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Daniel Davies, MIoL
Chairman, Institute of Licensing

Welcome to the 38th edition of the *Journal of Licensing*. This will be my final foreword for the *Journal*, as I prepare to step down as Institute of Licensing Chair after nine years. As the longest serving IoL Chair to date, I'd like to start this foreword with a simple but sincere thank you.

There have been many highlights during my time as Chair. When I joined the Board in 2014, the *Journal of Licensing* was already firmly established as *the* professional journal for licensing practitioners. It has been a privilege to provide the foreword for this superb publication ever since. The *Journal* was part of my inspiration when establishing *LINK* magazine – introduced to complement the *Journal* and work in tandem with it, and it has been a real pleasure to see that happen exactly as I had hoped.

I have enjoyed a brilliant tenure as IoL Chair, and I sincerely hope that my contribution has been of value to IoL members and other stakeholders. The IoL is a fantastic organisation. Fantastic because of the many professional individuals and organisations who give their support, time, energy and commitment to the IoL and its work in all areas and at all levels. The IoL team, the 17 Board members, the 12 regional committees, trainers, speakers, sponsors, article authors, the editorial team responsible for the *Journal* and the many others who support our work on consultations, through stakeholder groups and so on – the IoL is extremely rich in human resources, support and commitment and it must always remain worthy of this.

As IoL Chair it has been my pleasure to represent the IoL at many meetings and events.

I was honoured in 2016 to be invited to speak to the House of Lords Select Committee responsible for the post-legislative review of the Licensing Act 2003. In 2018 it was a double honour to be invited again, this time to address the Select Committee on the Regeneration of Seaside Towns and Communities.

The invitation to speak about the regeneration of seaside towns and communities was also a recognition of the regeneration project in my hometown of New Brighton. I have spoken and written about this work numerous times, so many of you will be familiar with the project, which has been front and centre for me since I embarked on the Victoria Quarter project through my company Rockpoint Leisure.

My role with the IoL inspired me to put my time and money where my mouth (and heart) was, and I have been deeply committed ever since to making a difference as an industry operator and community champion. Time and time again I have encountered challenges which are overcome most effectively when all parties work together. Businesses, residents, police, council and other stakeholders all want our towns, cities and communities to thrive and be places where people can live, work and come together in a positive and safe environment. Partnership working is always the answer, and this chimes with everything the IoL stands for.

It has been a privilege and a pleasure to chair the IoL. A huge thank you to all of you for the support you've given me. I remain committed to the IoL and its core objectives, and I hope that I will be able to continue to offer support as an advisor to the Board.

Institute of Licensing

JOURNAL OF LICENSING ISSUE 38

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Leo Charalambides, FIoL
Editor, Journal of Licensing

Welcome to the 38th edition of the *Journal of Licensing* and the last under the Chairmanship of Daniel Davies. To our longest serving Chair of the IoL, both I and the editorial team at the *Journal* offer our sincere thanks for his unwavering support. During his time, and with his full encouragement, the *Journal* has blossomed into an invaluable publication that can be used in training, during licensing hearings and in appeals.

It is with great pleasure that we dedicate this issue to Dan in recognition of his long service. We have every confidence that he will remain a vital and inspiring member of the Institute for many years to come. He may be stepping down as our Chair but both he and his legacy will have an enduring and ongoing influence.

Darkest before the dawn: a manifesto for the night-time economy

The night-time sector is down on its knees, and badly needs support from central and local government. **Philip Kolvin KC**, Patron of the Institute of Licensing, has worked with the Night Time Industries Association to draw up a manifesto setting out a range of reinvigorating measures

Whoever said the only certainties are death and taxes was not far wrong, but not entirely right either. By January 2025, but most probably sometime this year, there will be a general election in the UK. In anticipation, that fine campaigning body the Night Time Industries Association (NTIA) is fast out of the blocks with its own manifesto: *Darkest before the dawn*. In this article I explain the manifesto and its pressing rationale.

A cliff edge

Over the past two decades, the hospitality sector has undergone a radical transformation. We have, for example, seen a rise of the experiential economy, competitive socialising, the coffee shop phenomenon, microbreweries and super-clubs. We can acknowledge and celebrate this as we do all societal and market developments, which both lead and reflect the spirit of the age.

This manifesto, however, is in response to an altogether more worrying trend, which is the ongoing and incipient collapse of the grassroots night-time economy: pubs, clubs, music venues, LGBT bars, independent restaurants and the like. The numbers are stark. In 2023, we lost two pubs and five restaurants every day, and two nightclubs and two music venues every week. The longer term trend is worse, with 31% of the club sector lost in just three years. One can quibble with the detail – for example, some smaller pubs may have been replaced with bigger ones – but the trend is unarguable.

Some of this is the simple corollary of the developing hospitality sector. At the turn of the millennium, the pound in one's pocket was not prey to the competing demands of the iPhone subscription, the gym membership, Netflix and a cappuccino at every turn.

But, of course, there are other factors at play: the cost of living, education fees, exorbitant housing costs falling disproportionately on young people, commodity and energy costs impacting businesses, VAT and business rates which favour supermarkets and dark kitchens over licensed venues and loss-leading on alcohol in the retail sector, to take just a few examples.

There is no sign of any of this abating. The fact that Rekom, the largest nightclub operator in the country, has now fallen into administration is a flock of canaries in the coalmine, should we care to notice. Industry insiders have not written off, and many are predicting, a still more vertiginous collapse in the year ahead.

Should we care? After all, this might just be seen as the outworking of a market economy. That is why we no longer have Betamax, Caramac, Blockbuster, Walkmans and C5s, all extinct because consumer tastes moved on. I argue that we should care. My reasons are not rooted in economics. Figures suggesting that hospitality is worth over £90 billion and provides 3.5 million jobs are undeniable but unspecific. They represent the value of the hospitality sector as a whole rather than any particular element of it.

Instead, I argue that focus should be trained on the grassroots night-time economy, the bars, pubs, music venues and nightclubs, which sit at the heart of local cultural economies. Such venues – often situated in reworked buildings – old warehouses, depots, railway arches and basements – are an essential part of placemaking. They reflect local authenticity. They are often in the hands of local independent operators who are rooted to the location rather than surveying the nation for the next investable asset, and who will tend to use local labour, supply lines and contractors. And they can be relied upon to bring on the next generation of musical artists, who all hope to progress through the local musical ecology, eventually to play in larger venues as their careers develop.

In short, the grassroots night-time economy is an essential part of the UK's culture and cultural history, and for a large but largely forgotten swath of civil society – the young – it is their main or even only engagement with culture. It is also a part of the UK's culture which performs extraordinarily well, forming an important export, promoting the UK's soft power abroad, and constituting a key reason for people to live, work or invest in a town or city.

The sector's woes are not merely economic – they are political and regulatory too. This is a far cry from 2003 when the Licensing Act heralded an era of Cool Britannia founded on light touch regulation. The ink was barely dry at the Queen's printer before the worm turned. Lickety-split, we had cumulative impact policies, summary reviews, late night levies, "rebalancing" which lowered the threshold for intervention from necessary to appropriate, and much more, leaving operators to survive on rocky regulatory terrain. This trend has been complemented by a noticeably harder edge to regulation in some areas. Counter-intuitively, these developments have occurred as increasing numbers of young people are turning away from alcohol to other activities, including street food, competitive socialising and the experiential economy. An enlightened approach may involve riding the wave of these changes, but instead, again in some areas, the regulatory screw has been tightened further.

In seeking to parse these changes, I would argue that an early misstep was to pass responsibility for the night-time economy from DCMS to the Home Office. The latter specialises in organised crime, drug control, the justice system and illegal immigration. The promotion of joy is not in its portfolio.

There are at least two consequences of this shift of responsibility. The first is that nobody in government has the job of speaking up for youth culture, popular culture, the counter culture or night culture. No-one advocates for it. It is no minister's day job to care for the night. The second, linked corollary is that at central political level, the only approach to the night-time economy is to regulate it, to see it as a threat to good order and peace in the community, and to tame it, tamp it, rather than nurture it and guide it.

The manifesto

These thoughts are the soil in which the NTIA's manifesto is rooted. Its name – *Darkest before the dawn* – signifies that night culture is now in a dark place, facing a perfect storm of pressures, with local if not regional extinction of grassroots venue on the cards – at least those which have not shut already. It is, however, "before the dawn" because with the right decision made now by our political masters, we can collectively look forward to a brighter future.

The manifesto is not a party political document, but a framework for support capable of adoption by any or all parties to save the grassroots sector. At the NTIA's recent and vibrant summit in Manchester, it was gratifying to see its main tenets endorsed by a slew of Metropolitan mayors drawn from the two main parties.

There are 44 ideas in the document, spread over seven sections, but there are two fundamental themes on which all are hinged.

The first theme is that, at this time of maximum peril for the grassroots night-time economy, we have to move from just regulating it to supporting and promoting it as well. To the degree that it requires regulation, so be it. But regulation alone is not enough – the grassroots night-time economy also requires nurturing if it is not to founder.

The second responds to the question: how shall we support it? The answer is by creating a national strategy for the sector and then cascading it to local level.

To develop that slightly, the manifesto makes seven interlocking suggestions:

1. Because the sector is part of the cultural economy, it should sit within DCMS, which is the only government dept with "culture" in its title.

2. There should be a minister to champion the sector nationally.

3. There should be a national night-time economy strategy board to advise the minister.

4. There should be a national strategy, which need not be prescriptive, but should be replete with ideas and examples of best practice from across the globe.

5. At local, sub-regional or regional level there should be offices for night life, staffed up where this can be afforded, but run by BIDS or on voluntary lines where it can't; in either case advising local authorities on their night-time economies.

6. Local authorities should publish their own night-time economy strategies, taking account of national strategy and local advice.

7. Those strategies will inform planning, licensing, cultural and other relevant policies.

If these simple ideas are adopted, then for the first time the night-time economy will be officially recognised as important at Cabinet level and in the heart of local government. It would be a huge leap forward for the cultural life of the nation.

From those core ideas flow further sections in the manifesto, setting out more detailed ideas.

Placemaking. This section exhorts authorities to consider late-night zones, night-time enterprise zones, cultural industries' quarters, artists' quarters and cultural heritage designations of historic night-time venues. It suggests planning policies to protect local authenticity in the night-time economy, and urges better support for agent of change principles.

Licensing. The section on licensing asks for proportionality to be properly embedded in licensing legislation, for cumulative impact policies to be a last rather than first resort and for partnership to be promoted in policy. For years practitioners have debated what can be derived from police statistics, arguments which would melt away if there were a standardised approach to statistical reporting. It is suggested that remote hearings be placed on an express statutory footing, and that measures be implemented to make appeals quicker and cheaper. There is also a suggestion of exemption from licensing for small night cafes.

People. The underpinning theme is upskilling of licensing committee members, workers and responsible authorities. A recommendation is made for a local ombudsman to facilitate investment, guide applicants and mediate disputes. Street ambassadors should be promoted in national guidance, and security providers should be licensed. Further, to avoid venues being threatened by criminal conduct of some customers, national strategy should focus on the perpetrators rather than the place where they elect to commit their crimes.

Best practice. Good practice schemes such as Best Bar None, Purple Flag and Pubwatch should be promoted by government; local authorities should accredit night safety champions and promote late- night transport; and central government should encourage sustainability and foster diversity in the night-time economy. The Home Office has recently licensed a city centre drug testing facility in Bristol – a national roll-out should follow in due course.

Costs and finance. The manifesto urges financial assistance to the night-time economy, including VAT cuts reflecting the fact that the tax on hospitality is the highest in Europe. Business rates should be restructured and reduced and late-night levies abolished. There should be a review of licence fees, a national fund for the protection of cultural venues and cultural tokens for young people. To prevent a repetition of the business uncertainty during the pandemic, there should be an equitable business interruption insurance scheme backed nationally. Finally, local authorities should be empowered to impose a tourism levy to support local initiatives, be it pedestrianisation, greening, WCs or late-night transport infrastructure.

Conclusion

No doubt, there are other ideas – the NTIA enjoys no monopoly. However, what it views as non-negotiable in its manifesto is a change of mindset. Put straight, Government needs to get off the industry's back and get by its side. NTIA hopes that its sector will be represented at the Cabinet table and championed at the heart of government.

To reduce a detailed document to a single thought, it is this. We have presented our children with profound challenges to solve: economic, climate, ecological and geo-political. Can we, perhaps, also bequeath them a place to dance?

Philip Kolvin KC
Barrister, 11 KBW

Licensing guidance for taxis and private hires is updated

James Button assesses the long-awaited best practice guidance for taxi and private hire licensing

The Department for Transport (DfT) finally published the updated *Taxi and Private Hire Vehicle Licensing - Best Practice Guidance for Licensing Authorities in England* (BPG) on 17 November 2023, having consulted on the proposed changes in 2022. It specifically applies only to England (including Plymouth and Greater London), but until the Welsh Government produces its own comprehensive guidance for Wales, this document must have some impact in Wales.

This BPG updates and replaces the previous version issued in 2010, and is a much larger and more detailed document. It is also significantly different from the consultation document, and on the Institute of Licensing website there is an annotated version of the BPG showing the various alterations https://www.instituteoflicensing.org/news/dft-best-practice-guidance-changes-tracked/.

In this article I will not examine the entirety of the document and supporting documents, but will consider some of the main elements of the new BPG and how that may alter some elements of taxi and private hire licensing.[1] As a consequence not every subchapter is referred to. The annotated guidance does indicate where new material from the consultation has been inserted.

What was issued on 17 November?

- Taxi and Private Hire Vehicle Licensing - Best Practice Guidance for Licensing Authorities in England.[2]
- Guidance Note on Private Hire Vehicle Licensing
- Model Byelaws for Taxis
- Taxi byelaws: guidance and the byelaw making process
- Driver Vehicle Condition Checklist
- Sample Notices Between Taxi / Private Hire Vehicle Driver and Passenger

Sadly, there is no single cohesive and comprehensive DfT Guidance for taxi and private hire licensing. The BPG needs to be read in conjunction with the above documents, as well as the *Statutory Taxi & Private Hire Vehicle Standards* 2020[3] (2020 SS). Although the BPG clearly states that the earlier 2010 *Taxi and Private Hire Vehicle Licensing - Best Practice Guidance* has been cancelled, there is no indication as to the continuing status of the various Circulars and DfT Notes (dating back to 1985). It is hoped that the DfT might clarify the situation in due course.

The BPG itself states:

> *This version of the best practice guidance replaces all previous versions and will be subject to revision when necessary.*[4]

So it remains to be seen how often this is altered or amended. I hope updates will be more frequent than 13 years.

Impact and effect

The BPG itself makes it clear that this is not statutory guidance[5] (contrast with the 2020 SS). What does this mean? Under s 177(4) Policing and Crime Act 2017, once the Secretary of State has issued that guidance (2020 SS), licensing authorities must have regard to it. As the BPG is not statutory guidance, does this make a difference?

"Having regard to" does not mean "slavishly adhering to".[6]

1 Readers will know that I steadfastly refer to hackney carriages and private hire vehicles, and use the term 'taxi' to refer to both elements of the industry collectively. However, the Government and DfT have used the term 'licensed taxi' and more recently 'taxi' to mean a hackney carriage for many years, and do so in this Guidance. Accordingly, to avoid confusion, for the purposes of this article I will use the DfT preferred terms.

2 Unfortunately, the numbering of paragraphs in the BPG leaves something to be desired. Whilst the Chapters are divided into sections (1.1, 1.2, 1.3 and so on) there is no sub-section number (eg,1.1.1, 1.1.2, 1.1.3). This makes referencing the document more difficult than need be.

3 Available at https://www.gov.uk/government/publications/statutory-taxi-and-private-hire-vehicle-standards.

4 Final para of s 1.1.

5 Section 1.1 para 2.

6 See, eg, *City of Glasgow District Council v Secretary of State for Scotland, William Hill (Scotland) LTD* Court of Session (Inner House, Second Division) 1992 S.C.L.R. 453: *R. (on the application of S (A Child)) v Brent LBC* [2002] E.L.R. 556 CA; *Daniel Thwaites Plc v Wirral Borough Magistrates' Court* [2008] L.L.R. 536 Admin Crt.

However the authority must take the guidance into account and only depart from it if there are good reasons for doing so.

The same will apply in relation to non-statutory guidance. Both statutory and non-statutory guidance are relevant factors in *Wednesbury* terms and a local authority should only depart from them if there are good reasons for doing so.

The key point here is that, despite the mandatory language in which the guidance is written, this is not legislation. It does not bind local authorities. Each authority should ensure that the guidance is taken into account when creating a policy, but is free to depart from it if there are good reasons to do so. It must also be taken into account when considering individual matters. As always, each case should be considered on its merits, in the light of the guidance and the local authority's policy .

Chapter 1 - Introduction

This chapter is almost entirely new with very little carried over from the 2010 BPG. In addition there are some significant additions from the consultation document.

1.1 Background

The objective of the government is to work with licensing authorities to promote the regulation of the sector in a way that enables the provision of safe, accessible, available, and affordable services that meet the wide range of passenger needs by a thriving trade.

1.2 Terminology

This section makes it clear that "taxi" means a hackney carriage and not a private hire vehicle.

1.3 Scope of the best practice guidance

As with all government guidance, it includes the usual disclaimers:

> *This Guidance does not seek to cover the whole range of possible licensing requirements. Instead, it seeks to concentrate on those issues that have caused difficulty in the past or that seem of particular significance. This document will be reviewed and updated when necessary and other specific issues may be added should the need arise. The law on taxi and private hire vehicle licensing contains many complexities which are beyond the scope of this Guidance. Licensing authorities will need to seek their own legal advice on issues that are particularly relevant to them. – Para 1.3*

> *Individual licensing authorities are still responsible for deciding their own policies and making decisions on individual licensing matters applying the relevant law and any other relevant considerations. This guidance is intended to assist licensing authorities, but it is only guidance and does not intend to give a definitive statement of the law; any decisions made by a local authority remain a matter for that authority. – (similar to para 4 in 2010 BPG)*

> *The guidance on whether services might require a private hire vehicle licence stresses that it remains for local licensing authorities to make decisions in the first instance and that, ultimately, the courts are responsible for interpreting the law.*

As was pointed out earlier, these statements are at odds with the overall mandatory tone of the guidance.

Chapter 2 - The role of taxis and private hire vehicles

Chapter 2 was entirely new in the 2022 consultation document, and there has been little change from that in the final version.

It emphasises that taxis and PHVs are part of the wider transport network and must be included in transport planning. This is to be welcomed as finally there is a proper recognition by central government of the importance of taxis and PHVs across society as a whole.

Unfortunately, there is no indication of any forthcoming subsidies for this vital sector of the transport network. All other forms of public transport (buses, trams and trains) are subsidised, but taxis and PHV are wholly private enterprise operations. As will be seen further on, suggestions that licensing authorities can determine how many disabled-friendly vehicles are available, and have them available at all times is impossible without some central government subsidy for the sector.

Chapter 3 - The role of licensing authorities

This restates that the purpose of taxi and PHV licensing is public safety:

> *As stated in the Statutory Taxi and Private Hire Vehicle Standards issued by the Department to licensing authorities, the primary and overriding objective of licensing must be to protect the public. Licensing authorities should also be aware that, as well as ensuring taxi and private hire vehicle services are safe, the public have a reasonable expectation that the services available will be accessible and affordable.* (Similar to Para 8 2010 BPG.)

A new addition since the consultation document is

reference to the Crime and Disorder Act 1998:

> *Section 17 of the Crime and Disorder Act 1998 requires local authorities to consider the crime and disorder implications of all their activities and functions and do all that they reasonably can to reduce crime. Licensing authorities routinely do this by setting licensing requirements that protect passengers, but this duty also extends to considering ways that licensing requirements and policies can reduce crime against drivers. It is the case that drivers are subjected to robbery, verbal and physical assault, this can be racially motivated or aggravated. Licensing authorities must consider ways to protect those working in the trade as well as those that use its services.*

While there is reference in here to reducing crime against drivers, it is perhaps unfortunate that there is no clear statement that public protection extends to taxi and PHV drivers just as much as passengers and other road users.

Chapter 3 goes on to remind local authorities of the need to consider the Public Sector Equality Duty and makes it clear how important taxis and PHVs are for disabled people. (3.1 - the regulator's role makes reference to the Regulator's Code and makes it clear that all regulation should be proportionate.)

It is in 3.2 - *The objective of regulation and consideration of policies* – that the first clear indication of the DFT's desire to fully differentiate between taxis and PHVs becomes apparent:

> *When formulating a taxi and private hire vehicle policy, the primary and overriding objective must be to protect the public. Ensuring high safeguarding requirements and processes, as set out in the Statutory Taxi and Private Hire Vehicle Standards, is only one way in which licensing authorities can help ensure the personal safety of passengers.*
>
> *Ensuring local residents understand the distinction between the taxi and private hire vehicle trades and how each service can be legally engaged is very important.*
>
> *The key message needs to be that, unless you are hailing a locally licensed taxi in the street or at a stand, you should not get in any other vehicle unless you have pre-booked it and have received information from the operator to identify it. This messaging can be supported by a policy that makes taxis look distinct from private hire vehicles; this is discussed further in section 8.*

There is then reference to the need for competition with reference to the guidance issued by the Competition and Markets Authority.

3.3 Delivering licensing services

This section makes it clear that licensing work must minimise delays to the issue of licences and continue whatever the circumstances. This is a clear rebuke to some licensing authorities which are still struggling to recover from the effects of lockdown during the pandemic.

3.4 Licensing fees

This section states:

> *It is essential to a well-functioning taxi and private hire vehicle sector that those administering and enforcing the regime are well-resourced. The licensing model is intended to be self-funding through licensing fees and it is expected that licensing authorities seek to provide a well-resourced system at the lowest cost to licensees. Licensing authorities should regularly review their fees to reflect changes to costs, both increases and reductions.*

This is at best disingenuous and at worst inaccurate. Sections 53 and 70 Local Government (Miscellaneous Provisions) Act 1976 do not permit for cost recovery. The Court of Appeal in *R (on the application of Rehman) v Wakefield City Council* [2020] RTR 11 CA extended the term "administration" to include the cost of enforcement against those licensed by that particular local authority, but it does not allow the authority to recover the costs of enforcement against those licensed elsewhere, or unlicensed activity (this can be contrasted with the approach under the Supreme Court ruling *in R (app Hemming and Ors) v Westminster City Council* [2017] 3 WLR 342 SC in relation to sex establishment licensing). It is unfortunate that this is not made clear in the BPG.

The remainder of chapter 3 restates material from the 2020 SS.

Chapter 4 - Accessibility

This material is entirely new, first introduced in the consultation document and further altered in the BPG.

The Government wants disabled people to be able to travel easily, confidently and without additional cost, and it is important that all transport services play their part in making this a reality. This is a laudable aim. Overall this is a very important and well presented chapter, but there are some points to note.

4.1 Accessibility barriers

There are a number of points in this subchapter. Amongst other things it states:

Licensing authorities should also do the following: . . .

- *incentivise the uptake of wheelchair accessible vehicles where mandating them would be inappropriate.*

- *consider specifying that wheelchair accessible vehicles should be capable of carrying wheelchairs larger than the reference size*.

Unfortunately the BPG is completely silent as to any suggestions as to how this can happen. The difference in cost between a vehicle capable of wheelchair carrying and a "normal" vehicle is enormous. Suggestions that have been made in the past in relation to reductions in licence fee for such vehicles merely scratch the surface of that difference. No local authority is currently in a financial position to subsidise these vehicles in any meaningful way and as a result this element of the guidance rings hollow.

In relation to the second point, the question is "How much larger?". Perhaps unsurprisingly this is not answered. That automatically leads to the following question: "What vehicles are available for larger wheelchairs?" Which again the BPG does not address.

The following quotation is extremely difficult to understand:

Exercise discretion on application of other vehicle requirements if they would prevent suitable wheelchair accessible vehicles from being brought into service where there is unmet demand.

Although the meaning is less than clear, it probably means that authorities should consider significant departures from their other requirements, eg, the number of passenger doors if doing so will enable additional wheelchair accessible vehicles to be licensed. As long as overall public safety is not compromised by such departures from policy, it is difficult to see why that would be unreasonable.

4.2 Communication barriers

This section states that to reduce the problems that disabled people encounter in either hiring a taxi or booking a PHV:

Authorities should . . ensure that:

- *a range of booking methods are provided, so that people with limited access to certain forms of technology or communication can request a PHV.*

- *operators should identify a passenger's accessibility needs prior to taking a booking, to ensure an appropriate vehicle is provided.*

- *Information provided in hard copy in vehicles and in public places (such as libraries or private hire vehicle offices) is also available in alternative accessible formats, including large print, Braille and Easy Read.*

This would appear to suggest that local authorities should mandate telephone communication ability for private hire operators within their policy and the operator's conditions. Whether this would be reasonable for an entirely app-based private hire remains to be seen. It is certainly reasonable to require operators to establish any particular needs that a disabled person has at the time of booking, whether that is by telephone, app, face-to-face or some other as yet unforeseen process. The suggestions for hardcopy information are eminently sensible.

4.3 Barriers relating to the Carriage of Assistance Dogs, and 4.8 Assistance Dogs

There are around 6,000 assistance dog partnerships in the UK, supporting disabled people to navigate the built environment, respond to sounds they cannot hear, react to health emergencies, and interact with objects and obstacles. They are often vital for their owners' ability to live independently, confidently and safely, yet 76% of assistance dog owners surveyed for the 2022 Inclusive Transport Strategy Evaluation report had experienced a refusal or near-refusal during the preceding year.

This dismal statistic leads to a number of issues identified by assistance dog owners. Unfortunately, there is a very restricted definition of "assistance dog" for the purposes of ss 168 and 170 Equality Act 2010 which has not been addressed or mentioned in the BPG. Chapter 4.8 is a new section providing useful suggestions for local authorities to improve the attitudes of the trades to assistance dogs, but it is peculiar that it does not tie in with chapter 4.3. Given the length of time it is taken to publish the BPG, it would seem that these two could have been merged quite successfully.

4.4 Confidence barriers

This is a useful section which goes some way to explaining the problems that disabled people face. There is an interesting final paragraph:

To assist passengers who would like to raise a complaint, licensing authorities should require operators to

provide a driver's private hire licence number and any information relating to a booking upon the relevant licensing authority's request.

This is already a statutory requirement under s 56(2) Local Government (Miscellaneous Provisions) Act 1976, and it is difficult to see why it needs restating here.

4.5 Supporting an inclusive service

This section states:

By taking action to ensure there are sufficient wheelchair accessible vehicles to satisfy passenger demand, authorities can ensure that wheelchair users need no longer structure their lives around the times and locations when vehicles accessible to them are likely to be available.

This is another statement which presents local authorities with a problem with no suggestion as to what the solution might be. All this does is raise expectations, which will ultimately lead to frustration and disappointment.

4.6 Inclusive service plan

This section states:

All licensing authorities should develop and maintain an Inclusive Service Plan (ISP), either as a standalone document or as an integral element of a wider strategy.

The requirement to produce a Local Transport Plan is a county, unitary or combined authority function, so districts will have to create their own Inclusive Service Plan or liaise with the county council. However this is achieved, the plan must be updated every five years.

Overall this is an extremely useful and important chapter, but within it is a slightly discomforting passage:

Additionally disabled people continue to face barriers when using taxis and private hire vehicles, for example from unhelpful drivers, vehicles with too high a step or a lack of handholds or being refused carriage and left waiting at the kerbside. To ensure decisions taken on the regulation of services are informed by the lived experiences of disabled people, authorities should take steps to ensure that policy makers and staff dealing with the public understand the barriers that disabled people can face when using transport services. Therefore, relevant authority staff should complete disability awareness training.

The problem here is with the vehicles, drivers and operators, yet it is local authority staff who need training! Although this appears perverse, there is a sound principle behind this. Unless the regulators understand the issues they will not be able to address those in their requirements. I do feel it could perhaps have been worded slightly more felicitously.

4.7 Assistance for all passengers

This section makes it clear that enforcement action should be taken wherever possible when people have been discriminated against on the grounds of disability. The final paragraph makes interesting reading:

Where a complaint about discrimination is received that will not result in a conviction . . . . Possible outcomes include no action is taken and the complaint recorded, a suspension until disability and equality awareness training/assessment is completed, or revocation of a licence and a refusal to issue another for an appropriate period.

There is no indication given of what that period should be. This is potentially problematic because a local authority cannot prevent somebody making an application, and provided that application is complete, they must then consider whether or not to grant the licence. It is difficult to see how the local authority can state the licence will not be granted for a specific period without fettering its discretion.

Chapter 5 - Enforcing the licensing regime

Again, a useful and detailed chapter, which moves on significantly from the 2010 BPG.

5.1 Setting expectations and monitoring

This section has been brought forward and significantly expanded from the consultation document and has incorporated other sections of this chapter. There is great emphasis on taking action against those who discriminate against disabled people. This is to be applauded.

Where operators or drivers are prosecuted for Equality Act 2010 offences enabling those affected to give evidence in court may help to strengthen the authority's case, crystalise the harm caused to individuals, and increase complainants' confidence in the enforcement process. It is our view that prosecuting drivers and operators for offences under the Equality Act 2010, rather than relying solely on licensing sanctions, is proportionate to the harm caused by such discrimination and is vital to increasing the confidence of disabled passengers to use services.

We therefore recommend that cases are prosecuted where sufficient evidence exists and doing so would

be in the interest of the inhabitants of the area. Blanket policies on not prosecuting offences may be incompatible with authorities' wider equalities duties.

The reference to blanket policies against prosecuting is useful. Taking guidance from the Regulator's Code,[7] many local authorities have an enforcement policy which prevents prosecution for a first offence, relying on providing information and assistance to prevent further offences. This part of the BPG continues:

Well-directed compliance and enforcement activity by the licensing authority benefits not only the public but also the responsible people in the taxi and private hire vehicle trades. Indeed, it could be argued that public safety depends upon licensing authorities having effective compliance and enforcement mechanisms in place. This includes actively seeking out those that operate outside the licensing system, not just those who come forward seeking the appropriate licences.

5.2 Test purchasing

This section is helpful, and now raises the question of Regulation of Investigatory Powers Act (RIPA) authorisations. This is an area where I would urge licensing authorities to ensure their legal departments are involved in determining whether RIPA authorisations are required for test purchases, before such activity is undertaken.

5.3 Joint authorisation of enforcement officers and 5.4 The Community Safety Accreditation Scheme

These have not altered from the consultation document.

5.5 Points-based enforcement systems

This section amplifies and reinforces the consultation document, explaining how a well-considered and administered scheme can be beneficial. It also emphasises that it must be made clear that any such system does not relate to DVLA points.

5.6 Suspension and revocation of driver's licence

This is a useful section which reinforces the impact of *Singh v Cardiff City Council* [2012] EWHC 1852 and gives useful guidance on the overall use of suspensions and revocations. It also mentions immediate action but states:

The department is not proposing to issue any specific guidance on this issue of when immediate suspension or revocation of a licence is appropriate, preferring to leave it to the discretion of licensing authorities as to when the power should be used.

This begs the question. Why not?

5.7 Suspension and revocation of vehicle licences and 5.8 Suspension and revocation of vehicle licences

These sections simply detail the powers available without any further explanation.

Chapter 6 - Driver licensing

A lot of additional material has been added to this chapter since the consultation document appeared. Unfortunately, there is no mention of local authorities issuing restricted licences for SEND home to school (H2 S) transport, which is an important area for the specialised sector of the private hire industry[8] – and no mention of restricted licences.

6.2 Fit and proper test

This section refers to the test of fitness and propriety detailed in 2020 SS, but it would be much more effective if it was included here. Constantly referring to two or more documents is not particularly efficient. Why not simply insert it here?

There is a useful reference to the requirement to use the NR3 S under the provisions in the Taxis and Private Hire Vehicle (Safeguarding and Road Safety) Act 2022.

Although it is not contained within the BPG itself, there is a particularly important paragraph in the *Taxi and private hire best practice guidance: government response.* In the final paragraph of the Government's conclusion to the consultation question "Do you agree licensing authority should require taxi and private drivers, as professional drivers, to evidence a higher degree of driving ability than is required for private motorist?", the following is stated:

The Government notes the views expressed by some licensed drivers in response to the consultation that as they cover more miles it is to be expected that they will incur more points on their DVLA driving licence. The Department does not share this view. Taxi and private drivers are trusted to transport the public and it is imperative to the safety of passengers and other road users that drivers obey road laws.

6.3 Disability awareness

This section makes it clear that drivers should be trained and have their knowledge and skills assessed.

6.4 Driver proficiency

Drivers should pass a driving course on their first application and then every three years. Unfortunately, there is no

7 At https://www.gov.uk/government/publications/regulators-code.

8 See Institute of Licensing *Link Magazine* Issue 16.

suggestion that a fully vocational qualification should be obtained (see 6.10 vocational training and assessment):

> *The ability to drive a car is tested when obtaining a driving licence. Nevertheless, evidence shows that driving behaviours are a significant contributor to road collisions. Factors such as fatigue, distractions and excess speed contribute significantly to collisions; excess speed alone accounted for 12 percent of all road traffic collisions in 2021 and 25 percent of those that resulted in a fatality. As professional drivers, for whom time is money, an appreciation of the effect of additional distractions and pressures which can negatively influence their driving behaviours is particularly relevant.*
>
> *Licensing authorities should require taxi and private hire vehicle drivers to undertake training and/or assessment focussed on attitudes and behaviours, such as those provided by IAM Roadsmart and the Royal Society for the Prevention of Accidents (RoSPA), at first application and renewal (typically every 3 years). Where an authority has specific concerns about the driving ability of a driver, for example through passenger complaints, it would be appropriate for the authority to consider whether the driver in question should undertake a practical driving ability training course or assessment to address those concerns.*

6.6 Medical and vision assessment

This section makes it clear that drivers should meet Group 2 medical standards and the doctor assessing that must have access to the driver's full medical records, not simply a summary.

All initial category C and D licence applications require a medical assessment by a registered medical practitioner (recorded on the D4 form, this does not need to be the applicant's GP). The same assessment is required again at 45 years of age and on any subsequent reapplication. Though it is not a requirement, the DVLA recommends that drivers who submit a medical report with an application or renewal for a Group 2 licence should obtain this from a doctor with access to their full medical records. When conducting medical investigations, the DVLA will write to the driver's GP or consultant if further medical information is required; licensing authorities should do the same.

This is an important paragraph which addresses an issue that has concerned licensing authorities for some years, with many driver medicals being based on a summary of medical records rather than access to the full medical records. The guidance clearly indicates that that approach is unacceptable.

6.11 Topographical knowledge

Topographical (ie, geographical) knowledge tests should be required for taxi drivers, but should not be required for private hire drivers.

6.12 Intended use policies in respect of taxi drivers

This is an interesting element of the guidance. While emphasising that hackney carriages can undertake pre-bookings to work anywhere, it also makes it clear that:

> *Licensing authorities should require an applicant for a taxi driver licence to declare that they intend to work predominately within the licensing authority's area. The residential address provided by the application should be considered in assessing the likelihood of this declaration being adhered to when assessing an application for a taxi driver licence.*

Intended use policies for taxi drivers and / or vehicles have never been tested in the senior courts. Remote use of a taxi for pre-booked activity may well be inconvenient for a local authority in whose area the activity takes place, and may be upsetting to locally licensed drivers, but it is not illegal.[9] It is open to question whether a local authority can restrict lawful activity by means of, firstly, a policy and, secondly, a condition attached to a driver's licence.

6.13 Vehicle condition check

This section makes it clear that the condition of the vehicle is the responsibility of the driver, and specifies the penalty for driving a vehicle that is in a dangerous condition. It emphasises that a daily walk-round car check should be undertaken; and if this has not been undertaken, action should be taken against the driver.

Chapter 7 - Private hire vehicle operator licensing

This is another generally well thought out and useful chapter, with a lot of new material, though the terminology is sometimes slightly peculiar. Throughout the BPG, references are made to "private hire vehicle", "private hire vehicle driver" and "private hire vehicle operator". This does rather beg the question, Why? Isn't "private hire vehicle", private hire driver" and "private operator" already clear? I would suggest that inserting "vehicle" is both unnecessary and potentially confusing.

There are some points arising within this section:

9 See (2023) 37 JoL.

. . . the Department consider it appropriate to ensure that private hire vehicle operators administer their business correctly to be considered 'fit and proper'.

Failure on the part of an operator to comply with all legal requirements should lead to questions being asked as to whether they remain a fit and proper person to hold a private hire operator's licence.

7.1 Sources of information

This is a useful section in relation to obtaining references to company information, but why is there no suggested test of fitness and propriety for operators? This is a serious omission.[10]

7.5 Health and safety responsibilities and 7.6 Compliance with employment law

Within this section there is an expanded reference to health and safety responsibilities and some reference to compliance with employment law. In both cases it is made clear that any non-compliance on the part of an operator will call into question their continued fitness and propriety.

Chapter 8 - Vehicle licensing

Again, this is a generally well thought out and useful chapter, with a lot of new material introduced since the consultation document. As previously, there are some points arising.

There is no reference to company information, and no test of fitness and propriety for vehicle proprietors, despite that being mentioned in Statutory Standards paras 7.2 to 7.6. This is a serious omission.[11]

8.3 Pedicabs

This section makes it clear that pedicabs can be licensed as hackney carriages outside London. Indeed the wording seems to suggest that the Department of Transport is in favour of them:

Pedicabs or rickshaws are pedal-powered vehicles in combination with a trailer designed to carry passengers. They include electrically assisted pedal cycles. Pedicabs offer short-distance, zero emission journeys. Outside London, pedicabs can be regulated as taxis. Where there is local interest in providing pedicab services, licensing authorities should make appropriate adjustments to their licensing requirements for drivers and vehicles to accommodate these requests.

It remains to be seen how many local authorities share the Department's enthusiasm for these vehicles. As they will be licensed as hackney carriages, drivers must hold a full DVLA driver's licence before they can apply for a hackney carriage driver's licence; they will be subject to the standard hackney carriage tariff of fares, and must undertake journeys within the district unless the driver has a reasonable excuse.

8.4 Vehicle age limits

This section is based on BPG 2010 but has been expanded. The suggested approach is based firmly on the age of the vehicle and there is no suggestion that mileage covered could be considered as an alternative approach.

8.5 Vehicle safety ratings

This contains expanded information on NCAP ratings.

8.6 Environmental considerations

This section is largely as it was in the consultation document. It clearly places the responsibility on licensing authorities, but there is useful addition:

. . . the trade will need to be fully prepared for the end of the sale of new petrol and diesel cars and the need to transition to zero emission vehicles.

8.8 Tinted windows

The BPG contains an important addition to the consultation document:

There is a significant cost and inconvenience associated with requiring drivers to replace the standard manufacturer or factory specifications for window glass. Some passengers may feel more comfortable in vehicles that do not have very heavily tinted rear windows but there is a lack of evidence to suggest that these are detrimental to public safety. Balancing these factors, the department considers that licensing authorities should not require the removal of windows rear of the B-pillar if they have a minimum light transmission of 30% or above. This should maintain passenger confidence whilst ensuring a wide range of vehicles may be licensed.

The department recognises that a minimum light transmission of 30% for windows rear of the B-pillar might impact on executive hire vehicles, where passengers demand a higher degree of privacy. Some licensing authorities already grant executive hire vehicles plate exemptions, and they could determine that an exemption from the 30% minimum light transmission level for these vehicles is appropriate. Authorities should be assured that vehicles are not

10 For a suggested test please see para 12.35 *Button on Taxis: Licensing Law and Practice,* 4th edition Bloomsbury Professional.

11 For a suggested test, see para 8.98 *Button on Taxis: Licensing Law and Practice,* 4th edition, Bloomsbury Professional.

used for 'normal fares'.

This second paragraph appears to be in some degree of conflict with the final paragraph of 8.12 - vehicle identification signage, in relation to plate exemptions for executive vehicles.

8.9 An accessible fleet

This section states:

> *Licensing authorities should understand the demand for mixed fleets in its area and ensure that, when issuing licences, it has the right mix of vehicles.*

Unfortunately there is no indication as to how a licensing authority can achieve this. Should there be quotas for types of vehicles? If so, how will the requirement to provide a wheelchair accessible vehicle (WAV) rather than a "normal" vehicle be allocated?

In addition, the licensing authority must now assess demand for wheelchair accessible vehicles every five years. Again, there is no indication as to how this assessment should be undertaken.

8.10 Inclusive vehicle specifications

This section is largely as detailed in the consultation document, placing responsibility on licensing authorities to determine what are suitable vehicles. There is a useful addition to the consultation document:

> *We have undertaken a review of the reference wheelchair standard and believe that further consideration on its use is required. In the meantime, we suggest that licensed WAVs meet minimum size requirements and any changes in policy will be reflected in future guidance.*

This section also suggests that local authorities should ensure that WAVs should be available throughout the day! Again, there is no indication how a licensing authority can realistically achieve this aim without vehicle and driver subsidies.

8.12 Vehicle identification and signage

This is potentially one of the most contentious sections of the BPG. It states:

> *. . licensing authorities should seek to differentiate the profile of private hire vehicles as these can only be legally engaged through a booking with a licensed operator.*

It goes on to say that authorities should require an illuminated roof sign on all taxis, and there should be a complete prohibition of roof signs on PHVs.

> *Having an illuminated sign on taxis and prohibiting them from private hire vehicles will provide a simple way for the public to differentiate between the two services and we encourage all licensing authorities to promote this difference to raise public awareness.*

In relation to the signage on private vehicles, the guidance states the following:

> *Licensing authorities' private hire vehicle signage requirements should be limited to the authority licence plate or disc and a "pre-booked only" door sign.*
>
> *This approach enables passengers to be given the clear and consistent message that you should only get in a vehicle that 'has a taxi sign on the roof' unless you have pre-booked a private hire vehicle and have received information from the operator to identify it.*

The idea that all people who book a private hire vehicle receive information from the operator enabling them to identify the vehicle is by no means always the case. Operators with sophisticated apps may be able to do this, but smaller and single person operators may not.

In relation to the overall question of signage on private hire vehicles, the taxi and private hire trades take the view that signage encourages unlawful attempts at immediate hiring. However, local authorities take the view that public safety is enhanced by enabling the public who have booked a private hire vehicle to be able to identify licensed vehicles instead of illegal, unlicensed pirate vehicles.

It remains to be seen how this is approached by licensing authorities in the future.

This section goes on to say that:

> *Licensing authorities should only exempt the display of a licence plate by a private hire vehicle in exceptional circumstances. 'Executive hire' services are licensed as private hire vehicles and licensing authorities should assure themselves that there is sufficient justification to exempt these vehicles from a requirement to display a plate or disc and that there is an effective means to prevent the vehicle being used for 'normal' private hire work.*

There is no real explanation as to why this approach has been taken. There are good reasons to exempt the display

of the plate (and the associated removal of the need for the driver to wear his or her badge, in the case of specialised school transport services and genuine executive hire services. Celebrities, sports people and captains of industry may not want to be seen driving around in a private hire vehicle for either status or security reasons.

8.13 Passenger capacity

This section states:

> *Licensing authorities should consider whether there may be a safety risk for passengers in terms of 'third row' seats, if passengers must move other seats with which they are unfamiliar to enter or exit the vehicle in an emergency situation. Should these seats be included in the licensed seating capacity, licensing authorities should require operators to advise passengers in advance that some seats have restricted access and so may be unsuitable for those with mobility difficulties.*

Unfortunately, the final decision is left to local authorities, so there will still be no consistency in the approaches taken. Neighbouring authorities could take different approaches which makes matters difficult for operators who have licences in more than one district.

8.14 Carrying children

This section gives a useful summary of the law relating to the carriage of children. Unfortunately, no mention is made of the fact that it is the parents' / responsible adults' responsibility to decide whether or not a child should be carried when no appropriate seat is available. This should be made clear and the onus should not be placed upon the driver to make decisions in the circumstances.

8.15 Personal security

This section acknowledges that many vehicles have after-manufacture screens or divisions fitted between the front and rear seats. It goes on to state that:

> *Authorities should ensure that security adaptations (for example, partitions in vehicles) do not prevent drivers from fulfilling their legal obligations towards disabled passengers. For example, whilst front seats may not be included in occupancy numbers or generally used by passengers where security screens are fitted, some disabled people may require access to the front seat to complete a journey comfortably and safely, thereby reducing the numbers carried in the back.*

8.16 Partitions in vehicles

This section makes reference to DfT guidance on after-manufacture screens.

8.17 In-vehicle visual and audio recording - CCTV

No new information is provided in this section beyond that contained in 2020 SS.

8.18 Emergency equipment

This section states:

> *The Highway Code advises that should a vehicle catch fire, the occupants should get out of the vehicle quickly and to a safe place and not to attempt to extinguish a fire in the engine compartment, as opening the bonnet will make the fire flare.*

This is clearly good, sensible and safety-oriented advice. The trade has long argued that fire extinguishers serve no practical purpose, but are often used by passengers as a weapon to attack either the driver or other passengers. The removal of any requirements for vehicles to have fire extinguishers is therefore sensible and the fire extinguisher requirement in the model taxi byelaws has also been removed.

8.19 Vehicle testing

This section is split into a number of subsections.

In **Frequency of vehicle tests** the BPG states:

> *An annual test for licensed vehicles of whatever age (including vehicles that are less than three years old) seems appropriate in most cases, unless local conditions suggest that more frequent tests are necessary. More frequent tests may be appropriate for older vehicles which may be more prone to mechanical defects (see Vehicle age limits or for vehicles owned by proprietors that persistently present vehicles that do not meet the standards required by the authority. More information is also provided in the Environmental considerations section of this guidance.*

This makes sense, but again there is no reference to the mileage covered by the vehicle, only the age of the vehicle.

In the **Motoring Diligence** section, the following is made clear:

> *Licensing authorities should, where possible, obtain details of the test, including failures. Where testing arrangements do not make the sharing of this information possible, the licensing authority should use GOV.UK to check the MOT record of a vehicle to ascertain if any vehicle defects were identified during an MOT. Where licensing authorities designate where a vehicle must be inspected, and the outcome is not recorded on the MOT database, the authority should require the*

tester to provide them with the outcome of the test.

It is expected that diligent monitoring and maintenance of the vehicle condition by proprietors should result in few if any dangerous or minor defects being detected at on-road compliance checks. A vehicle proprietor should ensure that a vehicle is in a safe and satisfactory condition, frequent failures can be raised with the proprietor and authorities can consider whether they are content that the proprietor is taking sufficient action to monitor and maintain the safety of their vehicles.

This reinforces the view that the maintenance of the vehicle by the proprietor is a relevant factor in relation to whether or not that proprietor should be allowed to continue to hold vehicle licences.

Chapter 9 - Quantity restrictions of taxi licences outside London

This chapter adds very little that is new. The references to the Competition and Markets Authority 2017 report are useful, but if that view is so compelling, why not remove the ability to limit taxi licences? Obviously that would take primary legislation but a more forceful indication that the Department does not approve of restricted numbers might have been useful.

9.3 Demand surveys

The BPG states:

To assist in the inclusion of the taxi and private hire vehicle sector in Local Transport Plans these [unmet demand] surveys should, where possible, follow the cycle of their production but should be undertaken at least every 5 years.

It is not clear whether the Department feels that surveys should only be undertaken every five years or whether this is a reference to the local transport plan. As the senior courts seem to have accepted that three years is the maximum life of an unmet demand survey, it would be difficult to depart from that.

Chapter 10 - Taxi fare rates

This is another useful chapter which helpfully makes the point that fare setting is an executive, not a council function.

10.2 Setting taxi fare rates

The suggestion is that there should be regular reviews of taxi fares taking into account not only the impact on passengers but also the livelihood of drivers.

To ensure that taxi tariffs reflect the costs of the trade they should be reviewed following significant changes in licensing fees and other major costs such as fuel. Regular reviews will assist drivers in maintaining their earnings and so continue to attract those seeking to become taxi drivers and provide existing licensees with greater confidence to remain in the trade and plan for future investment in new vehicles. Regular reviews will also avoid large changes in fares for passengers that infrequent reviews are more likely to result in.

The point is also made that passengers can always try to negotiate fares downwards!

Chapter 11 - Taxi ranks and roadside infrastructure

This is another helpful chapter with useful additions since the consultation document, including:

As well as the taxi trade, licensing authorities should seek the views of residents and other interested parties such as businesses in the night-time economy and transport hub operators [when locating taxi ranks].

Taxi rank provision should be reviewed at least every five years, if possible in alignment with local transport plans. In relation to taxi ranks, the emphasis is firmly on passenger safety, while acknowledging the needs of other road users.

Taxi and private hire vehicle drivers, operators and those developing cycling infrastructure play a collective role in ensuring vulnerable road users can reach their destinations safely. The need for inclusively designed cycle infrastructure should be considered so that disabled passengers are able to access the kerbside with ease where possible. The local transport note guidance (LTN 1/20) supports authorities with the delivery of accessible cycling infrastructure, and further advice can be sought from Active Travel England.
Consideration should also be given to how disabled people relying on taxis and private hire vehicles will gain access to the kerbside on roads where access is prevented, such as areas where bus priority is implemented.

Chapter 12 - Taxi zones

This chapter does not add anything new.

Chapter 13 - Flexible transport services

This chapter does not add anything new.

Chapter 14 - Local transport plans and strategy

This chapter is a useful introduction to local transport plans

(LTPs) for district councils which are not Local Transport Authorities.

> *An LTP is a public facing document that sets out the future of transport in the local authority. LTPs should clearly articulate an integrated transport strategy drawn from a robust evidence base and vision for the local area, and also include an implementation plan that list the policies and interventions that will deliver the strategy.*

Chapter 15 - Tax checks in taxi and private hire vehicle licensing

This chapter gives a useful short overview of the tax check requirements.

Other documents

Guidance note on private hire vehicle licensing

There is no difference from the version issued in 2011, and I still have the same reservations about some of this guidance.[12]

Model byelaws for taxis

The DfT has reissued the model byelaws, now for taxis. There are only two changes:

1. The words "hackney carriage" have been replaced by "taxi" throughout the document.
2. The requirement for taxis to have a fire extinguisher has been removed.

A consequence of the change in terminology means that there is a new model byelaw number 2 (the definition of taxi), so all remaining numbering has moved on by one.

Otherwise, this remains identical to the version issued in 2005. As a consequence I can see no purpose in local authorities updating their byelaws unless significant departure from the model is intended (see below).

Taxi byelaws: guidance and the byelaw making process

Again, "hackney carriage" has been replaced with "taxi" throughout. Otherwise this guide is also identical to the version issued in 2005. It contains the same assertion that the decision in *Wathan v Neath Port Talbot CBC* [2002] L.L.R. 749 Admin Crt is being misinterpreted, and conditions can be attached to a taxi driver's licence. I do not agree with that view.

The guidance states that departures from the model byelaws can be submitted to the DfT but the experience of authorities that have attempted to do so since 2005 positively discourages this course of action.

Driver vehicle condition checklist

A very sensible and useful daily walk-round checklist for drivers.

Sample notices between taxi / private hire vehicle driver and passenger

A sensible outline of expectations for both driver and passenger. A repeat of Annex B to 2010 BPG.

Conclusions

This is generally a very good document , but as I mentioned in the introduction, there are a number of issues and I cannot see that either the taxi and private trades or local authorities are going to be completely satisfied with everything contained in the BPG.

It is no substitute for completely updated and reconsidered law covering taxi and private activity, and I would urge the Government to return to the Law Commission Report[13] and introduce their proposed Bill as a matter of urgency.

James Button
Principal, James Button & Co Solicitors

12 For details of my concerns, see para 12.130 et seq *Button on Taxis: Licensing Law and Practice,* 4th edition Bloomsbury Professional.

13 At https://lawcom.gov.uk/project/taxi-and-private-hire-services/.

Improved coordination between gambling licensing and planning could save all time and money

The Gambling Business Group's **Charlotte Meller** sets out ways officials in the gambling and licensing sectors could work more closely together, to everyone's benefit

The House of Lords Select Committee's 2017 post legislative scrutiny report on the Licensing Act 2003 and its subsequent follow up report in July 2022 were critical of several areas of the implementation of the Licensing Act including the lack of coordination of the licensing and planning systems. The follow up report was frustrated by the lack of progress to address the "continued inconsistency and a lack of joined-up decision-making" and called on the Government to "work with key stakeholders to establish a clear mechanism for the licensing and planning systems to work together and communicate successfully."

The Government responded, agreeing that while coordination was important "the systems are separate, with two very different and distinct objectives and approaches".

These observations from the Select Committee and Government could equally apply to the relationship between licensing and planning under the Gambling Act 2005, and this has been borne out by recent examples of costly and time-consuming appeals to gambling and planning applications.

Relationship between gambling licensing and planning

The 2005 Act and the Gambling Commission's *Guidance to Licensing Authorities* (GLA) sets out the framework for how these two regimes should work:

With regards to planning permission, s 210 of the Act states:

> *(1) In making a decision in respect of an application under this Part a licensing authority shall not have regard to whether or not a proposal by the applicant is likely to be permitted in accordance with the law relating to planning or building.*
>
> *(2) A decision by a licensing authority under this Part shall not constrain any later decision by the authority under the law relating to planning or building.*

Part 7 of the Gambling Commission's GLA provides more detailed guidance on the topic of consideration of planning permission and building regulations as part of the premises licensing process:

> 7.65. *When dealing with a premises licence application for finished buildings, the licensing authority should not take into account whether those buildings have to comply with the necessary planning or building consents. Nor should fire or health and safety risks be taken into account. Those matters should be dealt with under relevant planning control, building and other regulations, and must not form part of the consideration for the premises licence.*

Section 204 of the 2005 Act sets out how a potential operator can apply for a provisional statement if construction of the premises is not yet complete, or they need alteration, or he does not yet have a right to occupy them.

This is supported by a 2008 case *The Queen (on the application of) Betting Shop Services Limited v Southend-on-Sea Borough Council* [2008] EWHC 105 (Admin), which found that operators can apply for a premises licence in respect of premises which have still to be constructed or altered, and licensing authorities are required to determine any such applications on their merits.

Section 157 of the Act lists the responsible authorities that must be notified of applications and which are entitled to make representations to the licensing authority on gambling premises applications. The authorities include in England and Wales, the local planning authority; and in Scotland, the planning authority.

Decreasing numbers of gambling premises

The number of gambling premises in Great Britain has substantially decreased over the past 10 years as the land-based sector has been impacted by changes to stakes and

prizes in betting shops, planning use changes, the impact of Covid on businesses and the growth in online gambling.

	Year to March 2013	Year to March 2023
Betting shops	9100	5955
Adult gaming centres	1671	1348
Bingo	680	650
Family entertainment centres	362	164
Casinos	144	144
Total	**11957**	**8261**

Gambling Commission Industry statistics November 2023

While the previously frequently cited description of "proliferation" of gambling premises doesn't hold true given the ever-decreasing premises, some councils and their communities have concerns about "clustering" of premises particularly in areas of deprivation.

Options for refusing applications for gambling premises

Councils have powers under both gambling and planning regimes to refuse applications within their respective regimes.

Gambling Act

Section 153 of the Gambling Act states that the licensing authority shall aim to permit the use of premises for gambling in so far as it thinks it is:

a. In accordance with any relevant code of practice issued by the Commission.

b. In accordance with any relevant guidance issued by the Commission.

c. Reasonably consistent with the licensing objectives (subject to a and b above).

d. In accordance with the licensing authority's statement of licensing policy (subject to a to c above).

The GLA (part 1.26) states:

The 'aim to permit' framework provides wide scope for licensing authorities to impose conditions on a premises licence, reject, review or revoke premises licences where there is an inherent conflict with the relevant codes of practice, relevant guidance issued by the Commission, the licensing objectives or the licensing authorities own policy statement.

Part 5.34 of the GLA makes it clear that moral or ethical objections to gambling are not a valid reason to reject applications for premises licences.

Section153 of the Act highlights the importance of licensing authorities having a current licensing policy statement which reflects the authority's priorities and objectives on gambling – taking into account issues and risks for the local area.

Unfortunately these policy statements are often underutilised as a tool. The current policy statements should cover the three years between 31 January 2022 – 2025, irrespective of any interim reviews. An exercise conducted by the Gambling Business Group in December 2023 found nearly 50 councils did not have a current policy statement, with one council confirming that its 2007-2010 policy is its most current.

Gambling White Paper

The Local Government Association (LGA) has called for "more powers" for local licensing authorities citing that the statutory aim to permit licence applications makes it "difficult to refuse new licence applications, even in locations which the council and local residents believe are inappropriate".

The Department for Media Culture and Sport's *High stakes gambling reform for the digital age* White Paper published in April 2023 stated "licensing authorities have a wide range of powers under the 2005 Act to refuse or place conditions on applications for gambling premises licences where there is cause for concern, and we fully support use of these powers".

However, it has proposed, following calls from the Gambling Commission and the LGA, to introduce Cumulative Impact Assessments (CIAs) to complement existing powers. As CIAs require primary legislation changes, DCMS encourages local authorities to make full use of their existing powers and update their policy statements in the interim of finding suitable Parliamentary time.

DCMS does not intend to remove the "aim to permit" requirement when CIAs are introduced and has made it clear that there will an onus on local authorities to capture and regularly review a wide range of evidence to support the CIA; that each application must be assessed on a case-by-case basis; and that blanket refusals will not be permitted.

Planning legislation

Since 2015, betting shops in England have been classed as *sui generis* (a use that does not fall within any use class), so any new betting shop must apply for full planning permission.

However, if a new betting shop tenant moves into a unit where the last known use was as a betting shop, the new tenant can operate under the previous user's planning use class.

Even with this use class change, to refuse a planning application for a betting shop, the council's local plan, approved by the national planning inspectorate, would need to include a strong evidence base as to why it has restricted betting shops.

Some councils have considered whether and how planning policies for gambling can be reflected in local plans, such as Knowsley's 2022 Town Centre Uses Supplementary Planning document which states that "planning permission for a pay day loan shop, pawnbrokers or gambling use within a retail centre will not be granted if it causes an unacceptable grouping of uses which would have a negative impact on the character of the centre", and goes on to set out what it deem unacceptable groupings and states that a "proliferation of these uses can be detrimental to the principle of supporting vibrant retail centre".

In February 2023, Westminster Council's Planning Committee refused permission for a new adult gaming centre (AGC) on Oxford Street London because the business would undermine the street as a globally recognised shopping district. The decision was appealed and in November planning permission was granted for the AGC. The Planning Inspectorate's report was clear about the boundaries between planning and licensing and whether a gambling premises would be detrimental to the area. It stated:

> *The focus of planning policies and decisions should be on whether the proposed development is an acceptable use of land in land use terms, and the impacts of those uses, rather than the control processes or issues that are subject to approvals under other regimes such as licensing.*

And it added that:

> *There is no compelling evidence that a single AGC would be inappropriate or harmful to the character or function of the area as a whole.*

Engage with your gambling premises

Gambling premises are one of the most highly regulated businesses on the high street – with a dual licensing system, extensive requirements around anti-money laundering and preventing crime, with protecting consumers at the heart of everything they do.

Visitors to gambling premises will rarely go just to the betting shop or arcade: there will be visits, before or afterwards, to other venues on the high street, increasing the footfall to those premises. Gambling premises contribute to the diversification of the offerings on the high street and provide employment opportunities.

The money invested in security in gambling premises means they are safe spaces as highlighted in Bradford where casinos and AGCs are amongst the businesses recognised as "safe havens" on the WalkSafe+ app, which also highlights safer walking routes.

According to the Commission's Licensing Authority Statistics 2022-2023, only 1,582 visits to licensed gambling premises were undertaken by 350 licensing authorities (with another 808 visits to other premises- predominantly pubs to look at gaming machines).

The LGA and the IOL have recently launched a training standard for licensing committee members setting out basic requirements and additional development opportunities for those considering licensing applications. It suggests stakeholder engagement including occasionally participating in visits with licensing officers in the nighttime economy, and meeting with local licenses to understand the challenges they face.

While planning and licensing should not exceed boundaries between their respective regimes, it would be beneficial for members of planning committees to equally consider the stakeholder engagement suggested by the LGA and the IoL And (gambling) licensing and planning officers should build working relationships and communication channels, if not already in place, to share information about gambling premises.

The LGA and IoL commented: "Such engagement would address the small but increasing number of "inconsistent and a lack of joined-up decision-making". Additionally, being more familiar with how high street gambling business operate could allay planning or licensing concerns at an early stage, saving councils money and resources on appeals.

The Gambling Business Group continues to extend its offer to officers and committee members to facilitate familiarisation visits to gambling premises in your local area, building on training provided for the Metropolitan Police in a London AGC and visits for licensing officers to Motorway Service Areas.

Charlotte Meller
General Manager, Gambling Business Group

Change on the way for gambling regulation in 2024

Gambling regulation may well be amended this year, in the wake of numerous consultations by the Gambling Commission and the Government on the much-discussed Gambling Act White Paper, writes **Nick Arron**, who also analyses the recent *Rex v Entain PLC* decision and looks at what we can expect from 2024

Consultation: Statutory levy

Since the last *Journal*, the Government has launched and concluded its consultation on the introduction of a statutory levy for gambling operators, as proposed in the gambling White Paper. The introduction of a statutory levy is a significant change, and the consultation offers a good insight into the Government's thinking.

The consultation considered the structure, distribution and governance of the levy. The main proposals were:

Structure: The Government suggested that online gambling operators should pay a higher rate than their land-based counterparts. As set out in the White Paper, this approach accounts for evidence of the varying levels of harm associated with different sectors (the articles on fines of licensees on the Commission website demonstrate the issues with online gambling) and their respective costs, while raising sufficient funding for key projects and services. The proposed levy rates as a % of gross gambling yield (GGY) are:

- 1% from all online operators (excluding society lotteries with remote licences).
- 1% from remote software licences.
- 1% from remote machine technical licences.
- 1% from remote pool betting licences.
- 0.4% from land-based casino/betting.
- 0.4% from non-remote software licences.
- 0.4% from non-remote machine technical licences.
- 0.4% from non-remote pool betting licences.
- 0.1% from land-based arcades and bingo.
- 0.1% from society lotteries (including external lottery managers and local authority lotteries licensed by the Gambling Commission).

It was proposed that those with GGY or gross profits below £500,000 will not be expected to pay the levy.

One issue with consultation, which readers may have noticed, is the inconsistent use of definitions. Under s 123, the Secretary of State may make regulations requiring holders of operating licences to pay an annual levy to the Commission. However, confusingly, the consultation describes application of the levy to sectors, such as "land-based arcades and bingo" and then in other instances, specifically defines operating licence types. This has made understanding the proposals more difficult and will need to be rectified for the final regulations.

The Government's goal is to set rates that are equitable while generating around £90 million to £100 million per year by 2027, to fulfil the Government's objectives to provide effective and sustainable funding for research, education and treatment.

Distribution: The Government proposed around 10-20% of the levy funding would be allocated to UK Research and Innovation (UKRI), facilitating the establishment of a multidisciplinary Gambling Research Programme. Another 15-30% of the funds would be devoted to prevention and education initiatives aimed at raising awareness of gambling-related harms across Great Britain. A substantial 40-60% of the levy proceeds would be directed toward the NHS to enhance the commissioning of treatment services for gambling addiction across the entire treatment pathway.

Governance: To ensure the proper oversight of the levy system, the Government suggested establishing a Statutory Levy Board and a separate Advisory Group. These bodies will serve as a platform for Government oversight of the levy system and enable sector experts from public health, academia and charitable organisations to provide insights on funding priorities. It is proposed that levy rates and distribution will be reviewed every five years.

Proposed changes to licence conditions and codes of practice, and remote gambling and software technical standards

At the end of November 2023, the Gambling Commission launched its second phase of consultations on proposals outlined in the Gambling Act Review White Paper.

The consultation covers the following topics:

Socially responsible incentives: Consulting on proposals to ban or limit the use of wagering requirements in promotional offers. A wagering requirement is what you have to do before you are allowed to make a withdrawal from a betting bonus, so for instance, a 10x wagering requirement means that you'll have to wager or bet through a bonus 10 times over before you can withdraw any winnings won from it.

Proposing to ban the mixing of product types, such as betting, bingo, casino and lotteries, within incentives: Seeking views on changes to the LCCP section regarding rewards and bonuses, to make it clear that incentives should be constructed in a manner that does not lead to excessive or harmful gambling.

Customer-led tools: Consulting on changes to the Remote Gambling and Software Technical Standards to ensure that consumers who want to make use of pre-commitment tools, such as deposit limits, can do so easily and in ways that work for them.

Seeking opinions on consumers' ability to choose limits across accounts held with multiple operators: Addressing concerns or examples where consumer decision-making may have been influenced by the use of friction or other barriers.

Improved transparency of protection of customer funds in the event of insolvency: Consulting on an addition to the existing LCCP provision, for gambling businesses that offer no protection in the event of insolvency to remind customers that their funds are not protected.

Changes to the frequency of regulatory returns submissions: Proposing to change the LCCP so that all regulatory returns would have to be submitted quarterly, to help the Commission provide a more timely and accurate picture of the gambling sector. This is a significant practical change for licensees, the majority of whom submit returns annually, and will add additional administrative burden.

Removal of annual financial contributions requirement: Proposing to remove the current LCCP requirement for licensees to make annual financial contributions to research, prevention and treatment organisations, as this will become obsolete once the Government's upcoming statutory levy is introduced.

Rex v Entain PLC - deferred prosecution agreement

On 5 December last year, the agreement in the case *Rex v Entain PLC* was published, following the UK authorities' investigation of bribery in connection with gambling operations In Turkey.

Entain is one of the UKs largest gambling businesses, owning both Coral and Ladbrokes (it was previously called GVC).

The Crown Prosecution Service (CPS) and Entain entered into a deferred prosecution agreement (DPA). A DPA is an agreement between a UK prosecution authority, in this case the CPS, and a corporate entity, here being Entain. Under a DPA the prosecutor agrees not to bring a criminal charge subject to conditions agreed by the corporate entity, those conditions including a financial penalty and requirements for future conduct. The DPA required Entain to make a total payment of £615 million, which includes a £20 million donation to charity.

The DPA is not a criminal charge nor an admission of guilt and is an agreement between the UK prosecution authority and Entain that no charge is brought on the condition that the financial penalties are paid. It is noted that the figure of £615 million is an estimation by the CPS and is about 50% of what would otherwise be payable had there been a conviction against Entain.

Following the decision, the CPS issued a statement, which addressed the Gambling Industry directly:

> "The wider gaming industry may wish to reflect on the implications of this agreement for their own corporate compliance procedures and, where appropriate, take action to address and report any failings they identify. The CPS will continue to work closely with law enforcement partners in this area, such as HMRC, as well as the industry regulator, the Gambling Commission".

The agreement brings into question licensees' ability to operate in "grey markets", a term loosely meaning jurisdictions which are on the path to regulation but not yet regulated, or those where the law is open to interpretation, or not supported by enforcement. Currently some UK licensees do operate in these grey markets, with the Commission expectation that such operations are supported by legal advice. This may change.

Looking forward to 2024

The Government has yet to consult on many of the topics in the White Paper, and the key prediction for 2024 for the gambling industry is that there will be more consultations, with the consequent likelihood of delay in the implementation of the changes, due to the pending election.

At time of writing, we do not know exactly when the next election will take place in the UK, with the latest possible date being in January 2025, but the main parties are now gearing up for full campaign mode. The Conservatives and Labour do not appear to have significantly differing views on gambling regulation, so other than delays, I do not expect 2024 to see any significant changes from the Government policy outlined in the White Paper. Expect consultations on an ombudsman, Gambling Commission fees and review of the Horserace Betting Levy to ensure the appropriate level of funding for horse racing is maintained. We can also expect new legislation, following the consultations from 2023, including changes to the ratio of gaming machines in AGC and bingo premises, cashless payment on gaming machines and increases to licensing authority fees.

Nick Arron
Solicitor, Poppleston Allen

With input from:

Felix Faulkner
Solicitor, Poppleston Allen

Institute of Licensing News

Chairman

At the National Training Conference in November last year, Daniel Davies announced his decision to step down as Chair of the IoL in March this year. As a result, members will have seen that we have been advertising the position and we hope to be able to confirm the new National Chair soon.

Dan has been a fantastic Chair for the IoL. As our longest serving Chair (nine years), he has supported and grown the IoL team, overseen the increased training and events offered and established *LINK* magazine as a complementary publication to run in tandem with the *Journal of Licensing*. Dan has represented the IoL at numerous events, chaired the National Training Conference for the last nine years and spoken at many IoL events. He has appeared before Select Committees within the House of Lords to discuss the review of the Licensing Act 2003 and the Regeneration of Seaside Towns and Communities and has chaired the National Licensing Forum since joining the Board in 2014.

We are sincerely grateful to Dan for his support and commitment to the IoL, the Board of Directors, the Team and the membership. Thank you, Dan.

The Team

In the last edition, we advised that Steve Lonnia (previously from Sheffiled Council's licensing team) would be joining the team in November.

Part of Steve's new role is to work closely with the regional committees to provide them with help and support. He will lead on supporting the regions, including helping to arrange regional meetings, providing regional membership information and assisting in communications. He has already been in contact with all the regions and will be working with regional committees to provide whatever help and support he can.

IoL / LGA Training Standards

The Institute of Licensing and the Local Government Association have produced training standard guidance which sets out what the LGA and the IoL believe to be a basic level of licensing committee member training.

The guidance explains what we think ought to be the minimum level of training for councillors sitting on licensing committees but also signposts to additional activities, training and engagement which councillors could consider in order to increase their knowledge and understanding of licensing and licensing considerations in their local areas. The training standards can be found on our website.

The IoL offers a full day training course for councillors, which has been delivered online since August 2020, and we can also offer bespoke courses tailored to customer requirements. Contact the team for more information via training@instituteoflicensing.org.

Membership

The new IT system (CRM) and website continues to progress, although there have been some delays and we are now awaiting testing. We hope the system will be live in April but anticipate that membership renewals will be processed using the new system, if it is fully functional at that stage.

We will send out renewal invitations in due course, and as always, the team will be ready to help with any queries, which should be directed to:
membership@instituteoflicensing.org

Training and Events

It was wonderful to see so many of you at the National Training Conference last November. The planning each year for the next NTC is inspired by the pleasure of running the last one and this year will be no different. The 2024 NTC will run from 13 - 15 November with the option of accommodation from 12 - 14, and we are already looking forward to seeing many of you there!

In January we organised an online Safeguarding Conference, and again this proved popular with delegates. We had a superb programme with some very compelling sessions.

In February, we were delighted to join up with the Gambling Business Group at ICE2024, the UK's largest gaming and betting exhibition, held in the ExCeL in East London. We were represented by David Lucas who was joined by IoL members from local authorities who visited us at the GBG's High Street Hub.

We were also delighted to join up with the NTIA, who invited the IoL to provide a panel as part of the Night-Time Economy Summit held at Freight Island in Manchester. Our panel of experts was chaired by IoL Director Tim Shield (John Gaunt & Partners), who was joined by Andy Grimsey (Poppleston

Allen), Ian Graham (Metropolitan Police), Iwona Kossek (Six till Six) and Fraser Swift (Manchester City Council). Our colleague Caroline was also able to attend to provide a stand promoting the Local Alcohol Partnerships Group[1] which the IoL chairs and administers.

We have had some great training events already with more lined up for 2024, including:

- 15 March 2024 - BBFC's New Classification Guidelines (Online webinar)
- 19 March 2024 - Taxi Conference (Leicester)
- 24 April 2024 - Large Events Conference (Online webinar)
- 12 June 2024 - Summer Training Conference (London)
- 14 & 16 May 2024 - Prosecution Interviewing (Online)
- 22 & 23 May 2024 - Zoo Licensing (Noah's Ark, Bristol)

For details of all our events, please go to our website: https://www.instituteoflicensing.org/events/.

Awards

All awards are presented at the IoL Gala Dinner which takes place on the Thursday night of the National Training Conference in November annually. In 2023, we were delighted to present the following awards:

2023 Award Winners:

Jeremy Allen Award: ***John Miley***
Chairman's Special Recognition Awards:
Suzanne Fisher (previously Telford and Wrekin Council)
Dave Nevitt (previously Westminster City Council)
Inspector Alan McKeon (Merseyside Police)
PC Diane Park (Merseyside Police)

It was wonderful to be able to recognise the hard work and achievements of our award winners. Full details of the awards are in the Winter Edition of *LINK* magazine.

Recognition is important, and simply being nominated for consideration of an award is in itself recognition by peers which means so much to nominees. We are privileged to be able to offer the following awards:

Fellowship

Nominations for Fellowship can be made at any time and should be emailed to sue@institituteoflicensing.org There is an award criteria (below) and nominations will be referred to the Board of Directors with a recommendation based on the criteria:

> Fellowship will be awarded, following nomination by two members of the Institute, to an individual where it can be demonstrated to the satisfaction of the Institute's Membership and Qualifications Committee that the individual:
>
> - Is a member of the Institute or meets the criteria for membership; and
> - Has normally made a significant contribution to the Institute and has made a MAJOR contribution in the field of licensing; for example, through significant achievement in one or more of the following:
> - Recognised published work.
> - Research leading to changes in the licensing field or as part of recognised published work.
> - Exceptional teaching or educational development.
> - Legislative drafting.
> - Pioneering or taking a leading role in licensing initiatives or developments leading to significant changes or having a significant impact.

It is stressed that Fellowship is intended for individuals who have made exceptional contributions to licensing and / or related fields rather than those who have simply done their jobs well.

Chairman's Special Recognition

The IoL Chairman's Special Recognition award can be made at the discretion of the serving Chairman based on nominations from Board members. This will normally be limited to two awards per year and can include individuals or groups. There are no set criteria, thus allowing each nomination to be judged on its merits.

Anyone wanting to put forward a suggestion for nomination should contact their regional chair or director.

Jeremy Allen Award

The nominations window for the Jeremy Allen Award will open in June and nominations will then be accepted until early September.

This award (now in its 13th year) is well recognised as an exceptional achievement following nomination by peers. The award is a tribute to excellence in licensing and will be allocated on the basis of practitioners who have made a notable difference by consistently going the extra mile.

1 https://www.linkedin.com/company/local-alcohol-partnerships-group / https://localalcoholpartnershipsgroup.co.uk/.

Consultations

At the time of writing, there are a number of ongoing consultations, some of which are still open to responses:

Consultation title	FROM	CLOSING DATE	Notes
Martyn's Law: standard tier	Home Office	**18 March 2024**	This consultation is targeted at organisations, businesses, local and public authorities, and individuals who own or operate publicly accessible premises or events that the Terrorism (Protection of Premises) Bill will potentially affect.
Alcohol Licensing - Digital Identity, Technology and Remote Sales	Home Office	**30 March 2024**	The government is consulting on whether to allow digital identities and technology to play a role in age verification for alcohol sales, as well as whether to amend legislation in order to specify that for sales of alcohol that do not take place face to face, age verification should take place at the point of delivery as well as sale.
Licensing of animal welfare establishments, activities and exhibits	Welsh Government	**01 March 2024**	We are working with our Animal Consultation Panel on the IoL response.
Extending licensing hours for UEFA Euro 2024 matches	Home Office	**19 February 2024**	IoL will be responding to this consultation to support the extensions. A Private Members Bill is also in progress and aims to simplify the parliamentary process for this type of extension.
Gambling Commission: Autumn 2023 consultation on proposed changes to Licence Conditions and Codes of Practice (LCCP) and Remote Gambling and Software Technical Standards (RTS)	Gambling Commission	**21 February 2024**	This consultation focuses on remote gambling and software technical standards – Any IoL response is unlikely to add material value so we will not be responding to this consultation

We are working with small groups of IoL members on all the above consultations. These consultation panels allow us to have discussions on consultation proposals and to develop an IoL response after hearing from a sample of practitioners.

In some cases, we will still conduct member surveys, but if anyone would like to feed into the IoL response on any consultation, please contact Sue Nelson via info@instituteoflicensing.org.

Sue Nelson
Executive Officer, Institute of Licensing

National conditions for private hire licences

James Button issues a clarion cry for local authorities to work together to eradicate the long-standing problem of private hire vehicles operating outside of their licensing area

There is a universal desire for national standards for private hire licences.[1] This is not only felt by local authorities, but also by the trade and by safety groups. While universal standards have been promised by the Government as one of the three suggestions from the Task and Finish Group[2] which the Government agreed to,[3] it has been stated that the remaining two changes[4] will not be introduced until after the next general election.[5] Obviously the outcome of that election remains to be seen, but whatever it may be, it seems unrealistic to assume that these vital matters will be high on any government's agenda.

That leaves an unsatisfactory lacuna, where private hire vehicles (PHV) and private hire drivers (PHD) licensed anywhere in England or Wales can undertake pre-booked journeys in areas where they are not licensed.[6] Often, though not always, the local authority that issued these licences had lower standards, to some extent, than the local authority in where the activity in question takes place.

This has numerous serious and harmful implications: it reduces the ability of local authorities in which such vehicles and drivers are working to protect users of private hire vehicles; it reduces the revenue available to those authorities to enforce against unlawful activity; it increases the difficulty for the licensing authority to ensure compliance by its licensees: and overall, it undermines both public safety and public confidence in the private hire trade.

However, all is not lost. I suggest that a solution is available, and that it is possible for local authorities to not only address, but solve this situation by their own combined actions.

It is well known that one local authority licences a significant number of PHVs, PHDs and private hire operators (PHOs). According to the Department for Transport (DfT) statistics for 2023, some 15% of PHVs licensed outside London were licensed by one particular local authority.

The reasons for this are irrelevant for the purposes of this article. Suffice to say that one particular local authority has an efficient and effective licensing system for private hire licences.[7] It has good standards for drivers, vehicles and operators. Whie these are not necessarily the highest set by local authorities, they are a long way from the lowest.

PHVs and PHDs licensed by that local authority are working in many parts of England and Wales, with PHOs licensed by that authority either taking bookings directly, or undertaking bookings that have been sub-contracted to them by "local" operators. At present this causes, at best, resentment amongst "local" licensees and their local authority, and at worst, public safety issues because passengers report issues to the "local" authority, not realising that they are not responsible for licensing that particular vehicle or driver.

All this can be overcome by allowing one particular local authority to become the national licensing authority for England and Wales. This could be agreed by all other licensing authorities in England and Wales. For this article, that particular local authority is referred to as the "principal authority".

This radical proposal is readily achievable using the current legislation.

As already stated, the law allows a PHO to advertise its

1 Also hackney carriages, but that is beyond the scope of this article.

2 Taxi and Private Hire Vehicle Licensing Steps towards a safer and more robust system available at https://www.gov.uk/government/publications/taxi-and-private-hire-vehicle-licensing-recommendations-for-a-safer-and-more-robust-system.

3 Those were: National Minimum Standards; National Enforcement Powers; and a National Licensing Database. The Government's response is available at https://assets.publishing.service.gov.uk/media/5f76f9308fa8f55e36671b26/taxi-task-and-finish-gov-response.pdf.

4 The commitment to the National Licensing Database was partially met by the introduction of the Taxis and Private Hire Vehicles (Safeguarding and Road Safety) Act 2022, but only in relation to private hire (and hackney carriage drivers). There is still no database for vehicle proprietors or private hire operators.

5 Stated by the then Transport Minister Richard Holden at a meeting on 6 March 2023 with the author, Sue Nelson and John Garforth, all representing the Institute of Licensing.

6 For full details see *Remote private hire and hackney carriage activity*, (2023) 37 JoL, page 8.

7 That is not to suggest in any way that there is only one such authority.

services anywhere, accept a booking from a passenger located anywhere, and fulfil that booking provided the PHD and PHV are also licensed by the same authority that licences the PHO – the trinity of private hire licences.[8]

If the only local authority that issued private hire licences was the principal authority, there is an immediate and automatic private hire industry controlled by the same (effectively national) standards.

Obviously, this would require significant co-operation between every local authority, but that could be co-ordinated by the Local Government Association (LGA). It would require local authorities to relinquish their control over PH licensees, but as will be seen, that would be outweighed by national safety standards and the removal of a local authority's requirements being undermined by other PHDs and PHVs. It would also require the principal authority to accept this responsibility and expand its licensing operation accordingly.

How is this possible within the current legislation?

While the ability of a local authority to licence PHDs and PHOs is mandatory, the power to licence PHVs is discretionary.[9] Therefore, every local authority (bar the principal authority) could refuse to licence PHVs. As a PHO can only use vehicles and drivers licensed by the same authority that licensed the PHO, only a PHO licensed by the principal authority could fulfil a booking. Local PHOs could accept bookings, but would have to sub-contract them to a PHO licensed by the principal authority.[10] It would remain to be seen whether there was a demand for locally licensed PHOs or whether the operators would move wholesale to be licensed by the principal authority.

Enforcement in relation to those drivers and operators licensed by the principal authority could be undertaken in every local authority if the "local" local authority placed its officers at the disposal of the principal authority,[11] and they were then made authorised officers by that authority.[12] This mechanism is already used by a number of local authorities and is recommended by the DfT in the recent *Taxi and private hire vehicle licensing best practice guidance for licensing authorities in England.*[13]

There are a number of local authorities which already allow vehicle tests to be undertaken at locations outside their local authority boundary, so the principal authority could utilise that approach across both England and Wales.

This approach would significantly reduce, or completely remove, PH licence income for all the other authorities. This could be offset in relation to enforcement against principal authority PH licensees by such costs being recharged to the principal authority. Those costs would be recoverable by the principal authority via its licence fees.[14] This would also remove another frequent concern expressed by local authorities about their funding of action against licensees from other areas.

This is not a perfect solution, as it does not address hackney carriage drivers (HCD) or vehicles (HCV). They would still be licensed by individual local authorities to stand or ply for hire within their respective local authority area (or hackney carriage zone in some local authorities) for predominantly local activity, but those HCVs could still undertake pre-booked journeys anywhere – ie, outside their licensed area. However, this is thought to be a small part of the current remote cross-border hiring activity.

It is suggested that in relation to private hire licensing, this could work, and provide a solution to an enormous problem. It would be for the principal authority to determine the standards for its licensees, and the conditions which were then imposed. It is suggested that good, high standards already exist and could readily be used by the principal authority, if they are not already in place. Whether those would be acceptable to all the other local authorities who would be asked to relinquish control would remain to be seen. There is no reason why agreement could not be reached. That would be likely to involve some compromises: the highest possible standards might not be achieved, but this approach would undoubtedly raise the standards applied by many local authorities.

There are practical difficulties involved here. There needs to be a concerted desire by local authorities for this to happen. Those authorities would need to agree this is a more desirable situation than the current one; they would need to be able to agree the common standards applied by the principal authority; they would need to accept their control would be reduced, but this would be accompanied by the acceptance of a satisfactory common standard being applied. Experience indicates this would not be easy,[15] but is

8 See *Remote private hire and hackney carriage activity*, *ibid*.

9 See respectively ss 51(1), 55(1) and 48(1) Local Government (Miscellaneous Provisions) Act 1976.

10 Using the provisions of s 55A, Local Government (Miscellaneous Provisions) Act 1976.

11 These powers are contained in s 113, Local Government Act 1972.

12 Under s 80, Local Government (Miscellaneous Provisions) Act 1976.

13 Paragraph 5.3, available at https://www.gov.uk/government/consultations/taxi-and-private-hire-vehicle-best-practice-guidance.

14 See *R (on the application of Rehman) v Wakefield City Council* [2020] RTR 11 CA.

15 The difficulties experienced by local authorities trying to agree common approaches to PH and HC licensing standards in the past is well known.

surely not beyond the wit of those involved. If there is enough will and determination, this approach could be achieved.

There would remain the issue of PH activity within Greater London.[16] TfL might chose to become involved, but might not. In a way, this might not be an immediate issue as London has its own legislation,[17] and is to an extent a distinct PH licensing area,[18] but I would suggest that a truly cohesive system across England, Wales and Greater London would be preferable.

Would it be acceptable to the public? There is no reason why not. Generally speaking, passengers do not expressly demand a PHV and PHD licensed by a specific local authority when making a booking: they will usually accept any vehicle dispatched by a PHO to fulfil their booking. A realisation that in many cases, safety standards would be enhanced should remove any concerns expressed by the public, although in some cases there may be reductions.[19]

Ultimately, it is a question of will.

Are the problems and concerns that exist in relation to cross-border private hire activity sufficient to lead to a consensus by local authorities and the inevitable compromises that would require?

If so, then local government could take the lead on this important issue, wresting control from a central government which demonstrably does not regard it as a vital matter.

If not, then it may be the case that local authorities only have themselves to blame for the continuation of a system which ultimately puts public safety at risk.

James Button
Principal, James Button & Co Solicitors

16 Private hire licensing for Greater London is undertaken by Transport for London (TfL).

17 The Private Hire Vehicles (London) Act 1998.

18 It must be recognised that a London PHO can subcontract to a PHO licensed in England and Wales (except one licensed by Plymouth City Council) and vice versa.

19 This may well be the case in relation to CCTV in PHVs, although this could be one of the common standards.

Tinkering and training: the Government's preferred approach to licensing change

Root and branch reform of the licensing system, with particular emphasis on rationalising its overlap with planning, has been called for by MPs but the Government seems less than committed to the idea, discerns **Richard Brown**

Readers may recall that in 2016 a House of Lords Select Committee was convened to undertake post-legislative scrutiny of the Licensing Act 2003 (LA03). I have written previously about the many and varied recommendations and conclusions of the Select Committee in its report.[1] A cursory glance through the summary at pp 154-161 of the report leaves one with the distinct impression that the careful work of the committee has gone unheeded by the Government. Indeed, the report has been batted back and forth since publication, with a follow-up report published by a Liaison Committee in 2022 which found that much the same defects they had previously identified remained. Nevertheless, the recommendations of 2016 continue to echo down the years.

This often finds expression in the form of ministerial missives to licensing authorities. These diktats are usually framed in a way which lets authorities know that something needs to be done, but without actually telling them what it is the Government wants or how it should be done. One example of this disconnect between central government and local authority licensing was seen during the FIFA Women's World Cup in 2023 when one working day before the final the Government exhorted local authorities to consider "additional support you may be able to give to ensure that, for example, where an application is being rapidly considered to allow a short extension to licensing hours". Of course, anyone with a passing familiarity with LA03 knew that they were being asked to do something which was impossible to lawfully achieve in that timeframe.[2]

Anyhow, on 15 January 2024 the latest epistle pinged into the inboxes of licensing committee members nationwide.[3] Authored by Chris Philp, the Minister of State for Crime, Policing and Fire at the Home Office, it takes the form of (another) elbow to the ribs of licensing authorities to *do something*. The principle focus of the letter was twofold: firstly, the provision of training for "licensing practitioners", and secondly "collaboration" between local licensing and planning regimes.

The thorny issue of amalgamating licensing and (or rather, into) planning - very much a takeover not a merger - has never really gone away nor yet has it found a hand strong enough to grasp the nettle and remain impervious to the inevitable stings.

Although it appears that there has been little substantive progress as such, the Minister makes it clear that discussions are ongoing, and following two workshops convened by the Home Office there will be ongoing talks facilitated by "two small virtual groups with expert stakeholders to enable these conversations to continue".

On the issue of training, the Minister seems to be going beyond the conclusions of the Select Committee. There, the focus was primarily on provision of training for police officers and elected members, following criticisms of both by witnesses. Now, additionally, licensing officers are the beneficiaries, specifically with a view to preparing the ground for a more and better collaboration with the planning regime. The Minister writes (my emphasis):

> *We ask that you support this work by ensuring that all relevant local licensing officials have suitable training* ***on matters of licensing and planning, including on the overall regimes and how the two regimes interact****.*

1 https://publications.parliament.uk/pa/ld201617/ldselect/ldlicact/146/146.pdf.

2 Had the Government considered in advance that the FIFA Women's World Cup constituted an 'exceptional international, national, or local significance' it could have made the same licensing hours order under s 172 LA03 as it has done for men's international football tournaments.

3 15-01-24-minister-philp-to-licensing-and-planning-authorities.pdf (instituteoflicensing.org).

We do not intend to mandate for a minimum standard or mandatory licensing training requirement - all local areas should be able to make their own decisions on what training is most valuable and necessary for their particular local needs, but we do encourage all areas to ensure that their local package is substantive. The Government will continue to support this by disseminating good practice and signposting new and updated training materials produced at a local level.
It is logical and sensible that, if we are finally to see the will of the Select Committee come to fruition, licensing officers are up to speed with relevant planning considerations, law, procedure and practice. Nevertheless, in a time of such financial constraints for local authorities where resources are stretched to and in some cases beyond breaking point, it may not be a welcome requirement.

Speaking for myself, I mention planning much less often at licence hearings than I used to, simply because of the changes to planning use classes which commenced on 1 September 2020.[4] This has led to far fewer planning applications for change of use from, for example, the former A1 retail use class to A3 restaurant, as both uses (along with office use) are now subsumed into the new class E. There is therefore less need for formal welding together of the planning and licensing regimes when considering applications under each regime for the same site than there was in 2017.

For although going beyond the recommendations of the Select Committee in terms of training for licensing officers, the Minister's letter at the same time foreshadows a watering down of the rather trenchant changes advocated by the Select Committee regarding planning and licensing. The focus then, it will be recalled, was on changes which were fundamental, sweeping, and time sensitive.[5] Under the heading "The Licensing Process", the Select Committee decided that on the basis of evidence it had heard regarding the operation of licensing sub-committees, "clearly reform of the [licensing] system is essential". This entailed:

6. Sections 6–10 of the Licensing Act 2003 should be amended to transfer the functions of local authority licensing committees and sub-committees to the planning committees. We recommend that this proposal should be trialled in a few pilot areas.

7. We believe that the debate and the consultation on transferring the functions of licensing committees and sub-committees to the planning committees must start now, and the pilots must follow as soon as possible.

This root and branch reform is at odds with the more restrained tone of the Minister's letter.

Although I am not an advocate of joining together the two regimes formally, there is certainly value in closer collaboration (to use the hopefully deliberately chosen wording of the Minister's letter) where circumstances require.

Firstly, one obvious example is large scale mixed-use developments which incorporate hospitality venues underneath and within housing (or to a lesser extent, offices, or both). It seems to me that while the nation urgently needs more (and more affordable) housing, yet we are also desperate to retain hospitality venues which are the bedrock of many communities, where people can go and enjoy themselves, without having an adverse impact on residents. Resolving this dissonance is at the heart of building sustainable communities. An area with only licensed premises but bereft of residents (and, increasingly, retail) is not a sustainable community. Likewise, an area with only residents and no hospitality venues is not a sustainable (or at least not a rounded) community. Very few people advocate for either of these extremes, but the characteristics inherent in many town and city centres in the UK and, perhaps, the power of property developers, present particular challenges with regard to long-standing residential communities.

Secondly, the agent of change principle. This is still a planning consideration only but is now also firmly ensconced in the s 182 Guidance and is another obvious area where there can be useful liaison between planning and licensing authorities. The principle is expressed as follows at para 14.67:

Where there is an application for planning permission, the National Planning Policy Framework expects new development can be integrated effectively with existing businesses and community facilities (such as places of worship, pubs, music venues and sports clubs). Existing businesses and facilities should not have unreasonable restrictions placed on them as a result of development permitted after they were established. Where the operation of an existing business or community facility could have a significant adverse effect on new development (including changes of use) in its vicinity, the applicant (or 'agent of change') should be required by the local planning authority to provide suitable mitigation before the development has been

4 The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 which amended the Town and Country Planning (Use Classes) Order 1987.

5 Recognised by the Select Committee at para 153: 'We recognise that a suggestion that licensing committees should be abolished and their work amalgamated with that of planning committees is a radical one.'

completed.

The licensing authority is well placed to liaise with its planning counterparts to ensure that the principle is furthered. Effective collaboration to ensure that new housing can be built while not impacting existing licensed businesses should be welcomed by all. On the flip side, the licensing process should aim to ensure that new hospitality venues do not impact negatively on residents.

Thirdly, as the Minister's letter recognises, there is scope for increasing the role of planning as a responsible authority under the LA03. Of course, the planning authority has always been designated as a "responsible authority" and so presumably Parliament must have anticipated its proactive involvement in the licensing process, where appropriate.

This is, in my view, particularly pertinent where there has been no need for a change of use application due to the planning use class changes and the planning authority has not had the opportunity to scrutinise and condition the proposed development. For instance, the fact that a premises may be changing from low impact A1 retail closed in the evening to a licensed premises closing much later can clearly raise concerns regarding, for example, noise emanation through the structure, which is a proper consideration for planning and falls within the licensing objective of "prevention of public nuisance". It is not difficult to think of examples of where the public safety objective can also be engaged in such circumstances.

The s 182 Guidance perhaps sets out an ideal way forward whilst at the same time signalling the inherent difficulties. Clearly there is scope for planning officers and licensing officers to work together. This has long been recognised by the s 182 Guidance, which states that:

> ***Considering cases where licensing and planning applications are made simultaneously***
>
> *9.45 Where businesses have indicated, when applying for a licence under the 2003 Act, that they have also applied for planning permission or that they intend to do so, licensing committees and officers should consider discussion with their planning counterparts prior to determination with the aim of agreeing mutually acceptable operating hours and scheme designs.*

Though laudable in theory, in practice this does not seem to work. Although some authorities purport to require an applicant to have obtained planning permission before applying for a licence, in law they cannot do so. In any event, as noted above the change to planning use classes obviates the need for a change of use planning application in many cases. Planning considerations, although overlapping with the licensing objectives where they relate to hospitality units, do not mirror them. There may be no or different concerns to a planning permission for the development as a whole, but concerns which only become apparent on the licence application(s). That is before we have even considered that there may be tactical reasons why, where planning permission is required, an applicant may wish to apply for *and obtain* planning permission before applying for a premises licence.

However, it should be obvious to the planning authority when it receives an application for a major development that there will be subsequent applications for a premises licence(s). In such circumstances, it plainly makes sense for authorities to have a system where licensing counterparts can be fully involved and aware of the progress of the application and feed into it where necessary.

The s 182 Guidance goes on to illustrate the obstacles. For instance, para 14.65:

> *The statement of licensing policy should indicate that planning permission, building control approval and licensing regimes will be properly separated to avoid duplication and inefficiency. The planning and licensing regimes involve consideration of different (albeit related) matters. Licensing committees are not bound by decisions made by a planning committee, and vice versa. However, as set out in chapter 9, licensing committees and officers should consider discussions with their planning counterparts prior to determination with the aim of agreeing mutually acceptable operating hours and scheme designs.*

The Minister closes his letter with some sensible suggestions related to the Select Committee's recommendations, for instance co-locating planning and licensing teams, maximising the role of planning as a responsible authority under the Licensing Act 2003, and "continuing to engage with local residents and identify ways to support them in presenting any concerns about applications to licensing committees and how they interact with planning requirements."

Further, the s 182 Guidance will (yet again) be amended to provide "detailed advice on practical ways that local licensing and planning regimes can collaborate".

Yet for all this, there is no indication that anything is being done to further the Select Committee's most far-reaching proposal to "transfer the functions of local authority

licensing committees and sub-committees to the planning committees" and it must be in doubt whether, seven years down the line, this will ever come to fruition.

Richard Brown
Solicitor, Licensing Advice Project, Westminster CAB

Back to the drawing board for the proposed alcohol advertising ban

The Scottish Government has listened to public opinion and may be poised to re-think its approach to alcohol advertising, suggests **Stephen McGowan**

On 30 November 2023 the Scottish Government published an analysis of the responses to its controversial consultation on proposed prohibitions around the advertising of alcohol. The proposals were put out to consultation in November 2022 and provoked a heated reaction, perhaps unsurprisingly, given they suggested measures such as a complete ban on all alcohol advertising in all public places across Scotland, and suggested that there was no real difference between one alcohol brand and another, a comment met with significant disbelief from the whisky industry in particular.

Such was the fallout that after Nicola Sturgeon resigned, the issue cut across the campaigns for those vying to be her successor, each of them distancing themselves from it to some degree. When Humza Yousaf became the new First Minister, he used his maiden speech in that role to say that, given the general opprobrium it had attracted, the consultation would be put "back to the drawing board".

A year later, the Scottish Government has now published the analysis of the responses to the consultation. The analysis was prepared by Griesbach & Associates, a research consultancy service which has expertise in public health and has provided consultation analyses for the Scottish Government.

Government has already decided on a direction of travel

The report includes a Ministerial Foreword, from Elena Whitham, who declares:

> *It is clear that further engagement is needed, to ensure that future proposals have adequately taken account of the range of views on this matter. To that end, in early 2024 the Scottish Government will undertake targeted stakeholder engagement on alcohol marketing, to better understand the concerns raised by business stakeholders on this matter. I am committed to working with stakeholders on the impact and the implementation of proposals, and this collaborative approach will enable us to refine and enhance our proposals, ensuring that they're well informed, deliverable and achieve our aim of reducing alcohol harms. The Scottish Government will then seek to undertake a further public consultation in 2024 on a narrower range of proposals, following the planned engagement with stakeholders in early 2024.*

So here we have official confirmation that there is to be a second consultation, which will run at some point in 2024. That will no doubt require further analysis of responses, and then, at some further juncture, one assumes a Bill will be forthcoming.

There is here, for me, an admission of a mis-step in the original approach. I was vocal in my criticism that Government had allowed the consultation to be engineered, and steered, in a silo. That error appears to be gently conceded in the Foreword.

A stark summary

Here are some key numbers from the Executive Summary:

- There were 2,993 responses. Although the report doesn't confirm this, I understand this to be one of the highest yields to a Scottish Government consultation since Holyrood came into being. Of these, the report says there were 1,985 individual responses, 423 responses from organisations and 585 "campaign" responses which it says were organised by CAMRA (542) and the SBPA (81).

- 70% or more opposed nearly all of the specific proposals set out in the consultation.

- 77% opposed a comprehensive package of restrictions.

Table 2.2: Organisational respondents, by type

Organisation type	Number	Percent
Alcohol drinks producers and related organisations	140	33%
Public health and third sector organisations (including children and young people's organisations)	70	17%
Sporting organisations	52	12%
Tourism and hospitality organisations (including pubs)	46	11%
Retail organisations	27	6%
Music, cultural and events organisations	25	6%
Advertising organisations	19	4%
Licensing and regulatory bodies (including local authorities and public bodies)	12	3%
Print, broadcast and social media organisations	8	2%
Business and other private sector organisations	8	2%
Academic organisations	8	2%
Other organisation types	8	2%
Total organisations	**423**	**100%**

Figure 1. Response extract by organisation type

Who responded?

Above is an extract from the report showing the different types of organisations (as opposed to individuals) which responded.

For transparency, I should note that my firm, TLT LLP, was the only law firm to respond and is one of the eight respondents under the "Other Organisation Types".

One of the emotive aspects of the consultation was that it requested respondents to declare links to the alcohol industry, the first time in the history of the Scottish Government that such a declaration had to be made. No such declaration was required by groups opposed to alcohol. The Law Society of Scotland raised a point of order over the use of declarations in meetings with civil servants, and the Government was later required to confirm that industry responses would not be treated with any difference or weighting to responses from others. In the result, 22% of respondents said they had direct links, 13% said indirect links and 65% of respondents said they had no links to the alcohol industry.

Specific proposals and their responses

Here is a "dashboard" summary of the responses to a few of the key proposals:

- Ban on alcohol sports sponsorship: 77% of respondents against a ban; 21% agreed with a ban.
- Ban on alcohol events sponsorship: 81% of respondents said there should be no ban on alcohol sponsoring events like music and cultural events; 17% agreed with a ban.
- Prohibition on alcohol adverts in public places:75% against a ban; 22% for.
- Restriction of alcohol displays in shops: 76% against; 21% for.
- Structural separation of alcohol by retail, ie "a shop within a shop": 76% against; 19% for.
- Banning alcohol branded merchandise: 82% against; 15% for.
- Restrictions should extend to No/Lo products: 78% against; 18% for.

A shot across the bows?

What I think is important to note from the Griesbach report is that its compilers spend some time in each of the discreet areas in outlining that responses from all sides appear informed; justification for views is offered. Those who responded in outcry and disappointment at the approach of the consultation did not do so merely on emotion or self-preservation, although some made their feelings very clear (eg, on the ban on branded merchandise, the report says: "respondents frequently expressed their views in strong language saying that the proposal was 'ridiculous', 'laughable' or 'preposterous'").

In fact, the report does an excellent job of highlighting the fact that responses from this clear majority were cultured, engaged, and able to offer probative critiques. Here are some examples:

- **On sport sponsorship:** responses from sporting

bodies provided evidence of an inverse relationship between advertising spend and alcohol harm, citing studies.

- **On event sponsorship:** "organisers of large-scale arts and music events, those representing museum and galleries, organisations responsible for the care of heritage sites, and funders of the arts sector in Scotland often provided long and detailed accounts of why they were opposed."

- **On event sponsorship:** evidence was submitted to the effect that the public were in favour of alcohol brands supporting culture and heritage events

- **On event sponsorship:** evidential comparisons were drawn by respondents with the issues around public funding in, for example, France, Ireland and Norway. These comparisons demonstrated that the Scottish Government was not prepared to fund the arts to the same level; and that a ban on support from alcohol brands would result in closures and unemployment, and would impact the next generation of artists and musicians.

- **On a ban on public advertising:** respondents made strong points that no attempt had been made to understand the impact of existing regulation or assess the impact on new and small businesses.

- **On a ban on public advertising:** numerous practical examples were provided highlighting how unworkable the proposal would be such, including such issues as liveries and cross-border travel, costs to business in replacing existing external apparatus, cost to local authorities in loss of billboard revenue, and so on.

- **On "in shop" bans:** research evidence was cited on the likelihood of young people being influenced at home, as opposed to by seeing brands on a shelf.

- **On "in shop" bans:** respondents highlighted a large number of existing arrangements none of which had been properly recognised or the impact of which analysed in the consultation: for example, CAPS, Challenge 25, local licensing and so on.

- **On window display bans:** respondents highlighted the consequences for staff and public safety as well as the impact on customer experience and administrative burden on licensing boards that would follow a ban, as display changes would require licensing approval.

- **On branded merchandise:** respondents criticised the alleged evidential basis for the ban: "The evidence quoted in relation to young people is questionable. In particular, the evidence for the use of branded merchandise among 11- to 19-year-olds is largely based on the wearing of replica football club shirts featuring an alcohol sponsor."

- **On No/Lo:** "respondents also argued that (the presentation of) the evidence in the consultation paper in relation to No/Lo products is misleading and incorrect. It relies on the use of non-peer reviewed studies, including those carried out by campaign groups."

The volume of opposition to the proposals can only be described as significant; it is a clear and robust majority. I tend to think that Ministers realised pretty early on that the framing of the consultation was too agenda-driven, too single-minded. It is telling that there was no BRIA; and it is disappointing that the consultation appears not to have had the benefit of being sense-checked by departments outside of Health.

Conclusion

Standing back and looking at the Griesbach report, it is not just the quantity but the quality of responses from people who opposed the proposed prohibitions which I hope will remind our policymakers and legislators that, when it comes to alcohol, the only good silos are the ones in which the grain is stored.

Stephen McGowan
Partner, TLT Solicitors (Scotland)

Remotely piloted aircraft systems – the guidelines

Drones and model aircraft are often used at public events these days and there are regulations to ensure they are flown safely, as **Julia Sawyer** explains

The term "remotely piloted aircraft system" (RPAS) refers to "any aircraft operating or designed to operate autonomously or to be piloted remotely without a pilot on board".

The Civil Aviation Authority's publication CAP722 provides guidance and policy on the operation of unmanned aircraft systems within the UK. It is intended to assist those who are involved in all aspects of the development and operation of RPASs. The CAA has also published CAP 722D which lists the abbreviations and glossary of terms that may be useful in RPAS regulation.

RPASs come in a variety of shapes and sizes, ranging from small handheld types up to large aircraft, potentially a similar size to airliners, and, just like manned aircraft, they may be of a fixed wing design or rotary winged or a combination of both.

RPASs may also be referred to as:

- Drones.
- Unmanned Aircraft (UA).
- Unmanned Aircraft Systems (UAS).
- Unmanned Aerial Vehicles (UAV).
- Model Aircraft.
- Radio Controlled Aircraft.

All flying activities in the UK are regulated by the CAA, with the rules and regulations being established in law under the Air Navigation Order 2016 (ANO 2016), and the RPASS regulation, also known as the Implementing regulation. The police are the enforcing authority for these regulations.

The CAA assists all operators of unmanned aircraft to fly safely and securely, by regularly updating the CAP 722 guidance documents, which help the sector continue to grow responsibly. Updates and changes are made to the guidance after consulting with industry bodies, such as RPAS Community, the Home Office, the police and the Department for Transport.

Planning an event using a RPAS

If you are using an RPAS at an event, the following should be considered:

- Be aware of the potential risks from RPASs and ensure the event risk assessment details this.
- Ensure that the RPAS operator is suitably qualified and, where necessary, holds operational authorisation from the CAA. This should include a specific risk assessment for the flight, flight path and landing points, method statement including time of flight and maintenance of the RPAS.The conditions as set out in the authorisation from the CAA must be followed.
- The named pilot has the final decision to make the flight or not and is the ultimate person in charge when planning and fulfilling a flight.
- It is illegal for any RPAS of any size to fly over assemblies of people without an operational safety case authorisation (OSC) from the CAA.
- An RPAS policy and statement should be established.
- Consider the use of counter RPAS technology to jam signals in the local area, if necessary.
- Make sure that the event and security team are fully aware of their roles and what they can and cannot do in relation to an RPAS, including that they know it is a criminal offence to interfere with a pilot who is in

control of a drone in flight.

- The pilot must be insured to fly an RPAS.
- Participants in the event have given consent to be filmed.
- Weather conditions: wind speeds the RPAS can operate in, if likely to rain or to be very hot, altitude. All of these conditions can affect the safe flight and / or efficiency of an RPAS.

Contributory factors that may affect the flight of an RPAS

There are additional factors that may need to be considered when planning on using an RPAS. If additional controls are not implemented to take these factors into consideration, then this may prevent the RPAS from being used.

These additional factors may include:

- Flight restricted zones around aerodromes.
- Danger areas.
- Prohibited areas.
- Restricted areas.
- Protected birds.
- Other aircraft such as helicopters coming into the event site.
- Pyrotechnics in use at the event.
- Broadcasting rights.
- Public encroachment.
- Distraction caused by proximity of an RPAS.

Only the CAA has the authority to grant a temporary airspace restriction for aircraft, including all types of RPAS, and only the police have powers of enforcement on the restriction.

Further guidance

Further guidance on the permissions and use of an RPAS can be found on the CAA website, and also in the Purple Guide, which contains guidance for outdoor events. The guide sets out how to establish an RPAS policy, how you should communicate to others about the use of an RPAS at your event, what can be done if an RPAS is found, what to do if an accident occurs involving a RPAS, etc.

Any person who wants to operate an RPAS in the UK must adhere to UK regulations and obtain a UK flyer ID and operator ID before flying their drones in the UK. Local authorities may have specific requirements and regulations for drone flights within their jurisdiction, so it is essential to check with them before flying. Additionally, there may be local byelaws regulating flights over-crowded areas, sensitive sites, and restricted airspace.

If operators do not comply with UK drone laws and regulations set by the police, they face consequences such as: fines and penalties; confiscation of drone and equipment; criminal charges, which can result in a criminal record and potentially imprisonment; and liability for any damages or injuries caused by the drone.

Summary

The operator is responsible for managing and mitigating any additional risks that are identified as part of the RPAS's operation.

If employing an RPAS operator, as part of your due diligence, adequate checks should be carried out on the documentation that is required to safely operate an RPAS. If the correct documentation is provided you will still need to ensure that the operator uses the RPAS in a safe and secure manner. Having the correct paperwork does not automatically mean the operator operates in a safe way. Examples of incidents where the investigation has shown it has been down to operator error are power failure after ignoring warnings of low battery, incorrect control inputs on landing and more than one operator.

Even though the guidance states you can fly a drone above people under certain conditions, if there is no reason to fly above someone then why take any risk if you don't need to?

Julia Sawyer
Director, JS Consultancy

THE NEW UAS REGULATIONS – WHAT'S THE DIFFERENCE?

UK Civil Aviation Authority

Type of limitation	Old (pre 31 Dec 20)	New (31 Dec 20 onwards)
Max distance from remote pilot	Must be kept within visual line of sight (VLOS)	Must be kept within visual line of sight (VLOS)
Max operating height	400ft (120m) from closest point of earth's surface	120m (400ft) from closest point of earth's surface
Max weight in flight	20kg	Less than 25kg
Operating area	**Camera fitted** - Not within 150m of congested areas - Not within restricted airspace	**A1/A2** - Not within restricted airspace
	No camera - Not within restricted airspace - Do not endanger	**A3** - Not within 150m of residential, industrial, recreational or commercial areas - Not within restricted airspace
Registration	Required for 250g or greater	**Camera fitted/not a toy** - Required for any mass
		No camera - Required for 250g or greater
		Toys - Required for 250g or greater
Remote pilot competence	Required for 250g or greater	Required for 250g or greater (additional competence required in some cases)
Remote pilot minimum age	No minimum age	**Less than 250g** - No minimum age if a toy marked C0, or privately built - 12 years for all others for an interim period, then reverting back to no age limit
		250g or greater - 12 years for an interim period then reverting back to no age limit
Separation from airports/airfields	Remain clear of Flight Restriction Zone	Remain clear of Flight Restriction Zone
Separation from uninvolved persons	**Camera fitted** - 50m (30m during take-off or landing)	**Less than 250g** - No minimum distance - Do not endanger
	No camera - No minimum distance - Do not endanger	**250g or greater** - 50 m horizontally (reductions apply for C1 and C2 UAS)
Separation from crowds	**Camera fitted** - Not within 150m of organised outdoor assemblies of 1000+	**Less than 250g** - Must not fly over groups of people
	No camera - No minimum distance - Do not endanger	**250g or greater** - 50 m horizontally (reductions apply for C1 and C2 UAS, but must not overfly)
Separation from property (vehicles, vessels and structures)	**Camera fitted** - 50m	**All** - No minimum distance - Do not endanger (if persons are inside the properties or vehicles, then the separation from persons must be applied)
	No camera - No minimum distance - Do not endanger	
Commercial operations	CAA permission required	No authorisation required for commercial use but see www.caa.co.uk/CAP722 for when authorisations are required

THE DRONE CODE

The UK Dronecode is published by the Civil Aviation Authority to assist drone users in flying safely.

December 2020

For further information please visit:
caa.co.uk/drones

dronesafe.uk

You are responsible for each flight. Legal responsibility lies with you. The Police can track illegal drone flights and trace offenders. Failure to fly responsibly could result in criminal prosecution. To report drone misuse please call the Police on 101. Always call 999 in an emergency. **Do make sure you are adequately insured.**

The Drone Code (CAP2008)

Making our cities LGBTQIA+ friendly

The LGBTQIA+ nightlife and entertainment scene in the UK represents a crucial and evolving component of the cultural landscape says **Alicia Souter** but more support is required from the police and local authorities if it's to really thrive

It's February 2024 and we at Night Time Economy Solutions (NTES) have just finished writing the first LGBTQIA+ night-time strategy. When I say first, I mean the first ever written, not just our first. Part of me wanted to do the biggest celebration that I have ever done and part of me wanted to weep. I still cannot believe that we have had the enormous honour of researching and working with LGBTQIA+ people to write something that should have been written many years ago for every major UK city, but then we wrote the first-ever women's night-time economy strategy only four years ago (Norfolk) and the first-ever male behaviour change strategy (Kingston, Merton, Wandsworth and Wimbledon councils) in 2023 so maybe it's not so shocking after all.

And where was this unicorn of a strategy written for? It was for Cardiff in Wales funded by the Safer Streets Fund. I salute Cardiff for its pioneering forward-looking vision and inclusive view of its nightlife, and may there be many more LGBTQI+ and Women's Safety Strategies written in the coming years.

Many LGBTQIA+ people do not always find themselves being accepted or supported by their own families, friends and communities, and many find themselves moving into cities to find a community of like-minded people. However, cities are not always tolerant either. In London over the last 10 years, 116 LGBTQI+ venues have closed, and maybe a few more too. This is against a backdrop of over 300 nightclubs closing since the pandemic. Many of the LGBTQI+ people we interviewed said that their once-safe venues have been taken over by women fleeing sexual harassment in other venues.

The Public Sector Equality Duty (PSED) came into force in April 2011. It put a duty on public authorities to consider how their policies or decisions affect people protected under the Equality Act, taking into account age, disability, gender reassignment, marriage or civil partnership (in employment only), pregnancy and maternity, race, religion or belief, sex or sexual orientation. Section (a) says that local authorities should be trying to "eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010; further to that local authorities should be providing information to demonstrate their compliance with the public sector equality duty (from 31 January 2012)." This is supposed to be reviewed every four years. We have welcomed the violence against women and girls (VAWG) funding and Safer Streets Funding that has been issued over the last few years. However, in the 20 UK night-time strategies that we wrote last year and the 20+ Safer Streets projects that we have designed and implemented, it's becoming increasingly evident that those with protected characteristics feel less safe, protected and served than other people.

The Licensing Act 2003 centres around the promotion of the four statutory objectives: the prevention of crime and disorder; public safety; the prevention of public nuisance; and the protection of children from harm. This adds another necessary component for us to protect all members of the public including those with protected characteristics. Interestingly, we have seen a decrease in the number of violent crimes alongside the decrease in alcohol consumption in the under 30s. However, that doesn't mean that those with protected characteristics feel safer, and as place-based leaders, we must work harder to ensure that all members of our community feel safe using our towns and cities at night.

The LGBTQIA+ nightlife and entertainment (LGBTQIA+ ENTE) scene in the UK boasts a rich and diverse history, offering a wide array of experiences to its patrons. From lively nightclub events to captivating drag performances, this vibrant sector has played a pivotal role in fostering inclusivity and celebrating diversity.

In recent years, the LGBTQIA+ ENTE scene has evolved and expanded, becoming an integral part of the cultural tapestry of the UK. It has provided safe and welcoming spaces for people of all gender identities and sexual orientations to express themselves and connect with like-minded individuals. Often independently owned, these venues have been at the forefront of promoting acceptance and understanding within society. Although LGBTQIA+ venues are closing, we are seeing the growth of kink spaces which offer nights for all spectrums of people who consider themselves part of non-gender normative groups.

However, akin to any other sector within the entertainment industry, LGBTQIA+ venues have encountered their fair share of challenges. Economic factors, including escalating operational costs and uncertainties stemming from Brexit, have exerted pressure on the sustainability of these spaces. Additionally, shifts in consumer behaviour and the ascent of digital entertainment options have introduced new competition and more rigid licensing conditions. Sexual entertainment venue (SEV) licenses are often enforced on fetish, kink, pseudo-spiritual and LGBTQIA+ spaces, even if sexual activity is not present and I remember several years ago a licensing authority asking us if we would go undercover into a kink space to feedback on what was happening in the space as they didn't know and weren't sure whether a SEV was needed or not. In our review of many statements of licensing policy, we have discovered that not many are inclusive of LGBTQIA+, fetish, kink or pseudo-spiritual space needs.

One noteworthy trend affecting LGBTQIA+ ENTE venues is the evolving nature of social interactions. As society progresses, the methods through which people socialise and connect have also transformed. In 2001, only 1.8% of people identified as having accessed or wanted to access a kink space, but in 2013, that number had risen to 20% and in 2023 that had risen to 48% of 18 to 30-year-olds in both hetero-normative and LGBTQIA people. Some LGBTQIA+ patrons have embraced online communities, underground or grassroots and unlicensed venues and events, private parties in airbnb venues and virtual events which are less controlled but more welcoming of alternative, fetish or kink-based needs. However, this is altering the dynamics of in-person gatherings and they are not always as safe or monitored and controlled as licensed spaces. Therefore licensing authorities need to put some thought into how best to manage the growth of these spaces before dangerous, harmful or negative incidents occur.

Notwithstanding these challenges, the LGBTQIA+ ENTE sector remains resilient and indispensable. It persists in providing a sense of belonging and community for individuals who may feel marginalised in other settings. The significance of these spaces transcends mere entertainment; they function as hubs for activism, awareness and support for LGBTQIA+ rights and issues.

To thrive in the face of ongoing changes, many LGBTQIA+ venues have been directing their attention towards strategic investments. This includes enhancing venue facilities, updating technology and diversifying their offerings to cater to a broader audience. Such investments are vital not only for the venues' sustainability but also for the broader LGBTQIA+ cultural ecosystem.

In summary, the LGBTQIA+ nightlife and entertainment scene in the UK represents a crucial and evolving component of the cultural landscape. It continues to play a significant role in promoting diversity, acceptance and community for LGBTQIA+ individuals. While confronting its own set of challenges, this sector remains a resilient and important aspect of British society. However, to ensure that an area is considered LGBTQIA+ friendly it needs to contain some essential elements.

All LGBTQIA+ people must feel comfortable and safe in the area. Factors that can help are having a person(s) dedicated to LGBTQIA+ liaison, LGBTQIA+ signage, celebration of LGBTQIA+ history, events, flags, training, policies and accreditation for venue staff, visibility of other LQBTQIA+ people and staff and door security personnel. Inclusion, respect, and education are key to this being successful. With funding in place to do this. A good example of this is Cambridge City Council which funds and promotes a series of LGBTQIA+ events every February.

LGBTQIA+ people strongly feel that they should not have to modify their behaviour or disclose their sexuality to avoid harm, and it should be a human right for them to be themselves and still feel safe and welcomed. Towns and cities could be doing more to support those who identify as LGBTQIA+ to live more freely by actively welcoming them and running inclusivity campaigns.

Homophobia is swiftly dealt with and active and trained bystanders or community liaison teams are in place to step in. Also, that the public knows how to report issues having confidence that the police and local authority will take those reports seriously and put in place measures and strategies to overcome enduring and emerging issues. Interestingly, only 45% of the LGBTQI+ people we interviewed said they would feel safer with a greater police or uniformed presence, which indicates a desire for a more community-led approach to managing safety. This has been effectively achieved in Manchester, with the *LGBT Foundation - Village Angels* project which has been running since 2011. They are a team made up of mostly volunteers, who are either members of the LGBTQ+ community themselves or visible allies; we think this would be a good addition to any city with an established LGBTQIA+ scene.

There should be an LGBTQIA+ inclusion policy in planning and licensing. LGBTQIA+ fetish, kink, or pseudo-spiritual spaces should be better supported by licensing teams with clear objectives on how to set up and run without judgement or fear. This could include setting up safety and operating policies that are aligned with the Licensing Act of 2003 and SEV licensing and which encourage the sharing of best

practices in the area between venues, or including venues in accreditation schemes such as LSAVI.

When it comes to public realm improvements, there should be evidence that LGBTQIA+ people are welcome in spaces. Technology-driven tools should be better advertised and used to improve safety and inclusivity and encourage reporting of incidents.

Many LGBTQIA+ people said that they didn't engage in forums because they didn't feel safe to do so. Therefore, there needs to be open forums such as focus groups for discussing and resolving issues.

The future, therefore, of our cities rests in becoming more aware of the needs of all members of the public who use our cities at night. In recognising those with protected characteristics, we should be designing specific strategies to ensure that they feel welcome, included and safe. We do need to take into consideration the PSED and ensure that it is activated in our cities at night. We would recommend that every city and town with a night-time economy should have as a minimum an LGBTQIA+ strategy, a women's safety strategy, a disabled persons strategy and an ethnic inclusion strategy. These do not have to be long or arduous pieces of work but they should be created, reviewed and activated every four years, in line with the PSED.

If you want to discuss how to make your area more LGBTQIA+ friendly, then please do get in touch.

Alicia Souter
Head of Projects & Research, Night Time Economy Solutions

The challenges of short-term let licence applications in Scotland

The Scottish Government's attempts to improve the standards of let accommodation have proved disastrous for many property owners, as **Lynn Simpson** explains

Short-term lets have been a hot topic in Scotland for some time now, particularly following the introduction of new licensing requirements to regulate the use of accommodation for that purpose. While the Scottish Government's aims of introducing those requirements were to ensure basic safety and quality standards, and to improve visitor experiences, the unintended consequences have been confusion and despair for many short-term let operators.

There was a flurry of activity across Scotland in the run up to the September 2023 deadline, which required all existing hosts to submit applications for short-term let licences by 30 September, in order to continue using their properties while their applications went through the licensing process. Any hosts who failed to submit their applications by the deadline would have had to cease operating immediately. The importance of submitting applications correctly and on time was therefore readily apparent.

Despite the importance of the deadline, operators faced significant challenges in deciphering the new regulations and completing the time-consuming application process. Each local authority was given autonomy to create its own application process, allowing them all to design their own style of application form and determine what documentation would require to be submitted with each application.

Some local authorities offered traditional application forms, but others required applicants to input and upload information to online portals, which presented their own challenges. Many of these online portals were clearly designed for use by applicants who already knew what information was required and who had all of that information to hand, but often this wasn't the case. For operators, particularly those who were applying for licences across various areas, the lack of consistency made the process of obtaining and collating all of the required documentation even more complex.

Even where operators had understood what documents were required, the challenge for many was being able to source and obtain them in time. As the September submission deadline loomed and the demand for reports increased exponentially, many applicants scrambled to find accredited assessors with availability to provide the necessary reports. It would not be surprising if some applicants missed the submission deadline completely, having been unable to source the necessary reports in time.

Adding further to the chaos was the lack of clarity around the planning permission requirements, which applicants were also required to address before submitting their licence applications. The technicalities of whether or not using a property for short-term lets triggered a change of use for planning permission purposes were incomprehensible for many, forcing most operators to seek expert advice from planning consultants and incur further costs.

Each local authority had the ability to determine parts of its own planning policy in relation to short-term lets and the areas where planning permission would be required. Edinburgh City Council chose to designate the entire city as a "short-term let control zone", essentially mandating that for every short-term let application, a planning application would also be required. Applicants seeking a licence for secondary letting (properties that aren't the operator's main home) were required to either evidence that planning permission or a certificate of lawfulness had already been granted, or that they had recently applied for one of these, even where the property was already being used for short-term lets. As a result, some operators were reluctant to submit applications at all, anticipating that any application for planning permission would likely be refused, with some property owners even choosing to sell and withdraw from the licensing process completely. Those owners may now regret those decisions, following successful challenges to both the Edinburgh short-term let and planning policies.

Following publication of the initial Edinburgh short-term let policy, which claimed that there would be a presumption against the grant of any licences for secondary lettings in flats which had shared access, a successful legal challenge was lodged. The Court of Session[1] found that aspect of the council's policy to be unlawful, on the basis that the council could not refuse to grant a licence for a property solely on

1 Averbuch [2023] CSOH 35.

the basis that it was a flat without its own main-door access.

That judgment was welcomed by many when it was published a few months prior to the September 2023 deadline, but it may have come too late for operators who had already sold up or made plans to use their properties for activities which wouldn't require a licence.

Those operators will have been further dismayed by the successful challenge to Edinburgh's planning policy in December 2023,[2] with the Court of Session essentially ruling that the council's blanket requirement for planning permission to be obtained for all secondary letting applications was unlawful. It is yet to be seen whether or not Edinburgh Council will appeal that decision or how its short-term let policy will be amended as a result, but there will undoubtedly be Edinburgh operators who would have taken a different approach had these points been clarified before the September deadline.

Those judgments were solely in relation to Edinburgh policies but other local authorities will certainly be taking note. We have already seen changes to Glasgow Council's short-term let policy, in response to the first Edinburgh judgment. Whereas Edinburgh had permitted applicants to show, when lodging licence applications, that they had also recently submitted an application for planning, Glasgow Council took a much more stringent approach. Its policy clearly stated that unless any required planning permission had already been granted, applications for short-term let licences would not be accepted. Given the time required for a planning application to be considered and determined, this rendered the September deadline meaningless for many, unless they had submitted a planning application months prior. This approach has since been changed but too late for those hosts who missed out on the deadline to be able to rectify the situation.

Unfortunately for short-term let operators, the likelihood is that there will be more uncertainty and confusion to come in the near future. Submitting the applications was simply the first step. Those applications must all now be processed and work their way through each local authority's internal processes. With some councils having received significantly more applications than others, there is a concern as to whether or not they will have the resources to cope with the demand, even with the benefit of a nine-month period in which to determine each application. Many applications will need to be cited to committee hearings, which will be an unfamiliar experience for some applicants. Given the newness of the short-term let regime, there is likely to be a level of inexperience amongst those committees and uncertainty around the parameters within which they must make their decisions. It would be a safe bet to expect more short-term let turmoil throughout 2024.

Lynn Simpson
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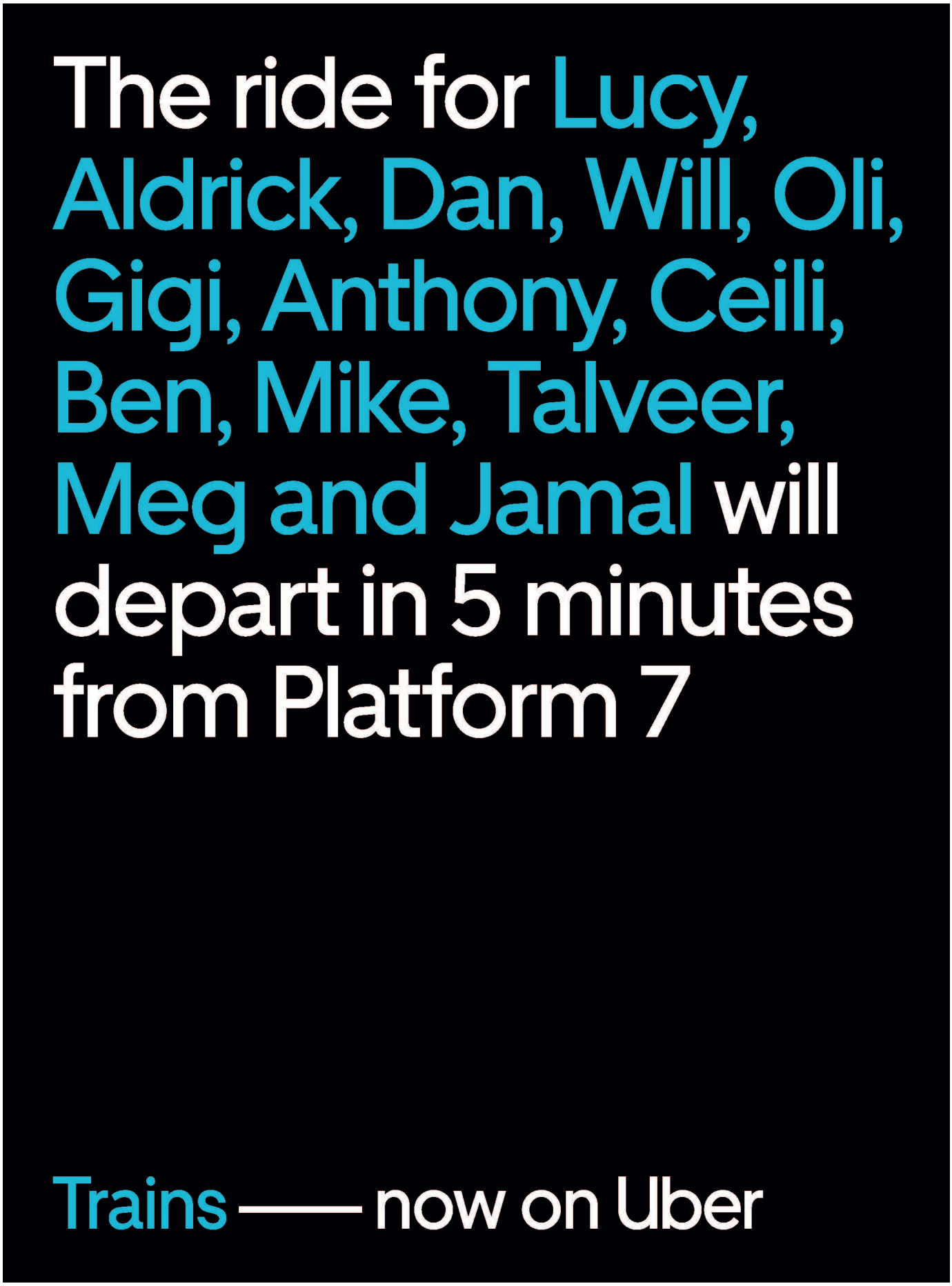
2 Muirhead [2023] CSOH 86.


The ride for Lucy, Aldrick, Dan, Will, Oli, Gigi, Anthony, Ceili, Ben, Mike, Talveer, Meg and Jamal will depart in 5 minutes from Platform 7
Trains —— now on Uber

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