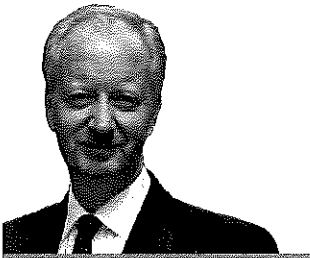


The hand we've been dealt

Jeremy Phillips considers the latest developments in licensing law, including a government crackdown on illegal working, enforcement actions, and a preview of the Supreme Court's hearing of what constitutes 'cheating' in gambling



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A number of changes to licensing law happened to come into effect simultaneously on 6 April 2017 as a result of the Immigration Act 2016 (illegal working in licensed premises and cessation of personal licences) and Policing and Crime Act 2017 (including summary reviews and interim steps) respectively (as explained in SJ 161/16).

Illegal working in licensed premises

The government believes that a significant proportion of illegal working occurs in licensed premises selling alcohol and/or offering late night refreshments, as well as in taxis and private hire vehicles. For that reason, the Immigration Act 2016 amended licensing legislation so that a licence may not be issued to an illegal worker. The Act also makes the employment of illegal workers a factor that may be taken into consideration when issuing or revoking licences. Additionally, the Act provides immigration officers with power to enter premises used for certain licensable activities.

End of personal licence renewals

Following the Deregulation Act 2015 personal licences have had effect indefinitely, subject to provisions in the Act as to surrender, revocation, and suspension. In addition, following the Immigration Act a personal licence will now terminate if the holder of the licence ceases to be entitled to work in the UK.

Summary reviews and interim steps

The Policing and Crime Act 2017 was principally concerned with improving the efficiency and democratic accountability of police forces and fire and rescue services. However, it also took the opportunity to address anomalies in the summary review regime which had existed since the expedited regime was created by the Violent Crime Reduction Act 2006.

The 2017 Act now restricts the opportunity for a premises licence holder to make repeated applications to modify interim steps unless there has been a material change in circumstances since the earlier hearing. Amendments made also address the ambiguity concerning interim steps between the review hearing and the review decision coming into effect. In addition, at the

full review hearing, which is required to take place within 28 days, the licensing authority must review any interim steps that have been required.

An appeal may be made by the police or licensee against the decision regarding the interim steps taken at the review hearing. Such an appeal must be heard within 28 days.

Planning law and pubs

The Neighbourhood Planning Act 2017 received royal assent on 27 April. The Act requires the secretary of state to make an order as soon as reasonably practicable removing permitted development rights from public houses. At present, where such premises have been listed as assets of community value (ACVs), the permitted development rights which are withdrawn include change of use to class A1 (shops), class A2 (financial and professional services), and class A3 (restaurants and cafés). Once the relevant order has been made, such rights will be removed for all drinking establishments, regardless of whether or not they are listed as ACVs.

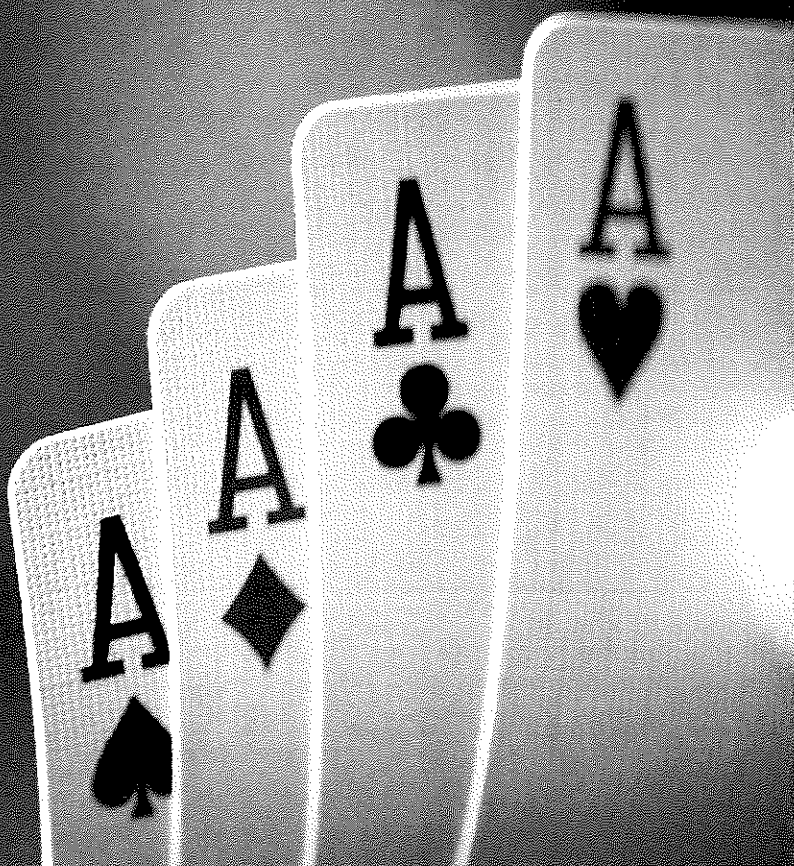
Developments in gambling

Given the constraints on space in this column it will be convenient in this brief article simply to summarise some of the recent developments that have occurred.

In *Greene King v The Gambling Commission* [2017] EWCA Civ 372 the Court of Appeal (Lord Justice Hickinbottom delivering the lead judgment, with which Lady Justice Arden and Lord Justice Simon agreed) effectively upheld the decision of the Upper Tribunal, accepting that the Gambling Commission was "entitled to concur with, and place weight on, the view of their own officers as to the 'different expectations of those frequenting pub or bingo premises as to their primary purpose'... upon which the recommendations of the Budd Report were based. It was clearly open to the panel to conclude that visitors to a pub, after consuming alcohol, might be vulnerable to available high stake gambling."

The court directed that the company's appeal to the First-tier Tribunal should be re-determined by that forum when "Greene King will be able to raise each of these matters and it will be for that tribunal to determine them on their merits".

The appellant claimed that because he was of the “honest belief that his actions were not cheating” his play could not be considered as that of a cheat



The commission has also announced its proposals for a more robust approach to enforcement:

- “Putting all regulatory tools, including licence review (both of the operator and personal management licences), on an equal footing by removing the current bias in favour of settlement within our existing statement for licensing and regulation;
- Changes to our statement on financial penalties including introducing higher penalties for breach, particularly where we see systemic and repeated failings;
- Using time-limited discounts to create better incentives for early settlement.”

Two men operating an unlicensed gambling website connected to a video game, which was used to bet on real life football matches, pleaded guilty to offences under the Gambling Act 2005 and were fined £91,000 and £164,000 respectively.

In another enforcement first, BGO Entertainment Ltd has been fined £300,000 for misleading advertising on its own and its affiliates’ websites. This was the first financial penalty imposed by the commission for advertising failings.

In *Global Gaming Ventures (Southampton) Ltd v Southampton City Council* [2017] EWHC 165 (Admin) the High Court held that Southampton City Council was entitled to indicate its intention to enter into a contract with the development partners for the Royal Pier development, which included a casino element. Further, it was entitled to identify a preferred specific location for a large casino as part of the Royal Pier and Mayflower Park redevelopment project, that site having been previously identified (among others) as part of the council’s submission to the Casino Advisory Panel. Permission

was refused on both grounds for judicial review.

On 13 July 2017, the Supreme Court heard Phillip Ivey’s challenge to the Court of Appeal’s judgment in *Ivey v Genting Casinos UK Limited (t/a Crockfords Club)* [2016] EWCA Civ 1093 that he was technically guilty of “cheating” when he won £7.7m from the casino. Ivey had not denied using a technique known as “edge-sorting”, which exploits design irregularities on the backs of playing cards, to gain an advantage over the club when playing the game punto banco. He claimed that because he was of the “honest belief that his actions were not cheating” his play could not be considered as that of a cheat. The club rejoined that it was unaware of the edge-sorting method at the time and that use of the technique unfairly altered the odds of the game against it. Both the High Court and the Court of Appeal found in favour of the club.

The importance of checking the appropriate application of UFEC permits (club gaming permits, club machine permits, and unlicensed family entertainment centres) was underlined by the commission during a number of recent joint site visits with councils in the South West to premises where permits were due for renewal in September 2017.

Ministers have announced their intention to close a loophole which allows Britons to place bets on the outcome of the EuroMillions draw with a £2 stake on websites such as Lottoland.

In my next licensing review, I hope to report on the outcome of the Supreme Court consideration of “cheating” under the Gaming Act 2005, as well as a number of recent developments in the world of taxi and entertainment licensing. As ever I will be happy to respond to readers’ queries where these raise issues of general interest. SJ