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Foreword

Jon Collins

Chairman, Institute of Licensing

When the Greek philosopher Heraclitus declared (some time around 500BC) that the only constant is change, he probably did not have licensing in mind. Of course, if he had been referring to licensing then we would have all given him a firm pat on the back as he would have been correct.

The last 15 years has seen an unprecedented rate of change with fundamental change delivered though primary legislation (Licensing Act 2003, Licensing (Scotland) Act 2005); additional powers incorporated into Home Office legislation (Violent Crime Reduction Act 2005); and minor changes adopted through the deregulation and regulatory reform process (Sunday dancing).

Of course, one major risk when there is such flux is that new powers will be used inappropriately, incorrectly or not at all. This leads to frustrations and concerns on all sides. For example, after years of lobbying by the nightclub industry, the Home Office issued a deregulation order in the mid-1990s that not only ensured that clubs retained the additional hour's trading when the clocks went back in the autumn but also stated that, on the commencement of British Summer Time, one hour should be added to the standard finish time. Every year since this deregulation occurred, there has been at least one part of the country where clubs and bars were unnecessarily required to close. In 2012, it was the turn of Skegness, with Lincolnshire Police having to apologise for the incorrect application of the law by three of its officers.

This example is frustrating but not really business critical. More serious problems arise when political and operational pressures combine to lead officers to use more robust powers against venues. There are immediate term public order issues, short term operational matters and longer term reputational concerns as a result of actions such as the over-zealous use of closure notices.

All too often, further change to the licensing system has been announced before the previous additions and amendments have had time to truly bed in. Regulators, residents and the trade might just be getting to grips with a new power, right or responsibility when a new wave of reform is announced. The licensing community does not yet fully understand the implications of the Late Night Levy (LNL) and revised Early Morning Restriction Orders (EMRO), both of which could prove highly divisive if implemented without comprehensive communication and a sound evidence base.

And yet, in addition to considering LNLs and EMROs, we have the potential for more controversy with the introduction of a new health-related objective for alcohol licensing related specifically to cumulative impact and a potential change to licence conditions following the upcoming review of the Mandatory Code for Alcohol.

There is the potential here for additional uncertainty as the Government's Alcohol Strategy has made clear its commitment to removing unnecessary regulation and to exploring how it can make the day-to-day process of licensing as easy as possible for responsible businesses by cutting any unnecessary red tape in the licensing system. It is unclear at present what this could actually mean in practice but one interpretation would be that the Government intends to introduce a lighter licensing regime for businesses deemed to be lower risk.

That possibility prompts two immediate thoughts. Firstly, the nature of the current licensing system should mean that better-run venues are already subject to less regulatory intervention.

Secondly, what are the implications for the yet to be implemented proposals on licence fees of a licensing regime that is revised to be less burdensome for more responsible businesses? Logic would suggest that a reduced regulatory role must mean lower licence fees for the best operators (as there will be less cost to recover). This could create a potentially complex system to administer and be a source of much controversy. However, if handled correctly, recognising and rewarding responsible operation so directly should prove a real spur to local businesses and thus provide a sound platform for partnership.

It is the Institute's members that have the day-to-day challenge of absorbing these new powers and responsibilities and continuing to make the licensing regime work. It does seem to be a fact all too often lost in the rolling debate on alcohol policy that actually, broadly speaking, the licensing regime does work and works well. A focus on less revision and reform and on more education would make it even better. It is therefore encouraging to see the current commitment within the Home Office to an extensive programme of communication, information sharing and training. As ever, the Institute will do all it can to publicise and, in time, run conferences on the next round of changes. It remains our goal to ensure that the Institute's members are as well placed as possible to perform their ever more important role.

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Editorial

Leo Charalambides

Editor, Journal of Licensing

In the inaugural issue of the Institute of Licensing's *Journal of Licensing* I set out the key objectives of the IoL Board and the specially convened editorial committee:

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

Reviewing our efforts in our first year of publication, I feel confident that we have met these aims. This confidence is based on the very positive feedback that I, the Officers and the Board of the Institute, have received.

Licensing law and practice is a niche area that is well served by a small number of instantly recognisable, and in some cases iconic, resources. As a licensing specialist, it seems to me that there are certain indispensible publications that every specialist should have access to: a current edition of *Paterson's Licensing Acts*, *Manchester on Alcohol & Entertainment Licensing*, *Licensing Review*, the *Licensing Law Reports* and *The Publican's Morning Advertiser*. To these I would now add the *Journal of Licensing*.

In addition to adhering to our key objectives, as the editor it remains my personal aim to ensure that the *Journal* is a valuable and reliable reference tool for our members.

It is also my aim for the contents of the *Journal* to be referable and of real practical benefit to our members. It was thus with great pleasure that when I attended a lap-dancing hearing, I found a copy of the leading article by Dr Teela Sanders, Rosie Campbell and Dr Phil Hadfield - *Dancer welfare at sexual entertainment venues* (2012) 3 JoL 4 - was cited and produced in evidence.

Increasingly I am aware that features and articles are forming parts of representations, sub-committee papers and seminars; on more than one occasion I have seen a well thumbed and flagged copy of the *Journal* forming part of the reference bundles of representatives and officers.

I have now lost count of the number of times that the question "Can it ever be appropriate to take a step that is unnecessary?" has been asked at various IoL regional meetings, seminars and sub-committee hearings. An indication, it seems to me, of the wide impact of the leading article in the *Journal* by Gerald Gouriet QC & Gary Grant *Amendments to the Licensing Act 2003: reform for reform's sake?* (2012) 2 JoL 4.

Equally it was my aim that the *Journal* would contribute and engage with the wider professional and academic debates and discussions.

The *Local Government Lawyer* recently published an on-line article by Andy Woods – Representation of the people (11th September, 2012) – in which he considered the increasing numbers of representations made against the proliferation of betting shops. In the current issue of the Journal Gerald Gouriet QC argues, in the first of two articles, that when it comes to the highly contentious issue of the proliferation of betting shops, local authorities have more power than they appear to realise.

In his article Andy Woods states: "Despite the best attempts of some local authorities to try and block betting premises licence applications, we are still waiting some five years on from the implementation of the Gambling Act 2005, for any appeal in the Magistrates' Court to uphold any decision not to grant a licence." Perhaps in some future editorial I might note that, in much the same way as *Paterson's Licensing Acts* is so used, the *Journal* and Gerald Gouriet QC's article is the first to be cited and relied upon during an appeal.

Finally, I was concerned that each current issue of the *Journal* should build upon and contribute to an evolving narrative. Thus, James Button's regular Taxi feature provides a continuing thread to the evolution and impact of the Law Commission's Taxi Law review. Similarly, Richard Brown continues to explore the crucial and central (and in my view under-valued) role and involvement of interested parties and other persons within licensing regimes. In the current issue this cross-issue narrative and influence is illustrated in *Mind the Gap! Planning and Licensing Law* by Ian de Prez.

Despite our increasing organisation and professionalisation the *Journal*, like the Institute, is the product of dedicated volunteers (supported by a small team of equally dedicated officers and staff); it is these volunteers who are at the heart of the positive reception of the *Journal* and the proper beneficiaries of the many kind reviews and encouragement that I am regularly given on their behalf. It is also on their behalf that I feel justified and confident in taking a step back to review the three volumes of our first year in print and declare: "Well done us!!!".

Leading Article

Clamping down, Chinese walls, and human rights

When the Government radically amended the 2003 Licensing Act to empower licensing authorities to be both responsible authority and licensing authority, concerns were raised that retail operators would not receive a fair outcome to their applications and appeals. **David Matthias QC** examines the arguments for and against the change, and whether the balance of power has swung too far in terms of the Human Rights Act

The Executive Summary at the beginning of the Home Office 2010 consultation document entitled *Rebalancing The Licensing Act* announced that, "The Government intends to introduce more flexibility into the current licensing regime to allow local authorities and the police to clamp down on alcohol-related crime and disorder hot spots within local night-time economies". It went on to state that the Government was proposing *inter alia* to, "Give licensing authorities the power to refuse licence applications or call for a licence review without requiring relevant representations from a responsible authority." This article is about how the Government has subsequently sought to give effect to that proposal by amending the Licensing Act 2003 (the 2003 Act), and about the Human Rights Act (HRA) implications of that amendment.

The Amendment to the 2003 Act

It will be recalled that section 12 of the 2003 Act defines "the relevant licensing authority" as the licensing authority in whose area premises are situated. Section 12 also contemplates the possibility that premises may be situated in the areas of two or more licensing authorities, in which case section 12(3) of the 2003 Act provides that the relevant licensing authority will be "the licensing authority in whose area the greater or greatest part of the premises is situated". All important decision making functions under the 2003 Act in relation to premises are bestowed upon the relevant licensing authority (subject only to a statutory right of appeal to the magistrates' court, and the supervisory jurisdiction of the High Court).

Section 13 of the 2003 Act defines "responsible authorities", and the scheme of that Act is to give significant powers to responsible authorities to make representations for or against most applications available to licensees or aspiring licensees under the 2003 Act, and to instigate reviews of premises licences where the "responsible authorities" see fit to do so. The 2003 Act in its original form defined "responsible authorities" in section 13(4) in such a way as to expressly *exclude* relevant licensing authorities from also being "responsible authorities", by providing in section 13(4)(g) that responsible authorities should include "any licensing authority (other than the relevant licensing authority) in whose area part of the premises is situated". So where premises were situated in the areas of two licensing authorities, the licensing authority in whose area the greater or greatest part of the premises was situated (i.e. the relevant licensing authority) was not a responsible authority as regards those premises, while the other licensing authority was.

The logic was clear. It was not that licensing authorities should not also be responsible authorities, but only that *relevant* licensing authorities should not, in order that the significant powers given to responsible authorities should not be available to the same authority that was charged with all important decision making functions under the Act in relation to any given premises. In short, it ensured that the same authority could not be both accuser and decision maker in relation to any given application concerning a premises licence.

Section 103 of the Police Reform and Social Responsibility Act 2011 (the 2011 Act), which came into force on 25 April 2012, effected a radical amendment to section 13(4) of the 2003 Act by providing that henceforward *relevant* licensing authorities are also to be responsible authorities. The same authority can now be both accuser and decision maker in applications concerning premises licences. Indeed, it would seem that the scheme of the 2003 Act as so amended imposes a statutory obligation upon a relevant licensing authority to act as both accuser and decision maker in appropriate cases. It will be recalled that section 4(1) of the

2003 Act provides that, "A licensing authority *must* carry out its functions under this Act ('licensing functions') with a view to promoting the licensing objectives" (emphasis supplied). While prior to 25 April 2012 a relevant licensing authority's functions did not include those of responsible authorities (e.g. applying for reviews of premises licences), after that date they do. The 2003 Act as amended therefore obliges a relevant licensing authority to carry out its functions, *inter alia* as a responsible authority, with a view to promoting all four of the licensing objectives (i.e. the prevention of crime and disorder, public safety, the prevention of public nuisance, and the protection of children from harm). Accordingly, we find the Amended Guidance dated April 2012, issued under section 182 of the 2003 Act, stating at paragraph 9.13 that, "It is,... for the licensing authority to determine when it considers it appropriate to act in its capacity as a responsible authority; the licensing authority should make this decision in accordance with its duties under section 4 of the 2003 Act", and at paragraph 11.5 that, "the relevant licensing authority may apply for a review if it is concerned about licensed activities at a premises and wants to intervene early without waiting for representations from other parties".

There can be no doubt that the amendment to section 13(4) of the 2003 Act discussed above was designed and intended by the Government to alter the status quo between relevant licensing authorities and licence holders. The afore-mentioned consultation document entitled *Rebalancing The Licensing Act* was quite clear about that. Chapter Five of the document announced that "The Government proposes to change the balance of the Licensing Act to make licensing authorities more pro-active and empowered to take decisions", and that "To make existing powers stronger and more responsive to local needs, it is proposed that relevant licensing authorities are made responsible authorities ... This would empower them to refuse, remove or review licences themselves without first having had to have received a representation from one of the other responsible authorities".

Following the consultation process, the Home Office document *Responses To Consultation: Rebalancing The Licensing Act* explained the decision to implement the proposed change to section 13(4) of the 2003 Act as follows: "This will help licensing authorities to pro-actively target irresponsible businesses. A large number of consultation respondents supported the proposal. Some raised concerns this could lead to procedural unfairness, however we are confident that this will not be the case since there will be a separation of responsibilities within the licensing authority to ensure that different functions are not exercised by the same individuals".

Although the 2003 Act as amended was silent on the point, the notion that there should "be a separation of responsibilities within the licensing authority to ensure that different functions are not exercised by the same individuals" was emphasised in the amended departmental guidance dated April 2012.

At paragraphs 9.17-19 the Amended Guidance states that:

In cases where a licensing authority is also acting as responsible authority in relation to the same process, it is important to achieve a separation of responsibilities within the authority to ensure procedural fairness and eliminate conflicts of interest. In such cases licensing determinations will be made by the licensing committee or sub committee comprising elected members of the authority (although they are advised by a licensing officer). Therefore, a separation is achieved by allocating distinct functions (i.e. those of licensing authority and responsible authority) to different officials within the authority. In these cases, licensing authorities should allocate the different responsibilities to different licensing officers or other officers within the local authority to ensure a proper separation of responsibilities. The officer advising the licensing committee (i.e. the authority acting in its capacity as the licensing authority) must be a different individual to the officer who is acting for the responsible authority. The officer acting for the responsible authority should not be involved in the licensing decision process and should not discuss the merits of the case with those involved in making the determination by the licensing authority. For example, discussion should not take place between the officer acting as responsible authority and the officer handling the licence application regarding the merits of the case. Communication between these officers in relation to the case should remain professional and consistent with communication with other responsible authorities. ... For smaller licensing authorities, where such a separation of responsibilities is more difficult, the licensing authority may wish to involve officials from outside the licensing department to ensure a separation of responsibilities. However, these officials should still be officials employed by the authority.

In other words, relevant licensing authorities should ensure that their elected members and officers involved in the decision making process on a contested application have no involvement in the authority's conduct as a responsible authority in relation to that application – so-called "Chinese Walls" are to be erected and operated within licensing authorities, so that in principle a licensing authority (in its capacity as responsible authority) could apply for the review of a premises licence, but at the conclusion of a contested hearing the same authority (as responsible licensing authority) could decline to take any steps adverse to the interests of the licence holder.

Without doubt, this radical amendment to section 13(4) of the 2003 Act has given rise to considerable consternation amongst licence holders and those who represent them. They fear that whatever is said about Chinese Walls, a decision making process in which the same body can prosecute and also adjudicate upon review proceedings, is a process inherently likely to operate unfairly against licensees. This has, in turn, given rise to speculation about whether a decision making process in which a public authority is both accuser and decision maker is one that can be regarded as complying with Article 6(1) of the European Convention on Human Rights (ECHR), and whether the answer to that question might be affected by the Chinese Walls issue. In other words, might the answer be different if, in any given case, one was to assume that the Chinese Walls had operated effectively, and if in another, the Chinese Walls were found to have broken down (or to have never been erected).

The amendment to section 13(4) has also given rise to no small degree of apprehension amongst licensing authorities, many of whose officers and members are concerned about the practicalities of establishing and maintaining appropriate Chinese Walls within departments that are often small and relatively short staffed. There are fears of challenges being made under Article 6(1), in particular if licensing authorities are unable to demonstrate that they have erected and operated appropriate Chinese Walls in relation to any relevant decision making process.

The HRA implications

Article 6(1) of ECHR provides that: "In the determination of his civil rights and obligations ... everyone is entitled to a *fair* and public hearing ... by an *independent and impartial tribunal* established by law. ..." (emphasis supplied).

There is now a large body of case law (both domestic and European) examining how Article 6(1) applies to administrative decision-making that has been undertaken in the first instance by a branch of the executive (such as a local authority in its capacity as a licensing authority acting through its licensing sub-committee). Decision making by a branch of the executive may involve the "determination of civil rights and obligations" as understood by Strasbourg, but is unlikely in itself to satisfy the Article 6(1) requirement for an independent and impartial tribunal because such decisions will generally be taken by individuals who have an interest in or are connected to one of the "parties" to the decision. The European Court of Human Rights has made clear[1] that this lack of independence and impartiality is not necessarily fatal, because:

[t]he Convention calls at least for one of the two following systems: either the jurisdictional organs themselves comply with the requirements of Article 6 paragraph 1 . . . or they do not so comply but are subject to subsequent control by a judicial body that has full jurisdiction and does provide the guarantees of Article 6 paragraph 1.

Where an initial decision is taken by an executive body, the following questions arise under Article 6(1):

1. Is Article 6(1) actually engaged? That is to say, do the proceedings amount to a determination of a person's "civil rights and obligations"?
2. If so, was the initial decision making body (such as the licensing sub-committee) an independent and impartial tribunal for the purposes of Article 6(1)?

If the answer to the second question is "no", was that body subject to subsequent control by an independent and impartial body with so-called "full jurisdiction" sufficient to cure the deficiency inherent in the initial decision? It would be hard to dispute that Article 6(1) is engaged when a licensee is involved in a hearing before a licensing sub-committee. The right to carry on commercial activity has been declared a civil right[2] and more relevantly it has been held that Article 6(1) is engaged in proceedings which determine whether or not an individual is entitled to undertake licensable activities: see *Kingsley v United Kingdom* (2002) 35 E.H.R.R. 10 paragraph 34.[3] That Article 6(1) was engaged in proceedings before a licensing sub-committee was accordingly conceded by Westminster City Council in the recent leading case of *The Queen on the application of Hope and Glory Public House Limited v City of Westminster Magistrates' Court and Westminster City Council* [2011] EWCA Civ 31, [2011] 3 All E.R. 579.

It is also uncontroversial that in the context of determining a licensing application in respect of which officers of its own authority are making representations, a licensing sub-committee does not possess the necessary degree of independence to comply with Article 6(1), regardless of whether appropriate Chinese Walls have been erected and maintained. Again, that point was conceded by Westminster in the *Hope and Glory* case. Turning to the third question, it will be seen that the issue of whether a decision making process in which a licensing authority is both accuser and decision maker is one that can be regarded as complying with Article 6(1), must depend primarily not on whether the Chinese Walls within the authority operated effectively (or at all), but rather on whether there is subsequent control by a judicial body having "full jurisdiction" which can guarantee the requirements of Article 6(1).

The correct approach to this third question is to be derived from four leading authorities, namely: *Bryan v United Kingdom* (1995) 21 E.H.R.R. 342; *Regina (Alconbury Developments Ltd and Others) v Secretary of State for the Environment, Trade and the Regions* [2003] 2 AC 295; *Runa Begum v LB Tower Hamlets* [2003] 2 AC 430; and the aforementioned *Hope and Glory* case.

In the case of *Bryan*, having concluded that the first stage determination (a decision by the Planning Inspector) did not satisfy Article 6(1), the Strasbourg Court essentially took a two-pronged approach. The Court examined the jurisdiction of the court which was exercising "subsequent control" (in that case, the High Court) and the courses that were open to it. The Court then had regard to factors relating to the first stage decision such as "the subject matter of the decision appealed against, the manner in which that decision was arrived at, and the content of the dispute, including the desired and actual grounds of appeal" (at paragraph 45). Both stages of the process (i.e. both the primary decision making and the appeal stages) therefore need to be examined in detail, since the nature of the first stage decision and the way in which it was taken will determine what is required for "full jurisdiction" at the second stage.

Bryan has been considered and applied by the House of Lords in *Alconbury* and *Runa Begum*, and by the Court of Appeal in the licensing context in *Hope and Glory*. In Alconbury, Lord Hoffmann succinctly restated the relevant question as being whether the judicial body exercising "subsequent control" over the administrative decision making process has "jurisdiction to deal with the case as the nature of the decision and the context requires" (at paragraph 87). This was repeated by Lord Hoffmann in *Runa*

1 In *Albert and Le Compte v Belgium* (1983) 5 E.H.R.R. 533, repeated by the House of Lords in *R (Alconbury) v Secretary of State for the Environment, Trade and the Regions* [2001] UKHL 23, [2003] 2 AC 295 at paragraphs 29, 44, 86 and 153.

2 *Tre Traktorer Aktiebolag v Sweden* [1989] 13 E.H.R.R. 309.

3 Approving the judgment of the Chamber of the Third Section of the Court (application number *35605/97*, judgment of 7th November 2000, see paras. 44 and 45).

Begum, and was also explicitly adopted by Lord Bingham (paragraph 5) and Lord Millett (paragraph 101). A number of factors specific to administrative decision making have been taken into account by the domestic courts as part of the assessment into the adequacy of the jurisdiction exercised by the second stage tribunal. Firstly, some administrative decisions require judgments to be made in the public interest. Such decisions involve "questions of policy or expediency" more than "matters of right"; they involve "wider social and economic interests" (*Alconbury* paragraphs 122, 139, 156 and 159).

It has been recognised that it is wholly legitimate and in accordance with democratic principles for such decisions to be taken primarily by democratically accountable bodies. A requirement that the Court at the second stage be able to substitute its own judgment on these matters would "not only be contrary to the jurisprudence of the European Court but would also be profoundly undemocratic" (*Alconbury* paragraph 129 per Lord Hoffmann).

Secondly, in addition to questions of policy and expediency, administrative decisions may also be characterised by the exercise of evaluative judgement and discretion. In many cases professional or specialist knowledge and experience are vital, and it is therefore appropriate that administrators are primarily responsible for decision making (*Runa Begum* paragraphs 104-105).

Thirdly, it is also relevant that Parliament has seen fit to put administrative schemes in place and has prescribed the decision making process and any subsequent opportunities for appeal or review. "In determining the appropriate scope of judicial review of administrative action, regard must be had to democratic accountability, efficient administration and the sovereignty of Parliament" (*Runa Begum* paragraph 43 per Lord Hoffmann).

The majority of the domestic cases have concerned the 'subsequent control' exercised by the Administrative Court, and in particular whether it can be said to have "full jurisdiction" given that it does not enter into the merits of the decision it is reviewing and has limited jurisdiction over factual matters. The effect of the European authorities was summarised by Lord Bingham in *Runa Begum* (paragraph 11) as follows: "the absence of a full fact-finding jurisdiction in the tribunal to which an appeal lies from an administrative decision-making body does not disqualify that tribunal for purposes of article 6(1)".

Taking the European and domestic authorities together, it must be concluded that in the context of administrative decision making undertaken in the first instance by a branch of the executive, a full rehearing will rarely be necessary at the second stage: judicial review will suffice to satisfy Article 6(1).

The purpose of the licensing regime is to regulate, in the interests of the general public, commercial activity which, while generally beneficial, is recognised to have potentially detrimental effects and impacts. This requires different, and competing, interests to be balanced. A licensing sub-committee is tasked under the 2003 Act with striking that balance, using its knowledge and experience of licensing matters, of the local area in question and of the concerns of those who live and work in that area, having regard to the licensing authority's policy and the Secretary of State's statutory guidance.

While factual disputes will undoubtedly be raised in licensing applications, and will have to be determined, they are only part of the broader judgement that has to be made. The Strasbourg Court has referred to the "respect which must be accorded to decisions taken by the administrative authorities on grounds of expediency": *Zumtobel v Austria* (1994) 17 EHRR 116 paragraph 32. Accordingly, it is not surprising that in the *Hope and Glory* case, Toulson L.J. giving the judgment of the Court, said: "As to article 6, we accept the propositions advanced by Mr Matthias and we agree that the form of appeal provided by s182 and schedule 5 of the Act amply satisfies the requirements of article 6".

Conclusion

Applying the approach to Article 6(1) set out in the authorities and as summarised above, one must conclude that a magistrates' court hearing a licensing appeal (that is to say, an appeal from an administrative decision made by a democratically accountable body) in fact exercises a jurisdiction which is *fuller* than Article 6(1) requires. An aggrieved licensee benefits from a factual rehearing, albeit subject to the caveat that the court must be satisfied that the sub-committee's decision is wrong before it can interfere with the result. Furthermore, of course, an aggrieved licensee also has a further appeal by way of judicial review or case stated available to him in an appropriate case.

While the amendment to section 13(4) of the 2003 Act is radical in terms of the scheme of the Act, it is difficult to see how it could be argued successfully that its operation will produce results that do not comply with Article 6(1) of the ECHR, regardless of whether the Chinese Walls required by Guidance have operated effectively (or at all). The licensing sub-committee will remain subject to subsequent control by an independent and impartial body with "full jurisdiction" sufficient to cure any deficiency in the initial decision, thereby ensuring compliance with Article 6(1). The availability of a factual rehearing before a magistrates' court, together with a further appeal to the High Court by way of judicial review or case stated in an appropriate case will, in any event, remain an "appeals package" that amply satisfies the requirements of Article 6(1).

That is not to say that a licensing authority may be cavalier in its approach to establishing and maintaining the required Chinese Walls when acting as both accuser and decision maker in any given case. Licensing authorities are, of course, obliged by section 4(3) of the 2003 Act to have regard to any guidance given by the Secretary of State under section 182, and will in any event be concerned to ensure that they are seen to be approaching their decision making functions in an even handed manner. However, the validity of a decision made by a licensing sub-committee will ultimately depend not upon the height or security of the licensing authority's Chinese Walls, but upon whether a magistrates' court on appeal is persuaded that the decision is wrong; and the height or security of the Chinese Walls will not found any free-standing challenge to the decision making process on the basis of Article 6(1).

David Matthias QC
Francis Taylor Building

How best to impose sanctions on taxi drivers

A penalty points scheme devised by Cardiff City Council to deal with offences caused by taxi drivers has been ruled lawful in principle but found wanting in certain respects, as **James Button** explains

What is new in relation to taxi law? After all the excitement of the Law Commission Consultation (and I hope you got your response in before 10 September) we now await with bated breath to see what the outcome will be. The Law Commission has promised draft legislation by the end of 2013 so by the time you're reading this article that is probably only just over a year to wait. There is an App you can download for your iPhone which counts the number of "sleeps" until Christmas (and those of you with children may have encountered it). It remains to be seen whether there is a market for a similar App which will count down the number of sleeps until new taxi law!

So much for speculation, what is hard law?

James Button

Motorbikes as private hire vehicles

In July 2012 the Department for Transport issued *Licensing Motorcycles as Private Hire Vehicles – A guidance note from the Department for Transport,* which I mentioned in the last article. Notwithstanding some serious concerns raised by the Taxi Consultative Panel during a final consultation, the Guidance was issued in its final draft form.

Ultimately, it remains up to individual local authorities to determine whether they want to licence motor bikes as Private Hire Vehicles. If they do, the Guidance is there. But if they don't feel that motor bikes are sufficiently safe, they can still refuse. In either case, I would suggest canvassing opinion from experienced bikers.

Taxi penalty points schemes

The powers available to local authorities to deal with taxi (hackney carriage and private hire) drivers are both limited and severe (suspension or revocation under section 61 of the Local Government (Miscellaneous Provisions) Act 1976). As a result, a number of local authorities have developed "penalty points schemes" to enable action to be taken in relation to more minor problems which do not of themselves justify the sanctions contained in the legislation. In their simplest terms, these are similar to the penalty points which can be awarded to motorists on their DVLA licenses, with a tariff of points for misdemeanours and a maximum number of points that can be attached to a licence. Once that limit is reached, the driver is taken before committee to consider whether or not action should be taken against the licence.

One of the longest running such schemes - in Cardiff, where it has been in place since 1988 - was recently the subject of judicial review in *R (app Singh) v Cardiff City Council* [2012] EWHC 1852 (Admin).

The challenge was based on a number of arguments but the principal ones were: there was no lawful power to run such a scheme; when the maximum points were reached there was automatic revocation and therefore no application of discretion; there was a fetter on the discretion of the authority; the scheme was irrational; and the process conflicted with Article 6 of the European Court of Human Rights (ECHR).

The judge found that it was lawful to have a penalty points scheme as a means of dealing with misdemeanours. Mr Justice Singh said (at para 65):

In my view, there is nothing wrong in principle with the defendant authority such as the present, adopting the

policy, which seeks, both in fairness to the driver potentially affected and also to protect the public interest, to have, as it were, a staged process by which the cumulative effect of incidents of misconduct may well lead ultimately to the conclusion that in the judgment of the local authority, a person is not a proper person to continue to enjoy the relevant licence.

However, there was a problem with the way in which Cardiff City Council implemented the policy. Its approach was that when a driver reached ten points under its scheme, the licence would be revoked; and it appeared that on occasions, reduced numbers of points were awarded to a driver to avoid revocation of the licence. It was these elements which led to the challenges of a lack of application of discretion and fetter of the discretion. In this area the judge agreed with the claimants but in doing so explained how the process of deciding on whether action should be taken against a driver's licence should be undertaken.

In relation to action being taken under section 61(1)(b) ("any other reasonable cause") the question is whether a person remains a fit and proper person to continue to hold a driver's licence. The judge said that this was not purely discretion, it required a "judgement to be performed on whether the statutory question has been answered in favour of or against the relevant driver" (at para 70). If the answer to that judgement is against the driver (i.e. he is not fit and proper) there then still exists discretion as to what action to take against the licence.

In addition, the rigid mathematical formula led to the question being "how many points does the driver have?" as opposed to "whether there is any reasonable cause, in other words whether in all the circumstances of the case a driver is a fit and proper person to continue to enjoy licence?" (at para 77).

And finally, the policy did not recognise that even if the person is not a fit and proper person, suspension may be appropriate rather than revocation.

It can be seen therefore that penalty points schemes can be lawful provided the mechanism enables an offending driver to be brought before a delegated decision maker (most usually the committee) which will then consider the question of fitness and propriety in the light of the evidence and then determine what sanction (suspension or revocation), if any, should be applied.

There is another important aspect of this judgment which must be considered.

Suspension of a driver's licence as a punishment

There has been debate over the years as to whether local authorities can suspend a driver's licence as a punishment, rather than to rectify a problem, e.g. to address concerns over the impact of a medical condition on the person's suitability to remain a driver.

Mr Justice Singh makes it clear that suspension of a driver's licence is a final decision on the question of a person's fitness and propriety and that it cannot be used as an interim measure pending further investigation into a driver's conduct and ultimate fitness and propriety.

This is addressed directly by Mr Justice Singh at paragraphs 103 to 105 in the following way:

103. In my judgment, the way in which the concept of suspension is used by Parliament is section 61 of the 1976 Act is not, as it were, to create a power of interim suspension, it is rather after a considered determination in other words a final decision on whether a ground for either revocation, or suspension of a licence is made out, for there to be either revocation or, as a lesser sanction, a sanction of suspension.

104. By way of analogy, one can envisage for example in a professional context a solicitor or a barrister can be disciplined on grounds of his conduct. The relevant disciplinary body may conclude that even if the misconduct has been established, that the appropriate sanction should be something less than complete revocation of the practising certificate for the relevant lawyer. It may be, for example, a suspension for a period of one year, will constitute sufficient sanction in the interests of the public.'

105. It is in that sense, in my judgment, that Parliament uses the concept of suspension in section 61 of the 1976 Act. It does not use it, as it were, to create an interim power, before a reasoned determination has been made, that the grounds in subsection (1A) or (1B) have been made out. It is not, as it were, a protective or holding power. It is a power of final suspension, as an alternative to a power of final revocation.

It is therefore clear that suspension of the driver's licence can be used as a sanction, which will of necessity be a lesser sanction than revocation. To that extent this judgement may prove useful to local authorities.

However, the effect of this judgment will be to prevent local authorities suspending a driver's licence pending further investigation. Up until now, many authorities have suspended a driver's licence following serious complaint or allegations (e.g. violence, sexual assaults, dishonesty etc) to protect the public while an investigation takes place. Following the investigation, the decision may be taken in the light of the additional evidence to either revoke the licence or lift the suspension. In the light of this judgment, this procedure is now unlawful.

In relation to this element, the judgment is disappointing and yet another example of why new and carefully considered legislation is required.

James Button

Principal, James Button & Co.

Article

Simply Pleasure and the determination of licence fees

The case of *R (Hemming) v Westminster City Council*[1] has thrown helpful light on how regularly local authorities should determine licence fees and the procedures they should adopt. **Philip Kolvin QC** examines a case that illustrates the importance of fee transparency and justification

Although Timothy Hemming trades as the more memorable Simply Pleasure Limited, it is by his own name that this important case will come to be known. He and six other operators ran a total of 13 shops in Westminster, together accounting for the great majority of the adult sex shop trade in the borough. While in the greater scheme of things the numbers of licensed premises is small, the principles they established with their case in the Administrative Court affect most licensed establishments, and in particular those where it is up to the authority to determine the fee. Although part of the case is subject to further appeal to the Court of Appeal, important elements have not been appealed, and need to be read, learned and inwardly digested by all licensing authorities. In this article, I shall first explain those parts of the judgment which have not been appealed and then describe those parts which have.

The fees for sex shops, and of course sexual entertainment venues and sex cinemas too, are governed by Schedule 3, paragraph 19 of the Local Government (Miscellaneous Provisions) Act 1982. This requires the applicant for a grant, renewal, variation or transfer of a sex establishment licence "to pay a reasonable fee determined by the appropriate authority."

From this, it is axiomatic that the obligation to pay a fee at all only arises once it has been determined by the appropriate authority. This requires an act of determination by some person or body within the council with authority to make the determination. While in an annual licensing regime, the authority may determine the fee anew each year, it is not bound to do so. It might for example determine the fees for the next three years. But determination there must be, otherwise the demand of the fee which follows is unlawful. By the time of the hearing of this case, those propositions were not in dispute.

In this case, Westminster City Council had delegated the job of setting fees to the Licensing Applications Sub-Committee. In 2004, the sub-committee determined the application fee for 2005 at £29,102. This is by some stretch the largest licensing fee in the country, of which more later.

Following that, it was the claimants' case that no delegated body within Westminster determined the fee again until January 2012. Westminster pleaded that the fees had been subject to an annual review by officers. However, it ultimately accepted that, while provision may have been made for such annual reviews in its financial regulations, these did not amount to determinations for the purposes of the legislation. Its case rested on the proposition that the 2004 determination had been open-ended and was therefore designed to govern future fees until such fees were re-determined. The claimants pointed to the language of the resolution in 2004 which made it clear that the sub-committee had only been purporting to determine the fees for a single year. The court, in the guise of Mr. Justice Keith, agreed. In the result, therefore, Westminster had not determined the fees for any of the years from 2006 to 2011 inclusive. The next part of the debate concerned the consequences of that.

Judicial Review challenges

Were the claimants entitled to challenge fees going all the way back to 2006? Or were they confined to challenging the fees only for 2011? Westminster pointed to the proposition, contained in rule 54.5 of the Civil Procedure Rules, that judicial review challenges have to be brought promptly and in any event within three months of the decision to be challenged. To that, the claimants had a two-pronged attack. The first was the common law principle that where a tax or other sum has been paid as a result of an unlawful demand, there is an immediate common law right to restitution, not dependent on public law

1. [2012] EWHC 1260 (Admin) and [2012] EWHC 1582 (Admin).

rules at all. The principle was clearly laid out in important tax cases, including *British Steel Plc v Customs and Excise Commissioners (No.1)* [1997] 2 All ER 366. The second was the court's discretion to extend time for judicial review proceedings under section 31 of the Senior Courts Act 1981. In this case, the Learned Judge decided that time should be extended. Given that the claimants could have brought their action separately as a claim in restitution, this is not surprising and has not been the subject of appeal.

Calculation of fees

The next question, though, is what principles should govern the calculation of fees? It so happened that the leading case on calculation also involved the determination by the same council of sex licensing fees, *R v Westminster City Council ex parte Hutton* (1985) 83 LGR 461. There, it was held that in the determination of fees, previous years' deficits may be brought into account so as to balance income and expenditure. Furthermore, it was held that it was lawful for the licensing authority to bring into account its enforcement costs.

In *Hemming*, the claimants had for some time been seeking to ascertain what the state of account was through Freedom of Information Act 2000 requests, as a result of which they believed that Westminster had been making profits at their expense. While Westminster accepted that its response to the requests had been inadequate, it denied that the account was substantially in surplus. That was not decided by this case, but is to be the subject of a new determination process to be undertaken by the council.

What was, however, decided was whether surpluses as well as deficits are to be carried forward. The logic of *Hutton* is that they should. If the council is entitled to bring forward deficits, why should it not give credits for surpluses? Mr Justice Keith agreed. He stated (para 26): "If a local authority were to be treated as acting lawfully if it failed to carry forward a surplus from one year to the next, the making of profits would become legitimised." He did not go so far as to require pin-point precision year on year, stating: "...it does not have to adjust the licence fee *every* year to reflect any previous deficit or surplus, so long as it 'all comes out in the wash' eventually. And the adjustment does not have to be precise: a rough and ready calculation which is broadly correct will do." (Para 27.)

The upshot of that was that Westminster was ordered to determine the fees for each of the years 2006-2011 and to repay the claimants the balance between the fees determined and those collected. None of that was subject to an appeal.

However, the claimants had further strings to their bow, which concerned the effect on licence fees of the implementation through the Provision of Services Regulations 2009 of Directive 2006/123/EC on Services in the Internal Market, commonly known as the Services Directive. The directive applies to most authorisation schemes dealing with the provision of services, with exceptions including gambling and taxis. Article 13.2 of the directive concerns fees and states "... any charges which the applicants may incur from their application shall be reasonable and proportionate to the cost of the authorisation procedures in question and shall not exceed the cost of the procedures." This was transposed by similar language into regulation 18(4) of the Regulations, which came into effect on 28 December 2009, and therefore governed Westminster's sex licensing fees from 2010.

As mentioned above, Westminster's annual fees were £29,102. The overwhelming preponderance of that was alleged to be for the costs of the pursuit of illegal operators who were not licensed at all, but were working wholly outside the system. The claimants' case was that, while this may have been permitted by *Hutton*, it ceased to be permitted when the regulations became law. The council's case was that the directive and regulations should not be construed as prohibiting that which has been permitted in domestic law for a long time. The court decided that the construction of the provisions was clear, and that Westminster was not entitled to charge licensees the costs of investigating and prosecuting unlicensed operators. In determining its fees for 2010 and 2011, Westminster was to apply this principle. The court also quashed the fee for 2012 which had been determined at £19,973 and £18,737 for applications and renewals respectively, on the same basis.

Westminster has appealed against this element of the judgment, which will require the Court of Appeal to decide whether the proper construction of the provisions is that advanced by the claimants and accepted by Mr Justice Keith or not. This case is likely to be heard in early 2013.

Fee transparency

For the sake of completeness, it is necessary to mention two other elements of the case which were appealed. First, Mr Justice Keith ordered that the redetermination of the fee should take place on an annual basis for each of the years 2006 to 2012. Westminster argued for a single retrospective recalculation, and has carried that argument to the Court of Appeal. Second, prior to the commencement of the claim, the claimants had made a without prejudice offer pursuant to Part 36 of the Civil Procedure Rules to forgo all of their past entitlements if Westminster would re-determine the fee for 2011 without bringing into account the costs of enforcement against illegal operators. Their offer was refused but the claimants proceeded to obtain a judgment which represented a significant improvement on that position. Accordingly, the Learned Judge awarded the claimants interest at 10% over base rate on the repayments due from Westminster, which is a sanction contemplated by Part 36. Westminster intends to argue that the rules should not be taken to apply to cases in which important public law principles are at stake.

The lessons for licensing authorities from *Hemming* are at least two-fold. First, as they are given increasingly wide powers over the determination of fees, they must exercise those powers in a transparent and rigorous manner. Second, they must ensure that basic public finance accounting principles are followed so that, if challenged, they are able to justify their fees and demonstrate that the fees system has not been used to make profits. The extent of their ability to bring into account third party enforcement costs, assuming they incur any, is a matter which will be considered by the Court of Appeal in the coming months, and will no doubt be revisited in this journal.

Philip Kolvin QC
Head of Licensing, Cornerstone Barristers

Liquid nitrogen and how to use it safely

There are many dangers associated with liquid nitrogen, but handled carefully in line with legislation and various other control measures, it can be used safely to enhance public events, as **Julia Sawyer** explains

It is becoming more and more common for liquid nitrogen to be used in bars, at events, festivals and in restaurants to provide that special effect and make a demonstration look much more dramatic.

This article looks at the control measures that should be in place when using liquid nitrogen and highlights why it should be handled carefully to protect the public at events. When all of the control measures are followed it provides a wonderful and artistic safe effect.

What are the dangers?

Although liquid nitrogen is not flammable it is stored in a container that if heated to above 50°C may cause the container holding it to rupture or explode. It is important, therefore, that it is handled, stored and identified appropriately. If handled incorrectly, liquid nitrogen poses the following risks:

Asphyxiation - One of the main dangers associated with liquid nitrogen is the risk of asphyxiation when used or stored in poorly ventilated areas. Liquid nitrogen evolves into nitrogen gas, which is inert and non-toxic, but there is a risk of asphyxiation in situations where high concentrations may accumulate and subsequently displace air from the room. Short exposures to cold gas vapour leads to discomfort in breathing while prolonged inhalation can produce serious effects on the lungs and could possibly provoke an asthma attack.

Cryogenic burns (thermal burns) - Liquid nitrogen can cause cryogenic burns if the substance itself, or surfaces which are or have been in contact with the substance (e.g. metal transfer hoses) come into contact with the skin. Local pain may be felt as the skin cools, though intense pain can occur when the cold burns thaw and if the area is large enough, the person may go into shock.

Frostbite - Continued exposure of unprotected flesh to cold atmospheres can result in frostbite. There is usually sufficient warning from local pain while the freezing action is taking place.

Julia Sawyer

Hypothermia - Low air temperatures arising from the proximity of liquefied gases can cause hypothermia. Susceptibility is dependent upon temperature, exposure time and the individual concerned.

Pressurised vessels should not be accompanied in lifts. If a goods lift or passenger lift is used to transport liquid nitrogen it should be closed to all passengers. The vessel should be manoeuvred into the lift and the lift sent to its destination floor to be met by another person. A system should be employed to ensure that no passenger enters the lift at intermediate floors. This can be done either by locking the lift or by using a barrier (chain/tape etc). An appropriate warning sign (Do not enter – liquid nitrogen in transit) should also be deployed within the lift to prevent persons entering. If liquid nitrogen spills in a lift, as it is a confined space, it will displace the oxygen extremely quickly and anyone in that lift will die from asphyxiation.

Relevant legislation

Health and Safety at Work, etc, Act 1974 section 2 and 3 places duties on employers to ensure the safety of their employees and on employers and the self-employed to

ensure the safety of persons other than their employees, i.e. members of the public.

Control of Substances Hazardous to Health (COSHH) Regulations 2002 extend to the use of "those gases and vapours which, when present at high concentrations in air at the workplace, act as simple asphyxiants". Use of liquid nitrogen is therefore subject to these Regulations.

The Management of Health & Safety at Work Regulations 1999 require every employer to make a suitable and sufficient risk assessment of the risks to health and safety of his employees to which they are exposed while at work. The regulations also stipulate a requirement for the provision of adequate information, instruction and training for procedures for dealing with serious and imminent danger.

The Personal Protective Equipment at Work Regulations 1992 require employers to provide suitable protective equipment where risk cannot be adequately controlled by other means which are equally or more effective.

The Confined Spaces Regulations 1997 may also apply in unventilated or poorly ventilated areas.

The Pressure Systems Safety Regulations 2000 apply to all systems containing liquefied gas operating at a pressure greater than 0.5 bar (approx 7 psi) above atmospheric. These regulations require users to ensure that systems are properly maintained, periodically examined (with adequate records of examination kept) and are operated within established safe operating limits.

The British Compressed Gases Association (BCGA) Code of Practice CP27 - Transportable Vacuum Insulated Containers of not more than 1000 litres volume - may also be applicable to the transport of liquid nitrogen.

Control measures that should be in place

- Ensure the person using it has received appropriate training in how to use and handle liquid nitrogen.
- Ensure the appropriate equipment is being used to store the liquid nitrogen, such as a Dewar.
- Liquid nitrogen should always be carefully handled without spilling.
- Lone working should not be permitted when using liquid nitrogen.
- Protective clothes should be worn: non absorbent insulated gloves, goggles or a full face shield; arms should be covered when decanting as it does splash and spray; no open toed shoes.
- Metal jewellery and watches should be removed from hands or wrists when filling equipment.
- Objects cooled by liquid nitrogen should never be touched immediately: there should be a specified safe time between using and touching.
- Clothing should be designed so that liquid nitrogen cannot be trapped near the skin.
- Containers should always be slowly filled in a well ventilated area.
- An open Dewar should never be prevented from venting naturally.
- Containers should never be overfilled nor hollow rods or dipsticks used to test the liquid level.
- Storage and use should always be in a well ventilated area.
- The liquid should never be disposed of in a confined space or poured into sinks.
- The Dewar and hand held equipment should be kept secure (to prevent unauthorised use) and stored in an upright position.
- Dewars containing liquid nitrogen should be handled carefully and kept clean and dry and protected from damage.
- First aiders should be trained to deal with any emergency involving liquid nitrogen.
- Plans, evacuation procedures and fire risk assessments should be updated stating where the pressurised vessel/s is being stored and emergency services notified if in an emergency.

Julia Sawyer
Director, JS Safety Consultancy Ltd

Reported incidents

In 2009 a 24-year-old chef in Germany who was experimenting with liquid nitrogen lost both of his hands.

He was unaware of liquid nitrogen hazards when filling a closed container. When he tried to open the container at his home it ruptured. The container used by the injured person was not designed for storing liquid nitrogen. It had been closed using an unvented screwed cap and the liquid nitrogen was trapped. The temperature of the liquid nitrogen was -196 °C and the ambient air temperature was approximately 20 °C. Due to the heat transfer into the liquid nitrogen, it warmed up and raised the pressure inside the container. As the container had no safety device to relieve pressure it ruptured when the cook tried to open it.

European Industrial Gases Authority (EIGA) Safety information 26/11/E

In 2010 at the International Culinary Centre in Denver a 160l Dewar containing liquid nitrogen was knocked over while being moved from the 4th to the 2nd floor of the building. Seconds later the Dewar vented with a thundering ka-boom, blowing the cap off the top and punching out a ceiling tile. The hallway filled with nitrogen. The area was cleared and ventilated and oxygen levels monitored. Fortunately no one was hurt.

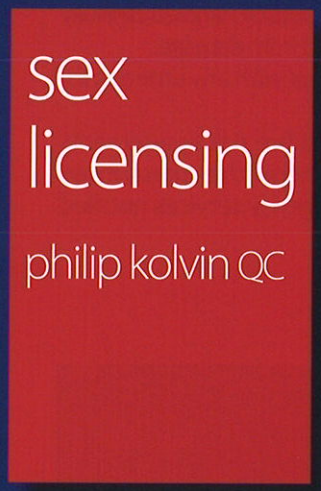
www.cookingisssues.com/2010/03/12ka-boom-liquid-nitrogen-safety-rules-are-there-for-a-reason

In 2011 an American student was wearing cloth material gloves (suitable for hot processes) when filling a Dewar with liquid nitrogen. It spilled on to his hand and penetrated the glove causing frostbite on one of his fingers. The cloth made the situation worse by allowing the liquid through the material and holding it to his skin.

http://www.udel.edw/ehs/liquidnitrogen/html *University of Delaware Office of Campus and Public Safety*

In October 2012 a girl had to have her stomach removed after drinking a cocktail containing liquid nitrogen. David Morris MP is asking the Government to ban the use of liquid nitrogen in alcoholic drinks.

Institute of Licensing *Books*



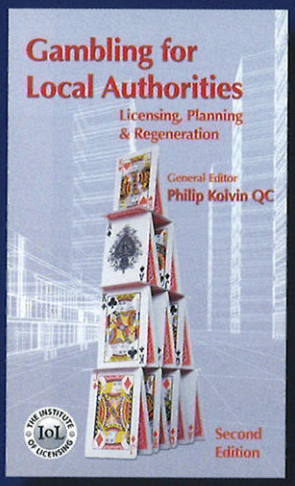
Sex Licensing
Philip Kolvin QC
Published 2010 Price IoL members £25.95 (non-members £34.95)
ISBN: 978-0-9555392-2-0

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

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

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

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



Gambling for Local Authorities
Philip Kolvin QC
Published 2010 Price £49 ISBN: 978-0-9555392-1-3

This book charts the terrain of gambling law simply and succinctly for both licensing and planning professionals. The second edition includes important new material:

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

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

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

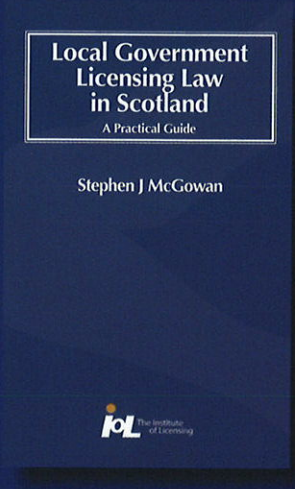
New text on Planning Policy Statement 4 and the Community Infrastructure Levy.

A new chapter on problem gambling by Professor Mark Griffiths.

New tables and figures to explain and simplify the law.

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

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



Local Government Licensing Law in Scotland
A Practical Guide
Stephen McGowan
Published 2012 ISBN 978-0-9555392-3-7

Price IoL Members £30 + P&P and to Non-members at £40 + P&P.
For the first time in the history of Scots law an author has brought together a legal textbook which acts as a practical guide to the procedures of what is commonly known as "civic licensing" providing local authority staff, solicitors, the police, enforcement officers and operators with an easy-to-read 350 page guide to the Civic Government (Scotland) Act 1982 and related legislation.

If you wish to pre-order a copy or copies email orders@instituteoflicensing.org

Information at a licensing hearing — to share or not to share?

There is much debate currently in licensing circles over the level and type of information that should be provided at a licensing hearing held to consider a premise application by the local licensing authority. But, to me, it's clear that availability of local licensing information already in the public domain is important to help all parties focus on the key licensing issues of the case being considered – and it can save much time otherwise taken up in painful questioning by legal representatives during a hearing, including mining for or trying to establish key data that may have a strong relevance for the licensing panel when determining an application.

This is especially important when you have professional licensing advocates present who do not want to waste precious time in determining basic local licensing information: it means they can use the data provided to focus on the key issues of the application before them, exam relevant case law and counter key arguments by an opposing advocate.

Now I fully appreciate all premises applications need to be considered on their own merits and every case is unique and has its own relevant key information to consider. I also appreciate that there is a school of thought which argues against providing additional local licensing data, and which prefers to make the legal representative or prospective premises holder do the work themselves. However, in striving to achieve licensing excellence at a hearing, I believe we as an industry must continue to embody best practice by providing local data, intuitively and in a user friendly format, that will result in a greater understanding to non-specialists and the public of the often complex and multifaceted licensing sector.

One of the examples of best-practice local licensing information I am referring to is a premises spreadsheet, which shows a colour coded night-time economy map that details premises which are granted times for licensable activities and shows those premises that can trade twenty four hours a day. You cannot show every premises by day, with starting and closing times for each activity, as it will prove impossible to refer quickly to the spreadsheet. Therefore, a summary of the closing times of all premises by ward or area for a Saturday night is a good referral point when discussing licensing activities. This can be further enhanced by overlaying surrounding residential and business premises.

With currently available technology, whether it is on a tablet or on a projected screen, data can be delivered in an ever more intuitive and informative format, thus allowing a real time window into the current status of the licensing economy of the local area which all attendees of the licensing committee/licensing panel can access and use effectively to aid discussion and decisions.

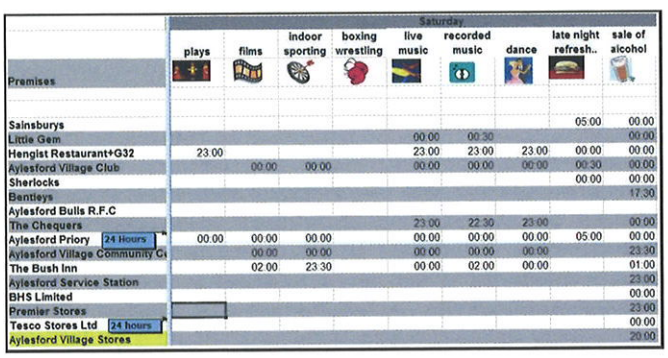
Basic licensing information, when made available in this modern and professional manner, helps instil confidence in the licensing process for all parties.

Another frustrating missing data link for licensing advocates can be not knowing where people who have made a representation live. Showing the location of their home on a map, which also indicates where local businesses are situated, can clearly demonstrate to panel members weighing up representations how a person can be affected by licensing activity.

Other key sources of information which I make available are drawn from the web or local press coverage, which can be useful for reflecting public domain debate on the premises licence application. Although this is not primary data, in the way that representations made through the 28 day notice period are, it represents a "taking the pulse" of the local community and ensures all parties are clearly aware of the community's current feelings.

In summary, I am a great advocate of providing relevant "real time" information to all parties at a hearing in order to ensure that the consideration of a licensing application has been aided by quality data, discussion and determination. Information when presented in this way goes a long way to help aggrieved and disgruntled objectors understand the licensing process and appreciate the task of striving to strike a balance between a vibrant night time economy and residents having a good night's sleep.

Anthony Garnett
Licensing Manager, Tonbridge & Malling Borough Council



Premises	Saturday								
	plays	films	indoor sporting	boxing wrestling	live music	recorded music	dance	late night refresh..	sale of alcohol
Sainsburys								05:00	00:00
Little Gem					00:00	00:30			00:00
Hengist Restaurant+G32	23:00				23:00	23:00	23:00	00:00	00:00
Aylesford Village Club		00:00	00:00		00:00	00:00	00:00	00:30	00:00
Sherlocks								00:00	00:00
Bentleys									17:30
Aylesford Bulls R.F.C									
The Chequers					23:00	22:30	23:00		00:00
Aylesford Priory 24 Hours	00:00	00:00	00:00		00:00	00:00	00:00	05:00	00:00
Aylesford Village Community C		00:00	00:00		00:00	00:00	00:00		23:30
The Bush Inn		02:00	23:30		00:00	02:00	00:00		01:00
Aylesford Service Station									23:00
BHS Limited									00:00
Premier Stores									23:00
Tesco Stores Ltd 24 hours									00:00
Aylesford Village Stores									20:00

Select Committee's Gambling Act Report and Camelot defeat

The Parliamentary Select Committee that oversees DCMS affairs is calling for a series of changes in the way gambling is regulated; Camelot has lost its battle to halt the Health Lottery; and casino and bingo legalities in Oldbury – all are covered in **Nick Arron's** regular review of changes in gambling licensing

The Culture, Media and Sport Committee published its report *The Gambling Act 2005: A bet worth taking?* in July following its inquiry into the Act. The committee focused on the financial impact of the Act, the effectiveness of the Gambling Commission, remote gambling, casino licences, gaming machines and problem gambling.

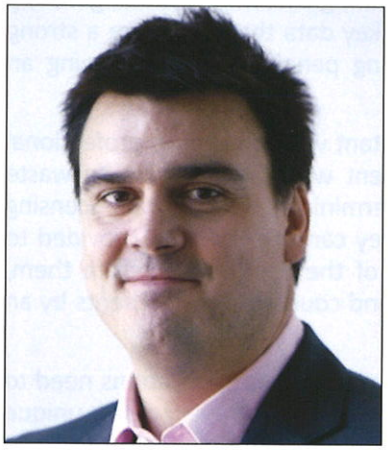
The committee refers to numerous inconsistencies within the Act, stating that it has not been sufficiently evidence-based. It highlights particularly gaming machine numbers and stake and prize limits.

The committee would like to see more powers devolved to local authorities so they can make decisions based on their local knowledge, while national controls focus on the protection of children and the vulnerable.

Pointing to failures with the new 2005 Act casino licensing process, the committee recommends that casino licences originally granted under the Gaming Act 1968 be made portable and re-locatable. Local authorities would be given discretion to apply their local knowledge and decide whether consent be given to licences in their area, and subsequently decide on granting premises licences and planning permission.

The key recommendations of the report include an independent review of Gambling Commission expenditure and a call for greater transparency in relation to where its fees are spent, with a view to reducing costs and the burden of fees on the industry. The committee, repeating calls from the industry, would like to see operators pay less to the Commission by way of fees. It is especially concerned about small, independent operators paying much higher fees per shop than large chains and suggests that the Commission should address the issue by introducing a new licence fee structure.

On gaming machines, the committee suggests increasing the permitted allocation of B2 machines in casinos to twenty, as casinos are more highly regulated and have controls on access. The committee also recommends allowing local authorities to increase the number of B2 gaming machines which are permitted in betting shops, in order to relieve the unintended consequence of the Act encouraging clustering on high streets.



Nick Arron

Referring to the withdrawal of Government funding for future British Prevalence surveys on problem gambling, the committee is concerned about a lack of proper research to inform policy. It calls for Government to ensure that high-quality, independent research is available to assess the scale of problem gambling and the impact of changes in regulation. It also suggests commissioning specific research on problem gambling and children, with a focus on the most effective ways of educating children on the risks of gambling. On a local level, it suggests that the DCMS makes information on problem gambling more readily available outside gambling premises.

Beyond the scope of the Act, on online gambling, the committee recommends that the Government should look to set the tax rate at a level which encourages operators to base themselves within the UK, and it also urges measures to prevent the formation of a perceived online "grey market".

Camelot loses legal battle to halt the Health Lottery

Camelot, the operator of the National Lottery, has failed in its bid to prevent the Health Lottery from continuing.

The Health Lottery is the brand name under which 51 Community Interest Companies (CICs), which are

non commercial societies each holding a society lottery operating licence, operate their society lotteries. The CICs have each outsourced the management and day-to-day conduct of their lotteries to The Health Lottery ELM Limited (THL), which holds an external lottery manager's operating licence. Each CIC covers a different geographical area of the UK and raises money for health related causes.

Camelot sought permission for judicial review of the Gambling Commission's decision to grant operating licences to THL in September 2010 and to the various CICs and for failing to launch a review into the way in which the Health Lottery operates. The basis for these assertions was that the CICs were established for purposes of private gain in breach of section 19 of the Act, which defines non-commercial societies and provides that they must be established and conducted for charitable purposes, sport or cultural activity or for any other non-commercial purpose other than that of private gain. Camelot argued that they were established, in part, to create private gain for THL (or its predecessor) and were therefore not non-commercial societies.

Camelot also argued that the 51 society lotteries effectively operated as one single lottery, (which it considered was a rival to its National Lottery) and that this resulted in a breach of section 99 of the Act which defines limits on lottery proceeds.

Refusing Camelot permission for judicial review, the judges supported the Gambling Commission's assertions that the claim had been considerably unduly delayed and that Camelot had "failed to establish a claim with a real prospect of success". They went on to criticise Camelot which, they said, had "not been candid" about when it first appreciated that it had grounds for judicial review.

They stated that the CICs were indeed non-commercial societies and that they did not breach section 19 even though they had been incorporated in conjunction with a commercial external lottery manager to be part of the overall scheme branded as the Health Lottery.

Furthermore, even though the companies were under common control because they all had the same directors and employed the same external lottery manager, they were separate legal entities; there was no suggestion that they were operated for fraud; nor was there any suggestion that their assets were applied for purposes other than for the benefit of the individual local communities which they were bound to support by their various Articles of Association. Indeed, the uncontested evidence was that very many health related organisations and charities around the country had benefitted from the proceeds of the lotteries. There was no suggestion that the proceeds limits in section 99 had been breached by any individual society lottery. Consequently the Health Lottery did not operate as a single lottery.

The judges stated that Parliament or the Government should be responsible for making decisions on multiple society lotteries and that such schemes were not prohibited per se by the Gambling Act 2005.

They found that the Commission had correctly determined that the real question relating to the Health Lottery is whether the lotteries, in practice, satisfy the licensing objective of fairness and openness, given the misleading widespread perception of a single lottery benefitting a single society.

At the time of the case, the question was being addressed in section 116 reviews of the society lottery licences and THL's external lottery manager's operating licence. The reviews were launched after Camelot launched its proceedings but before the case was heard, and were on the basis of whether conditions should be attached to the various licences.

The reviews followed research and test purchasing undertaken by Commission staff on the marketing and point of sale activities of the Health Lottery. The results demonstrated that the Health Lottery's promotion raised "the serious risk of the potential player not realising that they are participating in the particular society lottery rather than a single health related lottery".

The reviews led to a late application by Camelot to amend its Judicial Review claim: this was also refused by the High Court.

Concerns were raised that the decision could lead to other operators launching similar schemes and to erosion of National Lottery proceeds (which was not proved in the case) and those of more conventional society lotteries. Whether potential operators will have the support of businesses such as those of Richard Desmond is another question.

In proceedings, it became clear that the Commission shares concerns about the Health Lottery. It wrote to the DCMS stating that the scheme "is essentially a clever device to get round the proceeds limits for individual lotteries enabling the External Lottery Manager (ELM) to benefit from the more generous rules on payment of expenses in the 2005 Gambling Act".

The Commission had decided, and the High Court agreed, that the Health Lottery is technically compliant with the Act. It is now a question for the Government and Parliament as to whether they believe legislative changes are necessary.

Camelot has confirmed plans to appeal.

Gambling Commission and National Lottery Commission merger plan

The DCMS has released the consultation paper outlining the proposed merger between the Gambling Commission and the National Lottery Commission.

The National Lottery Commission relocated to the Gambling Commission's Birmingham offices in January 2012 and the Government is now consulting on the proposed measures which will allow the two bodies to merge.

The consultation paper was available on the DCMS website for responses by 23 October 2012.

In light of the High Court decision regarding the Health Lottery, Camelot's response to the consultation could be a highlight in an otherwise straightforward exercise for the DCMS.

Nick Arron
Lead Partner, Betting & Gaming, Popplestone Allen

Article

Mind the gap!

Planning and licensing law

The links between planning and licensing law can cause practical problems in the licensing process, writes **Ian de Prez**. This is not, he explains, because the relevant principles of law are difficult or subject to any great uncertainty. They are, however, largely unknown to the public and when explained may cause surprise

Interested parties often find it hard to accept that the council in its capacity as licensing authority can lawfully entertain a licensing application which, if granted, would in theory allow licensable activities to take place beyond the opening hours prescribed by the planning permission. Surely, they say, the council is wrongly undermining the rule of law and contradicting its own planning decision?

The applicant in the same situation may feel aggrieved when told that the success of the licensing application does not in itself deliver a variation of the planning permission or the right to act contrary to it, and that the council in its capacity as local planning authority is not bound to follow the licensing decision when it determines the application to vary the planning permission which must now be made.

Planning and licensing are essentially separate regulatory codes although they happen to be administered by the same council. The idea of councils *wearing different hats* when performing differing functions is well established in public law. A planning permission cannot authorise a breach of the terms of a premises licence any more than it can authorise what would otherwise be a nuisance at common law or a breach of a restrictive covenant. By the same token, a premises licence is not a licence to act contrary to the terms of planning permission or any other regulatory restriction.

In *R (Blackwood) v Birmingham Magistrates*[1] Kenneth Parker QC (now Parker J) having noted that the Guidance issued under Section 182 indicates that "planning, building control and licensing regimes will be properly separated to avoid duplication and inefficiency" (para 13.57) added: *It is relatively easy to state this as a target, but it is much harder to formulate any general principle to assist in demarcating the respective competencies of planning and licensing authorities.*

It appeared to the judge *that the framework and substance of the act and its underlying rationale strongly suggest that operational matters are intended primarily for regulation by the licensing authorities.*

Experience is beginning to suggest some commonly arising situations where one regulatory code works better than the other. As Philip Kolvin QC has demonstrated[2], the cessation of licensable activities and the closing of premises to the public are different concepts and the enforcement of licence conditions purporting to control the latter is problematic because of the wording of Section 136 of the Licensing Act 2003. Councils may therefore prefer to rely on a planning condition.

The Guidance makes it clear that planning and licensing decisions in respect of the same premises can legitimately differ because the respective decision makers have to apply criteria which are *different (albeit related)*. Most of the considerations that arise in a licensing hearing under the four licensing objectives will also be relevant in a planning context[3]. However, planning decisions are made with reference to *amenity* which has a lower threshold than *public nuisance* and may need to take into account planning polices which find no echo in the licensing objectives.

Therefore, in most cases an adverse or more restrictive approach is more likely in the planning context than the licensing. However, there is no hierarchy between regulatory codes, and no requirement that planning permission must precede a licence application. Earlier versions of the Guidance stated that: "Applications for premises licences

1 [2006] EWHC (Admin) (2006) 170 J.P. 613. See also *R (o/a Townlink Ltd) v Thames Magistrates' Court* [2011] EWHC 898 (Admin) in which planning issues were also considered.

2 (2011) 1 JoL 15.

3 The Deputy Judge in *Blackwood* said that the protection of children from harm is not a land use planning consideration. I would want to add that whilst it may not be a primary concern for a planning decision maker it is too absolute a statement to say that it is never relevant at all.

....should normally come from businesses with planning consent for the property concerned".[4]

Representations were made on the basis that this creates a policy presumption for the priority of planning, but I suggest that this argument was unsustainable. This part of the Guidance was unhappily worded and can usefully disappear from any statements of policy into which it was copied when they are next revised. It would be more accurate to say that applicants ought to be encouraged in their own interests to obtain or vary the necessary planning consent before applying for a premises licence since it would be futile to obtain a licence whose terms cannot be used in full because of planning restrictions.

John Gaunt has suggested[5] that the latest guidance in stating that licensing committees and officers 'should consider discussion with their planning counterparts prior to determination with the aim of agreeing mutually acceptable operating hours and scheme designs' (Guidance 9.41) introduces an unwelcome blurring of the distinction between planning and licensing. Compatibility between planning and licensing requirements certainly makes operational sense for a business and avoids public confusion. However, strict consistency will only occur if the decision-making criteria are brought into line with each other by primary legislation. The co-operation that is recommended will not be easy in practice given the time limits required of licensing decision makers, particularly if the input from planners is to be authorised by members.

A business must comply with the requirements of both planning and licensing law. If the planning permission and the premises licence have different terminal hours, the earlier prevails (Guidance 13.58). This principle needs to be examined further. Imagine a bar with a separately let flat upstairs. A licensing panel has allowed licensable activities to continue until midnight because the adverse effect on one household cannot amount to a public nuisance. However, the planning permission requires the bar to close at 11pm because of the effect on the amenity of that household. In this scenario if licensable activities continue after 11pm there is no breach of licensing law but there is a breach of planning control. The reference in the Guidance (13.58) to the possibility of prosecution when this occurs is unfortunately misleading. The carrying out of licensable activities which are unauthorised or contrary to a condition on the premises licence is an offence under Section 136 of the Act, but breach of a planning condition is not criminalised unless it persists after the council has served a breach of condition or enforcement notice.

Licensing panels are sometimes asked to impose a condition requiring that any extended hours only be used if and when the planning permission has been varied so as to match them. This is of dubious legality and should be resisted; compliance with planning law is not a licensing objective.

It is also common for a premises licence to refer to the existence of other regulatory controls e.g. *no restriction on opening hours other than under planning law.* This is fine, as long as it is understood to be merely informative; it cannot have the effect of incorporating any planning conditions as licensing conditions, which are then to be enforced under section 136 of the 2003 Act.

Having established the essential principle of separation, what of the overlap? The Guidance's broad definition of public nuisance (2.34) reads suspiciously like a definition of amenity. This passage was criticised by District Judge Zara in the *Crosby Homes* case[6], but, following Burton J's comments at first instance in *Hope and Glory,*[7] must be treated as lawful. However, there are significant differences between the two concepts which can make a practical difference. Public nuisance:

1. Must affect a *class* of people although a small number may be sufficient.
2. Cannot include lawful use of the highway unless the effect is extreme.[8] So, in most licensing cases traffic and parking issues are irrelevant.

The latest Guidance retains the statement that 'licensing committees are not bound by decisions made by planning committee and vice versa, but has deleted the warning found in earlier versions that licensing applications should not be a re-run of the planning application and should not cut across decisions taken by the local authority planning committee'.[9] Should we simply recognise that decision making factors which are not totally compatible may from time to time result in decisions that do not match, or is a licensing committee at liberty to come to a different conclusion on the same factual issue as its planning counterpart?

To put this in practical terms can an applicant say to a licensing panel, "Your planning colleagues have just decided that I can stay open until x hours without unacceptable harm to amenity; surely you cannot refuse me a premises licence consistent with this on the grounds of public nuisance? This would not be an understandable difference based on different grounds for decision-making but an inconsistency which is unlawful".

In *Blackwood*, the Administrative Court seems to have made its decision on the assumption that a licensing decision-maker must take into account the way in which an overlapping factor in a recent planning decision has been determined and if differing from it, give a good reason for doing so. The potential conflict between the planning and licensing regimes in this case was judged to be more apparent than real. An existing planning condition required floodlights in a pub car park to be turned off at 11.30pm. The court held that this decision had been made solely with reference to the issue of light pollution. The licensing authority could lawfully allow licensable activities to continue until a later hour, having made its own decision with regard to the licensing objectives. (Surprisingly, there is no discussion of the difference between amenity and public nuisance.)

There are, however, two arguments against a

4 See para 13.64 (October 2010).
5 (2012) 3 JoL 18.
6 *Crosby Homes (Special Projects) Ltd-v- Birmingham City Council and Nightingale Club* [75] Licensing Review Oct 2008, p 26.
7 [2009] EWHC 1996 Admin.
8 *Gillingham BC v Medway (Chatham) Dock Co.* [1992] 3 W.L.R. 449. See also *Tower Hamlets v Ashburn Estates Ltd (t/a Troxy)* [2011] EWHC 3504 Admin.
9 See para 13.64 (October 2010).

straightforward assertion that a favourable planning decision will automatically be followed by the licensing decision maker:

A licensing hearing allows a more detailed and sympathetic consideration of local objections. Necessity requires local authorities to determine many planning applications at officer level and to strictly limit public speaking at planning committees. A licensing application need receive only one relevant representation for a hearing to be required, unless the parties agree that it is not necessary. The greater scrutiny that this allows may sometimes permit the licensing panel to conclude that it will not follow a planning decision.

It is not just that the factors relevant to planning and licensing decisions do not match; the route map to a decision is different in each case. Planning legislation requires that decisions be made in accordance with the development plan unless material considerations indicate otherwise.[10] This may mean that when a night club is under consideration, policies encouraging urban regeneration will be balanced against residential amenity. The licensing process focuses on the licensing objectives.

Common sense suggests that a council will not grant planning permission for a pub and then completely refuse to authorise alcohol sales under a premises licence; there may, however, be a few cases where a less extreme inconsistency may be lawful.

Ian de Prez
Solicitor Advocate, Suffolk Coastal District Council

10 Section 38(6) Planning and Compulsory Purchase Act 2004

IoL Calendar of Training & Events

November 2012

14-16 National Training Event - Birmingham
28 How to Inspect Licensed Premises - North Herts

December 2012

5 North East Regional Meeting
6 Eastern Regional Meeting
6 London Regional Meeting
6 South West Regional Meeting
11 Licensing Fees Course - East Staffordshire
12 North West Regional Meeting
tbc Licensing Fees Course - West Midlands

January 2013

8 Animal Welfare Licensing - Cambourne

February 2013

15 West Midlands Regional Meeting

March 2013

7 London Regional Meeting
12-14 Zoo & Animal Welfare Licensing Course - Bristol Zoo
13 North West Regional Meeting
18-19 Investigators PACE Course - Kings Lynn

Institute of Licensing

Benefits of membership

Institute of Licensing

As part of the Institute of Licensing's main aims and objectives we strive to increase knowledge and professionalism in licensing. Being a charity we do not operate as a business and we do not seek to make a profit. We aim to provide a service on a cost neutral basis.

We have a Board of non-paid directors consisting of representatives from all of our membership base, council and police officers, lawyers, licensing consultants and the licensed trade. We have 11 regions covering England, Wales and Northern Ireland. We employ a small number of staff and we have a small team of contractors.

Benefits of Membership

As an organisation the IoL are continuing to provide even better service and value to our members. The subscription rate has stayed the same for individual membership for a number of years whilst the services and benefits to members has risen considerably both in terms of what the organisation from the Centre delivers and the Regions deliver.

A small selection of membership benefits are shown below, for full details visit our member benefits pages of our website www.instituteoflicensing.org

Discounts for Members

The IoL are not resting on their laurels we are continuing to look at more and more ways to improve the benefits of membership and this year we have teamed up with the organisations listed below that will offer an even greater service to IoL individual or organisational members. Each organisation is offering members a discount of their normal fees/book prices ranging from 10% to 20%, (see specific discount as offered by each company on our website www.instituteoflicensing.org). The companies that are offering the discount are all very highly valued for the services/products that they provide but now if you are an IoL member they are even better value.

- Francis Taylor Building
- Horsey Lightly Fynn
- RIAMS
- LexisNexis
- Poppleston Allen

Journal of Licensing

This publication, the *Journal of Licensing* is published three times a year, and is free of charge to all members. Additional copies can also be ordered, at a small cost. See inside front cover for more details.

Licensing Flashes

We know that licensing is always changing and we know members need to be kept up to date with the changes and latest court decisions. Members will receive an electronic news update, a "Licensing Flash" whenever there is a news story that will be of interest to our members.

Ask a Question

Do you ever get asked a question and don't know the answer or can't remember? Members can post questions and all members get the opportunity to reply. Again, this is a free service for members.

Membership

For more information on membership and how to apply online visit our membership section of our website www.instituteoflicensing.org or contact us at membership@instituteoflicensing.org

Membership Fees - 1st April 2012 to 31st March 2013

Individual - £70
Associate - £60
(Retired membership 50% of above)

Standard Organisation (1-6 persons)	- £250
Medium Organisation (7-12 persons)	- £360
Large Organisation (13+ persons)	- £500

Institute of Licensing News

Model Conditions Project

In July the IoL announced its intention to develop good practice guidance in relation to licence conditions and operating schedules. The move is a response to the legacy of the Licensing Act 2003 (LA03) transition, as it is clear that there is massive inconsistency in terms of the approach to licence conditions. This inconsistency is found in the number of conditions on licences, the enforceability of conditions, the thought process and mechanisms used in attaching conditions, and the role responsible authorities play in the process.

Sue Nelson
Executive Officer, IoL

The background

The transition to the Licensing Act 2003 showed a similar pattern across the country with the majority of applications being made in the latter part of the transition period, and with a mix of conversion and variation applications. For conversion applications, local authorities were required to turn licenses for public entertainment, liquor, theatre, cinema and late night refreshment into the one combined licence but with the same terms as the previous licences, many of which had been subject to standard conditions at that time. Variation applications, on the other hand, were to be treated as new licence applications with uncontested licence applications being granted subject only to "conditions consistent with the premises operating schedule."

Jim Hunter
Training & Qualification Officer, IoL

With two very different approaches - on the one hand the conversion of licences complete with the multitude of existing conditions, and the other hand starting with a blank sheet, combined with the avalanche of applications received during the latter part of the transition - it is no wonder that in many cases, operating schedules were converted into licence conditions rather than used to inform the licensing authority of the types of conditions which might reasonably be applied.

Natasha Mounce
Co-ordinator, IoL

The aims

Now, seven years after the transition, we are left with an inevitable legacy of inconsistent approaches to licences and conditions. The IoL in undertaking this project seeks to achieve a number of outcomes:

- A pool of model conditions which have been tried and tested, legally and practically.
- Guidance to regulators on the process of considering licence applications and the crafting and application of appropriate licence conditions.
- Guidance to industry operators on drafting a robust premises operating schedule.

The final document will be very clear that:

- This is *not* a list of standard conditions.
- The document *cannot be used as standard conditions* to licences under the LA03.
- *This is a tool* – no more and no less – to assist in the consideration and application of conditions to licences and within operating schedules.

How is the IoL going about the project?

The project is being taken forward by Sue Nelson, Jon Collins, Jim Button and Gary Grant. We have received a number of examples of condition pools and company operating schedules to start with and will be looking to use these examples to formulate the first draft of our conditions

pool. We will call on expert practitioners to advise us on specialist areas, and the conditions will be challenged legally and practically by the IoL team plus expert and industry contacts to ensure that they are achievable, practical, enforceable and robust.

We may consider including case studies to illustrate where conditions have failed, why they've failed and how failures can be avoided.

We will keep IoL members informed of progress as we go forward and may also consult members for views before agreeing the final guidance document.

The Jeremy Allen Award

We asked for nominations for the Jeremy Allen award in August/ September. We will be announcing the finalists and the winner of the award at the IoL's National Training Event which will take place at the Crowne Plaza Hotel in Birmingham from 14 – 16 November 2012.

The award recognises the most deserving nomination where the nominee has been shown to have "gone the extra mile" in working in partnership with other parties to make a difference in the field of licensing and the night time economy.

The IoL is proud to continue this award in partnership with Poppleston Allen solicitors as an ongoing tribute to the life and work of Jeremy Allen.

Consultation panels

The IoL is delighted to announce that we now have established consultation panels for the following topics:

- Alcohol & Entertainment (chaired by Philip Kolvin QC)
- Gambling (chaired by Susanna FitzGerald QC)
- Miscellaneous Licensing (chaired by Gareth Hughes)
- Taxis (chaired by Jim Button)

In each case, the consultation panels comprise volunteers from within the IoL membership and we are fortunate to have a combination of local authority, legal and private practice on each of the panels. The role of the panels is to assist the IoL in responding to consultations, giving an opportunity for more detailed discussions. The panels will not detract from IoL members' views and where a response is distinctly that of a panel, this will be made clear in the consultation response. In some cases it may be appropriate to make a separate response (as illustrated in the case of the taxi law reform proposals reported below).

Our thanks to our existing volunteers who have made the panels possible. We will keep IoL members updated on consultations and IoL responses.

Consultations – recent and current

Consultations, background documents (such as Impact Assessments) and IoL responses can be found in the website library section in the consultations folder. In addition, details on recent and current consultations can be found on the consultations page (access via the drop down menu under News).

Consultation on the Proposed Merger of the Gambling Commission and the National Lottery Commission (closing date 23 October 2012).

The DCMS launched the Government's consultation on the proposed merger of the Gambling Commission and the National Lottery Commission in August.

The merger, which was originally included as part of the Public Bodies Bill which received Royal Assent in December 2011, is part of the Government's commitment to increasing the accountability and reducing the number and cost of public bodies.

The DCMS website stated:

Merging the Gambling Commission (GC) and National Lottery Commission (NLC) will help achieve this aim while preserving the appropriate and effective regulation of gambling and the National Lottery and delivering other organisational benefits.

The creation of a single regulator should ensure that regulation continues to protect the public, particularly in light of rapid change and innovation in the overall gambling market, while allowing regulated sectors to flourish in order to deliver the public benefits outlined above. The Government is now seeking to use the powers in the Public Bodies Act 2011 to put in place the merger of the two bodies by abolishing the NLC and transferring its powers to the GC. Ministers are required under the 2011 to consult on their proposals before laying draft legislation. Comments are therefore invited on the Government's approach as set out in the consultation document. An impact assessment of the proposed approach is also being published.

IoL Members will be asked for their views on this consultation, and the IoL's Gambling Consultation Panel will assist in preparing the IoL's response.

Technical Consultation - Proposed New Chapter 15 of the Section 182 Guidance issued under the LA03 (closing date 28 September 2012)

The DCMS issued a technical consultation on a revised chapter for the Home Office's Section 182 Guidance reflecting changes brought in by the Live Music Act 2012, which received Royal Assent in March 2012.

The consultation was opened on 22 August and closed on 28 September. This left insufficient time to consult IoL members and a response will therefore be discussed via the IoL's Alcohol & Entertainment Consultation Panel. The response will make it clear that IoL members have not been consulted due to the short timescales.

Law Commission consultation on draft proposals for reforming taxi and private hire licensing laws (closing date 10 September 2012)

The Law Commission for England and Wales, which advises the Government on law reform, launched a public

consultation in May 2012 seeking views on proposed changes to the way in which taxis and private hire vehicles are regulated.

We will be submitting a report to the Law Commission outlining the views received within the consultation deadline.

Alongside the IoL member consultation survey, the Law Commission consultation has been the subject of extensive discussion between members of the IoL's Taxi Consultation Panel (TCP), and a separate response giving the views from the panel was submitted in advance of the member survey results.

In summary, the retention of the existing two tier system with taxis and private hire vehicles licensed separately was questioned by the panel, and throughout the responses to the provisional proposals and questions, were examples of how (in the view of the TCP) a streamlined one tier approach would lead to a simpler, more transparent licensing regime with the following structure:

Vehicles

a. All vehicles to be taxis able to stand and ply for hire within the district or zone in which they are licensed and to be pre-booked for journeys anywhere.
b. All vehicles must be driven by a driver licensed by the same authority that licensed the vehicle.
c. The minimum standards to enable a vehicle to be licensed would be that the vehicle is safe and suitable for use as a taxi.
d. National minimum standards must take into account the environmental impact.
e. The national minimum safety and suitability standards would set out factors such as testing levels (which we consider should be above MOT level) and frequency (more than annual and could be based on mileage and vehicle age), seating capacity (minimum seat sizes per passenger), and minimum identification requirements.
f. Local authorities would have the ability to set higher suitability standards than the national minimum suitability standards through a statement of licensing policy for taxis.
g. This would enable them to set out what they consider to be a suitable vehicle for taxi work. A saloon car and a purpose built taxi may both meet the vehicle safety standards, but a licensing authority might, within the discretion the Law Commission provisionally proposes to give them, opt to restrict the licensing of taxis to purpose built taxis, whether for reasons of civic pride, wheelchair accessibility or driver safety.
h. Local authorities would be able to apply conditions to individual vehicle licences.
i. Wheelchair accessible vehicles would be able to use all ranks within the district or zone in which they are licensed.
j. Local authorities would be able to introduce a permit system for using specified ranks by non-wheelchair accessible vehicles.
k. Local authorities could set fares. All rank hirings and hailings would be at no more than the metered rate. All pre-booked hirings would be subject to negotiation with no consideration of the metered rate.
l. All journeys (whether pre-booked or otherwise) should be recorded.
m. Receipts should be given to all passengers.
n. No ability for the licensing authority to limit the number of licensed vehicles.

Drivers

a. A national minimum standard for drivers.
b. Drivers licensed by local authorities to work in that local authority area.
c. Local authority able to apply driver standards above the national minimum (e.g. knowledge tests).

Operators

a. Any person taking bookings for more than one vehicle must be licensed as an operator.
b. Minimum requirements for information recorded by licensed operators.
c. All operators and staff working for licensed operators must meet minimum standards.

Regulations

a. Regulations would set out the procedures for hearings (public hearing unless in public interest that the hearing is not in public – as per LA03) and national vehicle standards.

Under the above system the TCP suggested that all vehicles start from an equal position – as a licensed taxi meeting minimum (plus local) standards. The licensing authority would have discretion to set their local policy in relation to signage, roof lights, livery, vehicle type (accessibility) etc.

In making this response, the TCP was unanimous in its appreciation of the achievements of the Law Commission in making a detailed consultation on the complex and often controversial issue of taxi and private hire licensing.

The TCP very much supports the view that reform is needed and that merely tinkering with the existing legislation is not an effective way forward. In its response to the Law Commission, the TCP gave a considered response to each of the questions and proposals on the basis of both retaining the two tier licensing regime and highlighting, where appropriate, the relevant simplicity of a single tier solution.

The full TCP response together with the IoL response containing the view from IoL members can be found on our website.

BRDO CONSULTATION - Age Restricted Products and Services: A Code of Practice for Regulatory Delivery (closing date 28 September 2012)

The Better Regulation Delivery Office (BRDO) consulted on a new code of practice for the test purchasing of age restricted products and services in July. The code was developed in collaboration with business and regulators, and builds on the Age Restricted Products and Services Framework published in November 2011, which presented an agreed set of shared responsibilities and reasonable expectations for young people, their parents and carers, businesses, employees and regulators.

The code of practice is applicable to all local regulatory activities undertaken in England and Wales. It covers all

products and services for which statutory age restrictions are in place, and all relevant compliance and enforcement activities, whether in relation to premises, or to the online supply of these products and services.

IoL members were consulted via online survey and a response will be submitted to BRDO within the timescales. Again, alongside the member survey, the draft Code of Practice is being looked at by our volunteers on the Alcohol & Entertainment Consultation Panel to ensure a detailed and debated response is made.

Northern Ireland: Reform of Liquor Licensing Consultation (closing date 12 November 2012)

A 16 weeks public consultation was launched in July on reform of liquor licensing legislation in Northern Ireland (NI).

Amongst the proposals being consulted on were:

- Further restrictions on mixed trading in supermarkets.
- Late opening hours and opening hours at Easter for public houses.
- Alignment of alcohol and entertainment licences.
- Formal approval of codes of practice on responsible retailing.
- Changes to the law affecting private members' clubs. Liquor licensing and public entertainment licensing in Northern Ireland remains separate and these proposals do not suggest reform on the scale of the Licensing Act 2003. The proposals are unique to Northern Ireland and NI branch members have been consulted via our usual online member survey. It is likely that the Northern Ireland Branch committee will act as the Consultation Panel in the main in assisting the co-ordination of the IoL response to the proposals.

The full Institute response to consultations, together with the consultation documents and supporting information can be accessed via the IoL's website library or on the consultation page (under News) http://www.instituteoflicensing.org/consultations.html

Gambling Commission Consultation on Revised Guidance to Licensing Authorities (April – July 2012)

The Gambling Commission published its consultation on the new edition of the Guidance to Licensing Authorities (4th edition) in April 2012 as reported in the previous *Journal of Licensing.*

As a result of the online survey, the IoL was able to report to the Gambling Commission that no concerns had been raised by members to the proposed revised Guidance.

National Licensing Forum

The third meeting of the National Licensing Forum (NLF) was held at Brewers' Hall, Aldermanbury Square, London on 18 September 2012.

A post-meeting briefing note will be published on the IoL website and a more detailed update will be available for the next edition of the *Journal of Licensing*.

Member Questions – website facility

We have in the last few months been trialling a new feature on the website which allows members to post a question, via the IoL Team, to which other members and users can respond.

The aim of this feature is to allow members to post questions on the website which can be viewed by other members who will be able to post their views against the questions. Both the original questions and responses will be vetted by the IoL team to ensure appropriate content and to prevent spam.

Previously, member questions have been circulated via email with responses emailed either to the question source or the IoL team. This new facility will allow questions and answers to be visible on the news pages of the IoL website for other IoL members to view.

To post a question please email news@instituteoflicensing.org

Online events payments

Further to the launch of online payments for membership in April of this year, we are pleased to advise that members and non-members alike will now be given the opportunity to pay for online event bookings either with a debit/credit card or existing PayPal account via the website instead of receiving an invoice.

If you have any queries regarding this or any other event query please email events@instituteoflicensing.org

Membership

Memberships for 2012/2013 should already have been paid and those that have not paid will have been advised that their membership benefits, such as this Journal, reduced rates for events and access to news stories on the website etc. have been removed and their membership lapsed.

If for any reason you have had your membership lapsed, when you believe you have paid or you wish to reinstate your membership, please email membership@instituteoflicensing.org

Tell us about it

One of the Institute's key objectives is to increase knowledge and awareness amongst practitioners. This includes up to date relevant news and information on licensing and related matters including good practice initiatives, government proposals, statutory and non-statutory guidance, court cases etc. If you have been involved in a case or new initiative or simply have a story to share, email us at news@instituteoflicensing.org

Article

What control do licensing authorities have over betting premises?

Betting offices have proliferated on high streets in recent years, and although some of them have been associated with problems of social disorder, many local authorities have felt unable to reject applications to open new ones. In the first of a two-part look at betting shops that will be concluded in the next issue, **Gerald Gouriet QC** argues that the authorities have more power than they appear to realise

The current situation

There is a misconception shared by many licensing authorities that they have practically no power to prevent an unwanted increase in the number of betting offices opening on their high-streets.

The groundswell of concern came into prominence in a recent Channel 4 *Dispatches* documentary[1]. Some betting shops, particularly in the more deprived and densely populated areas, seem to attract groups of punters who loiter immediately outside, often the worse for drink, making certain pavements a no-go area for intimidated shoppers/residents. There are reports of disorder of one kind or another breaking out *inside* betting shops, and the police having to be called, whether because a disgruntled punter becomes violent over a disputed bet, or there is fighting amongst the customers themselves for no identifiable reason. Vandalism of gaming machines (presumably in an attempt to steal the money in them) is commonplace. There are even armed robberies of betting offices, in areas where crime is high enough already, with guns pointed at behind-the-counter staff.

It would be strange indeed if the Gambling Act 2005 gave no power to a licensing authority to say "enough is enough" in those circumstances, and refuse a licence for yet another betting shop that, on the evidence, was likely to attract the same attendant problems: but that is precisely the interpretation of the legislation, wrong in my view, that has been allowed to hold sway in licensing districts in many parts of the UK.

The 2005 Act, so the argument runs, does not permit a licensing authority to refuse a licence to an applicant save in the narrowest of circumstances. And those circumstances rarely, if ever, apply to an application made by one of the respected national bookmakers.

The statutory obligation to "aim to permit" gambling in premises

The source of the misconception is section 153(1) of the 2005 Gambling Act, which it is worth citing in full:

Section 153 Principles to be applied

(1) In exercising their functions under this Part a licensing authority *shall aim to permit* the use of premises for gambling insofar as the authority think it -
  (a) in accordance with any relevant code of practice under section 24,
  (b) in accordance with any relevant guidance issued by the [Gambling] Commission under section 25,
  (c) reasonably consistent with the licensing objectives (subject to paragraphs (a) and (b)), and
  (d) in accordance with the [policy] statement published by the authority under section 349 (subject to paragraphs (a) to (c)).

[italics added][2]

The licensing objectives are given by section 1, which provides –

Section 1 The licensing objectives

In this Act a reference to the licensing objectives is a reference to the objectives of –
  (a) preventing gambling from being a source of crime or disorder, being associated with crime or disorder or

1 August 6, 2012.

2 Gambling Commission Guidance (@ 5.5) describes the italicised words as creating a "presumption in favour of [grant]".

being used to support crime,
(b) ensuring that gambling is conducted in a fair and open way, and
(c) protecting children and other vulnerable persons from being harmed or exploited by gambling.

The expressed purposes of the 2005 Act were to consolidate and *deregulate* gambling, and section 153 is the embodiment of those purposes. Introducing the White Paper which preceded the Gambling Bill, the Secretary of State[3] wrote:

It has been clear for some time that these laws are in need of reform. They are very complicated, and hard for the general public to understand...

...above all they were enacted or have their roots in an era when gambling was widely regarded as an activity which was at best morally questionable. The legal framework for gambling is one of grudging toleration...

...There is a powerful case for lifting regulatory burdens on an industry which has built a world reputation for integrity...

... In the Government's view the law should no longer incorporate or reflect any assumption that gambling is an activity which people should have no encouragement to pursue. It is an important industry in its own right, meeting the legitimate desires of many millions of people and providing many thousands of jobs.

But while section 153 is certainly permissive - the licensing authority "shall aim to permit the use of premises for gambling..." - it falls far short of requiring the grant of a licence whenever an applicant jumps the statutory hurdles set out in the section, namely being in accordance with the relevant Gambling Commission Code of Practice and Guidance, being reasonably consistent with the licensing objectives and being in accordance with the authority's own Policy Statement.

If a grant were mandatory in those circumstances, it would have been easy for the section to have said so. But it doesn't. It says that the authority should aim to permit, not that the authority must permit. "Aim to permit" is merely a steer, albeit a strong one, to look favourably on an application, all other things being equal.

The regrettable resonance of repealed law

The widespread misreading of section 153 has its origins, perhaps, in the very different provisions of the repealed Betting, Gaming and Lotteries Act 1963, which governed the licensing of betting offices until 2007. Paragraph 19 of Schedule 1 to the 1963 Act was headed: "Grounds for refusal to grant or renew a betting office licence." Paragraph 20(1) read: "Save as provided by [paragraph 19] of this Schedule the appropriate authority shall not refuse any application for the grant or renewal of a... betting office licence."

Although there are no equivalent provisions in the Gambling Act 2005, the approach to the licensing of betting offices under the 1968 Act - no refusal unless one of the stated grounds is made out - seems to have lingered with practitioners and influenced their interpretation of Section 153.[4] Applications are being decided under the mistaken impression that unless there is a failure to meet the requirements of section 153(1)(a)-(d) "the discretion to refuse is not engaged". The position is, in fact, the other way around: unless the requirements of section 153(1)(a)-(d) *are* met, there is no discretion to grant.

So it is that some licensing authorities have been persuaded that because the prevention of street drinking and nuisance are not licensing objectives, they cannot be taken into consideration in the determination of a betting premises licence application. Similarly, the clustering of betting offices, the "degeneration" of high streets – even incidents of armed robbery, where "gambling" is not the reason for the crime, but the mere presence of large sums of money is – are frequently ignored, albeit with an expressed reluctance, as irrelevant considerations.

The point has been missed that an application's being in accordance with the relevant Gambling Commission Code of Practice and Guidance, and being reasonably consistent with the licensing objectives and being in accordance with the authority's own Policy Statement, takes us to the point where the licensing authority must "*aim* to permit" – but no further. In the exercise of its residual discretion there is nothing in the Act to prevent a licensing authority, on the back of cogent evidence, having regard to nuisance, general disorder, damage to high street regeneration, robbery, etc, as factors speaking against the grant of a betting premises licence.

Support for the existence of a discretion to refuse

The fact that section 153 of the 2005 Act leaves room to refuse, even when what I have called the "statutory hurdles" are overcome, is illustrated by subsection (2), which reads:"In determining whether to grant a premises licence a licensing authority may not have regard to the expected demand for the facilities which it is proposed to provide." That subsection can only be necessary if a licensing authority is entitled to refuse notwithstanding the steer of section 153(1).

If it were otherwise, and a refusal was bound to follow when the statutory requirements (the four "hurdles") of section 153(1) were satisfied, then section 153(2) would be wholly redundant.

The same can be said of section 210(1), which reads: "In making a decision in respect of an application under this Part a licensing authority shall not have regard to whether or not a proposal by the applicant is likely to be permitted

3 Tessa Jowell.

4 It is also possible that the current misinterpretation of the Gambling Act 2005 can be traced to the deceptively *similar*, but fundamentally *different* regime created by the Licensing Act 2003 in respect of pubs and bars etc.., which *does* indeed confine licensing authorities to decisions which relate directly to the 'promotion' (or otherwise) of the hallowed 'four licensing objectives'. Critically, the earlier legislation (which did supply much of the structure and design of the 2005 Act), contains no section corresponding to the 'aim to permit' provision.

in accordance with the law relating to planning or building." Again, if section 153(1) created an obligation to grant, rather than a steer to look favourably on an application, then section 201, as well as 153(2), would have no purpose. It is unlikely that a High Court would interpret the Gambling Act in such a way as to render two of its important sections purposeless and unnecessary. The sections have a function; and that function illustrates that there is a discretion to refuse a betting premises licence, notwithstanding the steer in section 153.

Powers on a review

It is also worth noting the powers of a licensing authority on a review: one may take, for example, the broad discretion expressly given by section 200(2)(b) of the Act, which empowers the authority to instigate a review of the licence. The subsection provides –

Section 200 Initiation of a review by the licensing authority

(2) A licensing authority may review any matter connected with the use of premises in reliance on a premises licence if the authority ...
  (a) ...
  (b) *for any reason (which may relate to the receipt of a complaint about the use of the premises) think that a review would be appropriate.'* [italics added]

Section 201(5) of the Act goes on to provide that, in considering whether to take action under section 202 (revoke or suspend the licence; add, remove or amend conditions) -

"... the licensing authority shall have regard (*in addition to the matters specified in section 153*) to –
  (a) any representation made in accordance with section 197(6) or 200(5)
  (b) any representations made at the hearing of the review (if there is one), and
  (c) [the grounds on which the review was instigated].

The words I have italicised (in section 200(2)(b), and section 201(5) in particular) make it plain that, on a review, regard may be had to considerations going beyond the "principles to be applied" given by section 153. If that is so on a review of a licence, why not on an application for grant? The basis on which the grant of a licence may be refused are usually, and for good reason, mirrored by the basis on which a licence may be taken away[5]. In my view the provisions in the 2005 Act relating to review lend significant support to there being a much wider discretion to refuse betting premises licences than has so far been recognised[6].

Conclusion

In plain English, there is a self-evident gap between "shall aim to permit" and "shall permit". The Statute is unhelpfully silent on what circumstances might legitimately pull the aim away from the target. But that indicates a broad, rather than a narrow, discretion. Only two matters are ruled out of consideration: likely demand, and likely planning permission. The remaining discretion, it would seem, is to be found in the familiar territory that lies between the good sense of the licensing authority and *Wednesbury* unreasonableness.

The variety of circumstances in which there may be a lawful refusal cannot be drawn up in a pre-defined list. But an authority aiming with the best will in the world to permit the use of premises as (perhaps "yet another") betting office may well find that police and residents' complaints of intimidating street drinkers loitering outside the existing betting offices, or disorder (fighting) amongst disgruntled punters, or the vandalising of gaming machines - not to mention the small matter of armed robberies - swing the committee's gun-sights irresistibly away from permitting premises to be used for gambling and towards a perfectly legitimate refusal of a licence.

Gerald Gouriet QC
Barrister, Francis Taylor Building

5 See, for example, the Licensing Act 2003, where the same test applies (whether the proposed action is appropriate for the promotion of the licensing objectives) on applications and reviews.

6 Further support is found in Section 202(3), which reads – "A licensing authority may, in particular, take action under subsection (1)..." - i.e. revoke, suspend, add, remove or amend conditions – "...on the grounds that the licensee has not used the licence." The use of the phrase "in particular" seems to me to indicate that the there is a broad discretion to take action under subsection (1) in a variety of circumstances, one *example* (merely) of which is given; i.e. the licensee's not using the licence.

Institute of Licensing *Training*

Institute of Licensing

An important element of the Institute is training, and in addition to the National Training Event we organise residential and non-residential training courses throughout the year on different subjects including licensing fees (2012), licensing hearings for all parties (2012) and outdoor events (2011/12) to provide timely and relevant training opportunities to our members, including basic training aimed at new entrants, and advanced training for established practitioners.

One of the IoL's main member benefits is the low cost good quality training courses that are available to members in each of the 11 regions and on a National level.

Our signature event, the National Training Event, held each November, was substantially changed for 2011 following feedback from Institute members against a background of a difficult financial climate. The result was an improved and extended programme with more choice for delegates at less cost for our members. In addition, key programmes were repeated within the event programme which enabled delegates more opportunity to tailor the programme to their individual preferences without having to miss other preferred sessions. This successful format will be repeated at the 2012 National Training Event.

Training Courses

The Institute continues to increase the number and frequency of training delivered across all our 11 regions. In 2011 for example we delivered over 80 training courses across the country, all of which were available at significantly reduced costs to Institute members.

The Training courses currently available for delivery in any of the 11 regions include:

- How to Inspect Licensed Premises
- Caravan Site Licensing
- PACE & Investigation Courses
- Taxi Licensing
- Street Trading and Pedlars
- Licensing Act 2003
- Gambling Act 2005
- Basic Licensing Principles
- Councillor Training
- Licensing Hearings for All Parties
- Sex Establishment Licensing
- Animal Welfare Licensing
- Bespoke training courses to suit your requirements

The IoL will also be running a series of seminars in relation to the DCMS Proposals to deregulate Schedule One of the Licensing Act 2003 and the Live Music Act 2012. The seminars will run during 2012/2013: see the IoL website for more details.

The IoL will be organising a series of training courses and seminars to examine the changes to the Licensing Act 2003 brought about by the Police Reform and Social Responsibility Act 2011. The seminars will run during 2012/2013: see the IoL website for more details.

The IoL can deliver at your location; you can also email training@instituteoflicensing.org for a quote on your training requirements. Most IoL training courses can be delivered at your preferred location for the training fee of £1000 plus VAT (including expenses) for a one day course and in many cases delegate numbers are not restricted allowing the training to be opened up to neighbours which in turn can allow for the cost of the course to be fully recovered.

The Interested Party

Residents' involvement with appeals under the Licensing Act 2003

How far should a licensing authority take into account wider community interests at reviews and appeals? **Richard Brown** believes the public benefit is best served when residents' views are fully heeded

The Licensing Act 2003 (the Act) was preceded by the publication in April 2000 of a White Paper (Cm 4696) entitled *Time for Reform: Proposals for the Modernisation of our Licensing Law*. The White Paper set out three compelling reasons why the licensing functions at that time exercised by licensing justices sitting in the magistrates' courts should be transferred to local authorities, which at the time had responsibility for public entertainment licensing but not alcohol licensing. Among these reasons were the following:

Accountability: we strongly believe that the licensing authority should be accountable to local residents whose lives are fundamentally affected by the decisions taken.

Accessibility: many local residents may be inhibited by court processes, and would be more willing to seek to influence decisions if in the hands of local councillors.

This philosophy has, at least in theory, informed subsequent legislative amendments. The role that residents can play in the licensing regime is well known and is set out clearly in the Act and on local authority websites. Representations are made and reviews submitted up and down the country by residents and residents' groups.

However, the magistrates' court does, of course, retain a crucial role in the licensing process by way of being the statutory avenue of redress for those whose nose has been put out of joint by a decision of a licensing sub-committee (LA03 Sch 5 (9)(1)). Appeals can be on the merits of the decision on the facts, but also to consider points of law.[1] Usually of course, the parties to an appeal are the licence holder (or prospective licence holder) and the licensing authority. Where an appeal is made by a responsible authority or interested party, both the licensing authority and the licence holder are respondents (LA03 Sch 5 (9)(3)).

There are two options for residents where a licence holder appeals. Firstly, apply to the court to be joined as a party. Secondly, and if they are indeed "inhibited by court processes", allow the local authority to defend its decision. Having made robust representations in respect of an application, residents are usually more reticent about being a party to an appeal (no doubt at least partly because of costs considerations), trusting that the local authority will defend its decision robustly and, in doing so, give the residents an appropriate platform to voice their views.

Richard Brown

What, then, of residents who have scrutinised an application by their local bar, researched some licensing law, written an objection letter, were "willing to seek to influence" a decision by appearing at a hearing, and obtained a favourable result which is then appealed? What of the residents' association which has taken its local trouble-spot to review and had conditions imposed to curb the issues? To what extent could and should they be consulted on appeal? Proper recognition of the role that residents have been given in the Licensing Act 2003 would suggest that seeking the views of residents on the appeal and on settlement proposals is an important part of the functions of the local licensing authority responding to the appeal.

A recent case has supported the proposition that considering wider community interests is a vital and necessary part of the proper consideration of an appeal by a licensing authority. The case of *Mayor and Burgesses of London Borough of Tower Hamlets v Ashburn Estates Limited (Trading as The Troxy)* [2011] EWHC 3504 (Admin)

1 April 2012 s182 Guidance para 12.6. See also *obiter* comments of Toulson LJ at paras 51-52 *R (oao Hope and Glory Public House Limited) v City of Westminster Magistrates' Court* [2011] EWCA Civ 31.

was ostensibly a costs case, but the circumstances are relevant to the question of whether and to what extent residents should be consulted on settlement negotiations on appeal. Costs are, of course, a consideration for all on an appeal from a sub-committee decision. There have been a number of costs decisions in the higher courts since the Licensing Act 2003 came into force. They have largely served to reinforce section 181 of the Act which states that the magistrates' court has a very wide discretion,[2] and that costs sought against a licensing authority should be dealt with under the guiding principles of *Bradford v Booth*.[3]

For licensing authorities there is the added complication that they are effectively charged with exercising their functions in the public interest. Trying to find a consensus in such cases highlights one of the major difficulties that the licensing authority has in seeking to achieve "balance" between the competing interests of the participants in furthering its duty to promote the licensing objectives. Navigating the choppy waters of an appeal, it may avoid foundering on the rocks of local opprobrium only to be submerged by the wave of costs.

The Tower Hamlets case involved an appeal by the licence holder from a sub-committee decision on a residents-led review. The appeal was successful before the magistrates in that the decision reflected a compromise offer put forward by the appellant and not accepted by the respondent. Tower Hamlets was duly ordered to pay £21,986.60 in costs to the appellant, and appealed the costs decision by way of case stated. The basis of the district judge's decision on costs is instructive in showing the difficulties for a licensing authority on appeal from a resident-led review. The compromise proposal offered by the appellants was made at a very late stage, on the morning of the hearing. Counsel for the council indicated that they would proceed with defending the appeal, despite the compromise proposals now effectively forming the basis on which the appellant would pursue the appeal. On being reminded of possible adverse costs implications, counsel again indicated that the appeal would still be opposed, because "residents' opinions were important and the Respondents would proceed on that basis." During evidence, the district judge again invited counsel for the respondent to consider its position. Again, the instructions were to proceed (presumably for the same reason).

The district judge's comments in the stated case as to why the costs order was made were to the effect that: i) a compromise had been offered, twice; ii) the authority had had "ample time" to consider it; iii) the remedy was in the hands of the authority; and iv) it had continued to oppose the appeal. Accordingly, the decision to proceed was unreasonable and not a sound administrative decision.

Tower Hamlets, then, rightly set great store by the opinion of the residents who had brought the review which had led to the decision being appealed against. Is it right that this should lead to the conclusion that the decision to oppose the appeal was unsound? The review application was made by two members of the Pitsea Estate Tenants and Residents Association. Both appeared at the review hearing, as did a representative of Mile End Housing Association and other local residents. A petition had been gathered in support of the review, although it is not clear whether these each constituted "relevant representations". Of course, the council will have wanted to consult at least those who had appeared at the hearing in the pursuit of its "public duty". That the district judge could conclude that failure to do so in the face of a proposal submitted at the door of the court constituted an unsound administrative decision would have had far reaching implications on the ability of residents to influence appeals. Although there was no requirement for the licensing authority to consult with anyone, it could be said that by a failure to do so, where it is the body appointed by Parliament to consider these issues in the public interest, the authority would have been making an unsound administrative decision. Of course, given that a decision on a review is stayed pending determination of an appeal, it is perfectly possible that residents' evidence does not support continued opposition to an appeal, due to remedial measures by the licence holder.

It was submitted to the High Court that in furtherance of its section 4 duty to promote the licensing objectives, an authority should, nay, must take in to account wider community interests when considering both its decision at the review hearing and its position on an appeal. In exercising the wider public duty, it arguably had no choice but to reject an offer that it could not possibly consider properly. In fact, to turns things on their head, the *Bradford v Booth* decision makes clear that it is the very existence of the "public" element of a regulatory authority's decision that is an important factor in protecting local authorities from adverse costs orders, where it has acted honestly, reasonably and properly in the exercise of its public duty.[4]

The Act itself is silent as to the role of interested parties on appeal. The Guidance does not seem to assign huge importance to the role of residents: "...the licensing authority...*may* call as a witness a responsible authority or any other person who made representations against the application *if it chooses to do so.* For this reason, the licensing authority *should consider* keeping responsible authorities and others informed of developments in relation to appeals to allow them to consider their position. Provided the court considers it appropriate, the licensing authority may also call as witnesses any individual or body that they feel might assist..."[5] (my italics).

The reasons why it is right and proper for licensing authorities to take proper account of residents' views on settlement proposals, apart from usual public law principles, can be summed up by Toulson LJ at para 42 of the *Hope and Glory* case:

2 See, for example, *Prasannan v Royal Borough of Kensington and Chelsea* [2010] EWHC 319 (Admin) where the court upheld a decision of the Magistrates' Court awarding costs against a successful Appellant on appeal.

3 *City of Bradford Metropolitan District Council v Booth* [2000] 164 JP 485.

4 'Where a complainant has successfully challenged before justices an administrative decision...the court should consider...ii) the need to encourage public authorities to make and stand by honest, reasonable and apparently sound administrative decisions made in the public interest without fear of exposure to undue financial prejudice if challenged.' (Para 26.3).

5 April 2012 s182 Guidance para 12.5.

Licensing decisions often involve weighing a variety of competing considerations: the demand for licensed establishments, the economic benefit to the proprietor and to the locality by drawing in visitors and stimulating the demand, the effect on law and order, the impact on the lives of those who live and work in the vicinity, and so on. Sometimes a licensing decision may involve narrower questions, such as whether noise, noxious smells or litter coming from premises amount to a public nuisance. Although such questions are in a sense questions of fact, they are not questions of the "heads or tails" variety. They involve an evaluation of what is to be regarded as reasonably acceptable in the particular location. In any case, deciding what (if any) conditions should be attached to a licence as necessary and proportionate to the promotion of the statutory licensing objectives is essentially a matter of judgment rather than a matter of pure fact.

A crucial part of this judgment on the part of the licensing authority is the continued views of those who have made representations before it.

Joining the party

There was always the option for residents to be joined as parties to the appeal. This was pointed out in the *Ashburn* case. Residents may want to do this where they feel that their interests and those of the licensing authority might differ. Residents who are separately represented can choose how and which arguments are put and evidence presented. It is far more difficult where someone has only the opportunity to brief someone else and provide them with information.[6]

The Act is silent on whether those who made representations are entitled to be parties to an appeal. There were several conflicting magistrates' court decisions on the matter which left the question undecided.[7] The editors of Paterson's Licensing Acts (2009 Edn) expressed the view that a High Court decision on the matter would be helpful to all, and they got their wish in 2009.[8] In that case, Moses LJ decided that there was no express or implied entitlement to be joined, but interested parties were at liberty to apply to the magistrates' court to be joined. In essence, the magistrates have a discretion to administer their own proceedings in the interests of justice and in furtherance of the object and aims of the statute.

As Moses LJ put it: "The decision is made *for the public benefit* one way or the other in order to achieve the statutory objectives" (my italics). As the decision is for the public benefit, any comments the public have to make on appeals will always and necessarily be an important part of the licensing authority's view. This, in my view, is entirely consistent with its role in the licensing regime.

Richard Brown
Solicitor, Licensing Advice Project, Westminster CAB

6 See *Chief Constable of Nottinghamshire Police v Nottingham Magistrates Court* [2009] EWHC 3182 (Admin).

7 Eg From the Horseferry Road Magistrates' Court in *Lucas v Westminster City Council*, where the DJ decided that they could be joined, and from the Redhill Magistrates' Court in *Woldingham Golf Course v Tandridge DC* which decided that they could not.

8 Chief Constable of Nottinghamshire Police v Nottingham Magistrates Court [2009] EWHC 3182 (Admin)].

Licensing: the local government context

New code of practice for regulating age-restricted products and services

It's a year now since a new framework was introduced to assist local authorities and other bodies in dealing with age-restricted products and services. **Alan Tolley** examines the scope of this new code of practice, which he believes is a force for good and suitably in tune with the Government's localism agenda

In November 2011 the Local Better Regulation Office (LBRO) published the *Age Restricted Products and Services Framework* which set out an agreed set of shared responsibilities and reasonable expectations for young people, their parents and carers, businesses, employees and regulators with regard to access to age restricted products and services.

This covered a wide range of activities, including:

aerosol spray paint; air weapons and imitation firearms; alcohol; butane lighter refills; cinema films; crossbows; caps, crackers and party poppers; fireworks; gambling; liqueur confectionery; lotteries; petrol; pets; harmful publications; knives; scrap metal purchasing; solvents; sunbeds; tattooing; and video works and video games.

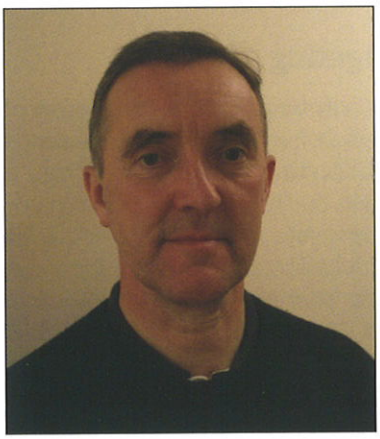
The BRDO (Better Regulation Delivery Office) has now assumed the role of the LBRO and its activities are designed to support the Coalition Government's strategy for better regulation so that businesses have the confidence to invest and grow at the same time as citizens and communities are properly protected.

BRDO may well be an "independent unit" within the Department for Business, Innovation and Skills (BIS) but its intentions are clear, ie "to promote a simple and clear regulatory environment by ensuring that the business voice is heard". This will be achieved by simplifying delivery of regulation for businesses, regulators and government by ensuring that the business voice is heard when it comes to shaping regulatory policy and delivery.

Building on the LBRO's framework a draft code of practice has now been developed by BRDO aimed primarily at local authorities because they play a significant role in regulatory delivery through their responsibilities in relation to local licensing.

The original LBRO framework document set out an agreed set of responsibilities for Regulators and Enforcers which are :

- To be clear about the outcomes that they are working towards, and how their activities will contribute to those outcomes.



Alan Tolley

- To ensure that their compliance and enforcement approach to age restricted products and services legislation is transparent.
- To work together with partner organisations and other regulators and enforcers to ensure that the overall approach is consistent and focused on delivering outcomes.
- To take an evidence based approach to determining priority risks to local communities and young people.
- To prioritise resources on activities that deliver improved protections, including working in partnership with businesses and local communities to tackle issues of access to age restricted products or services.
- To take a risk-based approach when targeting checks on the compliance of individual businesses and to ensure that the risk assessment model is transparent.
- To be clear and consistent in their message that valid proof of age should always be required when young people seek to access age restricted products or services.
- To respond to complaints, intelligence and breaches in a proportionate manner that recognises the business's compliance arrangements, and work with them, including through Primary Authority if appropriate.
- When using particular tactics, to seek the appropriate

authorisations or approvals as required by legislation or as set out in a code of practice or procedure.
- To communicate to businesses in writing, in a timely manner, the outcome of all checks on compliance by test purchase or inspection.
- To share good practice with other regulators and enforcers.
- To have regard to the welfare of test purchasers when carrying out test purchases.

The introduction of the Licensing Act 2003 and the Gambling Act 2005 has prompted a significant growth in the number of test purchasing operations undertaken. The new code builds on guidance issued by LACORS in 2010 which has played an important role in establishing good practice, particularly in relation to the welfare of test purchasers.

The code is split into four sections :
- Prioritisation and targeting
- Working with businesses and communities
- Conduct of checks on compliance
- Responses to non-compliance

Prioritisation and targeting

Effective interventions can only begin with a clear sense of the outcomes to be achieved. Delivering outcomes depends to a large degree on the allocation of resources across a range of regulatory activities, so that, when prioritising or targeting resources, a wide range of measures needs to be considered, including education and advice, awareness campaigns and intelligence sharing, not just traditional "enforcement" measures. Clearly, local authorities will need to take an evidence-based approach when setting priorities for regulating age-restricted products.

Risk assessment should precede and inform all aspects of any approach to regulatory activity. One of the determining factors will be the Authority's own published enforcement policy which should be consistent with the Authority's corporate and strategic policy. This will normally be about protecting jobs and investment, making the area a safer place to live and improving the wellbeing of its citizens, but it should also be about keeping communities safe, supporting vibrant businesses and protecting young people from harm.

Authorities need to ensure that their enforcement policies contain the key principles of openness, consistency, proportionality, accountability, objectivity and transparency.

Of course, not all age-restricted products and services present the same level of potential harm, so an enforcing authority's assessment needs to take into account the potential harm associated with non-compliance. An authority should therefore ask itself what the problems within its area are, and whether there is, for example, a high level of alcohol consumption by under 18s before embarking on a programme of test purchasing exercises.

For example, a recent study of shopkeepers involved in selling alcohol reported that people working behind the counter in deprived neighbourhoods felt that they had encountered more serious alcohol problems with customers as opposed to those in less deprived areas. These are factors which could also form part of an authority's licensing policy under the 2003 Act.

The new code encourages joint working with the police and other enforcement agencies but suggests that they should seek jointly to deliver proportionate responses to compliance issues. This may not always work in practice as the police tend to opt for the fixed penalty route in many cases, whereas, in the area of under age sales of alcohol, where trading standards officers have a statutory duty under Section 149 of the licensing Act 2003, a wider range of options are usually considered, such as giving the seller a fixed penalty but going down the prosecution route if that person also happens to be the DPS at the premises. There is also an increasing use of the review process by trading standards officers so it is important that the code recognises there is no "one size fits all" approach and that different enforcement agencies may well have different priority outcomes.

The same applies under the Gambling Act 2005 where local authorities jointly regulate alongside the Gambling Commission. There is an enforcement protocol in place between the two regulatory bodies but the Commission tends to promote compliance largely through advice and negotiation, whereas a local authority may well decide to take a much tougher stance and take more formal action depending on the circumstances of the case.

Local issues need to be the driving force and these may well differ from one area to the next. London, for example, may have a particular issue at any one time in relation to knives, but other parts of the country may consider it more important to concentrate on under age sales of alcohol or tobacco in order to promote health and wellbeing.

Working with businesses and communities

It is important for enforcing authorities to communicate effectively with businesses and this can be achieved in a variety of ways, either through trade associations, or other local schemes such as Pubwatch, crime reduction partnerships, Business Improvement Districts (BIDs) and the like. The first resort should not be to punish however, but to inform and, if necessary, to deter.

Conduct of checks on compliance

Risk assessments of individual businesses should take account of all relevant, available information and intelligence in order to make an informed assessment. In other words, this should include the potential harm associated with the products or services supplied by the business and the number of young people that could potentially access age restricted products and services through the business.

One of the more intriguing questions posed by the consultation process is whether there are any circumstances in which it would be acceptable for a test purchaser to lie in response to questions about their age. Opinion among enforcers and the business community is understandably divided, but there is an acceptance that it may well be appropriate in certain circumstances, such as when there is intelligence about a premises known to be selling alcohol to

children but appearing to sell only to regulars, thus making it difficult for test purchasing purposes.

It is a quite different story, however, for a test purchaser to be encouraged to use fake ID when challenged. This is, by its very nature, a more questionable tactic to use, especially in the case of a premises which is complying with the mandatory condition by asking to see proof of identity in the first place. There are also cases of officers using 15-year old volunteers who happen to be over six feet tall, to go into shop premises as part of a test purchasing operation. It is never going to be appropriate to entice a seller into committing an offence by the test purchaser producing fake ID, or by deliberately using someone who looks over 18, as this could well be termed entrapment and should be avoided as far as possible.

The code will require enforcing authorities conducting test purchasing exercises to notify the business concerned in writing of the outcome. A period of five working days is suggested for a failed test and 10 working days for a pass.

Of course, there are always going to be circumstances where further test purchases may be required in a short space of time to gather additional evidence so, in those circumstances it should be acceptable to delay formal notification, in line with the code's recommendations, pending further evidence becoming available.

It is suggested in the code that all officers undertaking work with young persons should be required to undergo a criminal record check. This may depend on how frequently the officer is going to be working with young people so, perhaps this should be a voluntary rather than mandatory requirement for officers involved in test purchasing exercises. That said, the integrity and safety of test purchasers or under age volunteers is always going to be paramount.

A small number of enforcing authorities pay under-age volunteers to act as test purchasers. Others may offer gratuities such as book or record vouchers or may treat the volunteer to a meal at the end of the exercise. At least one authority has a volunteer of the year award which is designed to reward and encourage participation from teenage volunteers. It is crucial, however, that under no circumstances should any payment, reward or gratuity be dependent on the outcome of a test purchase itself.

Responses to non-compliance

The code requires an enforcing authority to communicate effectively with businesses in relation to any non-compliance. Indeed, where the business has a home or primary authority, early contact is positively encouraged. In addition, statutory guidance issued under section 182 of the Licensing Act 2003 suggests it is good practice to give premises licence holders early warning of any concerns about problems identified at the premises, and of the need for improvement.

Similarly, enforcing authorities must make sure that they respond to breaches of compliance in a manner that is proportionate and focussed on securing ongoing compliance. In the first instance, and depending on how serious the breach is, this could simply mean providing advice and support, working in partnership to address the issues, accepting a commitment from the business to undertake certain steps or agreeing a course of remedial action with the primary or home authority.

More formal action might be appropriate should further breaches continue, especially in circumstances where there is a deliberate or blatant failure, where there is evidence of persistent selling, or where advice and support to the business has not been effective in improving compliance.

The main objective of any enforcement action should be to change the behaviour of the offender. This need not necessarily involve a "punishment" but, when considering what action, if any, to take the enforcing authority must look at what is appropriate for the offender and the issue at stake, be proportionate to the nature of the offence and the harm caused, and aim to deter future non-compliance.

The BRDO framework document rightly points out that the choices we make, as individuals, are shaped by the wider environment in which we live, and that shared personal responsibility is at the heart of a strong society. To a large extent the regulation of age-restricted products and services shares the common objective of protecting the health, safety and wellbeing of young people.

The new code is supported by regulators, who will have a duty to let businesses know what to expect, and also by businesses, whose job it will be to put the appropriate controls in place and provide effective staff training in relation to age-restricted products and services. Parents and carers also have their part to play, particularly in relation to sales of alcohol so that proper warnings are given to young people early in their life about the dangers involved.

Finally, young people themselves must shoulder some of the responsibility by having regard to the risks associated with age-restricted products and services, by showing valid proof of age when required to do so and by being aware of the consequences for themselves if they attempt to buy, or are found in possession of, certain age restricted products.

Whether we approve of it or not, this collective responsibility to protect young people from the hazards associated with age-restricted products and services is a key part of the Government's localism and Big Society agenda, and it is hoped that the new BRDO code will assist regulators in contributing to better outcomes for local communities, citizens and businesses alike.

Alan Tolley
Senior Licensing Officer, Sandwell Metropolitan Borough Council

More information please

The Government's July announcement, just before Parliament rose for its Summer Recess, that it would be pressing ahead as planned with the implementation of two new licensing powers contained few surprises but also remarkably little detail. It is an all too familiar story since the introduction of the Licensing Act 2003 – implementation deadlines are set but the practical information on how the new laws are designed to work is still not available.

In the case of measures to tackle late night drinking – and we must remember that this is the Government's stated aim in introducing the latest in a stream of licensing reforms – we know that the power to adopt a Late Night Levy or Early Morning Restriction Order (EMRO) was to come into force from 31 October. But at the time of writing in September, there was no sign of the detailed regulations and, crucially, Guidance which operators, licensing authorities and practitioners needed well in advance of this to allow time to plan.

The Government's July announcement set out clearly the policy intent: EMROs are to be a power of last resort designed to clamp down on a very precisely defined and targeted area or number of irresponsible premises where acute problems of crime and disorder are occurring; the levy, on the other hand, is broader in scope, and unlike the EMRO should and must not be used as a punitive measure to punish irresponsible operators.

But the very fact that both powers may be applied flexibly and that there will be considerable local discretion means the impact on the licensed retail trade could be substantive and variable across the country.

While we are all aware of the big picture, the devil is always in the detail, and there are some key pieces of the jigsaw still missing and, somewhat worryingly, still to be decided.

The Government's intent is that licensing authorities should consider specific measures against individual premises causing a problem or liaise on business-led schemes before deciding to impose an EMRO but it is by no means clear whether this will be an absolute requirement. The policy statement certainly implies that. It states that should a licensing authority decide that an EMRO is the only mechanism to tackle the identified problems, it must consult with those affected. But it is not clear whether this would form part of any published evidence base.

The situation is far less clear cut in respect of the levy. Before introducing a levy, the licensing authority must liaise first with the police and determine the services it will cover and the way in which it will operate. The Government has rejected calls for the police and residents to have the power to call for a levy – the decision is the local authority's alone. There are no specific evidentiary burdens or requirements to demonstrate that a levy is justified. Indeed, in discussions, officials have gone further and suggested that a local authority need produce no evidence, but simply set out its policy intent.

Notwithstanding the Government's reluctance to impose a requirement on local authorities to justify their actions and decisions, it is clear that, in practice, there will be a need to do so – if only to pre-empt legal review. It would seem sensible, therefore, if the Government provided some indicative guidance to help licensing authorities and operators to understand their obligations.

Procedurally, even bigger uncertainties remain in respect of EMROs. The licensing authority will need to advertise a proposed order on its website and local newspaper as well as notifying all affected businesses. The Government had originally proposed that all premises licence holders be notified as well as local residents. This has been reduced to an obligation to proactively consult only with those businesses directly affected by the EMRO and advertise the proposals on websites and in local newspapers. Operators will therefore need to be vigilant and monitor local authority activity.

Once the proposed order is advertised, affected businesses and other interested parties will then have 42 days to make relevant representations for or against the order. This would trigger a hearing, but no details are provided as to when or how a hearing will be conducted.

Given that a decision to impose an EMRO - effectively removing a permission to trade and goodwill from businesses which may not be at fault – is a serious and significant step and one where there is no immediate recourse to appeal, it is frankly baffling that the procedural details are still so absent.

The total annual cost of these measures to the industry will be over £28 million per annum. The Government anticipates that these costs will be passed on and that consumers will see higher prices as a result. This will widen the price differential between on and off trade and act as a further disincentive to drink in a supervised environment. The Government also accepts that the introduction of EMROs and the levy may result in loss of amenity and customer choice of venue as businesses are dissuaded from trading later.

In short, the plans are dangerously out of step with recent policy pronouncements by the Prime Minister and Home Secretary as well as with the launch of the Alcohol Strategy, the national planning policy framework, the response to the Portas Review to protect pubs and with the development of partnership working initiatives such as Best Bar None, BIDs and Pubwatch.

Kate Nicholls
Strategic Affairs Director, Association of Licensed Multiple Retailers

Institute of Licensing *Training*

Investigation Procedures and Giving Evidence in Court

This is a two day course which will take place on the 18th and 19th of March 2013 at the Council Offices in Kings Lynn.

This course would be beneficial to the following:

- Anyone who has duties that include investigating complaints or alleged offences. That is to say, officers who investigate offences;
- The person responsible for ensuring investigations is conducted in accordance with the legislation governing investigations or gathering evidence. That is to say lawyers and senior officers who have to decide whether there is sufficient evidence and reasons to prosecute an offence; and
- Lawyers who represent clients suspected of committing offences.

The training will be scenario based; using a suspected offence committed under the Clean Neighbourhoods and Environments Act 2005, delegates will not need to have any prior knowledge of the Act. The scenario has been chosen to demonstrate the steps needed to conduct an investigation and prepare a prosecution file prior to giving evidence in court.

The training will concentrate on conducting an investigation from the initial complaint, taking a witness statement ensuring the witness statement complies with the rules of evidence, conducting the investigation and gathering evidence, interview preparation in accordance with Police and Criminal Evidence Act 1984. Conducting interviews in accordance with the PACE Codes of Practice. The interview process will also detail the roles of all parties present during the interview, the interviewing techniques, what must be done prior to, during and at the end of the interview.

After the evidence gathering has taken place what are the next steps; to prosecute or are there alternatives?

The course will then move on to examine the steps needed to ensure file preparation is adequate and includes all of the required information, forms and evidence. This will be followed up with an in depth and practical look at giving evidence in court.

The course is a very practical course which follows a step by step guide to conducting an investigation and giving evidence in court. At the end of the course delegates will know:

- How to take a witness statement and what can be included in the statement and what cannot be included in a witness statement to comply with the rules of evidence.
- How to write their own witness statements and what must be included in the statement.
- How to plan for an interview, the purpose of an interview (to prove or disprove an offence has been committed), the questions to ask during an interview. The interview techniques and tips.
- The legal process of an interview, how to establish the points the need to proved if an offence has been committed and what must be done in relation to establishing a defence or providing mitigation.
- That on completing the evidence gathering process the next steps may not automatically be to instigate a prosecution and that there are alternatives that may be more suitable.
- How to prepare for presenting their evidence in court and how to give their evidence in court.

Please pass details of this course to others within your organisation who you feel would benefit from such a course.

Course Fees

IoL Member - £225 + VAT

Non-members - £295 + VAT

This course is non-residential. However, the IoL have secured bed and breakfast rates, for a double bedded room, single occupied, at a preferential rate of £75 per person per night, for delegates who wish to stay at the 4* hotel which is a 2 minute walk of the venue.

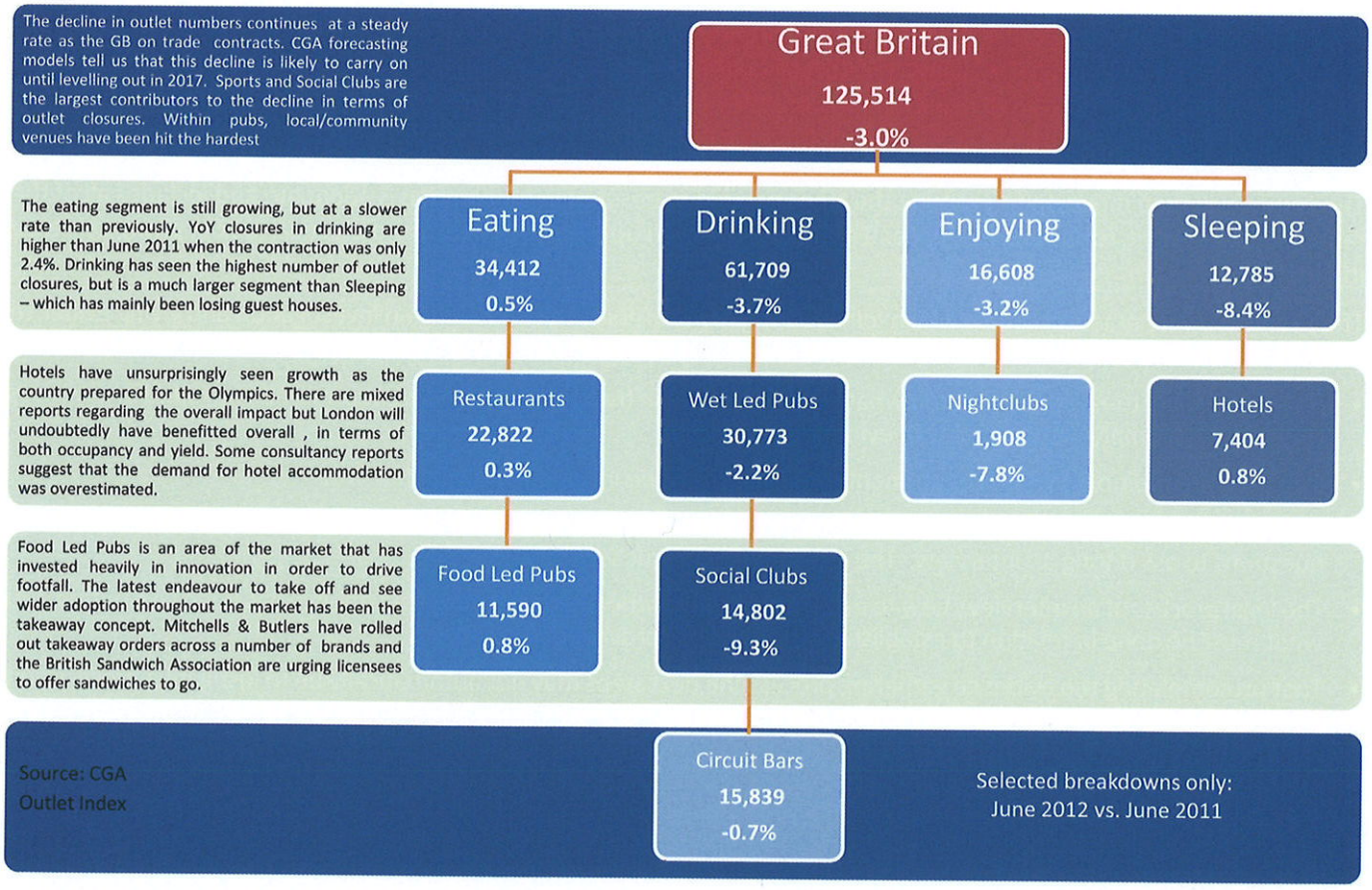
Book early to avoid disappointment as places are limited for this course. For more information and to book your place go to the events pages of the IoL website http://www.instituteoflicensing.org/events.html

CGA statistical snapshot

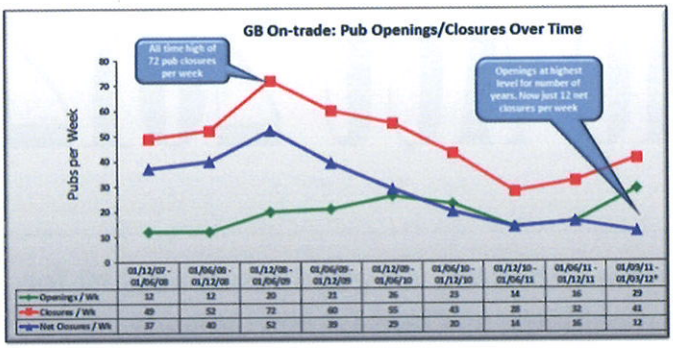
A changing on-trade picture

The GB licensed trade has faced many issues over the past five years which have made running profitable licensed outlets increasingly difficult. Government legislation, tough economic conditions and changing consumer tastes have all had an impact causing a significant decrease in outlet numbers. **Stuart Capel** discusses these factors in the latest statistical snapshot from CGA

GB On-Trade Universe



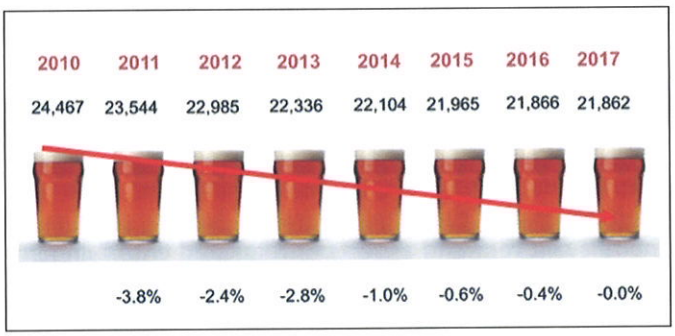
Pubs have received a lot of attention from the media over the past few years, brought to the forefront of our minds as closure rates climbed dramatically to 52 per week in 2009. Fortunately the closure rate has decreased over the last three years and now stands at its lowest rate since before 2007. Many people see the local pub as a focal point for community life and it is without doubt a quintessentially English affair, acting as a draw for tourism and valuable local services. Certain communities have even stepped up to take action to prevent the loss of their favourite local – the residents of Crosby, Ravensworth raised a quarter of a million pounds to buy the freehold of their local, The Butchers Arms. Similar stories are becoming frequent across the UK.



The latest pub closure figures show us that the decline in pubs has been gradually improving across the last three years, after a peak of 72 closures per week between December 2008 and June 2009. With 20 openings a week, and 72 closures a week – we come to a net closure rate of 52 pubs per week. This is the way we look at the overall contraction of the market.

Many people argue that the smoking ban triggered this decline, but there were many other factors involved. Increasing taxation, discounting from supermarkets and a wider range of leisure choices both in and out of the home, have all made life harder for the local licensee. Interestingly, we can see that in the six months to March 2012, openings increased. These openings consist largely of branded food pubs from managed pub companies, and café/wine bar outlets, as the market adapts to changing consumer tastes and demand.

As a result of pub closures and tighter levels of consumer disposable income levels, beer sales have understandably been in decline (see below). Since 2010, beer sales have dropped by 1,482k hectolitres – equating to more than 26 million pints. CGA forecasting suggests this decline will continue until 2017, with a further drop in consumption of 19.7million pints.



Definitions

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

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

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

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

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

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

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

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

Article

Karaoke and the impact of the Live Music Act 2012

The Live Music Act 2012, which has recently come into force, is a good result not just for live music but also for operators with karaoke machines, as **Clare Eames** explains

Currently, where a licensed premises offers karaoke entertainment, operators need to ensure that a wide range of licensable activities is authorised by their premises licence under the Licensing Act 2003.

Operators wishing to offer karaoke for their customers need to ensure that their premises licence permits all the relevant requisite aspects of regulated entertainment covered by Schedule 1 of the 2003 Act. These are the performance of live music; playing of recorded music; exhibition of films; and facilities for making music. Schedule 1 Part 3 para 18 provides that "music" includes "vocal or instrumental music or any combination of the two". Contrary to any adverse personal experiences, it must be presumed that the performance of karaoke falls within the bounds of this generously wide definition. Thus, authorisation for the performance of live music along with the playing of recorded music would be required for karaoke.

Some local authorities take the view that the authorisation for the exhibition of film, which is defined in the 2003 Act as "any exhibition of moving pictures", is also required as the songs' words and directive graphics appear on screen.[1] This is to be doubted as the exhibition of film requires that an audience is present for the purpose of viewing a film rather than incidental activities associated with viewing pictures or images on a screen (*cf British Amusement Catering Trades Assoc v Westminster CC* [1989] AC 147).[2] Furthermore, the microphones, screens, and private booths necessary to facilitate the making of music – in so far as karaoke can be said to be music – rendered it necessary for the premises licence to authorise the provision of those facilities for the cacophonous feast. Indeed, para 15.4 of the section 182 Guidance includes a karaoke machine as falling within the definition of entertainment facilities.

It also follows that the arrhythmic performances that accompany the performance of karaoke potentially fall within the further extremes of what might constitute dance, hence requiring the operator to ensure authorisation for the performance of dance and facilities enabling persons to dance. This extensive range of authorisations is almost universally accompanied by a comprehensive suite of conditions, so as to promote the prevention of public nuisance.

Self evidently, this creates an administrative and regulatory burden for a niche and relatively simple form of social entertainment. I would question whether, in the case of karaoke, premises offering this entertainment are fully or correctly authorised to do so. In the shortfall of the proper authorisation, operators are resorting to the use of Temporary Events Notices and major variation applications to ensure that the necessary authorisations are in place.

Section 177 of the Licensing Act 2003 contains provisions seemingly aimed at easing the burden for licensees of small venues where live music – which includes karaoke – is being performed. Section 177 was a messy, last minute compromise during the final stages of the progression of Licensing Act 2003. As a result, this section is complex, convoluted, and flawed. Although the intended consequence was the disapplication of certain conditions, it is unclear whether these provisions have been properly understood or usefully applied.

The Live Music Act 2012

The Live Music Act received the Royal Assent on 8 March 2012 and came into force on 1 October 2012. This piece of legislation started life as a Private Members' Bill; it is worth briefly touching upon the background concerns informing its enactment.[3]

When the Licensing Act 2003 was going through Parliament, a strong case had been put forward by a lobby

1 Licensing Act 2003, Sch 1, Prt 3, para 15.

2 See Colin Manchester, How many is an audience in regulated entertainment? JoL2.

3 See Andrew Grimsey, Anatomy of the Live Music Bill, JoL1.

comprising the music industry, performers' unions and live music campaigners that the regulation of live music would harm small music performances and gigs. Attempts to, at the very least, maintain the *status quo* on the "two in a bar" exemption failed.

The 2012 Act was drafted on behalf of the same lobby groups, and Hansard records that the speeches in the House of Lords contain a distinct preoccupation with giving live bands a break from excessive red tape bureaucracy and burdensome regulation. The provisions of the 2012 Act were clearly drafted solely with the performance of live music in mind. The intention was to give live bands, subject to specified criteria, a chance to perform free of the administrative and regulatory burdens imposed by the 2003 Act. Although the preoccupation and intention was to meet the concern of performers, the definition of live music under the 2012 Act demonstrably extends to encompass the not-so-professional performances of karaoke. Thus, in my view, the 2012 Act will have a direct impact on the provision of Karaoke.

Impact of the new legislation

Although the Live Music Act 2012 is ostensibly geared towards addressing a perceived problem in relation to the provision of live music, section 2 of the 2012 Act has the effect of removing from the scope of regulatory control the requirement to licence the provision of entertainment facilities. This means that in relation to karaoke, both authorisation for the facilities for making music and, where relevant, facilities for dancing, will no longer be needed.

Having referred to the fact that the intention of the Live Music Act 2012 was to address a perceived problem in relation to the provision of live music, interestingly section 2 of the Act will remove all "entertainment facilities" from being regulated entertainment and therefore these will no longer need to be authorised under a premises licence.

Moving onto live music, the provisions of the 2012 Act are quite complex but the effect quite simple - they basically deregulate the provision of live music in certain circumstances. The criteria are set out in section 177A of the Licensing Act 2003 (as amended): the premises must be licensed for the sale or supply of alcohol on the premises; the premises must be open for the consumption of alcohol on the premises; and the live music must take place between 08:00hrs and 23:00hrs. Additionally, for amplified music, the audience must not exceed 200 persons (not including staff and performers). It is worth noting that a premises capacity is not the relevant factor – it is the audience number that counts.

If the above criteria are met, then the live music aspect of karaoke would no longer be a licensable activity for the purpose of the Licensing Act 2003. In addition, certain music related conditions would be suspended; thus, any existing licence conditions which relate to live music remain in place but are suspended between 08:00hrs and 23:00hrs. In some instances it will be obvious that a condition relates to live music - for example, "during live music all doors and windows must remain closed". In other instances, it might not be so obvious - for example, a condition stating "during regulated entertainment all doors and windows must remain closed". This former condition would not apply if the entertainment provided was live music with an audience of up to 200 but if there was a disco being held in the adjoining room then that condition would still apply. The only exemption is where a music related condition was imposed following a review.

When considering the performance and provision of karaoke, as I have stated earlier, a premises licence will also need to authorise recorded music. Under the Live Music Act 2012 provisions, it is not clear whether these will still need to be authorised, as it is possible for the provisions to be interpreted in a number of ways, as follows.

Firstly, as with the current law, it could be interpreted that karaoke is also recorded music and, as such, that authorisation would be required. Secondly, as live music (during the hours permitted by the Act) is not a regulated activity, then recorded music is incidental under Schedule 1 and so does not need to be authorised. It could be said that karaoke is merely a form of live music and so, subject to the criteria being met, it is not licensable at all.

The final point has weight, as the Government has long taken the view that there will always be an element of recorded music to enhance live music - for example, backing music or music between sets. It is accepted this will not need to be licensed as it is part of the live music experience.

Conclusion

The Live Music Act 2012 clearly has a favourable impact for an operator wishing to have karaoke, given that, at the very least, entertainment facilities will no longer be required and, if the criteria are met, the live music will be not need to be licenced. Therefore, at most, an operator may require an authorisation for recorded music.

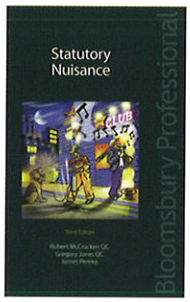
However, it must be remembered that even in circumstances where the Live Music Act 2012 can be relied upon, if a premises causes noise nuisance and as a result the licence is reviewed, the Licensing Authority can amend or add new conditions under the Act. This is provided for under section 177A (3) and (4) and could result in an operator having to comply with certain conditions on its licence regarding live music or then having to rely on authorisations on its licence for live music as a licensable activity.

And it should also be borne in mind that the review provisions of the 2003 Act are complemented by other legislative schemes, namely: the Noise Act 1996, the Clean Neighbourhoods and Environment Act 1995, the Anti Social Behaviour Act 2003 and the Environmental Protection Act 1990.

Clare Eames
Partner, Poppleston Allen

Book Reviews

Statutory Nuisance, Third Edition



Robert McCracken QC, Gregory Jones QC, James Pereira

Bloomsbury Professional Ltd, 2012, paperback, £90

Reviewed by Gareth Hughes Barrister/Director, Jeffrey Green Russell Limited

It is the irony of this reviewer's current situation that while reading through *Statutory Nuisance* by McCracken, Jones and Pereira I was subject to extreme levels of noise from a building site almost adjacent to my offices! Four very large diggers and numerous men with drills were demolishing a four storey building. In the middle of the summer when air conditioning has broken down and windows need to be opened, the sound is ever more intrusive than normal – in fact, deafening.

Against this background, I found this excellent work sitting on my desk. It came just at the right time when I was trying to seek a solution to my very own nuisance problem. Within a flash I was able to locate the precise relevant statutory provisions that would enable me to report to the local authority and advise them of the possible course of action under the Control of Pollution Act 1974. And I was also quickly able, to locate all the relevant statutory provisions under that Act and associated regulations. While only a small section in this substantial volume, the fact that what I was seeking was so easily locatable is testimony to the ingenuity of the authors in their organising of such a diverse range of material.

Clearly, any book of this nature will deal with the issue of noise disturbance - the scourge of the modern industrial age, as some have put it - to a substantial degree and this is what practitioners are seeking. The wealth of information and, more importantly, comment from these leading practitioners provides more than the essential material to get an understanding of what can be a very complex area.

The book is a very clear road map through what can be a minefield of statutory provisions, regulations, notices and enforcement. Step by step, the authors, with consummate clarity, take the reader through the various stages of the statutory nuisance provisions and the Environmental Protection Act 1990, which as a matter of course serves as the heart of this volume. There is, therefore, a very helpful and logical progression through a brief definition of what constitutes a statutory nuisance not merely limited to noise matters. This is followed by a very helpful explanation of the duties and powers of local authorities. Many council officers reading this will see clearly set out the duties which are placed upon them by the relevant statutory provisions; and more particularly when it is incumbent upon them to issue, for example, a noise abatement notice.

One of the most interesting questions which often arises once an abatement notice is issued is whether the local authority can subsequently withdraw that notice. The author of this review has often had debates with local environmental health officers all over the country and in London about whether they have a power to withdraw such a notice so that once relevant works have been carried out or remedial measures taken, the notice may be removed and not act as what is tantamount to a charge on the property in the future. Interestingly in this context, the learned authors take a view slightly different to that expressed by the High Court and do not fully accept that a local authority officer has the power to withdraw a noise abatement notice. They are not entirely convinced of the High Court reasoning in this respect. They suggest that a local authority, once it has issued a noise abatement notice, is *functus officio* and cannot go back on that notice, given the ability of a private individual to prosecute under it. However, they appear to accept the High Court view that even if there is a power to withdraw a notice then any appeal brought under that notice continues to exist to deal with, for example, matters such as costs. It is comforting to see the arguments for and against set out here, and to know that the distinguished authors take the view that this is a tricky area.

The authors then continue their journey by dealing with the contentious issue of how to draft an abatement notice. As many local authority officers will know, this is of great importance when it comes to both appeals and prosecutions. In the second part of the volume they very helpfully set out some draft abatement notices with alternative wording for whichever condition arises, and this is most helpful to hard-pressed environmental health officers who have little time to sit down and think about such matters in great detail.

As a counterweight to this advice to local authority officers is a section on how those served with such notices may challenge them, and the authors deal in some detail with the various grounds upon which a challenge could be mounted.

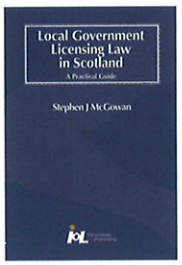
There is a very rich vein of information concerning prosecutions brought under the authority of an abatement notice as well as advice to individuals who can, of course, also bring such proceedings.

Finally, what makes this 400 page volume outstanding is its wealth of materials, which saves the inevitably tiresome task of having to dash off to your limited library or conduct research on the web. There is a wealth of information here which any practitioner will find eminently useful, particularly the draft noise abatement notices which the authors have very helpfully completed with their own draft comments. We also find significant extracts from legislation such as the Environmental Protection Act and the Control of Pollution Act and procedural notes including the Magistrates' Court Rules (which avoids having to plough through pages of *Stone's Justices' Manual*) and some very helpful guidance published by the World Health Organisation and the now surpassed PPG24 Planning Policy Guidance on planning and noise.

The references to the Licensing Act 2003 and the issue of what constitutes public nuisance are brief and cover just a page, but the view expressed by the authors is that a restrictive interpretation of public nuisance would be "unfortunate" in light of the aims of the Act, which are to open up to the general public a ready ability to challenge problem premises. Sadly, they do not get involved in the recent debate in the court about the effects of the wording in the Guidance issued by the Home Office but that wording appears to echo their views in any event.

Armed with this clear and concise volume I am now ready to do battle with the builders just outside my window!

Local Government Licensing Law in Scotland



Stephen J McGowan

Institute of Licensing, 2012, paperback, £40 (£30 for IoL Members)

Reviewed by James Findlay QC, Terra Firma Chambers (Scotland) and Cornerstone Barristers

Local Government Licensing Law in Scotland by Stephen McGowan is a welcome practical guide to the multifarious aspects of local government licensing in Scotland - apart from liquor and gambling. The text is divided into two parts, the first dealing with the Civic Government (Scotland) Act 1982 as recently updated by the Criminal Justice and Licensing (Scotland) Act 2010 while the second gathers together assorted other areas of local government licensing.

The range of licences covered is vast, as indeed the author suggests in his preface. From taxis and street traders to dog breeding and children's work permits, this one book covers them all.

The sheer breadth of such subject matter presents any author with a serious problem – how to contain all the necessary material in one volume yet make it accessible? That problem has been squarely faced up to and dealt with in a very successful fashion by the structure that the author has adopted and by the entertaining style of his writing. He has split the book into two parts, which has enabled him to take an orderly approach to those areas governed by the Civic Government (Scotland) Act 1982 and then to deal with the other categories of licensing. He has not sought to give each area of licensing the same depth of coverage but has sensibly sought to provide greater assistance in areas likely to be more useful, the best example being taxi and private hire licensing, while in respect of other more esoteric areas providing only the necessary bare bones. And keeping his book to a reasonable length of just over 300 pages not only assists practically but ensures that it will not daunt the novice while providing assistance for the more experienced.

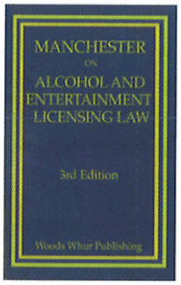
The result is an accessible and useful text that fulfils the author's stated purpose of providing a practical guide not only to lawyers but also to all others who are interested in such licences. It will be a "must buy" for any local authority licensing department and indeed for any person involved with such licensing applications.

It is first and foremost a practical book for practitioners in Scotland rather than an academic tome and does not purport to be otherwise, although the author does provide a very useful and interesting introductory chapter on the history of civic licensing in Scotland. For instance, he deals with appeals briefly but does provide appropriate reference to Hadjucki's annotated statute for those who need to know more. It appears to be accurate in its statements of the law, but I do note that game licences have not been required in Scotland since the passing of the Wildlife and Natural Environment (Scotland) 2011.

My only other comment is that while the author provides some reference to related and sometimes useful academic material and case law south of the border, acknowledging for example the work of Philip Kolvin QC in *Sex Licensing* (2010) in the chapter on sex shop licences, there were other opportunities which were not taken to give such references where this might have been useful for those wishing to delve deeper – e.g. a nod to *Button on Taxis* in the chapters on taxis would not have gone amiss notwithstanding the differences in the law north and south of the border.

This minor point aside, this is an extremely useful and accessible text book, both attractively written and well researched, which fills a gap in the local authority library. It provides sound practical advice allied with a clear exposition of the relevant legal frameworks. It is to be commended.

Manchester on Alcohol and Entertainment Licensing Law, Third Edition



Colin Manchester

Woods Whur Publishing Ltd, 2012, paperback, £79

Reviewed by Gary Grant, Francis Taylor Building

Keeping abreast of the flood of reforms to the law on alcohol and entertainment licensing feels, at times, like trying to hang on to the side of a runaway steam train. There is the bone-shaking speed of the locomotive, the sudden unexpected turns and twists, the fear, horror and occasional moments of exhilaration amid the despair. The billowing steam temporarily blinds us to the track ahead but when it blows over, the path is clearer though heading in a direction we did not wish to go. When the train approaches a red signal with barriers emblazoned with the precautionary words "Danger: Do Not Enter", the sane and alert driver will bring the train to an absolute stop. Even the reckless would pause. Yet our train continues to accelerate and crashes on through into the forbidden and unknown lands where dragons may lie. On the downhills, even the atheists begin to pray and beseech the gods for mercy and seek some sign of where we are going and when it will all stop. On the steep uphill, things may slow down and we can momentarily gasp for breath. For these moments we have the yearly revised bible of licensing law to grab onto in the form of *Paterson's Licensing Acts* - the grand old man who is always there, always reliable and up to date and there to remind the initiated and well-versed, at least, precisely where we stand at that particular time.

But eventually our train will come to a stop. We can disembark and begin to take stock. We can rest, recover, reflect and learn. We can think deeply about every change, chew over every nuance, philosophise on the meaning of it all. The learned man will run every permutation through his mind, analyse and contextualise the law, practice and procedures and the practical consequences - intended and unintended - that may flow. It is thanks to the magnificent intellectual efforts of Colin Manchester, formerly the Professor of Licensing Law at the Universities of Warwick and Birmingham, that all this erudition has once again been committed to paper.

The recently published third edition of his textbook is touchingly dedicated to one of his former co-authors, the late Jeremy Allen, and is now reborn under Colin Manchester's sole authorship as *Manchester on Alcohol and Entertainment Licensing Law.* Coming four years after the second edition it is a brilliant, timely and most welcome publication. The text is, as we have come to expect, authoritative and comprehensive. It has been substantially revised to encompass all the recent legislative changes to the Licensing Act 2003 including the major reforms brought in by the Police Reform and Social Responsibility Act 2011 and the Live Music Act 2012. All the relevant primary and secondary legislation, regulations, guidance and case developments are included and placed in context within the author's confident and clear commentary. Where legal controversy exists, Colin Manchester avoids sitting on the fence and jumps one side or the other. As the author points out in the Preface, if he is later proved wrong he can always fall back on the comforting words of the Victorian Judge who when revising an earlier opinion stated : "The matter does not appear to me now as it appears to have appeared to me then".

The impressive scholarship of the author is borne well in the text. It is used to illuminate rather than to impress, to the great benefit of the reader. The book is highly readable, engaging and user-friendly. It does not merely set out the black-letter of the law - any foolish lawyer can do that. Rather it seeks to explain what its impact is in real-life practice and diverse situations. It does so in that noblest means of communication - "plain English" - and does not adopt the "legalese" designed to conspire against the non-lawyer section of the public.

The book's cover tells us it seeks to "combine detailed academic analysis of the legislative provisions, in the context of their practical application" and claims to be "essential reading for all local authorities, magistrates' courts, legal advisors, licensing policy advisors, operators and the police as well as those applying for licences". This tome does exactly what it says on the tin.

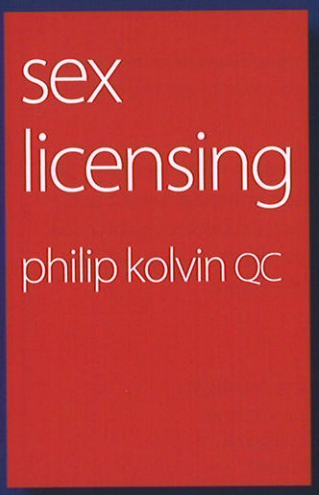
CORRECTION (2012) 3JoL43

Paterson's Licensing Acts 2012

Simon Mehigan QC, Jeremy Phillips & the Hon Mr Justice Saunders (General Editors)

LexisNexis 2012, hardback, £280 (£238 for IoL Members).

Institute of Licensing *Books*



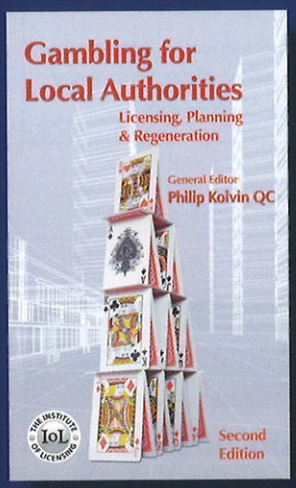
Sex Licensing
Philip Kolvin QC
Published 2010 Price IoL members £25.95 (non-members £34.95)
ISBN: 978-0-9555392-2-0

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

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

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

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



Gambling for Local Authorities
Philip Kolvin QC
Published 2010 Price £49 ISBN: 978-0-9555392-1-3

This book charts the terrain of gambling law simply and succinctly for both licensing and planning professionals. The second edition includes important new material:

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

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

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

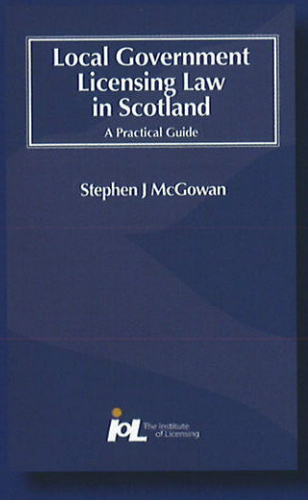
New text on Planning Policy Statement 4 and the Community Infrastructure Levy.

A new chapter on problem gambling by Professor Mark Griffiths.

New tables and figures to explain and simplify the law.

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

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



Local Government Licensing Law in Scotland
A Practical Guide
Stephen McGowan
Published 2012 ISBN 978-0-9555392-3-7

Price IoL Members at £30 + P&P and to Non-members at £40 + P&P.
For the first time in the history of Scots law an author has brought together a legal textbook which acts as a practical guide to the procedures of what is commonly known as "civic licensing" providing local authority staff, solicitors, the police, enforcement officers and operators with an easy-to-read 350 page guide to the Civic Government (Scotland) Act 1982 and related legislation.

If you wish to pre-order a copy or copies email orders@instituteoflicensing.org

Zoo & Animal Welfare Licensing Course
The IoL's first fully focused course looking at Zoo and Animal Welfare licensing requirements.

The course will run from Tuesday 12th March 2013 until Thursday 14th March 2013 at Bristol Zoo, Bristol. The course will be held on site using the zoo conference facilities and the zoo gardens.

Investigation Procedures & Giving Evidence in Court
This is a two day course which will take place on the 18th and 19th of March 2013 at the Council Offices in Kings Lynn.

The course is a very practical course which follows a step by step guide to conducting an investigation and giving evidence in court.

For more information about either course and to book your place go to the events pages of the IoL website **www.instituteoflicensing.org/events**

Book early to avoid disappointment as places are limited for both courses.

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