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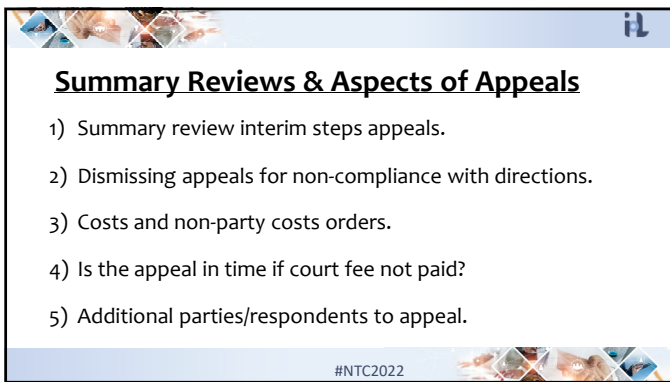
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Ambrose Bierce

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*“Appeal” - in law, to put the dice into the box for another throw*

-Ambrose Bierce,  
“The Devil’s Dictionary”

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Finley Peter Dunne

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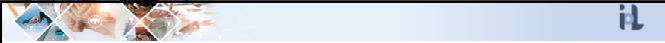
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“An appeal is when you ask one court to show its contempt for another court”

- Finley Peter Dunne

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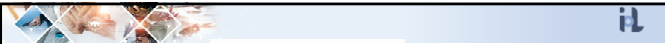

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- Bowen LJ

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“If no appeal were possible, I have no great hesitation in saying that this would not be a desirable country to live in. . . . It is quite true that there is enough difficulty in appealing as it is; but if there is to be no appeal at all possible the system would be intolerable.”

Bowen LJ, *Queen v. Justices of County of London* (1893)

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**STATUTORY RIGHT TO APPEAL TO  
MAGISTRATES' COURT**



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**LICENSING ACT 2003**

**181 Appeals against decisions of licensing authorities**

(1) Schedule 5 (which makes provision for appeals against decisions of licensing authorities) has effect.

(2) On an appeal in accordance with [Schedule 5] against a decision of a licensing authority, a magistrates' court may—

- (a) dismiss the appeal,
- (b) substitute for the decision appealed against any other decision which could have been made by the licensing authority, or
- (c) remit the case to the licensing authority to dispose of it in accordance with the direction of the court,

and may make such order as to costs as it thinks fit.



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**SUMMARY REVIEW  
INTERIM STEPS APPEALS**



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**SUMMARY REVIEW INTERIM APPEALS**



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**SUMMARY REVIEW INTERIM APPEALS**

- s 53A – 53D Licensing Act 2003
- See Chapter 12 of [s.182 Guidance](#)
- Recently used where **flagrant Covid breaches** at premises – including “The Office”, in Northolt (*J&D Properties (London) Ltd –v- LB of Ealing, Judgment 13.1.21*, per DJ Deborah Wright)

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**SUMMARY REVIEW INTERIM APPEALS**

- The Office raised 4 principal issues:
  - 1) Scrutiny of the superintendent’s certificate.
  - 2) Propriety of imposing interim steps pending appeal more onerous than final decision.
  - 3) Which of the four licensing objectives are relevant to interim steps pending appeal?
  - 4) Can interim steps be imposed solely where public nuisance issues?

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**CRITERIA FOR USE**

- The premises is licensed for sale of **alcohol**; and
- A police **Superintendent\*** (or above) has **certified** that in their opinion the premises is **associated** with:
  - **Serious crime**

Or,

- **Serious disorder**

(Or both).

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**“SERIOUS CRIME”**

- S.53A(4) defines “serious crime” by reference to s.81 Regulation of Investigatory Powers Act 2000.
- i.e. conduct that:
  - Constitutes an offence for which a person who is 21 years of age or over with no previous convictions could reasonably be expected to be sentenced to **imprisonment for 3 or more years**
- **OR...**

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**“SERIOUS CRIME”**

- Involves the use of **violence** (NB: not “serious violence”)

Or,

- results in **substantial financial gain**

Or,

- is conduct by a **large number of persons** in pursuit of a common purpose.

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**“SERIOUS DISORDER”**

- S.182 Guidance:
  - [12.6] *“There is no definitive list of behaviours that constitute serious disorder, and the matter is one for judgment by the local police. The phrase should be given its plain, ordinary meaning, as is the case under s.12 of the Public Order Act 1986 in which it is also used.”*

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**“LALLI”**

- Lalli v Commissioner of Police for the Metropolis and London Borough of Newham [2015] EWHC 14
  - A single incident can satisfy “associated with” serious crime or serious disorder test.
  - Once Supt. signs certificate - not for the local authority to scrutinise whether it ought to have been signed before taking steps.

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**INTERIM STEPS CHALLENGED**

- At hearing challenging initial interim LA must:
  - consider what interim steps, if any, are **appropriate** for the **promotion of the licensing objectives** [s 53B(8)]
  - Determine whether to withdraw or modify the steps taken

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**INTERIM STEPS PENDING APPEAL**

- **Final** decision on review does not have effect pending appeal [s.53C(11)]
- Since 2017, at the full review hearing LA must [s.53D(1)]:  
*“review any interim steps that have been taken [by the authority] ... that have effect on the date of the hearing.”*

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**REVIEW OF INTERIM STEPS**

- And consider: [s.53D(2)]
  - whether the interim steps are appropriate for the promotion of the licensing objectives; and
  - any relevant representations; and
  - whether to withdraw or modify the interim steps taken.

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**REVIEW OF INTERIM STEPS**

- Any interim steps taken at full review hearing apply until [s.53D(4)]—
  - the end of the period for lodging an appeal [i.e. 21 days]; or
  - If appeal lodged - the time the appeal is disposed of; or
  - Any shorter period as directed by LA

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**INTERIM STEPS APPEALS**

- Right to **appeal** review of interim steps (i.e. those made at end of **full** review hearing only) to magistrates' court: [see: s.53D(9) & para 8B of Part 1 of Sch.5]
- Both **PLH** and **Police** can appeal interim steps
- Appeal to be lodged within 21 days.
- Appeal against interim steps to be "heard by" magistrates' court within 28 days (of lodging).

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**SUMMARY REVIEW INTERIM APPEALS**

- At interim steps appeal, Landlord submitted:
  - LA entitled to reach different conclusion to police re premises associated with serious crime.
  - If LA concluded no serious crime – no power to impose interim steps.
  - Covid breaches not "serious crime"
  - Since public nuisance not part of original application (and not serious crime) – no power to impose interim steps pending appeal.

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**SUMMARY REVIEW INTERIM APPEALS**

- LA responded:
  - Simple statutory duty on LA is to have regard to the representations and "*consider whether the interim steps are appropriate for the promotion of the licensing objectives*" (plural): s.53D(2).
  - Plain words of s.53D make it clear task of LA not to scrutinise Supt certificate.
  - Certificate merely trigger that brings case before LA – as per *Lalli...*

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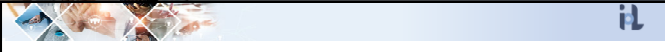
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**SUMMARY REVIEW INTERIM APPEALS**

- LA can and should look at facts in the round when assessing what steps to take to promote licensing objectives.
- All 4 objectives engaged – not simply crime and disorder or “serious crime”
- Interim steps pending appeal could be imposed solely to prevent public nuisance.
- In this case justified given nuisance to residents

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**SUMMARY REVIEW INTERIM APPEALS**

- DJ Wright agreed with LA – interim steps pending appeal could be imposed solely to promote public nuisance objective.
- *Obiter*: Covid breaches in themselves unlikely to be an offence resulting in 3 years or more imprisonment.
- But on the facts the conduct did satisfy “substantial financial gain” limb of serious crime (as cited in original police application of review).

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**SUMMARY REVIEW INTERIM APPEALS**

- Interim steps appeal dismissed
- Subsequently, Appellant withdrew main appeal.
- Agreed costs order.
- Article on [IOL website](#) (20.1.21)

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**SUMMARY DISMISSAL FOR NON-COMPLIANCE WITH DIRECTIONS**



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- Fails to comply with Directions
- Refuses to engage in correspondence
- Fails to serve evidence on time or at all
- Commercial motive to trade pending appeal



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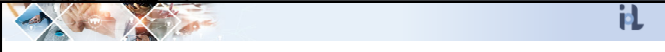
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**MAGISTRATES COURTS RULES 1981**

- Apply to licensing appeals in magistrates’ court
- R.3A – Case Management Powers
- R.3(A)(2): *“The court must actively manage the case by giving any direction appropriate to the needs of that case as early as possible.”*

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**MAGISTRATES COURTS RULES 1981**

- R.3A(7) *In fulfilling its duty under paragraph (2) actively to manage the case the court may give any direction and take any step unless that direction or step would be inconsistent with legislation, including these Rules. In particular, the court may—*
- [...]
  - (i) **specify the consequences of failing to comply with a direction.**

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- In civil proceedings, court may strike out an application/case where *“there has been a failure to comply with a rule, practice direction or court order”* : CPR r.3.4(2)(c)
- Civil Procedure Rules (“CPR”) – do not apply to magistrates’ courts, but...

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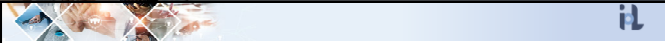
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- In certain circumstances, CPR provisions can be “a **good guide to what is necessary and proportionate**” in the magistrates’ court.
- See: *R(Cleary) v Highbury Corner Magistrates’ Court* [2006] EWHC 1869 at [34] per May LJ
- *The Queen (o/a/o Essence Bars (London) Ltd v Wimbledon Magistrates’ Court* [2016] EWCA Civ 63 at [36], per Beatson LJ.

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- *Almada v City of Westminster Magistrates’ Court* [2010] EWCA Civ 386, per Dyson LJ
- *The Chilli Tree (Saleh Uddin v Wealden & Rother DC)* High Court, CO-634-2019, per Mostyn J (5.3.19)

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**“CHILLI TREE” – Mostyn J Written Order**

*“The decision of the defendant [Council] was well-reasoned and unlikely to be capable of challenge. Therefore, the court required the claimant to specify the legal and factual basis for his appeal by 29 August 2018 and to file all his evidence by 12 September 2018. This he failed to do. The defendant therefore applied for a debaring order. This was listed for 26 September 2018. Still the claimant failed to comply with the directions and failed to furnish any good reason for his default at the hearing. It became plain that the claimant was using the appeal process as a filibuster to allow him to continue selling alcohol...”*

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**“CHILLI TREE” – Mostyn J Written Order**

“... A debarring order (i.e. an order summarily dismissing the appeal) was therefore inevitable. In *Prince Abdulaziz v Apex Global Management Ltd & Anor* [2014] UKSC 64, the Supreme Court upheld a debarring order made for failure to comply with a disclosure order. It was not disproportionate in that case to make the debarring order where the defendant persisted in failing to make simple disclosure and had showed that he had no intention to do so. So here.”

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**APPELLANT FAILS TO ATTEND COURT**

- Section 56, Magistrates’ Courts Act 1980:
- 56 Non-appearance of complainant.
- Where at the time and place appointed for the hearing or adjourned hearing of a complaint the defendant appears but the complainant does not, the court may dismiss the complaint or, if evidence has been received on a previous occasion, proceed in the absence of the complainant.

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- See article on “Summary Dismissal of Licensing Appeals for non-compliance” by Gary Grant, Journal of Licensing (July 2019)



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**COSTS & NON-PARTY ORDERS**

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**BASIC COSTS RULES**

- Wide discretion on costs.
- s. 181 LA03: “[Court] may make such order as to costs as it thinks fit.”
- Generally:
  - Council win – Appellant pay their reasonable costs.
  - Council lose – Council not pay Appellant costs unless unreasonable approach taken to appeal

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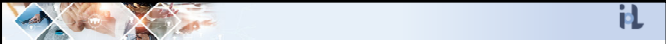
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**BASIC COSTS RULES**

- Ordering Councils - who have behaved reasonably in defending a licensing appeal - to pay costs whenever they lose is likely to have a “chilling effect” on conduct of Council’s work.
- This is an “important factor” in exercise of Court’s discretion on costs – *Competition & Markets Authority v Flynn Pharma & Pfizer* [2022] UKSC 14 [at§97]
- Supreme Court considered principle in *Bradford Metropolitan District Council v Booth* [2000] 164 JP 485



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**NON-PARTY COSTS ORDERS**

- Only in exceptional and appropriate cases.
- Generally where Appellant (often corporate licence holder) is impecunious and without substantial assets - so unlikely to meet costs order (or will dissolve to avoid it).
- Court must act “justly”

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**NON-PARTY COSTS ORDERS**

- The relevant principles for non-party costs order can be drawn from these cases:

*Dymocks Franchise Systems (NSW) PTY Ltd v Todd and others [2004] 1 WLR 2807 (PC); Deutsche Bank AG v Sebastian Holdings Inc. [2016] EWCA Civ 23 (CA); Goodwood Recoveries Ltd v Breen [2005] EWCA Civ 414 (CA); Goknur Gida Maddeleri Enerji Imalet Ithalat Ihracat Ticaret ve Sanayi As v Aytacli [2021] EWCA Civ 1037 (CA); Aldemir v Cornwall Council [2019] EWHC 2407 (Admin).*

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**NON-PARTY COSTS ORDERS**

1) Although costs orders against non-parties are to be regarded as "exceptional", exceptional in this context means no more than outside the ordinary run of cases where parties pursue or defend claims for their own benefit and at their own expense.

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**NON-PARTY COSTS ORDERS**

2) The only immutable principle is that the discretion must be exercised justly. Since the decision involves an exercise of discretion, limited assistance is likely to be gained from the citation of other decisions at first instance in which judges have or have not granted an order of this kind.

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**NON-PARTY COSTS ORDERS**

3) Where a non-party director can be described as the "real party", seeking his own benefit, controlling and/or funding the litigation, then even where he has acted in good faith or without any impropriety, justice may well demand that he be liable in costs on a fact-sensitive and objective assessment of the circumstances.

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**NON-PARTY COSTS ORDERS**

4) In order to assess whether the director was the real party to the litigation, the court may look to see if the director controlled or funded the company's pursuit or defence of the litigation. But what will probably matter most in such a situation is whether it can be said that the individual director was seeking to benefit personally from the litigation.

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**NON-PARTY COSTS ORDERS**

5) In the case of an insolvent company involved in litigation which has resulted in a costs liability that the company cannot pay, a director of that company may be made the subject of such an order. Although such instances will necessarily be rare, non-party orders may be made to avoid the injustice of an individual director hiding behind a corporate identity, so as to engage in risk-free litigation for his own purposes. Such an order does not impinge on the principle of limited liability.

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**NON-PARTY COSTS ORDERS**

6) It is not necessary that the non-party be "the only real party" to the litigation provided that he is a real party in very important and critical respects".

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**NON-PARTY COSTS ORDERS**

7) Generally speaking the discretion will not be exercised against "pure funders" meaning those with no personal interest in the litigation, who do not stand to benefit from it, are not funding it as a matter of business, and in no way seek to control its course.

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**NON-PARTY COSTS ORDERS**

8) Individuals should be put on fair notice of intention to apply for costs against them and a fair opportunity to respond to the application.

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**NON-PARTY COSTS ORDERS**

- *Aldemir v Cornwall Council* [2019] EWHC 2407 (Admin) (13.9.19, Swift J) – confirms power to make 3<sup>rd</sup> party costs awards under LA03
- Costs order should be X & Y to pay Council costs of ££££ on a joint and several basis.

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**COSTS SCHEDULE**

- Costs Schedules can include:
  - Officer investigation time (in appeal period): *Associated Octel Ltd* [1997] 1 Cr App R (S) 435 and *Balshaw v CPS* [2009] 1 WLR 2301
  - In-house Council solicitor charged at commercial rates: *Eastwood* [1975] Ch. 112; *R(o/a/o Kuznetsov) v London Borough of Camden* [2019] EWHC 3910 (Admin) (at §30-34)
  - External Counsel rates– can take into account specialised nature of work/public interest in case

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**COSTS SCHEDULE**

- VAT usually not claimable (if can be reclaimed by Council from HMRC)
- Costs of hearing before Council not claimable
- All reasonable costs of defending appeal claimable
- LA's should consider putting Appellant on notice of likely costs in correspondence early on – to avoid surprises down the line.

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**ENFORCING COSTS ORDER**

- Means of losing party not directly relevant to order.
- Costs generally payable immediately unless time to pay agreed with other side.
- Non-payment enforced as civil debt in civil courts (not magistrates' court).

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**IS THE APPEAL IN TIME IF DELAY IN PAYMENT OF COURT FEE?**

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**TIME FOR APPEALING**



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**TIME FOR APPEALING**

- An appeal must be commenced by notice of appeal given by the appellant to the designated officer for the magistrates' court within the period of **21 days** beginning with the day on which the appellant was **notified** by the licensing authority of the decision to be appealed against. (LA03: Sch.5, para.9)
- NB: time starts from day of notification (not following day).

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**TIME FOR APPEALING**

- “Designated officer” does not include handing to sub-contracted court security officer but can include service on court by email: *Begum v Luton Borough Council* [2018] EWHC1044 (Admin)



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- 21 day time limit is strict:
- *Stockton on Tees BC v Latif* [2009] EWHC 228 [§20-23] (taxi appeal)
- See also, *Essence Bars (London) Ltd v Wimbledon MC & Royal Borough of Kingston* [2016] EWCA Civ 63 [§49] (LA03 appeal)



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**TIME FOR APPEALING**

- 21 days likely to start when the appellant is notified of the written decision letter (rather than announcement of oral decision).
- Notice of determination must be “*accompanied by information regarding the right of a party to appeal against the determination of the authority.*” : Reg 29, Licensing Act 2003 (Hearings) Regulations 2005
- “*Any notices required to be given by these Regulations must be given in writing.*”: Reg.34(1), LA03 (Hearings) Regs 2005

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**TIME FOR APPEALING**

- S.184 LA03 deals with giving of notices by post/hand-delivery (i.e. where/how/to whom). When... ?
- If 1<sup>st</sup> class post – deemed delivery date 2<sup>nd</sup> business day after posting (by reference to CPR 6.26)
- If emailed – same day if before 4.30pm on business day (or else next business day): CPR 6.26.

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**TIME FOR APPEALING**

- Notification satisfied by email if recipient has agreed to email service in advance and email is followed up "forthwith" in writing: (reg. 34(2)).
- This agreement might be implicit – e.g. if email address set out in formal document (e.g. CPR PD6A, §4.1)
- Safest course - confirm recipient agrees to service by email of all documents at earliest opportunity.

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**TIME FOR APPEALING**

- If appeal lodged in time, payment of **court fee** can follow afterwards: "Appeals and non-payment of court fees: solvable problem" (JoL, March 2021, Gary Grant).
- See: *R (o/a/o Preservation and Promotion of the Arts Ltd v Greater Manchester Magistrates' Court & Others* [2020] EWHC 2435 (Admin) (business rates case).



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**TIME FOR APPEALING**

- Non-payment of fee should **not** hold up court issuing summons to CMH.
- Some courts will issue standard directions deeming appeal abandoned if fee not paid within 14 days.

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**ADDITIONAL PARTIES TO APPEALS**




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**WHO CAN BE A PARTY?**

- Schedule 5 identifies who may appeal a decision of the licensing authority.
- Generally rights of appeal extend to the original applicant, Premises Licence Holder & any individual or body that made relevant representations before the licensing authority.




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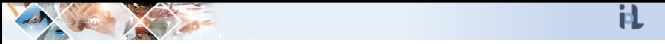
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**WHO CAN BE A RESPONDENT?**

- *The Chief Constable of Nottinghamshire Police v Nottingham Magistrates' Court & Tesco Stores Ltd* [2009] EWHC 3182 (Admin):
- No automatic right for any other party who made relevant representations to be added as Respondents/Parties to an appeal.
- Licensing authority carries principal burden of defending their decision - but may call other parties as witnesses.




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**WHO CAN BE A RESPONDENT?**

- However court has a **discretionary** power to allow an interested party or responsible authority to appear on an appeal (represented or in person) where it is necessary to do so in order to achieve “a just resolution of the appeal”.
- Require potential conflict or special feature?
- Costs implications – additional party may not get all costs if duplicative (See JoL, July 2021, “3<sup>rd</sup> Party Costs, a cautionary tale” by Sarah Clover)

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**CONCLUSION**



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**FURTHER INFORMATION**

**GARY GRANT**  
 BARRISTER  
 FRANCIS TAYLOR BUILDING  
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