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Guidance for Interested parties: Appealing Licensing Decisions

This guidance describes the process for appealing a licensing authority's decision about an application for a new premises licence or club premises certificates or for a variation to an existing licence or certificate, or a provisional statement. It also contains information about the court hearings process. Unless stated otherwise, references to 'licences' in this text also apply to club premises certificates.

Who can appeal a licensing authority decision?

In relation to premises licences, "interested parties", that made relevant representations during the application stage, have the right to appeal against a licensing authority's decision in the courts, if they think:

- The licence should not have been granted
- The licensing authority should have imposed different or additional conditions on the licence
- A licensable activity should have been excluded from the licence
- The licensing authority should not have agreed to the named "premises supervisor" (not relevant for club premises certificate)
- There was a procedural irregularity, and this affected the decision (e.g. the licensing committee had failed to comply with the hearings regulations)

Any appeal must address the likely impact that granting the application may have on any of the four licensing objectives:

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

How do I make an appeal?

Appeals should be made in writing to the designated officer for the magistrates' court for the area where the premises is situated. Appeals have to be made within **21 days** from the day the applicant is notified of the licensing authority decision about the application. The licensing authority should notify all interested parties, who made relevant representations, of their decision at the same time; however, appellants may want to check the exact "cut-off" date with the licensing authority.

Some courts have created an "appeals form" to make the process easier; however, there is no set form or procedure, so appellants should contact the relevant magistrates court to check how to make an appeal. A fee of **£23:50** must be made to the magistrates' court on lodging an appeal.

What happens once an appeal has been made?

On receiving an appeal, a magistrates' court has three options. It can:

- Dismiss the appeal
- Substitute the decision being appealed against for any other decision the licensing authority could have made
- Send the case back to the licensing authority and tell them how to deal with it in accordance with directions of the court.

The court may also make such costs orders as it considers fit.

There will normally be an **"initial appeal hearing"** at the magistrates' court at least 28 days after the '21-day' period for making appeals. This is when the court will decide whether there is a case to hear, and whether it will hear the case itself or send it back to the licensing authority to deal with. In doing this, the court will consider whether the appeal is valid and whether the case

outlined in the appeal has been contested. Where a court decides to hear the matter itself, it will normally adjourn to a separate "**full hearing**" date to decide the case, when sufficient court time can be allowed.

As the licensing authority is always a party to an appeal, it is suggested that concerned interested parties should contact their licensing authority to establish whether another party or the applicant has lodged an appeal.

[NB – If applicants appeal licensing authority's decisions, responsible authorities such as the police, and interested parties, such as local residents, that made representations about the application, will not, by the terms of the Licensing Act be "responding parties" at appeal hearings. However, in such cases, an interested party could request that the court make it a responding party, or the licensing authority could call upon them as a "witness" to back up the decision they made].

Procedure at an appeal hearing

Appeal hearings will take place at the magistrates' court for the area where the premises is situated. The licensing authority and the applicant will be the "responding parties" (respondents) to appeals from interested parties and will normally be present at appeal hearings. Interested parties should contact their court to find out whether they need to appear at a hearing. It may be possible in some cases for written evidence to be given to the court instead, however, magistrates courts aren't obliged to accept written evidence and can insist that parties attend in person, so prior agreement must be sought.

At a hearing the person appealing would normally open the case and call his / her witnesses. However, in licensing cases the court may invite the respondents (i.e. the licence or certificate holder) to speak first, if everyone agrees, as this will enable the court to understand how the licensing authority came to its decision. All parties at an appeal hearing can call upon witnesses to provide evidence to support their position (e.g. other local residents or responsible authorities such as the police).

Costs

If you appeal against a licensing authority's decision, and you are unsuccessful, the magistrates' court can award

costs against you if it sees fit. This would mean that you would have to pay other parties' legal costs as well as your own. **However, the Magistrates Association and the Justices' Clerks Society has advised that awarding costs for a licensing appeal should be an exception and not a rule, and any resident with reasonable grounds for appeal should not be penalised.**

What happens after an appeal?

After an appeal hearing, the court will normally notify the licensing authority and other parties of its decision, and the reasons for it, within three working days.

The Licensing Act 2003 does not provide for a further appeal against the decision of the magistrates' court. Accordingly, the usual rules for challenging decisions of magistrates' courts will apply.

NB - Courts will not issue orders suspending the effects of any licensing authority decision, whilst an appeal is waiting to be heard. The licensing authority's decision will take effect immediately, until the outcome of any appeal is known.

This guidance does not detail matters such as the nature of the court hearing with regard to standard of evidence, role of licensing policy etc. Applicants should contact the relevant court for further advice.

Schedule 5 to the Licensing Act 2003 and Chapter 10 of the Secretary of State's Guidance to licensing authorities deal with appeals. For further information about the appeals process, contact the relevant magistrates court.