

BRIGHTON & HOVE CITY COUNCIL
LICENSING PANEL (LICENSING ACT 2003 FUNCTIONS)

10.00am 5 FEBRUARY 2010

COUNCIL CHAMBER, BRIGHTON TOWN HALL

MINUTES

Present: Councillor Lepper (Chair); Harmer-Strange and West

Officers: Rebecca Sidell (Lawyer) and Jim Whitelegg (Senior Environmental Health Officer)

PART ONE

121. TO APPOINT A CHAIRMAN FOR THE MEETING

121.1 Councillor Lepper was appointed Chair for the meeting.

122. PROCEDURAL BUSINESS

122a Declarations of Substitutes

122.1 There were none.

122b Declarations of Interests

122.2 There were none.

122c Exclusion of the Press and Public

122.3 In accordance with Section 100A of the Local Government Act 1972 ("The Act"), the Licensing Panel considered whether the press and public should be excluded from the meeting during an item of business on the grounds that it was likely, in view of the nature of the business to be transacted or the nature of the proceedings, that if members of the press or public were present during that item, that there would be disclosure to them of confidential information (as defined in Section 100A(3) of the Act) or exempt information (as defined in Section 100(1) of the Act).

122.4 **RESOLVED** – That the press and public be not excluded.

123. THE OCEAN ROOMS, 1-2 MORLEY STREET, BRIGHTON

- 123.1 The Panel considered a report from the Assistant Director of Public Safety regarding an application for review of a premises licence under the Licensing Act 2003 for The Ocean Rooms, 1-2 Morley Street, Brighton (for a copy see minute book).
- 123.2 Mr Smith, Barrister representing the applicant, Mr Gill, the applicant, Mr Love, Safety Advisor for Ocean Rooms and Ms Shabib, Security Consultant, attended the hearing to make representations against the review application. Mr Savil, Solicitor representing Sussex Police, Ms Irving and Inspector Harris from Sussex Police, Roy Pickard, Environmental Health Manager, Mrs Sandra Cartwright, Senior Environmental Health Officer and Edward Bulger, Environmental Protection Officer, Councillor Fryer on behalf of the Kingswood and Milner Tenants Association, and Mrs Williams, a local resident, attended the hearing to make representations in favour of the review application.
- 123.3 The Senior Environmental Health Officer, representing the Licensing Authority, Mr Whitelegg, began by summarising the application and stating that the expedited review had been brought by Sussex Police after an incident of serious crime at the Ocean Rooms. A major crime investigation was ongoing and there were restricted papers pertaining to this as part of the agenda pack.

The interim steps hearing on 15 January resulted in an immediate suspension of the licence as the panel felt it was clear the premises had been associated with serious crime resulting in a death, there was a lack of co-operation from the premises management with the police and non-compliance of licence conditions. A suspension of the licence had been deemed necessary to uphold the licensing objective of Prevention of Crime and Disorder.

Brighton & Hove City Council Environmental Protection Team and Health and Safety Team, Sussex Police and local residents had made representations for the review under the licensing objectives of Prevention of Crime and Disorder, Public Safety and Prevention of Public Nuisance. There was a history of noise problems associated with the premises, and a number of suspected offences under the Health and Safety at Work Act.

The steps open to the panel were to modify the conditions of the licence; exclude any licensable activity; remove the DPS; suspend the licence; revoke the licence or do nothing. Guidance from the Home Office document Problem Places on Probation advised first and second intervention measures, however notes that where cases are serious enough, revocation in the first instance should be considered.

- 123.4 The Chairman asked if there were any questions and Mr Smith asked if the full guidance on reviews of licence was available to the panel. The Chairman replied that it was.
- 123.5 The Environmental Protection Officer, Mr Bulger, began his representation and highlighted the details of his written representation to the Panel Members.

- 123.6 The Chairman asked if there were any questions of the Environmental Protection Officer and asked if he had written to Mr Gill regarding the problems at the premises. Mr Bulger confirmed that he had written to Mr Gill three times.
- 123.7 The Chairman asked if Mr Gill had contacted Mr Bulger and he confirmed that he had received email replies to two of his letters. He noted the emails were largely placatory and gave reasons for the issues that had occurred at the premises and the work that had been done to rectify issues.
- 123.8 Councillor Harmer-Strange asked if the work had ever been checked to see if it was accurate. Mr Bulger replied that as it was not a formal investigation at that time, the work had not been checked.
- 123.9 Councillor West asked if there were any further noise problems after November. Mr Bulger replied that a Noise Abatement Notice had been served in 2008, but since then no formal contact had occurred regarding noise complaints.
- 123.10 Councillor West asked if Environmental Protection were aware of the noise problems the residents were experiencing and Mr Bulger agreed they were.
- 123.11 Councillor West asked if a Noise Abatement Notice was in place and further noise problems were occurring, was a written letter the appropriate action to take. Mr Bulger stated there were guidelines regarding dealing with noise nuisance and the department had followed these guidelines.
- 123.12 Councillor West asked if Mr Bulger pursued a meeting with Mr Gill after 17 December and he stated he had not as no incident had occurred at that time.
- 123.13 Mr Smith asked Mr Bulger if Mr Gill was co-operative and Mr Bulger agreed he was.
- 123.14 Mr Smith asked Mr Bulger if he was aware that Mr Gill had spent around £300,000 on sound insulation at the premises and he stated he was not.
- 123.15 Mr Smith asked Mr Bulger if he was aware that noise monitoring was taking place at the premises and Mr Bulger agreed this was the case and in his opinion this monitoring was satisfactory.
- 123.16 Mr Smith asked if it was true to say that the smoking area had been relocated on the advice of the Environmental Protection Team and Mr Bulger agreed.
- 123.17 Mr Smith asked if Mr Bulger was aware that during the incident around the White Night festival the premises was being operated by Brighton & Hove City Council. Mr Bulger was not aware of this.
- 123.18 Mr Smith asked if the noise nuisance in this instance was due to open air noise. Mr Bulger replied that the complaints concerned amplified music. Mr Smith asked if it could be from amplified open air pianos and Mr Bulger replied that he did not know.
- 123.19 Mr Smith asked if there were any problems with communications from the premises and Mr Bulger replied there was not.

- 123.20 The Senior Environmental Health Officer, Mrs Cartwright, from the Health and Safety Team began her representation and stated that the team had become aware of a number of incidents at the premises that were reportable under RIDDOR, but it appeared that this was not taking place. She stated that these cases were still being investigated and added that there may be valid reasons as to why this was not done. A formal interview would take place with Mr Gill in the following week to assess the situation further. At this stage Mrs Cartwright could not comment further on the cases.
- 123.21 The Chairman asked if there were any questions and Councillor Harmer-Strange asked how many incidents had occurred. Mrs Cartwright believed it was four.
- 123.22 Councillor West asked if it was only recently that the team had become aware of the incidents that the police were aware of, and Mrs Cartwright agreed. She stated that the team would expect to be notified if a member of the public had been taken to hospital from the premises.
- 123.23 Councillor Lepper asked if it was normal for premises management to be aware of the requirements of RIDDOR and Mrs Cartwright agreed that it was.
- 123.24 Councillor Lepper asked if Mr Gill and Mr Dempster were aware of RIDDOR and Mrs Cartwright stated that it appeared from discussions they were not aware.
- 123.25 Mr Smith asked if other clubs in the city reported incidents under RIDDOR requirements. Mrs Cartwright replied that she could not give exact numbers of this.
- 123.26 Mr Smith asked if it was correct that only incidents involving members of staff due to work procedures or practices were reportable under RIDDOR. Mrs Cartwright stated that it would also be reportable if a member of the public was involved in an incident.
- 123.27 Mr Smith asked if Mrs Cartwright had seen a copy of the Health and Safety policy of the premises and Mrs Cartwright replied that it had not been available at the time officers attended the premises.
- 123.28 Mr Savil asked if it was a matter of concern that Mr Gill did not know about the requirements under RIDDOR. Mrs Cartwright stated that it was and that it was also concerning that incidents involving hospital visits had not been reported. However, she added the cases were still being investigated and no formal opinion had been formulated at this time.
- 123.29 The Chairman asked for clarification of RIDDOR and it was replied that this was a mandatory duty to inform the relevant authorities of incidents involving work practices or procedures where those practices resulted in an attendance at hospital.
- 123.30 Mr Savil began his representation and stated that there was sufficient concern at these premises for the Police to request an expedited review of the licence. The incident on 1 January 2010 resulted in a major crime investigation being launched although Mr Savil could not relay details of this investigation as it was still ongoing.

However, several other incidents at the premises had caused the police sufficient concern and the lack of communication or engagement from the premises management was a significant worry. Mr Savil stated that this was an unacceptable state of affairs and could not be allowed to continue when instances of Actual Bodily Harm were being reported to the police by members of the public or the hospital, but not by the premises management. This behaviour seriously undermined the police's ability to investigate crimes properly and could not be accepted. There was now a lack of trust with the premises management, police fears of a culture of secrecy and no basis for partnership working.

Specific problems at the premises included the lack of a frontline licensed door supervisor to give direction to door staff on the night when the serious crime incident occurred, irregularities with invoices for door staff services, including invoices from companies that were not in existence, therefore making the invoice invalid, and concerns about SIA registration of security staff used at the premises.

Another incident had occurred on the day before the major incident occurred but again in this instance the police were only notified by the ambulance service. The victim of the incident was too drunk to cooperate with the police investigation and the police expressed significant concern over this as it indicated that the victim had been served alcohol in the premises whilst drunk. The Premises Licence Holder had also failed to inform the police in this circumstance.

Again issues of concern were raised around the holding of R&B nights at the premises, with bottles thrown into the crowd at one event, injuries and people reported with blood stained clothing. A member of the public notified the police of the problems in this instance.

On 1 August 2009 a member of the public reported a large fight outside the venue, and door staff reported that they recognised members of the public in the fight who had been in the club earlier in the evening. This called into question the dispersal policy of the club.

On 31 July an underage event was held at the premises, which was in breach of the licence conditions and on 26 July was a further incident. CCTV was sought in this instance but was not available from the premises. Again the management failed to inform the police of the incident Mr Savil stated that these were not minor incidents and involved significant assaults and injuries.

The police viewed the failings of the establishment very seriously and as such had asked for an expedited review. It was also noted that the premises was due to be sold on by the current Premises Licence Holder and this was significant because the security arrangements of the premises needed to be considered in detail and managed appropriately. They did not consider the venue was adequately managed for the interim steps measures to be rescinded.

123.31 The Chairman asked if there were any questions and Councillor Harmer-Strange asked if a dispersal policy had been set up subsequently.

123.32 Sergeant Wauchope, on behalf of Sussex Police, replied that he had not seen one

for the premises and was unclear if there was a dispersal policy.

- 123.33 Councillor Harmer-Strange asked if the police had ever been refused CCTV footage of incidents at the premises. Sergeant Wauchope replied that he had not had problems but was aware other Officers had asked for CCTV images and not received them.
- 123.34 Councillor Harmer-Strange asked if the CCTV set up was appropriate for police purposes and Sergeant Wauchope replied that in his view it was sufficient, but not comprehensive, although added he was not a police expert on CCTV matters.
- 123.35 Councillor West noted there had been a long catalogue of incidents at the premises and asked what the police were doing to monitor and control this premises, aside from instigating an expedited review. Sergeant Wauchope stated that the police had a responsibility for all licensed premises in the city and regularly spoke with premises that were causing concern. Letters had been sent to the premises management and the police had tried to enter into discussions with Mr Gill.
- 123.36 The Chairman asked what happened when police attended the premises to resolve the problems. Sergeant Wauchope stated that the Police Licensing Officers would normally only attend if a serious incident occurred and would speak to the DPS if necessary. With regard to the Ocean Rooms, Police Licensing Officers had spoke to three different managers at the premises, but not to Mr Gill and in Sergeant Wauchope's view this created difficulties in terms of continuity and relationship building with the police.
- 123.37 The Chairman asked if the premises management were cooperative after incidents had occurred and Sergeant Wauchope stated that they were.
- 123.38 The Chairman asked if there was an incident book used at the premises and Sergeant Wauchope stated that there was. He noted that the security arrangements at the premises seemed to be irregular however.
- 123.39 Councillor Harmer-Strange asked if the lack of cooperation from this premises was common for licensed venues in the city. Sergeant Wauchope replied that it was initially before the Licensing Act was introduced, but now the emphasis was on cooperation and partnership when dealing with problems, and the police were eager to pursue this route.

Inspector Harris added that the Brighton Crime Reduction Partnership was also used as an intelligence sharing forum, with an exchange of best practice ideas. A police and door supervisors meeting was held on Fridays at 22:30 in Revenge.

- 123.40 Councillor West asked if the response from the police regarding the Ocean Rooms in particular had been inadequate in this instance. Ms Irving stated that the police had been in the process of preparing a review of the premises when the major crime incident occurred.
- 123.41 Councillor West stated that he remained concerned about the response from the police and Sergeant Wauchope noted that the response may have seemed slow, but

the police were reliant on receiving information from the premises and there had been no contact from the premises management. There had also been issues around continuity of management at the premises, which created problems in terms of feedback and resolving issues. He added that the process did take time to complete and Mr Gill had been given the opportunity to address the issues with the police and a partnership approach had been adopted. However, events had overtaken the normal review process and an expedited review was necessary.

Inspector Harris agreed that the review had been initiated too slowly. A new system to avoid such delays had been introduced to the police licensing team and they would be using the Council's enforcement action policies in the future to address immediate concerns much more quickly. She was confident that the new practices would be much more successful in dealing with problem premises.

- 123.42 Councillor Harmer-Strange asked how often premises were visited and Inspector Harris stated that premises were visited in rotation. The Ocean Rooms had been visited after the problems on 5 June 2009 relating to an R&B night. Other licensing visits occurred on 31 July, 11 September, 31 October and 31 December.
- 123.43 Mr Smith asked if it was correct to say that if an incident was logged by a member of the public, and they mentioned the Ocean Rooms as a reference point, then this would be recorded as an incident at the Ocean Rooms. Inspector Harris stated that when information about an incident was collected the police were very careful not to use venues as landmarks.
- 123.44 Mr Smith questioned the lack of engagement from the premises and noted that an incident had been logged as called in by the door supervisors of the premises. Inspector Harris noted this, but added that the door supervisors had been at the Market Diner and not the Ocean Rooms when they had logged the incident. This indicated to the police that they were off-duty at the time and merely acting as concerned members of the public.
- 123.45 Mr Smith asked how there could have been an incident at the Ocean Rooms when the venue closed at 04:00 hours and the reports logged the incident at 04:48 hours. Inspector Harris stated that the reports logged that members of the public were still in the Ocean Rooms at this time and the incident took place over a long period of time. There had been a report of a firearm at the premises and the police response had to be proportionate to this. The subsequent investigation had proved that the incident started in the club and spilled outside. At this point the police believe that they were not notified within good time that an incident had started at the club and believe it was fortunate that they were notified by door supervisors at the Market Diner. Mr Smith did not agree with this response and believed the Ocean Rooms had called the police to the venue first.
- 123.46 Mr Smith asked if the police graded intelligence on how reliable it was and Inspector Harris agreed. He asked what grade the anonymous call on 20 October was given and Inspector Harris stated that this had been given the lowest grade of credibility because it was anonymous, and would be treated accordingly.
- 123.47 Mr Smith asked if the police knew that the party on the 31 July was a private party

and no payment for services had taken place. Inspector Harris replied that she was aware of this, but music had been playing at the event.

- 123.48 Mr Smith asked a series of questions around incidents at the premises and indicated that many had in fact been reported to the relevant authorities by staff from the Ocean Rooms, and some incidents were not related to the Ocean Rooms. Inspector Harris could not confirm these questions, or did not have access to the relevant information.
- 123.49 Mr Smith asked if the police were accusing Mr Gill of being complicit in accepting false invoices from AMS Security. Inspector Harris stated it was a fact that the company did not exist with Companies House, and that the address given on the invoices was incorrect. At this point she was unaware of who was involved in the issue.
- 123.50 Mr Smith asked Inspector Harris to confirm that the door staff used by the Ocean Rooms were registered with the SIA and Inspector Harris confirmed this.
- 123.51 Mr Smith asked when letters were written to Mr Gill. Inspector Harris stated they were written on 3 November, 13 November, 30 November and 11 December. Sergeant Wauchope added that business cards were also left at the premises before this.
- 123.52 Mr Smith asked if the letters were all regarding the proposed underage disco at the venue and Sergeant Wauchope confirmed this, adding that this was a starting point and other issues would have been discussed if the premises had contacted the police.
- 123.53 Mr Smith asked if the letter written on 30 November confirmed that the police were happy for the event to take place at the premises. Sergeant Wauchope explained that relevant conditions would be expected to either be in place at the premises, or added via variation, before such an event took place, but subject to this, there would be no technical problems in holding such events at the Ocean Rooms. He added that it was the responsibility of the promoters and the Licence Holders to ensure the relevant conditions and activities were on their licence to hold such events.
- 123.54 Mr Smith asked Sergeant Wauchope to confirm that the event did not take place and he agreed, stating that the police had contacted the promoter to cancel the event.
- 123.55 Mr Smith asked if the review process was underway, why was an under 18s event agreed to at the premises. Sergeant Wauchope replied that the police had been dealing with the promoter, and in terms of the promoter they had no issues with them running such events as long as the premises had the suitable permissions in place. The Ocean Rooms did not and no variation of conditions was forthcoming from the management, therefore the event was cancelled. It was incumbent on the promoters and the Licence Holders to respect the licence conditions at all times.
- 123.56 Mr Smith asked if the police were aware that SASSCO had provided security at the premises for a number of years until very recently and Sergeant Wauchope stated that this may be the case. He believed that in-house door staff changed on a regular basis however, making continuity an issue for the police.

- 123.57 Mr Smith referred to the last licensing inspection at the premises, which was satisfactory. He asked if the only issue regarding the strength of shooters had been clarified and Sergeant Wauchope agreed that it had.
- 123.58 Mr Smith asked if venues in the city were risk assessed, and what the frequency of visits by the police was if a venue was assessed as high risk. Sergeant Wauchope stated that all venues were risk assessed in conjunction with other partners including the Council, and visits could take place weekly if it was felt necessary.
- 123.59 Councillor Fryer began her representation on behalf of the Kingswood and Milner Tenants Association and stated that residents had made representations based on all four licensing objectives. Residents were suffering from sleepless nights as a result of activities at the premises. The area was deprived, with recovering alcoholics based in the area, and Councillor Fryer did not feel it was appropriate for a nightclub to be situated in this area. Residents had contacted the club regarding problems but had received little response and no improvements. There was a history of problems including noise disturbance and antisocial behaviour, and the residents would have complained earlier had they known about the review process. The problems were identified as relating directly to the Ocean Rooms as there had been a significant improvement since the suspension was put in place.
- 123.60 Mrs Williams began her representation and stated that she had suffered years of not sleeping and was disappointed that someone had died at the premises before a review was forthcoming. There had been significant problems and a murder at the Ocean Rooms in the past, and Mrs Williams stated that the noise nuisance was now so constant that it kept her awake throughout the night and for most of the week. She stated that this had adversely affected her health. There were also noise problems associated with people coming and going from the premises, and from people standing outside. Since the suspension there had been a significant improvement.
- 123.61 The Chairman asked if there were any questions and Councillor Harmer-Strange asked if the previous murder was corroborated. The Lawyer to the Panel stated that matters pertaining only to this licence review should be discussed.
- 123.62 Councillor Harmer-Strange asked what the behaviour of the people outside the premises was like and Mrs Williams stated that people pre-loaded on the street beforehand, there was noise disturbance from taxis and people congregated around the bin area for the flats. She was confident that these people were using the Ocean Rooms as she had witnessed that they joined the queue for the premises in due course.
- 123.63 Councillor Harmer-Strange asked how often was she disturbed and Mrs Williams replied that it was most often on student nights which were worse because of fights spilling onto the street and from people screaming outside the club.
- 123.64 Councillor West asked which block of flats Mrs Williams lived in and she stated she lived in Milner block. Councillor West believed this was some distance from the premises, and the Panel could only deal with noise nuisance in the immediate

vicinity of the premises.

- 123.65 Councillor West asked if there was music noise breakout from the club and Mrs Williams replied she could hear bass music that kept her awake.
- 123.66 Councillor West asked if people congregated around the premises and Mrs Williams stated that they did and they did not seem to disperse.
- 123.67 Councillor West asked if the door staff managed the crowds and Mrs Williams replied that they did not seem to.
- 123.68 Councillor West asked if noise from queuing customers could be heard and Mrs Williams stated that she could hear people noise from around 21:00 hours and it was very loud.
- 123.69 The Chairman asked about a gap in recording in Mrs Williams' noise diary and she replied that she did not put every incident in because she was trying to sleep on most occasions and trying to live with the noise problems.
- 123.70 The Chairman asked if there were ever any improvements in the noise problems and Mrs Williams replied that there were brief improvements when complaints were made, but it always quickly reverted back to the same situation.
- 123.71 Mr Smith noted that the club was not open until 23:00 hours and asked if people were standing on the street until this time. Mrs Williams replied that this could happen, but asserted that the club opened before this time.
- 123.72 Mr Smith asked if the road was used as a thoroughfare and Mrs Williams replied that it could be used to access St James street facilities.
- 123.73 Mr Smith asked if Mrs Williams agreed that there were preexisting antisocial issues in the area and that it was a mixed use area in need of redevelopment and Mrs Williams agreed to this.
- 123.74 Mr Bulger asked Mrs Williams to clarify if a statutory noise nuisance had been identified and Mrs Williams stated that there was. Mr Bulger stated that his records did not show this, but a significant annoyance had been identified and so a letter had been written to Mr Gill regarding this.
- 123.75 The Panel adjourned for lunch between 13:00 and 13.30 hours.
- 123.76 Mr Smith began his representation on behalf of the Licence Holder and stated that it was fair to say that the operation of the Ocean Rooms had not been without fault. Errors had been made, but lessons had been learned by the management. The suspension of the licence was not appealed in recognition of this and they were aware of the death of the individual and did not feel it was appropriate to re-open.

Mr Gill recognised that clear policies and procedures were needed before the club re-opened. Mr Smith added there was a need to decide the correct action in terms of this premises and whether a full revocation was necessary.

The premises had operated as a night club since the 1970s and was situated on the edge of the SSA. The surrounding area was in need of redevelopment and currently suffered from a run down feel since the closure of the open market. It was an existing mixed use area and whilst the Market Diner operated an all night licence opposite the premises, the Premises Licence Holder felt that problems were created as a result of this, not directly linked to the Ocean Rooms. Mr Gill had owned and successfully operated the premises since 2000 and had won the Nightclub of the Year award in 2000. He was a private individual with his own money invested into the club. The current licence operated until 02:00 hours on Sunday evenings and the normal pattern of operation was Wednesday to Saturday.

Between 3 and 7 door staff were available during this time, as were up to 8 members of staff and a manager. Staff were well trained and were trained to Challenge 21 standards. The training included no glass bottles allowed to be served on the ground or basement floors. This had been breached in recent months by a member of staff, which had led to glass bottles being used in an incident. The drinks prices were typically high for a nightclub premises, and whilst there had been issues identified around the pricing of shots at the premises, it was clarified that these shots were watered down to 14% volume and the police were satisfied with this.

The current DPS had worked for the premises for 2½ years, although he was now suspended pending the outcome of the review process. The smoking area was located originally at the front of the premises, but had been relocated following advice from the Environmental Protection Team at Brighton and Hove City Council. CCTV covered this area, but on the night in question, the incident occurred just off camera. This had now been rectified and there was full coverage of the area, which was lit by street light and cordoned off. The area was also monitored by the door staff.

The security team at the premises had been provided by SASSCO until October 2009, but following a dispute this contract had been cancelled and a new contract entered into in good faith with AMS Security. He recognised there were issues around SIA registration of the door staff, but felt that this would be pursued independently and was not an issue for the Panel to consider.

In June 2009 Mr Gill suffered an accident, and as a consequence had been less involved in the management of the premises during his recovery. He had been working in the evenings until around 00:30 hours and was present during the daytime. Mr Dempster was responsible for the management of the premises during the early hours of operation.

Mr Smith recognised there had been reporting issues since the departure of SASSCO, which needed to be rectified, and Mr Gill recognised that he needed to take a more hands on role during the early hours of operation again. Mr Gill recognised the seriousness of the incidents, but felt he not been able to manage the premises appropriately in the last six months during recovery from his operation.

The incident on 1 January was very serious and tragic, but involved a single punch from the perpetrator. The victim fell over and hit his head, causing his injuries. Mr

Smith recognised that this had instigated the review process. Other evidence linked to the review was disputed however, and Mr Smith listed several incidents where it was believed the police evidence was inaccurate, and demonstrated that the premises had cooperated with police requests for information where possible.

On 1 January Mr Gill spent most of the day assisting the police in their investigations. Evidence showed that ticket sales were slow for New Years Eve and therefore four door staff were employed. One doorman left between 00:00 and 03:00 and another doorman left at 04:00. Mr Dempster did not manage this and although Mr Gill was present, he was at the club in the capacity of a customer.

It was suggested there was poor engagement with the police over issues at the premises, but if the premises had been rated as a high risk, there was an expectation that weekly visits from the police would be initiated to rectify the problems. Infrequent requests for contact had not been passed onto Mr Gill and the issues around the under 18s planned event were also not communicated to Mr Gill by Mr Dempster. Despite this, there were no issues evident with the October 2009 licensing check. Mr Smith recognised there were outstanding health and safety issues. He asked that the Security Manager, Mr Love, give evidence to the Panel.

123.77 Mr Love addressed the health and safety issues relating to RIDDOR reporting at the premises and stated that regulation 3A of RIDDOR stated that notification was needed only when a member of staff died in an accident from actions related to work practices. 'Accident' was defined in the guidance, as was 'work practices' and Mr Love asserted that the incident which occurred on 1 January was not defined as an accident, and therefore not reportable under RIDDOR.

Mr Love stated that RIDDOR protocols formed part of the health and safety policy at the premises and it was noted that when Mr Gill had been asked questions regarding the protocols, he had misheard and therefore did not understand the questions. He was fully aware of the requirements under RIDDOR however.

123.78 Mr Smith continued with his representation and stated that the Environmental Protection Team believed that Mr Gill was always cooperative, despite the police claims to the contrary.

Over £300,000 had been spent on sound insulation at the premises and between the period that the Noise Abatement Notice was served and the end of October 2009, no noise complaints were made. At the end of October the White Night festival was held and run by the Council, and a series of complaints was made regarding the management of this.

Mr Gill had responded to every email sent to him regarding issues at the premises, which proved his intention to cooperate with the relevant authorities. The residents representations showed they suffered inconvenience from noise disturbance since the smokers area was moved, and he recognised there may be noise breakout from the premises as the sound traveled uphill. He did not believe all of the antisocial behaviour in the area was attributable to the Ocean Rooms however and felt that conditions could be proposed to address noise breakout issues. Conditions were proposed by the Premises Licence Holder, and Mr Smith stated that if these

conditions were placed on the licence, they would be carried over whether the premises was sold or not. He asked that Ms Shabib from Select Security and Stewarding be allowed to give evidence to the Panel.

- 123.79 Ms Shabib stated that she was the managing director of Select Security and Stewarding and had been working closely with the Premises Licence Holder to develop and provide pragmatic security policies for the establishment to introduce following the review process. Within the policies document was guidance on deployment of staff, dispersal of customers and incident management.
- 123.80 Mr Smith continued with his representation and stated that a doorman would be provided to monitor the smoking area and to ensure that the door to the premises remained closed except for access and egress. It was also agreed that a noise limiter would be used, set at a level agreed with the Environmental Protection Team. It was also recognised that residents were suffering noise disturbance late in the night, and so Mr Gill was willing to cut back the hours of operation to 04:00 hours. The CCTV system would be reviewed in conjunction with Crime Prevention Officers and it was suggested that monthly meetings occur with the police. Mr Smith finally ran through a list of proposed conditions from the PLH.
- 123.81 The Chairman asked if there were any questions and asked Ms Shabib if her role at the premises was as a consultant. Ms Shabib stated she would also be involved in the implementation of the security measures and her company would be providing the door staff.
- 123.82 The Chairman referred to the list of proposed conditions from the PLH and asked why it was necessary for the premises to be brought to review before these conditions, many of which were standard and best practice across the industry, were accepted on the licence. Mr Smith replied that no serious concerns had been raised about the management of the premises with Mr Gill, and it was very unfortunately that it had taken a tragic event to bring the premises to review. However, he asserted that Mr Gill did not know about many of the problems at the premises, and now was in the process of rectifying these problems.
- 123.83 The Chairman stated that some of the conditions were very basic and asked why Mr Gill had not implemented them already. Mr Smith stated that many of the conditions were quite radical, some were already in place but not as formal conditions of the licence, and some were in operation when SASSCO was operating security at the premises, but since they had left in October 2009, there had been a noticeable drop in standards.
- 123.84 Councillor West stated that the police had lost faith in Mr Gill as a responsible manager and asked why, as an experienced operator these practices were not in place. Mr Gill responded that he understood it was his responsibility to ensure the premises was well run and agreed there had been a drop in standards. He had not been aware of the frequency of incidents at the premises and felt he had been clearly let down by the DPS, who had not informed him of the contact with the police.

- 123.85 Councillor West noted there had been a lot of engagement with Environmental Protection, but despite this the premises was still operating without a doorman monitoring the smoking area. He asked why this was. Mr Smith replied that the smoking area had been moved in February 2009 in conjunction with the Environmental Protection Team, and there had been no noise complaints until October 2009, and so Mr Gill had assumed the location was not a problem. Mr Gill added that the door staff did have a clear view of the area from the front, but he now realised this may not be adequate.
- 123.86 Councillor Harmer-Strange asked how many times Mr Gill had consulted the police and he replied that he had not recently.
- 123.87 Councillor Harmer-Strange asked if Mr Gill understood that it was his responsibility to engage directly with the police and he stated that he did. He added that he did not go ahead with the under 18s event as so had believed there was no need to contact the police.
- 123.88 The Chairman asked Mr Gill if he believed he was fulfilling his responsibilities and requirements as a DPS and PLH and Mr Gill believed he had for a number of years, although recognises his standard had slipped recently.
- 123.89 Mr Bulger asked if there was a condition proposed for live music at the venue. Mr Smith replied that it was very difficult to run live music through a sound limiter and suggested that the hours of this activity could be limited if it was thought to be a problem.
- 123.90 Mr Pickard from the Health and Safety Team asked what training was provided at the premises for staff dealing with work related violence. Ms Shabib responded that there would be ongoing training for door supervisors and a recommendation that bar staff also receive training in this area for a holistic approach to the problem.
- 123.91 Mr Savil asked if Mr Gill accepted that he was responsible for the problems at the premises. Mr Gill replied that recently he had not fulfilled his duties in terms of the premises.
- 123.92 Mr Savil asked why Mr Dempster was not given full management of the premises if Mr Gill could not fulfill his duties properly. Mr Gill stated he wasn't aware of any problems at the premises. He added that he was still managing the premises day-to-day, and that only the later hours of operation were covered by Mr Dempster.
- 123.93 Mr Savil asked if Mr Gill considered himself a failed DPS and he replied he did not.
- 123.94 Mr Savil asked if Mr Gill should be removed as the DPS and he did not feel he should be. Mr Smith added that Mr Gill accepted that the premises could have been run better in the last few months, but his removal as DPS was not one of their proposals.
- 123.95 Mr Savil asked if Mr Gill was the sole director of the company and Mr Gill replied that his sister was a second director.

- 123.96 Mr Savil asked if Mr Gill did not sell his property on 5 March would he remain as DPS at the premises and Mr Gill replied that he would. He stated that he recognised there had been problems but he would rectify these and pay more attention to the nightclub.
- 123.97 Mr Savil asked if the problems at the premises had occurred because Mr Gill wanted to sell the premises and was no longer interested in its management. Mr Gill denied this and stated that the problems had occurred because he was recovering from an operation and had a young family to look after. He recognised that he needed to make changes to ensure the business was run properly, and he was willing to do this.
- 123.98 Mr Savil asked if the proposed conditions had been drawn up as a response to the review process. Mr Gill agreed that this was the case.
- 123.99 Mr Savil asked why no independent analysis of the premises was taking place and Mr Gill replied that because he was not aware there were any problems, he did not see a reason to review the running of the establishment. Mr Smith added that the police had not identified any problems at the premises separately to Mr Gill.
- 123.100 Mr Savil drew attention to the series of letters written to Mr Gill as an indication that the police were trying to contact him and Mr Gill replied that these letters did not refer to any problems except the under 18s disco, which he believed had been resolved satisfactorily.
- 123.101 Mr Savil asked why Mr Gill did not feel it was necessary to contact the police even though they sent a series of letters and left business contact cards at the premises. Mr Gill stated that Mr Dempster had dealt with the police enquiries and he believed this had been satisfactory.
- 123.102 Mr Savil asked if it was a large financial outlay to implement the new security policies and procedures that had been proposed, and added that a new owner would not be compelled to proceed with this. Mr Gill stated that it was a large financial outlay, and Mr Smith stated that any new owners would have to abide by the operating schedule and conditions on the licence.
- 123.103 Mr Savil asked if Mr Gill needed to retain the premises licence to be able to sell the premises, and Mr Smith stated that it was of course a commercial decision. The premises could not be useful as any other type of establishment and so a premises licence would be needed.
- 123.104 Mr Savil raised doubt that the conditions would be effective if the premises was sold, and stated that if it was not sold, then the premises would retain a DPS the police had no faith in. Mr Smith replied that the conditions would remain a part of the operating schedule despite whether the business was sold or not. He added that the Panel could not revoke the premises licence based on whether the business was sold or not, as this was a commercial decision and did not affect the licensing objectives.

- 123.105 Mr Savil asked why the police were not called to so many of the incidents at the premises. Mr Smith stated that it was the door supervisors' responsibilities to contact the police in such circumstances. He was not aware of why this had not been happening.
- 123.106 Mr Savil asked for more details about the dispute with SASSCO and Mr Gill replied that it was over money and billing.
- 123.107 Mr Savil asked how long Mr Gill had used AMS Security and how often he was billed. Mr Gill replied that he had been using the company since October 2009 and was billed weekly.
- 123.108 Mr Savil asked if Mr Gill was concerned that it appeared the company did not exist. Mr Gill replied that the security staff at AMS used to work for SASSCO and he had believed that they were a valid company.
- 123.109 Mr Savil stated that the police had been making serious allegations about SIA registration issues at the premises and asked if the invoices were made up to deflect this issue. Mr Gill denied this was the case.
- 123.110 Mr Savil asked why Mr Furnable was being paid considerably more than door supervisors from AMS who were head door staff. Mr Gill replied that Mr Furnable was being paid double time for working on New Years Eve.
- 123.111 Mr Savil asked whether Mr Gill was willing to accept a condition that no drinks promotions would take place at the premises. Mr Gill replied that he would continue to do drinks promotions on certain lines, although most of his drinks were around £3.50.
- 123.112 Mr Savil asked what happened to the member of staff who had breached the no glass condition and Mr Gill replied that she had been suspended and would be disciplined appropriately.
- 123.113 Mr Savil asked who was responsible for managing the self-employed door supervisors. Mr Gill replied that the head door supervisor employed through AMS was responsible for the self-employed staff.
- 123.114 Mr Savil asked if Mr Gill had a contract with AMS and he replied he did not. Mr Savil asked if this was an unusual practice and Mr Gill replied that he did not feel that he needed a contract with AMS. Mr Smith added that Mr Gill had worked with the individuals who set up AMS Security for many years and had trusted them. He added that a contract was not a legal requirement.
- 123.115 Mr Savil asked why the police were not informed when they attended the premises on one occasion that the party being held was a private party. Mr Smith replied that the police had told the management that the party was not allowed to take place and they had not felt able to argue with the police at that time.
- 123.116 Mr Savil asked if it was the claim of the PLH that some of the incidents evidenced by the police were in fact not related to the Ocean Rooms and Mr Smith replied that

some of the calls were anonymous and therefore could not be treated as credible evidence, and some of the calls involved customers from the Market Diner rather than the Ocean Rooms.

- 123.117 Mr Savil asked if there were issues of drunkenness at the premises and Mr Smith replied that he had spoken with the door team regarding this issue and with Mr Dempster to rectify the problems.
- 123.118 Mrs Williams asked if the PLH was aware that she had been in hospital for a period of time, which was why a full noise diary had not been kept for some of the months. Mr Smith replied that they were not aware of this and apologised for any negative inference.
- 123.119 Councillor Harmer-Strange asked if the staff had received any training in the last year and Mr Gill replied that they received training from the manager when they were first hired to the post. Councillor Harmer-Strange asked for further details of this training and Mr Gill replied that they were given a tour of the premises, evacuation procedures were explained, the health and safety policy, how to use the tills and the reporting procedures at the premises. Mr Love added that fire evacuation procedures and accident reporting were also included in the training.
- 123.120 Councillor Harmer-Strange asked if Mr Gill had received any training in the last year and he stated he had not.
- 123.121 Councillor Harmer-Strange asked when the last time Mr Gill had received training in licensing issues was and he replied that it was 10 years ago when he received his Personal Licence training. Mr Smith stated that Mr Gill would be willing to undertake DPS training to BII standards.
- 123.122 Councillor Harmer-Strange asked why there were no specific training requirements in the conditions proposed by the PLH. Ms Shabib replied that this was most likely an administrative oversight and these could be included if the licence was retained.
- 123.123 The Chairman asked if any training was given on the sale of age restricted products and Mr Smith confirmed that this was part of the induction training for each member of staff. He added that training was also received in not serving to drunken people.
- 123.124 The Chairman asked if Mr Gill was responsible for any other premises in the city and Mr Gill replied that he did not.
- 123.125 The Licensing Manager began her final statement and listed the options available to the panel. She added that section 182 guidance stated that the panel must establish the cause of the problems at the premises and take remedial action. Replacement of the DPS could be considered if poor decisions were evident at the premises, however it was recognised that this would be ineffective if the problems were as a result of poor policy or procedures at the premises. Venues were responsible for the area immediately outside their premises. The list of suggested conditions from the PLH must be clear, precise and enforceable, if accepted by the panel. Finally, the panel must ensure that any action taken is proportionate and appropriate to the circumstances.

123.126 Mr Bulger began his final representation and stated that as a result of the complaints evidence had been gathered for the review process. Significant noise disturbance had been suffered by the residents, but he felt that the suggested conditions from the PLH would satisfy any outstanding Environmental Protection concerns. The outstanding concern was around live music at the premises, however, Mr Bulger felt that a curtailment of live music to finish at 23:00 hours would resolve this issue however, and noted that noise disturbance could be controlled through the Environmental Health Act 1990.

123.127 Mr Pickard began his final representation on behalf of the Health and Safety Team and stated that a number of serious incidents had occurred at the premises, of which they had not been notified. An investigation was ongoing and as a result of today's hearing, Mr Pickard also expressed concern about violence at work issues, which needed to be taken in to account.

123.128 Mr Savil began his final representation and stated that it was fair to say that Sussex Police should have acted sooner in this case. The police recognised that the premises had a commercial benefit to the area, but the Premises Licence Holder also had a paramount responsibility to uphold the licensing objectives. There had been criticism of the police and the Council for not informing the DPS of the problems occurring at the premises, however he believed that Mr Gill had recognised that it was his responsibility to manage his premises. Mr Savil felt that the Panel needed to assess whether the police material presented at the meeting was accurate and correct, and if so then they should be satisfied that the premises was associated with significant crime and disorder and public nuisance.

Mr Savil was in no doubt that the premises was undermining the licensing objectives and felt that Mr Gill was an absentee DPS. The police had no confidence in the future management of this premises and believed that Mr Gill wanted to wash his hands of the venture. The licence needed to be treated with circumspection, as there was no guarantee that new owners would improve the overall standards of the premises. In this instance removal of the DPS would not solve the problems of mismanagement at the premises, as Mr Gill would likely remain the PLH. Finally, the police did not feel a reputable owner should be hindered with onerous conditions due to Mr Gill's mismanagement of the premises.

123.129 Mrs Williams had nothing further to add to her representation.

123.130 Councillor Fryer had nothing further to add to her representation.

123.131 Mr Smith began his final representation and stated that Mr Gill was not an absentee DPS and he had striven to work in partnership with the Environmental Health and Health and Safety Teams at Brighton & Hove City Council.

He did not feel that Mr Gill's lack of additional training should be an issue as most licence holders did not receive additional training once receiving their licence.

Mr Gill recognised there were problems at the premises and accepted the review process of the premises. He had successfully operated the club for 11 years

however and national guidance stressed that it was good practice for the Licensing Authority and Responsible Authorities to give early warnings to Licence Holders if there were problems identified at a premises. There was no evidence that the police flagged up any problems with Mr Gill or Mr Dempster, aside from the letters regarding the under age disco.

There had been no face-to-face communication with Mr Gill to work out an action plan for the premises and Mr Gill was not aware that information was not being passed on to the police. He recognised that practiced needed to change at the establishment, and he could agree that extra training was needed in some areas, however, Mr Gill had learned serious lessons during this review process and was in the process of rectifying the identified problems. Mr Smith questioned whether this case was serious enough to warrant a revocation of the licence. Mr Gill was unaware of the issues and so could not be ignoring them.

Mr Smith stated that the Panel needed to take the necessary and proportionate steps to uphold the licensing objectives. This must be balanced with the financial impact any action may have on the business. The conditions suggested by the PLH were necessary, proportionate and enforceable conditions and had been established in conjunction with Environmental Health Officers. Mr Smith added that a range of options were open to the Panel and the Members should seek to establish the cause of concern at the premises, and remedy this problem appropriately. He believed that the proposed conditions would rectify the reporting procedures at the premises, which were felt to be the main cause of concern in this instance.

Finally, Mr Smith stated that the Panel could not take into consideration the fact that Mr Gill might sell the premises as this was not relevant to the operation of the licence.

123.132 **RESOLVED –**

The panel considered the application for review, relevant representations, and submissions of the responsible authorities, interested parties, and of the applicants.

The Panel listened very carefully to all the information before them, both written and oral representations. They heard evidence of how these premises have been managed over the last twelve months. They believed that the licensing objectives of: Prevention of Crime and Disorder, Public Safety and Prevention of Public Nuisance, had been compromised in some way.

The Panel had to consider what they, as licensing authority, could do to promote those licensing objectives. There were several options open to them and they considered each one. In doing so there were concerns over the current management of the premises and the triple role of Designated Premises Supervisor, personal licence holder and club owner in the one person.

After hearing evidence from the police, the Environmental Protection Team, the Health and Safety Team and local residents, they did not have confidence that Mr Gill would be able to put the necessary changes into operation to uphold the licensing objectives,

Therefore the panel considered it necessary to revoke this premises licence.

This step was serious and with financial consequences but the panel considered that the public interest outweighed the financial impact to the owner.

The Panel believed that this step was necessary and proportionate to uphold the licensing objectives.

The meeting concluded at 5.00pm

Signed

Chairman

Dated this

day of