

**Licensing Committees :**

**Decision Making**

**and**

**Rules of Natural Justice**

# **Members Code of Conduct**

- **Sets the standards that members must observe**
- **Treat others with respect**
- **Cannot bully or intimidate anyone**
- **Cannot compromise the impartiality of an officer**
- **Give proper reasons for all decisions**
- **The ‘prejudicial interest’ concept**

# Members Code of Conduct

A **prejudicial** interest is :

*‘one which a member of the public, with knowledge of the relevant facts, would reasonably regard as so significant that it is likely to prejudice your judgement of the public interest’*

**NB public perception is paramount**

# **Prejudicial Interest**

- **‘prejudicial’ in the eyes of the public**
- **Avoid discussion prior to a Hearing**
- **Preconceived bias for or against the outcome**
- **Where an interest is declared, it is not simply a case of not taking part**
- **Member(s) should withdraw from the room**

# Prejudicial Interest

*2 members of Glen Parva Parish Council faced an inquiry after they gave a £300 grant to a village club of which they were members. Both councillors declared an interest and did not speak or vote on the grant, but an investigation was launched because they had remained in the room where the decision was made. After an inquiry both were found to have breached the code.*

# Conduct of Committees

- **Each case on its own merits**
- **Cannot fetter your discretion**
- **Must demonstrate a willingness to depart from policy**
- **Wednesbury principles of reasonableness**
- **Decisions can be subject to judicial review**
- *Reid v Secretary of State for Scotland*

# **Reid v Secretary of State for Scotland**

## **Grounds for Judicial Review**

- **Departing from procedures**
- **Decision found to be perverse or disproportionate**
- **Legal deficiency**
- **Absence of, or insufficient evidence**
- **Taking into account an irrelevant matter**
- **Not taking into account something relevant**

# Conduct of Committees

- **Policies cannot be applied rigidly or inflexibly**
- **Must demonstrate that you are prepared to depart from your policy**
- ***‘why should we treat you differently from everyone else ?’***
- **Not taking into account something you should have**
- **Taking into account something you should not**
- **Officers making recommendations**

# Human Rights Act 1998

- Proportionality
- All decisions have to be ‘proportionate’
- Striking a fair balance between the rights of the individual and the interests of the wider community
- The rights of the person to retain their licence has to be balanced against the rights of the public to be safeguarded
- It is all about defining that ‘fair balance’
- The 3-point test for proportionality

# Proportionality

- **Have relevant and sufficient reasons been advanced in support of the decision ?**
- **Was there a less restrictive alternative ?**
- **Has there been a measure of procedural fairness in the decision-making process ?**

# **Rules of Natural Justice**

**There are three basic principles:**

- The other party must be informed of the allegation(s) being made against them.**
- All parties must be given a chance to put their case.**
- A person who has an interest in the matter must be disqualified from hearing it.**

# Right to a fair hearing

## Hillingdon LBC v Commission for Racial Equality

- **The right to a fair hearing is :**
- *A right to be informed of the case one has to meet*
- *A right to have a reasonable time in which to prepare representations*
- *A right to have those representations genuinely taken into account by the decision maker*

# Right to a fair hearing

## Stansbury v Datapulse plc

*‘a member of a tribunal who does not appear to be alert to what is being said during the course of the hearing may cause the hearing to be unfair’ because each member must be concentrating on the case before him or her’*

## Kraska v Switzerland

*‘each tribunal is under a duty to conduct a proper examination of the submissions, arguments and evidence produced by the parties without prejudice to its assessment of whether they are relevant to its decision’*

# Bias and pre-determination

- **There must be no bias or even the appearance of bias in any particular outcome**
- **Hannam v Bradford City Council**
- *‘It does not matter what actually happened in the Committee room, but what the impartial bystander looking in thinks may have happened’*
- **Decision makers should avoid giving the appearance of having pre-judged the matter before hearing it.**
- **Members should therefore avoid, as far as possible, any public comment beforehand**

# **Localism Act 2011**

- **Prior indications of a view may not necessarily amount to a predetermination**
- **Local authorities have a duty to promote and maintain high standards of conduct**
- **Local decisions should be taken by locally elected people**
- **Members still have to act ‘fairly’**
- **Expressing an opinion can be different to predicting the outcome**
- **Avoid any hint of predetermination**

# Expressing a View

- Reading BC v Quietlynn Ltd
- **Two members had previously opposed sex shops**
- *‘the decision to refuse the application could only be overturned for bias if it could be shown that the Council had acted in such a way that it was clear that when the Panel came to consider the application its members had not exercised proper their proper discretion’*

# Decision making

- **Full and detailed reasons must be given**
- **Must be based on what has been heard**
- **Leisure Inns UK v Perth and Kinross**
- *‘behind every ground for refusal there have to be adequate reasons, and for those reasons there has to be a proper basis in fact, ie there must be adequate material to substantiate any ground of refusal’*
- **Legal advice given to Committee :**
- **Clarke v Kelly**

# Decision Making

## Risky Business v Glasgow Licensing Board (2000)

- *Decision contained words such as 'could give rise to' or 'likely to'. Court held that no proper reasons had been given, and there had been no material before the Board to support such a decision.*

## Selvarajan v Race Relations Board (1976)

- \* *Lord Denning said that every member of a judicial body must have access to all the evidence and papers in the case, and must have heard all the arguments and have come to his/her own conclusion*

# **General Principles**

- **A fair and unbiased mind**
- **No preconceived opinions**
- **Act without prejudice**
- **Impartiality**
- **Strike the right balance**
- **Treat all parties fairly**
- **try not to be adversarial**
- **It is not an 'us and them' scenario**

# Summary

- A committee hearing is not a court of law
- Proceedings should be informal
- Procedure must be followed
- A fair hearing is essential
- Come with an open mind
- Cannot be seen to determine the outcome until everyone has had their say
- Attach due weight to petitions and hearsay evidence
- Overriding duty to act in the interests of the wider community

# **Decision-making and the 'fit and proper person' test**

# Role of the local authority

- **Department for Transport Guidance :**
- *‘the aim of local authority licensing of taxis and private hire vehicles is to protect the public’*
- *It is important that anyone going home alone, at night, should be confident the driver does not have a criminal record for assault and that the vehicle is safe’*
- *‘the approach should not be too restrictive, and the trade should not be constrained by onerous licensing conditions’*

# Louise Casey's Report

- **Opening Statement :**
- *'When determining policy, setting standards and deciding how those standards will be enforced, the safety of the public should be the uppermost concern of any licensing and enforcement regime.'*

# Criminal Record Checks

- **Dft Guidance – on a statutory footing ?**
- *‘Passengers can expect to be carried in a vehicle which is safe, and which is driven by a driver that is able to do so, and is a fit and proper individual’*
- *‘Each case to be considered on its own merits’*
- *Offences of dishonesty, violence or sexual offences*
- *Offences against :*
- *Children*
- *People with special needs*
- *Other vulnerable people*

# Suspension or revocation

- **S.61 1976 Act : Drivers**
- **Can suspend, revoke, (or refuse to renew)**
- **If the driver has been convicted of an offence involving dishonesty, indecency or violence**
- **Any offence or non-compliance by the driver**
- **Any other reasonable cause**

# Case law on 'fit and proper' test

- **Adamson v Waveney District Council**
- *'once some, or all of the spent convictions are admitted in evidence before the local authority committee, the applicant is entitled to be heard, not by way of suggesting that the convictions were incorrectly arrived at, but in order to persuade the committee that they are irrelevant by reason of their age, circumstances or lack of seriousness that they should not jeopardise his application. All of that is simple natural justice'*

# Case law on 'fit and proper' test

- **Adamson v Waveney District Council**
- *'the committee has to come to its own dispassionate conclusions having in mind, not only the interests of the applicant as a person with spent convictions, but also the interests of the public in whose interests the powers were being exercised'*

## Case law on 'fit and proper' test

- **McCool v Rushcliffe Borough Council**
- *'it is for the applicant to establish that he is a fit and proper person on the balance of probabilities. The real question to be decided is whether or not, on the balance of probabilities, the applicant is a fit and proper person to be granted a licence. This does not require the view to be formed as to whether the person had, in all likelihood, committed a specific offence*

# Case law on 'fit and proper' test

- **McCool v Rushcliffe Borough Council**
- *'one must, it seems to me, approach this question bearing in mind the objectives of the licensing regime which is plainly intended to ensure, so far as possible, that those licensed to drive private hire vehicles are suitable persons to do so, namely that they are safe drivers, with good driving records and adequate experience, sober, mentally and physically fit, honest, and not persons who would take advantage of their employment to abuse or assault passengers'*

# Case law on 'fit and proper' test

- **Nottingham City Council v Farooq**
- *'it is not open to local authorities when dealing with applications to review an individual's convictions. An applicant for a licence can explain the circumstances of the offences for which he was convicted, and put forward mitigating circumstances relating to them, but the authority cannot go behind those convictions'*

# Case law on 'fit and proper' test

- **Leeds City Council v Hussain**
- *'the Council's focus must be on the impact of the licensee's character on members of the public'*
- *'this does not require the consideration of the personal circumstances of the driver as they are irrelevant'*

# Case law on 'fit and proper' test

- **Cherwell v Anwar**
- **Driver's licence was refused on renewal**
- **Conviction for assault on his wife**
- **Magistrates, on appeal, took into account 'hardship' issues**
- *'magistrates must accept the Council's policy and apply it as if they were standing in the shoes of the council considering the application'*
- *'in this case the court took into account an irrelevant reason, which no reasonable court would have done'*

# Where does the burden of proof lie in proving 'fitness' ?

- **Brighton and Hove v Kaivanpor**
- Driver's licence was revoked
- Magistrates dismissed appeal
- High Court ruled that :
  - *The burden of proof in taxi licence revocation appeals is on the council to show that an individual is not a fit and proper person*
  - *The Magistrates had erred in placing the burden on the driver to satisfy them he was a fit and proper person when considering the revocation of his licence for 'any other reasonable cause'*

# **Final thought . . .**

- **When determining a matter, if in doubt always err on the side of refusal.**
- **It is easier to defend a decision on appeal in the Magistrates Court than in a Coroners Court .**