Abandon All Hope, Ye Who Enter Here – Those Infernal Interim Steps……..

There are now four cases that have considered, in some detail, the issue of interim steps in a Summary Review. The issue remains fraught with confusion, and none of the four cases is either authoritative or conclusive as to how Licensing Sub-Committees are to approach this important licensing exercise. Decision makers are less likely to be interested in the academic debate surrounding Summary Review and interim steps and far more interested in the practicalities of what they are expected to be doing in these difficult cases. Practical guidance, lifted directly from the cases that we have, is somewhat thin on the ground, however. It is highly regrettable that all we have at this point in time is two Magistrates' Court decisions, which directly contradict each other, and two Rulings from the High Court in the context of Judicial Review permission hearings in which permission to proceed was refused. All of these decisions are expressly excluded from being authoritative - the Magistrates' determinations because they are not Courts of record, and create no binding precedent, and the High Court rulings by virtue of Practice Direction (Citation of Authorities) 2001 1 WLR 1001. For all practical purposes, all four decisions carry the same weight as each other – whether some or none. Nevertheless, we must do the best we can with what we have.

The law with which we are concerned is set out in sections 53A – 53C of the Licensing Act 2003, as inserted by the Violent Crime Reduction Act 2006. These sections between them bestow a power upon the Police to call for a Summary Review by certifying at Senior Officer level that premises are associated with serious crime, serious disorder or both. Serious crime is defined according to section 81(2) and (3) (a) and (b) of the Regulation of Investigatory Powers Act 2000. Serious disorder is not defined. So much is already well-trodden ground. Once an application for Summary Review has been submitted to the Licensing Authority, the Sub-Committee must consider it within 48 (working) hours and must make a decision as to whether interim steps are necessary. The interim steps that the licensing authority must consider taking are: the modification of the conditions of the premises licence; the exclusion of the sale of alcohol by retail from the scope of the licence; the removal of the designated premises supervisor from the licence; and the suspension of the licence. Typically, it is the suspension of the licence which causes the most problems, as it stops the premises dead in their tracks, and has the potential to put them out of business. It is possible for this to happen without any representative of the premises being present at that stage.

The premises are afforded a right to come before the Sub-Committee to make representations for themselves, also in a 48 hour time frame, to argue against any interim steps that may have been imposed. It can be perceived, at that stage, that they are on the back foot, and that, the step having already been taken, there is a default position that it will remain. If the interim step – particularly that of suspension – is confirmed at this second stage, then the Licensee has a problem. The next stage in the proceedings is a full review hearing, which behaves much as an ordinary review does - all other responsible authorities and other interested persons are consulted in the usual way, and the determination of the Sub-Committee on review is suspended for 21 days, or until the outcome of any appeal. The question has always been, in this situation, what happens to the interim steps.

The four cases in which the issue of interim steps has been considered are:

- Chief Constable of Cheshire –v- Gary Oates (Chambers, Runcorn) Halton Magistrates' Court District Judge Knight 19/12/2011
- 93 Feet East ltd –v- London Borough Tower Hamlets [Permission hearing, Judicial Review] Dingemans J, [2013] EWHC 2716 (Admin)
- Commissioner of Metropolitan Police – v- Mayfair Realty Ltd, Westminster Magistrates' Court, District Judge Roscoe, 22/7/14
- Jasbinder & Rajbinder Sarai –v- London Borough Hillingdon [Permission hearing, Judicial Review], Collins J, August 2014.

The Gary Oates case was one of the first 'reported' cases to consider the interim steps provisions in any detail. The original DCMS guidance which came out at the same time as the introduction of the Summary Review power had made it plain, in the last paragraph, that interim steps would last until the time of the appeal. The wording of the Act did not seem to make that clear on its face, and the matter was challenged by Gary Oates in the context of a Summary Review in 2011 in which he had originally been accused, as DPS of the premises, in collusion with his door staff, of beating up a customer behind a curtain in the lobby of his night club premises. The Police case at the interim steps stage was stark. By the time of the full review hearing itself, the situation was much more ambiguous, and, having suspended the licence as an interim step, the Review Committee took a much different stance on review, based on the evidence they were then given, and imposed various conditions on the licence, which seemed to reflect their acceptance that the reality of the situation was much less serious than the Police had originally set out. It certainly did not warrant revocation. Mr Oates wanted to challenge the conditions that had been imposed upon him, however, but in

order to do so, it appeared that he would have to continue to labour under the suspension that had been imposed as an interim step. This would have put him out of business. He sought QC's advice, which confirmed that the effect of the Statute was not that the interim steps lasted beyond the review; that they were, indeed, "interim", as the wording of the Statute implied, and lapsed at the date of the full review. He was, therefore, the Advice confirmed, free to open his nightclub again, pending the appeal against the conditions, and that is what he did.

The Local Authority and the Cheshire Police did not agree, and objected to Mr Oates re-opening, and served him with a s.19 Closure Notice, (Criminal Justice and Police Act 2001), alleging that he was trading otherwise than in accordance with a licence. The matter was referred to the Magistrates' Court for the hearing of the s19 Closure application by the Police, and that is how this interim steps issue first came before the Court.

District Judge Knight found the statute impenetrable. She is not the only one to have found it badly drafted, and now finds herself in the august company of Collins J, who agreed as recently as August 2014 that:

"The legislation is badly drafted and is by no means clear."

and

"There is undoubtedly a serious lacuna in the legislation".

District Judge Knight's conclusion, having grappled with the terminology of the statute was that interim steps do not last automatically beyond the review hearing, and that Mr Oates had been entitled to re-open after the full review hearing.

It is worth taking stock to see how far the debate has come. At the time of the Gary Oates decision in 2011, the argument was about whether interim steps continued beyond the review hearing and into the appeal period *automatically*- that is, by operation of the statute itself, that no-one could change. This was not originally a debate about whether the Licensing Committee could make them last if they wanted to – but about whether the statute had that automatic effect, whether or not the Licensing Committee wished to continue the interim steps or not. Typically, interim steps were not discussed again at the full review stage, as it was considered that they were a "done deal", and could not be changed. What District Judge Knight found was that the statute did not have that automatic effect. This is an important aspect of the debate, because it is still common to come across Licensing Sub-Committees and their advisors who believe that they have no choice as to whether

the interim steps continue past the review hearing, and that there is no alternative available under the statute. These more recent cases apparently show to the contrary, although this carries difficulties of its own, and this is now a very important consideration.

What we now have is a clear indication from these four cases that the future of interim steps from the review stage onwards is firmly in the hands of the Sub-Committee. It is vitally important, therefore that the Sub-Committee recognises this and acts accordingly at the review stage. Precisely what they are to do is less clear.

According to one of the Judges who has considered the matter, (District Judge Roscoe – 'Mayfair Realty' July 2014), it would be "unlawful" for the Sub-Committee to fail to consider interim steps again at the full review stage:

DJ Roscoe:
"42: I would also think that it would be unlawful for a LA not to "ratify" or withdraw the interim steps at the determination of the review (or at least to ensure that there was an early hearing to hear representations under section 53B(8) and consider the need for any interim steps to continue pending the coming into effect of the review determination)."

Presumably the District Judge also meant that the Sub-Committee could "amend" the steps as well. What this means is that there is now, presumably, always going to be some kind of extra element, at, or around the time of a full review hearing after a Summary Review, which is dedicated to considering the interim steps overtly, and making a conscious decision as to what is to happen to them. So, we seem to have moved from an understanding that interim steps automatically continue after a Full Review, and that there is nothing that anyone can do about it, to an understanding that they may or may not continue, but that is a decision that a Licensing Sub-Committee must overtly make as a separate decision – failing which, they make an error of law.

It is interesting that all of the decisions made so far about the fate of interim steps have been predicated upon the basis of the premises in question being assumed to be "bad" premises. The argument goes that a Senior Police Officer has certified that the premises are associated with serious crime, serious disorder or both, and that, therefore, it would be wholly contrary to the promotion of the licensing objectives, and anathema to common sense to allow interim steps to lapse at the review hearing, and allow the premises to continue to trade.

Again, in the words of DJ Roscoe:

"43:…..the position would be that where a senior police officer has asked for a review of the licence because the premises are associated with serious crime and/or serious disorder, and where the LA has decided that it was necessary to impose interim steps upon application and also refused to withdraw such interim steps upon application, and where the LA has, at a full review hearing, decided to "ratify" those interim steps; and finally, where, so far as I am aware, there are no equivalent steps that can be taken elsewhere in the legislation, the interim steps simply fall away. In my view that must be entirely wrong."

It is hard to argue with the logic of that interpretation in relation to premises which are "banged to rights", which will attract little sympathy when the interim steps continue pending their (no doubt) meritless appeal, and potentially drive them out of business. Premises like that are not the cause for concern.

But what of the premises more like '93 Feet East', and Gary Oates' Chambers nightclub? At the time of the certification of the serious crime / serious disorder, and at the time of the Police initial representations to the Sub-Committee, the picture seemed to be all one way, and the premises were painted black. At that stage, the premises may not have been given any opportunity whatsoever to defend themselves, or put forward a contrary view. There are very many examples of Licensees and their representatives becoming aware that an interim steps hearing is being held by the Council to consider the application of the Police, and of them turning up to the Council building, asking to be heard, and being refused. They can, in short, press their noses against the door of the Council Chamber, but they cannot influence what it is that the Sub-Committee hear at that stage. It is not always correct. It is not always balanced.

In the '93 Feet East' case, the Magistrates' appeal was concluded before the Judicial Review permission hearing had been heard, and that was the key to the refusal of the permission in that case. In that Magistrates' appeal, one gleans the truth as to whether the 93 Feet East premises were "bad" premises, rightfully deprived of their licence and potentially facing the end of their business. The appeal was compromised with the Licensing Authority, in a negotiated outcome and a consent order, varying the decision that the Licensing Sub-Committee had reached on full review. On any

interpretation, this must have meant that the premises were, in fact, worthy of continuing to trade, and did not deserve to lose their licence.

In that context, it is interesting to consider precisely what Dingemans J said in '93 Feet East', when looking at this whole issue:

"This proposed claim for judicial review raises an issue of statutory construction of sections 54A, B and C of the Licensing Act 2003. Those were inserted by the Violent Crime Reduction Act 2006 and the statutory purpose, as Mr Clarke submits on behalf of the defendant and I accept, was so that ***problem premises, as they were perceived to be*** – I make no comment about whether the Claimant was rightly identified to be in that category – could be closed pending the revocation proceedings and final judicial determinations".
[Emphasis added. I have commented elsewhere on the incongruity of the phrase "revocation proceedings"]. It appears that, here, the Judge has caught – whether intentionally or incidentally – the whole interim steps dilemma in a nutshell.
Earlier in the judgment, he said:
"I should note, out of fairness to the claimant, that that evidence, as to the extent [of their culpability] and cooperation, is challenged."

Dingemans J no doubt correctly identified that the sections inserted by the VCRA 2006 were *intended* to capture "problem premises". The difficulty, always, is in differentiating between the ones that genuinely are trouble, and those that are initially portrayed in that way, but, on closer examination, turn out to be wrongly accused. Life would be much simpler if we could assume that mistakes and misrepresentations never occurred, and that the first accusation by the Police against premises was always reliable and remained unaltered. This is not always the case.

In circumstances where the Sub-Committee can see that the original position put before them to secure the interim steps is not in fact the full picture, and they change their minds about matters at a later stage, it is now clear that they can do so and should reflect that in the interim steps that they wish to see continue against the premises, if any, for the next 21 days, or until the outcome of any appeal. They not only can do it - they must do it:

Collins J, Sarai v Hillingdon:

"3. The legislation is badly drafted and is by no means clear. Whatever the true construction, there clearly should be a procedure which enables there to be a possibility of suspending the effect of a determination or of any interim order pending appeal. Section 53B(1) enables an interim order to be made 'pending the determination of the review', but s.53C(2)(c) makes clear (if it is to be given any sensible meaning) that such an interim order may extend to when the determination comes into effect. However, s.53V(2)(b) *[sic]* enables the committee to modify any interim order by imposing different and perhaps less onerous measures."

Pausing there again, it is very unfortunate that this typo ['53V(2)(b)'] has slipped into the Order at this crucial point, as it is not entirely clear what the Learned Judge meant. It seems certain that the Learned Judge meant s.53C(2)(b), but this is the section about the full review of the premises licence following the review notice, and s.53C(2)(b) actually says:

"53C(2)(b): The relevant licensing authority must –
(a) hold a hearing to consider the application for the review and any relevant representations;
(b) take such steps mentioned in subsection (3) (if any) as it considers necessary for the promotion of the licensing objectives…"

On the face of it, this section doesn't have anything to do with interim steps, or modifying them, so it is not entirely clear why the Learned Judge thought that it did.

Nevertheless, what we can clearly glean from the Learned Judge's ruling is that he expects Licensing Sub-Committees at the full review stage to give further attention to the interim steps, and to withdraw them, or modify them if necessary, or "ratify" them, and give an express decision that they should continue.

This is something that District Judge Roscoe had also considered and approved, in the earlier 'Mayfair Realty' decision. She said:

"36: The Respondent asserts that this could have the effect that where the LA has imposed far less onerous conditions or even found that the police contentions are without any substance, the interim steps restrictions would nevertheless remain in place until 21 days had elapsed, or longer if the police appealed the LA's decision and that that cannot be right.

37. I agree with him that such a consequence would not be right. However, I cannot see that that would happen if the interpretation was as I have outlined above. …"

The District Judge's interpretation of the statutory provisions started with the observation that s.53B(1) sets out the requirement of the Licensing Authority to consider whether it is necessary to *take* interim steps pending the full review. According to DJ Roscoe, the operative word is '*take'* – and the word "pending" only controls the time period within which the Sub-Committee may *take* the interim step, but has nothing to do with how long the interim steps should last; [Paragraph 23]. This is a very interesting part of her decision, given what the District Judge then goes on to say, which is that the Sub-Committee can and should consider amending or withdrawing the interim steps at any time, including *after* the full review hearing. So, we can only conclude that it is a different act, as a matter of law, to "take" a step than it is to modify it or remove it. In other words, according to DJ Roscoe, the Sub-Committee can only "take", or impose the interim step in the first place, up until full review, but not thereafter. They can, and should, however consider removing such an interim step, or amending it, during and after the review as well. What does this mean if the Sub-Committee wanted to change the interim step quite radically? If they started out by suspending, but wished to lift that suspension and impose, say, a knife arch. Is that an amendment? Or is it taking a new step?

It is worth noting that Collins J disagreed with her interpretation on "take" and "pending":

Collins J: Sarai – v – Hillingdon:
"S.53C(2)(c) does indeed seem to be an unnecessary provision since s.53B(1) makes clear that interim steps are what they say, namely steps taken pending determination and once a determination has come into effect they will automatically lapse."

All the Judges appear to agree that Section 53C(2)(c) is the only provision which deals in any way with the lapse or expiry of interim steps. Unfortunately, this section is apparently only concerned, on its face, with how the steps shall "cease", and does not make plain how, why or when they are to *continue*. This section makes it clear that the LA has a duty to resolve what happens to the interim steps. Its responsibility is, ultimately, to take steps to secure the *termination* of the interim steps (unless the effect of the interim steps continues by virtue of the determination that the Sub-Committee made on full review anyway). This has always been at the heart of the problem.

S53C(2)(c) talks specifically and exclusively about making the interim steps "cease". It says not a word about amending them; ratifying them; continuing them or any other variation of them. The big question here, then becomes "When?". When do the Sub-Committee have to make ("secure" that) the interim steps cease? Is this a determination that they have to reach at the full review? How is that possible, and what should they say, or do? Is it a determination that they have to reach at the time that their full review determination comes into effect – which is either at the end of the 21 days, or at the conclusion of the Magistrates' Court appeal? This is clearly impossible. No Sub-Committee is going to reconvene 21 days from the taking of the full review determination specifically to "secure that …any interim steps….cease to have effect". Nor is there the remotest possibility that they are going to reconvene on the last day of the Magistrates' Court appeal hearing to do the same thing.

If this is the only sub-section in the Act that deals with what should happen to interim steps, it is spectacularly useless and extraneous to requirement. This appears to be the view of Collins J as well. No-one would dream for a moment that interim steps would continue to last once the full review determination has come into effect, whether after 21 days or after a Magistrates' appeal. There is no possible purpose in making the Sub-Committee go through an extra step to confirm that. What is far more important and interesting is what should happen to the interim steps whilst everyone is waiting for the review determination to come into effect, and try as anyone might, there is not a single way of reading a single word in the Statute as giving the smallest hint on that whatsoever.

What DJ Roscoe and Collins J have done, therefore, is fall back on Human Rights to insert this extra, important factor, to achieve the desired effect:

> Collins J:
>
> "4. There is undoubtedly a serious lacuna in the legislation since it was in my view be disproportionate in terms of Article 1 Protocol 1 if there were no power to suspend an adverse decision pending appeal or a fortiori no power to give immediate effect to a decision that the application under s.S53A was not made out albeit an interim order had been made. S.53C(2)(c) does indeed seem to be an unnecessary provision since s.53B(1) makes clear that interim steps are what they say, namely steps taken pending determination and once a determination has come into effect they will automatically lapse. However, it must be assumed that Parliament meant s.53C(2)(c) to have some effect and in my judgment it

> only makes sense if it implies and must enable justice to be done carry within it by the words in brackets a power to vary or indeed to remove any interim steps pending the expiry of 21 days or any appeal."

All words in this extract are exactly as they appear in the Order, and, again, it is unfortunate that the wording is not clearer, but the sense may be gleaned.

The Learned Judge does not agree with the interpretative route that DJ Roscoe took – in his view, "take steps pending review" means exactly what it says. However, he goes on to find that this would make S53C(2)(c) entirely redundant, which is anathema in statutory interpretation, which seeks to find meaning in Parliament's words, if at all possible. He also finds that there is nothing overt in the statute which provides a power to lift or change the interim steps, but that it is vitally important, for human rights purposes that there should be one, and that this "lacuna" in the statute is filled. There must, he concludes, be a means to lift or change the interim steps once they have been imposed, because otherwise it would be disproportionate, and contrary to Article 1, Protocol 1. So, a power is implied and conferred upon the Sub-Committee to be able to change the interim steps. He clearly thinks that should be done at full review stage.

On the outcome, at least the Judges are in agreement; if not in the interpretation of the Statute that gets them there. The Judges, Collins J, and Roscoe, clearly did not see the problem that Dingemans J was looking at in '93 Feet East'. It was argued before him that if the Sub-Committee are reaching a decision about interim steps at the full review stage, then that becomes part of the full review determination, and that decision itself would be caught by s.53C(11) which states:

> "(11) A decision under this section does not have effect until;
> (a) The end of the period given for appealing against the decision, or
> (b) if the decision is appealed against, the time the appeal is disposed of."

So, what is a "decision under this section"?

> "53C(1) - This section applies to a review of a premises licence which a relevant licensing authority has to conduct on an application under section 53A".

Is that section wide enough to encompass a decision by the same Sub-Committee on the same occasion as to what they should do with the interim steps? It is hard to see why not. Does that decision of theirs get suspended? Dingemans J did not know, and did not decide the matter:

> " The answer to that [that Counsel for the premises] gave was interesting. It was: well, in fact, properly analysed, what …..the committee did on this particular occasion, was make two decisions: one to revoke the licence, and the other was to continue the interim steps in those circumstances. And that both were suspended under 53C(11). It does not seem to me that that is anything more than a construction of what went on in the particular circumstances of this case."

It may have been what went on in that particular case, but would it not equally be what went on in any other case of its kind?

This is a different formulation of the same problem – namely that interim steps end at review because the Sub-Committee are unable in law to make any determination about them that survives the automatic appeal suspension built into 53C(11). This is a different approach, but the same outcome, to saying that interim steps automatically lapse on the day of the full review by automatic operation of the statute.

Dingemans J refused to address the point, because 93 Feet East had already been resolved in the Magistrates, and he said it was "academic". DJ Roscoe and Collins J apparently did not think about it at all. What we can, possibly, conclude from the judgments of DJ Roscoe and Collins J is that they do not believe that a decision about interim steps, taken on the same day as the review hearing and as part of the review proceedings would fall under that suspension. Whether that is right as a matter of law is a different question. It may be possible to convene a hearing of the Sub-Committee which is overtly separate from the review hearing – even if it is on the same day, and which is referred to as a hearing to consider interim steps specifically. But what would this hearing about interim steps be called, and where does the power to convene such a hearing come from? There is no such power in the Act.

DJ Roscoe said this:

"42. I would also think it would be unlawful for a LA not to "ratify" or withdraw the interim steps

at the determination of the review, (or at least to ensure that there was ***an early hearing to hear representations under section 53B(8)*** and consider the need for any interim steps to continue pending the coming into effect of the review determination". (sic).
[Emphasis added].

Now, those two options are entirely different things. To say it would be "unlawful" for the Sub-Committee not to ratify or withdraw their interim steps as part of the determination of the review itself walks straight into the s.53C(11) suspension problem. How can one discrete part of the review determination be exempt from the 21 day or full appeal suspension? Indeed, the District Judge appears to confirm this conundrum for herself in an earlier passage:

"[The Licensing Authority's] responsibility is to terminate the interim steps (the only exception being if the effect of the interim steps continues by virtue of the determination made by the LA). Put simply it must ***either terminate or ratify*** the interim steps. That decision does not take effect, however, until the expiry of the period set out in 53C(11)."

[Emphasis added]. Note well that, if the decision to *ratify* the interim steps does not take effect at the time of the full review, because of s53C(11), then we are back where we started, and interim steps do not survive the review hearing.

District Judge Roscoe gives an alternative, however, in her paragraph 42 (above). To say that there should instead be "an early hearing to consider those representations under s.53B(8)" is all well and good, but the Sub-Committee cannot hold such a hearing of its own motion. They can only do so if the Licensee applies for such a hearing under s.53B(6). What if the Licensee doesn't do that? Or, what if the Licensee has already called for a hearing under 53B(6) at an earlier stage than the full review, and the Sub-Committee upheld the interim steps? Then what must the Sub-Committee do about interim steps at full review stage? Revisit them, (under what power?), or ignore them, or make them part of their review decision?

DJ Roscoe also said:

> "34……Sub-section (11) relates to "A decision under this section". Section 53C deals with the review and not with the interim steps. If interim steps measures do not cease upon the determination by the LA or lapse for any other reason then this requirement on the LA

> ensures that the interim steps measures do not continue for an indefinite period (even beyond section 53C(11), which after all only refers to a decision made under section 53C and not any decision under 53B and are truly interim. It requires the LAs to address the issue of the interim steps measure at the review hearing."

With great respect, this appears to be wholly contradictory. If the interim steps are being considered, as DJ Roscoe says repeatedly that they must be, at the review hearing, then why are they not part of the review hearing, falling under s.53C? They certainly do not fall under s.53B, unless the Licensee has specifically called for a hearing under s53B(6). And, as before, under what circumstances could the Licensing Authority reasonably be required to take any steps to end interim steps that were somehow rampaging on, out of control, beyond the conclusion of a Magistrates' Court Appeal? It is a reasonably safe bet to say that, if this is a necessary step, required under the Statute at the time of the Magistrates' Appeal, it has never yet been taken by any Licensing Authority in the country.

DJ Roscoe went on to say:

> "40. The LA clearly has an obligation to take action in respect of the interim steps ***during the section 53C review hearing.*** It is necessary for them to reconsider the interim steps ***at the end of the review*** and make it clear that either they continue through the decision reached or are withdrawn by the LA ***under their powers contained in section 53B***……I reiterate that ***the only way*** of terminating the interim steps before the coming into effect of the determination, as far as I can see, is under ***section 53B(8)."*** [Emphasis added].

This is, again with respect, baffling. Within the same paragraph, the District Judge avers that interim steps must be considered both at the full review hearing, and under s53B. These are two fundamentally different stages in the summary review proceedings, arising from two separate powers within the statute. S53B(8) comprises the Licensing Authority's only power to hold a hearing (within 48 hours) to consider representations made to the Authority by the Licensee against interim steps. If the Licensee does not make representations, then there can be no hearing, and the s53B(8) power does not arise. If the Licensee made representations under s53B(6) before the full review, and the Sub-Committee considered the representations and continued the interim steps, then there is no further s53B(8) power at the full review stage, unless the Licensee makes further representations overtly under s53B(6). It must be noted that it cannot be said that if the Licensee

simply begins to make ad hoc representations about the interim steps during the review hearing, that this qualifies as a s53B(6) representation, because the Authority must take certain steps upon receipt of a s53B(6) representation, including giving advance notice of the hearing they will hold into those representations to the Licensee and to the Chief of Police.

DJ Roscoe says in her paragraph 40 (above) that the *only* way in which the LA can terminate the interim steps is under s53B(8) - that is directly contradicted by what Collins J says:

Collins J:

> " 3. S.53V(2)(b) *[presumably meaning S. 53C(2)(b)]* enables the Committee to modify any interim order by imposing different and perhaps less onerous measures. "

S53C(2)(b) is very firmly in full review territory.

Collins J:

> "4. However, it must be assumed that Parliament meant s53C(2)(c) to have some effect and in my judgment it only makes sense if it implies and must enable justice to be done carry within it by the words in brackets a power to vary or indeed to remove any interims steps pending the expiry of 21 days or any appeal".

Again – s53C(2)(c), our old friend – is full review territory.

So far, we are no closer to understanding how even an implied power for the Sub-Committee to revisit interim steps at the full review stage, or thereafter is to be exercised, or how it is to escape the suspension provision of S53C(11).

DJ Knight (Gary Oates) came in for some harsh criticism from DJ Roscoe, who declined to take any account of the former's decision on the basis that:

"The decision in Oates is, in any event, not binding upon me and, I think is wrong. I do also agree with the IP [*the Metropolitan Police]* that it is difficult to see how a decision which admits to a complete inability to comprehend the legislation is of assistance."

What DJ Knight actually said was this:

> "The Police Solicitor has tried valiantly to interpret this appallingly drafted provision: s53C(2)(c). I will not claim to understand section S53C(2)(c) because I think it defies understanding by any human being:
>
> **"S53C (2)** The relevant licensing authority must–
> (a) hold a hearing to consider the application for the review and any relevant representations;
> (b) take such steps mentioned in subsection (3) (if any) as it considers necessary for the promotion of the licensing objectives; and
> (c) secure that, from the coming into effect of the decision made on the determination of the review, any interim steps having effect pending that determination cease to have effect (except so far as they are comprised in steps taken in accordance with paragraph (b))."
>
> "The coming into effect" is at the outcome of the appeal, in this case a distant time, March 2012. The Council then have to trouble themselves to "secure" that interim steps cease to have effect. The Respondent would say: "There are no interim steps, because they ceased at review. " If the Police are right, then the Council would have to trouble themselves at the outcome of the appeal to bring interim steps to an end. But why would that be necessary, because they would end then anyway, even if the Police are right, and they subsisted until the outcome of the appeal. They would come to an end then through statutory declaration.
>
> That is without going into the words in brackets in s 53C(2)(c) –
> "(except so far as they are comprised in steps taken in accordance with paragraph (b))."
> What does that mean? "Except so far as.." etc. Does that mean that they do not secure the ceasing of the interim steps that are comprised in the review determination, no matter the outcome of the appeal? But suppose the appeal were allowed totally?
> The nonsense of this provision – that the Licensing Committee should not seek to bring to an end steps that they have imposed as if the appeal process has got it wrong, if the appeal process does not uphold those steps. This must be a nonsense."

It appears that we have yet to find anyone who has a proper answer to that, or who can convincingly demonstrate that they actually do understand s53C(2)(c) - Collins J did not claim to be one of them:

> "3. The legislation is badly drafted and is by no means clear."

And

"6. I recognize that the provisions are far from clear and it may be a judicial decision is needed".

DJ Roscoe herself did not offer any answers to DJ Knight's apparently reasonable questions. In fact, DJ Roscoe said herself:

"10. The issue, therefore, is whether or not the interim steps are still in force.
11. All three parties assure me that this issue is straightforward and clear. I am afraid that I have not found it so."

"28. [I have to say that I have not had more than a comparatively superficial look at sections 161-168 of the Act. They also seem to be somewhat complex, possibly even more complex than section 53."

"34. I have to say that I am not sure what is meant by the word "secure". I can only conceive that it means "ensure"."

That appears to be pretty much the point that DJ Knight was making, and it is hard to see why DJ Knight should be criticised for failing to understand the very same points that DJ Roscoe concedes she does not understand either.

DJ Knight and DJ Roscoe found themselves, unexpectedly, in agreement on one point, although diametrically opposed on all the rest. Both concluded that it was possible for the Licensees to make repeated representations against the interim steps, both before and after the full review hearing. DJ Knight thought this would be a nonsense, and it was part of her reasoning as to why interim steps could not possibly last beyond the review:

DJ Knight, Gary Oates:

"If the Police are correct and the Guidance is not right at paragraph 4.1 – "superseded" – and the interim steps persist until the end of the appeal, it would follow that the premises licence holder could expect to have the interim steps reviewed every 48 hours – there is no time limit for making representations on interim steps, so there is nothing to stop the premises licence

holder from asking the committee to consider more representations within 48 hours, on an ongoing basis and they would be obliged to consider it. There would be no limit on the number of times he could do it.

I cannot imagine that that is what Parliament intended, that every 48 hours the licensing committee is to be tied up, but without a right of appeal that is the only outlet available to the premises licence holder. It is quite nonsensical that Parliament should have meant that that was the only thing the premises licence holder could do, that that is the only recourse. Surely the interim steps are intended to deal with temporary, urgent situations in a cooling off, a settling down period."

DJ Roscoe, however, thought that Parliament might have intended that very thing:

" 33. The Applicant [Council] and the IP [Police] say that there is no limit to the number of times that a licence holder can make representations to the LA against interim steps measures. The Respondent says that that would lead to a ridiculous situation which could result in an additional 14 hearings (in fact 12 by my calculation) on the same issues before the review hearing. (An opinion with which DJ Knight in Oates agreed). I do not agree. The requirement is only that the LA "must hold a hearing to consider those representations". It must be implicit in that that once those representations have been considered they do not have to be considered again. It would only be if there is a change in those representations or in the circumstances supporting the issue of necessity essential to the imposition of interim steps that a further hearing would be required. The determination of a review which did not "ratify" the interim steps would clearly be such a change.

If I am wrong on the latter point and there is a possibility of multiple hearings on the same point then, if that is what the legislation says is to happen, then that is what can happen."

38. The Applicant [Council] and the IP [Police] state that there is no restriction on the number of times a licence holder can make representations for the interim steps to be withdrawn under section 53B. (There also seems to be no time constraint limiting such applications to before the determination hearing). That is the literal reading of section 53B(6) and indeed fits in to the general interpretation of the Act. For example, if the review "ratifies" the interim steps and is appealed by the licence holder, and, as in this case there is some delay until the appeal can be heard, the interim steps remain in force, but there is no reason that I can see that would

> prohibit the licence holder from making post determination representations to the LA where there was a change of circumstances. This would allow for early reconsideration of the position where there was no longer a necessity for the interim steps, but the appeal continued because of argument over some of the conditions imposed by the LA.
>
> 39. The Respondent refers the decision in Oates and says that it is impossible that the legislation should mean that there can be unlimited interim steps hearings under section 53B(8). The Respondent also asks me not to take literally the absence of any section other than sections 53C(2)(c) or 53B(8) terminating the interim steps as meaning that the expiry of interim steps is only from when either the LA hears representations under section 53B(8) and withdraws or varies the interim steps or the determination under section 53C(2) becomes effective under section 53C(11). I am afraid that I cannot see how I can do other than take the legislation literally."

The pre-condition to taking the legislation literally is knowing what it is saying in the first place. I, for one, frankly concede that I do not. The problems and issues highlighted above, in my view, remain mysterious and await an answer. If there are those who still believe that this legislation is "clear", then they could do others a favour, and set out the answers to the points above, and make it plain what everyone is supposed to be doing. Failing which, we are doomed to wait until we find a case that the High Court decides that it is prepared to hear.