



Francis Taylor Building

FTB Licensing Update Webinar

22 January 2021



Francis Taylor Building

T: 020 7353 8415 | E: clerks@ftbchambers.co.uk | www.ftbchambers.co.uk

1



Francis Taylor Building

Review of the Gambling Act 2005

“Terms of Reference and Call for Evidence” (8 December 2020)

INTRODUCTION

GERALD GOURIET QC



Francis Taylor Building

T: 020 7353 8415 | E: clerks@ftbchambers.co.uk | www.ftbchambers.co.uk

2



Francis Taylor Building

Gambling Act 2005

- Received Royal Assent in 2005
- Came into effect in 2007
- Essentially -
 - before 2005 gambling was grudgingly permitted (certainly not encouraged)
 - GA 2005 set out to “liberalise gambling”
 - positively **encouraged** it:
 - : “Aim to permit”
 - : Restrictions on advertising lifted

Francis Taylor Building
T: 020 7353 8415 | E: clerks@ftbchambers.co.uk | www.ftbchambers.co.uk



Francis Taylor Building

“An analogue law in a digital age” – Nigel Huddleston (Culture Secretary)

- The soundbite traceable back to Conservative & Labour manifestos:
 - “*The Gambling Act 2005 is “unfit for the digital age.”*”
- Difference between the two parties:
 - : **Labour** party pledged to repeal 2005 Act & start again
 - : **Conservative** commitment went no further than the promise of a review.
- Terms of reference for this review make it clear:
 - : the intention is to build on the existing “unfit” platform of the 2005 Act rather than to repeal it.

Francis Taylor Building
T: 020 7353 8415 | E: clerks@ftbchambers.co.uk | www.ftbchambers.co.uk



Francis Taylor Building

Some dates

March 2002: Tessa Jowell, Culture Secretary: *"The modernisation of our gambling laws is long overdue. Both society **and technology** have overtaken the law and when that happens, the Government must act."*

October 2004: Tessa Jowell, Culture Secretary: *"Opponents of the Government's gambling reforms are snobs who want to deny ordinary people the right to bet."*

January 2016: Baroness Jowell: *"The 2005 Gambling Act has not worked".*

Francis Taylor Building
T: 020 7353 8415 | E: clerks@ftbchambers.co.uk | www.ftbchambers.co.uk



Francis Taylor Building

August 2012: Harriet Harman (Deputy Leader, Labour Party): *"**Labour made a mistake** over Gambling Law. Gambling liberalisation introduced by the former Labour government was a "mistake" and has ruined people's lives."*

July 2020: Report of the House of Lords Select Committee: *"**Gambling Harm – Time for Action**: "...successive governments and regulators have failed to keep up with the revolution in the UK gambling sector."*

December 2020: Sir Ian Duncan Smith: *"Now is the time to make bold moves and urgently prevent any more devastation to people's lives." - and "**The government should also use this opportunity to not only review the powers of the Gambling Commission, but to be rid of it altogether.**" – and "the industry is in dire need of a reset."*

Francis Taylor Building
T: 020 7353 8415 | E: clerks@ftbchambers.co.uk | www.ftbchambers.co.uk

Root and Branch reform?

- On the back of such vociferous condemnation, one might have thought the government would be looking at some root and branch reforms.



Maybe not...

- The consultation document (the “call for evidence”) dampens expectations.
- **Principal focus:**
 - : better regulation of **online gambling**
 - : better protection for **problem gamblers** and children
 - : tighter restrictions on **advertising**

Problem Gamblers

- Approximately 0.5% of the adult population (300,000 people)
- Some 55,000 children



Protecting the Vulnerable

- Let us round the numbers up to 400,000
- Compelling need to protect them is not denied
- But is the focus on them **at the expense of other areas in need of attention?**

Amongst many issues not addressed by the consultation are the following: (seven in all)

(1) Machinery of Regulation



- Is a local authority sub-committee the best forum for premises licensing?
- Is it satisfactory that the only appeal on the merits is to a magistrates' court?
- Should the Gambling Commission be more accountable?

These are important issues – unaddressed by the Gambling Act review

(2) Complexity

- Gambling Act 2005 intended to simplify the *regulation of gambling*
- Instead, it has become excessively **complicated** and **over-prescriptive**
- Primary legislation + 45 statutory instruments
- Licensees and licensing authorities, as well as those merely working in the industry, need to be aware of, *and understand* :
 - ever-changing 'guidance'
 - 'advice notes'
 - 'principles to be applied'
 - 'licence conditions' and 'codes of conduct' (NB revisions)

(3) Over-Prescriptive

- **Fast approaching** the stage where:
 - : Everything undesirable is criminal
 - : Everything desirable is mandatory
- **Micro-management: 2018 LCCP**
Equal chance gaming in clubs and premises with alcohol licences: *the operator must ensure that there is a "pleasant atmosphere"*.

(October 2020 LCCP backs away from this requirement)

(4) "Aim to Permit"

- 153(1) requirement to "*aim to permit the use of premises for gambling*"
- Effectively a presumption in favour of grant
- The high-water mark of 2005 Act permissiveness

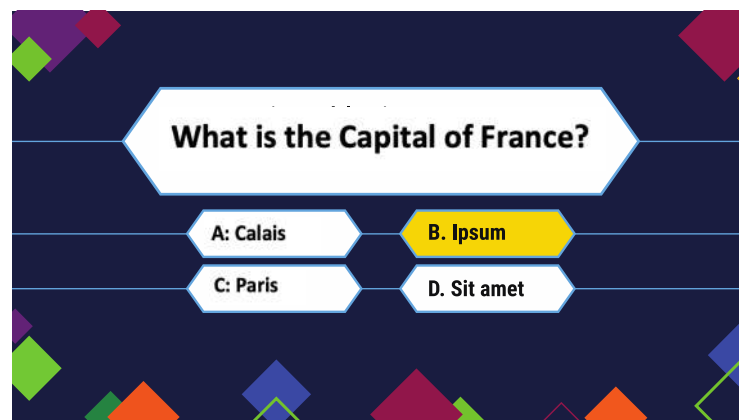


- *Not mentioned at all in the consultation*

(5) The 'Demand Test'

- Another surprising omission from the consultation
- Abolished by s. 15(2) of the 2005 Act
- Lord Parker CJ: there should be “*no more betting offices than are **really required by demand***”
- **House of Lords Select Committee** suggest it should be (effectively) restored by giving local authorities the power to refuse a licence on the ground that non one wants more gambling premises in the locality
- **NB** this is not the same as “cumulative impact”
- Q43: “Is there evidence on whether licensing and local authorities have enough powers **to fulfil their responsibilities** in respect of premises licenses?”

(6) Competitions





Francis Taylor Building

(7) Lotteries: Free Route of Entry

- Unashamed 22-carat lotteries
- **High monetary prizes + low stakes**
- Unsupervised entry by texting a 5 or 6-digit number
- Advertised on television day and night
- “Normalisation” of gambling to children



Francis Taylor Building

Is a review of Gambling Act necessary (to achieve the issues raised by the consultation document?)

- *The enhanced player protection measures being proposed could be introduced under the current framework of the legislation*
(LCCP, powers of Secretary of State)
- Measures in place or in process:
 - £100 million commitment from leading operators for “gambling research, education and treatment” (a ten-fold increase)
(‘GambleAware’ to use the money to “expand third sector treatment services”)
 - HMG announced opening of **15 new specialist clinics** “for people who experience serious gambling problems”



Conclusions

- A lost opportunity
- No hope that gambling law will be simplified – quite the contrary
- Prevailing view: every aspect of our lives should be regulated
- See the Coronavirus Regulations: 75 pages
(Guidance: 50 documents, 600 pages)
- Our lawmakers are in thrall to regulation
- The preferred solution to an over-regulated gambling industry?

More Regulation



FURTHER INFORMATION:

GERALD GOURIET QC
FRANCIS TAYLOR BUILDING
INNER TEMPLE, LONDON. EC4Y 7BY.
TEL: 020 7353 8415

gerald.gouriet@ftbchambers.co.uk

licensing-lawyer.co.uk



Francis Taylor Building

Disclaimer

The oral presentation including answers given in any question and answer session (“the presentation”) and this accompanying paper are intended for general purposes only and should not be viewed as a comprehensive summary of the subject matters covered. Nothing said in the presentation or contained in this paper constitutes legal or other professional advice and no warranty is given nor liability accepted for the contents of the presentation or the accompanying paper. Gerald Gouriet QC and Francis Taylor Building will not accept responsibility for any loss suffered as a consequence of reliance on information contained in the presentation or paper. We are happy to provide specific legal advice by way of formal instructions.

Francis Taylor Building
T: 020 7353 8415 | E: clerks@ftbchambers.co.uk | www.ftbchambers.co.uk



Francis Taylor Building

The Lockdown Regulations

Charles Holland
22 January 2021

Francis Taylor Building
T: 020 7353 8415 | E: clerks@ftbchambers.co.uk | www.ftbchambers.co.uk



Francis Taylor Building

Enough is enough:

Neither the police themselves, nor the public that they serve, want virtually every aspect of our behaviour to be the subject of the criminal law...



Francis Taylor Building
T: 020 7353 8415 | E: clerks@ftbchambers.co.uk | www.ftbchambers.co.uk



Francis Taylor Building

PM press conference 23 June 2020

.... After a long period of asking...the British public, to follow very strict and complex rules to bring coronavirus under control...we will be asking [people] to follow guidance on limiting their social contact, rather than forcing them to do so through legislation'.



Francis Taylor Building
T: 020 7353 8415 | E: clerks@ftbchambers.co.uk | www.ftbchambers.co.uk



Francis Taylor Building

Ease of enforcement

- **Rule of 6:** ‘simplifies and strengthens the rules on social gatherings, making them easier to understand and easier for the police to enforce’
- **10 pm curfew:** ‘to help people enforce this rule, I’m afraid that means, alas, closing and not just calling for last orders, because simplicity is paramount’

Francis Taylor Building
T: 020 7353 8415 | E: clerks@ftbchambers.co.uk | www.ftbchambers.co.uk



Francis Taylor Building

Simplicity?

- **All Tiers Regulations:** 120 pages long
- **Part of a larger suite:**
 - Face Coverings
 - Collection of Contact Details
 - Obligations of Undertakings
 - No. 3
 - Self-Isolation
 - International Travel
 - No. 2
 - Enforcement Powers and Amendment

Francis Taylor Building
T: 020 7353 8415 | E: clerks@ftbchambers.co.uk | www.ftbchambers.co.uk



Francis Taylor Building

Overlay of guidance

- **Core lockdown guidance:** 6,200 words
- Regulatory paraphrase and (true) guidance
- Guidance on matters already the subject matter of regulation, e.g.:
 - *You may leave home to exercise with your household (or support bubble) or one other person (in which case you should stay 2m apart). Exercise should be limited to once per day, and you should not travel outside your local area.*

Francis Taylor Building
T: 020 7353 8415 | E: clerks@ftbchambers.co.uk | www.ftbchambers.co.uk



Francis Taylor Building

Post-legislative clarification

The Telegraph

Shooting and fishing are permitted under the [latest lockdown rules](#) as a form of exercise, officials have confirmed.

After confusion over the status of the sports, the representative bodies sought clarification from the Government over whether they could continue.

Francis Taylor Building
T: 020 7353 8415 | E: clerks@ftbchambers.co.uk | www.ftbchambers.co.uk



Francis Taylor Building

Stricter enforcement approach

- **Met:**

After ten months of this pandemic the number of people who are genuinely not aware of the restrictions and the reasons they are in place are vanishingly small.

- **Fine** attendees of events

- **Serious offenders** no 3 Es (Engage, Explain, Encourage), straight to 4th (Enforcement)



Francis Taylor Building
T: 020 7353 8415 | E: clerks@ftbchambers.co.uk | www.ftbchambers.co.uk



Francis Taylor Building

Stricter enforcement approach



Francis Taylor Building
T: 020 7353 8415 | E: clerks@ftbchambers.co.uk | www.ftbchambers.co.uk



Francis Taylor Building

House parties

'As we have done throughout this pandemic we are constantly reviewing our approach to ensure that we can crack down on those most serious cases of rule-breaking.

Today I can announce, next week will be introducing a new £800 fine for those attending house parties, which will double for each repeat offence to a maximum level of £6,400.

These fines will apply to those who attend illegal gatherings of more than 15 people in homes.

The science is clear: Such irresponsible behaviour poses a significant threat to public health, not only to those in attendance, but also to our wonderful police officers who attend these events to shut them down.

From the outset we have given the police the necessary powers to enforce the rules which are in place to stop the spread of this virus.'

Francis Taylor Building
T: 020 7353 8415 | E: clerks@ftbchambers.co.uk | www.ftbchambers.co.uk



Francis Taylor Building

SAGE-EMG, SPI-B, Transmission Group 23/12

- Provide positive feedback about a) the great efforts people are making to control the virus, b) the success of these efforts in helping to reduce infection rates and c) the need to now increase these efforts in order to sufficiently control the new variantⁱⁱⁱ.

There is concern among some members of the public that their considerable efforts to help control the spread of the virus have had no success. It is important to recognise the sacrifices made and emphasise that the efforts the public have made have already had success in keeping infection rates much lower than they would have been while going back to work and other activities – but that because of the greater threat of infection posed by the new variant we need to build on and extend these efforts in order to save lives and reduce the need for lockdown.

Communications should avoid giving visibility to non-adherence (which undermines social norms for adherenceⁱⁱ) or suggest the ineffectiveness of preventive behavioursⁱ. Focusing on failure leads to reduced self-confidence and lower motivation to try, whereas positive feedback about coping efforts leads to further effortⁱⁱ, particularly if combined with feedback that further effort is needed to reach the desired goalⁱⁱⁱ. More positive messaging about the positive impact of the many ways in which members of the public are acting safely and the effectiveness of the measures they are taking when implemented fully should help to increase confidence in the value of these efforts and the ability of everyone to make them.

Francis Taylor Building
T: 020 7353 8415 | E: clerks@ftbchambers.co.uk | www.ftbchambers.co.uk



Francis Taylor Building

SAGE-EMG, SPI-B, Transmission Group 23/12

- **When introducing any changes to guidance for infection control it is crucial to provide a credible rationale for new guidance and changes, and the new guidance should be precise and consistent^{xiii,xiv}**

Resources should include clear and convincing explanations, detailed guidance and effective behaviour change techniques to motivate and support people to adhere to the guidance. **The messaging should be transparent about uncertainty where present, in order to earn trust.**

In the context of the new variant, messages should focus on encouraging and supporting the additional behaviours required to control a more infectious virus strain, particularly (as recommended by EMG):

- **reducing indoor contacts** to the lowest level possible;
- consistent use of **high-quality face-coverings** whenever indoor close contact mixing is unavoidable;
- approaches to enable effective **ventilation of enclosed spaces^v**;
- **high adherence to testing and self-isolation if symptomatic or a contact of a case.**

Francis Taylor Building
T: 020 7353 8415 | E: clerks@ftbchambers.co.uk | www.ftbchambers.co.uk



Francis Taylor Building

SAGE-EMG, SPI-B, Transmission Group 23/12

- **Help members of the public** to identify situations where they find it difficult to avoid risky behaviour and work with them to create acceptable solutions
- **Target more intensive information and practical support for adherence to the specific behaviours, settings and populations that need it.**
- **Provide appropriate communications and support for people from communities with different cultural backgrounds**

Resources should identify and address concerns and barriers, suggest positive solutions, maintain social cohesion and support, and promote a shared sense of responsibility for infection control. **Fear-inducing messages should be avoided as, even when health messages are adhered to, stressors remain in the physical environment that are not within the control of individuals; if a health message induces fear, it may result in denial or avoidance as a coping mechanism due to low control over external factors, such as working in frontline roles.**

Francis Taylor Building
T: 020 7353 8415 | E: clerks@ftbchambers.co.uk | www.ftbchambers.co.uk



Francis Taylor Building

Navigating out of this

- **Law** – constant tweaking / micromanagement
- **Guidance** – distinction with law / tilting of law
- **“Clarification”** – one rule for them...
- **Enforcement** – the wrong message?



Francis Taylor Building
T: 020 7353 8415 | E: clerks@ftbchambers.co.uk | www.ftbchambers.co.uk



Francis Taylor Building

The Lockdown Regulations

Charles Holland
22 January 2021
www.cholland.com



Francis Taylor Building
T: 020 7353 8415 | E: clerks@ftbchambers.co.uk | www.ftbchambers.co.uk



Disclaimer

The oral presentation including answers given in any question and answer session (“the presentation”) and this accompanying paper are intended for general purposes only and should not be viewed as a comprehensive summary of the subject matters covered. Nothing said in the presentation or contained in this paper constitutes legal or other professional advice and no warranty is given nor liability accepted for the contents of the presentation or the accompanying paper. Charles Holland and Francis Taylor Building will not accept responsibility for any loss suffered as a consequence of reliance on information contained in the presentation or paper. We are happy to provide specific legal advice by way of formal instructions.



ENFORCEMENT

JAMES RANKIN

BARRISTER

FRANCIS TAYLOR BUILDING



Francis Taylor Building

Prohibition Notices, Dispersal Orders, FPN

The Health Protection (Coronavirus, Restrictions) (All Tiers) (England) Regulations 2020

- PN Reg. 9(2)
- DO Reg. 9(3)
- FPN Regs. 11, 12
- £200 (£100 14 days)
- £400 for second offence-£6400 for sixth offence

Francis Taylor Building
T: 020 7353 8415 | E: clerks@ftbchambers.co.uk | www.ftbchambers.co.uk



Francis Taylor Building

House Parties

- £10,000 for the organiser
- £800-£6400 for **attendees** (to be introduced next week)

Francis Taylor Building
T: 020 7353 8415 | E: clerks@ftbchambers.co.uk | www.ftbchambers.co.uk



Francis Taylor Building

In Practice.....Crackdown

- 4 “Es” Engage, Explain, Educate, Enforce
- Met Police issued more than 140 FPN £39,000 in 2 days last weekend
- S Yorkshire Police 127 FPN last week (92 for indoor gatherings)
- Sheffield holiday rental house party last weekend
- G Manchester 3 parties (one involving more than 40 people)

Francis Taylor Building
T: 020 7353 8415 | E: clerks@ftbchambers.co.uk | www.ftbchambers.co.uk



Francis Taylor Building

Prosecutions

- 6,500 C-19 Related Crimes 1st April-30th September 2020
- 1,688 assaults on emergency workers
- 1,137 charges for breaking C-19 laws

Francis Taylor Building
T: 020 7353 8415 | E: clerks@ftbchambers.co.uk | www.ftbchambers.co.uk



Francis Taylor Building

CORONA VIRUS AND THE LICENSING OBJECTIVES

- Public safety
- Public nuisance
- Crime and Disorder



Francis Taylor Building
T: 020 7353 8415 | E: clerks@ftbchambers.co.uk | www.ftbchambers.co.uk



Francis Taylor Building

Public Safety

- **Does not** include “*public health issues*” See paragraph 2.7 of the s.182 Guidance
- Does include immediate harms resulting from activities being carried on at the premises.
- Unarguable that the immediate contraction of a potentially fatal illness is an immediate harm



Francis Taylor Building
T: 020 7353 8415 | E: clerks@ftbchambers.co.uk | www.ftbchambers.co.uk



Francis Taylor Building

Public Nuisance

- “*public nuisance*” includes, historically, the risk of infections spreading as a result of activities carried out on land.
- In addition, causing a public nuisance is a serious criminal offence under the common law punishable with a maximum of life imprisonment (see [R v Rimmington & Goldstein](#) [2005] UKHL 63).
- Therefore both the prevention of public nuisance and crime and disorder licensing objectives are engaged.



Francis Taylor Building

Standard Review

- As is well known this would enable any person or responsible authority to launch a “**standard**” review of the premises licence pursuant to s.51-53 of the Licensing Act 2003.
- The Council would be able to take any steps that promoted the licensing objectives including revocation of the premises licence or a suspension for up to 3 months.
- But timing is of the essence: 28 day consultation period, requirement for a hearing within 20 working days thereafter, and that any decision taken at a review hearing would not have effect pending the determination of any appeal to the magistrates’ court.



Francis Taylor Building

Summary Review

- SR s.53A-53D of the Licensing Act 2003, can achieve quick results
- Can only be launched by the police if a senior officer (of Superintendent rank or above) has certified that, in his opinion, the premises is “associated” with serious crime or serious disorder or both.
- “Serious crime” is defined by reference to s.81 of the Regulation of Investigatory Powers Act 2000. It includes:

Francis Taylor Building

T: 020 7353 8415 | E: clerks@ftbchambers.co.uk | www.ftbchambers.co.uk



Francis Taylor Building

Serious Crime

An offence for which an adult could reasonably be expected to be sentenced to imprisonment for a period of 3 years or more.
(Unlikely to get home on this)

Or,

Conduct resulting in substantial financial gain. (this condition might also be satisfied if sales are being made).

Francis Taylor Building

T: 020 7353 8415 | E: clerks@ftbchambers.co.uk | www.ftbchambers.co.uk



Francis Taylor Building

Summary Review contd

- SR review criteria likely to be satisfied so the police, if so minded, could apply for a Summary Review of the premises licence.
- The Council may not look behind the police officer's certificate (Lalli [2015] EWHC 14).



Francis Taylor Building

Powers on summary review

- LA has the power to suspend the licence on receipt of the application as an interim step until the full review hearing is heard within 28 days of the application.
- Interim suspension could be imposed following a phone call or email exchange between members of the licensing sub-committee and has immediate effect.
- There is no legal requirement for the licence holder to be given the opportunity (let alone attend a hearing) prior to the Members making their first interim decision to suspend the licence (among other steps).



Francis Taylor Building

Full review following summary review

- At the full review hearing the Council may revoke or suspend the licence (for up to 3 months). But, in addition, the Council also has the (new) power to suspend the licence pending any appeal of that final decision made at the full review hearing (53(D)).
- The Summary Review route is most likely route (in addition to the new closure powers in the Coronavirus Act 2020)

Francis Taylor Building
T: 020 7353 8415 | E: clerks@ftbchambers.co.uk | www.ftbchambers.co.uk



Francis Taylor Building

Summary Reviews in practice

- **Nakira and Petite Afrique v Birmingham CC**
- Afro-Caribbean premises; multiple breaches of C-19 Regs; more than 6; less than 2m; dancing; loud music shisha etc
- Warnings
- SRs brought by WMP; IS suspensions; licences revoked; IS continue pending appeals (53D)

Francis Taylor Building
T: 020 7353 8415 | E: clerks@ftbchambers.co.uk | www.ftbchambers.co.uk



Francis Taylor Building

Nakira/Petite Afrique the challenge

It was submitted that:

- PSED not complied with
- “Not seeking to go behind *Lalli*”
- BUT...LSC has to make a finding that there is serious crime before they can make any determination under 53(C)
- Parliament has introduced a specific statutory regime for breach of C-19 Regs(viz fines)

Francis Taylor Building
T: 020 7353 8415 | E: clerks@ftbchambers.co.uk | www.ftbchambers.co.uk



Francis Taylor Building

Contd

- Even if prosecuted for public nuisance (*Rimmington*) likely sentence would not pass the s.81 RIPA test (3year sentence)
- Other limbs of s.81 not engaged (substantial financial gain (but see The Office 13th January 2021); conduct by a large number of people in pursuit of a common purpose)
- If no serious crime/substantial financial gain then no power to impose IS

Francis Taylor Building
T: 020 7353 8415 | E: clerks@ftbchambers.co.uk | www.ftbchambers.co.uk



Francis Taylor Building

Contd

- Following revocation of the licences and refusal to lift the IS suspension, operators appeal,
- Substantive appeals listed May 2021
- IS suspension appeal heard 9th December 2020
- Mags refuse to lift the IS suspension
- Appellants case-state that decision
- ? JR the better course

Francis Taylor Building
T: 020 7353 8415 | E: clerks@ftbchambers.co.uk | www.ftbchambers.co.uk



Francis Taylor Building

The Office v LB Ealing “substantial financial gain” 13th January 2021

- Multiple C-19 breaches; SR; licence suspended IS; on SR multiple residential reps; new operator; hours cut back
- BUT LSC continued the IS suspension 53(D)!
- Appeals against SR decision and IS decision (53(9))
- On 53(D)(9) appeal LBE concede suspension but resist the cut back in hours
- Appellant submits that conduct is not serious crime, and no substantial financial gain.....s.81 RIPA

Francis Taylor Building
T: 020 7353 8415 | E: clerks@ftbchambers.co.uk | www.ftbchambers.co.uk



Contd.....

- LBE submits that the DJ is bound by *Lalli*;
- Appellant's argument is academic but RIPA engaged in any event (substantial financial gain);
- Once the certificate is issued then a decision on the IS suspension engages all of the licensing objectives ("serious crime" is not one of these);



The result.....

- DJ Wright refuses to go behind *Lalli*
- Substantial financial gain limb of RIPA engaged-can be inferred from the facts; large numbers gathering for extended hours over lengthy period; publicans' motives are not altruistic
- A decision on the IS suspension engages all of the licensing objectives
- Cuts back the IS hours even further to 22.30!!
- <https://www.ftbchambers.co.uk/file/office-dj-wright-judgment-13121pdf>





Francis Taylor Building

Closure Orders

- Closure power exists under Chapter 3 of the Anti-Social Behaviour, Crime and Policing Act 2014 .
- This would enable the local authority or police to apply for a **Closure Notice** on the basis that the use of the site is likely to result in nuisance to the public.
- the serious risk of a Covid-19 outbreak is likely to be adjudged as a nuisance.
- Notice has the effect of closing the premises by prohibiting people to attend the premises for up to 48 hours (if issued by the Council's Chief Executive or a senior police officer of Superintendent rank or above, or 24 hours otherwise).

Francis Taylor Building
T: 020 7353 8415 | E: clerks@ftbchambers.co.uk | www.ftbchambers.co.uk



Francis Taylor Building

Contd....

- The effect of the Closure Notice can be extended to 3 months on application to the magistrates' court for a **Closure Order**.
- The relevant test for the Court before making an Order includes consideration of whether criminal behaviour is likely to occur (e.g. the offence of causing a public nuisance), or, whether a serious nuisance to the public is likely to occur if the Order is not made
- Process could be used to close the premises immediately

Francis Taylor Building
T: 020 7353 8415 | E: clerks@ftbchambers.co.uk | www.ftbchambers.co.uk



Francis Taylor Building

LB Ealing v Basrah Lounge 30th December 2020

- Industrial Estate; Shisha Lounge; “off sales” of shisha (with food) to cars parked in the vicinity; residential housing nearby
- LBE do not pursue the case on basis of C-19 breaches
- Instead they relied on evidence of nuisance to residents
- Partial closure order granted
- Query whether CO could have been sought for the car park as well.....

Francis Taylor Building
T: 020 7353 8415 | E: clerks@ftbchambers.co.uk | www.ftbchambers.co.uk



Francis Taylor Building

Tudor Rose v LB Ealing challenge to certificate

Covid summary review – wedding venue having 100’s at illegal wedding.

- Threatened JR of certificate. PAP letter re quashing of certificate alleging not serious crime plus attack on vires of Regs – challenges whether regs should be made by emergency procedure in Parliament.
- Not followed through (funding?)
- Licence not revoked, conditions added as per PLH proposals plus suspension (Tudor Rose is a community asset, so LSC not want to revoke despite seriousness of breaches).
- Appeal to mags, even though decision matched PLH proposal! GG for LBE on appeal. LBE threatened costs if they didn’t withdraw. Appeal withdrawn

Francis Taylor Building
T: 020 7353 8415 | E: clerks@ftbchambers.co.uk | www.ftbchambers.co.uk



Francis Taylor Building

Civil Injunction

Given:

- serious risk to public health
- likely public nuisance
- likelihood of criminal offences being committed if the operators remained open in defiance of HMG's instruction

The High Court would readily grant an emergency injunction with a penal sanction prohibiting the premises from opening.

Francis Taylor Building
T: 020 7353 8415 | E: clerks@ftbchambers.co.uk | www.ftbchambers.co.uk



Francis Taylor Building

FURTHER INFORMATION:

JAMES RANKIN

FRANCIS TAYLOR BUILDING

INNER TEMPLE, LONDON. EC4Y 7BY.

TEL: 020 7353 8415

MOB: 07803207855

www.ftbchambers.co.uk

james.rankin@ftbchambers.co.uk

Francis Taylor Building
T: 020 7353 8415 | E: clerks@ftbchambers.co.uk | www.ftbchambers.co.uk



Francis Taylor Building

Disclaimer

The oral presentation including answers given in any question and answer session (“the presentation”) and this accompanying paper are intended for general purposes only and should not be viewed as a comprehensive summary of the subject matters covered. Nothing said in the presentation or contained in this paper constitutes legal or other professional advice and no warranty is given nor liability accepted for the contents of the presentation or the accompanying paper. James Rankin and Francis Taylor Building will not accept responsibility for any loss suffered as a consequence of reliance on information contained in the presentation or paper. We are happy to provide specific legal advice by way of formal instructions.

Francis Taylor Building
T: 020 7353 8415 | E: clerks@ftbchambers.co.uk | www.ftbchambers.co.uk



Francis Taylor Building

FTB Licensing Update Webinar

22 January 2021

Francis Taylor Building
T: 020 7353 8415 | E: clerks@ftbchambers.co.uk | www.ftbchambers.co.uk