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Licensing Hearings Training

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Index



1. Overview of the regime(s) and refresher
2. Licensing Act 2003 – What has it achieved?
3. Decisions under the Licensing Act 2003
4. Key Principles of Good decision-making
5. Appeals
6. Deregulation: music

Overview



- Overview of the regime(s) and refresher
- Procedure at the hearing: basic principles
- Best Practice for conducting hearings
- Deregulation and appeals

1. Overview and refresher



Licensing Act 2003



The Licensing Act 2003 - overview

- “24-hour drinking”
- 4 Licensing Objectives:
 - **Crime and Disorder**
 - **Public Nuisance**
 - **Public Safety**
 - **Protection of Children from Harm**
- Premises Licences and Personal Licences
- “Licensable activities”
- Permissive – so grant unless reps show objectives undermined/prejudiced
- Reviews and other enforcement powers
- Licensing Policy
- Statutory Guidance





What must be authorised?

- Only “**licensable activities**”:
- Regulated entertainment (e.g. some music, dance, films, plays etc)
- Late Night Refreshment
- Sale/supply of alcohol
 - this gets special treatment:
 - must be a Premises Licence; a DPS on the licence; all sales to be made/authorised by a Personal Licence Holder (unless club premises certificate)



Types of authorisation

- **Premises licence** – the main form of licence under the Act. (Pubs, nightclubs, cinemas, theatres, indoor sporting arenas, restaurants, takeaways, off-licences etc)
- **Club premises certificate** (for members' clubs)
- **Temporary event notices** (for temporary events or extensions to existing authorisations)



The Operating Schedule

- At the heart of most applications
- Should deal with LOs
- Key document when considering application
- Grant unless relevant representations re LOs
- Even if relevant reps – consider against Operating Schedule – are the concerns dealt with?

Licensing Act 2003 – Some key provisions (4)



Relevant representations

- Only where received is there any discretion
- Follows that must consider application in light of them
- Can be from Responsible Authorities (including LA itself)
- NB Secretary of State now a RA where alcohol/LNR (6/4/17)

- Or from Other Persons – formerly ‘interested parties’ – essentially anyone
- Must relate to the LOs (‘relevant’);
- Must not be ‘frivolous or vexatious’

Licensing Act 2003 – Some key provisions (5)



The Licensing Officer – 2 distinct functions

Administrative:

- Considers whether reps are repetitive, frivolous or vexatious
- Prepares report
- History of the premises
- Details of other premises in the area
- Should they make recommendations?

Substantive

- Make a representation/bring a review
- Separation of roles

Licensing Act 2003 – Some key provisions (6)



Conditions

- Presumption of grant unless good reason not to;
- If reasons not to – can conditions remove the objection?
- Can govern many activities:
 - Opening/closing times;
 - Door supervision;
 - Dispersal;
 - Windows and doors;
 - Use of outside space;
 - Rubbish collection and deliveries;
 - PubWatch
 - Even minimum transactions...etc. etc.



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NB: Mandatory conditions for alcohol, films, SIA

Licensing Act 2003 - Some key provisions (6)



Conditions (cont.)

- Can come onto licences in 3 ways:
 - Because they are offered in the operating schedule.
 - Because they are imposed by the authority following receipt of relevant representations.
 - Because they are mandatory conditions.
- Robust system required to ensure optimal conditions are placed on the licence.

Licensing Act 2003 – Some key provisions (7)



Guidance and Policy

- **National Guidance** is published by the Secretary of State under s 182 Licensing Act 2003.
- **Licensing policies** are published by the licensing authority under s 5 Licensing Act 2003.
- Licensing authorities must **have regard to** National Guidance and local policy in making their decisions

Licensing Act 2003 – Some key provisions



The relationship of objectives, guidance and policy

National
Guidance



Local Policy



Licensing
objectives

National Guidance and local policy are the **signposts**.

The licensing objectives are the destination - i.e. they are the **paramount consideration**.

It is local policy which tells you how the objectives are to be achieved locally.

Therefore, local policy can depart from national guidance for good reason, e.g. if to do so does not undermine licensing objectives.

Premises Licence Application – Procedure



Application with operating schedule

If no objections, grant on the terms in operating schedule

Objections (relevant representations) can be made by responsible authorities or other persons
(Reps by other persons can be discarded if frivolous, vexatious or repetitious)

Notice of hearing

Hearing

The authority must grant the application except to the extent appropriate to promote the licensing objectives

2. Licensing Act 2003 – What has it achieved?



2



The Effect of the Licensing Act 2003 (1)



- The majority of premises have longer trading hours but not to any great extent (on average an extra 21 minutes);
- Less than 4% of premises have a 24 hour licence and the majority of these are off licences or hotels. The BBPA indicated that only two public houses regularly open for 24 hours.
- The effect of the Act on crime and disorder appears to be negligible but more problems occur later;
- The political pendulum has swung from liberalisation to enforcement;
- Local residents have a much more influential role;
- The process is local but can be more political;

The Effect of the Licensing Act 2003 (2)



- Alcohol consumption fallen by 17%
- Rates of binge drinking declined amongst all age groups
- Violent crime fallen “most years” with rates of violent crime 40% lower
- Rise in violent crime between 03:00 and 06:00, but offset by a larger decline at “old closing times (23:00 to midnight and 02:00 to 03:00)”
- Alcohol related admissions continue to rise but at a slower pace;
- Little evidence of a continental café culture;
- Primary objectives of **diversifying the late night economy**; allowing **greater freedom of choice** and **improving public order** have largely been met.

3. Decisions under the Licensing Act 2003



decisions...
decisions.....

Decision-making: Types of application



Licensing Act 2003:

- New premises licence/club certificate application
- Variations
- Change of DPS/Transfer of Premises Licence (Police only)
- Review
- Summary Review
 - Interim Steps
 - Consideration of Representations on Interim Steps
 - Full Review
- Review following Closure

Decision-making (1) – The test



- ‘New’ test – take such steps as are appropriate
- Replaces ‘necessary’ in original Act – govt. say it is ‘reducing the evidential burden’
- BUT - Guidance retains requirement for proportionality
- Reality: no great change – still only impose conditions/take decisions where they are the minimum required to achieve the end sought.
- Can conditions make the operation acceptable? If so impose them
- Whatever the test:
 - weigh up what you have HEARD
 - ask questions if anything is unclear
 - own knowledge – dangerous!
 - Use legal adviser on the LAW (*and reasons*) but decision must be yours

Decision-making (2) - Sanctions



- Generally licensing looks to the future – what should/can be done?
- Legal Adviser will help with what your POWERS are
- Generally should not be punitive

- BUT - Bassetlaw v Worksop Magistrates' Ct:
 - Failed test purchases to minors
 - suspension but overturned on appeal by MC – shouldn't be punitive
 - Slade J in HC – can include consideration of deterrent where criminal activity involved (and see Jay J in East Lindsey v Abu Hanif)

- Curtailing hours – safest to link to disorder/crime/nuisance
- Suspension: easiest to defend if linked to measures to be taken
- Revocation – likely to be appealed – must be proportionate response

Decision-making (3) - Evidence



General principles

- No rule against hearsay
- No rule against using inference, common sense or local knowledge
- Where finding facts (did this happen?), standard is balance of probability
- Ultimate decision is **not** that kind of decision – is akin to risk assessment – what might happen? What is the best thing to do here?
- A value judgment
- Can base decision on any material upon which it is rational to rely
- Question is often what weight to be attached, not whether admissible
- Case of Thwaites

4. 15 Key Principles of Good decision-making



Principle 1: The Committee sets the procedure



- Committee hearing, not a Court of law.
- Within the scope of the regulations, Committee to set and control its own procedure.
- Proviso: procedure to be fair and offer an equal opportunity to all parties to present their case.

Principle 2: Remember the purpose of the procedure



- To enable those with a right to appear to **advance their point of view** and to **test** the case of their opponents;
- To **assist the Committee** to gather evidence and understand the relevant issues.
- If procedural issue arises, basic purposes to be kept in mind.
- Within the boundaries of fairness, needless formality is to be avoided.

Principle 3: Establish the ground rules



- Establish at outset, to:
 - Avoid conflict later.
 - Facilitate the smooth running of the hearing.
 - Tell parties what to expect.
- e.g.
 - Order of presentation and closing submissions.
 - Dealing with conditions proposed by the parties.
 - Maximum time for presentation.
 - Respectful/points in turn/etc

NB – should have been sent out in advance

Principle 4: The Committee may accept hearsay evidence



- Hearsay evidence is when a witness gives evidence of something they did not see or hear, but were only told about. For example:
 - My neighbour says they were kept up all night.
 - My son saw under-18s being served.
 - The newspaper reported there was a fight.
 - I got a letter from a local resident which said they could hear the bass beat from the amplifier.
- Is a question of weight
- Therefore, the Committee may accept a petition, which amounts to the written views of the signatories, subject to the proviso that only limited weight can be attached to it, because the individual views will not have been tested before it.

Principle 5: The Committee may take into account anything which is relevant and helpful



- Licensing Sub-Committees may use their common sense to make judgments – i.e. inferences - about potential harm and what is necessary to avoid it.
- In doing so, sub-committees may draw upon any material before them, including local knowledge, upon which it is rational to rely, regardless of whether it would qualify as “evidence” in a court.
- Anything that ‘persuades’ is ok, unless irrational.

Principle 6: Late objections are inadmissible



- This is the law.

Principle 7: The Committee should ensure fair treatment of witnesses



- Protect witnesses from being berated or interrupted.
- Require the witness to answer the actual question and prevent them from straying from the point.

Principle 8: The Committee should ensure a level playing field



- Maximum times to be enforced.
- Party B entitled to reply to submission by Party A.
- If Committee questions a witness, other parties entitled to ask questions arising.

Principle 9: The Committee may oil the wheels



- Committee may cut through issues:
 - Is point x really contested?
 - Committee has heard and understood the point.
 - Point has been dealt with.
 - Would a condition not deal with this?
 - Do you want to add to what witness X has said?

Principle 10: The Committee may investigate



- The Regulations allow the Committee to ask questions.
- Implicit in this is that it may demand answers.
- It is entitled to probe the information it has been given.
- Questions such as what, when, where, how and why are legitimate.
- Questions such as “I find it hard to believe that...” are inadvisable.

Principle 11: The Committee should be pro-active with conditions



- Ask for draft conditions for use **if** the Committee is minded to grant the application.
- Check whether issue is over principle or wording or both.
- Make clear that this is to save time and narrow the issues: there has been no pre-judgment.
- Invite comment on proposed conditions before imposing them.
- Do not impose conditions unless it would be necessary to refuse the application without them.
- Always consider whether objections may be overcome by conditions.

Principle 12: Do not express view re. merits before giving decision



- Duty to behave impartially, i.e. quasi-judicially.
- Do not make up mind until the end.
- Do not appear to do so.
- Do not discuss merits with press or residents.

Principle 13: Rely on legal adviser as to matters of law



- Including:
 - Interpretation of the Licensing Act 2003.
 - Other statutory provisions creating legal duties, such as section 17 of the Crime and Disorder Act 1998 (duty to do all it reasonably can to prevent crime and disorder) and Human Rights Act 1998.
 - Admissibility of evidence.
 - Rules of procedure, under Regulations / common law fairness.
- Advice to be given, or repeated, in open session and parties' comments invited

Principle 14: The Committee should draft thorough reasons



- Parties have a legal right to know why they have won or lost.
- Badly drafted reasons weaken case on appeal.
- **Reasons should:**
 - Refer to every relevant representation.
 - Start with the policy.
 - State the extent to which it has taken account of Guidance and policy
 - When deciding in accordance with policy, explain why it has not considered a departure justified.
 - When deciding contrary to policy, explain the basis and reason for the departure.
 - When refusing in whole or in part, or attaching further conditions, state both that it considered it appropriate to do so in order to promote one or more specified licensing objectives and why this was so.
 - Committee may use legal adviser in helping it to draft its reasons, but the reasons must be the Committee's.
- **Do not invite licensing officers to retire with Committee.**

Principle 15: Don't do any of these!



- These really happened:
 - Sleeping
 - Eating
 - 'Going to get a coffee' during the hearing
 - Late contested evening hearings
 - Pets at hearings
 - Mobile phones ringing
 - Behaviour before or after hearings with applicants / objectors
 - Strict time limits with no discretion
 - Quorums of 2



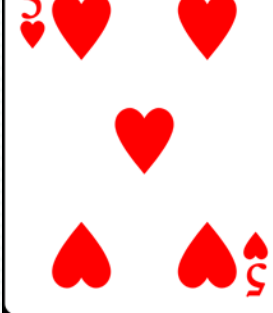
The Model Committee Member:



- Discusses the case with no-one
- Checks in with Monitoring Officer if there is a risk of appearance of bias or predetermination.
- Pre-reads the papers
- Listens
- Asks relevant questions
- Avoids expressing any opinion on the merits of the application or the witnesses until the decision
- Consults the legal advisor on the law
- Produces reasons which explain why a party has won/lost and which will withstand scrutiny on appeal

5. Appeals



- To Magistrates' Court
 - Suspends effect of decision pending appeal (reviews)
 - LA always a respondent
 - Test is whether decision 'is wrong' (at that time)
 - New evidence, witnesses etc... all ok
- 
- Sometimes opportunity to negotiate – consider prospect of upholding decision in light of e.g. new evidence
 - Mediation?
 - BUT – consider other parties (e.g. residents)
 - Costs – usually protected but if refuse to negotiate could be at risk

R (Hope & Glory) v Westminster



- Magistrates Court should only overturn licensing authority decisions where it thinks the decision is wrong
- It should not do this lightly.
- This reinforces the importance of a well-reasoned decision.
- A well-drafted set of reasons is far more likely to be upheld in the magistrates' court.
- A poorly-drafted set of reasons makes is far more likely that an appeal will be allowed with costs.

6. Deregulation: music



Deregulation (1)



- **Live Music (from 6/4/15):**
- No licence required for live music if:
 - Unamplified between 0800 – 2300hrs anywhere
 - Amplified between 0800-2300hrs and audience <501
- **Recorded Music (from 6/4/15):**
- No licence required for recorded music if:
 - 0800-2300
 - On-licensed premises (but not ‘workplaces’)
 - Audience <501

NB both can be made licensable upon review

Deregulation (2)



- **Local authority premises** – no need for licence if:
 - Live and recorded music between 0800-2300
 - Non-residential LA premises
 - Audience <501
 - Organiser gets consent
- NB same for **hospitals, schools, unlicensed community premises**
- Still need a licence for any entertainment after 2300 or in presence of audience of >500



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