Strip Clubs and the Law

Guide & Recommendations

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"licensing authorities may refuse to relicense 'even where there has been **no material change in circumstances**"

"Parliament has drawn **no distinction** between grant and renewal of a licence .."

This paper is available online at www.notbuyingit.org.uk/StripLegal

Summary

SEV Licensing Failures

- Councils unaware of their sweeping powers to refuse to (re)license strip clubs on grounds of locality
- Clubs have little or no legal recourse to challenge refusal on these grounds
- There has never been a successful legal challenge by clubs (where correct procedure followed)
- But Councils appear so fearful of legal challenge they will not refuse license on grounds of locality
- Typically, Councils only refuse licenses on grounds of 'unfit applicant'
- This is much easier to challenge - making Councils very wary to refuse on these grounds
- Consequently, numerous clubs with clearly unfit applicants are relicensed repeatedly
- Strip clubs and their counsel confuse, frequently mis-represent and even appear to lie to Councils
- This is compounded when few licensing committee members have read Report Packs for licensing hearings
- The ultimate outcome is that SEV Legislation is not being properly applied
- Local democracy – the will of Councils and the people they represent - is being thwarted

SEV Licensing - Key Issues

- Councils unaware that existing clubs cannot be treated substantially differently from new applicants
- Councils unaware no material changes needed whatsoever in order to refuse to relicense
- Councils unaware no change in locality needed in order to refuse to relicense
- Councils unaware evidence of harm is not required in order to refuse to relicense
- Councils unaware they may refuse to relicense even if they granted the license in previous years
- Councils are routinely misdirected and confused by strip club legal counsel

SEV Policy - Key Issues

- Councils are unlawfully writing SEV policy 'around' existing clubs
- Councils are unlawfully 'exempting' existing clubs from their SEV policy - by making them impossible to challenge on locality
- Councils uncertain of their right to set a policy for zero SEVs (no location appropriate)
- Councils are exempting existing clubs from a zero policy
- Regarding the 'Frequency Exemption' Local Bodies can, and must, lobby Parliament to end this

Equality Law

- Most Councils have an extremely poor Equality Impact Assessment for SEVs/ SEV Policies

- Councils are legally bound by the PSED at a high level with regard to SEVs
- Councils have little understanding of Equality Law
- Councils cannot possibly adhere to equality law due to no understanding of the reality of the strip industry, the inability to regulate it and its widespread harms
- Councils are liable to legal challenge for breach of equality law on all of the above grounds

Recommendations

- Government to issue clear guidance to all councils regarding the points above
- Training for all relevant council members and staff (including safeguarding and licensing officers) (with annual refreshers) on the realities and widespread harms of the strip industry and how regulation is circumvented
- This training cannot be carried out by those in, or representing the strip industry, (as is currently the case) with a clearly vested interest to misrepresent the issues
- This training must include information from individuals and their representatives who understand the harms of the industry, how regulation is subverted and the full sex equality impacts
- All relevant councillors and their legal advisors require training (with regular refreshers) on the law regarding both SEV legislation (policy and licensing) and the PSED
- This training cannot be carried out by legal experts who represent the strip industry (as is currently the case), with a long standing track record of mis-representing both SEV legislation and Equality law at licensing hearings
- 'Report Packs' for licensing hearings must be much easier to read by busy councillors, including a summary of the issues above and an historical summary of all incidences at the venue, its chain and any other venues owned by the operator

Not Buying It has attended and reported on numerous SEV licensing hearings and policy consultations. We were integral to two successful legal challenges in the High Court against Sheffield City Council for breach of equality law due to its pro-strip industry stance. In addition, our founder helped ensure SEV legislation was introduced over a decade ago.

This report is based on our experience of how SEV and PSED legislation is *actually* being implemented compared to how it *should* be implemented according to the law, Judge's rulings, legal precedent and expert legal analysis.

Councils have Sweeping Powers to Refuse to (Re)License on Grounds of Locality

The entire purpose of strip club (SEV) legislation is to give Councils the right to refuse to license (or relicense) strip clubs – particularly on the grounds of locality. And yet many, if not all, Councils seem unaware they have sweeping powers to refuse a license on these grounds and instead appear to believe they will face costly legal challenge by strip club operators, which the Council will lose:

Geoff Smith, Sheffield City Councillor

This is the widely held believe, even though Councils' considerable powers are clearly stated in the legislation and its accompanying guidance and has been more recently reiterated in a Parliamentary briefing. This is despite the fact that these powers have been reaffirmed and acknowledged numerous times by Judges and licensing experts (such as Philip Kolvin, QC, the expert in licensing law who helped bring in SEV legislation in 2011):

i. Kolvin, QC on the Relicensing of a Chester strip club

"The .. legislation .. is designed to **give authorities much greater control** over what goes where taking into account community concerns."

ii. Kolvin, QC on the Relicensing of a Chester strip club

"The courts have said that you can respond to a body of feeling in the locality, **merely the fact that a number of people are concerned about this justifies refusal**."

iii. Kolvin, QC on the Relicensing of a Chester strip club

".. you have to make a value judgement, that's why you are elected.. the law states that you **can refuse simply because the venue is in the wrong place**.. "

iv. Legal Analysis of Judge's ruling refusing a License Renewal for a South Bucks strip club

The **breadth of the discretion** in applications for SEV licences is confirmed. It is **intended to be wide**

Clubs Cannot Successfully Legally Challenge Refusal on Grounds of Locality

The discretion to refuse to license/relicense on the grounds of locality is so wide that *all* a Council need do is give the reason(s) why the license was not granted or re-granted. Further, strip club operators have no legal grounds for appeal. They must pursue a case in the High Court, an exceedingly difficult (and invariably unsuccessful) path.

The lack of legal recourse by strip club operators has been confirmed numerous times by legal experts:

i. Kolvin, QC: advice to Fawcett Society 08.04.08

> There is **no appeal** form a licensing authority's decision under the **"locality grounds"** which gives a licensing authority considerable leeway to make decisions using their own perception of the needs of their area. The only challenge is then on rationality grounds in the **High Court, a route which is difficult to pursue**.

ii. Kolvin quoted in Parliamentary Briefing p7
[Originally in Kolvin 'Licensed premises: law, practice and policy' (2nd ed), Bloomsbury, 2013, p668]

> "The grounds for refusing a license "confer a **wide discretion** and **will not easily be shown to be unreasonable**"

Failed Legal Challenges by Strip Clubs

The lack of legal recourse to existing strip club operators for refusal on the grounds of locality has also been demonstrated in the courts. There has never been a successful legal challenge by a strip club operator against a Council for refusing to license or relicense on grounds of locality *. In fact, this is now so well established in case law that a club is likely not to even be given leave to proceed with the case. The other factor to consider is that clubs have to challenge refusal on the grounds of locality in the High Court – a very difficult route to pursue and a higher court than a Magistrates Court where refusal on other grounds (such as an 'unfit applicant') must be pursued:

i. Oxford strip club license refusal. **Decision to refuse upheld in High Court *and* on appeal.**

ii. Two Leeds strip club refusals on grounds of locality. **Decision to refuse upheld in High Court**

iii. Four Sex Establishment License Renewals refused on grounds of locality in inappropriate localities in four different local authorities. **Decision upheld**

R v Birmingham City Council ex parte Sheptonhurst Ltd [referenced in Thompson v Oxford City Council]

iv. Platinum Lounge Strip Club, Chester There is only one instance, to our knowledge, where a challenge to a refusal was successful, but this was purely on a technicality (the committee had not been properly constituted). Indeed, the **Judge specifically stated he agreed with the committee's decision and would otherwise have upheld it**.

Absolute Right to refuse to *Re*license Strip Clubs

Strip clubs' legal counsel often argue that if a license was previously granted it *must* be granted again. This is not true. All a council need, indeed *should,* do is 'pay due regard' to the fact that it has previously licensed the club. To refuse, all it need do is state the reason(s) why:

i. Kolvin, QC: Advice to Fawcett Society 08.04.08

"the fact that the premises **currently holds a licence**, although a relevant factor, is **not a determining factor** in its renewal"

ii. Court of Appeal in North Wiltshire DC 30 p13 (referred to in Thompson v Oxford)

".. the decision maker is **free to disagree with the earlier judgment [grant of license**] but before doing so he should have regard to the importance of consistency and give his reasons for departure from the previous decision.

iii. R v Birmingham City Council ex parte Sheptonhurst Ltd 27 p 11 (referred to in Thompson v Oxford)

".. the statute imposes **no constraint** upon a Local Authority's discretion when it is considering a **renewal** ..In my judgement it is not perverse to refuse a renewal where there is no change in the character of the relevant locality or in the use to which any premises in the locality are put."

iv. Legal Analysis of Judge's ruling to refuse a license renewal for a South Buckinghamshire strip club

Although it is important to give reasons for a decision to refuse, **those reasons need only be sufficient to enable the losing party to know why he has lost**

v. Court of Appeal O'Connor 28 p12 [referred to in Thompson v Oxford]

" it must give its reasons for refusal .. **If the reasons given are rational**, that is to say properly relevant to the ground for refusal, then the **court cannot interfere**. "

Unlawful to Treat Existing Clubs differently from New Applicants

Countless councils treat existing clubs differently from (and preferentially to) new applications. Many state that there is a presumption to refuse to license any new strip clubs but that this presumption does *not* apply to those currently in operation. Even Councils with policies which state no clubs are appropriate anywhere in the borough sometimes still state there is a presumption to refuse new, but not existing clubs. Although SEV legislation states that 'due regard' must be paid to the fact that a club is currently operating, the legislation does *not* allow existing clubs to be treated differently from a new applicant:

R v Birmingham City Council ex parte Sheptonhurst Ltd [1990] 1 AII ER 1026 p12

"Parliament has drawn **no distinction between grant and renewal** of an SEV licence .. **To make a distinction would fetter the discretion of the local authority** in cases of renewal, which Parliament has not done"

Absolute Right to refuse to Relicense even if NO CHANGES

Strip club Legal Counsel often suggest, if not outright state, that licenses cannot be refused unless there has been a *change* in the locality or some other material change. This is categorically incorrect.

Councils have the absolute right to not relicense a strip club even if there have been **no change in the locality or any other material change whatsoever**. The same licensing committee for the same club in the same, unchanged location merely need to look at the application 'with fresh eyes', as they are fully entitled - indeed charged - to do:

i. R v Birmingham City Council ex parte Sheptonhurst Ltd 27 p 11 (referred to in Thompson v Oxford)

> ".. the statute imposes **no constraint** upon a Local Authority's discretion when it is considering a renewal ..In my judgement it is not perverse to refuse a renewal where there is **no change** in the character of the **relevant locality** or in the **use to which any premises in the locality** are put."

ii. Kolvin, QC et al

> 'licensing authorities are entitled to 'have a fresh look' and may refuse to relicense 'even where there has been **no material change** in circumstances"

iii. Court of Appeal O'Connor 28 p12 (referred to in Thompson v Oxford

> " the licensing authority were entitled to have a **fresh look** at the matter

iv. Court of Appeal in North Wiltshire DC 30 p13 (referred to in Thompson v Oxford)

> "the decision maker is free to **disagree with the earlier judgment** [grant of license].

Strip club lawyers frequently refer to the Thompson v Oxford case, where there *had* been a change in location to suggest there therefore *must* be a change in location. However, not only does this not provide any legal precedent for the need for change, a Judge has expressly stated that no change was required *with reference to this case*:

Court of Appeal O'Connor 28 p12 (referred to in Thompson v Oxford)

> " the licensing authority were entitled to have a **fresh look** at the matter... In a case where there has been **no change of circumstances**, if the licensing authority refuses to renew on the ground that it would be **inappropriate having regard to the character of the relevant locality**, it must give its reasons for refusal .. If the reasons given are rational, that is to say properly relevant to the ground for refusal, then the **court cannot interfere**. "

Evidence of Harm is Not Needed

Evidence (of harm or any sort of impact of a strip club) is *not* needed in order to refuse a license. However, strip club lawyers often mis-represent this:

> Strip club lawyers frequently refer to the '**Thwaites case'** to suggest the need for 'evidence'. However, this has case has been reviewed and it has been determined that it is 'sometimes misconstrued' as requiring decisions to be based on real evidence. See 4 here
>
> In fact, one legal journal specifically cites how this case is deliberately used to misdirect local councils on the idea that 'evidence' is required.

Strip Clubs Themselves Impact Locality

It is well demonstrated that strip clubs can negatively impact the local area – from the presence of pimps touting outside to increased crime and disorder, such as harassment in their vicinity and acting as a 'feeder' for local brothels. This in itself allows grounds for refusal:

High Court Judge ruling on Chester-based strip club

> The second reason [Judge would agree with Council's refusal to relicense a strip club] was the committee's conclusion that the location of the **premises** in that area had an **impact on the character of the locality**.

Judge in Spearmint Rhino vs Camden Council

> "I am left in no doubt that **the club** is an attraction which draws touts to the vicinity and keeps them there whilst the club is open. It is pervasive and persistent and intractable. The behaviour of the touts is anti-social and is I find perceived by some as intimidating. The issue is not just the question of crime, disorder and nuisance but the **wider character of the area**. All the best efforts of the club have properly been put into seeking to eradicate the problem which they themselves describe as a scourge but to no real effect, save for a temporary displacement at a short distance. As I am sure of this and that when the club shuts at 4 a.m. the problem goes away, the only relief which I can give to the affected residents is not to add to the problems and difficulties caused until a solution can be found. For this reason alone I would refuse the club's application to extend their hours...."

Licenses Should not be Rubber Stamped

Licensing expert Philip Kolvin, stresses that the annual hearing to decide whether to relicense a strip club should not be a 'rubber stamping' process. However, many licensing hearings frequently appear to be exactly this:

Kolvin, P (2010) Sex Licensing, The Institute of Licensing p.90

> "Given that there is potential for the discretion to be exercised afresh, the renewal should not just be a **rubber stamping** exercise, but an opportunity, if needed, to review the principle and content of the license"

Right to use Hearsay Evidence at Licensing Hearings

In 2021, the lawyer representing the Portsmouth Strip club, Elegance, stated that evidence not given in person should not be considered (even including statements from victims of sexual harassment). This is not true and clearly designed to misdirect Councils into making a decision favourable to the strip club. There have no doubt been many other instances of this, given that a Judge had already had to formally intervene, ruling that 'hearsay' evidence from anonymous sources can be used by Councils to help inform their decision:

Judge in Court of appeal which upholds Oxford City Council's right to refuse to relicense a strip club

> "There was a "considerable body of evidence" relating to the **impact of the club on the area** in the first year of its operation. The Court accepted that this evidence was hearsay evidence from anonymous sources and therefore carried less weight than might otherwise have been the case. Nevertheless, the sub-committee was entitled to have regard to this evidence and it was capable of sustaining the sub-committee's conclusion"

It is an Offence to Lie to a Council

Several strip club operators often appear to make misleading, if not false, statements to Local Authorities. Their lawyers, often highly versed in the relevant legislation, also routinely confuse, mislead and at times appear to make false statements about the legislation in which they are expert. This includes information given to Camden Council, Calderdale and others. Making false statements (ie lying) to a Council is however, unlawful:

Local Government (Miscellaneous Provisions) Act or LG(MP)A Section 21 Schedule 3

> Any person who, in connection with an application for the grant, renewal or transfer of a license under this Schedule, makes a **false statement** which he knows to be false in any material respect or which he does **not believe to be true**, shall be **guilty of an offence**.

Councils cannot make Objectors' Details Public

Licensing Law clearly states that the details of those who object to strip clubs cannot be passed on to operators:

> Local Government (Miscellaneous Provisions) Act or LG(MP)A Schedule 3 section 17
>
> The Appropriate Authority shall not without the consent of the person making objection reveal his **name or address to the applicant**

Despite this, in 2021 Camden Councils, started routinely publishing the names and home addresses of all those who objected to its strip clubs. Nearly a dozen individuals were immediately targeted in a libellous letter by a strip club operator threatening legal action against them. It took two interventions by the Information Commissioners Office (with the power to issue substantive fines) before the Council backed down.

This doesn't merely demonstrate the lack of understanding or adherence to the most basic tenants of licensing law, it indicates how often decisions are made that favour strip club operators. This case, like the two High Court Equality Law challenges to Sheffield City Council (see below) also indicate that it is often only when council's hands are 'forced' that they cease making decisions, including unlawful ones, that favour strip club operators.

Camden Council eventually stated that it would ensure 'more training'. If training is needed over such a basic aspect of licensing law then how much more urgently is training needed regarding more complicated SEV legislation and far more complicated Equality Law?

The Right to Introduce and Adhere to a Zero Policy

Local Authorities have the absolute right to decide that no clubs are appropriate in their borough (a zero policy). They also have the absolute right to adhere to this. Licensing expert, Philip Kolvin, goes so far as to say a zero policy can be so tightly written that it, in effect, becomes an embargo that cannot be challenged:

'Sex Licensing' Kolvin, QC, The Institute of licensing p129, para 15.15

> One option for policy is to state that the appropriate number in a particular locality is zero and that the **policy is intended to be strictly applied**, except in genuinely exceptional circumstances. The policy ought to justify such a course, for example by reference to the status of the locality as a ...residential area... Of course, an authority may not reject an application without considering it, even where it breaches a zero policy

'Sex Licensing' Kolvin, QC, The Institute of licensing p127, paras 15.10 and 15.11

> "...the provision gives the authority a high degree of control, **even amounting to an embargo**, on sex licences or particular types of sex establishment, within particular localities. The width of the discretion is consolidated by the absence of any appeal against a refusal on this ground"

'Sex Licensing' Philip Kolvin, QC, The Institute of licensing p 60

> "Lord Reid had said that an authority may evolve **a policy so precise that it could well be called a rule**; and there could be no objection to that provided that the authority was always willing to listen to anyone with something new to say. ... In other words, there is no rule against closed policies - the rule is against closed minds."

Further, a legal expert has confirmed that there is no breach of human rights (Article 1, 'right to property' such as an SEV licence, or Article 10 'freedom of expression') in setting a nil policy. In fact, she goes as far as to state that it would be 'almost impossible' to challenge on these grounds.

SEV Policies cannot be written around Existing Clubs

Many Councils clearly appear to have written SEV policies around the presence of pre-existing clubs which has made it even harder for licensing committees to consider closing them on grounds of locality – effectively turning

licensing procedures into a rubber stamping exercise. This includes Hammersmith and Fulham, Calderdale, Birmingham City Council (8 clubs) Manchester City Council (5 clubs) and many others.

Existing Clubs cannot be 'Exempt' from a Policy

Many councils have SEV policies that effectively 'exempt' existing clubs from it by making it impossible to challenge them on the grounds of locality – the easiest possible way to close a club. Many of the clubs in such councils already have a long track record of serious incidences and have never been deemed to have an 'unfit applicant' (the only other likely, although far less certain, mechanism to shut a strip club). In other words, these councils have effectively made it impossible to shut down their strip clubs and turned the annual licensing process into a rubber stamping process.

This also means existing venues are being treated preferentially (even those many with a track record of serious incidences) to any new applicant, which is surely anti-competition law.

Existing Clubs cannot be 'Exempt' from a Zero Policy

There are even councils with a zero policy have often exempted existing clubs. Numerous Councils have written policies that state there is no appropriate location for an SEV and yet exempt existing clubs from this. In effect, existing clubs cannot be refused on grounds of locality, even under a policy that states there is no locality where a strip clubs is appropriate!

This is also likely to breach the PSED (see below), since one of the reasons for deeming there is 'no appropriate location' is on the grounds of safety and equality.

This also means existing venues are being treated preferentially (even those many with a track record of serious incidences) to any new applicant, which is surely anti-competition law.

These are just some of the councils that have exempted existing clubs from their zero policy:

Camden	Hackney	Coventry	Portsmouth
Islington	Tower Hamlets	Leeds	

Frequency Exemption Failure

Under SEV Legislation a 'frequency exemption' is written in allowing venues to host 'occasional' lap dancing performances without an SEV license. This has seen 'cowboy' operators in towns like Cheltenham where operators take full advantage of racing events with 'pop up' strip clubs . Not only are the conditions in these venues particularly exploitative, the town itself turns into a 'no go' zone for women – with high levels of harassment.

Local Authorities and MPs have the power to lobby Government to end the frequency exemption. They can also find other ways to prevent these venues from operating (such as the use of ASBOs).

Breach of Equality Law – Equality Impact Assessment

Equality Law or the Public Sector Equality Duty (PSED) is particularly poorly understood across the board. This states that all public bodies must in all their decisions and policies:

Pay due regard to the need to seek to:

- **Eliminate** harassment, victimisation and discrimination of women by men
- **Foster good relations** between the sexes

Guidance for the PSED clearly states that 'the greater the relevance and potential impact, the higher the regard for the duty'. Clearly this is particularly relevant for any branch of the sex industry.
Further it does not only apply to women in clubs and their vicinity – it applies to wider society.

However, some Council's SEV policies state that Equality Law is not relevant (Newcastle) whilst many councils either have not carried out an Equality Impact Assessment (EIA) or have carried out one of such low quality as to be meaningless. This means that most councils are laying themselves open for legal challenge on grounds of unfit EIA alone.

Breach of Equality Law – High Court Challenges

Two successful High Court Cases have been taken against Sheffield City Council for breaching the PSED in its pro strip industry stance.

The Council conceded it had wrongly dismissed concerns for equality as 'moral objections' whilst the Judge reiterated that their PSED applied across wider society.

Louise Whitfield, DPG, Solicitor for the claimant against the Council

> "it is now clear that a local authority considering [strip club] license applications must look long and hard at the adverse impact on gender equality of letting such an enterprise exist at all. Otherwise it will be acting unlawfully and will be subject to legal challenge"

Hottak is Hocus

One of the most bizarre legal arguments made by strip club lawyers is that equality law is not relevant to strip clubs because of a 'failed' case set in Afghanistan (Hottak). This was a case taken against the British army by their Afghan employees, working in Afghanistan. Even this is incorrect. It was actually found that equality law (the PSED) *did* apply even in Afghanistan to British Government employers, just not at the highest level. Again, it is hard to infer that this argument is being made to deliberately confuse and scare councils into licensing strip clubs whilst thwarting legally sound decisions. It is also hard to imagine that those lawyers who evidence this case are not fully aware that they are presenting false information to the council and so potentially breaching section 21 of the LG(MP)A.