

# Supplementary Papers for Licensing Sub-Committee

Date: Tuesday, 16 July 2024



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## 6. 561 Christchurch Road, Boscombe, Bournemouth, BH1 4AH

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Please find attached a copy of supplementary information submitted on behalf of the applicant.

Published: 15 July 2024

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**LICENSING MATTERS**  
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**PREMISES LICENCE APPLICATION**

**561 Christchurch Road, Boscombe, Bournemouth, BH1 4AH.**

**Hearing 16<sup>th</sup> July 2024**

**SUMISSIONS RELATING TO THE REPRESENTATIONS**

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1. This application is for a new premises licence for 561 Christchurch Road, Boscombe, Bournemouth, BH1 4AH which was submitted to the licensing authority on the 23rd of May 2024. During the consultation period, 10 representations against the grant of the application were accepted as valid, and sent to Licensing Matters. Of those 10 representations, 5 have been accepted by the licensing authority with only a name and email (and 1 with a name and a street name) & there has been no attempt to obtain the personal details of these individuals in full.
  2. Despite many attempts to request the full details of all parties that have made a representation against the application and for full addresses to be disclosed, that request has been refused. The licensing authority have not only refused to furnish the applicant with the full detail of these people, but they have also themselves failed to obtain them and been satisfied with what the person has chosen to tell them. They have stated:

***“Where we have not given the full postal address, we have given as much information such as the name of the road as we hold”.***

***“We consider the email address to be part of the personal details of those making a representation and when considering the purpose of disclosing such personal details”.***

3. In taking this approach the officers are failing to ensure openness and transparency of the process and in their own duty to establish if the representations are vexatious. They are also placing the committee in a compromised position as in hearing the application, they do not have the full facts to hand.
4. Therefore, the only course of action we can now take is to make submissions directly to the licensing committee for them to consider this issue.

#### The Submissions

5. In summary my submissions are that the legal officers via the licensing officer are failing to undertake their basic legal duties relating to an application of this nature. They have accepted a name and an email only as proof of the identification of an individual making a representation, and in doing so are permitting that person to be anonymous which means an assessment of vexatious cannot be undertaken. By failing to scrutinise the representation (and taking away the ability of the applicant **and the sub-committee** to also do so, the basic requirements of openness and transparency are being disregarded.

#### The meaning of vexatious & the responsibility of the licensing authority

6. Upon receipt of representations, it is the responsibility of the licensing authority to make a determination on if those comments made are irrelevant, frivolous or vexatious. If they consider a representation to be so, then it must be rejected.

The section 182 Guidance states:

***9.5 It is for the licensing authority to determine whether a representation (other than a representation from a responsible authority) is frivolous or vexatious on the basis of what might ordinarily be considered to be vexatious or frivolous. and local knowledge will therefore be invaluable in considering such matters.***

BCP Statement of Licensing Policy states:

***8.3 This Policy sets out a general approach to making licensing decisions..... Similarly, it will not override the right of any person to make representations on an application or to seek a review of a licence or certificate where provision has been made for them to do so in the 2003 Act provided, they are not frivolous or vexatious.***

7. The meaning that should be given to the term vexatious is outlined in the s.182 Guidance to the Licensing Act at point 9.5 where it states:

***A representation may be considered to be vexatious if it appears to be intended to cause aggravation or annoyance, whether to a competitor or other person, without reasonable cause or justification. Vexatious circumstances may arise because of disputes between rival businesses and local knowledge will therefore be invaluable in considering such matters.***

8. An assessment of “irrelevant” or “frivolous” can be made using only the words on the page, it is clear from what is said if a representation should be accepted or not. But the test to determine if a representation might be “vexatious” is entirely different. In their emails the licensing authority state

***“There is nothing in the representations that have been made by ‘other persons’ that appear to the Licensing Authority are intending to cause aggravation or annoyance, whether to a competitor or other person, without reasonable cause or justification. The Council is of the view that there are no grounds to deem those representations to be vexatious”.***

It is clear from this that the officers have made this assessment simply by looking at the words on the page instead of doing what they should have done in order to assess this correctly and establish the identity of the person who had written it.

9. A specific example of what constitutes a vexatious representation as detailed by the s.182 Guidance (detailed at point 6 above), is that it **“may arise because of disputes between rival businesses.”** That means that it is the identity of the person making the representation that should be the key element of the licensing authorities enquires in this regard. If this question is not asked, and identity provided, then an assessment of vexatious cannot be made.
10. Another example of how this decision is not enabling them to undertake their basic duties is made clear by referring to the BCP statement of licensing policy itself as follows:

***8.5 Whether or not incidents can be regarded as being "in the vicinity" of licensed premises is a question of fact and will depend on the particular circumstances of the case. In cases of dispute, the question will ultimately be decided by the courts. In addressing this matter, the Licensing Authority will primarily focus on the direct impact of the activities taking place at the licensed premises on members of the public living, working, or engaged in normal activity in the area concerned.***

11. The policy states that the licensing authority will "primarily focus on the direct impact of the activities taking place" on the members of the public in the area. Yet without requesting the address of those having made representation, how is the licensing authority able to do that? With an email address only, the licensing authority have no knowledge of where the person lives and if they can be directly impacted by the activities taking place at the premises.

If we consider that point in the context of this application, the representation submitted by Mr Piyush Wagh demonstrates the point perfectly. He states, "the anticipated increase in noise during nighttime hours would severely disrupt the peace that residents enjoy". Yet, as we do not have his address we are unable to assess the impact of the additional noise he claims will disturb him, consequently how is the committee meant to know how much weight to attach to this representation?

12. It is basic common sense that a fellow shopkeeper or their family & friends are not going to be transparent about the motivation behind any representations they might make. It takes no more than 10 minutes to set up an email address or numerous email addresses. An alternative method is for a fellow shopkeeper to ask friends or employers to send in an email. Any person who wants to cause damage to an applicant can do so by hiding behind that email, using a false name and without fear of challenge.
13. In refusing to make efforts to establish for themselves the identity of the people who have sent in the emails, the licensing/legal officers who have made this decision are gifting the privilege of anonymity to the people behind the emails.

Prejudice to the applicant.

14. It is widely accepted across all types of law, be it criminal or civil, that the basis for fairness and transparency is that the applicant is entitled to know who speaks against them, and that the people making the representation providing their full details (name AND address) is one of the basic requirements.

15. There are clear attempts being made to block this application by fellow shop owners, and with a couple of exceptions, we suspect that the majority of emails that have been generated in opposition to the application are connected & vexatious in their intent.
16. Due to the lack of effort or willingness on the part of the licensing authority to obtain the address details of the objectors prior to the hearing, we have been unable to conduct the appropriate enquiries into the representations. At the same time the people having made them are having their efforts to damage this application facilitated by the licensing authority.

#### Supporting Documents

17. If there is any doubt about my view on this matter, at Appendix 1-5 I have included several documents that may assist the committee in their consideration of this issue. I felt that it was important that the view of the wider licensing & legal community is taken into account as follows:
- **Appendix 1 (page 7)** contains the emails that were sent to the licensing authority officers and show the efforts that we have made to persuade the licensing authority to obtain and release the address details. The emails in response were sent back to us by the licensing officer but with a cut & paste answer that is from a legal officer who, for reasons unknown, does not provide their own details.
  - **Appendix 2 (page 15) The s.182 Guidance** covers the disclosure of personal details and references the fact it is the person's name and address that is expected to be being provided.
  - **Appendix 3 (page 16) The Guidance for Interested Parties document** that was issued in 2009 and is still relevant, outlines the anonymity point.
  - **Appendix 4 (page 24) Guidance documents from other authorities.** These are just 2 of numerous such documents that could have been provided, but the point is again made that people making representations are not permitted to be anonymous.
  - **Appendix 5 (page 26) Article in the journal of Licensing by Chris Grunert from John Gaunt & Partners.** Also to assist I have included an extremely helpful article by one of the most well-respected licensing lawyers in the country. In it he cites a case where the Magistrates awarded costs of £19,182.38 to an applicant due to the licensing sub-

committee following their officer's lead and permitting representations to be anonymous. The Magistrates directed that the licensing authority "lift the veil of anonymity."

### Conclusion

In conclusion it is submitted to the sub-committee considering this application that the licensing/legal officers for the council have failed in their clear legal obligations to carry out its functions as the licensing authority. The licensing authorities' failure to sufficiently scrutinise the representations means that all parties are disadvantaged by the anonymity afforded to those objecting.

The applicant has not been given any opportunity to test the evidence of these individuals & likewise the sub-committee as the decision makers when weighing the evidence, are being asked to do so with their hand tied behind their back.

It is submitted to the sub-committee directly that these submissions be considered when considering this application.

## G Sherratt

**Gill Sherratt**  
**Licensing Matters**  
**Agents for the Applicant**





## Appendix 1

### Emails to and from the council to ask for addresses of the objectors:

From: Klare - Licensing Matters <klare@licensingmatters.net>  
Sent: Friday, June 21, 2024 9:44 AM  
To: Tania Jardim <tania.jardim@bcpccouncil.gov.uk>  
Subject: RE: 561 Christchurch Rd, Boscombe, Bournemouth BH1 4AH.

Hi Tania

Thank you for the attached. With reference to the members of the public representations can you confirm if any of them are licence holders in that area please. The emails from them all seem to be of a similar nature have you investigated that these are actual people and have their addresses? I would be grateful if you could supply their addresses please.

Many Thanks

Klare Casey

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From: Tania Jardim <tania.jardim@bcpccouncil.gov.uk>  
Sent: Friday, June 21, 2024 11:20 AM  
To: Klare - Licensing Matters <klare@licensingmatters.net>  
Subject: RE: 561 Christchurch Rd, Boscombe, Bournemouth BH1 4AH.

Hello Klare,

Thank you for your email. We only accept representations which are relevant and relate to the licensing objectives. There is nothing to prevent a licence holder from making a representation provided it meets those criteria. In fact, I did reject some that did not meet the criteria and/or related to need or business competition. You are entitled to make contact and ask questions and can also ask questions of them at the hearing, if they attend.

Regards

Tania Jardim

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From: Klare - Licensing Matters <klare@licensingmatters.net>  
Sent: Friday, June 21, 2024 11:41 AM  
To: Tania Jardim <tania.jardim@bcpccouncil.gov.uk>  
Subject: RE: 561 Christchurch Rd, Boscombe, Bournemouth BH1 4AH.

Thanks Tania.

I understand that they meet the criteria for a representation, but my question was has it been investigated that they are actual people? Getting representations on emails does not prove that they actually exist, and we have had a recent case where a council accepted reps on email but did not do any checking and it turned out they were from the same person

who had made up the identities. The licensing authorities are under a duty to establish the people are in fact real people and objectors. Once that is done we have no issue with the objections.

I still need their addresses as per the S182 guidance as we are entitled to full disclosure so our client can receive a fair hearing under article 6 of the Human rights act.

Many Thanks

Klare Casey

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From: Tania Jardim <vania.jardim@bcpccouncil.gov.uk>

Sent: Tuesday, June 25, 2024 1:35 PM

To: Klare - Licensing Matters <klare@licensingmatters.net>

Subject: RE: URGENT - 561 Christchurch Rd, Boscombe, Bournemouth BH1 4AH.

Hello Klare,

Thank you for your email and explaining your understanding.

I am aware of Section 158 and if the licensing department felt that someone was making a false statement we would make the necessary enquiries. We are local licensing officers and aware of issues within the community and would question if something did not look right. Objectors will be invited to the hearing by email and if they do not attend the meeting, it will be for the licensing sub-committee to acknowledge they are not in attendance where further information be requested and give appropriate weight to the written representations as made, in making their decision. You will also have the opportunity to address the committee if you have any concerns about these people not being real people. I have contacted all the objectors by email (addresses which were on the reps provided to you) and none have bounced back. For completeness, I list below, email addresses and addresses/ details for the objectors who have provided them to me.

Finally, as mentioned on Friday, I received another representation that I was waiting clarification on, and this is now attached for your information. We have also received representation from Dorset Police, which I understand you have been copied into, but attach for ease of reference.

Please confirm that you and your client are available to attend a hearing on 16 July, so that I can send out Notice of Hearing and meet statutory timescales. Hearing dates are scheduled in advance and if a party is not available, we will need confirmation from all parties that they agree to an adjournment.

Regards

Tania Jardim

DATE	NAME	POSTAL ADDRESS
18.06.24	Masoud Samimi Motaghi	████████ Christchurch Road
18.06.24	Bahram Saffari	████████ New Park Road, Southborn
18.06.24	Lee Hall	works at a licensed premises within the vicinity.
18.06.24	Behrooz Saffari	
18.06.24	Jorge Soares	
18.06.24	Piyush Wagh	
18.06.24	Mohsen Samimi- Motaghi	connected with a licensed premises in the vicinity
20.06.24	Marjan Ahmadi	Old Christchurch Road
20.06.24	Daniel Sulimierski	████████ Christchurch Road BH7 6AA
20.06.24	Better Boscombe Regeneration Hub	30-32 Royal Arcade, 566 Christchurch Road, BH1 4BT

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From: Klare - Licensing Matters <klare@licensingmatters.net>

Sent: Tuesday, June 25, 2024 1:48 PM

To: Tania Jardim <tania.jardim@bcpcouncil.gov.uk>

Subject: RE: URGENT - 561 Christchurch Rd, Boscombe, Bournemouth BH1 4AH.

Thanks for this information Tania.

Are you please able to obtain the addresses for the Lee Hall, Behrooz Saffari, Jorge Soares and Piyush Wagh as they are missing from the table.

Many Thanks

Klare Casey

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From: Tania Jardim <tania.jardim@bcpcouncil.gov.uk>

Sent: Tuesday, June 25, 2024 2:12 PM

To: Klare - Licensing Matters <klare@licensingmatters.net>

Subject: RE: URGENT - 561 Christchurch Rd, Boscombe, Bournemouth BH1 4AH.

Hello Klare,

Lee Hall has confirmed he lives in Christchurch Road.

I shall let you know the others when I receive them.

Regards

Tania Jardim

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From: Gill Sherratt <gill@licensingmatters.net>  
Sent: Monday, July 8, 2024 5:17 PM  
To: Tania Jardim <tania.jardim@bcpcouncil.gov.uk>  
Cc: Licensing Com <licensing@bcpcouncil.gov.uk>  
Subject: URGENT - 561 Christchurch Rd, Boscombe, Bournemouth BH1 4AH.

Dear Sir/Madam,

I am writing regarding the email sent to you below on the 25th of June by my colleague Klare Casey, requesting the full details of the people who have objected. I will be representing the applicant in the forthcoming hearing, and as we have not yet heard from the licensing authority, I am writing to request that urgent action be taken about the withholding of details which our client is entitled to. I have outlined the 2 specific issues that I need to be addressed below.

The Applicant is entitled to full disclosure and transparency

Our client is entitled to a fair hearing, and they can only get that with full transparency and that includes the name and address details of any person who makes an objection. It is well established (and recorded in the Sec 182 Guidance) that people who make representations are not entitled to remain anonymous. By refusing to provide these details we are unable to carry out any enquiries to establish who these people are, are they connected to the applicant in any way, perhaps have an issue with them or have a business that might be affected by this application which would be the motivation behind the objection. We understand that many, if not all, of these representations come from staff of another store and if that is the case it is an important consideration for the licensing authority. If we are unable to conduct these enquiries our client's case is being highly prejudiced, and the hearing can only then be held based on unfairness to the applicant.

The Licensing Authority has a responsibility to scrutinise the representations. You will understand that, on receipt of a representation it is the responsibility of the licensing authority to establish if that representation is irrelevant, frivolous or vexatious and if they fall into any of those categories it should be rejected. Therefore, in addition to providing the details of the objectors please can I be informed of what actions the licensing authority has taken in this case to establish if these representations are vexatious?

By failing to provide the emails and at the same time conduct no enquiries into who these people are, the licensing authority is permitting these people to hide behind an email. In doing so a fellow shopkeeper can potentially cause problems for another business owner, something that the Licensing Act expressly prohibits. The licensing authority is enabling that to happen and affording every courtesy (and advantage) to the objectors and none to the applicant.

It is almost 2 weeks since you received the email from my colleague Klare, and as the hearing is next week, I need a response to these 2 points immediately so that we can prepare for the hearing. In the event that you continue to refuse us these details, I need time to escalate this further.

I look forward to hearing from you.

Thanks,

Gill

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From: Tania Jardim <taniam.jardim@bcpcouncil.gov.uk>

Sent: Tuesday, July 9, 2024 8:39:05 AM

To: Gill Sherratt <gill@licensingmatters.net>

Subject: RE: URGENT - 561 Christchurch Rd, Boscombe, Bournemouth BH1 4AH.

Hello Gill,

Thank you for your email, apologies for the delay in responding, I was seeking our legal representative's advice on the matter. In response to your queries, our legal adviser has stated the following: -

*The full names and details of all representations made by 'other persons' have been disclosed to the applicant, in addition to the email addresses used to make each representation and the full postal addresses of the 'other persons' where we hold that information. Where we have not given the full postal address, we have given as much information such as the name of the road as we hold. We consider the email address to be part of the personal details of those making a representation and when considering the purpose of disclosing such personal details, it is for the applicant to be able to contact and mediate with the person making the representation. This can be done by email in the same way it can be done by letter and post.*

*It is the section 182 guidance that states we should disclose names and addresses of those making a representation, not a particular section in the Licensing Act 2003. We are of the view that by giving email contact addresses we are acting in the spirit of that guidance. We have no reason to believe that anyone making a representation is not a real genuine person, we have communicated with everyone using the email addresses and we do not believe the applicant is disadvantaged by not having the full postage address. Representations are no longer restricted to those in the vicinity of the premises in any event. The applicant will have the opportunity at the hearing to bring to the attention of the sub-committee any concerns they may have regarding the representations made and the sub-committee can give appropriate weight to those concerns and to any representations made by persons who may not attend the hearing.*

We consider this matter to have been addressed and we will not be responding to any further correspondence on this point.

Regards

Tania Jardim

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From: Gill Sherratt <gill@licensingmatters.net>

Sent: Tuesday, July 9, 2024 8:42 AM

To: Tania Jardim <tania.jardim@bcpcouncil.gov.uk>

Subject: Re: URGENT - 561 Christchurch Rd, Boscombe, Bournemouth BH1 4AH.

Hi Tania,

Thanks for this.

Please can you refer my other point to legal asking what you as a licensing authority have done to establish who the people are who are hiding behind an email and how you yourselves have fulfilled the responsibility to determine if a representation is vexatious.

I need a response to that also.

Thanks,

Gill

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From: Tania Jardim <tania.jardim@bcpcouncil.gov.uk>

Sent: Wednesday, July 10, 2024 3:53 PM

To: Gill Sherratt <gill@licensingmatters.net>

Subject: RE: URGENT - 561 Christchurch Rd, Boscombe, Bournemouth BH1 4AH.

Hello Gill,

Further to your email below, and upon consulting with our legal department, I can advise as follows:

Paragraph 9.4 of the S 182 Statutory Guidance makes it clear that it is for the Licensing Authority to determine whether a representation (other than a representation from a responsible authority) is frivolous or vexatious on the basis what might ordinarily be considered to be vexatious or frivolous.

A representation may be considered to be vexatious if it appears to be intended to cause aggravation or annoyance, whether to a competitor or other person, without reasonable cause or justification. Vexatious circumstances may arise because of disputes between rival businesses and local knowledge will therefore be invaluable in considering such matters. Licensing authorities can consider the main effect of the representation, and whether any inconvenience or expense caused by it could reasonably be considered to be proportionate.

There is nothing in the representations that have been made by 'other persons' that appear to the Licensing Authority are intending to cause aggravation or annoyance, whether to a competitor or other person, without reasonable cause or justification. The Council is of the view that there are no grounds to deem those representations to be vexatious.

Any challenge to this view will be by way of Judicial Review proceedings.

On assessing the representations received and the content of the same and having regard to the local area the Licensing Authority are content that the representations are not vexatious and therefore they have been accepted. The Applicant will have a chance at the hearing on 16 July 2024 to make any points it feels relevant in relation to the representations. You will recall that you have been provided with the email addresses for those persons making representations to enable the Applicant to make contact with the same to discuss any issues arising.

Regards

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**From:** Gill Sherratt

**Sent:** Wednesday, July 10, 2024 5:22 PM

**To:** Tania Jardim <vania.jardim@bcpcouncil.gov.uk>

**Subject:** RE: URGENT - 561 Christchurch Rd, Boscombe, Bournemouth BH1 4AH.

Hi,

This email response is completely missing the point!

I will be making formal submissions to the committee about this before the hearing and requesting that, in the absence of this being correctly handled by the licensing officers prior to the hearing, they undertake a formal assessment of the validity of these objections.

Please can you put the legal officer on notice that I will be making those submissions prior to the hearing commencing.

Thanks,

Gill

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**From:** Gill Sherratt

**Sent:** Friday, July 12, 2024 11:28 AM

**To:** vania.jardim@bcpcouncil.gov.uk; Licensing Com <licensing@bcpcouncil.gov.uk>

**Cc:** Gill Sherratt <gill@licensingmatters.net>

**Subject:** 561 Christchurch Rd, Boscombe, Bournemouth BH1 4AH.

Dear Sir/Madam,

I am preparing for the hearing on Tuesday and will be sending in formal submissions about the position the legal officers for the council have taken in relation to the point about "vexatious" representations. Every response we have had to our submissions on that point have been received anonymously from a legal officer and by way of cut and paste comments via the licensing officer with no identification of the person/s having offered up the legal advice.

I am therefore concerned that the legal officer/s who has reached the conclusion that an email address is sufficient to establish who is making a representation, may be the person advising the committee on Tuesday and clearly, out of a concern for the impartiality of the legal advice given to the committee, we have a right to understand if that is the case.

Please can you provide the name of the legal officer or officers who have determined the position of the licensing authority in the emails sent by the licensing officer. Also, please can you confirm who the legal office will be at the hearing in the capacity as advisor to the committee.

I look forward to receiving this information.

Thanks,

Gill

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**From:** Linda Cole <linda.cole@bcpcouncil.gov.uk>

**Sent:** Friday, July 12, 2024 8:09 PM

**To:** Gill Sherratt <gill@licensingmatters.net>

**Cc:** Tania Jardim <tania.jardim@bcpcouncil.gov.uk>; Johanne McNamara <johanne.mcnamara@bcpcouncil.gov.uk>

**Subject:** RE: 561 Christchurch Rd, Boscombe, Bournemouth BH1 4AH.

Dear Gill

Tania forwarded me your email below.

Both my colleague Johanne McNamara and I have assisted Tania in dealing with this application, she has asked for advice on various elements, and we have given it. It is not a question of giving it anonymously, we are an inhouse team and will assist Council Officers with queries when asked to. You have not asked Tania previously for the names of those assisting her and we have not withheld them

I understand you do not agree with the responses you have received from Tania to various questions put to her and that is your prerogative. You will have the opportunity to raise any concerns you have about those making representations and whether they may be vexatious with the sub-committee on Tuesday. The sub-committee will consider your submissions, give appropriate weight to the representations as they consider and determine the application.

Johanne will be advising the Sub-Committee on Tuesday.

Kind regards



## **Appendix 2**

### **Section 182 Guidance**

#### **Disclosure of personal details of persons making representations**

9.26 Where a notice of a hearing is given to an applicant, the licensing authority is required under the Licensing Act 2003 (Hearings) Regulations 2005 to provide the applicant with copies of the relevant representations that have been made.

9.27 In exceptional circumstances, persons making representations to the licensing authority may be reluctant to do so because of fears of intimidation or violence if their personal details, such as name and address, are divulged to the applicant.

9.28 Where licensing authorities consider that the person has a genuine and well-founded fear of intimidation and may be deterred from making a representation on this basis, they may wish to consider alternative approaches.

9.29 For instance, they could advise the persons to provide the relevant responsible authority with details of how they consider that the licensing objectives are being undermined so that the responsible authority can make representations if appropriate and justified.

9.30 The licensing authority may also decide to withhold some or all of the person's personal details from the applicant, giving only minimal details (such as street name or general location within a street). However, withholding such details should only be considered where the circumstances justify such action.



## APPENDIX 3



department for  
culture, media  
and sport

# Guidance for Interested Parties:

## Making Representations

August 2009

improving  
the quality  
of life for all

Our aim is to improve the quality of life for all through cultural and sporting activities, support the pursuit of excellence, and champion the tourism, creative and leisure industries.

# Guidance

This guidance describes the process for making representations to licensing authorities about applications for:

- new premises licences or certificates;
- Minor Variations to existing premises licences or certificates;
- full variations to existing premises licences or certificates; or
- provisional statements.

It also contains information about the hearings process, which applies to all the application processes except Minor Variations. Unless stated otherwise, references to 'licences' in this text also apply to club premises certificates.

## What to look out for

When applicants want to apply for a new licence, or vary their existing one (for example to put on additional activities or extend their hours), they must advertise the application by:

### Placing a notice at or on the premises

- On A4 (or larger) pale blue paper (or on white paper, in the case of an application for a Minor Variation).
- Printed legibly in black ink or typed in a font of at least 16.
- Placed **prominently** at or on the premises where it can be **conveniently** read from the **exterior** of the premises.
- Placed every 50 metres on the external perimeter of the premises abutting any highway (where applicable).

### Placing a notice in a newspaper (not applicable to a Minor Variations application):

- Newspaper circulation must be in the vicinity of the premises (or if there isn't a local paper, in a local newsletter or circular).
- Advertisement will be at least once in the 10 days following the application being given to the licensing authority.

## Licensing Register

Full application details can also be viewed in the licensing authority's "licensing register". Using the Register, applicants will be able to check all opening hours; licensable activities and any steps the applicant has volunteered to take to promote the four licensing objectives. These are set out in the applicant's "operating schedule".

The four licensing objectives are:

- The prevention of crime and disorder;
- Public safety;
- The prevention of public nuisance; and
- The protection of children from harm.

If interested parties believe that granting a licence in the terms it has been applied for is likely to have an effect (whether positive or negative) on the promotion of one or more of these objectives, they can make a representation to the relevant authority. For a Minor Variation application, interested parties have 10 working days in which to make a representation. For other applications, they have 28 consecutive days. In all cases, the timetable starts on the day after the day on which the application was given.

## Licensing Policy

Before making representations, interested parties may wish to look at their local authority's "licensing policy statement". These set out councils' policies about licensing, and may explain the procedure for making representations.

## Operating Schedule

When considering the steps that an applicant has volunteered to promote the licensing objectives, it is important to remember that applicants should already be adhering to legislation in other areas, and they may feel there is nothing additional they need to do to promote the licensing objectives. Some applicants may therefore simply say something like "nothing beyond existing Health and Safety/Fire Safety etc. requirements" or if they are applying to vary a licence "nothing beyond the steps we are currently taking, which are already conditions of the licence".

For more information about the four licensing objectives, and local authorities' statements of licensing policy, talk to your local authority's licensing department, or visit the DCMS website:

[www.culture.gov.uk/alcohol\\_and\\_entertainment/licensing\\_act\\_2003/licensing\\_objectives](http://www.culture.gov.uk/alcohol_and_entertainment/licensing_act_2003/licensing_objectives)

## Making representations

Representations should be made in writing to the licensing authority where the premises are situated. Licensing authorities may also accept representations by email, but you may want to check first with the licensing authority that this is the case. If email representations are accepted the interested party must also send the licensing authority a hard copy.



All representations must be about the likely effect of granting or varying the licence on the promotion of at least one of the four licensing objectives. It would be wise, therefore, to explicitly link any representation to one or more of the objectives.

Representations do not have to be objections: you can make representations in support of an application if you believe that it will have a positive impact on one or more of the licensing objectives. For example, an application to add live music or late night refreshment to a licence might help the premises attract a more diverse clientele and lower the risk of crime and disorder.

There is no requirement for an interested party to produce a recorded history at a premises to support their representations, and in fact, this would not be possible for new premises. However, it will assist their case if the representations are specific to the premises and evidence based. So, for example, if an interested party believes a variation to an existing premises may cause problems in relation to crime and disorder, they may wish to talk to local police beforehand, or document existing problems themselves by, for example, keeping a diary or photographic evidence of any incidents. Licensing authorities will need to be satisfied that there is an evidential and causal link between the representations made, and the effect on the licensing objectives.

In addition, the licensing authority can only consider representations that are not "vexatious" or "frivolous". These terms have their ordinary meaning. Whether representations are frivolous or vexatious will be for the licensing authority to determine. For example, the licensing authority might find the representations were vexatious if they arise because of disputes between rival businesses or they might be frivolous representations if they plainly lacked seriousness.

Interested parties cannot make representations anonymously, even if somebody else (e.g. a local MP or councillor) is making the representation on their behalf. This is because, for example, the licensing authority needs to be satisfied that the person making the representation lives in the vicinity of the premises, and is not being vexatious. It is also important that an applicant is able to respond to a representation, for example, if they believe that it isn't a "relevant" representation. If interested parties

are concerned about possible intimidation, they could consider asking the police, or another appropriate responsible authority to make a representation on their behalf.

Alternatively, the licensing authority may be willing, in exceptional circumstances to withhold some or all of the interested parties' personal details from the applicant. However, withholding such details should only be considered where the circumstances justify such action and the licensing authority is satisfied that the complaints are not frivolous or vexatious.

#### **Things you may want to consider when making representations**

- **If no relevant representations are made (for applications other than a Minor Variations application), the licence or variation must be granted (subject to the mandatory conditions).**
- Local Authorities must grant a Minor Variation unless there could be an adverse effect on the licensing objectives. They must take representations into account, but they will not hold a hearing.
- It may be helpful to get the backing of other people living, or businesses operating in the vicinity of the premises, or other "responsible authorities", such as the police or environmental health.
- Look at your licensing authority's official records about the premises, kept in their "licensing register". This will show you if other people have asked for a review of the premises in the past.
- If you want to ask another person, such as an MP or local Councillor to represent you, it is advisable to make such a request in writing so that the individual can demonstrate he or she was asked. It will be a matter for the MP or Councillor to decide whether they should agree to your request. They are not obliged to do so, however, most elected representatives are happy to help residents with this sort of issue, and there is no requirement for them to live in the vicinity of the premises in question for them to be able to make representations on behalf of residents that do. Councillors who are part of the licensing committee hearing the application will not be able to enter into discussions with you about the application, outside of the formal hearing, so it is suggested that you do not approach them to try to.
- Consider how you would like the issues to be addressed.
- If making a representation in support of an application, explain how the proposed activities would help promote the licensing objectives.

#### **What happens after a representation has been made?**

For a Minor Variations application, licensing authorities must take representations into account, **but there will be no hearing**. The authority must make a decision within 15 working days after the application is made.

## Hearings

For applications other than Minor Variations, the licensing authority must hold a hearing to consider representations, unless:

- The representations are irrelevant (i.e. not from an interested party); frivolous; or vexatious); or
- all parties can come to an agreement beforehand, and agree that a hearing is unnecessary. For example, the licensing authority may offer to try and resolve matters via a negotiated agreement outside a formal hearing. You will need to decide if this is appropriate for you, but you can insist upon the hearing.

If there is to be a hearing on an application to which you have submitted representations, the licensing authority will write to you to inform you of the date and time and will explain the format.

If an applicant withdraws their application after a hearing date has been arranged, the licensing authority will let them know that the hearing has been cancelled. Interested parties should be aware that if they make representations about an application that is later withdrawn, and the applicant makes a new, amended application, their representations will not automatically be taken forward. Any amended application would need to be re-advertised as set out above. Interested parties will then have the opportunity to decide whether to make representations about the new application.

## Arrangements for Hearings

Interested parties that made representations are required to give notice to the licensing authority at least 5 working days before the start of the hearing, stating:

- Whether they will attend the hearing in person
- Whether they will be represented by someone else (e.g. councillor/ MP/ lawyer)
- Whether they think that a hearing is unnecessary (if, for example they have come to an agreement before the formal hearing)
- If they want another person to appear at the hearing (not to represent them), a request for permission for the person to attend, and details of their name and how they may be able to assist the authority in relation to the application

Interested parties must let the licensing authority know as soon as possible (by a notice no later than 24 hours before the start of a hearing, or orally at the hearing) if they wish to withdraw their representation.

Hearings will generally be held in public, unless the licensing authority decides it is in the public interest to hold all, or part of the hearing in private. The licensing authority shall ensure that a record is taken of the hearing.

Hearings will normally take the form of a discussion and will be led by the licensing authority, which will consist of three local authority elected councillors (this will be the licensing sub-committee drawn from a full licensing committee of fifteen councillors). The licensing authority will explain the procedure to be followed. It will determine any request for additional persons to appear at the hearing. It will consider evidence produced in support before the hearing and can consider evidence produced by a party at the hearing, but only if all parties agree. Further evidence can also be produced if this was sought for clarification of an issue by the authority before the hearing. Cross-examination of one party by another during a hearing is not allowed, unless the licensing authority thinks it necessary. The parties are entitled to address the authority and will be allowed equal time to address the authority and, if they have been given permission by the authority to do so, they will be



given equal time to ask any questions of any other party. The authority will disregard any information it considers to be irrelevant.

**NB - A hearing can still go ahead in the absence of any party (e.g. applicant or interested party)**

### **Hearing Decisions**

As a result of the hearing, the licensing authority must then decide how to proceed in order to promote the licensing objectives. It may:

- Decide to grant or vary the licence in the same terms as it was applied for;
- Decide that it is necessary to refuse to issue or vary the licence;
- Decide to grant or vary the licence, but to modify the conditions;
- Exclude from the scope of the licence a licensable activity.
- In the case of a premises licence, refuse to specify a person as the premises supervisor

Licensing Authorities must give notice of its decision within 5 working days (if it does not give a decision at the hearing) and include information on the right of a party to appeal against the decision. For more information on appeals, see the separate guidance on appealing licensing decisions.

For further information about making representations, contact the licensing department at your local council.



## LICENSING AND PUBLIC PROTECTION SERVICES

PREMISES LICENCE REPRESENTATION FORM -  
GRANT / VARIATION / MINOR VARIATION / REVIEWLiverpool  
City Council

1. Any person, body or business may make a representation about any of the above types of application (as well as certain prescribed Responsible Authorities such as the Police and the Council's Environmental Health Officer).
2. Your representation must be relevant, namely what you consider to be the likely effect of granting the application on the promotion of one or more of the licensing objectives which are
  - Prevention of Crime and Disorder • Prevention of Public Nuisance • Public Safety • Protection of Children from Harm.
3. A representation based solely on any of the following types of matters would not be "relevant":
  - an increase in traffic / your property value being affected / that there already enough licensed premises nearby. The Licensing Authority will also not consider any representations that are frivolous (one that does not have a serious purpose) or vexatious (one that is not made in good faith but rather to unfairly frustrate an application).
4. Any relevant representation which is made, and not subsequently withdrawn, will be considered by a Licensing Sub-committee hearing to which the applicant and any person who made a relevant representation will be invited to attend by receiving a formal notice of the hearing. A relevant representation will be considered by the Sub-committee notwithstanding the absence of the person who made it.
5. **You cannot make a representation anonymously and the City Council is under a legal duty to provide a copy of your representation, including your contact details, to the applicant or their representative. A legal duty of this type falls within the exemptions to the Data Protection rules which otherwise apply to the disclosure of personal information. Whilst it is often helpful in resolving representations for the applicant to commence a dialogue with anyone who has made a relevant representation, to better understand their concerns and potentially address them, you may prefer not to be contacted direct by the applicant or their representative in which case you should place an "X" in the appropriate box on the form so that the applicant is made aware of this.**
6. **Whilst the City Council will not generally be prepared to withhold any of your personal details from the applicant, it may, in exceptional cases, decide to do so if satisfied that this is appropriate because you can provide sufficient written reasons to support a genuine and well-founded fear of intimidation. If you believe this to be the case you are advised to first contact the Licensing Section by email – [LicensingAct2003@liverpool.gov.uk](mailto:LicensingAct2003@liverpool.gov.uk) to discuss. However, as an alternative to personally making a representation, you could instead approach one of your ward councillors, your MP, any landlord or residents association etc who may be willing to submit a representation, instead of you, based on your concerns. However, it will be at their discretion to make a representation if they consider it justifiable and appropriate to do so.**
7. All representation must be **received** by the Licensing Authority within the statutory 28 day period for representations. Any representation received after the deadline date **cannot** be accepted.
8. If the application goes to a Sub-committee hearing for a determination, all representations will be published on the Council's website but with personal details redacted. The hearing will be held within 28 days of the end of the application period. You will be invited to attend the hearing. We will send you guidance notes about what to expect when attending the hearing.

AN EXAMPLE OF 1 GUIDANCE DOCUMENT  
PRODUCED BY A COUNCIL



## Appendix 3

From the website of Newcastle under Lyme Council

<https://www.newcastle-staffs.gov.uk/premises-licence/making-representation-premises-licence-application/6>

### What does a frivolous or vexatious representation mean?

'Frivolous' or 'vexatious' will bear their ordinary meaning. Whether representations are frivolous or vexatious will be for the licensing authority to determine.

For example, the licensing authority might find the representations were vexatious if they arise because of disputes between rival businesses or they might be frivolous representations if they plainly lacked seriousness.

You cannot make representations anonymously, even if somebody else (e.g. a local MP or councillor) is making the representation on your behalf. This is because the licensing authority needs to be satisfied that the person making the representation is not being vexatious.

It is also important that an applicant is able to respond to a representation if they believe that it is not a 'relevant' representation.

If you are concerned about possible intimidation, you could consider asking the police, or another appropriate responsible authority to make a representation on your behalf.

Please remember that lodging a representation is a serious matter. Any representation must be factually correct. It is an offence to knowingly or recklessly make a false statement in connection with an application and the maximum fine for which a person is liable on summary conviction for such an offence is £5,000.



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Institute of Licensing



# Anonymity - a case study

Anonymous representations in licensing applications have been on the rise but this is not a healthy phenomenon, argues **Chris Grunert**

*The openness of judicial proceedings is a fundamental principle enshrined in Article 6(1) of the European Convention on Human Rights (the right to a fair trial).*

*This underpins the requirement for a prosecution witness to be identifiable not only to the defendant, but also to the open court. It supports the ability of the defendant to present their case and to test the prosecution case by cross-examination of prosecution witnesses. In some cases it may also encourage other witnesses to come forward.*

CPS - Witness protection and anonymity - Legal Guidance<sup>1</sup>

I have been a licensing lawyer for many years (some may say too many). I recall the days of the licensing justices and travelling from court to court to present my cases and clients to the magistrates.

I also recall the frantic days of transition and the second appointed date (24 November 2005). In this experience I am far from unique. As a generation of practitioners, we have been around since day one and have seen how the law has developed and common practices have spread across England and Wales. A level of homogeneous practices in certain aspects can now be found across the country although there remain several exceptions.

One such common practice has become the spread of anonymous representations from members of the public who may oppose the grant of a new licence or variation of an existing business or support a review of the licence. Anecdotal evidence suggests this practice is a done as a matter of course and not in the limited circumstances prescribed by the guidance.<sup>2</sup> Under the Licensing Act 2003 the applicant and all those making relevant representations become a "party to the hearing" (Reg 2, Licensing Act 2003 (Hearings) Regulations 2005), the effect of which is to impose certain rights and obligations upon all the parties (Reg 7) (Hearings Regulations 2005). The processing of that data within the application and representations falls within clear legal obligations placed upon the council to carry out its functions

as the licensing authority (see Art 6(1)(c) GDPR) and within the clear performance of its public licensing functions as a licensing authority (see Art 6(1)(e) GDPR).

Anonymity is not described nor appears to have been considered in the 2003 Act at all. When addressed in the s 182 Guidance, readers are cautioned to limit the application of anonymity (9.27) or provide alternative solutions (9.29 and 9.30).

The anonymity of witnesses has been grappled with by the highest of courts and lawmakers alike. All have struggled to weigh anonymity, as a necessity in limited circumstances, against the fundamental principle of openness to ensure a fair trial.

The issue on anonymity has been considered in many different areas of law, both criminal and civil, and when subject of recent *judicial dicta*<sup>3</sup> the consensus of opinion has been that anonymity must be the exception, not the rule; there must be a hurdle which those seeking anonymity should clear. Anonymity can adversely impact the public interest in open justice (a fair trial) and should only be permitted when it is considered that non-disclosure is necessary to secure the proper administration of justice and is in the interests of that party or witness.<sup>4</sup> The Civil Procedure Rules, for example, require the court to consider the interests of both the administration of justice and the party or witness seeking anonymity. The adverse impact can be felt by the applicant (from whom the identity of an objector is kept), as well as an impediment to the decision-makers (sub-committee) when weighing the evidence.

A recent case and a cautionary tale.

In a recent appeal, *Greaves v Craven District Council* (North Yorkshire Magistrates' sitting at Scarborough Magistrates' Court, 21 January 2022), the issue of anonymity of interested parties' objections became a central issue in the case (although not the only issue).

<sup>1</sup> <https://www.cps.gov.uk/legal-guidance/witness-protection-and-anonymity>.

<sup>2</sup> Revised guidance issued under s 182 of the Licensing Act 2003 (April 2018), para 9.26 – 9.30.

<sup>3</sup> *Neil Charles Money (as Liquidator of CSL Global Solutions Limited (in Creditors Voluntary Liquidation), David Dyett Limited (in Creditors Voluntary Liquidation)) v AB (by his Litigation Friend, the Official Solicitor)* [2021] EWHC 2999 (Ch).

<sup>4</sup> Civil Procedure Rules 1998/3132 rule 39.2(4) General rule—hearing to be in public.



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5 In this case, the anonymised objections were all from interested parties who claimed the operation of the premises would adversely impact upon their homes.

While representations may be made by any persons within the local authority's area (or indeed from any geographical location) the Court of Appeal confirms the importance of the particular location for decision making: *Licensing decisions ... involve an evaluation of what is to be regarded as reasonably acceptable in a particular location.* (See *Hope & Glory*<sup>5</sup>; also the s 182 Guidance, para 8.42).

6 The particular location of a person making representations, and the likely impact of the operation of a premises in that location vis-à-vis the likely effects of that impact generally in that location and specifically to the person making the representation, will have a direct impact on the weight to be attached to a representation.

During the public consultation period for what is a modest micro bar with a capacity in the region of 20 patrons, no representations were received from any of the responsible authorities but a small number of anonymous interested parties did oppose the grant. No interested party appeared at the licensing sub-committee hearing, but they did nominate a local councillor to speak on their behalf.

7 There was therefore no opportunity for the applicant in the first instance to properly test the evidence. It is my view that the advice at paragraph 9.12 of the s 182 Guidance, namely that responsible authorities should ensure their representations can withstand the scrutiny to which they would be subject at a hearing, is equally valid for those other persons making representations.

The sub-committee resolved to refuse the application. An appeal was lodged and was listed before the Scarborough Magistrates' Court (although it was not a decision of the Scarborough licensing authority which was being appealed). The respondent chose to rely upon no witnesses in the appeal, other than the licensing officer who presented the decision of their licensing authority and the committee's agenda papers. The licensing officer entered these items into evidence as exhibits to their own witness statement. No other witnesses appeared on behalf of the respondent. This is not uncommon but is unsatisfactory for many reasons, some of which the court articulated in its decision notice.

The magistrates were ostensibly presented with the same evidence as had been considered by the sub-committee save that they did not have the benefit of an advocate speaking on

behalf of the anonymised interested parties.

Curiously, the licensing authority chose not to observe the operation of the premises in the interim between the premises licence application refusal and appeal. The premises had operated under the authority of TENs in this period, but the licensing authority chose not to observe the site in action. This was surprising, especially, as in common with many applications for new licences, the friction came from what the operator claimed would be the operating reality and what objectors portrayed this to be. Real life experience, in the opinion of the appellant, was seen as very relevant evidence.

At the conclusion of the case, the magistrates allowed the appeal and remitted the case to the sub-committee to reconsider the case subject to their directions which included a direction that "the licensing authority should allow disclosure of personal details of persons making representations in order to allow for mediation as outlined in s 182".

The respondent was also ordered to pay the appellant costs of £19,182.38 in full.

In their decision notice, the magistrates made the following comments on the issue of anonymity in this case:

The exceptional reasons for redacting the contact details from the correspondence of objectors had not been justified. The decision was taken to anonymise without corroborative evidence. Those representations could therefore not be subject to scrutiny by the applicant. (Para 9.26 of the s 182 regulations requires the licensing authority to provide the applicant with copies of the relevant representations and only under exceptional circumstances should they be anonymised.)

Engagement and mediation with local people and groups had not been undertaken (para 9.34) this was due to the anonymisation of the objections.

We were not satisfied that the evidence amassed and assessed and then presented to the licensing authority was sufficient and had not been subject to robust scrutiny to enable the licensing authority to make a decision or come to the decision it did.

The decision to remove the identification on the correspondence from other objectors had prevented the applicant from addressing their concerns. The reasons for redacting these details was not in our opinion sufficiently justified by the licensing authority (S9.27

<sup>5</sup> *R (on the application of Hope & Glory Public House Ltd) v City of Westminster Magistrates' Court & Ors* [2011] EWCA Civ 31 [42].

and 9.28). We did not feel that the FB post and notice in the window amounted to exceptional circumstances where persons making representations would have a genuine and well-founded fear of intimidation. This frustrated the interests of natural justice tests in that the testing of evidence to assist the hearing was denied.

From our experience, the magistrates rarely remit successful appeals to the sub-committee. A more common outcome in such cases is for the magistrates to substitute their own decision for that of the sub-committee; in this instance this would have been the grant of the premises licence.

The decision of the magistrates appeared to acknowledge the impact of anonymisation on the appellant and the court and / or the licensing sub-committee itself. It is important to recognise that all parties are disadvantaged by anonymity, not just the premises licence holder and / or applicant.

The appellant was denied the opportunity to test the evidence, but so was the court. In addition, the weight given to the interested parties must reasonably be diminished by some measure. There is a toll to pay for anonymity by all sides. An objector who is anonymised may be ill served by this decision.

The court's decision was therefore to remit the matter to the sub-committee with direction to lift the veil of anonymity, thus allowing the sub-committee and potentially, on appeal, a future bench of magistrates a clearer understanding of evidence and allow them to assess the evidence fully.

Should, therefore, one party be allowed to make their comments from behind a veil of anonymity which cannot be tested by the other? The answer appears to be yes, but only under exceptional circumstances and not as a matter of course.

### Anonymity - the legal test

The issue of anonymity is not dealt with in either in the Licensing Act 2003 or the Hearing Regulations 2005 but it is in the s 182 Guidance. The notice of hearing given by the licensing authority to the applicant must give the applicant copies of the relevant representations received (Reg 7(2) and Sch 3). These representations should be disclosed in full. In my view that ought to include the address and the contact details of the person making representations. I acknowledge and accept that these details ought to be redacted in the public agenda packs. The starting point ought to be that relevant representations received should be provided in full to the applicant. It is important to recognise that the disclosure of the address to the applicant, and in certain

circumstances to the members of a licensing sub-committee determining an application, will be of the upmost necessity when responding to the issues contained therein or weighing their worth. Equally, contact details (or some other facility) to aid mediation are of vital importance.

The importance of full disclosure to the applicant in accordance with the Hearings Regulations 2005 is made clear in paras 9.26 – 9.30 of the s 182 Guidance, which state that withholding personal details should only be had in "exceptional circumstances" such as where there is a "genuine and well-founded fear of intimidation" and where the "circumstances justify such action". The court found that circumstances of this case did not raise exceptional circumstances.

### Disclosure of personal details of persons making representations

The s 182 Guidance states:

9.26 Where a notice of a hearing is given to an applicant, the licensing authority is required under the Licensing Act 2003 (Hearings) Regulations 2005 to provide the applicant with copies of the relevant representations that have been made.

9.27 In exceptional circumstances, persons making representations to the licensing authority may be reluctant to do so because of fears of intimidation or violence if their personal details, such as name and address, are divulged to the applicant.

9.28 Where licensing authorities consider that the person has a genuine and well-founded fear of intimidation and may be deterred from making a representation on this basis, they may wish to consider alternative approaches.

9.29 For instance, they could advise the persons to provide the relevant responsible authority with details of how they consider that the licensing objectives are being undermined so that the responsible authority can make representations if appropriate and justified.

9.30 The licensing authority may also decide to withhold some or all of the person's personal details from the applicant, giving only minimal details (such as street name or general location within a street). However, withholding such details should only be considered where the circumstances justify such action.

The guidance suggests a two-limb test before action is taken to anonymise representations in any way:



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1. The party can demonstrate to the licensing authority's satisfaction "that the person has a genuine and well-founded fear of intimidation" and
2. [as a result of the fear of intimidation] may be deterred from making a representation on this basis.

A party who has therefore already submitted a representation openly including their name and address would appear to fall outside the terms of the guidance.

Generously, this may be interpreted to include parties who may express their objection to the representation being shared openly with the applicant.

In either case, the licensing authority must be satisfied "that the person has a genuine and well-founded fear of intimidation". In order to reach a conclusion on this issue the licensing authority must assess evidence provided by the interested party to establish and justify their "well-founded fear". Simply to offer it carte blanche is not supported by the s 182 Guidance or the application of anonymity in any other field of law.

### Case specific

In this specific case the issue of anonymisation of the objections was flagged throughout and raised with members of the sub-committee. In the committee agenda it was noted "Requests have been made by objectors for their personal information to be withheld". No further justification was outlined in the body of the agenda. When questioned by members of the sub-committee whether anonymisation was a usual practice, the licensing officer responded as follows:

Yes, under the Licensing Act, they've got to provide a name and address to the licensing authority anyway so we can verify the location and that it's a relevant objection etc. It's unheard of really for them to remain anonymous throughout the whole process. There's got to be substantial grounds for it normally.

This demonstrated a clear understanding of the issue at hand. However, the Magistrates' Court ultimately disagreed that the evidence cited in support of the decision was sufficient.

Although not justified in the initial agenda the respondents did address their decision to anonymise the representations

in more detail during the appeal. In their supporting statement, the licensing officer stated:

*Following the determination of [previous proceedings] complaints were made to Licensing alleging 'The Applicant' publicly posted [the FB post referenced above] and named one of the residents who had made an objection against the premise. .... It was alleged 'The Applicant' had also been seen [allegedly] giving the 'one finger salute' to residents and placing a notice on the premise directed at those who at made representations. It was due mainly to these events that those making representations wanted their objections to remain anonymous during the application for <name of premises - redacted>, in order to safeguard themselves from being publicly named and possibly being subject to abuse.*

As stated previously, although the local authority chose not to visit the premises between the refusal and appeal, they did canvass opinion from local residents and submitted a supplementary statement to summarise these views. Again, the licensing authority chose to anonymise the source of the comments this time stating:

*The 13 residents were named on the email and verified by myself, by previous involvement during the history of the premises but requested to remain anonymous due to the hostilities and belief of there being further hostilities towards these residents.*

No additional evidence of hostility towards the residents originating from the appellant was cited to justify this decision.

The "evidence" was tested by counsel at the appeal hearing and the magistrates agreed it failed to reach the necessary level.

The appellant called during the appeal an expert witness to comment upon the trading of the premises under the aforementioned TENS. A recognised expert in crime and disorder he characterised, when questioned, the nature of the evidence relied upon to justify anonymisation as a symptomatic of "neighbour dispute".

### Conclusion

*This case provides a timely reminder that anonymisation in the licensing regime is the exception and not the norm.*

**Chris Grunert**

Partner, John Gaunt & Partners

