



## ADJOURNMENTS

An issue which appears to be cropping up with increasing regularity is the problem of adjourning Licensing Committee hearings when one party or another is unable to attend. According to the Hearings Regulations<sup>1</sup>, a hearing generally must be held within twenty working days of the end of the consultation period. Licensing Authorities will occasionally take this as an absolute limit, and refuse to contemplate any adjournment at all. This is incorrect, and can cause difficulty, since the hearings are often scheduled without consultation with the parties who are expected to attend them.

By virtue of the same Hearings Regulations, the licensing authority has the power to extend any time limit provided for within the Regulations<sup>2</sup>, with the proviso that it is in the public interest to do so. Some licensing authorities have argued that this is a power that can only be exercised by the Committee, necessitating attendance at the hearing scheduled in order to argue for an adjournment of it. This is also an over-zealous application of the rules.

Case-law makes it plain that Human Rights law applies to Licensing Committee hearings, and that licensees have a right to be heard when matters pertaining to their licences are being considered. Article 6 has been held to apply in full to Licensing Hearings, and also Protocol 1 of Article 1: Protection of property.<sup>3</sup>

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<sup>1</sup> The Licensing Act 2003 (Hearings) Regulations 2005 S/I 2005 No 44

<sup>2</sup> Regulation 11 – Power to Extend Time

<sup>3</sup> **Protocol 1 of Article 1: Protection of property.**

(1) “ Every natural or legal person is entitled to peaceful enjoyment of his possessions. No-one shall be deprived of his possessions except in the public interest and *subject to the conditions provided for by the law*, and by the general principles of international law. “ (Italics added).

Article 6(1) might have been expected to apply, since it talks of the determination of “civil rights and obligations”<sup>4</sup>

A key European authority<sup>5</sup> for the point confirms that Article 6(1) is applicable because a licence confers a right on a licensee, in the form of an authorisation in accordance with the conditions of the licence, and the legislation. Therefore, a licensee has a “civil right” to run a business under the licence unless it contravenes the conditions laid down therein, or gives rise to any of the statutory grounds for revocation.

Article 6 secures to everyone the right to have any claim relating to his civil rights and obligations brought before an independent and impartial tribunal. This certainly includes a Licensing Committee<sup>6</sup>.

The European Court in *Tre Traktor* also took the view that the economic interests connected with the running of licensed premises were “possessions”.

The Court found that the maintenance of the licence was one of the principal conditions for the carrying on of the applicant company’s business, and that its withdrawal had adverse effects on the goodwill and value of the licensed premises. A licence to serve alcohol should, therefore, be considered to be a possession within the meaning of Article 1 Protocol 1.

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<sup>4</sup> **Article 6(1):**

“In determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.”

<sup>5</sup> *Tre Traktor Aktiebolag v Sweden* (1989) 13 EHRR 309

<sup>6</sup> Those with long memories will recall that the concerns about “impartiality” of Local Authorities in hearing representations from their own Departments as responsible authorities was resolved by affording the right to a hearing *de novo* on appeal to the Magistrates during the introduction of the LA2003.

Such withdrawal of a licence can therefore constitute an interference with the licensee's right to "peaceful enjoyment of its possessions".

A Scottish case<sup>7</sup> in 2001 took the application of Article 6 to a Licensing Hearing one stage further. In an application for judicial review of the Scottish (Glasgow City) Licensing Board's decision to refuse an extension to an entertainment licence to a nightclub, the appellants argued that the way in which the case had proceeded before the Licensing Board had violated their rights to a fair trial under Article 6.

The High Court accepted that Article 6 applied in full to the hearing of a Licensing Board<sup>8</sup>. There was no doubt that the Licensing Board was a similar body to Licensing Committees - a body created by statute for the purpose of dealing with applications for licences; exercising an administrative function on a quasi-judicial basis. Article 6 applies in full, notwithstanding the fact that Article 6 makes reference to 'criminal proceedings'.

The Court held<sup>9</sup> that the essential ingredients of fairness were a general equality of arms between the parties and the elimination of any notion of ambush when it came to the emergence of material.

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**<sup>7</sup> (1) Catscratch Ltd (2) Lettuce Holdings Ltd v Glasgow City Licensing Board (2001). Scottish Outer House, Court of Session.**

<sup>8</sup> "I am prepared to accept that Article 6 applies generally in the context of a hearing of this type, ie: a Licensing Board, albeit it is administrative and it is not, in my opinion correct to regard the Board as exercising the functions of a tribunal. Having said that, however, I do not consider the test to be required under the Convention raises any different issues, certainly in this case, on the question of fairness and the equality of arms from those required by the law of Scotland."

<sup>9</sup> "I do not doubt that the licence holder should have a fair opportunity of correcting or contradicting information which is put before the Board by an objector, but I do not accept this means he has the right to insist that he do so by leading evidence".

"What matters is whether they have denied a party that equality of treatment which is involved in the right to a fair hearing."

The Scottish High Court found that the Licensing Board should not be regarded as being the same as a court or tribunal, and that the procedures to be adopted at the statutory meetings were substantially a matter for the tribunal to determine, *but* that their proceedings were subject to the supervision of the Higher Court, with regard to the common law principles of natural justice, and, crucially, the European Convention on Human Rights.

This brings the whole of Article 6<sup>10</sup> into play

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“The essential ingredients to my mind of fairness are a general equality of arms as between the parties and the elimination of any notion of ambush when it comes to the emergence of material.”

<sup>10</sup> **ARTICLE 6**

1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgement shall be pronounced publicly by the press and public may be excluded from all or part of the trial in the interest of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.
2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.
3. Everyone charged with a criminal offence has the following minimum rights:
  - (a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
  - (b) to have adequate time and the facilities for the preparation of his defence;
  - (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
  - (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
  - (e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

These Human Rights and Natural Law principles will apply with force when the licence is being subjected to a review application with the possibility of restrictions being placed on the licence, or even revocation.

The regulations<sup>11</sup> make clear that an adjournment should be considered even if the premises licence holder simply fails to turn up.

It is clear, therefore that the Licensing Authority must give consideration to the need for an adjournment where it becomes apparent that a party to the proceedings is unable to attend, particularly if that party is the premises licence holder. The consideration must be given in the context of the “public interest” of granting an adjournment. “Public” does not just mean members of the public. It is in the wider public interest to have due process

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<sup>11</sup> Regulation 20 of the Hearings Regulations (The Licensing Act 2003 (Hearings) Regulations 2005) states as follows:

“20(1) – If a party has informed the authority that he does not intend to attend or be represented at a hearing, the hearing may proceed in his absence.

(2) If a party who has not so indicated fails to attend or be represented at a hearing the authority may –

(a) where it considers it to be necessary in the public interest, adjourn the hearing to a specified date, or

(b) hold the hearing in the party’s absence.

(3) Where the authority hold the hearing in the absence of a party the authority shall consider at the hearing the application, representations or notice made by that party.

(4) Where the authority adjourns the hearing to a specified date it must forthwith notify the parties of the date time and place to which the hearing has been adjourned.”

upheld; and for licensees not to have their businesses and livelihoods adversely affected without being given the opportunity to be fairly heard; and it is in the public interest for human rights to be carefully observed and upheld at all times. It is also in the public interest to give careful and fair hearings to applications that might be of general benefit to the public; the local nightlife, and the economy; or to representations that might demonstrate that the licence affects the public adversely. These, and doubtless more, are all valid considerations. There is no justification for excluding the parties themselves from the consideration of “public interest”.

Thus it can be seen that a request for an adjournment should never be ignored, and that a careful consideration of the request should be made by the Licensing Authority. It is a good idea to consult the parties on availability before a date is set, to avoid the problem arising in the first place, if at all possible.

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