

**Licensing Update**

*Roy Light considers two cases that challenge the technical propriety of local authority action and reviews new editions of some leading licensing texts.*

Challenges to the validity of the actions of public bodies in licensing matters continue to come before the courts; in respect of failure properly to follow procedural requirements under the legislation and, more fundamentally, by challenging the lawful adoption of the legislation itself. In *Funky Mojoe* the procedural failures were not considered by the court to invalidate the licensing committee's decision and in *Call A Cab* a similar conclusion was reached in respect of procedural failings by the authority when resolving to adopt taxi legislation.

Licensing practitioners are fortunate in the scope and quality of the books available to them and the past few months have seen publication of new editions of some of the leading licensing texts. These are reviewed below.

**Legal challenges to Local Authority decisions**

The case of *Mu Mu*, mentioned in a previous update (*SJ 157/26*, 2 July 2013, page 24), has been joined by a number of other such challenges to review decisions made by local authorities. In *Funky Mojoe v London Borough of Redbridge* it was argued that the licensing committee had no jurisdiction to consider the review application as the notice advertising the review was defective in that it failed in two respects to comply with the requirements of Licensing Act 2003 (Premises Licences etc) Regulations 2005 and further it referred to two separate premises licences. First, the 'grounds' for the review were not set out in the notice which referred only to the licensing objectives engaged and, secondly, three lines of the notice were typed in 14-font rather than the required 16-font. The committee rejected these and other submissions.

On appeal the District Judge accepted that the notice was defective but held that the court is required to look at the consequences of non-compliance in considering whether the committee had jurisdiction and the decision a nullity (*R v Soneji* 2006 1 AC 340). In deciding what Parliament intended the judge accepted the Council's submissions that the court must look at among other things whether there was substantial performance of the statutory requirement (in this case 'yes' as the review was fully advertised albeit with errors) and if there was any real, rather than hypothetical, prejudice or injustice (in this case 'no'). The judge also held that a person who could read 16-font could read three lines mistakenly written in 14-font.

The judge went on say that there was strong public interest in the case being dealt with on its substantive merits without further delay and that in the absence of evidence of substantial prejudice or injustice to the licence holder the non-compliance did not come near the degree or status that would go to the jurisdiction of the committee. Consequently, despite the defects in the

notice, it was held that the committee had jurisdiction to consider the review. The judge also held that on the facts it was proper for the review and notice to cover both premises licences. An appeal has been lodged to the High Court.

In *Aylesbury Vale District Council v Call A Cab* [2013] EWHC 3756 (Admin) the Divisional Court considered the effect of failure by the authority to follow the statutory procedures laid down for adoption of the Local Government (Miscellaneous Provisions) Act 1976. A taxi company and its director, were prosecuted under s.46(1)(d) of the Act for the offence of operating a private hire vehicle without a licence. The District Judge dismissed the prosecution on the basis that the 1976 Act had not been lawfully adopted some 24 years previously in that the council had failed to send a copy of the newspaper notice to a number of parish councils.

Aylesbury Vale could not prove it had notified the parish councils as its correspondence files had been destroyed. Aylesbury produced minutes from a 1989 meeting which had authorised its secretary and solicitor to serve the notices but could offer no evidence that any parish had been notified. The council argued that it could prove the newspaper notices had been placed, that there was no reason why the parish councils would not have been sent copies and that the presumption is that official acts have been carried out correctly.

The defendant director searched the archives and produced 12 of 112 parish council records – none of which recorded receipt of the relevant notice. The defence submitted that there was no need to interrogate all 112 parish records as an inference could be drawn that copies of the notice had not been sent to the parish councils. In any event, the defence argued, non-receipt by one parish council was sufficient to vitiate the resolution. The prosecution argued unsuccessfully that the case of *R v Secretary of State for the Home Department ex parte Jeyanthan* [2000] 1 WLR 354 demonstrated that the Courts do not treat every procedural lapse as fatal to the validity of administrative acts.

The Divisional Court, while accepting that it was not irrational for the District Judge to find on the evidence before him that the authority had breached the notification requirements, held that he should have gone on to consider the consequences of non-compliance. The first step would be to determine the imputed intention of Parliament as to the effect of procedural non-compliance and whether there was any prejudice to those making the challenge. It found that:

*... reading the statute as a whole and recognising the complete lack of prejudice to the defendants from non-compliance with the statutory requirements beyond the fact that non-compliance might give them an argument whereas validity would deprive them of it ... if there is substantial compliance with the statutory provision, the act is not invalid ... I am satisfied that this is a statute in respect of which substantial compliance with the requirement means that the act is valid even if the compliance has not in all respects been completed.*

The Court remitted the case back to the District Judge to consider these matters.

## **Books**

New editions of three licensing books and a supplement for a fourth have been published. While the erudite and admirably comprehensive textbook *Manchester on Alcohol and Entertainment Licensing Law* (excellent value at £85 and for which a supplement has recently been published) forsakes its jaunty cover for the third edition, *Paterson's Licensing Acts* has abandoned 121 years of plain brown wrapper for a rather fetching more graphic approach. More importantly, the editors of *Paterson's* are once again to be congratulated on producing the definitive up-to-date reference work on alcohol, entertainment and gambling law (with useful sections on taxis and street trading also provided). It remains an indispensable tool for licensing practitioners and its two volumes (plus CD-ROMs) represent money well spent at £295.

A welcome new edition of *Licensed Premises: Law, Practice and Policy* incorporates *Policy* into the title to reflect the nature and tone of the volume. Kolvin and his contributors have called upon their vast collective experience to produce a fascinating practical and theoretical analysis of the legal regulation of licensed premises. The book is accessible and well written and is highly recommended at £115. A second edition of the *Licensing Law Handbook* presents, as with the first edition, a useful and manageable guide to alcohol and entertainment licensing law and procedure. It achieves very well its aim of producing a clear and concise practical guide and is good value at £63.

**Prof Roy Light** is a licensing barrister practising from St John's Chambers, Bristol (roy.light@stjohnschambers.co.uk)