

Public Document Pack

Licensing Sub-Committee

Monday, 12th May, 2008

PRESENT: Councillors G Hyde, C Townsley and
G Wilkinson

1 "The Faversham" - Application for the Variation of a Premises Licence for the premises known as "The Faversham" 1-5 Springfield Mount, Woodhouse, Leeds, LS2 9NG

Please note that all outstanding representations in relation to this application were settled prior to the hearing. The application was therefore withdrawn from the agenda.

2 "Smokestack" (Formerly Soul Circus) Application for the Variation of a Premises Licence for the Premises Known as "Smokestack" 159a Lower Briggate, Leeds, LS1 6LY

Please find attached the deferral letter in relation to this application.

3 "Academy" (Formerly Liquid & Envy) - Application for the Grant of a Premises Licence for the Premises Known as "Academy" 55 Cookridge Street, Leeds, LS1 3AW

Please find decision letter attached.

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**Democratic Services**

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Our Ref:
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12th June 2008

APPLICATION FOR THE VARIATION OF A PREMISES LICENCE: "SMOKESTACK" 159A LOWER BRIGGATE, LEEDS, LS1 6LY

On the 12th May 2008 the Licensing Sub-Committee heard an application brought by Mr. Simon Ord for the variation of a premises licence in respect of the premises known as "Smokestack", 159a Lower Briggate, Leeds, LS1 6LY.

The Sub-Committee was advised by Mr. Lyon, solicitor for the applicant, that the applicant had just received an Acoustic Assessment Report which had highlighted that there was an issue with noise breakout at the premises. Due to the Report the applicant was happy to amend the application to change the proposed hours of licensable activities to only seek an extension of hours on Sunday between 12:00 hours to 02:00 hours with half an hour period for 'winding down'. In addition to this there would also be no live bands at the premises after 01:30 hours. Mr. Lyon informed the Sub-Committee that should the variation be granted that the premises would not operate to the new hours unless the noise issue was addressed.

Mr. Bilsborough, Environmental Health Services, informed the Sub-Committee that he had only just received the information in relation to the Acoustic Assessment at the premises and that officers were still investigating five complaints regarding the premises. Mr. Bilsborough suggested that the applicant should defer the application until all required works had been completed at the premises. Ms. Ray, Yorkshire Metropolitan Housing, also agreed with the proposed deferral.

The Sub-Committee then adjourned and sought legal advice regarding this matter. The Sub-Committee took into consideration the representations made by all parties present and

FINAL

resolved to defer the consideration of the application for a period of no more than three months from the 12th May 2008 for the required works to be completed at the premises. The applicant should then give 14 days notice to Licensing Officers in order for a hearing to be rescheduled.

Yours sincerely

Laura Pilgrim
Governance Services Officer



Democratic Services

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12th June 2008

APPLICATION FOR THE GRANT OF A PREMISES LICENCE: "ACADEMY" 55 COOKRIDGE STREET, LEEDS, LS2 3AW

On the 12th May 2008 the Licensing Sub-Committee heard an application brought by Academy Music Group, 211 Stockwell Road, London, SW9 9SL for the variation of a premises licence in respect of the premises known as "Academy" (formerly Liquid and Envy and Creation).

The applicant sought the following:

Proposed Licensable Activities:

- A Plays
- B Films
- E Live Music
- F Recorded Music
- G Performance of Dance
- H Anything of a similar description to that falling within (E), (F) or (G)
- I Provision of Facilities for Making Music
- J Provision of Facilities for Dancing
- K Provision of Facilities for Entertainments of a Similar Description to that falling within (I) or (J)
- L Late Night Refreshment
- M Supply of Alcohol

Proposed Hours of Licensable Activities

- A Plays
- B Films
- E Live Music
- F Recorded Music
- G Performance of Dance
- H Anything of a similar description to that falling within (E), (F) or (G)
- I Provision of Facilities for Making Music
- J Provision of Facilities for Dancing
- K Provision of Facilities for Entertainment of a Similar Description to that falling within (I) or (J)
- M Supply of Alcohol

Monday to Thursday 10:00 hours to 04:00 hours
Friday to Saturday 10:00 hours to 06:00 hours
Sunday 12:00 hours to 06:00 hours

L Late Night Refreshment

Monday to Thursday 23:00 hours to 04:00 hours
Friday to Sunday 23:00 hours to 06:00 hours

Proposed Times When the Premises is Open to the Public

Monday to Thursday 10:00 hours to 04:30 hours
Friday to Saturday 10:00 hours to 06:30 hours
Sunday 12:00 hours to 06:30 hours

Non Standard Timings and Seasonal Variations

On the Four Saints Days (St. Patrick's, David's, George's and Andrew's Day) and on the Friday Saturday and Monday of Bank Holiday weekends and on the occasion of events of local, national, or international significant or for charitable events, the finish time for all licensable activities will be extended by one hour over and above the standard times requested in the basis of 10 days notice to the police and only by agreement with the Police

On Bank Holiday Mondays to extend the hours for all licensable activities to 06:00 hours.

To extend the terminal hour on New Year's Eve to the beginning of the standard timings on New Year's Day.

The Sub-Committee noted that prior to the hearing the applicant had reached the following agreements with Health and Safety Services:

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Public Safety 3: - Management Arrangements

1. Written records of all accident and safety incidents involving members of the public will be kept. These will be made available at the request of an authorised officer.
2. A suitably trained and competent person must ensure regular safety checks of the premises including decorative and functional fixtures, floor surfaces and equipment (including electrical appliances) to which the public may come into contact are undertaken. Records of these safety checks must be kept and made available for inspection by an authorised officer.

Public Safety 4:- Fire/Electrical Safety

3. Electrical installations will be inspected on a regular basis (at least every three years or at a frequency specified in writing) by a suitable qualified and competent person. If used, any temporary electrical wiring and distributions will also be inspected. Inspection records/certificates will be kept. These will be made available at the request of an authorised officer.
4. One of the following protective measures shall be used for all socket-outlets which may be used for the connections for lighting, video or sound amplification equipment and display models:
 - a) Each socket-outlet shall be protected by a residual current device having a rated residual operating current not exceeding 30mA
 - Or
 - b) Each individual socket-outlet circuit shall be protected by an integral residual current device having a rated residual operating current not exceeding 30mAThe current operation of all residual current devices shall be checked regularly by pressing the test button. If the device does not switch off the supply, an electrical contractor should be consulted. At the same time action should be taken to prohibit the use of sockets associated with a faulty residual current device.

Public Safety 6: - General Housekeeping

5. Regular safety checks of guarding to stairs, balconies, landings and ramps will be undertaken, and a supervision policy will be maintained to prevent people from inappropriate behaviour including climbing which may lead to a fall from height.
6. A written spillage policy will be kept to ensure spillages are dealt with in a timely and safe manner

Public Safety 8: - First Aid

7. A suitably trained First Aider or an appointed person will be provided at all times when the premises are open to the public for licensable activities.
8. Adequate and appropriate First Aid equipment and materials will be available on the premises.
9. A procedure for dealing with unwell members of the public will be in place including those who appear to be affected by alcohol or drugs. Staff will be appropriately trained in such procedures.

FINAL

Public safety 9 : - Special Effects

10. Where strobes, laser, smoke machines or any other special effect equipment may be used, a written health and safety policy covering all aspects of their use will be provided, and staff will be appropriately trained.
11. No strobes, lasers, smoked machines or any other special effects, will be used at the premises unless there is a clearly displayed warning at the entrance to the premises that such equipment is in use.

Public Safety 10: -

12. Before the launch of the venue to the public the applicant will contact the Health and Safety Team to arrange a final Inspection of the premises.

This letter represents the formal decision of the Sub-Committee in respect of the application.

Preliminary Procedural Issues

The Sub-Committee considered preliminary matters of a purely procedural nature. There were no declarations of interest made. The Sub-Committee agreed that the procedure for the hearing would not be varied. The Sub-Committee then decided to exclude the public from that part of the meeting where Members would deliberate on the application as presented. This would allow them to have a full and frank discussion on all matters put before them and this fact outweighed the public interest in not doing so.

Prior to the hearing that Sub-Committee had considered the Licensing Officers report which included a copy of the application as submitted. The report also included written representations received from Environmental Health Services and the Health and Safety Team.

The Sub-Committee then went on to consider the application

The Hearing

The following interested parties attended the hearing:

- Mr. R. Bilsborough, Environmental Health Services
- Mr. S. Clothier, Environmental Health Services
- Mrs. McCann, Solicitor for the applicant
- Mr. Maides, DPS
- Mr. Marley, Sound Consultant on behalf of the applicant

In determining the application the Sub-Committee took into account the written submissions from the responsible authorities contained within the report and the Notices of Hearing. These had been circulated to the parties prior to the hearing.

After considering the evidence and submissions the Sub-Committee would need to satisfy itself that granting the variation would promote the licensing objectives.

In reaching its decision, the Sub-Committee had regard to the provisions of the Licensing Act 2003, guidance under Section 182 of that Act and the council's own Licensing Policy.

FINAL

In particular the Sub-Committee took into account *Sections* 17 & 18 of the Act because these were the most relevant to the application and Chapter 2 of the Guidance relating to the prevention of crime and disorder, public nuisance and public safety.

The Sub-Committee then went on to consider the following sections of the Licensing Policy as the Sub-Committee took the view that these paragraphs had a bearing on the applications:

- Section 6 General Principles
- Section 11 Promotion of the Licensing Objectives

Responsible Authorities

The Sub-Committee then considered representations made by Mr. Bilsborough on behalf of Environmental Health Services. Environmental Health Services had made a qualified objection to the application due to the vicinity of the premises to residents. The main concern was in relation to noise breakout at the premises, patrons outside the premises and from the balcony area. The application was also for late hours when background noise levels were low which meant that any noise at that time would have a higher impact on residents. This had led to the condition of noise being inaudible outside of the premises after 23:00 hours. In justification of the condition Mr. Bilsborough explained that since the Licensing Act 2003 had been introduced Officers had the opportunity to protect residents from noise nuisance proactively. Whilst the applicant had argued that there was existing legislation which dealt with noise nuisance but this would only come into force once the nuisance had occurred. The proposed clause by Environmental Health Services was 'Noise from the premises shall be at the nearest noise sensitive premises (i) after 23:00 hours and (ii) at any time when entertainment, as defined by paragraph 2 of schedule 1 of the Licensing Act 2003, takes place on more than 30 occasions per year'. Officers believed that this condition was the easiest condition to comply with as it was easy to understand for all parties and was also workable as the manager could stand outside the premises and see if there was a noise breakout. Mr. Bilsborough informed the Sub-Committee that he felt that the applicant's alternative condition was not workable and that it would be virtually impossible to determine a breach of the condition for example an officer would have to measure sound 2 metres away from a first floor flat.

The following issues were addressed in the questions which followed:

- Mrs. McCann directed Members of the Sub-Committee to the applicant's proposed conditions and informed them that she felt that those conditions were necessary and proportionate.
- Mr. Bilsborough had believed that the premises would be split in to two separate venues on different floors however Mrs. McCann clarified that the premises would be open plan and operated as one whole venue.
- Mrs. McCann informed the Sub-Committee that she felt that the proposed conditions from Environmental Health provided more protection for residents than the current law allowed and that there were existing powers under other legislation which could deal with noise nuisance. Mr. Bilsborough agreed but stated that the Licensing Act 2003 required public nuisance is prevented from happening in the first place which had lead officers to the proposed conditions.

FINAL
Applicant

As there were no objectors or other responsible authorities present the Sub-Committee then considered the representations made on behalf of the applicant by Mrs. McCann, solicitor for the applicant. Mrs. McCann referred to a number of documents which had been provided to all parties which included a letter from the Interim Chief Executive of Sheffield City Council congratulating the company on the successful opening and development of a similar venue in Sheffield. The pictures included in the document indicated the high standard of premises the company provided. The current Premises Licence which was in place for the premises under it's previous owner had later terminal hours. As 'Liquid & Envy' the applicant was not aware of any successful prosecutions in relation to noise. The new premises was to undergo a huge refurbishment and a new application must be made for the grant of a new Premises Licence. As previously mentioned the premises had been a night club however the new premises would be a destination venue for live music with tickets and not a vertical drinking establishment. There had also been no outstanding objections from West Yorkshire Police or complaints from local residents.

Mrs. McCann then went on to outline the main points of the applicant's case which the Sub-Committee should take into consideration when making their decision. The conditions suggested by Environmental Health Services went beyond what was required under the current legislation. The recent Thwaites Case ([2008] EWHC 838 (Admin)) established that any condition must be based on evidence and not go above what current law already catered for. Mrs. McCann reiterated that there had been no prosecutions under the previous owners and added that the 'light touch' of the Licensing Act 2003 was created for a reason. The Review mechanism also was available to officers should any problems that arise persist. The applicant was happy to work with Environmental Health Services in principle which is why Mrs. McCann was instructed to write the letter with the suggested amendments to the proposed conditions. The applicant's main concern was that of inaudibility. Leeds City Council held open air concert in the nearby Millennium Square and surely the local authority itself would be in breach on this condition. The applicant owned a number of venues across the UK, including three in London, Oxford, Liverpool, Sheffield, Birmingham and Glasgow and the venues had international acclaim. Many of the sites were in city centre areas with other licensable premises nearby and also residential premises. The Company took the issue of noise very seriously and had been proactive in their various venues to prevent noise nuisance. There had been no applications made under the Licensing Act 2003 to Review any of the Premises Licences held by the company and the company had even contributed to national guidance in relation to crowd control.

There was sufficient legislation which covered noise nuisance already in existence and recent new legislation called into question the issue of 'inaudibility'. The Licensing Sub-Committee should only depart from Government Guidance where they had good reason to. Mrs. McCann also added that the legislation did not require inaudibility but that the noise should not constitute a statutory nuisance. Mrs. McCann then invited Mr. Marley, a noise consultant employed by the applicant to address noise issues at all their venues. Mr. Marley informed the Sub-Committee that he did not feel that the inaudibility condition proposed by Environmental Health Services was enforceable. Potential non-acoustically trained officers may be called on to make a decision regarding inaudibility. At this stage Mr. Bilsborough clarified that this was not the case and all officers who would assess noise nuisance would be appropriately trained. Mr. Marley continued to advise the Sub-Committee that noise being audible did not constitute a statutory nuisance. The reason why he had

FINAL

suggested that noise levels were measured two meters away from the building wall was to avoid the test being effected by noise reflecting off the wall.

The following issues were addressed during questions:

- Mr. Maides, proposed DPS had 18 years of experience of similar types of venues and had managed similar venues both in the city centre and in residential areas. As the premises was a destination venue for ticketed events taking place 80% of the time between 19:00 hours and 23:00 hours it would not attract a lot of people queuing at 23:00 hours as they would do for club. The queues would have a high visibility of staff whose numbers would be assessed based on the area. Mr. Maides would also have to work with the landlords or nearby premises as it was likely that the queue for the premises would have to move towards the 'Walkabout Inn'.
- Dispersal at the premises would be heavily stewarded also and Mr. Maides was aware that the Premises Licence could be affected if there was a noise nuisance created by people leaving the premises. Whilst he could not guarantee that it would be 100% quiet in the area he would engage with taxi firms and work with the council in relation to this. The company had experience with dealing with unsolicited taxis also from their premises in Birmingham.
- There would be probably one late event every week at the premises compared to two or three a week with the previous night club.
- The company had worked well with the police and local authorities in all of the areas where they had premises and any issues which had occurred in one venue was fed to all staff and venues.
- The company had been involved in a police campaign to catch a group of pick-pockets who were targeting music venues. The premises in Birmingham had been involved with the police in this matter and assisted in apprehending a group of pick-pockets from Portsmouth.
- The Clientele for the premises was mixed and covered 16 years old to 60 years old. Whilst the company could be selective with regards to selecting bands/events which would not cause problems they did aim to provide a wide range of bands etc.
- Mr. Clothier informed the Sub-Committee that the legislation in relation to noise law had a different objection to the requirements of the Licensing Act 2003 where the Act looked for the prevention of public nuisance. The inaudibility condition was used by Leeds City Council and other local authorities in order to prevent noise nuisance. The Institute of Acoustics Draft Guidance suggested that noise levels should not exceed the background noise levels. However, this was difficult to measure as there were a number of premises in the area and it would be difficult to isolate the premises from other premises in the area. The proposed condition regarding inaudibility was easier to implement however the background noise maybe a point for consideration. Mr. Marley agreed that it would be difficult to pinpoint who was responsible for the noise nuisance but added that Mr. Clothier had mentioned guidance which was included in the draft version of the Guidance and not the final version.
- Mr. Marley informed the Sub-Committee that it was possible to control noise breakout at the premises and avoid neighbours being disturbed by a thumping bass by controlling the structure of the building. For instance the premises which is owned by the company in Brighton cost an additional £3million due to additional soundproofing which was installed. Another venue in Sheffield was near the 'Crucible' and of approximately 25 events which have been held at the premises there had been no complaints regarding noise.

FINAL

- Mrs. McCann confirmed that should the application for the grant of the Licence Premises be agreed then the previous licence would be surrendered.

The Decision

The Sub-Committee discussed the application in a closed session and received legal advice on the options open to them with regard to the application. Members noted the written submissions objecting to the variation. The representations made by the applicant in support of the application were also taken into consideration by the Sub-Committee.

After careful consideration the decision of the Sub-Committee was to grant the Premises Licence in the following terms:

Licensable Activities:

- A Plays
- B Films
- E Live Music
- F Recorded Music
- G Performance of Dance
- H Anything of a similar description to that falling within (E), (F) or (G)
- I Provision of Facilities for Making Music
- J Provision of Facilities for Dancing
- K Provision of Facilities for Entertainments of a Similar Description to that falling within (I) or (J)
- L Late Night Refreshment
- M Supply of Alcohol

Hours of Licensable Activities

- A Plays
- B Films
- E Live Music
- F Recorded Music
- G Performance of Dance
- H Anything of a similar description to that falling within (E), (F) or (G)
- I Provision of Facilities for Making Music
- J Provision of Facilities for Dancing
- K Provision of Facilities for Entertainment of a Similar Description to that falling within (I) or (J)
- M Supply of Alcohol

Monday to Thursday	10:00 hours to 04:00 hours
Friday to Saturday	10:00 hours to 06:00 hours
Sunday	12:00 hours to 06:00 hours

L Late Night Refreshment

Monday to Thursday	23:00 hours to 04:00 hours
Friday to Sunday	23:00 hours to 06:00 hours

Times When the Premises is Open to the Public

Monday to Thursday	10:00 hours to 04:30 hours
Friday to Saturday	10:00 hours to 06:30 hours
Sunday	12:00 hours to 06:30 hours

Non Standard Timings and Seasonal Variations

On the Four Saints Days (St. Patrick's, David's, George's and Andrew's Day) and on the Friday Saturday and Monday of Bank Holiday weekends when the finish time for all licensable activities will be extended by one hour over and above the standard times requested. And an additional 10 additional days to be agreed with the police on 10 days notice to them.

On Bank Holiday Mondays to extend the hours for all licensable activities to 06:00 hours.

To extend the terminal hour on New Year's Eve to the beginning of the standard timings on New Year's Day.

The grant of the Premises Licence was also subject to the incorporation in the Operating Schedule of the conditions agreed with the Health and Safety Service as outlined below:

Public Safety 3: - Management Arrangements

1. Written records of all accident and safety incidents involving members of the public will be kept. These will be made available at the request of an authorised officer.
2. A suitably trained and competent person must ensure regular safety checks of the premises including decorative and functional fixtures, floor surfaces and equipment (including electrical appliances) to which the public may come into contact are undertaken. Records of these safety checks must be kept and made available for inspection by an authorised officer.

Public Safety 4:- Fire/Electrical Safety

3. Electrical installations will be inspected on a regular basis (at least every three years or at a frequency specified in writing) by a suitable qualified and competent person. If used, any temporary electrical wiring and distributions will also be inspected. Inspection records/certificates will be kept. These will be made available at the request of an authorised officer.
4. One of the following protective measures shall be used for all socket-outlets which may be used for the connections for lighting, video or sound amplification equipment and display models:
 - c) Each socket-outlet shall be protected by a residual current device having a rated residual operating current not exceeding 30mAOr

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d) Each individual socket-outlet circuit shall be protected by an integral residual current device having a rated residual operating current not exceeding 30mA
The current operation of all residual current devices shall be checked regularly by pressing the test button. If the device does not switch off the supply, an electrical contractor should be consulted. At the same time action should be taken to prohibit the use of sockets associated with a faulty residual current device.

Public Safety 6: - General Housekeeping

5. Regular safety checks of guarding to stairs, balconies, landings and ramps will be undertaken, and a supervision policy will be maintained to prevent people from inappropriate behaviour including climbing which may lead to a fall from height.
6. A written spillage policy will be kept to ensure spillages are dealt with in a timely and safe manner

Public Safety 8: - First Aid

7. A suitably trained First Aider or an appointed person will be provided at all times when the premises are open to the public for licensable activities.
8. Adequate and appropriate First Aid equipment and materials will be available on the premises.
9. A procedure for dealing with unwell members of the public will be in place including those who appear to be affected by alcohol or drugs. Staff will be appropriately trained in such procedures.

Public safety 9 : - Special Effects

10. Where strobes, laser, smoke machines or any other special effect equipment may be used, a written health and safety policy covering all aspects of their use will be provided, and staff will be appropriately trained.
11. No strobes, lasers, smoked machines or any other special effects, will be used at the premises unless there is clearly displayed warning at the entrance to the premises that such equipment is in use.

Public Safety 10: -

12. Before the launch of the venue to the public the applicant will contact the Health and Safety Team to arrange a final Inspection of the premises.

The following Environmental Health conditions will also be incorporated into the Operating Schedule:

Noise and Vibration

1. Ensure that no nuisance is caused by noise or vibration emanating from the premises.
2. Amplified sound or live music shall only be played within the building in such a way that noise breakout when measured within 2 metres of the nearest noise sensitive residential property will not exceed:
 - a. Background noise levels measured as a LS90 by more than 3bBA when measured as 15 min LA_{wq}.

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- b. Background noise levels in any octave band centre frequency measure as a L90 more the 3dB when measured as a 15 min Leq.
3. Ensure that all licensable activities are conducted and operated so as to prevent the transmission of audible noise or perceptible vibration through the fabric of the building or structure to adjoining properties.
4. No bottles shall be placed in the external receptacles between the hours of 23:00 hours and 07:00 hours to minimise noise disturbance.
5. There shall be no external loud speakers.
6. With the exception of staff controlled access for a limited number of people (to enable compliance with the smoking ban) customers will not be present on an evening on the external balcony beyond 23:00 hours.
7. Queues shall be restricted to cordoned areas to prevent them from obstructing footpaths and spilling out onto roads, and to keep noise and obstructions away from residential property. Staff shall be trained to intercept and manage any incidents and sufficient staff shall be employed to properly manage queues to prevent noise and aggression.
8. A cooling down period with reduced volume shall be operated before the premises close.

Light Pollution

9. Ensure that lighting provided for the purpose of customer and staff safety, for the security of the premises, and lighting associated with activities of entertainment and advertising is of such an intensity, suitably positioned and operated so as not to cause nuisance to neighbouring or adjoining properties.

Odour

10. Ensure that the premises are operated so as to prevent the emission of odours which are a nuisance at nearby premises or to persons in the immediate area.

Litter and Refuse

11. Ensure that business waste is stored inside closed containers awaiting collection; that litter arising from people using the premises is cleared away regularly; that promotional material such as flyers do not create litter; and that other street advertising is carried out lawfully.

In making its decision the Sub-Committee was satisfied that the grant of the licence with the imposed conditions was in line with the Council's own Licensing Policy and the provisions of the Licensing Act 2003.

There is a right of appeal to the Magistrates Court should you be dissatisfied with the decision made by the Sub Committee. You must make this appeal within 21 days of this letter reaching you.

Appeals should be addressed to the Magistrates Court at:
Clerk to the Justices
Leeds Magistrates Court

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Westgate
Leeds
LS1 3JP

and accompanied by a copy of this decision letter and the court fee of £400.00 if you are the premises licence holder and £200.00 for all other parties. Cheques should be made payable to HMCS.

Yours sincerely

Laura Pilgrim
Governance Services Officer