

Licensing Committees :

Decision Making

and

Rules of Natural Justice

Role of the local authority

- **Dft 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’*
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Louise Casey opening statement

The safety of the public should be the uppermost concern of any licensing and enforcement regime: when determining policy, setting standards and deciding how they will be enforced.

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 reasons for all decisions**
 - **The ‘prejudicial interest’ concept**
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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**
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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**
 - *‘a decision so unreasonable that no reasonable authority could ever have come to it’*
 - **Reid v Secretary of State for Scotland**
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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**
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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 shouldn’t**
 - **Officers making recommendations**
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Case law on policy

Eastleigh BC v Betts

- *‘Where an Authority has a discretion, it is entitled to adopt a policy which indicates how it proposes to exercise that discretion. However, such a policy is liable to challenge if the effect is that the decision maker ‘shuts his ears’ to an application, or class of applicants’*

R v Hampshire County Council

- *‘the law requires that each case must be considered in the light of the policy but not so that the policy automatically determines the outcome’*
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Human Rights Act 1998

Article 1:

- *‘every person is entitled to the peaceful enjoyment of his possessions’*

Article 6:

- *‘everyone is entitled to a fair and impartial public hearing’*

Article 8:

- *‘everyone has the right to respect for his private and family life’*

NB it is unlawful to act in a way that is incompatible with a Convention right

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
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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 ?**
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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.**
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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*
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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**
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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**
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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’*
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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**
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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*
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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**
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Keeping an open mind

- **Must come to a hearing with an open mind**
 - **Ideally, do not express any views beforehand**
 - **Group meetings are not necessary**
 - **Not influenced by the way officers present the case**
 - **Officer briefings in advance should be on procedural points only**
 - **Asking officers to provide additional evidence**
 - **Merits of case must not be discussed with officers**
 - **Be aware of ‘lobbying’**
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Summary

- **A Hearing is not a court of law**
 - **Proceedings should be informal**
 - **Procedure must be followed**
 - **A fair hearing is essential**
 - **Equal opportunity must be afforded to all parties**
 - **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**
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