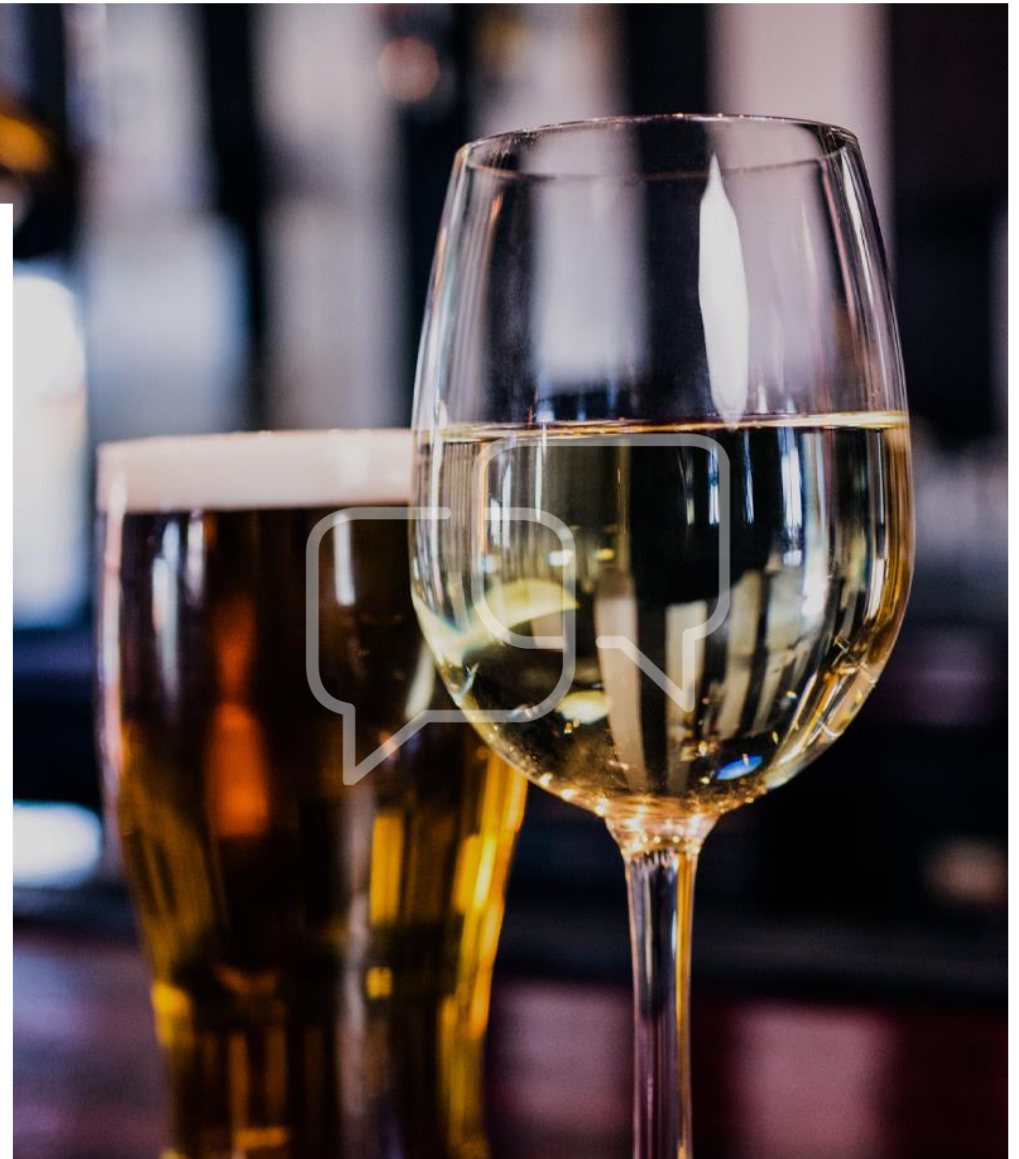




Francis Taylor Building

FTB Licensing Update Seminar

7 June 2024





Meet the Speakers



Gary Grant - Chairman



Jeremy Phillips KC



James Rankin



Leo Charalambides



Charles Holland



Francis Taylor Building



Night & Day: the law of nuisance & agent of change in licensing



Leo Charalambides



Summary Reviews and Interim Steps Appeals



Jeremy Phillips KC



Summary reviews & Interim Steps – the facts [1]

1. Approximately 15% of all licence reviews are Summary
2. Y/e 31 March 2022 there were 347 premises licence reviews
3. 43% decrease (-264) compared with y/e 31 March 2018
4. In y/e had been around 1,300!
5. Of the 347 licences reviewed in 2021-22, almost half of those PLs (167: 48%) were revoked or withdrawn.



Summary reviews & Interim Steps – the facts [2]

Reason	Completed reviews year ending 31 March 2022	Completed reviews year ending 31 March 2018	Percentage change
Total	347	611	-43%
Crime and disorder	290	505	-43%
Public safety	132	160	-18%
Public nuisance	119	154	-23%
Protection of children	102	141	-28%



Problems identified by Regulatory Policy Committee (2015)

Prior to reform:

“It is unclear whether interim steps should remain in place after the review hearing and before the review decision takes effect after 21 days (time allowed to lodge an appeal) or until any appeal hearing or if the interim steps can be amended/withdrawn by LAs.

This uncertainty can result in unfair steps being imposed on businesses or unsuitable premises continuing to operate freely for long periods”



Policy objectives and the intended effects

“The objective is to ensure the public are protected from premises associated with serious crime and serious disorder in the period between the review hearing and the determination coming into effect, in particular where an appeal is lodged by the licensee, which can delay implementation of the final outcome by several months. We would also like to ensure that businesses subject to summary reviews are treated fairly and that any interim steps remaining in place after the review hearing are proportionate, including when they remain in place for extended periods when an appeal is lodged by either side.”



Preferred option:

“LA to review interim steps at the hearing and decide what steps should remain in place until the 21 appeal period expires or any appeal is determined. Post hearing, the police and licence holder would have a right to an expedited appeal to a magistrates’ court against the interim steps.”



RPC opinion:

“ .. offers premises an expedited appeal against the interim steps following the review hearing. While there is the potential for costs to LAs and courts from the uptake of this route, it is unlikely that many premises will actually take up this appeal. This is because interim steps will have already been reviewed very recently at the review hearing and therefore any appeals are unlikely to be successful. There is therefore expected to be no additional cost over the baseline option.”

“Requiring the LA to review the interim steps at the review hearing will lead to more proportionate and robust interim steps. As the interim steps will likely be more in line with the final decisions and therefore more lenient than the original interim steps, option 3 presents a benefit for businesses”



Key assumptions/sensitivities/risks

“The risk of increased appeals and associated rises in costs and burdens on the courts and LAs as a result of the additional expedited appeal right against the interim steps is considered to be minimal. This is because it is unlikely that many businesses will take up this option as it would involve a cost and would be unlikely to be fruitful, given that they would have had the opportunity to put forward their case against any interim steps less than a month prior to lodging the appeal against the steps.”



Interim Steps taken by licensing authorities in 2014:

Type of interim steps taken	No. of instances	Percentage
Operating hours modified	17	16%
Licensable activity partially restricted	6	6%
Licensable activity completely excluded	5	5%
Other conditions added or modified	30	28%
Designated Premises Supervisor removed	15	14%
Licence suspended	69	65%
Total no. of cases where interim steps were taken¹⁰	106	

¹⁰ As more than one type of interim step can be taken in a case, the sum of the instances of the different types of interim steps is greater than the total number of cases involving interim steps.



Type of interim steps taken: estimated % profit lost (28 days)

- Operating hours modified 50%
- Licensable activity partially restricted 25%
- Licensable activity completely excluded 75%
- Other conditions added or modified 25%
- Designated Premises Supervisor removed 20%
- Licence suspended 100%

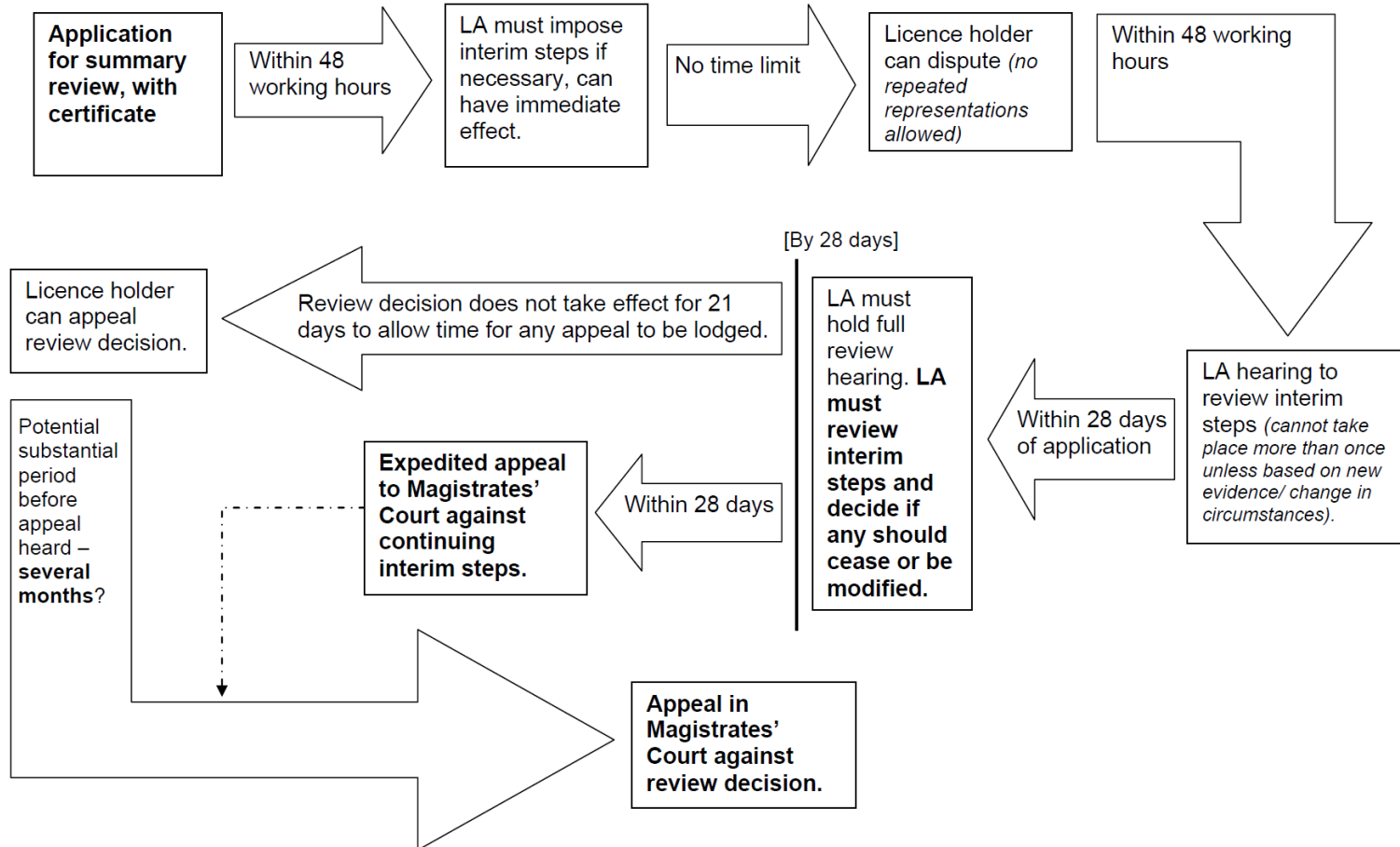


Impact until appeal is heard:

“If the premises appeals the decision, the determination will not come into effect until the appeal has been disposed of. Appeals often take a very long time to be heard – based on anecdotal evidence from licensing lawyers and comments in the licensing authority questionnaire results, this is assumed to be 24 weeks. The estimated 15% of businesses which appeal therefore face a further 24 weeks of interim steps and associated profit losses.”



Summary review flowchart – option 3





Discussion...

1. Experience with Interim Steps:
 - Initial
 - When reviewed (interim)
 - On Review
2. I.S. - scope for less than full sanctions from Summary Review?
3. Experience with mediation? Potential for development?
4. General problems with the Summary Review / I.S. system?



Cross-Pollination: applying lessons from other regimes to the Licensing Act 2003



Charles Holland



The Standard

NEWS SPORT BUSINESS LIFESTYLE CULTURE GOING OUT HOMES & PROPERTY COMMENT

NEWS | LONDON



Josephine Smith: 'Such a sad time' Three teens arrested for murder and firework recovered after gran killed



JOSEPHINE SMITH DIED FROM SMOKE INHALATION
MET POLICE



News ▸ East London News ▸ Romford

Teen thugs who pushed lit firework through East London home and killed woman, 88, are jailed

Josephine Smith died of smoke inhalation after two explosions caused her home to be set ablaze

NEWS By [Holly Evans](#)

15:30, 28 APR 2023 | UPDATED 15:32, 28 APR 2023

Bookmark 📌



Comments 11



📍 Kai Cooper, 19, was found guilty of manslaughter, and arson with recklessness as to whether life was in danger at the Old Bailey



EXCLUSIVE

Romford arson death: Why is fireworks shop still trading?

20th February 2023

FIREWORKS

HAVERING COUNCIL

METROPOLITAN POLICE

OLD BAILEY

OLD BAILEY - CENTRAL CRIMINAL COURT

BUSINESS

COURT

CRIME

LOCAL GOVERNMENT

HAROLD WOOD



Exclusive by Charles Thomson

Investigations Reporter

Share   

A Romford shop is battling to keep its licence after it twice sold fireworks to a teenager, despite his loud boasts to the shopkeeper that he would use them to “terrorise” people.



Explosives storage licensing

- Explosives Regulations 2014
- Made under Health & Safety at Work etc. Act 1974
- No person may store more than specified quantities of explosives unless that person holds a licence for their storage and complies with the conditions of that licence: regulation 7(1) of the 2014 Regulations
- S.33(1)(c) criminal offence to contravene H&S regulations (including to contravene licence conditions)



Explosives storage licensing: grants and refusals

- LA must grant unless specified ground for refusal applies: regulation 13(2)
- LA must refuse to grant a licence if it is of the opinion applicant not a "fit" person to store explosives: regulation 20(1)(a) and 2(b)(i)



Explosives storage licensing: revocation

- LA may revoke where it appears on info obtained post-grant that licensee not a fit person: regulation 23(1)(b)(i)
- “Minded to revoke” procedure with oral/written representations: regulation 23(3)-(4)
- LA must give written for revocation: regulation 23(5)
- Revocation takes effect on a date to be determined by LA: regulation 23(6)



Explosives storage licensing: appeals

- Any person who is aggrieved by a decision of an authority having power to issue licences under any of the relevant statutory provisions revoking a licence held by him may appeal to the Secretary of State: s.44(1)(d) 1974 Act
- No set time for appealing!
- No provisions for a stay pending appeal (c.f. an appeal against an improvement/prohibition notice s.24)



“Fit and proper”

R v. Crown Court at Warrington, ex parte RBNB [2002] 1 WLR 1954 at [9]

- portmanteau expression
- does not lend itself to semantic exegesis or paraphrase
- applicant has the personal qualities and professional qualifications reasonably required of a person doing whatever it is that the applicant seeks permission to do



“Fit and proper”

McCool v. Rushcliffe BC [1998] 3 All ER 889 at 891

- bear in mind objectives of the regime
- safe drivers with good driving records and adequate experience, sober, mentally and physically fit, honest, and not persons who would take advantage of their employment to abuse or assault passengers



“Fit and proper”

Chief Constable of Essex v. Germain (1992) 156 JP 109

- permissible to take into account the kind of irresponsible and uncontrolled behaviour which may be revealed in a succession of cases of drink driving, such that the chief constable is entitled to draw the inference that the appellant is the sort of person who cannot be trusted with a shotgun ... because he lacks proper self-control and self-discipline



“Fit and proper”

Catch22bus Ltd v. DfT [2020] RTR 12 at [7(iii)]

- A regulator must be able to trust those whom it licences to operate in compliance with the regulatory regime

HSE Explosives Licensing Guidance

- Unfitness implies that the LA does not have confidence in individual’s willingness/ability to abide by the regulations or licence conditions



“Fit and proper”

Kavanagh v. CC of Devon and Cornwall [1974] QB 624

- Regulator entitled to (and obliged to) have regard to all relevant matters
- Whether or not admissible in a court of law



“Fit and proper”

R v. Knightsbridge CC, ex p International Sporting Club (London) Ltd [1982] QB 304

- Past misconduct always relevant
- May be cases where wrongdoing so flagrant / well publicized, no amount of restructuring can restore confidence as a fit and proper person to hold a licence ... public confidence in the licensing justices would be gravely shaken by allowing it to ... run the casino



Discretion to revoke

S.21(2) Legislative and Regulatory Reform Act 2006

- Principles of good regulation
- Regulatory activities
- should be carried out in a way which is transparent, accountable, proportionate and consistent
- targeted only at cases where action is needed



Proportionality

R v. Barnsley MBC, ex p Hook [1976] 1 WLR 1052

- Revocation of market trader's licence over single incident
- Breach of natural justice ...
- and disproportionate



Proportionality

Lalli v. MPS [2015] PTSR 1221 at [41(iii)]

The Porky Pint Ltd v. Stockton on Tees BC [2023] EWHC 128 (Admin) at [35]

- Statutory provisions which permit revocation of licences are compatible with licensee's A1P1 rights where they enable fair balance to be preserved, subject to appropriate safeguards (including rights of appeal), between public interest and licensee's interests



Proportionality

B. v SSHD [2000] 2 CMLR 1086

- Reasonable relationship between (legitimate) objective which is sought to be achieved and means used to achieve that end
- Measure not proportionate unless necessary to achieve objective



Proportionality

de Freitas v MAFFLH [1999] 1 AC

- Legislative objective sufficiently important to justify limiting a right
- Measures designed to meet objective are rationally connected to it
- Means no more than are necessary to accomplish objective
- Balance between interests of society and group (Huang)



Proportionality

R (Corner House Research) v. SFO [2009] 1 AC 756

- No need for public authority to adopt the least intrusive measure provided the appropriate balance has been struck



Preventative purpose

Licensing Act 2003

- The prevention of crime and disorder



Preventative purpose

Roots v. TC for London and South East [2013] UKUT 0410 (AAC)

- Jurisdiction of Traffic Commissioners is preventative in nature
- “not required to wait and then react after some serious event has occurred”



Preventative purpose

Ackers v. Taylor [1974] 1 WLR 405

- S.30(2) Firearms Act 1968 “part of the equipment given to police officers for the preservation of good order in public”
- “a branch of preventative justice”



Deterrence

East Lindsey DC v. Hanif [2016] CTLC 81 (Admin)

- Prevention of crime and disorder “requires a prospective consideration of what is warranted in the public interest, having regard to the twin considerations of prevention and deterrence”



Appeals

Hesham Ali (Iraq) v. SSHD [2016] 1 WLR 4799 at [45]

- *Hope and Glory* applies to all appeals by way of rehearing



Appeals

R (Begum) v. SIAC [2021] AC 765

- *Caution against substituting own judgement for that of statutory decision maker*
- *"the Secretary of State's assessment should be accorded appropriate respect, for reasons both of institutional capacity ... and democratic accountability"*



Appeals – decision maker’s policy

Marshall v. Waltham Forest LBC [2020] 1 WLR 3187

- Court is to start from the (regulator’s) policy, and it must give proper consideration to arguments it should depart from it.
- Burden on appellant.
- Look at objectives of policy and ask itself whether objectives would be met if the policy is not followed.

Regulators’ Code



Appeals – statutory guidance

R (Munjaz) v. Mersey Care NHS Trust [2006] 2 AC 148

- More than mere advice which an addressee is free to follow or not as it chooses



Stay – implied power?

R (Leicester Gambling Club Ltd) v. Gambling Commission [2007] EWHC 531

- Properly and reasonably be regarded as incidental to a relevant express power (AG v. Great Eastern Ry Co).
- Powers that promote reasonableness and fairness

R (Dean) v. BEIS [2017] 4 WLR 158

- Power to vary petroleum exploration and development license



Stay – not if “fit” is a requirement

R (OWD Ltd) v. HMRC [2019] 1 WLR 4020

- Not possible for a licensing authority to grant a time limited approval for the purposes of giving effect to a stay where the approval may only be granted to “fit” person



EXCLUSIVE

Harold Wood shop worker admits firework sale to killer teen

24th April

ROMFORD MAGISTRATES COURT

COURT

CRIME

HAROLD WOOD



Mark Vardy (right) sold fireworks to a teen who then posted one through Josephine Smith's (centre) letterbox (Image: Streetview/Smith family/Romford Recorder)



Exclusive by Josh Bolton

Court and crime reporter

@joshdbolton

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No Comments

A Harold Wood shop worker has admitted selling fireworks to a 15-year-old boy who used them to kill an elderly woman.



Josephine Smith's family - including son Alan (second from right) outside the Old Bailey (Image: Charles Thomson)

Alan said the guilty pleas had given them some closure to a two-and-a-half-year nightmare, and says he hopes the sentences Mark Vardy and LMV Enterprises receive will reflect the pain they had contributed to.

District Judge Susan Holdham adjourned sentencing until June 4 to allow for a probation report on Mark Vardy, with a prison sentence of up to three months being a realistic possibility.



Takeaways: the licensing of hot food deliveries



James Rankin



Francis Taylor Building



French Tacos

Harrow Road



The Facts

- A small restaurant with take-away and no premises licence
- WCC enforcement officers observe hot food being provided to delivery drivers through a side window
- The premises are closed to public customers with the lights off.
- At 00.03 they order a hot French Taco via the Uber Eats app from their car positioned on the opposite side of the road.
- Shortly afterwards a delivery driver collects the food and supplies it to the officers at a nearby location
- WCC says that this is an offence. Syed Andrabi says that it is not
- A DJ will decide who is right on 12th July 2024



WHY IS LATE NIGHT REFRESHMENT A LICENSABLE ACTIVITY?

Paragraph 3.21 of The DCMS Guidance published under *s.182 The Licensing Act 2003* explains why the Act makes the provision of hot food after 23.00 a licensable activity:

"The provision of late-night refreshment is regulated primarily because it is often linked to alcohol-fuelled crime and disorder in the night-time economy, such as at fast-food takeaways where late-night drinkers congregate."



Thus, the mischief which resulted in the supply of late-night refreshment becoming, nationally, a licensable activity was the high incidence of disorder and nuisance at takeaway venues, involving patrons in drink who had recently decanted from bars and clubs, hungry for a late-night refreshment and a fight.

It had nothing to do with premises which were closed to the public sending out a French Taco (for example) to those who had ordered them.



THE LAW

Late night refreshment

The licensable activity is (s.1(1)(d) of the Licensing Act 2003) the provision of late-night refreshment.



Schedule 2 of the Act identifies what constitutes the provision of late-night refreshment.

Paragraph 1(1) of Schedule 2 provides that for the purposes of the Act, a person “provides late night refreshment” if -

*(a) at any time between the hours of 11.00 p.m. and 5.00 a.m., he **supplies** hot food or hot drink **to members of the public**, or a section of the public, **on or from any premises**, whether for consumption on or off the premises, or*



(b) at any time between those hours when members of the public, or a section of the public, are admitted to any premises, he supplies, or holds himself out as willing to supply, hot food or hot drink to any persons, or to persons of a particular description, on or from those premises, whether for consumption on or off the premises,

unless the supply is an exempt supply...

The Court can immediately discount paragraph 1(1)(b) as the public were not admitted to the premises on the night in question.



Does the activity fall within paragraph 1(1)(a)?



Supply

“Supply” is a simple concept. It is far simpler than “sale by retail” (the licensable activity relating to alcohol). As s.190 of the 2003 Act demonstrates, a contract for the sale of alcohol can be made in a different place to where the alcohol is appropriated to the contract, and that section has to deem for these purposes where the sale takes place.

But supply is much easier. It is when the food or drink is *handed over*.



1. The s.182 Guidance says this (at para 3.13):

The 2003 Act affects premises such as night cafés and take away food outlets where people may gather at any time from 11.00pm and until 5.00am. In this case, supply takes place when the hot food or hot drink is given to the customer and not when payment is made. For example, supply takes place when a table meal is served in a restaurant or when a take-away is handed to a customer over the counter. (emphasis added).



On or from the premises

It can be seen in para 1(1)(b), which deals with a premises to which the public is admitted, that the supply can be “on or from” the premises”. This, it is suggested, is to deal with premises where food can be served from the premises, through a hatch or over a counter, to persons standing next to but not on the premises. This is a typical scenario for every “hole in the wall” takeaway operations. The position would, of course, be different if customers were collecting hot food from the window via “click and collect”.



As already pointed out, para 1(1)(b) can have no application to the current facts: the public are simply not admitted to the premises.

Do the facts support a conviction under para 1(1)(a)? The Defendant says no because the public are not supplied on the premises.

Nor are they supplied from it either.



No but yeah but.....surely hot food is supplied “from” the premises in that the food goes *from* the premises into the hands of a delivery driver, into the pillion of a motorcycle, and back into the hands of the delivery driver before being handed to the customer at the doorstep.



The answer to that submission is no, not least because “premises” means (s.193) “*any place and includes a vehicle, vessel or moveable structure*”. So, by that analysis, every moped and Vauxhall Vectra departing from a fast-food restaurant to deliver French Tacos would also need to be licensed because the vehicle would be a subsequent premises following the fast-food premises.



The better analysis is that the French Taco is not supplied until it is handed to the customer on his or her doorstep. At that point there is no supply to the public on or from any premises. It has become an entirely private, and unlicensable, supply.



WHAT CAN WE DO?

We have residential areas where the noise of delivery drivers is a nuisance

- Do not prosecute
- Nothing to prevent unlicensed premises delivering post 23.00
- For premises which are licensed you can review and impose a condition preventing delivery after a certain time
- Lobby for a change in the law



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