exception. What is perhaps forgotten is the upheaval and uncertainties faced by all the services and staff in the affected councils – an upheaval which is significant, leading to increased staff turnover, putting staff in competition with colleagues for fewer jobs perhaps and general disorganisation in the process, affecting staff and public alike leading up to and during transition (hopefully followed by a better organised and more streamlined authority at the end of the process). For me, I had worked alongside colleagues in the six districts for 18 years at that point and it was a joy to be able to turn my focus to another organisation that I cared deeply about, while remaining a licensing practitioner at the core.

Less than 12 months later, the IoL appointed Jim Hunter as Training and Qualifications Officer, a role he was already filling to a large extent as South West Regional Chair. Jim was exactly the right person for the role and as a result the number, range and scope of IoL training developed significantly, with Jim often travelling the length and breadth of the UK to deliver IoL training courses.

When I look back over the years and remember where we started, with two to three main events each year, and accounting, membership, and events all compiled on basic Excel spreadsheets, and compare that to today, together with our communications network and website / social media presence, it really brings home how far the IoL has come. The team has grown along with the organisation. Jim Hunter has moved on to pastures new (or camping sites new!) but remains in touch and is a regular trainer contractor for the IoL along with other excellent trainers across the country covering all aspects of licensing. Despite working remotely, we have a strong and skilled team ready to take the IoL forward into its 20th year and beyond.

The IoL's progress has been made achievable by the voluntary contributions of so many people. Jeffrey Leib set up the licensing flashes, managed the website and was responsible for our early publications (Licensing Circles) as well as being a major contributor to conferences during his time on the Board. Ian Webster and David Chambers were

instrumental in achieving the merger of the IoL and the Society of Licensing Practitioners. All of our Board members over the years have contributed to the direction and progress of the IoL. And of course, our regional officers have ensured, and continue to ensure, the effective and proactive running of our regions. On a personal note, John Garforth, who chaired the IoL's Management Organisation and Development Committee alongside chairing the North West Region, was a great support to me personally in my role as Executive Officer, as was David Chambers who remains committed to the Board in an advisory capacity, and Jon Collins in his capacity as IoL Chair. It is impossible to mention everyone who has contributed to the IoL simply because there are too many – I can honestly say though that everyone's contribution to the IoL over the years has been the single consistent factor which has allowed the IoL to continue to grow into the organisation it is today. That support will continue to play an essential role in future development of the organisation.

Jeremy Allen

My one regret in my role as Executive Officer is that I didn't have the opportunity to work with Jeremy Allen. I was on maternity leave when Philip Kolvin QC stepped down as IoL Chair after seven years, and Jeremy took the chair briefly before he tragically died in June 2011, aged just 66.

I had met Jeremy on a number of occasions during my work for the IoL and previously at the roadshows Poppleston Allen provided in the run up to the implementation of the Licensing Act 2003 and he was rightly held in high regard by all who knew him. In November 2010, he was presented with the IoL's Outstanding Achievement Award in recognition of his major contribution to licensing.

Before taking the role of IoL chair, Jeremy took the time to call me and talk through the role and the IoL more generally. I believe that he would have brought a great deal to the IoL had he had the time to do so. The establishment of the Jeremy Allen Award provided in partnership with Poppleston Allen remains our joint tribute to Jeremy and his work.

Influence and engagement

Another major change over the years has been the influence and engagement of the IoL with various Government departments. This has been aided, of course, by a complete change in the willingness of the Home Office, for example, to engage with, discuss and listen to external bodies and other stakeholders. It really wasn't very long ago that such interaction was virtually impossible. Now the Home Office is represented on the National Licensing Forum and many other forums, as well as being approachable and engaging others in discussions around forthcoming and potential changes. The DCMS has a similar stance and we hope to see the same approach with other Government departments going forward.

It is here that the broad church of the IoL comes into its full strength. The IoL is unique in its ability to pull together different (even opposing) views and come out with a rounded response to consultations and proposals. When there is a consensus and a need for a strong voice, the IoL is uniquely placed to provide it. As just one example, this was clearly illustrated when the Home Office consulted on the proposal to abolish personal licences. The consultation "Personal Alcohol Licences: Enabling Targeted, Local Alternatives" was met with strong criticism all round. Jon Collins, IoL Chair at the time said, "Given the broad and varied nature of our membership, consultations are often met with mixed views, which the IoL will look to fairly represent. On this occasion however, there was sufficient consensus of opinion for the IoL to take a united view and that view is that the abolition of the personal licence system as proposed by the consultation must be opposed".

Journal of Licensing

The *Journal of Licensing* - now well established as an essential reference for licensing practitioners - will continue to develop and to play a significant role in the IoL's stage presence, and we are indebted to the *Journal* team as well as to all our contributors without whom the *Journal* would be impossible.

Looking forward

The new website, a major development and investment for the IoL, will deliver many efficiency savings for the IoL team as well as providing a significantly improved service to members and other users. Plans going forward are to continue to expand the membership, further expand the broad church and significantly advance our development of IoL licensing qualifications.

There is serious work to do in relation to Safeguarding in licensing, and the IoL is committed to making a difference through training and information sharing as well as other opportunities. The issues, so vividly demonstrated by reported cases across the country including Rotherham and Oxford, are too serious and widespread. The consequences of failure to deal with them and to use all tools available to all agencies are simply unthinkable.

Sue Nelson
Executive Officer, Institute of Licensing

Licensing and planning: integrating strategies, demarking boundaries

How to decide whether it should be the licensing regime or the planning regime that decides the fate of an application can be a ticklish matter but **Stephanie Hall** and **Leo Charalambides** explain the fine distinctions

Perhaps one of the causes of greatest confusion and greatest complaint for lay people when they encounter a licensing issue is the seeming failure of the licensing regime to integrate and achieve consistency with the planning regime.

Attempting to integrate licensing and planning regimes is perhaps akin to chasing the pot of gold at the end of the rainbow or indeed attempting to locate the Holy Grail of local authority administration - genuine joined-up thinking. On the one hand the s 182 Guidance calls for duplication to be avoided, and on the other, case law demonstrates the potential for cross-over and confusion.

This article seeks to clarify the legal and policy guidance available to local authorities to help them locate a golden mean between these two approaches, and then additionally to help authorities formulate practical integration strategies based upon a clearer understanding of where that balance lies.

Policy considerations

Naturally, planning committees and licensing sub-committees have different aims, functions and objectives. The planning regime is a system of plan-led decision making which is guided by often detailed borough-specific policies and guidance documents (in addition to the overarching national planning policies and guidance). The licensing regime provides a system to make evidence-based determinations of appropriate actions for the promotion of the licensing objectives. Both are statutory objectives which impose statutory obligations on the committees to exercise their powers to reach those objectives. All of the licensing objectives are, to a greater or lesser degree, able to be material planning considerations.

The guidance published pursuant to s 182 of the Licensing Act 2003 (most recently updated in March 2015) encourages the distinguishing of the two regimes at a policy stage:

> *13.56 It is recommended that statements of licensing policy should provide clear indications of how the licensing authority will secure the proper integration of its licensing policy with local crime prevention, planning, transport, tourism, equality schemes, cultural strategies and any other plans introduced for the management of town centres and the night-time economy….*

The s 182 Guidance also seeks to distinguish considerations relevant to planning decisions from those relevant to licensing decisions:

> *13.57 The statement of licensing policy should indicate that planning permission, building control approval and licensing regimes will be properly separated to avoid duplication and inefficiency. The planning and licensing regimes involve consideration of different (albeit related) matters. Licensing committees are not bound by decisions made by a planning committee, and vice versa.*

In recognition of the fact that the two systems may reach different decisions on the same subject matter the Guidance accepts that overlapping conditions, imposed by the different regimes, can coexist:

> *13.58 There are circumstances when as a condition of planning permission, a terminal hour has been set for the use of premises for commercial purposes. Where these hours are different to the licensing hours, the applicant must observe the earlier closing time. Premises operating in breach of their planning permission would be liable to prosecution under planning law. Proper integration should be assured by licensing committees, where appropriate, providing regular reports to the planning committee.*

In terms of planning policy, while local plans may include their own references to interaction with licensing or other regimes (although, in our experience, this is rare), the National Planning Policy Framework (NPPF) comes closest to an acceptance that other regimes need to be considered in NPPF paragraph 122.

Paragraph 122 is framed in the context of pollution and emissions control. However, it needs to be borne in mind

that the definition of pollution for the purposes of the NPPF includes anything which might adversely affect general amenity. "Emissions" such as noise and litter are therefore well within the remit of planning policies which cover pollution, such as NPPF 122, and it is here that the NPPF deals with potential overlap of jurisdiction.

In particular, paragraph 122 provides that:

> *…local planning authorities should focus on whether the development itself is an acceptable use of the land, and the impact of the use, rather than the control of processes or emissions themselves where these are subject to approval under pollution control regimes. Local planning authorities should assume that these regimes will operate effectively…*

This encapsulates the need for planning decision-makers to have regard to the acceptability or otherwise of the development in planning terms on its own facts in the first instance, without seeking to control matters which are the subject of other regimes. This naturally has the most application in situations where the development may, if operated poorly, cause emissions in the truest sense in terms of fumes, for example. However, it seems to us to be of some application in terms of the overlap with licensing control.

For example, the NPPF here clearly has in mind control regimes such as the Environmental Protection Act 1990 which provides a complete system of regulatory control for emissions which might be usually outside the planning regime, such as in the example of a plant operating poorly which generates fumes. In such a case, it would be unlikely to be appropriate for the planning permission to seek to control something which only may occur if the plant is run in a certain way and is not a necessary feature of the operation, particularly as the Environment Agency can step in at this stage.

This is somewhat analogous to a licensed premises which may emit noise or litter only if run poorly. In such circumstances it would be unusual and undesirable to seek to pre-empt such "emissions" by way of pre-emptive conditions controlling these matters. Instead, the licensing regime is far better placed to deal with noise limits, requirements to close doors at particular times and requirements to use outside areas only prior to particular hours, for example.

Case law

In *Lethem v Secretary of State* [2002] EWHC 1549 (Admin), a premises owner, Mr Lethem, applied to quash a planning decision on the grounds that crime and disorder (material considerations in the inspector's decision to reject his planning application) were factors to be dealt with under the Licensing Act 1964 rather than the planning control system. Mr Lethem argued that when one statutory regime existed to deal with a mischief then that regime must be left to deal with it, without interference from parallel or other regimes. The planning inspector had said:

> *I do not accept that it would be correct to grant planning permission for the proposal as presented and effectively hand over responsibility for defining the use and managing its effects to another regime. To my mind the proposal and its future operation must be satisfactorily secured in planning terms, before it passes to the Licensing Authority for any further control necessary.*

Mr Lethem asked the High Court to quash that decision. The judge, Mr George Bartlett QC, agreed with the inspector that just because crime and disorder could be dealt with by the licensing regime did not mean that the planning regime could ignore crime and disorder in reaching its decision. He said:

> *20. The essential point, in my judgment, is that a consideration that, in the absence of some other statutory control, would be a material consideration […] is not rendered immaterial by the existence of that other statutory control.*

R (Blackwood) v Birmingham Magistrates [2006] EWHC 1800 (Admin) was a case diametrically opposed to *Lethem*. Mr Blackwood was a local resident, rather than a premises owner like Mr Lethem; he objected to the variation of a licence and he disputed the jurisdiction of the licensing authority. Nevertheless both appellants had argued that the wrong regime had been applied and in both cases the judge had dismissed the appeals, applying the case of *Gateshead Metropolitan Borough Council v Secretary of State for the Environment* [1993] 3 PLR 100 which says that:

> *Where two statutory controls overlap, it is not helpful, in my view, to try to define where one control ends and another begins in terms of some abstract principle. If one does so, there is a very real danger that one loses sight of the obligation to consider each case on its individual merits…*

In *Blackwood* Kenneth Parker QC cogently summarises the problem of "laying down any hard-and-fast rule" to separate the two regimes, in light of the new licensing regime. In relation to paragraph 3.51 of the Licensing Guidance (the equivalent of para 13.56 of the present Guidance) he states:

> *58. It is relatively easy to state this as a target, but it is much harder to formulate any general principle that would assist in demarcating the respective competences of planning*

> *and licensing authorities. It does seem to me, however, that the framework and substance of the [Licensing Act 2003], and its underlying rationale, would strongly suggest that operational matters are intended primarily for regulation by the licensing authorities. […] It does seem to me, therefore, that once planning permission has been granted for licensed premises, an operational matter, such as opening hours, is intended by the Act to be regulated primarily by the licensing authority.*

Nevertheless, the judge considered that the different committees should be conscious of each other's jurisdiction, noting:

> *59. […] I am not saying that the planning authority may not, in appropriate circumstances, impose conditions on granting planning permission for licensed premises that concern operational matters. But there may be many circumstances where the planning authority could properly leave such matters to be regulated by the licensing authority. If the planning authority has not dealt with an operational matter, such as opening hours, the licensing authority, having regard to the licensing objectives, has the primary task of determining what conditions should be imposed. Each case has to be considered upon its own particular facts […]*

A similar tension was noted in a Scottish case, *Di Ciacca v The Scottish Ministers* [2003] S.L.T. 1031, which also wrestled with the opacity of the licensing-planning division. Lord Reed explained:

> *…a consideration which would be a material planning consideration in the absence of the other regulatory regime is not rendered immaterial by the existence of that regime. At the same time, the existence of the other regime may nevertheless be relevant to the exercise of planning powers. The relationship between two particular regimes will however depend upon their specific circumstances. [34]*

A further case, *R (KVP Ent Ltd) v South Bucks DC* [2013] EWHC 926 (Admin), demonstrates that similar difficulties exists between sexual entertainment venue (SEV) licensing and planning regimes and this recent case repeats the important principle, the silken thread that weaves through the case law, that while the objectives of one regime may be shared by the other, the regimes are separate and may call for consideration of distinct matters.

In *KVP Ents Ltd* a planning report had not addressed the same questions a licensing sub-committee had needed to consider, and therefore the sub-committee was correct not to have referred to it in its decision, namely:

> *60. In my view, there is no necessary correlation between the consideration to be given to an application for planning permission, even in relation to matters relating to the character of an area and the amenity in relation to that area, and the question relevant to whether a licence should be granted for an SEV in relation to a particular locality which is required to be assessed under paragraph 12(3)(d)(i) of Schedule 3 to the 1982 Act. In the particular circumstances of this case, to which I will return in a moment, there were good reasons why the Licensing Sub-Committee decided to proceed to consideration of the distinct matter which was for them to consider, namely, a decision under paragraph 12(3)(d)(i) of Schedule 3 to the 1982 Act, without reference to the Planning Report.*

The same principle arose again, most recently, in *Gold Kebab Limited v Secretary of State for Communities and Local Government* [2015] EWHC 2516 (Admin) where the claimant argued that because a planning department had not objected to the granting of a licence on terms which were contrary to planning policy, they were precluded from rejecting a planning application on those same grounds. The Court again disagreed, restating that where the legal considerations driving the two regimes were different the planning inspector was correct to make a decision in line with the objectives of his regime, even though he may take account of the licencing committee's findings.

Practical integration

Given the legal and policy background, how might the two regimes be better integrated so as to contribute to better decision-making and to also foster wider community engagement and confidence in both regimes? The difficulty with providing true integration and avoiding *any* overlap or duplication is that it is nigh on impossible to do so without one committee or officer simply adopting the decisions of the decision-maker who "got there first". To adopt that approach would amount to the fettering of discretion or, in essence, abdicating to another decision-maker, which is all very fertile ground for public law challenges and is therefore best avoided. Successful integration is best done early rather than at the point of decision.

Our first suggestion is that the licensing authority seeks to engage with and involve the planning authority as a responsible authority under the Licensing Act 2003. The local planning authority is designated a responsible authority by vesture of s 13(4)(d) of the 2003 Act. Our common experience confirms that the involvement of the planning authority as a responsible authority within the licensing regime is limited. As with other more involved responsible authorities this

greater involvement can be achieved by informal meetings, joint training and regular overview meetings. It seems to us that it is important for the licensing authority to make clear its expectations of all the responsible authorities to ensure that the proper scrutiny of applications is achieved and that the best information is available to the licensing authority.

In terms of pre-application integration, again contacts and officers speaking to each other is key, in our view. If it is hoped to set parallel conditions on both the licence and planning permission, then this can of course be achieved. However, the decisions and officers' reports will need to address why, in terms of the particular regime concerned, those particular conditions are in any event a good thing and not rely solely on "because the planning/licensing committee said so" as justification.

Secondly, the informal approach suggested above can be developed and incorporated into the local statement of licensing policy. Setting out the expected extent and scope of involvement by the planning authority within the licensing regime would be a useful aid to applicants and also wider civil society.

Many local policy documents contain the advice that planning and licensing are separate regimes. Many also set out the expectation that an applicant provide details and an explanation of the planning (and other regulatory) requirements. Requiring an explanation for inconsistencies may also be required and could be very useful. Once granted, a premises licence operates within the wider regulatory framework – so a confirmation that this is respected and understood would clear many misunderstandings.

The chief repeating issue in respect of planning and licensing is the discrepancy between operational hours. It tends to dominate debate of this discussion. However, we are of the view that the planning authority as responsible authority is in a strong position (perhaps better than some of the other responsible authorities) to provide some of the basis information required for good decision making. Paragraphs 8.33 – 8.39 of the s 182 Guidance set out the steps required to promote the licensing objectives:

> *8.33 In completing an operating schedule, applicants are expected to have regard to the statement of licensing policy for their area. They must also be aware of the expectations of the licensing authority and the responsible authorities as to the steps that are appropriate for the promotion of the licensing objectives, and to demonstrate knowledge of their local area when describing the steps they propose to take to promote the licensing objectives. Licensing authorities and responsible authorities are expected to publish information about what is meant by the promotion of the licensing objectives and to ensure that applicants can readily access advice about these matters. However, applicants are also expected to undertake their own enquiries about the area in which the premises are situated to inform the content of the application, as the following extract makes clear:*
>
> *8.34 Applicants are, in particular, expected to obtain sufficient information to enable them to demonstrate, when setting out the steps they propose to take to promote the licensing objectives, that they understand:*
> *• the layout of the local area and physical environment including crime and disorder hotspots, proximity to residential premises and proximity to areas where children may congregate;*
> *• any risk posed to the local area by the applicants' proposed licensable activities; and*
> *• any local initiatives (for example, local crime reduction initiatives or voluntary schemes including local taxi-marshalling schemes, street pastors and other schemes) which may help to mitigate potential risks.*
>
> *8.35 Applicants are expected to include positive proposals in their application on how they will manage any potential risks. Where specific policies apply in the area (for example, a cumulative impact policy), applicants are also expected to demonstrate an understanding of how the policy impacts on their application; any measures they will take to mitigate the impact; and why they consider the application should be an exception to the policy.*
>
> *8.36 It is expected that enquiries about the locality will assist applicants when determining the steps that are appropriate for the promotion of the licensing objectives. For example, premises with close proximity to residential premises should consider what effect this will have on their smoking, noise management and dispersal policies to ensure the promotion of the public nuisance objective. Applicants must consider all factors which may be relevant to the promotion of the licensing objectives, and where there are no known concerns, acknowledge this in their application.*
>
> *8.37 The majority of information which applicants will require should be available in the licensing policy statement in the area. Other publicly available sources which may be of use to applicants include:*
> *• the Crime Mapping website;*
> *• Neighbourhood Statistics websites;*
> *• websites or publications by local responsible authorities;*
> *• websites or publications by local voluntary schemes and initiatives; and*

• *on-line mapping tools.*

8.38 While applicants are not required to seek the views of responsible authorities before formally submitting their application, they may find them to be a useful source of expert advice on local issues that should be taken into consideration when making an application. Licensing authorities may wish to encourage co-operation between applicants, responsible authorities and, where relevant, local residents and businesses before applications are submitted in order to minimise the scope for disputes to arise.

8.39 Applicants are expected to provide licensing authorities with sufficient information in this section to determine the extent to which their proposed steps are appropriate to promote the licensing objectives in the local area. Applications must not be based on providing a set of standard conditions to promote the licensing objectives and applicants are expected to make it clear why the steps they are proposing are appropriate for the premises.

In our view the planning authority is very well equipped to provide and comment upon the premises plan, locality plans, local area profiles, crucial information about transport provision *etc.* The decision of the local authority is location sensitive, and this was confirmed by the Court of Appeal in *R (on the application of Hope & Glory Public House Ltd) v City of Westminster Magistrates' Court & Ors* [2011] EWCA Civ 31:

[42] 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. Sometimes a licensing decision may involve narrower questions, such as whether noise, noxious smells or litter coming from premises amount to a public nuisance. Although such questions are in a sense questions of fact, they are not questions of the "heads or tails" variety. **They involve an evaluation of what is to be regarded as reasonably acceptable in the particular location.** *In any case, deciding what (if any) conditions should be attached to a licence as necessary and proportionate to the promotion of the statutory licensing objectives is essentially a matter of judgment rather than a matter of pure fact. (Bold emphasis added.)*

It is accepted that each case will depend on its merits, the provision of sound evidence for the location and the setting up of a premises represents, to us, a significant foundation for best practice. In our view, the planning authority has much to contribute in this regard. Thus, a simple statement setting out the expectation that the licensing authority will look to the planning responsible authority as a source of information on the characteristics of a locality provides a useful step towards integration. Additionally a properly prepared statement on the location, its dominant uses and the balance between residential and other uses could be a very useful feature for consideration in licensing.

Thirdly, we are of the view that licensing and planning might benefit from some integration of their enforcement protocols. There is useful co-working which may be undertaken between enforcement teams and case officers. It seems to us that enforcement teams tend to work in silos with the licensing officers often having little contact with their planning colleagues. It seems to us that this is where joined-up working may be most fruitful. Given that there is a large degree of overlap between planning and licensing conditions, the enforcement and monitoring of those conditions is likely to benefit from being a joint exercise.

In particular, at this point in time, both regimes would appear to have very similar aims; when conditions are being breached the concern is almost invariably emanations from premises such as noise or litter which remain planning concerns under the umbrella of amenity.

However, in our experience it would seem that forging contacts is almost the most valuable outcome and vehicle for obtaining meaningful integration. When planning and licensing officers know each other they are more inclined to speak to each other about concerns about particular premises and reach an agreed strategy for how to enforce against particular breaches without duplication and using the most effective regime to get the desired result.

For example, planning breaches *can* result in prosecutions but only after the service of an enforcement notice, for example, after allowing premises a time period for compliance; or after any appeal has run its course and after the prosecution has been approved. Whereas a review of a premises licence may strike more directly at the root of the problem by presenting the premises owner with the real risk of losing his or her licence or having it suspended and thus trading suspended for a meaningful period. It is therefore helpful to consider the local authority's enforcement toolkit in the round rather than in siloes of planning and licensing. This is particularly so where the real issue derives from its operation and the particular operator.

A cautionary note

We emphasis that integration can only go so far. While consistency may be highly valued each case must be

determined on its own merits and within the context of its own requirements. There can be no abdication of decision-making functions by one regime to another nor slavish copying of one regime by another. There nonetheless remains the significant challenge to local authorities of considering the value of proper integration where this may be achieved. We believe that an examination of such integration may benefit the perceived effectiveness of both regimes to meet each of its objectives.

Stephanie Hall
Barrister, Francis Taylor Building
and
Leo Charalambides
Barrister, Francis Taylor Building

Save the Dates 2016

National Licensing Week - 20-24 June

The aim of the National Licensing Week is to promote awareness of the role of licensing in everyday lives to a national audience. It is intended that numerous events will take place during the week as well as a proactive awareness campaign nationally and regionally. Further information will be forthcoming as plans are finalised.

National Training Day - 22 June

The Institute's Annual National Training Day will take place at the Holiday Inn, Stratford-upon-Avon. The aim of the day is to provide a valuable learning and discussion opportunity for licensing practitioners to increase understanding and to promote discussion in relation to the subject areas and the impact of forthcoming changes and recent case law.

The hotel is set amid landscaped gardens beside the River Avon, 20 miles from Birmingham Airport (BHX) and 10 minutes off the M40 motorway. There is plentiful on-site parking and the town centre is a two-minute walk away. Stratford-upon-Avon railway station is only a mile away, with frequent trains to London and Birmingham

National Training Conference - 16-18 November

The Institute's successful National Training Conference will be held for the first time at the Holiday Inn, Stratford-upon-Avon. The three day training event will start on Wednesday 16th through to Friday 18th November 2016.

Over the three days there will be a great line up of speakers, a packed and informative programme and evening activities.

The event is three days of training covering all of the major licensing related topics in addition to training on the niche areas of licensing. The days are themed to ensure there is always a training topic that will be of interest to delegates.The objectives of the conferene are to provide a valuable learning and discussion opportunity for licensing practitioners to increase understanding and to promote discussion in relation to the subject areas and the impact of forthcoming changes and recent case law.

More information for all three events will be online in the next few weeks

EU Court has not called last orders for minimum alcohol pricing

The Scottish Government may still get its way on minimum pricing if it can persuade the Court of Session that it's both an appropriate means of pursuing public health objectives and can do that better than by taxation. **Josef Cannon** and **Matt Lewin** update us on the thorny issue

On 23 December 2015 the Court of Justice of the European Union (CJEU) gave its judgment in the case of *Scotch Whisky Association v Lord Advocate* (C-333/14), which had been referred to it by the Scottish Court of Session for an opinion on the compatibility of minimum pricing of alcohol with EU law. On 3 September 2015 Advocate General Bot issued his opinion in the case, which Charles Holland, writing in Issue 13 of this journal, described as the likely death knell for minimum pricing of alcohol.[1] Although the CJEU has in effect followed its Advocate General's view of the case, we argue that minimum pricing remains alive and kicking.

What is minimum pricing?

A minimum pricing policy has been adopted by the Scottish Government with the intention of reducing high levels of drinking, improving public health and reducing crime and disorder, much of which is alcohol-related. The policy permits the Government to interfere with market forces by fixing a minimum price per unit of alcohol in alcoholic drinks sold at retail, effectively a floor price for a unit of alcohol below which it cannot be sold.

The policy was introduced in Scotland with the enactment of the Alcohol (Minimum Pricing) (Scotland) Act 2012 and gave the Scottish Government power to determine a minimum price per unit (MPU) by secondary legislation. A draft order was adopted, fixing the price at 50p per unit. At this level, a 500ml super-strength can of beer (9% ABV) could not be sold for less than £2.25 (on 12 January 2016 a "Warka Strong Lager" retailed for £1.61 at Morrisons); and a 3-litre bottle of cider (7.5% ABV) could not be sold for less than £11.25 (on 12 January 2016 a "Frosty Jack's Original Apple Cider retailed for £3.50 – reduced from £4.50 – at Iceland).

It should be noted that minimum pricing is directed at the sale of alcohol by retail: at the level set (50p per unit), it is likely that the vast majority of alcoholic drinks served in pubs and bars will be above this level. The Scottish Government suggests that "almost all drinks bought in the pub are already sold well above any likely minimum price, so they wouldn't be affected. The minimum unit price of 50p per unit will mostly affect cheap white ciders and value spirits with high alcohol content which tend to be favoured by problem drinkers".[2]

Why is it different from tax?

In short, minimum pricing is directed at the strength of alcohol sold, rather than the volume: in contrast, the duty on alcohol is calculated per litre. That said, the duty per litre is greater for stronger alcohol: for still cider and perry, for example, it is 38.87p per litre for cider / perry between 1.2% and 7.5% ABV, and 58.75p per litre if it is between 7.6 and 8.5% ABV.[3] Minimum pricing means that there is a minimum price per unit of alcohol contained within the drink concerned – after all, it is the alcohol content (rather than the volume) of a drink which is the effective element. This creates a "floor price" below which an alcoholic drink cannot be sold but, unlike duty (which continues to apply regardless of the price level) does not have an effect above that floor price. It is thus "targeted" at cheap alcohol.

Crucially, the Scottish Government does not have devolved powers to raise duty on alcohol. Minimum pricing is part of its attempt to deal with the issue of problem drinking within the powers it does hold.

How did the case reach the CJEU?

The Scotch Whisky Association and two other alcohol trade bodies launched a judicial review challenge of the 2012 Act and the draft Order. The challenge failed at first instance but was appealed to the Court of Session. The Court of Session referred a number of questions about the EU law impact of minimum pricing to the ECJ.

Minimum pricing engages EU law because it represents an interference with the principle of market forces, which is a cornerstone of EU law on the free movement of goods.

1 Charles Holland, Case Note: Minimum unit pricing in Scotland looks a lots cause (2015) 13 JoL, p46-48

2 http://www.gov.scot/Topics/Health/Services/Alcohol/minimum-pricing

3 https://www.gov.uk/tax-on-shopping/alcohol-tobacco

As part of the Common Agricultural Policy, EU law has established a common market in agricultural products, including wines (Regulation 1308/2013). The free formation of selling prices on the basis of fair competition is central to that Regulation. The effect of imposing minimum pricing is that it will be impossible for the retail selling price of wines, whether domestic or imported, to be lower than the fixed minimum price. Such a measure is therefore likely to undermine competition by preventing some producers or importers from taking advantage of lower cost prices so as to offer more attractive retail selling prices for consumers.

Additionally, minimum pricing prevents the lower cost price of imported drinks from being reflected in the selling price, which potentially obstructs products which are lawfully marketed in other EU member states from being marketed in Scotland. This falls foul of Article 34 of the Treaty on the Functioning of the European Union (TFEU), which effectively prohibits national measures which might frustrate the attempts of foreign producers and retailers to enter a domestic market.

"It is for the Scottish Court of Session (and, perhaps ultimately, the Supreme Court) to determine whether increased taxation would be as effective as minimum pricing in protecting human life and health, while being less restrictive of trade in alcoholic drinks within the EU."

It was not disputed before the CJEU that minimum pricing was incompatible with both the basic principle of the common market Regulation (free formation of prices) and Article 34 TFEU (as a measure having equivalent effect to a quantitative restriction). Therefore the key question for the CJEU was whether, notwithstanding that incompatibility, minimum pricing could be "justified" for public policy reasons. If it could be justified, minimum pricing is lawful under EU law.

What does the judgment say?

The CJEU considered that minimum pricing was incompatible with the principle of free formation of selling prices of agricultural products on the basis of fair competition (see para 24 of the judgment) and that it was a measure having equivalent effect to a quantitative restriction on trade and therefore breached Article 34 TFEU (32).

However, crucially, the CJEU had more to say.

The CJEU held that, in principle, the Scottish Government was entitled to adopt a policy of minimum pricing if it did so to pursue the objective of the protection of human life and health, even if that undermined the system of free formation of prices in conditions of effective competition (27). The same potential justification applied to a measure that breached Article 34 TFEU. In each case the question was whether the measure was a proportionate response to the aim pursued – or did it go beyond what was necessary to achieve the public health objective pursued?

There was a clear finding that minimum pricing was in pursuit of the stated objective – the protection of human health and life. It sought to reduce the consumption of alcohol by those whose drinking was hazardous but also consumption more generally amongst the whole population. Setting a minimum price per unit was an appropriate way to set about achieving that aim, "given that drinkers whose consumption [is hazardous] purchase, to a great extent, cheap alcoholic drinks" (36). The fact that minimum pricing was just one of a number of measures forming a generalised strategy to combat the harmful effects of drinking alcohol in Scotland might be an answer to the criticism that minimum pricing – which affects cheap alcoholic drinks only – unfairly penalises poor drinkers and does little or nothing to influence the behaviour of more affluent problematic drinkers.

The most important aspect of the judgment, therefore, turned on the second limb of the proportionality test – ie, whether minimum pricing goes beyond what is necessary to achieve the objective of protecting human life and health, or whether that same objective could be as effectively achieved by alternative measures which are less restrictive of trade within the EU (41).

The particular alternative measure which the CJEU focused on was an increase in taxation on alcoholic drinks: would an increase in taxation be as effective in protecting the health and life of humans? If the answer is "yes", then minimum pricing is disproportionate and therefore unlawful under EU law.

It is clear that the CJEU favoured increased taxation as opposed to minimum pricing: it noted that "increases in excise duty must sooner or later be reflected in increased retail selling prices, without impinging on the free formation of prices" (44); and that increased taxation entails "a

generalised increase in the prices of [alcoholic] drinks" which is not inconsistent with the public health objectives pursued by the Scottish Government (47). Nor did taxation interfere with the freedom to set prices, because it remained open to retailers to set their own price notwithstanding the duty levied. Nor indeed could it be said that because increasing taxation had a generalised effect on all alcohol sold and consumed, that made it less effective - as minimum pricing did the same.

What happens next?

However, having made its own view relatively clear, the CJEU sent it back to Scotland to make a final decision based on all the evidence. The case returns to the Court of Session for a decision, in the light of the guidance of the CJEU of the interpretation of the relevant EU law. It is for the Scottish Court of Session (and, perhaps ultimately, the Supreme Court) to determine whether increased taxation would be as effective as minimum pricing in protecting human life and health, while being less restrictive of trade in alcoholic drinks within the EU.

The burden of demonstrating the proportionality of minimum pricing rests with the Scottish Government, which must present sufficient evidence and analysis to persuade the Court of Session that minimum pricing is both an appropriate means of pursuing the public health objective (effectively already accepted by the CJEU) *and* is more effective in pursuing that aim than other measures (i.e. increased taxation) that are less of a restraint on trade (54). The court is entitled to have regard to all available evidence as at the date of hearing (and is not restricted to the evidence available to the Scottish Government when the legislation was enacted). The CJEU was careful to observe that the Scottish Government is not required to go so far as proving "positively, that no other conceivable measures could enable the legitimate objective to be attained under the same conditions" (55).

Does this mean last orders for minimum pricing?

We don't think so. Reports of the death of minimum pricing – or that it is "contrary to European law"[4] – are exaggerated. While the CJEU may have signalled its preference for taxation over minimum pricing, helpfully for the Scottish Government, the judgment establishes that minimum pricing is not, in principle, unlawful under EU law. The CJEU also indicated that minimum pricing is, in principle, an appropriate means of pursuing the public health objectives identified by the Scottish government, although it also referred to "the possible existence of scientific uncertainty as to the actual and specific effects on the consumption of alcohol of a measure such as [minimum pricing]", which the Court of Session could take into consideration as part of its proportionality assessment (57).

The task for the Scottish Government is to persuade the Court of Session that minimum pricing is more effective in protecting human life and health than increasing taxation of alcoholic drinks.

That case can be made. When the Westminster Government was contemplating introducing minimum pricing in England, the Home Office published an Impact Assessment which made the case for minimum pricing over taxation:

> *Minimum pricing] is a more targeted approach to address the problems of cheap alcohol ... A rise in alcohol duty would affect all types of alcohol products, including the most expensive products. [Minimum pricing] is intended to specifically target the sale of cheap alcohol products. ... There is no requirement for retailers to pass through higher duties into prices, so higher duties will not automatically raise the price of cheap alcohol, and some evidence that in practice prices do not always rise to reflect higher duties. ...*[5]

That said, the Westminster Government later disavowed this evidence and, controversially, shelved plans to introduce minimum pricing in England, citing "an absence of empirical evidence" that minimum pricing "will actually do what it is meant to do: reduce problem drinking without penalising all those who drink responsibly."[6] The Scottish Government will need to show that there is no absence of such evidence.

With the Welsh and Irish Governments recently announcing plans to follow Scotland's lead in introducing minimum pricing in their jurisdictions, the debate – legal and political – over the appropriateness of minimum pricing appears to be far from over.

Josef Cannon
Barristers, Cornerstone Barristers

Matt Lewin
Barristers, Cornerstone Barristers

4 http://www.telegraph.co.uk/news/uknews/scotland/12065861/Scotlands-minimum-alcohol-price-plan-contrary-to-European-law.html

5 Home Office, Impact Assessment on a minimum unit price for Alcohol, November 2012: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/157763/ia-minimum-unit-pricing.pdf

6 Home Office, Next Steps following the consultation on delivering the Government's alcohol strategy, July 2013: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/223773/Alcohol_consultation_response_report_v3.pdf

Reviewing the situation

What powers do residents have when contesting gaming licensing applications and how effective are they? **Richard Brown**, who has been involved in helping several groups oppose new betting shops, with mixed results, reflects on the helpfulness or otherwise of the legislation

I have been involved in a number of premises licence applications (new or variation) under Gambling Act 2005 (GA05) on behalf of concerned residents, with decidedly mixed results. It has often been difficult to translate residents' concerns about new betting shops into effective "relevant representations" which address the matters set out in s 153 GA05[1] and are supported by evidence.

A few years back, as some licensing authorities wrestled with their obligation to "aim to permit" in the face of fiercely contested licence applications, it was suggested that if licensing authorities felt unable to manifest their concerns and the concerns of their residents by way of refusing new licences on the basis of problems which might happen once the licence was granted, then they need only avert their gaze from the scorched earth of s 153 and alight upon the more fertile pastures of s 200, using their powers to initiate a licence review if the problems actually *did* occur. Residents also had the right under s 197 to ask the licensing authority to review a premises licence.

I recently had my first experience of a review under GA05. The process led me to cogitate on i) the similarities and differences between the role played by residents, particularly with the review procedure, under LA03 and GA05; and ii) the extent to which residents have used their powers and the efficacy of the process. The purpose of this article is to examine these points.

Once upon a time…

A White Paper (Cm 4696) entitled *Time for Reform: proposals for the modernisation of our licensing laws* was published in April 2000. It set out what were said to be three compelling reasons why the licensing functions at that time exercised by licensing justices sitting in the Magistrates' Courts should be transferred to local authorities. Among these reasons were:

- *Accountability: we strongly believe that the licensing authority should be accountable to local residents whose lives are fundamentally affected by the decisions taken.*
- *Accessibility: many local residents may be inhibited by court processes, and would be more willing to seek to influence decisions if in the hands of local councillors.*

The gestation of GA05 had begun to take shape with the Gambling Review Body's *Gambling Review Report*, published in July 2001. Some of the recommendations in the report appear striking in the context of GA05 as subsequently enacted. The Gambling Review Body saw the purpose of empowering local authorities with the responsibility of a granting premises licences as two-fold: firstly, to provide a means of preventing the proliferation of gambling venues, and, secondly, to provide local residents with the opportunity to shape the communities in which they live.[2]

The eagle-eyed will have noted that this terminology is remarkably similar to the words used almost a decade later in a consultation document produced by the Home Office in 2010 which aimed to make it easier for local residents to participate in and influence the licensing process - *Rebalancing the Licensing Act- a consultation on empowering individuals, families and local communities to shape and determine local licensing*.

In fact, the *Gambling Review Report* went further still. *Paterson's* notes that the report recommended[3] giving licensing authorities the power to impose a blanket ban on all or some types of gambling premises in a certain area or in the whole of its area. It also recommended[4] that licensing authorities should be able to have regard to character of the locality and the use to which buildings nearby were put. These recommendations are an echo of the provisions in Schedule 3 to Local Government (Miscellaneous Provisions) Act 1982, now amended to include "sexual entertainment venues" (SEVs) with the explicit aim of enabling residents to have more of a say on SEV licensing.

1 Section 153 GA05 being the "aim to permit" requirement, subject to a number of factors.

2 Gambling Review Report para 18.19. See the commentary in *Paterson's 2015*, p 60.

3 Ibid, Para 21.9.

4 Ibid, Para 21.13.

A White Paper entitled *A safe bet for success – modernising Britain's gambling laws* (Cm 5397), published in March 2002, was the Government's response to the *Gambling Review Report*. Most of the recommendations (146 out of 172) were accepted by the Government and taken forward. The White Paper obviously rejected the "blanket ban" proposal, save for casinos. Had this and the "character of the locality" test been implemented, GA05 may have had a very different philosophy.

Role of residents under LA03

The role of residents under LA03 is a vital check and balance in the legislation. This is clear from the s 182 Guidance (as amended) which states that one of the key aims and purposes of the legislation is to encourage "greater community involvement in licensing decisions and giving local residents the opportunity to have their say regarding licensing decisions that may affect them" (para 1.5).

The licensing authority must determine an application "with a view to promoting the licensing objectives in the overall interests of the local community" (para 9.37).

With regard to the review process specifically, it is regarded by the Government as "a key protection for the community" (para 11.1).

Role of residents under GA05

There are a number of differences in the review process under GA05. However, for the purposes of this article, suffice to say that any "interested parties" - ie, someone who lives or carries on business "sufficiently close" to the premises to be (likely to be) affected by the (proposed) activities - can apply for a review (s 197). Aside from the terminology used, the rights (and responsibilities) of residents and the options open to a licensing authority are ostensibly the same.

However, the Gambling Commission's *Guidance to Licensing Authorities* (GLA) does not seem to place quite so much emphasis on the importance of the role of licence reviews as does the s 182 LA03 Guidance. This is no doubt due to s 153 GA05, the famous "aim to permit" requirement on licensing authorities. This is addressed by the Commission at para 1.19 of the GLA, and it can at once be seen that there is a different emphasis:

> *The Act places a legal duty on both the Commission and licensing authorities to aim to permit gambling, in so far as it is considered to be reasonably consistent with the licensing objectives. The effect of this duty is that both the Commission and licensing authorities must approach their functions in a way that seeks to regulate gambling…to moderate its impact rather than by starting out to prevent it altogether.*

Chapter 10 of the Commission's *Guidance to Local Authorities* specifically considers reviews. Para 10.3 states that licensing authorities are "expected to act in a manner that is in accordance with the powers set out under the Act. This means that licensing authority actions, including reviews, should be in pursuit of the principles set out in s 153 of the Act or underpinned by reasonable concerns, such as changes to the local environment of resident complaints." The primacy of s 153 is again reiterated at para 10.16:

> *As licensing authorities are required to permit the use of premises for gambling, insofar as it is in accordance with the s 153 principles, applications that raise general objections to gambling as an activity, that relate solely for demand for gambling premises, or raise issues relating to planning, public safety, and traffic congestion are unlikely to be considered an appropriate basis for review.*

Use of review powers by residents

Responsible authorities, particularly the police, have made use of their review powers since LA03 came in to force. Residents, too, have made effective use of their powers either as applicants in their own right, or by making relevant representations supporting licensing authority / responsible authority-led reviews. There is therefore an established and accepted process whereby residents and responsible authorities work together to resolve the concerns they both have.

Since 2005, the DCMS and the Home Office have collected data on a wide variety of licensing matters regulated by LA03 – including reviews.[5] Headline figures show that there has been extensive use made of the review powers. The totals per year make up a bell curve graph. There was a general upward trend from 2005-06, when the DCMS reported that there were about 600 reviews,[6] although there is no indication of how many of these were made by residents, until 2009-10, when there were 1,334 reviews (120 or 9% by "interested parties"). The total has since dropped off to about 800 (53 or 7% by "other persons") in 2013-14, the latest available figures. Overall, the proportion of reviews instigated by interested parties/other persons between 2008-9 (when the first figures for resident-led reviews were produced) and 2013-14 has fluctuated from between 7%-10%. This equates to a total of about 400 reviews.

The Gambling Commission requires licensing authorities

5 http://webarchive.nationalarchives.gov.uk/+/https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/77469/ae-statistics-bulletin-2008.pdf 2007/08

6 The first survey was small scale, and responses were received from only 27% of licensing authorities. The early survey therefore contained modelled data and figures and was a general guide to trends.

to submit annual returns detailing, among other things, reasons for and outcomes of reviews. The data for reviews is not included in the "Licensing authority statistics" section on the Commission's website. However, I am told by the Gambling Commission that it is not aware of any resident-led reviews at all under GA05.

One of the factors which may result in a licensing authority initiating a review "for any other reason" is "receipt of a complaint about the use of the premises". This is precisely what happened with a review of a betting shop licence which I was involved in recently, advising residents who had made the complaints which prompted the licensing authority to initiate a review. It was a good example of how the licensing authority took on board widespread community concerns, and worked together with residents to reach an acceptable conclusion. The concerns relating to this particular betting shop had been brought in to sharp focus by the 73 representations made against an application for a new premises licence by a different operator very close by. As a result, the licensing authority carried out inspections, visits and observations which corroborated the complaints of residents. In the light of this evidence, the licensing authority decided that it had no option but to initiate a review of the premises licence as a result of the concerns raised and its own subsequent observations. There were 50 representations in support of the review, including from three councillors and the local amenity society. A number of residents attended the hearing and provided powerful oral evidence to the licensing sub-committee.

I do not seek to give a view or make any assumptions as to why it is that the review procedure under GA05 does not seem to be used as extensively as the procedure in LA03. Such an analysis could be the subject of an entire article, and would include the obvious fact that there are far fewer betting shops than premises licensed under LA03. Of course, it is not necessarily a bad thing. Perhaps the concerns expressed by residents at new licence hearings are not then borne out by the actual operation of the premises. Perhaps the concerns do not fit neatly in to the s 153 considerations and the GA05 licensing objectives – particularly when it is only "reasonable consistency" that is required. Perhaps the many excellent initiatives set up by licensing authorities in partnership with the industry negate the need for reviews. Perhaps the engagement of the industry in general with licensing authorities is effective, and early warning of issues leads to resolution before a review is necessary. Perhaps the Gambling Commission's power to revoke an operating licence concentrates minds. Perhaps, more cynically, gambling "harm" is less easy to spot than public nuisance under LA03, particularly being able to link the problems to the provision of gambling at a particular premises. Licensing authorities, therefore, do not receive the same volume of complaints or, when they do, it is not easy to corroborate the concerns.

Conclusion

Representing residents on a GA05 review application has made me realise that there is a place for the review process under GA05 in the context of the wider philosophy of licensing legislation to give local people more of a say – to "shape their communities", as the *Gambling Review Report* put it. It should, of course, be a proportionate response to the issues, and it must be supported by evidence.

As I write this, MPs are debating whether to allow a possible future President of the United States in to the country. Why? Because a petition of over half a million signatures demanded it. In the era of change.org, social media, and "below the line" opinion, members of the public are much more able and willing to seek to influence opinion and put their views forward. It was clear from the review I was involved in recently that there was widespread concern in the community. The review process gave residents the opportunity to make their concerns known on a formal basis, to submit evidence, to attend the hearing, to listen to what the licence holder had to say, to address the licensing sub-committee, which was comprised of the elected representatives charged with determining these matters, in an open, democratic way, and to understand and experience the process involved in resolving problems which went to the heart of their community.

Richard Brown
Solicitor, Licensing Advice Project, Westminster CA

How safe is your dance pole?

Pole dancers' safety when carrying out their acts is not regulated yet there are dangers to limb and maybe even life if the equipment they use is defective. **Julia Sawyer** argues dancers should be afforded the same protection as any other set of workers

Pole dancing is defined in the *Oxford English Dictionary* as "erotic dancing, which involves swinging around a fixed pole". It is a form of performance art, historically associated with strip clubs and nightclubs, which combines dance and acrobatics centered on a vertical pole.

In the 1920s, members of travelling circuses and sideshows would pole dance around the pole in the middle of a tent. These were called "hoochie coochie" dances. Eventually the pole dancing moved from tents to bars, and combined with burlesque dance. The earliest recorded modern pole dance was in 1968 with a performance by Belle Jangles at Mugwump Strip Club in Oregon. The craze took off and spread to Canada's red light district in Vancouver, where pole dancing was featured throughout many nightclubs. The women would dress in themed costumes and use musical routines to dance seductively in their performances. The shows quickly spread, popping up through gentlemen's clubs and strip clubs everywhere and lost the whole 'theme musical' aspect but kept the seduction, scant amount of clothing and pole.

There is no specific piece of legislation, regulation or British Standard that details how a dance pole should be constructed. It is very easy to purchase your own pole and assemble it at home, following the manufacturer's instructions, but there is very little additional guidance on the safe construction of a dance pole at home or in the work place. It is quite different, for example, to someone at work using scaffolding to hold a person's weight so as to be able to carry out a task. For this activity, there are regulations and numerous guidance notes on how to assemble scaffolding. These stipulate that the person assembling the scaffolding must be fully trained and competent and that the scaffolding has to be regularly inspected prior to use and then every seven days after. The scaffolding being used and the way it is assembled or dismantled needs to follow a recognised standard.

New fire stations have dispensed with firemen's poles generally. They are built on one level to eliminate the risk the pole and the stairs pose to fireman exiting the building in a hurry. Nasty accidents have occurred in the past with firemen falling down the hole around the pole or not having the correct grip; some of these have resulted in death or serious injury.

None of these specific requirements exist for a dance pole, but it too needs to be safely constructed to be able to take the weight of a person moving on it and it needs to be assessed to ensure the safety of those on it and around it.

And there clearly are health and safety risks. It has been reported in the press that a woman in 2010 broke her neck while using a dance pole and was left paralysed from the chest down. A common complaint from people using a dance pole is that they suffer with wrist pain, have strained a tendon or a ligament or pulled a muscle. People starting to learn to dance on a pole often incur many bruises.

The different types of dance pole

Dance poles come in two different categories: permanent or portable.

Poles come in three diameters - 50mm, 45mm and 40mm - and a variety of heights; for higher ceilings, extension tubes can be used. The pole can be spinning or static.

Then there are different pole finishes: chrome (the most common), brass, titanium gold or stainless steel (which does not give as much grip as other coatings). For additional grip some pole dancers use grip products like Dry Hands or Might Grip.

When installing a portable dance pole, it needs to be secure and able to take the load of someone moving on it. Where possible, the top plate is secured against a ceiling joist so that the pole is adequately braced. Where the ceiling is not an option, a bottom-loaded pole is used, with the floor holding the weight.

A permanent dance pole is normally screwed to the floor and ceiling joists.

Whether it be permanent or portable, it is important to ensure that the floor the pole is being placed on can take the load and is secure.

Ensuring the safety of pole dancers

Employers have duties under the Health and Safety at Work etc. Act 1974 in relation to ensuring the work equipment that people use at work is safe. The specific sections are:

> *s.2.1 it shall be the duty of every employer to ensure, so far as is reasonably practicable, the health, safety and welfare at work of all his employees.*
>
> *s.2.2.a the provision and maintenance of plant and systems of work that are, so far as is reasonably practicable, safe and without risks to health.*

Regulation 3 of the Management of Health and Safety at Work Regulations 1999 requires employers to "make a suitable and sufficient assessment of the risks to the health and safety of his employees to which they are exposed whilst they are at work; and the risks to the health and safety of persons not in his employment arising out of or in connection with the conduct by him of his undertaking."

A risk assessment of a pole and the dancers using it should consider the following:

- Construction of pole – what it is made of, what load it can take, how it is fixed. If permanent, ensure it is securely screwed (normally with three or four screws) by the flanges in to the floor and ceiling joists. Check the floor and ceiling flanges regularly for any loosening or wear, and any loose screws. Look at the flanges or screws to see if damaged. Ensure that the tubing length, diameter, thickness and construction material are of suitable quality to withstand the intended load and that the ceiling or floor joist / fixing are adequate. Ensure the set screws or rivets that secure the tubing to the flanges are regularly checked - these stop the pole from unintentionally rotating. It should have been installed to the manufacturer's instructions.

- What maintenance is carried out on that pole - the screws or rivets that secure the tubing to the flanges should be checked regularly depending on use. This should be specified on the assessment, as should exactly what is being checked, and this all should be recorded.
- The dancer should consume no alcohol nor medication that impairs judgement while working on the pole. Interestingly one website offering advice on pole safety states that the person using the pole must not be under the influence of alcohol, but then goes on to state: "Keep a clean towel and a cleaning substance for your pole nearby. This can be a resin spray product, 99% rubbing alcohol, a pole dance cleaning cloth or even vodka in a spray bottle. This keeps sweat and oil build up on the pole to a minimum". However, I'm not sure if enforcement authorities would believe that the vodka they could smell was for cleaning purpose!
- The dancer should not wear any oils, lotions or body make-up while working on the pole.
- Training – how somebody new is taught the skill of dancing on a pole and how someone maintains that flexibility and strength to prevent injury.

There is a code of conduct written by the Pole Dance Community (PDC) available on the internet. PDC is formed of a group of independent pole dance schools that have agreed to abide by a voluntary code of conduct; they are not an accredited body, and their aim is to unite the pole dance community. Part of their conduct deals with safety and states:

- PDC-approved events will use only safe, clean poles. Event organisers will be happy to share information about the type of poles being used as well as the dimensions of the poles being used. Poles should be tested prior to the commencement of the event to ensure they are fit for purpose.
- PDC-approved events will have adequate employers and / or public liability insurance for their events.
- PDC-approved events will ensure they have adequate, qualified security staff if required.
- PDC-approved events will have adequate provisions for administering first aid.
- PDC-approved events will have adequate fire regulations in place and will have a specific fire risk assessment.
- PDC-approved events will be fully risk assessed.

The *Journal* has previously reported on the research findings of a large-scale national project on the working conditions and experiences of dancers operating in licensed strip venues within England and Wales.[1] Although the construction of dance poles is not specifically mentioned in these articles, they give an insight in to how the dancers feel and are treated.

It is my opinion that dance poles should be treated like any other piece of work equipment in the workplace; and for the

1 Sanders, Campbell and Hadfield, Sexual Entertainment Venues: considering dancer welfare (2012) 3 JoL, pages 4 – 9 and Sanders and Campbell, Sexual Entertainment Venues: policies and conditions addressing dancer welfare and safety (2013) 7 JoL, pages 13 – 17.

employer to ensure the safety of their employees, you would expect the following information to be in place:

- How the dance poles are installed.
- What weight loading the pole can take.
- A specification to follow when installing them.
- That maintenance is carried out on the poles to make sure they continue to be able to take the load they are designed for; this should be included in the risk assessment.
- How the poles are cleaned, and if there are any products that they cannot use because it affects the dancer's grip.
- Training that is given on the use of the pole.

One club was particularly helpful when carrying out this research. It explained that in the past, the poles were mostly fixed by concrete at the base under the stage. The new ones have adaptors at top and bottom. The manufacturer's instructions were followed during the installation, and it provided the weight loading. The club has very few problems with the poles and uses warm, soapy water to clean them. None of the poles has failed or come loose. The only problem is that the dancers find them too thick for easy use.

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www.polemotion.com pole dance buying guide.
www.learn-pole-dancing.com pole dancing safety tips.
www.poledancecommunity.com pole dance community code of conduct.
www.thetelegraph.com of 16 September 2010 reporting on the woman who broke her neck while using a dance pole.

Julia Sawyer
Director, JS Safety Consultancy

Immigration Bill 2015-16: illegal workers in licensed premises

A Government crackdown on illegal workers has worrying implications for licensed premises, not least allowing immigration officials to close them, as **Caroline Daly** explains

The Immigration Bill 2015-2016, which (at the time of writing) has reached the Committee stage in the House of Lords, proposes a number of significant amendments to the Licensing Act 2003 in relation to illegal working and licensed premises. Before turning to the proposals, it is useful to consider the current position with regards to the treatment of licensed premises with members of staff that either cannot lawfully be in the UK or cannot lawfully be employed in the UK.

The present measure for tackling employers who have taken on illegal workers (be it at a licensed premises or not) is that the employer may be issued with a civil penalty notice (penalty of £20,000 per illegal worker). Where an employer "knowingly" employs a person who is not allowed to work in the UK, the employer will commit a criminal offence and may face up to two years' imprisonment and / or an unlimited fine.

With regards to licensed premises in particular, the s 182 Guidance provides an express link between licensing and illegal workers. Paragraph 11.27, which falls under the section entitled "reviews arising in connection with crime", sets out a number of criminal activities that may arise in connection with a licensed premises that should be treated "particularly seriously". Included within that list is "knowingly employing a person who is unlawfully in the UK or who cannot lawfully be employed as a result of a condition on that person's leave to enter".

The inclusion of a reference to illegal working in the guidance invites the possibility of review applications of premises licences solely in relation to concerns about illegal workers on the basis that the licensing objective of the prevention of crime and disorder is not being met.

Making a formal link between licensing and illegal working

The Government considers that the present position does not go far enough in tackling the issue of illegal workers. The Immigration Bill seeks to establish a formal link between illegal working and licensing. When pressed on the reasoning for targeting the licensing regime in a Commons committee meeting, James Brokenshire, Minister for Immigration, justified the measures as follows:

> *The hon. Gentleman asked me for evidence of why we think this is an important area to legislate on by building a mechanism into the licensing provisions—evidence of people with no status in the UK being captured within those sanctions and mechanisms. Of all civil penalties served in the year to June 2015, I am advised that 82% were served on the retail industry or hotel, restaurant and leisure industry, a large proportion of which hold premises or personal alcohol licences. That is why we see this as an issue affecting a particular sector...*[1]

Thus, the Government's perception appears to be that there is a particular issue with illegal working in licensed premises. However, other than the unsubstantiated statement by Brokenshire that a "large proportion" of civil penalties imposed in the retail / hotel, restaurant and leisure industry have been at licensed premises, I have been unable to find any further justification from the Government for the imposition of what may well prove to be far-reaching changes to the licensing regime.

The proposals

The Bill proposes to make the following amendments to the Licensing Act 2003:

- An immigration officer will be entitled to issue an illegal working closure notice and close a premises for up to 48 hours if they discover that there is a person employed at the premises who is not entitled to work in the UK. If the employer or another person can prove that they have conducted the requisite right to work checks, the closure notice may be cancelled. If no proof is forthcoming, the premises may be placed under special compliance requirements as directed by the courts under a compliance order. The courts can make any such order that they deem appropriate. This can include continued closure for a period, followed by re-opening subject to compliance inspections and the requirement to conduct right to

1 Public Bill Committee Meeting, 27 October 2015.

work checks. A compliance order can have effect for a maximum of 12 months.

- Immigration officers will have a right to enter licensed premises if they have reason to believe that offences are being committed under the Immigration Act 2014.
- The Secretary of State will become a "responsible authority", allowing the Home Office to make representations in relation to applications for premises licences.
- Applicants for premises licences or personal licences must be entitled to work in the UK.
- Premises or personal licences will lapse if the licence holder ceases to be entitled to work in the UK. Under the current framework, a licence will lapse on the death, incapacity or insolvency of a licence holder.
- In relation to personal licences, the list of "relevant and foreign offences" will include "immigration offences and immigration penalties". Such offences and penalties will be a material factor in the application process for a personal licence.
- Immigration offences and penalties will be a ground for seeking revocation of a premises licence.

Our modern licensing regime, as introduced by the Licensing Act 2003, is a system administered and enforced by local authorities and their licensing departments. Yet, if the Immigration Bill is enacted as proposed, a number of powers under the 2003 Act will be bestowed upon immigration officers, with the most notable example, and the one of most concern to operators, being the power to close a premises for up to 48 hours, with the prospect of that closure lasting for a much longer period.

Immigration law and policy is a key issue for the current Government. However, it is surprising that concerns surrounding immigration have precipitated changes to the licensing regime. Indeed, one is left perplexed as to the Government's particular justification for singling out licensed premises as opposed to any other business as providing a particular problem with regards to illegal workers.

In any event, regardless of the adequacy of the reasoning behind the proposed measures, the Immigration Bill 2015-2016 ought to be on the radar of all operators of premises licences, and such operators would be well advised to make absolutely sure that they have rigorous right to work checks in place.

Caroline Daly
Barrister, Francis Taylor Building

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It’s never too late in the on-trade

Night clubbing is still very popular with the young, and even the not-so-young, if only operators provided venues that weren’t so crowded, noisy and expensive, writes **Paul Bolton**

There have been plenty of doomsday warnings for the late-night trade over the past few years, as the changing face of the on-trade has seemingly squeezed out venues where revellers would traditionally end their evening’s entertainment. According to CGA Outlet Index, there has been a 13% fall in the number of circuit bars since 2010 for example, compared with a 26% rise in restaurant numbers. But just because the makeup of venues is changing, this does not mean the opportunity for late-night operators is not there.

There is still a huge appetite for late-night venues: the late-night consumer makes up 35% of all drinking out visits in the on-trade. The young, in particular, still represent a huge opportunity. Half of 18-34 year olds surveyed by CGA Strategy typically go on a night out at least fortnightly and they eat, drink and spend more than average, with a half willing to trade up to a higher quality drink.

But given the changing landscape, where are these consumers now going? Operators are attempting to revitalise the late-night scene with new concepts and themes. Hostage in Birmingham, for example, blindfolds clubbers, removes their mobile phones and drives them to a secret abandoned building with DJs playing cutting-edge house and techno music. Rebel Bingo in London combines clubbing with number calling, with huge prizes, glitter cannons and “hedonistic energy” culminating in a unique night out. This move towards something different is summed up by the owners of Selective Hearing in Manchester and Leeds, who want to “move away from running nights in the standard club settings and instead use different spaces – be they garages, disused furniture warehouses or warehouses in the middle of industrial estates”.

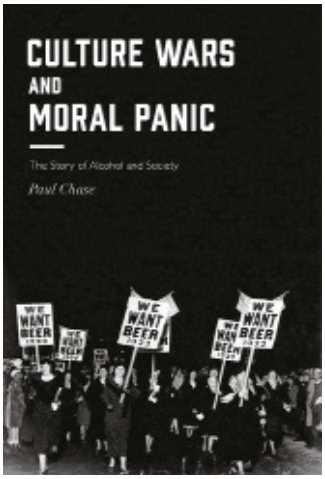
These types of venues are popping up thick and fast – 17% of circuit bars opened in the past year are themed and consumers are lapping them up. Seven in 10 consumers surveyed by CGA Strategy would be more likely to visit a bar if it was themed. Almost a third of consumers have visited an American-themed bar, while a quarter have visited a tiki bar, beach bar or hidden/secret bar.

This ties in with the profile of the late-night consumers, who are generally more exploratory than average – 43% like to try new bars and a nightclub and 94% like to try new drinks. But in order to bring in these consumers, some important factors must be considered. Engaged late-night consumers say it’s primarily the drinks range, drinks quality and music quality that draws them towards a venue, while perhaps unsurprisingly, dancing is the number one reason to visit a nightclub. When looking at new venues, a recommendation is very important, alongside location and drinks promotions. But there could be an opportunity away from high-tempo late-night venues. Those that are put off might see themselves as too old, but they also cite venues that are too crowded, too loud or too expensive as barriers to going out.

It may seem like a crowded marketplace, but there is still room for growth. Our research found that the number one way to improve a late-night consumer’s experience would be to create more venues, with half of those surveyed citing this. Food may be the success story in the on-trade, but it would be a wasted opportunity to forget about the opportunity at the end of the night.

Paul Bolton
Researcher, CGA Peach

Book Review



Culture wars and moral panic
Paul Chase
CPL Publications, 2014
£10.00

Reviewed by **Roger Butterfield**, independent legal services professional

"Teenage girls most at risk as drinking levels soar" said *The Times* on its front page. "Alcohol behind three quarters of A & E cases" said the *Daily Telegraph*. Both these headlines were in newspapers published on 22 December 2015. Many people believe that the social problems caused by the consumption of alcohol is a very recent problem. However Paul Chase's excellent book puts everything into perspective and it is abundantly clear that there have been concerns about consumption of alcohol for hundreds of years.

People might think there is nothing new to write about the topic of alcohol and its consumption. However, Paul's research and way he has set the book out make it clear there is still a lot to learn. Everyone can learn something from this book about how long alcohol has been consumed, how long people have been concerned about the consumption of alcohol, steps taken to try and ban it and steps taken to control the supply of alcohol.

The book makes it clear that the public's liking for alcohol has not just been evident in the United Kingdom. Paul spends the first part of the book considering the history of alcohol in the United Kingdom and the United States of America. However, this is not a criticism as the book also explains that there were temperance movements in Canada, Australia, New Zealand, Sweden, Iceland, Norway and Finland but that the organisations in the United Kingdom and America were perhaps the most vociferous.

The book looks at how the "alcohol problem" has been passed from clerics to doctors to try to resolve; and it also looks at the background leading up to the Licensing Act 2003 and what the trade can do to deal with the continuous attacks made on it.

To set out the context of the history of the consumption of alcohol Paul has done some first class research and the book contains many interesting facts. In the Eighth Century the missionary Saint Boniface wrote to the Archbishop of Canterbury complaining: "In your dioceses the vice of drunkenness is too frequent. This is an evil peculiar to pagans and our race. Neither the Franks nor the Gauls nor the Lombards nor the Romans nor the Greeks commit it." Perhaps Paul's next book could see if this statement is still true today. However, it does underline how many years people have been concerned about the consumption of alcohol. Perhaps it is the type of alcohol that is consumed that has changed. In 1742 19 million gallons of gin were consumed in Britain by a population barely a tenth of the current population. In New England in 1770 the population of 1.7 million drank 7.5 million gallons of rum!

As a result of concern about the amount of alcohol being consumed various temperance movements were established. Paul looks at the organisations, the way they operated and various demonstrations that took place. He also looks at proposals to introduce legislation and protests against Government's intended law. The "Carlisle Experiment" was a determined attempt to control things, including banning external advertising of alcohol!

After setting out the history of temperance movements, prohibition and licensing the book then looks at a number of fascinating topics including the various sides of the argument that suggest the chronic use of alcohol is a disease, an addictive illness. This is a debate which will continue, especially with recent analysis of figures by the Nuffield Trust revealing that nine out of ten patients who visited an A&E department with alcohol poisoning did not visit hospital again that year and more than half of the admissions were at the weekend, suggesting one-off binges. The section entitled "Does alcohol cause alcoholism?" and the discussion of the meanings of addiction deserve careful consideration. Paul also provides some thoughtful comments on alcohol and social class, drinking cultures, student drinking, the under-class and the ageing population. Should there be freedom of choice regarding alcohol or should there be a state control in a similar way to the proposals people keep putting forward to control the sugar content of food? Read the book and consider the various arguments made over many years.

In the course of your journey through the book you will come across many interesting characters including Dr Diocletian Lewis, Wayne Bidwell Wheeler and Carry A Nation! I will leave you to read the book to learn what their views were on alcohol.

The book is very easy to read, an excellent social history,

full of numerous interesting facts and information and should be read by everyone in the licensed trade including licensing lawyers, licensing officers, councillors, doctors and people who have concerns about alcohol as well as people who like a drink. As is made clear in Part three of the book it is possible to make statistics say what you want them to say. Perhaps this is true of the very recent figures. I am not making any final conclusion on the various arguments but would suggest you read the book yourself and make your mind up.

Paterson's Licensing Acts 2016
Editor-in-Chief: Jeremy Phillips General Editors: Simon Mehigan QC, Gerald Gouriet QC & The Hon Mr Justice Saunders Consulting Editor: David Wilson Lexis Nexis Butterworth, 2016 (also available as e-book), £315.00

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

The licensing community has been much taken with anniversaries and commemorations. Last year, 2015, marked ten years of the Licensing Act 2003 with the inevitable consideration of the benefits and burdens of the new regime. The overall consensus seems to be *trying hard, could do better.* The same luke-warm response cannot be applied to the Institute of Licensing which this year celebrates its twenty year anniversary. The Institute (and I here acknowledge a bias) continues to grow from strength to strength. Amid these acorns stands the magisterial achievement of *Paterson's Licensing Acts 2016*, now in its 124th edition.

In an age of instant digital communication the December publication of *Paterson's Licensing Acts* stands as a reminder of different rhythms and different times but also marks the passage and progress of the licensing year. A rhythm to which this journal modestly contributes: the March edition now consistently providing a notice of publication for *Paterson's* with an annual book review, the July edition seeing, *inter alia,* the regular publication of *Phillips Case Digest* (a case round up by *Paterson's* Editor-in-Chief, Jeremy Phillips, providing an invaluable inter mezzo before the next December update).

Despite our burgeoning digital resources *Paterson's* remains indispensible for licensing practitioners. What can any reviewer say of a textbook that remains omnipresent, with no challenger in sight? It seems churlish to engage in critical assessment of a ready reckoner and consistent companion of desk, town hall and court - a recent (up-to-date edition), well-thumbed and ragged copy being a sure sign of a real licensing expert as much as travel-stained robes and ragged wig once signposted an experienced advocate.

Inevitably, it seems to me, that the *Paterson's* book review in the *Journal of Licensing* is as much a review of the tome as the reviewer's personal relationship with a key industry tool.

For my part then, *Paterson's* provides the starting point for "what's in?, what's out?" – the preface providing the base upon which to consider developments and advancements in licensing. Whether I agree with the editors or not, Paterson's continues to provide the initial commentary from which avenues of research advance.

In the ever expanding corpus of guidance, statutory and otherwise, of policies, initiatives and pilots, the selected entrails of which comprise the section on Additional Material, the editors provide a glimpse into the future directions that licensing might take.

In the present edition I was pleased to note the inclusion of Home Office, *Additional Guidance for health bodies on exercising functions under the Licensing Act 2003* (8 September, 2014) and Public Health England, *Public health and the Licensing Act 2003 – guidance note on effective participation by public health teams* (October, 2014).

Here, too, I acknowledge a personal interest, having worked with Public Health England in an advisory capacity and having made some small contribution to the PHE Guidance note. Whether the inclusion of these documents heralds a future for health and wellbeing remains to be seen.

What is clear is that as long as *Paterson's* continues to serve the needs of a broad cross-section of all licensing practitioners, its continued annual welcome is assured.

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2016 will be the 20th Anniversary of the IoL

To celebrate this milestone we have the following events planned

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16-18 November 2016

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