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Guidance

Alcohol licensing: using case law

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1. Case law and the Licensing Act

The Licensing Act 2003 is the Act of Parliament that establishes the statutory framework for regulating licensable activities in England and Wales. When cases are brought before the courts, the decisions can help us to interpret the Act.

When a case is decided by the courts the decision can provide an example of the interpretation of the Act. This can then be used to guide other committees and courts when they are making decisions on cases with similar facts.

It can be helpful for public health teams contributing to a new case to look at previous decisions and to understand the judgments that have been passed down. This can help you to make a more convincing case.

As a rule, the higher the court, the more weight a judgment carries. For example, a decision in a magistrates' court may be persuasive but a decision in the Court of Appeal will be binding. This means that another committee or court can consider the judgment from the magistrates' court and decide differently, but they must follow the decision of the Court of Appeal.

When you are relying on the decision in a particular case it is important to refer to the judgment itself rather than commentary, because commentators can interpret the judgment in different ways – it is always best to quote what the judge actually said.

Case names will be set out as 'the name of the party that brought the claim' versus 'the name of the party that the claim was against', followed by the year, then the court it was brought to and the case number. This is known as a 'neutral citation', and will help you find the judgment.

For example, R (on application of Hope and Glory Public House Ltd) v City of Westminster Magistrates' Court and Others (2011) EWCA Civ 31 indicates that in 2011 Hope and Glory Public House Ltd brought a claim against Westminster Magistrates' Court which was heard in the Civil Division of the Court of Appeal of England and Wales, and was the 31st case of the year.

There have been many cases decided by the courts since the Act came into force, but those described below are most frequently relied on.

2. The British Beer and Pub Association v Canterbury City Council

The British Beer and Pub Association, The Association of Licensed Multiple Retailers, The British Institute of Innkeeping v Canterbury City Council [2005] EWHC 1318 (Admin)

This is an important case looking at what Licensing Authorities can and should include in their Statements of Licensing Policy. This case would be most relevant when you are involved in updating your local policy.

Mr Justice Richards said:

A policy ... not only guides the decision-maker but also serves to inform an applicant about what he should consider in preparing his application... An application that takes account of the matters set out in the policy, for example by including what is referred to in the policy or by giving a reasoned justification for not doing so, is less likely to give rise to relevant representations and more likely to be granted without additional conditions.

And:

The council is entitled to indicate in the policy its own expectations with regard to the promotion of the licensing objectives; and I do not think that an applicant can legitimately complain if a failure to take account of those expectations gives rise to representations...An applicant who does not tailor his application to the policy therefore faces an uphill struggle.

Responsible Authorities should be encouraged by this case to take an active role in the preparation and drafting of Statements of Licensing Policy, because these policies are an important tool in shaping the activities that take place in each vicinity. A well drafted policy gives a strong and clear basis for representations on individual matters and helps licensing committees make robust decisions.

The full judgment is available on the Licensing Resource (<http://www.licensingresource.co.uk/sites/all/files/la2003/bbp.pdf>).

3. Hope and Glory Public House v City of Westminster Magistrates' Court and Others

R (on application of Hope and Glory Public House Ltd) v City of Westminster Magistrates' Court and Others (2011) EWCA Civ 312

This case, referred to as 'Hope and Glory', is essential reading for Responsible Authorities and licensing committees. It is relevant to most hearings.

The decision is important because it:

- illustrates that licensed premises, and the activities that take place in those premises, exist in a dynamic environment and should not be looked at entirely in isolation
- confirms that this can include the impact that licensable activities have on a range of factors such as crime, the quality of life for residents and visitors to the area, and demand for licensed premises
- sets out the approach that should be taken when making licensing decisions

Lord Justice Toulson said:

Licensing decisions often involve weighing a variety of competing considerations: the demand for licensed establishments, the economic benefit to the proprietor and to the locality by drawing in visitors and stimulating the demand, the effect on law and order, the impact on the lives of those who live and work in the vicinity, and so on. Sometimes a licensing decision may involve narrower questions, such as whether noise, noxious smells or litter coming from premises amount to a public nuisance.

Although such questions are in a sense questions of fact, they are not questions of the 'heads or tails' variety. They involve an evaluation of what is to be regarded as reasonably acceptable in the particular location. In any case, deciding what (if any) conditions should be attached to a licence as necessary and proportionate to the promotion of the statutory licensing objectives is essentially a matter of judgment rather than a matter of pure fact.

Responsible Authorities should be encouraged by this decision to make representations so that their information can be taken into account, and appropriate measures put in place for the licensing objectives to be promoted.

The full judgment is available from the British and Irish Legal Information Institute (<http://www.bailii.org/ew/cases/EWCA/Civ/2011/31.html>).

4. Daniel Thwaites plc v Wirral Magistrates' Court and Others

R (on application of Daniel Thwaites plc) v Wirral Magistrates' Court and Others (2008) EWHC 838 (Admin)

This case, referred to as 'the Thwaites case', is important because it emphasises the important role that Responsible Authorities have in providing information to decision makers to contextualise the issue before them.

This case is sometimes misconstrued as requiring decisions to be based on 'real evidence', and that conditions cannot be imposed until problems have actually occurred. This is wrong. The purpose of the Act is to prevent problems from happening. Decisions can and should be based on well-informed common sense. The case recognises that Responsible Authorities are experts in their fields, and that weight should be attached to their representations. It is most relevant when opposing grant applications.

The Honourable Mrs Justice Black said:

[D]rawing on local knowledge, at least the local knowledge of local licensing authorities, is an important feature of the Act's approach. There can be little doubt that local magistrates are also entitled to take into account their own knowledge but, in my judgment, they must measure their own views against the evidence presented to them. In some cases, the evidence presented will require them to adjust their own impression. This is particularly likely to be so where it is given by a Responsible Authority such as the police.

The approved judgment is available from Guildford Council (https://www.guildford.gov.uk/media/10669/Item-27%E2%80%9420Thwaites-Casepdf/pdf/pdf210_1.pdf).

5. Murco Petroleum Ltd v Bristol City Council

R (on application of Murco Petroleum Ltd) v Bristol City Council [2010] EWHC 1992 (Admin)

This case is important because it confirms that licensing committees and courts can require applicants to provide any information that they believe will help them make a decision about the promotion of the licensing objectives. It is relevant to most hearings.

Responsible Authorities should be encouraged by this case to ask applicants to provide further information they believe will help them understand the application more fully. If that information is not provided by the applicant, Responsible Authorities can make representations to committees who have the power to require the request is met.

Mr Justice Cranston said:

The sub-committee [has the power] to ask a question of a party, where the question is calculated to elicit an answer which will facilitate the function of considering and adjudicating upon the relevant question

The full judgment is available from the British and Irish Legal Information Institute (<http://www.bailii.org/ew/cases/EWHC/Admin/2010/1992.html>).

6. East Lindsey District Council v Abu Hanif

East Lindsey District Council v Abu Hanif (t/a Zara's Restaurant) 2016

In this case, the High Court upheld the Licensing Committee's decision to revoke a premises licence where the licensee had employed an illegal worker.

The significance of the case is that it reaffirms the principle that Responsible Authorities need not wait for the licensing objectives to actually be undermined before objecting to a licence being granted. This case would be most relevant when opposing a grant application.

Commenting on the way committees and courts should approach the promotion of the licensing objectives, Mr Justice Jay said:

[T]he 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.

The full Judgement is only available from subscription services such as Westlaw (<http://login.westlaw.co.uk/maf/wluk/app/authentication/formLogin>) or Lawtel (<https://www.lawtel.com/Login?ReturnUrl=%2f>).

7. General principles proven in case law

There are also cases that do not directly relate to the Licensing Act but provide general principles that are relevant.

7.1 R (on application of Westminster City Council) v Middlesex Crown Court and Chorion plc (2002) EWHC 1104 (Admin)

This case is important because it sets out the approach that courts on appeal should take where a council has a policy. Responsible Authorities should be encouraged by this case to help shape their council's licensing policy so that it sets out a strategic approach to promoting the licensing objectives in their particular area. A clear policy will provide a strong basis to impose conditions, refuse licences and so on, which should then be upheld by the court on appeal because the reasons for the conditions or refusals will be well-founded and readily understood. It would be most relevant when updating Statements of Licensing Policy.

Mr Justice Scott Baker said:

It must accept the policy and apply it as if it were standing in the shoes of the Council considering the application.

The full judgment is available from the British and Irish Legal Information Institute (<http://www.bailii.org/ew/cases/EWHC/Admin/2002/1104.html>).

7.2 Stepney Borough Council v Joffe [1949] 1KB 5997

This case, alongside Sagnata Investments Ltd v Norwich Corporation [1971] 2 QB 614, is important because it has long established the principle that the court on appeal should only overturn a decision where it is wrong. This would be most relevant in appeal hearings.

[On appeal the Court ought] to pay great attention to the fact that the duly constituted and elected local authority have come to an opinion on the matter and ought not lightly, of course, to reverse their opinion. It is constantly said (although I am not sure that it is always sufficiently remembered) that the function of a court of appeal is to exercise its powers when it is satisfied that the judgment below is wrong, not merely because it is not satisfied that the judgment is right.

This means that although appeals are re-hearings, the onus is on the appellant to persuade the court that the decision being appealed is wrong – not for the council to persuade the court that the decision is right. Responsible Authorities should provide the council with any information they believe is relevant to place before the court on appeal, so that the court can make a fully informed decision.

8. An example of using case law in a representation

This is an illustrative example of how you may wish to refer to the case law above in your representations to licensing committees:

The premises are not yet trading so the Licensing Objectives have not yet been undermined; but I believe that it is likely they will be undermined if the licence is granted.

In the case of *East Lindsey District Council v Abu Hanif (t/a Zara's Restaurant)* (2016) Mr Justice Jay said:

[T]he 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.

I believe that the fact the premises are proposing to sell alcohol and play music 24 hours a day in a residential area means it is likely that there will be nuisance caused to residents through late night noise and anti-social behaviour. Having regard to the existing levels of alcohol-related crime and anti-social behaviour, I believe that this will be worsened if this application is granted.

This guidance has been produced by Lawyers in Local Government and Public Health England, and is intended to give a brief overview of the case law most relevant to the Licensing Act. It does not constitute legal advice, and should be used as a guide for more detailed consideration of the cases depending on the individual facts in question.