NUMBER 20 MARCH 2018

Journal of Licensing

The Journal of the Institute of Licensing

IN THIS ISSUE

Institute of Licensing

Journal of Licensing ISSN 2048-9110

Journal of Licensing

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This issue shall be cited as (2018) 20 JoL.

Daniel Davies, MIoL
Chairman, Institute of Licensing

It's a pleasure to welcome you to the Spring issue of the *Journal*. I hope you've had a good start to 2018, a year which I believe will be significant for everyone across the licensing spectrum.

Several developments have come to light since my last foreword, one of which took place just before the close of 2017. This was the House of Lords Select Committee's debate on the Government's response to its recommendations on the review of the Licensing Act 2003. Many of the topics discussed were on matters that the Government has already agreed, including the rejection of the promotion of health as a licensing objective and the introduction of more training for councillors and police. There was also a "wait and see" approach to both minimum unit pricing and the extension of licensing laws to airports.

Similarly, other topics may need to wait longer before coming to fruition, but still represent quite a radical development arising from the House of Lords report, notably the issue of reforming the appeals system. Lord Smith of Hindhead said the appeals system had "stuck out like a sore thumb from the evidence we heard – that the current appeals system is not working as it should in an industry that is so important to the UK economy". In addition, Baroness Williams of Trafford said that while there is no intention to change the appeals system "at present", the Government accepts the committee's findings that there is room for improvement.

This certainly signals change, and could be read as an indication there is appetite in government for a more fundamental reform of the appeals system. The evidence presented to the committee would tend to confirm that change would be universally welcome, and this is clearly a headline topic in licensing for 2018, and an area to watch closely.

Aside from these developments, I'm pleased to announce we are expanding the provision of the Professional Licensing Practitioners Qualification (PLPQ), which has become an essential aspect of our training services. We would recommend this course to anyone new to licensing or to professionals in need of refreshing their knowledge. It's a practical four-day course which covers the essentials of dealing with various areas of licensing.

And on a similar educational note, the third annual National Licensing Week will soon be upon us, taking place on 18-22 June. Since its launch in 2016, the event has continued to grow and garner strong coverage from the licensed trade as well as the public. We have some big plans in place for this year, and we look forward to announcing them in the coming months.

I hope you enjoy the diverse range of content in this edition of the *Journal*. Beginning with the thoughts of Editor Leo Charalambides, we have articles covering our staple topics - taxi licensing, public safety and gambling as well as the view from "the interested party". And we also have articles on less mainstream areas such as zoo licensing and environmental assessments. Plus, of course some trenchant Opinion pieces – one, a particularly rousing defence of the social value of pubs and clubs from Lord Smith. And please do take time to read the IoL News section, which includes coverage of the latest recipient of the prestigious Jeremy Allen Award.

As always, I'd like to thank the IoL staff and members who work hard to produce this journal. Your efforts are greatly appreciated by everyone in the organisation.

Until next time.

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Leo Charalambides, FIoL
Editor, Journal of Licensing

Think Global, Act Local is a now familiar mantra as individuals and communities consider how to reduce and reverse harmful impacts on our local, national and international environment. Recently many of us have had the consequence of discarded plastics on the oceans and the ecosystem brought into our living rooms by the BBC's *Blue Planet 2* series.

In my last Editorial (19 JoL) I highlighted the initiative by JD Wetherspoon and others to phase out and eventually ban plastic straws as part of a growing environmental awareness amongst operators – but this was just the beginning.

On 15 January this year London's *Evening Standard* launched its Last Straw campaign to eradicate plastic straws from London's streets. The response has been staggering. The adoption and promotion of the campaign by top restaurants, pubs and bars, theatre groups, hotel groups and retailers continues apace. The Environment Secretary Michael Gove has backed the campaign saying, "I believe we need to act and am exploring now what we can do as quickly as possible within the law". In this he was supported by the Opposition.

It seems to me self-evident that the litter caused by plastic straws and their wrappers is a public nuisance, quite apart from the enormous environmental harms they create (to refer back to *Blue Planet,* it's estimated by 2050 there will be more plastic in the ocean by weight than fish). In his support for the Last Straw campaign Mr Gove recognises that "straws are not just another example of plastic waste, they can be lethal".

What then, if anything, can licensing authorities do to contribute to the Last Straw campaign? Scott Ainslie, a Green Party councillor in Lambeth Borough Council, proposed to stop providing plastic cups, bottles, cutlery and straws at all council buildings, cafes and public events by the end of the year. The Labour-run council had hoped to introduce such a policy by April but has delayed its introduction until the end of the year so that it can assess the impact of the proposed changes. (The Last Straw website tells us that adopting a policy of giving straws out on request only can reduce straw use in a venue by up to 50% immediately.)

Significantly, Lambeth plans to impose limits on single-use straws at all festivals in the borough. It is being suggested that they could be required to use recyclable alternatives as a condition of receiving a licence.

The Last Straw campaign demonstrates that businesses and operators can and do provide innovative and responsible operational policies. It highlights an often forgotten or overlooked aspect, namely that licensed premises benefit our communities. There is an in-balance caused to the administration and application of the licensing regime when licensed premises are considered a blight to be managed rather than viewed holistically as an important civic feature that comes with benefits and burdens.

The Last Straw campaign provides an example of business and civil society coming together with a shared vision for the beneficial impact of licensed premises and the reduction and elimination of harms. It is an example of genuine partnership in action.

Furthermore, the campaign provides, in the form of the plastic straw, a clear link between a cocktail in a local venue, public nuisance, and environmental harms that could be occurring hundreds, even thousands of miles away from our immediate locality.

Operators and civil society have advanced self-regulation as one solution to the problem. Local authorities are now asking themselves what, if anything, can be done through the administration and application of the local licensing regime to contribute to the solution. This seems to me a necessary next step. The benefit of self-regulating business and operators needs to be acknowledged and this recognition includes the need for regulatory and enforcement agencies – such as licensing authorities – to encourage recalcitrant businesses towards the promotion of the same objective, if

Volunteering in the night-time economy: does it really help?

Looking after people suffering from over-consumption on a night out is an essential activity that many thousands of volunteers perform tirelessly, and tax payers and hospitality operators are benefitting from their work too, writes **Jo Cox-Brown**

A recent article by Anthony Bushfield for Premier Christian Radio's website claimed that the national voluntary group Street Pastors saved the NHS £13 million during the 2017 festive period by diverting intoxicated people away from A&E.

At first glance it seems like an audacious claim, but based on my first-hand knowledge of groups such as Street Pastors and Street Angels and the incredible work that they do to keep our cities safe after dark, I believe this is probably quite accurate. A study in Nottingham by the Crime and Drugs Partnership indicated that the Street Pastors in Nottingham saves the emergency services approximately £1.5 million per year and costs £30,000 to run - not a bad return on investment.

I have been involved in reducing vulnerability in the night-time economy since 2003. Initially I was a volunteer myself, and when I moved from London to Nottingham in 2007 it became a full-time job. I remember the exact moment that caused that move. I walked out of Blackfriars Station en route to work one morning and was greeted by the news headline "Binge Drinking Nottingham". A few days later I walked out of the same station and was confronted with the headline "Shottingham". I was heartbroken. I grew up in Nottingham and have loved the city since I was a child, and this was not the city that I knew and loved. I resolved to go back to try and make a difference.

Since that time, I have been involved in night-time economy management in a variety of roles, all based around reducing vulnerability, promoting safety and encouraging diversity. I am passionate about cities after dark, curating a safe and enjoyable night culture and designing innovative solutions to enduring night-time economy problems. I have seen the genuine and vital impact that vulnerability management, harm reduction and volunteering can have on all stakeholders in the night-time economy when used in partnership with emergency services and as part of a wider night-time economy strategy.

The latter half of this article is a whistle-stop tour of the main vulnerability management tools and their expected impact when implemented and managed well. However, I want to look at some of the enduring issues that they help to resolve that are inherent to all major cities and towns after dark.

1. 1.The police are expected to manage and take responsibility for everything that happens in the city at night, but with increasing front-line cuts it is becoming harder to staff the night-time economy. They also receive little or no vulnerability or mental health training so when faced with vulnerable people they may not be fully equipped to deal with the situations they face.
2. 2.There is always a strategy for managing the day-time economy, but neither central government nor most local authorities have an overarching strategy for managing their night-time economy. Exceptions include Wales, which seems the most developed, together with London, and Manchester, which is a work in progress. The night-time economy is worth approximately £66 billion and roughly 24% of GDP, with these figures growing year on year. Imagine Starbucks or Apple operating without a strategy; these are companies of an equivalent financial worth. Without a strategy it is hard to identify enduring issues and vulnerabilities, and devise a partnership plan to overcome them.
3. 3.Despite the vital employment opportunities, income, leisure and entertainment that the night-time economy provides, the narrative which the media, local authorities, police and others use to describe the night-time economy continues to be overwhelmingly negative. The Night Time Industries Association (NTIA) is doing an excellent job at challenging this narrative. Voluntary organisations and vulnerability management projects are excellent tools for changing the narrative to a positive one, often with excellent news stories to share of community cohesion and change as a result of volunteers.
4. 4.The majority of those managing and working in licensed premises are aged 18 to 25 and have little or no training (except those working in large chains

who often have great training packages), limited life experience and are paid minimum or living wage. However, they are managing complex operations as well as large crowds of people, many of whom have consumed alcohol or drugs. Most of these individuals are well behaved but approximately one per cent are intoxicated to excess and therefore become vulnerable.

5. 5.Without voluntary and vulnerability management projects, there is little help beyond the emergency services for people who became vulnerable at night, as all the statutory services work Monday to Friday and close at 5pm. Those who became intoxicated or vulnerable at night are in danger of putting extra pressure on emergency services by becoming victims of crime or requiring first aid.

What are the main vulnerability reduction projects in the UK and how do they work?

Street Pastors and Street Angels

Both Street Pastors and Street Angels are Christian voluntary groups. They rely on volunteers mainly, but not solely, from faith communities to work alongside emergency services on a Friday and Saturday night during set hours, usually between 10pm to 4am. Volunteers go through over 30 hours of training in subjects such as roles and responsibilities, alcohol, drugs, mental health, homelessness, weapons, vulnerability management, counselling and listening and first aid before they are released on the street. Most groups ensure their volunteers are Disclosure and Barring Service (DBS) checked and work closely with partners to share anonymised data that helps to build a wider picture of what is happening in the night-time economy. They reduce vulnerability by giving first aid to those who need it, preventing A&E attendances, caring for people who are intoxicated until they are sober enough to return home, ensuring that they get home safely, giving brief interventions on drugs, alcohol, sexual health and making sure that those they care for don't become victims of crime. They also give out supplies like lollipops to reduce noise, flip flops to prevent girls cutting their feet on glass, water to keep people hydrated, pee pouches to stop on-street urination and spikeys to prevent people's drinks being spiked.

What impact do these groups have?

There are approximately 450 teams of volunteer Street Pastors, Street Angels and other groups in towns and cities across the UK. On an average Friday and Saturday night in the UK it is estimated that each group helps about 15 people get home safely in a variety of ways. According to NHS Digital it costs an average of £4,296 to treat an intoxicated person in hospital. Based on data from a core selection of these groups working in large city centres, on average they prevent 80% of those they help from needing A&E, paramedics or police. However, without looking at every incident dealt with, it is hard to determine an exact figure of their worth. Nottingham Crime and Drugs Partnership did some basic analysis in 2015 that indicated that every £1 invested in Street Pastors saved an average of £121.50 on emergency services. Their value also lies in the additional uniformed presence on the streets and perhaps one of the most useful, yet underrated services is the volunteers' ability to set a happy, peaceful and warm tone to nights out. I have seen them calm down fights equipped with just a smile, a hug and a lollipop. In most cities those who use the city's nightlife love them. Comments such as "we love you", "you helped my friend" or "you are amazing" fill the air as they walk the streets. This positive tone setting is vitally important and highly undervalued.

Night Owls

An almost direct replica of Street Angels or Pastors, Night Owls is a student-led project focused on student safety and well-being, initially set up in Nottingham but now being used by five university towns. Students go through similar training and security checks as Street Pastors and Street Angels.

The Night Owls assist in getting students home safely, normally during the week, working midnight to 5am. They also provide students with information and helpful supplies, such as water, first aid, food, condoms and foil survival blankets.

What impact do they have?

The Nottingham project is the only project that has been operating for longer than a year, so the only one for which statistics are available. In the last year volunteers picked up 1,226 glass bottles and 4,135 items of litter. This means that the glass can't be used as a weapon or injure girls who take their shoes off. By picking up litter they prevent the low level anti-social behaviour regularly associated with the night-time economy. They have also walked 179 lone students home, preventing potential attacks such as robbery, sexual harassment and rape. They have cared for 194 students who were vomiting or needed minor first aid, keeping them out of A&E, and have provided significant pastoral care to 1,173 students. Because the project is run for students, by students, it is a positive example of student peer support. This project has the potential to make a positive impact on students if it can be maintained. To ensure continuity of funding, the management and oversight of the project should probably rest with the Student's Union.

Safe Spaces, SOS Buses, welfare units and alcohol treatment centres

These are partnership schemes often run by a combination of volunteers, paid staff, St John's Ambulance, paramedics and hospitals, and are based in buses, cabins, trailers,

buildings or hospitals. They provide a place of safety for those who might need it, medical assessment, basic medical treatment, first aid and supervised recovery. Most see 15 to 20 people per night. These centres treat night-time economy users that have been injured, are intoxicated (with alcohol or illegal drugs) and / or are vulnerable for other reasons. They provide advice to those who are lost or can't get themselves home or have a need for pastoral care. Some also offer services for rough sleepers. A small number of schemes signpost their users to follow-on services, such as alcohol, drugs and mental health interventions. Some Safe Spaces also act as a base for partners who are managing the local night-time economy.

What impact do they have?

A 2017 study by Make Associates for the Local Alcohol Partnerships Group (LAPG), supported by The Portman Group, titled *A Study of 'Safe Spaces' in the UK Night-time Economy,* found that there are 45 Safe Spaces in the UK. Most of these operate on Friday and / or Saturday nights or when there is a busy midweek student night. Make Associates reported Safe Spaces can help offset public sector costs by as much as £9.31 for every £1 spent on the service. A Safe Space can allow ambulance and A&E services to redeploy £50,000 - £1 million of resources each year, depending on the size and location. Safe Spaces cost between £5,000 and £150,000 a year to operate. Make Associates estimated that a UK network of 150 Safe Spaces could return over £100 million to the NHS each year. Having set up and run a Safe Space for seven years, I believe there are some key learnings that need to be considered. To be successful, Safe Spaces need to be centrally funded by a partnership, as they are hard to find funding for. If volunteers are used to give care and first aid they need good supervision, training and ongoing support and encouragement. During quiet times volunteers may become disillusioned; there are some nights, particularly Friday nights in January and February, when no one needs the service. It might be more effective to only open Safe Spaces during busy times, which needs careful planning.

Club Crew, Club Angels and Welfare Officers

Drinkaware Club Crew, Club Angels and Welfare Officers are trained staff or volunteers working in clubs and venues (often in venues with a capacity of over 500) to help support the welfare and wellbeing of people on a night out. They work in pairs and wear a highly visible uniform often saying something like "Here to help". They mingle with customers to promote a positive social atmosphere and help those who may be vulnerable, because of drinking too much alcohol, for example. This can include reuniting lost customers with friends, helping people into taxis, or simply providing a shoulder to cry on. Working directly with the venues, they co-ordinate with other members of staff, like security and first aid, providing an extra layer of support to ensure customers have an enjoyable evening where the risk of harm is minimised.

What impact do they have?

They appear to be an invaluable resource, winning praise from venue operators, student unions, licensing officers, police forces and crime prevention and community safety initiatives. These groups help to demonstrate responsible licensing practices, good corporate social responsibility and provide a reassuring safety net for customers. By placing fully trained welfare staff around the venue it frees up management and security staff time, so they can concentrate on making the venue work effectively. The Drinkaware Crew has been recommended as best practice in the Government's 2016 Modern Crime Prevention Strategy.

Based on statistics from Drinkaware Crew in the last year, working across 13 cities, they have helped 3,634 individuals (2,179 female, 1,455 males), given 1,041 instances of emotional support, raised 472 incidents with security staff and given 2,001 instances of practical assistance.

Vulnerability training

Police forces, voluntary groups and training providers across the country have been running vulnerability training with licensed premises and new students. Drinkaware has recently launched e-learning on vulnerability with CPL Training for use with staff working inside venues, including bar staff, glass collectors, first aiders and any other staff whose role involves direct contact with customers, and in Nottingham they are also using this training with McDonalds and taxi drivers. Vulnerability training equips staff with the ability to identify alcohol and drug related vulnerability and take steps to help prevent customers from coming to harm. Where it's been used with students it helps freshers to orientate themselves with the city they are coming to and protect themselves and their friends from coming to harm, teaching them what to do if something does go wrong. Most vulnerability courses or packages take the learners through what vulnerability means and what makes a person vulnerable, issues surrounding sexual harassment and how to prevent and report it, and advice for staff and students on what do if they encounter a vulnerable person.

What impact do they have?

It is difficult to define the impact this type of training has, because no monitoring has been conducted of either qualitative or quantitative data. From an observational point of view, any form of training given to staff and students to help them know what to do to help themselves and others is certainly never a bad thing; upskilling individuals will take pressure off emergency services and deliver a better-quality

experience for customers and friends. This type of training when used as a package with other vulnerability support will no doubt reduce vulnerability.

Drug testing and harm reduction advice

Organisations such as the Loop and Dance Safe provide harm reduction advice and information, welfare support, drug safety testing and training, run by a mixture of paid staff and volunteers and in conjunction with police forces, public health, venues and festival management companies. Testing facilities set up in night clubs, bars or at festivals identify substances of concern that may put users at a greater level of risk. They also provide information to users and onsite medics of drug-related incidents, so they can provide informed and targeted treatment. Through the testing they can identify substances that have been mis-sold to users by unscrupulous dealers, particularly those that are likely to cause medical issues. They provide information relating to substances, to reduce drug related harm on site and minimise the possibility of a major public safety incident. In the case of drugs, this can mean the difference between life and death.

What impact do they have?

These projects are about minimising harm and always run in partnership with police and public health officials, and are used actively in countries such as the Netherlands, Sweden, Spain and Portugal. When someone gives in a recreational drug to be tested, and then returns to be given the results (the drugs aren't returned they are destroyed) they are told about the composition of the drug, told that drugs are illegal and not condoned and that drug use is risky and potentially harmful. However, and vitally, they are receive harm reduction information. Testing services provide a unique and engaging method for communicating alcohol and drug harm reduction practices to the public, with services being most popular with younger and inexperienced users, who are also the populations often most as risk from drug harm. After receiving harm reduction messaging they can then make an educated decision as to whether to take any other drugs that they may have purchased. At Boomtown Festival the Loop, which ran the testing facility, tested around 1,000 recreational drugs and saw a 25% reduction in drug-related referrals to the medical team. This is matched at other events where drug safety testing services have been introduced: they too have reported a reduction in the numbers of drug-related welfare and medical incidents occurring upon their introduction. Up to 20% of people chose not to take the tested drugs and handed them over for destruction, and others took smaller amounts. The Loop identified particularly harmful pills and were able to get the message out to not take them, potentially saving lives (which is important since there were 63 Ecstasy-related deaths in the UK in 2017, the highest on record). Police and security services have also reported that they have been able to better focus their resources on incidents of serious crime due to a reduction in time spent dealing with drug-related incidents.

Dr Henry Fisher, Senior Chemist for The Loop, said: "Where our service has been in operation, we have been able to educate service users on pragmatic harm reduction practices and notify event staff to substances of concern that may be in circulation, allowing they to respond promptly and appropriately."

Conclusion

Vulnerability management and volunteering in the night-time economy does make an essential difference. Our cities and festivals are safer because of their existence. There is a raft of vulnerability management and volunteering opportunities in the night-time economy and all of them can play a vital role in keeping members of the public safe from harm. People who volunteer in our night-time economy are heroes. To help them serve their city or town to the best of their ability they need central funding, regular feedback, encouragement and clear definition of their roles.

There is no one-size-fits-all solution to reducing harm and vulnerability in the night-time economy and each city and town needs to offer the services that best meet its needs, identified by a clear partnership strategy. In most cases there is a need to slightly tweak projects to meet the requirements of the specific local situation. The best vulnerability projects come from strong partnership working and good leadership of individual projects. Where projects falter it is often down to lack of good partnership working, inadequate funding and poor leadership. It is essential that projects track qualitative and quantitative data and feed those into a central location so that we can keep monitoring their success, and provide solid evidence to show that voluntary schemes such as these deserve the widespread support and funding they need to continue.

Jo Cox-Brown, MIoL

Co-Founder of Jocee & Co and the website NightTimeEconomy.com

Guildford case shows the way for calculating table of fares

Challenging the methodology for establishing a table of fares has led to a High Court judgment that all councils should note well, says **James Button**

There have been two major High Court decisions in the past few months. *Milton Keynes Council v Skyline Taxis and Others*[1] is considered by Roy Light and Sarah Clover elsewhere in this issue, which leaves me to consider Guildford Borough Council's latest foray into taxi litigation.

This new episode concerned hackney carriage fares and was a challenge by Mark Rostron to the fares set by the council. Those who follow taxi litigation in general, and Guildford's involvement in particular, will recognise Mr Rostron as a serial challenger to taxi decisions and practice in that borough.

The decision in *Rostron v Guildford Borough Council*[2] is the only High Court case concerning the setting of hackney carriage fares. The methodology used by Guildford Borough Council to calculate the prescribed hackney carriage fares was challenged by way of judicial review.

Guildford Borough Council, acting via its Executive as required under the Local Government Act 2000, approved a method of calculating the table of fares. Using that process, it established a proposed table and then engaged in informal consultation with the trade. Questionnaires were sent to all 262 hackney carriage proprietors and drivers, of whom only five responded. These were considered and then the statutory consultation required under s 65 of the 1976 Act was undertaken. This led to ten representations being received. The table of fares was then adopted by the council and the challenge by way of judicial review was launched. This was on two grounds: firstly, that the methodology used by the council was flawed; and secondly, that setting of fares was contrary to EU law.

The judge concluded that the argument that setting these fares amounted to an unjustified restriction on the freedom of establishment enshrined in Article 49 of the Treaty of the Functioning of the European Union (TFEU) was not made out. This element of the decision absorbs several pages of the judgment, but ultimately is not particularly useful, apart from demonstrating that the arguments themselves were flawed.

That having been determined, the judgment is far more useful in respect of the detailed assessment of the way in which Guildford calculated the fares. It was challenged on the basis that the council had used obsolete data from the AA which did not relate to hackney carriages, and in particular the claimant was aggrieved that it had not based the costings for running a hackney carriage on those used by Transport for London when setting hackney carriage fares within Greater London.

The council countered that by pointing out that only nine out of 193 hackney carriages licensed by Guildford Borough Council were purpose-built London style cabs. The council was also aware that the figures were out of date and factored that into its decision-making process.

The aim of the council was to enable a hackney carriage driver, diving the average number of miles covered by a hackney carriage in a year, to earn the average of the median annual gross salary of residents and workers in Guildford.[3] The running costs taken into account would include fuel, tyres, parts and servicing, depreciation and insurance. This process is considered in detail within the judgment.[4]

The conclusion of the Court was that there was no infringement of the rights contained in Article 49 of TFEU, and the decision to set the table of fares at the rate that was determined was not unreasonable in Wednesbury terms. The judge, John Howell QC, concluded in these terms:[5]

> *Further there is no evidence that the resulting table of fares is one that no reasonable authority could have adopted. It was envisaged that a driver driving no further than the*

1 *Milton Keynes Council v Skyline Taxis and Private Hire Ltd* [2017] EWHC 2794 (Admin) 10 November 2017 (unreported).

2 [2017] EWHC 3141 (Admin) 5 December 2017 (unreported).

3 See para [12] of the judgment.

4 At para [72 to 114] of the judgment.

5 At para [113 and 114] of the judgment.

average could earn, charging the basic tariff, the average of the median salaries of Guildford residents and workers. The Claimant has not shown that that expectation was unreasonable on the basis of the evidence that the Borough Council had. If the Borough Council's estimates of the costs that such a driver incurs were wrong, the Claimant, the other members of his Association and other operators of hackney carriages in Guildford have only themselves to blame for not submitting sufficient reliable evidence on such costs in the two consultations that the Borough Council conducted. . . .

In my judgment it may also reasonably be concluded from the evidence submitted by the Borough Council in respect of the particular matters in issue that the maximum fares selected were reasonable and that the table of fares adopted preserves a fair balance between the public interest and the interests of drivers.

This is an extremely useful and important judgment, and local authorities involved in taxi licensing need to consider the approach taken by Guildford when next setting their hackney carriage fares.

Beyond that, we remain in legislative and quasi-legislative limbo. By the time you read this, it is hoped that the Ministerial Working Party report will have been published, thereby allowing progress to be made by the Department for Transport on producing the drafts of the revised *Best Practice Guidance* and the s 177 Guidance for consultation. It remains to be seen whether the arrival in January of a new Minister, Nusrat Ghani as the replacement for John Hayes, will assist or hinder the process.

In this spirit of fiddling while Rome burns, any prospect of new taxi legislation for England seems as far away as ever, but let us hope that my (increasing) cynicism is misplaced.

Guidance on determining the suitability of applicants and licensees in the hackney carriage and private hire trades

As readers will be aware by now, during February the Institute consulted on our Guidelines on suitability for taxi drivers. By the time you read this, the consultation will have finished and we will be close to launching the final version at the Taxi Conference on 26 April. This may lead you to wonder what the purpose of this element of this article is?

Well, the answer is: to give you some background. For many years there has been concern about the widespread variation in standards applied by local authorities when considering applications for new drivers' licences, and renewals from existing licensees. In 1992, when the law was changed to enable local authorities to consult the police (subsequently repealed when the Criminal Records Bureau came into effect), the Home Office and Department of Transport issued guidance on the suggested approach to the use of previous convictions for drivers in the form of Annex D to a Joint Circular. Whilst this has gone through various reincarnations by local government regulation and the Local Government Association, these have been based firmly on those original guidelines.

It is now clear from the research undertaken by Hannah Jones which underpins the "Offenders and Offending - an Overview" section of the Guidelines that there is no hard evidence to explain what time period must elapse before a person can be considered to be no longer at a risk of reoffending. As the provisions of the Rehabilitation of Offenders Act 1974 (and the rehabilitation periods therein) do not apply to taxi drivers, and spent convictions can be taken into account for other hackney carriage and private hire licences, it is clear that longer periods of time must be considered.

Our Guidelines are significantly more stringent than many councils' existing policies, and deliberately so. As previously outlined in my articles, taxi drivers are in a unique position of power and control over passengers, whilst operators and proprietors are also persons with significant power in relation to information and the use of vehicles. It is therefore completely correct that society as a whole, which includes our most vulnerable members who are heavy users of taxi services, is protected as far as possible from unsuitable persons. It is hoped these Guidelines are widely accepted, and then rigorously applied. Councillors and officers let their citizens down when unsuitable and unsafe persons are licensed.

The vast majority of those involved in the hackney carriage and private hire trades are decent, law-abiding, hard-working and caring individuals, who provide levels of service ranging from good to outstanding. Every unsafe or unsuitable person who is licensed undermines that reputation, so for the good of the trades, as well as society, it is imperative that standards are not only raised but then maintained. These Guidelines will go a long way to achieving that.

There is still one fundamental question which society needs to address: considering the role of a taxi driver, why do we accept any level of criminality? That question cannot be answered by the Institute, but we can and should ask it, and see what the response is.

James Button, CIoL
Principal, James Button & Co Solicitors

Gaming and social responsibility top a busy gambling agenda

A DCMS consultation on gaming machines, casino licensing and the Gambling Commission's new strategy are all recent developments assessed by **Nick Arron**

Back in October 2016 the Government called for evidence on gaming machines and social responsibility measures applied to protect players and communities from gambling related harm.

The review sought evidence-based proposals on:

- Maximum stakes and prizes for all categories of gaming machines permitted under the Gambling Act 2005.
- Allocation of gaming machines permitted in all licensed premises under the Gambling Act 2005.
- Social responsibility measures for the industry as a whole to minimise the risk of gambling-related harm, including on gambling advertising, online gambling, gaming machines and research, education and treatment.

A total of 275 responses was received including comments from stakeholders, local authorities, charities and members of the public.

The DCMS stated that the aim of the review was to ensure that legislation "strikes the right balance between a sector that can grow and contribute to the economy, while also ensuring it is socially responsible and doing all it should to protect consumers and communities, including those who are just about managing".

On 31 October 2017, the DCMS published its consultation on its proposals from the call for evidence, which include:

- Regulatory changes to the maximum stake permitted on category B2 gaming machines (FOBTs), considering options between £50 and £2, in order to reduce the potential for large session losses and potentially harmful impacts on players and their wider communities.
- Retention of the current regulatory environment for the remaining stakes and prizes, permitted numbers and allocations across other categories of gaming machines (B1, B3, B3A, B4, C and D).
- Social responsibility measures across gaming machines that enable high rates of loss, player protections in the online sector, and a package of measures on gambling advertising and on current arrangements for the delivery of research, education and treatment.

The consultation period of 12 weeks closed on 23 January. Central to the consultation is the proposed reduction in the stakes on the B2 or fixed odds betting terminals, but there are significant proposals for developing the social responsibility obligations of operators to enhance player protection and prevent problem gambling. With Parliament's current legislative timetable it is not anticipated that any changes will take effect until the end of 2018.

Strategic priorities for the Gambling Commission

In November 2017, the Gambling Commission published its new strategy for 2018-2021, setting out the regulator's focus on five key areas in plans to make gambling fairer and safer.

The five areas detailed are:

- Protecting the interests of consumers – for example, the Commission expects operators to intervene to make play safe and to protect consumers at risk. There will also be tougher and broader sanctions on operators (including lottery operators) who fail to treat customers fairly and make gambling safe.
- Preventing harm to consumers and the public – for example, the Commission expects consumers to be provided with more information about gambling and its risks, and better controls to manage their gambling.
- Raising standards in the gambling market – for example, the Commission expects effective and independent arrangements to resolve consumer complaints and disputes.
- Optimising returns to good causes from lotteries – for example, the Commission will regulate in a way that delivers a healthy National Lottery for customers and good causes, and will plan for the competition for a new licence to be awarded for 2023.

- Improving the way the Commission regulates – for example, the Commission will improve the way it taps into consumer and public issues to inform action; it will help industry comply but take precautionary action where necessary; and it will give independent and well-evidenced advice to government on gambling and its impact.

Protecting customers' interests and treating customers fairly has been a focus of the Gambling Commission under the leadership of Chief Executive Sarah Harrison. It was a surprise to many in the industry that a few weeks after the publication of the strategy, the Gambling Commission announced that Sarah Harrison will be leaving the Commission in February 2018 to take up a senior role with the Department for Business, Energy and Industrial Strategy. Until a successor is appointed, Neil McArthur, the Commission's Chief Counsel and Executive Director, will be acting as Chief Executive.

Gambling Commission customer interaction and AML compliance assessment action

The findings of a recent compliance assessment have led to the Gambling Commission issuing an open letter to all online casino operators with details of actions that need to be taken by the casino sector with immediate effect.

In the letter, the Gambling Commission states that "due to the serious nature of the assessment findings, we have already started investigations into 17 remote operators and are keeping under consideration whether it is necessary to commence a licence review of five operators".

The compliance assessment was focused on the policies and procedures that online remote operators should compile and operate to prevent money laundering and prevent problem gambling. The Gambling Commission says that "identified failings have raised significant concerns about the effectiveness of the casino sector's management and mitigation of risks to the licensing objectives".

The letter gives a summary of the conclusions formed from the assessment and highlights the following issues:

- Lack of evidence for the ongoing monitoring of customer accounts.
- Lack of formal anti-money laundering qualifications for money laundering reporting officers (MLROs) and some MLROs unable to explain what would constitute money laundering and "tipping off".
- MLROs not keeping sufficient records and no documented risk assessments.
- Lack of understanding from MLROs as to how criminal spend affects the business.
- Feedback given by the UK Financial Intelligence (FIU) unit indicated that when a suspicious activity report (SAR) was made there was not enough information to enable a comprehensive analysis of the money laundering risk.
- Operator records showing that "they had assumed the FIU had approved the ongoing business relationship, as opposed to operators undertaking further enhanced due diligence".
- Lack of customer interaction when accounts showed potential signs of problem gambling.

The letter concludes with the below action points for the operators, advising that they review their policies and procedures and ensure compliance with the requirements of the Licence Conditions and Codes of Practice:

- *Conducting appropriate risk assessments of the risks of money laundering and terrorist financing for your business, and implement policies, procedures and controls which manage the risks effectively.*
- *Introducing measures for customer due diligence, the ongoing monitoring of customers and enhanced customer due diligence which are sufficiently risk-focused, including better risk profiling of customers.*
- *Ensuring that you are able to adequately evidence customer interactions.*
- *Providing your staff with appropriate training to ensure that they are aware of the law relating to money laundering and terrorist financing and how to recognise and deal with transactions, activities or situations which may be related to money laundering or terrorist financing.*
- *Ensuring your policies and procedures make specific provision for making use of all relevant sources of information where you have concerns that a customer's behaviour may indicate problem gambling and putting into effect such policies and procedures.*

The Gambling Commission Chief Executive, as quoted on the Gambling Commission website, says: "It is vital that the gambling industry takes its duty to protect consumers and keep crime out of gambling seriously. The Gambling Commission's new strategy sets out our vision for a fairer and safer gambling market. The action we are taking to examine online casino operators' compliance with money laundering and customer interaction requirements is just one example of how we will be relentless in turning that vision into reality."

Southampton casino licence challenge fails

The Court of Appeal has refused permission for Global Gaming Ventures to appeal following its failed judicial review leaving the way for Aspers to begin development.

In 2016, Southampton City Council granted a large casino

licence to Aspers for its proposal at the Royal Pier. Seven companies had applied for the right to run the casino and, following the decision, one of the rival competitors, Global Gaming Ventures, sought a judicial review of Southampton City Council's decision on the grounds that the council had adopted the wrong method for calculating the gross value added of the proposals, and should have considered the possibility of the Royal Pier scheme proceeding even if Aspers were excluded.

The judicial review was dismissed by the High Court in February 2017, but Global Gaming Ventures took its case to the Court of Appeal, where Jackson LJ refused permission, which brought to an end the casino competition and confirmed Aspers as the winner.

Nick Arron
Solicitor, Poppleston Allen

Back to basics

The role of the licensing authority, delegations and authorisations are all topics **Luke Elford** found himself thinking about afresh when he delved back into the 2003 Act

I have recently been prompted to revisit the early sections of the Licensing Act 2003, something I've not done for a while, and I found it rather intriguing.

The first thought that occurred to me was, "Who are licensing authorities?" We're all familiar with councils of districts, counties or London boroughs being licensing authorities, but what if I mentioned the names Patrick Maddams and Guy Perricone? Yes, Messrs Maddams and Perricone are, by a quirk of the Act,[1] licensing authorities in their own right (as Sub-Treasurer of the Inner Temple and Under Treasurer of Middle Temple respectively).

My starting point thereafter was the general duty of a licensing authority found in s 4 of the Act: "A licensing authority must carry out its functions under this Act (licensing functions) with a view to promoting the licensing objectives" (my emphasis). What struck me was the prescriptive nature of the language. Must - not might, or shall, or ought - Must. (The word is used 686 times in the Act.)

Moving onward, a licensing authority must (there's that word again) have regard to its licensing statement and any guidance issued by the Secretary of State under s 182. A licensing authority can, where the circumstances permit, depart from its own policy and from the s 182 Guidance if need be. Should a licensing authority be minded to go "off piste", then reasons for that decision are the order of the day.

I don't intend to insult anyone's intelligence by reminding readers what the four licensing objectives are, but I will, if I may, point to para 1.4 of the s 182 Guidance which reminds us that each of the objectives are of "equal importance" and "the paramount consideration at all times". What of other aims though? We're told that the other aims identified at para 1.5 of the Guidance are "vitally important" and should be "principal aims" for everyone. Whether those aims are treated as vitally important is a conversation for another time, but the use of language is interesting nonetheless.

The Act is also very prescriptive in terms of setting a licensing policy - who we must consult when doing so etc. The usual suspects are all there - police, fire, health - but the interesting one for me is "Such other persons as the licensing authority considers representative of businesses and the residents in the area". Licensing authorities can and will take differing views on who "such other persons" might be, but my suggestion (as with departing from policy or Guidance) is that any decision on who to consult (and, for that matter, who not to consult) ought to be sufficiently backed up with reasons. Cases on the Late Night Levy have been won and lost on the issue of consultation so it's not outside the realm of possibility that an entire policy could be taken on due to lack thereof. Food for thought when drafting a policy or keeping it under review!

I don't intend for the purposes of this article to deal with the formalities of establishing a licensing committee and thereafter sub-committees, but another interesting titbit from the Act may be found at ss 7(3) and (5) – licensing committees can discharge other functions. This particular ability seems underutilised nationwide, but is probably something that has moved to the forefront of peoples' minds following the House of Lords Select Committee report on the Licensing Act 2003 and their lordships' views on licensing and planning. Again, something to think about.

The Act further provides for delegation from a sub-committee to an officer of the licensing authority. This sub-delegation comes with some provisos in the form of a pretty extensive list of things that cannot be delegated to officer level – mostly applications (of almost any type) where representations have been received. If anyone is in the market for a recommended delegation of functions then the s 182 Guidance has just that at para 14.63.

My attention then turned to the breadth of the role of the licensing authority and the many different hats licensing authorities wear in relation to licensing. One of the most important, in my opinion, relates to receiving representations and determining whether they are relevant, vexatious or frivolous. While the majority of representations are anything but vexatious or frivolous, I do sometimes have to raise an eyebrow at how some representations make their way before councillors.

Another important role in licensing terms for a Responsible Authority is that councils may wish to consider how they deal with separation of responsibilities in the context of presenting licensing applications and making objections to them. I am aware of some authorities which have an officer specifically

1 Licensing Act 2003, ss 3(1)(f) and 3(1)(g).

tasked to dealing with Responsible Authority objections, but I am equally aware that's not entirely practical depending on the size of the licensing team within an organisation. One additional point to make here is that a Responsible Authority objection isn't to be made lightly, nor should it be made on behalf of other Responsible Authorities (who can, quite frankly, do their own dirty work). I was confronted, not too long ago, by what was referred to by the officer as a "holding objection" because the police hadn't got around to doing theirs yet!

The point I came away with is that it's rare that one goes back to basics and reviews the early sections of the Act, but one should. Those early sections provide the very building blocks for everything that comes later and will merit your attention when you have a moment.

Luke Elford
Solicitor, TLT LLP

Events Calendar

April 2018

18	Taxi Licensing for Beginners, Basingstoke
19	Working in Safety Advisory Groups, Yeovil
19	East Midlands Region Meeting & Training Day, Nottingham
24	Investigators PACE Course, Lancaster
25	Acupuncture, Tattoo and Cosmetic Skin Piercing, Chorley
26	Taxi Conference, Swindon
30	Professional Licensing Practitioners Qualification, Peterborough

May 2018

1-3	Professional Licensing Practitioners Qualification, Peterborough
10	Working in Safety Advisory Groups, London
15-18	Professional Licensing Practitioners Qualification, Birmingham
24	Street Trading, Rushcliffe

June 2018

5	West Midlands Region Meeting & Training Day, Redditch
6	Wales Regional Meeting, Llandrindod Wells
7	Sex Licensing, London
13	North West Region Meeting & Training Day, Blackpool
18	Taxi Licensing for Beginners, Birmingham

June 2018 cont...

19	Pocket Notebooks & Audio Interviews, Birmingham
20	National Training Day, Oxford
26-29	Professional Licensing Practitioners Qualification, Leeds

July 2018

10	Taxi Conference, Leeds

September 2018

12-13	Zoo Licensing, Doncaster
12	West Midlands Region Meeting & Training Day, Cannock
18-21	Professional Licensing Practitioners Qualification, Newcastle Under Lyme
25-28	Professional Licensing Practitioners Qualification, London

October 2018

3-4	Public Safety at Events, Leeds
10	Wales Regional Meeting, Llandrindod Wells
16-19	Professional Licensing Practitioners Qualification, Reading

November 2018

14-16	National Training Conference, Stratford-upon-Avon
27-30	Professional Licensing Practitioners Qualification, East Grinstead

Drinking socially is good for us all

Philip Smith, The Lord Smith of Hindhead CBE, Chairman of Best Bar None, spoke at the Institute of Licensing's National Training Conference 2017. For members not present, we have published his speech

May I start by paying tribute to your chairman, Daniel Davies, who is a relentless ambassador for the licensing and leisure Industry and a force for good, to the board of the IoL and in particular to Sarah Clover, who was an outstanding specialist advisor to the Lords Select Committee on the review of the Licensing Act 2003.

My own background for the past 30 years has been in the world of private members' clubs, being CEO of the Association of Conservative Clubs, which has around 850 clubs throughout the UK. Therefore, I am in the same hospitality industry as any other pub operator. We have the same interests in ensuring the smooth running of the licensed sector. So I am in the licensing business with an interest in politics rather than a politician who might have an interest in licensing.

The Licensing Select Committee was a fascinating process and one of the recurring themes was concern about the increase of the stay-at-home culture.

As I am sure you will know, last year, for the first time, the quantity of beer consumed at home from the off-trade exceeded sales of beer consumed from the on-trade. The amount of other alcoholic products consumed at home and purchased from the off-trade has exceeded that of the on-trade for a number of years but this was the first that the statistic has applied to beer. The overall figure is that almost 70% of all alcohol is now consumed at home.

I have always believed that alcohol can play an important and beneficial role in the nation's life and the nation's health. A society which socialises together is a stronger society and the UK's pubs, clubs, bars and restaurants put that into practice every day.

Drinking provides, and has always provided, social cohesion. It is a recognised fact that people who enjoy an active social life avoid loneliness and the devastating effect which isolation can have on a person's health. Such people lead a longer and healthier life. Three key elements of health are exercise, diet and "belonging".

Pubs, clubs and bars provide a significant part of most peoples' social lives. Pre-theatre drinks, restaurants and the latest gastro venues provide the basis of the social lives for many others. Whether it is having a drink with family or friends, watching sport or celebrating a special occasion, the common denominator of having a drink often provides that cohesion.

It is important to recognise, however, that per capita alcohol consumption in the UK has fallen significantly during the last ten years and the number of young people consuming alcohol is also down - by 41% since 2004. Around one in five adults in 2016 described themselves as teetotal. The UK today drinks less alcohol than 16 other European countries, according to the World Health Organisation.

Alcohol-related hospital admissions and the incidences of *certain* alcohol-related health conditions for those under 40 years of age have declined since 2010 and alcohol-related deaths have fallen according to the Office of National Statistics. However, alcohol-related hospital admissions for those aged over 65 have increased by 135%.

I believe this statistic has much to do with the increasing trend of "stay at home" consumption with large quantities of alcohol being purchased, often very cheaply, from supermarkets and off-licenses. When therefore commentators speak of the stay at home culture, it is often related to young people "pre loading" before they go out; but the statistic I have just given you might indicate that, in fact, older people are staying at home and frankly drinking too much.

I do have concerns that some of the deals on offer for beers and lager can calculate down to the cost being as little as 63p for a pint. I am also concerned that recent statistics show that as much as 40% of all alcohol purchased in the UK is bought by only 10% of the adult population and that possibly one fifth of all alcohol sales are now purchased on-line. It will be interesting to see what effect the recent minimum unit pricing ruling will have on the consumption of certain types of alcohol in Scotland as minimum pricing comes into force.

I would be the first to say that there is still more to do to prevent people who are sensible, responsible consumers of alcohol from becoming part of the minority who either become nuisance drinkers or who cause trouble in villages,

towns and cities for both neighbours, residents and the leisure economy; or who harm themselves and their families by excessive drinking and alcoholism.

In 40% of all violent incidents in 2015/16, the victim believed the perpetrator to be under the influence of alcohol. In the same period, one in eleven adults reported that they personally experienced or witnessed drink-related anti-social behaviour.

This is just one of the reasons why I accepted the invitation to take on the chairmanship of Best Bar None, working with the alcohol industry, the police and licensing officers, so that I can make a contribution to promoting responsible alcohol consumption and higher professional licensing standards, and help to tackle crime, disorder and under-age sales.

If people of all ages feel safer to go out and venues are more appealing, then many are more likely to go out to socialise. People who drink with company consume less alcohol than those who stay at home. In short, this is better for the nation's health; it is better for the nation's leisure economy; and importantly for us, is it better for our long-term business interests.

May I therefore thank you for everything you all do for our hospitality sector throughout the year. I hope that together we can all continue to create a better understanding between those, like many of you, who are tasked with enforcing the Licensing Act, with those, like me, who are obliged to operate under it.

Lord Smith of Hindhead CBE
Chief Executive, Association of Conservative Clubs

The Habitats Directive and the Licensing Act 2003

EU legislation on pollution levels is an issue licensing authorities must take into account when considering applications for events such as festivals in rural areas, say **Gary Grant** and **Charles Streeten**

You can't stay in your corner of the forest waiting for others to come to you. You have to go to them sometimes.

A.A. Milne, *Winnie-the-Pooh*

There is perhaps some irony in the fact that as Britain negotiates its departure from the European Union, the number of licensing cases in which points of EU law are raised has been increasing. While most licensing decisions can, of course, be taken within the parameters of the Licensing Act 2003 itself, EU law imposes an over-arching duty on a public authority - which includes a council's licensing committee and licensing sub-committees - to have regard to its requirements. Heretical as it may sound, EU law is capable of requiring a licensing sub-committee to have regard to matters going well beyond the licensing objectives when deciding whether to grant a premises licence (or other authorisation) under the Licensing Act 2003.

The environmental example considered in this article, namely the impact of the Habitats Directive on the Licensing Act 2003, is not simply of academic or hypothetical interest. It has already impacted on the licensing approach taken by one licensing authority seeking to reduce air-pollution levels around Ashdown Forest. The forest, with its spectacular views of the Sussex countryside, is known the world over as the home of Winnie-the-Pooh.

Although unusual and, in some quarters, possibly unwelcome, the application of EU law to licensing is not an entirely novel concept. There are other instances where licensing decisions and legislation will be subject to considerations of EU law. One example is the requirement that licence application fees have to comply with the Provision of Services Regulations 2009 which gave effect to EU Directive 2006/123: *R(Hemming (t/a Simply Pleasure Ltd) v Westminster City Council* [2017] UKSC 25. Another is the Scottish legislation imposing minimum pricing for alcohol which must be considered in light of articles 34 and 36 of the Treaty on the Functioning of the European Union to ensure trade is not unfairly restricted. Neither of these requirements appears in the Licensing Act 2003, yet they must still be complied with in the licensing context.

Air pollution around Ashdown Forest

Ashdown Forest lies within Wealden District Council's borders. The forest is designated under the Habitats Directive as what is known as a "Special Area of Conservation" (SAC) and under the Birds Directive as a "Special Protection Area" (SPA). These are designations which afford very high levels of environmental protection to particular species of flora and fauna (in the case of the Ashdown Forest, Nightjar and Dartford Warbler birds as well as the lowland heath and rich invertebrate assembly).

The council's planning department had conducted air quality monitoring and modelling using the UK Air Pollution Information System which provides data on nitrogen pollution and its environmental impacts. This enabled the council to determine the level of pollution at or above the level which current scientific knowledge suggests will cause harm to specific habitats (known as "critical load").

The council's planning department had also commissioned a new district-wide transport model to assist with its emerging strategic planning policy. This model identified the increase in annual average daily traffic on roads crossing the Ashdown Forest from development within the Wealden district and development outside the district boundaries. Importantly, the model showed that planning permissions already granted were exceeding the critical load.

As a result, in a planning context, the council had determined that until necessary compensation / mitigation measures are in place, developments throughout the district (and indeed potentially in other districts) could only proceed where it is shown that they will have no impact on the Ashdown Forest SAC (ie, they will not generate additional vehicle trips on affected roads).

The council had even taken the matter to the High Court. In *Wealden DC v Secretary of State CLG* [2017] EWHC 351 (Admin), Jay J held that a cumulative assessment of the effect of traffic movements from neighbouring authorities had not been properly carried out in advance of those authorities adopting their strategic planning policies and as

a result quashed those policies.

Since it was clear that vehicle emissions contributed to unacceptable air-pollution levels around the protected forest, and certain licensed premises and music festivals were likely to attract more polluting vehicles into the affected area, this question arises: should licensing decisions also take into account the pollution issues and, in particular, the terms of the Habitats Directive? The answer, it turns out, is "yes".

The impact of the Habitats Directive

The protection afforded by the Habitats and Birds Directives (which are materially identical) is strict.

Article 6(3) of the Habitats Directive states:

Any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect there on, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives. In the light of the conclusions of the assessment of the implications for the site and subject to the provisions of paragraph 4, the competent national authorities shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned and, if appropriate, having obtained the opinion of the general public.

This is transposed into English law by regulation 61 of the Habitats Regulations. This places competent authorities under a duty to carry out an appropriate assessment before deciding to undertake, or to give any consent, permission or other authorisation for, a plan or project which is likely to have a significant effect on an SAC or SPA.

Regulation 7 of the Habitats Regulations defines "competent authority" to include a public body of any description or a person holding a public office. Importantly, this includes councils acting in their role as licensing authorities under the Licensing Act 2003.

There is a substantial body of case law regarding Article 6(3) which is familiar to environmental lawyers, but possibly less so to licensing sub-committees. In essence, where there is a risk of significant adverse effects to a protected site then there must be an "appropriate assessment" of the environmental effects. Such a risk exists "if it cannot be excluded on the basis of objective information that the plan or project will have significant effects on the site concerned". In case of doubt as to the absence of significant effects, such an assessment must be carried out. It would usually be expected to be carried out by experts instructed by the applicant for the relevant permission, licence or other authorisation. A written report will follow. There are a number of experts who specialise in preparing just these type of reports (albeit in the planning rather than licensing context). They are easily found by internet searches.

The word "appropriate" is not a technical term and simply means that the assessment should be appropriate to satisfy the responsible authority (ie, the licensing authority in our context) that the project will not adversely affect the integrity of the site concerned, to a "high standard of investigation". The appropriate assessment cannot have lacunae and must contain complete, precise and definitive findings and conclusions capable of removing all reasonable scientific doubt as to the effects of the works proposed on the protected site concerned. This issue is a matter of judgement for the authority.

As regards what constitutes a plan or project, this has been broadly interpreted. In *Waddenzee* [2005] Env LR 14 the Court of Justice of the European Union (CJEU) held that having regard to the high level of protection afforded to the environment under EU law, and the "precautionary approach" that must be taken to that environmental protection, *any* intervention in the natural surroundings and landscape constituted a plan or project.

Any application for a premises licence, club premises certificate, temporary event notice or other authorisation which could potentially have an impact on the environment will therefore constitute a plan or project for the purposes of Article 6(3) of the Habitats Directive as defined in *R (Akester) v DEFRA* [2010] EWHC 232 (Admin). And, as regulation 7 of the Habitats Regulations makes clear, any public authority is a competent authority for the purposes of the Habitats Regulations and is thus under a duty to comply with the requirements of Article 6(3) of the Habitats Directive. This will therefore include:

a. A licensing committee, sub-committee or officer with delegated powers making a determination under the Licensing Act 2003.
b. The licensing authority, planning authority, or environmental health authority acting as a responsible authority under s 13 of the Licensing Act 2003.

Any of the above bodies must therefore exercise their powers to secure compliance with EU law, including the Habitats Directive, and refrain from actions which would prejudice the fulfilment of the obligations it imposes (see Art 4(3) of the Treaty on European Union and case C-103/88 *Costanzo*).

As a competent authority, when determining licensing applications, the council is under two key duties pursuant to Art 6(3) of the Habitats Directive. Firstly, where it appears that to grant an authorisation under the Licensing Act 2003 *may* have a significant effect on an SAC or SPA (ie, such an effect cannot be excluded on the basis of best available scientific knowledge) then the council *must* require an appropriate assessment be carried out by the applicant. Secondly, if, on the basis of that assessment, a significant effect on the integrity of the SAC/ SPA cannot be ruled out, the council *must* refuse to grant the authorisation.

It may of course be that an appropriate assessment has already been carried out as a result of an application for planning permission. In such circumstances it need not be repeated. However, where no appropriate assessment exists the licensing authority must require it. There are sufficient powers for the licensing authority to request such information under regulations 7(d) and 17 of the Licensing Act 2003 (Hearings) Regulations 2005 (see *R (Murco Petroleum Ltd) v Bristol City Council* [2010] EWHC 1992.

If the appropriate assessment demonstrates that the effect of granting the licence or other authorisation would be an increase in vehicle trips likely to significantly affect the integrity of the SAC or SPA, then licence or authorisation must be refused.

Conclusion

The potential consequences are extremely significant. A great number of festivals are held in rural locations throughout the country each year. Their temporary nature means that many do not require planning permission and so the first time an assessment may be required is at the licence application stage. The significant number of vehicle movements created by such festivals nevertheless has the potential to impact upon SAC and SPA. When determining such applications, licensing committees must therefore be alert to their obligations in EU law. It is likely a responsible authority will make a representation in response to any sensitive application and specifically raise the issue. Applicants should be invited to provide the appropriate assessment before their licence application is determined. A failure to do so may result in either the non-determination or rejection of their application. Where this issue is likely to arise licensing authorities should consider amending their statements of licensing policy so that prospective applicants know the duties on them to satisfy the licensing authority that their premises or event will not fall foul of the Habitats Directive.

Gary Grant, MIoL and **Charles Streeten, MIoL**
Barristers, Francis Taylor Building

Is consent from the licensing authority a necessary condition?

Licensing authorities are struggling to cope with the consent system for events with special effects. So why not let organisers make their own judgements on safety, asks **Julia Sawyer**?

Many licensing authorities still attach the following condition, or a condition with similar wording, to a premises licence:

Any special effects or mechanical installations shall be arranged and stored to minimise any risk to the safety of those using the premises. The following special effects will only be used when seven days' prior notice is given to the licensing authority and written consent is provided from the environmental health team: dry ice and cryogenic fog; smoke machines and fog generators; pyrotechnics including fire works; firearms; lasers; explosives and highly inflammable substances; real flame; and strobe lighting.

Is this condition to obtain consent necessary?

Special effects are used in many entertainment venues or at events. The artistic director uses them to give a certain ambience during a performance (smoke or fog), or to create a "wow" factor (pyros or lasers) or make the audience scream with fright (gunshot) or produce any of the many other effects that are used to make a performance memorable.

Whatever effect of this kind is used, there is an element of risk, and both organisers and enforcing authorities understand that they need to ensure adequate control measures are in place to protect those using them and those working near to them as well as the audience.

The legislation and guidance aimed at ensuring event safety includes but is not limited to:

Health and Safety at Work, etc Act 1974
Regulatory Reform (Fire Safety) Order 2005
Fire (Scotland) Act 2005
Management of Health and Safety at Work Regulations 1999
Construction, Design and Management Regulations 2015
Technical Standards for Places of Entertainment
Managing Crowds Safely HSG154
Eguide Association of Event Venues (AEV)
PLASA Technical
BS7909 – Code of practice for temporary electrical systems for entertainment and related purposes

Who has ultimate responsibility?

It is the responsibility of organisers to ensure they comply with the relevant legislation and guidance for whatever special effect they are using. Proof of this compliance should be set out in documents such as event safety plans, risk assessments, method statements, construction phase plans, etc. These documents detail the roles and responsibilities and the control measures that will be followed to protect public safety and those working with the effect.

Local authorities, with the condition placed on the premises licence, are putting themselves forward to consent to a special effect being used. But if something goes wrong when that effect is being used, could the authority somehow be implicated on grounds of contributory negligence? At a time when local authority workforces are being cut, this presents a real problem. It can be an overwhelming burden for authorities to keep up with the quantity of consent applications being made: they are often having to study reams of paperwork to give consent to something they have not inspected and have no idea if the procedures outlined in someone's risk assessment or event safety plan are being followed. Often the submissions are made very near to an event opening, putting further pressure on both the authority and organiser if any changes need to be made.

Self-assessment better than consent system

There are many work activities that are just as risky as some special effects, and some more so, but which do not require consent; for example, working at height, manual handling, fixing of signage, using LPG gas in catering, installation of temporary structures, aerial work, etc.

Another potential problem is that consent forms or templates vary by local authority.

Most submissions are suitable and sufficient as the organiser understands the risk or employs someone with the technical knowledge and experience to provide that

Special effects:

Dry ice and cryogenic fog
Dry ice is solid carbon dioxide and it sublimes (turns in to gas) at -78^{0}c. It is used in conjunction with a fog machine to create a low-lying fog effect.

Cryogenic fog effects use the science of the very cold and mainly two different cryogens; liquid nitrogen and liquefied carbon dioxide. A machine heats water to at or near the boiling point, creating steam and increasing the humidity in a closed container. When liquid nitrogen is pumped into the container, the moisture rapidly condenses, creating a thick white fog.

Smoke machines and fog generators
Smoke effects are produced either by pyrotechnic materials or other flammable substances such as incense or HVAC smoke pencils or pens. It is composed of solid particles released during combustion.

Fog / haze effect is created by pumping one of a variety of different glycol or glycol / water mixtures in to a heat exchanger and heating until the fluid vapourises, creating a thick translucent or opaque cloud. It is composed of liquid droplets.

Pyrotechnics including fire works
Pyrotechnics is the science of using materials capable of undergoing self-contained and self-sustained exothermic chemical reactions to produce heat, light, gas, smoke and/or sound.

Firearms
Firearm includes live weapons, air weapons, blank firing weapons, imitation, replica and deactivated firearms.

The term “weapon” includes any object which is designed for inflicting bodily harm such as crossbows, catapults, any sharp-edged instruments used in a fight sequence (swords and knives) or martial arts weapons (such as rice flails) and batons, swords, spears and longbows.

Lasers
A laser is a device that emits light through a process of optical amplification based on the stimulated emission of electromagnetic radiation.

Explosives and highly inflammable substances
An explosive is a reactive substance that contains a great amount of potential energy that can produce an explosion if released suddenly, usually accompanied by the production of light, heat, sound and pressure.

An inflammable substance is something that is easily set on fire.

Strobe lighting
A lamp that produces very short, intense flashes of light in rapid succession.

Real flame
A naked flame.

information. But in some cases, the submissions are totally inadequate in addressing the risks the effect will pose. The local authority must then devote time to explaining what information is missing; and if it still is not provided, it has to go through the procedure of refusing to give consent. This all takes up a lot of the authority’s time.

The consent application helps the organiser focus on what safety measures are required. However, the additional documentation adds to the already heavy paperwork burden. And the application can sometimes be superseded by changes that are made during rehearsals, right up to the opening. If there’s less than a week until the show opens, it may be too late to obtain consent for whatever changes the director would like, which inhibits artistic flexibility.

If asked whether I think the condition to obtain consent is necessary, I would say No. Far better for the company / technician / safety professional with a specialism in the effect, such as an armourer in the case of firearm use, to take the responsibility of ensuring all the required safety measures are in place. The local authority could then decide which venues and events it deems risky enough to require a visit in order to check the organiser’s event safety plan; and it could also take a view on whether the organiser’s compliance track record is poor enough to necessitate on-site inspection.

For organisers, having a local authority visit the site can be very beneficial. It allows them to demonstrate the good practices they have in place to protect public safety, and it can help establish a good partnership with the authority. Having established the credentials of the good organisers, the local authority is freed up to concentrate on the less professional organisers.

Julia Sawyer, MIoL
Director, JS Safety Consultancy

Institute of Licensing News

National Training Conference 2017

November seems a long time ago now, but what a great conference we had! Residential places sold out in August, and we were delighted to be joined by more than 350 delegates, speakers and sponsors over the three days, drawn by a packed programme which delivered a range of information, opinions and discussions on the full range of licensing topics. As always we are so grateful to all our speakers and sponsors who make this event a success year on year.

Adam Perry and Richard Wilson accepting Claire Perry's award

We return to the Crowne Plaza in Stratford for this year's event which will be held from 14-16 November. Planning is already underway to ensure that the event continues to be the essential licensing conference of the year.

Michelle Bignell
Jeremy Allen Award Finalist

The Jeremy Allen Award

The most poignant moment of the conference was the presentation of the 2017 Jeremy Allen Award, which was awarded posthumously to Claire Perry who sadly passed away earlier in the year. The award was accepted on her behalf by her husband Adam and her manager Richard Wilson, and was met with standing ovation from those present at the Conference Gala Dinner.

Joanne Moran
Jeremy Allen Award Finalist

Claire was nominated by nine individuals including colleagues within the Licensing Partnership for Sevenoaks, Tunbridge Wells, Maidstone and Bexley councils, and also more widely by colleagues in the South East region which she supported through her commitment as an IoL regional officer. Claire was described as "an inspirational colleague", a "driving force for the South East Region", "a voice of hope" and "a great forger of partnership working". Apart from her humour and positive attitude Claire will be remembered for her successful implementation of partnership working across four local authorities.

Jeremy Phillips QC receiving the Fellowship Award

Andy Eaton receiving the Fellowship Award

The Jeremy Allen Award is an annual recognition awarded jointly by the Institute of Licensing and Poppleston Allen Solicitors to recognise excellence in licensing and related fields and to award those practitioners who "go the extra mile".

Nominations are by third party only, and other nominees and finalists for the Jeremy Allen Award 2017 were:

- Michelle Bignell, 2020 Partnership (finalist)
- Joanne Moran, Merseyside Police (finalist)
- Austin Young, Watford Borough Council
- Dave Nevitt, Westminster City Council
- Peter Barrow, North West Leicestershire Council

Fellowship award

We were delighted to award two Fellowships during the conference. Fellowship is awarded, following nomination by two members of the Institute, to an individual where it can be demonstrated to the satisfaction of the Institute's delegated committee that the individual has made a significant contribution to the Institute and has made a major contribution in the field of licensing (full details can be found on the website – www.instituteoflicensing.org / MembershipPersonal.aspx).

Fellowships were presented to Andy Eaton from Rother and Wealdon Councils and Jeremy Phillips QC from Francis Taylor Building. The presentations were made during the annual National Training Conference by IoL Chairman Dan Davies and Vice Chairman Gary Grant.

Andy Eaton said: "I feel extremely honoured to be recognised by the Institute of Licensing for admission as a Fellow of the Institute. I am overwhelmed, especially when I look at the calibre of people who have been previously recognised over the years and reflect that my contribution to the field of licensing has made such a difference to so many people. I have been

incredibly lucky over the years to have worked with so many officers and councillors across a range of councils. I would like to thank all those who have enthusiastically embraced the process of training on the peculiarities of licensing, and have worked hard with me to ensure that sound and meaningful decisions can be achieved, no matter how challenging.

"I would like to thank all those officers who have over the years had the courage to introduce the licensed driver penalty points schemes in their areas. This has often been met with quite unnecessary hostile opposition from the trade. However, standards of licensed driver behaviour do improve noticeably following the introduction of the scheme, and it does lead to improved levels of public protection.

"Most of all, I would like to thank the Institute of Licensing for nurturing the expertise of so many officers and councillors whose dedication and commitment to public safety is so often taken for granted by councils. There are few areas where the public are so reliant upon councils to protect them from those people who may seek to take advantage of their vulnerability. That simple challenge has always motivated me to operate to such high standards, and I am grateful to the Institute of Licensing to be recognised with this honour."

Jeremy Phillips QC said: "I am absolutely delighted to accept this Fellowship from the Institute of Licensing. Having hosted one of the Institute earliest meetings in 2003 I have been incredibly impressed by the IoL's development year after year into the amazing organisation that it has now become. Not only does the Institute provide a unique training and networking centre for the licensing world, but it has also become the first port of call of government when considering the impact of current legislation and the need for reform. The IoL can now properly claim to provide an important and central role in the UK's social structure."

National Licensing Week 2018

This year's National Licensing Week (NLW) will run from 18-22 June. The IoL established NLW in 2016 in part to mark its twentieth year, but also to provide a unique platform for all licensing practitioners to celebrate the role licensing plays in business, home and leisure, keeping people safe and enabling them to enjoy their social and leisure time with confidence.

The work that goes on behind the scenes by licensees, operators and regulators is often invisible to the public until something goes wrong. NLW is a chance to change that and raise awareness across the country. It's a chance to "shout out" about the work you do on a daily basis and also a chance to celebrate and promote partnership working.

The underlying message of the initiative is that "licensing is everywhere", and we will be using these daily themes to demonstrate how licensing effects our daily lives:

Day 1 – Positive partnerships
Day 2 – Tourism and leisure
Day 3 – Home and family
Day 4 – Night time
Day 5 – Business and licensing

The aim of the week is to raise awareness on the role licensing plays in everyday life. For full details on the week please visit http://www.licensingweek.org. Last year's event saw some stand-out examples of organisations using the NLW initiative to showcase their role in licensing and, in the case of local authorities in particular, to raise public awareness of the licensing regime and what it achieves. There was a marked increase in engagement with the initiative in 2017 from the previous year, with more job swaps, more planned activities and lots of social media interaction.

This year's NLW promises to continue to build on previous years and we already have lots of planned job swaps and other activities in the planning stages. This is a great opportunity to raise awareness, promote positive partnerships and engage with all parties.

To find out more and get involved please email NLW@instituteoflicensing.org We look forward to hearing from you! #NLW2018 #getinvolved

Consultations

Call for Evidence - A ban on commercial third party sales of puppies and kittens

(closes 18 April 2018)

The Government has published (8 Feb 2018) proposed new rules to modernise and enhance animal welfare requirements applying to dog breeding and other animal activities licensed by local authorities in England and Wales.

These reforms include:

- All licensed dog breeders and sellers of pets, to adhere to strict mandatory welfare standards.
- Prohibition of the sale of puppies, kittens, ferrets or rabbits below 8 weeks of age.
- Pet sellers to advertise their licence number in the advert and which local authority issued it, a photo of the pet, its age, country or residence & origin.
- Requirement for dog sales to be completed in the presence of the purchaser on the premises where the licensed seller/breeder has been keeping the dog (bans online sales).
- Ensures licenced dog breeders show puppies alongside the mother before a sale is made and only sell puppies they have bred themselves.

The IoL intends to respond to the call for evidence, and requests members' views via an online survey to inform our response.

The survey will close on 18 April 2018 at Midnight.

Guidance on determining the suitability of applicants and licensees in the hackney and private hire trades

(closed 12 March 2018)

In December 2015, the Institute of Licensing (IoL) established a working party to look at the creation of a model or standard set of guidelines in relation to assessing the suitability of applicants and licence holders in relation to taxi drivers, operators and vehicle proprietors, taking into account the character of the applicant or licensee.

This 'Guidance on determining the suitability of applicants and licensees in the hackney and private hire trades' is the result of the work of the project team and we welcome views on this consultation draft document. The guidelines include consideration of antecedent history of the applicant or licence holder and its relevance to their 'character' as well as consideration of convictions, cautions and non-conviction information.

The Institute of Licensing is delighted to have the Local Government Association, the National Association of Licensing and Enforcement Officers and Lawyers in Local Government jointly supporting this project with the IoL.

HMRC consulting on tax obligations as licence conditions

(closed 2 March 2018)

The HMRC consultation proposes options to tackle the hidden economy by making access to licences needed to trade conditional on tax compliance, known as 'conditionality'.

An initial consultation in August 2016, discussed the principles of developing conditionality in order to tackle the hidden economy. A response document was subsequently published in March 2017.

The current consultation outlines specific licensing schemes which could be suitable for these changes, selected because existing licence conditions align reasonably well with tax-compliance measures; they apply to sectors vulnerable to hidden economy activity; and there are broader potential benefits to be realised in driving up wider regulatory standards.

Licences issued in the following sectors are included for consideration in the consultation:

- private security,
- taxi and private hire vehicles (PHVs),
- waste management,
- houses in multiple occupation (HMOs) and selective licensing in the private rental sector,
- scrap metal, and
- retail and trade (street trading, market stalls, massage and special treatment premises)

Training and Events

2018 is shaping up to be the busiest year for training in history so far for the Institute of Licensing!

Owing to demand, we have doubled the number of Professional Licensing Practitioners Qualification (PLPQ) courses that we provided in 2017. Locations for 2018 include Bristol, Nottingham, Birmingham, Leeds, Stoke-on-Trent, London and Reading. Further PLPQs in the Eastern and South East regions are to be confirmed at the time of writing.

In April we are holding a Taxi Conference in Swindon for learning and discussion around all hot topics of hackney carriage and private hire licensing. We also hope to repeat this event in the summer in the north of the country.

The pending animal licensing changes will be addressed by a series of training courses throughout the country.

Does your area have local elections in May 2018? If you are a local authority with new licensing committee members who require training then please contact us.

We continue to strive to cover the majority of members training requirements but if you have a training need that is not being met please do not hesitate to contact training@instituteoflicensing.org to see if we can assist.

Regional Officer Focus

Michael Moss, South East Region

Regional events allow professionals in the field of licensing to meet colleagues who work under the same conditions and face the same challenges. We offer professional development training which allows our members the opportunity to perform better in their roles and contribute to a national vision of improved and fairer regulated activities which shape the way we all live and socialise.

For me, licensing was not a predetermined career choice but one I fully embraced and became passionate about when I started working as a licensing assistant for Swale Borough Council in 2007. I became a member of the Institute of Licensing in 2008 and participated in many national and regional training events. As a member of the IoL I had access to a library of case law and best practice being developed nationally, as well as an opportunity to hear the perspective of some of the leading licensing professionals in the UK. In addition it showed that I was serious about my career and my professional development, which always looks good on a CV. At the start of my membership I was unaware of the work undertaken by the Institute but as I raised my profile as a licensing professional I was given the opportunity to join the South East Regional Board.

Following the unexpected, mid-year departure of the Regional Training Coordinator in 2015 I was invited to attend a board meeting and I agreed to take on the vacant role. My volunteering was not without hesitation, not because of the additional work I would be taking on, but I feared I would not have the capability to deliver a high standard of regional events as previously provided by so many professionals. Nevertheless, I took on the unfamiliar challenge and successfully delivered regional events for over two years and received excellent feedback.

The work undertaken on behalf of the South East Region is voluntary, which means some personal time is spent organising events. The most important aspect of putting on a regional event is creating an open, inclusive and supportive environment in which all attendees feel comfortable to participate. I make an effort to ensure a wide range of voices and perspectives are represented at each event. Regional events facilitate networking as well as professional development. These events can be useful for making new contacts and learning best practice. The South East Region also considers venues carefully, to make it an enjoyable “day out of the office”, as well as focusing on the content which is being provided.

Although each region operates differently, the South East Regional Board meets four times a year to discuss the region’s funds, proposed regional events and any survey results. Regional event dates are agreed at the board meetings, subject to venue and speaker availability. We endeavour to deliver four regional events per year including the annual AGM. Obviously not all go to plan, but all members of the board are supportive as is the central team, whose members have helped me out on a number of occasions. By pooling our resources and focusing on the needs of our members, we deliver excellent events for the benefit of all attendees, whether existing members or encouraging new members.

The benefits of being the training co-ordinator were professionally rewarding. I became more recognised as an individual either by leading licensing professionals or by establishing connections with other licensing authorities in and around the South East. I have been able to use those contacts and their guidance in many issues directly impacting on my day-to-day work and in many ways it has improved my overall confidence.

Last year I changed my role within the region to fill the role of communications officer and gave another person the opportunity I had been given as training co-ordinator. Over the coming years I will be looking to further the South East Region’s communication with our members. I will be focusing on reaching all members who, like myself many years ago, do not utilise or appreciate the benefits the IoL can offer to their particular role, whether that be the role of manager, officer or assistant.

Sometimes working on behalf of the region is a challenge, especially with other responsibilities at home or with our day job, but you are never working alone. I have made some wonderful friends and get recognition for the work I have done, but the most rewarding part, however corny it may sound, is the positive comments and smiling faces of the attendees at our regional events. At the end of the day all the hard work is worth it if we are able to deliver the best we can and make our members happy.

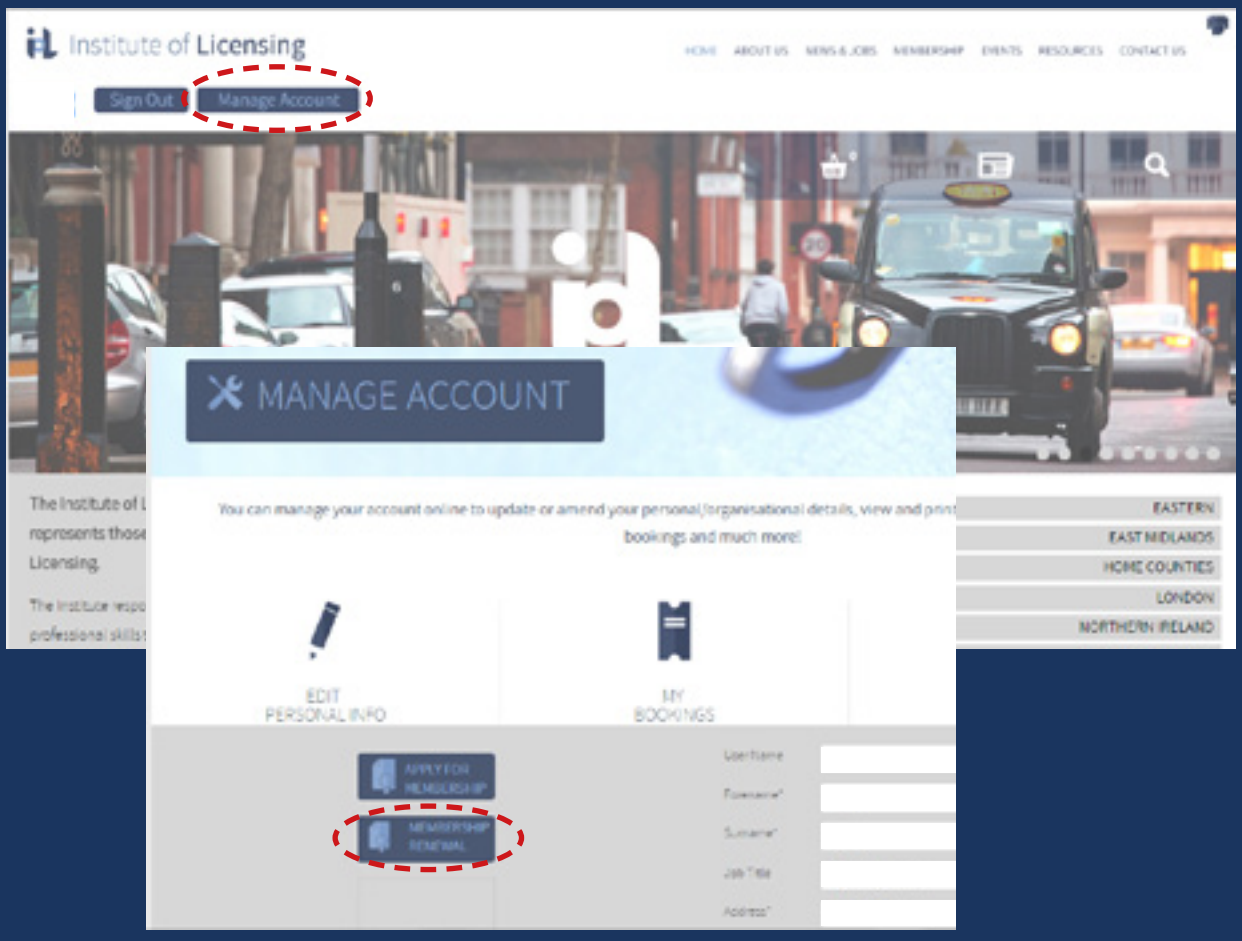
Membership Renewals

The 2018/19 membership renewal date is 1st April. All Associate/Individual members and Main Contacts for organisation membership will be sent a membership renewal email explaining how to download the invoices from the website.

If you have not yet renewed your membership you can log onto the website and go to ***Manage Account***, click on the ***Edit Personal Info*** tab and you should see a ***Membership Renewal*** button as shown below.

By clicking on the ***Membership Renewal*** button you will be able to renew your membership, download your invoice and pay in the usual ways.

If you do not have your website login details or you cannot access the invoice email membership@instituteoflicensing.org and one of the team will be able to assist.



2018/19 membership fee

Personal

• Individual/Companion/Fellow - £80.00

• Associate - £70.00

Organisation

• Small Organisational Member, up to 6 named contacts - £300.00

• Medium Organisational Member, up to 12 named contacts- £450.00

• Large Organisational Member, over 13 named contacts - £600.00

Animal welfare, human safety and zoo management

Zoo licensing presents a number of challenges to councils, particularly if they are minded to refuse a licence when a zoo is not being run properly, as **Ben Williams** explains

In 2013, a 24-year-old keeper at the South Lakes Safari Zoo in Cumbria (known as South Lakes Wild Animal Park at that time) was in the keepers' corridor when she was attacked and mauled to death by a Sumatran tiger. In March 2017, the company pleaded guilty to health and safety offences and was fined nearly £300,000. Charges against the sole company director, Stanley Gill, were dropped.

Against this backdrop of the criminal prosecution, the continued licensing / operation of the zoo came to the fore. There were significant issues over a number of years that had contributed to a seemingly unworkable relationship between Mr Gill and the local authority.

The licence was up for renewal in 2016 and an inspection took place to ascertain the present working conditions of the zoo. Three experts recommended that the licence should not be renewed unless Mr Gill was removed from the decision-making process at the zoo. As owner and controlling mind of the zoo, this was never going to prove straightforward. A further complicating factor was that there was no recorded case of refusal of a renewal of any zoo licence throughout Europe. It followed that the statutory process had never been tested. In anticipation that it might, the local authority was forced to scrutinise the statutory framework, which revealed some potential pitfalls. While this was underway, the renewal decision was deferred for a period of time.

The legal framework

The primary legislation in respect of zoo regulation is the Zoo Licensing Act 1981. This Act was subsequently variously amended by SI 2002/3080 which implemented EC Directive 1999/22/EC.

Pursuant to s 1 of that Act, it is unlawful to operate a zoo except under the authority of a licence issued by the local authority for the area within which the whole or major part of the zoo is situated.

Section 2 of the 1981 Act sets out the scheme for applications for such licences. Before granting or refusing a licence, the local authority must take into account any representations made by or on behalf of the applicant and certain other interested parties. Interested parties may include any person alleging that the establishment or continuance of the zoo would injuriously affect the health or safety of persons living in the neighbourhood of the zoo. The authority must consider any reports made in pursuance of inspections of the zoo. The authority must also consult the applicant about the conditions it proposes to attach to the licence, and make arrangements for the zoo to be inspected.

Pursuant to s 4, the local authority must refuse a licence if it is satisfied that the zoo would injuriously affect the health or safety of persons living in the neighbourhood or seriously affect the preservation of law and order, or if it is not satisfied that the applicable conservation measures will be implemented in a satisfactory manner at the zoo.

There exists a discretionary power to refuse a licence where the authority is satisfied as to the conservation measures but it is not satisfied as to the adequacy of the accommodation, staffing or management of the zoo. Further, there may also be a refusal if the applicant, an officer of the zoo or a keeper in the zoo has been convicted of an offence under the 1981 Act or any other specified enactment, or any other offence involving ill-treatment of animals.

An original licence is for four years, and a fresh licence granted to an existing licence holder is for six years from the expiry of the existing one (s 5). A licence must be granted subject to conditions requiring the applicable conservation measures to be implemented at the zoo.

Inspections

The framework allows for the continued inspection of a licensed zoo. In accordance with s 10, the local authority concerned must carry out periodical inspections. These must be made during the first year of an original licence and then not later than six months before the end of the fourth year and in the case of a renewed or fresh licence, during the third year and not later than six months before the end of the sixth year.

Provision is made for the conduct of inspections, including the number of inspectors and the right of objection by the zoo

operator to any inspector, the presence of representatives of the operator, the production of the zoo records and the contents of the inspector's report.

The local authority may at any time carry out a "special inspection" of a licensed zoo if it thinks it appropriate having regard to certain specified circumstances (s 11). Such an inspection must be carried out by authorised persons who appear to the authority to be competent for the purpose. Both the appointed inspectors and the zoo operator must be informed of the purpose of the inspection.

The local authority must make arrangements for a licensed zoo to be informally inspected once in each year in which no formal inspection is made.

Renewals

The renewal process is governed by s 6 of the 1981 Act. Section 6 envisages a renewal application not less than six months before the expiry of the existing authorisation. On receipt of an application, the local authority can ultimately, either extend the period of the existing licence (s 6 (1)(a)) or it can direct the applicant to apply for a fresh licence in accordance with s 2 (see above).

Prior to any extension, the authority must obtain a report (the format of which is covered in s 9) and consider the same. In the event of a direction for a fresh application, the existing licence remains in force until that application is determined.

Alteration of licences

The local authority may alter a licence at any time after its grant if it considers it necessary or desirable for ensuring the proper conduct of a zoo during the period of the licence (s 16). The licence holder must generally be given an opportunity to make representations.

Where an authority has made a direction concerning a licence condition which has not been complied with, and the period specified in that direction has expired, and the authority is satisfied that a condition specified in that direction which requires any conservation measure to be implemented at the zoo is not met in relation to the zoo or section of it concerned, then the authority must make such alterations to the licence as it considers to be necessary or desirable to ensure that the section of the zoo in relation to which it is satisfied that the condition is not met is closed permanently to the public.

An alteration under the provisions described above may be by varying, cancelling or attaching conditions or by a combination of those methods.

The right of appeal

There lies a right of appeal to the Magistrates' Court in respect of a number of decisions made by the local authority, including: the refusal to grant a licence; the attaching of any condition to a licence; and any variation or cancellation of a condition. Such an appeal must be brought within 28 days from receipt of written notification of the authority's decision.

On an appeal, the court may confirm, vary or reverse the local authority's decision and may give such directions as it thinks proper.

As is typical of licensing laws, certain directions have no effect during the appeal period, nor, where an appeal is brought, before it is determined or abandoned.

Refusing to renew

It is certainly worth noting for any local authority that, pursuant to s 16E, the licensing authority has to assume care for the animals in the event that the zoo is either closed, abandoned or the operator has no available funds to deal with the animals post closure. This is not of course a reason not to close a zoo or refuse a renewal, but it does present some pause for thought for authorities. It certainly lends credence to the need for a diligent inspection regime.

The main question on the lips of those involved with this case was whether a renewal could simply be refused given that s 6 simply says "extend or direct a fresh application" and if so what the net effect would therefore be, including whether there would be a right of appeal.

There is no doubting that the statutory framework is unique, albeit there are clear analogies to be drawn with other licensing frameworks. The scheme is plainly engineered towards ensuring that the welfare of animals exhibited in zoos is of paramount importance, as well as the safety of those visiting and living in the vicinity. With this in mind, the statutory scheme does not envisage that once a zoo is operating pursuant to a licence, it will be closed down immediately so that animal welfare is placed at further risk.

Certainly s 6 envisages that, should no straightforward renewal be granted, then while the fresh application is made, the zoo remains operational. The scheme also makes express provision as to the timing of renewals so that a smooth transition may be made. Of course, other enforcement laws may intervene so as to temporarily close down the zoo in the event of a serious incident.

Pursuant to the governing framework, the licence durations allow for a consistent and structured inspection regime

and also ensure that zoos are not bogged down in yearly applications. The scheme does not seemingly envisage that a refusal to renew of itself is a permissible decision. This is supported by the absence of any right to appeal a refusal to renew in s 18.

The scheme plainly envisages that by having to effectively apply afresh as opposed to enjoying a further six years of permission, the applicant zoo is put through a more onerous exercise and those interested parties outside of the local authority decision-makers are able to be involved in the process once more. The degree of supervision is therefore enhanced, and also reflected in a licence (permission) that runs for four years as opposed to six years.

This more onerous exercise enables the local authority, as decision-maker, to conduct a fuller and therefore more thorough examination of the zoo and its impact on the welfare of the animals it houses. Consequently – the answer was No, the local authority could not simply refuse to renew the licence. If a council is not satisfied that the inspection report provides sufficient cause to renew the existing licence, then it must direct that the zoo make a fresh application.

It followed, that if the Act did not envisage a refusal to renew, then there was no right of appeal had the council taken this course. Although this seemingly did conflict with DEFRA's guidance, at the subsequent hearing in July 2016 the council refused to extend the licence and directed that a fresh application be made.

The fresh application

In fact two applications for licences came forward; one from Mr Gill, and one from a limited company comprised of staff members who would operate the zoo under a leasehold arrangement from Mr Gill. Shortly after those applications, in March 2017 the company was sentenced for the health and safety breaches. This appeared to be the last incident in a long line of concerning matters pertaining to the zoo, including: a previous conviction for breaching health and safety rules; the death of some 500 animals over four years; the euthanasia of seven healthy lion cubs and five young baboons because there was not enough space to keep them in; Mr Gill shooting 18 Sacred Ibis birds after he was threatened with prosecution for letting them fly free; a giraffe being shot by its keeper after collapsing; and two snow leopards which were found partially eaten.

These matters were addressed in an inspection report which also noted that inspectors were "dismayed by the obvious deficiencies in the accommodation, the overcrowding and the lack of proper welfare and husbandry". Inspectors said they believed that if a new licence was granted there was "a reasonable likelihood that animals may continue to escape, and that if escaped they might injuriously affect the health or safety of persons living in the neighbourhood".

Against the backdrop of that report, in March 2017 Mr Gill's application was, perhaps unsurprisingly, refused. He lodged an appeal no doubt to protect his position, however, and in May 2017, Cumbria Zoo Company was granted a new four year licence. Evidently the inspection team were encouraged by the improvements made during the six months since Mr Gill had handed over the lease.

Conclusion

It might be that similar circumstances do not arise in future. However, councils that license zoos may be called upon from time to time to deal with relevant licensing issues and they ought to approach such matters carefully. The inspection regime must be properly set and thereafter properly supervised, for it is those inspections which dictate how the future licensing will be conducted.

The questions posed at the point of renewal must be the same questions posed at the point of any fresh grant. It is relatively straightforward for the decision maker to refuse a licence if they are satisfied that the establishment or continuance of the zoo would injuriously affect the health or safety of persons living in the neighbourhood of the zoo or seriously affect the preservation of law and order. The more difficult scenario comes where the council is not satisfied that the standards of accommodation, staffing or management are adequate for the proper care and wellbeing of the animals or for the proper conduct of the zoo.

Councils would want to act properly and proportionately. Refusal would plainly be the last option, and the option that is only taken assuming any inadequacies identified are such that the council cannot be satisfied that the animals' welfare can be properly met, even by imposing conditions (including conservation measures); or, that while they are satisfied conditions may be adequate, they are not satisfied that the conditions will be implemented in a satisfactory manner.

Councils would be mindful that there is a right of appeal against their decision and while the magistrates should be slow to intervene (*R (on the application of Hope & Glory Public House Ltd) v City of Westminster Magistrates' Court* [2011] EWCA Civ 31 applied) they would be entitled to do so where the decision was wrong. The fact that any appeal stays the impact of the council's decision is also a relevant factor to take into account.

Ben Williams
Barrister, Kings Chambers

The Lords report - not The End but The Beginning

The recent debate on the House of Lords licensing report showed there is much still to play for as Government looks to implement changes that few expected, writes **Sarah Clover**

On 20 December 2017, members of the House of Lords Select Committee on the post-legislative review of the Licensing Act 2003 debated the Government's response to their recommendations.

This, it might have been imagined in advance, would be a dull affair, simply re-hashing old ground, chewing over stale arguments, and with no prospect of action. Nothing could have been further from the truth, and those who have already moved on from this topic, having concluded the Government was not interested in the House of Lords Report and that nothing is going to change as a result of it, need to think again.

The Government response to the report did not by any means reject out of hand all the recommendations that were being made, although it is true that some attracted only the faintest indication of any imminent implementation, and some failed to find any favour. However, even the most radical of the committee's recommendations, those concerning planning & licensing, received a response indicating that further consideration would be given to the subject matter, if not the specific recommendations themselves. And the debate on certain other topics definitely raised eyebrows.

The Lords did touch on matters in their debate that are no longer in dispute, such as the rejection of Promotion of Health as a licensing objective, training for councillors and police, and the "wait and see" approach to minimum unit pricing. But some of the most striking contributions concerned matters that might have been thought to have been laid to rest but clearly are not. Those who imagine that the issues of Late Night Levy (LNL) and Early Morning Alcohol Restriction Orders (EMRO), for example, are now beyond debate should have listened to the speech of Lord Smith of Hindhead, Chairman of Best Bar None, who pulled no punches in making some of the hardest-hitting criticisms of what he described as "unfair" burdens on the licensed trade.

He set out his agenda with his opening remark that "the Licensing Act 2003 was created before Google, Facebook or online shopping, and is increasingly looking like a cheque book in an online world, with too much emphasis and regulatory liability on the on-trade compared with the off-trade".

He then launched a sustained challenge to the Government's dogged commitment to late night levies, and EMROs, which ensured that these topics are going to remain on the agenda for debate for some time to come. Describing the measures as unfair and unpopular, Lord Smith was supported by fellow Peers, Baronesses Eaton and Henig, who agreed that the burdens outweighed the benefits. The inescapable fact is that only nine of the 350 local authorities have introduced a LNL since 2011, and none of them has touched an EMRO.

It is very clear the Government is not ready to make concessions on LNL and EMRO but there are already signs of movement on other matters highlighted by the report. For example, the official Government response on the extension of the 2003 Licensing Act in airports was that it agreed with the concerns surrounding holiday drunkenness and associated incidents of "air rage" but needed more evidence before acting. It is not clear why, since there was a wealth of evidence available to the committee which informed the report recommendations in the first place. However, in early January 2018, there was a flurry of press reports, from a source unknown, indicating that the Government seemed minded to impose licensing regulation airside, although the reference was still being made to "more evidence". There seems no doubt that airport licensing will change at some stage in the future.

Another area that is undoubtedly ripe for further attention and action in 2018 and beyond is the appeals system. The Government response accepted that changes could be beneficial, although there was rejection of the specific recommendation that appeals should go to the Planning Inspectorate. That suggestion by the Lords committee was based upon the range of perceived benefits that would come from that planning appeal process, including expert decision-makers, precedent decisions and more flexibility. Those benefits are potentially available in other appeal regimes as well, and the Government has not ruled out seeking those benefits for the licensing system via another route, once it

has considered best practice in other appeal areas.

The chair of the committee, Lady McIntosh, pressed the issue, saying that she "could not understand how a magistrate, who is no longer considered by the Government to be the right person to consider a licensing application, should nevertheless be the right person to hear an appeal". She highlighted the benefits of the First-tier Tribunal as a preferable home for licensing appeals, which is where gambling appeals go. She also highlighted that the evidence to the committee had indicated significant scope and potential for mediation in the licensing appeal system and she welcomed the Government's acceptance of increased mediation as a positive move.

The response of the Minister, Baroness Williams of Trafford, on this subject was interesting. She said that although there was no intention to change the appeal system "at present", the Government accepted the committee's findings "that the licensing appeals system could be improved and we are aware that some local areas find the system unwieldly and prone to delay. We will explore with partners whether there is good practice in the existing regime and similar regimes that might offer some ideas for consideration."

This certainly signals change, and could be read as an indication that there is appetite in Government for a more fundamental reform of the appeals system, including a serious examination of how mediation could be integrated to achieve early and effective outcomes. The evidence presented to the Lords committee would tend to confirm that such radical reform would be universally welcome, and this is clearly a headline topic in licensing for 2018, and an area to watch closely.

There was one more surprise to come out of the debate, again owing to Lord Smith, who appeared to track most closely the particular concerns of the trade. He raised the issue of the fee multiplier, which was not the subject with the highest profile in the Lords' report, but is a matter of key interest to all those who have to pay it. In response to his queries as to why this additional form of taxation was imposed on the on-trade but not, for example, supermarkets, the Minister, Baroness Williams stated: "My noble friend Lord Smith of Hindhead talked about the multiplier. The fee multiplier is applied to premises which predominantly or solely sell alcohol in high volumes. These are often referred to as vertical drinking bars and make up a very small percentage of premises subject to a licensing fee. The high fee reflects the high volumes of alcohol sold in the night-time economy".

This is not an approach that many licensees will recognise from their own licensing authorities, who routinely use the Valuation Office Agency (VOA) categories, or turnover or profit figures, or even Facebook pages to attempt to calculate whether premises are "exclusively and primarily" concerned with alcohol. There can be no doubt that such an approach should be revisited as a result of this welcome and important clarification from the debate, which chimes with the original debate on the introduction of the fee multiplier, all those years ago in 2005, when Lord McIntosh of Haringey said:

> *Fees are not an alternative source of revenue. They cannot function as taxation. Fees can only recover the costs of the services provided in carrying out the legislative function approved by Parliament. Fees therefore have nothing to do with what any individual, business or club can afford to pay. They have nothing whatever to do with what anyone should pay, based on moral ground. Fees are not a substitute for the taxation needed to police the streets and control the behaviour of individuals once they are beyond the control of licensed premises and licensees.*
>
> *It has been argued that it was an error to apply the multiplier only to pubs and not to nightclubs because customers coming out of nightclubs cause just as much trouble on the streets. But that misunderstands the function of licence fees. The policing of the behaviour of customers after they leave premises is a matter for general taxation, which is a quite separate debate.*
>
> *Fees can legitimately cover only the costs of carrying out licensing functions and enforcing licensing offences on the premises themselves, not outside. The difference between nightclubs and pubs goes directly to that issue. … the evidence from the police and others is that costs relating to [large public houses, and] the enforcement of licensing law on those premises are likely to be higher than those relating to nightclubs. My answer to the noble Lord … Clement-Jones, is categorical: no, we do not propose to make nightclubs pay the multiplier that applies to pubs.*

This in itself is an eyebrow raiser, in our more informed position in 2018.

Finally, many have asked the question, "What happens next?" It would be easy to conclude that these type of reports, with their recommendations and the Government response thereafter, are too staid and formulaic to be of much interest to those involved at ground level, but this would be a mistake. Change in law comes through a political route, and when committed politicians take the bit between their teeth, as they clearly have done here, then it is wise to watch their direction closely.

Sarah Clover, MIoL
Barrister, Kings Chambers

Private hire operators and the Deregulation Act 2015

The *Skyline* ruling has spelt out the conditions that must be met for private hire vehicles to sub-contract between districts using a remote booking system, as **Roy Light** explains

Private hire vehicles (PHVs) require a vehicle licence, driver's licence and operator's licence (known as the "trinity of licences"). These must be issued in the same licensing authority district. This enables the authority to have oversight of the business and to monitor and enforce its operation in the interests of public safety.

Traditionally, the legislation and case law were clear that while an operator could sub-contract a booking to another operator in the same district (while maintaining the trinity of licences) a booking could not be transferred to a different district. However, the Deregulation Act 2015 has fundamentally changed matters.

Law

PHVs are regulated under the Local Government (Miscellaneous Provisions) Act 1976. PHVs may only be operated by a licensed PHV operator. "Operate" means "in the course of business to make provision for the invitation or acceptance of bookings for private hire work" (s 80(1)). The operator has a duty to ensure that both the vehicle and driver are properly licensed.

Section 46(1)(d) provides that it is an offence to operate a vehicle as a PHV without having obtained a licence under s 55. The authority may impose conditions on the licence (s 55(3)) and the contract is with the operator who accepted the booking (s 56(1)); records must be kept in such form as the authority by conditions prescribes (s 56(2)&(3)); and if any person without reasonable excuse contravenes the provisions of s 56 he shall be guilty of an offence (s 56(5)).

Sub-contracting

Section 56(1) envisages sub-contracting as it states that the contract shall be deemed to be with the operator who accepted the booking "whether or not he himself provided the vehicle". Prior to the Deregulation Act 2015 the law was clear that while it was lawful to sub-contract within a district it was not lawful to operate PHVs by making provision for the invitation and acceptance of bookings received in another district[1] (for example, where a company has offices and operator's licences in two districts and its phone or online booking system at its office in one district diverts automatically to its office in the other district).

In *Shanks* the court considered that:

> *It is clear that whenever any operator acts by making provision for the invitation or acceptance of bookings for a private hire vehicle, he must use vehicles and drivers licensed by his licensing authority. He is perfectly entitled to do that by way of sub contract; but he cannot obtain the use of vehicles or drivers licensed by another authority in order to carry out the booking which he has as an operator made provision for by way of invitation or acceptance (para 27).*[2]

However, Latham LJ noted:

> *There is no doubt that there are advantages operationally and in the provision of a service to the public to be gained from a more flexible form of control. Accordingly, there may well be good policy reasons for revisiting the structure which has been created by the 1986 action (sic). In particular, there has been a significant development in modern communication systems which may make the demarcations, which are consequent upon the construction of the Act, which I consider to be correct, too restrictive in the public interest. But that is not a matter for this court. That is a matter for Parliament (para 25).*

Deregulation Act 2015

Section 11 of the 2015 Act inserts new provisions into the 1976 Act relating to sub-contracting of PHV bookings. Section 55A(1)(b) permits a PHV operator to sub-contract a booking *inter alia* "where the other person is licensed under section 55 in respect of another controlled district and the sub-contracted booking is accepted in that district". Section 55A(2) provides:

> *It is immaterial for the purposes of subsection (1) whether or not sub-contracting is permitted by the contract between the person licensed under section 55 who accepted the*

1 *Dittah v Birmingham City Council* [1993] RTR 356; *Murtagh v Bromsgrove DC* [1999] All (D) 114.

2 [2001] EWHC 533 (Admin).

booking and the person who made the booking.

Section 55A(3) provides: *Where a person licensed under section 55 in respect of a controlled district is also licensed under that section in respect of another controlled district, subsection (1) (so far as relating to paragraph (b) of that subsection) and section 55B(1) and (2) apply as if each licence were held by a separate person.*

Thus an operator is able to sub-contract between districts as well as within the same district. It is also possible for a company with operator's licences in more than one district to sub-contract with themselves; as they are treated as separate persons (s 55A(3)).

Section 55B deals with sub-contracting and criminal liability. It provides that:

1. *"the first operator" means a person licensed under section 55 who has in a controlled district accepted a booking for a private hire vehicle and then made arrangements for another person to provide a vehicle to carry out the booking in accordance with section 55A(1);*
   "the second operator" means the person with whom the first operator made the arrangements (and, accordingly, the person who accepted the sub-contracted booking).
2. *The first operator is not to be treated for the purposes of section 46(1)(e) as operating a private hire vehicle by virtue of having invited or accepted the booking.*

Sub-contracting would therefore not render an operator liable under s 46(1)(e). However, if the second operator utilises a vehicle and / or driver from a different district there may still be criminal liability under s 46(1)(e) for both operators - for s 55B(3) provides that the first operator is guilty of an offence if he knew "that the second operator would contravene section 46(1)(e) in respect of the booking".

Milton Keynes Council v (1) Skyline Taxis and Private Hire Limited (2) Gavin Sokhi[3]

Skyline Taxis has operator's licences in the districts of South Northamptonshire Council (SNC) and Milton Keynes Council (MKC). Work was sub-contracted between them utilising the iCabbi computerised booking system. A customer in Milton Keynes phoned the automated system and pre-booked a journey within Milton Keynes. The iCabbi system transferred the booking to South Northamptonshire and a vehicle and driver both licensed in SNC were used.

MKC prosecuted Skyline and the driver under s 46(1)(e) for operating a vehicle as a PHV for which a s 48 vehicle licence issued by MKC was not in force, driven by a driver who was not licensed by MKC under s 51. The basis of the prosecution was that the booking was with Skyline MK, which held an operator's licence issued by MKC, but the vehicle and driver were licensed by SNC. Thus the trinity of licences was breached.

Skyline's defence was that the booking had been transferred from Skyline MK to Skyline SN by the iCabbi system in accordance with s 55.

On 25 May 2017 a district judge found there was no case to answer as the prosecution had failed to show to the criminal standard of proof that the booking had not been transferred to Skyline SN under s 55A.[4] The DJ found that Skyline SN had an operator's licence from SNC and that the driver and vehicle were licensed by the same authority.

MKC appealed by way of case stated. The appeal was dismissed.

> *[The] essential issue before the District Judge … focussed on whether treating them as distinct persons for these purposes, Skyline MKC arranged via the iCabbi system for Skyline SNC to provide a vehicle to carry out that booking in accordance with section 55 (para 28).*

It was accepted that s 55 permits sub-contracting between districts providing that the trinity of licences is maintained; but MKC argued that in order for s 55A(1)(b) to be satisfied, and for the sub-contracted booking to be "accepted in that district", something identifiable must happen in the district of the second operator, to whom the booking is transferred. In the Skyline case, it appeared as though nothing identifiable happened in the SNC district, because all the activity took place either in the geographical district of MKC, or in the computer "cloud".

The challenge was essentially to the operation of the iCabbi system. One concern, which the court shared, was the necessity for full and accessible records to be kept by both districts. The court concurred with the DJ that the system was compliant in this respect:

> *The evidence is that the iCabbi system is intended to be a comprehensive, integrated, post-Deregulation Act, web- and cloud based despatch software, which includes a despatch system designed to "manage all aspects of the booking process", using new technology such as Voice Response, the internet and apps; as well as a system to*

3 [2017] EWHC 2794 (Admin).

4 It was accepted that the burden of proof lay with the prosecution.

record the details of the journey undertaken, which, in addition to providing useful management information, is seen as useful as assisting in dealing with incidents that might form the basis of a complaint by driver or customer (para 24).

MKC's argument that to satisfy s 55A the second operator has to take a positive decision to accept the booking and this requires some positive intervention of some description on the part of the second operator was not accepted by the court:

The provisions clearly contemplate a single operator having multiple operator's licences in different areas; and there is nothing in the legislative scheme to suggest the operation in each area has to have a separate and distinct controlling mind (para 46).

MKC further argued that the pre-condition of s 55A(1)(b) that "the sub-contracted booking is accepted in that district" had not been complied with as this meant "that the booking had to be accepted at a base of the second operator which had physically to be within the controlled area where the operator had an operator's licence" (para 50). There was no evidence as to where the iCabbi server was located. This too, although it has to be said in not particularly clear terms, was rejected by the court on the basis that:

"accepted in that district" requires that the second operator "is licensed under section 55 in respect of another controlled district and the sub-contracted booking is accepted as a booking subject to the licence in that district …" (para 52, emphasis in original).

It appears that what is intended by this is that the significance of the statutory wording is to ensure that the booking, once transferred to the second district, is covered by the licences and conditions pertaining in that second district. Geography is not the overriding consideration.

Summary

The Deregulation Act has fundamentally altered the law in relation to PHV sub-contracting making it lawful to sub-contract between districts provided that a transfer is made and the "trinity" of licences is maintained. *Skyline* provides guidance on the new provisions when operated through a remote booking system.

The challenge for licensing authorities is to ensure that their regulatory regimes and conditions on licences they issue keep pace with the technology and safeguard the public. It is essential that both first and second operators keep full records that are available for inspection by authorised officers. Further, the records must be easily accessible in intelligible form without delay should the need arise, for example if there is a road traffic accident or other incident.

Roy Light, FIoL
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Licensing: could indeed be better, Sir Humphrey accepts

The Government has responded cautiously to the House of Lords licensing review but acknowledges improvements to the process could be made. **Richard Brown** agrees

I recently wrote in *Journal 18* that "I look forward to the Select Committee's Report being the beginning of the debate, rather than the end."[1] It was. There has been plenty of commentary on the outcome of the House of Lords Select Committee report following its post-legislative scrutiny of Licensing Act 2003. The *Journal* has covered the topic extensively, but the recent back-and-forth between the Government and the Lords necessitates further comment.

Guidance published by the Cabinet Office known as the "Osmotherly Rules" states that the relevant Government department "should aim to provide the considered Government response to both Commons and Lords Select Committee Reports within two months of their publication". Only in "exceptional circumstances" should a response be deferred for more than six months. The Government response was published on 6 November 2017, a full seven months after the Select Committee published its report.

To be fair, a number of weightier matters have crossed the Government's desk since. Perhaps the Home Office was channelling the approach to prioritising explained by Bernard, the browbeaten assistant to Nigel Hawthorne's Machiavellian mandarin Sir Humphrey pulling the strings of the perpetually muddled minister in *Yes, Minster*. When quizzed on how to keep at bay an ever growing pile of to-do's, Bernard suggests responding to correspondence with "'The matter is under consideration", or even "under active consideration", explaining that "'under consideration' means we've lost the file, 'under active consideration' means we're trying to find it."

To use a cricketing analogy, the response was more Geoffrey Boycott than Viv Richards. A commendably straight bat was proffered in the direction of the Lords' most publicised recommendation, the suggestion that licensing should be subsumed within planning. It will surprise no-one that the Government "does not intend to be hasty" in acting upon the recommendation to radically overhaul the Act. Many of the recommendations which the Government indicated that it is minded to take up will be given effect by amendments to the s 182 Guidance and training for councillors.

In any event, the response was debated on 20 December 2017 in the House of Lords. It is fair to say that many of the Lords were not enamoured of the Government's response.[2]

A number of noble Lords repeated the criticisms made in the report regarding the workings of the Act, and compared the licensing system unfavourably with the planning system which "is well suited to dealing with licensing applications and appeals, in which the interests of residents are always taken into account". The planning system was said to work "much better".

In my previous article I wrote that "if the recommendation is to be taken further, the workings of planning committees should be subject to the same scrutiny as that of licensing committees. I suspect that many of the criticisms would be repeated".[3] I included in my article a selection of random comments about the planning process from a variety of parties, which I had harvested from a cursory internet search. They were startlingly similar to the sort criticisms of the licensing regime which informed the Select Committee's report.

On a similar theme, an article on the *Local Government Lawyer* website caught my eye recently.[4] What was reported sits uneasily with the view that the planning system works "much better" and "always" takes into account the interests of residents.

1 (2017) 18 JoL, p42.

2 http://hansard.parliament.uk/Lords/2017-12-20/debates/AB16850E-BEFD-4A7B-8608-A912C132E114/LicensingAct2003Post-LegislativeScrutiny(LicensingAct2003Report)

3 (2017) 18 JoL, p42.

4 http://www.localgovernmentlawyer.co.uk/index.php?option=com_content&view=article&id=33626%3Atown-council-dissolves-clearly-impotent-planning-committee&catid=63%3Aplanning-articles&Itemid=31

It was distinctly serendipitous that the article was published on the very same day of the Lords' debate. It concerned a town council in Devon which was in the habit of scrutinising and responding to every planning application within its sphere of interest and acting as a conduit for residents' concerns. This would, no doubt, have involved a significant investment of time. The town council clearly considered that the return on this investment of time was negligible and, worse, that the lack of traction which its comments on planning applications garnered with the relevant planning authority was damaging to those residents who had raised concerns with the town council to inform the town council's responses.

A statement issued by the town council stated: "It has been made quite clear in recent years that the carefully considered and well-informed responses to planning applications to [ ] have been ignored by their planning authorities in reaching decisions".

Feeling that their planning committee was impotent, they dissolved it.

Of course, this may be an isolated incident. It was acknowledged by the Select Committee that the evidence against the licensing process was not all one way – indeed the report noted that the Select Committee appreciated that it was perhaps more likely to hear horror stories than examples of good practice. Similarly, it was acknowledged during the debate that local authorities and the Government had rather more optimistic views of the licensing regime – although one of the noble Lord's comments recalled Mandy Rice-Davies' famous aphorism during the Profumo affair – they would say that, wouldn't they?

At least two of the Lords who contributed to the debate brought experience of local government to bear on proceedings. Their comments during the debate are well worth reading. Baroness Eaton, for instance, is an ex-leader of Bradford Metropolitan District Council and an ex-Chair of the LGA. Lord Kennedy of Southwark is a current councillor at London Borough of Lewisham, and sits on the planning committee. The Lords' contributions to the debate is particularly instructive as a counter-balance to some of the other views expressed. Lord Kennedy stated that:

> *The new system has generally worked well, but it is a lot of work for councillors, in my experience….One of the recommendations that I am not convinced about, although other noble lords are, is the trial merging of planning and licensing committees. I serve on the planning committee of Lewisham Council and it is a significant time commitment... Members of both committees take their responsibilities seriously and receive training. I am not convinced, from what I have seen of this proposal, that it would enhance that, but I accept that it is different in other places…*

This point of view was not missed by Baroness Williams of Trafford, responding on behalf of the Government, who said: "Many noble Lords, including my noble friend Lady McIntosh of Pickering, talked about planning and licensing, as well as the experimental merger of local authority licensing committees and sub-committees with planning committees, as mentioned by the noble Lord, Lord Blair. We have not accepted that recommendation; interestingly, the views of noble Lords in the House from the local government perspective perhaps indicate why… We agree that improvements in practice could be made."

The Government did accept the "important points raised by the committee on the effectiveness and consistency of implementation of licensing processes and decision-making across local areas. We agree that improvements in practice could be made."

This must surely be the right approach, at least for now.

Wind of change?

The symbiotic relationship between planning and licensing can already be seen in sexual entertainment venue (SEV) licensing. There is a right of appeal to the Magistrates' Court in respect of a refusal under some grounds (eg, unsuitability of the applicant),[5] but not others (eg, exceeding the appropriate number of SEVs, character of locality).[6] The reason why Parliament did not give a right of appeal to refusals under subsections (c) and (d) is because it saw these grounds as "planning type judgements".[7] This allows me to segue clumsily into the second part of this article.

SEV operators have been put through the mill in recent years. The landscape for SEV operators is increasingly fraught. An SEV licence is subject to an annual renewal process. The grounds of refusal are extremely wide.[8]

Objections to SEV applications from members of the public are usually formulated (whether deliberately or not) on matters pertaining to sub-section (c) and (d)(i) and (ii) of para 12(3) of Local Government (Miscellaneous Provisions) Act 1982:

> *(c) that the number of sex establishments in the relevant*

5 Local Government (Miscellaneous Provisions) Act 1982, Schedule 3 para 12(3)(a).

6 *Ibid*, para 12(3)(c) and (d).

7 Philip Kolvin QC, *Sex Licensing* (Institute of Licensing), 2010, p.98.

8 See, eg, *R (Alistair Thompson) v Oxford City Council and Spearmint Rhino Ventures (UK) Limited Court of Appeal (Civil Division)* [2014] EWCA Civ 9.

locality at the time the application is made is equal to or exceeds the number which the authority consider is appropriate for the locality

(d) that the grant or renewal of the licence would be inappropriate, having regard

(i) to the character of the relevant locality; or

(ii) to the use to which any premises in the vicinity are put;

However, in a renewal application for the famous Windmill International in Soho which has recently concluded in Westminster the objector's focus was instead on sub-section (a) of para (12)(3):

(a) that the applicant is unsuitable to hold a licence by reason of having been convicted of an offence or for any other reason.

Clearly, an objector is going to need to come up with some pretty compelling evidence in order to succeed with this angle. The question arises: how to come up with such evidence? It is much easier for members of the public to monitor compliance with conditions on a premises licence under Licensing Act 2003 as many pertain to what happens outside the premises. The issue of SEV conditions, on the other hand, tends to focus on what happens inside the premises and the behaviour and protection of the dancers.

While hearsay is admissible, as with any licensing hearing,[9] in reality evidence to which a licensing authority will feel confident in ascribing considerable weight will be required for an objector to succeed on this ground.

Plenty of objections to SEV applications state a strong opposition to what is seen as the objectification / exploitation of women without really being able to crystallise this into an persuasive argument within the scope of para 12(3). As the applicant is frequently a company, an objector may not know who are the individuals formally involved (although it is quick and easy to check on the Companies House website). The objector in this case stated that they believe in women's rights, and do not believe in the objectification of women.

There is not necessarily a ready fit between a ground of objection of this type and the grounds for refusal of an application. Objections of this type risk being challenged as a "moral" objection by an applicant.[10] However, what distinguished this objection and made it so powerful was that the objector was able to evidence these concerns by sending a number of retired police officers into the premises to observe covertly. The retired officers provided statements pointing to what was said to be repeated and serious breaches of conditions of the SEV licence. Although the objection did not specifically mention the suitability of the applicant in the terms expressed in the Act, it clearly raised important questions in this regard.

When the licensing authority received the objection and the supporting evidence, it unsurprisingly piqued its interest and council officers undertook investigations of their own which supported the objector's assertions.

The upshot was that the objector's evidence was accepted by Westminster's Licensing Sub-Committee and the application to renew the SEV licence was refused on the basis that the applicant was not suitable to hold an SEV licence due to a systemic failure to comply with conditions on the licence.

Does this open up a new front for objectors to oppose SEV applications? Well, only if i) breaches are occurring; (ii) an objector is aware or suspects this is so; and (iii) an objector has the resources / wherewithal to be able to obtain the evidence.

Richard Brown, MIoL
Solicitor, Licensing Advice Project, Westminster CAB

9 See, eg, *Kavanagh v Chief Constable of Devon and Cornwall* [1974] QB 624.

10 See *R v Newcastle Upon Tyne City Council, ex parte The Christian Institute* [2001] LGR 165.

Scotland embarks on its great pricing experiment

Minimum unit pricing is coming, but as no other country has tried it before, there are likely to be a few teething troubles suggest **Stephen McGowan** and **Michael McDougall**

Last November saw the Supreme Court rule that minimum unit pricing (MUP) was legal, clearing the way for the Scottish Government to implement the Alcohol Minimum Pricing (Scotland) Act 2012. The Scottish Government views MUP as a key component of its strategy to address the health and social consequences attributable to the consumption of cheap, high strength alcohol.[1]

Scotland will be the first country in the world to introduce this particular form of MUP. While debates over the European dimension of the legality went on for some time and have now been settled by the Supreme Court (see below), some of the practical consequences are unclear. The unresolved questions range from how MUP will be enforced on a day to day basis, to how the Government will evaluate its success.

Background

The 2012 Act created a system that allows the Scottish ministers to set a price below which alcohol cannot be sold. In order to achieve this, all premises licences and occasional licences issued under the Licensing (Scotland) Act 2005 will be subject to a mandatory condition. The key provisions of this condition are:

> *6A(1) Alcohol must not be sold on the premises at a price below its minimum price.*
> *...*
> *(3) The minimum price of alcohol is to be calculated according to the following formula —*
> *MPU x S x V x 100 where —*
> *MPU is the minimum price per unit,*
> *S is the strength of the alcohol, and*
> *V is the volume of the alcohol in litres...*[2]

The price per unit will be set by a Scottish Statutory Instrument. While 50p per unit is the Scottish Government's preferred level, the final decision will be made after a consultation exercise.

Prior to MUP being implemented, the Scotch Whisky Association and others challenged the lawfulness of the measure on the basis of non-compliance with EU law. Following a number of challenges through the courts, the Supreme Court found unanimously that MUP is a proportionate means of achieving a legitimate aim and thus complies with EU law. On the SWA's point of taxation being a better means of achieving the aim, the Supreme Court found that MUP targets the health hazards of cheap alcohol and the groups most affected in a way that an increase in tax or VAT does not.[3]

What next?

The Scottish Government's consultation on the appropriate price per unit narrates that MUP begins on 1 May this year.[4] The Scottish Government itself proposes 50p per unit as it "provides a proportionate response to tackling alcohol misuse as it strikes a reasonable balance between public health and social benefits and intervention in the market". Other than this broad statement, no further detail is given as to why this is an appropriate level. A possible key consideration is that this proposed level was used by the University of Sheffield's modelling on the effectiveness of MUP. Accordingly, there must be some utility in assessing the practical impact of MUP on the same basis.[5]

However, it has already been suggested that owing to inflation and a decrease in the amount of alcohol being sold for less than fifty pence per unit, the Government may need to consider increasing the price per unit "early in the six year evaluation period to ensure that it achieves the effect that was envisaged originally".[6] It is unclear how a change in the price per unit would impact on any analysis of MUP's effectiveness.

1 See *Changing Scotland's Relationship with Alcohol: A Framework for Action*, Scottish Government, 2009.

2 Section 1 of the 2012 Act.

3 *Scotch Whisky and Others v The Lord Advocate and The Advocate General,* [2017] UKSC 76; 2017 SLT 1261.

4 *Minimum Unit Pricing of Alcohol,* consultation document, Scottish Government, December 2017.

5 Reports are viewable at https://www.sheffield.ac.uk/scharr/sections/ph/research/alpol/publications#scottish

6 *Scotland's policy on minimum unit pricing for alcohol: the legal barriers are gone, so what are the implications for implementation and evaluation?*, *Addiction Journal*, February 2018, http://onlinelibrary.wiley.com/doi/10.1111/add.14125/full

Once implemented, attention will inevitably turn to how compliance will be achieved. Section 1(1) of the 2005 Act makes it a criminal offence for alcohol to be sold unless it is in accordance with the premises licence. Therefore, a breach of the MUP condition would constitute a criminal offence.[7] Examples of police pursuing criminal charges in relation to such breaches are relatively rare and in practical terms enforcement (and education) will in all likelihood fall to licensing standards officers.

Licensing standards officers are responsible for providing information and guidance and supervising compliance with the 2005 Act. As such, they will be responsible for making sure that licence holders are aware of this new requirement and that it is complied with. At a time of real pressure on local authority staff, it appears that there has been little consideration of how to resource the necessary supervision of this new requirement. We are aware of concerns from some licensing standards officers that they will be tasked with prioritising enforcement of MUP ahead of other duties in order to obtain early figures and information on compliance for political or media reasons. It is understandable that checking every line of alcohol on sale in a supermarket may take some time and detract from other duties.

The 2005 Act sets out a framework for licensing standards officers to secure compliance. If an officer is of the view that a condition is being breached then they must issue a notice requiring that remedial action is taken. If that notice is not complied with, then the officer may make a premises licence review application.[8] In most cases, you expect licensees to take cognisance of the warning notice and correct the price, which if done quickly should be the end of the process. A review can, of course, lead to other steps and ultimately revocation of the licence.

The future

I believe there will be a number of unintended consequences of MUP. For example, a number of wholesalers are licensed as they permit public sales. It will be essential that these wholesalers, despite the existence of a premises licence, can continue to sell alcohol to trade at a trade price that is not captured by MUP. There appears to be significant confusion as to a premises' ability to, in effect, have a dual pricing structure with alcohol being sold to trade at a trade price on terms below MUP. It is to be hoped that the Scottish Government issues guidance to clarify this point.

Alcohol dispatched to Scotland from south of the border, perhaps further to an online order, will not need to comply with MUP as those premises are not licensed by the 2005 Act. This may lead to an increase in Scots purchasing alcohol from England or Wales in order to avoid the price increase. Should such a trend emerge, the Scottish Government may consider utilising its powers under s 139 of the 2005 Act to create regulations that govern situations where alcohol is ordered in Scotland and dispatched elsewhere, so that they are MUP compliant.

Unusually, the 2012 Act sets out that it expires after six years unless it is extended by an order of the Scottish ministers. It states that a report must be made to the Scottish Parliament on "the effect that the operation of the minimum pricing provisions has had on [the licensing objectives, the trade and anyone else the ministers deem relevant]".[9]

At first blush, it would appear that the intent is that the duration of MUP will be extended should the aforementioned report be positive. However, the Act must be extended at the five year mark and the report is to be submitted to the Scottish Parliament "as soon as practicable after the end of the five year period". In all likelihood, we will see the effect of the 2012 Act extended for an indeterminate amount of time pending the report's publication.

One final, possibly quirky impact of MUP that has also been overlooked is the effect it will have on cocktails. While at fifty pence per unit MUP is unlikely to affect prices in pubs and clubs (at present), if I ask for a Long Island Iced Tea and the bartender "free pours" the cocktail (which, of course, is perfectly legal under the Weights and Measures Act), how does the bartender calculate the ABV of that particular drink? Every licence holder will have a legal obligation to ensure they are selling above the MUP and this patently cannot be calculated for free pour cocktails. We shall have to wait and see.

Stephen McGowan and **Michael McDougall**
Solicitors, TLT LLP

7 Punishable by a fine of up to £5,000 and / or six months' imprisonment.

8 Section 14 of the 2005 Act.

9 Sections 2 and 3 of the 2012 Act.

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Music copyright, and how to get it right

Licensees who play music in their venues must ensure all the relevant copyright licences are obtained, on pain of custodial sentence if they don't, as **Sarah Taylor** explains

The world of copyright can seem a world away from the licensed trade. Despite all the publicity regarding satellite broadcasts of sporting events in pubs and the importance of having the correct permissions, the position regarding the playing of music within licensed premises is less clear. Many operators assume that having live and recorded music on their premises licence is sufficient to allow them to play music within their premises and that there are no further requirements. It can therefore come as a shock to be asked to pay a further fee to a music licensing company.

The Copyright Designs and Patents Act 1988 protects the copyright in original literary, dramatic, musical or artistic works, sound recordings, films or broadcasts and the typographical arrangements of published editions. The owner of the copyright in a work has the exclusive right to copy the work, to issue copies of the work to the public, to rent or lend the work to the public, to perform, show or play the work in public (which is a broad concept and can still include places such as private members' clubs), to communicate the work to the public, to make an adaptation of the work or do any of the above in relation to an adaptation.

The copyright in a work is infringed by a person who, without the licence of the copyright owner, does or authorises another to do, any of the acts restricted by copyright.

The concept of keeping a record of every track played and paying royalties to those entitled to receive them is rather overwhelming and would be time consuming and impossible to enforce. Music licensing companies were created, therefore, to collect royalties on behalf of copyright owners and distribute them accordingly.

PRS for Music and PPL (Phonographic Performance Limited) are two organisations, set to merge, which license differing sets of rights relating to the use of some music. PRS collects and distributes licence fees for the use of musical compositions and lyrics on behalf of composers and music publishers; and PPL collects and distributes licence fees for the use of recorded music on behalf of record companies and performers.

If you play music in public, regardless of the type of business you operate, you are likely to require a licence from both organisations but you should also be aware that there may be works which PRS and PPL do not license and therefore alternative licensing arrangements would need to be made with the owner of the copyright. Differing tariffs apply, depending upon the type and size of the business and the purposes for which the music is played. Simply buying a CD and playing this in your premises or streaming music via a service such as Spotify would result in a breach of copyright unless the appropriate PRS / PPL licence had been obtained. The sale of a CD and use of Spotify grants a licence for "personal use" only. Spotify offers a service called Soundtrack Business which is specifically for commercial use but a PRS and PPL licence are still required in any event.

It is also very easy to inadvertently play music without having an in-house sound system. For example, turning on a TV carries the risk of music being played via musical recordings played in TV programs or adverts.

Some pub companies have a "no music" policy, which eases the burden of applying for the relevant copyright and entertainment licences. However, for many operators, music is an essential element of their offer. PRS conducted a survey which found that three quarters of the pubs and bars it surveyed believed that playing music led to an increase in sales, while 93% of those surveyed agreed that playing music created a better atmosphere for their customers.

While there are specific criminal offences under the Copyright Designs and Patents Act 1988 relating to copyright infringement, these rely upon trading standards officers taking enforcement action. But there have been a number of recent civil cases brought by PRS and PPL involving the use of recordings of music in breach of copyright. These cases highlight the seriousness of the potential consequences of a breach of copyright and the importance of ensuring that the business is correctly licensed if it is playing music in a public place.

In *PPL v John (T/A Socialite Bar)* [2015] EWCH 3394, Mr John operated *Socialite Bar* in Muswell Hill where he played music

within the repertoire of PPL without obtaining a licence. PPL obtained an order to prohibit Mr John from playing any music from PPL's repertoire, which was granted in January 2014 along with a costs order against Mr John. The costs and prior licence fees were not paid to PPL and it therefore obtained a writ of execution. However, High Court enforcement officers could only successfully recover a small sum in respect of payment.

In 2015, PPL investigation agents revisited the premises and obtained evidence that the injunction was being breached once again by Mr John. PPL therefore applied to the court for Mr John's committal. Mr John admitted in his evidence that he had been breaching the order. He accepted full responsibility for the breach and acknowledged that he must pay damages and costs. Mr John also issued an apology to the court and to PPL.

The court considered the appropriate sanction and found that although the committal application only related to one specific breach of the order on one particular date, it was evident that there had been further breaches extending over a period of time. The Judge therefore felt that Mr John's contempt of court had to be regarded as a "deliberate and knowing infringement of PPL's rights" in contravention of the court order; and that although this was a first offence for Mr John and involved only a single allegation of contempt, the circumstances warranted a custodial sentence. The Judge imposed a sentence of 28 days in custody, suspended for a period of 18 months, conditional upon the understanding that Mr John did not infringe PPL's rights again. Damages were awarded to PPL in the sum of £3,310.54 plus £108.16 and £550 to cover interest.

In *PPL v Nightclub (London) Limited* [2016] 892 PPL pursued a claim in respect of a nightclub known as *Kolis*. Mr Toska was the sole director and shareholder of the company and also the designated premises supervisor (DPS) of the nightclub. The premises were visited by investigation agents from PPL and it was found that music from PPL's repertoire was being played without the appropriate licence being in place. The company declared that recordings from PPL's repertoire were being played in the premises but solely as background music. PPL issued the appropriate licence to the company but had suspicions that songs from its repertoire were being used for DJ sessions and other entertainment, which attracted a higher licence fee. PPL's investigation agents visited the premises and found evidence to show that those suspicions were correct.

PPL tried on numerous occasions to persuade the company to apply for and pay the fee for the correct licence but was unsuccessful. Proceedings were therefore commenced to prevent the company from continuing to infringe copyright. An order to that effect was made in November 2014 and copies of the order were posted to the company's registered office and the premises. Mr Toska contested the order, stating that he held the correct licence. However, when it was explained to Mr Toska that he required a different level of licence due to the entertainment being provided, he applied for the correct level of licence but failed to pay the invoice issued by PPL to ensure the licence was valid. This led to an injunctive order being endorsed with a penal notice in 2015.

At this time, the premises remained open and playing music in breach of the order and the licence permitting background music had expired. Mr Toska did not respond when PPL made an application for his committal and for a writ of sequestration against the company. The company did pay an invoice which was automatically generated by PPL but, due to the ongoing proceedings, PPL refused to issue the licence.

The Judge held that PPL had complied with all procedural requirements. The Judge also held that where a company is ordered to avoid a particular act, a director of the company who is aware of the content of the order must take reasonable steps to ensure compliance. Wilful failure to take steps in compliance with the order may be punishable for contempt, though there must be some culpable conduct by a director as mere inactivity was not sufficient. As Mr Toska was the only shareholder and director of the company, the Judge found that he was guilty of contempt but adjourned sentencing to a later date to give Mr Toska the opportunity to attend.

PPL V CGK Trading Limited & Others [2016] EWCH 2642 involved a well-known nightclub in Chelmsford, Essex, known as *Miya*. Since 2009, either no PRS licence had been obtained by *Miya* or, where PRS had granted licences, the licence fees had not been paid. Since 2010, PPL had also sought unsuccessfully to license the playing of music within its repertoire at the club but had not been able to do so. Both collecting societies issued proceedings against a series of companies and individuals who appeared to be running the club. The defendants to the proceedings were the premises licence holding company, the sole shareholder of that company and its most recent director and the third defendant, Kerry Ormes, who had been the DPS of the premises since November 2014 and at the time of the proceedings was the manager of the club.

The primary issue was whether Ms Ormes had the authority to authorise the infringing acts based upon her role at the club, and the claim that Ms Ormes was in fact acting in a management capacity. A further issue was whether, as manager, her authority extended to authorising those

infringing acts and whether she did indeed authorise them.

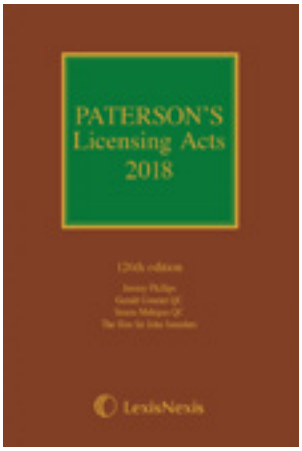
Ms Ormes's contract of employment was examined and although the terms of the contract did not specifically state that she was responsible for ensuring that the playing of music at the premises was correctly licensed, PPL and PRS asserted that Ms Ormes's duties were far more extensive than stated in her employment contract and, for example, she was also responsible for booking acts to perform at the club. Based upon the evidence of the investigating officers, the Judge found that Ms Ormes's responsibilities did extend to booking acts and therefore authorising the performance of music at the venue, which amounted to a breach of copyright. The Judge found that this authorisation had taken place from the commencement of Ms Ormes's employment at the club in November 2014. The Judge awarded PRS and PPL an injunction against the defendants to prevent future infringement and awarded damages against Ms Ormes in a personal capacity given that she had been found to have authorised the infringement.

The theme of all of these cases is that if an individual is involved in the management of licensed premises, particularly with responsibilities for arranging musical performances and entertainment at the premises, a court is extremely likely to find that you have a responsibility to ensure that the relevant copyright licences are obtained. The sanctions in each of these cases demonstrate the seriousness of the offences and highlight the likelihood of an award of damages being made and the possibility of a custodial sentence if persistent infringement occurs.

Both PRS and PPL have comprehensive websites explaining the types of licences available and dedicated teams contactable via phone to discuss the types of music played in a particular business in order to establish which type of licence would be required and to assist with the application process.

Sarah Taylor
Associate, Poppleston Allen

Book Review



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Reviewed by **Debra Allday**, Senior Solicitor, Regulatory Team, London Borough of Southwark and **Andrew Heron**, Principal Licensing Officer, London Borough of Southwark

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Moving forward, it will be interesting to see what effect any eventual outcomes of the House of Lords Select Committee consultation will have on future editions. Given the current political climate, licensing may not be top of the list on the Government's agenda but modifications are almost certainly guaranteed.

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NUMBER 20 MARCH 2018
JOURNAL OF LICENSING