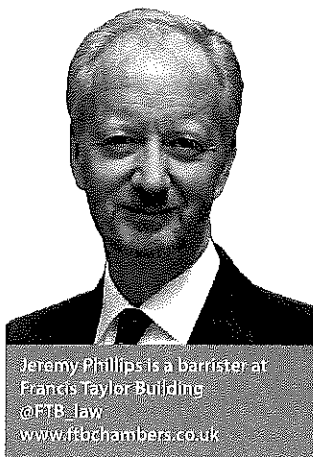


Drinking, gambling, and mistakes in notices

Jeremy Phillips considers the effects of the government's proposals to tackle alcohol-related crime, as well as other recent developments in the world of licensing



Jeremy Phillips is a barrister at Francis Taylor Building @FTB_law www.ftbchambers.co.uk

Just six months ago one of the most significant items on the agenda of the home secretary might have been her modern crime prevention strategy, promising to build 'on the successes of the past while making the most of new research, techniques, and tools to protect the public'. How distant those days must seem now. Following the EU referendum and her anointing as prime minister, the mere prevention of crime must inevitably have slipped some way down Theresa May's agenda.

Nonetheless, the Home Office's crime prevention strategy remains something which should be of interest to us all, as the published statistics continue to show. In this piece I focus upon the proposals as they relate to alcohol, one of the 'six key drivers of crime'. The full report may be found on the Home Office website, but the highlights for lawyers involved in this field (and, as I have previously observed, suggested reading for property lawyers advising in this field) are the government's proposals for:

- Cumulative impact policies to be put on a statutory footing: this is with a view to 'strengthen[ing] the ability of authorities to control the availability of alcohol and reduce alcohol-related crime and disorder, as well as providing industry with greater clarity about how they can be used'. Quite what this means in detail we have yet to learn. Suffice it to say that the cumulative impact zone, to date a completely non-statutory device, has for the past decade or more been one of the most significant elements of the licensing regime enacted in 2003. The presumption of refusal which such policies typically create has often been the sole bulwark for residents and traders against the inexorable expansion of bars and clubs in many crowded city centres;
- Powers to review a group of premises in a locality and impose a set of conditions (the group review intervention power): this, we are told, will 'enable licensing authorities to consider the licensing conditions of a group of premises to address problems in a specific location' and 'enhance licensing authorities' ability to manage the night-time economy in their area, for example by requiring better security at premises, or measures to reduce the risk of alcohol-related violence. Where there are serious concerns about individual premises, the licensing authority will continue to use the existing review process; the group review intervention power would not itself result in the closure of premises. The concern for individual licensees must be that, under such a system, the few could well suffer for the shortcomings of the many;
- Improved local intelligence systems for use as evidence in licensing hearings: although obviously an invaluable tool, it is presently unclear how the Home Office will in practice deliver on this proposal;
- Encouragement of partnership working schemes: the somewhat utopian aim is to ensure that 'all those involved in the operation and management of the evening and night-time economy work together, so that people can enjoy a safe night out without fear of becoming a victim of alcohol-related crime or disorder, while also enabling local economies to grow'. This proposal made me think back to my youth and a very senior (and somewhat fearsome) clerk to the justices who regularly declined police suggestions for 'partnership working' on the basis that such an initiative might be seen by those in the dock as compromising the crucial independence of magistrates. One hopes that local councillors will be similarly conscious of the importance of impartiality where a serious conflict of evidence exists;
- Support for local authorities in diversifying the late-night economy away from alcohol-led premises to 'other activities in the evening and night-time economy, such as entertainment and food': cynics will recall that the creation of a 'continental cafe style of drinking culture' was to have been the prime outcome of the more liberal regime introduced by the Licensing Act 2003;
- More flexibility when imposing the late-night levy: 'At the same time, the government will

create a greater role for police and crime commissioners, by giving them a right to request that local authorities consult on introducing a levy to contribute towards the cost of policing the evening and night-time economy'; and

- Civilian police staff to be given powers of entry: this will reflect the increasing role of such staff in enforcing the licensing regime.

Mistakes in notices

The jurisprudence on errors in licensing notices has a long, if not noble, history, running from cases of the 19th century which pronounced that such documents should 'not be scrutinised as closely as the old forms of pleading' (*R v Lyon, ex p Skinner* (1898) 14 TLR 357 CA, per Lord Justice Chitty) to those referring to more contemporary preoccupations such as equality issues, accessibility to those with impaired vision, and the size of the font used (*R (D&D Bar Services Ltd) v Romford Magistrates' Court and London Borough of Redbridge* [2014] EWHC 213 (Admin)).

In *The Queen on the application of Essence Bars (London) Limited t/a Essence and Wimbledon Magistrates' Court and Royal Borough of Kingston upon Thames* [2016] EWCA Civ 63, the Court of Appeal considered the effect of an error made by solicitors in a notice of appeal. The question for the court was whether there was power to amend a notice of appeal by way of complaint in licensing proceedings by substituting the name of one company which, as premises licence holder, did have standing to appeal, for the name of another company which did not.

Remitting the case to the magistrates' court from whence it originally came, the court held that there would be two questions to be decided by the bench when construing the notice and its relevant background, namely:

1. Whether, on the facts of this case, the notice of appeal had simply misdescribed the name of the premises licence holder who was the appellant/complainant or whether, notwithstanding the reference in it to 'the complainant, the premises licence holder', in the circumstances of this case the identity of the appellant was actually a different person; and then (only if it was found that the mistake was the former; the latter being a fatal defect)
2. Whether the other party to the appeal (i.e. the licensing authority) was not in any reasonable doubt about the identity of the appellant, applying the approach of the Divisional Court to the test formulated by the justices in *Marco's case (Marco (Croydon Ltd) t/a A and J Bull Containers v Metropolitan Police* [1984] RTR 24, *R v Greater Manchester JJ, ex p Aldi GmbH and Co KG* (1994) 159 JP 717).

Gambling policy

A key feature of the new regime introduced by the Gambling Act 2005 was the primacy of the role accorded to the Gambling Commission. Not only was the commission tasked with the duty to advise the secretary of state on the effects and the regulation of gambling, but additional powers required it to assess compliance with the provisions of the Act and secondary legislation; issue operating and personal licences; publish codes, conditions, and guidance; investigate and prosecute offences; and generally exchange information with relevant authorities.

Faced with that substantial remit one might think that the commission would be pleased to allow local councils, as the licensing authority for premises licences under the 2005 Act, to assume responsibility for all decisions at this level. Not a bit of it. The long-running saga of *Greene King Brewing and Retailing Ltd v The Gambling Commission* [2016] UKUT 0050 (AAC) represents a seismic battle for the centre-ground of licensing.

In the red corner: Greene King, arguing vociferously that as a 'fit and proper person' it should be allowed to introduce high-stakes bingo into a limited number of carefully identified public houses. Opposing it, the commission, arguing with equal force that to permit such a step would introduce hard gambling into an environment for which it was not intended. Greene King argues that should be a decision for the local licensing authority considering an application for a premises licence. The commission suggests that to allow matters to get to such a stage would be an abdication of its responsibility to control the development of gambling nationally.

The score so far is 2-1 to the commission. In the First-Tier Tribunal (General Regulatory Chamber), the president at that time, Judge Nicholas Warren, held that the commission had wrongly taken into account matters which the Act provided were exclusively for the licensing authorities on a premises licence application. In the Upper Tribunal, however, Judge Levenson upheld the commission's position, accepting that it had an integral role as the national body with oversight over gambling policy and regulation.

On that basis the appeal succeeded, although as the judge made clear, whether the decision was correct on its merits would be an issue to be decided when the remitted case was heard in accordance with the legal basis set out in his judgment. Recognising that the issue was not beyond argument and that the case raised issues of national importance, Judge Levenson also granted permission for Greene King to appeal to the Court of Appeal. That case is likely to be heard in spring 2017. SJ



The concern for individual licensees must be that, under such a system, the few could well suffer for the shortcomings of the many