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## Sex Establishments and the PSED JR

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#NTC2022

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What is the PSED?
Sex Establishments
SEV judicial review
Questions

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### What is the PSED: the Law

**149 Public sector equality duty**

(1) A public authority must, in the exercise of its functions, have **due regard** to the need to—

- (a) **eliminate discrimination**, harassment, victimisation and any other conduct that is prohibited by or under this Act;
- (b) **advance equality of opportunity** between persons who share a relevant **protected characteristic** and persons who do not share it;
- (c) **foster good relations** between persons who share a relevant protected characteristic and persons who do not share it.

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**What is the PSED: Protected Characteristics**

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**What is the PSED: Three Limbs**

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**What is the PSED: Advancing Equality of Opportunity**

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**What is the PSED: the Principles**



- Requires a conscious approach
- Not a target duty
- Prior to decision-making
- May require further inquiries
- Good practice to document
- Context specific!**

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**Sex Establishments: the law**



- SEV, sex cinema, sex shop
- Maximum one-year licence
- Mandatory grounds for refusal
- Discretionary grounds for refusal

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- Suitability of applicant
- Character of relevant locality

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**Sex Establishments: "moral considerations"**

"...Mr Holland has suggested that the provisions of [the Act], do enable the authority and the Court to take account of what he has called the "moral case against the activities" but, in my judgment, it does no such thing. ... It is the effect on the locality and on those living nearby which has to be taken into account and that is the distinction which is drawn. Thus, straightforward objections on the ground that sex shops should not be allowed to exist have no part to play in my or a local authority's consideration of the case. ... Whether the local authority approves or disapproves is equally nothing to the point"

**R v Newcastle upon Tyne CC ex p The Christian Institute [2001] BLGR 165**

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**Sex Establishments: "moral considerations"**

"3.23... Any person can object to an application but the objection should be relevant to the grounds set out in paragraph 12 for refusing a licence. Objections should not be based on moral grounds/values and local authorities should not consider objections that are not relevant to the grounds set out in paragraph 12. Objectors must give notice of their objection in writing, stating the general terms of the objection."

(NB *Christian Institute* case cited as authority for this, at footnote 5)

**Sexual Entertainment Venues: Guidance for England and Wales (Home Office, 2010)**

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**SEV Judicial Review: Facts**

**Council Policy**

- 2 rounds of consultation
- No 'cap' on the number of SEVs
- Rebuttable presumption of renewal for 3 established operators

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**SEV Judicial Review: Dispute**

**Challenge**

- Were objections taken into account?
- Was there compliance with the PSED?
- Was rebuttable presumption lawful?

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**Watch this space!**

**ANY QUESTIONS?**  
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