



Rt Hon Theresa May MP
Home Secretary
2 Marsham Street
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By email

Margaret Carney, Chief Executive
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11th January 2016
REF - AN/CSELA2003

Dear Home Secretary,

Licensing Act 2003 – Issue of a Personal Licence

I write to draw your urgent attention to what in our view is a conflict between the statutory requirements of the Licensing Act 2003 (LA03) and the prevention of child sexual exploitation (CSE).

Sefton Council is currently facing a dilemma between serving the permissive licensing legislation and assisting the police combat CSE.

In brief, the details are as follows:

In mid-September Person X applied to the Council for a personal licence to sell alcohol. The legislation (Section 120 LA03) requires that the Local Authority must grant the licence if it appears to it that:

- (a) The applicant is aged 18 or over
- (b) The applicant possesses a licensing qualification or is a person of a prescribed description,
- (c) No personal licence held by the applicant has been forfeited in the period of five years ending with the day the application was made, and
- (d) The applicant has not been convicted of any relevant offence or any foreign offence.

Person X meets all the conditions and as you are no doubt aware, the police are therefore unable to comment and the Local Authority is under no legal obligation to inform the police or any of the other responsible authorities of the application.

As a personal licence rests with the individual and the said licence is valid across political boundaries, Sefton Council has no power to request any information regarding the applicant's intentions.

The Council is currently supporting a police CSE investigation which involves the premises owned and operated by family X and the suggestion is that Person X was either very naïve or complicit in the alleged CSE matters. X's partner is currently on police bail.

The Council is therefore faced with a very difficult decision does it determine the licence and issue to Person X or does it withhold the licence until the police investigation is completed. Clearly the latter would be contrary to current licensing regulations

The police have requested the Council not to issue a licence because it would enable family X to potentially set up business elsewhere and they might lose track of them. As you will be aware there is no national database for personal licences. In addition unlike some other licensing schemes for example Taxi licensing there is no fit and proper person test that we could apply.

At this stage Council officers have taken the view that the safeguarding of children must take precedence over the licensing regulations and has not yet determined the application. We expect to be challenged on this matter. We are therefore seeking your views on how the existing regulations could be strengthened to include

- A national data base of personal licences
- A fit and proper persons test
- In particular provision to allow a council to defer determination of a personal licence where the individual is currently involved in a police CSE investigation where licenced premises is central to those investigations

I understand that this is very difficult territory given that the applicant has not been charged with any offence. However the council's duty to protect children must surely be paramount in these circumstances. If you are minded to consider a change to the regulations we would be willing and able to provide additional information and support to find a workable solution.

The Council would be grateful for your views on this matter

Yours sincerely



Margaret Carney
Chief Executive

CC Rt Hon Edward Timpson MP, Minister of State for Children and Families
CC Sir Jon Murphy QPM Chief Constable Merseyside Police



Home Office

**Karen Bradley MP
Minister for Preventing Abuse,
Exploitation and Crime**

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18 March 2016

Dear Ms Carney

Thank you for your letter addressed to the Home Secretary dated 11 January in which you outline your concerns about the legislation in respect of personal licence applications. I am replying as the Minister for Preventing Abuse, Exploitation and Crime and have responsibility for alcohol policy. I apologise for the delay in responding.

While it is not Government policy to comment on specific cases, I have asked my officials to look into the legislative point you raise and to consult the police and licensing authority representatives, including your licensing officers, for views about the best way to address this matter.

I shall reply further once my officials have examined this more closely.

Yours sincerely

**Karen Bradley MP
Minister for Preventing Abuse, Exploitation and Crime**

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Rt Hon Karen Bradley MP
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Date: 30th May 2016
Our Ref: AN/CSELA2003
Your Ref:

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Dear Ms Bradley

Licensing Act 2003 – Issue of a Personal Licence

Thank you for your letter dated 18th March 2016 advising you and your officials are considering the legislative point I raised.

I write to advise you that the Council has now been challenged by the applicant over the delay in determining this matter. In the interim we have commissioned two legal opinions; the first states quite categorically:

"As a result of this Opinion, the position is now clear to all and the personal licence must be issued to X in accordance with the statutory duty as contained in section 120(2) of the 2003 Act".

The second opinion whilst not overtly contradicting the first, quotes *R v Registrar General Ex p. Smith (Court of Appeal)* and argues that mandatory statutory provisions are not always enforced by the court, suggesting a mandatory duty may be vitiated where there are public policy considerations to justify the same in the context of the statutory scheme as a whole, in this case that would be licensing objectives.

Any further delay in determining the application may result in a legal challenge against the Council and so it is my intention to present this application and Counsel's advice to the Council's Licensing & Regulatory Sub-Committee for determination in June.

At this point I would appreciate any feedback you and your officials have regarding the legislative point originally raised.

Yours sincerely

Margaret Carney
Chief Executive

