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The Role of Responsible Authorities

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Authorised persons: s.13(2)

- Empowered to carry out inspection and enforcement roles
 - officers of the licensing authority
 - fire inspectors
 - H&S inspectors
 - environmental health officers
- Right of entry pre-application: ss.59 (+constables)
- Right of entry to investigate licensable activities: s.179 (+constables, immigration officers)

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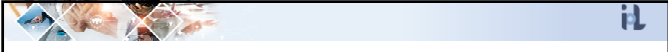
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Responsible authorities: s.13(3)

- Statutory consultees for grant, variation or review

Licensing Authority	Local Planning Authority
Police	H&S enforcing authority
Fire and rescue authority	Environmental Health
Public Health	Trading Standards
Child protection	Home Office Immigration Enforcement

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Relevant representations

Grant


- Representations which are about the likely effect of the grant of the premises licence on the promotion of the licensing objectives: s.18(6)(a)


Variation

- Representations which are about the likely effect of the grant of the application [to vary] on the licensing objectives: s.35(5)(a)

Review

- Representations which are relevant to one or more the licensing objectives: s.52(7)(a) & 53C(7)(a)





Crime – exceptional circs

Grant


- Only police may make representation about the identity of the DPS, making a statement that due to exceptional circumstances of case, satisfied that DPS designation would undermine crime prevention objective: s.18(6)(c) & (7)


Vary DPS

- Only police may give notice stating reasons why satisfied that exceptional circumstances are such that granting would undermine crime prevention objective: s.37(5)

Transfer


- Only police may give notice stating the reasons why satisfied that exceptional circumstances of the case are such that granting would undermine the crime prevention objective: s.42(6)

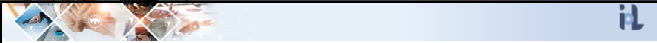




TENs - objections

- Only the police and Environmental Health may give an objection notice in response to a TEN.
- Objection notice states stating the reasons why satisfied that allowing the premises to be used in accordance with the notice would undermine a licensing objective: s.104(2).




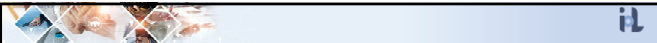


S.182 guidance, para 9.12

- Each RA will be an expert in their respective field.
- In some cases likely that a particular RA will be the LA's main source of advice in relation to a particular LO.
- E.g. police should usually be the LA's main source of advice on matters relating to the promotion of the crime and disorder objective.
- However *any* RA may make reps on *any* LO if they have *evidence*.
- It remains incumbent on all RAs to ensure that their representations can withstand the scrutiny to which they would be subject at a hearing.

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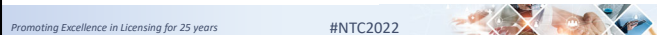





Cresswell principles (*Ikarian Reefer*)

1. Expert evidence presented to the court should be, and should be seen to be, the **independent** product of the expert uninfluenced as to form or content by the exigencies of litigation.
2. An expert witness should provide independent assistance to the court by way of **objective, unbiased opinion** in relation to matters within his expertise. An expert witness in the High Court should **never assume the role of an advocate**.
3. An expert witness should state the facts or assumptions upon which his opinion is based. **He should not omit to consider material facts which could detract from his concluded opinion.**
4. An expert witness should make it clear when a particular question or issue falls outside his expertise.

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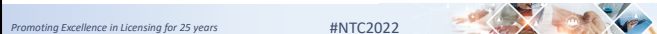


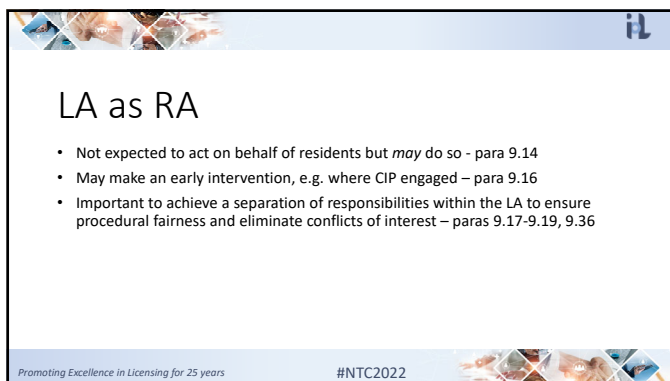


Cresswell principles (*Ikarian Reefer*)

5. If an expert's opinion is not properly researched because he considers that insufficient data is available, then this must be stated with an indication that the opinion is no more than a provisional one. In cases where an expert witness, who has prepared a report, could not assert that the report contained the truth, the whole truth and nothing but the truth without some qualification, that qualification should be stated in the report.
6. If, after exchange of reports, an expert witness **changes his view** on a material matter having read the other side's expert's report or for any other reason, such change of view should be communicated (through legal representatives) to the other side without delay and when appropriate to the court.
7. Where expert evidence refers to **photographs, plans, calculations, analyses, measurements, survey reports or other similar documents**, these must be **provided to the opposite party at the same time as the exchange of reports.**

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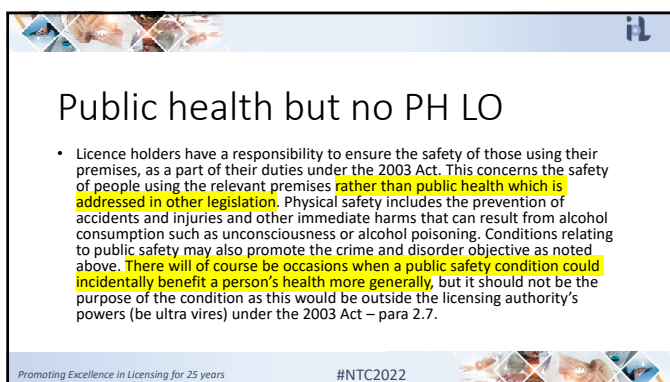




LA as RA

- Not expected to act on behalf of residents but *may* do so - para 9.14
- May make an early intervention, e.g. where CIP engaged – para 9.16
- Important to achieve a separation of responsibilities within the LA to ensure procedural fairness and eliminate conflicts of interest – paras 9.17-9.19, 9.36

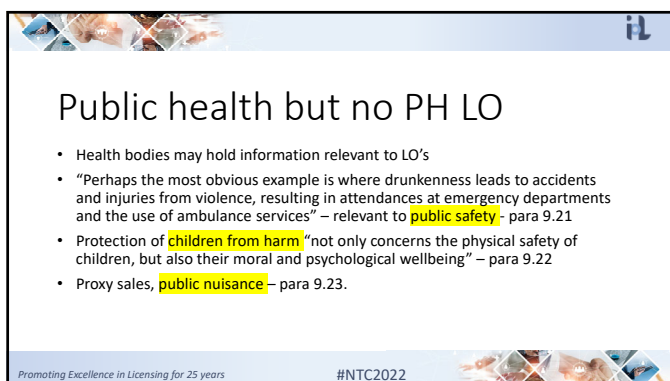
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Public health but no PH LO

- Licence holders have a responsibility to ensure the safety of those using their premises, as a part of their duties under the 2003 Act. This concerns the safety of people using the relevant premises **rather than public health which is addressed in other legislation**. Physical safety includes the prevention of accidents and injuries and other immediate harms that can result from alcohol consumption such as unconsciousness or alcohol poisoning. Conditions relating to public safety may also promote the crime and disorder objective as noted above. **There will of course be occasions when a public safety condition could incidentally benefit a person's health more generally**, but it should not be the purpose of the condition as this would be outside the licensing authority's powers (be ultra vires) under the 2003 Act – para 2.7.

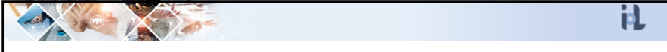
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Public health but no PH LO

- Health bodies may hold information relevant to LO's
- "Perhaps the most obvious example is where drunkenness leads to accidents and injuries from violence, resulting in attendances at emergency departments and the use of ambulance services" – relevant to **public safety** - para 9.21
- Protection of **children from harm** "not only concerns the physical safety of children, but also their moral and psychological wellbeing" – para 9.22
- Proxy sales, **public nuisance** – para 9.23.


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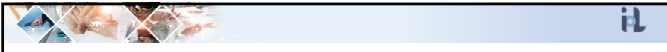


Negotiation, mediation, hearings

- Earlier the better – 9.32
- Pre-application – 9.34
- Without prejudice or open?
- Single local authority officer may represent RAs at hearing – 9.35

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Appeals

- The representing RA is not a respondent
- May apply to participate: *R (Chief Constable of Nottinghamshire) v. Nottingham Magistrates' Court and Tesco Stores Ltd* [2009] EWHC 3182 (Admin)

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Disclosure

- Notice of hearing shall be accompanied by information regarding any particular points on which the authority considers that it will want clarification at the hearing from a party: 7(1)(d) Hearings Regulations 2005 and [R \(Murco Petroleum Ltd\) v. Bristol CC](#) [2010] EWHC 1992 (Admin)
- S.97 Magistrates' Courts Act 1980
- Data Protection Act 2018 / Environmental Information Regulations 2004 / Freedom of Information Act 2000
- Public interest immunity / in camera

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Principles of good regulation

- A person exercising a regulatory function must have regard to the principles of good regulation, namely that regulatory activities should be carried out in a way which is transparent, accountable, proportionate and consistent, and should be targeted only at cases in which action is needed: s.21 Legislative and Regulatory Reform Act 2006
- “All the regulatory functions so far as exercisable by local authorities under or by virtue of ... the Licensing Act 2003”: Legislative and Regulatory Reform (Regulatory Functions) Order 2007.

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Other duties

- S.6(1) Human Rights Act 1998 – unlawful for a public authority to act in a way which is incompatible with a Convention right
- Anti-discrimination provisions of Part 2 Equalities Act 2010
- Public sector equality duty in s.149 Equalities Act 2010

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Consultation and policy

- RA Policies – rare – if they exist, must be consulted upon, in writing, published and kept under review
- Statement of Licensing Policy – every 5 years
- Cumulative Impact Assessments – every 3 years

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