

## 8. AN EFFECTIVE NEW SYSTEM OF SANCTIONS AND PUNISHMENTS

89. It is, in our view, the function of the courts to punish individual offenders and the function of the licensing authority to examine the corporate responsibility for the premises where offences have taken place and decide whether sanctions should be applied against the premises and if they should be able to continue to operate, and if so, whether new or different conditions should apply. A more flexible system of sanctions is needed so that the courts and the licensing authority will have more options to punish breaches of licensing law in ways that are proportionate to offences. At present, the licensing justices have only one choice - to revoke or not to revoke a licence to sell alcohol. Some justices might be discouraged from utilising the full weight of the law because they do not want to deprive an individual of his or her income or business for what on occasions may seem to them to be a relatively minor offence. The final deterrent of revocation needs to be accompanied by more varied sanctions such as fines, reduced trading hours or closures for a temporary period.
90. The system we propose envisages a personal licence holder having statutory responsibility for compliance with the conditions that have been attached to a premises licence. This responsibility is not diminished by the fact that some personal licence holders will own neither the premises nor the business in respect of which the premises licence has been issued. However, the balance between action against the personal licence and against the premises licence will need to be determined in the light of the circumstances of individual cases. Where a company with a chain of licensed premises is involved, suspension of the manager's personal licence alone may not be adequate to deal with inadequate corporate support or direction.
91. The consequences of breaching a licence – whether identified by the courts or by the licensing authority – should be cumulative both with regard to personal licence holders and the premises licence. Breaches should continue to count against a licence holder for five years. So, after three offences within five years, revocation must be considered by the licensing authority. The principle would be three strikes and you're out. We emphasise that a single incident of particular seriousness could itself still result in instant revocation.
92. We therefore propose that:
- ✓ breaches of the conditions attached to the premises licence or of licensing law should normally lead to action to be taken by the magistrates' courts (following a relevant prosecution and conviction) or the licensing authority (following findings made by the authority) in respect of both:
    - the personal licence holder(s); and
    - the premises licence
  - ✓ personal licence holders should normally be liable on conviction for a relevant offence to a fine and warning on breach 1; fine, warning, and temporary suspension on breach 2; and fine and revocation on breach 3, but there should be a discretion available to the magistrates' court to go straight to revocation in particularly serious cases

- ✓ on sentencing an offender, the courts would order the endorsement of the personal licence, and every breach and penalty would be endorsed in writing on the personal licence
  - ✓ where the police and/or the Crown Prosecution Service decide not to pursue a prosecution, it would be open to the police to bring any issue or incident to the attention of the licensing authority which would have the discretion to hold a hearing to review both the personal and the premises licences
  - ✓ the licensing authority could also hold such a hearing in response to information received from any source, including local residents provided that there is sufficient cause to do so
  - ✓ in such circumstances, if satisfied that any breach has occurred the licensing authority, would be empowered to endorse the personal licence themselves, but not to impose fines on the personal licence holder
  - ✓ endorsements should carry over when the personal licence holder moves from one set of premises to another
  - ✓ conviction for a criminal offence, which would have prevented the acquisition of a personal licence in the first place should normally lead to speedy revocation of the personal licence
93. The question of sanctions could therefore arise in two ways: following conviction for an offence in the criminal courts or following a finding by the licensing authority that the conditions of a premises licence had been breached. It would always be open to the police to initiate a prosecution, as now. But where the alleged breach of conditions is not serious enough to justify full engagement of the criminal law it should also be possible for the police or indeed any public body or individual to complain to the licensing authority.
94. The licensing authority would then be empowered, following a full review of the facts, to decide to endorse the personal licence and to impose penalties, if appropriate, in respect of the premises licence (though not impose fines). These penalties will have financial consequences for the businesses involved. We recognise the potential for a constant stream of baseless or exaggerated complaints. Licensing authorities should therefore be free to reject complaints on the basis of the papers submitted without a hearing on the grounds that a complaint is without merit or substance, malicious or which has already been considered at a hearing of the licensing authority.
95. Where complaints are upheld, in addition to the penalties imposed, it would be open to the licensing authority to impose new or revised conditions for attachment to the premises licence.
96. Where either a prosecution arises or a licensing authority hearing follows from the breach of the premises licence, and the personal licence holder responsible for compliance is convicted or held accountable, the range of sanctions available to the licensing authority in respect of the premises licence would be:

- ✓ licensed premises should normally be liable to additional conditions on breach 1; additional conditions, temporarily reduced hours or temporary suspension on breach 2; additional conditions, temporarily or permanently reduced hours, temporary suspension or revocation on breach 3.

97. For these purposes, temporary would normally mean anything from days to weeks or months, and would be for the licensing authority to decide on the individual merits of any case, essentially based on the seriousness of the breaches involved. We also consider that “temporary” could mean “indefinite” where breaches required remedial action to be taken by the operator and suspension should continue until changes have been satisfactorily made: for example, work done to restore sound proofing. We stress that suspensions for months should be rare, because breaches of such seriousness should normally give rise to revocation.

98. We also think that:

- ✓ the Home Office should issue national guidance on sanctions to encourage consistency, and to the police about the exercise of their considerable powers envisaged under our proposals
- ✓ all guidance would be published
- ✓ all sanctions should be subject to appeal, with scope for trading to continue normally until the appeal is resolved.

99. An illustrative chart explaining the system is at Appendix 5; and in Appendix 6 we have described in two imagined scenarios how the respective roles of the courts and the licensing authority should work.