



LEGAL

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Clifton Davies Consultancy Limited specialises in all licensing, gambling and regulatory issues affecting the pub and bar industry. The views expressed by David Clifton and Suzanne Davies are given without any assumption of liability on their part. If you have any questions, do get in touch and they will be pleased to provide answers, either via this page or direct. **E:** dc@cliftdavies.com / sd@cliftdavies.com **W:** cliftdavies.com

Don't forget the effect of insolvency on your licence

Suzanne Davies, director of Clifton Davies Consultancy Limited, explains what to bear in mind if financial pressures on your business raise the spectre of insolvency

You might have read about last November's Office for National Statistics analysis, revealing that more than 11,000 pubs had closed in the UK in the previous 10 years, representing a fall of almost a quarter (23%).

To put that into perspective, its research showed that it was primarily small pubs that were disappearing, with big pub chains consolidating their businesses around bigger bars.

Now, we hear from the Altus Group that during 2018 close to £300m in total was paid out by The Insolvency Service in terms of redundancy pay, unpaid wages, overtime, holiday pay and commission in relation to companies that had entered administration, liquidation or company voluntary arrangements (CVAs).

In a year that saw insolvencies of food and beverage businesses increase by 17.9%, the above sum represents an increase of almost a third more than was paid out during 2017, leading Altus to say: "High streets the length and breadth of the country have been battling a perfect storm of rising costs from business rates, rents and minimum wage rules at a time of falling sales amid uncertainty over Brexit, resulting in subdued customer confidence."

If 2018 was the year of the CVA, there is speculation that 2019 will turn out to be the year of administrations – it is worth a reminder that the consequence of insolvency of a premises licence holding company is that its premises licences will lapse immediately (making alcohol sales and provision of other licensable activities unlawful). That will be so whether the insolvency takes place by way of liquidation, appointment of an administrator or administrative receiver, or the approval of a CVA proposed by the company's directors.

If, within 28 days of any of those circumstances occurring, reinstatement action of the type I mention below is not taken, the premises licence will be lost forever with no guarantee that a replacement licence will be granted at all or on the same terms.

Reinstatement of the premises licence is possible if, within (but not later than) that 28 day period, either (a) an interim authority notice is given to the licensing authority and the police by the freeholder, leaseholder or the premises licence holder's insolvency practitioner, or (b) an application to transfer the premises licence (to take immediate effect) is made.

This is very much an area where urgent specialist licensing advice is essential. Too often, neither directors of premises licence holding companies nor insolvency practitioners take into account what is required to ensure that licensed premises can continue trading pursuant to their licences when an act of insolvency occurs. This can mean that sometimes the landlord of a leased pub wanting to protect the value of its reversionary interest can beat the insolvency practitioner in the race to reinstate the premises licence.

The same licensing processes apply where the holder of a premises is an individual who becomes bankrupt or is the subject of an individual voluntary arrangement.

With a new CGA and CPL survey of leading industry figures indicating that over half of businesses with a focus on drink show market optimism for 2019, in contrast with food-led businesses for whom just one in three are optimistic, I hope that not many readers will need to resort to my above advice, but I am here if you need me. 

QUESTIONS & ANSWERS

Q: Will any more Late Night Levies be introduced anywhere?

A: Although the government rejected a House of Lords Committee recommendation in 2017 to abolish the Late Night Levy, many councils have concluded that, pending implementation of provisions within the Policing and Crime Act 2017 to allow the targeting of the levy in specific geographical areas within council boundaries, business improvement districts provide greater flexibility than the levy. One might have thought it unlikely that many more Late Night Levies would be introduced in the meantime. It is surprising therefore that two London Boroughs, Southwark and Redbridge, are currently running public consultations (until 19 and 21 May respectively) on whether to introduce a levy. Time will tell whether they do.

Q: How many government inquiries are taking place into business rates?

A: I understand why you ask this question. A Treasury Committee inquiry on how government business rates policy has impacted business finished on 2 April. That was a different process than the Housing, Communities and Local Government Select Committee's inquiry into high streets and town centres, whose report (published in February) recommended lower business rates to encourage regeneration of town and city centres. In addition, UKHospitality has recently called for revenue raised from introduction in April 2020 of the Digital Services Tax to be used "to slash extortionately high costs of business rates on the high street rather than let it disappear into Treasury coffers."

Q: Will more underage tests be conducted on gaming machines in pubs?

A: Yes. Grave concerns were expressed by the Gambling Commission last November after tests on a sample of pubs in England revealed an 89% failure rate in stopping children from playing on pub gaming machines. A similar failure rate was reported in January arising from tests on 12 pubs in Bolton and, following additional failures in the London Borough of Barnet, the Commission has warned that it will continue to work with councils on underage testing. Age verification checks and proper supervision of machine locations is essential, as explained in a code of practice available on the Commission's website.