NUMBER 18 JULY 2017

Journal of Licensing

The Journal of the Institute of Licensing

IN THIS ISSUE

Institute of Licensing

Journal of Licensing ISSN 2048-9110

Journal of Licensing

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

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

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

The Institute's Journal of Licensing is available to Institute members free of charge, with individual members receiving a copy and a set number of copies being provided to organisation members as follows:

- Small Organisation member - 3 copy
- Medium Organisation member - 4 copies
- Large Organisation member - 6 copies

Additional copies are available to Institute members at only £10.00 each (plus P&P + VAT). Non-members may purchase the Journal for a fee of £75.00 (plus P&P + VAT) which will include complimentary membership at the appropriate level for the remainder of that membership year (all memberships are renewable on 1st April annually).

To order copies, please email orders@instituteoflicensing.org

This issue shall be cited as (2017) 18 JoL.

Daniel Davies, MIoL
Chairman, Institute of Licensing

In the months since the release of the House of Lords Select Committee report, I was proud to see how the Institute of Licensing came together to reflect on the findings.

The IoL fully supports and endorses many positive elements contained in the report. We have consulted members to get a clear picture of opinion on the various findings and recommendations, and will use this information in discussions going forward.

Of course, we know there have been shortfalls in some local licensing committees, but the majority have built expertise in this specialist area. We do think that greater guidance and formal training for members who sit on licensing committees is a recommendation of the report that we can support – and who better to provide that training than this Institute? If you expect people to carry out a job, you need to provide the right tools.

In summary, the Board view the Select Committee report as an opportunity to promote discussion and explore ways to make improvements to the licensing regime. We recognise that there is room for improvement, support the recommendations for training and consistency, and welcome the discussions which must now follow.

Over the last two years, it's been a great privilege to lead the Institute of Licensing. Together, we have brought the licensing community closer together and demonstrated our influence on the biggest stage. In February members approved an extension of my chairmanship until 2020. I am delighted to be given the opportunity to continue our progress and lead positive changes within the organisation for the next three years.

I am pleased to announce that we have now established the Institute's first ever administrative office. For an organisation of our reach and stature, this has been long overdue. The new office is set to play a crucial role in our growth strategy and delivering increased support for members. We are also in the process of having our courses formalised as units of learning in a way that is consistent with regulated qualifications.

For the most part, licensing operates under the radar – invisible to the general public who do not see the vital role it plays in everyday life. In my role as chairman, it is my duty to raise awareness of licensing and change this perception. National Licensing Week (NLW) has been key in edging closer to achieving this goal. Held at the end of June, the second annual campaign was even bigger than last year's event, with people swapping jobs, support from industry-leading operators and a strong social media presence.

Following the outcome of the House of Lords report, it was important for us to provide support for the wider licensing community. In response, we decided to hold a series of workshops presented by Sarah Clover, who is chair of the IoL West Midlands region and a specialist adviser to the Select Committee. In this issue, we take a closer look at the workshops, which have been running across the IoL regions. Separately, Sarah also provides an article on the review in this issue of the *Journal*.

To conclude my comments for this edition, I would like to thank you for your steadfast support over the previous months. For many of us, the Select Committee review has cast a degree of uncertainty in the licensing community, but can assure you we are in a strong position to articulate our collective view to government on this important matter.

Contents

Leo Charalambides, FIoL
Editor, Journal of Licensing

On 4 April this year the House of Lords Select Committee on the Licensing Act 2003 issued its post-legislative scrutiny report of the Licensing Act 2003. It is no surprise that we have since then been subjected to a barrage of commentary, opinion, counter arguments, seminars and lectures. This issue of the *Journal* is no exception. I am very pleased that Sarah Clover, the specialist advisor to the select committee, has been able to provide in the leading article an overview of the report and some impressions from her "ringside seat". The leading article is joined by contributions from other Institute stalwarts: Philip Kolvin QC, Susanna FitzGerald QC, Andy Eaton and Jeffrey Leib each give their unique perspective and response to the scrutiny report.

It is also with great pleasure that the *Journal* welcomes the views of Jon Foster of the Institute of Alcohol Studies, whose own work *The Licensing Act 2003: its uses and abuses 10 years on* (March 2016) was a valuable forerunner to the House of Lords scrutiny report and certainly needs re-visiting in light of the House of Lords recommendations.

I trust that as we receive our summer issue of the *Journal* and add it to our essential holiday reading we are not overly fatigued by the scrutiny heaped upon the scrutiny of the scrutiny report; I must confess I am.

I have recently attended a number of meetings where I enjoyed balanced and well-presented overviews of the scrutiny report but from all of them I came away thinking: has this presentation given any assistance in the implementation of the Licensing Act 2003 as it exists today? For me, the answer is a clear and unequivocal "No!"

James Nicholls in his *Politics of Alcohol: A history of the drink question in England* (Manchester University Press, 2009) gives us an account of the long quest to achieve the correct measure of licensing control. The House of Lords scrutiny report is just another step in this age-old balancing exercise between the social benefits and burdens of alcohol use. It is not that I am opposed to review, scrutiny and suggestions for future improvements; it is rather that I am of the view that what is needed now is clearer and better understanding of today's regime, not yesterday's or tomorrow's. Pipe dreams of how it should have been, how it could have been and how it will be are of little present practical assistance. What is needed is good practice today so as to strive for even better practice tomorrow.

I ask myself, what conclusions would a report on existing best practice within the licensing regime highlight? What examples of existing good practice would be identified? What areas would the report suggest as need improvement? That, it seems to me, would be a far better use of seminar time and this discussion needs to be highlighted and advanced alongside any continuing debate for future reform. We need to be making good applications and good decisions thereon today.

For example, within the planning-licensing debate given fuel by the scrutiny report there has been discussion about the different cultures of reporting and the role of officer recommendations. Are licensing reports as clear as they could be? Could they be improved? Does the legislation and guidance admit the possibility of an officer recommendation? Should such recommendations be encouraged?

With this in mind I am proposing to add an additional section to the *Journal* – a spotlight on best and better practice. I would like to instigate an ongoing *ad hoc* competition amongst our members, readers and contributors to provide examples or suggestions of how we can achieve good or even better results from the existing regime.

Please submit your contributions, minimum 1,500 words, to journal@instituteoflicensing.org. It is my view that there is much to commend in our existing practice, that there is much more than we can achieve from the existing regime and *above all* that it is the membership of the IoL that is best placed to provide such insights. I look forward to your contributions.

House of Lords Select Committee Report – planning for the future?

Knee-jerk reactions to the Lords licensing report ignore the wealth of insight and intelligence brought to bear on many complex issues, argues **Sarah Clover**, who enjoyed a ringside seat throughout its compilation

The report of the House of Lords Select Committee on the Licensing Act 2003, published on 4 April 2017, was nothing if not controversial, but everyone appears to agree on one thing - the majority of the recommendations were unexpected.

Perhaps it was our prior perception of the august but rather remote peers who constituted the committee, or perhaps it was our recent experience of the review by the Law Commission of taxi licensing, but the general opinion prior to the report was that nothing very radical was anticipated, and everything would look much the same when the ten year review of the act was concluded. How wrong we were!

The headline-grabbing recommendation has been the proposed merger of planning and licensing committees. The committee was well aware of how radical a suggestion this is, and did not propose it lightly. Much of the outcry has focused on the perceived lack of value that the committee placed on the licensing system and upon local authority officers in particular, yet this interpretation could not be more wrong. A careful reading of the report clearly demonstrates that the committee believed licensing officers had a specialised role, which should be valued and enhanced, with a bespoke qualification, so that they could play a "larger part in the licensing process" (para 129). This is something that practitioners and the IoL have sought for years, and it is surprising that this part, at least, of the recommendation has not been more warmly welcomed.

Any notion that such a merger could happen overnight is misconceived, and the report itself calls it "radical", worthy of serious exploration and necessitating careful trials over two years. There is nothing to say that the government would accept such a recommendation in any event, so the knee-jerk reactions around "downgrading" and job losses is not only entirely overblown but has precluded a more mature consideration of the wider debate. It seems far more likely that the Lords' recommendation, rather than being accepted on its own terms, will provide a stimulus to a deeper and more significant examination of the relationship between licensing and planning. This is to be welcomed.

The committee said that most witnesses, particularly residents, could not comprehend the current disconnect between the systems, where licensing and planning do not speak to each other, and applications can be granted, each without the other, with entirely contradictory conditions. Who could disagree? The committee said that the current system, "far from avoiding duplication and inefficiency, has increased it, and has led to confusion and absurdity" (para122). The committee could not understand why planning departments, although responsible authorities under the 2003 Act, so very rarely make a representation. Licensing practitioners know that it is because the planning departments usually believe that licensing has nothing to do with them.

It is fair to say that this is not the first time that a closer relationship between the different regulatory regimes has been mooted. In 2014, the Local Government Association published a manifesto, *Rewiring Licensing - Open for Business*. This was another radical publication, suggesting a complex amalgamation of a range of regulatory permits and licences, but it also had something to say about planning:

> *Licensing and planning councils need effective powers to secure economically efficient use of land but also the ability to manage the social, environmental and aesthetic impacts on communities. In practice, however, the distinction between the role of planning and licensing in providing these functions is blurred. This results in confusion to businesses and a perception of unnecessary duplication of control.*
>
> *It also means councils lack the means to deal with issues such as clustering in an efficient and effective way. Yet residents expect councils to have powers to influence the nature of land use and business activity in their areas. Resolving these issues will require greater clarity about the distinction between licensing and land use planning in managing how business premises are used.*
>
> *As recent debates on the clustering of betting shops illustrate, neither the planning use class system nor licensing framework, operating individually or jointly,*

enable councils to effectively manage and mitigate the social impact and public protection aspects of business activity. This is because use classes group together classes of activity that have a comparable economic impact on an area and licensing objectives are too narrow. We need a further debate about how these issues can be disentangled to result in use classes that provide effective economic regulation and within them transparent local licensing options to manage the social and public protection impacts. The distinction between planning and licensing functions needs to be clear, but it is also important that the functions are aligned operationally to provide a joined up and customer focused service to businesses. Many councils are already exploring opportunities to improve customer service for businesses in this area, for example by joining up planning, licensing and other advice at an early stage through pre-application advice services.

This is not so very dissimilar to the thoughts and conclusions that the House of Lords committee reached, and yet, as memory serves, did not meet with the same outcry as the committee's report. At either end of a spectrum ranging from doing nothing through to full amalgamation of the two systems, there is likely to be a consensus of protest. But there is much value in examining points along the scale, to see where improvements can be made.

The two key arguments that are presented repeatedly in opposition to the Lords' recommendations about licensing and planning are that licensing is a regime concerning operational issues not land uses, and that the planning regime is equally flawed and so would provide no solutions. Both arguments fail to withstand scrutiny. In the first place, licensing premises for alcohol and entertainment is very clearly a land use issue, in much the same way as are a waste recycling centre, a motor race track, a haulage depot or a shooting range. The use of the land gives rise to impacts upon neighbours. The impacts must be defined and controlled by the authorisation given. The controls take the form of restrictions and conditions, which might include hours of operation, management interventions, noise reduction mechanisms or litter and pest control. What's the difference? Licensing is not special in that regard. It has its own bespoke statutory regime, including enforcement. So does the protection of endangered animal species, heritage assets, including listed buildings, and waste management. There is no real difference there either.

The second argument presented is that the planning regime has its own problems. Planning committees, the argument runs, are no better than licensing committees, and the delay, bureaucracy and lack of public engagement attending planning decisions is no improvement either.

"The licensing and planning regime are at the heart of the same exercise, and the current dissonance between them is untenable."

This appears to be the worst argument of all for doing nothing, and the best argument available for tackling issues and flaws wherever they are identified. A conclusion that both systems, with their manifest deficiencies, should be left alone is not an answer to the situation - it is pessimistic inertia. If the committee's report does nothing more than shine a spotlight on these facts for further consideration and action, then it will have performed a great service.

There may be arguments as to why licensing and planning could not be more closely integrated, but these two are not good ones.

There is a far wider issue engaging many public bodies and organisations at this time, which concerns strategic place-making, and the juxtaposition of different land uses in town and city centres, particularly in entertainment and night-time economy areas. As our urban centres become more densely packed, as they inevitably must do, we should become more intelligent about the decisions as to where everything and everyone will go, and how we can all exist harmoniously alongside one another. The debate must go beyond separation of land use functions, namely keeping residents and sources of disturbance as far apart as possible, and must use more creative ways to meet all needs. This is entirely possible to do, but the licensing and planning regime are at the heart of the same exercise, and the current dissonance between them is untenable. The Lords' recommendation should not be crushed and rejected, but examined and developed. No doubt, in many ways, the recommendation is simplistic and can be criticised. This is not to say that something greater would not come from the refinement.

Having recognised the complexity of what it was suggesting, the committee went on to make a clear distinction between that revolution, and more urgent single

issues that, in its view, needed tackling more immediately. Chief among these was the appeals system. The committee pointed out that there is nothing inevitable about licensing appeals being passed on to Magistrates' Courts, given that planning and gambling appeals, to name but two, are not. The criminal court system is not best placed to deal with regulatory civil issues, not least from a timing and delay point of view, and proceedings very quickly become expensive, rendering the appeal process a luxury that only those with the deepest pockets can afford. Vanishingly few witnesses thought that the extremely low numbers of appeals was due to the quality of decision-making in the first place; a truth attested to by the numbers of appeals that are commenced, but never concluded in the courts, because the licensing authorities have no choice but to compromise the untenable decision that their committee members made. This was not lost on the House of Lords committee.

The committee also highlighted the common lack of experience of decision-makers in the Magistrates' Courts, and the consequent lack of consistency of decisions, and the unacceptable uncertainty for appellants. The committee highly preferred the planning system, with the trained professional inspectors, the considered, written decisions, and the tripartite appeal system of written representations, hearings or inquiries, meaning that more stakeholders were able to access the system affordably, in accordance with their rights. No-one should be excluded from their rights of appeal because of fears of disproportionate cost, capricious uncertainty and delay or realistic fear of poor quality decision making. This is simply wrong and must be addressed.

Further immediate improvements that the committee wanted to see concerned the committee procedure in licensing, and the consequent needs for more training. The Lords committee members were clearly very concerned about the "horror stories" they heard of poor behaviour by councillors on committees, and while they trusted that it would be the exception rather than the rule, this did not dissuade them from taking measures to stamp out bad practice, however infrequent, and whenever it occurred. To this end, they expected that the chairs of licensing committees should take responsibility for ensuring that poor behaviour by members was eliminated on their watch.

The committee members were clearly surprised and concerned at the lack of national, mandatory training programmes for councillors and the police, and were particularly puzzled to be told by senior representatives of the police that they believed that there was already such a national programme in place for police licensing officers when, clearly, there is not. It was notable that some of the more poignant appeals for more training within the written evidence came from the police themselves.

The committee was not impressed with paragraph 9.12 of the s 182 guidance, which requires police evidence to be accepted, unless it fails to withstand scrutiny. The committee found that the quality of police evidence was not always what it should be, and that the necessary scrutiny was all too often lacking. Assistant Chief Constable Rachel Kearton said in her oral evidence that there was no justification for the police to have a bigger seat at the table than any other representative, nor for police evidence to be given more weight than it deserved, purely because of its provenance. In that regard, the committee noted that there are other exhortations in the guidance to take police advice on crime and disorder particularly seriously, and that there was no doubt of the specialism of the police role, which is difficult, and concerns law of increasing complexity. The report highlights some of the police powers, particularly those of closure, that have caused notable trouble over the years, and recommended that steps be taken, including through the s 182 guidance, that some of the worst examples should not happen again.

Inevitably, as the report clearly shows, the committee very closely and carefully considered the issue of whether there should be further licensing objectives, most notably one promoting health. Its interest in and concern for public health was at all times evident. The committee members had no doubt about the potential that alcohol has to impact harmfully on health, and they were particularly struck by some of the health data that emerged. At the same time, they also carefully noted that there was a particular difficulty in drawing concrete conclusions from the data, which, for the most part, considered different questions from different angles. An alcohol-related admission to hospital, for example, could relate to anything from chronic liver disease brought on by decades of drinking, in different locations in the country, to a traumatic injury brought on by an alcohol-induced accident, with many more variations in between. Applying these, or many other types of data to specific applications for licences, yields no meaningful conclusion, other than the basic proposition that alcohol is bad for the health, and access to it should be restricted.

If that is the proposition, then it needs something very much less complicated than a health objective to apply it and the ultimate logical extension of that argument is prohibition. These are not conclusions to shy away from, but to confront. Pretending that this argument has anything to do with the merits of a particular application for particular premises is futile, and the issue should be set out frankly for what it is. If it is to be government policy to restrict access by the public to alcohol, across the board, because it is harmful to their health, and therefore to reduce the number of outlets

from which it is available, then that is a "need" and "quota" argument, and should be recognised and addressed as such.

In a similar way, the Government amended the approach to sexual entertainment venues (SEV) applications, for which licensing authorities are overtly entitled to introduce a cap on numbers. Local health data has as little to do with numbers of local alcohol outlets, as local data on numbers of children or local worshippers has to do with the numbers of SEV premises. It is not taken into account on a case by case basis, because it is not necessary to do so; and it would not be relevant in any event.

Those in a locality who are affected by alcohol health harms may be so affected because of one episode of binge drinking, or because of a lifetime of alcohol abuse, some of which may have occurred in an entirely different geographical location. The committee's recommendations reflected the reality of this, and although supportive of government policies concerning alcohol and health, the committee felt clearly that such big issues should be tackled holistically at that level, and not attempted in a regulatory regime on a case by case basis, which is a false basis, and impossible to administer coherently on the ground.

The committee was struck initially with what appeared to be some straightforward propositions concerning alcohol; for example, that higher prices would curb consumption, that pre-loading on cheap off-licence alcohol blighted the night-time economy or that more should be done to prosecute sales to drunken persons. On such issues, however, when they dug deeper, members discovered that matters were not so straightforward as might first have appeared. Pricing and taxation, the committee found, were issues largely outside its remit and in any event, had been pored over exhaustively already, most recently in the Scottish context, with the Scotch Whisky Association challenge, which, having concluded in the European Court, is on its way to the Supreme Court. On that matter, the committee found that there was little to be done but watch and wait, since the issues were already under scrutiny by the courts.

On pre-loading, there was a notable lack of facts and hard evidence for the committee to look at, the Home Office having reported at the outset of the committee's work that it did not regard pre-loading as a problem. The committee instinctively felt that it must be, but were never provided with the data that would have expounded the issue. The members looked at super-strength schemes and group review intervention powers (GRIPS), neither of which is a tool ideally suited to tackling pre-loading, and their conclusions on both propositions were negative in any event, because of the inherent difficulties of implementation.

As far as prosecuting sales of alcohol to drunken persons was concerned, the practical problems of identifying in a sufficiently robust way those who should not be sold to and those who should not have sold it, with a view to sustaining a prosecution, were reluctantly noted, and thus the recommendation that more should be done was aspirational rather than practical.

There were some forceful representations to the committee on the subject of temporary events notices (TENs), despite the tendency in the evidence to show that, for most people, (including the National Organisation of Residents Associations (NORA)), they did not present an overwhelming problem, (with some notable exceptions, apparently, in Camden). The committee was not persuaded that the TENs system was being abused, and firmly pointed out that a TEN is not an "application", and was always intended to be a light touch process, to replace the similar light touch facility in the preceding legislation, notably benefitting members' clubs. The committee did not accept that TENs were designed only for "voluntary" or "community" based activities, and it found that the distinction between "commercial" and "non-commercial" TENs was an illusory one.

Members did believe, however, that the TENs system should be more transparent, and that consistent records should be maintained by local authorities for the information of residents and councillors, who should then be able to make their concerns known to the local licensing department, which could also raise objections. There is, of course, nothing to stop residents or councillors raising their concerns with environmental health teams or the police, but the committee felt that this additional facility was a compromise between retaining the light touch, the short notice approach, and offering more control to local people.

The committee was not at all satisfied, as the report indicates, that the government had begun to legislate in relation to a number of topics of reference for which the committee had been specifically convened. Not unreasonably, the chair of the committee asked the government to undertake not to implement the provisions in the Policing and Crime Act 2017, upon which the committee was due to report, until it had carefully considered what the committee had to say.

In relation, specifically, to early morning alcohol restriction orders (EMROs) and late night levies, the committee was not as confident as the government continues to be that these are measures worth persisting with. With regard to EMROs, the committee saw no hope whatsoever. The stark fact that not one single EMRO had been introduced since their inception in 2012 spoke volumes to the committee, and a

basic examination of what EMROs and their predecessors, the alcohol disorder zones, were all about was sufficient to reject them in fairly short order. There was very limited support for them throughout the evidence.

With late night levies, the committee was similarly dubious, and would have recommended their total abolition had the government not amended them rather radically in the 2017 Act. That being the case, not least due to the fairly obvious steer of the government's intentions in this regard, the committee was minded to recommend that the amendments be attempted, but with the proviso that late night levies be abandoned once and for all, if even that approach fails. The committee did also point out that the government would need to look closely at the implications for late night levies, and other fee-taking measures, such as fee multipliers, in the wake of *Hemming*. The committee, while not able to give a definitive pronouncement, was not convinced that such measures could remain lawful.

"A major opportunity, such as this one, to aspire to the ideal system is exciting and energising... and such a chance should be grasped with enthusiasm."

The committee was much more impressed with local and voluntary schemes, such as business improvement districts, Best Bar None and Purple Flag, and commended their relative flexibility and positive methods for tackling similar issues. This approach was the committee's preference.

The committee was supportive of the night time economy and live music, and measures to support them, such as the planning "agent of change" principle, and the London night tube. They found that the Live Music Act 2012 deregulation had largely worked well, although was somewhat complex and could be explained better to stakeholders.

With regard to financial affairs, the committee heard an even split of evidence on whether licence fees should be locally or nationally set, and, based on what they heard, concluded that local fees were preferable. Members would have liked, in some respects, to have extended fee multipliers to the larger premises, particularly off-premises such as supermarkets, to even up the playing field, but felt that they could not make such a recommendation because of their serious reservations about the potential lawfulness of such fees in light of *Hemming*. It will be interesting to see if, when and how the trade pick up on that strong hint.

The committee also swept up a range of miscellaneous issues concerning electronic applications, personal licence data base, relaxation of rules on members' clubs and application of the act airside and portside. This latter point has been another popular topic with the media. The committee found it obvious the 2003 Act should apply throughout ports and airports, in light of the number of examples of alcohol abuse before and during journeys, sometimes with disastrous consequences. The committee could not understand the government's apparent reluctance to act, and were entirely unpersuaded by the slight arguments presented against the measure.

There is a significant number of recommendations in the report which have received widespread support and approval. It is a shame if these, the majority, are overshadowed by negative commentary on the minority. The report is a tribute to common sense, compiled by those who, with limited prior experience of the licensing system, have evidently understood and absorbed it, in a very short time, to an astonishingly high standard.

This is not to say that all who read it will agree with it all: far from it. Nobody would expect it, and that is not even desirable. The value, however, of having strangers to the licensing world look into it, with care and concern, is that it highlights all those things which strike intelligent, objective outsiders as illogical and untenable, when we ourselves live and work with, and ignore and tolerate those things on a daily basis. The report should be used as a foundation and stimulus for debate and improvement. The Licensing Act 2003 was a radical piece of legislation to start with, tearing up the past and starting again as it did. Its glitches were inevitable. A major opportunity, such as this one, to aspire to the ideal system is exciting and energising. All those who engage positively get the chance to steer, and such a chance should be grasped with enthusiasm and conviction, not fear and negativity.

Sarah Clover, MIoL
Barrister, Kings Chambers

English tests, manned operators' bases and private hire insurance

The High Court's judgment in the *Uber v Transport for London* case concerning English language tests for drivers and some provisions of the Equality Act 2010 have important implications as **James Button** explains

As a result of changes by Transport for London (TfL) to the requirements for private hire licensing within Greater London, the High Court was asked to rule on the legality of three particular changes. Judgment in *R (on the application of Uber) v Transport for London*[1] was handed down on 3 March 2017, and the particular matters at issue were:

- The introduction of a spoken and written English test for all private hire drivers.
- A requirement that a private hire operator should always have a manned telephone line available.
- And a requirement that a private hire vehicle within London has insurance for private hire work at all times (even when being used for leisure purposes).

These issues will be examined in turn, but it should be noted that both parties have indicated that they are seeking leave to appeal to the Court of Appeal.

The English test

TfL introduced a requirement that all private hire drivers had to be able to communicate in English to Level B1 of the Common European Framework of Reference for languages (B1 CEFR), which required speaking, listening to, reading and writing English at an appropriate level.

This was challenged by Uber as being disproportionate, although it did not contest the need for drivers to be able to speak and verbally communicate in English. Uber argued that the English language requirements were contrary to EU law, discriminatory on grounds of nationality or national or ethnic origins and disproportionate.

Judgment was given by Mitting J. Firstly he considered the potential grounds of challenge:[2]

14. It is common ground that a measure which has had and will have such an impact on so many people must be strictly justified. European Union law is engaged in two ways: because the English language requirement affects the right of EEA nationals to "take up and pursue activities as selfemployed persons" under Article 49 of the Treaty on the Functioning of the European Union; and, because they discriminate indirectly against nonUK nationals whose first language is not English, Article 2 of Council Directive 2000/431/EC of 29th June 2000 is engaged. It provides:

> *"1) For the purposes of this Directive, the principle of equal treatment shall mean that there shall be no direct or indirect discrimination based on racial or ethnic origin*
>
> *(b) Indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice would put persons of a racial or ethnic origin at a particular disadvantage compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary."*

Article 3 deals with the scope of measure:

> *"(1) Within the limits of the powers conferred upon the Community, the Directive shall apply to all persons as regards both the public and private sectors including public bodies in relation to:*
>
> *(a) conditions for access to employment, to selfemployment and to occupation, including selection criteria and recruitment conditions whatever the branch of activity and at all levels of the professional hierarchy, including promotion."*

15. Effect is given to this Directive by section 19 of the Equality Act 2010, which provides:

> *"(1) A person (A) discriminates against another (B) if (A) applies to (B) a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of (B's).*
>
> *(2) For the purpose of subsection (1) a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of (B's), if:*
>
> *(a) (A) applies, or would apply it to persons with*

1 3rd March 2017 Admin Crt (unreported).

2 At para 14 et seq.

whom (B) does not share the characteristic.
(b) It puts or would put persons with whom (B) shares the characteristic at a particular disadvantage, when compared with persons with whom B does not share it.
(c) It puts or would put (B) at a disadvantage.
(d) (A) cannot show it to be a proportionate means of achieving a legitimate aim."

The relevant protected characteristics include race, which, by virtue of section 9(1) includes nationality and ethnic or national origins.

16. Application of these principles requires TfL as a public authority to establish that the measure is proportionate in the EU law sense. It was helpfully and comprehensively explained in the joint judgments of Lord Reed and Lord Toulson on R (app Lumsden and others) v Legal Services Board[3]*:*

"33 Proportionality as a general principle of EU law involves a consideration of two questions: first, whether the measure in question is suitable or appropriate to achieve the objective pursued; and secondly, whether the measure is necessary to achieve that objective, or whether it could be attained by a less onerous method."

In two circumstances, proportionality is applied "more strictly": when measures interfere with fundamental freedoms guaranteed by the treaties, and when they derogate from them in purported compliance with EU law, see paragraphs 37 and 38. The approach to evidence deployed in support of the measure was explained in paragraph 56:

"The justification for the restriction tends to be examined in detail, although much may depend upon the nature of the justification, and the extent to which it requires evidence to support it. For example, justifications based on moral or political considerations may not be capable of being established by evidence. The same may be true of justifications based on intuitive common sense. An economic or social justification, on the other hand, may well be expected to be supported by evidence."

The judge explained that any measure which restricted freedoms must be proportionate, and would be unlawful if the required level of protection could be achieved by less restrictive means.[4] The need for the requirement was explained as follows:[5]

The public interests in question are the safety and welfare and convenience of the passengers. The level of protection of those interests which TfL has determined is necessary to protect them is that private hire vehicle drivers must have a sufficient command of spoken English to be able to understand their requirements, including those arising unexpectedly, for example, in a medical emergency; to discuss a route or fare with them, and to explain safety requirements to them; and of written English, to understand regulatory communications to them, and traffic and other information supplied to them by TfL.

The judge determined that the protection required by the requirement was acceptable within the margin of appreciation, and then considered whether there were less onerous means of achieving it. The test required applicants to write a short essay on a topic which was unrelated to private hire activity. This was only 100 to 130 words and he concluded:[6]

In my judgment, TfL have demonstrated that they were and are entitled to require drivers to demonstrate that level of competence in written as well as spoken English. There is now and for the foreseeable future no practicable alternative means of achieving the protection of the legitimate public interests which TfL have identified to the level properly set by them. In reaching that conclusion, I have not found the Central Government requirement for "public facing" officials to have a sufficient command of spoken English only to deal with a comparable set of circumstances. For the reasons explained, drivers must do more than converse with passengers and understand spoken English.

This element of the judgment demonstrates clearly that a requirement to speak and write in English to a basic level is a reasonable requirement for private hire drivers, and by extension, hackney carriage drivers.

The manned telephone line

Moving on to the requirement that the operator maintains a manned telephone line, this was addressed as follows by the judge:[7]

32. The wording of the telephone requirement is very broad. The operator is required to:

"Ensure that the passenger for whom the booking was made is able to speak to someone at the operating centre or other premises with a fixed address in London or elsewhere if they want to make a complaint or discuss any other matter about the carrying out of the booking."

It is not confined to a requirement to provide that facility in what the passenger believes to be an emergency, or a situation which requires immediate resolution, such as the refusal of the driver to comply with disability law in

3 [2016] AC 697.

4 See paras 17 & 18.

5 See para 19.

6 At para 27.

7 At paras 32 and 33.

respect of the passenger, in other words, a "hotline".

33. It requires a large appbased operator such as Uber to maintain, round the clock, a telephone service to deal with complaints and any other matter about the carrying out of the booking immediately.

He continued:[8]

[At present] Uber have a system which effectively sorts real emergencies from all which are only potentially critical or urgent and deals with each appropriately; the first immediately, and all others within 6 hours as to 70 per cent and within 24 hours as to 99 per cent. This is to be commended rather than criticised.

The justification put forward by TfL was:[9]

. . . many passengers will be reassured by their ability to speak to a human being about their complaint and emergencies can be dealt with more quickly than would be the case without the intervention of a live telephone operator. A small number of real life examples are given. I accept their reasoning, but only up to a point. I can readily understand that some passengers, believing themselves to be confronted by an emergency, will find it reassuring to speak to a human telephone operator.
38. TfL were and are entitled to identify the public interest affected as public safety and convenience, in the case of an emergency principally the former, and to conclude that a high level of protection should be given to passengers who believe that they are faced with an emergency. I also accept that in that instance there is no alternative measure which could combine reassurance and speed of response to some passengers. . . .
39. Accordingly, despite the fact that Uber's current system may well provide an effective and timely response to genuine emergencies, I accept that it cannot provide the level of reassurance which some passengers may, for good reason, require. This aspect of the measure is therefore lawful. It does not follow that the regulation is lawful in its full width.

And he concluded on this point:[10]

TfL has not shown that less restrictive measures could not be adopted than those contained in the telephone requirement to meet the level of protection which they require for the only public interest at stake, passenger convenience. . . . It follows, therefore, that I must quash regulation 9(11) and leave it to [TfL] to make a fresh regulation if he considers it desirable to provide for, in colloquial terms, a "hotline" for emergencies broadly defined to include situations in which immediate action is required to remedy a breach of the law.

The insurance issue

The final point concerned insurance. Within London, a private hire vehicle can be driven by a person who does not hold a private hire driver's licence if the vehicle is being used for "leisure" purposes, ie, other than carrying passengers. This third requirement was to be introduced under the following wording:

"The vehicle must be insured to carry passengers for hire or reward" and in condition 14 of schedule 2:
"(1) The vehicle must be insured to carry the passengers for hire or reward at all times for the duration of the licence.
(2) Details of the insurance must be displayed in the vehicle at all times for the duration of the licence. Transport for London shall specify from time to time the details which are to be displayed and how they are to be displayed.

It may seem surprising that this was the subject of challenge, but it was, and that challenge was successful. TfL conceded that this requirement was not necessary and on this point the judgment is illuminating. The whole insurance issue was summed up in three paragraphs:[11]

The insurance requirement.
42. I can deal with this shortly because of a proper concession made by Mr Chamberlain [Counsel for TfL] on instructions from TfL. They now "accept that in taking the decision to impose the motor insurance requirement TfL did not take into account the extent to which claims against the Motor Insurers' Bureau would in fact provide passengers with equivalent protection", in other words, to that provided by the insurance requirement.

43. He was right to make this concession. [The General Manager of the Taxi and Private Hire Department of TfL] Ms Chapman's reasoning was based on the need to ensure that, for the protection of passengers, no gap existed between the cover which an insurer provided and the circumstances in which a private hire vehicle was being driven when they were injured in consequence of the careless driving of the licensed driver. A paradigm case was that of the driver who had domestic and pleasure cover only but was carrying passengers for reward. She appears to have thought that in those circumstances, the passenger would experience at

8 At para 35.

9 At para 37 et seq

10 At para 41.

11 Paras 42 to 44.

least difficulty in recovering full compensation, or at worst might recover nothing.

44. If so, this was a misconception. As the Court of Appeal explained in Bristol Alliance Limited Partnership v Williams *[2013] QB 286 the combined effect of part V1 of the Road Traffic Act 1988, article 75 of the memorandum and articles of association of the Motor Insurers' Bureau and the agreement which has been made between it and the Secretary of State for Transport, on and since 31st December 1945, is that the insurer under a policy in respect of the vehicle in which an injured passenger is carried, whether for reward or not, must meet a judgment obtained by the passenger against the driver of the vehicle even if the use at the time was other than that permitted under the policy. There, is in reality, no gap which, in the interests of passengers, is required to be filled by the insurance requirement. As I am invited to by Mr Chamberlain I therefore quash this requirement.*

It remains to be seen what the Court of Appeal (if the appeal is allowed) make of this. Many local authorities have spoken English requirements for hackney carriage and private hire drivers and as far as I am aware those requirements have never been challenged in the senior courts. This judgment makes it clear that in the absence of any specific spoken English only test for taxi drivers, the requirement for written English is not an unreasonable addition.

It will be interesting to see whether TfL tries to introduce a less draconian telephone manning requirement, or simply wait to see what the Court of Appeal decides, but again this has an impact for operators outside London.

Finally, the insurance question raises interesting points. It would appear, looking at the judgment of the Court of Appeal in *Bristol Alliance Limited Partnership v Williams,*[12] that provided there is a policy of insurance in force for a vehicle, even if that insurance does not cover the use of the vehicle for hackney carriage or private hire purposes, passengers will be indemnified by either the insurance company and / or the Motor Insurance Bureau. This should not be an issue for private hire vehicles outside London, because under the ruling in *Benson v Boyce* [13] the vehicle is always a private hire vehicle, but it may have an impact on prosecutions for no insurance when a private hire vehicle is found plying or standing for hire.

Introduction of ss 165, 166 and 167 Equality Act 2010 Wheelchair accessibility for hackney carriages and private hire vehicles

12 [2013] RTR. 9.

13 [1997] RTR 226 QBD.

As readers will be aware, the government has now made good on its promise to introduce ss 165 and 167 of the Equality Act 2010. These provisions came into effect on 6 April 2017, and guidance for local authorities (and TfL) was issued on 21 February 2017.[14]

These provisions allow a licensing authority (a local authority or TfL in London) to create a list of "designated vehicles" which are capable of carrying passengers in wheelchairs (s 167), and then require drivers of those vehicles to provide mobility assistance (s 165). These vehicles can be either hackney carriages or private hire vehicles. Section 166 is an exemption provision.

The starting point for these provisions lies with s 167:

167 Lists of wheelchair-accessible vehicles

(1) For the purposes of section 165, a licensing authority may maintain a list of vehicles falling within subsection (2).

(2) A vehicle falls within this subsection if—

(a) it is either a taxi or a private hire vehicle, and

(b) it conforms to such accessibility requirements as the licensing authority thinks fit.

(3) A licensing authority may, if it thinks fit, decide that a vehicle may be included on a list maintained under this section only if it is being used, or is to be used, by the holder of a special licence under that licence.

(4) In subsection (3) "special licence" has the meaning given by section 12 of the Transport Act 1985 (use of taxis or hire cars in providing local services).

(5) "Accessibility requirements" are requirements for securing that it is possible for disabled persons in wheelchairs—

(a) to get into and out of vehicles in safety, and

(b) to travel in vehicles in safety and reasonable comfort, either staying in their wheelchairs or not (depending on which they prefer).

(6) The Secretary of State may issue guidance to licensing authorities as to—

(a) the accessibility requirements which they should apply for the purposes of this section;

(b) any other aspect of their functions under or by virtue of this section.

(7) A licensing authority which maintains a list under

14 "*Access for Wheelchair Users to Taxi and Private Hire Vehicles*" available at https://www.gov.uk/government/publications/access-for-wheelchair-users-to-taxis-and-private-hire-vehicles .

subsection (1) must have regard to any guidance issued under subsection (6).

It can be seen that this is a power rather than a duty, but the guidance issued by the Department for Transport "recommends strongly" that licensing authorities do maintain such a list.[15]

Although a mechanism exists which would allow a local authority to specify ("list") a vehicle as only being suitable for carrying wheelchair-bound passengers when it is being used and the local bus service ("a special licence" in accordance with subsections (3) and (4)) it is difficult to see why that would be the case. As the overriding consideration must be the safety of the passengers, it would appear to be immaterial whether the vehicle is being used for regular hackney carriage services or a local bus service.

The government wants as many vehicles included on the lists as possible and that guidance is contained at paragraph 1.14 to 1.17:

1.14 The Act states that a vehicle can be included on a licensing authority's list of designated vehicles if it conforms to such accessibility requirements as the licensing authority thinks fit. However, it also goes on to explain that vehicles placed on the designated list should be able to carry passengers in their wheelchairs should they prefer.

1.15 This means that to be placed on a licensing authority's list a vehicle must be capable of carrying some – but not necessarily all – types of occupied wheelchairs. The Government therefore recommends that a vehicle should only be included in the authority's list if it would be possible for the user of a "reference wheelchair"[16] to enter, leave and travel in the passenger compartment in safety and reasonable comfort whilst seated in their wheelchair.

1.16 Taking this approach allows the provisions of section 165 of the Act apply to a wider range of vehicles and more drivers than if LAs only included on the list vehicles capable of taking a larger type of wheelchair.

1.17 The Government recognises that this approach will mean that some types of wheelchair, particularly some powered wheelchairs, may be unable to access some of the vehicles included in the LA's list. The Act recognises this possibility, and section 165(9) provides a defence for the driver if it would not have been possible for the wheelchair to be carried safely in the vehicle. Paragraph 3.10 of this guidance below aims to ensure that users of larger wheelchairs have sufficient information about the vehicles that will be available to them to make informed choices about their journeys.

The guidance also makes it clear[17] that there should also be a list of vehicles where a wheelchair-bound passenger can be transferred to a normal seat within the vehicle.

There is a right of appeal contained in s 172(4). This gives "a person who is aggrieved by the decision of a licensing authority to include a vehicle on a list maintained under s 167" a right to appeal. It is interesting to note that this right lies with "a person" rather than the proprietor of a vehicle which has been listed. It remains to be seen whether it would be possible for people who are not proprietors to appeal against the listing, and why they would wish to do so.

Once a vehicle has been listed under s 167, it is then referred to as either a "designated taxi" or a "designated private hire vehicle" and the driver of any such vehicle who is not in possession of an exemption certificate issued under s 166 is then under a statutory duty to carry wheelchair-bound passengers and to provide "mobility assistance".

The duty applies when the vehicle has been hired:

(1) This section imposes duties on the driver of a designated taxi which has been hired—
(a) by or for a disabled person who is in a wheelchair, or
(b) by another person who wishes to be accompanied by a disabled person who is in a wheelchair.
(2) This section also imposes duties on the driver of a designated private hire vehicle, if a person within paragraph (a) or (b) of subsection (1) has indicated to the driver that the person wishes to travel in the vehicle.

The duties imposed on the driver are detailed in subsections (4) and (5). Subsection (4) contains the general duties and subsection (5) details what is meant by "mobility assistance".

The general duties are:[18]

(a) to carry the passenger while in the wheelchair;
(b) not to make any additional charge for doing so;
(c) if the passenger chooses to sit in a passenger seat, to carry the wheelchair;
(d) to take such steps as are necessary to ensure that the passenger is carried in safety and reasonable comfort;
(e) to give the passenger such mobility assistance as is

15 Ibid at para 1.12.

16 As defined in Schedule 1 of the Public Service Vehicle Accessibility Regulations 2000.

17 Ibid at paragraph 1.22.

18 EA 2010 S165(4).

reasonably required.

And mobility assistance:

is assistance—

(a) to enable the passenger to get into or out of the vehicle;

(b) if the passenger wishes to remain in the wheelchair, to enable the passenger to get into and out of the vehicle while in the wheelchair;

(c) to load the passenger's luggage into or out of the vehicle;

(d) if the passenger does not wish to remain in the wheelchair, to load the wheelchair into or out of the vehicle.

Neither of those duties requires a driver to carry a passenger in circumstances where it would be lawful for him to refuse the hiring, eg, for a journey from a hackney carriage stand which will terminate outside the district (or hackney carriage zone).[19] In addition, unless the vehicle is of a description prescribed by the secretary of state, the driver cannot be compelled to carry more than one wheelchair or wheelchair-bound passenger.[20]

Failure to provide mobility assistance or to carry the passenger or discharge any of the other duties contained in s 165 (4) is a criminal offence by virtue of subsection (8), but there is a defence if the driver can show that it would not have been possible for the wheelchair to be carried safely in the vehicle (subsection (9)(b).

Local authorities will be considering whether to create a list under s 167, and if so, what vehicles are going to be included within it.

Turning to the question of exemptions, the guidance does give some indication as to how a licensing authority should approach this, in the absence of any national criteria.[21]

1.31 Some drivers may have a medical condition or a disability or physical condition which makes it impossible or unreasonably difficult for them to provide the sort of physical assistance which these duties require. That is why the Act allows LAs to grant exemptions from the duties to individual drivers. These provisions are contained in section 166, and were commenced on 1st October 2010.

1.32 Section 166 allows LAs to exempt drivers from the duties to assist passengers in wheelchairs if they are satisfied that it is appropriate to do so on medical or physical grounds. The exemption can be valid for as short or long a time period as the LA thinks appropriate, bearing in mind the nature of the medical issue. If exempt, the driver will not be required to perform any of the duties. Since October 2010, taxi and PHV drivers who drive wheelchair accessible taxis or PHVs have therefore been able to apply for exemptions. If they do not do so already, LAs should put in place a system for assessing drivers and a system for granting exemption certificates for those drivers who they consider should be exempt.

1.33 We suggest that authorities produce application forms which can be submitted by applicants along with evidence supporting their claim. We understand that some licensing authorities have already put in place procedures for accessing and exempting drivers, and as an absolute minimum, we think that the evidence provided should be in the form of a letter or report from a general practitioner.

1.34 However, the Government's view is that decisions on exemptions will be fairer and more objective if medical assessments are undertaken by professionals who have been specifically trained and who are independent of the applicant. We would recommend that independent medical assessors are used where a long-term exemption is to be issued, and that LAs use assessors who hold appropriate professional qualifications and who are not open to bias because of a personal or commercial connection to the applicant. LAs may already have arrangements with such assessors, for example in relation to the Blue Badge Scheme.

1.35 If the exemption application is successful then the LA should issue an exemption certificate and provide an exemption notice for the driver to display in their vehicle. As section 166 has been in force since 2010, many LAs will already have processes in place for issuing exemption certificates, and as such we do not intend to prescribe the form that those certificates should take. We are however keen to ensure that passengers in wheelchairs are able to clearly discern whether or not a driver has been exempted from the duties to provide assistance, and as such will prescribe the form of and manner of exhibiting a notice of exemption.

1.36 If the exemption application is unsuccessful we recommend that the applicant is informed in writing within a reasonable timescale and with a clear explanation of the reasons for the decision.

It can be seen that there is not going to be any national standard test for exemptions, and each licensing authority

19 EA 2010 s165(6)(b).

20 EA 2010 s165(6)(a).

21 Ibid para 1.31 et seq.

must decide on its own criteria, and processes for determining applications. This could well prove contentious, as there may be wide variations between the approached taken by neighbouring authorities, and this may result in further "licence shopping" as drivers try to find the authority with the most sympathetic exemptions requirements.

There is a right of appeal to the Magistrates' Court against a refusal to grant an exemption certificate contained in s 172. The guidance [22] suggests that licensing authorities may want to have some form of internal appeal in addition to the statutory appeal, but it is difficult to see what the perceived advantage of this approach is.

Finally, although there are no prescribed exemption certificates, the government has produced the prescribed notices of exemption. These are contained in the Equality Act 2010 (Taxis and Private Hire Vehicles) (Passengers in Wheelchairs - Notices of Exemption) Regulations 2017.[23] These notices are specific to the particular driver, and can only be displayed in the vehicle when that driver is either driving, or has parked the vehicle and it has been driven to that location, or is to be driven from that location by the named driver.

They must measure 10 cm x 10 cm (which will be difficult for the Welsh version, because in the regulations it is rectangular) and must then be displayed in the windscreen on the nearside of the vehicle.

These are long overdue provisions, and it is only hoped that they herald the introduction of the remaining provisions of the Equality Act 2010 relating to hackney carriages and private hire vehicles. It is depressing to remember that when the Disability Discrimination Act 1995 was introduced, the intention was that all hackney carriages would be wheelchair accessible by 1997, unless the local authority sought a derogation from those provisions from the Department for Transport. Twenty years later, there has been very little real progress, and although these recently introduced provisions will make a difference, there is still a long way to go.

James Button, CIoL
Principal, James Button & Co Solicitors

22 Ibid at para 1.42.

23 SI 2017/342.

Licensing Act needs overhaul but problems only half diagnosed

The House of Lords Select Committee has come up with some headline-grabbing proposals but failed to explore the root cause of the 2003 Licensing Act's problems, argues **Jon Foster**

The Lords committee charged with reviewing the 2003 Licensing Act reached scathing conclusions, stating that "the Act is fundamentally flawed and needs a major overhaul." On the evidence they present, and that found elsewhere, this is a fairly accurate conclusion. Yet, before assessing the Lords' recommendations, it is worth taking a closer look at the problems they highlight, which are only half diagnosed. In fact, the report gives an overly administrative account of the Act, focusing on procedures and formalities, while overlooking problems with how it is applied, and decisions made in practice. As such, some of the key factors contributing to the problems described are simply not mentioned.

The act's conflicted beginnings

The report is critical of the "inadequate statutory framework whose basic flaws have, if anything, been compounded by subsequent piecemeal amendments." However, its short history of the Act's origins gives no context which might explain why the basic framework was put together in a problematic way.

In fact the Act was designed as a pro-business deregulatory measure, but marketed as a way of civilising the night-time economy (hence the unrealistic "café culture" idea), and brought forward as part of New Labour's wider cultural modernisation agenda. As one senior civil servant put it, "essentially (ministers) wanted to have a more economic-facing approach; they didn't want it to be just about crime and disorder," [1] and responsibility for this was given to the Department for Culture, Media and Sport rather than the Home Office.

While there was a consensus on the need to update licensing, there is a common view amongst those who have considered the history of the Act that it was heavily influenced by the drinks industry and the licensed trade.[2] [3] [4] This influence, and New Labour's attempt to dress significant deregulation up as cultural modernisation, produced several tensions and inconsistencies within the Act, revolving around economics, leisure, health and crime, all of which are apparent today.

While a lot more could be said here, police powers had to be improved because these influences resulted in them being too weak in the first place, even though the rhetoric on crime was tough. Once implemented these problems became more apparent and had to be addressed. The continuing debate around health, and its addition as a Responsible Authority, is another reflection of these problems within the Act, as is the extent to which economic factors are considered within licensing decisions, despite there being no economic objective.

The Lords place great emphasis on the fact that licensing and planning were not joined up, but this too is a symptom of the Act's unstable beginnings; in its original form the free market was left entirely to decide the number and placement of premises. This was thought to be the best approach even where premises were highly concentrated, with cumulative impact policies only added to the guidance as a concession to campaigners after the act had passed through Parliament.[5] With the free market seen as the best way of doing things, why bother to involve planning, which in contrast allows the local authority to consciously take a strategic approach?

So, while it is regrettable that the Act has had to be frequently amended in the last 11 years, the report lacks a discussion about the reasons underlying this.

The decision-making process

While the report is detailed in parts, this lack of historical context is not the only omission. The Lords found evidence

1 Greenaway. J., (2010) *Alcohol in the UK*, background paper, National School of Government, p 7.

2 Baggot. R., (2010) *A modern approach to a new problem? Alcohol police and New Labour. Policy & Politics*, Vol 38 no 1, p137.

3 Greenaway. J., (2010) *Alcohol in the UK, background paper, National School of Government*, p 2.

4 Hadfield, Philip Mason (2005) *Bar Wars: Contesting the night in British cities*, Durham theses, Durham University. Available at Durham E-Theses Online: http://etheses.dur.ac.uk/2709/ p 3.

5 Roberts. M., Eldridge. A., (2009) *Planning the night time economy*. Routledge. p 115.

to suggest that licensing decisions are "something of a lottery" and lack formality and professionalism, and they talk of "scandalous misuses of the powers of elected local councillors". They recommend some specific, and probably useful, changes to the s 182 Guidance, along with a general call for better training, but do not specify exactly what problems such training should address.

While these are significant concerns, and some of the reasons for them are given in detail, there are other contributing factors not mentioned. The report overlooks problems with how the Act is applied and decisions made in practice, while giving an overly administrative account of procedures and formalities. The fact that the committee took a lot of evidence from people with a legal background may be a factor behind this, and reading the report it is clear that this perspective was given significant weight. On the one hand there are clear reasons why this might be so, but on the other hand additional factors seem not to have been assessed, and a few dots left without being joined up.

Aside from administrative problems, one of the key reasons why licensing decisions can be "something of a lottery" is that the Act's decision-making process is applied in an inconsistent way between local authorities; decisions can be made in fundamentally different ways between areas, but we hear nothing about this. Evidence, for example, is given different weight and consideration between areas, with some unnecessarily aiming to prove decisions beyond reasonable doubt, whereas others apply the Act as written by looking to make decisions based on a balance of probabilities.[6]

Many local authorities apply the misleading and not properly supported "premises by premises" approach, where a premises is seen to be isolated from its geographic location (indeed, this is the only approach considered by the Lords). Others take a more rounded view of "what is to be regarded as reasonably acceptable in the particular location" (*Hope and Glory* [2011] para 42) as supported by case law.[7] And while some local authorities take a strategic and long-term view of how licensing might develop in their area, akin to the planning system praised by the Lords, others take a very short-term and bottom-up approach.

Better training on these issues would be beneficial for all involved in licensing, including councillors, licensing and legal officers. However, we hear nothing about these significant differences in the application of the Act within the report – this is a big omission. It also begs the question of why such a well-resourced and seemingly comprehensive report contains this significant gap, but it seems the Lords were keener on criticising licensing committees than helping them use the Act in a more comprehensive and authoritative manner.

The report also misses opportunities to highlight good practice and showcase examples of local authorities using the Licensing Act in a proactive and effective way. Furthermore, while it does include evidence that licensing had become "too political", with some local authorities "frightened of making a tough decision" in case they faced costly appeals brought by big drinks companies, it does not link this as another factor hampering local authorities and the application of the Licensing Act. It should.

Licensing and planning

Here, the report has two main recommendations:

1. *Use existing planning committees to administer the Licensing Act, on the basis that these are seen to operate at a higher standard than licensing committees, and that this would help to foster better coordination between the two regimes.*

This is an interesting idea and caught many of the headlines, but while this recommendation fits with the report's overly administrative focus, it is somewhat one-dimensional compared to the detail contained within the body of the report, and there are missed opportunities. Overall, it could be clearer on exactly why planning committees are regarded as better than licensing committees, and how this gap could be bridged without simply merging the two.

Firstly, if quality of decision-making is a concern, better training all round would probably be a good first step. The training would of course have to address the real underlying issues though. Secondly, the report details how planning officers give significantly more support to their committee members, stating that they "spend significant time collating and analysing consultation responses to a planning application, and will apply their professional judgment to those responses to reach a planning balance overall, which is in compliance with law and guidance."

This is indeed very different to most licensing committees, and this approach seems to be offered as a possible solution to irregularities within licensing. But does this make it into the recommendations? It isn't quite clear whether the Lords mean that, in transferring licensing to planning committees, licensing officers should take on this more proactive role. All the evidence suggests that this would be a step in the right direction and should be pursued.

6 Jon Foster The 2003 Act: better for the trade than local authorities (2016) 15 JoL p30-32.

7 Jon Foster The 2003 Act: better for the trade than local authorities (2016) 15 JoL p30-32.

A third point here is that some local authorities already have significant overlap between membership of their planning and licensing committees, but this does not necessarily result in better co-ordination between the two regimes. As mentioned at para 244, co-ordination is also needed between planning and licensing officers, and at a policy level. Indeed, the report would benefit from talking in more detail about statements of licensing policy (SLPs). While these are mentioned in para 126 it gives rather more detail about the parallel processes within planning, while SLPs are downplayed. In fact, para 1.17 of the s 182 Guidance confirms that "each application must be considered on its own merits and in accordance with the licensing authority's statement of licensing policy".

This gives SLPs significant weight if used strategically, and some local authorities use them in the way that the Lords report favourably describes planning policy, and as an important method of shaping the future development of the licenced trade. In contrast, the Lords give the view that licensing decisions are only influenced in a bottom-up way, as applications are received, and not via policy. Regular readers of the *Journal* will remember the editorial to edition number 14 on the topic of policy and strategy within licensing, and we'll return to this issue later.

Regardless, it is clear that licensing can learn a lot from planning, but this is not a new idea. In his excellent book *Bar Wars*, published in 2007, Phil Hadfield put forward similar views. He is also critical of licensing committees, but unlike the Lords he highlights the way in which the system justifies lawyers in suppressing and distorting unfavorable evidence "however truthful it may be."[8] I have previously argued that the 2003 Licensing Act does allow licensing committees to counter this by taking a more inquisitorial role, but this does not often happen in practice. Hadfield suggests planning, and the role of its inspectorate, as a solution to this, and this links to the additional planning related proposal made by the Lords, which is also similar to Hadfield's comments.

2. *That appeals from licensing authorities should lie to the planning inspectorate, following the same course as appeals from planning committees.*

This is a standalone recommendation, not dependent on merging planning and licensing committees, and it certainly bears consideration. It seems likely to result in more thorough appeals where arguments from both sides are considered in a less confrontational manner. As the report argues, it could result in higher standards, primarily because magistrates and judges hear relatively few cases and so are less practised in the detail of licensing law. Yet Hadfield also points out that this approach could help to level the legal playing field between sections of the trade and local authorities, as "proceedings would be regarded as an attempt… to get at the truth, with the lawyers on each side required to assist the investigator in obtaining the best available evidence".[9]

In summary, better co-ordination between planning and licensing is both needed and desirable, but achieving this will need joint working at the officer level, between planning and licensing strategies and at the committee level, whether there is one committee or two. Yet as a first step, better training for councillors, officers and local government lawyers, and a more proactive and inquisitorial approach from licensing officers, could go a long way to improving standards within licensing committees themselves.

The licensing objectives

When it comes to assessing the licensing objectives, the Lords make some quite remarkable statements. The first of these is that "the objectives are not a list of matters which it would be desirable to achieve, but simply an exhaustive list of the grounds for refusing an application or imposing conditions. There is therefore no point in including as an objective something which cannot be related back to particular premises."

This again ignores the role of policy within licensing, as mentioned above, where the objectives play a role in shaping future developments as applications are viewed in conjunction with the local SLP. But the most striking issue is the view that "the objectives are not a list of matters which it would be desirable to achieve".

Firstly, case law states that "there is no controversy between parties, no decision in favour of one or other of them, but the decision is made for the public benefit one way of the other in order to *achieve* the statutory objectives" (*Chief Constable of Nottinghamshire v Nottingham Magistrates' Court* [2009], para 38, my emphasis). Secondly, this view fails the common-sense test, and it seems pretty clear that the objectives have been identified for the very reason that achieving them, and placing them front and centre within licensing matters, is very desirable and in the public interest.

The report here takes a very business-friendly perspective, and almost seems to forget that local authorities and the police have a key role in the act – for them, as for the public, achieving the objectives is the overriding concern.

8 Hadfield, Philip Mason (2005) *Bar Wars: Contesting the night in British cities*, Durham theses, Durham University. Available at Durham E-Theses Online: http://etheses.dur.ac.uk/2709/ p 286.

9 Hadfield, Philip Mason (2005) *Bar Wars: Contesting the night in British cities*, Durham theses, Durham University. Available at Durham E-Theses Online: http://etheses.dur.ac.uk/2709/ p 287.

This criticism is also apparent where the Lords suggest that the objectives should not be "promoted", stating that it is misleading to suggest "that a licensee must take positive steps to achieve the objectives, whereas the intention is simply that the granting of a licence will not (to use the Scottish wording) be "inconsistent with" the prevention of crime and disorder etc".

Licensees can, should and very frequently do take positive steps to achieve the objectives, and para 8.33 of the s 182 Guidance gives all involved a very clear steer on this issue. But the word "promotion" gives local authorities and the police scope to be proactive in their approach to licensing; to promote the prevention of crime and disorder is not only about reducing crime and disorder, but working to create an environment where crime and disorder is less likely to occur. It allows a proactive approach where risk to the objectives can be managed down and addressed before problems occur. It is true that not all local authorities take this approach, but why would the Lords want to limit this and make the Act more reactive?

The report is also incorrect in stating that Scottish licensing has no equivalent to the promotion of the objectives. Alcohol Focus Scotland has written to the Lords Committee to correct this. It points out that Scottish Government guidance on overprovision refers to the "impact" on the "promotion" of the objectives being a key consideration, and argues that the Lords have neglected the role of policy and strategy within licensing, which is another way in which local authorities promote the objectives, including their health objective.

Taking a similar line, the report dismisses calls for a health and wellbeing objective. It does state that these concerns have a role to play for "alcohol strategy", but fails to join the dots regarding licensing strategies at a local level, as pointed out above. The Lords' argument against health will be familiar to anyone who has an interest in this issue, revolving around the ability to link issues relating to an objective to a specific premises or application. This is a key issue, but findings from both north and south of the Scottish border, including within the Home Office's local alcohol action areas, suggests that it can be done on occasion, but also that health plays a more significant role in licensing strategies, as AFS states.

Overall, the Lords here put forward a rather one-dimensional argument that omits some of the more supportive evidence received regarding a health objective. While the conclusion is not necessarily surprising, it is far more conservative than other parts of the report, but rather than aiming to move the debate forward, they seem only to want to end it. For example, there is no real assessment of how health as a responsible authority is doing since its addition, and no consideration of how it might strengthen or adjust its involvement using the existing legislation. This is an interesting and innovative area of licensing, and there are some fantastic examples of best practice available. I have no doubt that the Lords would have had a ready audience for this if they had covered the issue.

Off-trade

In contrast to the health objective, the Lords are favorable towards Scottish licensing when it comes to the off-trade. They highlight the significant shift to home drinking and the fact that the Licensing Act is poorly designed for this, recommending copying Scotland's more significant restrictions on the off-trade, including restricted opening hours and a ban on multi-buy offers.

This is welcome and sensible, but less far-reaching than recommendations to address the issue currently being made in Ireland. Regrettably, the government has already ruled out any action on multi-buys, a short-sighted move taken before some of the more recent evidence was published. The growing issue of online sales is given only a passing reference by the report, which is a shame.

EMROs, LNLs and GRIPs

The dismissal of late night levies (LNLs) in favour of business improvement districts is another example of the report's business-friendly nature. Evidence for the effectiveness of both options is scarce but the trade-friendly option comes up trumps seemingly for no reason other than to satisfy the trade's preference for self-regulation. The changes to LNLs, allowing them to be applied to selected areas, seem likely to increase their use, and as it is LNLs are growing in number, particularly in London, and the Newcastle LNL has reportedly been successful.

The treatment of early morning alcohol restriction orders (EMROs) is similar. While mixed views from all sides are acknowledged, no thought is given to whether a working EMRO might be desirable. In Australia, bringing forward closing times from 5am to 3am was associated with a 21% reduction in sexual assaults, a 43% reduction in assaults causing grievous bodily harm, a 50% reduction in assaults causing actual bodily harm and a 57% reduction in robberies.[10] Yet the report's only comment on the potential merits of a workable EMRO is an economically focused – that they "may indeed prove harmful to any area in which they are implemented". This may be the case from an economic perspective, although findings from Australia suggest a welcome increase in economic diversity earlier in the evening. Group review intervention powers (GRIPS) are

10 Foster. J., Charalambides. L., (2016) *The Licensing Act (2003): its uses and abuses 10 years on*. Institute of Alcohol Studies.

treated in a similar manner, although the report is right to point out that their exact focus is not yet clear.

The common thread of contention running through these three policies is the fact that many alcohol-related problems cannot be traced back to a specific premises, but are more likely to be found in certain environments. LNLs, EMROs and GRIPs all aim to influence these wider environments, and are dismissed by the Lords report, as is the role of strategy with licensing which also works to this end. Yet wider place-shaping is a legitimate goal within licensing, and an approach available under the act as it stands, as the use of both SLPs and CIPs testifies. The three policies above also add to this, at least in theory.

Reading between the lines, the Lords rely upon a very narrow "premises by premises" approach, where venues are considered in isolation from their environment, and which is not entirely supported by the Act.[11] Rather, the Act and case law (see *Hope and Glory* [2011] para 42 above) allow for a more rounded approach where premises are considered within their location, both individually and strategically. There is clearly tension between these two approaches, but evidence suggests that local authorities which take a wider-ranging and strategic approach feel better able to manage licensing in their area. Clearly the Lords take a view in favour of the narrow approach, but future developments will be interesting; the introduction, and reform, of LNLs and EMROs, followed potentially by GRIPs, suggests that the Home Office increasingly acknowledges that not all problems can be linked back to an individual premises. In theory at least, they seem to want to better equip local authorities and the police to address these issues nonetheless.

The business-friendly approach continues when dealing with industry schemes. While the report is critical of some of these, especially the government's Responsibility Deal, it is inconsistent and applies less scrutiny to local voluntary schemes, which are also poorly evidenced. The Lords committee criticises national voluntary agreements on the basis that "many of the worst operators will probably never comply with voluntary agreements," but this is just as true at local level too.

Minimum unit pricing

The report supports minimum unit pricing (MUP), but in a slightly predictable way. If MUP is implemented in Scotland and shown to work (both of which seem likely), it stands to reason that there will be strong pressure on Westminster to follow suit – the report's recommendation is just a reflection of this. Given the overwhelming evidence in support of MUP, a more far reaching report would have recommended implementing MUP *in parallel with Scotland* if the court case is won this summer, including the sunset clause prompting a repeal of the measure if it is unsuccessful after five years.

Other issues

Having covered the key themes, there is only limited space to mention some of the many other issues. The recommendation that local authorities be given the power to object to TENs is very welcome, as are the administrative recommendations around TENs, and the proposed repeal of community ancillary sellers' notices. Allowing local authorities to set their own licensing fees is also needed, with fee levels not having increased since the act came into force and many local authorities having to subsidise their licensing work out of general funds. It is unfortunate that these last two recommendations were not brought together though, as the cost of processing a TEN is also far greater than the cost to the applicant. The Lords identify this problem, without offering a solution.

Supporting the agent of change principle is also a positive move, as are calls for a national database of personal licence holders. But sales to drunks seems again to be dealt with in a one-sided way; enforcement is an issue, but increasingly problematic with declining numbers of police officers. The report mentions calls for a mandatory condition requiring premises to produce a written policy on dealing with drunk customers, so why not recommend that too?

Conclusions

Overall this report is interestingly detailed in some administrative respects, but with significant gaps regarding the application of the act's decision-making process. Local authorities have been roundly condemned without properly discussing some of the key problems and obstacles they face, or suggesting meaningful ways to address them.

From a licensing perspective, the fact that all the headlines focused on MUP and planning committees is regrettable; the danger is that debate about this report will focus on some rightly scandalous anecdotes before skipping quickly on to these eye-catching recommendations, while avoiding more substantial debate about the root cause of the problems and how the act can be applied more rigorously and consistently for all.

Jon Foster
Senior Research and Policy Officer, Institute of Alcohol Studies

11 Foster. J., Charalambides. L., (2016) *The Licensing Act (2003): its uses and abuses 10 years on*. Institute of Alcohol Studies.

How very dare you!

The House of Lords licensing committee members have squandered a golden opportunity to help councils deliver a better licensing regime, says **Andy Eaton**

I was thinking that after 12 years of the 2003 Licensing Act's implementation, we had just about got on top of the licensing process. We'd finally got the members fully trained and thinking rationally and logically about complex licensing cases, and generally lots of us were basking in the glory of having done a good job, from not the best piece of legislation. Oh how wrong I seemed to be, according to the House of Lords!

Right from the start of their executive summary they appeared to be saying how bad a job we've all done, and why didn't the government go to those fabulous people who run planning when they stripped it from those nice magistrates who'd been doing it so well for over 500 years?

The statement about there being a perfectly good process inside local councils already in 2005 (the planning committee) ignored the fact we were already doing public entertainment, theatres and cinema licensing, so why create a whole new one? That got me very confused, given we had been running the entertainment licence regime and of course taxi and private hire licensing for well over 30 years by then. So just who did proffer to the learned Lords the planning committee as being the perfect venue for the licensing of entertainment and alcohol?

Is it really the case that there is widespread lack of training for licensing members throughout the whole country, or is it that the Lords were told some woeful stories of such cases and then decided that all the rest of the licensing committees throughout the country were not training their members either? Couldn't we say exactly the same about planning members? Couldn't we all cite a humdinger of a case where the planning members were swayed by favourable s 106s to provide nice facilities for the community? I wonder how many leisure centres, health centres and schools have been built around the country by "kind" developers who received a favourable planning permission. At least that isn't the case in licensing. At least we can hold our heads high and say we may have granted licences and we may have insisted on conditions to compel an applicant to meet the licensing objectives, but not because the applicant was promising to build a children's playpark in return for the grant of the licence.

I do accept, of course, that changes were introduced in recent times to tighten up on that behaviour by planning committees, but it was common practice not that long ago, and certainly within the life of the current licensing regime that has been so lambasted by the Lords. I can honestly say that in the last 12 years of sitting on applications for a premises licence I have never seen a politically-led decision to grant or refuse a licence, only a decision based on the objectives. I wonder how many politically-driven decisions have been made in planning in the same time-frame?

Of course, the other galling aspect of the review is the way it depicts the planning process as being without fault. Throughout the last 50 years you can follow a trail of bad planning decisions that have yielded several high profile legal challenges. Even as recently as 2004, in *Georgiou v Enfield LBC*, members of planning behaved in a way that surely suggests the behaviour of licensing members is far better. However, the Lords did quote two quite alarming examples from our very own Professor Roy Light and Gerald Gourier QC which were quite appalling, but as Gary Grant recently said to me "one wouldn't normally treat a patient with a headache with decapitation".

That in essence captures the proposal in this review. The Lords clearly heard evidence of poor practice, and rather than make suggestions on how we deal with those issues, instead propose a wholesale revolution to the regime that will leave a new group of members with no experience in licensing fumbling around trying to make it work; in essence it will knock us back another 12 years.

Some of you who attended the Training Conference in November will remember me stating at the final panel session that I wanted a new licensing inspectorate for Christmas, so that I wouldn't have to spend the rest of my life waiting at the Magistrates' Court to get appeals heard when priority was always given to criminal matters. So what did the Lords do? Well, they said we could use the planning inspectorate. That's fine, except my colleagues in planning tell me the current waiting time for a hearing is eight to nine months, and it then takes three or four months to receive the decision. They also tell me there is quite a backlog - so obviously things will get a whole lot worse once they have licensing appeals to deal with.

How very dare you!

In truth it sounds like the government is proposing to resolve all the problems with licensing by shoving it somewhere else, simply forgetting that the place they want to shove it all is just as bad. It has taken councils, lawyers, practitioners, courts, barristers and judges the past 12 years to make the system work, and while I accept it may not be a perfect system, how can the Lords believe that fundamentally changing it will lead to a better regime? It defies logic. I wonder how the very same Lords would have reacted when in the midst of the expenses scandal there had been a suggestion that given there were some bad MPs and peers, we should scrap the whole parliamentary system and change to an executive!

I have to say, the whole report seems to be a wasted opportunity to help councils deliver a better licensing regime. The vast majority of us have worked hard to develop our councillors, to equip them with the knowledge and skills they need to administer the regime properly and fairly. A few bad councillors seems to be all the Lords needed to destroy all the work we have done, and then pass it along to another regime that is no better than the one they seemed determined to destroy. It is a Brave New World indeed in which we operate.

Andy Eaton, FIoL
Deputy Legal Services Manager, Rother & Wealden District Council's Shared Legal Service

Events Calendar

September 2017

7	Caravan Site Licensing - Arun
7	North East Region Meeting & Training Day - York
8	London Region Meeting & Training Day - Lambeth
11	Licensing Hearings - Spennymoor
12	Licensing Hearings - Basingstoke
13	Licensing Hearings - Solihull
13	North West Region Meeting & Training Day - Preston
14	Licensing Hearings - Ely
15	Licensing Hearings - Neath
19-22	Professional Licensing Practitioners Qualification - Stoke
26-29	Professional Licensing Practitioners Qualification - London
28	West Midlands Region Meeting & Training - Stratford-upon-Avon

October 2017

3	Caravan Site Licensing - Darlington
10	Practical Taxi Licensing - Carlisle
11	Safeguarding through Licensing - Nottingham

October 2017 cont...

11	Wales Region Meeting & Training Day - Llandrindod Wells

November 2017

15-17	National Training Conference - Stratford-upon-Avon

December 2017

7	North East Region Meeting & Training Day - York
7	East Midlands Meeting & Training Day - Nottingham
7	North East Meeting & Training Day - York
8	London Region Meeting & Training Day - Lambeth

March 2018

20-23	Professional Licensing Practitioners Qualification - Nottingham

May 2018

15-18	Professional Licensing Practitioners Qualification - Birmingham

It pays to advertise, correctly...

Since the start of the year, important developments have been occurring across the gambling landscape including a £300,000 fine on a gaming website operator, as **Nick Arron** explains

There have been a number of developments of interest in the gambling world in early 2017. We have had the first financial penalty imposed by the Gambling Commission on a gambling website because of its approach to bonuses and promotions; changes extending the horseracing levy to online bookmakers; an important announcement on anti-money laundering; and a judicial review relating to a new large casino licence in Southampton.

Gambling Commission imposes first financial penalty for advertising issues

The Gambling Commission has imposed a financial penalty on BGO Entertainment (BGO) for misleading advertising on its own and its affiliates' websites. The penalty of £300,000 is the first imposed for breaches relating to advertising and followed a review under s 116 of the Gambling Act 2005 of the remote casino and bingo operating licence held by BGO. The review commenced in September 2016 on the grounds that the commission had reason to suspect that activities may have been carried on in purported reliance on the licence but not in accordance with a condition of the licence and suspected that the licensee may be unsuitable to carry on the licensed activities.

On 8 May 2015, following a public consultation, new licence conditions relating to the marketing of offers came into effect. Social responsibility code provision 5.1.7 requires licensees to abide by any relevant provision of the Committee of Advertising Practice (CAP) code and the Broadcast Committee of Advertising Practice (BCAP) code, which relates to "free bet", "bonus" or similar offers. In particular, advertisements must state significant limitations and qualifications. Marketing material must not amount to or involve misleading actions or misleading omissions. These rules apply to all forms of marketing communications, including social media and affiliate marketing.

Also of relevance to BGO's affiliates, social responsibility code provision 1.1.2 requires licensees to take responsibility for third parties with whom they contract for the provision of any aspect of the licensee's business related to the licensed activities. This means that licensees are considered responsible for the actions and behaviour of third parties with whom they contract, which includes marketing affiliates and advertising networks.

In June 2015 the commission asked remote operators to provide information regarding their compliance with the code provisions on marketing and advertising. The commission found that a number of operators were not compliant as they published adverts with significant limitations and qualifications relating to promotions which were potentially misleading to consumers. BGO was one of those operators and the commission contacted it about rectifying the issues.

The commission, it appears, was not satisfied with the response from BGO, which failed to take prompt and effective action to address the issues identified. BGO repeatedly provided assurances to the commission that it understood the requirements and had taken action to ensure that they were met. Yet the commission found evidence of continued non-compliance in that advertisements on BGO's own website and the websites of third parties remained potentially misleading by failing to include significant limitations and qualifications of promotions.

In May 2016, BGO commissioned a copy advice audit of its website from CAP. The review assessed marketing communications on BGO's website and considered its conformity with the CAP code. The audit made several recommendations in relation to what significant limitations and qualifications should be included in the advertisements on BGO's website. Unfortunately BGO did not initially follow those recommendations and its website and those of its affiliates remained in breach of social responsibility code provision 5.1.7 from May to July 2016.

BGO did belatedly make the changes recommended in the audit in late July 2016. However, the commission continued to find and capture evidence of on-going breaches in relation to advertising on the websites of third parties with which BGO had a contractual relationship in August, September and October 2016. As a result the review commenced.

In addition to finding BGO in breach of social responsibility

code provision 5.1.7 it also found BGO acted in a way which cast doubt on its suitability to carry on the licensed activities because it failed to take timely and effective action to address the breaches once made aware of them and it provided inaccurate assurances that the problems had been addressed. BGO received a formal warning as well as the £300,000 financial penalty.

Horserace Betting Levy Regulations 2017

On 25 April the Horserace Betting Levy Regulations 2017 came into force. They provide that all bookmakers and betting exchange operators which hold remote operating licences which take bets on British horseracing are now liable to pay the levy.

The Gambling (Licensing and Advertising) Act 2014 was introduced to require that all gambling operators which engage with British customers, wherever they are located, must hold a Gambling Commission licence. Following the introduction of the act, the government determined to ensure that a level playing field was applied to both British-based and offshore remote gambling operators who take bets on British horseracing in respect of their contribution to the Horserace Betting Levy.

The DCMS' consultation on extending the Horserace Betting Levy issued in June 2014 explains that the "main purpose of linking collection of the levy to holding a Gambling Commission licence is to provide a fairer basis for competition between remote gambling operators who take bets on British horseracing wherever they are based. The levy is collected from the gross profit of betting on British horseracing (ie, horseracing in England, Scotland and Wales) and distributed to help improve horseracing and, in particular, breeding and veterinary research and education". The levy is charged at the rate of 10% of the amount of profits raised on leviable bets in a levy period in excess of the exempt amount, which is set at £500,000.

Government exemptions under new money laundering requirements

On 15 March HM Treasury published its response to consultation on the EU 4th Money Laundering Directive and decided that all gambling sectors should be exempt from the new regulations, except for remote and non-remote casinos. The announcement was welcomed by the wider gambling industry.

The Treasury's national risk assessment classified the gambling sector as low risk in relation to other regulated sectors, based in part on several mitigating factors including the legislative framework that gambling operators are subject to and the regulatory control exercised by the Gambling Commission. This maintains the status quo in the gambling sector, with only casino operators required to comply with the money laundering regulations once they take effect.

High Court challenge to grant of large casino licence in Southampton and new casinos

The final hurdle to a new large casino in Southampton appears to have been cleared. In February Southampton City Council defended a judicial review by Global Gaming Ventures (Southampton) following the authority's decision to grant the large casino licence to Aspers for a site at the Royal Pier.

The grounds for Global Gaming Ventures' High Court challenge were that the council's advisory panel should have undertaken a mathematical calculation of the benefits of each proposal and secondly, that an alternative tenant should have been considered, replacing Aspers, for the Royal Pier site.

Mr Justice Jeremy Baker rejected the application as he did "…not consider that either of the matters relied upon by the claimant give rise to an arguable ground upon which to judicially review the defendant's decisions, either to grant a provisional statement to the interested party in respect of a large casino, or to refuse to grant such a statement to the claimant."

Asper's new large casino in Southampton will join those it already operates in Milton Keynes and Stratford, the Genting at the NEC in Birmingham and the recently opened Victoria Gate casino in Leeds, operated by the applicants of the judicial review in Southampton, Global Gaming Ventures. This leaves three of the large casinos yet to be developed, in Great Yarmouth, Middlesbrough and Hull. Provisional statements have been granted to Pleasure and Leisure Corporation, Jomast Developments and Apollo Resorts and Leisure respectively.

Looking forward

At the time of writing this article, we await the much anticipated decision from Court of Appeal in the matter between Greene King and the Gambling Commission regarding the commission's refusal to grant Greene King an operating licence authorising bingo in pubs, and the government's consultation on gaming machine stake and prizes. The consultation, which has been delayed by the election, will be of particular importance to bookmakers, as we are likely to see a significant reduction in the £100 stake of the B2 gaming machines in betting shops.

Nick Arron
Solicitor, Poppleston Allen

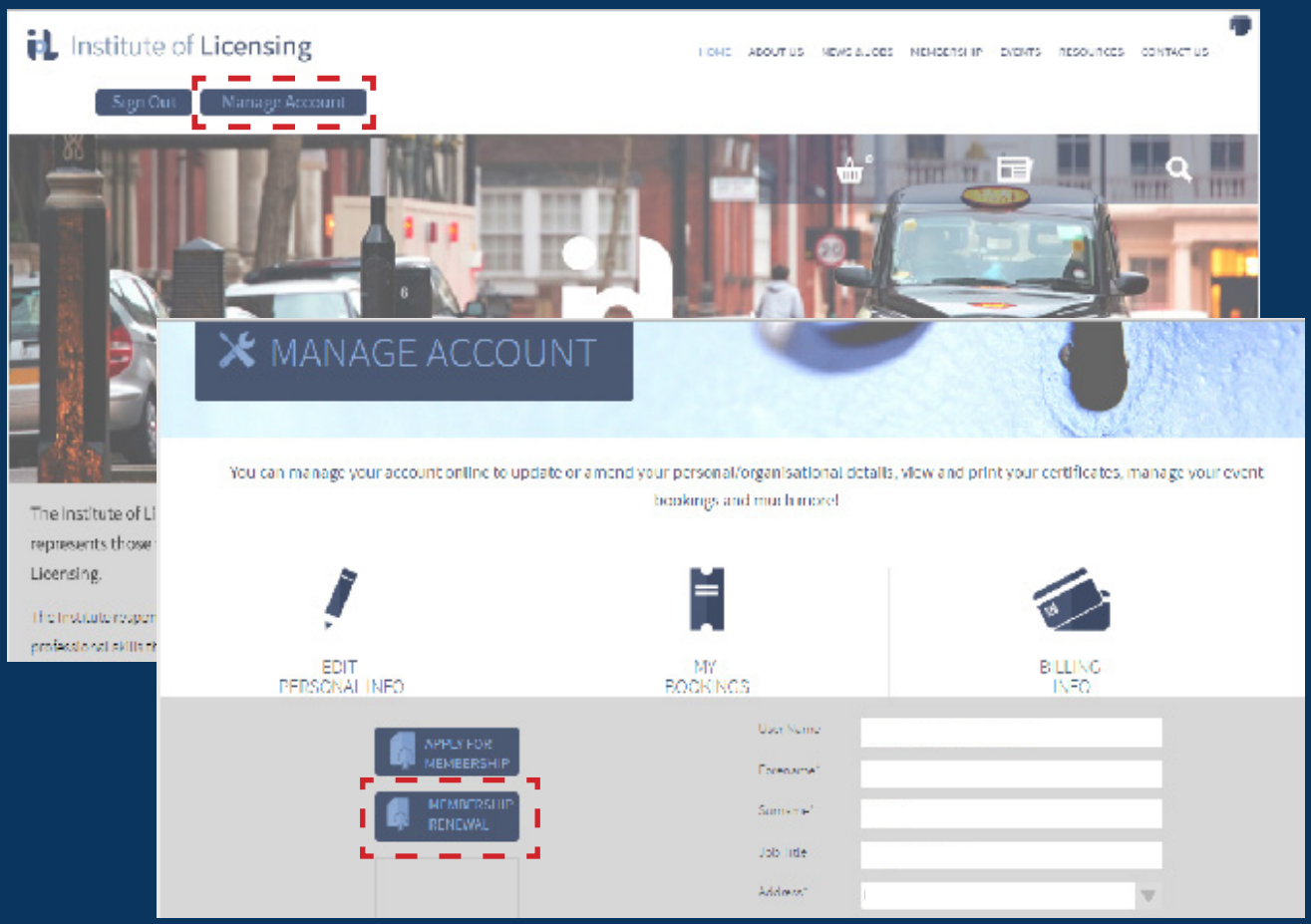
Membership Renewals

Have you paid your membership renewal?

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

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

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



The reform of summary reviews

New guidance on summary reviews helpfully emphasises that they are intended to deal only with the most serious cases, where other less intrusive interventions are inappropriate, writes **Gary Grant**

Reform! Reform! Aren't things bad enough already?

This sentiment, most often attributed to the sumptuously bearded Victorian statesman Lord Salisbury,[1] is all too often well-placed. But not when it relates to the recent and welcome reforms of summary reviews.

From 6 April 2017, ss 136-137 of the Policing and Crime Act 2017 came into operation. They significantly amend the summary review procedures within the Licensing Act 2003.[2] While, on the one hand, the changes strengthen the powers of local authorities to safeguard the public from problematic licensed premises, on the other, they provide a new escape route for operators who face an existential threat if they cannot operate pending the hearing of their appeal against an adverse decision.

This article will consider the recent reforms against the backdrop of the crucial judgement calls required to be taken by police officers and local authorities alike when embarking on the summary review process.

Background to summary reviews

The power to summarily review a premises licence did not form part of the original Licensing Act 2003. This brave new world of licensing heralded the light-touch, liberal and permissive licensing culture which would, our political masters assured us, bring a continental-style café culture to Albion. "Bologna in Birmingham, Madrid in Manchester, why not?" a parliamentary committee optimistically queried.[3] (The answer may well lie in these great cities' respective annual rainfall figures.)

When originally enacted, the principal route to review a premises licence was by way of a "standard" review under ss 51-53 of the Licensing Act 2003. But this process was usually a long and drawn out one. A 28-day consultation period was followed by a review hearing that would take place months after the process had been triggered. Even then, the local authority's final decision at the review hearing would have precisely zero effect pending any appeal by the operator to the over-burdened Magistrates' Courts. In many cases, well over a year could pass-by without a distressed community receiving any effective relief from the antics of a troublemaking premises. These delays could be exploited by certain operators for commercial advantage: the economic benefits of operating a profitable licensed premises pending the appeal hearing often outweighed the costs of funding those proceedings. Meanwhile, the licensing objectives were continuing to be undermined.

It soon became apparent that there was a need for a more robust and expeditious system of reviewing a premises licence to deal with the very worst cases where the operation of a licensed premises seriously threatened public safety particularly, but not exclusively, where guns and knives were being used to perpetuate violence. The legislative opportunity arose in the Violent Crime Reduction Act 2006 which inserted the summary review procedures into the Licensing Act 2003.[4] These new provisions came into force on 1 October 2007.

The summary review process

A summary (or expedited) review application can only be instigated by, or on behalf of, a chief officer of police and only if a senior officer, of superintendent rank or above,[5] has certified that in his opinion a premises was "associated"[6]

1 But also to Lord Palmerston, Lord Liverpool, Lord Chancellor Eldon and Mr Justice Astbury (among other luminaries).

2 See ss 53A-53D.

3 https://www.publications.parliament.uk/pa/cm200203/cmselect/cmodpm/396/39603.htm

4 By inserting s 53A-C.

5 Or an acting or temporary superintendent, see *R(o/a/o FL Trading Ltd) v Royal Borough of Kingston upon Thames* CO/1505/2014, Admin Court, Patterson J.

6 A premises may be "associated" with serious crime or serious disorder on the basis of a single incident and it is not for the licensing authority to adjudicate on whether the superintendent's certificate ought to have been issued or not - see *Lalli v Commissioner of Police for the Metropolis and London Borough of Newham* [2015] EWHC 14 (Admin Crt, 9.1.15).

7 Section 53A(4) of the Licensing Act 2003 defines "serious crime" by reference to s 81 of the Regulation of Investigatory Powers Act 2000, ie, as conduct that (a) constitutes an offence for which a person who is 21 years of age or over with no previous convictions could reasonably be expected to be sentenced to imprisonment for three or more years; or (b) involves the use of violence; or (c) results

with "serious crime"[7] or "serious disorder"[8] or both.

Following the application, the licensing authority must determine the summary review application at a full review hearing within an expedited period of 28 days.[9] However, to ensure that safeguarding measures can be put in place swiftly, within 48 hours[10] of the application being received, the licensing authority[11] must consider whether it is *necessary* to take interim steps pending the determination of the full review.[12] The interim steps to be considered[13] are: a) the modification of the conditions of the premises licence;[14] (b) the exclusion of the sale of alcohol by retail from the scope of the licence; (c) the removal of the designated premises supervisor from the licence; and (d) the suspension of the licence. The focus for interim steps should be on "the immediate measures that are necessary to prevent serious crime or serious disorder occurring"[15] and the authority should consider the "practical implications of compliance".[16] At this initial consideration of interim steps there is no *requirement* for the licensing authority to hold a formal hearing, and a decision may be made by councillors following, for example, a phone conversation or email communications. Nor is there any need, at this stage, to consider any representations from the licence holder[17]. However, if it is "appropriate or feasible" to do so, the authority may afford the licence holder with an opportunity to have their say (orally or in writing) even at this early stage.[18] If time permits, some authorities will try to hastily organise an informal hearing and invite both the police and licence holder to make representations before taking any interim steps, but they do not have to.

However, a voiceless licence holder is not left out in the cold for long. If the authority takes any interim steps then the aggrieved licence holder has a right to challenge them. If he does so, then the authority must hold a formal hearing within the breakneck deadline of 48 hours[19] to consider the appropriateness[20] of the interim steps pending the full review hearing.[21] The licence holder should be given as much notice as is possible in the circumstances to afford him a maximum practicable opportunity to prepare for and attend the hearing.[22] At this interim steps hearing both the licence holder and police can have their say before the licensing sub-committee.

Although participation at the interim steps stage of the summary review process is limited to the police and licence holder, things are very different for the full review hearing which, as mentioned above, must take place within 28 days following the date of receipt of the initial police application.[23] At this stage, all responsible authorities, and any other person (including residents and councillors), may make representations in relation to *any* of the four licensing objectives.[24] Consequently, *any* crime and disorder can be taken into account and not simply the *serious* crime or *serious* disorder which initially triggered the summary review application.[25]

At the full summary review hearing the licensing authority

in substantial financial gain; or (d) is conduct by a large number of persons in pursuit of a common purpose.

8 Serious disorder is not statutorily defined. Paragraph 12.6 of the revised section 182 Guidance to the Licensing Act 2003 (April 2017) states: "There is no definitive list of behaviours that constitute serious disorder, and the matter is one for judgment by the local police. The phrase should be given its plain, ordinary meaning, as is the case under s 12 of the Public Order Act 1986 in which it is also used."

9 Pursuant to s 53A(2)(b) and 53C.

10 Excluding working days: s 53(A)(5).

11 The decision must be taken by councillors and not delegated to officers, see s 182 Guidance, para 12.12.

12 Pursuant to s 53A(2)(a) and 53B. Note the "necessary" threshold only applies to the initial consideration of interim steps. The test then, curiously, drops to the more familiar "appropriate" test for all subsequent decisions in the summary review process. It may be that the different tests are a legislative oversight or, possibly, reflect the fact that the initial consideration of interim steps can take place without the licence holder making any representations and so a higher threshold for intervention at this stage is required as an added protection for the licence holder.

13 Section 53B(3).

14 This includes the alteration or addition or addition of conditions: s 53B(4).

15 Section 182 Guidance, paragraph 12.16. Note the important deletion in the April 2017 revised guidance of these additional words which previously appeared in the March 2015 guidance: "In some circumstances, it might be better to seek suspension of the licence pending the full review, rather than imposing a range of costly conditions or permanent adjustments."

16 Section 182 Guidance, paragraph 12.15.

17 Section 53B(2).

18 Section 182 Guidance, paragraph 12.11 – 12.12.

19 Excluding working days: s 53(B)(10).

20 See fn 12 above.

21 Section 53B(6).

22 See s 182 Guidance, paragraph 12.18.

23 Section 53A(2)(b).

24 Section 53C(2)(a) and (7). The licensing objectives are the prevention of crime and disorder, the prevention of public nuisance, public safety and the protection of children from harm.

25 Strictly speaking, no "trigger incident" is actually required to justify a summary review. It is a premises' "association" with serious crime or serious disorder that matters. For a recent example, see *Club 791 (Kyeyune v London Borough of Croydon.* (DJ Susan Green, Camberwell Green Magistrates Court, 30 March 2017 decision and news article on the Institute of Licensing's website.)

can then make any decision it could have made at a standard review hearing, namely[26]: (a) the modification of the conditions of the premises licence; (b) the exclusion of a licensable activity from the scope of the licence; (c) the removal of the designated premises supervisor from the licence; (d) the suspension of the licence for a period not exceeding three months; or, ultimately, (e) the revocation of the licence.

Summary review usage

Given the effectiveness of the summary review procedures in rapidly dealing with problematic premises, it came as no surprise that they soon became the darling of police licensing officers and, indeed, their superiors. Following a serious high-profile incident at a bar or nightclub a call would often come down the chain of command demanding that "something must be done". Summary reviews, more often than not, fitted the bill.

In the year to 31 March 2016, there were 113 valid police applications for summary review (out of an overall total of 700 completed reviews of all types). Interim steps were taken in response to 91% of police applications. Suspension of the licence was by far the most frequently employed interim step (in 62% of cases). Operating hours were reduced on an interim basis in 21% of cases.[27]

The popularity of summary reviews remains undiminished. As the recent case involving the celebrated London nightclub Fabric highlighted, their impact on the night-time economy can be immense.

The interim steps controversy

Given the potentially fatal impact on a business of being effectively closed down by an interim suspension, or rendered financially unviable by a significant, albeit interim, cut in operating hours, lawyers representing those businesses soon focused on the lawfulness of interim steps. Three issues, in particular, were within the legal cross-hairs: a) how many times could the interim steps be challenged *prior* to the full review hearing?; b) did interim steps survive the full review hearing pending appeal or did they simply fall away?; and c) if they survived, could they be repeatedly challenged even *after* the full review hearing?

Now, if statutory provisions were always crystal clear and comprehensively provided for every possible scenario (or if all humans always behaved in a saintly manner) then there would, God forbid, be little need for lawyers. But the original summary review procedures could claim none of those distinctions.

In relation to the number of times that interim steps could be challenged, the original provisions were silent. They simply indicated that the licence holder could challenge the interim steps. No indication was given as to whether this was a single challenge or multiple challenges. Lawyers abhor a vacuum. It may well be the case that insanity is properly defined as doing the same thing over and over again and expecting different results,[28] but that did not deter certain hyperactive or, depending on your perspective, tenacious licensing lawyers from making repeated, sometimes daily and increasingly desperate challenges to the interim steps prior to the full review hearing. If a licensing authority succumbed to these entreaties then the practical and cost implications of numerous hearings could prove onerous.

Moreover, following a suggestion in some legal and judicial quarters that interim steps could be challenged even after the full review hearing (and pending any appeal) a licence holder's onslaught against interim steps could, theoretically, become infinite until the appeal was finally determined.

The final controversy, and the major one, was this: what was the duration of interim steps? Did "interim steps pending review" do precisely what they said on the tin and expire at the full review hearing? But if they fell away at this stage that might mean that a potentially dangerous premises, whose licence had been suspended as an interim step, could immediately re-open pending appeal, even if its licence had been revoked after proper consideration at the full review hearing. This consequence appeared to many to defeat the purpose of the summary review provisions and make a nonsense of other statutory wording in the relevant sections.

The answer to the interim step conundrum could often be existential in nature for a business. If, for example, an interim suspension lasted beyond the full review hearing until an appeal was determined many months down the line, then few businesses could shoulder the financial burden for long. The costs involved in paying rent under a commercial lease and paying staff salaries while the business was unable to earn revenues were usually prohibitive.

The potential duration of interim steps was complicated by a former provision of the Licensing Act 2003,[29] which had been variously described by judges, with some justification, as "appallingly drafted [and] defying understanding by any

26 Section 53C(3).

27 Home Office statistics.

28 A quote probably misattributed to Albert Einstein, as many clever observations are.

29 The former, and now repealed, s 53C(2)(c).

human being", [30] "badly drafted",[31] and, in a more diplomatic effort, "unhappily expressed".[32]

The original non-statutory guidance on summary reviews, originally published by Department of Culture, Media and Sports in 2007, revealed the draftsman's original intention (or at least that of the DCMS) to be that interim steps *could* be maintained pending any appeal. However, following a non-binding decision of a district judge in Halton Magistrates' Court,[33] the Home Office removed the wording to this effect from revised guidance they published in 2012. Three further non-binding judicial decisions, one from a district judge,[34] the other two from High Court judges in interim applications,[35] indicated that the Halton decision was wrong, and interim steps could continue pending an appeal. However, to add to the general gaiety of life, each judge gave different reasons for believing that to be the case.

Uncertainty in the law is bad for nearly everyone. Clarity on interim steps was needed. Thanks, in part, to the work of members of the Institute of Licensing, whose voice of complaint was heard by Home Office civil servants who attended its national conferences, as well as to several articles published in the *Journal of Licensing* on the issue, at long last the necessary reforms to summary review procedures came to fruition.

The reforms: repeated challenges to interim steps

The first reform introduces a new s 53B(9A) into the summary review provisions and aims to put a brake on repeated, identical challenges to interim steps by operators. Once the initial challenge to interim steps by the licence holder has been determined, then the holder of the premises licence may only make further representations if there has been "a material change in circumstances" since the authority made its determination.[36] What may amount to a material change in circumstances will be a question of fact and judgement in every case. For example, it could well be that a new management team or trusted door supervision team can be inserted into a premises to provide the strong leadership or security that had previously been absent. Alternatively, it may be that further investigations demonstrate that a significant piece of evidence relied on in a police application can be undermined or rebutted. The test of material change of circumstance may not be overly difficult to overcome by an imaginative operator or their lawyer. However, a robust and pragmatic licensing authority should be able to discern whether a minor change, posing as something more, is actually "material" in the context of the reasons why the challenged interim steps were imposed in the first place.

The reforms: duration of interim steps

The second reform provides welcome answers to the earlier question marks about the duration of interim steps. A new s 53D has been inserted into the Licensing Act 2003, and other relevant provisions have been amended, to provide procedural and legal clarity – although not absolute clarity (as will be seen below). At the end of the full review hearing, the licensing authority now has considerable flexibility to impose whatever valid interim steps it considers to be appropriate pending any appeal.

As before, the *final* decision reached at the full review hearing does not have effect pending the determination of the appeal (or, if no appeal is launched, until the expiry of the 21 day period for appealing).[37] However, immediately at the end of the full review hearing the licensing authority must now carry out a "review of the interim steps". In the words of s 53D(1), they must "review any interim steps that have been taken … that have effect on the date of the hearing". In conducting this review, the licensing authority must: (a) consider whether the interim steps are appropriate for the promotion of the licensing objectives; (b) consider any relevant representations; and (c) determine whether to withdraw or modify the interim steps taken.[38]

The interim steps that may be imposed are identical to those available at the initial stage of proceedings.[39] The new provisions are now explicit in stating that these interim steps apply until either: (a) the end of the period for appealing (ie 21 days) has expired; or (b) any appeal to the Magistrates' Court is determined; or (c) any lesser period set down by the authority has expired.[40]

30 *Chief Constable of Cheshire v Gary Oates* (District Judge Knight, Halton Magistrates' Court, 19.12.11).

31 *Sarai v London Borough Hillingdon* CO/3240/2014 (Sir Andrew Collins, Admin Court, 27.8.14).

32 *R (o/a 93 Feet East Ltd) v London Borough of Tower Hamlets* [2013] EWHC 2716 (Dingemans J, Admin Court, 16.7.13)

33 *Oates* (ibid).

34 *Commissioner of the Metropolitan Police v Mayfair Realty Ltd* (District Judge Roscoe, Westminster Magistrates' Court, 22.7.14).

35 *93 Feet East* (ibid) and *Sarai* (ibid).

36 A phrase resonant of the test for making repeated applications under the Bail Act 1976.

37 Section 53C(11).

38 Section 53D(2).

39 Section 53D(3).

40 Section 53D(4). See also s 53D(5) which states: "Any interim steps taken under section 53B in relation to a premises licence cease to have effect when the decision made under section 53C comes into effect". Decisions under s 53C (ie the full review decision) do not come into effect until an appeal has been decided or the appeal period has expired. Presumably, this section has been inserted to cater for the position where at the review of the interim steps under

What is unclear is whether there is any power to impose interim steps at this stage if none were imposed at the outset of the summary review process or if those previously imposed no longer have effect on the date of the full review hearing (because, for example, a suspension was time limited and expired prior to full review hearing). A plain reading of the new provisions suggests that if no interim steps are extant at the time of the full review hearing then there is nothing to "consider, withdraw or modify" and so there is no power to impose any interim steps at this stage. A contrary argument might, at a stretch, seek to imply such a power by relying on the purposive approach of the reforms as expressed in the new guidance on summary reviews which states:[41]

> *To ensure that there are appropriate and proportionate safeguards in place at all times, the licensing authority is required to review any interim steps that it has taken that are in place on the date of the hearing and consider whether it is appropriate for the promotion of the licensing objectives for the steps to remain in place, or if they should be modified or withdrawn.*

In most cases, at the conclusion of a full review hearing a licensing authority will simply amend the interim steps to reflect, so far as possible, their final decision.[42] So, if a licence is revoked at the full hearing it may well be that the review of interim steps concludes that a suspension of the licence pending appeal is the most appropriate step. Similarly, if operating hours are cut, then the interim step might be an identical reduction in hours. It is difficult to foresee circumstances where a licensing authority would be justified in imposing an interim step that is more *severe* than the final decision (and it is likely this action would be swiftly reversed on appeal). However, in exceptional cases it might well be possible for an operator to persuade a licensing authority – perhaps as an act of judicial mercy - to impose interim steps pending appeal that are *less* restrictive than the final decision.

The reforms: appeals against interim steps

As before, there is no right to appeal to the Magistrates' Court any interim steps imposed *prior* to the full review hearing. Any challenge to those steps can only be to the High Court by way of judicial review on public law grounds if time permits - and it usually does not.

However, the government has, rightly, recognised that overly restrictive interim steps in place pending an appeal (such as an unjustified suspension) may well have the effect of denying a licence holder a practical right of appeal. If the business folds during the interim period then any appeal is likely to be discontinued. To remedy this, and as a counter-balance to the flexibility given to licensing authorities to impose interim steps pending appeal, for the first time a licence holder, and indeed also the police, have a right to appeal to the Magistrates' Court against the imposition of interim steps made at the end of the full review hearing.[43] The appeal must be launched within 21 days of the decision on the review of interim steps being notified to the appellant. Then, the Magistrates' Court must "hear" the appeal against the interim steps within 28 days of the commencement of the appeal.[44]

Magistrates' Courts are well used to hearing expedited interim-style hearings. They already do so, for example, in the case of closure orders under the Anti-Social Behaviour, Crime and Policing Act 2014 among many other applications. The question will be how much time will be allocated to such a hearing given the courts' other responsibilities? However, any hearing that may provide a licence holder with some relief from interim steps pending appeal must be better than none. The new guidance, perhaps over optimistically, anticipates that both the appeal against interim steps and the appeal against the final review determination may be listed together in the Magistrates' Court for determination within the requisite 28 days.[45] It awaits to be seen if this hope concentrates the minds of over-burdened court listing officers.

New guidance

Given the importance of summary reviews, and not before time, the original non-statutory guidance has now been incorporated into the statutory section 182 Guidance issued by the secretary of state. It forms the whole of a new chapter 12. The guidance has been amended in some important ways, not only to take into account the new procedures, but also to re-emphasise the need for summary reviews to be used as a last resort and only if genuinely required. For example, the words emphasised below from paragraph 12.2 of the new guidance have been added to the previous version:

> *The powers are aimed at tackling serious crime and serious disorder, in particular (but not exclusively) the use of guns and knives. The powers complement the general procedures in the 2003 Act for tackling crime and disorder associated with licensed premises and should be reserved*

s 53D no withdrawal or modification of the original steps is made and so the original interim steps will continue pending any appeal.

41 Section182 Guidance, paragraph 12.29. Emphasis added.

42 A pragmatic course many licensing authorities have followed even before these reforms came into force.

43 Pursuant to section 53D(9) and paragraph 8B of Part 1 of Schedule 5 to the Licensing Act 2003.

44 The legislation does not expressly require the court to *determine* the appeal within 28 days.

45 Section 182 Guidance, paragraph 12.34.

for the most serious matters which cannot be adequately or otherwise redressed unless urgent action is taken.

The guidance continues to remind police applicants that: "[it] is not expected that this power will be used as a first response to a problem"[46] and "it is important to explain why other powers or actions are not considered to be appropriate".[47]

Though I can only speculate, the new guidance appears to try to clip the wings of the well-known decision of the High Court in *Lalli* [48] (which held that a single incident could justify a police officer's certificate that a premises was associated with serious crime) when it states that:[49]

…it is not expected that this power will be used as a first response to a problem and summary reviews triggered by a single incident are likely to be the exception."

Conclusion

Summary reviews are the sharpest tools in a police licensing officer's box. But, like any tool, if they are misused they risk being blunted and, if mishandled, can cause serious collateral damage. The new guidance, rightly, emphasises the importance of summary reviews being used as they were intended – to deal only with the most serious cases where other less intrusive interventions are inappropriate.

The clarifications on the duration of interim steps and repeated challenges and the expedited right of appeal to the Magistrates' Court are welcome and positive steps. The call to "Reform! Reform!" has, in this instance, prompted positive changes that are likely to be a force for good in licensing.

Gary Grant, MIoL
Barrister, Francis Taylor Building

46 Paragraph 12.7.

47 Paragraph 12.8.

48 *Lalli v Commissioner of Police for the Metropolis and London Borough of Newham* [2015] EWHC 14 (Admin Crt, 9.1.15).

49 Paragraph 12.7. Emphasis added. That said, High Court decisions override the guidance.

In-cab cameras – seeing and hearing is believing

Southampton Council may have lost its in-cab audio-recording appeal against the Information Commissioner but the First-tier Tribunal's decision has clarified just when recording sound as well as vision is permissible, as **Ben Williams** explains

It is difficult to conceive of a time without camera phones and CCTV capturing every moment of our lives. In fact, so prevalent are cameras in modern society that the prospect of a crime not being captured in glorious technicolor is met with bewilderment and disbelief. The days of grainy footage with a minimum three second, frame by frame delay are gone, and most cameras now, however discreet, are able to record high definition real-time footage on a continual loop.

The licensing world has long understood the importance of CCTV and no doubt many readers have had cause to argue about licensing conditions on those exact issues. However, in the context of taxi regulation, the use of in-cab cameras, and more importantly, the requirement for the installation of cameras via council policy, is a relatively new concept, and one which has caused a degree of confusion. Councils have appeared unsure as to whether they could or should adopt such a policy, and if so, to what extent cameras should be required.

The Southampton case

In 2012, the First-tier Tribunal (FTT) (Information Rights) rejected an appeal from Southampton Council against an enforcement notice issued by the Information Commissioner under s 40 of the Data Protection Act 1998. In 2009, following a number of serious violent and sexual offences taking place in or around taxis, the council had resolved that all licensed taxis should be fitted with digital cameras, which made a continuous audio-visual recording of passengers. The Information Commissioner issued an enforcement notice, requiring the council to stop audio recording because it was in breach of the data protection principles in the act (the first principle in particular). The council appealed.

There were two central disputes: firstly, the conclusion that the policy involved the processing of "sensitive personal data" as well as personal data; and secondly, the Information Commissioner's Office (ICO) finding that the recording and retention of audio data was a disproportionate interference with passengers' privacy rights under Article 8 of the European Convention. The FTT rejected the appeal on both points.

The FTT said that it was "unrealistic" to contend that the policy did not involve the processing of "sensitive personal data": taxi users would undoubtedly from time to time discuss their own and others' sex lives, health, politics and so on. The FTT also agreed with the ICO that, although the processing served the legitimate aims of promoting public safety, preventing crime, and protecting persons, it was not proportionate.

The FTT observed that there were two important points to note. Firstly, the legitimate aim could only be directed at "taxi-related" crime: the fact that police had been able to obtain useful evidence about other crimes could not therefore come into the balance as a benefit. Secondly, the relevant benefits and non-benefits were only the marginal ones coming from audio recording, because no complaint was made about CCTV in taxis. Against that background, the policy's significant interference with privacy rights outweighed any resulting benefits. The FTT was particularly impressed by arguments about "function creep", ie, the use of the system for other purposes by (say) the police; and also by the danger that someone would access and make improper use of the very extensive recorded information. Finally, the FTT said that the ICO was entitled to serve an enforcement notice, given the high public importance of the case.

Plainly, there was no dispute as to the entirely legitimate intention of such continuous audio recordings. The FTT took the decision that the method was open to abuse and this seems to have weighed heavily in the decision-making process. It is plain that this decision impacts on all forms of surveillance performed by public bodies (ie, not just in the context of taxi licensing and enforcement).

The FTT therefore confirmed that there was absolutely no reason why CCTV of itself was not permissible and remarked "...we accept that the existence of CCTV in taxis tends to deter crime and assists in its investigation when it does occur and similarly that it assists the council in relation to its function of licensing only suitable taxi drivers…".

In ruling against the council, the FTT did provide a ray of

light in suggesting that a more targeted scheme may have been acceptable. For example, if audio recordings were being taken at certain times of day, for certain types of customer, or by operation of a panic button. In the FTT's words, this less intrusive scheme was "an acceptable alternative".

As a result of that decision, Southampton revised its policy to allow audio recordings to be made alongside the visual recordings, activated by the driver for a period of five minutes. The cameras were required to meet a stated specification and a download policy was also adopted. Transport for London also adopted the ICO's advice in relation to audio recording in its *Guidelines for CCTV systems in licensed London taxis and private hire vehicles* by introducing the so-called "panic button". Other local authorities then followed suit.

The emergence of the SCC

Pursuant to the Protection of Freedoms Act 2012, the office of the Surveillance Camera Commissioner (SCC) was created to encourage compliance with the surveillance camera code of practice launched in June 2013. Although the commissioner has no enforcement or inspection powers, he works with relevant authorities to make them aware of their duty to have regard to the code by providing, among other things, advice on the effective, appropriate, proportionate and transparent use of surveillance camera systems.

On 26 October 2015, the commissioner made an address to the National Taxi Association stating: "In general CCTV is welcomed by the public – they recognise its value in keeping them safe, protecting them. My predecessor used a phrase I like, 'surveillance by consent', to mean the public consent to being observed where there is a pressing need and it is in their best interests. But this consent is fragile and there needs to be consultation about how, where and why cameras are deployed."

As the commissioner made clear in this address, licensing schemes that are run by local authorities are caught by the code, and therefore all of a local authority's functions relating to surveillance fall under the code. Section 1.15 of the code explains the responsibilities of a local authority when exercising its licensing conditions. If surveillance camera systems are to be mandated as part of the conditions of the licence, then it will require a strong justification and must be kept under regular review. The code also warns that a blanket approach "is likely to give rise to concerns about the proportionality".

The commissioner made it clear that he would support a local authority that sought to conform to the requirements of the code, before touching on the issue of vulnerable passengers. He stated: "Taxis are used to transport some of the most vulnerable in our society. They are used to take kids to school – escort vulnerable adults. Most of this is done between the driver and passenger. What happens if something goes wrong? What can and does go wrong? I am unsighted on the issues and potential solutions. Would CCTV in cabs actually help solve the problem? This is a genuine question. Some people think that CCTV is the answer to every problem. I disagree. Whilst it can and does work in various incidents and circumstances, it is not always the answer."

The Rotherham experience

The issues that arose in Rotherham are well documented. In August 2014, Professor Alexis Jay published her report into child sexual exploitation in the town. Consequently, the secretary of state determined to put into place an intervention which removed certain decision-making powers from the council and placed them in the hands of a team of commissioners. It is against that background that the council sought to introduce a stringent taxi policy. In the past two years Rotherham has litigated a large number of appeals, and has been successful in the vast majority of them. It is worth noting that the district judge, who heard many of the first instance appeals, and thereafter a number of Crown Court judges, remarked that there was every reason to adopt a stringent policy when it came to taxi regulation.

The council's policy was introduced in July 2015 and an implementation scheme was approved by the commissioner in August 2015 requiring the implementation of CCTV cameras in vehicles by 6 January 2016. The policy required all vehicles to be fitted with CCTV (audio and visual) to a specification that met or exceeded the council's requirements. While visual recording must be made at all times, audio recording was only required when a child or vulnerable adult was in the vehicle and unaccompanied or where there was a driver / passenger dispute, in which case the CCTV could be activated by the passenger or the driver and must continue until deactivated.

Having passed through a consultation period unscathed and been implemented fully, the policy was challenged by seven licensed drivers mounting a group appeal. They sought to challenge the fact that such a requirement was embodied in conditions attached to their licences - which meant the only ground of appeal open to them was whether such conditions were reasonably necessary.

The appeal was doomed from the outset given that it was a blatant attack on a policy which the court was duty bound to follow *(Westminster City Council R (on the application of) v Middlesex Crown Court and Chorion Plc* [2002] EWHC 1104 (Admin) applied). The council argued that it was a judicial review through the back door, and ultimately the district

judge rejected the appeal with little difficulty.

What was interesting about the evidence put forward by the lead appellant, was that he conceded in evidence that the CCTV was an important safeguard for him and his colleagues, who were collectively of the view that drivers were "sitting ducks" for spurious complaints. It was also abundantly clear that the overwhelming majority of the trade supported the CCTV camera policy. The council was able to show that the set up costs were effectively cost neutral, and in any event relatively modest, contrary to some assertions by the appellants.

So, where are we?

My experiences of the last three years in respect of taxi regulation and appeals is that the courts offer little resistance to the notion that the regulated taxi trade ought to uphold the very highest of standards. On the rare occasion that a Magistrates' Court has incorrectly applied *Hope and Glory* to the appeal process, I have seen the Crown Court quickly overturn such cases. In order to properly regulate, councils are moving to tighten up their taxi policies. The introduction of mandatory safeguarding training, membership of the DBS update service and mandatory installation of CCTV into vehicles are all becoming commonplace amid the wide range of taxi policies in existence.

It is difficult to see how anyone can consider such measures a bad idea. We would all wish our loved ones to be safe when alone in the company of a taxi driver. Provided local authorities follow a proper consultative exercise, I also believe that the majority of drivers welcome the same. Many are sick and tired of being tainted by the actions of a few. CCTV is yet another natural step towards achieving that safe environment, and ensuring that drivers and passengers behave properly.

I reiterate, now is the right time to strengthen existing policy, to ensure that it represents the best version of itself. To that end, a requirement for CCTV cameras in taxis is entirely legitimate. Audio recording in specified circumstances is entirely legitimate, and setting minimum technological requirements for such cameras is also entirely legitimate. In writing such a policy, I would urge councils to research the policies that are already in place. It seems to me entirely sensible that neighbouring authorities would wish to adopt a relatively consistent approach to one another.

If a local authority is minded to introduce such a policy, it should be aware that proportionality is an essential ingredient of a reasonable and lawful policy and should also be mindful that a number of safeguarding measures operating together may complement one another and work better overall.

Ben Williams
Barrister, Kings Chambers

Somethings *should* change

Susanna FitzGerald QC looks beyond the House of Lord's controversial calls and discerns many sensible proposals including reforming the applications and appeals processes

Well! Talk about stirring it up! Combine licensing and planning! Now I appreciate there were horror stories given in evidence to the House of Lords Select Committee, and I know that there are more out there, but there are horror stories that can be told about all tribunals. That does not mean you should jump into wholesale change: if it is not working as it is, surely efforts should be made to try to fix it first?

It is most regrettable that the committee did not hear any evidence about how planning works in practice, where I understand there are plenty of horror stories to be told as well.Considerable evidence should be collated about the necessity for the proposed change before anything is decided. How would those two systems work together? Both areas are highly specialised, and licensing officers require different skills and knowledge to planning officers. It would need a major change in the law, and primary legislation, and this should not be rushed into.

However, there are no doubt a variety of ways in which the two systems can work with each other much more closely than at present, with success and benefits for all. For example, it is close to scandalous that a simple licensing applications system is not fully online and operational in all councils already, including payment; think of the efficiencies and benefits to all sides. Win / win all round. So the recommendation that the Gov.UK system should be improved is welcome, but I understand that there is unlikely to be any money forthcoming for this. However, I-Dox already provides a system being used by some councils for planning that has a licensing application ready to go. I urge all councils to check it out. Then all we need is for the government to get rid of anything that would require a paper application, eg photographs that have to be signed on the back: is it 2017 or what? Additionally, I have thought for some time that the appeals procedure is no longer fit for purpose. Licensing appeals now resemble high court trials, with directions and date fixing hearings, lengthy skeleton arguments and so on, which puts the costs way beyond the pockets of many would-be appellants, particularly the smaller operators, and especially with the added danger of a possible adverse costs order. This, too, all in front of a tribunal often with little or no licensing experience.

The small number of appeals suggests two things to me: that most people are put off appealing for the reasons above, and / or the ones that do go to appeal are settled before the hearing. This can be after large costs have been incurred. The committee recommends that licensing appeals should be heard by specialist licensing inspectors or arbitrators (similar to planning inspectors). I would go further and suggest there should be a mandatory mediation / arbitration process before an appeal proper can be begun. This mediation / arbitration should have the minimum of formality and require very simple paperwork, and go before an experienced licensing arbitrator. It can either be done on paper, or in person in a mediation. In any case where this might be a fruitless exercise, which would only add an extra layer of cost because there is no way that the case can be settled, there could be a mutual agreement between the parties for a "leap frog" to avoid the mediation layer and go straight to appeal.

It also seems deeply regrettable that perfectly well run licensed premises should have their businesses affected or even blighted because a developer decides to turn that semi-derelict warehouse near the venue into smart flats. All licensing practitioners, I have no doubt, have had experience of that. If someone, eg a developer, wishes to do something like that, the developer should be responsible for minimising the nuisance to his new flats, rather than possibly debilitating conditions having to be put on the existing business, or its licence being removed all together. I appreciate that there may be situations where the incoming development cannot do enough to prevent the nuisance or problems to, say, the prospective residents, but at least this would prevent a significant number of venues from being affected. That of course works the other way too –any new licensed outlet should be equally responsible for preventing nuisance, whether by noise or disorder, and the planning and licensing processes currently take care of that.

Do not let us be blinded by the controversy over the licensing / planning suggestion, but let us support the excellent recommendations made in the report, including the requirement for extra training for councillors, which I suggest should be mandatory, and for police. I also heartily support the replacement of late night levies with initiatives such as BIDs, Best Bar None, Purple Flag and others.

Susanna FitzGerald QC, MIoL
Barrister, One Essex Court

Institute of Licensing News

Further development for the IoL

We are delighted to announce that the IoL has agreed a lease with Egerton House Wirral Limited for office accommodation, with the intention of providing a 9-5 manned office facility and customer contact centre.

This is part of our drive to continue to develop the IoL, and its services to members including the ongoing development of training and qualifications and our core objectives of raising the professionalism of licensing across all practitioners.

The office will be manned by a small administration team and we will keep members informed once we have recruited the staff.

House of Lords Select Committee Review of the LA03

As discussed in several articles in this *Journal*, the House of Lords Select Committee published its report on the review of the Licensing Act 2003 on 4 April 2017. There are a number of recommendations within the report which if taken forward will alter the licensing landscape significantly.

There was a clear theme throughout the report of promoting clarity, consistency and transparency within the licensing system, whether that is through the decisions of sub-committees, the Temporary Event Notices system, the application process or a personal licence database. The IoL supports any improvements to the licensing system that promote consistency and would support its members in giving or receiving a better-quality service. The report clearly highlights some recommendations as to how this can be achieved.

The IoL strives for best practice, and the interests of all participants in the licensing system, and looks forward to engaging fully in the ongoing debate as to which of the report recommendations should be promoted to deliver true improvements to the regime that we value.

The IoL has consulted members to gather views on the recommendations within the report, but at the time of writing this is in progress. We will report on the findings of that survey in due course.

The IoL was delighted to run a series of free training workshops with Sarah Clover, Barrister at Kings Chambers, and IoL Director, talking to delegates about the work of the Select Committee and the findings / recommendations within the report. The workshops were very well attended both by members and non-members, providing a first-hand account of the biggest review of alcohol licensing in the last 12 years.

Membership renewals are now overdue

All our membership renewals were sent out before April, and a big thank you to all who have renewed and paid. If you have not received yours, please email membership@instituteoflicensing.org. If you have not paid and wish to pay by card or you wish to set up an annual direct debit, contact our Accounts Manager, Caroline Day, on 0845 287 1347 or accounts@instituteoflicensing.org. To view the benefits of membership, view our member benefits pages http://www.instituteoflicensing.org/member_benefits.html .

The team (and the regions) will continue to work hard to increase member benefits and to provide the best membership service we can. The team are always open to suggestions for improvements which can be emailed to membership@instituteoflicensing.org.

Jeremy Allen Award 2017 – nomination period now open

We are delighted to continue the Jeremy Allen Award, now in its seventh year, in partnership with the Poppleston Allen Solicitors.

This prestigious award is open to anyone working in licensing and related fields and seeks to recognise and award exceptional practitioners. Crucially, entry to the award is by third party nomination, which in itself is a tribute to the nominee in that they have been put forward by colleagues in recognition and out of respect to their professionalism and achievements.

Nominations for the 2017 award are now open, and should be submitted by no later than **8 September 2017.** The criteria are shown below and we look forward to receiving nominations from you. Please email nominations to awards@instituteoflicensing.org and confirm that the nominee is aware and happy to be put forward.

Award criteria

The award is a tribute to excellence in licensing and will be given to practitioners who have made a notable difference by consistently going the extra mile. This might include:

- Local authority practitioners for positively and consistently assisting applicants by going through their licence applications with them and offering pragmatic assistance / giving advice.
- Practitioners instigating mediation between industry applicants, local authorities, responsible authorities and / or local residents to discuss areas of concern / to enhance mutual understanding between parties.
- Practitioners instigating or contributing to local initiatives relevant to licensing and /or the night-time economy. This could include, for example, local pubwatch groups, BIDS, Purple Flag initiatives etc.
- Practitioners using licensing to make a difference.
- Regulators providing guidance to local residents and / or licensees.
- Practitioners' involvement with national initiatives, engagement with Government departments / national bodies, policy forums etc.
- Practitioners' provision of local training / information sharing.
- Private practitioners working with regulators to make a difference in licensing.
- Responsible authorities taking a stepped approach to achieving compliance and working with industry practitioners to avoid the need for formal enforcement.
- Regulators making regular informal visits to licensed premises to engage with industry operators in order to provide information and advice in complying with legal licensing requirements.
- Regulators undertaking work experience initiatives to gain a more in-depth understanding of industry issues, or industry practitioners undertaking work experience initiatives to gain a more in-depth understanding of regulatory issues.
- Practitioners embracing and developing training initiatives / qualifications.
- Elected councillors promoting change within local authorities / industry areas; showing a real interest and getting involved in the licensing world.

The annual award seeks to recognise individuals for whom licensing is a vocation rather than just a job. Everyone nominated for this award should feel very proud that others have recognised their commitment and dedication.

Fellow and Companion nominations

Don't forget that in addition to the Jeremy Allen Award, the IoL has a Fellowship category for members following nomination and award.

Fellowship is intended for individuals who have made exceptional contributions to licensing and /or related fields; Companionship is intended for individuals who have substantially advanced the general field of licensing.

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 delegated committee that the individual:

- Is a member of the Institute or meets the criteria for membership; and
- Has 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.

Nominations are welcomed at any time and should be emailed to awards@instituteoflicensing.org

All awards are presented annually at the Gala Dinner during the IoL's National Training Conference, this year at the Holiday Inn, Stratford-upon-Avon on the evening of Thursday 17 November.

National Licensing Week

National Licensing Week started in 2016 as a means of highlighting and promoting the importance of licensing in everyday life. The theme for 2016 was "Licensing is everywhere" and nationally we have had teams of people getting involved. There were job swaps from Government Departments, local authorities and the trade. The Gambling Commission organised a national day of action and there was a lot of social media activity from all sides promoting the week.

Building on the success of 2016, this year's National Licensing Week was again held over 5 days, from 19 to 23 June 2017, with each day focusing on the following areas in connection with licensing and its positive impact on everyday lives – every day.

- Day 1 – Positive Partnership
- Day 2 – Tourism & Leisure
- Day 3 – Home & Family
- Day 4 – Night time
- Day 5 – Business & Leisure

This year saw a big increase in the number of national trade bodies, government departments, private sector and local authorities supporting the initiative.

A big thank you to everyone who contributed to NLW this year whether it was a job swap, partnering the event or promoting the daily themes, we look forward to a bigger and better NLW 2018!

National Training Day 2017

The IoL's National Training Day took place during National Licensing Week on Wednesday 21 June at the Crowne Plaza in Stratford-upon-Avon. A huge thank you goes to our speakers who delivered an excellent training day for all concerned.

National Training Conference 2017

The IoL's signature event, the National Training Conference (NTC) returns to the Crowne Plaza at Stratford-upon-Avon for the second year running. The conference dates are 15 – 17 November with the option to arrive on Tuesday 14th November.

As always, the NTC programme is deliberately crafted to give delegates many different options in relation to topics and speakers. This allows individuals to tailor their training experience to best suit their interests / training needs. There will be a packed agenda each day and evening activities as well to maximise networking opportunities and to enhance delegate enjoyment of the event overall.

The NTC is supported by a range of sponsors who support the event, allowing the IoL to keep training fees as low as possible. With over 50 speakers involved during the course of the event, this conference is one of a kind totalling 12 hours of training and discussion. Confirmed speakers are listed on the website and we will continue to keep the programme under review to ensure that all the latest and forthcoming changes are covered. Our thanks to all our speakers and sponsors who help to make this the unmissable conference for licensing practitioners.

The days are themed to ensure there is always a training topic that will be of interest to delegates. The programme can be viewed on the Events page of the website.

We are looking forward to seeing all our delegates at the event. It is quite simply a joy to run this event and be able to welcome delegates old and new to join us for 3 days of excellent training with unrivalled networking opportunities.

The Early Bird Discount ends on 31 August so be sure to book your place now.

Event queries and booking requests should be directed to events@instituteoflicensing.org When emailing to book your place, please include details of how many days and nights you wish to book, and provide a purchase order number if you use a purchase ordering system.

Consultations

DCLG Review of park homes legislation - call for evidence, Part 1
(closed 27 May 2017)

The DCLG have issued a call for evidence to assist in the review of the Mobile Homes Act 2013 which made significant changes to the law on park homes. The government gave a commitment to review this in 2017.

The review, which calls for evidence about practices in the sector and the effectiveness of legislation, is in 2 parts.

Part 1 of the review was a call for evidence on the fairness of charges, the transparency of site ownership and on experience of harassment, IoL members were consulted and responses reported back to the DCLG. We now await part 2, which is a call of evidence on how effective local authority licensing has been, how well the procedures for selling mobile homes, making site rules and pitch fee reviews are working and whether 'fit and proper' controls need to be applied in the sector. We will consult members regarding Part 2 once open.

Regional Officer Focus

Suzanne Fisher, West Midlands Region

I am secretary for the West Midlands Region, which is an active region. We hold four regional meetings a year which carry CPD points and are free to members. The region also hosts additional training on subjects requested by members at a subsidised rate for West Midlands members.

Organising the four regional meetings we hold each year involves setting dates, finding venues for the meetings, liaising with the venues and sponsors regarding arrangements for the meetings, finding speakers and setting an agenda. Our committee members all have a part to play in the organisation and delivery of these events. This year we are also including an Open Topic item on the agenda where members can send questions in advance to the committee for discussion at the meetings. Our region also pays for non-residential places at the Institute's annual National Training Conference for two of the region's members.

The job of a licensing officer cannot be done in isolation. My involvement with the Institute of Licensing both as a member and as a regional officer has been absolutely invaluable to me as a licensing officer. The Institute has, and continues to, train me as a professional and keeps me up-to-date with the all too frequent amendments to and introduction of new legislation, enabling me to do the my job to the best of my ability for the benefit of my employee.

The value of networking, sharing best practice, licensing policies and problems with other licensing professionals cannot be underestimated. Meeting other licensing officers and practitioners at both Regional and National events helps hugely with delivering the day job. Just knowing that you are not on your own out there and that you can pick up the phone to speak to a colleague, who you know has experienced a similar situation, makes it worth being a member of the Institute.

If you would like to get involved in your region or find our more about who your Regional Officers are visit the homepage of our website **www.instituteoflicensing.org** and select your region from the list on the right hand side.

- EASTERN
- EAST MIDLANDS
- HOME COUNTIES
- LONDON
- NORTHERN IRELAND
- NORTH EAST
- NORTH WEST
- SCOTLAND
- SOUTH EAST
- SOUTH WEST
- WALES
- WEST MIDLANDS

Claire Perry

It is with regret that we announce that Claire passed away suddenly on Sunday 21 May after a short illness. Claire was well known in licensing circles and has served as a regional officer for the South East region for several years.

George Barnes, South East Regional Chair said: "Claire was a highly respected Licensing Officer who pioneered partnership working between local authorities. She was a committed member of the IoL and contributed greatly to the organisation and activities of the South East Region. Claire will be greatly missed by all those who were fortunate to know and work with her. Our thoughts and prayers are with Claire's family, friends and colleagues at this sad time."

Leave well alone

A curate's egg is the assessment by **Philip Kolvin QC** of the House of Lords licensing report, and the good parts open up training opportunities for the Institute

The House of Lords Select Committee on the Licensing Act 2003 published its post-legislative scrutiny report on 4 April 2017. The headline in the report summary, and therefore in press accounts, was that the Licensing Act was basically flawed and in need of a "radical comprehensive overhaul". Practitioners' eyes will have been drawn by the proposal to scrap licensing committees and pass their powers to planning committees, with appeals to planning inspectors.

Sticking my neck out, this will not happen, and not just because this Institute opposes it. It would require primary legislation from a government with one or two other things on its mind. It gives insufficient weight to the fact that licensing committees already perform important regulatory functions in relation to many fields, including gambling and taxis. And in any case, planning departments and committees are fully occupied with planning functions and are unlikely to welcome or easily absorb the extra work. If, as claimed, the issue is training, the answer is to train, something the Institute knows more than a little about: opportunity beckons. Similarly for appeals, the answer to lengthy hearings before inexperienced tribunals is to appoint a small number of district judges regionally who can case manage the proceeding to ensure expedition both before and at the appeal hearing.

The headline notwithstanding, the fine grain of the report has much to commend it. There is indeed an argument for better training for licensing committee members and police licensing officers, to promote expertise and consistency in this important sector of our economy; albeit that, as the select committee itself observed, the few who made trenchant criticisms of the behaviour of councillors are likely to be outweighed (perhaps a thousand fold) by the many whose experience has been neutral or positive.

The calls for the addition of further licensing objectives of the "good for culture" variety are rightly waved aside: they ignore the fact that the starting point is that the licence should be granted, and should only be refused if this is appropriate to further one of the four regulatory objectives. Adding cultural objectives does unnecessary violence to this structure. The place where the wider vision should be considered is at the planning and licensing policy stage, where a good authority will develop its vision, working out and declaring what it wants, where it should go and, presumptively at least, what hours it can support. Similarly, the committee discounted health as an objective: this is adequately covered by other legislation. It was, then, arguably inconsistent for the committee to support a requirement for a disabled access and facilities statement, condemning the view of the Home Office junior minister that a voluntary code was sufficient as "remarkably complacent". The better answer would have been that this is all governed by duties on service providers under the Equality Act 2010, on all businesses by fire regulation, and at times of building works by building departments. It does not need second guessing by a licensing authority.

As regards off-licences, the committee viewed the much-heralded responsibility deal, including voluntary restriction of super-strength products, as a dead letter, due to low take-up. Yet it was unimpressed with the idea of local schemes controlling the promotion of high strength products, and positively antithetical to the group review intervention power (GRIP), which will be welcomed by all those of the "save us from further legislation" persuasion. Again, perhaps paradoxically, it supported a standard national approach to controls as practised in Scotland, including a ban on buy one, get one free offers. As was discovered during the evolution of the mandatory code, these one size fits all approaches to regulation are very difficult to formulate; apart from a set of lowest common denominator conditions, these things really are best left to local regulation of local issues in local places.

In respect of minimum unit pricing, the committee accepts that the legality of the measure is still to be determined in relation to Scotland by the Supreme Court, and then that it will be many years until the Scottish government can appraise the success of the measure. Even then, the econometrics for Scottish drinkers will not necessarily cross-apply with precision. Therefore, the committee's recommendation that if the policy works in Scotland it should be introduced in England and Wales too can be viewed as a long term aspiration at best.

The committee dipped its toe into the broiling sea of temporary event notices. It might have transposed Churchill's acid observation that democracy is the worst form of government except for all the others. Trying to balance out a desire for greater community consultation with a concern that the process should not be elongated, it came up with

a compromise that licensing authorities should be able to object, which I doubt is generally wanted and severely doubt will happen. It made a helpful suggestion that conditions could be added during a hearing. And it recommended early euthanasia for community and ancillary sellers' notices, on the basis that the measure feels too much like parliamentary meddling.

It might have, but did not, say the same about putting cumulative impact policies (CIPS) on a statutory footing, as provided for in the Policing and Crime Act 2017. CIPS are certainly one way of skinning a cat, but they are one of many. Licensing policies themselves are statutory documents: it is a skewed approach to elevate one element and give it special statutory status. But it did not pull its punches regarding the perennially vexed question of whether interim steps survive the final decision: the solution in the 2017 Act is still Kafkaesque. It would be far better, it said, for the authority to determine whether its final decision should have immediate effect than to give interim steps an after-life beyond the final decision. Hurrah for common sense.

As regards the wider vision for the night time economy, the committee welcomed the notion of champions of the late night sector, as happens in various European cities and now recently in London, through a night czar and the chair of the Night Time Commission. It felt, however, that the roles needed better delineation and transparency. It was clear that EMROs had had their chance and now should be consigned to history. Nor was it much impressed with the late night levy: it should go but, if it survives, the 70:30 levy split in favour of police should be abolished. Pleasingly, it endorsed the excellent voluntary schemes which have grown up over the last two decades, including BIDS, Best Bar None and Purple Flag. Every successful night time economy is built on partnership: regulation can only set the basic ground rules - it is no guarantor of a successful and thriving night time sector.

Philip Kolvin QC, CIoL
Barrister, Cornerstone Barristers

Well, I didn't see that coming

Licensing committees may not get everything right all the time, but do the members of the House of Lords committee think planning committees are the pinnacle of perfection? **Richard Brown** is sceptical

The House of Lord's Select Committee on the Licensing Act 2003 published its report on 4 April, following its post-legislative scrutiny of the act. The report contained 73 conclusions and recommendations which, for those who do not wish to trawl through all 161 pages, can be found on pages 154-161.

I wrote in the last *Journal* that the select committee was "clearly extremely well informed". It has waded through a considerable amount of written material, evincing a multitude of views on the myriad workings of the act, and heard a great deal of oral evidence. There are a number of conclusions and recommendations which will be welcomed by many. However, it is fair to say that paragraphs five, six and seven of the conclusions and recommendations have attracted the most attention, debate and, in some quarters, no little disquiet.

The "headline" recommendation is that the functions of local authority licensing committees and sub-committees should be transferred to the planning committees.[1] Anyone who had read the written or oral evidence did not need a crystal ball to see that the committee's report would address the lack of integration on which many witnesses had commented. What is unexpected and thought-provoking is the recommendations made. Far from suggesting ways in which planning and licensing could merely be more closely integrated, the report states that it is "logical to look at licensing as an extension of the planning process…".[2]

I was hopeful that the report would address the question of whether the right balance exists, and whether residents engage effectively in the licensing regime, in more detail than it did. The question seems to be dealt with largely in the context of the evidence the Lords heard about inconsistent / poor decision-making and practices by licensing sub-committees and the implicit assumption that planning sub-committees would produce "better' outcomes". This led to the conclusion that the licensing committees should be taken and carved in to something new.

There are, I would suggest, two obvious questions arising from the report from an "interested party" point of view:

1. Are the criticisms of licensing committees and sub-committees fair?

The select committee received evidence[3] about inconsistencies in decision-making and questionable procedural practices. Although its members acknowledged that they were "perhaps more likely to receive evidence critical of the way the licence process operates",[4] they seem nevertheless to have afforded this evidence considerable weight in developing their thinking and reaching their conclusion. They conclude that "clearly reform of the system is essential". Yet it is also stated that "most witnesses from a variety of backgrounds thought the act was working well, though all had suggestions for improvement...".[5]

The Lords suggest that it would have been sensible to give the powers of the licensing justices to the planning committees under the 2003 Act rather than set up a "new and untried system of licensing committees with a new and different procedure, new staffing, and a new appellate process".

However, the 2003 Act did not only transfer one set of powers or one regulatory regime. It was a consolidating act, bringing six previously separate licensing regimes under the umbrella of one "premises licence". Furthermore, no fewer than five of these six regimes were already regulated by local authorities and decisions made by licensing committees, for example public entertainment licences. They were therefore already familiar with the sorts of issues that subsequently found expression in the statutory licensing objectives.

1 For brevity I have used "licensing committees" as a catch-all for committees and sub-committees.

2 Report page 44, para 152.

3 It is somewhat ironic that the "evidence" heard regarding the perceived inadequacies of some licensing committees was itself (of necessity) anecdotal.

4 Report page 154, para 5.

5 Report page 29, para 95

Perceived "inconsistency" of licensing committees was a recurrent theme of the report. I do not doubt that this is an issue in some places. Yet in a sense, hearings are not necessarily supposed to produce "consistent" decisions. A hearing may involve considering a wide range of information and evidence which can be subject to many variables and which renders different (or, if you like, "inconsistent") decisions on what look like, on paper, similar applications, perfectly appropriate. Each application should be dealt with on its merits in accordance with a wide variety of potential factors, some of which may pertain on one application but not on another, similar, application. This is precisely the point of local decision-making, when done well. If it is not being done well, then surely other solutions should be explored before the licensing baby is thrown out with the planning bath water?

2. Would transferring the functions as suggested mean that "balance" was better achieved and that residents were able to engage more effectively?

The select committee convened a panel of four witnesses specifically to consider the issue of the integration of planning and licensing. The witnesses were asked "could you live with a situation where the two procedures were merged under the planning committee...?" Of the four witnesses, three expressed at least a degree of support. One (a licensing solicitor) was against the proposal. I shall put it no more strongly than saying this is a small sample on which to reach such a radical conclusion.

The committee's view, having heard from the four witnesses, is that the concerns of residents are "more likely to be adequately addressed in the planning process". Further, they believed that there is a case for considering whether its proposal for a single committee process might not, at the same time as helping to integrate licensing and planning policy, also deal with the "inadequacies" of licensing committees.[6] This is strong stuff, particularly if one considers that the same councillors often have experience of sitting on both committees, sometimes at the same time.

The following is a selection of anecdotes harvested from a cursory online search using a well-known search engine.

'I'm very disappointed as the way things are decided is not fair. We only get three minutes to express our views and the committee doesn't care at all what we have to say.'

'[The applicants] therefore consider that they were placed at an unfair advantage having been restricted to a 15 minute presentation and (oneway) answer session only.'

'He lobbied all six councillors on the sub-committee but that none declared this or excused themselves from the decision-making process.'

'I saw some [ ] get waved through the appeal process with pathetic ease.'

'The residents are particularly angry at the way [the Chair] ran the meeting. "There were shocking scenes at the committee meeting," they said. "We will be taking this further."'

'You will not be allowed to complete your presentation if the time limit expires.'

Each quote above is startlingly similar to criticisms of the licensing process which the select committee heard. However, each statement above concerns the planning process.

Of course, as the report makes clear, any changes would not happen overnight. They would be subject, surely, to further comprehensive consultation. Yet it would be remiss not to question whether the select committee heard sufficient evidence about planning committees and objectors' involvement in the process. This is not a criticism; the views of the committee's members quite properly evolved and were shaped by the evidence they heard throughout their inquiry.

However, if the recommendation is to be taken further, the workings of planning committees should be subject to the same scrutiny as that of licensing committees. I suspect that many of the criticisms would be repeated. I would also hope that the many examples of dedicated, knowledgeable and fair licensing committees and councillors would be put forward.

Others will be far better qualified than I to assess the relative merits of licensing committees and planning committees. There is plenty of evidence that planning committee procedures and practice seem just as inconsistent and subject to local proclivities as the criticisms of licensing committees. Some planning committees allow three minutes for objectors to speak. Some allow five minutes for "major" applications. Some say that the time must be divided between all those objectors who wish to speak. Some do not permit any objectors to speak at all.

The report states that "…the other three members of the panel all stressed the additional opportunity residents have to put their views…". This seems to have been based on the evidence the select committee heard that there was

6 Report page 38, para 123.

more opportunity for mediation and discussion before the committee stage in planning. Even if this is the case in general, in practice the fundamental point is that it does not have to be the case. Indeed, a solution - increased training and increased resources through locally set fees - is provided by the select committee itself.

There is no doubt that certain licensing issues and applications / decisions prompt irate reactions from the "losing" party. There is a danger that "confirmation bias" comes in to play when the "losing" party comes to assess the licensing committee process. This does not, I would suggest, lead inexorably to the conclusion that a licensing committee has erred. If the overriding objective of the licensing process was to reach a solution where there is not a "winner" or a "loser" in a litigious sense, the licensing process would benefit. However, this does not need a "root and branch" reform. It requires training and resources.

Paterson's Licensing Acts is often described as the bible for licensing practitioners. It was certainly prophetic in its commentary when the 2003 Act came into force that the "success of the licensing regime created by the 2003 Act will be dependent upon the efficiency and effectiveness of the local authorities, which will itself be dependent upon there being sufficient funds to manage and enforce such a regime."[7]

My view remains that, as set out in these pages before and in my response to the select committee, the act does provide a framework for the right "balance" to be struck, but may not achieve this in practice. Whether "greater community involvement" would be facilitated either in theory or in practice by a transfer of functions to planning committees is doubtful.

However, it behoves us to keep an open mind. I look forward to the select committee's report being the beginning of the debate, rather than the end.

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

7 At para 1.315 of the 2017 edition.

Carry on camping – site licences under the 1960 Caravan Sites Act

A recent First-tier Tribunal decisions highlights the wide scope of a local authority's power to impose conditions on caravan site licences, as well as the interplay between the planning and licensing spheres in this sphere as **Caroline Daly** explains

Meadowview Touring Caravan Park in East Sussex offers, according to its website, the "very best in caravanning facilities" as a family-run park in a "quiet, secluded, sun-trapped valley in the heart of '1066' country within easy reach of beach and historical sites". It is described as nestling in the heart of the Sussex wine area providing the perfect base for exploring the many local attractions and beauty spots, including a number of National Trust properties and two steam railways.

The average licensing practitioner, accustomed to dealing with the darker licensing arts of alcohol, gambling and sex establishments, could be forgiven for questioning the significance of caravanning and the benign pursuits encouraged by the Meadowview Park to the licensing world. The answer lies in the Caravan Sites and Control of Development Act 1960 and the system of licensing introduced by this act, which operates in supplementation of, but separately from, the planning system.

An overview of the site licensing regime

Under s 1(1) of the act, a caravan site owner is required to hold a site licence. In accordance with s 1(2), an occupier of land who contravenes subsection (1) will be guilty of a criminal offence. Section 1(4) of the act defines a "caravan site" as land on which a caravan is stationed for the purposes of human habitation and any land that is used in conjunction with land on which a caravan is so stationed.

With regard to the process for making an application for a licence, s 3 of the act indicates that an application must be made in writing to the local authority in whose area the land is situated. A local authority may only grant a site licence if planning permission has already been granted for the use of the land as a caravan site. In other words, a formal grant of planning permission or a lawful development certificate is a condition precedent to the issue of a site licence. If the applicant provides the required information to support the application and has the requisite planning permission or certificate of lawfulness, a site licence must be issued. The ordinary position is that the licence remains in force as long as the planning permission remains extant. Thus, if the planning permission is granted for a temporary period, then the site licence will also be time-limited.

Given that local authorities must grant a site licence if the relevant information is supplied and planning permission has been granted, the true control mechanism for authorities under the licensing regime lies in the number and type of conditions that may be attached to a site licence in accordance with s 5 of the act. A local authority has a wide discretion with regard to the conditions that may be attached to a site licence. Section 5(1) indicates that a site licence may be issued subject to such conditions as the authority may think it "necessary or desirable" to impose on the occupier of the land "in the interests of persons dwelling thereon in caravans, or of any other class of persons, or of the public at large". In particular, a site licence may be issued subject to conditions that restrict the occasions on which caravans are stationed on land or the total number of caravans that may be stationed at any one time, that control the types of caravan that may be stationed on the land (eg, by reference to their size or state of repair) or that regulate the positions in which the caravans are stationed and the placing or erection on the land of other structures and vehicles (s 5(1)(a)-(c)). Section 5(1)(d)-(f) provides further examples of circumstances in which conditions may be attached to a licence, including for securing the taking of any steps for preserving or enhancing the amenity of the land, for securing that proper measures are taken for preventing and detecting the outbreak of fire and for ensuring that adequate sanitary facilities are provided and properly maintained for the use of persons dwelling on the caravan site. Under s 5(6) the local authority when imposing conditions is required to have regard to model standards issued by the secretary of state.

A disgruntled caravan site operator may, if he or she does not agree with any or all of the conditions imposed, make an appeal to the First-tier Tribunal under s 7 of the act. The tribunal may vary or cancel the relevant condition / s if it is considered that it is / they are "unduly burdensome".

The burden of proof that a condition is unduly burdensome is on the appellant, but the tribunal must decide on the

evidence whether the burden on the appellant from the condition outweighs the benefit from it to the public (*Owen Cooper Estates v Lexden and Winstree Rural District Council* (1964) 16 P. & C.R. 233).

Under s 8 of the act, a local authority has the power to alter the conditions attached to a site licence at any time. However, before doing so, the views of the licence holder must be obtained and considered by the authority. The licence holder may also request that the conditions be altered. There is a right of appeal under s 8 should a site operator be aggrieved by the new conditions imposed or by a refusal by the authority to alter existing conditions. Although s 8 does not refer to the "unduly burdensome" test under s 7, Lord Parker CJ in *Llanfyllin Rural District Council v Holland* (1965) 16 P & CR 140 made clear that the test is the same regardless of whether the appeal is under s 7 or s 8.

Section 10 of the act indicates that when the holder of a site licence ceases to be the occupier of the relevant land, he may, with the consent of the local authority, transfer the licence to the new occupier. At this point, a local authority may decide to consent to the transfer and take the opportunity to review the conditions attached to the licence. It may instead decide to refuse to consent to the transfer and leave it to the new occupier to apply for a new licence to which the authority could attach a different set of conditions.

Matthew Dighton (Meadowview Caravan Park) v Rother District Council, First-tier Tribunal, 13 March 2017

And so we return to Meadowview Park, the aforementioned caravanning facilities in the secluded sun-trapped Sussex valley, and a recent First-tier Tribunal decision regarding an appeal by the occupier of Meadowview Park under s 8(2) of the act against the decision of Rother District Council to decline to remove a condition from the site licence associated with the park.

Meadowview Park has been licensed under the act for use as a caravan site since at least 1986. It is a touring caravan site and not a site used for permanent residential units. There are three planning permissions associated with the park, all of which restrict the use of the park to 36 touring caravans only, and two of which restrict the operation of the park to the period between 1 March and 31 October each year.

The park was purchased by Mr and Mrs Dighton in March 2013 but was gifted to their son, Matthew Dighton, in April 2013. In October 2015, Matthew Dighton applied to the council for the transfer of the site licence associated with the park. The council sent Matthew Dighton the licence shortly thereafter, which was granted for the use of the land for 36 touring caravans / camping pitches for use during the period 1 March to 31 October in each year. The licence was granted subject to 29 conditions. Condition 29, the subject of the appeal, stated, after amendment by the council, as follows:

> *Unless individual planning permission suggests otherwise no caravan or tent shall be permitted to remain on the site for more than twenty-one consecutive nights. The holder(s) for the time being of this licence shall maintain a register of the users of each pitch on the site. Such registers shall be made in such forms as the authorised Officers shall from time to time approve but shall in any event contain sufficient particulars of the names and addresses of every person occupying a pitch on the site, whether with caravan or tent and the date of actual vacation of the pitch.*
>
> *Unless individual planning permission suggests otherwise the site shall only be used for caravans and tents from 1st March to 31st October in each year."*

In basic form, this condition comprised three separate requirements, namely: a maximum length of stay of no more than 21 days; the maintenance of a register of the users of each pitch; and a closed season with the park open only in the summer months of the year. The appeal was made on the basis that condition 29 was unduly burdensome. The appeal was made under three grounds, set out as follows:

a. The loss of seasonal touring caravan pitches by virtue of the 21 day requirement would have a dramatic effect on income and cash flow resulting in the potential closure of the business (the hardship ground).
b. The three requirements in condition 29 are planning issues and, as a matter of law, site licence conditions cannot be imposed to take away land use rights granted by planning permission (the planning ground).
c. The requirement to keep a register of names and addresses of persons using the park is unreasonable and unnecessary (the unreasonable and unnecessary ground).

The tribunal noted, as a finding of fact, that the council had been applying a 21 day maximum occupation period and a requirement to maintain a register of users for pitches since 1975. In other words, the imposition of condition 29 in the 2015 licence, precipitated by the transfer of the site to Matthew Dighton, was not a new set of requirements in respect of the operation of the park.

The tribunal further found, as a matter of fact, that the Dighton family had failed to comply with the requirements of the licence in their operation of the site. Of the 36 available pitches, 30 were seasonal touring caravan pitches to be used

between 1 March and 31 October only, and where owners had sited caravans for the entire year, in contravention of the 21 day rule. On this basis, the tribunal found that the park had the appearance of a static holiday site rather than a touring caravan site.

The tribunal refused the appeal, finding that none of the requirements of condition 29 were unduly burdensome.

In respect of the hardship ground, it was common ground that the imposition of the 21 consecutive day rule would spell the end of seasonal touring caravan pitches for the park, which would have adverse consequences on the Dighton family's business and the local economy. The tribunal found that it was open to the appellant to argue that financial hardship could be taken into account when considering whether or not a condition was unduly burdensome. However, in this case, the tribunal found that the Dighton family had chosen to operate the site in direct contravention of the longstanding 21 day rule and so any financial hardship pleaded arose from their choice to ignore existing conditions to the licence. Given that there was knowing non-compliance with existing site licence conditions, the tribunal decided to attribute no weight to the plea of financial hardship, with the effect that the appeal failed under this ground.

The appellant's argument under the planning ground was that the council's reason for the imposition of condition 29 was a planning objective and that, as a matter of law, the council was not entitled to impose conditions for reasons solely connected to planning matters.

This ground raises interesting issues as to the interrelationship between the planning and licensing regimes and the extent of the power to impose conditions under s 5 of the act. The tribunal set out the principles established in this area, namely: that the conditions imposed under the act must relate to matters that fairly and reasonably are related to the use of the site as a caravan site and that there may be some overlap with factors that are relevant to planning considerations (*Edsell Caravan Parks Ltd v Hemel Hempstead Rural District Council* (1967) 18 P & CR 200); that a condition cannot be imposed under the act that is based solely on planning considerations such as visual amenity (*Babbage v Norfolk District Council* (1990) 59 P & CR 248); and that, albeit some degree of overlap is inevitable, care needs to be taken in respect of the extent to which site conditions are used to limit existing use rights under planning law (*Goodwin v Stratford-upon-Avon District Council* (1996) 73 P & CR 524).

With regard to the seasonal closure, the appellant accepted that two of the three planning permissions mandated a seasonal closure and so the argument that condition 29 was unduly burdensome could relate only to the land to the north of the site where permission was granted for 10 caravan pitches without any express seasonal restriction. The council's reasons for imposing the site licence condition for seasonal closure were that it was consistent with the park's designation as a touring holiday caravan park and that such sites were, as a rule, better suited for summer use when the weather was dry and warm. The tribunal considered that the council's reasons were consistent with the use of the land as a caravan site.

The 21 day rule was also found to be consistent with the use of the land as a caravan site. The tribunal indicated that the rule aligned with the defining feature of a touring caravan site which distinguished it from the two other main types of caravan site (residential and static holiday sites) and that the 21 day requirement reinforced the transient characteristic of a touring caravan site and acted as an impediment against a touring site morphing into a static site. This in turn was said to help ensure sufficiency of touring caravan sites in the area to meet demand and to ensure that the facilities and services offered at the site were commensurate with those set down in the model standards for such sites.

Finally, in respect of the unreasonable and unnecessary ground, the tribunal found that the act of keeping a register of users of the park was not unduly burdensome as the appellant already maintained information on the users of the park and that doing so was of assistance to the internal management of the park.

On this basis, the tribunal was of the view that none of the three grounds put forward had any merit, with the effect that condition 29 would stand in unamended form.

The decision of the First-tier Tribunal in the Meadowview Park appeal highlights the wide scope of the power on the part of a local authority to impose conditions on caravan site licences. The judgment also provides a neat overview of the interplay between the planning and licensing spheres in the realm of caravan sites. While the specific area of caravan licensing may be new to many readers, the tension and overlap between planning and licensing regimes is an age-old theme that we see across many areas of licensing.

Caroline Daly
Barrister, Francis Taylor Building

Scottish health lobby calls for tighter licensing laws go too far

Health manifestos' non-licensing proposals are valid but further tinkering with licensing laws is not, says **Stephen McGowan**

In the run up to the Scottish council elections in May 2017, a number of interest groups published their own "manifestos" to impress their causes on those standing for election.

Amongst these was the paper *Changing Scotland's relationship with alcohol: Recommendations for Further Action*. This is a joint paper by Alcohol Focus Scotland, the British Medical Association, Scottish Families Affected by Alcohol and Drugs and Scottish Health Action on Alcohol Problems. The paper proposes around 50 recommendations, many of which relate specifically to licensing, with some sensible suggestions and some not so. Here's a brief summary of the proposals:

- **Introduction of minimum pricing:** if the courts decide MUP (minimum unit pricing) is lawful, just how quickly could it be brought in? The trade would need to be given time to ensure that it could implement a fixed minimum price on a vast number of products.
- **Introduction of a levy on alcohol businesses:** this is another call for a "polluter pays" style levy, which in fact already exists in the form of the social responsibility levy but has never been implemented. The idea expressed in the paper is that prospective business people would be "put off" from going in to the alcohol business by such levies and would come up with other business ideas instead. This type of approach is a singular view that ignores the social benefits of sensible alcohol sale and consumption. I, and others, find the notion that our licensed businesses should be treated as polluters jarring.
- **Ban price discounting:** the type of promotions being targeted here are your typical supermarket "was £7, now £5" on the sticker / label below a particular bottle of wine. The theory is that we buy more alcohol as a result of such deals.
- **Restricting off sale hours:** the current maximum hours are 10am to 10pm, which is less than under the old 1976 Act and less than in England and Wales, which can be 24 / 7. The proposal here is to restrict off sales from 10am to 8pm. This is an example of what the health lobby refer to as a "whole population" approach. In other words, a broad sweeping change which affects us all regardless of our individual consumption habits. It is worth noting that the act already allows for licensing boards to cut hours where there are issues. An 8pm cut off would apply to shops but also pubs and is in my view disproportionate.
- **Reducing impulse buys:** a number of proposals are put forward here. The "separate check-out" proposal that has been run a few times re-appears. Forcing customers buying the weekly shop to queue twice seems a disproportionate measure creating needless confusion and delay for customers as well as difficulty and cost for retailers having to adapt premises. Self-service alcohol purchases bans are also proposed, yet age-restricted purchases cannot be concluded unless a member of staff authorises it, as anyone who has scanned their own bottle of wine or even a packet of paracetamol will know. Having alcohol-only outlets is also mentioned. It would mean the closure of hundreds of local independent businesses who sell alcohol responsibly without attracting any difficulties as part of a wider offer.
- **Remove transport exemptions:** a number of exemptions currently exist where a licence is not needed, such as in certain airports and on airplanes, boats, ferries and trains when in transit. This paper suggests that they should be licensed. Achieving this would be a difficult feat for a number of technical reasons, not least the issue of jurisdiction. To which licensing board does ScotRail apply for a licence for its trains? Does it need a licence for every carriage and in every licensing board area that those carriages travel through?
- **Greater regulation of online sales and home deliveries:** this is a current hot potato with a number of advances in companies offering home delivery service of alcohol, either from their own premises or through third parties. We also saw concerns raised, rightly or wrongly, about the licence granted to the Amazon depo in Dunfermline. There could be some

work to do here. The 2005 Act provisions are not dissimilar to the old 1976 Act provisions and I do not see anything wrong in reviewing this to take account of modern trade practice.

- **A national licensing policy:** this is another old chestnut based on a preference for a top-down policy that limits the discretion of licensing boards. This is largely driven by the health lobby and any top-down policy would, I suspect, be directed at achieving their aims without consideration of the wider local issues that a local licensing board takes into consideration when making a decision.
- **Update the Scottish Government Guidance:** this is one proposal that everyone agrees with. The Scottish Government Guidance is not fit-for-purpose. It was produced in March 2007 before the act even came into force and has not been updated. A working group consisting of all stakeholders should be established and the guidance updated as a matter of urgency.
- **Require alcohol sales data to be given to boards:** licence holders should provide the board with a breakdown of alcohol sales as a condition of their licence. This would, they suggest, inform policy and could even be used to help calculate fees. There is no precedent for this that I am aware of and there is no doubt the trade would oppose it for proprietary reasons. Producers would also balk at the idea. When this idea first reared its head in 2016, the First Minister said in Parliament it was not part of their current thoughts.
- "**Ouster clause" preventing legal challenge of licensing policies:** this, again, has been proposed in the past and is one that I oppose. The idea that the rule of law should be subverted by prohibiting a right to legal challenge cannot stand. It is claimed that it is not in the public interest to allow a policy to be legally challenged. In my view the public interest is best served by not prorogating natural justice and basic legal rights.
- **Banning external advertising:** one of the more controversial proposals is to ban advertising alcohol externally. The example given is a shop using the window in its alcohol display area to advertise outwardly. But the proposal very clearly says this should apply to all licensed premises. The idea that pubs and bars should not be allowed to advertise what they sell in their own windows seems absurd.

There are many other proposals in this manifesto. Some or none of them may be heeded by the Scottish government and of course this is the latest in a long line of such papers. Many of the non-licensing proposals seem sensible and proportionate to me to address alcohol harm. Further tinkering with licensing laws is, however, unwelcome. The paper argues for certainty and stability in relation to banning legal challenges. I would ask for stability and certainty by calling a moratorium on further amendments to alcohol licensing law, to consolidate the current laws, and for a review of the operation of the whole Scottish Act before further changes are made.

Stephen McGowan
Solicitor, TLT Solicitors

With all due respect, m'Lords...

Should planning committees deal with licensing applications, as the House of Lords Select Committee considering the 2003 Licensing Act has suggested? **Jeffrey Leib** doubts the wisdom of such an approach

That planning committees should consider licensing applications is one of the key recommendations flowing from the recent House of Lords Select Committee's investigations into the 2003 Licensing Act

The committee's view was driven by evidence pointing to a lack of consideration in the original white paper on this issue, by inconsistencies and examples of questionable decision-making by some licensing authority committees, and by a wish for closer co-operation between the licensing and planning regimes so as to avoid the inconsistencies and irregularities that arise where, for example, planning permissions conflict with licence conditions.[1] The select committee's view is that statements of licensing policy can form part of a local development plan and be taken into account by a planning committee considering both planning and licensing matters together.

At first blush there may appear to be some merit to this proposal. For both businesses and local authorities, one single streamlined approach would appear to be more beneficial and cost-effective than two separate ones.[2] And indeed, if taken to its logical conclusion as the select committee hints - that licensing is an extension of planning[3] - then other reforms should have been proposed: a single system for advertising applications, a unified fee structure, compulsory training for officers and councillors that cover planning *and* licensing, and extending s 106 planning obligation agreements to the grant and variation of licences.

Some of the select committee's critique of licensing committees is based on their conduct. While some of this may be justified, the faults are capable of being easily remedied and indeed the select committee's recommendations to improve training, provide powers for the licensing committee chair to "enforce standards of conduct of sub-committee members" and provide statutory guidance in the protocols for licensing committees would be welcomed.

Are, however, planning committees the right forum for considering what the select committee acknowledges is a specialist subject? It is certainly true that there are elements of licensing concerned with the way in which land is used, and the impact on its local environment. So, an application involving a change in the existing use (perhaps from a retail outlet to a restaurant) would benefit from being heard before a single committee that can consider the impact on the local economy and the amenity, the local development plan priorities, regeneration (or over-concentration) of particular areas, and thus provide one decision by "the council".

And yet. The select committee is clear that planning and licensing should still retain its distinctions, and that licensing officers ought to still play a key and even an enhanced role in the latter regime.[4] What would this look like in practice? Would our applicant for a restaurant have to come along to a combined licensing and planning hearing, and have to argue the case in relation to, first the planning officer's report and the material planning considerations for the committee, and then address the operating schedule and representations relating to the licence application and the licensing objectives? Would the committee be able to give both applications a fair hearing in one sitting, particularly when it is not uncommon for planning committees to consider several applications during one meeting? Would it also be fair to ask councillors, within one meeting, to determine one application based on planning considerations and to then make a determination (perhaps even for the same set of premises) based on licensing considerations?

Equally, what would be the position if a planning application is granted? The committee would then move on to decide the licence application. However, during that part of the proceedings, issues are raised - for example, to do with crowd or queue management outside a large venue - that, if they had been aired at the time, might have resulted in a different outcome of the planning decision. Would the committee be able to revisit its original decision in the light of the new evidence?

A licensing committee, I would submit, is a specialist body with a specialist function - and remember that it licenses a whole range of other specialist functions, from sports grounds to zoos and sex establishments to street trading.

1 Report, para 123.

2 See report, para 123.

3 Report, para 152.

4 Report, para 129.

There have been no suggestions to transfer that jurisdiction to planning committees (or, at least, not yet).

Would a full planning committee, as opposed to a sub-committee of three councillors, be the most appropriate venue to consider a contested application for an off-licence where the only issue may be relatively minor - maybe thirty minutes' operating time, or whether CCTV should be a licence condition? Would a full planning committee of ten or more councillors be the most appropriate venue to consider the operating schedule for a late-night venue, and have an understanding of the local late-night economy, crime patterns, the impact of drinks promotions, appropriate use of door supervisors, participation in voluntary best practice schemes such as Best Bar None and Pubwatch and the measures to promote the licensing objectives?

Is a full planning committee the appropriate venue to consider a review instigated by trading standards for an off-licence following failed test purchases? Should that rare applicant with unspent relevant convictions, or an aspiring DPS about whom the police have concerns, have to appear before a full planning committee, or just a sub-committee of three, to apply for a personal licence? Could a full planning committee be assembled at short notice to consider objections to TENs or an expedited review? Or should there be a separate sub-committee to deal with those situations?

In my experience, many of the procedural and operational flaws identified by the committee are capable of being easily remedied - specialist training, clear committee procedures and a greater role for licensing officers can enhance the system. A key concern of the select committee to avoid inconsistencies between planning and licensing decisions could be addressed by simply imposing a new mandatory condition that no licence condition may take effect if it conflicts with a planning restriction, and ensuring planning considerations form part of the statement of licensing policy. Remembering that the planning authority is a statutory consultee under the Licensing Act, licensing officers throughout the country will no doubt identify with the many applications where no planning representations are made at the time and concerns are only raised after the licence has been granted. Placing a mandatory requirement for planning authorities to respond to licensing applications could equally address that issue.

The Institute of Licensing, in its initial response, recognised that the planning system is not without flaws and that the abolition of licensing committees will not be in the public interest. Tellingly, the Planning Officers Society reaches a similar conclusion, saying: "Planning (particularly the development management aspect) and licensing functions vary significantly. It is important to understand the differences and why they operate like that." The society's communications manager added that the select committee should have explored these matters further, and "if they did they might well have come to a different conclusion."[5] The Local Government Association disagrees with the select committee, too, saying: "The recommendation to scrap council licensing committees is unnecessary and ill-advised and does not take into account the fact that those most involved in working with the act do not want to see further major upheaval of the system.

"Figures from 2016 show that of the more than 21,000 licence applications made to council licensing committees, less than 1% were challenged. This reflects the fairness and sound basis licensing committees are using to make their decisions.

"It will always be possible in any system to pull out examples where things haven't worked as well as they should have, and we agree that there is scope for the planning and licensing frameworks to link together more closely. However, putting planning committees in charge of licensing decisions will not tackle current flaws in the Licensing Act, and completely fails to take account of the pressures the planning system is also under." [6]

I hope I have set out in this article some of the potential issues that may arise from a future licensing-planning fusion, and it is clear that this particular debate has only just begun.

Jeffrey Leib, FIoL
Principal Licensing Officer, Harrow Council

5 *Planning and Licensing Operate on Different Levels*, www.planningofficers.org.uk, (19/04/2017).

6 Press release, Local Government Association, 4 April 2017.

Using drones safely at events

Invaluable tool or significant menace? Drones can be both but if their increasingly wide base of users learns about and adheres to the legal guidelines, the eye in the sky can be a real boon, explains **Julia Sawyer**

Drones have increased in popularity over the past couple of years as their price has come down. Whereas once only large film companies could afford them, now anyone can buy a basic model for £200 or hire one for £32 a day.

Drones, which are also known as remotely piloted aircraft systems (RPAS) or unmanned aerial vehicles (UAV), come in a variety of shapes and sizes, ranging from small handheld types to large aircraft, potentially the size of airliners.

The Civil Aviation Authority (CAA) is the statutory corporation which oversees and regulates all aspects of civil aviation in the United Kingdom. Operators looking to use drones for commercial purposes need CAA permission. The authority also advises the public and industry on how to fly drones safely and reduce any risk to aviation.

The law and guidance in the UK relating to drones is increasing, but unfortunately these are not applicable in other countries. Each country has its own rules and regulations for drones: competency in the UK does not permit a pilot to fly a drone in Europe or elsewhere in the world. Some countries are very restrictive, some not so.

The laws relating to drones need to be better understood as more people buy them but appear unaware of the legal position and the risks that they pose. A recent near-miss involving a drone and an aircraft approaching Heathrow demonstrated the serious risk they can present. In 2016 there were 70 near misses, more than double the previous year.

Drone users

Because of the dramatic footage a drone can give - shots often only previously obtainable by helicopter - they are now being used by a wide audience, which includes:

- Hobbyists.
- The emergency services for evaluating remote accident scenes (such as cliff rescues, road traffic accidents), for thermal imaging to locate missing persons, for seeking out drug growing areas, for monitoring potential terrorist activities, hotspots within an inferno, overview of the resources available on a site, management of crowd flows, etc.
- The military for reconnaissance purposes and military action.
- Local authorities carrying out maintenance inspections of property.
- Marketing teams for festivals and events.
- Commercial usage such as business promotions, and possible future use for deliveries, film industry, sports industry, etc.
- Agricultural use, for example, spraying pesticides.

What are the legal requirements?

As with any other aircraft, an unmanned aircraft must be flown safely and not endanger other airborne aircraft or people and properties on the ground. To fly a drone in the UK, either commercially or recreationally, all pilots are required to comply with the air navigation order, unless otherwise approved by the CAA.

Pilots wishing to undertake paid aerial work must first obtain a permission for aerial work (PFAW) from the CAA, and then permission for the commissioned work. To obtain a PFAW the pilot must apply to the CAA and provide:

- A risk assessment.
- An operating manual.
- A demonstration of adequate competency from an approved national qualified training school. The applicant will also need to show a clear understanding of airmanship, airspace, aviation law and good flying practice. This qualification does not expire but the pilot must continue to show competency on an ongoing basis.
- Adequate public liability insurance.

The CAA has occasionally given permission for drone flights at public events by special arrangement, when a pilot has presented an operational safety case (OSC). These permissions have been extremely limited and usually involve a segregated take-off site with the drone only operating vertically and within strict lateral limits. There is no allowance for direct over-flight of persons.

The rules that apply to a drone operator in the UK are:

- To maintain a distance of 50m from people and property not in control of the pilot.
- To maintain a minimum distance of 150m from congested areas, such as a sporting event or a festival. If under 7kg maximum take-off weight, an exemption to this restriction is granted but the 50m rule mentioned above still applies.
- To be within line of sight, no higher than 120m above ground level and to a distance of 500m. This is regarded as the limit of normal, unaided sight.
- Outside of controlled airspace, away from aircraft, helicopters, airports and airfields, military bases, power stations. Apps are available that give an interactive map of airspace used by commercial air traffic so that the user can see areas to avoid or in which extreme caution should be exercised, as well as ground hazards that may pose safety, security or privacy risks when flying a drone.
- To follow the manufacturer's instructions on the safe operation of the drone.
- To have permission from the landowner.
- To monitor weather conditions and only fly when safe to do so.
- Have the correct permissions from the CAA.
- When used for commercial use, to comply with the Provision and Use of Work Equipment Regulations (PUWER).
- Have a flight plan and communicate this to the relevant people.
- Allow enough time to plan the flight.
- Keep a log of the flights carried out.
- Follow a pre-flight checklist and record this.
- Give a safety briefing prior to flying to the relevant people in the area.
- Ensure the risk assessment / method statement covers the flight and anything that may be affected in the vicinity, not only the public but any animals that may be in the flight area.

The CAA is primarily looking at controlling drone use from an airspace and safety perspective. Therefore, operators are still subject to all other applicable laws (eg, those relating to trespass, negligence and privacy) as well as the rules and regulations of bodies such as the Highways Agency and local authorities.

The CAA and the Air Accident Investigation Branch (AAIB) are the regulatory bodies when the drone is flying. Police will often initially be involved when misuse of a drone is reported. The Health and Safety Executive (HSE) is the enforcing authority when the drone is not flying and it is then defined as a piece of work equipment under PUWER. The law makes no distinction between indoor or outdoor drone use in relation to the enforcing authority.

Definitions

Small unmanned aircraft - any unmanned aircraft, other than a balloon or a kite, having a mass of not more than 20kg without its fuel but including any articles or equipment installed in or attached to the aircraft at the start of its flight.

Large unmanned aircraft - aircraft with an operating mass of more than 20kg are subject to the whole of the UK aviation regulations as listed within the ANO. If the weight is over 150kg, there are additional certification requirements by the European Aviation Safety Agency.

Aircraft <7kg - automatic permission to fly in a congested area, maintaining the 50m distance and above stipulations.

Aircraft >7kg - can only fly in a congested area if 150m distance is maintained and above stipulations.

Should drones be permitted at events?

Using a drone can be invaluable in the right circumstances, depending on location, weather and timings, etc. Given these are all favourable, drone use can give an overview of the site so that potential issues are dealt with quickly. Marshals and security staff can monitor crowd flows to discover pinch points or crowd back-ups, and thereby ease congestion and ensure safe access or egress.

Drones can also provide information for designing a site and can be used by investigators when an incident has occurred, if handled in the correct manner.

Drones have created their own accidents in the past. And there is potential for future mishaps, given fast-developing technology and the pressures on artists / performers / producers to be as creative and crowd-pleasing as possible. To guard against this, event organisers should study previous incidents and allot sufficient time for planning the use of a drone. Additionally, they should check the drone code is followed and that all appropriate permissions and documentation are in order.

Julia Sawyer
Director, JS Safety Consultancy

Information for this article obtained from:
www.caa.co.uk
www.hse.gov.uk
www.airproxboard.org.uk
www.aeroviews.uk
www.heliguy-guide-to-global-drone-regulations

Social media the key to success for operators

Operators are under increasing pressures on many fronts, but those who know how to exploit social media are confident they can thrive, explains **Paul Bolton**

The competition for consumer spend has never been greater. Licensees are up against a multitude of attractive new concepts, particularly in casual dining. And that's just when consumers decide to come out – so many these days prefer to spend their leisure time at home , enjoying supermarket food and drink offers and on-demand entertainment.

But these pressures, along with a tightening economy, are not damping the spirits of operators according to the latest CGA Business Leader's report for 2017. The 250 senior executives across the eating and drinking out sector CGA interviewed are bullish about the future, despite the triple whammy of rising costs of staff, food and property.

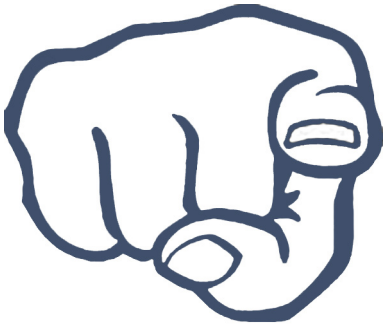
That said, there is concern in the industry. Rising business rates is one of the major issues in 2017, with 79% of those surveyed either concerned or very concerned about the impact of the changes that have been caused by government re-evaluations. Inflationary costs on food are another big worry, with four in five leaders concerned. These rises have been a direct impact of Brexit, the weakness of sterling and recent poor weather. A change to the national minimum wage and national wage have also pushed up wage bills and as a result, 59% of business leaders are concerned or very concerned about people and wage costs.

Yet despite these pressures, the industry remains confident. Two thirds of top executives are either very or fairly optimistic about their outlook for the remainder of the year, which is up six percentage points against late 2016. A fifth of operators are planning to open up more than 10 sites this year, with more than half of leaders actively or possibly interested in acquiring another business. New and smaller businesses are the most confident, with firms under five years old four times as likely to be very optimistic about their prospects for 2017 as the over 10-year-olds.

So what can a well-established licensee do to fend off competition from a crowded market? Quite simply, they must adapt or die. Fostering loyalty and mastering social media are two ways to stay relevant. Nine out of 10 leaders think building loyalty is important or very important in this year's survey. Facebook, Twitter and Instagram can help with this, with mobile platforms being particularly crucial. Over half of those at the top are increasing investments in digital marketing this year so their voice can be heard over the increasing number of voices in the market.

These are challenging times indeed, but playing on strengths and shouting about it will help to stop a loyal core being too distracted.

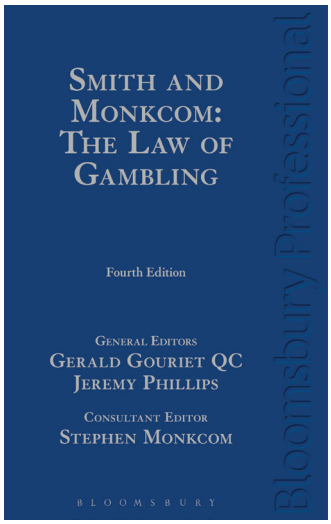
Paul Bolton
Senior Client Manager, CGA Strategy



We Need YOU!

If you would like to submit an article to be considered for inclusion in a future issue of the Journal or would like to discuss an article you would like to write, please contact us at journal@instituteoflicensing.org

Book Review



Smith and Monkcom: The Law of Gambling
General Editors: Gerald Gouriet QC and Jeremy Phillips
Consultant Editor: Stephen Monkcom
Bloomsbury Professional 2017
£275.00

Reviewed by **Gary Grant**, Barrister, Francis Taylor Building

Some years back, Kerry Packer, the billionaire Australian media tycoon and legendary gambler, was approached in a Las Vegas casino by a Texan oil-man demanding to play on the same high-stakes table. Packer politely declined. The brash Texan gloated: "Don't you know how much I'm worth? Seventy million US dollars!" After a short pause, Packer looked him square in the eye and responded: "Fine, I'll toss you for it".

What happened next isn't recorded. But we do know that in 2000, Packer managed to lose £13.6 million during a three-day baccarat binge, also in Vegas, bringing his total gambling losses that year to £27.4 million. Which, in those days, was considered a lot of money.

More recently, in 2014 the High Court ruled that London's Crockfords Club was legally entitled to refuse to pay £7.7 million in winnings to Phil Ivey, arguably the finest poker player in the world, when he was found to have "cheated" by employing the technique of edge-sorting while playing punto banco at the casino. (Edge-sorting is when players exploit the tiny differences of design that appear on the back edge of certain brands of playing cards as a result of the manufacturing process.) The decision was later upheld in the Court of Appeal which explained, perhaps counter-intuitively, that a player can "cheat" even in the absence of dishonesty.[1]

Cheating gamblers are as old as civilisation. Found in the ashes of ancient Pompeii were two ivory dice. On closer inspection, they were found to be loaded. Closer to home, a set of 24 dice were discovered in the Thames foreshore dating from the late 15th century. X-rays showed that the dice had been weighted with drops of mercury implanted in one side or another to ensure they would more probably fall on a particular number. Litigation arising from gambling with false dice can be found in the law reports dating from the reigns of Elizabeth I and James I.[2]

Why do men (and to a lesser degree women) gamble when the truth is that the safest way to double your money is to fold it over once and put it in your pocket? The answer may lie in Mark Twain's aphorism that a dollar picked up in the road, or won at playing cards, brings us more satisfaction than the 99 we had to work for.

Whatever the reason, the pastime is now very serious business in the UK. The total gross gambling yield stands at £13.6 billion. Remote gambling makes up nearly a third of this sum. The UK gambling industry employs some 105,000 people. There are over 8,700 betting shops and 168,000 gaming machines in the country. The National Lottery (a form of gambling once described as a tax on people who are very bad at mathematics) contributes £1.8 billion to good causes. Increasingly popular large society lotteries have contributed £208million to good causes in the year to March 2016 (a rise of over a 10.5% from the previous year).[3]

The law of gambling is vast, complex, intricate and ever-changing. Editing a book on gambling, as the authors rightly claim, is "analogous to painting the Forth Railway Bridge". In order to keep pace with the Gambling Commission's cascading updates to its licence conditions and codes of practice, statutory guidance and non-statutory guidance, the draft of this book was, we are told, re-painted four times in the past twelve months.

As a result, the newly published fourth edition of *Smith and Monkcom: The Law of Gambling* (Bloomsbury, 2017) brings the law right up to date. It is a remarkable achievement. This book now stands like an undisputed colossus over the whole field of gambling law. It is quite simply *the* indispensable volume for anyone who works in gambling, whether their interest is regulatory, commercial or legal.

The general editors, Gerald Gouriet QC and Jeremy Phillips, are highly distinguished practitioners in this area of law. Together with the eponymous consultant editor Stephen Monkcom, they have assembled a list of specialist contributors that contains enough talent to make a grown-man cry.

1 *Ivey v Genting Casinos UK Ltd* [2016] EWCA Civ 1093.

2 Eg, *Harris v Bowden*, 1 Croke Reports 30 Eliz. p 90.

3 Statistics from the Gambling Commission.

As a result, each chapter, whether it relates to casinos, betting shops, remote / internet gambling, bingo, gaming machines, lotteries, poker in pubs or clubs, or else concerns the associated tax, contractual or planning implications of gambling, is written with an expert authority that is both peerless and extremely practical. Money-laundering precautions, enforcement risks and civil and criminal liabilities are also dealt with in considerable detail.

Throughout the text the duties and responsibilities of the Gambling Commission and local authorities who regulate the industry are presented in a constructively challenging fashion. The editors do not shy away from critically, and sometimes caustically, analysing the legislation, Gambling Commission guidance, and recent case law. Examples of the latter include a comprehensive discussion of the recent litigation concerning spot-the-ball competitions, and the previously mentioned challenge by Phil Ivey to Genting Casinos' accusation of cheating, which is analysed with a razor-sharp clarity that manages to demonstrate that between the High Court and Court of Appeal there appear to be four different judges giving four different opinions on the concept of "cheating". The ongoing litigation involving Greene King's attempt to offer bingo in their pubs receives a similar treatment.

The current law is set out cogently and comprehensively. The book is accessible for both the novice and expert alike and for the lawyer as well as the non-lawyer. Local authority officers will find this text just as invaluable and useful as the international casino operator.

Importantly, and extremely helpfully, the law as it now stands is set in its full historical context, which leads to a far better understanding of the current position than any other book in this area. If we know where we have come from it is much easier to appreciate where we are and where we might be going. Indeed, the historical narrative is so intrinsically fascinating that it would justify the purchase of this book on its own.

Overall, the book is an ideal mix of a comprehensive statement of the law on the one hand, and academic analysis, comment and criticism (when justified) on the other. The practical implications of the law are clearly at the very forefront of the editors' purpose.

If the dreadful option presented in Desert Island Discs were to be applied to incorrigible gambling practitioners, then the one book every one of us would have to take to that mythical isolated island would be this one.

Phillips' Case Digest

In this issue of the *Journal* we have prioritised articles and opinions on the House of Lords report reviewing the Licensing Act 2003 and have allowed for additional articles and submissions above and beyond our usual quota. To accommodate this special focus, *Phillips' Case Digest* will therefore be held back until our November issue (JoL 19). I am grateful to Jeremy Phillips for agreeing to this deferment. Editor.

Tell us about it and get involved

One of the Institute's key objectives is to increase knowledge and awareness amongst practitioners. This includes up-to-date and relevant news and information on licensing and related matters including good practice initiatives, government proposals, statutory and non-statutory guidance, court cases etc. The IoL is always grateful for contributions from members and there are a number of ways you can get involved.

Regionally: Through volunteering to serve on your regional committee or assisting the committee with events and communications.

News and information: We are always keen to hear about news stories in licensing so that we can report on happenings, initiatives, case outcomes etc. Please keep us informed by emailing news@instituteoflicensing.org and making sure you have us on your press release distribution list!

Training ideas: Let us know what training you want and think others would like to see by emailing training@instituteoflicensing.org

2018 Dates for the Diary

National Licensing Week
18-22 June 2018

National Training Day
20 June 2018

National Training Conference
14-16 November 2018

(Please note dates may be subject to change)

Directory Advert

Advertise your oganisation here

One 1/4 page advert is £200 + VAT per issue or you can advertise in three consecutive issues for £500 + VAT.

One full page advert is £800 + VAT per issue or you can advertise a full page advert in three consecutive issues for £1850 + VAT.

For more information and to book your space contact us via
journal@instituteoflicensing.org

Institute of Licensing

www.instituteoflicensing.org

Institute of Licensing

Institute of Licensing Board

Daniel Davies	- Chair
Myles Bebbington	- Vice Chair, Eastern Regional Director & Chair and Training & Qualifications Committee
Gary Grant	- Vice Chair
Phil Andrews	- Finance Director
George Barnes	- South East Region Regional Director & Chair
David Chambers	- Advisor to the Board
Sarah Clover	- West Midlands Regional Director & Chair & Chair of Management, Organisation & Development Committee
James Cunningham	- Northern Ireland Branch Chair
Susanna FitzGerald QC	- Director
John Garforth	- North West Regional Director
Karen Hollands	- Home Counties Regional Director
Gareth Hughes	- London Regional Chair
David Lucas	- East Midlands Regional Director & Chair
Martin Phillips	- Wales Regional Director
Tim Shield	- North East Regional Director & Chair
Steven Wright	- South West Regional Director & Chair

Patrons
Jon Collins
Philip Kolvin QC

President
James Button

2017/18 membership subscriptions for the Institute of Licensing

Membership Fees - 2017/2018

- Individual/Companion/Fellow - £75.00
- Associate - £65.00

Organisation Membership Fees - 2017/2018

- Small Organisational Member, up to 6 named contacts - £300.00
- Medium Organisational Member, up to 12 named contacts - £450.00
- Large Organisational Member, over 13 named contacts - £600.00

Apply online - visit our website - **www.instituteoflicensing.org**

www.instituteoflicensing.org

INSTITUTE OF LICENSING
NUMBER 18 JULY 2017
JOURNAL OF LICENSING