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From: Andrew Griffin [mailto:andrew.griffin@TLTsolicitors.com]

Sent: 28 April 2010 18:07

To: John Myall

Cc: PSavill@12cp.co.uk; Cindy Tetstall; Matthew Phipps

Subject: Glade Licensing hearing - Special Police Services

Sent on behalf of Matthew Phipps

Dear John,

Below is the substance of the arguments we will advance in respect of the Special Police Service condition (Condition 1) as set out in the Police Representations. I have spoken to Peter Savill, to whom I am copying this note, he has confirmed that whilst there may be a sensible discussion to be had first thing on Friday (I understand that we have a likely hour, whilst you consider a different case, to talk matters through), his current instructions are to pursue this point. Therefore I have taken my own Counsel's opinion on the points, indeed most of what is below was produced by Counsel, but as I am presenting the matter, and as we are not in Court, I hope you will find this email an appropriate way to telegraph the points. The first of which may well be to determine how we (Police and ourselves) raise this before your committee. My provisional view is that this is a discreet standalone point, hence the first paragraph. Inevitably there's an element of anxiety (by me) in unilaterally distributing our arguments but I think it must be better to try to articulate these now, and to allow the committee to digest and or consider these quite complex issues now instead of "on the day", not least for fear that the hearing runs on and on (and on!). I have the cases and can bring copies, I'm guessing you can all access them anyway. I

1. This addresses a discreet but important question of law which will require determination prior to the review hearing.
2. It is submitted that the condition proposed by the Hampshire police in respect of Special Police Services would be an unlawful condition.

2. The requested condition is in the following terms:

“The Premises Licence Holder/Event Organiser and Hampshire Constabulary shall agree a Statement of Intent setting out their respective responsibilities of the event.

The police will carry out a risk assessment of the event in accordance with the event management plan and traffic management plan.

If it is deemed by Police that additional police resources are required for this event, the event organiser shall be provided with details within 21 days of receipt of the event management plan and associated documents.

The Premises Licence Holder/Event Organiser should enter into negotiations with the police to agree the required level of Special Police Services. The Police may then submit a final amended report.

Before any licensable activity takes place, the event organiser must submit a request in writing to the Police for Special Police Services as detailed in the final police report. This request must include the agreement to pay for such Special Police Services no later than 28 days prior to the commencement of the event.

(This condition ensures appropriate resources are provided for the Prevention of Crime & Disorder and Public Safety objectives.)”

3. The proposed condition is unlawful as it
 - a. constitutes duplication of an existing statutory framework;

- b. attempts to circumvent the process by which Parliament, and subsequent decisions of the courts have provided Special Police Services should be provided and by which payment should be arranged;
- c. undermines the clear meaning of section 25 of the Police Act 1996, through a condition on a premises licence which is enforceable with criminal sanction;
- d. attempts to make contractual arrangements between the Police and individuals subject to sanction against one party in those arrangements by the criminal law under section 136 of the Licensing Act 2003,
- e. forces the person to request and use SPS services rather than other means of security which may itself constitute a breach of competition law;
- f. is disproportionate and unnecessary in all the circumstances of this case;
- g. specifies conduct by the Police over which the PLH has no control.

Special Police Services

4. The provision of 'Special Police Services' (SPS) is governed by section 25 of the Police Act 1996.

5. Section 25 provides:

'25 (1) The chief officer of police of a police force may provide, at the request of any person, special police services at any premises or in any locality in the police area for which the force is maintained, subject to the payment to the police authority of charges on such scales as may be determined by that authority.'

6. Importantly, the person who wishes SPS to be provided, **requests** those services from the police, and then enters into a contractual relationship with the police for the SPS services to be provided.

7. The definition of SPS is important as it is distinct from those services the police provide in fulfilment of its public law obligations. The Courts have laid down guidelines for whether a service should be provided by the police in the course of its general duties, or whether a service is 'special'. The police when providing SPS are entering into contractual arrangements as a service provider.

8. The terms of section 25 have been considered by the Court of Appeal: *West Yorkshire Police Authority v Reading Festival Ltd* [2006] 1 WLR 2005; *Chief Constable of the Greater Manchester Police v Wigan Athletic AFC Ltd* [2009] 1 WLR 1580.

9. In *Reading Festival* Scott Baker LJ stated:

'This appeal concerns the correct interpretation of section 25 of the Police Act 1996 and the circumstances in which the police are entitled to charge for 'special police services' at a music festival. The appeal has implications for major sporting events, other music festivals and large gatherings. Where is the dividing line between the service the police must provide as part of their ordinary public duty, and special services they provide at the request of promoters of events for which the promoter must pay?'

10. At paragraph 50, Scott Baker stated:

50. Whilst I entirely accept that it is a matter for the police how the policing is conducted and the promoter cannot dictate to the police how they are to perform their public duty, that does not in my view put the promoter in an all or nothing view in so far as 'special police services' are concerned. He can, for example, say that there is a ceiling to his budget to which the police would be entitled to respond that they were not prepared to provide any 'special police services'. He can say what he wants and is prepared to pay for and what he does not want. Each side has a right of veto. In my judgment, although it does not expressly say so, it is very difficult to see how section 25 (1) can operate absent a contract. There has to be a request accepted by the

chief officer of police. This of course could be achieved by the police saying we want to do this and the promoter agreeing.'

11. In considering the definition of SPS Scott Baker LJ said:

'It does however seem to me that one of two key features is ordinarily likely to be present. Either the services will have been asked for but will be beyond what the police consider necessary to meet their public obligations, or they are services which, if the police do not provide them, the asker will have to provide them from his own or other resources. Essentially, however, 'special police services' will be something that someone wants, hence the importance of the link in the section with a request.'

12. A number of key principles emerge from the *Reading Festival* case.

- i. SPS are services over and above the police's general duties.
- ii. A person must request SPS before there can be a contractual relationship resulting in their provision.
- iii. A person cannot be forced by the police into requesting SPS.
- iv. The police may or may not agree to provide them.

13. In *Wigan Athletic*, Sir Andrew Morritt C held at para 32:

'It is clear both from the terms of section 25 and the decision of the Court of Appeal in the *Reading Festival* case that 'the request' must match the special police services supplied. The match does not need to be exact because it is for the chief constable to determine the level of policing required. So, if a person asks the police authority to provide special police services at a private event and the services are provided at the level the police authority considers to be necessary it is no answer to the police authority's claim that the request had not specified the level of policing actually supplied. Conversely, if a promoter asks for on site policing and the police authority concludes that only off site policing is required it cannot, without more, charge the promoter for the off site policing for which he did not ask.'

At 35 'if the club's objection was to the level of policing, irrespective of whether it was entitled to do so, it is impossible to infer a request for the provision of the special police services to which it objected.'

14. The court held a premises had to request a level of police support, and that a contractual arrangement could not be imposed upon it.

15. Accordingly it is clear that there is an existing statutory framework for the request, agreement and provision of SPS. This is currently established in the Police Act 1996, but has been recognised since the 1920s. In addition the Courts have repeatedly upheld the principles underlying those statutory provisions, in the face of Chief Constables attempting to impose SPS requirements on individuals where they have not been requested.

16. There are a number of likely policy reasons evident. The police are entering into private contractual arrangements with persons, and there must be agreement, without the police unilaterally imposing the terms of that contract. In addition, it is open to an individual to seek alternative private security arrangements at his own cost. In the context of SPS, where the police alone set the payment scales, it may be that an individual can find appropriate alternative security at a more competitive cost.

Duplication

17. Licensing authorities should not impose conditions which duplicate other statutory provisions (National Guidance para 10.15); *R (Bristol Council) v Bristol Magistrates' Court* [2009] EWHC 625 (Admin). Where statutory provisions are in place it cannot be necessary to impose the same or similar duties.

18. In the *Bristol Council* case the Magistrates' Court overturned conditions placed on a Somerfield's licence which were similar to the framework provided by the Environmental Protection Act 1990, the Health and Safety at Work Act 1974, and regulations such as the Workplace Regulations. The decision to overturn those conditions was upheld by the High Court

19. The proposed condition duplicates the framework by which a person would seek SPS under section 25 of the Police Act 1996.

20. Such duplication is recognised by the Guidance to be unnecessary, and is accordingly unlawful.

21. While the Guidance recognises that in certain circumstances that an existing framework may not address particular issues (for example in relation to particular types of entertainment), that is not applicable here where there is a statutory provision expressly dealing with the operation of SPS. The present case is similar to the *Bristol* case, where there were provisions dealing with the subject matter in question.

Circumvention

22. By providing a duplicate framework, the proposed condition also attempts to circumvent the statutory process for dealing with SPS.

23. The condition would make a request for SPS mandatory. While a condition ensuring some form of request will be made may be appropriate, (obiter by Scott Baker LJ in *Reading Festival*); here the police request a condition which would force the operator to request SPS as detailed by the police in a final report.

24. It is a feature of the law governing the power of the police to provide SPS that a person may or may not request them. This was explicitly recognised in both the *Reading Festival* and *Wigan Athletic* cases. Under this condition, the police would be able to force a person to make a request, and force the person to make a request in the terms which the police dictated.

Criminal sanction for a contractual arrangement

25. Importantly, the proposed condition further raises the possibility of the criminal law being used to enforce a contractual arrangement. This is plainly far from what Parliament intended in respect of the police power to provide SPS on the request of an individual.

26. If the proposed condition were to be imposed on the premises licence, any failure to comply with any element of it would result in the organisers committing a criminal offence punishable with imprisonment under Section 136 of the Licensing Act 2003. As a result any departure from the heavily prescribed and detailed process which is proposed for dealing with SPS in respect of this licence would make the organiser liable for criminal conviction.

27. For example, if the request was not made in accordance with the condition, or the request did not exactly match the police requirements, or payment were to be made slightly later than is proposed [which is in advance, 28 days before the event] the condition would be breached and the organiser liable to prosecution.

Competition law

28. The condition proposed also raises questions of a possible anti competitive practice by the police. It has been held by the courts that the terms of section 25 of the Police Act 1996 were intended to allow persons to seek alternative means of security if desirable. This condition would force the premises to use SPS as required by police, irrespective of whether the vast majority of its security requirements could be met more competitively by another supplier.

Conclusion

29. For all these reasons it is submitted that the proposed condition in respect of SPS is unlawful and should not be imposed on either premises licence.

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