



REPORT OF THE ASSISTANT CHIEF EXECUTIVE (CORPORATE GOVERNANCE)

TO: LICENSING COMMITTEE

DATE: 2 JUNE 2009

SUBJECT: IMPLICATIONS OF THE RECENT CASE OF R (ON THE APPLICATION OF BRISTOL CITY COUNCIL) V BRISTOL MAGISTRATES COURT

Electoral wards affected:

All

Specific implications for:

Ethnic minorities

Women

Disabled people

Narrowing the gap

Executive Summary

1. This report advises Members of the implications of the recent case in the High Court of Justice. In that case, the Bristol City Council applied for the Judicial Review of a decision of the Bristol Magistrates Court in respect of the grant of a Premises Licence under the provisions of the Licensing Act 2003.
2. In that case the High Court decided that:-
 - Conditions should not be imposed on a Premises Licence which are adequately dealt with in other legislation;
 - Matters in the Operating Schedule are not automatically included in any Premises Licence which is granted. This will apply whether or not representations are made.
 - The Licensing Authority has to be sure that it is necessary to impose any conditions in order to promote the licensing objectives, and in order to do this must consider each condition individually.
3. This case raises implications for how hearings are conducted.

1.0 Purpose of this report

- 1.1 The purpose of this report is to advise Members of the implications of the above case, with particular reference to the way in which this Licensing Authority carries out its functions under the Licensing Act 2003.

2.0 Background information

2.1 The Application

On 5 July 2007, Somerfield Stores Ltd applied to the Bristol City Council for a Premises Licence for one of their stores, where they also operate a petrol filling station. They applied for permission to sell alcohol off the premises 24 hours a day, 7 days a week, and to provide late night refreshment indoors and outdoors between 1.00 pm and 5.00 am, 7 days a week. As relevant representations were received, the Council's Licensing Sub-Committee held a hearing into the application and decided on 29 August 2007 to impose a number of conditions on the Premises Licence, which they granted.

2.2 The Magistrates' Decision

Somerfield appealed to the Magistrates Court and they allowed their appeal in relation to five of the conditions imposed, and decided that they should be granted a licence without those conditions.

2.3 The conditions removed by the Magistrates Court were as follows:

- 2.3.1 Noise from ventilation, refrigeration or air conditioning plant or equipment shall not cause nuisance to the occupants of any properties in the vicinity.
- 2.3.2 All gangways, passages, staircases and exit ways shall at all times be kept entirely free from chairs or any other obstructions, and from any article or substance which may cause a person to slip, trip or fall.
- 2.3.3 The floor covering shall be secured so as not to ruck up or cause obstruction. Mats more than 1cm thick shall be sunk to floor level unless of rubber with wide bevelled edges.
- 2.3.4 The floors of all gangways, lobbies, corridors, passages and other exit routes and the tread of all steps and stairways shall be non-slippery and flat. The nosings of the treads with steps, changes of level and stairways shall be of a contrasting colour to the remainder of the tread. The nosing shall show up clearly under emergency lighting conditions.
- 2.3.5 No accumulation of combustible rubbish, dirt, surplus material or stored goods shall be permitted to remain in any part of the premises except in an appropriate place, and of such quantities so as not to cause nuisance.

2.4 The basic ground upon which the Magistrates Court allowed Somerfield's appeal was that they did not consider that the five conditions were necessary to promote the licensing objectives, as the matters covered were adequately dealt with by other legislation.

2.5 The High Court

The Council contended that the Operating Schedule submitted with Somerfield's application was deficient, and that the Magistrates Court failed to recognise that conditions had to be imposed to deal with that deficiency. The High Court recognised that any application for a Premises Licence must be accompanied, amongst other things, by an Operating Schedule. That is a document which, in accordance with Section 17(4) of the Licensing Act 2003, must be in a prescribed form and must include a statement about certain prescribed matters. Those matters include a statement of the steps which it is proposed to take to promote the licensing objectives. Members will be familiar with the application form for a Premises Licence, and are advised that the Operating Schedule is at Box P of that form.

2.6 The High Court also accepted that an application must be determined by the Licensing Authority in accordance with Section 18 of the Act, and that subject to certain exceptions the Authority must grant the Licence in accordance with the application, subject only to the mandatory conditions and also such conditions as are consistent with the Operating Schedule accompanying the application.

2.7

- The Barrister representing Bristol City Council submitted that a Licensing Authority is under a duty to impose conditions consistent with an Operating Schedule, regardless of whether they will be required to promote the licensing objectives.
- The High Court decided that this is not the case. It said that the Operating Schedule is not automatically included in any Premises Licence which is granted.
- It further said that it is a criminal offence to fail to comply with whatever the Operating Schedule contains only if, and to the extent that, what is in the Schedule is included in the Premises Licence ultimately granted, for example, by way of conditions.
- A Licensing Authority, therefore, has the power to impose conditions consistent with the Schedule. However, it does not impose a duty to impose conditions that reproduce the effect of the Operating Schedule.

3.0 **Main issues**

3.1 The Licensing Authority has a power to impose conditions from the Operating Schedule, but does not have a duty to do so. The Licensing Authority is also under a duty not to include conditions relating to matters which are adequately covered by other legislation. The Committee will therefore need to consider each condition in the Operating Schedule and will need to be satisfied that:

- (i) It is necessary to promote a licensing objective, and
- (ii) that it does not duplicate other legislation

before it can be imposed as a condition.

- 3.2 The position is more complicated where a Part B has been signed by the applicant. A Part B is effectively a request by the applicant to incorporate into the Operating Schedule agreed measures as conditions. The Committee still needs to be satisfied that it is necessary to promote a licensing objective, and that it does not duplicate other legislation before even agreed conditions can be incorporated into the Operating Schedule and then imposed as conditions.
- 3.3 This is likely to cause difficulties for the responsible Authorities, especially the Police, who would have to attend even where a Part B has been agreed in order to make representations to Committee that the conditions are necessary. The alternative would be that the Responsible Authority does not attend, and the Committee will then have to decide, without hearing representations, whether a condition is necessary.
- 3.4 Meetings have been scheduled between Legal, Licensing and Registration and the Responsible Authorities to look at the existing and any proposed conditions to establish which of these are adequately covered by other legislation.

4.0 Implications for council policy and governance

- 4.1 The High Court decided that there is no statutory provision which automatically incorporates the Operating Schedule submitted into any Premises Licence. The implication of this is that the Committee has to consider each condition included in the Operating Schedule to ensure that it is necessary in order to promote the licensing objectives.
- 4.2 The High Court also decided that conditions cannot be imposed which are adequately covered by other legislation.
- 4.3 The case raises implications for how hearings are conducted and for officers and Members.

5.0 Legal and resource implications

- 5.1 A Licensing Officer or Committee must always examine the Operating Schedule and determine whether or not it is necessary to convert the content into conditions. It may not be necessary to do so if matters are adequately covered in other legislation. That exercise must be done on an individual case basis. Responsible Authorities must be aware, when considering Operating Schedules and whether to make representations, that not all matters in the Operating Schedule will appear as conditions. Also, the fact that conditions are "agreed" via the Part B process does not mean that they will automatically appear as conditions. Responsible Authorities must decide whether to appear at the hearing to make comment on the specific premises, or to reach agreement with the applicant and then allow the case to be presented without the parties attending, but with the risk that some of the agreed matters may not ultimately appear as conditions if Members consider they are not necessary.
- 5.2 There are resource implications in that every application where a representation has been made will need to be referred to Committee irrespective of any agreement subject to the provision that a hearing may be dispensed with if the Licensing Authority, the applicant and each person who has made a representation agree that a hearing is unnecessary. This may result in there being more hearings before Committee.

6.0 Conclusions

- 6.1 Conditions should not be imposed which are adequately dealt with by other legislation.
- 6.2 Matters in the Operating Schedule are not included automatically in any Premises Licence which is granted. Where representations are made, this will include additional conditions contained in the Part B which the applicant requests be incorporated into the Operating Schedule. Where there are no representations, the conditions proposed in the Operating Schedule will still not be imposed as conditions unless considered necessary in order to promote the licensing objectives.
- 6.3 The Panel has to be sure that it is necessary to impose any conditions in order to promote the licensing objectives, and in order to do this must consider each condition individually.

7.0 Recommendations

- 7.1 That Members note the contents of this report.