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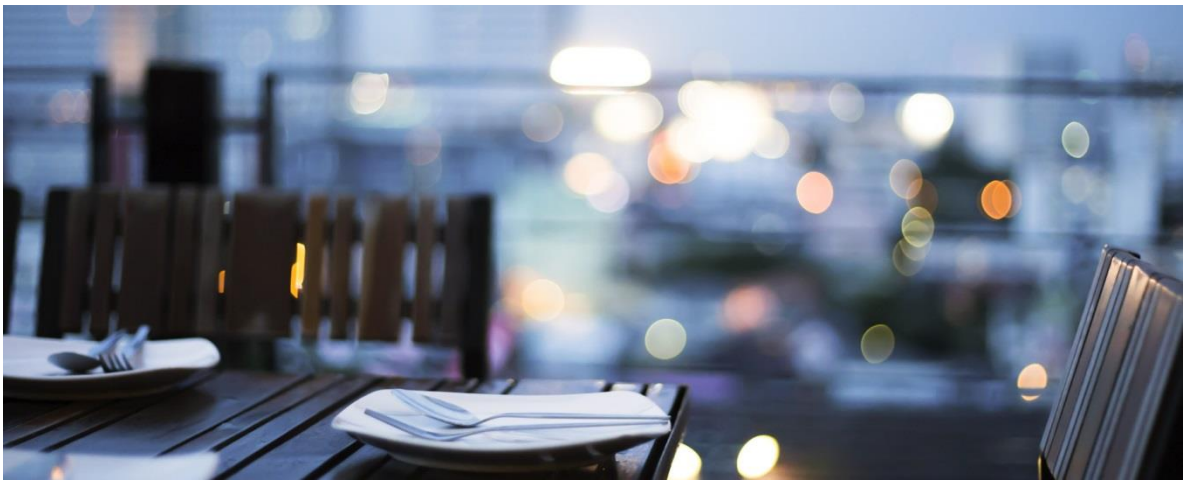

Summer 2017

Leisure update

Welcome to our Summer 2017 edition of the leisure update.

Looking back at the editorial I wrote a few months ago for the winter edition, I'm struck by how much has happened in such a short space of time. Back then, we were in the immediate aftermath of the Supreme Court's decision in the *Miller* case and heading full steam ahead for triggering Article 50 by the end of March. The Labour party was riddled by in-fighting and discord and the Conservatives could seemingly do no wrong in the eyes of large swathes of the electorate. Theresa May was still reiterating the message that she wouldn't call an election before 2020 because it would cause instability...

How times change. The Government, following on from its disastrous election campaign, is now a shadow of its former self and reliant on the DUP of Northern Ireland to prop it up with a wafer-thin majority. Even if the Government can survive (and that is by no means guaranteed), this inevitably means that any plans it had before the election to push through an ambitious new legislative agenda will now be seriously curtailed. Its more contentious manifesto commitments are likely to be dropped but where does it leave the Brexit negotiations? I was fascinated to read this week that one of the key proponents of Mrs May calling the election in the first place was Jean-Claude Juncker himself. He and other senior EU diplomats apparently thought that a larger majority would give the Government the buffer it needed during the pinch points of the negotiations which in turn would give them the best chance of securing a deal. How that strategy has back-fired. Still, the optimist in me wants to believe that because Mrs May will inevitably now have to build a cross-party consensus she may have to make pro-business concessions which involve a softer line on immigration in return for single market access. But with MPs in Westminster riven with disagreement on this issue and the Government so weak, just building such a consensus domestically will be an enormous challenge, let alone then agreeing a deal with all 27 remaining EU member states - and all the while the two-year period under Article 50 is ebbing away.

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With all of this going on, it's easy to forget that there are other issues that businesses are grappling with and this edition we bring you an interesting and diverse collection of articles.

- With Taittinger's announcement that it will plant its first ever vines in English soil and British wines enjoying a major boom, IP specialist James Longster explores the issue of geographical indicators (GIs) in the context of Brexit.

- Employment specialist Adam Rice looks at the issue of dress codes and the potential issues for businesses in the sector which are looking to impose standards of dress and appearance on their employees.

- Following Sadiq Khan's announcement that he will not underwrite the £3m annual maintenance bill for the Garden Bridge, real estate specialist Sarah Quy thinks this could be the end of the road for the project.

- Planning specialist Romola Parish ponders the future of the Licensing Act following the House of Lords' recent review.

We hope you enjoy the edition.

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Summer 2017

A sparkling investment in the UK wine sector

In another boon to the UK's leisure sector, Champagne House Taittinger planted its first ever vines in English soil in May this year. The last decade has seen significant investment in British wines with a 135 per cent increase in vineyard acreage over that period according to the English Wine Producers trade body. Taittinger's venture is however the first investment in the UK by a "grand marque" house.

Taittinger's joint venture with its UK importer, Hatch Mansfield, aims to produce its first bottle in 2023, but claims of an "English champagne" are a lazy use of language (even if Taittinger is involved) and English sparkling wine producers will be well aware that this is the case.

From a legal perspective, "champagne" is what is known as a geographical indicator (a GI) – this is akin to a trade mark but importantly, it solely relates to the origin of a product, or the location of the production, processing or preparation of a product. If a GI exists in respect of a product, then the only producers who can use the GI are those that fall within the scope of the GI. To use the GI "champagne", a wine producer must produce the wine within the French "Champagne" region, and comply with certain prescribed standards. British examples of GIs include "Jersey Royal potatoes" and "Stilton blue cheese".

Much has been made about the impact of Brexit on the use of trademarks and how/if an existing EU registered trademark will provide protection within the UK following Brexit, but very little has been said about the impact on GIs. GIs within the EU are currently governed at an EU level with no legal provision in the UK for national GIs. Existing EU GIs obtained by British companies are likely to continue to exist within the EU (EU membership isn't necessary as demonstrated by, for example, the EU GI in respect of "Colombian coffee"), but it is likely that a new national structure will need to be set up in the UK to grant and administer UK GIs – Champagne houses like Taittinger will obviously be very keen to see their rights under their existing GI replicated within the UK. Aside from provenance, there is also an economic impact –

products protected by a GI on average sell for 2.3 times as much as a non-GI protected equivalent.

Whilst we imagine that this will not be top of the government's or the EU's list of points for negotiation in the upcoming Brexit talks, it will be an incredibly important issue for the circa 1150 producers who operate under, and place huge importance on, GIs for their trade.

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Summer 2017

Dress codes: what not to wear?

Dress codes have made headlines in recent months, with the Government rejecting calls to legislate on what employers can and cannot ask employees to wear at work. More than 150,000 people signed a petition urging reform, after a temp receptionist was sent home for not wearing high heels in breach of her agency's dress code.

The Dorchester hotel also received negative press last year after its grooming guidelines were leaked. The guidelines reportedly asked female employees to avoid oily skin, bad breath or garish makeup, as well as encouraging them to shave their legs and ensure fingernails were manicured.

These cases highlight the difficult question of how far employers can dictate their employees' appearance at work.

Employers can, as a general rule, regulate standards of dress and grooming or require staff to wear a uniform, particularly in sectors like hospitality where image is important. However, employers must be careful not to fall foul of discrimination law.

Sex discrimination

Employers who set higher standards for female employees than they do for male staff, or vice versa, could face sex discrimination claims. However, so long as the overall standard of dress is the same, it is not necessarily discriminatory to have different requirements for men and women. If men are required to wear a collar and tie, for example, then women should be required to dress equally smartly.

More difficult questions arise when it comes to issues like hairstyles. Some employers might be happy for females to wear long hair loose but would expect men to cut it or tie it back. Employers have historically been able to justify asking men to keep hair short if they require all staff to have a conventionally smart appearance. However, conventional standards of dress are changing and it is more likely that an employer could justify requiring men to tie long hair back than to cut it. This would also help avoid the risk of race or religious discrimination.

Employers should also consider the impact of any dress code or uniform on transsexual employees, who should generally be allowed to dress according to the gender with which they identify.

Accommodating cultural and religious requirements

Employers should always accommodate cultural or religious items wherever possible, even if this means making exceptions to a uniform or dress

code. Failure to do so would amount to discrimination on the grounds of race, religion or belief unless it can be justified.

A requirement for employees to be clean-shaven, for example, could discriminate against Muslim employees who wear a beard. Uniforms that do not permit jewellery or tattoos could equally discriminate against employees of certain cultures or faiths.

Employers can justify such requirements if they are necessary to achieve a legitimate aim, such as maintaining hygiene standards for employees working with food or ensuring a uniformly smart appearance for customer-facing staff. Even then, employers should be as flexible as they can without detracting from such aims – for example, it would not be justified to insist on staff being clean-shaven if the same hygiene standards could be met by wearing a 'snood' or similar covering.

Uniforms and grooming standards

Uniforms and grooming standards are common in the hospitality sector and are generally accepted as necessary to ensure a smart appearance for customer-facing staff. However, deviations should be allowed in order to accommodate those with special requirements.

Fashion retailer Abercrombie & Fitch made headlines after it lost a harassment claim from an employee with a prosthetic arm who wanted to wear a cardigan at work. A manager had instructed her to work in the stockroom instead of the shop floor because the cardigan breached the company's 'look' policy, which required staff to wear short-sleeve polo shirts. Interestingly, the company had granted the employee a dispensation but the offending manager was unaware of this, highlighting the need for all managers to be informed of their obligations and any dress code exemptions.

What should employers do?

In implementing and enforcing a dress codes or grooming standards, it is good practice for employers to ask themselves:

- What is the policy trying to achieve (for example, protecting the health and safety of staff or customers, or ensuring a smart business-like appearance)?
- Are equal standards being expected of male and female staff?
- Are any of the dress code requirements likely to disadvantage employees of a particular sex, race, religion or belief, or those with a disability?
- If so, can any changes be made to accommodate these without detracting too much from the aims of the dress code?

If an employee asks for special treatment for cultural or religious reasons, or due to a disability, employers should not reject this outright but carefully consider whether an accommodation can be made, endeavouring to be as flexible as possible.

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Summer 2017

Adieu to the Garden Bridge

The Garden Bridge was envisaged as a "breath-taking new public garden" stretching across the River Thames. The design is for a 366 metre long copper-nickel structure extending from Temple on the north side of the Thames to the South Bank and featuring 270 trees and thousands of other plants.

It was intended to offer people different ways to experience the garden; a quick and beautiful route across the river for commuters and, for others with more time on their hands, a series of green spaces in which to stop and linger. It would be free for all but would be closed from time to time in the evening to allow for corporate functions, the income generated by which would provide part of the finance for its upkeep.

Its supporters argue that the Bridge would be a big tourist asset and a useful pedestrian link, whereas critics argue that it is planned for a part of London which is already well served by bridges and that it would block many unique views of and from the river. There have also been questions about why taxpayers' money should be spent on a link that will be privately run by the Garden Bridge Trust, and about the apparent lack of transparency surrounding many of the key decisions made in relation to the project.

Some of the legal issues raised by the Bridge project during its chequered history

- Following nomination by a local protest group, Lambeth Council has listed the site on which the southern end of the Bridge would land as an "asset of community value". This means that before the Trust could buy or lease it, the local community would have six months to put together a bid to buy the land.
- Questions have been raised by commentators including the *Architect's Journal* about the validity of Transport for London's process to appoint Heatherwick Studios as designer and Arup as engineer.
- In 2015, protesters were given leave to start a judicial review claim in relation to the grant of planning consent by Lambeth Council. This was not pursued.

When Khan became mayor of London he was in favour of the project. However, he subsequently commissioned MP Margaret Hodge to investigate whether the bridge represents value for public money. Her report found that:

- the business case for the bridge was weak, and the purpose of the bridge was confused and unclear

- the tendering process, under which Heatherwick's team was chosen to design the structure and engineering company Arup selected to lead the construction, was "not open, fair or competitive"
- it was likely to cost more than £200 million, whereas initial estimated were around £60 million
- £37.4 million of public funds has already been spent without any building work taking place
- the Garden Bridge Trust has lost major donors and secured only £69 million in private pledges, leaving a gap of at least £70 million; the risk to the taxpayer has therefore intensified.

The Trust has refuted many of Hodge's findings but in a letter to the Garden Bridge Trust on 28 April the Mayor said that he will not provide a financial guarantee for the £3m annual maintenance bill. The signing of operation and maintenance guarantees is a requirement of the Port of London Authority and is a condition of the planning approvals from the London Borough of Lambeth and Westminster City Council. Guarantees must be in place before construction can commence.

It is open to the Garden Bridge Trust to seek to amend the Port of London Authority's requirement and the planning conditions from the local authorities; however the planning permission expires if work does not start by December.

This letter could therefore represent the end of the road for the Garden Bridge.

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Summer 2017

Calling time on the Licensing Act?

The Licensing Act 2003, which came into force in 2005, has recently been subject to scrutiny by the House of Lords. Its report, issued in April 2017, highlights some serious issues with the current system, and proposes some solutions, which could bring the regime closer to the existing planning regime.

What are the main concerns?

The report highlights a number of concerns about the current system, including the way that licensing committees currently operate. These include:

- a clear lack of training of committee members
- a lack of resources
- inconsistencies and lack of transparency in the committees' decision-making.

What reforms are proposed?

The key proposal for reform is that there should be a degree of merger between the licensing and planning systems, in the hope that this might streamline matters by both committees considering the same material at the same time. It might also encourage and facilitate a proper understanding of the different legal regimes and proper application of the respective laws.

What is the degree of overlap at present between the planning and the licensing systems?

There are certain similarities between the two regimes, and there are also important differences.

- Having planning consent does not necessarily guarantee grant of a premises licence.
- A planning consent attaches to the property itself and is not (usually) personal.
- A premises licence is concerned with the operation of the use permitted by planning.
- The licensing system requires a responsible person to be designated as a premises manager and to have overall responsibility for the sale of alcohol on his premises.
- Licences may be reviewed annually; this is not the case for planning unless the consent is specifically granted as a temporary consent which, on expiry, must be reapplied for.
- Licences can be revoked for breaches or because of operational irregularities, which is not usually the case with planning consents.

There is also a difference in jurisdictions. The magistrates' court deals with licensing enforcement. Local Planning Authorities deal with planning enforcement (though may apply for injunctions from the magistrates' court). There is scope to include licensing appeals in the jurisdiction of the planning court, where suitably qualified judges familiar with the issues that both licensing and planning are concerned with, might also apply this knowledge and experience to licensing cases. This would, perhaps, create a greater, more consistent (and more independent?) jurisdictional distance between nightclub or pub owners and local magistrates and local police who may find themselves at odds over licensing matters.

When will any changes happen?

The committee acknowledges that the major changes that it suggests will require primary legislation and that this will be unlikely to happen in the near future. However, it also points out that several of the necessary improvements could be made more easily, such as amending the statutory guidance to:

- make clear the responsibility of the chair of a licensing committee for enforcing standards of conduct of members of sub-committees, including deciding where necessary whether individual councillors should be disqualified from sitting, either in particular cases or at all
- introduce into the guidance a requirement that a councillor who is a member of a licensing committee must not take part in any proceedings of the committee or a sub-committee until they have received training to the standard set out in the guidance
- indicate the degree of formality required, the structure of hearings, and the order in which the parties should normally speak; it should make clear that parties must be allowed sufficient time to make their representations
- make clear that a licensing committee, far from ignoring any relevant decision already taken by a planning committee, should take it into account and where appropriate follow it; and vice versa.

They also recommend that where on a summary review a licence is revoked and the livelihood of the licensee is at stake, magistrates' courts should list appeals for hearing as soon as they are ready.

What next?

The Government has two months to decide how to respond, and then the House of Lords will debate the report. However, in the current political situation, it is unlikely to be high on their agenda.

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