BIRMINGHAM CITY COUNCIL

LICENSING SUB COMMITTEE - A

MONDAY 26th OCTOBER 2020

LA REFERENCE (PETITE AFRIQUE), 160 HOCKLEY HILL, BIRMINGHAM B19 1DG

That having considered a full review of the premises licence under s.53C of The Licensing Act 2003 following an expedited summary review under s.53A of the Act brought by West Midlands Police in respect of the premises licence held by Rodrigue Tankeu in respect of La Reference (Petite Afrique), 160 Hockley Hill, Birmingham B19 1DG, this Sub-Committee determines:

- That the premises licence shall be revoked
- Rodrigue Kouamo Tankeu shall be removed as the Designated Premises Supervisor.
- Having reviewed the interim steps imposed on 1st October 2020 (and not lifted on 16th October 2020), that it will not withdraw or modify the interim steps of suspension of the licence and the removal of the designated premises supervisor Mr Rodrigue Kouamo Tankeu under s.53D of The Act. Those steps remain in place pending any appeal.

Before the meeting began the Sub-Committee was aware of the amended Health Protection (Coronavirus, Restrictions) (No. 2) (England) Regulations 2020, the updated version of the Guidance entitled 'Closing Certain Businesses and Venues in England' originally issued by HM Government on 3rd July 2020, and the Guidance entitled 'Keeping Workers and Customers Safe in Covid-19 in Restaurants, Pubs, Bars and Takeaway Services' issued originally by HM Government on 12th May 2020 and updated regularly thereafter.

The Sub-Committee was also aware of the special local lockdown measures (specifically for Birmingham) which had been announced by HM Government on Friday 11th September 2020, then introduced on Tuesday 15th September 2020. These measures were an attempt to control the sharp rise in Covid-19 cases in the city.

Furthermore, the Sub-Committee was aware of the further national measures to address rising cases of coronavirus in England as a whole, which were announced by HM Government on 22nd September 2020. These national measures had been published on the "gov.uk" website on that date, and detailed the new requirements for all businesses selling food or drink (including cafes, bars, pubs and restaurants), ordering that all such premises must be closed between 22.00 hours and 05.00 hours. Other requirements for such premises included seated table service, wearing of masks, and participation in the NHS Test and Trace programme. These measures were an attempt by HM Government to control the sharp rise in Covid-19 cases nationally.

The pandemic had continued to be the top story in the national news across the Spring, Summer and now into the Autumn of 2020; the Birmingham lockdown, and also the new national measures announced on 22nd September, had been very widely publicised and discussed both in news reports and on social media. The Prime Minister, together with HM Government's Chief Medical Officer and Chief Scientific Officer, had recently resumed the televised 'Coronavirus Briefing' broadcasts which had been a feature of the first few months of the pandemic.

The Sub-Committee was also aware that since 1st October 2020 further HM Government Guidance and regulations were introduced on 14th October 2020, namely The Health Protection (Local Covid-19 Alert Level)(High)(England) Regulations 2020 No. 1104. Birmingham is now ranked as Tier 2 High. These further measures formed no part of the Sub-Committee's deliberations. For the purpose of this hearing it only took into account regulations and guidance that were in force on 1st October 2020.

Miss Sarah Clover of counsel appeared for the premises licence holder. Also in attendance was Carl Moore and Rodrigue Kouamo Tankeu.

Mr Gary Grant of counsel represented the applicant for review, West Midlands Police (WMP). Also in attendance was PC Abdool Rohomon; Police Sergeant Giess and Tim Woodward.

Mr Grant on behalf of WMP provided the Sub-Committee with helpful detailed submissions on the facts and the law. Prior to the meeting commencing, the Sub-Committee fully read all of the papers in the agenda, including Mr Tankeu's statement and enclosures.

Since July, WMP officers have visited the premises on five occasions in line with the 4E's approach: engage, explain, encourage, enforce. In the first four of these visits Mr Tankeu was given advice and assistance on how to comply with the duties on him, as the licence holder, to provide a COVID-secure environment for his

customers and staff and so help to protect the wider community. These included three visits from PS Nicholas Giess.

It was only after the fifth visit, when the venue was found to be operating after the 10pm curfew in breach of COVID regulations, and also failing to take proper account of guidance in order to provide a COVID-secure environment, that WMP instigated this summary review.

8 August 2020

In the early hours of 8 August, PS Nicholas Giess was deployed as an (acting) Inspector on Operation Reliant, which is WMP's response to licensing issues during the pandemic (among other things). WMP made a number of visits to licensed premises. Another operator raised concerns about the way Petite Afrique was operating and so police paid the venue a visit.

When they arrived, they witnessed a mix of people standing and others seated. A few women were dancing. The music was very loud, to the extent that the officer had to shout to be heard when he spoke to Mr Tankeu. It appeared that the venue was operating in a pre-pandemic fashion.

PS Giess spent about 15-20 minutes speaking with Mr Tankeu, who had the music turned down. Mr Tankeu asked anyone who was standing up or dancing to sit down. They went in the back office area where the officer explained that Mr Tankeu needed to keep the music at a much quieter level so that people did not have to shout, in order to reduce the risk of COVID infection spreading.

The high volume level of the music was of particular concern to WMP as the Government had issued guidance in July, designed to assist bar and restaurant operators to operate in a COVID-19 secure manner, which stated:
"All venues should ensure that steps are taken to avoid people needing to unduly raise their voices to each other. This includes, but is not limited to, refraining from playing music or broadcasts that may encourage shouting, including if played at a volume that makes normal conversation difficult. This is because of the potential for increased risk of transmission particularly from aerosol transmission."

PS Giess asked about the Covid Risk Assessment, which operators are required by law to undertake. However, Mr Tankeu had not conducted one at that point.

There were about 50-60 people inside. PS Giess advised Mr Tankeu about the need to ensure social distancing. At that time there were no social distancing measures in place. There was a discussion about the use of the pool table.

PS Giess spent in all 15-20 minutes in the venue speaking and advising Mr Tankeu. He explained that the licensing team were there to assist, and to contact them if he needed support.

At this time the COVID infection rate in Birmingham was rising. The City was on the government's watch-list of areas that may need to be subjected to a local lockdown if the infection rates increased with devastating economic consequences. Hence, it was particularly important for hospitality operators to responsibly implement COVID-secure measures.

15/16 August 2020

Over the weekend of 15/16 August, PS Giess paid another visit to Petite Afrique. He was disappointed to find that, despite his earlier advice, he could not see evidence of any additional efforts by Mr Tankeu to make the venue COVID-secure.

The venue was busier than the earlier visit, with about 80 customers inside. People were dancing together which potentially impacted on social distancing (and risked the venue being characterised as a prohibited nightclub or similar dance venue). A birthday party was taking place. Social distancing was not being encouraged by staff and tables were still too close to each other.

Once again, the music was so loud that PS Giess had to shout to make himself heard. There was no evidence of improvement in the way the venue was being operated. In fact, things appeared to be worse.

28 August 2020

As part of Operation Reliant, PS Giess attended Petite Afrique in the early hours of 28 August. The bar was busy again with some 80-100 customers. The music was still being played too loudly when the officer attended. People were dancing.

PS Giess spoke to Mr Tankeu and asked him why the music had been so loud given the earlier advice. Mr Tankeu said that the DJ must have turned it up and he "had not noticed". He also said it was difficult to stop his customers from dancing.

4 September 2020

WMP officers attended the venue as part of Operation Reliant on 4 September at around 22:55hrs. This venue was causing WMP particular concern due to the way it had been operating in the past.

The music inside was, once again, being played very loudly.

Customers were in the premises drinking at tables. PC Reader asked Mr Tankeu to come outside so he could talk to him. Mr Tankeu told the officer that "*the music was just being tested and wasn't normally that loud*". In the light of previous experiences, the officer found that an improbable coincidence (and in the bodycam footage Mr Tankeu does not sound very convincing when he says it). As indicated above, he had previously been advised on several occasions about playing loud music. Mr Tankeu also said he "*definitely*" understood that music should not be played that loudly.

Mr Tankeu produced a generic *blank* risk assessment form that had not even been completed. He promised to email a Risk Assessment to the Sergeant.

Later that day Mr Tankeu did email through a Risk Assessment, which the experienced police officer (and a trained Risk Assessor) described as "*completely inadequate and sub-standard*". He viewed it, with some justification, as "*the worst attempt at a COVID Risk Assessment that I have seen*".

The Sub-Committee saw bodycam footage of this conversation. One of the members of the Sub-Committee had been unable to view the footage, and it could only be played at the hearing without sound. An attempt was made to play it via the chairman's iPad during the hearing which was unsatisfactory, and so, for the purposes of this hearing the Sub-Committee relied on PC Reader's account of the conversation as relayed in his statement.

The installation and use of a noise limiting device, set at a pre-set volume level, is a condition on the Premises Licence. The officer asked Mr Tankeu whether he had a noise limiter device fitted. He replied "*I think we have one*". He did not appear to fully understand what a noise limiter was ("*well the music comes out clearly*"). He then told the officer "*they told me they had one last time, when I had the talk with the DJ. I don't know whether he said it's broken or something like that. I'll have to double check within him today, if it's fixed*".

There was no mention during this conversation of an engineer being on site sorting out the noise limiter or music equipment. The Sub-Committee would have expected Mr Tankeu to have mentioned to the officer at the time when the issue of the noise limiter was raised if this is, in fact, what Mr Tankeu is alleging.

26 September 2020

(The nationwide 10pm curfew on venues trading as bars or restaurants was now in force from 24th September).

On 26 September officers were again deployed on Operation Reliant. They drove past Petite Afrique at 22:20hrs and noticed a large number of vehicles outside. The metal shutters were halfway down covering the main doors.

PC Reader entered the premises a few minutes later (around 22:23-22:24hrs). He found approximately 40 people, including staff, still inside the venue. This was well after the curfew hour. Social distancing measures were not in place. Customers were talking loudly, standing around and drinking at tables.

When police attended someone shouted inside the venue. When customers saw the police they quickly began to leave (which suggested to the Sub-Committee that they were fully aware they should not still be in the venue at that time). Officers took the view that, if they had not turned up, these customers would simply have remained in the venue for some time yet; the Sub-Committee agreed.

Mr Tankeu was present, clearing tables. He came up to speak to the officers. He said he had been trying to get people to leave since 21:45hrs, but they would not listen to him and "*didn't want to go*". He confirmed that his SIA security staff had left at 22:00hrs. The Sub-Committee formed the view that Mr Tankeu had little or no control over the operation of his premises or his customers. The Sub-Committee also questioned why Mr Tankeu released his door supervisors at 22:00hrs when he still had plenty of people remaining in the venue who were using it as a bar/restaurant. This is significant, because Mr Tankeu's witness statement asserts that his customers were not listening to his requests to leave. (It is a condition of the premises licence that SIA requirements need to be risk assessed before 23:00hrs). The view that the Sub-Committee formed was that it is more likely that Mr Tankeu did not really mind if people remained in the venue after 22:00hrs. That is why he released his door supervisors. The Sub-Committee found that this displayed a troubling disregard, and contempt, for the COVID regulations during a national pandemic.

The Sub-Committee viewed extracts from the CCTV taken on the evening, but did not watch it in its entirety. It was open to Miss Clover to request that specific footage be played. She chose not to. The Sub-Committee relied on the findings contained in PC Reader's statement as evidence of what the CCTV showed.

CCTV from 26 September 2020

There appear to be little or no efforts made by staff to ensure groups abide by social distancing or the Rule of 6. The Sub-Committee also formed the view that

a. Individuals regularly mix with other groups – despite the demarcation strips on the floor - and are unchallenged by staff when they do so.

b. With one or two exceptions, most the staff members, including Mr Tankeu himself, are not wearing masks even when in close contact with customers (they should have been wearing them).

c. The bar area is congested with people standing up, some with drinks in their hands, and others are ordering from the bar whilst standing (under the regulations, they ought to order and be served whilst seated).

d. Even after 22:00hrs customers drinking at the bar are left unchallenged and customers are served further drinks or takeaway food.

e. 21:49hrs - the large group in the booth are still pouring themselves glasses of wine/champagne from bottles in coolers on their table. Two males are standing by the table drinking. At least one walks off to chat to others standing by the bar holding drinks. Mr Tankeu returns to the bar.

f. 21:49hrs – Mr Tankeu sells bottles of beer to two men who stand by the bar as they drink the beer.

g. 21:52hrs - the disco lights go off and most of the customers remain as before.

h. 21:59hrs - staff are in very close contact with customers at the bar area who are paying by credit card/PDQ machine, none of whom are wearing masks whilst this takes place (they should have been).

i. 22:01hrs – Mr Tankeu is at the till. Three men remain at the bar with drinks right in front of him.

j. 22:05hrs – most of the customers remain in the venue drinking and chatting. There is no obvious sign that staff are challenging them. A waitress brings what is thought to be a takeaway food plate to a customer (this is not permitted, and happens on other later occasions too). Males remain at the bar with drinks in front of them.

k. 22:06hrs - a male is standing by the booth with a drink in his hand talking to the rest of the group. One member pours another drink from the bottles on the table.

l. 22:08hrs – female staff member hands over a takeaway food bag to a customer, takes cash from the customer and places it in the till.

m. 22:10hrs – female staff member hands over a bottle of beer to male across the bar.

n. 22:12hrs - Mr Tankeu (in a black shirt with white stripes) is seen talking to a male standing by the booth who hands him a series of banknotes. Mr Tankeu walks away and the male returns to talk to his friends with a drink in hand.

o. 22:13hrs - a female comes out of the staff entrance and starts clapping as if to get people's attention. Another female has a white (food) bag in her hand and goes to sit down in the booth. Plates are collected from the table in the booth but customers remain seated whilst drinking. Mr Tankeu is standing next to the booth.

p. 22:15 – 22:23hrs – Mr Tankeu stands by the bar. He remains there for over six minutes making no attempt to get customers to leave. Several customers remain at the bar with drinks during this period.

q. 22:17-22:18hrs – two males, in two transactions, approach the bar and are supplied with drinks by the barman. Credit card payment is taken from the second male (possibly by using mobile phone payment).

r. 22:19hrs – Mr Tankeu chats to a customer who is standing next to him. He takes a credit card payment from this customer.

s. 22:23 – Mr Tankeu goes over to the booth and removes the wine cooler containing bottles from the table. This sudden action coincides with the time police entered the premises. Customers rapidly leave.

The Sub-Committee heard also from Martin Key on behalf of Environmental Health, Shaid Ali on behalf of Licensing Enforcement, and read the representation in support of the review from Kyle Stott of Public Health who did not attend but also supported the review.

Miss Clover, on behalf of Mr Tankeu, chose to make no submissions challenging the WMP evidence. This was in contrast to the hearing on 16th October 2020 where she made specific challenges to the evidence. The Sub-Committee therefore presumed that she was relying on Mr Tankeu's witness statement for any "challenges" to the evidence. The Sub-Committee's findings above were reached having read this statement.

The Sub-Committee does not accept that the only discussion on 8th August 2020 was about the pool table. In respect of 15th/16th August 2020 visit Mr Tankeu says: *"At no time did he spend a little time explaining what measures we were to have in place*". The Sub-Committee did not accept this assertion and prefer the evidence of PS Giess who spent 15-20 minutes in the premises explaining Mr Tankeu's obligations under the regulations and the Home Office Guidance. Nor did the Sub-Committee accept that PS Giess was *"hostile".* In respect of 4th September 2020 Mr Tankeu says *"...PC Ben Reader & another officer attended. They did not go round the premises; they stood right at the entrance and then went back out. I went outside to speak to them. PC Reader told me that the music was too loud. I informed him that the sound engineers were on site and were testing the equipment*". Both of these assertions were untrue. PC Reader is clearly shown on the CCTV entering the premises. PC Reader does not record any conversation about sound engineers being on site.

The Sub-Committee was not shown any invoice from any sound engineering firm and assumed that, if one had been available, the Sub-Committee would have been shown it.

With respect to the 26th September 2020 visit Mr Tankeu says, *"the bar had stopped serving drinks…a number of customers were being very difficult in vacating the premises"*. The Sub-Committee saw no evidence of that on the CCTV. Rather, it

showed Mr Tankeu's staff serving drinks beyond 10pm and him making no attempt to clear the premises. The Sub-Committee questioned again why, if customers were indeed being difficult about leaving, Mr Tankeu saw fit to release the door staff.

Mr Tankeu's own timeline of the CCTV does not help his case. It records a considerable number of occasions when (unspecified) people are noted as *entering* the premises from the *front* door after 10pm (e.g. at 22.11, 22.14, 22.15, 22,16, 22.17, 22.19, 22,21hrs).

Miss Clover's verbal submissions on the facts were restricted to an assertion that "nothing happened". She said that the WMP case was "all about trying to prevent something that may never have happened".

THE LAW

Miss Clover maintained that the Licensing Act 2003 was not the correct vehicle for enforcing the Covid-19 regulations. The Sub-Committee disagrees; the Sub-Committee is specifically charged with a duty to promote the licensing objectives, which include crime and disorder, public safety and public nuisance. The Sub-Committee's view is that it is unarguable that these objectives are engaged in a case such as this. The Sub-Committee is engaged in an inquiry as to whether Mr Tankeu's conduct promotes these objectives, or whether, as the Sub-Committee find is the case, that to accede to WMP's submissions would promote these objectives. Miss Clover provided the Sub-Committee with a number of recent statistics which she maintained showed that the risk of anyone catching Covid-19 from attending licensed premises (and by analogy these premises) was minimal. The Sub-Committee is not concerned with quantifying risk using national statistics; it focused on the task in hand, which was to examine the facts of this case, apply them to the licensing objectives, and come to a decision on the evidence before it.

PUBLIC SECTOR EQUALITY DUTY ("PSED")

Miss Clover took an unusual approach which was to adopt the submissions that Leo Charalambides had made in respect of the Public Sector Equality Duty created by the Equality Act 2010 (PSED) in the Nakira case which two of the Sub-Committee had dealt with on 23rd October 2020. One of the Sub-Committee Members

(Councillor Locke) had not sat on that hearing. Miss Clover was aware of this. Miss Clover indicated that this was for personal reasons.

In closing, Miss Clover said that the Sub-Committee should "decide on the facts put to you" as to whether there has been due regard to the PSED. The Sub-Committee was unsure as to whether she was submitting that it could not have regard to the exercise that it performed in the Nakira case as evidence that it had discharged its duty in the present case. If she was, then the Sub-Committee disagree with her. It was the view of the Sub-Committee that she could not rely on submissions made in the Nakira hearing and then seek to exclude the findings in relation to the PSED.

Councillor Locke was given a full briefing in relation to the PSED duty generally, and the background in respect of the "white owned or operated premises" identified (incorrectly in the view of the Sub-Committee) by Mr Charalambides as receiving treatment which was different to the treatment given by WMP to premises owned or operated by the Afro-Caribbean community. The Sub-Committee sets out its findings on PSED in relation to that case below:

> ***"Public Sector Equality Duty***
> *Mr Charalambides drew the attention of the Sub-Committee to the provisions of* ***The Equality Act 2010*** *which is engaged in a case such as this. He correctly pointed out that the City Council's current Statement of Licensing Policy ("SoLP"), which it is required to publish every 5 years, makes no mention of the Equality Act as is required by paragraphs 14.66 and 14.67 of the Guidance.*
>
> *Two points arise. First, the current Statement of Licensing Policy is out for consultation and that omission will be rectified. Secondly, the absence of any reference to the Equality Act in the SoLP does not prevent the Sub-Committee from applying its mind to the provisions.*
>
> *In broad terms, Mr Charalambides identified two premises which he said had a white clientele, but which had been treated differently from his clients, who operate a premises for the Afro-Caribbean community.*

These other premises were The Bricklayers Arms and The Greyhound. He maintained that Black Asian and Minority Ethnic ("BAME") venues were treated more harshly. He made assertions about other unidentified cases that he had been involved with in Birmingham where it had been suggested "off the record", by unidentified police officers, that the operator agree to a condition that no urban or bhangra-style music be played. He drew an analogy with the "stop and search" powers, which he said were exercised more usually against members of the BAME community. He said that it seemed to be the case that if premises in Birmingham were operated by black or Asian operators, then they would be dealt with more harshly. In closing he said that he was ***not*** *accusing WMP of being racist, but that he was just making it clear that he has been pulled aside on numerous occasions on the issue of the style of music being played in venues.*

PC Rohomon gave the Sub-Committee some important further information. He explained that the four "Es"(engage; explain; encourage and enforce) were the key principles as to how the Police had been working with premises during Covid. None of the cases where enforcement had taken place (save for The Bricklayers Arms) had been on an "ad hoc" basis.

The Bricklayers Arms was an expedited review which took place before 4th July ("Independence Day") and the introduction of regulations and guidance. That premises should not have been open during national lockdown. They were. The licence was suspended for 3 months.

In respect of The Greyhound, the premises were found to be breach on one instance, and a fine of £1,000 was levied. A meeting took place with the operators where they were asked for a risk assessment; they replied very quickly and have not been in breach since. PC Rohomon said that it was a "two-way street". The Police give advice and when the premises do not respond to the advice, that is when they use enforcement powers. He said that, unfortunately, some premises are not responsive, although

the vast majority do engage once they have been found to be in breach. He said that he got annoyed when the police are accused of being racist. He has been a police officer for 19 years. He said that they are not racist in any shape or form, and that they are simply responding to public concern. He said that you can only go so far, and that if someone does not respond or listen, then that is when enforcement powers were used.

The Sub-Committee also had regard to PC Rohomon's statement submitted with the evidence, together with the evidence he gave earlier in the hearing that these premises were not unique, and that there were other premises in the city centre and the wider community which members of the black community visit. Consequently, there would be no adverse impact on any protected category in the event of the revocation of the licence for Nakira.

The Sub-Committee was also aware that the Act and the hearings regulations required these proceedings to be completed within a certain timescale.

The Sub-Committee was advised of the relevant statutory provisions under ***s.149*** *of* ***the Equality Act 2010****. It had regard to the protected categories under the Act; it was informed of* ***'The Brown Principles'*** *and accepted the assurances of the officer. It was aware, also, that the PSED is not a duty to achieve results. Rather it is a duty to have regard to the need to achieve the goals identified in paras (a) to (c) of s.149(1)-* ***Hotak v Southwark London Borough Council [2015] 2 WLR 1342 at para 73.***

With these matters in mind, the Sub-Committee gave the appropriate weight to the evidence of the Police, and the submissions of Mr Charalambides. It was the view of the Sub-Committee that its duty under ***the Equality Act*** *2010 had been discharged.*

The Sub-Committee found that the actions of the Police were focused on these premises not through improper motive or because they served the Afro-Caribbean community, but because the operators failed to heed warnings and advice given to them.

The Sub-Committee's view was that there is an overriding duty to promote the licensing objectives in an appropriate and proportionate manner in this case, having had due regard to the PSED, not least because the increased risks of COVID-19 infection as a result of acts and omissions by Nakira's operators impacts on all communities, including the BAME community itself who frequents Nakira".

The Sub-Committee makes the same findings in this case.

WMP rely on PC Rohomon's statement again in this case, which makes the point that he himself has a BAME background. Miss Clover expressed surprise that this was referenced in his statement. She said that "it is not about him". The Sub-Committee took the view that the importance of this evidence was that the officer was more likely than not to be alive to issues relating to the PSED, given his own background.

The Sub-Committee weighed up its duties in respect of the PSED, and its duties under the Licensing Act 2003. It had regard to the relevant principles and law with respect to its duties under The Equality Act 2010 in the present case and forms the view that they have been discharged.

THE LEGALITY OF THE CERTIFICATE

Miss Clover indicated that she was going to adopt the submissions of Mr Charalambides in relation to the certificate in the Nakira case. The Sub-Committee sets out its findings in relation to that case on the issue of the Superintendent's certificate:

"Mr Charalambides made a number of submissions as to the legality of the certificate issued by the Superintendent. In essence it was said that the

Superintendent had relied upon the common law penalty for public nuisance (life imprisonment) without applying his mind to the Crown Prosecution Service Guidance for prosecuting breaches of the Covid Regulations which, he pointed out, stated that these were summary only offences and punishable with a fine, and which urges a 'light touch' approach. He pointed out the other remedies available, prohibition notices or directions in respect of gatherings. He categorised the route selected by the Superintendent as "The Victorian Road". He drew the attention of the Sub-Committee to the Guidance issued by the Home Office under s.182 of the Act, to which the Sub-Committee of course had regard.

The Sub-Committee found these arguments academic because it was bound by the High Court decision in ***Lalli v Metropolitan Police Commissioner [2015] EWHC 14 (Admin)*** *in which Deputy High Court Judge John Howell ruled on three occasions in his judgment (paragraphs 62, 70 and 75) that:*

"the licensing authority is obliged to conduct the summary review even if it considers that the information available to the officer when he gave the certificate did not establish that the premises were associated with serious crime or serious disorder". (62)

"*In my judgment Parliament intended that the licensing authority should be entitled to treat an application for a summary review made by the chief officer of police as valid if it is accompanied by a certificate that apparently meets the requirements of section 53A(1) and has not been quashed. It is not obliged to consider whether or not it is liable to be quashed."(*70)

"In my judgment, therefore, the licensing authority was not obliged to consider whether or not Superintendent Nash was entitled to give the certificate that he did on the basis of the information then available to him". (72).

The Sub-Committee therefore had to accept the certificate on its face and apply its mind to the duty under s. 53C of the Act:

(2)The relevant licensing authority must—

(b)take such steps mentioned in subsection (3) (if any) as it considers appropriate for the promotion of the licensing objectives;

(3)Those steps are—

(a)the modification of the conditions of the premises licence,

(b)the exclusion of a licensable activity from the scope of the licence,

(c)the removal of the designated premises supervisor from the licence,

(d)the suspension of the licence for a period not exceeding three months, or

(e)the revocation of the licence.

The legality or otherwise of the certificate had no bearing on that. Mr Charalambides then submitted that the Sub-Committee was under a duty to scrutinise the certificate. He said that Members did not have to follow down the path of the Certificate, and that whether they agreed with the Certificate or not was reflected in the steps they should take.

The Sub-Committee disagreed. This is not what The High Court in ***Lalli*** *ruled. The Court pointed out that the licensing authority's own view as to whether the premises was "associated with serious crime or serious disorder" (even if different to the opinion of the senior police officer who signed the certificate) is not decisive as to what steps are appropriate to take in order to promote the licensing objectives at the summary review hearing (and by analogy the full review hearing). The Deputy High Court Judge stated [at § 63]:*

> *"The fact (if it be the case) that the licensing authority does not itself consider that any reasons provided for giving the certificate establish that there is an association between the licensed premises and serious crime or serious disorder is not of itself necessarily decisive for any decision about interim steps or for the determination of the summary review itself. The licensing authority may consider interim steps are necessary or appropriate for the prevention of crime and disorder (which is one of the licensing objectives) given further information provided, or representations made, by the chief officer of police or, when determining the summary review, by others... When doing so, as explained above, the*

authority may consider representations that do not relate to the crime prevention objective (as well, of course as those which do) and, as section 53C(2)(b) of the 2003 Act states, the authority must then take any steps as it considers appropriate for the promotion of the licensing objectives, not merely the crime prevention objective."

The Sub-Committee's findings on the law in this case are the same as in the Nakira case. Miss Clover's position on the law as of 16th October 2020 when she represented the premises licence holder for Nakira has changed. On that day she submitted that the certificate had been issued unlawfully and that ***Lalli*** could be distinguished (but did not explain how). In relation Petite Afrique, if she is adopting Mr Charalambides's arguments, she is not saying that the certificate was issued unlawfully (although she did submit that it was "inappropriate and unlawful" for the police to say that the common law nuisance was serious crime in the context of the licensing regime"). When asked about her position on this point she said that she did not challenge the legality of the certificate, but that the Sub-Committee was "fully entitled to go behind it". She said that the Sub-Committee's legal advice was incorrect. The Sub-Committee disagrees. This is at variance with what Deputy High Court Judge said at paragraph 63 in Lalli above.

The Sub-Committee applied its mind to the task in hand which was to take such steps as were appropriate and proportionate under s.53C in order to promote the licensing objectives. It also bore in mind paragraphs **11.1** and **11.26** of the Guidance issued under s182.

It was mindful that the promotion of the licensing objectives is ultimately a forward-looking exercise. Deterrence is also a proper consideration. In ***East Lindsey District Council v Abu Hanif [2008] EWHC 3300*** **(Admin),** a licensing case involving the employment of illegal workers, the High Court (Jay J) made important observations of more general application to licence review decisions:

> *"The question was not whether the respondent had been found guilty of criminal offences before a relevant tribunal, but whether revocation of his licence was appropriate and proportionate in the light of the salient licensing objectives, namely the prevention of crime and disorder. This requires a much broader approach to the issue than the mere identification of criminal convictions. It is in part retrospective, in as much as antecedent facts will usually impact on the statutory question, but importantly the 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."*

Similarly, in ***R (Bassetlaw District Council) v Worksop Magistrates' Court [2008] EWHC 3530*** **(Admin)**, the High Court considered a case where a licence review followed sales of alcohol to underage test-purchasers. Slade J (at §32), referred to deterrence as a proper consideration in the context of licence reviews.

The Sub-Committee agrees with Miss Clover that the approach should not be to punish Mr Tankeu. The revocation of his licence is not a punishment. It is an appropriate and proportionate response to take in circumstances where a licence holder appears unwilling or unable to comply with the Covid-19 regulations and guidance, in circumstances where he has been given four opportunities to do so.

The Sub-Committee finds that the licensing objectives of the prevention of crime and disorder is engaged. A breach of the Regulations is a criminal offence and so engages the prevention of crime and disorder licensing objective. The attention of the Sub-Committee was drawn to the case of ***R (Blackpool Council) v Howitt [2008] EWHC 3300*** **(Admin)** where breaches of the newly imposed smoking ban were a criminal offence. There does not have to be a criminal prosecution or conviction for this objective to be engaged.

All in all, the Sub-Committee considered the licence holder to have failed to take his responsibilities seriously. It found that the activities identified above amounted to a flagrant disregard for the licensing objectives, including those of public safety and public nuisance.

It looked at the question of imposing a lesser step than revocation even though this was not urged by Miss Clover. A suspension of up to 3 months is one of the steps that it could have taken. However, the Sub-Committee viewed the activities of the premises licence holder as so serious that the only appropriate and proportionate course for it to take was to revoke the licence. The Sub-Committee had no confidence or trust in the management of the premises. The revocation of the licence and the removal of the DPS removed the threat to the licensing objectives of crime and disorder, public nuisance and public safety which would otherwise prevail if Petite Afrique was allowed to continue operating under the current management.

In reaching this decision, the Sub-Committee has given due consideration to the City Council's Statement of Licensing Policy, the Guidance issued by the Home Office under s182 of the Licensing Act 2003, the Public Sector Equality Duty created by the Equality Act 2010, and the submissions made by the Police, Environmental Health, Licensing Enforcement and Public Health. The Sub-Committee listened carefully to the submissions of the representative of the premises licence holder.

The Sub-Committee is required under s.53D of the Act to review the Interim Steps that have been taken by the Licensing Sub-Committee under s.53B. In conducting a review of the Interim Steps, s.53D(2) sets out how it should approach such a review:

In conducting the review under this section, the relevant licensing authority ***must*****—**

(a)consider whether the interim steps are appropriate for the promotion of the licensing objectives;

(b)consider any relevant representations; and

(c)determine whether to withdraw or modify the interim steps taken.

The Sub-Committee took the view that, given the conduct of the operators of these premises, that it is appropriate and proportionate that these steps remain in place.

All parties are advised that there is a right of appeal to the Magistrates' Court against the Licensing Authority's decision within 21 days of being notified of these reasons.