Neutral Citation Number: [2024] EWHC 1787 (Admin)

Case No: AC-2023-LON-001996

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 11/07/2024

Before:

MR JUSTICE CHAMBERLAIN

- -

Between:

WALK SAFE SECURITY SERVICES LTD **Appellant**

- and -

LONDON BOROUGH OF LEWISHAM **Respondent**

- -
- -

Jeremy Phillips KC and Leo Charalambides (instructed by **Dadds LLP**) for the **Appellant**
Stephen Walsh KC and Matt Lewin (instructed by **Browne Jacobson**) for the **Defendant**

Hearing date: 15 May 2024

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Approved Judgment

This judgment was handed down remotely at 10.00am on Thursday 11th July 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MR JUSTICE CHAMBERLAIN

Mr Justice Chamberlain:

Introduction

1 This is an appeal by case stated against a decision of District Judge Nermine Abdel Sayed sitting at Bromley Magistrates' Court. It raises a pure question of law: is it lawful for a licensing hearing before a local authority licensing committee to be held remotely? The point is of wide significance because many local authorities routinely conduct all or most licensing hearings remotely. The legality of this practice has not yet been considered by the High Court.

Background

2 The appellant holds a premises licence for a night club in Catford called Silks. The respondent London Borough of Lewisham is the licensing authority. Since 2020, it has held all its licensing hearings remotely.

3 On 27 October 2022, following an application for summary review by the Metropolitan Police and a remote hearing, the respondent's Licensing Committee revoked the appellant's licence. There was then a further remote hearing on 29 November 2022, which resulted in a decision to modify the licence by reducing the permitted hours. Both these decisions were appealed. The appeal has a suspensive effect, so the club remained open and trading on the terms of its licence as they were before 27 October 2022.

4 The appeal was to the Bromley Magistrates' Court. The appellant raised as a preliminary issue whether remote hearings are permissible. There was a hearing on 30 March 2023. On 17 April 2023, the District Judge gave a concise and clear written judgment explaining why she had answered that question in the affirmative. On 19 June 2023, on the appellant's application, she stated a case for the opinion of this Court, posing the following question:

> "Are remote hearings lawful under the Licensing Act 2003 and the Licensing Act (Hearings) (England) Regulations 2005?"

5 Since the appeal to this Court, there was a further hearing before the respondent's Licensing Committee, at which the licence was further modified, following a further application for summary review of the appellant's licence by agreement between the parties. It was nonetheless agreed that the issue on which this Court's opinion had been sought should be determined, as it raises a pure question of law of potentially wide significance.

The statutory framework

The general scheme of the Licensing Act 2003

6 The background to and effect of the Licensing Act 2003 ("the 2003 Act") is explained in *R (Hope and Glory Public House Ltd) v City of Westminster Magistrates' Court* [2011] EWCA Civ 31, [2011] PTSR 868, at [13]-[25] (Toulson LJ giving the judgment of the Court). In short, prior to the 2003 Act, liquor licensing was the responsibility of licensing magistrates, but the licensing of public entertainment was the responsibility of local

authorities. The 2003 Act created a unified system for the regulation of the sale and supply of alcohol, the provision of regulated entertainment and the provision of late-night refreshment. Local authorities were to be the licensing authorities.

7 Toulson LJ explained as follows:

> "18. Section 4 sets out general duties of licensing authorities. It identifies 'licensing objectives' which licensing authorities are to promote. These include the prevention of public nuisance. Section 5 requires licensing authorities to produce statements of licensing policy for three-year periods. In carrying out its licensing functions, a licensing authority must have regard to its licensing statement and to any guidance issued by the Secretary of State for Culture, Media and Sport under section 182. Before determining its policy for a three-year period, a licensing authority must go through a process of public consultation: section 5(3). Section 6 provides for licensing authorities to conduct their licensing functions through licensing committees. Section 9 deals with proceedings before licensing committees and empowers the Secretary of State to make regulations about them.
>
> 19. There are various types of 'personal licence' and 'premises licence' which a licensing authority may grant. The present case concerns a premises licence granted under section 18. It is open to a licensing authority to attach such conditions to a licence under section 18 as it considers necessary for the promotion of the licensing objectives identified in section 4.
>
> 20. Under section 51 an 'interested party' or a 'responsible authority' may apply to the licensing authority for a review of a premises licence. An interested party includes anyone living or involved in a business in the vicinity: section 13(3). A responsible authority includes the local authority which has statutory responsibilities in relation to the protection of the environment and human health: section 13(4)(e). In the present case the applicant for the review was the council, acting through the EHCS. Section 53 expressly permits a local authority to make an application under section 51 for a review of a premises licence in its capacity as a responsible authority and to determine the application in its capacity as the licensing authority.
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> 21. Section 52(3) provides that a licensing authority which receives an application under section 51 may, after holding a hearing to consider it and any relevant representations, 'take such of the steps mentioned in subsection (4) (if any) as it considers necessary for the promotion of the licensing objectives'. The steps mentioned in subsection (4) include modifying the conditions of the licence.

> 22. Section 52(10) requires the licensing authority to notify its determination, and its reasons for making it, to the holder of the licence, the applicant, any person who made relevant representations and the local chief officer of police.
>
> 23. Section 181 and Schedule 5 provide a system for appeals from decisions of a licensing authority to a magistrates' court. Paragraph 8 of Schedule 5 deals with appeals against decisions made under section 52. It provides:
>
> '(1) This paragraph applies where an application for review of a premises licence is decided under section 52.
>
> (2) An appeal may be made against that decision by—
>
> (a) the applicant for the review;
>
> (b) the holder of the premises licence; or
>
> (c) any other person who made relevant representations in relation to the application."

8 Section 53A empowers the chief officer of police for a police area to apply to the relevant licensing authority for a review of the premises licence for premises licensed to sell alcohol which are wholly or partly in that area. To make such an application, the chief officer of police must certify that the premises are associated with serious crime or serious disorder or both. The licensing authority then has power to take interim steps under s. 53B and must in any event within 28 days of the application review the licence under s. 53C.

9 In this case, the decisions of 27 October 2022 and 4 April 2024 were made pursuant to applications for review under s. 53A. The decision of 29 November 2022 was made pursuant to an application for review under s. 51.

Licensing committees

10 Each licensing authority is required by s. 6(1) to establish a licensing committee consisting of between 10 and 15 members of the authority. By s. 7(1), all matters relating to the discharge by a licensing authority of its licensing functions are referred to its licensing committee and accordingly that committee must discharge those functions on behalf of the local authority.

11 Where a licensing committee is required by the 2003 Act to make a decision, it is generally required first to hold a "hearing": see e.g. ss. 52(2) and 53C(2)(a).

12 Section 9(1) provides for the licensing committee to establish one or more sub-committees consisting of three members of the committee. The remainder of s. 9 provides as follows:

> "(2) Regulations may make provision about—

> (a) the proceedings of licensing committees and their sub-committees (including provision about the validity of proceedings and the quorum for meetings),
>
> (b) public access to the meetings of those committees and sub-committees,
>
> (c) the publicity to be given to those meetings,
>
> (d) the agendas and records to be produced in respect of those meetings, and
>
> (e) public access to such agendas and records and other information about those meetings.
>
> (3) Subject to any such regulations, each licensing committee may regulate its own procedure and that of its sub-committees."

Licensing hearings – England

13 Regulations have been made under s. 9(2): the Licensing Act 2003 (Hearings) Regulations 2005 (SI 2005/44: "the Hearings Regulations"). As respects licensing authorities in England, they provide at reg. 4(1) as follows:

> "(1) An authority in England shall arrange for the date on which and time and place at which a hearing is to be held in accordance with regulation 5 and shall give a notice of hearing in accordance with regulations 6 and 7."

14 Regulation 6(1) requires the authority to give specified persons a notice stating "the date on which and time and place at which" the hearing is to be held. The term "place" is not defined.

15 Regulation 21 provides that, subject to the provision of these Regulations, "the authority shall determine the procedure to be followed at the hearing".

Licensing hearings – Wales

16 In respect of licensing authorities in Wales, the Welsh Ministers have amended the Hearings Regulations: see the Local Government and Elections (Wales) Act 2021 (Consequential Amendments and Miscellaneous Provisions) Regulations 2021 (SI 2021/356) (W 107). As amended, reg. 2(2A) provides as follows:

> "In these Regulations, a reference to a hearing of an authority in Wales held through remote means is to a hearing held by means of any equipment or other facility which enables persons who are not in the same place to speak and be heard by each other (whether or not the equipment or facility enables those persons to see or be seen by each other)."

17 Regulation 4(2) provides as follows:

> "(2) An authority in Wales must—
>
> (a) in the case of a hearing which is held through remote means only, arrange for the date and time at which the hearing is to be held in accordance with regulation 5;
>
> (b) in the case of a hearing which is held partly through remote means or not through remote means, arrange for the date on which and the place and time at which a hearing is to be held in accordance with regulation 5.
>
> (2A) In either case mentioned in paragraph (2) an authority in Wales must give a notice of hearing in accordance with regulations 6(1A) and 7."

18 Regulation 6(1A) contains modified notice provisions for licensing authorities in Wales. The notice required is:

> "a notice which—
>
> (a) where the hearing is held through remote means only, gives details of the time of the hearing and how to access it, or
>
> (b) where the hearing is held partly through remote means or not through remote means, gives details of the time and place of the hearing and how to access it."

19 There are also other modifications to the same or similar effect: see regs 12(2A) and (3A) and 20(4A).

Meetings of local authorities and their committees

20 Section 101(1)(a) of the Local Government Act 1972 ("the 1972 Act") confers on a local authority the power to arrange for the discharge of any of its functions by a committee. However, by s. 101(15), the functions delegated do not include any function under the 2003 Act. As noted above, the scheme for delegation of licensing functions is dealt with separately, under the 2003 Act itself.

21 Section 99 of the 1972 Act gives effect to Schedule 12, which makes provision with respect to meetings and proceedings of local authorities and their committees. Further provision for access to meetings and documents of certain authorities, committees and sub-committees is made by ss. 100A-100K.

22 In *R (Hertfordshire County Council) v Secretary of State for Housing, Communities and Local Government* [2021] EWHC 1093 (Admin), [2021] 1 WLR 3714, a Divisional Court (comprising the President of the King's Bench Division and myself) had to consider whether the reference in Schedule 12 to a "meeting" could include a meeting conducted wholly or partly remotely. The answer was "No".

23 Two features of the *Hertfordshire* case should be noted. First, the 1972 Act required local authority meetings to be held "at such place, *either within or without their area*, as they may direct": para. 4 of Schedule 12 to the 1972 Act (emphasis added). Second, against the background of express provision for remote meetings in Scotland and Wales and a public consultation on changes to the 1972 Act premised on the assumption that remote meetings were not permitted, Parliament in s. 78 of the Coronavirus Act 2020 had conferred an express power to make regulations authorising remote attendance at meetings, but the power was time limited. The question was whether the 1972 Act could be read as permitting such meetings after the expiry of the relevant power.

24 The Court said this:

> "75… We can readily accept that 'meeting' can, in some contexts, encompass virtual or remote meetings: since March 2020 it has become common to refer to a 'Zoom meeting'. But in other contexts 'meeting' would not carry that meaning. If a meeting is to be 'either in or outside London', one would not expect it to be conducted online. The question for us is not what 'meeting' means in the abstract, or in some other context, but what it means in the particular statutory context of Schedule 12 to the 1972 Act.
>
> 76. That being so, the meaning of 'meeting' must in our judgment be informed by reading Schedule 12 as a whole. This includes the obligations to hold the meeting 'at such place, either within or without their area' as a principal council, parish council or community council may direct (paragraphs 4(1), 10(1) and 26(1)), to publish 'notice of the time and place of the intended meeting' and to send out 'a summons to attend the meeting' (see e g paragraphs 4(1A), 4(2), 10(2), 26(2)). In our view, a 'place within or without the area' is most naturally interpreted as a reference to a particular geographical location and would not naturally encompass an online location; and a requirement to send out 'notice of the time and place of the intended meeting' is inconsistent with the idea of a meeting taking place at multiple locations (eg in the homes of all participants). In this regard, it is noteworthy that the Scottish Parliament, when it expressly permitted fully remote meetings, also considered it necessary to omit or amend the equivalent provisions in the predecessor Scottish legislation. Attending a meeting at a single specified geographical location would, in our view, ordinarily mean physically going to that location; and being 'present' at such a meeting would involve physical presence at the specified location.
>
> 77. We accept that this is not determinative of the question whether Parliament intended an updating construction to be applied… The terms used ('meeting', 'place', 'present' and 'attend') are relatively general, and – as Leggatt J said in *N* [2014] PTSR 1356 – this could indicate that Parliament intended the meaning of the terms to be capable of evolving as technology evolved.

78. There is, however, another feature of the statutory context which makes it unlikely that Parliament intended an updating construction to apply. The meetings provided for by Schedule 12 to the 1972 Act are an important part of the mechanism of government of the country. The decisions taken at these meetings may have significant legal consequences for third parties. It will often be necessary to decide whether a meeting is quorate or whether a majority of those present has voted in favour of a particular resolution. Questions of this kind can give rise to acrimonious disputes. This makes it important to have certainty about what constitutes attendance or presence at a meeting. Without such certainty, it may be unclear whether a particular decision has been validly taken or not… It is legitimate to construe the 1972 Act in a way which promotes certainty in its application. A construction according to which meetings have to take place in person at a physical location better promotes certainty than one in which remote meetings are permissible in some but not other situations and the dividing line is not spelled out.

…

83. For these reasons, if we had to construe the 1972 Act purely on the basis of what was intended in 1972, we would read 'meeting' as referring to an in-person meeting taking place at a particular geographical location and 'attend' and 'present' as connoting physical attendance or presence at that location.

84. That is not, however, the end of the story, because, if the 1972 Act were ambiguous, it would be legitimate to consider later legislation in construing it. So far as England is concerned, there is now section 78 of the 2020 Act. We would then have to ask whether, by enacting that provision, Parliament has "acted in a way which treats the [terms] as having a particular meaning and [signalled] its approval of that meaning": see *N* [2014] PTSR 1356, para. 55. In our view, Parliament has acted in that way.

85. The 2020 Act has to be read against the background of the 2003 Scottish Act, the 2011 Welsh Measure, the 2016 Consultation and the 2019 Response. The Scottish and Welsh legislation provided examples of express legislative provision for remote local authority meetings. The consultation document and response to consultation articulated in clear terms the Government's view that the 1972 Act included no such provision (in contrast to the position in Scotland).

86. Section 78(1) of the 2020 Act had a variety of purposes. Mr Moffett may be right to say that section 78(1)(d) would on its face have authorised regulations requiring meetings to be held remotely, though its more obvious purpose was (as the Explanatory Notes said) to confer power "to relax some requirements in relation to Local Authority meetings for a specified period". But, whatever the scope of section 78(1)(d), section 78(2) would have been otiose if

> the 1972 Act already permitted remote meetings. The fact that it was included is an indicator that Parliament legislated on the basis that the 1972 Act did not permit such meetings; wished to confer power to do so; recognised that this would require legislative choices to be made; conferred power on the Secretary of State to make those choices by regulations; but limited the effect of those regulations to the period specified in section 78(3). This may be seen as an instance of the proposition that 'Where one construction would render a later Act superfluous the presumption that the legislature does nothing in vain may be relevant': *Bennion, Bailey and Norbury*, 8th ed. (2020), para. 24.19."

Submissions for the appellant

25 Jeremy Phillips KC for the appellant accepts that hearings before licensing committees are administrative rather than judicial in nature. But this does not diminish the need for the function to be exercised in accordance with the rules of natural justice. Although s. 9(3) of the 2003 Act empowers each licensing committee to regulate its own procedure, that is "subject to" the Hearings Regulations. Those include reg. 4(1), which applies in England, and reg. 4(2), which makes express provision for remote hearings in Wales. Legislators do not put themselves to the time and expense of enacting new legislation simply to "clarify any ambiguity in the law", as the District Judge put it. Read as a whole, the Hearings Regulations make clear that remote hearings are permitted in Wales, but not in England.

26 The legislature has reviewed the licensing process from time to time since 2005. The Licensing Act 2003 (Premises Licences and Club Premises Certificates) (Amendment) (Electronic Applications etc.) Regulations 2009 (SI 2009/3159), which implemented Council Directive 2006/123/EC, provision is made for applications, notices and representations to be communicated electronically, but neither these Regulations, nor a subsequent amending instrument (SI 2012/955) said anything about remote hearings.

27 Furthermore, it is instructive to consider the procedure for deciding on interim steps pending the determination of a summary review under s. 53B of the 2003 Act. Here, reg. 3(2) disapplies certain of the procedural requirements applicable to other hearings. The consequence of this disapplication is spelled out in para. 12.12 of the guidance issued under s. 182 of the 2003 Act:

> "The determination of interim steps is not a matter that may be delegated to an officer of the licensing authority. The relevant decisions are likely to be taken by a licensing sub-committee rather than the full committee. It should also be noted that there is no requirement for a formal hearing in order to take interim steps. This means that the relevant sub-committee members can communicate by telephone or other remote means in order to reach a decision. A written record should always be produced as soon as possible after a decision is reached."

28 It follows that, where the normal requirements for hearings are not disapplied, communication by telephone or other remote means is not permitted.

29 The analysis in the *Hertfordshire* case of the requirements for "meetings" in the 1972 Act applies *mutatis mutandis* to the requirements for "hearings" in the 2003 Act. Insofar as the Divisional Court relied at [78] on the important public consequences of local authority meetings, the same can be said of licensing hearings. The decisions taken at such hearings frequently impact upon people who live and work close to licensed premises, visitors to those areas, those who frequent licensed premises and those who own, operate and work in those premises. They also have an impact on the regulatory and policing functions for the relevant area.

30 Moreover, the proceedings in the present case determined the appellant's civil rights and obligations, so Article 6 ECHR conferred a right to a fair and public hearing: *R (Brogan) v Metropolitan Police* [2002] EWHC 2127, [2002] All ER (D) 66. A key component of this right is the principle of equality of arms. The jurisprudence of the European Court of Human Rights shows that the right to a fair hearing may be violated if the arrangements for a remote hearing give rise to substantial disadvantage for one party: see eg *Marcello Viola v Italy*, App No. 45106/04, Judgment 5 October 2006, [67]; *Jallow v Norway*, App. No. 36516/19, Judgment 2 December 2021, [68]; *Xavier Lucas v France*, App. No. 15567/20, Judgment 9 June 2022, [57]; *Niderost-Huber v Switzerland*, App. No. 18990/91, [30]. Given that some people find it difficult to access remote hearings, these principles suggest an interpretation of "hearings" which requires them to be conducted in person.

31 Finally, if hearings could be conducted remotely, committees' powers to regulate proceedings would have been extended far beyond the practical matters (length and timing of speeches etc.) which most obviously fall within that power; the specific measures introduced by the Senedd would have been otiose; licensing committees would be entitled to conduct remote hearings without detailed and practical guidance similar to that provided in respect of courts (for example); hearings could be conducted remotely even in relation to serious matters involving fatalities at premises (for example) having impacts on jobs, businesses and local communities; there would be a negative impact on the principle of open justice; and all these consequences would flow without Parliament having the opportunity to consider the necessary safeguards.

Submissions for the respondent

32 Stephen Walsh KC for the respondent submits that there is no statutory definition of "hearing" either in the 2003 Act or in the Hearings Regulations. Insofar as the latter prescribe minimum procedural requirements (including advance notice – reg. 6(1) and 7; the right to attend and be represented – reg. 8(1) and 15; the public's right to attend – reg. 14(1) and (2); the right to address the decision-making body – reg. 7(1)(d), 10(b), 16 and 17; the right to submit evidence – reg. 18; the right to a permanent record of the hearing – reg. 30), they are all consistent with a remote hearing.

33 There is no requirement either in the 2003 Act or in the Hearing Regulations that a hearing must be held at a single physical location. Unlike in the 1972 Act, the word "place" in the Hearing Regulations is not qualified by the words "either within or without their area" or otherwise defined. There is also no requirement for anyone to be "present". There is no conceptual difficulty in regarding an online platform as a "place": see *Hertfordshire*, [63] and [75].

34 In principle, a remote hearing can satisfy the requirements of fairness, as can be seen from the fact that courts and tribunals regularly hold such hearings. It is telling that the appellant makes no complaint about the fairness of the hearings in this case.

35 Regulation 21 of the Hearings Regulations empowers each licensing authority to determine its own procedure. This implies, as the District Judge put it at para. 7(g) of the Case Stated, that "unless the [Hearings] Regulations specifically permit or prohibit remote hearings, then the authority may determine the matter for themselves". This is consistent with devolving matters of procedure to individual licensing authorities.

36 The fact that the Senedd has expressly provided for remote hearings in Wales does not mean that they are not permitted in England.

Discussion

37 The 2003 Act contains numerous references to a "hearing", but the claimant does not suggest that any of these references shows that Parliament intended every hearing to be conducted in-person. The appellant relies not on any language taken from the parent statute, but on the terms of the secondary legislation made under it – the Hearing Regulations – which are said to preclude remote hearings when read as a whole.

38 Before considering the various arguments deployed by the appellant in this regard, it is important to be clear about the exercise being undertaken when construing secondary legislation. Legislation of this kind is normally made by a Minister – in this case, the Secretary of State acting through the Minister of State at the Department for Culture, Media and Sport. When construing secondary legislation, even where (as here) it has been laid before Parliament, the court's task is to determine "the intention reasonably to be attributed to the person making the instrument in respect of the words used": see *Bennion, Bailey and Norbury on Statutory Interpretation* (8th ed., 2020), §3.17.

39 In general, the effect of an amendment should be construed by construing the amended instrument as a whole. Where the instrument in question is an Act of Parliament, this is because the authors of the original and amending instruments are the same: Parliament; and the court's task is to ascertain the intention of Parliament when it enacted the amending act: see *Inco Europe v First Choice Distribution* [1999] 1 WLR 270, 272-3 (Hobhouse LJ). In most cases, the same is true when construing secondary legislation which has been amended: the author of the amending instrument will typically be the same as the author of the original; and the court's task will therefore be to ascertain the intention to be attributed to the author on the second occasion.

40 In this case, however, the amendments to the Hearing Regulations relied upon by the claimant were made not by the Secretary of State, but by the Welsh Ministers, whose remit extends only to Wales. There is no reason of principle why those amendments should have any direct relevance to the meaning of provisions made earlier by the Secretary of State governing "hearings" in England. The language used by the Welsh Ministers for the purpose of modifying the law applicable in Wales does not assist in ascertaining the intention to be attributed to the Secretary of State when, at an earlier stage, he made the provisions applicable in England.

41 The *Hertfordshire* case does not affect this analysis. The Scottish and Welsh provisions considered in that case were relevant because they were in place before the enactment of the Coronavirus Act 2020 and so were part of the background against which the Act fell to be construed: see at [85]. It was the Act from which Parliament's understanding or intention was inferred: see at [86]. Here, there is no equivalent later instrument by the Secretary of State from which the intention of the legislator can be inferred.

42 In the present case, the Welsh Ministers' amendments are relevant only indirectly to the interpretation of the English provisions. They are relevant only as comparative examples of how the English provisions might have been drafted. The weight to be given to such comparative examples depends on the context. In this case, the weight is limited. They show how one would draft a provision if one's intention were to put beyond doubt the question whether "hearing" includes a remote hearing. The English provisions do not do that. They have to be construed according to the usual methods for construing secondary legislation.

43 In my judgment, there are five points relevant to the proper interpretation of the English provisions. Taken together, these points favour a construction according to which remote hearings are permissible in principle.

44 First, shorn of its context, the term "hearing" – just like the term "meeting" – can be applied both to an in-person hearing and to a remote hearing using video-conferencing technology. The task of the Court is to interpret the term in its proper legislative context: see by analogy *Hertfordshire*, at [75].

45 Second, the legislative context here includes reference to the "place" at which the hearing takes place. Unlike in the 1972 Act, the term "place" is neither defined nor accompanied by words connoting a single geographical location (compare "either in or outside London" and "either within or without their area"). Without such qualifying language, an online platform could properly be described as a "place".

46 Third, there are important differences between licensing hearings and local authority meetings. Although the licensing function was always administrative rather than judicial, licensing hearings were previously undertaken by licensing justices and have many similarities with hearings before courts and tribunals, which have for some time been held remotely as well as in person. In common with many court and tribunal hearings, licensing hearings have implications for third parties. However, they are governed by a regime which is statutorily distinct from that which governs local authority meetings. Licensing committee hearings are not properly described as "part of the mechanism of government of the country".

47 Fourth, s. 9(3) of the 2003 Act reflects an intention on the part of Parliament, and reg. 21 reflects a like intention on the part of the Secretary of State as secondary legislator, to confer maximum procedural flexibility on licensing committees, subject to the Regulations. The question is therefore not whether the Regulations expressly authorise remote hearings, but rather whether they expressly prohibit them. For the reasons set out above, there is no clear indication that remote hearings are precluded.

48 Fifth, there is nothing in any of the jurisprudence of the Strasbourg Court to suggest that remote hearings *necessarily* give rise to a violation of any ECHR procedural rights. They

may do in particular cases, in which case a licensing authority would be obliged to consider alternative arrangements. But there is no suggestion that the remote hearings in the present case gave rise to any unfairness of that kind. In any event, the question of construction with which I am now concerned is about whether remote hearings are permitted *at all*.

49 Finally, I do not consider that anything of substance on the question now before me can be drawn from SI 2009/3159. That instrument implemented Council Directive 2006/123/EC. I did not hear any significant argument on the latter. It was not suggested, however, that it requires remote hearings. On the assumption that it does not, it is difficult to see how anything could be drawn from the absence of any mention of remote hearings from the instrument which implements it in domestic law: the implementing measure was drafted to give effect to the Directive. If the Directive did require remote hearings to be available, the absence from the implementing legislation of any provision dealing with them would presumably reflect an understanding on the part of the drafter of that legislation that they were already available under the existing regime.

50 Similarly, I do not consider that anything of significance can be drawn from para. 12.12 of the guidance under s. 182 of the 2003 Act in relation to the procedure for deciding on interim steps. That is addressing a quite different issue: whether a hearing is required at all. It is in that context that the guidance provides that the sub-committee members can communicate by telephone or other remote means. This tells one nothing about whether, in a situation where a hearing is required, it may be conducted remotely. In any event, it would not be safe to use guidance as a basis for determining the true construction of legislation.

Conclusion

51 For the reasons set out above, which largely coincide with those of the District Judge, I would rephrase the question posed in the case stated, and answer it, as follows:

Question: Under the Licensing Act 2003 and the Licensing Act (Hearings) Regulations 2005, may licensing committees in England hold licensing hearings remotely?

Answer: Yes.

52 The appeal will therefore be dismissed.