



Select Committee on the Licensing Act 2003

Oral evidence: The Licensing Act 2003

Tuesday 8 November 2016

11.40 am

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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 Goudie; Baroness Greender; Baroness Henig; Lord Mancroft.

Evidence Session No. 14

Heard in Public

Questions 144 - 154

Witnesses

I: Gerald Gouriet QC, Andrew Cochrane, Senior Partner and Head of Licensing, Flint Bishop Solicitors, and Paul Douglas, Managing Director, Douglas Licensing (NW).

Examination of witnesses

Gerald Gouriet QC, Andrew Cochrane and Paul Douglas.

Q144 **The Chairman:** Gentlemen, thank you very much for being with us this morning to give evidence in our inquiry. I bid you a very warm welcome. I have a bit of housekeeping. A list of Committee members' interests relevant to the inquiry has been sent to you. Copies are available this morning. The session is open to the public, is broadcast live—sadly, in audio only—and will be accessible subsequently via the parliamentary website. A verbatim transcript of the evidence will be taken and placed on the parliamentary website. A few days after today's session, you will be sent a copy of the transcript. We ask that you check it, for greater accuracy. It would be helpful if you could advise us of any corrections as quickly as possible. If after the evidence session you wish to clarify or amplify any points that you made during the evidence, or have any additional points that you wish to submit to us as supplementary evidence, that will be welcome—again, as soon as you possibly can.

I will ask a couple of general questions at the outset. Could you give the Committee your view on how effectively the Licensing Act 2003 has operated over the last 11 years? What do you think has worked particularly well? What do you think could be improved?

Gerald Gouriet: The Licensing Act 2003 has failed where the previous legislation succeeded—in stemming the proliferation of licensed premises. The demand test has been removed. The demand test was a very good filter that made sure that there was not an excess of supply over demand. The current regime requires a grant, if no one has objected, and even where there are objections limits the reasons for refusal to something arising under the licensing objectives. Overall, I think that has been bad. I have often had complaints from residents' associations and individual residents who wish to stop yet another bar or late-night club opening in their area that there does not seem to be any mechanism for doing so.

Andrew Cochrane: Generally, I think it has worked well. As a solicitor, I focus quite a lot on the procedure behind the applications. The Act has allowed a lot more engagement and has made it easier for both the trade and local residents to engage in the process. The vast majority of what goes on never comes before a panel or a hearing; something like 136,000 temporary event notices are applied for every year, and there are numerous transfers, DPS changes, minor variations and so on. Under the previous regime, all that stuff would have required some sort of attendance at a court. The Act has made it much easier for the licensed trade to engage.

From the residents' point of view, a magistrates' court was a slightly more forbidding forum in which to get involved. A local authority is perhaps more familiar to them. They are able to engage the services of their local councillor, if they want to try to make a point to committees. It

is much more accessible, and from that perspective, it has worked extremely well.

There have been some welcome reforms to the Act as we have gone along. I will not list them all. I can give you a shopping list of a few more, if that is desired, but they are not particularly major. One concern is that the electronic system of applications over the internet is not working as well as it could. Secondly, sometimes the product that you get at the end of the process—a paper licence—can be a bit impenetrable. Some of the licences that exist out there are not always as good as they could be, and can be quite difficult to understand and interpret. For example, yesterday we were looking at a licence that had a condition preventing roller-skating. As it was for a two-room bar, that was perhaps a slightly surprising addition to find.

Paul Douglas: The Act started off very well. It alleviated a number of problems. We finally did away with the 2 am thousands on the streets, which was good. Unfortunately, the 2 am thousands on the streets rapidly became the 2.30 am, 3 am and 4 am hundreds and hundreds on the streets, which has caused the police some problems.

Without a shadow of doubt, a good part of the Act is the review procedure. Prior to that, when it was before the magistrates, it was revocation or nothing. We have a good review procedure, with various sanctions. I feel that of late, however, the whole licensing system has been hijacked, to a point, certainly by a lot of local councillors with whom I deal. They make objections when nobody else—neither the police nor the responsible authorities—is making any, but on the basis of looking after their constituents, they lodge objections to curry favour with their voters.

Unfortunately, the Licensing Act is also being hijacked by the police in certain areas. It is being used as an attempt to bring in early morning restriction orders via the back door. Early morning restriction orders have failed. I have noticed licensing reviews for premises that trade until 6, 5 or 4 in the morning, where the theme is to bring their hours back to 2 am or 3 am. The evidence produced as a result of that has been far from satisfactory. They have not achieved the early morning restriction orders or the reduction in hours.

Gerald Gouriet: One area of concern that has developed recently—in the last two or three years—is the extent to which decisions are being made, or effectively being made, not by elected councillors but by unelected council officials and/or representatives of the police behind closed doors. Often I get residential complaints; people find that what had been an objection has been withdrawn and they do not know why, and they were no part of the process that caused it to be withdrawn. Indeed, my attendance at licensing committees and magistrates' courts indicates that frequently the court or the licensing committee does not know either. It is simply given the bare fact that there is no police objection and no objection from the licensing authorities.

The Chairman: Mr Gouriet, in your written evidence, you say quite a lot about residents and their views not being heard. When we have heard from residents and have had supplementary written evidence from them, one of the issues they raise is that the blue notice is simply not widely available. Do you think that the Act has the balance right on the way residents are forewarned and can go along to object? You draw many parallels with the planning procedures, as they did.

Gerald Gouriet: If there is substantial complaint from residents that they do not know about an application in advance, and therefore cannot make representations, it follows automatically that something is wrong. I do not get involved in that stage of the process, so I cannot give personal experience. Clearly, if that is a recurring complaint, something needs to be done.

Andrew Cochrane: I may be able to help a bit more on the blue notice, because that is more my end of the situation. The notice itself can sometimes appear to be a little unhelpful. Particularly before significant deregulation of entertainment, it can give a completely false impression of the sort of premises that you are trying to license. Of course, there are fairly strict statutory criteria for how these notices should be displayed. In my view, if they are adhered to, it will come to people's attention. A lot of local authorities go out to check that a notice has been displayed, so I am surprised that that is a serious point of contention.

Gerald Gouriet: The requirements are perhaps overly prescriptive. There has already been litigation in the High Court as to whether the font was the right size. Lawyers are often accused of feathering their own nests, but from the lawyers' perspective, it is wonderful when the law is in a slight mess, because we get up to the High Court.

The Chairman: I am a non-practising Scottish advocate, so I have no interest. Mr Gouriet, you mentioned the difficulty of closing and reducing the proliferation of premises. What do you feel about a cumulative impact policy and its potential effect?

Gerald Gouriet: It is a very good idea. I go back to what I was saying earlier, which illustrates the point that you are asking me to answer. This scenario often arises. There is a cumulative impact policy. An application is made for a new licence within that area. According to the policy, the applicant has the burden of establishing that he will not add to the cumulative impact problems. There is a meeting behind closed doors with the authorities and the police, who simply say, "We do not object". That is taken by the licensing authority as support for the application and, because of Home Office guidance, as something to which it has to give great weight.

In fact, as I have seen for myself, because we do not know what the police and the licensing authorities—I keep saying that; I mean "the responsible authorities"—are being told, there is a lack of transparency. From time to time, we get an inkling of the version that seems to have been given to them by the applicant. I have popped along, when I have

had the opportunity, and seen for myself what is going on and it is perfectly clear to me that the police and the responsible authorities may not have been given the entire picture, or even been told the truth—I am not going to mince my words. The police themselves have told me that they have these meetings and do not have the resources to check whether or not they are being told the truth. In fact, the lack of a representation by them means no more than, “If what we are told is true, there will not be any problems”, but it is taken by the licensing authority to be an endorsement of the application, which is sometimes impenetrable and impossible to overcome.

Q145 Baroness Henig: My question is about the hearings before the licensing committee, so it clearly follows on from what we have already heard, particularly from what Mr Douglas said. The case law says that the power of the licensing committee is a power delegated on behalf of the people as a whole to reach an holistic and balanced decision, weighing everyone’s interests. Is that how individual members see and perform their role? We have already heard suggestions that perhaps it is not. How easy is it for members of local authorities to put the interests of their voters to one side and make a dispassionate legal decision?

Paul Douglas: It is near impossible in some areas. Voters and committee members go hand in hand. They are councillors, after all. I have certainly noticed that the other persons or the residents are in a position of great power, sometimes more than the responsible authorities. Licensing committees give great weight to local residents.

Gerald Gouriet: I had a refusal after which a committee member came up to me and said, “Do not worry. You will get it on appeal, but we could not go against the residents”.

Andrew Cochrane: I am not quite negative about this. The local licensing committee is a body of councillors, not all the councillors. The point that Paul was making was that individual councillors themselves can make representations. My perception is that, if such committees are well chaired and well clerked, a lot of those issues can be put to one side. There are occasions when you have to take a bit of a gasp. We have had instances when I was standing talking to a police officer only for a local councillor to come up and say, “We are all right on this one, then”. You have instances when you go into a committee meeting a bit like this one and find councillors who are making a representation talking to councillors who are going to make a decision. I am not saying that that sways them, but at times it creates a perception issue that could be better managed.

Q146 Baroness Grender: A host of witnesses have claimed that members show undue deference to licensees, so that there is a presumption of grant, at the expense of local people. Given the number of licences granted, all the evidence suggests that that is correct. We have also had a host of witnesses who say that members unduly favour residents and, therefore, too many preconditions are added. Which side do you agree with, and why?

Gerald Gouriet: There is an element of both. One encounters both. Whenever an applicant loses in an application against residential objection, he says, "The council has unfairly and unduly given precedence to the residents". Stepping back from it, and going just from my own experience, I think the balance is very much in favour of the argument that residents are suffering a raw deal. There are occasions when too little evidence from the residents is given great weight. They occur, but because of the structure of the Act, and the way our appeals are now conducted, with the Hope and Glory case dictating how appeals should be decided, the balance is in favour of the industry against residents.

Paul Douglas: I disagree. It is firmly balanced towards the residents.

Baroness Grender: But so many licences are granted. Something like 5% are not.

Paul Douglas: There are areas where I operate where I know that I can submit an application and would be surprised if it were even read, because applications will go through, whereas in an adjacent area a far less controversial application will be examined. It is a bit of a lottery. It is like a postcode lottery, based on which area you operate in. Basically, some areas just let things go through. I do not know the internal workings of the organisations, but I get the impression that the applications are not being considered, whereas in other areas they are.

Andrew Cochrane: There is some force in what has been said. If you are on the winning side, you tend to think that you have been favoured by the committee. If you are on the losing side, you tend to think otherwise. For example, a few years ago, I did a big project that was quite well publicised at the time, when more than 100 licences were applied for in one go. They generated a whole host of objections—106 was our maximum on one of them—but nearly all the licences were granted at the end of the day. They were all granted, but we withdrew one or two for various reasons. It is fair to say that I have not heard anything about the residents' concerns coming back. They were articulated. I made the points that one would expect to be made—"You cannot necessarily say that there is going to be a problem. What evidence have you got?" and that sort of thing—and licences were granted.

It is seen in slightly binary terms; either you win or you lose. Of course, what quite often happens at a committee is that you wind up with a compromise—a grant, but subject to conditions. I am not quite sure that residents often understand that. When the decision is read out, they hear that the licence is granted. They do not understand that the committee has sat, listened to what they have said and to their concerns, and tried to address them by way of conditions. Perhaps residents also do not understand that, as part of the engagement process, they can talk to the applicant's solicitor or representative—whatever it is—and try to come to some sort of compromise. My experience of my professional colleagues is that they are more than willing to have those sorts of discussions.

Lord Mancroft: This is a slightly unfair question. On balance, were the 100-odd licences you applied for reasonably treated? Should they have gone through in that way? Was it a pretty good process?

Andrew Cochran: Yes. I thought it was fair enough. The notices went up. With any sort of application, be it a planning application or whatever, there is a fear of the unknown, is there not? You are trying to change the status quo. As I said earlier, sometimes the blue notice can have the effect of giving an artificial impression of what you are seeking to achieve from the process. At the end of the day, everybody was given the chance to have their say. In most cases, the concerns that were articulated to the committee were addressed by the committee, albeit that the licences were granted.

Gerald Gouriet: I have spoken substantially in favour of residents, and said how hard done by they are. I would not want it to be thought that I do not appear for the trade and the industry as well. I have been instrumental, not improperly, in many cases at the end of which my private thoughts were that the residents had a raw deal. It was not because of anything naughty that I had done, but I thought that overall they did not get the opportunity that they should have had. The forces that residents sometimes meet—I do not include myself in those—are considerable, compared with what their resources can afford and what they can do themselves.

The Chairman: If there is an electronic application, at what stage is the resident informed?

Gerald Gouriet: I simply do not know.

Paul Douglas: Through the blue notice and on the council's website.

Andrew Cochran: And the advert in the paper.

Paul Douglas: Yes.

Gerald Gouriet: I have only once told my commercial client in writing that there is no prospect of success on an appeal and that he should save his money. I wanted to avoid criticism afterwards, so I put it in writing. I will never do it again, because when we won I had to explain to him that the only reason we won was the inadequacy of the presentation by the other side.

The Chairman: Who were the residents, and who do not of course have any representation.

Gerald Gouriet: I had not bargained on its being quite as bad.

Paul Douglas: Because of the position the residents are in, you have to enter negotiations with them. To that extent, I depend on local authorities. I ask local authorities, "If representations are received within a 28-day period, please let me know about them". If I can, I try to negotiate with people, to find out what their concerns are. Sometimes the

concerns are quite simple: "We do not want you to open at 6 o'clock in the morning", or, "We do not want you to close at 12 o'clock at night". That being the case, we can go back to the client and say, "Look, we can keep the residents happy by opening an hour later". There are no objections, and the application goes through.

The Chairman: If the residents are saying, as they are, that there is a serious problem of conflicting conditions imposed by planning, licensing and highway authorities, would a way around it be for everyone to follow the planning conditions that are set?

Gerald Gouriet: The current position, which I encounter often, is that planning permission is given with hours, say, to 1 o'clock, and licensing permission is given with hours to 3 o'clock. I do not understand why that can be so, and why that subsequent decision could be made. As I said in my written submission, too often we have just the glib mantra, "Planning and licensing are different regimes. This is licensing. You should not have regard to planning". I think that that is wrong.

The Chairman: Are you saying to the Committee that two different departments of the same local authority may not be aware of conditions being set?

Gerald Gouriet: They are very often not aware of it. Sometimes when they are, there is an incorrect assumption that they are different regimes and that we should leave it to planning enforcement to deal with if they are operating after hours. As we know, planning enforcement is often a little trickier than it is imagined to be.

Q147 **Baroness Grender:** One of our witnesses was from the group that represents residents at Camden market. A whole load of licensed premises have almost grown up around them—they did not move into that area. Each one has a temporary event notice each weekend that extends into the early hours of the morning, because there is a cluster of clubs and venues. I would like to hear from you about that kind of situation, which impacts on residents. What do you think the solution to something like that would be? You have been a long-term resident. It has moved towards you. A whole load of temporary or personal licences are being swapped across premises.

Paul Douglas: If temporary notices are being granted, the issue is whether the premises are undermining the licensing objectives when they use them. Are they causing crime and disorder? Are they causing public nuisance, thereby upsetting the residents? If that is the case, when those premises apply for another temporary event notice, the authorities have it within their power to object.

Gerald Gouriet: Surely the real problem is that it is often not known that those particular premises are causing a particular harm. All we know is that they contribute to the general mêlée, so nothing can be done afterwards.

Q148 **Lord Mancroft:** Can I take you back to the comments you made a

couple of minutes ago? Surely a licensing authority recognises that on the one hand there may be a large company with very impressive counsel and legal advisers assisting it, whereas on the other side there may be half a dozen rather unhappy residents with no legal advice at all. Surely a sensible and reasonable licensing authority can weigh up those two. Are you telling us that it is not weighing them up and cannot weigh them up, or that there is a real problem of authorities not being able to balance those interests?

Gerald Gouriet: It is weighing them up insufficiently. When appeals went to a Crown Court, a Crown Court judge would fill in the gaps, by and large. To be candid about it, in front of a Crown Court judge one could not get away with what we can get away with in front of a magistrates' court or a licensing authority.

The Chairman: We are coming to that.

Q149 **Lord Mancroft:** Regulations 22 and 23 of the hearings regulations, which I have no doubt are engraved upon your soul, state: "At the beginning of the hearing, the authority shall explain to the parties the procedure which it proposes to follow at the hearing", and, "a hearing shall take the form of a discussion led by the authority". In your experience, do licensing committees follow that practice? Do they follow it well or not?

Andrew Cochrane: In my experience, they do. As regards the informal discussion, it rather depends on what sort of hearing it is. If it is a hearing where a couple of residents have turned up because they are not happy about an application, it will probably take the form of a more informal discussion. If my learned friend turns up, the chances are that it is going to be a fairly weighty matter—possibly a complex review or a complex new premises licence application—and it will proceed rather more like a trial. It rather depends on the circumstances, in my experience.

Paul Douglas: I have been party to very few discussions at licensing committee. They comply with the statutory requirements and explain everything, but most of the time it is quite formal.

Lord Mancroft: Is that a fair process or not?

Paul Douglas: It is not following the regulations, if it is supposed to be a discussion. I have just hit on this now. For residents, if there are a lot of legals involved, it can become a little awesome.

Gerald Gouriet: Yes and no. Some of us try as hard as we can to make it casual and informal and to have a discussion, but we are simply not allowed to, because there is adherence to the procedure and the agenda: "Mr Gouriet, you are not allowed to speak now. You are allowed to speak at item 7".

The Chairman: Somewhere you say that committees allow conditions to be rehearsed that are not relevant.

Gerald Gouriet: That was one major example. I tried desperately to stop the legal adviser and the council going through some 30 conditions at 11 o'clock at night, or thereabouts—as did the chap against me, for the police—because all the conditions were agreed. Several attempts to come in were just slapped down. An hour and a half later, we had to say, “All these are agreed, chair”.

The Chairman: We have some other questions that probably broach that.

Q150 **Baroness Goudie:** Mr Gouriet, I noticed that in your evidence you say that the calibre of licensing panels varies from admirable to indifferent, and that, even if there was some form of training procedure in the background, you are not sure whether it would make any difference. What do you see as the alternative to having local authority representatives as members—not as officers?

Gerald Gouriet: If I am right, and it is thought that there are some really bad councillors who it would be idle to think can be improved, one needs a much better appeals regime, as I say in my submission. Right now, there is an inhibition under the appeals regime. The words are very difficult for most lay magistrates to apply correctly. They have to look at whether the decision below was wrong. They do not look at all at the merits of what is before them.

Whether I am right or wrong—it is a matter I must be delicate about, or I will never be able to appear in a case again—there are some councillors who it may be thought are unlikely to be improved by training. To give an extreme example, I was involved in a case where the only representation against was from the chairman's wife. He would not stand down, and indulged in what I would call a pantomime of asking his wife questions as though she were at arm's length. That should not happen. It cost the local people a lot of money, because we won on appeal and got our full costs. I gave an anecdotal example a while ago, but I have often heard—just fed back to me informally—that a council decided as it did, knowing that the decision was wrong, because it could not face certain people if it decided otherwise. Such councillors will not be improved by training.

Andrew Cochrane: We have 350 licensing authorities in the country. They probably have between 10 and 15 members who can sit on them. It is inevitable that, in a pool of many thousands of potential committee members, you will get a few of the nature that Mr Gouriet describes. My experience is that they are few and far between. It is usually resolved by a stern nudge from the chair or the clerk as to their behaviour. I agree that there will be those whose behaviour cannot be changed by any amount of training, but it is not my experience that it is a systematic problem.

There are issues of the type that have been referred to. Sometimes you turn up and think that it must be a gaffe. For example, occasionally ward members may be sitting. I am not sure that that is always advisable, if the premises are in their ward and there are residential objections. Again,

it is not a huge problem. It comes back to the point that, with a good chair and a good committee clerk, the problems can usually be prevented.

Paul Douglas: If we have weak committees, obviously something has to be done, but what do we have at this moment in time? We have the committee solicitors advising the committee. What I find is that the solicitors advising the committee almost become a fourth member of the committee. They ask so many questions that it gets to the stage where you almost want to say, "Excuse me, but it is nothing to do with you. It is down to the committee members", but if you will be back before that committee in a couple of weeks' time, you cannot afford to upset them. In some areas, the solicitors are really taking over.

Gerald Gouriet: Because I disagree with Andrew Cochrane, I would not want it to be thought—

The Chairman: You will not get many instructions.

Gerald Gouriet: After today, I may have to retire. What I have said by way of complaint about licensing authorities and some people sitting on committees is by no means to be diminished as referring to a renegade few. It is far too frequent, in my experience; I would pitch it as approaching half. I am not prepared to say on which side of the borderline the approach falls.

Baroness Eaton: I have a specific question about councillors on committees, but I want to follow up what you have just said. Clearly, there was totally improper behaviour by the chairman of that committee. My background is in local government. I cannot remember the title of the officer in every authority—I am having a senior moment; it may be the 147 officer or the 157 officer—who is not the chief executive but has responsibility for the ethics and behaviour of the authority in respect of what is legally acceptable. I find it staggering that that situation could arise without the legal adviser working on the committee referring the matter and having it dealt with officially.

The Chairman: It is the monitoring officer.

Baroness Eaton: Thank you—there is a number attached to it. That really staggers me, and I am amazed that it can happen, but obviously it did.

The Chairman: That is a comment rather than a question.

Q151 **Baroness Eaton:** It is a comment rather than anything else. My question is this. As we have heard, members do not always behave terribly well on panels. Currently, members of councils can, and often do, sit on licensing panels, with only a few hours of training, to decide issues that may have important consequences for both businesses and residents. Should they be prevented from sitting until they have had more training? Are there circumstances in which some councillors should be prevented from sitting at all?

Gerald Gouriet: Yes to both. Of course they should be trained. I do not think that it is at all a good idea for people with no training to adjudicate in these matters. The commercial and social implications are enormous. Sometimes I have been told by all three, "We have never sat on one of these hearings before". It arises more in betting and gaming, but that is just as bad. They say, "We have never sat on an application such as this. Can you help us with X, Y and Z?" In the limited time available for the hearing, one does not feel for a moment that the thing has been properly ventilated, on either side.

Of course, training is only as good as the training that is given. I have given training, as some of us here have done. We are asked to do so. It is a bit of PR and we do it, to do ourselves good the next time we appear in front of them. I have had members of a licensing committee that I was training sit with their arms folded, staring at me hostilely, because they did not like for one moment what I was telling them, which represented what their limitations were—what the statute demanded that they did not do. They did not like hearing that at all and rejected the training that I was giving them.

The Chairman: Are you indicating that perhaps local authorities do not take licensing as seriously as they take planning?

Gerald Gouriet: I am not sure that it is a question of whether they take it seriously. I think they assume that they have powers that they do not have. They do not like the limitations that are imposed on them. As far as taking it seriously is concerned, I have been involved in very few planning applications, but they were a few minutes only. The flaws of the planning regime are solved by the planning inquiry, which is extensive—huge—compared with the few minutes that are given to the initial decision. In licensing, we have nothing that is the equivalent of the planning inquiry to put things right—nothing at all.

The Chairman: Is the mandatory training only three days?

Lord Blair of Boughton: Three hours.

The Chairman: In Scotland, apparently, no one is allowed to hear unless they have received mandatory training. Three hours? What do you recommend should be the minimum for mandatory training?

Gerald Gouriet: I will be plucking a figure from the air if I do.

The Chairman: You are experienced in giving training.

Paul Douglas: The least that the licensing committee should do—it is the same for police officers as well—is to put themselves in the shoes of the people who are running the premises, and do a day's personal licence training. It is quite elementary, but it is the only training that an awful lot of people get.

Andrew Cochrane: It is difficult to be overly prescriptive about the amount of training that a councillor should do, save to say that it should take place. I am a great believer in on-the-job training.

The Chairman: Three hours?

Andrew Cochrane: I agree that three hours is too little. There are various types of applications that come before a committee. Like everything in life, if it is properly done, you start off with the more straightforward stuff and then move on to the more complex things. I agree with what Paul said. It is probably to be recommended that people do some training in the industry itself.

Baroness Henig: Are we not skirting over another issue that lies beneath this? I come from local government, but I was also a magistrate. In both those forums, I came across opinionated and prejudiced people. A magistrate once said to me, "I do not believe a word a police officer says". That was before quite an important trial. I was open-mouthed. I would not want us to overexaggerate the problem. There is an issue with training, but there are problems with opinionated people right across the spectrum. I feel that we should acknowledge that.

Gerald Gouriet: That is so. Without being specific, one also gets opinionated people at higher levels of court than the magistrates, and one has to deal with it as best one can. It is a question of degree. One sees far too much of it. My bottom line on this is that we will always have these problems. We can solve them to some extent through training and experience, but they will always be there in decision-making at that level. It is vital that we have a better appeals procedure, to put things right.

The Chairman: That is very helpful.

Q152 **Lord Davies of Stamford:** Mr Gouriet, you have had a very interesting career.

Gerald Gouriet: I think I may have confessed rather too much.

Lord Davies of Stamford: It is unusual for someone to come before us with a background in Hollywood. You said something at the outset of proceedings with which I strongly disagreed—that under the present, post-2003 regime there was no mechanism for controlling the number of licensed undertakings. There is one; it is called the market, and some of us believe in it. However, you said something in your written evidence to us with which I strongly agree. I will read it out: "A repeated mantra (at licensing hearings) is that planning and licensing are two different regimes, and that, accordingly, planning considerations are irrelevant to licensing. That mantra is difficult to overcome, even though there is a wide overlap between planning and licensing". You say further on, "I think that an integration of the two regimes, under the authority of Guidance or Law, would be of great benefit". We have received quite a lot of evidence from different people in the same direction. I am convinced that you are right, and that we need to make sure that licensing and planning decisions in future are more coherent than they have often been

in the past and that these two functions talk and relate to each other in local government, which has not always been the case.

For our benefit, if we were to recommend to our colleagues a change in the law in this matter—guidance, of course, would be for the Home Office—and eventually push one through, what form do you think it should take? Do you think that before a planning authority issues any planning that provides for licensed premises it should check with its colleagues on the licensing committee, or that the licensing committee should have a statutory obligation to discuss every year with the planning committee how they should work together? What particular form of obligation should we impose to try to address the problem that you have identified?

Gerald Gouriët: My approach ducks an answer to that question, in a sense. As you may have gleaned from what I put in writing, I heartily wish that those who make decisions are given the authority to do what is right, without being too prescribed by conditions. It would be lovely if the first tier of decision-making in licensing was entitled, and knew that it was entitled, to have a look, if it wished, at the planning situation, and to grant a licence that accorded with the planning permission that had already been given. That would be a huge benefit. Right now, they are told in terms that there are two separate regimes and they should not muddle one with the other.

The Chairman: Mr Cochrane, do you have a view?

Andrew Cochrane: It is a question of looking at how it pans out in practice. If somebody comes to me and says, "I want to apply for a licence until 1 o'clock in the morning, and I have a planning restriction that stops me trading beyond 11 o'clock at night", I have to say, "You will have to resolve your planning issue". It may be that, as Gerald says, I will go to the committee and say, "Planning is planning and licensing is licensing"; indeed, I would. Equally, sitting behind that, my client still has the problem that they have to resolve the planning issue at some point, so that they can trade lawfully.

Lord Davies of Stamford: You waved your arms. We have identified a problem. We should try to solve it, so I would like your practical suggestion as to what the right remedy is.

Andrew Cochrane: If you wanted a solution, perhaps the way to do that, as Gerald said, would be to make it obligatory for the licensing committee to look at the planning position on any grant of a variation or new premises licence.

Gerald Gouriët: I wish it had that authority. Frankly, I wish that the licensing objectives were not there and that licensing committees could simply look at what needed to be done and do it, as licensing justices used to do. Their decision could be upset only if it was unreasonable to the extent that no reasonable person could have taken it. I wish that a licensing committee was entitled to look at everything, including the

current planning permission, the likelihood of the grant of planning permission or building regulations, and to do what it thought was the right thing.

Lord Davies of Stamford: That puts up a whole lot of issues. Personally, I would not like to go down that road. It is useful to have the clear discipline of four established criteria. I am very much in the market for practical solutions to what is clearly a difficulty at the moment.

Andrew Cochrane: I would be reluctant to see a regime that said, for example, "You have to have planning before you can apply for licensing". It may well be just because of the timing of the way things are working. As long as the licensing committee had been mandated to consider, and had considered, the planning implications of what was going on, it might be able to say, "We know from the planning officer that this is likely to be granted, but it has not yet been granted and may take some time". As long as the committee has a look at it, I do not see that that will be an issue.

Lord Davies of Stamford: You are saying that we should have guidance or law that, before taking decisions on licensing, the licensing committee must consult its planning colleagues to make sure that any decisions it takes are consistent with the planning guidelines on which the authority is working.

Andrew Cochrane: If the Committee feels that the two regimes need to be brought more closely together—personally, I do not—that would be a good way of doing it.

Paul Douglas: Planning committees or planning departments are already a responsible authority, so the link is there as far as planning is concerned.

Lord Davies of Stamford: The planning authority has to take into account licensing considerations.

Paul Douglas: I used to wonder why an application would be made to trade until 2 o'clock in the morning when there was planning permission only until midnight.

Lord Davies of Stamford: I am still wondering about that.

Paul Douglas: I could not really understand why planning never objected. To keep it simple, if the licensing committee receives a representation from the planning committee saying, "You do not have planning permission to do it", you sort out the planning permission first and then do it.

The Chairman: Should there be a role for mediation? What should that role be?

Gerald Gouriet: My concern about mediation, which I have raised already, relates to the behind-closed-doors aspect of it. If there is to be mediation, it should be transparent.

Andrew Cochrane: Is this in a general context or a planning context?

The Chairman: In licensing.

Andrew Cochrane: In licensing in general? Yes, there is a role for mediation. It would help local residents, in particular. For instance, if I make an application, they may feel that I am the hired gun coming to act for a company or somebody, so they are naturally wary of me. If there was some method of mediation, it would be helpful. I had an example recently in the north-east, where there was a bit of an issue over a pub, but probably not enough to generate legal action for a review or an enforcement notice. The local councillors got involved and brought the parties together to have a discussion about how the thing might move forward, and that worked very well. I encourage mediation wherever possible.

Gerald Gouriet: I will give a brief example of where it seems to me to be going wrong. Recently, I was asked by a local authority to attend a meeting with the licensing officer that was requested by an appellant, to see whether they could come to some agreement. I was asked to attend when the licensing authority became concerned at being given a list of who were to attend on behalf of the appellant. There were two licensees, two solicitors, a sound expert, a licensing consultant and Queen's Counsel. I attended and stopped happening what I think would have happened if I had not attended, which would have been, in effect, a hearing, with a decision, to which people who were interested residents were not invited. I was very concerned about that.

Paul Douglas: There is an issue with residents as well. The vast majority of my clients are, quite literally, the corner shop; they want to open a corner shop. I mediate with residents, if they are willing to talk to me, but an awful lot of the time, people say, "You are representing the other side. Is it safe to talk to you?" When I talk to them, through mediation, we always iron out the problems.

The Chairman: Provided that the residents—

Paul Douglas: Provided that they are willing.

Q153 **Lord Foster of Bath:** As we have taken evidence, we have heard lots of dissatisfaction with the initial decision-making processes of licensing committees. We have also heard dissatisfaction with the appeals process and magistrates' decisions there. In relation to magistrates, one of the concerns that we have heard is lack of consistency of decisions around the country. What are your thoughts on that? Given that we know that magistrates' courts are not courts of record, and that decisions are not always even written down, do you think that we could at least improve consistency, share information better and help with training if it was a

requirement that all magistrates' decisions in relation to licensing were written down and made available, possibly on the internet?

Gerald Gouriet: I do not think that would be a good idea, simply because many decisions are already written down—they are handed down in writing—and some very bad decisions are being hoicked around and used to try to influence another bad decision. It is too inferior a level of decision-making to be treated like a court of record or a High Court judge's decision. A bad decision by a lay Bench, or even a district judge, should not be used to persuade another court to come to the same decision.

Lord Foster of Bath: That is very interesting. We have heard somewhat different views from others, in other positions.

Andrew Cochrane: In practice, a lot of these decisions are out and about anyway, through the Institute of Licensing or through counsel who have sat on them. Sometimes they can even be found on the internet as well. The more interesting ones certainly tend to get out and about. I had not really considered Mr Gouriet's point of view beforehand. Having reflected on it momentarily, I can see that it has some force.

Lord Foster of Bath: Can we hear a final bit of evidence? Can you comment on what is clearly the view of your colleagues—that we should not rely on magistrates' courts as able to give decent appeal decisions anyway?

Paul Douglas: From my perspective in the pecking order—the nature of my business is very small—I deal with individual people. As Andrew pointed out, decisions come out through the Institute of Licensing or whatever. My simplistic approach is that if a decision is made—this happened a number of years ago—right away it sets the wheels in motion for everybody to try to sort out what is wrong with it. I am talking about the summary reviews and interim steps. That went one way and then another, and it is still ongoing. If decisions are made with which Gerald may not agree, we have the processes available to remedy that.

Gerald Gouriet: Can I quickly put an end to that? I have never used a magistrates' court decision, and several of my contemporaries do not do so. We do not think it right to do so, because magistrates' court decisions are so fact-dependent.

Lord Davies of Stamford: Mr Gouriet, my problem with what you have suggested is that it might lead to a false market in precedents and information. Some people will always know about precedents, some precedents will be well known in the trade and so forth, and some people can discover precedents by careful research, but others will not be able to discover them very easily. It would be very difficult to challenge the nature of the precedent that someone was quoting, because you would not have an authoritative record available to you. If everything was published on the internet, as my colleague Lord Foster suggested, at least the same information would be available to everybody, and there

would be a single record of each decision that had been taken.

The Chairman: Can I move the argument along slightly? I think you have answered that point. Am I right that the answer is a no?

Gerald Gouriet: Yes.

Q154 **The Chairman:** You said earlier that you would like to see a proper appeals procedure. Are you able to set out how the procedure could be improved, in your view? Should it go to the Crown Court, the county court or a professional tribunal for this purpose? You alluded to it, but you have not shared with the Committee what you would like to see.

Gerald Gouriet: I was happy when it went to the Crown Court. I am told—I do not know what the facts are—that that is impracticable now, possibly because of the number of criminal offences being committed that take up Crown Court time. I just do not know.

Baroness Goudie: There is a shortage of judges.

Gerald Gouriet: A shortage of judges?

The Chairman: We are being very nice to judges this week.

Gerald Gouriet: Really?

Baroness Goudie: There is a shortage of judges because of funding for the legal profession and for judges. That is quite clear.

The Chairman: I do not think that is evidence. That was a comment.

Gerald Gouriet: I and a number of others I have spoken to would be interested in appeals going up our tribunals ladder—to first-tier and upper-tier tribunals.

The Chairman: Specifically for this?

Gerald Gouriet: Yes. Gambling appeals, for example, go to the tribunals. I would have thought that was a considerable improvement over magistrates' court appeals.

Lord Davies of Stamford: Who would sit on the tribunals?

Gerald Gouriet: I think that judges sit on the tribunals.

Lord Davies of Stamford: You still have the problem that there is a shortage of judges.

Gerald Gouriet: There may be a shortage of judges who are willing to appear in Crown Courts, as opposed to willing to appear elsewhere.

The Chairman: These are tribunals. It is a different concept. Do the other panellists agree?

Andrew Cochrane: I share some of the reservations about the decisions becoming a sort of record on which everybody can rely—as Gerald said, they are very fact-specific—but my own experience of dealing with magistrates has been fine. Often, although not always, district judges sit on the cases. Although it is an area of law they are often not familiar with, they seem to be able to grapple with the issues and to come together with a good decision. When we have had a lay Bench, again often with very fact-specific cases, perfectly reasoned decisions have been found. As lawyers, we appear before forums all the time. You get decisions that you think are good and decisions that you think are bad. I am not sure that the propensity to get decisions that I think are good or decisions that I think are bad will be less simply because it is being dealt with by a Crown Court judge, rather than a district judge.

The Chairman: It comes back to where they are flatly contradictory and do not have the status of being a precedent. If it were a tribunal—possibly together with mediation—that would make it more formal.

Gerald Gouriet: I have this recurring problem with how mediation is conducted.

The Chairman: If residents were properly informed—

Gerald Gouriet: Yes. As I said, the little experience I have had of them was that there was considerable browbeating, or attempted browbeating, by one side of the other. That is not so easy in front of a formal tribunal, whether it is a court or otherwise.

The Chairman: Mr Douglas, do you wish to make a comment?

Paul Douglas: As far as the appeal is concerned, it may be magistrates or whatever. I agree with Andrew. You might not necessarily like the decision, but I have confidence in the panel as such. To introduce a tribunal where people are dedicated specifically to licensing can only be a good thing.

The Chairman: I thank you all very much on behalf of the Committee for being with us, giving up your time so generously and answering our questions. If there is anything that you would like to say in supplement, that would be very helpful. Thank you very much indeed.