

Meeting:	Licensing and General Purposes Committee
Date:	6 March 2006
Subject:	Compromise of Licensing Appeals in the Magistrates' Court
Responsible Officer:	Director of Legal Services
Contact Officer:	David Galpin, Senior Lawyer – Litigation and Licensing, extension 7500
Portfolio Holder:	Councillor Phillip O'Dell
Key Decision:	No
Status:	Public

Section 1: Summary

Decision Required

That the Committee delegate to the Director of Legal Services the power to compromise licensing appeals, to a magistrates' court under the Licensing Act 2003, in circumstances where:

1. It is not practicable to bring the matter before the Committee to obtain instructions; and
2. It is in the Council's interests to compromise the appeal, for example by saving costs; and
3. The effect of the compromise is either that the subject matter of the appeal will be remitted to the Licensing Panel for rehearing, or that the relevant license, certificate, notice or order will be amended in a way that reduces the potential for conflict with the licensing objectives, for example by reducing hours of operation.

Reason for report

At the time of writing there have been nine licensing appeals from decisions of the Council as licensing authority under the Licensing Act 2003. More appeals are expected. On the limited experience to date, it seems that the parties to licensing appeals will frequently come to a commonsense and unobjectionable resolution of the appeal "on the court house steps". The present mechanisms for obtaining instructions to agree the settlement or disposal of these appeals are decision of the Committee or urgent non-executive action, both of which may be too time consuming for practical resolution of cases.

Benefits

A delegation to officers to compromise licensing appeals in limited circumstances will enable appropriate cases to be resolved speedily and avoid the risk of unnecessary costs to the Council or adverse costs orders against the Council.

Cost of Proposals

Nil. There is the potential to avoid costs if the proposal is adopted.

Risks

Officers may make assessments as to whether a particular compromise will reduce the potential for conflict with the licensing objectives.

Implications if recommendations rejected

If there is no mechanism in place for responding speedily to offers of compromise, then opportunities to compromise may be lost. Council may be exposed to unnecessary costs in licensing appeals and to adverse costs orders. Adverse costs orders are particularly likely if proceedings have to be delayed and adjourned to enable the Council to instruct its legal representatives.

Section 2: Report

2.1 Brief History

2.1.1 The Licensing Act 2003 gives rights of appeal to a magistrates' court from decisions made by the Council as Licensing Authority: section 181 and Schedule 5. This includes appeals against decisions made by the Licensing Panel.

2.1.2 At the time of writing there have been nine appeals to the Harrow Magistrates' Court in which the Council is a respondent, all from decisions of the Licensing Panel. At the time of writing, six appeals have been concluded as set out in a separate report to the Committee. Three of those appeals have been compromised.

2.1.3 In each of the three compromised appeals, the Harrow Magistrates' Court has, by consent, remitted the case to the Council for determination in accordance with the Court's direction. The relevant circumstances may be summarised as follows –

Premises	Appellant	Circumstances
(a) Club 2000	Police	Operating hours reduced. Premises operator agreed to forego a number of discretionary "special event" days in accordance with police request.
(b) Moon on the	Residents	Operating hours reduced. Premises

Hill

operator agreed to reduce standard hours for sale of alcohol by half an hour each day.

(c) Club Mehfil

Applicant

Matter remitted to the Licensing Panel for rehearing. The Applicant did not appear at the Licensing Panel hearing the first time because, she says, she did not receive notification.

2.1.4 On the limited experience to date, it seems that the parties to licensing appeals will from time to time come to a commonsense and unobjectionable resolution of the appeal “on the court house steps”.

2.1.5 As set out above, the magistrates’ court appeals involving the Council are all from decisions of the Licensing Panel. The consequence is that, whilst Legal Services takes instructions from licensing officers when conducting appeals, there is a limit to the instructions that any officer can give, because he or she did not make the decision appealed. There is no delegation to officers to compromise appeals.

2.1.6 It might be thought that the Licensing Panel, which meets relatively frequently, ought be able to compromise its own decisions on appeal. However, the relevant delegation to the Licensing Panel is limited to determining applications and making orders in respect of licenses, permits, registrations and certificates where objections have been received. There is no delegation to the Panel to make any decisions in relation to appeals and the view is taken that its power is spent once a matter enters a magistrates’ court.

2.1.7 The Constitution delegates to the Licensing and General Purposes Committee the powers and duties imposed on Council by legislation, regulations, orders, codes and similar provisions for all activities under the Licensing Act 2003. The delegation to the Committee is considered broad enough to include the compromise of appeals to a magistrates’ court. Unfortunately, however, the Licensing and General Purposes Committee meets with a frequency of approximately once every quarter. The Committee meetings are too infrequent to be timely in the compromise of appeal proceedings.

2.1.8 Urgent matters may be dealt with in accordance with the procedure for urgent non-executive actions, but this will involve: preparation of a report and consultation with the chair of the Committee and leaders of the two other main political parties. The timing of proposals to resolve licensing appeals will generally be in the hands of parties other than the Council. In circumstances where the resolution of an appeal is proposed on the court house steps, or in the context of impending action in the litigation, it will often be the case that it is not practicable either to bring the matter back before the Committee for further decision or to proceed by way of the urgent non-executive action procedure. The solicitor attending at

court will be called upon to indicate the Council's position with limited time to obtain instructions.

2.1.9 In respect of the three appeals compromised to date, two were compromised before the difficulty with instructions was identified. The third matter (Club Mehfil) was compromised after instructions were obtained by urgent non-executive action.

2.2 Options considered

2.2.1 An appropriate delegation to compromise licensing appeals could be made to either the Group Manager Community Safety Services, or to the Director of Legal Services. It is suggested that the delegation be made to the Director of Legal Services, because it fits with, and further elucidates, the existing delegation to the Director of Legal Services to "institute, defend and conduct any legal proceedings".

2.2.2 The delegation could be achieved either by amending the Constitution, or directly from the Committee. The latter course is recommended, as it will bring about the quickest resolution of the issue. It is important to resolve the process for compromising licensing appeals as soon as possible to avoid the identified risks.

2.2.3 A delegation is proposed to permit licensing appeals to be compromised in limited circumstances. The Director of Legal Services should be able to compromise licensing appeals only where all the following are satisfied: –

- (a) It is not practicable to bring the matter before the Committee to obtain instructions.
- (b) It is in the Council's interests to compromise the appeal, for example by saving costs.
- (c) The effect of the compromise is either that the subject matter of the appeal will be remitted to the Licensing Panel for rehearing, or that the relevant license, certificate, notice or order will be amended in a way that reduces the potential for conflict with the licensing objectives, for example by reducing hours of operation.

2.2.4 The delegation would give discretion to officers to decide whether a compromise will reduce the potential for conflict the licensing objectives. However, the three cases that have been compromised to date are indicative of the circumstances in which the delegated power could or would be exercised.

2.2.5 It is proposed to continue to report to the Committee on the results of licensing appeals, as in the accompanying report, so there will be an opportunity for oversight of the delegation.

2.3 Consultation

2.3.1 There has been no external consultation.

2.4 Financial Implications

2.4.1 There are no costs associated with this report. There is a potential to avoid costs, primarily legal costs, if the proposal is adopted.

2.5 Legal Implications

2.5.1 If there is no mechanism in place for responding speedily to offers of compromise, then opportunities to compromise may be lost. Council may be exposed to unnecessary costs in licensing appeals and to adverse costs orders. Adverse costs orders are particularly likely if proceedings have to be delayed and adjourned to enable the Council to instruct its legal representatives.

2.6 Equalities Impact

2.6.1 No equalities issues appear to arise from the proposed delegation.

2.7 Section 17 Crime and Disorder Act 1998 Considerations

2.7.1 The prevention of crime and disorder is one of the four licensing objectives. The proposal is that officers will only compromise appeals in circumstances where there is a reduction in the potential for conflict with the licensing objectives, for example by reducing hours of operation.

Section 3: Supporting Information/Background Documents

Background Documents: None.