BIRMINGHAM CITY COUNCIL

LICENSING
SUB-COMMITTEE A
26 OCTOBER 2020

MINUTES OF A MEETING OF THE LICENSING SUB-COMMITTEE A HELD ON MONDAY 26 OCTOBER 2020 AT 1000 HOURS AS AN ON-LINE MEETING.

PRESENT: - Councillor Phil Davis in the Chair;

Councillors Mary Locke and Bob Beauchamp.

ALSO PRESENT

David Kennedy – Licensing Section
Joanne Swampillai – Legal Services
Mr James Rankin, FTB Chambers
Errol Wilson – Committee Services

(Other officers were also present for web streaming purposes but were not actively participating in the meeting)

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NOTICE OF RECORDING/WEBCAST

1/261020 The Chairman advised, and the Committee noted, that this meeting would be webcast for live or subsequent broadcast via the Council's Internet site (www.civico.net/birmingham) and that members of the press/public would record and take photographs except where there are confidential or exempt items.

2//261020 **DECLARATION OF INTERESTS**

Members were reminded that they must declare all relevant and pecuniary and non-pecuniary interests arising from any business to be discussed at this meeting. If a disclosable pecuniary interest is declared a Member must not speak or take part in that agenda item. Any declarations will be recorded in the minutes of the meeting.

APOLOGIES AND NOTIFICATION OF NOMINEE MEMBERS

3//261020 There were no apologies submitted.

LICENSING ACT 2003 PREMISES LICENCE – SUMMARY REVIEW PETITE AFRIQUE (LA REFERENCE), 160 HOCKLEY HILL, BIRMINGHAM B19 1DG

The following report of the Interim Assistant Director of Regulation and Enforcement was submitted:-

(See document No. 1)

On Behalf of the Applicant

Gary Grant – Counsel of FTB Chambers
Ms Jennifer Downing – West Midlands Police
Tim Woodward – West Midlands Police
PC Abdool Rohomon – West Midlands Police

Those Making Representations

Kyle Stott – Public Health, BCC (not in attendance)
Martin Key – Environmental Health, BCC
Shaid Ali – Enforcement, BCC

On Behalf of the Premises Licence Holder

Ms Sarah Clover – Counsel of Kings Chambers representing the Premises Licence Holder
Mr Carl Moore – Licensing Consultant, CNA Risk Management
Mr Rodrigue Tankeu – Premises Licence Holder

The Chairman introduced the Members and officers present and then explained the hearing procedure. The Chairman then asked if there were any preliminary points for the Sub-Committee to consider. No preliminary points were raised. The Chairman then invited the Licensing Officer, David Kennedy to outline the report.

Mr Gary Grant, Counsel of FTB Chambers on behalf of West Midlands Police (WMP) made the following statements: -

(a) On the 16 October 2020, when the challenge to the interim suspension was heard the Sub-Committee concluded that in continuing the suspension "*It as the view of he Sub-Committee that the licence holder was unable to run these premises according to law*". He added that the Sub-Committee would of course make a fresh decision today based on much more evidence that the Police had supplied and the Licence Holder and all the other representations.
(b) The Police suggested that at the end of this hearing the Sub-Committee would be justified in coming to the same conclusion. This was a Licence Holder who was also the Designated Premises Supervisor (DPS) who took over the premises licence in May 2020 during the lockdown, but he was unable to run this premises according to the law. He had made some efforts to make his premises Covid secure, but overall the Police asked

that Sub Committee conclude that those efforts were wholly inadequate in the circumstances we were all in.

(c) In the current climate of the pandemic, we were in an extraordinary situation and one where there was a very heavy burden on the licensed trade to behave professionally and to the highest standards. The importance was so much more important for the hospitality trade, because hospitality by its nature was designed to bring people close together and the dark irony of the times, we were in was that bringing people close together was precisely what increased the risks of coronavirus spreading in our community.

(d) This was why when you have the licensed trade, was allowed to reopened, most of it on the 4 July 2020, there were exceptions to nightclubs and similar, why it was so important and remained so the standards to be expected of licensees was higher now than it had ever been.

(e) Failure to achieve a Covid secure environment and to comply with the regulations, particularly the 2200 hours curfew, failures of life and this was the case because the guidance that was issued to restaurants, pubs, bars made it clear that if you played the music too loudly. The importance of playing why it was so important the premises did not play very loud music as Mr Tankeu had repeatedly despite these warnings.

(f) The guidance made clear that if you had to shout to be heard, you exhale aerosol and, in those droplets, as you shout that increased the risk of coronavirus spreading near to you. That was the importance and was one of the issues Mr Tankeu simply failed to take on board. It was another feature of this case that he would give lip service to the advice of the officers and then sure enough when officers turned up once again loud music was being played in spite of the engagement and the advice of WMP.

(g) When you look overall at the Covid secure environment, that Mr Tankeu was legally obligated to supply, he did not say that every word of every piece of guidance that emanates from Whitehall needed to be followed to the letter, that was not what guidance was. Regulations needed to be followed to the letter and there were breaches of those in particular to the 2200 hours curfew. But what you had to do as an operator if you were a responsible one was to bring in sufficient measures and implement them in order to create a Covid secure environment having regard to all of the guidance that emanates from government.

(h) I have set out in my written submissions the dynamic states of the regulations as they applied from March 2020 through to the 28 September 2020. These would be found in my written submission's pages 120 – 126. There was another feature – Mr Tankeu was not at all times completely straight with the officers when he spoke with them and made certain claims and that tarnishes his credibility when he made promises to the Sub-Committee that if you give him a chance everything was going to be fine.

The reasons the Police requested that the Sub-Committee revoked Mr Tankeu's licence were: -

1. Firstly, it was to promote the licensing objectives. They were all engaged in this case. Prevention of crime and disorder – it was a criminal offence to breached the regulations. Prevention of public nuisance – public nuisance could amount to increasing the risk of spreading a serious infection. Public safety – although public safety was not engaged with general public health, it was concerned with the safety of people on the premises.
2. The Police stated that if you were running your premises in a way that hugely increased the chance of catching Covid, on that premises which had probably breaches the public safety licence in effect. Protecting children from harm – children were impacted by coronavirus as well. This was the reason we say that the licensing objectives were engaged head on in this case. There were these things that the Police were asking the Sub-Committee to consider at the end of its considerations.
3. Bearing in mind the facts of this case, the history and the inability of Mr Tankeu to properly follow the Police advice, industry guidance and comply with the law, particularly in terms of the curfew. Do the Sub-Committee trust him to be able to run his venue in the future in a way that protects his staff, his customers and the wider community. Do the Sub-Committee trust him to do that. Do the Sub- Committee had confidence in him to do that. The Police say no, we had no confidence that Mr Tankeu had the ability to run this premises in a manner that could promote the objectives either now or in a month or in three months.
4. There was a second feature for the Sub-Committee's consideration and that was the deterrent purpose of any decision the Sub-Committee make. The primary function was to promote the licensing objectives in a manner that was appropriate and proportionate.
5. But the courts had said that the Sub-Committee was entitled to look at a second consideration - that of deterrence. This meant not only to deter Mr Tankeu, but to deter other operators who would be watching this case closely asking themselves what happened if they did not follow or did what the guidance stated. What happened to our licences if we breached the curfew.
6. The Sub-Committee was entitled to take that into account when the Sub-Committee assessed what the appropriate steps were in this case. As I indicated the Police's view was that there ought to be a revocation of the licence. When you look at other operators, the vast majority was making enormous efforts to provide Covid secure premises and they were doing an incredible job supported by the Council and the Police.
7. There were the bad operators who were the ones who were watching this and saying what happened to us if we chance our hand. Then there were the good operators who looked at the way Mr Tankeu was operating and say why were they being punished, as people like Mr Tankeu was running his venue in an unsafe manner because it was them who suffered if and as the infection rate increases in Birmingham contributed it to by negligent operators like Mr Tankeu. It was then the good operators who suffer as the restrictions had to tighten on the whole hospitality trade.
8. Turning to the facts of this case I will use as the format my written submissions which begins at page 109 of the Agenda papers. I have picked out the most relevant parts in the Agenda. At page 109 – the 8th August 2020 was the first visit after Mr Tankeu opened and it could be

seen that this was despite Mr Tankeu now claiming that the Police were not trying to help or engaged and that they were only bothered about a pool table in this case that the opposite was true.

9. On the 8th August in the early hours Police Sergeant Nicholas Giess was deployed as an Acting Inspector on Operation Reliant as the Sub-Committee may know that that was the Police led operation to try and ensure compliance during the pandemic in licensed premises amongst other things.
10. The Police had visited a number of premises but it was another operator who raised concerns about the way Petite Afrique was operating and that was why they headed there.
11. When officers arrived on the 8th August, they saw a mix of people standing up, others seated and the guidance was encouraging people to be seated for obvious reasons. A few women wee dancing. The guidance encourages against permitting people to dance as this could lead to a higher rate of infection.
12. The music was being played “very loud” to the extent that the Police Officers had to shout to be heard when he spoke to Mr Tankeu. It looked to the officers as if Mr Tankeu were running his venue in the manner it was expected to be run pre-pandemic – not taking on the guidance that had been issued on the 3rd July 2020 and widely circulated in the hospitality trade.
13. Contrary to Mr Tankeu assertions that the Police were hostile and did not wanted to help, Sergeant Giess spent about 15 to 20 minutes speaking to Mr Tankeu who by this time had turned the music down and had asked people to sit down and stop dancing. The officer went into the back office area with Mr Tankeu and took him through what he ought to be doing to make his premises more Covid safe including keeping the music down, something which was continually breached by Mr Tankeu as events unfolded.
14. Sergeant Giess asked about the risk assessment in place and rather troublingly, Mr Tankeu had not conducted a risk assessment. There was a legal duty on all license holders and all business operators as the Sub-Committee was aware under the Health and Safety at Work Act to have a risk assessment undertaken.
15. That legal duty applied prior to the pandemic, it applied after the pandemic but the risk of not going through the risk assessment process was that more serious and dangerous during the Covid pandemic.
16. On the 8th August 2020 there were some 50 to 60 people inside that was below maximum capacity. It was clear there was no attempt at social distancing between people and groups within the venue. There were discussions about the pool table (I am not relying her on whether you could or could not use the pool table at that particular time).
17. Sergeant Giess explained that the team was there to assist him and gave him the contact details so that Mr Tankeu could contact him if he needed a bit more help.
18. At this time as the Sub-Committee would know the infection rate in Birmingham was rising and the City was already on a Government watch list as arears that may need to suffer further restrictions which would have had disastrous economic consequences to the hospitality trade in

Birmingham. It was so important that people like Mr Tankeu did not let the City down by dropping standards. As the Sub-Committee will see, he did.

19. The weekend of the 15 and 16 August 2020 Sergeant Giess paid his second visit to Petite Afrique. The Sub-Committee may expect that the officer was hoping that everything would now be in order, bearing in mind the time they had taken with Mr Tankeu. Sadly none of it was.
20. The Sergeant's statement suggest that he could not see evidence of any additional efforts taken by Mr Tankeu to make the venue Covid secure. The venue was busier that before and there was about 80 customers inside. People were dancing together which potentially could cause impact on the social distancing issues.
21. When you have people dancing in a venue with very loud music you were perilously close to being in a prohibited nightclub or similar dance venue which was not allowed to open at all and had not been since the 21 March 2020. There was a birthday party going on, the tables were far too close together to enable social distancing. Once again, the music was being played so loudly the Sergeant had to shout to make himself heard.
22. There was no evidence of improvement despite the time that had passed. In fact the Sergeant stated that it appeared to have gotten worse from his first visit. Just less than two weeks later in the early hours of the 28th August there was a further visit as part of Operation Reliance. Petite Afrique was busy again with about 80 to 100 customers and the music was still being played far too loudly when the officer attended and people were still dancing. It was effectively being a prohibited club/dance venue.
23. Sergeant Giess once again spoke with Mr Tankeu and asked him why the music was being played so loudly, given the earlier warnings he had given to him. Mr Tankeu used the first of his excuses – he said the DJ must have turned it up and Mr Tankeu who was there had not noticed. He said it was difficult to get his customers from dancing.
24. If you are the licence holder and the DPS and you were on the premises and you did not notice that the music was being played far too loudly and people were dancing, how responsible were you. How could you be trusted in the future to get things right. He was asked about a risk assessment, bearing in mind the request that had been made a few weeks earlier.
25. Mr Tankeu produced a generic but blank risk assessment that appeared to be a template and he promised to email a risk assessment to the Sergeant. Later that day Mr Tankeu did email a risk assessment which the experience Police officer who was also a trained risk assessor described with some justification *the worst attempt at a Covid risk assessment he had seen*.
26. On the 4th September 2020, Police officers attended the venue again as part of Operation Reliance, just before 2300 hours. The music inside was once again was being played very loudly with the dangers that flowed from that and despite all of the previous warnings and advice the Police had given Mr Tankeu. Customers were drinking at tables and PC Reader asked Mr Tankeu to come outside.
27. The Sub-Committee would have noted in the witness statement of Mr Tankeu that he denied that the Police went into the venue and that the Police was at the entrance and that he came out to see them. The Sub-

Committee had seen on the video this morning how the officer walked straight into the venue up to the bar before then leaving with Mr Tankeu.

28. The officers did go in and it was mysterious why Mr Tankeu think it right to produce a witness statement before the Sub-Committee stating that the officer did not come in and that he remained at the entrance. They then had a conversation which was seen on the Bodycam, why was the music being played loudly and then Mr Tankeu came up with yet another excuse – *that it was being tested*.
29. The Sub-Committee could see the officer's surprise on the video when that was said and chuckled as if to say that was an unfortunate coincidence that by the time, we came you were testing your music system. The Sub-Committee could make its own judgment with regard to the manner in which Mr Tankeu stated that it was being tested without him even believed it himself.
30. The Sub-Committee could aske itself if this was true and there was an engineer on site – Mr Tankeu in his statement insisted that he told the officer there was an engineer on site. The Sub-Committee had heard the Bodycam footage and Mr Tankeu did not say that there was an engineer on site. The question was why he would test the music system at 2300 hours whilst he was still operating and why did he not mention that there was an engineer there.
31. The difficulty was this that if Mr Tankeu was not entirely straight with the officers and that was not a good basis to trust him when he tells us about the big things and tells us to trust him, he will get things right if you gave him the chance to do so.
32. We then move on to the 26th September 2020, before then the Sub-Committee would know that on the 15th September 2020 because of the increased risk of infection in Birmingham, that special regulations were brought in just for Birmingham. Those have impacted on the facts of this case as they dealt with restrictions on households mixing in private dwellings.
33. Before we get to the 26th September it was probably worth taking stock as to what the laws were. As the Sub-Committee was aware the laws were the 2200 hours curfew came in for premises such as Petite Afrique to much publicity around the country on the 24th September.
34. Regulations also stated that customers could only order and be served food and drink whilst seated. The rule of six was in place and no mingling between those groups and the hospitality trade as well as individuals. Track and trace and mask needed to be worn, face coverings by staff in these venues who came into close contact with customers.
35. When this was borne in mind we do not know if there was any track and trace, but certainly the other regulations wee not simply guidance, all appeared to be breached on the 26th September. After all of these entreaties to Mr Tankeu that he needed to up his game.
36. The 26th September's visit Police drove past the venue at 2220 hours. There was a large number of vehicles outside, the metal shutters at the front were half way down covering the main doors. The officers went in a few minutes later at about 2223 as per the CCTV footage and found approximately 40 people still inside some 20 – 25 minutes after the curfew and the venue was still carrying on as a bar.

37. There were staff inside and social distancing measures were not taking place and people were in booths very close to each other with people from one group joining other groups. Customers were talking loudly and were standing around not sitting and they were drinking at tables as well. When the Police attended there was something interesting happened.
38. Someone inside shouted to bring attention to the Police presence. The question was why someone would shout to all the others that the Police was there. We suggest that the reason was the people and customers there and Mr Tankeu knew they were doing something wrong by still being there. As soon as the customers saw the Police and this will be seen by the Sub-Committee on the CCTV people left quickly.
39. The officers took the view and they had good reasons to do so that had they not turned up at 2223 hours this would have gone on for quite some time afterwards. The question was how responsible was Mr Tankeu for what went on while he claimed now in his witness statement that he simply asked people to leave from 2145 hours but they would not listen to him.
40. When we come to play the CCTV the Sub-Committee could make its own judgment about how carefully and robustly Mr Tankeu was making an effort to clear those customers who were still buying and paying for food and drink. It was not apparent from the CCTV that he made any serious efforts at all to get people to leave. With a single exception that he turned off some of the disco style lights.
41. Even if the Sub-Committee was to take Mr Tankeu's claim at face value that he did everything he could at 2145 hours the question was what did this suggest about his ability, not willingness, his ability to comply with Covid restrictions in the future. He appeared to exert no control and influence over his own customers. This was not someone the Police states who could be trusted to open in a month etc.
42. At 2200 hours he admitted that he allowed his door supervisors to leave. The question was why he would do that, why would you allow your door supervisors to disappear at 2200 hours when you still had 40 people who were refusing on Mr Tankeu's account to go from his premises. This did not add-up that someone who so wanted to comply with the curfew dismissed his door staff at 2200 hours.
43. The Police suggested that Mr Tankeu really did not mind if people stayed and continued paying after the 2200 hours curfew. In other words he prioritised his commercial interest over the law that was there to protect all of us. This showed a troubling disregard and contempt for the Covid regulations and the promotion of the licensing objectives.

    At 1136 hours the meeting was adjourned for the Sub-Committee to view the CCTV footage of the 26th September of what had taken place at the premises.

    At 1222 hours the meeting was reconvened.

    Mr Gary Grant continued
44. Having seen the CCTV footage from the night of the 26th September, compare it if you would with the witness statement Mr Tankeu had provided the Sub-Committee and asking the Sub-Committee to accept it

(page 72 of the agenda pack). He read out the relevant paragraph of Mr Tankeu's statement.

45. That the Sub-Committee compare if they would that claim with what the Sub-Committee had seen on the CCTV because the Police suggested that those two did not marry. Compare also the excuse he gave why the music was so loud on the 4th September – the engineers testing it. The Sub-Committee may be surprised that despite the experienced legal representation he had no witness statement for that engineer was provided, no invoice or estimate.
46. If it was the Sub-Committee's conclusion that this was someone who not only did not provide a Covid secure place, but fibs about it, the ultimate question for the Sub-Committee was whether you entrust him to promote the licensing objectives if you were to permit him to reopen at any stage in the future. This was why the Police would invite the Sub-Committee to revoked the premises licence.

There were no questions from Councillors Bob Beauchamp and Mary Locke at this stage.

The Chairman requested clarification concerning the issue about the timings shown on the CCTV given this reference to the Bodycams not being alterable in terms of GMT. The Chairman further commented that as he understood it, all the CCTV footage the Sub-Committee had been shown was pre the clocks changing. The Chairman enquired whether he was correct.

Mr Grant advised that the Bodycam footage he believed was an hour out and the footage that was seen on the 4th September was an hour early. Whereas what we had just seen on the 26th September came from the premises own internal CCTV that was the correct time.

Martin Key, Environmental Protection Officer, Environmental Health, Birmingham City Council made the following statements:-

(a) The Environmental Health Department covered a wide range of function and they had an active role in Covid-19 work. There was a small dedicated team that was currently doing nothing but Covid-19 work. Colleagues in the Food and Health Safety Team pick up Covid-19 activities as part of their general work.
(b) The team he worked in dealt mainly with complaints about noise and licensing activities – premises licences, TENs and other similar activities. Our approach followed a risk based approach and the regulators code. We generally visit, give guidance and hoped that that achieved improvement and compliance with the regulation's standards.
(c) We have a supply of local authorities issued guidance on reopening premises after lockdown issued on the 2nd July 2020 on the Council's web page with a #Brum is Back and that had been updated regularly to try and support businesses through this difficult time and for working their way through the regulations and controls.
(d) Birmingham was a high risk zone and the virus thrives on social contacts and without social contact it would die out. Social contact was therefore

the main spread of the virus which was what the regulations and guidance focussed on.

(e) There was clear evidence from government data and the Sub-Committee may have seen the maps on TV that the current wave had been primarily instigated through younger people and then moved towards older people which had a larger impact.

(f) The controls in place were there to try and avoid this close contact to minimise the spread, but also to try and protect businesses by allowing them to open in a secure Covid-19 way. This was part of the regulatory control that we would approach.

(g) In respect of this premises we had an active noise complaint which started in July 2020 although with all the changes in the regulations and the restrictions on hours that complaint was currently on hold and we will be doing no further investigations.

(h) The Police approach outlined in the evidence that has been brought before the Sub-Committee followed the same approach that we would - advise, education and enforcement as the final straw when there was no improvement in activity or operations following intervention.

(i) I have reviewed the evidence that had been supplied by the Police based on the CCTV footage and the submission from the premises licence holder and the evidence clearly showed the premises was not a Covid secure location. There were some examples of good practice in the photographs in the documents submitted by the premises licence holder.

(j) However, having now reviewed the video footage that showed inadequate spacing of the seating area inside, service at the bar with no separation at the bar, disco lights going which would only encourage people to dance. People standing around in circulation areas blocking them and there was no evidence of anyone wearing masks.

(k) The applicant had submitted a document which claimed to be a risk assessment which was in fact a checklist of how some one writes a risk assessment. Some of the information provided was a start of what would be a good operational control.

(l) However, the evidence that had been supplied suggested that that had not been carried through. Without a proper risk assessment, there was no method and no control measures that could be put in place and therefore it was difficult to train staff.

(m)There was a lot of guidance available from the Health and Safety Executive and the Council itself and the Government about how to write a risk assessment and the relevant procedures and legal controls that were in place on Covid-19.

(n) Having reviewed all of the information it was my conclusion that there appeared to be a lack of adequate management, inadequate risk assessment and most importantly no control measurers that seemed to be written, controlled and passed on to the operation of staff.

(o) The question for the Sub-Committee had been summed up clearly that if the premises was allowed to continue to operate would this changed going forward.

Shaid Ali, Licensing Enforcement Officer, Birmingham City Council made the following statements:-

a. That he first became aware that WMP had called for a review of the premises licence on the 1st October 2020 and that he was tasked with the delivery of the letter informing that the Police had called for a review of the licence.
b. This was delivered to the premises and a public notice was attached to the premises and in and around the venue, giving members of the public an opportunity to put in a representation.
c. From the statements of WMP, it appeared that the Police had visited the premises on a number of occasions to check that the premises were operating within the guidelines issued by the government in regard to measures licensed premises must take to prevent the spread of the Covid-19 virus.
d. This was a highly infectious disease which had been declared a global pandemic by the World Health Organisation (WHO) and as a result there had been over 40,000 deaths related to this disease in the UK and was rising daily. PC Reader's statement advised that he had visited the premises on the 4th September 2020 and had spoken with Mr Tankeu.
e. That PC Reader noted at the time that the music was very loud and customers were sat inside the premises and that Mr Tankeu had advised PC Reader that the reason the volume of the music was so loud was because it was being tested and was not normally this loud. That PC Reader enquired whether the premises were fitted with a noise limiter as per the conditions of the licence, but Mr Tankeu was unable to demonstrate this .
f. The Government's Covid-19 guidelines advised premises not to play loud music as this would cause customers to shout in order to be heard and the louder the customer talked or shout then the greater the chance of the disease being spread from person to person.
g. It was clear that during the visit Mr Tankeu refused to believed that the music was loud as it was being tested. The premises were clearly in breach of the Covid-19 guidance and Mr Tankeu was clearly responsible for this breach. The music could have been tested at any time during the times that the premises was closed. He did not saw why it had to be tested at this particular time when the premises were opened to members of the public.
h. On Monday 26th September PC reader and PC Jevons were deployed by the force on operation … the officers observed Mr Tankeu serving customers just before 2200 hours and were seen taking payments for customers.

At this juncture, the Chairman interjected and advised that the Sub-Committee had all of this information from the Police's statement and enquired whether there was anything Mr Ali was going to add to the Police's statements or anything from enforcement that Mr Ali wanted to highlight.

Ms Clover stated that she welcomed the Chairman's intervention as she wondered whether there were any benefits with the Licensing Officer reading out the Police's evidence.

Mr Ali continued

i. Having looked at the Police's evidence, he was of the opinion that Mr Tankeu was not a fit and proper person to hold a premises licence or a personal licence given what the Police officers had observed at the premises which was in breach of the government's Covid-19 guidance.
j. By not adhering to the guidance and the conditions of the licence, Mr Tankeu was responsible for causing a public nuisance as specified in the Police report and has compromised public safety by endangering the lives and health of the general public, his customers and staff.
k. He appeared to have prioritised his profits over the public and as such, especially after having viewed the CCTV footage he was of the belief that Mr Tankeu was not a fit and proper person to either hold a personal licence or a premises licence.

There were no questions from Councillor Locke in relation to the representation from Mr Key and Mr Ali.

Councillor Beauchamp stated that he would like to have it made clear what representations were taken to the premises at to the licence holder/the DPS and whether there were copies or whether it was manual or did they saw the people concerned, whether this was followed up with their recommendations.

Mr Key stated that he was unsure what he could add to that as he had commented on the evidence that was before us. That he had visited the premises to do a noise complaint recently but nothing to do with the Covid compliance. He was unable to respond to any questions in relation to what written information was provided as he did not.

Mr Ali stated that he was given a copy of the notice for displaying in and around the premises and a letter which he had not read from WMP that was sealed that he was tasked to deliver to the premises.

The Chairman stated that looking at the maps 43 and 44 on the documentations enquired how much of the property surrounding was residential and where the closest residential area was. Mr Key advised that the areas around he venue was largely commercial, but there were some isolated residential developments around the edge of the Jewellery Quarter. The primary streets that they had complaints from was a development on Barr Street which were converted buildings which had now got flats and a number of apartments. As you go back towards the City Centre pretty much every block of offices along there had now been converted into residential properties.

Ms Clover stated that it needed to be careful about what evidence was being given about noise complaints as she did not believe that that was what we were here for. That if we were going into new evidence about noise complaints that was something that she had to deal with.

Ms Sarah Clover, Counsel of Kings Chambers representing the Premises Licence Holder made the following statements:-

1. The first thing she would like to do was to take a step back and take a large dose of perspective and reality and just remember what we were doing here.

2. The Police had taken a good deep dive into evidential minutia from CCTV and statements as to who was standing where and who was drinking what and in what hand and standing next to whom and on what and what time and so forth which was fine.

3. However there was context to this that we had to bear in mind at all times. This was a full review that had not come about in and of itself, it was a full review off the back of a summary review.

4. The summary review was brought on the back of a public nuisance point - a serious crime – which we heard very little about today. There were three things going on in this hearing – the one was the factual background and context which informed the review element and what the Sub-Committee will choose to do to this licence and this licensee going forward.

5. This behaved like a normal review and typically a licensee being faced with a normal review would got their privileges under the Act to continue to trade pending appeal, to remedy things that had gone wrong, took advice, changing context and as the Sub-Committee knew the ultimate decision would take place as at the time of the appeal on a set of circumstances that would be confronting the decision then whether it be a District Judge.

6. The Sub-Committee would know as well as she do as it happened a lot on quite a few outings that she had had in Birmingham that by the time you get to the appeal in the Magistrates' Court, things were different even to the point where the Licensing Authority would negotiate an appropriate outcome and you did not have a full hearing at all.

7. Without checking my statistics that had probably taken care of 8 – 10 of the last appeals that she had done in Birmingham over the last couple of years. So that was the first reality check. That was in the context of Covid issues which sat outside of the normal Licensing Act remit that we were used to. It was a highly fluid complex situation which was changing for all of us on a weekly, if not a daily basis.

8. Anyone would know that by the time you come up for an appeal you would be talking about the middle of next year and who knows where on earth we will be by then, whether we were still going to be in a Covid secure situation or whether we would have a vaccine; whether premises would be opened or closed; existent or non-existent and surviving or not surviving etc. That was the review element and that was where the facts go - CCTV and all the rest of it.

9. Secondly, we had the added complication here of the interim steps element because this was a summary review and it was the interim steps that was the fatal bullet in this case because that would give rise to the

holding position that would pertain from this day forward to any appeal and rather negative or nullified everything that she had just stated.

10. That the business would not get that opportunity to remediate what had happened in an appeal context and came before the decision maker in the new world whatever it might be at that stage as they would be gone already as they did not have the opportunity to trade in the interim steps of suspension. That was dependent upon the interpretation of public nuisance as a serious crime.

11. The third element was the Public Sector Equality Duty (PSED) which had been studiously and roundly ignored so far today by all and any whom might be expected to address it. These were the three elements.

12. That that she was working in a context here whereby this was the fourth time that these arguments had been made in one way or another before this Sub-Committee or a version of it and that she was aware that her colleague Mr Charalambides on Friday 23 October 2020 had made submissions to which she had wholly concurred in relation to the premises known as Nakira.

13. Although there was a new Sub-Committee Member on the panel today the reality that she faced was that with the best will in the world even with and with the greatest respect and all due respect to anybody she could persuade to her way of thinking, it would make not a lot of difference because two Councillors who sat on Friday had demonstrated where their minds sat in relation to this issue.

14. This was not an accusation of prejudgment as she had made it very clear. This was a recognition of the definition of insanity on her part which was repeating the same thing over and over and expecting a different outcome was not good logic and it was in a situation whereby the Sub-Committee were being professionally, legally represented that legal advice was not going to change.

15. In deed there was an element of reality that she had to recognised that it could not change because if she was to sway the Sub-Committee and the casting vote and the legal advice today to do something different off the back of identical submissions on Friday that raises problems legally in and of itself.

16. That she recognised all of that and she was not simply going to go through motions and repeat what had been said previously as she was very clearly and overtly going to adopt the submissions of Mr Charalambides on Friday 23 October 2020.

17. That she had worked on them with him and had concurred with them and to a certain extent she had designed them and he and she had utterly in concordance upon them and she will summarise them for todays purposes and leave everybody in no doubt that the same submissions were being made here today.

18. So far as the facts were concerned, this was pertinent for the review element and the public nuisance summary review interim steps element nothing had happened in this case. What we were dealing with was an assessment and an analysis of speculations and risks.

19. In a normal review, in a normal licensing hearing the Sub-Committee would be dealing with something – a glassing or an underage sale; a fight or a brawl or would be dealing with something. Very rarely if ever, would the Sub-Committee be looking at a review scenario based on something that had not happened. A risk of something that could have happened but never did.

20. So far as these Covid regulations breaches were concerned, this was all about trying to prevent something from happening which might never had happened anyway - in other words the transmission of a disease.

21. All the hyperbole in the world and little of it had been spared, put in Police certificates and responsible authority representations that how dangerous this disease could be does not cross the threshold on something that could happen but had not to something that could occurred. That was important for a number of points of views.

22. It was important from a public nuisance point of view because the very definition of a public nuisance upon which this summary review and therefore the full review was founded, was an act or omission (and it was known that Mr Charalambides had raised these points on Friday 23 October 2020).

23. An act or omission was needed and nothing had happened that endangered public life or health. Mr Grant stated adopting the extravagant tone of the Police here – standards for licensees were higher than they had ever been because failure costs lives - no, it did not.

24. Failure to comply with the Covid regulations and much less the Covid guidance was reprehensible in certain circumstances because everybody had to take the steps that the government had decreed to attempt to assist to do what was not fully understood to slow the transmission of a disease which may or may not had transpired in those premises that were located for families of those people anyway.

25. Data that came out today from UK Hospitality demonstrating that of 12,500 premises surveyed, there were 780 detected customer infections out of an estimated 250 million customer visits. This represented 0.0003% of customer visits.

26. The most recent data on transmission within hospitality venues demonstrated that they were 5% on the scale of transmission location sources. Way behind care settings, education settings and many other settings.

27. Mr Key stated that this was a virus that was transmitted socially. That might be right but that was not the same as saying it was a virus that was being transmitted by being sociable.

28. In actual fact the evidence showed that the transmission within the hospitality venue was exceedingly low. That was not to say that people should not abide by the regulations, but this was to cut across this hyperbole that that one single transgression and failure to follow Covid regulations and guidance would cost lives, because it would not.

29. Or, at the very least you had no idea here what the consequence may be. It did not come anywhere close to the public nuisance threat threshold of an act or omission that could be causally connected to an endangerment of life or health.

30. What we had actually got here and this tied to the PSED point was a breach of a regulations if that was what it was and it was untested as it had not been through the proper protocols for that regime.

31. It was a breach of a different statutory regime the Covid regulations which was how it had been dealt with in other premises that happened to have a different demographic.

32. For those premises, any alleged regulatory breaches tied or otherwise to guidance breaches had been dealt with through the remit of the statutory regime that was created to deal with it namely the Coronavirus Regulations and the criminal regimes that had been set up within those regulations to deal with that very thing and punished people who would not abide by the rules.

33. It may well be that if Mr Tankeu or anybody in his premises had been pursued through the coronavirus regulations in accordance with that regime, they too would have fallen foul of one or the other of those penalties, but this was not what we were doing here.

34. What we had here were several different regimes in concert with each other moving around each other. We had the Covid Regulations which was a statutory regime, the Licensing Act 2003 a statutory regime and we had the Common Law of Public Nuisance and the entire regime that sat underneath that.

35. These were three different planets that may be moving around each other but were entirely separate and they operate separately. In the Licensing Act 2003 terms there were no problems with these premises. They had not come to the responsible authority attention before.

36. Mr Key's allegations about the noise nuisance she did not know anything about that. It was not the Licensing Act 2003 and nothing had been done about it and he knew as well as she did that if there was a nuisance the Environmental Protection Act provides a duty to investigate and pursue

that so one takes it that there was not otherwise something would have had to be done about it as it could not be parked.

37. None of the other responsible authorities had indicated that in pure Licensing Act 2003 terms there were any problems with these premises' breaches of conditions, underage issues, operating in a way that undermined licensing objectives outside the context of the Covid secure scenario.

38. Mr Ali and to certain extent the Police had muttered about breach of conditions. I do not know what condition was said to have been breached nor what anybody wishes to do about it, because if there was a breach of conditions there was a regime to deal with that.

39. There were interview provisions, prosecuting provisions and matters could be pursued in that way. It appeared to be limited to the noise limiter if she understood this correctly. That was refuted as there were no breach to the conditions.

40. The Sub-Committee might have heard although it was not sure what he was supposed to have heard or gleaned from the distorted and muddled sound recording played through the iPad which was apparently intended to indicate to Mr Tankeu's manner and would be surprised if the Sub-Committee had heard it clearly.

41. Let alone to do with anything a manner. There was some mention in the audio about incident logs, capacity and so forth and she was not aware that anybody had come back and said there was a breach of conditions.

42. This insinuation which manifested itself most pertinently during Mr Ali's representation was rejected and should not be the foundation of any decision or action that the Sub-Committee took. Ms Clover stated that she had an issue that she had made clear through representations previously and Mr Charalambides did the same thing on Friday.

43. The Licensing Act 2003 was not the correct vehicle, a legal vehicle to be enforcing Covid regulations much less Covid guidance as those issues were primarily health related.

44. But the Sub-Committee had already indicated as a part of a composition of a committee and as the licensing authority as a whole that the Sub-Committee rejected her submissions on that front and had accepted submissions on behalf of the Police and other responsible authorities that the Licensing Act 2003 was the correct vehicle to be policing and enforcing the Covid regulations.

45. Ms Clover reiterated that she had repeated her resistance to that position and in due course no doubt that will need to be played out elsewhere. Mr Grant stated of Mr Tankeu that the Sub-Committee should conclude that he was unable to run the premises in accordance with the law. Again, characteristically sweeping.

46. Ms Clover questioned whether this meant that Mr Tankeu was unable to follow any law for an indefinite period of time. Ms Clover further questioned whether Mr Tankeu was in other words a write-off. Whether the Sub-Committee was to conclude and she quoted *not without surprise*. The representation of Mr Ali that he was *not fit and proper.*

47. That she would have expected a more forensic and careful language from a licensing enforcement officer. We did not as we all very well knew to have a fit and proper test for licensees under the Licensing Act 2003, it was careless that at least for Mr Ali to be using that language in the context of his representation.

48. To be inviting the Sub-Committee to conclude that Mr Tankeu was not fit and proper to hold a personal licence in the context of a full licensing review, quite what the Sub-Committee ought to make of that representation she was not very clear – that was disappointing to say that.

49. At the very least a mixed picture the Police wished to conclude that Mr Tankeu did not engage at all, that he in Mr Grant's words were *criminally disregarding the rules and regulations*.

50. That she did not quite knew what he meant by this, but if he meant he was breaking the Covid regulations the penalty for that as other had seen was to pursue him under the Covid regulations. It was very clear there had been communications, had been engagement, Mr Tankeu was clearly not ignoring what he was told.

51. Mr Grant liked to skirt over the pool table incident because he acknowledges that the Police gave incorrect advice in relation to the pool table.

52. But what was noticeable about that was that Mr Tankeu obeyed him and that had been told incorrectly by Sergeant Giess to remove the pool table Mr Tankeu did that. That was engagement, that was compliance, that was respect for the Police's wishes even though it happened to be wrong.

53. The Police wishes to disregard all of that and Mr Grant wishes the Sub-Committee to take no regard of this whatsoever. The key point as far as a review was concerned was that it was not a punishment and this was said too many times to be repeated.

54. It was not about punishing a licensee for failing to comply with Covid regulations or anything else. It was about upholding and maintaining the licensing objectives and that was what brings us into the nob of this argument which had been made multiple times which was we were not talking about licensing objectives; we were talking about the common law offences of public nuisance and the Sub-Committee knew where she stood on that.

55. Public Nuisance as set out in the classic caselaw had summarised it very briefly. That she had adopted all of Mr Charalambides detailed and nuanced expressions on this front.

56. A public nuisance within the case law made it plain about itself that if there was a bespoke statutory regime to deal with a particular thing or incident then hat was the statutory regime that takes precedent. In this case that was the Covid regulations.

57. It was inappropriate and unlawful (and she did not draw back from that submission) to be attempting to police a common law public nuisance through the medium of a Licensing Act summary review by calling it a serious crime and then playing it out in the context of the Licensing Act 2003.

58. Miss Clover highlighted that she will challenge this and that it needed to be tested in full in due course. That the last time she had made a submission to this effect the response was that her argument was interesting, but ultimately relevant as it was academic.

59. It was said to be academic because it was said that the Sub-Committee could not go behind the judge in **Lalli** and that where a senior Police officer had certified something to be a serious crime that was the end of the matter as far as the Sub-Committee was concerned and no further investigations or analysis could be made at that point.

60. Ms Clover maintained again that that was incorrect legal advice, but that she did not expect that submission to be met with any great favour today as it did in the previous case submission. That she would not seek to amplify it, but hat she had repeated it and reiterated it and underline it and if need be that would be tested elsewhere.

61. Finally the PSED (Mr Charalambides had gone into quite some details on this on Friday). To have a statement by PC Abdool Rohomon that stated that he resent being called a racist was surprising on a number of account.
62. Firstly, it completely missed the point about PSED. What might had been more helpful was a written statement from PC Rohomon explaining that he did, how he did it and why he did it.

63. That he understood the PSED because having read his statement she was more than convinced that he did not.

64. Secondly, to turn it into a personal front that he (PC Rohomon) resents anything was not the kind of language anyone would expect in any Police statement as it was not about him. That would no doubt came as a surprise if it needed to be investigated at any point higher up that the officer did think it was about him.

65. This was not about racism, this was about the licensing authority, the Council's duty – I understood that that duty had been explained to the Sub-Committee) I did not saw any evidence of it.

66. In the decisions that had been made and in the commentary that had emerged in any acknowledgements of requirements for an Equality Impact Assessment (EIA) which was something that PC Rohomon or Mr Key or Mr Ali could usefully had inputted into to explain.

67. The point of this was about public perception as much as anything else to explain why it should be and what possible explanation there might be as to why premises with one kind of demographic attract pursuance under the Covid regulations and a fine through those and premises with another type of demographics were pursued through the licensing regime with a view to ending their business.

68. Mr Grant on the last occasion in his submissions expressed surprised that this was a point being raised at all and she understood that he was making some criticism that he had not been given advanced warning. Licensing authority's decision makers did not need advance warning that the PSED was engaged because it was always engaged. What was disappointing was that it had not been grappled with in a meaningful way.

69. That Mr Grant now states in his written submissions that the issue of Black and ethnic minority identity as protected characteristics may have relevance as that demographics were more susceptible to Covid. That may well be a PSED point and again she saw no evidence that it was being grappled with.

70. Unless anybody think that this was excessive or sedimentary on her part for raising PSED they may or may not have followed the ***Spearmint Rhino*** case in Sheffield where the court found on two occasions that the Council in the course of their licensing decision making about ***Spearmint Rhino*** had failed adequately to address PSED and on the third challenge which was only now seeing the resolution, the court gave permission for a third time that an authority that you would think was a bit hot on this topic and a little bit on top of it by now still, was not complying by what the High Court regarded as their duty. This was not to be taken lightly.

71. Ms Clover stated that the Sub-Committee should not take the relative brevity of her submissions as being any kind of concession on any of these points. That she adopted and represented the case as being presented recently on behalf of Mr Tankeu but hat she would leave it there for now given the particular circumstances we find ourselves in.

The Chairman commented that in regard to Ms Clover's comments about the PSED that the Sub-Committee will have due regard to the duty under the 2010 Equality Act. He added that the Sub-Committee took none of these matters lightly and that the Sub-Committee would decide on the facts placed before it and the arguments put before this hearing rather than some other hearing. The Chairman further stated that it should not be implied that the Sub-Committee would be doing anything different as that was the basis on which the Sub-Committee had to determine matters today.

There were no questions from Councillors Bob Beauchamp and Mary Locke

In summing up, Mr Key clarified the issue in respect of the noise complaint. He advised that Environmental Health had investigated the noise issue in July 2020 and the investigations carried out did not identify any issue and hence there were no further action taken.

Ms Clover interjected at this point and stated that she had grave concerns about new evidence being given in the context of closing submission even if Mr Key believed that this was anodyne it was still an inappropriate procedure.

The Chairman advised that Mr Key could not respond in a Q and A way and that he needed to summarised what he wanted to say in terms of the outcome he would like to see in terms of the Sub-Committee's ultimate decision.

Mr Key stated that he did make the point during his primary evidence that he did state that there were complaints at the time. Mr Key stated that his evidence and his submission accepted that there was evidence in the submission provided by the operator that there were some coronavirus controls in place and that there was evidence that other operational controls could be put in place. Mr Key stated that his summary basically was that the evidence had been provided by the Police showed a lack of adequate management, inadequate risk assessment and a lack of control measures. The point raised by Ms Clover was a crucial one was this gentleman able to change is operations and comply going forward. Mr Key submitted that that was a decision for the Sub-Committee.

Mr James Rankin, FTB Chambers representing the City Council requested clarification in relation to Ms Clover's position. Mr Rankin questioned Ms Clover of her position concerning the certificate. Firstly, whether the certificate as issued by the Superintendent was unlawfully issued. Secondly, whether her suggestion was that the Sub-Committee was entitled to go behind the certificate.

Ms Clover responded that it may or may not be unlawfully issued not of concern to her, not of concern to the Sub-Committee. That the Sub-Committee could not make any determination about the lawfulness of the certificate and must accept it and proceed with a summary review based upon it . That the Sub-Committee could go behind it in terms of its categorisation of serious crime they could and must make a determination of their own as to what they believed the situation to be in accordance with their discretion as decision maker.

Mr Rankin further questioned Ms Clover as to whether she was challenging the legality of the issue of the certificate. Ms Clover responded that this was correct and stated that she did not challenge the legality of the certificate but the legality of these proceedings to consider the certificate. That this was not a miniature judicial review that was what ***Lalli*** said. They must accept the certificate and proceed upon them, but they were fully entitled to go behind it and to reach a contrary conclusion to that of the senior officer as to whether tis was or was not a superior crime and that would be capable of taking on board all the points she had made and indeed Mr Charalambides before her.

In summing up, Mr Ali stated that he did not hear anything that had made him changed his mind and that he was still of his original opinion. That he did not believe that Mr Tankeu had taken his responsibility enough being a personal licence holder and a premises licence holder. Having looked at the CCTV footage and having read Mr Tankeu's statement which tried to refute some of the accusations made by the Police, he could not find anything that suggested that the Police had made the wrong decision calling for a review of the licence. That he fully supported the review being called.

In summing up, Mr Grant stated that the Police's case from the beginning was appropriate and proportionate step to invite the Sub-Committee to take was to revoke the premises licence. The Sub-Committee had heard nothing from the licensee to suggest that that was not the appropriate and proportionate step to take in order to promote the licensing objectives. The Sub-Committee heard that the licensing objectives were not engaged and that he went through each licensing objectives and explained why each one was engaged in this case. That he would add just one more point that was raised in his written submission.

The suggestion that somehow regulatory breaches may not engaged fully the licensing objectives was considered in a case called **Howitt v Blackpool Council.** That he had raised the reference to this in his written submission on page 118 of the agenda pack footnote 10. This was a case involving a publican who had decided that the smoking ban did not applied to his pub. This was a regulatory breach of the Health Act and the High Court determined that it did engaged the licensing objectives and it engaged crime and disorder. That it was a crime to breach a regulation in the same way as it was a crime for Mr Tankeu in this case to breached the Covid regulations and he need only point to one the 2200 hours curfew that was clearly breached on this occasion. The licensing objectives were engaged in this case.

Dealing with the PSED, he accepted that the PSED was engaged in this licensing decision as it was with everyone. That he had made submission in his written submission that the Sub-Committee will find at pages 127-128 of the agenda pack. Since reference was being made to the Nakira hearing last week, the Sub-Committee would recall the evidence of Carl Stott from Public Health in that case, the effect that the BAME community was disproportionately impacted both in health and socio-economic terms by the Covid pandemic. This was the reason he had repeated the submission he had made then. This would go somewhere to promote the safeguarding of the interest of the BAME community if the Sub-Committee did not permit premises such as Petite Afrique to continue operating in a dangerous manner.

The Sub-Committee had also heard during the Nakira hearing that there were plenty other premises in Birmingham that appealed to the BAME community. There was nothing unique about Petite Afrique. The Sub-Committee heard a submission that nothing had happened in this case and that we could not prove that a particular person was affected at this particular time in this particular premises. That submission with respect had no force. One example away from this case – lets imagined that the public safety was engaged by a nightclub that had a big hole in the middle of the dance floor and live electrical wires were sparking around. You do not need to wait for someone to be electrocuted or to

fall in the hole for the public safety objective to be engaged. By analogy the same is true here where you … Covid unsafe premises you do not need to be presented with evidence of this person having been infected in this premises.

The objectives looked to the future promotion of the licensing objectives, but the Sub-Committee was entitled to look at the past behaviour of this licence holder in order to inform your view as to what was likely to happen in the future where the Sub-Committee to permit him to open at any time. To permit him to open bearing in mind the evidence of what we had seen, evidence of a reluctance towards incapability of following guidance, an inability to control his customers, also with regret any predilution towards telling little fibs about why breaches were taking place whether it was loud music being tested, yet no support was being brought before the Sub-Committee of the engineer he said had existed. Whether it was a more major fib when he claimed that at 2145 hours, he and his staff were endeavouring to get the recalcitrant customers out the venue.

The Sub-Committee now knew from the CCTV footage that was not what was happening. If the Sub-Committee could not trust Mr Tankeu to get it right in the past and trust him to remedy those faults even when they were brought to his attention on five visits by the Police, we say he simply could not be trusted to promote the objectives going forward in this case. There was an overriding public interest in this case that overrides the Sub-Committee's PSED duties that the Sub-Committee will engage with and had due regard to and that was to protect the overall public interest. Mr Grant stated that he had included a quote in his papers from the Guidance, Section 182, at page 124, paragraph 82 in the agenda pack which he then read to the Sub-Committee. That Guidance fits four-square with the facts before the Sub-Committee today.

It was indicated that there were no licence breaches, but he could indicate a few licence breaches and for the Sub-Committee's notes if they looked at the premises licence Annex 2, page 39 of the Agenda pack and read out the breaches that had taken place to the Sub-Committee. That Mr Tankeu thought it proper to released his door supervisors even though on his account which was false he still had recalcitrant customers in at 2145 hours refusing to leave on that night of the 26 September 2020. That there was an ambiguity whether there was a working noise limiter device when the officers attended on the 4th September. The Sub-Committee could base its decision on the twin aim: -

- To promote the licensing objectives in an appropriate and proportionate way.
- To deter both this operator and other operators who might be looking in today and may read about the Sub-Committee's decision from being tempted to create a Covid unsafe premises to breached the regulations that was there to protect us all in order to pursue their commercial interest.

This was why the robust steps of revoking the premises licence was both appropriate and proportionate in this case.

In Summing up, Ms Clover stated that there were a couple of points on the risk assessment. That the risk assessment was built into the conditions and a Covid risk assessment were two entirely different things. That Mr Grant conflates them wholly and appropriately. Mr Grant used as example the mysterious hole in the

middle of the nightclub floor with live cables around it demonstrated the point beautifully. That was a safety point and not a health point and as a direct causal connection. If you put your foot in the hole you would get electrocuted. If you did not socially distance you would not necessarily get Covid it proved the point rather than anything else. Mr Grant stated that something overrides the Sub-Committee's PSED, but nothing overrides the Sub-Committee's PSED. The Sub-Committee had a balancing exercise to conduct as ever.

Finally, the operators looking in on this meeting or reading about it afterwards would have no idea based on anything other than at the moment the obvious which was the demographics as to whether they would be fined under the Covid regulations or dragged before the Sub-Committee under a summary review for closure of heir business. They might be deterred but they would not know what their fate was based on any other criteria than demographics at this point in time and that was the reason PSED was so important.

At 1331 hours the meeting was adjourned in order for the Sub-Committee to make its decision and all parties left the meeting. The Members, Committee Lawyers and Committee Manager conducted the deliberations in private.

At 1415 hours the meeting was reconvened and a brief decision was given by the Chairman who advised that a full written decision of the Sub-Committee would be issued by the 28th October 2020.

At 1417 hours the meeting was adjourned due to technical difficulties.

At 1432 hours the meeting was reconvened and the Chairman then invited Ms Clover to make submissions in relation to the interim steps.

In submission, Ms Clover stated that in relations to the interim steps that she would not repeat the submissions that she had made previously about public nuisance that serious crime and all of those points that goes to the propriety of the summary review and the analysis of it that there should be a serious crime and the public nuisance was not a serious crime this did not trigger the need for the interim steps. That she had reiterated everything that was said during the course of the hearing and on previous occasions as well and repeated by Mr Charalambides on Friday 23 October 2020.

In submission Mr Grant stated that the test under Section 53D was for the Sub-Committee to review the interim steps and consider whether the interim steps were appropriate for the promotion of the licensing objectives. That if the Sub-Committee's decision was based on the premise that this licence holder was unable to promote the Licensing objectives, then there was never a more important time than the coming months to ensure that he did not undermine them. That was the reason they asked for the interim suspension pending any appeal.

Ms Clover stated that if in the Sub-Committee's decision the Sub-Committee accepted Mr Grant's submission that for Section 53D there was no need to address serious crime for the purposes of renewing the interim steps for the Sub-Committee to make that plain in its decision.

At 1436 hours the meeting was adjourned due to technical difficulties.

At 1500 hours the meeting was reconvened and the Chairman gave the Sub-Committee's verbal decision concerning the interim steps to all parties. The Chairman further advised that the Sub-Committee will give its full written decision by the 28th October 2020

The full written decision of the Sub-Committee was notified to all parties as follows: -

4//261020 **RESOLVED**:-

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.

The meeting ended at 1504 hours.

……
CHAIRMAN