

APPENDIX 6

ILLUSTRATIVE EXAMPLES: THE RESPECTIVE ROLES OF THE LICENSING AUTHORITY AND THE MAGISTRATES' COURTS

We have set out below two scenarios which we hope will aid the reader to understand the relationship between the licensing authority and the courts, and their respective roles in punishing breaches of licensing law and of conditions attached to premises licence under the new system we propose.

The decisions taken are merely illustrative of responsibility. We do not suggest that they are right or wrong. Individual cases should always be considered on all the available evidence and their individual merits.

SCENARIO 1

A public house – the Red Baron - with a capacity of about 500. It is popular and attracts a young crowd. It has registered door supervisors operating after 8 p.m. on Fridays, Saturdays and Sundays. It is covered by CCTV. Both are conditions attached to the premises licence. It's Friday night and the pub is open until 1am. The personal licence holder – Charlie Steel – is not on the premises. A junior manager is holding the fort. Following some jostling at the bar, a fight breaks out and one of those involved sustains some minor injuries. The junior manager calls and asks the police for assistance at 11.30pm.

Police arrive and arrest the two individuals that have been fighting, including one man slightly injured. Both men are very drunk. They take initial evidence from the bar staff and some customers. Although registered door supervisors are on duty when the police arrive, the evidence suggests that they were absent from the door when those arrested first arrived. These men had been drinking all evening in another public house and it appears that they were drunk when they first entered the Red Baron. Police ask for and are provided with CCTV evidence of the incident. On returning to the Police Station, the officers confirm that the Red Baron has not been the scene of significant rowdyism or trouble in the past. Charlie Steel has a “clean” licence and is well respected locally for running a good house.

Police decide on the basis of witness and CCTV evidence to charge both of the men arrested with assault and affray. CPS agrees to prosecute.

Police interview Charlie Steel who explains that the night in question was his first Friday night away from the premises in years. He had been obliged at short notice to visit his elderly mother after she was taken ill. His junior manager has assured him that the registered door staff were present and on duty all night. But he accepts that if they were on duty, they were admitting drunks.

Police consider prosecution of the personal licence holder for breach of licence conditions. But the police and the CPS are not satisfied that the evidence about the presence of door supervisors from the customers would stand up in court, if a

prosecution were to be pursued. They are also mindful of the personal licence holder's good record.

The police still strongly suspect that (a) the door supervisors had used the absence of the personal licence holder to take it easy, and had been inside the pub rather than outside doing their jobs; and that (b) the personal licence holder's deputy was inadequately trained and incapable of controlling the premises in his absence. They therefore seek a review of the premises licence and its conditions.

The local authority licensing committee decide to convene a hearing. The police and the personal licence holder are invited to attend. The police case is that :

- there is inadequate control without the personal licence holder himself present;
- the door supervisors failed – whether absent or not - to keep out drunks;
- the disorder was therefore direct result of the manner in which the public house is being run, and the failure of the personal licence holder to anticipate trouble in his absence.

The personal licence holder elects to acknowledge problems on the night in question. He promises to send his deputy manager on a training course, and demonstrates that he has already employed a new Security Company to run his door.

The licensing committee decide on balance of probability that the personal licence holder was aware that his junior manager was unable to maintain control, but that he decided to take a chance by leaving him charge; and that the door supervision was inadequate. They decide to endorse Charlie Steel's personal licence. They decide to impose no penalty in respect of the premises licence.

The personal licence holder decides not to appeal to the Crown Court. He decides to dismiss his junior manager and appoints a more experienced deputy.

SCENARIO 2

A small suburban public house – the Long and Winding Road - owned and managed by Fred and Rosemary Potman. Fred and Rosemary are experienced publicans with more than 25 years in the trade. Fred holds the personal licence and it has two endorsements – one imposed by the local authority licensing committee and one by the courts. Both endorsements concern selling to minors and arose in the last two years. The pub is open until 11pm Sunday to Thursday, 1am on Friday and 2a.m. on Saturday. The premises licence permits the supervised admission of children, and the playing of amplified music, karaoke, etc. The police visit the pub at 4.30pm and find a dozen sixteen year olds there in the company of two boys aged eighteen. The sixteen year olds are all drinking alcohol, and all are in school uniform.

The police have decided to keep a close eye on Mr Potman since he obtained his last endorsement. Their arrival is not by chance. They have received information from a concerned teacher that youngsters were drinking in the pub regularly. The police confirm that the teenage drinkers are all aged sixteen and are celebrating a birthday after

school. The two eighteen year olds admit that they purchased the alcoholic drinks on behalf of the younger drinkers. They say Mr Potman checked their ages but did not ask about their friends. Mr Potman states that he only got a close look at the two eighteen year olds, insists he checked their ages, and says he thought the others were eighteen too. He insists that the two “adults” confirmed that their friends were old enough to drink. Rosemary Potman confirms his story.

The police decide to prosecute Mr Potman for knowingly permitting consumption of alcohol by minors at the Long and Winding Road. They also prosecute the two eighteen year olds for buying on behalf of minors. The magistrates’ court do not believe the account given by Mr Potman or his wife, and are satisfied beyond reasonable doubt that he turned a blind eye to the age of the minors and that he made no proper attempt to establish their ages. Mr Potman is found guilty, fined heavily and in view of his record, his personal licence is revoked.

The police report the incident, conviction and revocation to the local authority licensing committee. Meanwhile, anticipating the revocation of the personal licence by the courts, Rosemary Potman has obtained a personal licence and taken over as licence holder at the Long and Winding Road. The committee decides to endorse her personal licence as she was present when the incident involving the schoolchildren occurred and she supported her husband’s false testimony. They decide to impose a penalty under the premises licence held jointly by Mr and Mrs Smith. The pub has to close for two weekends. They also vary the permanent conditions attached to the premises licence by banning under 18s from the pub altogether.

Mrs Potman appeals to the Crown Court against the endorsement of her licence on the grounds that her licence was not held at the time of the incident; and against the imposition of the new condition, because family trade is important to the business. The Crown Court allows her appeal on the personal licence issue and quash the endorsement; but they dismiss the appeal against the new permanent condition.