



Select Committee on the Licensing Act 2003

Oral evidence: The Licensing Act 2003

Tuesday 1 November 2016

11.40 am

Watch the meeting

Members present: Baroness McIntosh of Pickering (The Chairman); Lord Blair of Boughton; Lord Brooke of Alverthorpe; Lord Davies of Stamford; Baroness Eaton; Lord Foster of Bath; Baroness Greender; Baroness Henig; Lord Mancroft; Lord Smith of Hindhead; Baroness Watkins of Tavistock.

Evidence Session No. 12

Heard in Public

Questions 124 - 132

Witnesses

Senior District Judge Emma Arbuthnot, Chief Magistrate; District Judge Elizabeth Roscoe, Westminster Magistrates' Court; and Sheena Jowett JP, Deputy Chairman, Magistrates' Association.

Examination of witnesses

Senior District Judge Emma Arbuthnot, District Judge Elizabeth Roscoe and Sheena Jowett JP.

Q124 **The Chairman:** Ladies, good morning, you are most welcome. I extend a warm welcome to you and thank you for being with us and giving evidence to our inquiry. A list of Members' interests relevant to the inquiry has been sent to you, and copies are available for you today. This session is open to the public and is being broadcast live in audio, and is subsequently accessible via the parliamentary website. You will be issued with a verbatim transcript of the evidence, which we will ask you to look at. It will then go on to the parliamentary website a few days after the session. Perhaps you would check the copy of the transcript for greater accuracy and inform us of any corrections. If there is anything you would like to amplify or supplement, let us know afterwards. We were expecting a photographer but they are either not coming or have been delayed, and it should not delay our proceedings.

To start the questions, from where you sit, are you content with the way the Licensing Act 2003 is currently functioning?

Senior District Judge Emma Arbuthnot: Yes. Initially, there was an upsurge in appeals, but that appears to have settled and we are getting many, many fewer, probably in the last five years. We did a bit of research before coming here today. For example, Westminster, which is a pretty busy area for licensed premises, is running about one effective appeal a year. We checked in one or two other areas. I think Cornwall has one a year, and in Norwich there are one or two a year. We are not talking about very many.

District Judge Elizabeth Roscoe: I agree. There was a big change and there were a lot, and then things settled down; it became a bit clearer and dropped off.

Sheena Jowett JP: The area I sit in is in west Wales: Ceredigion and Pembrokeshire. We see very few appeals, and in those we do not seem to have any evidence that magistrates' decisions are being queried.

The Chairman: When there is an appeal from a licensing committee, do you believe there is uniform knowledge among those hearing the appeal? For example, planning appeals go to professional inspectors who are appointed and trained for that specific purpose by the Secretary of State. Should there be a similar procedure for licensing cases, given that the bulk of your work is, from what you say, more criminal?

Senior District Judge Emma Arbuthnot: The problem with training is that we do it so rarely that I am not sure it would be worth doing it for the few cases we have. Those cases are always very well prepared by counsel. Judges certainly have reading time and get into reading. There are one or two cases the judges would be aware of when trying cases, and they have judgment writing time at the end, so in my view it works well.

District Judge Elizabeth Roscoe: You said we do not do a lot of quasi-civil work. In fact, we do a surprising amount. When I was at a different court, a referral court, I was probably doing 40%-plus of civil jurisdiction. The most obvious is family court work, which is all civil. We do forfeitures and football banning orders. I have a long list. We do a lot of quasi-civil work. In that sense, doing civil work is not particularly unusual.

As for training, it is difficult. Even if you had, say, four appeals in a year, they could be on such very different points that the training would have to be quite wide. Then you have no idea when the case is going to be heard and what the Bench tribunal availability is going to be. The information is out there, and counsel are usually prepared and only too happy to provide you with previous judgments that support their arguments one way or the other.

Sheena Jowett JP: Magistrates are used to looking at evidence being presented to them for the first time, so we can weigh up both sides of an argument and come to a decision on what we have in front of us. It is not unusual for us to have cases that we do not see very often. I sit in an area where sometimes we get fishery cases. We do not see them very often, but we still deal with them more than adequately.

Q125 **Baroness Henig:** If you do not think that more training is the route forward, should appeals be heard only by district judges with particular experience of licensing matters?

Senior District Judge Emma Arbuthnot: I think Sheena hit the nail on the head. It is often factual. It must be said that occasionally it is very complicated law. For today, I read a recent judgment of Judge Roscoe and thought, "Blimey, I would not like to have decided that". It was very complex. Otherwise, they are often bits of detailed facts that the justices are more than able to deal with. It really depends. You would have a justices' clerk, or deputy justices' clerk, who would look at the sort of case it is and then make that decision.

District Judge Elizabeth Roscoe: To a certain extent, the decision-making affects the public community, and of course that is what JPs are, and indeed all of us are. It is a follow-through from that. Judges and magistrates alike may well have considerable local knowledge. I cannot say I know what the West End is like at 4 o'clock in the morning.

Senior District Judge Emma Arbuthnot: Come on.

The Chairman: It could be arranged.

District Judge Elizabeth Roscoe: Thank you, but no. Most magistrates will have some idea of what is going on in their local area.

Sheena Jowett JP: In the area where I sit, we do not have a district judge sitting regularly. A district judge comes in for certain cases, particularly youth cases, where we need that level of expertise. What might be useful is guidance. The Judicial College is strapped for cash, as everyone is these days, and some guidance on relevant questions and

previous decisions is always useful. As we have heard, we often get that anyway from the briefs that have been prepared.

Senior District Judge Emma Arbuthnot: It might also be useful to have a pack that goes to justices' clerks. They could determine and then send the pack to the legal adviser dealing with the case or the judge or the Bench.

Sheena Jowett JP: Indeed.

District Judge Elizabeth Roscoe: It is only uniformity of approach that you want, not a decision.

- Q126 **Baroness Eaton:** If the initial route of appeal is to continue to be to magistrates' courts, is there a case for a further appeal to the Crown Court, as in the case of taxi appeals? Why should licensing appeals not go to a circuit judge at the county court? You have partly touched on this. They have more experience of dealing with civil issues. You touched earlier on experience of civil issues. Perhaps you could look at taking it to the Crown Court like taxi drivers.

Senior District Judge Emma Arbuthnot: It depends on what your witnesses are telling you. If at the end of the day you think the system is not working, there is a reason to look at other ways of having appeals. We probably have about one a year and fewer would go to the Crown Court or county court, and I suppose there will be the same problem of lack of expertise. If there is another layer, it will be costly and cause more delay. That is all I can say about it.

District Judge Elizabeth Roscoe: Negotiated appeals are the ideal, because the licensed trade, the local authority and the public at large have to work together to get what the parties want. If there are persistent appeals, there is no real incentive to negotiate. People may think—although they might not because of the cost—"Well, I may as well chance my arm. I will go for it, and if I lose I can negotiate because I still have another appeal".

Sheena Jowett JP: There is judicial review. In that respect, if we have not done things properly or judicially, there is a layer of judicial review of our decision, but, generally speaking, we get very few. We have no evidence in the Magistrates' Association that our appeal decisions are not accepted by the parties involved.

- Q127 **The Chairman:** There seems to be a bit of a mismatch between the evidence from you and evidence from the Home Office, practitioners and others on the ground.

Senior District Judge Emma Arbuthnot: In what sense?

The Chairman: You say that there are very few appeals. The practitioners from whom we have just heard say that when there are appeals they take a long time and are very costly. While an appeal is going on the decision is stayed, obviously, so there are a number of

reasons to prevent appeals going forward.

District Judge Elizabeth Roscoe: Once the licensing authority has refused, changed or reviewed whatever it is, if there is to be an appeal there is a 28-day time limit. The appeal has to be put in within that time limit. Many more appeals start than actually finish with a court hearing. A lot are put in as a holding position, or indeed as a proper appeal prospect. It will take a certain amount of time. Hearings before licensing authorities are, as far as I can tell, comparatively short. I am not an expert; I just look at the paperwork on the appeals I have done of licensing authority decisions. A small licensee might not be represented, so the hearings are comparatively short, and there are not large amounts of evidence being put in. Ours are the full hearing, if you like.

The Chairman: Can I play devil's advocate? We have heard from residents that often they do not hear that an application has been made, whereas if it is planning it is much more in their face. They do not hear about the first stage of the process. The cost of an appeal to an individual resident, or even a street of residents, who may not be very well off, is absolutely prohibitive. We are picking up that there are no rules of evidence and decisions are taken on a haphazard basis by licensing committees. Some are accused of bias one way, some are accused of bias another way and some do not turn up for training. It is haphazard. Are you not asking yourselves whether there is an underlying reason why there are not more appeals?

District Judge Elizabeth Roscoe: I have wondered about the review procedure, because initially I thought that we would have a big flurry of changes, a quiet period and then there would be lots of review applications. It is not for me to look into that; I do not know how these things are working on the ground and whether they are satisfactory, but I thought there would be review applications. That has not happened. I cannot give you the reasons why it has not happened. If it has happened and there have been lots of review hearings before the local authorities brought by local residents, I accept that they have not appealed, but I do not know whether that is because applications have not been made or because they are satisfied with the answer.

Senior District Judge Emma Arbuthnot: I do not think we can help with costs. I am afraid it is so outwith what we are doing.

The Chairman: Thank you. I thought it was worth putting the question.

District Judge Elizabeth Roscoe: It is difficult for us to judge why something has not come to us.

Baroness Eaton: Judicial review is such an expensive process that it would be prohibitive for most of the people we are talking about.

District Judge Elizabeth Roscoe: It is, but if you are putting in another layer, and the case goes to the Crown Court, it can also be judicially reviewed. Generally, the Crown Court is considered to be more expensive

than we are. I am not sure. It may be of value, but personally I am not sure what it is.

- Q128 **Lord Blair of Boughton:** My question is in two halves. First, there has been criticism by witnesses about the length of time appeals take to be listed and heard. The second question, which is more specific, is whether or not there should be an immediate ban on the sale of alcohol even though an appeal has been lodged. Should you be closing premises pending an appeal or should there be some kind of interim process to get to that point? I am thinking of a case, which is still sub judice, related to deaths in a nightclub. In cases such as that, it seems we just close down the premises and wait for the appeal, but there are no interim steps and no hearing to work through that.

Senior District Judge Emma Arbuthnot: I will deal with the first part on the length of time for appeals to be heard. There are delays in the courts, and these sorts of cases are multi-day cases. The parties have not had what I call a full hearing at review stage in front of the local authority, and they have to prepare their case properly for a full hearing, including all their experts and everything else. At Westminster, Judge Roscoe and her colleagues have brought in a series of case management directions, which I think we might have sent to the Committee in advance. That gives a timetable that brings it up to about three and a half months, and we would expect to list it thereafter. I suspect it varies around the country, because it is difficult to get the three or four days required together. We are extremely busy courts, and it is difficult to prioritise this over, say, allegations of domestic assault or something like that. I appreciate that it is a matter of prioritising, but it is difficult because of the length of the hearing.

Sheena Jowett JP: Magistrates' courts are changing. A lot of our work will be taken out of magistrates' courts with the single justice procedure. In time—it will not happen immediately—there will be more space in magistrates' courts possibly to hear licensing cases. We need to embed the decisions being made at the moment before we make decisions on where licensing appeals ought to go. I firmly believe that they ought to stay in magistrates' courts. We are local; we know the local situation, and we can weigh the evidence put before us.

District Judge Elizabeth Roscoe: If you go through the directions, of which I think you have a copy, the practice should result in the case being ready for hearing, if they are adhered to, in about 10 weeks, because we start very promptly. Those are the directions used in Westminster. We found that there were very long delays, and about a week before getting to the hearing the parties would settle, and then you had five days of court time you were not able to use. From our point of view, it was important to front-load the directions so that things got ready quicker. We do that, and robust case management helps.

There was a suspicion—I have no idea whether it was true—that if, say, there was a review of licensing that was moved from 3 o'clock to 11 or 12, certainly in Westminster if someone managed to keep that going for

12 months, they could be making fairly hefty profits during the appeal process. They had that extra licensing time, so it was worth putting in an appeal, even though they knew it would perhaps be unsuccessful, and withdrawing it at the last minute because of the costs. That was why we instigated those directions. That means you get to the two and a half or 10 weeks, but then you need time for Bench availability.

Senior District Judge Emma Arbuthnot: The second part of the question was about an immediate ban on the sale of alcohol.

District Judge Elizabeth Roscoe: I will go on to that. An immediate ban on the sale of alcohol is a problem because it is a livelihood and there is a right of appeal. It is quite a short hearing, as far as I am aware, at the local authority. Unless there is a very good reason, it could be quite prohibitive to have, say, a complete ban on the sale of alcohol. If there has been serious crime or disorder, there is the interim steps procedure. If it is a closure order, in 48 hours there has to be a hearing before the local authority for interim steps—I think it is still 48 hours. The authority can then suspend the licence, alter the conditions, close the premises, get rid of the licensee and all sorts of things. There is a review within 28 days. The judgment Emma is talking about was one where the review closed the premises and there was an appeal. The licensed premises said that, because they had appealed, all the conditions came back and so they could sell alcohol. The ruling I gave was that the interim steps continued. As far as I have been told, I have not been overturned on that, and that was a couple of years ago. If there are interim steps and there is a ban, as far as I am aware it will continue until the appeal. That depends on the interim steps, so there is a procedure for doing that.

Q129 **Lord Foster of Bath:** We know that magistrates' courts are not courts of record and decisions are not treated as precedents, but Judge Arbuthnot talked earlier about the need to be aware of one or two cases that one would want to take into account. Judge Roscoe talked about the need for uniformity of approach, if not of decision. Clearly, that is very important, for instance, to multiple retailers. Very often, decisions are not written down and recorded. Do you believe that to get consistency there would be merit in having all the decisions and the reasons for them recorded and published online?

Senior District Judge Emma Arbuthnot: The majority of these decisions are written down; we give formal judgments that are handed down, so paper documents are available. I suspect it is the same for the Bench as well.

Sheena Jowett JP: We give our reasons and they are recorded. It is always good to have them to refer back to. We can look at what has happened previously. Transparency is essential; people need to know what decisions have been made.

Lord Foster of Bath: To be clear, you are saying that most but not all are recorded, and there is not an easy method of getting this information, or is there?

District Judge Elizabeth Roscoe: Perhaps the fundamental point is that they do not have to be written out and handed down. Certainly, when I have done them I have found it easier to do that, which means that I too have a record if I am judicially reviewed. That is always helpful. Generally speaking, longer cases especially are written down, but there is no record of the evidence other than the note of the legal adviser or court associate.

Lord Foster of Bath: Do you believe that it should always be done, not normally be done, and should it be more easily available?

District Judge Elizabeth Roscoe: I think you are asking rather a political question about which I probably have views.

Lord Foster of Bath: Can we hear them?

District Judge Elizabeth Roscoe: I think there are arguments, if you want to go that way, for recording in magistrates' courts—I do not know whether or not the chief agrees with me; I am here on a limb by myself. There is a cost to that and there will be downsides. I suppose you could bring it in just for licensing hearings, but if you do that you may find there is pressure to bring it in for all the other semi-civil jurisdictions that we do. I do not know. I would not necessarily argue against it. I do not have a problem with it.

Senior District Judge Emma Arbuthnot: The cases that might not be put down in writing are the very short ones involving a minor tweak, perhaps a one-hour difference in the licence or something like that. Then I could see a reason for not doing it, because the parties are not going to take it any further and it is fact based. For anything more complicated, my practice would always be to prepare a written judgment. As to the way we spread it around, obviously counsel have it and essentially it then goes back to whoever is paying their bills, but it would be a good idea to have that sort of information sent to justices' clerks through the JCS so that they could spread it, particularly on matters of principle rather than individual detailed cases that do not matter quite so much. As a matter of principle, it would be useful to send it.

District Judge Elizabeth Roscoe: I was certainly helped initially when the Act first came into force, because Westminster was very clued up; it had a very good licensing department. The people who worked there were excellent; one young lady, a Ms Davies, is still there. They instructed very experienced licensing counsel, and often the opposition were licensing counsel. It is a little group, certainly in the London area, so they all know one another. If there is a new decision it is referred to, so we got information through them. Occasionally, decisions are published in licensed trade magazines or whatever, so there is a certain amount of dissemination there. I do not know whether there is any dissemination among local authorities. Westminster does a lot, but local authorities in west Wales may not. Westminster has people who are very knowledgeable; Ms Jowett's local authority might not. Ideally, yes, there should be dissemination, but there comes a point when you are

bombarding people with a lot of information that they just file because it is not relevant and they do not read it.

Sheena Jowett JP: It is essential that the parties understand why we have made the decision on an appeal, and that our reasons are given in open court in plain English and are written down by the parties involved. Our legal advisers record those decisions, so people can look back and see them if they have not understood on the day.

Q130 **Lord Davies of Stamford:** It seems to me that a highly problematic situation has been revealed to us this morning. I would like to direct my question to Judge Roscoe, who obviously has experience of dealing with these appeals, and to Judge Arbuthnot as chief magistrate. Magistrates' courts are not courts of record. It follows that their decisions are not part of the jurisprudence of the common law, so you are not bound to be guided by them. You are bound to judge each case that comes forward on its own merits, taking account of the general principles of the law and any statute law that may be relevant. That is a different matter.

On the other hand, you have given us evidence this morning that in practice you are anxious to hear about such precedents and that you take account of them, and that sometimes they are properly and officially recorded and sometimes not. Sometimes you have to find them in licensing journals, or whatever you just quoted. That seems to me a very haphazard system. It also seems to be very unclear for the public, because in theory the decisions of magistrates' courts are not part of the law of the land, which we are all supposed to know about, but we have heard this morning that in practice they are guiding magistrates in their decisions; in other words, anybody with an interest in this matter, or who potentially wants to make an appeal, must study the precedents as far as they are available. There seems to be a very fundamental contradiction.

District Judge Elizabeth Roscoe: Perhaps I have not explained myself clearly. I was saying that that was how practitioners and local authorities disseminate it. If we hear a case, we do not refer to trade journals or magazines. If there is an authoritative textbook we would refer to that clearly and in court; we would say we were referring to it.

As to cases we take account of, even if they are at the same level, they are not binding; we consider them, but only if they are produced to us by the people in court, whether lawyers or private individuals. If we know of a case that is perhaps contradictory and we are going to take account of it, without doubt we have to produce it with copies to hand to the people in court, so that they know what we are considering and have a chance to address us on it. We never consider anything other than the evidence before us in the court, along with the law, the statement of licensing policy and Section 182 guidance. We do not refer to trade manuals.

Lord Davies of Stamford: You are guided in practice by precedent.

District Judge Elizabeth Roscoe: Precedent from a higher court.

Lord Davies of Stamford: Is it only from a higher court, not previous

magistrates' court decisions?

Senior District Judge Emma Arbuthnot: We have regard to them; we read them. The example in point is Judge Roscoe's judgment that I referred to earlier, when she decided quite differently from an earlier judge who had looked at the same point. She was not bound by that earlier judgment, but the parties in front of her, as I understand from her judgment, referred her to it. She said in terms, "I do not agree with that earlier judgment". You have regard to it; you read it, and you may decide completely differently that that judge got it wrong, and that was what she did.

Lord Davies of Stamford: Do you think it is a satisfactory situation? Is it clear to what extent precedent is having an influence on the law and to what extent the public should take account of precedent, taking account of the law? Do you think it is acceptable that the source of these precedents is haphazard, to use my word, because sometimes these things have been recorded and sometimes not? Sometimes they are brought forward by counsel and you do not know about them; sometimes counsel may choose to ignore precedents that they know about but do not suit their case.

District Judge Elizabeth Roscoe: They should not. Precedents which are decisions of a higher court are binding on us, and we always take account of that, assuming we know about it. We deal with a vast swathe of work. If you have qualified lawyers, you expect that if you miss something they will bring it to your attention, because when you are dealing one day with a civil aviation Act, and then with a fishing Act, a dentists Act or all sorts of Acts, some of which I admit I do not hear about until I get to deal with them, you have to look it up. You expect to have precedents from higher court authorities produced before you. You read those and you have to take account of them.

The Chairman: There is the possibility of a judicial review, so the fact there have been no judicial reviews probably means that—

District Judge Elizabeth Roscoe: But there have.

The Chairman: It is up to people to quote the authority. You are required to look at the merits of each individual case, so in a case in, say, 2014, a judge may have reached a different conclusion from an earlier judge.

District Judge Elizabeth Roscoe: At my level, yes.

The Chairman: If people are not happy with the outcome, it is up to them to review it judicially before the High Court, and that is not happening.

District Judge Elizabeth Roscoe: Not as far as I am aware, but at the early stages there were judicial reviews because it was a new Act and people were not quite clear how things were going to work. I am not aware of any large numbers, but we do not always get told.

Sheena Jowett JP: From the information I have been given, I believe there have been no more than three judicial reviews per year. Appeals to the magistrates' courts are rare; judicial reviews are even rarer, but obviously we take those into account. As magistrates sitting in court, we seek the advice of our legal advisers on whether there are any precedents. We look at the evidence before us and the way it is presented in court.

The Chairman: Exactly. One thing that concerns me is that it is not written down and recorded by, say, a clerk in the magistrates' court, unless I have misunderstood what has been said.

Senior District Judge Emma Arbuthnot: A clerk or court associate writes or types a note of all the evidence, so there is that record.

District Judge Elizabeth Roscoe: And the submissions and the decision.

Senior District Judge Emma Arbuthnot: We are just not a court of record.

District Judge Elizabeth Roscoe: There will be a note. They will not do it if you have written it out yourself, but there will be a record of the evidence, and it should be fairly full.

Lord Davies of Stamford: Is that just in Westminster or generally throughout the country?

District Judge Elizabeth Roscoe: Everywhere. Westminster brings their own person, who takes a shorthand note, so it is verbatim, but everywhere in every case before the magistrates' court there should be a note of all evidence and what is said.

Lord Davies of Stamford: It is a slightly curious situation.

The Chairman: Can we move on to the cost and delay of appeals? If there is time, we will come back to that.

Q131 **Baroness Greender:** We have talked quite a bit about delay in appeals and the lack of appeals. I think you said there was about one a year. Judge Roscoe said that far more seemed to start than finish, which leads to questions about mediation. Clearly, there is informal mediation. Is there any argument for a more formal process of mediation? Could residents and other third parties be involved? If the answer is yes, how would it work?

District Judge Elizabeth Roscoe: It is not a question I am particularly qualified to answer. In a sense, the best mediation is negotiation that takes place between the parties directly. Certainly, that happens between the licensing authority and the licensee. Whether or how a resident could get involved in some form of formal mediation, I do not know. I am not qualified to say whether that is useful or workable, but certainly the idea of negotiation between the licensee and the local authority seems to me

absolutely what the Licensing Act is supposed to do, which is to transfer responsibility for licensing from what used to be a licensing Bench, which, although very good, was unelected, to the elected local authority. If there are negotiations between people working in a community and the people managing it, that seems fine. Mediation is a bit outwith my knowledge. If a case has been withdrawn and there is a consent order, I assume that negotiations have been entirely successful. If you tell me that all the residents are up in arms, clearly it has not been, but I do not know.

Baroness Greder: There is an argument that an appeal, even for a small business, is prohibitively expensive. Although a small business may wish to appeal, it does not, so a formal mediation process might help in that respect.

District Judge Elizabeth Roscoe: The appeal is not expensive. I do not know how much it costs.

Baroness Greder: I understand that to initiate an appeal costs £400.

Senior District Judge Emma Arbuthnot: Counsel and preparation is the real cost.

District Judge Elizabeth Roscoe: If someone puts in an appeal, they have the £400 cost, and everyone knows there needs to be time to negotiate. There is a certain amount of preparation and they can come to the court and say, "Please do not make us incur extra costs. We just need two weeks to sit down and sort this out". I do not think a court would be unsympathetic, depending on what was going on. Big premises and people fighting in the street, or a little corner shop that wants to sell a few bottles or cans of beer are different cases. The four weeks mean they have to put in their appeal to hold the door open for that negotiation. There is nothing to stop them negotiating in the four weeks and putting in the appeal on the last day. If they can sort it out in two weeks and everyone is happy, they will get it back before the licensing committee. That is a tall order, but there is nothing to stop it. I am afraid that was a long non-answer.

Sheena Jowett JP: In other areas, for example the family court, mediation works exceedingly well. It is not for the Magistrates' Association to say whether mediation should be brought into licensing, but it could resolve the situation before it went to appeal, or at least clarify the areas of dispute, which would reduce the amount of time needed for the appeal. Mediation could easily be considered.

District Judge Elizabeth Roscoe: It could be, but it also has a cost, and if it does not work you are back where you started.

The Chairman: But for residents it might be appealing because it would be less expensive than the £400 fee.

District Judge Elizabeth Roscoe: It could be, but if you have mediation and it does not work the problem is: what happens then? Unless you have some way of making that final, there will always be some form of

judicial review. You might go straight to judicial review, but it will be very difficult to have either a judicial review or any other High Court hearing, unless you have had an absolutely full hearing, with witnesses and so on, at mediation. It is a bit clumsy. I am not sure how it could possibly work, but I do not have any problem with mediation. It is not really for us.

Sheena Jowett JP: If mediation in family court cases does not work, it comes back to the family court. I surmise that the same may happen, if it is deemed possible, in licensing. If mediation does not work, the case will go on to the formal appeal procedure.

Baroness Greder: To examine that further, it might feel more accessible, especially to a resident in this arena, if mediation is there as another stage to go through.

District Judge Elizabeth Roscoe: Yes, but that is not something I am particularly qualified to answer. I do not think there is any particular objection to it; it is just not a matter for us.

Sheena Jowett JP: It is seen as less formal than attending court, and possibly less stressful for the people involved.

Q132 **The Chairman:** You may have heard during the previous evidence session that lawyers quote case law to licensing authorities, which then turn round and say, "Do not quote case law at us". Would you be surprised if that is happening?

Senior District Judge Emma Arbuthnot: It depends on the level of case law. If it is our decision it is not binding, but if it is the High Court or a Divisional Court I would not be surprised if they did. It is a matter for them.

The Chairman: Something is vexing me and I would like some clarification. An interim step was taken and District Judge Knight on one set of circumstances reached one conclusion, and District Judge Roscoe, presumably on a different set of circumstances, reached a completely different conclusion. Is that not confusing for people?

Senior District Judge Emma Arbuthnot: It was very much on the law and it was a very technical point, if I may say, but I will leave it there.

District Judge Elizabeth Roscoe: I am afraid this is one of those decisions where at the end of it you are going to say, "Well, she would say that, wouldn't she?" The fact is that, having done a fair bit of licensing law and gone through the law with a fine-toothed comb, I thought, I am afraid, that Judge Knight got it wrong.

The Chairman: But neither decision is binding on any successor court.

District Judge Elizabeth Roscoe: No, but I rather like to think that mine was better argued.

Senior District Judge Emma Arbuthnot: Hers was very detailed. If I had the point in front of me, I would read it.

District Judge Elizabeth Roscoe: I went through it in rather more detail than she did, with a bit more analysis. I was considerably helped. I had two Silks and a very senior junior making a lot of representations to me, but it was very tricky. It is not authoritative; it has not been judicially reviewed. I like to think it has not been judicially reviewed because, if it was, I would be upheld and then it would be a precedent, but I may be entirely wrong about that. I think mine was more grounded in showing the basis for the decision.

The Chairman: Therefore, there could be a third case and another decision on interim steps.

District Judge Elizabeth Roscoe: That was certainly a decision I circulated among my colleagues, but I do not know how many of these cases come up. That was two years ago. Even if they had a quick skip read and it came up, the chances of them saying, "Oh, yes, Judge Roscoe did a judgment on that", are slim. But it is there, and I hope and expect that there would be some distribution among local authorities perhaps, or that licensing councils would research it.

The Chairman: Do you think local authority councillors who sit on licensing panels have sufficient training?

District Judge Elizabeth Roscoe: I do not know; I have no idea what training they have. Given the appeals we get, which are quite few in number—I heard the percentage earlier—it does not appear that too many people are disgruntled about the decisions.

The Chairman: There is conflicting evidence on that.

District Judge Elizabeth Roscoe: It is not something about which I have any knowledge. I do not know what their training is; I do not know how they are picked at Westminster, let alone anywhere else.

The Chairman: Thank you, Ms Jowett, Judge and Chief Magistrate, for being with us and for being so generous with your time and answering our questions so fully. We are very grateful to you.