

9 June 2020

Dear Sir

Magistrates Court hearings during the COVID-19 Pandemic

This letter addresses the significant adverse impact on the public interest in the delays now being experienced in magistrates' courts around England and Wales in listing and determining licensing appeals. Given the issues there is some urgency in this being addressed sooner rather than later.

The Institute of Licensing (IoL) is the professional body representing licensing practitioners across the UK with an interest in or working within the alcohol, entertainment, taxi and private hire, gambling industries as well as other areas where licensing falls within the remit of local authorities. Our membership includes both regulators (local authorities/police etc.) as well as the trade. The COVID-19 pandemic has had profound consequences for regulators and businesses across the country, and the importance of the licensing system and its continued operation during the pandemic has been apparent throughout the period.

The IoL has produced a Protocol for its members, aimed primarily at local authorities and encouraging them to continue to fulfil their statutory duties as licensing authorities despite the challenges of office closures, home working and social distancing. Crucially, this includes facilitating licensing committee hearings to ensure that applications for new licences or variations, as well as reviews of existing premises licences (described in the Secretary of State's Guidance on the Licensing Act 2003 "as a key protection for the community"), are heard without unnecessary delays. This accords with the entreaties in the Lord Chief Justice's [message to Judges in the Civil and Family Courts](#), which stated:

*"It is clear that this pandemic will not be a phenomenon that continues only for a few weeks. At the best it will suppress the normal functioning of society for many months. For that reason we all need to recognise that we will be using technology to conduct business which even a month ago would have been unthinkable. **Final hearings and hearings with contested evidence very shortly will inevitably be conducted using technology. Otherwise, there will be no hearings and access to justice will become a mirage.** Even now we have to be thinking about the inevitable backlogs and delays that are building in the system and will build to an intolerable level if too much court business is simply adjourned."* (Emphasis added)

Local authorities have risen to the challenge. Licensing hearings are now being heard and determined remotely as a matter of course.

However IoL members across the country are expressing deep concerns that licensing appeals to the magistrates' court against decisions made by the local authority are simply not being heard by the courts at present and are being routinely adjourned to unspecified dates in the future.

Our members report that in many cases this is down to greatly restricted hearing numbers, meaning only priority 1 cases are

being heard. In many cases, IoL members have been advised that the earliest possible date for licensing appeals to be heard (unless they relate to COVID-19 / public health issues) is October 2020.

These long delays are causing real problems for local authorities and the trade and is damaging the public interest and the interests of justice. In the case of taxi/private hire appeals, there is also the significant issue of public safety.

To take just two illustrative examples:

1. Where the operation of a licensed premises has led to crime and disorder, or public nuisance being suffered by local residents, or the public safety and the protection of children licensing objectives are being undermined, premises licences can be “reviewed” by a local authority on application by a responsible authority (e.g. the police) or other person (e.g. residents). The local authority may have determined to revoke the premises licence or reduce its operating hours in order to reduce crime and disorder or public nuisance in the public interest. However, importantly, in most cases (e.g. standard reviews under s.51 Licensing Act 2003) the decision of the local authority, made in the public interest, does not come into force until any appeal is determined by the magistrates’ court (or in some areas of licensing, such as taxi licensing, an onward appeal to the Crown Court). Therefore, a premises can continue to operate, albeit whilst undermining the licensing objectives, prior to the appeal being heard. This is often contrary to the public interest. Long delays in listing the appeal compounds the impact. The current lockdown of many (but not all) licensed premises due to the pandemic may well be lifted in the coming weeks and months and so the adverse impact on communities can be expected to rebound until the appeal is determined.
2. A trade applicant, such as a supermarket or local convenience store, may require longer hours to operate in order to survive the financial challenges prompted by the pandemic or to remove conditions on their premises licence prohibiting food or drink takeaways or deliveries in order to better serve their local community. Other operators still wish to open up new stores and require a premises licence if they wish to sell alcohol or provide hot food or drink after 11pm. If their licence application is refused by the local authority then the trade applicant may well wish to appeal that decision to the magistrates’ court. The failure of the courts to list these hearings stifle the ability of the trade operators to obtain licences enabling them to serve the community or may jeopardise the survival of the business.

We are aware of the Court’s Listing Priorities and the efforts being made by HM Court Service to meet the current challenges which are significant and exceptional. However, our Members are concerned that licensing appeals are currently being overlooked by the courts and de-prioritised to such a degree that this is now damaging the public interest which the licensing processes seek to advance.

We are also aware that in the parallel system of planning appeals, the Government is rightly making efforts to ensure those appeals are heard by the Planning Inspectorate, for which see this press release from 28 May: https://www.gov.uk/government/news/more-inquiries-and-hearings-to-be-held-virtually-in-june?utm_source=a09e4c81-2bc0-46af-a374-0d828d6c4950&utm_medium=email&utm_campaign=govuk-notifications&utm_content=immediate

In the magistrates’ courts it is our view that **licensing appeals are well-suited to being heard remotely** using audio and video technology. We are aware the courts are already using this technology in criminal cases.

The backlog of licensing appeals caused by the current inability of courts to list licensing appeals is an additional matter of concern.

We would urge you, please, to take such steps as are necessary to encourage the Courts to list licensing appeals, remotely or otherwise, in a more timely fashion.

Yours faithfully

Sue Nelson

Executive Officer, Institute of Licensing

On behalf of:

- John Miley, National Chairman, National Association of Licensing and Enforcement Officers (NALEO)
- Daniel Davies, Institute of Licensing Chairman & CEO of Rockpoint Leisure Ltd
- Gary Grant, Institute of Licensing Vice Chairman & Barrister at Francis Taylor Building
- Myles Bebbington, Institute of Licensing Vice Chairman and Licensing Manager at Huntingdonshire Council

cc

- Chief Magistrate Emma Arbuthnot, 181 Marylebone Road, London NW1 5BR
- Courts and Tribunal Judiciary
- Sir Richard Heaton KCB, Ministry of Justice
- HM Courts and Tribunal Service
- John Bache JP, National Chair of the Magistrates Association
- Kit Malthouse MP, Minister of State for Crime and Policing
- Office of the Lord Chief Justice
- The Rt Hon Priti Patel MP, Secretary of State for the Home Department
- The Rt Hon Robert Jenrick MP, Secretary of State for Ministry of Housing, Communities and Local Government