Journal of Licensing

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The Institute of Licensing

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Foreword

Jon Collins
Chairman, Institute of Licensing

A new journal to help inform judgements

Licensing in this country is all too often considered at an emotional level and from a perspective of narrow self-interest. Licensing decisions can be frequently misrepresented as either the latest example of big business buying influence to the detriment of the local area or an out of touch and vote-courting authority unnecessarily restricting enterprise.

In part, this is because of our country's complex relationship with alcohol and the media's desire (at both a national and local level) to simplify and sensationalise matters to create good copy and thus boost their ratings or readership. Within this environment, any attempts to develop Government policy will be subject to a myriad of influences, all too often driven by personal and emotional factors rather than a detached consideration of the evidence to hand. As a result, the development of licensing legislation from initial consultation to enactment is all too likely to be influenced by one-off events and the resultant media demand that "something must be done".

Take, for example, the Licensing Act 2003. This was initially positioned by Ministers in the late 1990s as liberalising legislation intended to "blow the cobwebs off our licensing system" to deliver a cultural change through the introduction of increased competition in the late night market and the creation of a Mediterranean style café bar culture. A decade later and, by the time the new licensing regime went live, it was being portrayed as a thoroughly regulatory move designed to strengthen the voice of local residents and hand more powers to local authorities and the police to prevent, restrict and remove licences from problem (or potential problem) premises.

In reality, the 2003 Act is neither too liberal nor too draconian. Licensing is technical with local, expert knowledge critical for the function to effectively balance off sometimes complementary but often competing interests. It is the implementation and interpretation of legislation at this local level that matters most.

The Institute of Licensing's members are central to this process and collectively we have a role to play in both the practical application of existing legislation and the on-going policy debate. We already have a strong track record in disseminating current best practice and raising standards through our website, licensing flashes and extensive meetings and training programmes. We are seeking a stronger voice within Government – not as a special interest lobbyist but as a trusted and expert adviser. Our commitment to maintaining a "broad church" means we have a breadth and depth of expertise and experience amongst the membership able to provide authoritative insight and advice on all manner of licensing issues.

The ability to take informed decisions nationally and locally is more important than ever given the financial pressures on the public and private sector. Licensing, alongside the other regulatory functions and with the support of an engaged and enlightened trade, can deliver vibrant and safe town and city centres – creating and preserving jobs, generating wealth and providing local and national tax revenue. Licensing practitioners are continually required to take finely calibrated judgements in order to preserve the balance that ensures retailers, customers and residents are all accommodated. Too liberal a policy and excessive competition can trigger alcohol price wars and a decline in standards – such a low quality licensed trade will be of limited appeal and likely to cause disturbance and disorder. Too draconian a policy and the trade will stagnate, venues will close and customers will go elsewhere - spend in outlets and on ancillary services will be lost, the take from business taxes and rates will fall and jobs will go.

This new Journal will allow local practitioners to make those judgements in a more informed way. It also serves as evidence of the Institute's expertise as we engage with officials across Government. In so doing, we are better able to meet the first stated objective of the Institute as set out in our Memorandum and Articles of Association, namely "To advance the development, evaluation and recognition of professional skill, technical competency, ethical conduct and practical achievement in the field of licensing and regulatory activity; including their application in the public and private sectors and in the framing and enforcement of laws and regulations [relating to] licensing and regulatory objectives."

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Editorial

Leo Charalambides

Editor, Journal of Licensing

This first issue of the *Journal of Licensing* is the response to a much-called-for printed publication reflecting the needs and interests of the membership of the Institute of Licensing (IoL). The expanding membership of the IoL includes local authority officers, police authorities, private legal practitioners and consultants along with representatives of trade operators and trade bodies. One of the defining features of the IoL is the provision of a forum wherein which these diverse parties meet together to share knowledge, ideas and experience. This new *Journal of Licensing* provides a further arena within which to have these discussions. In the current age of dwindling resources, the Journal represents a timely and significant addition to the resources provided by the IoL for the benefit of its membership and the licensing profession.

The IoL Board and a specially convened editorial committee set out three key objectives:

- To provide details and coverage, at regional and national level, of the activities and membership of the Institute of Licensing;
- To engage with the entirety of the varied and diverse membership; and
- To provide balanced coverage of the whole spectrum of local government and associated licensing law & practice.

Additionally, in line with the increasing professionalism of licensing practitioners, and the IoL goal to achieve accreditation for the licensing profession, it was deemed necessary that, as far as possible, the submissions to the Journal are to be peer reviewed.

My pleasure on being appointed Editor was countered by the challenge posed by this brief, amounting as it does, to pleasing most of the membership most of the time. Meeting this task I am joined by the two Deputy Editors: Julia Sawyer and Andrew Pring. We are all enormously supported by Natasha Mounce, who adds Editorial Assistant to her already heavy workload. I am equally grateful to all those members who contributed to the preliminary editorial and production meetings; and look forward to the continued feedback and input from members and the readership.

To meet our objectives, and ensure consistency, it was decided to adopt a broadly fixed structure to the new Journal. Each edition of the thrice-yearly Journal will open with a foreword from our Chair. At the heart of each issue, the IoL Pages provide a regular update of Institute events and initiatives. These pages will become increasingly important as the IoL develops its role as a consultative body: it is here, for example, that the summary of the IoL response to the DCMS proposals to deregulate Regulated Entertainment will be found.

A series of Regular Features will provide updates on Gambling Law and Practice (Nick Arron), Taxi Licensing (Jim Button), Event Management and Public Safety (Julia Sawyer) and the viewpoint of Interested Parties (Richard Brown). The trade impact will be considered through a combination of a Night Time Economy update along with regular trade data and statistics (Jon Collins).

These Regular Features will be supplemented by articles, submitted by and commissioned from the huge expertise of our membership. Each edition will contain an in-depth leading article. In this edition Andrew Grimsey examines the short and long term proposals for the deregulation of live music.

Each issue will also contain four further articles (two standard and two concise) providing a discussion of the wider implications of licensing law and practice (the relationship between CCTV conditions and data protection law) or an examination of some of the thornier issues (opening hours).

Finally, the experience of licensing professionals is that we are not a shy retiring bunch. Commonly our meetings and events are enlivened by opinionated and passionate debate. The Journal seeks to capture this vibrancy and will in each edition invite two leading licensing personalities to provide a bold and forthright opinion on the issues of the day.

It seems to me that the success of the Institute of Licensing is built upon the voluntary efforts of our membership and the enthusiastic participation of that membership; as we grow in professionalism and commercialism I earnestly hope that this cooperation and collegiality will not be lost. So many of our members have contributed their time and effort to the development and production of this new Journal and my thanks goes out to them all. The response to my requests for assistance and submissions has been generous and over whelming; indeed, I already find myself with material for the second and third issues! I take this as a promising and auspicious launch of the *Journal of Licensing*.

I thus welcome you to this first edition of the *Journal of Licensing* and hope that you derive as much pleasure from reading the Journal as we have had in preparing it.

Leading Article

Anatomy of the Live Music Bill

Musicians and their supporters have longed argued that the Licensing Act 2003 has harmed small live musical events and earlier this year the Government conceded changes were indeed required and gave qualified support to the Private Members' Bill now proceeding through Parliament. **Andrew Grimsey** explains the provisions of the Bill and their likely effect

All Parliamentary Bills have to start somewhere, and the Live Music Bill was no exception. For me it started in the House of Lords restaurant. My host was the tenacious and gracious Liberal Democrat Spokesman on Culture, Media and Sport in the House of Lords, Lord Tim Clement-Jones. The issue being discussed over Indian tea and Chelsea buns was the important aim of liberating live music from a sometimes overly bureaucratic, and occasionally nonsensical, licensing regime of the Licensing Act 2003.

Since that first meeting, now, over two years ago, I have been involved in the co-drafting of the Live Music Bill, advising and assisting both Lord Clement-Jones and the Government (which now supports the Bill) both in meetings and in the debates that have taken place during the Bill's passage through the House of Lords.

Lord Clement-Jones' Bill is a Private Members' Bill. Although few Private Members' Bills ever make it on to the statute book, the Live Music Bill, in its present form, is supported now not just by the Government, but has cross-party backing. It has a real (although by no means guaranteed) chance of becoming law.

The purpose of this article is to give an insight into the provisions of the Live Music Bill and their likely effect if enacted. As licensing professionals, we are often trying to interpret statute with a view to lifting the veil on the sometimes inscrutable "intention of Parliament". Uniquely, perhaps, the task with the Live Music Bill is a little simpler – the intention behind its occasionally complex provisions, at least at its initial stages, was that of a few individuals trying to improve the lot of live musicians and the millions of people who enjoy live music.

Background to the Live Music Bill

When the Licensing Bill was going through Parliament, in 2002-03, a powerful case had been made by the music industry, performers' unions and live music campaigners that entertainment licensing was harming small gigs. They argued for an exemption, and this was duly put forward by the Conservatives in the House of Lords, backed by the Liberal Democrats. But there was opposition from the police and local authorities on the grounds that this would cause crime and disorder. The proposed exemption amendment was only defeated by the then Labour Government after going back and forth several times between the House of Lords and the House of Commons.

By 2009, however, momentum for an exemption had significantly increased. Evidence was building that small-scale performance was indeed suffering under the new regime. This was reinforced in the Sixth Report of Session 2008-09 the House of Commons Culture, Media and Sport Committee. The Report, published in May 2009 concluded, among other things, that the Act was harming small-scale performance, and recommended an exemption for venues up to 200 capacity.

Building on this momentum, the Live Music Bill was launched in July 2009 as a Private Members' Bill by Lord Clement-Jones, then a Liberal Democrat peer; this first bill failed early in 2010 due to lack of Parliamentary time. Lord Clement-Jones, now a Government backbencher, relaunched the bill in an amended form later that same year. In March 2011, at the bill's Second Reading in the Lords, the Coalition

Government announced its qualified support, subject to changing the exemption cut-off from midnight to 11pm and other technical amendments. In July these were agreed at the bill's Third Reading, and the bill now enjoys the Government's full support.

The current problem

Despite the positive auguries for the Live Music Bill, the current position remains that under the Licensing Act 2003. The current regime can often result in the grant of a Premises Licence or Club Premises Certificate which contains numerous noise-related conditions. Typically, doors and windows have to be closed during regulated entertainment, even in small venues without air conditioning, or all music must be played through expensive noise limiters. Music has to cease at times when most customers would be expecting to see the band warming up. The licensee has run out of TENs, and cannot afford the cost (or the risk) of making a variation application. The list goes on.

The consequence is that the Licensee is often unwilling to allow live music performers to play at their premises for fear of breaching these conditions and facing a review or prosecution.

I am not here to argue the merits or otherwise of the live music lobby. Onerous conditions do not exist on every licence in the country, nor are licensing sub-committees or responsible authorities universally hell bent on restricting live music. But there are many premises licences and club premises certificates with what many would consider to be onerous and disproportionate music-related conditions.

Just as important is the perception by licensees and bands that they are constantly treading on ice. In a nation that has seen the genesis of the Beatles and Coldplay – not to forget Genesis – the question perhaps is this: should it be a criminal offence *per se* to allow musicians to perform on a premise for the purpose of entertaining others, simply because the premise's licence holder does not have the necessary authorisation?

The current regime

Section 177, titled "dancing and live music in certain small premises", of the Licensing Act 2003, contains provisions aimed at easing the regulatory burden for licensees of small licensed venues where live music is being played. Section 177 was a messy, last minute compromise during the final stages of the Licensing Act 2003. It is hideously complex and trying to decipher it is akin to reverse-engineering a crashed plane. Experience suggests that section 177 is poorly comprehended and very rarely invoked.

It is submitted that the existing section 177 is flawed; firstly by reason of its complexity, and secondly, by reason of its limited effect. Space does not allow me to discuss these in detail but in a nutshell it disapplies certain music-related conditions on premises licences or club premises certificates, subject to certain criteria.

For a typical pub or restaurant with a permitted capacity of no more than 200 persons, where music entertainment is provided, certain licence conditions relating to the provision of that music entertainment do not have effect, even if the music entertainment is amplified. For any premises where unamplified music takes place between 08.00 and midnight, where the premises has a permitted capacity of no more than 200 persons, certain music related conditions also do not have effect.

However, for amplified music (the first example), if those music-related conditions were imposed (even partially) under the objectives of crime and disorder and/or public safety (not public nuisance) then they are not disapplied. This qualification does not apply to the unamplified music provisions. In all cases, the disapplying provisions of section 177 themselves will be disapplied, if, following a review of the licence or certificate those music related conditions are altered or added to include a statement that section 177 does not apply to them.

Further, the definition of "licensing authority imposed condition" is set out and includes conditions imposed at a licensing authority hearing following a new premises licence application or a variation hearing (and the equivalent for club premises certificates) but it does not include conditions which were added to the licence as a result of being set out in the applicant's operating schedule.

Nor has section 177 been amended to include conditions imposed by way of the minor variation procedures for premises licences or club premises certificates.

In other words, there are lots of music-related conditions that still have effect even if premises comply with the permitted capacity and time criteria: namely, conditions included in their operating schedule (or added after negotiations during the application) both for a new application or a variation; music-related conditions that could equally have been applied because of crime and disorder or public safety as well as public nuisance (even if imposed at a hearing); conditions added to a licence by the minor variations process; and existing altered conditions, or new conditions added following a review where the licensing authority disapplies the exempting provisions of section 177.

We all know what conditions on licences and certificates look like. They do not tend to come with a family tree. It is little surprise, therefore, that section 177 is not used. Additionally, even if the music-related conditions on the licence could clearly be identified as not applying, live music itself is still regulated entertainment, which raises philosophical and practical questions about the effectiveness of this whole section. The Live Music Bill seeks to make the position clearer and more effective for all parties: licensees, local

licensing authorities, interested parties, responsible authorities and musicians and performers themselves.

Live Music Bill

The Live Music Bill is not a panacea for all musicians' or licensees' woes. It is, like all legislation, a compromise of policy interests, a relatively weak bargaining position (being a Private Members' Bill), lack of Parliamentary time, and the practical realities of passing legislation. Two important points arise from this. Firstly, a decision was taken early on to try and "fix" the existing section 177, to make it do what it perhaps should have done in the first place. This has raised some drafting issues that with glorious hindsight may have perhaps have been better approached by drafting a whole new section. However, in order to ensure consistency between the new provisions and the existing section 177, the existing provisions would had to have been dealt with regardless, and therefore section 177 in its current form would always have been the elephant in the room that had to finally be acknowledged.

Secondly, the Live Music Bill would certainly have died without the Government's support. This support, which is now given both publicly and wholeheartedly by Government and its DCMS lawyers, would not have been given had the original Bill not been amended to pull back the "finish time" for the exempting provisions from midnight to 23.00. The Government's argument in support of this is that the 23.00 cut off is consistent with existing legislation related to noise from premises in, for example, the Noise Act 1996 (as amended). Since agreement was reached on this and a couple of other less important points, Government support has been full, both at the Committee stage debate in the House of Lords on 15 July 2011, and in the invaluable drafting assistance given by DCMS' lawyers. However, the Bill still requires overt Government sponsorship in the House of Commons or it will die.

The Music Bill's constituent parts

The Live Music Bill is separated into four distinct parts. [Please note that the provisions set out below include minor amendments to be moved on Report which are not presently part of the Bill but will hopefully be included.]

1. Licence review for live music entertainment;
2. Removal of requirement to licence the provision of entertainment facilities;
3. Exemptions for live music entertainment;
4. Short title, commencement and extent

1. Licence review for live music entertainment

Clause 1(1) of the Bill amends the existing section 177 so that it would only apply to performances of dance – that is, paragraph 2(1)(g) as set out in Schedule 1. It is a little known fact that the dancing in the title of section 177 does not relate to customer dancing (or, more importantly, the facilities to do so) but to performances of dance. One would imagine that the limited exempting provisions of Section 177 so far as they relate to performances of dance are even less used than those that relate to the performance of live music.

The obvious question is, why retain this little-used rump of a section? The answer is that the Government required this section to be retained in order to maintain the status quo. In other words, the purpose of the Live Music Bill is to amend the provisions relating to live music, not to amend the provisions relating to the performance of dance. As a matter of principle, therefore, those parts of the existing legislation that were not intended to be changed by the Live Music Bill should retain (so far as possible) their existing effect. Its effect, for what it is worth, will continue to be the disapplication of certain dancing-related conditions on licences when performances of dance take place, and subject to the criteria already discussed. This may have some limited impact on small venues hosting the occasional lap dancing, but as I have mentioned, those provisions already have effect anyway.

All references to live music in the existing section 177 will be removed. Clause 1(2) of the Live Music Bill inserts a new section 177A to the Licensing Act entitled "Licence Review on Music Entertainment" (likely soon to be amended to "Licence Review for Live Music" for clarity). The new section 177A applies in the following circumstances:-

a. Where live music (as defined in Para 2)(1)(e)) takes place on premises authorised to be used for the supply of alcohol for consumption on the premises by a Premises Licence or Club Premises Certificate; and
b. At the time of the live music, the premises are open for the purposes of being used for the supply of alcohol for consumption on the premises; and
c. Either –
    i. The live music is unamplified; or
    ii. The live music is amplified and takes place in the presence of an audience of not more than 200 persons; and
d. The live music takes place between 08:00 and 23:00 hours on the same day, or, where an Order under Section 172 has effect to relax opening hours for special occasions, between the hours specified in that Order.

In short, therefore, premises which can benefit from Section 177A are pubs, restaurants, clubs, cafés and so forth, so long as they have a premises licence or club premises certificate authorising the sale of alcohol and are open for business as usual.

The distinction between the "permitted capacity" of 200 in the existing section 177 and the "audience of no more than 200 persons" in section 177A is to allow for larger venues to benefit from the exemption so long as their audience is no more than 200 persons. "Audience" would not include staff or band members. It is anticipated that,

where necessary, licence holders will need to have means of counting the number of people in the audience. Quite possibly, there might be larger venues where there is an audience of up to 200 but other customers in or on the venue.

Whether or not the licence holder still complies in those circumstances will be a question of fact. But as the definition of regulated entertainment looks at the purpose for which the premises are provided, if customers not listening to the band are situated in a wholly different part of the premises, then the position should be relatively clear.

Where the Secretary of State has extended opening hours (as for the Royal Wedding) then the hours during which live music may take place will be similarly extended.

Section 177A(2) states: "Any condition of the premises licence or club premises Certificate which relates to live music does not have effect in relation to the live music ...". This provision, unlike the similar provisions in the existing Section 177, applies to any condition, however it was imposed on the licence, save for conditions imposed at summary review (interim steps or final review). The Government considered that in view of the serious nature of the summary review procedure, it was inappropriate that such conditions be disapplied, notwithstanding that summary reviews are (at least initially) only brought by the police and only for serious crime or serious disorder. Other than that, all conditions, whether included in the operating schedule, via a new or variation application, or imposed at a hearing (including a normal review) are disapplied. This applies as much to conditions imposed after the Bill is brought into force (if it is) as well as conditions imposed prior to its coming into effect.

There is, however, a safeguard for residents and authorities. Under sub-section 3, existing live music-related conditions which do not have effect can be made to have effect by being altered so as to include a statement that section 177A does not apply to it (what I would call the "Section 177A Statement"). The Licensing Authority would have to explicitly state that for each and every relevant condition already on the licence, section 177A was now to apply to it. Clearly, this could only apply to live music-related conditions anyway.

In my view, a condition which states, for example, "during regulated entertainment all doors and windows will be closed save for access and egress" is a live music-related condition *qua* that live music. In other words, the same condition may or may not apply, depending upon whether live music (as opposed to other forms of regulated entertainment) is being performed. This may require a little dancing on a pinhead, but this is simply as a result of the licensing regime lumping live music together with other forms of entertainment in the first place.

Additionally, under sub-section 4, a licensing authority can, on a review of a licence or certificate, add a condition relating to live music as if live music were regulated entertainment and that licence or certificate already authorised the live music. This provision is intended to make it clear that licencees who do not have live music already authorised on their licence, but have otherwise benefited from the exemptions under section 177A, can have conditions added to that licence relating to live music even if live music is not authorised as an activity on the licence or certificate.

It is possible, therefore, that a pub which does not have live music authorised on its licence but has been benefitting from the exemption by having small gigs can have a section 177A statement with relevant conditions imposed upon the licence or certificate, even though live music isn't authorised. By virtue of 12A (see below) live music would thereafter be licensable at that premises and, given that the holder did not have live music authorised on the licence, he would have to make a variation application to add it in the normal way.

If he has already been brought to review for noise related issues, he may consider this is not a wise thing to do.

In a nutshell, therefore, section 177A disapplies the vast majority of live music-related conditions subject to the above criteria, with the important caveat that the licensing sub-committee at a review can re-impose these conditions, or, in the case of a licence without any conditions, impose them for the first time. In principle, therefore, the licensee might benefit from this exemption only once. (For clarity, section 177A only relates to the disapplication of existing conditions, and does not provide any exemption for live music per se, which is dealt with in the proposed new Schedule 1, Para 12A.)

2. Removal of requirement to license the provision of entertainment facilities

Readers may remember that the previous Labour Government launched a consultation on the classification of entertainment facilities and their own proposals for live music. These did not see the light of day owing to the General Election. The provisions of Clause 2 of the current Live Music Bill propose to remove all reference to "entertainment facilities" throughout the Licensing Act 2003, thus excluding "entertainment facilities" from the scope of licensable activities. There are no caveats to this and no criteria. It is not linked to an audience of 200 or the supply of alcohol for consumption on the premises. The removal is intended to be total.

So far as the Licensing Act 2003 is concerned, dance floors, stages, pianos for the use of the public, microphones, music stands, and the element of karaoke machines that relate to the singing/ amplification of voice will no longer be licensable in any circumstances. Where necessary, these will be regulated by health and safety and other noise legislation. The boxes on the application forms would be removed, saving paper; that at least, should be some comfort to environmental health officers!

3. Exemptions for live music entertainment

Clause 3 of the Live Music Bill creates three completely new exemptions for live music in Schedule 1 and clarifies the existing Morris Dancing exemption.

Amplification during morris dancing

The shortest, and perhaps the easiest exemption, amends Paragraph 11(a) of Schedule 1 so that amplification is also exempt from the licensing regime when forming part of the morris dancing performance. Hitherto (believe it or not) morris dancers were not able to benefit from this exemption if they brought along a small amplifier, which I understand they regularly do.

Live music in licensed venues

A new Paragraph 12A is inserted into Schedule 1. This exemption provides that live music is not to be regarded as the provision of regulated entertainment for premises or clubs with alcohol "on" authorisations, so long as:

a. The requirements of section 177A(1)(a)2(c) are satisfied; and
b. Conditions have not been included in the licence or certificate by virtue of section 177A(3) or (4).

Thus, if you are a pub, club or restaurant open for business and having live music between the hours of 08.00 and 23.00 with an audience of no more than 200, and so long as you have not been brought to review and had a Section 177A statement added to your licence, that live music itself is not a licensable activity. It is irrelevant whether live music is already authorised on the premises licence. The combined effect, therefore, of Section 177A and paragraph 12A of Schedule 1 is to disapply the vast majority of live music-related conditions, and to render live music exempt according to the same criteria.

However, if a licensee breaches this "trust" and ends up at a review, he is likely both to have existing conditions reapplied, possibly other conditions added, and also to lose the general exemption under 12A. If he does not have live music already authorised on his licence he will have to apply to vary the licence to include it.

Live music at workplaces

A new 12B is proposed which will exempt workplaces that are not licensed under the Licensing Act to provide live music so long as it takes place in the presence of an audience of no more than 200 persons and between 08.00 and 23.00. A workplace is defined by reference to Regulation 2(1) of the Workplace (Health, Safety & Welfare) Regulations 1992, and in theory could therefore include front of house in bars and restaurants. However, as such establishments will undoubtedly have a licence under the Licensing Act they are excluded from this exemption. These exempting provisions are primarily directed at factories, hospitals, and schools, where live music may form a general part of the workplace environment, or assist with its fund raising.

The only types of premises licensed under the Licensing Act that can benefit from this exemption are those that are solely licensed for late night refreshment. The reason for this is quite simple: it would have been perverse for a café that is open all day and perhaps is authorised for late night refreshment until midnight but does not sell alcohol, to be prevented from relying upon this exemption when, by virtue of its not selling alcohol, it cannot benefit from the exemption in 12A.

Both the provisions in 12A and 12B relate to amplified music as they do to unamplified music. There are no additional definitions of either "audience" or "amplified", and their common meanings will be applied. If the Bill came into effect, one would hope the Statutory Guidance would be amended in this regard.

Live unamplified music

Clause 3 of the Live Music Bill creates a new Schedule 1, 12C exemption which provides that a performance of live music is not to be regarded as the provision of regulated entertainment provided that the music:

a. Is unamplified; and
b. Takes place between 8am and 11pm on the same day.

This is a universal exemption that applies to live unamplified music anywhere. It is not subject to audience size or whether the premises are licensed (although see below); it applies as much in the backyard of somebody's terraced house as it does in the Royal Albert Hall. The owner of neither of these venues could be subject to prosecution under Section 136 of the Licensing Act provided they complied with these simple criteria.

There is, however, an important caveat for licensed premises. The exemption in 12C is "subject to the provisions of section 177A(3) and (4)". Licensed premises can benefit from this exemption, but if they are subject to a review and a section 177A statement is added (either to existing but hitherto diapplied conditions, or brand new conditions) the exemption under 12C is similarly disapplied.

A note about the Government's consultation on deregulating Schedule 1

At the time of going to print, the Government had just published its consultation document on proposals to deregulate almost all of the categories of entertainment listed in Schedule 1, subject to audience limits of 5,000. In the narrative, John Penrose, Tourism Minister, reaffirmed his support for the Live Music Bill. The question is whether the Bill is superseded by the proposals. A quick analysis suggests no. The proposals to remove entertainment facilities are already included in the Bill, and perhaps most importantly under the proposals existing conditions relating to live music would continue to apply if already attached to licences or certificates

authorising the sale of alcohol. The Live Music Bill would disapply those conditions subject to the criteria discussed above. No doubt things shall become clearer when the responses are published in due course.

Conclusion

The Live Music Bill still has a long way to go. At the time of writing, the Report stage in the House of Lords was expected in September or October 2011. The Bill will then have to go to the House of Commons, where, to ensure it has sufficient Parliamentary time, it will need to be sponsored by a Government Minister. This is, perhaps, when we will see the strengths of the Government's convictions (although the explicit support mentioned in the DCMS Consultation published on 9 September 2011 is encouraging). Lord Clement-Jones is working hard to ensure such support is given, but there is (at the time of writing) no guarantee. If the Bill gets this support, and avoids protracted debate and amendment in the House of Commons, then there is a realistic chance that the Live Music Bill will find its way on to the statute books sometime in 2012.

If that happens, it might not be music to everyone's ears – but it will be to many. In any event, it would be a major example of deregulation in action, and testament to the hard work of Lord Clement-Jones and Live Music Campaigner and professional drummer Hamish Birchall in the face of quite daunting odds.

Andrew Grimsey
Poppleston Allen

Consultation on deregulation of Schedule 1 of the Licensing Act 2003

The DCMS has recently published, September 2011, a '**Consultation on proposal to examine the deregulation of Schedule One of the Licensing Act** 2003'; the closing date for responses is the 3rd December, 2011.

One of the Visions set out in the Institute's Strategic Plan states: "Influence and Engagement – The Institute will provide a strong voice engaging with the Government and other relevant organisations on licensing related matters and will be recognised as the leading stakeholder for consultation on proposed legislative and other changes."

The broad church basis of the Institute of Licensing gives us an unrivalled platform from which we can view initiatives, proposals and consultations from all angles, and present a clear and balanced picture on behalf of our members. In some cases the response of the Institute will reflect the mixed and varied disciplines and professionalism of our members. In others, where a consensus is reached, this too will be made clear in our response. In all cases our response will be considered and all the stronger for containing the views and voice of the collective membership.

With the DCMS consultation, the Government is proposing a reform of activities currently classed as "regulated entertainment" in Schedule One of the 2003 Act. The consultation seeks views on the removal in certain circumstances of the requirement for a licence in England and Wales to host a performance of a play, an exhibition of a film, an indoor sporting event, a performance of live music, any playing of recorded music, or a performance of dance.

For ease and accessibility members will be invited to give their views on the DCMS consultation via the Institute of Licensing e-flashes and an on-line survey. The Editorial team at the Journal will report on the findings of the IoL survey and its response.

Editor.

Taxi licensing: law and procedure update

Simplifying and modernising taxi law

Archaic taxi law is to be reviewed by the Law Commission, with its proposals for simplification out for consultation by April next year. **James Button** explains the background to the review, and also looks at new guidance on private hire vehicle use as well as an instructive case concerning licence renewal

This is probably the most exciting time in taxi law since the halcyon days of *Life on Mars* when the Local Government (Miscellaneous Provisions) Act was passed, with James Callaghan as Prime Minister and Chicago singing *If You Leave Me Now* at No. 1 in the charts (1976, lest you've somehow forgotten). Today, for the first time in over a third of a century, there is a realistic prospect of new taxi law.

In July, the Law Commission announced a review of "archaic" taxi legislation, stating: "The project examines the legal framework relating to taxis and private hire vehicles with a view to making it simpler and more modern. We aim to publish proposals for reform in April 2012. This will be followed by a three month consultation period where we invite the public to respond to our proposals. We plan to publish a final report with our recommendations and draft bill by late 2013."

James Button

This development is the result of many years of judicial criticism of the existing regime (see e.g. Munby LJ in *Stockton on Tees Borough Council v Fiddler and others* [2010] EWHC 2430 (Admin); Kennedy LJ in *Murtagh (t/a Rubery Rednal Cars) v Bromsgrove District Council* (1999) Independent, 20 November, QBD) and follows hard on the heels of the Institute's *Taxi Reform Working Party Report* (http://www.instituteoflicensing.org/taxireform.html) which was successfully submitted to the Parliamentary Select Committee for Parliament as part of its enquiry into the Licensing of Taxis and Private Hire Vehicles.

That, however, is not all that has happened in the world of taxi licensing. In August the Department for Transport issued its long-awaited guidance on private hire vehicle use. Since the abolition of the "seven-day contract" under section 75 (1) (b) of the Local Government (Miscellaneous Provisions) Act 1976 there has been considerable confusion over what vehicles should be licensed as private hire vehicles and which should not.

In *Private Hire Vehicle Licensing - A note for guidance from the Department for Transport* (http://www.dft.gov.uk/publications/phv-guidance-note) the DfT attempts to address that confusion.

This is best described as a pragmatic document. A two-stage approach is taken, with five specific questions to be asked about the type of service provided by the vehicle and driver followed by nine examples of "sector specific guidance".

The emphasis is very much on the risks presented by the driver, with little or no consideration of the vehicle. The conclusion is that where a driver has been vetted for some other purpose, for example, school contract runs, as a childminder, say, it is unnecessary to consider them as private hire drivers. Beyond that, "genuine volunteers" are

outside the private hire licensing regime as are "courtesy lift" services for customers.

While there is an argument to say that double vetting of drivers is unnecessary (although not necessarily excluded by the wording of the 1976 Act), there is a worrying assumption that the vehicle will automatically be satisfactory. Take the example of a childminder. The childminder themselves will have been vetted, but their vehicle, which is likely to be their family car, will have no more than an annual MOT. Is this really a safe vehicle for regular transportation of people who are not family members?

The advantage of this Guidance is that it should provide a degree of consistency in terms of requirements imposed by local authorities, but it does seem to fall somewhat short of the requirements of the legislation, and there always remains the risk of an insurance challenge.

R (o/a Exeter City Council) v Sandle [2011]

The last few months have not seen the courts particularly exercised in relation to taxi matters, but the one case that has arisen deserves some examination. *R (o/a Exeter City Council) v Sandle* [2011] EWHC 1403 (Admin) 16 May 2011 Admin Crt (unreported) concerns renewal of hackney carriage proprietor licences.

The Local Government (Miscellaneous Provisions) Act 1976 does not expressly cover renewal of hackney carriage and private hire licences. Sections 60 (vehicles), 61 (drivers) and 62 (operators) make reference to renewal of licenses, but only in relation to the grounds that are available to the local authority to refuse to renew an application.

There is no mechanism for renewal specified, so local authorities have developed their own individual rules and in many cases take the view that an application for renewal must take place before the expiry of the existing licence. The argument to support that is that you cannot renew something that has expired.

What is less clearly stated by many authorities (but seems to be tacitly accepted) is that provided an application has been made before the licence has expired, if there is any delay on the part of the authority in determining that application, the licence can continue to be used until such time as that determination is made, effectively using a similar system to that which was found in the 1982 Act in relation to public entertainment licences, albeit without the benefit of statutory authority.

That is the background to this case, and Exeter City Council had attached a condition to their hackney carriage proprietors' licences to the effect that application for renewal could be made within the period of 14 days before the expiry of the 12 month licence.

Mr Sandle applied to renew his hackney carriage proprietor's licence after the expiry of the existing licence. Exeter City Council treated that as an application for a new hackney carriage proprietor's licence and refused to grant (Exeter limit their hackney carriage numbers) which led to an appeal to the Crown Court against refusal to grant a hackney carriage proprietor's licence.

The Crown Court allowed the appeal and Exeter challenged that by way of case stated. The questions raised were whether a licence could be renewed before the end of the one-year period, whether a licence that had expired was capable of renewal and if so for how long after expiry could it be renewed, and (relevant only to this particular case) if this licence could be renewed, should it have been?

Mr Justice Collins took the view that "renew" can quite properly mean "grant afresh". Accordingly he did not accept the proposition that once the period for which a licence had been granted had ended, the licence had expired and was therefore incapable of renewal.He concluded a licence could be "renewed" after it had expired.

In this case the application was made a day after the licence expired. The Crown Court took the view that there were exceptional circumstances (the applicant had a sick child) and accordingly allowed the appeal and therefore the grant of the licence. Mr Justice Collins agreed but said: "I must make it clear that if it is apparent from the conditions that the application has to be made within the period the licence is in force, it will take very strong case and very exceptional circumstances for an applicant who fails to make his application for renewal in time to be able to justify a claim that the council ought in the circumstances to have granted his licence.

"Such exceptional circumstances can exist and, as I say, it would be sensible for a council to give two or three days at least before taking the step of deciding to grant it [a hackney carriage proprietor's licence where numbers are limited] to someone else. After all, I suppose such an application can, for example, be made by post and if there are postal difficulties that would be a good reason no doubt to defer any action to make sure that there had not been a delay in the post.

"One can imagine other circumstances which might make it obvious that it would be prudent to give a little extra time in all circumstances. It is obviously impossible to spell those out, but as I say, suffice it to say that if the condition is not met it will be proper for the council to take the view that they will only allow renewal in exceptional circumstances."

His answers to the questions that were raised were: a hackney carriage proprietor's licence could be renewed before the expiry of the 12 month period; it could be renewed after it had expired but "it would only be in exceptional circumstances that a delay of more than a few days would be permissible". As to whether it should have been renewed in these circumstances, this was a matter of discretion which he need not answer.

Where then does this leave local authorities? It is clear that there needs to be a renewal mechanism incorporated into conditions attached to the licence (difficult for hackney carriage drivers where no conditions can be attached) and the local authority's own policies. It is also clear that a degree of common sense and reasonableness must apply when deciding upon applications that are made after the expiry of the licence, although it is worth re-emphasising Mr Justice Collins words that it is "only...in exceptional circumstances that a delay of more than a few days would be permissible".

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Whither Higher Education Licensing Courses?

Three years ago there were three recognised courses in Higher Education institutions. Two were Certificates of Higher Education in Licensing Law, one at the University of Warwick and one at the University of Westminster. The third was a Certificate of Competency in Licensing Law at the University of Wales Institute, Cardiff. At the present time, none of these courses are running. In the main, this is due to the prevailing economic climate and the difficulty of securing funding rather than any lack of interest on the part of persons wishing to study such courses.

Some, perhaps all, of the subject areas taught on those courses might be studied outside of the confines of a recognised Higher Education course. There are a number of excellent licensing trainers, many of whom are members of the Institute, who offer training on a wide range of areas. Certainly training is offered on all the substantive licensing areas (Alcohol and Entertainment, Taxis and so on) covered in modules on the Warwick course. So, do we need any Higher Education courses leading to a qualification and do they offer anything beyond what is gained from training courses?

My answer would be yes, for two reasons. First, a qualification demonstrates to the outside world knowledge and competence on licensing law in a way that training cannot. There will be some method of assessment on the qualification, the assessment question(s) will have been approved by an independent recognised expert (the external examiner), answers will be marked by those with expertise in the field and a selection moderated by another (expert) marker, and some answers will be sent to the external examiner. This is a rigorous process, which should inspire confidence in the value of the qualification.

Secondly, and I can only speak for the Warwick Certificate here (and the Birmingham Certificate before it), the course provides not just legal knowledge on areas of licensing law but crucially the opportunity to acquire the legal skills and techniques which lawyers have and which can be applied to any field of licensing or any other area of law. These skills, which relate to statutory interpretation, case law, precedent, development of legal arguments, and location of legal materials, as lawyers will know, are built up over a period of time through in-depth study and cannot be easily and quickly acquired. The level of skills acquired by those studying the Certificate course has inevitably varied but many have acquired an impressive range of skills over the duration of the course. Indeed, the best work produced is as good as the work of final year LLB students here at Warwick.

I have always regarded provision of the opportunity to acquire legal skills and techniques as the Certificate's most important contribution, since this opportunity is rarely available outside the confines of a law degree or a law conversion course for non-law graduates. That many have been able to benefit from the opportunity is reflected in the numbers who have successfully completed the courses (185 in total on the Birmingham Warwick Certificates, of which 15 were with Distinction and 74 were with Merit). Those who have completed the course will, in my view, be much better equipped to carry out their duties in the course of their work, insofar as these involve licensing law and legal matters.

The way ahead for Higher Education licensing law courses remains uncertain, as indeed it does for Higher Education itself. Reforms are likely to bring great changes and it is hard to predict what the Higher Education sector will look like in a few years time. I will not be around to see these changes as I shall be leaving the university at the end of September and, not being possessed of a crystal ball, I can offer no more than a tentative view but my thoughts are these. I do not envisage any of the three courses reviving, either in their pre-existing format or in a different form, nor do I think any new such courses will be introduced. If there is to be a Higher Education course, I think it will be a Postgraduate Certificate, which generally can be a shorter course with fewer credits than an undergraduate one (and which might enable some inroads to be made in costs/fees). The Certificate courses previously run have shown there is a need and demand for a licensing law course which carries a recognised qualification but the challenges will be finding someone to run any new course and securing funding for those wishing to study it.

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The dangers of temporary structures

Banners, A-boards, signage and installation can easily break free in gusting winds if not secured adequately, and sometimes with fatal consequences. **Julia Sawyer** looks at the safe installation of temporary structures at public events, and the steps that should be taken to ensure the public's safety at all times

The Dreamspace disaster – when two people died after a giant inflatable art installation broke from its moorings at a park in Chester-le-Street and flew 30 feet into the air – was a most shocking and dramatic demonstration of what can go wrong at an event.

Football fans may also remember how the giant TV screen in Birmingham city centre blew over in strong winds during the World Cup in June 2006. Fortunately, on this occasion no one was injured.

What can go wrong

Perhaps the most distressing recent example of what can go wrong occurred on 23 July 2006, when the Dreamspace inflatable flew into the air with about 30 people on board. Created by the artist Maurice Agis, Dreamspace was a large inflatable art installation about half the size of a football pitch and was installed at Riverside Park in Chester-le-Street. Dreamspace came free from its moorings, rose up about 30 feet and then travelled across the Riverside Park until it collided with a post supporting a CCTV camera and was brought crashing to the ground, killing two people.

Various suggestions were put forward at the time as to the cause of the incident, such as a freak wind, deliberate sabotage, or the effects of the hot afternoon sun that might possibly have turned the structure into a hot air balloon. Soon afterwards it emerged that Agis had experienced problems with other such art installations in the past. A similar structure, Colourspace, had flipped over at Travermunde in Germany in 1986 and injured five people, while another of Agis's inflatable sculptures, Clause 28, had gone adrift during high winds at the Glasgow Garden Festival in 1988. On that occasion, both Agis and a fellow worker were dragged some 30 feet into the air. Agis suffered back injuries, while the worker was dumped into the River Clyde.

Following the Chester-le-Street incident, Agis was formally charged with gross negligence manslaughter as well as an offence under section 3(2) of the Health and Safety at Work Act 1974. Further charges under the Health and Safety at Work Act 1974 were also brought against Brouhaha International Limited (the arts organisation behind Dreamspace 5), Chester-le-Street District Council,

Julia Sawyer

and Mark Galloway, the council's director of development services. Both Brouhaha and the local authority subsequently admitted a breach of the Health and Safety at Work Act, although the charges against Galloway were left to lie on file after he pleaded not guilty.

The prosecution case was that Agis had never carried out any proper calculations or tests to ensure that Dreamscape was equipped with a safe anchorage system; and that he never had the structure assessed by a qualified engineer. It was also claimed that even though Chester-le-Street District Council had carried out a risk assessment, which was inadequate, it had nevertheless specified that 40 pegs were required to secure the artwork, and Agis had used no more than 31.

Brouhaha International was fined £4,000, Chester-le-Street District Council was fined £20,000 and Agis was ordered to pay a fine of £10,000.

There are many examples of near-miss incidents involving banners and signage at events which are ripped away in high winds. Even with experienced contractors, problems of insecure fixing and anchorage can arise. In one recent example, a banner came adrift from the metal frame to which it was intended to be secured because it had been printed to a smaller size and did not wrap around the edges of the metal frame as it usually did. And the bungee chord used was not fit for purpose – agitated by the high winds, it rubbed against the metal frame and was easily

broken. A marine rope with high abrasion resistance and UV stability (a rope that doesn't deteriorate in the sun) would have been more suited to this job

In another example of what can go wrong, two companies were fined a total of more than £52,000 after a giant TV screen put up to show World Cup games in the centre of Birmingham collapsed. The large outdoor video screen at Millennium Point blew over in moderately windy weather in June 2006 – fortunately, no one was hurt.

Birmingham City Council had contracted Media Control (UK) Ltd to provide the video screen. Media Control had contracted Trapeze Rigging to design and provide a supporting structure. Trapeze Rigging had commissioned an independent structural engineer to assess the structure. Media Control had presumed that checks had been carried out. Issues in the structural engineer's report were never resolved. Trapeze Rigging never received final sign off from the structural engineer. The World Cup was starting and Trapeze Rigging had a concept design that they needed to push through so the public could view the matches. There was also a failure to assess competency of the contractors. The Health and Safety Executive took Media Control UK and Trapeze Rigging to court, and both companies pleaded guilty to failing to protect the public.

Safe use of temporary structures

For each installation there should be a risk assessment detailing how the structure will be erected, what safe methods will need to be applied to ensure it is securely fixed, the competency of the person fixing it in place (for example, are they registered with a recognised body such as Industrial Rope Access Trade Association (IRATA) or the Professional Lighting and Sound Association (PLASA)), and what follow-up control measures are required. In particular the following should be considered:

- How the item will be secured to the ground or fixed to the frame/building or structure.
- Are the calculations adequate for the structure – is a structural sign off required by a qualified engineer?
- How the item will be tied and with what material - by individual lengths of bungee cord/rope through each eyelet, or tied off at every metre?
- The specification for the material to be used considering the environment it is going to be used in (for example, mesh fabric that has small holes which allows the wind to run through it, UV stability and so on).
- What action should be taken with the installation, sign or banner at certain wind speeds – for example, at what stage should it be taken down - and who is responsible for monitoring the wind speed and forecasts?
- Specify who is going to supervise and monitor the work carried out to ensure it meets the agreed specifications and that safe working practices have been followed.
- What qualification/experience does the person have who is installing the structure/banner?

The message is clear: don't make assumptions that something has been checked. Make it clear on contracts, risk assessments and/or method statements who is responsible for ensuring the work has been carried out as agreed and signed off as required.

It is not enough to have a general risk assessment: fixing of any temporary structure is site-specific and dependent on what other factors the site presents, so appropriate detail must be included.

Relevant legislation

The legislation and guidance relevant to temporary structures:

- Health and Safety at Work Act 1974
- Management of Health and Safety at Work Regulations 1999
- Lifting Operations and Lifting Equipment Regulations 1998
- Working at Heights Regulations 2005
- Manual Handling Operations Regulations 1992
- Personal Protective Equipment Regulations 1992
- The Event Safety Guide HSG 195 (the Purple Guide)
- Safety Guidance for Street Arts, Carnival, Processions and Large Scale Performances
- Technical Standards for Places of Entertainment
- Temporary Demountable Structures

The Temporary Demountable Structures guidance provides guidance on the procurement, design, erection and use of temporary demountable structures such as grandstands, marquees, stage structures and barriers.

The Technical Standards for Places of Entertainment guide (produced by the Institute of Licensing with the District Surveyors Association and the Association of Theatre Technicians) includes a section on temporary structures. A new version of these technical standards is available called "R U Safe?" This is a streamlined version of the existing technical standards and is aimed at licensed premises to give a quick guide to all of the safety issues required to ensure public safety within their venue. This can be obtained from the Association of Theatre Technicians www.abtt.org.uk

Another issue to consider when installing a temporary structure is whether it is covered under any local by-laws or requires planning permission. The local authority will be able to advise on this. In London the following, amongst other things, are listed as temporary structures and require consent from the local authority under the London Building Acts (Amendment) Act 1939 Part IV Special and Temporary Structures:

- Advertising hoardings
- Free standing signs
- Flag poles
- Marquees and large tents
- Spectator stands
- Temporary scaffold (not building site)

Additional resource material

ABTT Codes of Practice www.abtt.org.uk

British Standards www.bsigroup.com

Building Research Establishment www.bre.co.uk

Building Services Research and Information Association www.bsria.co.uk

Chartered Institute of Building Services www.cibse.org

Department for Culture Media and Sport www.culture.gov.uk

HSE www.hse.co.uk

Industrial Rope Access Trade Association www.irata.org

Professional Lighting and Sound Association www.plasa.org

Institution of Engineering and Technology www.iet.org

Institution of Structural Engineers www.istructe.org

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Article

Opening Hours

The legal enforceability of opening and closing hours and their attached conditions is rarely a straightforward matter, as **Philip Kolvin QC** demonstrates in this analysis of the lack of clarity in sections 136 and 172 of the Licensing Act 2003. Conflating licensing hours and opening hours is often at the heart of the problem

The fact that the status of opening hours under the Licensing Act 2003 could form a credible topic for a licensing journal six years after the Act came into force is an indictment of the legislative provisions themselves. The lack of clarity in the Licensing Act 2003 is exemplified by section 172, which permits the Secretary of State to extend "opening hours" for special occasions, one such being the recent Royal Wedding. However, "opening hours" is defined in section 172(5) as meaning the times during which the premises may be used for licensable activities. This is to conflate licensing hours and opening hours, when in fact these are different concepts altogether.

The history of closing times may be briefly stated. Under the Licensing Act 1964, the hours of supply of alcohol were statutory, with a prescribed drinking-up time. During transition to the Licensing Act 2003, in some cases drinking-up times were grandfathered onto premises licences, and in some cases they were not. Under the Licensing Act 2003, there are prescribed forms for new licences, provisional statements and variations, whose Box O asks the applicant what hours the premises are to be open to the public. Applicants will sometimes indicate on the form that they intend to remain open to the public for a short period, perhaps 30 or 60 minutes, following the terminal hours for sale of alcohol. In some cases, this is translated by the licensing authority into a condition regarding opening and closing times. In others it is not.

Where there is no opening or closing time placed on the licence, then plainly the premises can open whatever hours the licensee wishes. The real issue comes where the licensing authority does place opening and closing times on the licence. Particular instances include the following:

a. The licence has an opening time of 10 a.m. The licensee wishes to open to serve breakfast, but not to conduct any other licensable activity, at 7 a.m. Would s/he be committing a criminal offence?
b. Late night refreshment premises have a licence which permits the provision of late night refreshment from 11 p.m. to 3 a.m., and then requires the premises to close at 3.30 a.m. Would the licensee be committing a criminal offence by remaining open, though not for the provision of late night refreshment, thereafter?
c. Premises have a premises licence which authorises, say, the sale of alcohol. On some days the licensee does not

sell alcohol, e.g. because s/he rents out a room on a dry hire basis. Is the licensee bound by licence conditions, including closing hours?

The reason why these situations do not admit of an easy answer is because it is not an offence under the Act to breach a licence condition, much less to open the premises to the public outwith the hours specified on the licence. Instead, section 136 of the Act provides that it is an offence if a person:

"(a) ... carries on or attempts to carry on a licensable activity on or from any premises other than under and in accordance with an authorisation, or

(b) he knowingly allows a licensable activity to be so carried on."

Plainly, the *actus reus* under (a) is carrying on or attempting to carry on the licensable activity. Under (b) it is knowingly allowing the activity to be carried on. In other words, it is not per se an offence to do something prohibited by a condition. It is an offence to carry on the licensable activity, or knowingly allow the activity to be carried on, in breach of the condition.

In considering the legal status of opening and closing hours, it is important to state that they could only have legal force as conditions on the licence. A licence confers the right to do something which would otherwise be unlawful, for example selling alcohol. If one does that beyond the hours permitted by the licence, then that is a breach of section 136 because one would be doing so otherwise than under the authorisation. A licence may also impose conditions on the authorisation, for example by preventing the playing of amplified music other than through a noise limitation device. To play amplified music without using such a device would be to do so otherwise than in accordance with the authorisation.

These seemingly banal points are made to underscore the fact that there is no other way of committing an offence under section 136. Thus, a closing hour need not coincide with the terminal licensing hour. Even where it does coincide it is always specified separately from the terminal licensing hour. That is, closure is a separate concept from the terminal hour for licensing. Therefore, if it has any force, it can only conceivably have force as a condition on the licence.

With those essentially preliminary comments in mind, we can now approach the question of the legal enforceability of opening and closing hours. The argument proceeds in stages.

First of all, when there is a condition which specifically limits the licensable activity, then it is plain that this is caught by section 136. For example, a pub has a condition that alcohol must be sold in polycarbonates. An outdoor festival has a licence which prevents music being played above a certain decibel level. In these cases, there is no doubt whatsoever but that the licence is governed by the condition and breach of the condition is an offence under section 136.

The second proposition is that the condition does not have to circumscribe the licensable activity itself in order for a breach to engage section 136. For example, there is a condition requiring a pub to use door staff to control who comes in. That is not a limitation on the sale of alcohol. It is a control of the circumstances in which alcohol is sold. If alcohol is sold when no door staff are on, that amounts to carrying on the licensable activity otherwise than in accordance with the authorisation.

The third area for scrutiny concerns conditions which go further in that they do not circumscribe the licensable activity and are not contemporaneous with such activity. For example, there might be a condition preventing emptying of bottles outside at night, or preventing deliveries before a particular time in the morning, or requiring a take away restaurant to sweep up outside after the premises close.

In all these cases, it is doubtful that anyone would suggest that the conditions are not enforceable. Indeed, were they not to be enforceable, a great many conditions imposed under the Licensing Act 2003 would be ineffective except in terms of their persuasive force and as a basis for the bringing of a review when they are breached. However, that there is a collective consensus that a category of conditions is enforceable and is regularly imposed is not a sufficient basis to say that section 136 is engaged. Those involved with licensing may simply be acting on custom and practice, without specifically turning their mind to the enforceability of the conditions. The question is why such conditions are enforceable. For example if a delivery were to be made at 05.00, five hours after the premises closed and five hours before it re-opens, could it be said that there are licensable activities being carried on otherwise than under and in accordance with the licence?

In truth, the enforceability of such conditions under section 136 is somewhat problematic. The argument could be made that section 136 does not require precise contemporaneity between the licensable activity and the condition. So if, for example, premises close at midnight and open the following morning at 10.00. but breach their conditions by taking a noisy delivery at 05.00. then their offence is carrying out the licensable activities throughout the whole period (i.e. the day before and the day after). In other words they are selling alcohol while accepting delivery of the alcohol at forbidden times.

However, that argument might be thought to stretch language quite close to breaking point in significant regards. Imagine that in the situation just described the premises do not in fact open the following day. How could it be said that the premises had traded on the previous day otherwise than in accordance with the licence when at the time they were trading they were not in breach of the licence, the breach of the licence only coming five hours later?

These arguments are finely balanced. However, the High Court would probably come down in favour of enforcement of the condition under section 136. The rationale would be that the premises are in general carrying on licensable activities while not adhering to the conditions subject to which those licensable activities were permitted. Having regard to the mischief at which section 136 is aimed, the construction of the section is sufficiently wide that contemporaneity is not required.

With those propositions in mind, one may turn to consider one kind of condition – a condition which

requires the premises to close at some point following the termination of licensable activities and/or which specifies an opening hour at some point prior to the provision of licensable activities.

For the reasons just given, it is submitted that on narrow balance a condition of that nature would be enforceable under section 136. To take but one example, a licence to sell alcohol is conferred, but subject to the stricture that the customers to whom the product is sold must be off the premises with the doors closed within 30 minutes of the terminal hour. Such a condition could be enforced by prosecution.

However, not all situations are so simple. What of the pub which dutifully closes 30 minutes after selling the last pint, but then wishes to open again to sell coffee and croissants at 8 a.m. the following morning, in other words for an activity which is nothing to do with licensable activities? Probably, this is where the relevant line is to be drawn. Where a condition requires premises to close at the end of trading hours, that is a way of limiting the impact of the licensable activities themselves. Beyond that what the proprietor chooses to do with the premises is not a matter for licensing.

In reality, it would be rarely if ever that a licensing authority could attach a condition which expressly purported to control the use of premises in general outside the licensing hours in relation to activities which are not licensable activities. Therefore, the question really boils down to whether upon construction a licence which imposes a closing hour imposes requirements or prohibitions upon a licensee in relation to commercial activities which are not licensable activities at all. It is submitted that it does not. Or, rather, in the absence of some very express language, it does not. The purpose of a licence condition is to provide the requirements and prohibitions subject to which a party is permitted to provide licensable activities. Without very specific language, it is hard to contemplate that a condition could be construed so as to limit the ability of premises to conduct activities on premises which have nothing to do with licensable activities.

Coming back to one of the examples above, what of the pub which supplies coffee and croissants in the morning? It does not need anybody's permission to do that. It is hard to see that it could somehow lose permission by virtue of asking for a licence to sell beer in the evening. There may well be some grey shading. What of the pub, for example, which closed but then re-opened 5 minutes later to serve the coffee and croissants? As it happens, that is arguably an effective breach of the closure condition because the condition is designed to dissipate the clientele who have been purchasing alcohol, and a brief, technical closure does not satisfy the condition. However, the fact that one can think of examples which challenge the application of the rule does not mean that there is no rule. While an attempt to circumvent a condition, e.g. by closing and then immediately re-opening, may well be considered to be a breach, that does not mean that conducting activity which has nothing whatsoever to do with the licensable activity and at a different hour from the licensable activities, would be held to breach a condition which is intended to govern the impact from licensable activities.

In conclusion, a condition which is designed to control the impact of the licensable activities is enforceable under section 136, even though the condition requires or prohibits action outside the licensing hours. There is a counter-argument, that one cannot be charged with "carrying on licensable activities" at a time when one is not actually carrying on licensable activities; and that if that conclusion is inconvenient then the remedy lies with Parliament by way of legislative amendment rather than with the courts by way of linguistic distortion. However, for the reasons set out above, the argument that a closing time imposed on a licence is enforceable under section 136 is to be preferred.

Nevertheless, when directed at activities which are not only outside the licensing hours but which have nothing to do with the licensable activities, a much clearer answer appertains. In that situation, a general closing or opening hour on the licence is designed to control the licensable activities and their impact and it is not appropriate to construe it so as to restrict other activities altogether.

Therefore, the pub may serve its coffee in the morning without offending the conditions on the licence. The function room can have its dry hire, and if the room is not used pursuant to the licence, the licence conditions do not apply. The late night refreshment premises can operate out of hours. However, it should avoid action which appears as an attempt to find a loophole to the condition. For example if the condition is to close at 03.00, it should not re-open with the same customers at 03.05. However, it would have a good argument that nothing prevents it from opening for cold drinks and sandwiches at 04.00, an hour after the customers served hot food have disappeared. That is, there is no reason or logic why a licence condition should be construed to place the business at a disadvantage to another premises selling cold food all through the night.

These arguments underline all too clearly the importance for legislators of testing through proposals with practitioners before they are placed on the statute book. When this does not happen, lawyers descend like crows from the trees.

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Extracts from the s 182 Guidance

Hours of trading

10.19 In some town and city centre areas where the number, type and density of premises selling alcohol for the consumption on the premises are unusual, serious problems of nuisance and disorder may arise outside or some distance from licensed premises. For example, concentration of young drinkers can result in queues as fast food outlets and for public transport, which may in turn lead to conflict, disorder and anti-social behaviour. In some circumstances, flexible licensing hours may reduce this impact by allowing a more gradual dispersal of customers from premises.

10.20 However, there is no general presumption in favour of lengthening licensing hours and the four licensing objective should be paramount considerations at all times. Where there are objections to an application and the committee believes that changing the licensing hours would undermine the licensing objectives, they may reject the application or grant it with appropriate conditions and/ or different hours from those requested.

10.21 Shops, stores and supermarkets should normally be free to provide sales of alcohol for consumption off the premises at any time when the retail outlet is open for shopping unless there are good reasons, based on the licensing objectives, for restricting those hours. For example, a limitation may be appropriate following police representations in the case of some shops known to be a focus of disorder and disturbance because youths gather there.

Licensing Hours

13.40 With regard to licensing hours, the statement of policy should generally emphasise the consideration which will be given to the individual merits of an application. The Government recommends that statements of policy should recognise that, in some circumstances, flexible licensing hours for the sale of alcohol can help to ensure that the concentration of customers leaving the premises simultaneously are avoided. This can help to reduce the friction at late night fast food outlets, taxi ranks and other sources of transport which lead to disorder and disturbance.

13.41 The Government also wants to ensure that licensing hours should not inhibit the development of thriving and safe evening and night-time local economies which are important for investment and employment locally and attractive to domestic and international tourists. Providing consumers with greater choice and flexibility is an important consideration, but should always be balanced carefully against the duty to promote the four licensing objectives and the rights of local residents to peace and quiet.

13.42 Statements of licensing policy should indicate that shops, store and supermarkets, are free to provide sales of alcohol for consumption off the premises at any times when the retail outlet is open for shopping unless there are good reasons, based on the licensing objectives, for restricting those hours. For example a limitation may be appropriate following police representations in the case of some shops known to be a focus of disorder and disturbance because youth gather there. Statements of licensing policy should therefore reflect this general approach.

Licensing fees

Date: 5 December 2011
Cost: £95 + VAT for IoL Members; £125 + VAT for Non-members
Venue: Camden Council Chamber: Town Hall , London WC1H 9JE

Programme summary

The day will cover the following:-

- How to calculate licensing fees to ensure the fee levels are not making any unnecessary losses.
- Legislation in relation to Local Authority income and in particular licence fees.
- Which fees can be charged for different forms of licensing.
- What can the income for licensing fees be used for, in particular:
  - Can licensing income be used to cover the cost of administering the licensing system?
  - Can the fees be used to cover enforcement?
  - Can the income be used to pay for training and equipment for the licensing officers?
  - Can the income be used for other services within the local authority that provide a service to the licensing regime?
  - Can the income be used to pay for other local authority services not relating to licensing?
  - Can the licence fee cover the cost of a licensing hearing?
  - How to avoid legal challenges in respect of licence fees.

Article

Common Approach to Competency Breakthrough For Regulators

Local authorities now have a system in place that allows them to demonstrate to all interested parties that they have an effective system in place for ensuring the competency of their regulatory staff, as **Philip Preece** of the Local Better Regulation Office explains

Local authority officers working in licensing, trading standards and environmental health now have access to a new set of competency frameworks to assist in their professional development.

The Regulators' Development Needs Analysis (RDNA) approach to competency has been used within health and safety regulation for over two years. More recently, the Local Better Regulation Office (LBRO), the Institute of Licensing (IoL), the Chartered Institute of Environmental Health(CIEH) and the Trading Standards Institute (TSI) along with other partners, have been working on a major project aimed at developing a common approach to regulatory competency by extending RDNA across other local authority regulatory services functions.

Since 1 November 2011, local authority officers have had access to the RDNA core regulatory skills section. Specialist technical knowledge sections are also available for food (food hygiene and food standards), animal health and welfare, housing, metrology, and port health.

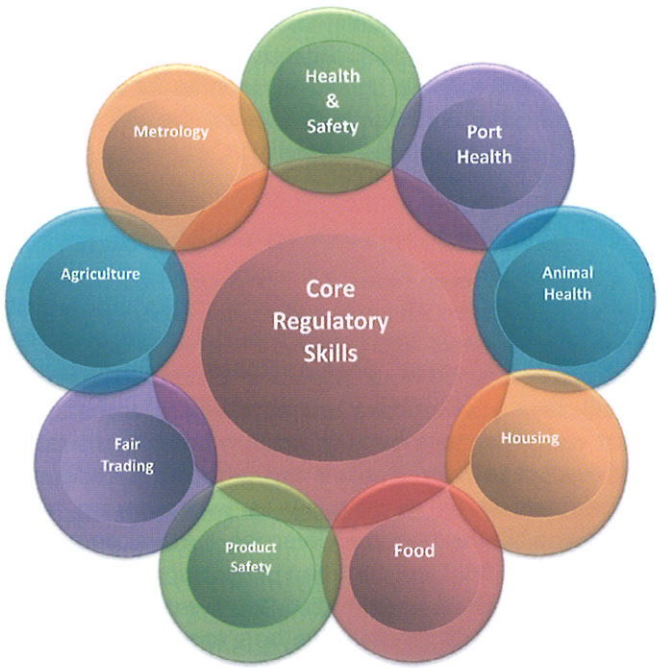
In spring 2012 RDNA will be further extended to cover pollution prevention and control, licensing (in particular the Licensing Act 2003), fair trading, product safety, and agriculture. The intention is that all of the main local authority regulatory services functions will eventually be included within the common approach.

For the first time, local authority officers have access to a nationally recognised and agreed competency framework for a range of regulatory functions and, most importantly, a system that can be used to identify and meet their development needs.

Local authorities will therefore have a means of demonstrating to national regulators, the Government, citizens and the courts that they have an effective system for ensuring the ongoing competency of their regulatory staff.

Elements

Firstly, the key element is a framework of eleven core skills (which include investigations, inspections, risk assessment, advising and influencing) which are common to all officers, and a suite of function-specific knowledge competencies chosen according to the particular work of individuals.



Secondly a website-based self-assessment tool, accessed via LBRO's website, provides a report highlighting where officers' development needs may lie.

Finally, GRIP (Guidance for Regulators Information Point), also available via LBRO's website, will assist officers in identifying how their development needs can be met by highlighting a series of web links to resources such as publications, operational guidance and training courses.

A partnership approach

Development of this common approach to regulatory competency is being supported and overseen by a board comprising representatives from the CIEH, TSI, Institute of Licensing, Local Government Group, Health and Safety Executive, Food Standards Agency, National Measurement Office, Animal Health and Veterinary Laboratories Agency and Association of Port Health Authorities, amongst others. Membership of this board will grow as RDNA is extended across additional local authority functions.

RDNA was piloted across 25 local authorities in England and Wales earlier this year, and the feedback was very positive. It included some valuable suggestions for improving the system, which have been implemented.

Brighton & Hove City Council was one of the local authorities that piloted RDNA. Tim Nicholls, Brighton & Hove's Head of Environmental Health, says: "We now use RDNA as a support to individual development planning and to identify development needs for the service in our annual management review and business planning.

"It is a more efficient, targeted way to identify development needs, enhance professional development and maintain and demonstrate competence with limited funds in the current economic environment. Officers have found it to be a straightforward and clear system to use, and managers welcome having a recognised competency framework for the first time."

Graham Perry, Head of Public Protection at Monmouthshire Council, agrees: "We were keen to support the development of the competency framework by being part of the pilot work because competence has always been important to public health professions. It's an ever-changing world in which we are expecting more and more from our staff. Developing a tool that is relevant and easy to use will help us identify priorities for professional development and support us in maintaining the high standards that we aim for – and are expected from us."

Supporting new ways of working

Local authorities have found the RDNA approach helpful in supporting staff through periods of change and in developing new ways of working. Allan Hampshire, Head of Public Health and Protection for Cornwall Council, which became a unitary in 2009, says: "Two of the biggest challenges I faced at the outset were how to achieve integration and harmonisation of different regulatory functions and professional disciplines. For these reasons we were keen to be involved in the RDNA pilot, after which we concluded that the approach provided a key tool to support culture change and a more structured and consistent approach to continuous professional development. We will be rolling out the use of the RDNA approach across the service over the next year."

And Worcestershire Regulatory Services, a new shared service bringing together regulatory services officers from the seven councils in Worcestershire, is rolling out the RDNA approach after taking part in the pilot earlier this year. Steve Jorden, Head of Worcestershire Regulatory Services, says: "We think the RDNA approach can support our new service as we develop new ways of working, particularly through a consistent, strengthened approach to training and development across the environmental health, trading standards and licensing professions."

Myles Bebbington, Vice-Chair of the Institute of Licensing, adds: "The Institute of Licensing is proud to be working in partnership with LBRO to develop a web based self assessment tool that will enable licensing officers to self-assess their development needs and identify learning and career development opportunities. The scheme already being piloted with CIEH and TSI will give a consistent structure to career development that can be recognised nationally and therefore put the skills and professional competency of Licensing officers onto a comparable level with officers in similar regulatory fields. A small working group has been set up to develop core competencies, initially within the Licensing Act 2003".

Next steps

The priority is to make RDNA available across additional local authority functions. In addition, LBRO is exploring the potential for making RDNA available to environmental health, licensing and trading standards practitioners working in the private sector.

LBRO, the Institute of Licensing, CIEH and TSI, along with their partners, are committed to ensuring that the collaborative approach through which RDNA is being developed will provide local authorities with a flexible, cost-effective staff development tool.

Philip Preece

Programme Manager, LBRO

The Local Better Regulation Office (LBRO) creates the conditions for cutting red tape for UK business and providing the right level of targeted protection for consumers, workers and the environment. LBRO is a catalyst within the regulatory landscape; using its unique relationships to energise all those involved in making regulation work for Britain, through Primary Authority and other simplification of the regulatory system. Its area of responsibility covers environmental health, trading standards, fire safety and licensing. LBRO currently operates within the remit of the Regulatory Enforcement and Sanctions Act 2008, as an executive non-departmental public body, accountable to the Department for Business, Innovation and Skills (BIS) through the Better Regulation Executive. Following the 4 February announcement by Business Minister, Mark Prisk MP, it is proposed that LBRO's independent and technical expertise will be carried forward in the delivery of Primary Authority and other improvements to regulation, by a new streamlined and independent organisation within BIS. The proposals are subject to Parliamentary approval and the Government intends to consult on these plans in spring 2011. LBRO is governed by an independent Board, has a staff of around 25 and is based in central Birmingham. Our remit covers the whole of the UK and we liaise closely with the devolved administrations to ensure our work in Wales, Scotland and Northern Ireland is appropriate.

For further information, email philip.preece@lbro.org.uk

Article

Data Protection and CCTV Licensing Conditions

Contrary to increasingly common practice over the past few years, the Information Commissioner has recently indicated that CCTV should not be a licensing condition unless there is justification. And in the absence of such circumstances, the ICO clearly does not see that the installation of CCTV can be universally justified to prevent crime or anti-social behaviour. **Sarah Clover** and **Michael Kheng** consider the implications of the ICO's pronouncement

Licensees not infrequently find that the different laws under which they are obliged to operate collide. The section 182 Guidance (para 1.16) states that duplication of other legal requirements is to be avoided, and that a licensing authority should only impose conditions which are necessary and proportionate for the promotion of the licensing objectives. Standard conditions form no part of the licensing regime. The "necessary & proportionate" test runs as a theme through the legislation, and has been ratified by R (Daniel Thwaites plc) v Wirral Magistrates' Court [2008] EWHC 838 (Admin).

One type of condition that appears with particular frequency is a CCTV condition. Often set out in considerable detail, the CCTV condition is of particular importance to the police, who take a close interest in the specification of equipment, and access to the footage that is captured by it. Non-compliance with CCTV conditions has proved very fertile ground for conflict with the responsible authorities and is taken very seriously by all sides.

Into this arena the Information Commissioner's Office (ICO) has entered. The ICO advises on and enforces the Data Protection Act 1998 (DPA). The DPA regulates the holding and processing of personal information relating to living individuals. Under the DPA, all public and private organisations are legally obliged to protect any personal information they hold, and that includes CCTV images.

The ICO has made specific pronouncements, which are published on their website, about the use of CCTV in licensed premises[1]. The ICO is clear that CCTV should not be a condition unless there is justification, which the ICO describes as a history of crime or anti-social behaviour associated with the premises and a likelihood of future trouble. In the absence of such circumstances, the ICO clearly does not see that the installation of CCTV can be universally justified to prevent crime or anti-social behaviour. The ICO specifically disapproves of CCTV conditions as model or standard conditions. This perspective differs sharply from that of the police and many licensing authorities.

The ICO makes it very clear that wording in CCTV conditions that requires licensees to provide CCTV images to the police "on request" does not fit with the provisions of the DPA, which incorporates a prejudice test, and such wording could be seen as contradicting the UK's obligations under the provisions of the European Data Protection Directive[2].

The licensee is the data controller for the CCTV images. The data protection principles allow for CCTV images which can identify individuals to be handed over to the

1 "ICO view on CCTV installation being made a condition of an alcohol licence by the licensing authority".
2 Directive 95/46/EC.

police where it is necessary to do so for the prevention or detection of crime; for the prosecution or apprehension of offenders; or where the disclosure is required by law. This is more restrictive than conditions worded as handing over images "on request". The police must be able to justify their requests for the CCTV images accordingly.

Many new licence applications have introduced wording into their CCTV conditions that would reflect the parameters of the DPA. Other licensees, however, find themselves in a conflict; trying to comply with more extensively worded conditions, but at the same time, complying with the requirements of the DPA. In their efforts to satisfy both sets of requirements, some licensees have devised "CCTV request forms" for the police to fill in, setting out a formal signed police request in terms that would satisfy the DPA. This has not been universally well received, and some police forces insist that they are entitled to the footage they require on demand, without further ado. It is not uncommon for the police to arrive at premises without prior warning and insist that they leave with the CCTV footage in their possession. This can cause data protection difficulties. It is for the requesting authority to indicate to the data controller which exemptions under Part IV of the DPA the authority believes they are making their CCTV request under, and why they believe those exemptions are satisfied. It is likely for the most part to be under DPA Section 29 - 'crime and taxation'.

Section 29(3) permits the data controller to disclose limited personal data, in the form of CCTV images, without the knowledge or consent of the individual to whom it relates, as long as the data controller is satisfied that failing to release this information would be likely to prejudice any attempt by the police to prevent, detect or prosecute crime. This introduces a level of detail in the request being made by the authority and the decision to release by the data controller that is not often envisaged by the wording of the licence condition itself.

The ICO has confirmed that Section 29(3) is a permissive exemption, which means it is in the power of the data controller to refuse to hand over the CCTV footage under the terms of the DPA, if not satisfied that data protection principles are complied with. In those circumstances, it would be possible for the data controller to request that the police obtain a court order requiring the release of the personal data.

There have already been indications that the police in some areas have not been happy with these extra layers of compliance before obtaining the CCTV images that they seek. In some instances, they have cited Section 19 of the Police and Criminal Evidence Act 1984 ("PACE") as a relevant provision to obtain images immediately. Section 19 of PACE states that when a police constable is lawfully on premises he can seize "anything" which he finds on the premises if he has reasonable grounds for believing that it has been obtained in consequence of the commission of an offence, or that it is evidence in relation to an offence which he is investigating, or any other offence and that it is necessary to seize it in order to prevent it being concealed, lost, damaged, altered or destroyed.

The difficulty with reliance on this provision appears to be that "anything" might relate to the hardware of the CCTV system, but does not appear to be apposite to the electronic information contained within it, to which Section 19(4) "information stored in any electronic form" seems to relate.

It is not the CCTV equipment itself that the police want; it is the information stored by it. It is at least arguable that the hardware itself affords no evidence whatsoever. Another key argument is whether there is any likelihood of the image information being "concealed, lost, damaged, altered or destroyed" simply because it is being retained by the data controller on the licensed premises and not being handed immediately to the police. In most cases, this seems unlikely. In any event, Section 21 of PACE requires that a police constable who seizes anything as a consequence of the provisions of the legislation shall provide a record of what was seized to the occupier of the premises upon request, which may not be much more or less arduous than filling in a DPA request form in the first place.

It can be seen that the introduction of data protection issues into an already lively debate surrounding CCTV conditions has resulted in a whole new set of considerations, which must be taken into account when introducing CCTV conditions, or complying with them.

Sarah Clover

Licensing Barrister, No 5 Chambers, Birmingham.

Michael Kheng

Director of Kurnia Licensing and Training Consultants, Mablethorpe Lincolnshire.

Extracts from the s 182 Guidance

2.6: Conditions are best targeted on deterrence and preventing crime and disorder. For example, where there is a good reason to suppose that disorder may take place, the presence of closed-circuit television cameras both inside and immediately outside the premises can actively deter disorder, nuisance and anti-social behaviour and crime generally. Some licensees may wish to have cameras on their premises for the protection of their own staff and for the prevention of crime directed against the business itself or its customers. But any condition may require a broader approach, and it may be necessary to ensure that the precise location of cameras is set out on plans to ensure that certain areas are properly covered and there is no subsequent dispute over the terms of the condition.

Institute of Licensing News

Institute of Licensing – how it evolved

In 1996 the Local Government Licensing Forum was formed by a small number of local government and ex local government officers from various professional backgrounds, to enable officers to:

- exchange information;
- give mutual support ;
- provide training in licensing matters; and
- act as a collective, respected and powerful voice at government levels on areas of concern.

In 2003, recognising the continuing needs for a professional organisation to serve the interests of practitioners in local government and elsewhere (such as the police, private sector and the legal profession) the Institute of Licensing was created and incorporated as a company limited by guarantee. A year later, it incorporated into its fold the Society of Licensing Practitioners, a body with similar aims to our own, and in 2006 the Institute became a registered charity.

The Institute responds to the needs of the membership in respect of the significance attached to different areas of licensing. The stated objectives of the organisation are set out in the company's Memorandum & Articles of Association for the benefit of the public as follows:

- to advance the development, evaluation and recognition of professional skill, technical competency, ethical conduct and practical achievement in the field of licensing and regulatory activity; including their application in the public and private sectors and in the framing and enforcement of laws and regulations in pursuit of prevention of crime disorder and nuisance, the promotion of health and safety, the protection of children and vulnerable people, the protection of the environment and other licensing and regulatory objectives;
- to foster mutual understanding and respect between practitioners and the communities and sectors they serve;
- to develop, encourage and provide certification of related standards, education, training, study, scholarship, communication, consultation, knowledge creation and information dissemination; and
- to provide other activity consistent with the public good in the licensing field.

How the Institute operates

The Institute operates throughout England, Wales and Northern Ireland, with a Board composed of 11 officers representing their regions and other officers, such as Chairman, Vice Chair etc. Accountable to the membership they set general direction and policy and work for the purpose of co-ordinating national activities, responding to government and other proposals, running our events, and promoting recognised licensing qualifications.

The Board's work is delegated to various committees, with specific remits. The Committees are:

- Management
- Events
- Organisation & Development

To help the Institute undertake the work identified by the Board and the Committees it currently employs two full-time officers and three part-time contractors:

- Executive Officer, Sue Towler
- Training and Qualifications Officer, Jim Hunter
- Co-ordinator, Natasha Mounce
- Book Keeper, Caroline Day
- Administrator, Linda Bendell

Our regions

A key working strength for the Institute are its eleven regions which operate throughout England, Wales and Northern Ireland. Each region is operated through a regional committee and hold regular meetings and events regionally which can be attended by members from any region, no matter where they live or work.

Each region will also hold an annual general meeting to elect the committee.

National training event – previously the Annual Conference

In November 1997, the first national Public Protection and Licensing conference was held at the Home Office Emergency Planning College in Easingwold, Yorkshire over four days. Over fifty delegates attended and had the opportunity to hear a wide range of speakers, on a wider range of topics.

This is now firmly established as our signature annual event, with successive conferences being held in Stockport (twice), Swansea, Torquay, Newcastle, Peterborough, Blackpool (2005), York (2006), Brighton (2007), Bristol (2008), Leeds (2009) and Manchester (2010).

Well-known speakers frequently address these events, such as the chairman of the Gaming Board for Great Britain and the chief executives of the Security Industry Authority and the Football Licensing Authority. Ministers of State addressed the 2006 and 2007 conferences.

As a result of feedback from members the annual conference has been rejuvenated and restyled to accommodate member's feedback. Therefore we are all set for the launch of the new National Training Event this

year in November which is to be held in Birmingham. The event will cover a whole range of topics by a number of prominent speakers.

The way forward

In January 2011 the IoL set its Strategic Plan for2011-2013. The plan recognises the aims and objectives of the IoL and its hopes for future development and was informed by the Strategic Review consultation with Institute members which was undertaken in 2010. The plan identifies the Institute's five main visions. These are:

1. **Profession body recognition** - The Institute of Licensing will aim to build on its foundations as the nationally recognised professional body representing all areas of licensing practice. The IoL wish to build on its inclusive membership and we will continue to provide guidance, training and support to promote the highest standards of professionalism, competency, and positive proactive practice.
2. **Professional recognition for licensing** - The Institute will continue in its quest to achieve national recognition of licensing as a profession with a clear progressive learning and development path, with recognised competencies and professional ethics, and will represent a recognised inclusive professional field of excellence.
3. **Influencing practices/provision of guidance** - The Institute will support and contribute to activities aimed at securing the highest standards of professionalism within licensing law and practice and related fields. The IoL will promote consistency in standards, policy and practice and will identify and share best practice including the provision of guidance aimed at all areas of licensing practice.
4. **Training provision** - The Institute will be the leading provider for training, qualifications, information, communication and reference sources for licensing practitioners.
5. **Influence and engagement** - The Institute will provide a strong voice engaging with the government and other relevant organisations on licensing related matters and will be recognised as the leading stakeholder for consultation on proposed legislative and other changes.

Work in progress - what we are doing for members

Qualifications and competency framework

The IoL recognise the need for its member's to have nationally recognised qualifications and a bench mark standard for licensing practitioners. The IoL are working towards the ability to provide nationally recognised qualifications for licensing practitioners. The IoL is also working with LBRO to establish a common competency framework for licensing officers. The work involved in both projects has started but due to the details involved it may be a while before either or both projects have been delivered.

Legislative changes

The IoL has started liaising with the Home Office, DCMS & DfT to ensure that when changes are proposed to the current legislation the views of the IoL's members are considered.

The Law Commission Review of Taxis & Private Hire Regulations

As a result of the work undertaken by the Taxi Working party over the last two years The IoL has been invited to discuss general issues with representatives of the Department of Transport in relation to future legislative changes within the Taxi and Private Hire legislation.

Subsequently we were invited to send an IoL representative to a meeting with the Law Commission and DfT following the statement by the Law Commission of its intentions to reform Taxi and Private Hire legislation.

DCMS consultation – proposal to deregulate regulated entertainment

The Institute hope that members will respond to this consultation. In addition, we will be consulting members for their views in order to respond as an organisation presenting the views of our membership as a whole.

Online event bookings and online payments

The IoL have in the last few months implemented the events and membership online booking/application system. This is currently bedding in but will mean that event bookings and membership applications are automatically logged on to the back office systems as opposed to information having to be manually re-inputted.

We are also seeking to implement online payments and this is work still in progress.

Training

An important element of the Institute is training, and in addition to the conference we organise residential and non-residential training courses throughout the year on different subjects including recent developments such as better regulation (2009), sex establishment licensing (2009), outdoor events (2010) etc to provide timely and relevant training opportunities to our members, including basic training aimed at new entrants, and advanced training for established practitioners.

One of the IoL's main member's benefits is the low cost good quality training courses that are available to members in each of the 11 regions and on a National level. The Training courses currently available for delivery in any of the 11 regions include:

1. How to inspect licensed premises
2. Caravan site licensing
3. PACE & investigation Courses
4. Taxi licensing
5. Street trading and pedlars

6. Licensing Act 2003
7. Gambling Act 2005
8. Basic licensing principles covering a selection of the subject areas above
9. Members training, training for Councillors on a licensing committee
10. Training for all parties who attend a licensing committee.

Comments relating to the courses the IoL has provided include:

PACE Course: "I thought it was one of the most useful courses I'd ever been on and that's saying something as I've been to many since qualifying 26 years ago!" Sandra Graham, Solicitor Horsey Lightly Fynn

Members Training Course: "The recent training from the IoL was pitched at just the right level, in a humorous and engaging way. Complex issues were broken down into bite size chunks making otherwise dry topics manageable to grasp. I would not hesitate to recommend the training to other local authorities" Jenna Rawle Senior Licensing Officer.

The IoL will be running a series of seminars in relation to the taxi legislation review currently being conducted by the Law Commission. Dates, locations and other details to be announced, see the IoL website for more details.

The IoL will also be running a series of seminars in relation to the DCMS proposals to deregulate schedule one of the Licensing Act 2003. The seminars will start in January 2012, locations and other details to be announced, see the IoL website for more details.

The IoL will be organising a series of training courses and seminars to examine the changes to the Licensing Act 2003 brought about by the Police Reform and Social Responsibility Act 2011. The seminars will start in January 2012, locations and other details to be announced, see the IoL website for more details.

Jim Hunter
Training & Qualification Officer, IoL

Natasha Mounce
Co-ordinator, IoL

IoL Calendar of Training & Events

November 2011
16-18 The National Training Event - Birmingham

December 2011
2 South West Regional Meeting & Christmas Lunch - Taunton
5 Licensing Fees Training Course - London
7 North East Regional Meeting
8 London Regional Meeting
9 North West Regional Meeting

January 2012
30 & 31 Outdoor Events Training - London

February 2012
TBC Licensing Practitioners Course

March 2012
6-8 Enforcement Course – Investigation Through to Trial
14 North West Regional Meeting
15 South West Regional Meeting
29 London Regional Meeting

June 2012
14 London Regional Meeting
14 North West Regional Meeting
14 South West Regional Meeting

September 2012
12 North West Regional Meeting
20 London Regional Meeting
20 South West Regional Meeting

December 2012
6 London Regional Meeting
6 South West Regional Meeting
12 North West Regional Meeting

Gambling licensing: law and procedure update

More flexibility for Operators

Changes to the Gambling Act earlier this year have given gaming machine operators the opportunity for more flexibility in adult gaming centres and bingo premises, and may lead to some operators consolidating their licenses. **Nick Arron** considers the implications of the changes, and also discusses William Hill's successful challenge to Brent Council over what it claimed were disproportionate conditions on a betting premises licence

The Gambling Act 2005 (Gaming Machines in Adult Gaming Centres and Bingo Premises) Order 2011 and the Categories of Gaming Machines (Amendment) Regulations 2011 both came into force on 13 July 2011. The former changes the category B gaming machine entitlements for adult gaming centres and bingo premises. The latter increases the maximum stake permitted on a B3 gaming machine from £1 to £2.

Prior to the order, adult gaming centres (AGCs) were permitted to have up to four category B gaming machines and bingo licensed premises up to eight.

The order allows both AGC and bingo premises to make available for use on the premises a number of category B gaming machines not exceeding 20% of the total number of gaming machines which are available for use on the premises. The calculation takes into account the category B and C gaming machines, for which there is no limit on the numbers made available.

Existing premises benefit from grandfather rights. The order does not reduce the number of category B gaming machines that the AGC or bingo premise licence is authorised to make available for use on the premises. Those licences granted before 13 July 2011 retain the right to have either four category B machines in an AGC or eight category B gaming machines in a bingo premises licence, despite the fact that these numbers may exceed the 20% limit.

There are transitional provisions in relation to new premises licences granted in the period starting on or after 13 July 2011 up until 1 April 2014. AGCs can benefit from either four category B machines or the 20% limit, whichever is greater; and similarly, bingo premises licences can benefit from eight category B gaming machines or 20% limit again, whichever is the greater.

After 1 April 2014, for those premises licences granted on or after 13 July 2011, only the new provisions apply and they will not be able to make available for use on the premises a number of category B gaming machines exceeding 20% of the total number of gaming machines which are available for use on the premises.

Nick Arron

The stake increase and changes in the allocations to AGCs and bingo premises have been broadly welcomed by the industry. They will give manufacturers greater creative freedom to innovate and improve upon their existing offers. The industry hopes that it and its customers will benefit from the stimulation to the sector.

The changes will lead to some licence holders, who have split their premises, applying to remove the split and consolidate their licences. This will reduce their liability for annual fees; and the changes in the order make a split less attractive, allowing operators to create more open plan premises. Indeed, operators may free up areas for additional category C and D machines to increase the possible allocation of category B machines.

There have been different approaches to the consolidation of licences nationwide. Certainly a new licence application would be effective, but a variation should also achieve the

required aim. Operators will prefer the variation method with the reduced cost. The difficulty is that section 187(2) of the Gambling Act 2005 states that "a licence may not be varied under this Section so as to relate to premises to which it did not previously relate".

The industry and a number of local authorities have sought advice from the Gambling Commission, which took a refreshingly pragmatic approach. It recognises that a degree of ambiguity exists as the Act was not drafted with these circumstances in mind. It stressed that a common sense approach should be used in considering applications and it sees no reason why, in principle, section 187(2) should preclude a variation where the new plan includes the premises that were subject to the licence prior to the variation to split the premises.

The Commission also points out that some licensing authorities have already allowed variations to cover such matters as the extension of the gambling area to include a former smoking area.

On costs, the Commission's view is that the fees should, as far as possible, be proportionate to the resource required to complete the task. In most of the cases it is difficult to see why a full application would be warranted as the gambling activities are already taking place at the premises. This approach is welcomed. However, the Commission points out that it is ultimately a matter for the licensing authorities as to whether a variation or a new application is required.

Certainly, operators should not simply be removing the split as they will then be in breach of the mandatory conditions on access. Licensing authorities and operators are encouraged to adopt a partnership approach to the applications necessary.

Appeal against imposition of conditions on licence

In early July, William Hill successfully appealed against a decision of the London Borough of Brent to impose two onerous conditions on its betting premises licence. The licensing sub-committee granted a gambling premises licence, for the premises in Wembley, on 19 November 2010. There were a number of objections to the application including from the police and from a headmistress whose school was 10 metres from the premises.

When granting the application, the committee adopted conditions which had been agreed by William Hill. However, they imposed a condition requiring a minimum of two members of staff to be present on the licensed premises at all times; and they amended an agreed condition relating to maglocks (magnetic locks) to state to the effect that doors and windows were to remain closed and a maglock electronic door release, to be fitted to the entrance door controlled by staff from the counter, was to be used at all times. Although William Hill did not object to the use of a maglock, it objected to the condition requiring it to be used at all times.

Importantly, when granting the licence and imposing the additional conditions, the two additional conditions were imposed without any consultation with William Hill and the committee did not provide reasons for its decision. William Hill contended that it would not have been able to open the premises with these conditions, as it would be uneconomic to do so, and that the conditions were disproportionate. It also pointed out that there are two other betting shops in the same road which operate without these additional conditions on staff and the use of the maglock.

The court heard from the headmistress and the police. It found that the police were unable to demonstrate how the additional conditions would prevent criminal activity or prevent harm to children. While they accepted there is crime in the area, the evidence provided did not directly link this crime with betting shops. Regarding the concerns of the headmistress, who they found an impressive witness, they stated that she was not able to demonstrate how the imposition of the additional conditions would safeguard her students.

William Hill had given evidence that her students regularly walk past an existing Ladbrokes on the same road and that this had not caused any problems. The headmistress also confirmed that she did not consider that any of her students would enter a betting shop.

The court found that the reasons given for the decision were insufficient in that they failed to address the evidence they heard with the conclusions they reached. In particular they did not give reasons for the additional conditions which they imposed.

The court was concerned that the committee failed to request representations from William Hill, in relation to the additional conditions, and found that this contravened the requirement to be transparent.

The justices referred to the other betting shops in the area, which were allowed to operate without the maglock and staff conditions, which suggested an inconsistent approach, not justified by the committee.

The appeal was allowed and the licence granted without the onerous conditions.

Gambling Commission Annual Report & Accounts 2010-2011

The Gambling Commission's Annual Report and Accounts 2010-2011 was published recently.

Worth highlighting are the 500 calls a week received by the Contact Centre, of which 98% were dealt with within three days, a total of nearly 25,000 calls in the year. The largest category of enquiries was from customers and about operators who are not licensed from Great Britain. Queries from operators were mostly about regulatory returns and fees. There were 127 reports of suspected illegal operators, of which 109 were passed to the relevant local authority for action.

The number of planned compliance visits to smaller operators fell compared to the previous year as the Commission focused its attention on high-impact operators and on targeted inspections such as underage gambling and money laundering.

The Commission conducted test purchase operations on some key AGCs. These were similar operations to those conducted on betting shops in previous years. Of 109 AGCs visited, 77 successfully prevented the under 18 from gambling.

Nick Arron
Lead Partner, Betting & Gaming, Poppleston Allen

Article

New Regulation For Circus Animals

The Government is working towards creating a new and tougher licensing regime to ensure the welfare and safety of circus animals. **Elliot Gold** examines its intentions and proposals

Being a nation of animal lovers, it should be unsurprising that in a recent public consultation the overwhelming majority of people surveyed declared themselves in favour of an outright ban on wild animals performing in circuses. Whether those members of the public engaged in a cost-benefit analysis before answering is less certain. There are thought to be fewer than 40 such performing animals.

On 13 May this year, the Secretary of State for the Environment announced the government would not seek to legislate for a ban but favoured regulation. This would secure high welfare standards for travelling performing wild animals in circuses, to be ensured through a strict new licensing regime.

The model of that licensing regime has not yet been announced. It is, though, possible to consider what such a system may look like. Before examining that, it is worth looking at the legal history relating to the ownership and exhibition of wild animals at circuses.

The history of animal ownership

There is surprisingly little law in relation to the keeping of wild animals. In his Commentaries on the Law of England, Sir William Blackstone in book two, chapter two, wrote that English law distinguished between animals as domiate naturae, which were tame and in which a person could have absolute property, and ferae naturae, which were of a wild disposition and in which no person could have absolute property. Instead, in such an animal, a person could have only qualified property either per industriam, propter impotentiam or propter privilegium, being by industry, by impotency in the animal or by privilege. Qualified property in wild animals, nevertheless, enabled a person to maintain a certain degree of ownership and control over them.

More recently, in the twentieth century, Parliament passed the Protection of Animals Act 1911 to regulate animal welfare. It still imposed no restrictions on the keeping of wild animals or using them for performance or entertainment. That came nearly fifteen years later when Parliament passed the Performing Animals (Regulation) Act 1925.

The present legislation in-force

This Performing Animals (Regulation) Act 1925 regulated the exhibition and training of animals. Section 1 of the Act prohibited any person from exhibiting or training a performing animal unless they were registered in accordance with it. It applied equally to animals that were wild as to those which were tame and any person could be registered – provided, that is, that they had not been found guilty by a magistrates' court of cruelty in connection with the training or exhibition of performing animals.

This legislation remains in force, for now. It provides that any officer of a local authority duly authorised in that behalf by the local authority and any constable may enter and inspect any premises in which any performing animals are being trained or exhibited or kept for training or exhibition and to require persons to produce their certificate of registration. Where a person acts in breach of the Act, this constitutes an offence triable summarily only, with the maximum penalty being a fine of £1,000 and removal of their name from the register.

The procedure for registration is set out in the Performing Animals Rules 1925, which requires the applicant to send an application to one of a number of stated local authorities. The Performing Animals Rules 1968 raised the fee for the registration of exhibitors and trainers of performing animals from one guinea to £3 and abolished the shilling fee for inspections of registers and copies of certificates of registration.

Other than that, there were no other statutory controls with regard to the keeping or exhibiting of wild and dangerous animals until the Dangerous Wild Animals Act 1976. This prohibited any person from keeping any dangerous wild animal, except under the authority of a licence granted by a local authority with an exception for zoos, circuses, licensed pet shops and designated establishments.

Animal welfare, itself, continued to be regulated by the Protection of Animals Act 1911 until largely

superseded by the Animal Welfare Act 2006, which applies equally to animals kept in circuses as to pets, farmed animals and other domestic and companion animals.

New proposals for licensing

In March 2006, however, the then Minister with responsibility for animal welfare announced in the House of Commons that the government intended to introduce Regulations under the 2006 Act to ban the use of certain non-domesticated species in travelling circuses where their welfare needs could not satisfactorily be met.

The government set up the Circus Working Group to consider the issue. The report stated that its purpose was "to evaluate the potential of an inspection system for circuses keeping wild animals". The chairman's report was produced in October 2007, and concluded:

- There was little evidence to demonstrate that the welfare of animals kept in travelling circuses was any better or worse than that of animals kept in other captive environments;
- There was no scientific evidence sufficient to demonstrate that travelling circuses were not compatible with meeting the welfare needs of any type of non-domesticated animal being used in the UK;
- Regulation could be introduced under the authority of section 13 of the Animal Welfare Act 2006 using the Zoo Licensing Act 1981 as a model.

It was suggested that the Government could introduce regulations to make it an offence to operate a circus except under the authority of a licence. Adapting the wording contained in the Zoo Licensing Act 1981, under the regulations circuses would be required to:

1. Accommodate their animals under conditions which aim to satisfy the biological requirement of the species to which they belong, including –
   i. providing each animal with an environment well adapted to meet the physical, psychological and social needs of the species to which it belongs; and
   ii. providing a high standard of animal husbandry with a developed programme of preventative and curative veterinary care and nutrition.
2. Preventing the escape of animals and putting in place measures to be taken in the event of any escape or unauthorised release of animals.
3. Preventing the intrusion of pests and vermin into the circus premises.
4. Keeping up-to-date records of the circus's collection, including records of:
   i. the numbers of different animals;
   ii. acquisitions, births, deaths, disposals and escapes of animals;
   iii. the causes of any such deaths; and
   iv. the health of animals.

It would be for the Secretary of State to set the basis for the standards to be imposed, potentially to be modelled on the Standards of Modern Zoo Practice, published on the Department for Environment, Food and Rural Affairs website. They would be likely to cover the rules relating to the provision of food and water, a suitable environment, animal health care, the opportunity to express most normal behaviour, and protection from fear and distress; transportation and movement of live animals; stock records; and staff training. It was also considered that an amended form of the requirement placed on zoos to have an ethical review process would also promote public confidence in the practices and procedures adopted by circuses.

In addition to that stated above, it was thought that a further significant source of relevant standards could be the Proposed Model Regulations for the Care, Transport and Presentation of Animals in Circuses, produced by the European Circus Association.

The next steps

As stated at the outset of this article, the Secretary of State has announced the government's intention to bring forward regulation. This is an area of delegated responsibility for both Scotland and Wales, so such regulations will apply in England only.

Mirroring the Standards of Modern Zoo Practice, the areas that the government has stated it is considering as part of licensing conditions include:

- the rules for transport of the animal, including how long animals can spend being transported without rest periods;
- the type of quarters that must be provided for the animal, including the size of the quarters and the facilities provided, including winter quarters;
- the treatment of animals by trainers and keepers, including performance and the training methods that may be used.

This is likely to be introduced in accordance with the Animal Welfare Act 2006 section 13, which provides that no person other than under licence and unless registered may carry on an activity specified in the accompanying regulations, which involves animals. As of yet, there are no accompanying regulations.

A person who in breach of the Act is guilty of an offence will be liable on summary conviction to imprisonment for a term not exceeding 51 weeks and/or a fine not exceeding £5,000 although, at present, the reference to 51 weeks is to be read as a reference to six months. In addition, the magistrates court will be able to make an order depriving such a person of ownership of the animal and for its disposal and to disqualify them from owning, keeping or participating in the keeping of animals or from being party to an arrangement under which they are entitled to control or influence the way in which animals are kept.

Elliot Gold

5 Essex Court, Chambers of Fiona Barton QC

Westminster Licensing Advice Project

The Government is encouraging local people to become far more involved in licensing decisions, and one innovative partnership in the public sector is showing a way forward, as **Richard Brown**, the solicitor who runs the Westminster Licensing Advice Project, explains. He also looks at an appeal decision involving the Albert Hall and local residents that is sure to reverberate

The Licensing Act 2003 aimed to engender, develop and maintain a more balanced equilibrium between the needs and aims of the licensed trade, local people, businesses, public bodies and others.

Way back in the mists of time, the then Secretary of State for the Department of Culture, Media and Sport wrote in the foreword to the Guidance issued under section182 of the Licensing Act 2003: "Local people are starting to show a much greater understanding of their rights to make objections and seek reviews and are becoming aware of and engaged in the licensing process".

These worthy aims have, under the stewardship of the coalition Government, grown into more ambitious principles which, following their wider "localism" agenda, found voice in the consultation proposals set out last year by the Government as a pre-cursor to the Police and Social Responsibility Bill (PSRB), which at the time of writing is wending its way through the Lords.

This article will outline the way in which one local authority, Westminster City Council, has sought to facilitate this greater involvement through an innovative partnership arrangement between the public sector and the voluntary sector.

The Licensing Advice Project (LAP) is a partnership between Westminster City Council and Westminster Citizens Advice. When the Licensing Act 2003 came into force, Westminster City Council wished to ensure that interested parties were aware of and could exercise their rights and responsibilities under the new regime. In 2005, it approached Westminster Citizens Advice with a view to establishing an independent service to provide advice to the community exclusively on licensing matters. The LAP was established, and is now into its sixth year. It is staffed by a licensing solicitor - myself. I have been in the role for just over two years.

Richard Brown

How it works

The LAP provides a free, independent, impartial and confidential information, advice and representation service on matters relating to the Licensing Act 2003 and related legislation.

The service is open to any resident of the City of Westminster (including residents' associations and amenity societies), and covers a range of issues including resolving problems with the current operation of a premises or making views known on applications under the Licensing Act 2003. Sometimes this will be an outright objection to the grant of a licence, and sometimes it will be reaching an agreement with the applicant over hours, conditions, agreements and so on, without the need for the time and expense of a hearing. In this way, the time (and more importantly, money) of all parties can be saved.

What next?

The raison d'etre of the Citizens Advice service is to provide

the advice people need for the problems they face and to improve the policies and practices which affect people's lives. The Licensing Act 2003 is a piece of legislation which can have a profound social effect thanks to the rights and responsibilities which it provides to local communities. Providing residents with access to expert advice and assistance is a vital step in ensuring that residents are able to utilise their rights and responsibilities, and that the views of all stakeholders are fully taken into account so that the legislative scheme can function as smoothly as possible.

It is the only service of its kind in the country and there has been significant interest in the LAP's service from a number of other local authorities. As yet, financial constraints seem to have inhibited other local authorities from utilising a similar service but the provisions of the PSRB in respect of "costs recovery" may change this.

Encouraging local resident and community involvement following the Albert Hall case

Another way in which local authorities can "encourage local resident and community involvement" is by notifying local residents of licensing applications in their area. While practitioners eagerly await the PSRB passing on to the statute book, and discover how in practical terms the licensing provisions will satisfy the Government's aim of re-balancing the Licensing Act 2003 in favour of local people, it is apposite that a recent case could lead local authorities to think very carefully about what extra-statutory procedures they carry out in order to encourage this community involvement. It would be unfortunate if this were so, for such extra-statutory measures are a vital way of ensuring that views of all stakeholders are taken into account.

The facts of the case involving the *Royal Albert Hall (Corporation of the Hall of Arts and Sciences v The Albert Court Residents Association and ors* [2011] EWCA Civ 430) will be familiar to many. Westminster City Council, in common with a number of other local authorities, had (and still has) an advertised practice of notifying local residents of applications within a certain vicinity of their property. Such a practice is anticipated in the Section 182 Guidance as one way of notifying residents of licensing applications. It is not, however, a statutory requirement. Many local authorities have taken the view that the requirements for advertising set out in the relevant Regulations suffice.

In this instance, the notification process did not include residents of one nearby block of apartments. No relevant representations were received from local residents, notified or not, within the consultation period. Representations were received after the closing date, once they became aware of the application, from residents of the nearby block. Environmental Health had made a relevant representation "in time" but had resolved its concerns by way of conditions and its representation was withdrawn. Hence, the application was granted in accordance with Section 35(2).

Residents of the nearby block who had not been notified of the application sought a judicial review of the decision on the grounds that Westminster did have a discretion to consider late representations and that in any event they had a 'legitimate expectation' of being notified of the application.

The High Court decided that the statutory time limits could not be overridden and that Westminster was therefore right in law to have excluded the late representations. However, Mr Justice McCombe decided that the residents did have a legitimate expectation of being notified, and, that expectation not having been fulfilled, the decision to grant the application was "irrational". The decision was accordingly quashed.

This left the City Council and the Albert Hall in something of a pickle as the mechanism of the Act appeared to demand that the application be granted, legitimate expectation or not. Both parties appealed to the Court of Appeal.

Lord Justice Stanley Burnton took the view, in his reasoned judgment, that the principle of legislative supremacy applied: the City Council were bound by statute (Section 35(2)) to grant the variation as there were no subsisting relevant representations: "Any failure by an authority to act in relation to its extra-statutory notifications cannot give rise to any right to interfere with the performance of its statutory duties." This overrode the question of whether a legitimate expectation existed. Westminster simply had no choice but to grant the licence.

While the appeal was granted, the Court of Appeal did not specifically overturn the part of the decision that the residents did have a legitimate expectation, although it was only for the purposes of the appeal that Stanley Burnton LJ accepted that they did. Local authorities may have preferred the question resolved one way or the other. As it is, the uncertainty could discourage those local authorities that do take steps to notify their residents, or those who are thinking of doing so. For example, some may question whether a legitimate expectation would arise for residents who had not been notified in a case similar to the Albert Hall's but where there were relevant representations in respect of the application, and the application was nevertheless granted. In such circumstances, the licensing authority is not under the duty imposed by Section 35(2) to grant the application but does so under the power conferred by 35(3) (or indeed 18(3)) to take such steps (if any) as it considers necessary for the promotion of the licensing objectives; a wide discretion.

Around the time of the Court of Appeal decision in "Albert Hall", London Borough of Camden announced that it intended to stop notifying residents in the vicinity of a premises. Residents would instead be expected to sign up for email or text alerts. This requires residents to be more proactive, not to mention having access to the internet and/or a mobile phone. While Westminster continues to notify residents, financial strictures and the spectre of the "Albert Hall" may lead other local authorities to consider the practice carefully. Fortunately, Stanley Burnton LJ did give a strong steer as to how the courts may deal with the question in the future, saying that he had "real doubts as to whether the residents did have any legitimate expectation." Hopefully, this will be enough to provide comfort to local authorities on the issue.

Richard Brown

Solicitor, Licensing Advice Project, Westminster CAB

Article

Anonymous Witnesses and Licensing Committees — A Delicate Balancing Exercise

There is a strong argument, writes **Gillian Crew**, that the considerations which are applied in criminal cases to anonymous witnesses should be applied in licensing proceedings – even though the instances where this may occur are likely to be exceptional and limited

The recent public furore over the use of superinjunctions and the subsequent alleged unmasking of the celebrities who have take out such injunctions on Twitter has thrown into the spotlight the use of anonymity orders. The apparent public dislike of such orders has been evident. However, there has been an increased use of anonymous witnesses and evidence in the more genteel and less well publicised forum of licensing committees. This creates real problems for all sides: the licensee is unable to properly challenge such evidence; the committee must struggle with what weight, if any, to give such evidence; and legal advisors are unable to properly advise on the strength of the case.

Further, there is the potential breach of natural justice: not only must justice be done, but it must also be seen to done. In what circumstances can a licensee have a fair trial when evidence against him is presented by a witness whose identity remains unknown to him?

In this paper I will consider whether the developments in the criminal law can shed useful light on this issue and whether they indicate a possible way forward within the licensing regime.

The nature of licensing committee hearings

Part of the difficulty arises from the unique nature of licensing sub-committees. As many practitioners are aware, the procedure and manner of licensing committees varies throughout the country. Some permit cross examination, some do not. Some restrict a party's presentation by reference to time, some do not. Some hearings are "discussions" whereas others are more formal.

Licensing committees had traditionally been presumed to be fulfilling a quasi-judicial function in carrying out their licensing-related functions. However, the recent Court of Appeal decision in the Hope and Glory case[1], has destroyed this presumption:

"As Mr Matthias rightly submitted, the licensing function of a licensing authority is an administrative function. By contrast, the function of the district judge is a judicial function. The licensing authority has a duty, in accordance with the rule of law, to behave fairly in the decision-making procedure, but the decision itself is not a judicial or quasi-judicial act. It is the exercise of a power delegated by the people as a whole to decide what the public interest requires. (See the judgment of Lord Hoffmann in Alconbury at para 74.)"

1 *R (on the application of Hope and Glory Public House Limited) v City of Westminster Magistrates' Court* [2011] Civ 31.

The Licensing Act 2003 (Hearings) Regulations 2005 sets out minimum procedures that should be followed by committees throughout the land. Hearings must be in public, save that the licensing authority may exclude the public from all or part of a hearing where it considers that the public interest in so doing outweighs the public interest in the hearing. A hearing shall take the form of a discussion, the parties must be given an equal maximum period of time and so on.

However, the strict rules of evidence do not apply, although there is a need to comply with the rules of natural justice.

Anonymous witnesses are expressly allowed to give evidence by virtue of paragraph 9.14 of the Section 182 guidance which provides:

"Disclosure of Personal Detail of Interested Parties:

9.14 Where a notice of a hearing is given to an applicant, the licensing authority is required under the Licensing Act 2003 (Hearings) Regulations 2005 to provide to the applicant with the notice and copies of the relevant representations that have been made.

9.15 In some exceptional and isolated circumstances interested parties may be reluctant to make representations because of fears of intimidation or violence if their personal details, such as name and address are divulged to the applicant

9.16 Where licensing authorities consider that the interested party has a genuine and well-founded fear of intimidation and may be deterred from making a representation because of this, they may wish to consider alternative approaches.

9.17 For instance, they could advise interested parties to provide the relevant responsible authority with details of how they consider that the licensing objectives are being undermined so that the responsible authority can make representations if appropriate and justified.

9.18 The licensing authority may also decide to withhold some or all of the interested party's personal details from the applicant, giving only enough details (such as street name or general location within a street) which would allow an applicant to be satisfied that the interested party is within the vicinity of the premises. However, withholding such detail should only be considered where the circumstances justify such action and the licensing authority is satisfied that the complaints are not frivolous or vexatious."

According to the guidance therefore, anonymous witnesses should only be considered where there are:

- Exceptional and isolated circumstances;
- Genuine and well founded fear of intimidation; and
- The interested party may otherwise be deterred from making a representation.

Intriguingly, where the test is met, it is clear from the guidance that there is not an automatic right to have anonymous witnesses but that the licensing authority should consider alternative approaches, which include whether the relevant representation could be made through a responsible authority (paragraph 9.17).

The general position pursuant to the Section 182 guidance is that the anonymous witnesses should only be considered where the circumstances justify such action. The guidance envisages that the applicant should be given sufficient details to satisfy itself that the interested party is within the vicinity. What is not taken into account by the guidance is that the licensee should be given sufficient details for the licensee to assess the credibility of the interested party's representation or attack the interested party's representation.

In practice, there is anecedotal evidence that committees regularly permit the use of anonymous witnesses and representations without applying their mind to whether the above test is made out. It is not being used in "exceptional and isolated circumstances" and results in the difficulties highlighted at the start of this article. Nor does the licensee get any say in whether anonymous witnesses should be permitted.

There is no guidance as to what constitutes "exceptional and isolated circumstances". Clearly there must be some evidence to justify a "genuine fear" and evidence that the witness would not submit a representation. But what evidence and how much evidence? A threat from a member of the management of premise would clearly be sufficient but would it be sufficient if the threat was made by door supervisors? In some cases, no analysis is made and details are withheld of interested parties, normally residents, on the strength of the interested party making a bold assertion that they are in fear of intimidation, leading to a potential breach of natural justice.

Anonymous witnesses and the criminal experience

Appeals from decisions of the licensing committee go to the magistrates' court where a quite different regime exists and a much stricter approach to anonymous witnesses is routinely applied in criminal matters. It is the availability of a right to appeal to the magistrates on both law and fact which ensures that the 2003 Act meets the requirements of article 6(1) of the Human Rights Act 1998 – entitlement to a fair and public hearing by an independent and impartial tribunal.

Although licensing appeals are in the nature of civil proceedings, and the courts are not bound by the rules of evidence applicable to civil proceedings and can take into account all matters which were before the licensing authority[2], there is less use of anonymous evidence on appeal, perhaps due to the fact that evidence is subject to more extensive scrutiny on appeal than is possible due to the time constraints before the licensing authority.

Further, the criminal jurisdiction is traditionally uncomfortable with the notion of anonymous witnesses. The anonymous witness saga has raged on for many years in criminal law and remains controversial. Despite, the licensing authority's apparent willingness to have

2 Colin Manchester, Susanna Poppleston & Jeremy Allen, *Alcohol & Entertainment Licensing Law*, (2nd ed) 12.8.4

anonymous witnesses, between July 2008 and December 2009 there were only 343 witness anonymity orders made in the criminal courts[3].

There is case law permitting the use of anonymous witnesses in limited circumstances. In the case of *R v Taylor (Gary)* [1995] Crim LR 253 anonymous witnesses were permitted where:

"the evidence must be sufficiently relevant and important to make it unfair to the prosecution to compel them to proceed without it. But the greater its importance, the greater the potential unfairness to the defendant in allowing the witness to remain anonymous. In this context, it seems to us, that a distinction can properly be drawn, as the judge drew it here, between cases where the creditworthiness of the witness is or is likely to be in issue and others where the issue for the jury is the reliability and accuracy of the witness rather than credit. Thirdly, the prosecution must satisfy the court that the creditworthiness of the witness has been fully investigated and the results of that inquiry disclosed to the defence so far as is consistent with the anonymity sought. Fourthly, the court must be satisfied that no undue prejudice is caused to the defendant. Finally, the court can balance the need for protection, including the extent of any necessary protection, against the unfairness or appearance of unfairness in the particular case. By referring to the extent of protection, we have in mind other courses which can be taken short of allowing anonymity to the witness. These include, for example, screening, a voice camera, a hearing in camera or whatever it may be."

However, the House of Lords case of *R v Davis*[4] reversed the position when the House of Lords held that the use of anonymous witnesses had resulted in an unfair trial.

In that case, D was charged with two counts of murder arising from a party in Hackney on New Year's Day 2002. At trial the judge accepted that three witnesses, who alone had identified D, were in genuine fear that if they gave evidence and their identity was revealed, their lives would be endangered. The judge ruled that protective measures should be imposed whereby the witnesses' addresses and personal and identifying particulars were withheld from D and his legal advisers; that D's counsel was not permitted to ask any question which might enable their identification; that they gave evidence under pseudonyms behind screens so that they could be seen by the judge and jury but not by D; and that their natural voices, although heard by the judge and jury, were subject to mechanical distortion so as to prevent recognition by the defendant. The testimony of those witnesses was decisive and the defendant was convicted.

The House of Lords held that that it was a long established common law principle that, subject to recognised exceptions and statutory qualifications, a defendant in a criminal trial should be confronted by his accusers so that he might cross-examine them and challenge their evidence. Lord Bingham said that it was unfair to require a defendant to "take blind shots at a hidden target" and unless the defendant knew the identity of the witness against him, how could he make any telling shots in cross-examination?

The decision of Davis resulted in legislation being rushed through within one month to empower courts to impose "witness anonymity orders". The Criminal Evidence (Witness Anonymity) Act 2008 was a temporary piece of legislation which would have repeated automatically at the end of December 2009. The "witness anonymity order" was incorporated into the Coroners and Justice Act 2009 and applied from January 1st 2010.

The relevant provisions are contained in sections 86 to 90 of the 2009 Act. The conditions to be satisfied are to be found in Section 88. Firstly, the order must be necessary in order to protect the safety of the witness or another person or to protect against serious damage to property or to protect the public interest. Secondly, the judge must be satisfied that granting the order is not incompatible with a fair trial, and finally the interests of justice must be satisfied.

In considering whether the conditions are met, the Court must consider:

(a) the general right of a defendant in criminal proceedings to know the identity of a witness in the proceedings;

(b) the extent to which the credibility of the witness concerned would be a relevant factor when the weight of his or her evidence comes to be assessed;

(c) whether evidence given by the witness might be the sole or decisive evidence implicating the defendant;

(d) whether the witness's evidence could be properly tested (whether on grounds of credibility or otherwise) without his or her identity being disclosed;

(e) whether there is any reason to believe that the witness—

(i) has a tendency to be dishonest; or

(ii) has any motive to be dishonest in the circumstances of the case,

having regard (in particular) to any previous convictions of the witness and to any relationship between the witness and the defendant or any associates of the defendant;

(f) whether it would be reasonably practicable to protect the witness by any means other than by making a witness anonymity order specifying the measures that are under consideration by the court.

Anonymous witnesses – the way forward

Clearly the answer to the question of whether anonymous witnesses may give evidence before licensing committees is yes, because the Section 182 Guidance expressly provides for anonymous witnesses. However, such orders should be made in "exceptional and limited circumstances", and the test laid down in paragraphs 9.15 and 9.16 should be rigorously applied.

There is a strong argument to suggest that the considerations which are applied in criminal cases to anonymous witnesses should be applied by analogy to the consideration of anonymous witnesses, both before the magistrates on appeal and before the licensing authority. Such factors provide objective criteria against which the test can be considered by both the licensing authority and licensees.

Gillian Crew
Ely Place Chambers

3 Prof David Omerod, *Fair Trials – the Anonymous Witness Saga*, lecture given on the 22nd March 2010 at Middle Temple Hall

4 [2008] UKHL 36

Spotlighting the real story of Safer late-nights

Lurid photographs of late-night drunken revellers still appear regularly in the media. But thanks to successful partnerships between police, local authorities, town-centre managers and many others, consumer behaviour in the night-time economy is far better than the pictures suggest. Which is why the Purple Flag accreditation scheme for safe town centres is making such impressive progress, as CGA Chief Executive **Jon Collins** explains

There has been far too much licensing legislation over the last decade. And it is bordering on farcical that, in large part, this legislation was created either as a precursor to or in response to the much misunderstood Licensing Act 2003.

This pressure to legislate is all too often created by the broadcast and print media. Shots of attractive young people behaving inappropriately on the streets of our towns and cities will always make good television. They also make for a nice double page spread in the tabloids and an easy editorial stating "Something Must Be Done". Ministers then feel compelled to respond (particularly if a General Election is in the offing), which kicks us into yet another cycle of crackdowns and campaigns. Typically, this flurry of activity will get underway before any previous activity has had a chance to be evaluated or any investigation has been instigated into the true nature of our town and city centres.

Jon Collins

And yet, while all this sound and fury has been conducted at a national level, things have been steadily and continuously improving on the ground. The product of decades of work (much of it initiated by the 1982 Local Government Act) has been an ever-closer working relationship between the industry and local authorities. The pioneering work by police officers in Manchester, Kent and beyond has created similar partnerships. Initiatives such as Best Bar None and Business Improvement Districts are obvious results of this approach but the reality is that there is a much wider push to partnership across the country.

Such a push is based on the common sense understanding that working together improves the quality of regulation, policing and operation alike. All across the country, interested parties are sitting together in a spirit of genuine partnership and with a common goal – safer town and city centres. And we now have the ability to recognise and reward those areas that have achieved this goal through the awarding of a Purple Flag. Just as a Blue Flag is an indicator of a good beach, a Purple Flag highlights where to go for a good and safe night out.

Purple Flag is an accreditation scheme that recognises where an area has been able to implement (and in some cases establish) best practice to deliver excellent management of the night time economy in a town or city centre. The ability to demonstrate the presence of

robust and active partnerships that span public and private sector bodies is a crucial element of any Purple Flag application.

Purple Flag aims to raise the standard and broaden the appeal of centres between 5pm and 6am. It is now managed by the Association of Town Centre Managers working alongside the Purple Flag Board - a partnership of key stakeholder groups, including central and local government, police, business and consumers. The Institute of Licensing is proud to be a member of this Board and to chair the Accreditation Panel.

To achieve a Purple Flag, areas must go beyond the basics to offer a better experience to visitors. Purple Flag is intended as a visible mark of quality that will be desired by areas wishing to be seen as a safe destination for people on a night out. The existence of the flag provides momentum to efforts to drive up standards (as neighbouring areas seek to keep up) and improve the quality of our towns and cities at night.

When first proposed by researchers at the Civic Trust, there was a concern that the late night economy might suffer from initiative overload given the existence of a range of projects and schemes such as licensing forums, Business Improvement Districts and Best Bar None. In reality, Purple Flag has been able to sit above these schemes to recognise great work going on in an area to ensure people can travel to and from their home, explore the public realm and experience great venues all in a safe, well managed environment.

The Civic Trust had identified through its "NightVision" project that more people would use centres at night if they were seen to be safer, more accessible and offered more choice. In turn this would further increase footfall as a broader mix of customers would reduce the reliance on the 18-25 market, moderate the behaviour of that market by providing older, more responsible role models, and dilute their impact on the general atmosphere. The effect would be to create improved trading conditions for a more diverse mix of outlets offering a range of experiences targeted at different age groups.

While it is expected that local authorities and police will be closely involved and normally take the lead in the application process, anyone can apply for Purple Flag status. They will be asked to demonstrate credentials as a stakeholder in the night time economy and a working partnership that spans:

- Health, licensing, security and safety;
- Late night transport and public realm management;
- Hospitality and entertainment;
- Planning and development; and
- Residents and consumers.

Applicants are expected to evidence a clear strategy for the management of the night time economy based on sound research, integrated public policy and a successful multi-sector partnership. In particular, the assessors and accreditation panel will look at four key areas:

- **Wellbeing:** A prerequisite for successful destinations is that they should be safe and welcoming. All sectors have a part to play in delivering high standards of customer care.
- **Movement:** Getting home safely after an evening out is crucial. So too is the ability to move around the centre on foot with ease.
- **Appeal:** Successful destinations should offer a vibrant choice of leisure and entertainment for a diversity of ages, lifestyles and cultures; including families and older people.
- **Place:** Successful areas are alive during the day, as well as in the evening. They contain a blend of overlapping activities that encourage people to mingle and enjoy the place. They reinforce the character and identity of the area as well as encourage flair and imagination in urban design for the night.

It is not easy to achieve Purple Flag status, and nor should it be. Applicants have to go through a multi-stage accreditation process which initially seeks to establish a solid paper trail to demonstrate thorough systems and processes. This will then be followed by an overnight inspection during a "stress" period to see how those systems perform in reality.

Given the way in which the character of a town or city centre can change markedly from day to day and week to week, Purple Flag assessors have to ensure this inspection is during the right "stress" period. The Accreditation Panel has had occasion to defer its decision where it was felt the visit had not been at an appropriate time. For example, the seaside town that was inspected on a wet midweek night in low season was re-visited on a hot Bank Holiday weekend (during which all was seen to be in order).

Purple Flag is not intended to identify merely the safest streets in the country. After all, an area is at its safest when completely deserted but that would not do much for its economic wellbeing or cultural health. The Accreditation Panel is looking for areas that have problems and pressures associated with success and have learned how to handle them. For example, where there is very high demand for taxis, has the area put in additional ranks, recruited and trained taxi marshalls and offered an enhanced night bus network as an alternative?

By providing an objective and independent assessment, Purple Flag can be used locally to counter any negative public perceptions that may exist and promote a positive message. Purple Flag provides the opportunity for successful centres to present themselves in their true colours and in a positive light to town centre users, including operators, residents, tourists and visitors.

The panel is now considering a record number of entrants in its fourth round of applications. Existing Purple Flag holders include large cities such as Birmingham, Liverpool and Manchester alongside high profile parts of London such as Covent Garden and Leicester Square. While areas such as Halifax and Winchester have also been successful, the Purple Flag team are working hard to generate applications from smaller and/or market towns. There is nothing in the process that prevents such areas from submitting an application. The evidence base and overnight inspection can both be flexed to recognise best practice whatever the environment.

Ultimately, Purple Flag can be a spur to partnership, improve standards of operation and ensure an area appeals to the broadest user base possible. While the licensed trade will always be a significant part of the late night offer in any area, it is in the trade's own interest that it does not become the whole offer. Purple Flag gives both customers and operators the confidence to step out of the mainstream and offer or experience something a bit different. That can mean a town centre accessible to all from 18 to 80 offering the choice to eat, drink, dance or take in something a bit more cultural. Add in effective public-private partnerships and communication and a well thought out transport strategy and you have a welcome recipe for success.

If you feel your area would benefit from securing Purple Flag status, please visit www.purpleflag.org.uk for further details.

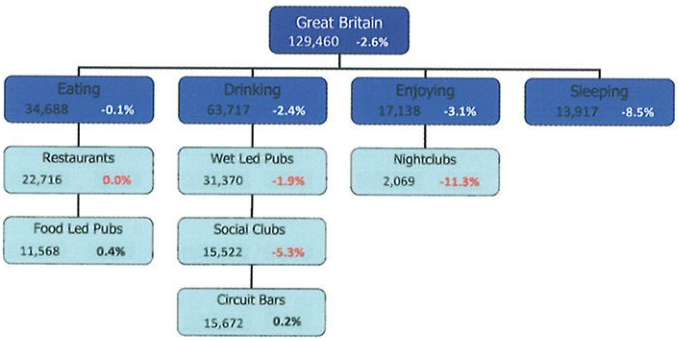
Jon Collins
Chief Executive, CGA

CGA statistical snapshot

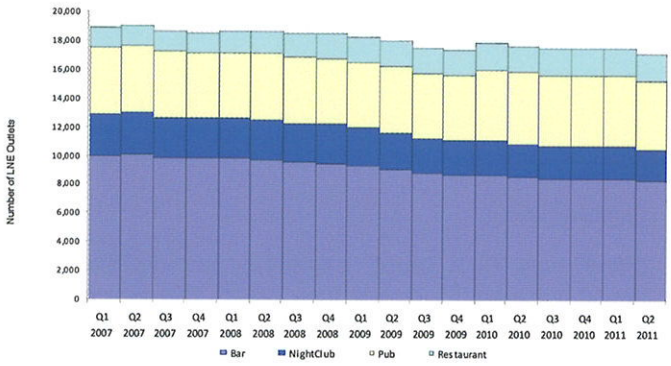
Shifting patterns in the ontrade

In each edition of the IoL Journal, CGA, the UK's leading on-trade consultancy, will be providing a statistical snapshot highlighting current trends in the UK licensed trade. This data will draw on both Brand Index and Outlet Index, CGA's outlet universe and volumetric indices, updated on a continuous basis by our team of field, telephone and desk researchers and supplemented by an unmatched selection of data partner sources prepared by **Mark Newton** and **Stuart Capel**

GB On-Trade Universe: showing decline in wet led and social club sectors



GB Late Night Market: a shifting mix of venue types



- Structure of the on trade continues to change with a decline in overall numbers – particularly nightclubs and social clubs;
- This is countered to a degree by continued interest in food orientated operations; and
- A rise in circuit bar numbers led by wine/café bars with a shift towards affluent suburbs and away from the high street/town centres.

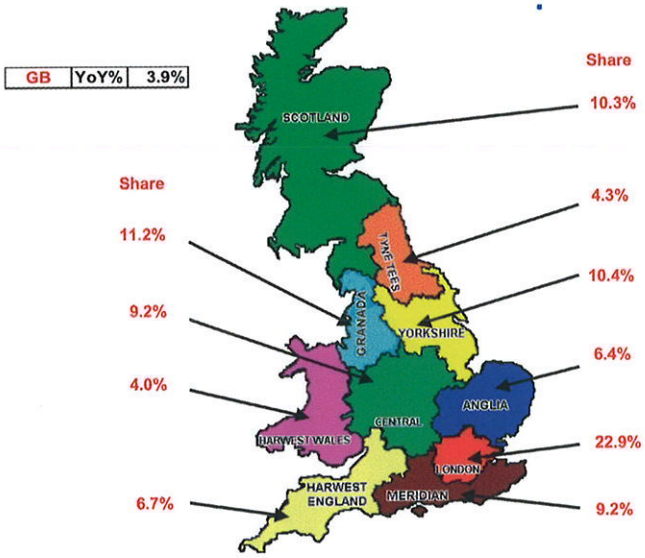
- Looking specifically at the make up of the late night market since 2007 we can see the way in which pubs and restaurants have become increasingly important.
  - o This move has been both led by and prompted the decline in the number of nightclubs and traditional high street circuit bar.
- Such a realignment has been a reaction to and then in turn added momentum to changes in consumer behaviour, most notably:
  - o An older demographic is entering this market; and
  - o An increased demand for late night food led offers.

Statistical Snapshot

Total Alcohol Sales: a trend that contradicts the general media coverage

- Over recent years there has been an overall consumption decline of -7.8%;
- This is due to a number of different factors, primary among them being an increase in off trade alcohol purchasing encouraged by cheaper supermarket deals and the emergence of a pre-loading culture among younger drinkers;
- There has also been a decline in overall footfall as drinkers look for a single, high quality, night out, the 'weekend millionaire' lifestlye'; and
- Social and legislative changes have also had a significant effect – with a greater focus on the effects of alcohol misuse and 'binge drinking' culture, combined with fundamental changes to the licensed trading environment such as the restrictions on smoking.

Share of Total Alcohol sales value: regional disparities apparent



- London is clearly the most important GB region for the on trade by value;
  - o There is significant over indexing of higher value drinks categories such as wine, champagne and premium spirits due to London having a larger percentage of more high end venues such as hotels, restaurants and café/ wine bars.
- Value share in regions such as Granada, Yorkshire and Scotland is much more likely to be driven by sales of the traditional beer categories given the predominance of wet led pubs and social/sports clubs.

Definitions

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

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

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

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

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

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

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

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

Institute of Licensing *Events*

COURSES

Licensing fees

Date: 5 December 2011
Cost: £95 + VAT for IoL Members; £125 + VAT for Non-members
Venue: Camden Council Chamber: Town Hall , London WC1H 9JE

Programme summary

The day will cover the following:-

- How to calculate licensing fees to ensure the fee levels are not making any unnecessary losses.
- Legislation in relation to Local Authority income and in particular licence fees.
- Which fees can be charged for different forms of licensing.
- What can the income for licensing fees be used for, in particular:
  - Can licensing income be used to cover the cost of administering the licensing system?
  - Can the fees be used to cover enforcement?
  - Can the income be used to pay for training and equipment for the licensing officers?
  - Can the income be used for other services within the local authority that provide a service to the licensing regime?
  - Can the income be used to pay for other local authority services not relating to licensing?
  - Can the licence fee cover the cost of a licensing hearing?
  - How to avoid legal challenges in respect of licence fees.

How to plan a safe event

Dates: 30 and 31 January (two day course)
Cost: £125 each day or £225 if both days are booked (both plus VAT)
Venue: Camden Council Chamber: Town Hall , London WC1H 9JE

Programme summary

The course is aimed at those that plan a large or outdoor event which would include event promoters, safety officers and landowners plus those that have a duty to regulate large or outdoor events including those that sit on a safety advisory groups

Member Training — A Luxury We Must Afford

There is no doubt from any point of view inside of local government that money is extremely tight. So where does that leave member training in areas like licensing?

If I had a pound coin for every time someone has spoken to me before a licensing hearing about why they need to address the members on the four licensing objectives and what they mean, I wouldn't need to work anymore. And let's not forget the area of taxi licensing. When was the last time you saw a lawyer representing a driver on a disciplinary matter at committee who actually understood what the 1976 Act or the 1847 Act involved, particularly on the fit and proper test?

In all seriousness, I do believe there is a complete misunderstanding among applicants and interested parties, and even taxi and private hire drivers and operators, on how well trained licensing members are. That process has been time consuming and expensive over the years, but it has been undertaken for very good reasons. It is patently obvious that untrained members could cause havoc on a committee. The ability to understand the licensing objectives and the need to be satisfied that an applicant can promote the objectives with their application is critical.

I firmly believe that training members is critical for licensing. You cannot escape the fact that members should make the decisions at the end of the day. I know of several councils which have devolved their scheme of delegation to enable officers to make some key decision on licensing, for example revocation of driver licences, in order to save time and money in putting the matter before members.

Some have told me this is because they do not believe their members can make those decisions properly, which I believe is a sad reflection of the quality of training provided for them, and a lack of belief in their abilities. And it completely overlooks the fact that members are democratically accountable to the electorate.

The Institute of Licensing has a growing number of quality trainers who can provide practical, experienced-based training for members, and a library of resource material which can help in keeping your members up to speed on where we are with licensing development.

Here in the South East, and indeed nationally as well, there is the Member Development Charter co-ordinated by South East Employers, in association with LG Improvement and Development, that provides accreditation for ongoing member development. This scheme recognises best practice on member training across the spectrum of responsibilities from licensing to standards. With the right commitment from officers on training and development you can achieve a confidence in your members to tackle complex, technical, and hostile cases without any panic or intimidation.

This leads on to the fundamental issue of appeals. We all know that decisions from the members can usually be appealed to some further court, be it the Magistrates or Crown Court. Neither of those processes is cheap. Some of the figures mentioned in recent case reports on the Licensing Act have been astronomical! The plain fact remains that if your members make a sound, reasoned decision, based upon proper evidence, and if their decision is properly made, your ability to defend costs is increased significantly. This is not the case when your members make a decision flying by the seat of their pants! Surely it is better to invest in the training of those members to make your decision making better, than it is to pay for the appellant's costs when you got it completely wrong? So in the round, you simply have to afford the former in order to avoid the later, which in the long run will be a very prudent and safe investment.

The new Police Reform and Social Responsibility Bill is not going to make matters any easier, with simple things like the "vicinity" test in premises licensing going to the wall. How many more applications will need to go before members following bizarre representations from people in different towns, cities or districts from the venue?

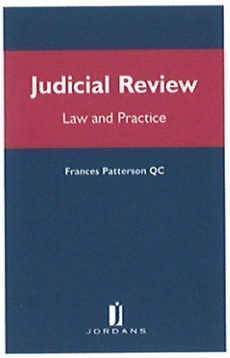
There are tough times ahead, and never have we needed well trained, experienced, confident, and capable members as we do right now. So now is not the time to be thinking of making savings by reducing member training and development. But if you do, don't say I didn't warn you!

Andrew Eaton

Litigation and licensing lawyer, Rother District Council.

Book Reviews

Judicial Review: Law and Practice



Francis Patterson QC (ed)
Jordans, 2011, hardback, £95
Reviewed by Professor Colin Manchester

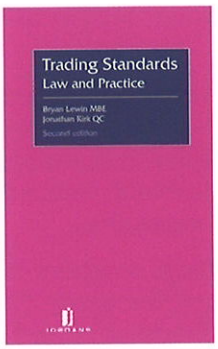
This edited collection, which aims to provide practitioners with a comprehensive introduction to judicial review proceedings, is divided into three Parts. Part One deals with General Principles of Judicial Review, covering Grounds of Judicial Review (Ch. One), Remedies (Ch. Two) and Practice and Procedure (Ch.Three). Part Two covers judicial review in specific areas and Chapter 12 on Licensing will be of particular interest to licensing practitioners. Part Three contains a series of Appendices, including a procedural guide to claims for judicial review, various statutory provisions such as the Human Rights Act 1998 and the Civil Procedure Rules 1998, and forms for use in connection with judicial review

Chapter 12 on Licensing, consisting of just over 28 pages, commences with a section on the status of a licence, covering, in particular, whether for the purposes of Article 1 of Protocol 1 of the European Convention on Human Rights, a licence is a "possession" or "property". This is followed by sections on the role of local licensing bodies, the role of local councillors, the role of appeal courts, policies and guidance, objectors and representors, and hearings and evidence. Most, though not all, of these sections have a very useful summary of general principles at the end.

The material contained in the chapter is clearly set out and the chapter provides a comprehensive coverage of the application of judicial review principles in the licensing field. From the licensing practitioner's viewpoint, the real strength is that it brings together all of the material drawn from a range of different areas of licensing within the scope of a single chapter. Works covering specific areas of licensing (for example, alcohol and entertainment, taxis) are likely to include the material contained in the chapter, to a greater or lesser extent, but this will be dealt with in the context of substantive law and will appear at disparate points throughout the work.

At over 500 pages, this book contains a wealth of useful information on judicial review both in the general principles section and in the specific areas covered. In addition to licensing, several of these will be of interest to those in local authorities, including housing, planning and environment, and education.

Trading Standards Law and Practice, 2nd ed



Bryan Lewis MBE and Jonathan Kirk QC
Jordans, 2011, paperback, £65
Reviewed by Professor Colin Manchester

This book has a strong, visual impact, sporting a bright pink cover, which according to the preface is the result of seeking advice from Jonathan Kirk's two daughters. This should at least enable it to be easily identified on the bookshelf. The second edition is an expanded work, with new chapters on product safety, food safety, the environment and animal welfare, and with coverage extended to Scotland. There are a number of contributors to the work other than the two authors.

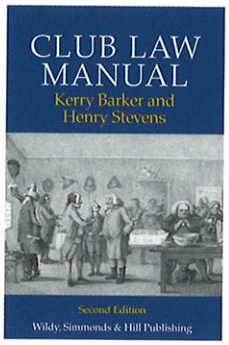
The book is described as an authoritative and comprehensive guide for everyone concerned with the implementation of trading standards law, and covers the full range of the work undertaken by trading standards officers in local authorities. Of primary interest to those in licensing will be chapter six on "Age Restricted Sales", in particular the section on alcohol sales (pp. 329-343). This is fully up to date, even to the extent of including proposed changes in the Police Reform and Social Responsibility Bill affecting alcohol sales.

In each of the areas covered in chapter six, the material is presented in a clear and logical order under the following

sub-headings: Introduction; Application/jurisdiction; Offence(s); Defences; Restrictions on proceedings; Who can be prosecuted; Duty to enforce/powers of enforcement officers; Sentencing; and Commentary. Case law is often dealt with within the relevant sub-heading(s), as might be expected, although in some instances including alcohol sales it is incorporated under a separate sub-heading of its own.

Given the scope of "Age Restricted Sales", the level of information provided on the areas covered is necessarily concise and to the point. The section on alcohol sales provides a useful summary of the relevant law to assist trading standards officers in the course of their work. If a detailed exposition of the relevant legal provisions is required, however, as it may be by licensing officers and (at least at times) by trading standards officers, recourse may be needed to more specialist works covering the Licensing Act 2003.

Club Law Manual, 2nd ed



Kerry Barker and Henry Stevens
Wildy, Simmonds & Hill, 2011, £35
Reviewed by Robert Sutherland, Jeffrey Green Russell

The book provides a practical guide to the law relating to members' clubs for both lawyers and those involved in setting up, running or regulating and controlling such clubs. The second edition brings the book up to date, introduces new chapters on gambling, fund raising, hearings and appeals and includes reference to issues specifically raised by readers of the first edition.

The author's aim is to provide an easy to read manual to make the law relating to members' clubs understandable to those associated or dealing with members' clubs and to give an indication of the signs to look out for as to when expert legal advice is required.

Targeted at the interested club member or official and their legal adviser or regulatory authorities, the book is divided into six parts. Parts one to four look at the regulation of the activities of the club through the Licensing Act 2003 and the Gambling Act 2005. More specifically, parts one and two introduce key concepts introduced by the Acts. Club premises certificates, the qualifications for and the practicalities of how to apply and subsequent applications that may be required should a club premises certificate be granted. Responsibilities of clubs in relation to the purchase and supply of alcohol are covered as well as the consequences for non-compliance. The text sets out briefly and succinctly the law and varying limits applicable to different types of gambling as well as the process for applying for a club gaming permit and club machine permit.

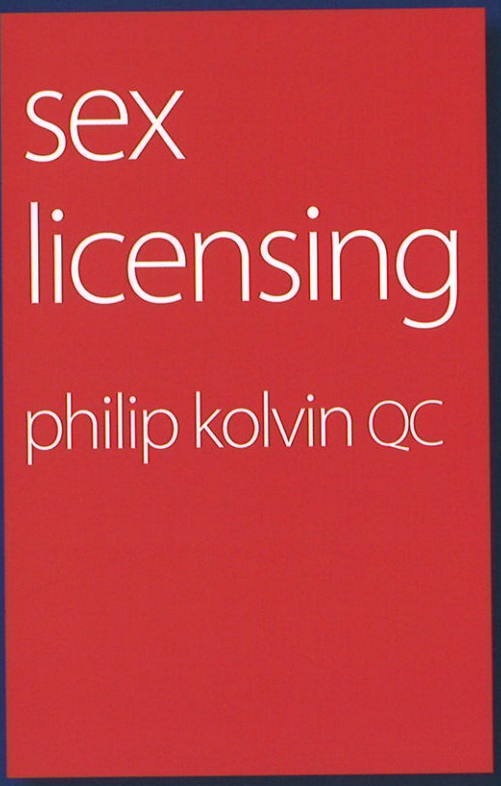
Part three is entitled Fund Raising but particularly deals with lotteries and prize competitions given the special attention these areas receive in the Gambling Act 2005. Having set out the legal requirements of the two Acts, part four focuses on hearings before licensing committees and appeals from committees to the magistrates court both under the Licensing Act 2003 and Gambling Act 2005 providing guidance on how the hearings should proceed. Part five looks at the club rules, roles and responsibilities of officers and trustees, procedures, management, staffing and responsibility for the conduct of members and their guests. Part six is entitled Liabilities and covers the liabilities of clubs, their members and officers to others for things done or actions taken by or on behalf of a club. The appendices set out a template for club rules, club constitution and a copy of the guidance issued under section 182 Licensing Act 2003 dated October 2010

Some readers may recall the original manual written by Ken Pain; some may still have a copy. The law has moved on and so has this edition to bring it up to date. There is a substantial focus on licensing issues. Parts one to four look at licensing and gambling and related committee and court procedure. However, the book is not limited to licensing, and in the remaining eight chapters it deals also with a variety of other matters covering employment, internal regulation, equality, occupiers liability, noise, health and food safety. It also contains some useful appendices.

As well as statutory and case-law references, there are many practical pointers on how to do things or where to look for more information including hotlines and web site addresses. The book is what it says it is on the cover - "A club law manual" - and as such will be valuable to club officials and members. With regards to licensing officers, police and other regulatory officers it will provide a good introduction and guide for carrying out ones statutory function. It is clearly set out and brings together a wide range of different matters within its cover and can be readily recommended to club officials and officers as well as those involved in regulating such members clubs.

For lawyers, it will very much depend upon one's preferences. There are more comprehensive texts but not all areas are brought together into one place. So, while it is not an in-depth authoritative text book it may be helpful in the initial identification of relevant issues which can be the subject of more in depth research. As such, I have no doubt that many involved with members clubs will find it a useful resource.

Institute of Licensing *Books*



Sex Licensing

Philip Kolvin QC

Published 2010 Price IoL members £25.95 (non-members £34.95) ISBN: 978-0-9555392-2-0

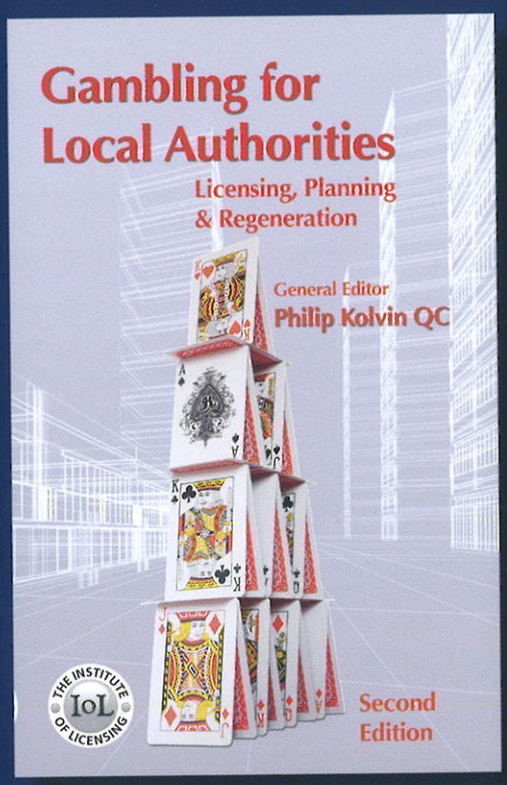
For the first time, England and Wales have a national licensing scheme for the entire range of sex establishments. In Sex Licensing, Kolvin deals with the law, procedures and philosophy of the legislation, and places it in its historical and political context.

Published to coincide with the implementation of the new laws on lap-dancing and other sexual entertainment venues, Sex Licensing provides an examination of the definitions of sex establishment, the application process, the grounds for refusal and the use of conditions.

The book explains how other statutory provisions, including the Human Rights Act and the Provision of Services Regulations, influence decision-making under the new legislation. It also deals in detail with the adoption and transition provisions, the interface between the sex establishment provisions, premises licensing under the Licensing Act 2003 and the special provisions regarding London.

Sex Licensing sets out to inform all involved in the licensing of the commercial sex industry how policy, the application process and the decision-making can all be geared to achieving a pattern and quantum of sex establishments which meets the local authority's aspirations for its area.

Order both books at the same time and receive a 10% discount



Gambling for Local Authorities

Philip Kolvin QC

Published 2010 Price £49 ISBN: 978-0-9555392-1-3

This book charts the terrain of gambling law simply and succinctly for both licensing and planning professionals.

The second edition includes important new material:

Commentary on major issues, including split premises, skills with prize machines and house prize competitions.

New regulatory material, including up-dated regulations, Guidance and Licence Conditions and Codes of Practice.

New case law, including on provisional statements, appeals, costs and bias.

New text on Planning Policy Statement 4 and the Community Infrastructure Levy.

A new chapter on problem gambling by Professor Mark Griffiths.

New tables and figures to explain and simplify the law.

Written in a clear, accessible style, supplemented by extensive use of diagrams and tables to illustrate the key concepts, this book is designed for reading by all professionals and committee members working in the licensing and planning process relating to gambling. With its insights into the working of the legislation from the regulator's point of view, the book will also be invaluable to other participants in the system, particularly industry operators and representatives

Deans Court Chambers

Deans Court Chambers are pleased to announce their membership of the Institute of Licensing as part of our continued commitment to excellence in licensing work.

Deans Court have been involved in representation in licensing work for over 20 years, working for private clients, local authorities and the police in relation to all aspects of licensing work including alcohol, gaming and private hire vehicle licensing. Deans Court Licensing group provides representation at all levels across the circuits.

For more information on Deans Court Chambers licensing team please visit our website on www.deanscourt.co.uk

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Apply Online – visit our website - www.instituteoflicensing.org