

High Court rules that remote licensing hearings are lawful

12 July 2024  Krishna Pancholi

A High Court appeal has dismissed a challenge to a licensing authority's use of remote hearings.

Walk Safe Security Services Ltd v London Borough of Lewisham [2024] EWHC is the first case to reach the High Court in which the lawfulness of the practice of using remote hearings was challenged. Browne Jacobson represented Lewisham in the proceedings. Hearings taking place by way of video conferencing, or “remote hearings” have been increasingly and widely used since the pandemic. Once covid 19 became a way of life and the virus was declared a pandemic, remote hearings continued to be held, allowing licensing committees the flexibility to hold hearings, provide access to a greater number of people, and enable quicker decisions to be made.

The Appellant – the operator of a London nightclub, Silks – held a premises licence which was revoked by the licensing committee in 2022, following an application for summary review by the Metropolitan Police. As it had done consistently since the onset of the pandemic, the hearing before the committee took place remotely via Microsoft Teams. The nightclub operator appealed against the revocation decision but also challenged the hearing taking place remotely, stating that remote hearings were unlawful.

The issue was considered as a preliminary issue by DJ Abdel Sayed sitting at Bromley Magistrates' Court, who ruled that remote hearings were permitted under the Licensing Act 2003 and the Licensing Act (Hearings) Regulations 2005. This decision was appealed to the High Court and was heard by Justice Chamberlain in May 2024.

Justice Chamberlain found in favour of Lewisham and in dismissing the appeal held that:

- The word “hearing” could be applied both to an in-person hearing and a remote hearing in the absence of a definition of the word “hearing” in the primary legislation.
- Although the Act and the Regulations require a hearing to be held in a “place”, that word is not defined either and therefore distinct from the provisions for ordinary local authority meetings which are held under the Local Government Act 1972, and which provide that ordinary meetings must take place in a physical and geographical location.
- Section 9(3) of the Act, and Regulation 21 of the Regulations permit a licensing committee to regulate their own procedure, and it was held that these provisions reflect an intention to confer the maximum procedural flexibility, subject to any contrary provision in the Regulations.

The question for the High Court was not whether remote hearings were permitted but whether they were expressly prohibited. In the court's judgment, there was no clear indication in the Regulations that remote hearings were precluded.

The ruling means that all licensing authorities in England and Wales are authorised to hold licensing committee hearings remotely, they can be held fully remotely, or the committee can enable a hybrid procedure.

Whilst the judgment focuses mainly on the legal point, licensing authorities should not forget their overarching duty of equality when considering whether a hearing should be held remotely. Whilst it has been held that fully remote hearings are lawful, licensing authorities are required to ensure they have a fair procedure for ensuring that all parties that are required to attend, or wish to attend are able to do so, and any representations or requests for a different format of hearing should be properly considered.

Browne Jacobson represented the licensing authority London Borough of Lewisham in these proceedings. Stephen Walsh KC (3 Raymond Buildings) and Matthew Lewin (Cornerstone Chambers) represented Lewisham at the hearing.

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