

APPLICATION FOR A BETTING PREMISES LICENCE - GAMBLING ACT 2005

Betextra Limited 17-19 Market Place, Sheffield, S1 2GH

CASE OUTLINE

APPENDICES

Appendix 1: Updated LARA

Appendix 2: Internal photographs of the current shop.

Appendix 3: Gambling Commission guidance document.

Appendix 4: Daniel Thwaites PLC v Wirral Borough Magistrates Court 2008 EWHC 838

INTRODUCTION

1. Betextra Limited have an operating licence issued by the UK Gambling Commission which allows them to operate betting shops in England, Wales and Scotland. The Gambling Commission, in determining whether to issue an operating licence to a company, will check whether the business will uphold the licensing objectives and if it is suitable to carry out the activities that the licence will allow. In assessing the suitability of a business, the Commission considers its ownership, finances, integrity and competence. The Gambling Commission assess policies that are in place to make sure that the licensing objectives will be followed; there is an understanding of the legislation overall; evidence that all arrangements will meet social responsibility requirements. The Commission set a high bar for the test on granting new operating licences.
2. Currently Betextra operate 6 licensed betting shops in Yorkshire. They are situated at:
 - 13 Frederick Street Rotherham
 - 1 St Sepulchre Gate Doncaster
 - 16 Baxtergate, Doncaster
 - 57 Low Pavement, Chesterfield
 - Unit 7b Crossgates Shopping Centre, Leeds
 - 19 Market Place, Sheffield
3. They are a small independent 2nd generation family run Yorkshire business and have never been refused an application when applying for permission.

4. They have had no reviews of their premises licences, and have had no regulatory issues in relation to their retail units. In all of their shops they have a significant number of regular repeat customers who are known by the staff who interact with them.
5. The number of betting offices in Sheffield centre has reduced significantly in recent years from 15 shops to 8. This has therefore reduced the number of Fixed Odds Betting Terminals (FOBT) from 60 to 32.
6. This is not an application for the grant of an additional licence. It is an application to increase the area of the premises and to be able to offer the regular customers better and more modern facilities. If this licence is granted the existing licence for 19 Market Place, Sheffield would be surrendered.
7. If this application is granted there will not be an increase in Betting Shop licences, compared to the position that has existed for a number of years in Sheffield centre.
8. In addition, the applicant has secured planning permission granted by your colleagues in the planning department. No additional conditions or restrictions have been placed on the grant of planning permission. The planning application was also objected to but granted.
9. Some criticism was levelled at the Local Area Risk Assessment (LARA) lodged with the application. Having traded successfully at 19 Market Place, Sheffield since 2013 the applicant did not anticipate this level of opposition in relation to extending his existing shop to offer better facilities. As a result of the complaint raised a revised LARA has been prepared and is attached. In addition the applicant has sought specialist legal advice and reviewed all of the issues raised.
10. The licensing Department of South Yorkshire Police have reviewed the application and have asked for the following conditions to be attached to the licence and as a responsible operator the applicant has agreed:

1. *A digital CCTV system installed to Home Office Guidance standards and maintained in a good working condition to ensure continuous quality of image capture and retention where:*
 - (a) *Cameras to be sited to observe the entrance doors from the inside.*
 - (b) *Cameras on the entrances must capture full frame shots of the heads and shoulders of all people entering the premises i.e. capable of identification.*
 - (c) *Cameras must be sited to cover all areas to which the public have access including any outside smoking area.*
 - (d) *Cameras must record whilst members of the public are frequenting the premises.*
 - (e) *CCTV system to be able to provide a linked recording of the date, time of any image*

- (f) CCTV system to have a monitor to review images and recordings*
 - (g) a member of staff trained in operating CCTV to be at the venue during times open to the public*
 - (h) CCTV footage must be kept for 31 days.*
 - (i) CCTV equipment must have a suitable export method, e.g. CD/DVD writer / USB*
 - (j) CCTV footage must be available within a reasonable time to Police on request.*
 - (k) The CCTV footage will be controlled and kept in a secure environment to prevent tampering or unauthorised viewing. A record will be kept of who has access the system, the reason why and when.*
- 2. An incident log shall be kept at the premises, it will be in a hardback durable format handwritten at the time of the incident or as near to as is reasonable and made available on request to the Police, which will record the following:*
- (a) all crimes reported to the venue*
 - (b) all ejections of patrons*
 - (c) any complaints received*
 - (d) any incidents of disorder*
 - (e) any faults in the CCTV system*
- 3. To acquire a suitable number of radio sets for the premises and to take the CCRAC Radio Scheme (City Centre Retail Against Crime) into use at all times when trading, and continue to be a user whilst this system is in use within Sheffield.*

11. If the licence is granted, not only will there be superior facilities for those who enjoy using an independent bookmaker's shop, but there will be these conditions attached to the licence. There will be no increase in the number of FOBTs at the premises as these are capped at a maximum of 4 in each licensed betting shop.

BACKGROUND

12. Betting premises are subject to a high degree of regulation to ensure they support the licensing objectives.
- Premises and their management and operation are subject to the Gambling Commission's extensive Licence Conditions and Codes of Practice applicable to betting premises operating licences.
 - Premises licences are subject to mandatory conditions which are deemed as being appropriate for premises of this nature.
 - This is what the primary legislation believes is needed for operators to be able to trade responsibly.

13. Betextra ensure compliance with the Licence Conditions and Codes of Practice through:

- Robust policies.
- Training/refresher-training of all staff.

- Mystery shopping.
- Venue audits.
- Offer to engage with community/neighbourhood groups.
- Offer to engage with local ward councillors.
- Strong local management oversight and support.

Children

14. No under 18s are permitted. There will be prominent Think 21 signage in the premises and those appearing under 21 will be requested to provide a valid photographic ID.

Vulnerable people.

15. The applicant is sensitive to the presence of vulnerable people in the area. The applicant will ensure that alcohol/drugs/intoxication is not permitted on the premises. Sufficient staff will be at the premises to provide oversight of customers and gambling. They will engage with the customers. There will be CCTV throughout the premises and social responsibility messaging. Significant information will be provided to help with problem gambling and liaison with gambling care providers. The Local Area Risk Assessment will regularly be updated to incorporate any changes in local risk.

16. It is important to note that Betextra have traded in this location for over ten years without issue. The owners and staff at the premises are very aware of any localised issues and follow best practice with assessing vulnerable people. The benefit of being an owner-operator independent is that the vast majority of customers are known to staff which enables betting patterns to be carefully monitored.

17. Throughout its trading history, it has been determined by the Gambling Commission (due to the grant of an operating licence) and by each Licensing Authority with the grant of each premises licence, that the company operates in a way which is consistent with the licensing objectives in relation to the prevention of children and vulnerable people from being put at risk. No applications have ever been refused, and the company has not seen any review of their premises licences.

SHEFFIELD CITY COUNCIL STATEMENT OF GAMBLING ACT POLICY **2022-2024**

18. Para 2.4 Applications The Act places a duty on the Licensing Authority to aim to permit the use of premises for gambling in so far as the Authority thinks the application is in accordance with:
- the Codes of Practice,
 - the Commission’s Guidance,
 - this Statement of Principles; and
 - where the application is reasonably in accordance with the licensing objectives.
19. Para 3.7 Integration with Planning The Licensing Authority recognises that there should be a clear separation of the Planning and Licensing Functions. Licensing applications will not be a re-run of the planning application. While there is no obligation for an applicant to have planning permission before applying for a licence, it is strongly recommended that planning use be obtained first so that proper consideration can be given to the impact the use of the premises will have on the surrounding amenities, character and locality.
20. **PART 4 Objective 1: Preventing gambling from being a source of crime and disorder, being associated with crime or disorder or being used to support crime.**

Anyone applying to the Licensing Authority for a premises licence will be required to hold an operating licence from the Gambling Commission before a licence can be issued. Therefore, the Licensing Authority will not generally be concerned with the suitability of an applicant and where concerns about a person’s suitability arise the Licensing Authority will bring those concerns to the attention of the Commission.

Sheffield City Council places considerable importance on the prevention of crime and disorder, and the Licensing Authority will fulfil its duty under the Crime and Disorder Act 1998. A high standard of control is therefore expected to be exercised over licensed premises.

4.2 Policy – Objective 1 The Licensing Authority will, when determining applications, consider whether the grant of a Premises Licence will result in an increase in crime and disorder or have any other impact in relation to this objective.

The following are considerations when determining this and would normally be expected to be in your risk assessments:

- The location of the premises (see location policy at Part 5)
- Whether the premises has a history of crime and disorder or has been associated with crime and/or disorder and whether there are potential future risks of this occurring (see location policy at Part 5).
 - o The likelihood of any violence, public nuisance, public order or other crimes and policing problems if the licence was granted.
- The design, layout and fitting of the premises
 - o Has it been designed to minimise conflict and opportunities of crime and disorder?
 - o Physical security features installed in the premises. This may include matters such as the position of the cash registers or the standard of CCTV that is installed
- What sufficient management measures are proposed and what other measures have been considered.

- Local supporting strategies and schemes including those listed in Part 3 of this document to be assessed:
 - o Applicants will be expected to detail how these have been addressed and promoted in regards to this licensing objective in their risk assessments
 - o It is recommended that applicants seek advice from South Yorkshire Police when addressing this issue as well as taking in to account local Planning and Transport Policies, Tourism, Cultural and Crime Prevention Strategies. Information relating to crime reduction is available at the South Yorkshire Police website www.southyorks.police.uk.

Conditions may be attached to Premises Licences in order to be reasonably consistent with this licensing objective, and will, so far as possible, reflect local crime prevention strategies (also see conditions section 10.4).

All applicants will be expected to demonstrate to the satisfaction of the Licensing Authority how they intend to be reasonably consistent with this objective. The steps to be taken in regards to this objective will be a matter for each applicant to consider, depending upon the nature of the premises and the licensable activities for which a licence is sought. These steps will therefore differ from one premise to another and each application for a Premises Licence will be considered upon its own individual merits.

Determining an opposed application

The Licensing Authority considers South Yorkshire Police to be the main source of advice on crime and disorder. Attention will be given to the consideration provided in the application on the above factors. Where an applicant has omitted information on the above, the Licensing Committee will ask questions of the applicant on such and will consider attaching appropriate conditions.

21. Objective 2: Ensuring that gambling is conducted in a fair and open way.

This Licensing Authority has noted that the Gambling Commission states that it generally does not expect Licensing Authorities to be concerned with ensuring that gambling is conducted in a fair and open way. This is because this will usually be concerned with either the management of the gambling business (and therefore subject to the operating licence), or the suitability and actions of an individual (and therefore subject to a personal licence). These permissions both fall within the remit of the Gambling Commission.

22. Objective 3: Protecting children and other vulnerable persons from being harmed or exploited by gambling.

23. The following would normally be expected to be included and addressed in your risk assessments which in turn will be used in determining your application:

- The location of the premises (see location policy at Part 5) e.g.:
 - o Are the premises located close to premises frequented by children or other vulnerable persons? E.g. Schools, colleges, universities, substance misuse treatment services, youth services, domestic abuse support services, children's play areas; are the premises near to

social housing or a treatment centre for gambling addicts, hospitals or residential homes for children or vulnerable people etc. (See local area profiling)

o Is a gambling premises suitable to be located there?

o Are there sufficient controls, procedures and conditions in place to be reasonably consistent with this licensing objective?

- Whether any promotional materials or advertising associated with the premises could encourage the use of the premises by children or vulnerable persons.

- Whether there are sufficient management measures in place to ensure adequate training and refresher training for staff is in place to protect children, young persons and vulnerable persons who may be harmed or exploited by gambling, including safeguarding awareness training. Safeguarding training and advice is available by contacting the Safeguarding Licensing Manager at SCSPsafeguardinglicensing@sheffield.gov.uk.

- The following measures are requirements that operators must address in Sheffield to be reasonably consistent with this licensing objective; these would include but not be limited to the following:

o a risk assessment for safeguarding children and vulnerable people at gambling premises to be undertaken with reference to the Sheffield Children Safeguarding Partnership risk assessment guidance available at

[https://www.safeguardingsheffieldchildren.org/sscb/children-licensed-](https://www.safeguardingsheffieldchildren.org/sscb/children-licensed-premises/the_gambling-act-2005)

[premises/the_gambling-act-2005](https://www.safeguardingsheffieldchildren.org/sscb/children-licensed-premises/the_gambling-act-2005). The outcome of the risk assessment should inform staff training and the operating policy.

o a member of staff to be designated to have lead responsibility for the operating systems relating to the protection of children and other vulnerable persons (for a description of this role refer to https://www.safeguardingsheffieldchildren.org/sscb/children-licensed-premises/the_gambling-act-2005);

o a recognised Proof Of Age Scheme to be operated in all areas of the premises where alcohol and other age restricted goods are on sale and at entrances to areas of the premises which give access to adult gambling facilities;

o staff shall receive induction and refresher training in relation to procedures and operating systems for the protection of children and vulnerable people. Staff training records shall be maintained and be available for inspection at the reasonable request of the Responsible Authorities;

o a written record shall be maintained of all staff interventions that are made with customers for the protection of children and other vulnerable persons including: refusals of service or admission, the provision of self-help information; membership records for the self-exclusion scheme including photographic ID; records of interventions with parents/carers who fail to behave responsibly at the premises; records of persons barred.

o signage to be displayed in areas where children are admitted regarding all restrictions

o A customer charter promoting the principles of acceptable behaviour at the premises including that adults must supervise their children at all times;

o Performance monitoring and self-testing procedures should be in place to identify training needs and staff competence in relation to age verification.

o Staff should receive safeguarding training to help them to recognise and respond to individuals at risk of gambling related harm. Staff may benefit from training that includes the impact of harmful gambling, the benefits of taking a trauma informed approach to engage with customers and how to manage confrontation. For further information about gambling related safeguarding training, contact the Safeguarding Licensing Manager at SCSPsafeguardinglicensing@sheffield.gov.uk.

- o To protect children and vulnerable adults from gambling related harm, Sheffield City Council recommends that licensed Operators work in partnership with local services such as Public Health and the Safeguarding Partnerships, to provide information about welfare and treatment services to customers. This may include local services distributing leaflets, posters, contact cards, self-screening tools (Lie/Bet) or other materials, free of charge, via Operators, to reduce the risk of gambling related harm.
- o Measures to be in place to prevent underage or vulnerable persons accessing online gambling if offered at a premise.
- o areas for adult gambling must be clearly segregated and physically supervised to prevent underage admission.
- o Signage must be displayed to promote all restrictions including age restricted games.
- o self-help notices and literature should be discretely accessible to customers;
- o staff to be trained to recognise vulnerable customers (for example, when people appear to be under duress when placing a bet or who appear to lack capacity (meaning they are unable at the time to understand the risks and likely implications of gambling) such as becoming agitated, aggressive, attempting to breach agreed limits or self-exclusion agreements; engaging in superstitious type rituals);
- o Operators are encouraged to establish links with the Sheffield Children Safeguarding Partnership as a Responsible Authority under the Gambling Act 2005 and with the Sheffield Adult Safeguarding Partnership as an advisory service regarding vulnerable adults.

THE LAW

24. As an experienced licensing sub-committee with legal advice will be aware, the Gambling Act sets out a different approach to the question of grant than the Licensing Act 2003. The approach relevant to gambling is detailed at Section 153 of the Gambling Act 2005:

*“In exercising their functions under this Part, a licensing authority **shall aim to permit** the use of premises for gambling in so far as the authority thinks it:*

(a) in accordance with any relevant code of practice [issued by the Gambling Commission]

(b) in accordance with any relevant guidance issued by the Commission

(c) reasonably consistent with the licensing objectives (subject to (a) and (b))

(d) in accordance with the [authority’s statement of licensing policy] (subject to (a) to (c)).”

25. The following points should be noted:

- The test is mandatory: “a licensing authority shall ...”
- The obligation to “*aim to permit*” where (a) – (d) are satisfied is described by the Gambling Commission in its Guidance as “*the licensing authority’s primary obligation*”
- As the Guidance states: “Any refusal should be for reasons which demonstrate that the licensing objectives will not or are unlikely to be met”. That means demonstrated by evidence.

- Conversely, the following considerations are legally irrelevant to the determination of an application for a premises licence:
- A dislike of gambling.
- A general notion that it is undesirable to allow gambling premises in an area.
- Moral or ethical objections to gambling.
- The demand for gambling premises (see s 153 Gambling Act 2005). As such, objections which state that there are enough gambling establishments in a locality are irrelevant to licensing.
- Planning considerations (see section 210 Gambling Act 2005).
- Nuisance (see Guidance by Gambling Commission).

REPRESENTATIONS

26. I will deal with the representations made in oral submissions focused upon the statutory test as set out above in this note, and against Sheffield Statement of Principles for the Gambling Act.

CONCLUSIONS

27. This is an application to extend the facilities of an existing independent operator who has traded in this location since 2013. In that time the number of licensed premises in central Sheffield has reduced by 7, from 15 to 8. Notwithstanding those closures the applicant is keen to invest in this locality to offer better facilities to his largely repeat/regular customers.

28. The evidence before the licensing sub-committee:

- He is experienced locally
- He trades a further 5 shops without issue
- He has had no issues with the Gambling Commission
- He has had no issues with the Responsible authorities in Sheffield or other locations where he has operated
- He has a long history of promoting the licensing objectives
- He has offered conditions to be attached to the licence as requested by South Yorkshire Police
- He has offered to work with those who have opposed the extension of the premises
- The application is in accordance with the LCCP issued by the Gambling Commission
- The application is in accordance with the Guidance issued by the Gambling Commission
- The application is in accordance with the local statement of policy

- He has secured planning permission for the extension to his premises
29. In all of those circumstances there are no reasons why the licensing sub-committee should depart from S153 of the Gambling Act where it is asked to aim to permit the grant of the licence.

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Local Area				
Licensing Objective		Risks	Existing Control Measures	Level of Risk of Occurrence / Manageability
1.1	Protecting children and other vulnerable persons from being harmed or exploited by gambling	<p>LOCALITY</p> <ul style="list-style-type: none"> • Studio 13 Drama School Castle House, Castle St, Sheffield City Centre, Sheffield S3 8LS • Sheffield Hallam 1-11 Arundel Gate, Sheffield City Centre, Sheffield S1 2PN • Life Skills Sheffield Churchill House, Meetinghouse Ln, Sheffield City Centre, Sheffield S1 2DP • Quran Teacher School House Office 33, Fortuna, 88 Queen St, Sheffield S1 2FW <p>OTHER:</p> <p><u>Student accommodation:</u></p> <ul style="list-style-type: none"> • Kommon Rooms Castle House, 1 King St, Sheffield City Centre, Sheffield S3 8LF • Sugarcube 14 - 18 Fitzalan Sq, Sheffield City Centre, Sheffield S1 2AZ • The Paperworks Star Residence, Sheffield City Centre, Sheffield S1 2NY • The Marples 2-8 High St, Sheffield City Centre, Sheffield S1 2AZ • Pearl House 41-55 King St, Sheffield City Centre, Sheffield S3 8LF • First Degree Living 15 Arundel Gate, Sheffield City Centre, Sheffield S1 2PN 	<p>The Premises:</p> <ul style="list-style-type: none"> • Signage & window display not to attract under 18s, and advice under 18's access is prohibited. • Regular patrols of the premises, to identify any vulnerable and children • Posters, 'Stay in Control' leaflets and GamCare leaflets will be on display (near toilets as well as in the main trading area) • Staff will ensure a stock of leaflets (stay in control, self-exclusion & Gamcare) through weekly checks of stock • GamCare notices with contact number clearly displayed on machines • Self-exclusion system in place • Photo equipment available for self-exclusions • CCTV coverage of all public areas, all entry and exit points to and from the premises enabling frontal identification of every person entering under any light conditions with ability for management to review remotely online. • Premises laid out to avoid blind spots • Entrance readily visible from throughout the premises to allow customer 	<p>High of Occurrence Initially / Low of not Managing</p>

		<p><u>Family Services</u></p> <p>There are no family services within a 200m radius of the premises</p> <p><u>Job / Recruitment Agencies</u></p> <ul style="list-style-type: none"> Local Care Force 8-10 Meetinghouse Ln, Sheffield City Centre, Sheffield S1 2DP Adecco Synergy Bldg, 3rd Floor, The, Campo Ln, Sheffield S1 2EL Alpha Recruitment 5-15 Market Pl, Sheffield City Centre, Sheffield S1 2GH Prime Time Recruitment 40 Castle Square, Sheffield City Centre, Sheffield S1 2GF <p><u>Community centres</u></p> <ul style="list-style-type: none"> City of Sanctuary 37-39 Chapel Walk, Sheffield City Centre, Sheffield S1 2PD Victoria Hall Norfolk St, Sheffield City Centre, Sheffield S1 2JB <p><u>Youth Centres</u></p> <ul style="list-style-type: none"> UCKG 12 Hartshead Square, Sheffield City Centre, Sheffield S1 2EL Fumble Castle Grn, Sheffield City Centre, Sheffield S3 8LX <p><u>Fast food</u></p> <ul style="list-style-type: none"> Wendys 25 High St, Sheffield City Centre, Sheffield S1 2GA Macdonalds 20/22 High St, Sheffield City Centre, Sheffield S1 2GE 	<p>monitoring</p> <ul style="list-style-type: none"> Monitoring customers as they leave the premises Machines to be properly labelled <p>The Operation:</p> <ul style="list-style-type: none"> Staff will patrol and supervise the whole of the premises, with particular care in identifying vulnerable Regular Test Purchasing “Know Your Customer” in place, developing customer interaction policies & procedures (importance of behaviour, time and spend limits) Staff monitors customer activity and behaviour to interact early to recognise customer with potential gambling issues. Staff to be aware of the importance of social responsibility, the causes and consequences of gambling Adequate staffing levels to be maintained at all times Return the stake/retain the prize Staff will review self-excluded data to ensure continued exclusion Sharing of information by staff regarding concerns about customers Mystery shopper tests 	
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		<ul style="list-style-type: none"> • Burger King High Street (Stop HS4, Sheffield City Centre, Sheffield S1 2ET • KFC 1 Haymarket, Sheffield City Centre, Sheffield S1 2AW • Subway Basement And Ground Floor, 57 King St, Sheffield City Centre, Sheffield S1 2AW • Fat Hippo Castle House, Kommune, Sheffield S3 8LS <p><u>Café</u></p> <ul style="list-style-type: none"> • Café Tucci Angel St, Sheffield City Centre, Sheffield S3 8LF • D’cups 7 Castle St, Sheffield City Centre, Sheffield S3 8LT • Chakra 5 Fitzalan Sq, Sheffield City Centre, Sheffield S1 2AY • Cavells 31 High St, Sheffield City Centre, Sheffield S1 2GA • Caffè Nero 2 High St, Sheffield City Centre, Sheffield S1 2GE • Starbucks 4 Fargate, Sheffield City Centre, Sheffield S1 2HE • Albies Coffee 22 Snig Hill, Sheffield City Centre, Sheffield S3 8NB • Hygge 14 Fitzalan Sq, Sheffield City Centre, Sheffield S1 2AZ • Sarni’s 25 Aldine Ct, Sheffield City Centre, Sheffield S1 2EQ • Builder’s Brew 2-3 E Parade, Sheffield City Centre, Sheffield S1 2ET <p><u>Banks/Building Society</u></p> <ul style="list-style-type: none"> • Natwest Esperanto Pl, Sheffield City Centre, Sheffield S1 2FH • Coutts 2nd Floor, 42 High St, Sheffield City Centre, Sheffield S1 2GE 	<p>Age Verification procedures:</p> <ul style="list-style-type: none"> • Implementation of Policies & Procedures including Think / Challenge 25 • Anyone reluctant in providing identification or demonstrating suspicious behaviour will trigger further investigation. Incident to be logged and customer removed from the area. • Age verification incident report (log) maintained on licensed premises and reviewed on regular basis by team staff members & Compliance Manager <p>Staff Training:</p> <ul style="list-style-type: none"> • Training of staff with 6 monthly refreshers/ local area profile/licence conditions • Training and guidance is provided to staff members regarding customer interaction and the implementation of the ID verification procedure. • Staff to be trained in Safeguarding Policy • Staff to be aware of refusing customers entry due to alcohol or drugs 	
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		<ul style="list-style-type: none"> • Halifax 30/34 High St, Sheffield City Centre, Sheffield S1 2GE • Sainsburys ATM Sheffield High Street Local, 19 - 21 High St, Sheffield S1 2GA • Lloyds 1 High St, Sheffield City Centre, Sheffield S1 2GA <p><u>Leisure, Sports Centres, cinemas, bowling alleys</u></p> <ul style="list-style-type: none"> • Ding Junhui 12-18 Haymarket, Sheffield City Centre, Sheffield S1 2AX • Ponds Forge Sheaf St, Sheffield City Centre, Sheffield S1 2BP • Tenpin 1-13 Angel St, Sheffield City Centre, Sheffield S3 8LN • Curzon 16 George St, Sheffield City Centre, Sheffield S1 2PF <p><u>Care Homes:</u></p> <ul style="list-style-type: none"> • Birchwood and Co 8 Campo Ln, Sheffield City Centre, Sheffield S1 2EF <p><u>Hospitals</u></p> <p>There are no hospitals within a 200m radius</p> <p><u>GP/Medical Centres</u></p> <ul style="list-style-type: none"> • Clover City Practice 1 Mulberry St, Sheffield City Centre, Sheffield S1 2PJ • LR Podiatry 15 N Church St, Sheffield City Centre, Sheffield S1 2DH • Elite Care 12-18 Haymarket, Sheffield City Centre, Sheffield S1 2AX • Boots Boots 4, 6 High St, Sheffield City 	<ul style="list-style-type: none"> • Staff to be trained on Anti Money Laundering, Proceeds of Crime nad Suspicious Behavior • Staff to be trained to look out for signs of aggressive behaviour or problem play 	
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		<p>Centre, Sheffield S1 1QF</p> <p><u>Mental Health:</u></p> <ul style="list-style-type: none"> • Sheffield Support Services 44 Bank St, Sheffield City Centre, Sheffield S1 2DS <p><u>Addiction/Recovery Centres</u></p> <p>There are no addiction or recovery centres within a 200m radius</p> <p><u>Hostels/Shelters</u></p> <ul style="list-style-type: none"> • Cathedral Archer Project Sheffield Cathedral, Campo Ln, Sheffield City Centre, Sheffield S1 2EF <p><u>Food banks</u></p> <p>There are no food banks within a 200m radius</p> <p><u>Loan Shops, Pawn Brokers</u></p> <ul style="list-style-type: none"> • Cash Shop 2-4 Fitzalan Sq, Sheffield City Centre, Sheffield S1 2AZ • H&T 27 King St, Sheffield City Centre, Sheffield S3 8LF • Eddys 35 King St, Sheffield City Centre, Sheffield S3 8LF • Small Finance Chambers, 68 Queen St, Sheffield City Centre, Sheffield S1 1WR 		
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		<p><u>Parks/Playgrounds</u></p> <ul style="list-style-type: none"> Fitzalan square Sheffield City Centre, Sheffield S1 2GD <p><u>Religious buildings</u></p> <ul style="list-style-type: none"> New Hope Christian Church King St, Sheffield City Centre, Sheffield S3 8LF The Fire of Balor 1ST FLOOR, Castle House, Castle St, Sheffield City Centre, Sheffield S3 8LU Sheffield Cathedral Church St, Sheffield City Centre, Sheffield S1 1HA <p><u>New Development or Shopping centres</u></p> <p>There does not appear to be any new developments or shopping centres in the area. There are various city centre shopping opportunities throughout the area</p>		
<p>1.2</p>	<p>Preventing Gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime</p>	<p>LOCALITY</p> <p>There are 2 other betting shops within 200m:</p> <ul style="list-style-type: none"> Betfred 11 Fitzalan Sq, Sheffield City Centre, Sheffield S1 2AY Ladbrokes 20-22 Haymarket, Sheffield City Centre, Sheffield S1 2AX <p>There are 3 AGCs within 200 metres</p> <ul style="list-style-type: none"> Admiral 3 Fitzalan Sq, Sheffield City Centre, Sheffield S1 2AY Admiral 32 Castle St, Sheffield City Centre, Sheffield S3 8LT Shipley Slots 17 Haymarket, Sheffield City Centre, Sheffield S1 2AW <p>There are no casinos.</p>	<p>The Premises</p> <ul style="list-style-type: none"> CCTV coverage of all public areas, all entry and exit points to and from the premises enabling frontal identification of every person entering under any light conditions with ability for management to review remotely online. Toughened/laminated glass to front window <p>The Operation</p>	<p>Medium of Occurrence Initially / Low of not Managing</p>

		<p>There are several premises licensed under the Licensing Act 2003 within distance, including:</p> <ul style="list-style-type: none"> • Bankers Draft 1-3 Market Pl, Sheffield City Centre, Sheffield S1 2GH • Aria Bar Castle House, Kommune, Angel St, Sheffield S3 8LN • Yorkshireman 10 Arundel Gate, Sheffield City Centre, Sheffield S1 2PP • Cavells 31 High St, Sheffield City Centre, Sheffield S1 2GA • Dove and Rainbow 2 Hartshead Square, Sheffield City Centre, Sheffield S1 2FD • Bar 1857 31-33 George St, Sheffield City Centre, Sheffield S1 2PF • Kommune Castle House, Angel St, Sheffield City Centre, Sheffield S3 8LS • Hop Hideout Unit 11, Kommune, 1-13 Angel St, Sheffield S3 8LN • T Bates Unit 11, Kommune, 1-13 Angel St, Sheffield S3 8LN <p>LOCAL AREA PROFILE</p> <p>Population</p> <ul style="list-style-type: none"> • Approximately 575,400 residents <p>Footfall</p> <ul style="list-style-type: none"> • Sheffield benefits from a rich mix of cultural diversity and is fast becoming one of the leading cities for the provision of a wide variety of entertainment and cultural activities. <p>Deprivation</p> <ul style="list-style-type: none"> • In Sheffield, 15.6% of the population was income-deprived in 2019. Of the 	<ul style="list-style-type: none"> • Machine door opening keys only available to management • Log visits by Police, Local Authority and Gambling Commission officers • Review unusual patterns of play (as per PoCA), 'non-regular' players and consider exclusion/reporting • Exclude badly behaved customers and look out for problem behaviour or aggression • Maintain contact with local traders and Police, including working with police to combat local issues • Limited staff floats • CCTV coverage over all cash transactions • Full machine audit on all machines on a weekly basis – ad hoc spot-check in case of any suspicion • Gaming machines are supplied and maintained by businesses licensed by the Gambling Commission <p>Staff Training</p> <ul style="list-style-type: none"> • Social Responsibility training and incident recording logs available to all staff. • Staff trained to look out for unusual/dyed notes • Staff & management to be alert to 	
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		<p>316 local authorities in England (excluding the Isles of Scilly), Sheffield is ranked 61st most income-deprived.</p> <p>Unemployment</p> <ul style="list-style-type: none"> • Unemployment rate 3.6% <p>Crime</p> <ul style="list-style-type: none"> • Most commonly reported crimes during Dec 2023 <ul style="list-style-type: none"> - Violent and Sexual Offences 218 - Shoplifting 130 - Anti-Social behaviour 110 - Public Order 97 <p>TRANSPORT & CAR PARK FACILITIES</p> <p>The premises are on transport routes and there are several bus stops and tram stops nearby as well as the city centre train station. The NCP Sheffield Hartshead Square is the nearest car park.</p>	<p>customers exchanging large volumes of paper notes for alternative denominations</p> <ul style="list-style-type: none"> • Staff to be alert to customer redeeming stake with little or no play • Staff trained about AML basics, strange transaction behaviour • Extra Training and guidance is provided to staff members regarding Anti-Social Behaviour • Staff fully trained how to deal with homeless people seeking refuge • Staff to be trained on local area risk assessment <p>Customer Interaction and Monitoring</p> <ul style="list-style-type: none"> • Suspicious activity to be written down in the log • Customer interaction may provide knowledge of criminal background and/or association leading to closer security and monitoring of such a customer. • Customers are efficiently monitored throughout the time they are on the premises to ensure prevention of machine related crime (money laundering). • Knowledge activity to be handed over to 	
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			Nominated Officer who will then report to NCA	
1.3	Ensuring that gambling is conducted in a fair and open way	<p>EQUIPMENT</p> <ul style="list-style-type: none"> Information must be clearly displayed Maintenance to reduce potential issues Compliance <p>PREMISES</p> <ul style="list-style-type: none"> Promotions Advertising <p>CUSTOMERS</p> <ul style="list-style-type: none"> Treatment of customers Complaints 	<p>Equipment</p> <ul style="list-style-type: none"> Machines only obtained from licensed suppliers Machines to be properly labelled Implementation of policies Machines to be maintained/serviced regularly / turned off if a fault occurs Procedure for making refunds Details of machine operation and winning combinations to be clearly shown on machines <p>Premises</p> <ul style="list-style-type: none"> Clear terms & conditions provided within the licensed premises. Any promotions or advertising to be ASA and LCCP compliant 	Low / Low

			<p>Staff Training</p> <ul style="list-style-type: none"> • Training of staff with 6 monthly refreshers • Staff to have full understanding of stakes and prizes, and odds associated with each machine. <p>Customers</p> <ul style="list-style-type: none"> • Review advertising material and promotions for compliance with LCCP • Complaints policy visibly displayed for customer information. All complaints to be fully investigated in accordance with policy and referred to nominated ADR 3rd party as required • Suitable public liability Insurance • Council conditions openly displayed • Regular Compliance Audits 	
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Gambling Operation and Physical Design (Internal and External)				
Licensing Objective		Risks	Existing Control Measures	Level of Risk of Occurrence / Manageability
2.1	Protecting children and other vulnerable persons from being harmed or exploited by gambling	<p>CUSTOMERS</p> <ul style="list-style-type: none"> • U18s entering • Problem Gambling • Providing Information • Administering self-exclusion • Signage 	<p>Equipment and Operation</p> <ul style="list-style-type: none"> • Machines to be properly labelled • Staffing levels will be risk assessed to ensure they reflect any risk to staff, customers and promotion of the licensing objectives • There would be no advertising locally. As part of the Licence Conditions and Codes of Practice issued by the Gambling Commission 	

		<p>PREMISES</p> <ul style="list-style-type: none"> • Consider 'blind spots' • Visibility of the entrance • Signage • Presentation of premises (signage/window display) 	<p>- Any Media displayed on the premises will comply with LCCP: Social responsibility code 5.1.6 (Compliance with advertising codes)</p> <p>The advertising of gambling products and services must be undertaken in a socially responsible manner and we must comply with the UK Advertising Codes issued by the Committees of Advertising Practice (CAP) and administered by the Advertising Standards Authority (ASA). Advertising on the premises will not differ from that of any other betting premises in Sheffield.</p> <p>Premises</p> <ul style="list-style-type: none"> • CCTV coverage of all public areas, all entry and exit points to and from the premises enabling frontal identification of every person entering under any light conditions with ability for management to review remotely online. • Premises laid out to avoid blind spots • Ensure entrance readily visible from throughout the premises • Signage & window display not to attract under 18s, and advise under 18's access is prohibited. • The entrance layout to enable staff to monitor those entering the premises 	<p>Low/Low considering design features</p>
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<p>2.2</p>	<p>Preventing Gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime</p>	<p>CUSTOMERS Customer behaviour</p> <p>PREMISES Layout to be considered:</p> <ul style="list-style-type: none"> • Consider 'blind spots' • Visibility of the entrance • Design out crime <p>STAFF</p> <ul style="list-style-type: none"> • Personal protection • Security • Staff behaviour <p>Money Laundering</p> <ul style="list-style-type: none"> - Customer behaviour - Staff monitoring 	<p>Staff Training Full Staff training on Money Laundering and the Proceeds of Crime Act as well as customer behaviour, particularly suspicious or aggressive customers</p> <p>Premises and Operation</p> <ul style="list-style-type: none"> • CCTV coverage of all public areas, all entry and exit points to and from the premises enabling frontal identification of every person entering under any light conditions with ability for management to review remotely online. • Regular patrols of the premises, including external areas to identify any vulnerable and children • Monitoring of customers as they leave the premises • Design out crime to be implemented • Toughened/laminated glass to front window • Mag Lock on front door • Intruder alarm installed and regularly serviced • Panic Button linked to Police 	<p>Low/Low considering design features</p>
<p>2.3</p>	<p>Ensuring that gambling</p>	<p>PREMISES</p>	<p>Premises</p>	

	<p>is conducted in a fair and open way</p>	<ul style="list-style-type: none"> • Promotions • Advertising <p>EQUIPMENT</p> <ul style="list-style-type: none"> • Information clearly displayed • Maintenance • Compliance 	<ul style="list-style-type: none"> • CCTV coverage of all public areas, office, frontage and rear door with recording device and ability for management to review remotely online • Clear terms & conditions provided within the licensed premises. <p>Equipment</p> <ul style="list-style-type: none"> • Machines only obtained from licensed suppliers • Machines to be properly labelled • Implementation of policies • Machines to be maintained/serviced regularly • Machines to be turned off should a fault occur • Procedure for making refunds • Details of machine operation and winning combinations to be clearly shown on machines <p>Customers</p> <ul style="list-style-type: none"> • Complaints policy visibly displayed for customer information. All complaints to be fully investigated in accordance with policy and referred to nominated ADR 3rd party as required • Suitable public liability Insurance • Council conditions openly displayed 	<p>Low / Low</p>
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			<ul style="list-style-type: none">• Regular Compliance Audits	
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Customer interaction: formal guidance for premises-based operators

Formal guidance note for premises based on customer interaction under SR Code 3.4.1

Published: 1 July 2019

Last updated: 12 September 2022

This version was printed or saved on: 19 February 2024

Online version: <https://www.gamblingcommission.gov.uk/licensees-and-businesses/guide/customer-interaction-formal-guidance-for-premises-based-operators>

Overview: > This guidance applies to premises-based operators and is currently in effect.

This is an HTML version of this guidance. You can also view or download the [original customer interaction guidance for premises-based operators \(PDF\)](#) published in July 2019.

Premises-based licensees are required to interact with customers in a way which minimises the risk of customers experiencing harms associated with gambling, as set out in [Social Responsibility Code Provision 3.4.1](#) of the Licence Conditions and Codes of Practice (LCCP).

A requirement to LCCP with effect from 31 October 2019 (as amended 12 September 2022) requires premises-based licensees to take into account the Commission's guidance on customer interaction. This guidance is structured along the three key outcomes operators are expected to meet.

These are, to:

- **identify**
- **interact**
- **evaluate.**

This guidance sets out why customer interaction is a requirement, makes our expectations clear, and suggests ways you could meet them. This includes learnings from research and some ways that gambling operators have found worked for them and their customers.

How to use this guidance

The purpose of this guidance is to share knowledge based on research, current practice and lessons learned in order to support licensees in determining how they can meet the outcomes. It sets out why customer interaction is important and makes our expectations clear. Not all of the content of the guidance will be relevant to all operators, but licensees must take it into account and be able to demonstrate how they have done so.

Following the guidance is no guarantee that all customers experiencing or at risk of harm will be identified. The guidance is not the only source of information which operators should use to help them develop their own processes, and licensees should also keep up to date with published research and other sources.

How we will use this guidance

For compliance and enforcement purposes, we will expect licensees to demonstrate how their policies, procedures and practices meet the required outcomes. This can be through implementing relevant parts of the guidance or demonstrating how and why implementing alternative solutions equally meet the outcomes.

Our understanding of gambling harms and how they manifest is constantly evolving, so for the purposes of raising standards, protecting consumer interests, and preventing harm to consumers, we will update and re-issue guidance where new evidence or risks emerge which may have a meaningful impact on how the outcomes can be met.

Identifying the right customers

You need to know:

- the types of markers and behaviours that could indicate harm relevant to online gambling, and
- how to spot when those indicators should trigger an interaction.

You need to put together what you know about the customer, with the relevant indicators of harm, to decide whether you need to interact. More knowledge about what to look for, with effective processes for monitoring customer behaviour, can mean quicker and better-informed decisions.

Some indicators of harm, such as high staking behaviour, can look similar to VIP and high-value customer activity. Even if you think the customer can afford it, they may still be experiencing gambling harms. Your enhanced contact with your VIPs means you have many opportunities to get to know them well and make better informed decisions.

Identify

We expect you to:

- Use a range of indicators relevant to your business that you can observe and monitor. Do not rely on financial indicators alone. Where trigger points or thresholds are used, they should be realistic, and remember that not every customer who is experiencing or at risk of harm will trigger every indicator.
- Monitor customer activity and behaviour so that you are able to interact early and quickly. Invest in appropriate systems and staff to manage your customer interaction process effectively.
- Make sure your process keeps pace with any increase in demand – through general growth or seasonal, promotional or other variations which might mean you are busier than usual.

- Train your staff to know their roles and responsibilities, and ensure they are supported and given the tools and skills they need to be able to act promptly when they spot or are alerted to indicators of harm, including those among your VIP and monitored customers.
- Ensure that your customers are not put at any greater risk of harm as a result of your premises being busier or quieter than usual. You need to protect your customers regardless of these factors.
- Think about the protection of new customers – you know less about them, so you may not know what their regular gambling pattern looks like. This means that alternative measures must be applied.
- Take safer gambling seriously for all customers including VIPs and not let commercial considerations override customer protection.
- Make meaningful records of all interactions with customers. Make these records available to staff and use them to aid decision-making. This should also take place in circumstances where an interaction has been ruled out. For example, because the customer is displaying signs of agitation.
- Even if you think your sector is 'lower risk', all forms of gambling present risks and you should understand the prevalence of gambling harms for the type of gambling products you offer and implement appropriate processes.
- Actively promote tools such as voluntary machine alerts, and ensure all your customers have access to information about safer gambling and the support available.

Understanding the impact of gambling harms

In 2018 the Gambling Commission published research (Wardle et al 2018) on understanding the full range of gambling harms and the impact this can have on society. This research defined gambling harms as the 'adverse impacts from gambling on the health and wellbeing of individuals, families, communities and society'. This can include loss of employment, debt and crime – gambling harms can also have detrimental impacts on physical and mental health and relationships, and at its worst, gambling can contribute to loss of life through suicide.

Gambling harms cannot be solely measured in terms of finance and resources. This is why we expect you to use a range of indicators in order to identify customers who may be experiencing harms.

Using the right indicators for your business

Change compared with previous gambling activity is a general trigger for customer interaction. Building up your knowledge of your regular customers is key to helping you spot changes in their behaviour.

You should use a range of indicators. This is not an exhaustive list, but your indicators should include the following.

Time indicators

Amount of time spent gambling, visit frequency or length of stay on the premises, leaving and then returning to the premises.

Spend

Amount and frequency of deposits, large losses, using multiple or more expensive payment methods, declined payments, appearing to spend more than they originally intended.

Behaviour or appearance

Such as signs of distress, agitation, or changes which could be an indication that gambling is having a negative impact on a customer's wellbeing.

Use of gambling management tools

Previous self-exclusions or previous customer interactions, or playing through machine alerts.

Customer-led contact

Information or hints from the customer, frequent complaints about not winning, or talking about the negative impacts of their gambling.

Play indicators

chasing losses, erratic betting patterns and gambling on higher risk products, or unusual markets or outcomes on which the customer is unlikely to have been able to make an informed choice. People who bet in-play may place a higher number of bets in a shorter time period than people who bet in other ways, as [in-play betting](#) offers more opportunities to bet.

A 'big win' or a windfall

Research (Parke and Parke 2017) shows high staking following a win could hide or even lead to harmful behaviour. Suddenly having more money than usual can lead to increasing staking, which can lead to harms not associated with wealth or resources.

Affordability and a customer's personal circumstances

Historically, gambling operators have not systematically considered customer affordability when developing their customer interaction policies. Many have used deposit or loss thresholds as a main or sole prompt for a customer interaction, but these have often been set at levels that were inappropriately high, in comparison to the average amount of money that the majority of people have available to spend on leisure activities.

This has led to a number of examples of customers spending more than they could afford, and this not being identified sufficiently early, as seen in much of the Commission's compliance and enforcement casework since 2017.

Operators should aim to identify those experiencing or at risk of harm and intervene to try to reduce harm at the earliest opportunity. Reliance on deposit or loss thresholds that are set too high will result in failing to detect some customers who may be experiencing significant harms associated with their gambling. It is therefore imperative that threshold levels are set appropriately.

Open source data exists which can help operators assess affordability for their British customer base and improve their risk assessment for customer interactions. Thresholds should be realistic, based on average available income for your customers. This should include the Office of National Statistics (ONS) publications on levels of household income. See the [ONS information on personal and household finances \(opens in new tab\)](#).

In considering these thresholds, you should be aware of the difference between 'disposable income' and 'discretionary income' which refers to the amount left after living costs are taken into account, but it does still include many other unavoidable costs. Most people would consider it harmful if they were spending a significant amount of their discretionary income on gambling.

Vulnerability

Life events or changes to an individual customer's circumstances may mean that a person becomes more or less vulnerable to experiencing gambling harms. Those circumstances could include bereavement, loss of income or other factors, as follows. It will not always be obvious or clear to an operator when such events have occurred, but knowing your customers, and ensuring staff ask questions when there are potential signs of vulnerability, will help to determine whether those individual circumstances present an increased risk.

As part of 'know your customer' and developing customer interaction policies and procedures, operators should consider the factors that might make an individual more vulnerable to experiencing gambling related harms.

Factors include:

- **personal and demographic** - if the individual is experiencing poor physical or mental health, physical or cognitive impairment, suffering side effects from a brain injury or medication or has an addiction
- **situational** - if the individual is experiencing financial difficulties, is homeless, is suffering from domestic or financial abuse, has caring responsibilities, experiences a life change or sudden change in circumstances
- **behavioural** - if an individual has a higher than standard level of trust or high appetite for risk
- **market-related** - if an individual is engaged in an activity which is highly complex; that they have a lack of knowledge and/or experience of the market
- **access** - if an individual has difficulty accessing information because of poor literacy or numeracy skills, knowledge, dyslexia.

We have seen examples through our casework of customers who should have received some interaction but did not, including customers who were particularly vulnerable, and more susceptible to experiencing gambling harms.

Spotting harmful gambling

How you monitor activity depends on your business. For some very small operators, manual monitoring may work. Larger operators will need comprehensive systems, which could include a mix of automated and manual processes and should draw on all available sources of data to give a comprehensive picture of the customer's gambling.

Options for spotting harmful gambling include:

- Reports on activity where relevant, for example from observation or loyalty carded play, particularly if the play is linked to online play
- Sharing of information by staff about concerns
- Customer interaction forms, day diary with flags
- Utilising back office systems and alerts where they exist.

The right information can mean better and quicker decisions. The customer interaction records you keep should give staff a more complete picture of the customer's previous activity, which will help to inform decisions.

Your customers should not be at more risk because your premises are either busier or quieter than usual. You should ensure you have appropriate levels of well-trained staff on duty to meet the licensing objectives.

Because VIP customers can also experience harm, it is good practice to carry out a safer gambling check when upgrading customers to VIP status and keep this under review. You should also use these opportunities to carry out checks for Anti-Money Laundering (AML). This could also help you to support customers who have had major wins.

The role of staff

It is important that all staff receive training so that they are aware of the signs that could indicate that a customer may be experiencing harms associated with gambling.

This is not an exhaustive list, but you should ensure that:

- Staff are trained to identify the signs of harm and refer back to documents that include the types of behaviour that may trigger customer interaction at an appropriate moment. Staff should know how to escalate a situation if they are unsure or require support.
- Staff understand how indicators of harm could be displayed differently in VIP or 'high-value' customers and know how to spot the signs.
- As a minimum, staff receive training at induction as well as refresher training.

Identify: questions to consider

These include:

- Are you curious about your customers?
- Are your indicators relevant to your gambling facilities and customers?
- How do you decide the right level of your thresholds?
- Do all appropriate staff have access to customer interaction records?
- How do you assess the risks posed by new and unfamiliar customers?
- Is staff training on customer interaction meaningful and engaging?
- Do you take into account all relevant information and act quickly?
- Does the structure and layout of your premises help or hinder identifying customers you need to interact with?
- Do you have any blind spots which mean that you are unable to monitor all customer activity?
- Is spend monitored across different products for individual customers?
- Do you offer the same level of protection for all your customers, no matter how long they have been a customer, or whether they are VIPs?

Interacting with the customer

When you are concerned that a customer may be experiencing harm, acting early and quickly could help stop or prevent the harm worsening. It is important in a premises environment that you interact with the customer in a timely manner whilst the opportunity presents itself.

For some customers, making them aware of why you are concerned may be enough to prompt them to think and make a change. Some customers will need more support or advice.

Your interactions should have an outcome. Knowing what impact your interaction has had will help you support the customer and help to keep improving your approach. To achieve this, it is vital to keep good records and make them available to staff to inform decisions.

Interact

We expect you to:

- Be curious, and if you spot behaviour or vulnerabilities that could indicate harm, to act on it.
- Ensure your staff have access to the information and support they need, such as customer interaction records, so that they are able to make decisions about how to interact and can do so discreetly.
- Interact in a way that is appropriate to the severity of the potential harm. You should trial and evaluate different approaches to achieve this. **Importantly, this may include refusing service or ending the business relationship.**
- Think about what information you should give the customer to help them understand why you are interacting with them, such as describing the type of behaviour they display or practical help or support where appropriate.

In gambling premises, many of your interactions are likely to be face-to-face, so it is important for staff to be prepared in advance of carrying out a customer interaction.

You should consider:

- What do you need to know from the customer and what do you already know about them?
- What information do you want to give them?
- How many times have you already interacted with the customer?
- What outcome do you want to achieve?
- Is the customer behaving in a way which might inhibit an interaction at this point?

A customer interaction has three parts

These are:

1. Observation – behaviour or activity you have spotted or something the customer tells you.
2. Action – contact to prompt the customer to think about their gambling, for you to find out more, and an opportunity for you to offer information or support.
3. Outcome – what you or the customer did next. In some cases, you may need to monitor the customer's gambling to spot any change which may prompt further action.

Offering help and support

Encourage customers to think about their gambling. Their responses will help you work out the right kind of help and support to offer.

You will need to direct some customers to information about safer gambling and/or suggest appropriate gambling management tools. You might need to signpost them to sources of help and specialist support from organisations which deal with advice and treatment for problem gambling.

You must also make information about safer gambling readily available to customers, as well as information about problem gambling.

You will need to interact with some customers a number of times. Your records of previous interactions with customers will help you decide how to provide the right help and support.

Feedback from consumers shows that they often respond better to being informed about their behaviour and why, rather than being “told” what to do. But for some customers, and particularly if the behaviour continues to cause concern, you may need to take a more proactive approach. In some cases, you may need to take action for the customer, which could mean refusing service.

The role of staff

You should ensure that your staff:

- understand the types of interaction that could take place and how to interact appropriately. For example, they may only need a brief intervention.
- know the type of help or support to offer, such as information, signposting customers to specialist support or the gambling management tools which are available. These may be the minimum required under the LCCP or tools you offer which go beyond minimum requirements.
- know the circumstances and process for refusing service to customers, such as requesting a customer to leave or barring a customer.
- understand their respective responsibilities and who is designated to carry out customer interactions, if only certain staff members are authorised to interact.
- are advised how to deal with situations where customers demonstrate signs of agitation, distress, intimidation, aggression or other behaviours that may inhibit customer interaction, and what to do if the interaction does not take place at that time.

Whilst training on the legislative framework is important, staff also need to be trained on the skills and techniques they need to help them carry out customer interactions.

Keeping records

Good record keeping allows you to demonstrate when and why you have interacted with customers and helps with ongoing monitoring of customers.

You should:

- Keep records of all customer interactions and, where an interaction has been ruled out, the reasons for this. Where an interaction has taken place a later date, this should also be recorded.

- Make use of all relevant sources of information to guide and deliver effective customer interactions, including your records of previous interactions.

Good records should include:

- the behaviour or activity before the interaction.
- the change in behaviour or prompt for the interaction.
- how you interacted and what was said or done, for example advice or suggestions to help the customer manage their gambling, or to take a break from their gambling, and
- what happened next.

You should also record situations where an interaction was prompted but did not take place, and how you followed that up.

In some cases, you will need to monitor the customer's gambling to spot behaviours which could indicate further harm.

Interact: questions to consider

- Where concerns arise, are you able to intervene early and engage with a customer at the right time?
- How do you ensure your staff are prepared and able to carry out interactions?
- Are your staff able to carry out customer interactions discreetly?
- Are your staff aware of and trained to carry out different levels of interaction?
- Have you allocated the right level and kind of resources to be able to interact with customers effectively when you have concerns?

Evaluate

By evaluate, we mean to understand impact and effectiveness in two ways:

- did an individual customer interaction have a positive outcome for the customer, and
- does your overall approach to customer interaction work?

To help with the latter, the Advisory Board for Safer Gambling published an evaluation protocol in 2016 for the industry to use when designing evaluations.

Find out more about the [National Strategy to Reduce Gambling Harms](#), including the [evaluation protocol](#) and further research on gambling-related harms.

Evaluate

We expect you to:

- Understand the impact of individual interactions on a consumer's behaviour and whether, or what, further action is needed.
- Evaluate the effectiveness of your approach by trialling and measuring impact.
- Embed lessons learned and best practice across the business and collaborate to share across the industry.

Understanding the impact of individual interactions

In this context, by impact we mean a change in the customer's gambling activity which could be attributed to the interaction. An important part of this is whether the customer has understood the information or advice you gave.

Not every customer who receives an interaction will require active follow up, but many will. In these cases, follow up activity should be proportionate to the severity or extent of the harm being displayed. This approach will help you target your resources where they are most needed.

Understanding the impact of the interaction on the customer includes being able to look at and compare:

- the behaviour before the interaction.
- the change in behaviour or prompt for the interaction.
- how you interacted – what was said or done, and
- what happened next.

Some ways to work out impact include:

- Did the customer start using gambling management tools independently or following your advice?
- If you use email, did the customer click through to safer gambling information from your tracked links?
- Was there a positive change in behaviour? Did the customer's gambling seem to change after the interaction?
- You could also follow up and ask the customer whether they found the interaction helpful or not.
- Is there a need for further or follow up action?

You may already quality assure individual customer interactions by spot-checking records. As well as checking that customers are getting the right support, this can also identify staff development needs and highlight good practice that you can share across your business and across the industry.

Evaluating the effectiveness of the approach

Records of interactions can provide useful evidence of what types of indicators, methods of interacting and options for providing support work well for customers. They will help to inform an evaluation of the effectiveness of your overall approach to customer interaction. Good evaluation helps you to understand which aspects of your approach are the most effective at identifying the right customers, and the types of tools or support that work well to help customers manage their gambling in a way that works for them.

The following measures could help to work out whether your approach is working well:

- Customer retention.
- Reduction in complaints.
- The appropriate number of customer interactions in relation to the size of your customer base or footfall, and the type of gambling you offer, as follows.

You should know and understand the prevalence of at-risk gambling among your customer base. A starting point is the [combined health surveys](#) of England, Scotland and Wales (Gambling Commission 2018). This data is broken down to gambling activity type, and by region.

However, rates will vary significantly between geographical areas and localities, and research shows that problem gambling rates in urban areas are likely to be higher than the national average. Further information on this topic can be found in the Research Report Problem Gambling in Leeds (Kenyon et al 2016). When looking at the potential percentage of your customers who may be experiencing harm, remember to consider the percentage of gamblers participating in that activity and not the percentage of the adult population.

Currently the only industry-wide quantitative measure of identifying and interacting with customers who may be experiencing harms associated with gambling is data on the numbers of customers who received an interaction, submitted to the Commission as part of regulatory returns. We have clarified the definitions in regulatory returns to offer guidance on what should be included in a customer interaction (incident) log and make clearer what should be recorded.

Your log should include as a minimum:

- the identity or other identifier of the customer involved
- the behaviour or activity that prompted the interaction
- the advice or support given, and
- the outcome of the interaction.

Keeping your policies and procedures under review and up to date by taking into account research and industry best practice will help you to identify customers you should be interacting with, which will help you target your resources where they are most needed, in ways which may lead to better outcomes.

You should also review your internal controls following the publication of a regulatory settlement, to address any similar weaknesses which could exist in your own processes.

The role of staff

Your staff have an important role to play to understand whether your approach works.

As a minimum, you should:

- Ensure that records of all customer interactions are made by staff and used to aid decision making. Such records should be used for evaluation purposes, for example, dip sampling for quality assurance purposes. Or, to assess whether a customer changed their behaviour as the result of an interaction.
- Train staff to recognise when follow-up activity to an interaction is required.
- Ensure that staff use customer interaction records as a decision-making tool.
- Ensure that staff are properly supported in carrying out effective interventions.

Evaluate: questions to consider

- Do you know how many of your customers may be experiencing some level of harm associated with gambling?
- How do you know you are delivering positive outcomes for your customers?
- How could you improve on your policies and procedures?
- How could you share your good practice with the industry?

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Status:  Positive or Neutral Judicial Treatment

**Daniel Thwaites Plc v Wirral Borough Magistrates' Court v The Saughall
Massie Conservation Society, Wirral Metropolitan Borough Council**

Case No: CO/5533/2006

High Court of Justice Queen's Bench Division Administrative Court

6 May 2008

[2008] EWHC 838 (Admin)

2008 WL 1968943

Before: The Honourable Mrs Justice Black

Date: 06/05/2008, Hearing date: 10th March 2008

Representation

David MW Pickup (instructed by Naphens plc) for the Claimant.

The Defendant did not appear and was not represented.

David Flood (instructed by Messrs Kirwans) for the 1st Interested Party.

Matthew Copeland (instructed by Wirral MBC) for the 2nd Interested Party.

Approved Judgment

Black J :

1 This is an application by Daniel Thwaites Plc ("the Claimant") for judicial review of a licensing decision made by the Wirral Magistrates' Court ("the Magistrates' Court") on 5 April 2006 and that court's decision on 21 April 2006 concerning the costs of the proceedings. The Claimant seeks an order quashing both decisions. Permission to apply for judicial review was granted by Mr Justice Pitchford on 2 November 2006.

The factual background

2 The Claimant owns the Saughall Hotel in Saughall Massie, Wirral which it operates as licensed premises ("the premises"). It originally held a licence under the [Licensing Act 1964](#) . In June 2005, it commenced an application to the Licensing Sub-Committee of the Metropolitan Borough of Wirral ("the licensing authority") for the existing licence to be converted to a premises licence under the [Licensing Act 2003](#) and for the licence to be varied simultaneously.

3 In essence, the Claimant was seeking to conduct business at the premises for longer hours than were permitted under the original licence. The police did not support the extension of the hours to the extent that the Claimant initially proposed. The Claimant agreed to restrict the hours to those that were acceptable to the police. Accordingly, the licensing authority was asked to grant a licence that would permit music and dancing to 11 p.m. and alcohol sales until midnight on all nights except Friday and Saturday and, on Friday and Saturday nights, music and dancing to midnight and alcohol sales until 1 p.m., with the doors closing one hour after the last alcohol sale every night.

4 The police withdrew their representations against the modified proposals and did not appear before the licensing authority when the matter was heard on 23 August 2005. No representations were made by the Wirral Environmental Health Services either. However, there was opposition to the proposals at the hearing from the Saughall Massie Conservation Society (“the First Interested Party”) and other Saughall Massie residents.

5 The Claimant told the licensing authority at the hearing that the hours of operation at the premises would not vary significantly from the existing hours of operation and that the application for extended hours was to allow flexibility to open later “on special occasions” This was a matter of which the licensing authority took note as is recorded in the minutes of their determination.

6 The licence was granted in the modified terms requested together with an additional hour for licensable activities and an extra 30 minutes for the hours the premises were to be open to the public over Christmas and at the major bank holidays. Special arrangements were also permitted for New Year's Eve. The licensing authority removed certain conditions that had been imposed on the old licence (requiring all alcohol to be consumed within 20 minutes of the last alcohol sale and banning children under 14 from the bar) and imposed other conditions which were obviously aimed at controlling noise, namely that the area outside must be cleared by 11 p.m., that the premises must promote the use of taxi firms which use a call-back system, that all doors and windows must be kept closed when regulated entertainment was provided and that prominent notices should be placed on the premises requiring customers to leave quietly.

7 The Saughall Massie Conservation Society and “others” appealed against the licensing decision to the Magistrates' Court on the ground that the licensing authority's decision “was not made with a view to promotion of and in accordance with the licensing objectives pursuant to [Section 4, Part 2 of the Licensing Act 2003](#)”.

8 The appeal occupied the Magistrates' Court from 3–5 April 2006. The respondents to the appeal were the licensing authority and the Claimant which both defended the licensing authority's decision. Witnesses were called including Saughall Massie residents, Police Sergeant Yehya who dealt with the stance of the Merseyside police, and Mr Miller, the manager of the premises.

9 The justices granted the appeal. Their Reasons run to 3 pages of typescript, one page of which is entirely taken up with setting out the new hours of operation they imposed. These permitted entertainment until 11 p.m. and alcohol sales until 11.30 p.m. on all nights except Friday and Saturday when entertainment would be permitted until 11.30 p.m. and alcohol sales until midnight. The premises could remain open to the public until midnight on all nights except Friday and Saturday when they could close at 1 a.m.. Similar provisions were imposed to those imposed by the licensing authority in relation to later opening at Christmas and major bank holidays and the provisions relating to New Year's Eve and the conditions of the licence remained unaltered.

10 The new licence had come into effect on 24 November 2005 so the new arrangements had been running for several months by the time of the hearing before the Magistrates' Court. There had been no formal or recorded complaints against the premises under the old or the new regime as the justices acknowledged in their Reasons. The residents who gave evidence were fearful of problems if the extended hours were allowed in the summer. The Chairman of the Conservation Society, who gave oral evidence, spoke of people urinating in the gardens and a problem with litter. It appears from the statement filed by the Chairman of the Bench for these judicial review proceedings that evidence was also given of interference with machinery on nearby Diamond Farm. The justices' Reasons make no reference at all to these matters. As to the statements of the “Witnesses of the Appellant”, they say simply that they have read and considered them but attached little or no weight to them.

11 The justices and their legal advisor have filed a considerable amount of material in response to the judicial review proceedings, in all 31 closely typed pages. These comprise their Response to the Claim, statements from Alistair Beere (who was the chairman of the bench), Mary Woodhouse (another of the bench) and Stephen Pickstock (the legal advisor), and what is said in the index to be a document by Mr Beere from which he prepared his statement. There was limited argument before me as to the status of these documents and the weight that I should give to them. It was not submitted that I should decline to have *any* regard to them although I think it is fair to say that it was common ground between the parties, rightly in my view, that I should concentrate principally on the Reasons. It is established by authorities such as [R v Westminster](#)

[City Council ex p Ermakov \[1996\] 2 All ER 302](#) that the court can admit evidence to elucidate or, exceptionally, correct or add to the reasons given by the decision maker at the time of the decision but that it should be very cautious about doing so. The function of such evidence should generally be elucidation not fundamental alteration, confirmation not contradiction. In the circumstances, I have read carefully what the magistrates have provided but approached its role in the judicial review proceedings cautiously.

The broad nature of the claim in relation to the licensing decision

12 The Claimant argues that the Magistrates' Court decision is unlawful for a number of reasons. It is argued that the decision was not in line with the philosophy of the [Licensing Act 2003](#) ("the Act") and imposed restrictions on the Claimant's operation which were not necessary to promote the licensing objectives set out in that Act, that it was based on speculation rather than evidence, that it took into account irrelevant considerations and failed to take into account proper considerations, and that it was a decision to which no properly directed magistrates' court could have come on the evidence. In so far as the court imposed conditions as to the time at which the premises must close, it is submitted that this was not a matter which can be regulated under the Act. It is further argued that the magistrates failed to give adequate reasons for their decision.

The legal background

13 The [Licensing Act 2003](#) was intended to provide a "more efficient" "more responsive" and "flexible" system of licensing which did not interfere unnecessarily. It aimed to give business greater freedom and flexibility to meet the expectations of customers and to provide greater choice for consumers whilst protecting local residents from disturbance and anti-social behaviour.

14 Note 12 of the explanatory notes to the Act gives an indication of the approach to be taken under the Act. It reads:

"12. In contrast to the existing law, the Act does not prescribe the days or the opening hours when alcohol may be sold by retail for consumption on or off premises. Nor does it specify when other licensable activities may be carried on. Instead, the applicant for a premises licence or a club premises certificate will be able to choose the days and the hours during which they wish to be authorised to carry on licensable activities at the premises for which a licence is sought. The licence will be granted on those terms unless, following the making of representations to the licensing authority, the authority considers it necessary to reject the application or vary those terms for the purpose of promoting the licensing objectives."

15 [Section 1](#) of the Act provides:

"S1

(1) For the purposes of this Act the following are licensable activities—

- (a) the sale by retail of alcohol,
- (b) [clubs]
- (c) the provision of regulated entertainment, and
- (d) the provision of late night refreshment."

16 To carry on a licensable activity, a premises licence granted under [Part 3](#) of the Act is generally required, [section 2](#) . Application for a premises licence must be made to the relevant

licensing authority, [section 17\(1\)](#) .

17 By virtue of [section 4](#) , the licensing authority must carry out all its functions under the Act (including its functions in relation to determining an application for a premises licence or an application for a variation of a premises licence) with a view to promoting the “licensing objectives”. These are set out in [section 4](#) as follows:

“S 4

(2) The licensing objectives are—

(a) the prevention of crime and disorder;

(b) public safety;

(c) the prevention of public nuisance; and

(d) the protection of children from harm.”

18 In carrying out its licensing functions, by virtue of [section 4\(3\)](#) the licensing authority must also have regard to its licensing statement published under [section 5](#) and any guidance issued by the Secretary of State under [section 182](#) .

19 [Section 182](#) obliges the Secretary of State to issue guidance to licensing authorities on the discharge of their functions under the Act. Guidance was issued in July 2004 (“the Guidance”). It was updated in June 2007 but it is the original guidance that is relevant in this case. In any event, none of the changes made are material to the issues I have to determine.

20 The Foreword says that the Guidance

“is intended to aid licensing authorities in carrying out their functions under the 2003 Act and to ensure the spread of best practice and greater consistency of approach. This does not mean we are intent on eroding local discretion. On the contrary, the legislation is fundamentally based on local decision-making informed by local knowledge and local people. Our intention is to encourage and improve good operating practice, promote partnership and to drive out unjustified inconsistencies and poor practice.”

21 As the Guidance says in paragraph 1.7, it does not replace the statutory provisions of the Act or add to its scope. Paragraph 2.3 says:

“Among other things, section 4 of the 2003 Act provides that in carrying out its functions a licensing authority must have regard to guidance issued by the Secretary of State under section 182. The requirement is therefore binding on all licensing authorities to that extent. However, it is recognised that the Guidance cannot anticipate every possible scenario or set of circumstances that may arise and so long as the Guidance has been properly and carefully understood and considered, licensing authorities may depart from it if they have reason to do so. When doing so, licensing authorities will need to give full reasons for their actions. Departure from the Guidance could give rise to an appeal or judicial review, and the reasons given will then be a key consideration for the courts when considering the lawfulness and merits of any decision taken.”

22 An application to the licensing authority for a premises licence must be accompanied by an operating schedule in the prescribed form including a statement of the matters set out in [section 17\(4\)](#) which are as follows:

- “(a) the relevant licensable activities,
- (b) the times during which it is proposed that the relevant licensable activities are to take place,
- (c) any other times during which it is proposed that the premises are to be open to the public,
- (d) where the applicant wishes the licence to have effect for a limited period, that period,
- (e) where the relevant licensable activities include the supply of alcohol, prescribed information in respect of the individual whom the applicant wishes to have specified in the premises licence as the premises supervisor,
- (f) where the relevant licensable activities include the supply of alcohol, whether the supplies are proposed to be for consumption on the premises or off the premises, or both,
- (g) the steps which it is proposed to take to promote the licensing objectives,
- (h) such other matters as may be prescribed.”

23 [Section 18](#) deals with the determination of an application for a premises licence. [Section 35](#) deals in very similar terms with the determination of an application to vary a premises licence. It will be sufficient only to set out here the provisions of [s 18](#) .

24 [Section 18\(2\)](#) provides that, subject to [subsection \(3\)](#) , the authority must grant the licence in accordance with the application subject only to:

- “(a) such conditions as are consistent with the operating schedule accompanying the application,
- and
- (b) any conditions which must under section 19, 20 or 21 be included in the licence.”

25 [Section 19](#) deals with premises licences which authorise the supply of alcohol. Such licences must include certain conditions ensuring that every supply of alcohol is made or authorised by a person who holds a personal licence and that no supply of alcohol is made when there is no properly licensed designated premises supervisor. [Sections 20 and 21](#) are not relevant to this claim.

26 [Section 18\(3\)](#) provides that where relevant representations are made, the authority has certain specified obligations. In so far as is relevant to this appeal “relevant representations” are defined in [section 18\(6\)](#) as follows:

- “(6) For the purposes of this section, “relevant representations” means representations which—
- (a) are about the likely effect of the grant of the premises licence on the promotion of the licensing objectives,
- (b) meet the requirements of subsection (7),
- (c)”

27 [Subsection \(7\)](#) provides:

(7) The requirements of this subsection are—

(a) that the representations were made by an interested party or responsible authority within the period prescribed under section 17(5)(c),

(b) that they have not been withdrawn, and

(c) in the case of representations made by an interested party (who is not also a responsible authority), that they are not, in the opinion of the relevant licensing authority, frivolous or vexatious.

28 Where relevant representations are made, the authority must hold a hearing to consider them unless the authority, the applicant and each person who has made representations agrees that a hearing is unnecessary. By virtue of [section 18\(3\)\(b\)](#) , the authority must also:

“(b) having regard to the representations, take such of the steps mentioned in subsection (4) (if any) as it considers necessary for the promotion of the licensing objectives.”

29 [Section 18\(4\)](#) provides:

“(4) The steps are—

(a) to grant the licence subject to—

(i) the conditions mentioned in subsection (2)(a) modified to such extent as the authority considers necessary for the promotion of the licensing objectives, and

(ii) any condition which must under section 19, 20 or 21 be included in the licence;

(b) to exclude from the scope of the licence any of the licensable activities to which the application relates;

(c) to refuse to specify a person in the licence as the premises supervisor;

(d) to reject the application.”

30 Conditions are modified for the purposes of [subsection \(4\)\(a\)\(i\)](#) if any of them is altered or omitted or any new condition is added.

31 During the currency of a premises licence, by virtue of [section 51](#) , an interested party (broadly speaking, a local resident or business) or a responsible authority (police, fire, environmental health etc.) may apply to the relevant licensing authority for a review of the licence on a ground which is relevant to one or more of the licensing objectives. By virtue of [section 52](#) , a hearing must be held to consider the application and any relevant representations and the authority must take such steps from a specified list as it considers necessary for the promotion of the licensing objective. The steps range from modifying the conditions of the licence to suspending it or revoking it completely.

32 The Act makes provision in [Part 5](#) for “permitted temporary activity” which, loosely speaking, is a form of ad hoc licensing to cover licensable activities which are not covered by a more general licence. The system involves proper notification of an event to the licensing authority and the police. Provided the applicable number of temporary event notices has not been exceeded and the police do not intervene, the event is automatically permitted. Temporary event notices can

only be given in respect of any particular premises 12 times in a calendar year and the period for which each event lasts must not exceed 96 hours.

33 [Section 181](#) provides for appeals to be made against decisions of the licensing authority to a magistrates' court which is, of course, how the decisions in relation to which judicial review is sought in this case came to be made.

The detail of the claim

34 The Claimant submits that in making its decision to allow the appeal in relation to the premises licence, the Magistrates' Court failed in a number of respects to take account of the changes that the new licensing regime has made and failed to adopt the approach required by the Act. It is further submitted that the magistrates failed properly to consider and take into account the Guidance.

35 There is no doubt that the Guidance is relevant in the magistrates' decision making. As I have set out above, [section 4\(3\)](#) requires the licensing authority to "have regard" to the Guidance. By extension, so must a Magistrates' Court dealing with an appeal from a decision of the licensing authority. The Guidance says:

"10.8 In hearing an appeal against any decision made by a licensing authority, the magistrates' court concerned will have regard to that licensing authority's statement of licensing policy and this Guidance. However, the court would be entitled to depart from either the statement of licensing policy or this Guidance if it considered it is justified to do so because of the individual circumstances of any case."

36 Mr Pickup submits that although the Guidance is not binding and local variation is expressly permitted, it should not be departed from unless there is good reason to do so.

37 Mr Flood for the First Interested Party submits that the Guidance simply serves to provide information for the magistrates and provided that they have had regard to it, that is sufficient. He also points out that, in some respects (as is clear from the wording of the Guidance), the Guidance is a statement of Government belief rather than proved fact. Inviting attention to the judgment of Beatson J in *J. D. Weatherspoon plc v Guildford Borough Council* [2006] EWHC 815 (Admin), he identifies that different policy elements in the Guidance may pull in different directions in a particular case, flexibility and customer choice potentially conflicting with the need to prevent crime and disorder. He submits that provided that the magistrates consult the Guidance, they do not need to use it as "a decision making matrix that the deciding Court has to sequentially address in making its decision in the manner it would if considering a section of a statute".

38 There is no doubt that regard must be had to the Guidance by the magistrates but that its force is less than that of a statute. That is common ground between the parties. The Guidance contains advice of varying degrees of specificity. At one end of the spectrum, it reinforces the general philosophy and approach of the Act. However, it also provides firm advice on particular issues, an example being what could almost be described as a prohibition on local authorities seeking to engineer staggered closing times by setting quotas for particular closing times. I accept that any individual licensing decision may give rise to a need to balance conflicting factors which are included in the Guidance and that in resolving this conflict, a licensing authority or magistrates' court may justifiably give less weight to some parts of the Guidance and more to others. As the Guidance itself says, it may also depart from the Guidance if particular features of the individual case require that. What a licensing authority or magistrates' court is not entitled to do is simply to *ignore* the Guidance or fail to give it any weight, whether because it does not agree with the Government's policy or its methods of regulating licensable activities or for any other reason. Furthermore, when a magistrates' court is entitled to depart from the Guidance and justifiably does so, it must, in my view, give proper reasons for so doing. As paragraph 2.3 of the Guidance says in relation to the need for licensing authorities to give reasons:

"When [departing from the Guidance], licensing authorities will need to give full reasons for their actions. Departure from the Guidance could give rise to an appeal or judicial

review, and the reasons given will then be a key consideration for the courts when considering the lawfulness and merits of any decision taken.”

This is a theme to which the Guidance returns repeatedly and is a principle which must be applicable to a magistrates' court hearing an appeal as it is to a licensing authority dealing with an application in the first instance. I agree with Mr Flood for the First Interested Party that the magistrates did not need to work slavishly through the Guidance in articulating their decision but they did need to give full reasons for their decision overall and full reasons for departing from the Guidance if they considered it proper so to do.

39 In this case, Mr Pickup submits that proper attention to the Guidance would have helped the magistrates to come to a correct and reasonable decision and that they have failed to adhere to it without proper reason and failed to carry out their licensing function in accordance with the Act.

40 The foundation of the Claimant's argument is that the Act expects licensable activities to be restricted only where that is *necessary* to promote the four licensing objectives set out in [section 4\(2\)](#). There can be no debate about that. It is clearly established by the Act and confirmed in the Guidance. For example, in the Act, [section 18\(3\)\(b\)](#), dealing with the determination of an application for a premises licence, provides that where relevant representations are made the licensing authority must “take such of the steps mentioned in [subsection \(4\)](#) (if any) as it considers necessary for the promotion of the licensing objectives” (the steps in [subsection \(4\)](#) include the grant of the licence subject to conditions). [Section 34\(3\)\(b\)](#), dealing with the determination of an application to vary a premises licence, is in similar terms. The Guidance repeatedly refers, in a number of different contexts, to the principle that regulatory action should only be taken where it is *necessary* to promote the licensing objectives. In particular, it clearly indicates that conditions should not be attached to premises licences unless they are necessary to promote the licensing objectives, see for example paragraph 7.5 and also paragraph 7.17 which includes this passage:

“Licensing authorities should therefore ensure that any conditions they impose are only those which are necessary for the promotion of the licensing objectives, which means that they must not go further than what is needed for that purpose.”

41 The Guidance also refers a number of times to the need for regulation to be “proportionate”. This is not a term contained in the Act but if a regulatory provision is to satisfy the hurdle of being “necessary”, it must in my view be confined to that which is “proportionate” and one can understand why the Guidance spells this out.

42 Mr Pickup submits, and I accept, that the Act anticipates that a “light touch bureaucracy” (a phrase used in paragraph 5.99 of the Guidance) will be applied to the grant and variation of premises licences. He submits that this means that unless there is evidence that extended hours will adversely affect one of the licensing objectives, the hours should be granted. A prime example of this arises when an application for a premises licence is made and there are no relevant representations made about it. In those circumstances, [s 18\(2\)](#) obliges the licensing authority to grant the licence and it can only impose conditions which are consistent with the operating schedule submitted by the applicant. Mr Pickup says that such a light touch is made possible, as the Guidance itself says, by providing a review mechanism under the Act by which to deal with concerns relating to the licensing objectives which arise following the grant of a licence in respect of individual premises. He invites attention also to the existence of other provisions outside the ambit of the Act which provide remedies for noise, for example the issue of a noise abatement notice or the closure of noisy premises under the [Anti-Social Behaviour Act 2003](#). The Guidance makes clear that the existence of other legislative provisions is relevant and may, in some cases, obviate the need for any further conditions to be imposed on a licence. Paragraph 7.18 from the section of the Guidance dealing with attaching conditions to licences is an illustration of this approach:

“7.18 It is perfectly possible that in certain cases, because the test is one of necessity, where there are other legislative provisions which are relevant and must be observed by the applicant, no additional conditions at all are needed to promote the licensing objectives.”

43 The Guidance includes a section dealing with hours of trading which the Claimant submits further exemplifies the philosophy of the Act. It begins with paragraph 6.1 which reads:

“This Chapter provides guidance on good practice in respect of any condition imposed on a premises licence or club premises certificate in respect of hours of trading or supply.”

44 It continues:

“6.5 The Government strongly believes that fixed and artificially early closing times promote, in the case of the sale or supply of alcohol for consumption on the premises, rapid binge drinking close to closing times; and are a key cause of disorder and disturbance when large numbers of customers are required to leave premises simultaneously. This creates excessive pressures at places where fast food is sold or public or private transport is provided. This in turn produces friction and gives rise to disorder and peaks of noise and other nuisance behaviour. It is therefore important that licensing authorities recognise these problems when addressing issues such as the hours at which premises should be used to carry on the provision of licensable activities to the public.

6.6 The aim through the promotion of the licensing objectives should be to reduce the potential for concentrations and achieve a slower dispersal of people from licensed premises through longer opening times. Arbitrary restrictions that would undermine the principle of flexibility should therefore be avoided. We will monitor the impact of the 2003 Act on crime and disorder and the other licensing objectives. If necessary in the light of these findings, we will introduce further legislation with the consent of Parliament to strengthen or alter any provisions.”

45 The Claimant submits that in imposing shorter hours than it requested for the supply of alcohol and for entertainment, the magistrates went beyond that which was necessary for these premises and failed to take into account that, as the Guidance explains, longer opening times would in fact reduce the potential for problems arising from licensed premises whereas curtailing operations could run counter to the licensing objectives.

46 The magistrates' Reasons record their acceptance that there had been no reported complaint in regard to public nuisance and that the extended hours had operated without any incidents. The magistrates also record in the Reasons, as I have already said, that they had attached little or no weight to the statements from witnesses of the appellant. Nothing is said about difficulties mentioned in evidence by the witnesses. As it was clearly incumbent on the magistrates at least to advert in broad terms to those matters that they took into account, it is fair to conclude in the circumstances that they proceeded upon the basis that there was no reliable evidence of actual problems linked to the premises either under the old licence or under the new revised licence. This was in line with the oral evidence of Police Sergeant Yehya (as recorded in the rather truncated notes of the legal advisor):

“1 reported incident for the site. No other incidents or complaints have been received. There are none in my file. There are no incidents we can directly link to the Saughall Hotel since previously open. There have been incidents locally but not linked to these premises.”

47 To judge by the Reasons therefore, what led the magistrates to impose restricted hours of operation was their forecast as to what would occur in the future in association with the premises, notwithstanding the absence of reliable evidence of past problems. The First Interested Party observes that the manager of the premises had given evidence that he intended in the summer to “make hay while the sun shines” and submits, correctly in my view, that the magistrates were entitled to take this apparent change of emphasis into account. However, Mr Flood further submits that the evidence of what had happened in the winter months was therefore of “little evidential value” in determining what was likely to happen in the future and I cannot wholly agree with him about this. Undoubtedly the fact that the Claimant intended in future to make more use

of the extended hours reduced the value of the premises' past record as a predictor of the future but it could not, in my view, be completely discarded by the magistrates. They still had to take into account that there had been extended hours for some months without apparent problems.

48 It is plain that the magistrates' particular concern was "migration" rather than problems generated by those coming directly to the premises for their evening out. Under the heading "The Four Licensing Objectives", they say that they accept that there have been no formal or recorded complaints against the premises "but feel that because of the concept of migration that public nuisance and crime and disorder would be an inevitable consequence of leaving the hours as granted by the Local Authority". Under the heading "Migration/Zoning" they begin:

"The Saughall Hotel due to its location and the fact that a number of license premises in the surrounding area have reduced hours to that of the Saughall Hotel we believe that as a consequence of this would be that customers would migrate from these premises to the Saughall Hotel. [sic]"

and end:

"We appreciate that the extended hours have been in operation for several months without any incidents but have taken into consideration this was during the Winter months and inevitable numbers will increase in the Summer causing nuisance/criminality."

49 They reiterate their concern under the heading "Nuisance (Existing/Anticipated)" saying that they "feel that public nuisance will be inevitable".

50 The Claimant complains that the magistrates' treatment of the issue of "migration" was fundamentally flawed on a number of grounds.

51 Firstly, it submits that there was no evidence on which the magistrates could find that customers *would* come to the premises when other premises in the vicinity closed or cause trouble and their concerns were no more than inappropriate speculation. The Claimant's position was that there was no evidence of migration to their premises. There were no recorded complaints of any kind about the premises let alone specifically about migration. Ms Lesley Spencer who lives opposite the premises and is the Secretary of the Saughall Massie Conservation Society gave evidence of her fear that customers would migrate but said that she did not think there had been any migration.

52 Apart from their own local knowledge, the only material on which the magistrates could possibly have formed their views about migration was what Police Sergeant Yehya said in evidence. According to the legal advisor's notes, whilst being cross-examined by Mr Kirwan, the sergeant gave evidence about the other licensed premises operating in the vicinity (which I have seen marked on a local map and which were within walking distance of the premises) and their closing hours and said that there were three assaults each week at one of the premises. The legal advisor records that he also said,

"We have staggered closing. This could cause problems it has the potential to cause difficulties in the area. I have a list of considerations but none would rank as high as crime, not even noise. No complaints have been made to me even regarding noise. One concern was dispersal. We gave people one hour to disperse and therefore reduced from 2.00 a.m. to 1.00 a.m.. 1.00 a.m. closing at 2. 280 people leaving premises. Other premises subject to high levels of crime *migration not an issue* ." [my italics]

53 I appreciate that this evidence acknowledged that staggered closing *could* cause problems but, had migration been a significant issue as opposed to a mere possibility, one can, I think, assume that the police would have made representations on that score, particularly given that they had plainly considered the impact of trading hours specifically and *had* initially objected to the even longer hours originally proposed by the Claimant. It is noteworthy that even when they were in opposition to the plans, it was never on the basis of migration of disruptive characters from other licensed premises and always simply on the basis of late noise from ordinary

customers of the premises dispersing. The absence of police objections before either the licensing authority or the Magistrates' Court seems to have surprised the magistrates who said so in their Reasons, commenting:

“We were surprised that the Police originally objected to the application but withdrew that objection after a slight variation of the terms.”

In so saying, they convey, in my view, not only their surprise about the Police approach but also their disagreement with it.

54 It was not open to the magistrates, in my view, to elevate what Sergeant Yehya said in the witness box to evidence that a problem with migration could reasonably be expected, nor do they say anything in their reasons which suggests that they did rely on his evidence in this way. The only concerns about migration were therefore the magistrates' own with perhaps some fears expressed by local residents though not on the basis of firm historical examples of migration to the premises.

55 It is clear from the Guidance that drawing 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 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. They must also scrutinise their own anxieties about matters such as noise and other types of public nuisance particularly carefully if the responsible authorities raise no objections on these grounds. These magistrates did recognise the absence of police objections which caused them surprise and they chose to differ from the police in reliance on their own views. The Claimant submits that in so doing they departed into the realms of impermissible speculation not only in concluding that there would be migration but also in concluding that in this case it would generate nuisance and disorder. The First Interested Party is correct in submitting that the Guidance accepts a link between migration and a potential breach of the licensing objectives but it is also clear from the Guidance that each case must be decided on its individual facts so the magistrates could not simply assume that if people came from other premises, there would be trouble.

56 The Claimant complains that the magistrates' treatment of the migration issue also flies in the face of the Guidance because firstly it was an improper attempt to implement zoning and secondly it ignored the general principle of longer opening hours.

57 Zoning is the setting of fixed trading hours within a designated area so that all the pubs in a given area have similar trading hours. The problem created by it, as demonstrated by experience in Scotland, is that people move across zoning boundaries in search of pubs opening later and that causes disorder and disturbance. The Guidance says, at paragraph 6.8:

“The licensing authority should consider restricting the hours of trading only where this is necessary because of the potential impact on the promotion of the licensing objectives from fixed and artificially-early closing times.”

It stresses that above all, licensing authorities should not fix predetermined closing times for particular areas.

58 I am not convinced that the magistrates' limiting of the Claimant's operational hours can properly be described as implementing zoning which, in my view, is a term that is more appropriate to describe a general policy imposed by a licensing authority for a defined area than an individual decision of this type, albeit made with reference to the opening hours of other premises in the vicinity and having the effect of imposing the same hours as those premises.

59 What has more weight, however, is the Claimant's submission that the magistrates failed to give proper weight to the general principle of later opening hours and to the intention that the approach to licensing under the Act would be to grant the hours sought for the premises unless it was necessary to modify them in pursuit of the licensing objectives. The Reasons include a heading “Flexibility” under which the magistrates say simply:

“We have considered the concept of Flexibility.”

In so saying, they may be referring to the sort of flexibility to which reference is made, for example, in paragraph 6.6 of the Guidance (see above) but their shorthand does not enable one to know to what conclusions their consideration of the concept led them in this case nor whether they had reliably in mind that the starting point should be that limitations should not be imposed upon the licence sought unless necessary to promote the licensing objectives rather than that the licensing authority or the court should form its own view of what was necessary for the premises and only grant that.

60 The Claimant was seeking to have the freedom to open later on certain occasions when the trade justified it or, as the magistrates put it, “the application for extended hours was to allow *flexibility* to open later on certain occasions”. As the First Interested Party would submit, the magistrates may have inferred from Mr Miller's comment about making hay that the premises would *often* be open late rather than this happening only infrequently in accordance with the picture presented to the licensing authority. If this was their inference, however, it is odd that they considered that the Claimant could deal with the position by applying for a temporary certificate because this would have allowed the premises to open later on only a limited number of occasions. They make no express finding in their Reasons as to the frequency on which they considered the Claimant intended to keep the premises open late. This was material not only to the degree of disturbance that might be caused generally by late opening but also specifically to the issue of whether there would be migration. It would seem unlikely that customers from nearby pubs would bother to walk or even drive to the Saughall Hotel in search of another drink at the end of their evenings unless the Saughall Hotel was open late sufficiently frequently to lead them to a reasonable expectation that their journey would be worthwhile.

61 The magistrates' comment about the temporary certificate also seems to me to be an example of a failure by them to adopt the lighter approach that the Act dictated and to allow flexibility to those operating licensed premises unless the licensing objectives required otherwise. Temporary certificates would be a cumbersome and restricted means of achieving flexibility, not responsive to the day to day fluctuations in business, only available a limited number of times, and not in line with the philosophy of the Act.

62 There is no consideration in the magistrates' decision of whether the imposition of conditions to control noise or other nuisance (which were going to be imposed) would be sufficient to promote the licensing objectives without reducing the operating hours of the premises. Given that the Act dictates that only such steps as are necessary should be taken with regard to the variation of the terms of operation sought, such consideration was required.

My overall conclusions

63 It would be wrong, in my judgment, to say that the magistrates failed to take account of the licensing objectives. At the outset of their Reasons, they correctly identify those which are relevant. Similarly, as the First Interested Party submits, whilst they did not *articulate* that the curtailment of the hours sought was “necessary” to promote those objectives, it is implied in their decision that they did take this view and it can also be inferred from their comment that because of the concept of migration, public nuisance and crime and disorder would be “an inevitable consequence” of leaving the hours as granted by the Local Authority. However, in my view their approach to what was “necessary” was coloured by a failure to take proper account of the changed approach to licensing introduced by the Act. Had they had proper regard to the Act and the Guidance, they would have approached the matter with a greater reluctance to impose regulation and would have looked for real evidence that it was required in the circumstances of the case. Their conclusion that it was so required on the basis of a risk of migration from other premises in the vicinity was not one to which a properly directed bench could have come. The fact that the police did not oppose the hours sought on this basis should have weighed very heavily with them whereas, in fact, they appear to have dismissed the police view because it did not agree with their own. They should also have considered specifically the question of precisely how frequently the premises would be likely to be open late and made findings about it. They would then have been able to compare this to the winter opening pattern in relation to which they accepted there had been no complaints and draw proper conclusions as to the extent to which the summer months would be likely to differ from the winter picture. Having formed a clear view

of how frequently late opening could be anticipated, they would also have been able to draw more reliable conclusions about the willingness of customers from further afield to migrate to Saughall Massie. They proceeded without proper evidence and gave their own views excessive weight and their resulting decision limited the hours of operation of the premises without it having been established that it was necessary to do so to promote the licensing objectives. In all the circumstances, their decision was unlawful and it must be quashed.

64 I have said little so far about what appears in the magistrates' response for the judicial review proceedings. The various documents comprising the response did nothing to allay my concerns about the magistrates' decision. Indeed quite a lot of what was said reinforced my view that the magistrates had largely ignored the evidence and imposed their own views. They refer in their response to incidents about which the residents had given evidence and to the residents not having complained formally for various reasons, for example because it was Christmas or because there was thought to be no point. If the magistrates considered these matters to be relevant, it was incumbent on them to say so clearly in their reasons whereas they there recorded their acceptance that there had been no formal or recorded complaints, that the extended hours had been in operation for several months without incidents and that they had attached little or no weight to the statements of the witnesses of the appellant. They also refer extensively in their response to their thoughts on migration, including that people may come from further afield than the pubs in the vicinity in cars. Particularly concerning is that they refer repeatedly to a perceived issue over police resources which is not something that, as far as I can see, had been raised by Sergeant Yehya or explored with him in evidence. Mr Beere says in his statement for example, "... there is also the question of Police resources and their ability to effectively police this area especially at weekends with already stretched resources being deployed in Hoylake".

65 Reference is made in the response documents to the court feeling that the Brewery's proposed opening hours contradicted the acceptable activities of a family pub and that the Saughall Hotel is "a village pub and not a night spot in the centre of town". For the court to take matters such as this into account seems to me to be an interference with the commercial freedom of the premises of a type that was not permissible under the Act unless it was necessary to promote the licensing objectives. I appreciate that the magistrates' response seems to suggest that they feared that a different type of customer was being courted or would invite themselves once it got too late for families but this does not seem to have been founded on anything that was given in evidence so was really not much more than speculation.

66 Mr Beere's statement ends with a reference to the Brewery wanting to make hay while the sun shines, of which he says, "I believe that this statement was indicative of the Brewery's attitude to local residents and to the general management of the premises.". Given that problems with or in the vicinity of the premises had been almost non-existent and that the magistrates had not seen fit to make reference in their Reasons to any difficulties caused by the Hotel, it is hard to see how this belief could be justified but it does perhaps exemplify the approach of the magistrates.

67 I have considered quite separately the argument as to whether the hours of opening can be regulated as part of the licensing of premises as opposed to the hours during which licensable activities take place. It was suggested during argument that there was no power to regulate the time by which people must leave the premises. I cannot agree with this. Clearly keeping premises open (as opposed to providing entertainment or supplying alcohol there) is not a licensable activity as such. However, the operating schedule which must be supplied with an application for a premises licence must include a statement of the matters set out in [section 17\(4\)](#) and these include not only the times when it is proposed that the licensable activities are to take place but also "any other times during which it is proposed that the premises are to be open to the public". On a new grant of a premises licence, where there are no representations the licensing authority has to grant the application subject only to such conditions as are consistent with the operating schedule. I see no reason why, if it is necessary to promote the licensing objectives, these conditions should not include a provision requiring the premises to be shut by the time that is specified in the operating schedule. If representations are made and the licensing authority ultimately grants the application, it can depart from the terms set out in the operating schedule when imposing conditions in so far as this is necessary for the promotion of the licensing objectives. It must follow that it can impose an earlier time for the premises to be locked up than the applicant wished and specified in its operating schedule. It is important to keep in mind in this regard that the role of the licensing authority and, if there is an appeal, the court, has two dimensions: the fundamental task is to license activities which require a licence and the associated task is to consider what, if any, conditions are imposed on the applicant to ensure the

promotion of the licensing objectives. A requirement that the premises close at a particular time seems to me to be a condition just like any other, such as keeping doors and windows closed to prevent noise. I see no reason why a condition of closing up the premises at a particular time should not therefore be imposed where controlling the hours of the licensable activities on the premises (and such other conditions as may be imposed) is not sufficient to promote the licensing objectives.

The costs argument

68 In the light of my conclusion that the magistrates' decision is unlawful and therefore must be quashed, it is not appropriate for me to consider the arguments in relation to their costs order further. The appellants had given an undertaking to the Licensing Authority that they would not seek costs against the Licensing Authority and they sought the entirety of their costs of the appeal from the Claimant. The magistrates granted that order and the Claimant submits that that was not an order that was open to them. Whatever the merits of that argument, the magistrates' order in relation to costs cannot now stand. The basic foundation for the order for costs was that the appeal had succeeded and the Claimant had lost. That position has now been overturned and the costs order must go along with the magistrates' main decision. The magistrates would have had no reason to grant costs against the Claimant if the appeal had been dismissed.

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