



## Lap Dancing? Not in My Back Yard!

## BRIEFING

### Introduction

Regulation of lap dancing venues has recently become a media and political hot topic. Whilst media reporting of the issue has brought the problems with the existing law to the public attention, writers have struggled to precisely outline the current legal position. This article attempts to explain the law as it currently stands, before exploring its effects and the potential for reform.

### The Law

The Licensing Act 2003 (“the 2003 Act”) does not seek to censor or regulate the specific content of entertainment and performances, apart from to promote the four licensing objectives of prevention of crime and disorder, public safety, prevention of public nuisance and the protection of children from harm. The Government’s justification for this approach was that regulation already exists in other places including the Indecent Displays (Control) Act 1981 (“the 1981 Act”) and the Local Government (Miscellaneous Provisions) Act 1982 (“the 1982 Act”).

The 1981 Act regulates displays such as advertising material and exterior decoration of premises, but has no effect on an actual lap dancing performance.

The 1982 Act gives local councils the optional power to subject ‘sex establishments’ to much greater scrutiny. These licences must be renewed

annually, and can be refused on the grounds that the business would be unsuitable for the area. A ‘sex establishment’ is defined to be a sex shop or a sex cinema. Lap dancing cannot be considered to fall within this definition.

Within London, the position is different. In addition to a sex shop/cinema, a ‘sex establishment’ includes a ‘sex encounter establishment’. The definition of ‘sex encounter establishment’ includes “...premises at which entertainments which are not unlawful are provided by one or more persons who are without clothes or who expose their breasts...” Lap dancing is clearly caught.

However, if there is a loophole in the law, it is here. Premises that hold and use a premises licence under the 2003 Act and have permission to provide regulated entertainment (which includes dancing or musical performance) or late night refreshment (supply of hot food or drink) are excluded from ‘sex encounter establishment’ regulation. In these cases the council has no more power to regulate lap dancing venues than it does to regulate late night cafés, nightclubs and kebab vans.

### Current Situation

The current state of the law has two major consequences. An existing bar or nightclub will often be able to introduce lap dancing without the need for a new licence and without even having to inform the local authorities. This happened



recently in the Barbican area of Plymouth, sparking local and national media interest.

Additionally, local councils have limited powers to restrict new applications for lap dancing venues. An objection must be lodged by a 'responsible authority' (police, environmental health etc) or an interested party, such as a resident who lives in the vicinity. If no objection is lodged, then the application must be granted.

An application may only be rejected, or conditions on the licence imposed, in line with the four licensing objectives. It is harder to do this than it might first seem. Objections on 'protection of children from harm grounds' may be answered by a ban on under-18s and restrictions on advertisement. Worries about solicitation outside the club may be allayed by a condition requiring dancers to leave the premises by pre-booked taxi. Operators may argue that there is little evidence to suggest public nuisance is any more acute outside lap dancing premises than outside late night bars. Offence against morality or the lowering of surrounding property values are not valid licensing objections. Nor is overwhelming opposition of local residents unless somehow tied in with the four licensing objectives.

Councils are currently left to regulate as best they can with the tools at their disposal. A clear and comprehensive licensing policy can help restrict the proliferation of lap dancing venues seen in recent years. For example, Westminster Council places a "no nudity" clause on all licence applications for premises where any form of non-nude regulated entertainment is to take place.

Westminster's policy states that applications involving nudity, striptease or sex related entertainment will only be granted in exceptional circumstances and if the proposal meets certain criteria. However such policies may simply move the problem into a neighbouring borough, where controls are less strict and licensing policies less precise. Westminster's stance has resulted in operators looking at neighbouring Southwark, City of London and Camden.

### **Reform?**

This issue forms part of the wider debate on the level of Government regulation in everyday life. Almost all seek a concentrated effort to eliminate those premises where 'lap dancing' is a poorly disguised front for prostitution and even people trafficking. As in any line of business, there are good operators and there are bad operators. Divergence in opinion comes over the level of regulation that the good operators should be subject to. Some seek an outright ban on all lap dancing on morality grounds. An opposing view is that transactions between consenting adults are not situations which the Government should be regulating, and that if you don't approve of them, you don't have to go in.

Other people will be accepting of the concept of lap dancing clubs until one opens next door. Whilst so called 'nimbyism' is much derided, very few would feel comfortable with the prospect of living next to or on top of a lap dancing club. It can certainly be argued that the current licensing objectives are inadequate vehicles for local residents to voice their concerns.



There are two obvious prospects for legislative reform. The first is to bring all lap dancing nationwide under the 1982 Act, regardless of whether or not a premises licence exists. This is what was suggested in a recent Private Member's Bill in the House of Commons and the Government has suggested it will revisit this idea shortly. The second is to formally incorporate lap dancing regulation into the 2003 Act, and to allow a wider range of objections to the licensing application than currently exist. The former seems the simpler of the two solutions.

### **In the meantime...**

Concerned residents and other parties should consider some other weapons in their armoury. For new lap dancing venues planning permission or change of use will sometimes be needed in addition to the premises licence.

For existing lap dancing clubs, review of a premises licence is possible. Residents would need to demonstrate that the club is in breach of its licence conditions and/or is increasing crime and disorder or public nuisance, or is acting in such a manner that is detrimental to public safety or the prevention of children from harm. The review may result in the licence being varied or even revoked. The problem is that it is onerous for ordinary residents to gather a convincing body of evidence in support of such a review. This is particularly so when any disturbances occur along the street rather than in or directly outside the affected premises. Whether the recent actions of Channel 4's *Dispatches* team (who took hidden

cameras into lap dancing clubs to highlight unlawful behaviour) will be widely replicated remains to be seen.

Landlords should also go back and have a careful look at the leases they have granted. It may be that an operator, by permitting lap dancing on the premises, is in breach a condition of the lease. A landlord in this position may be able to prevent lap dancing on the premises, or failing that seek to forfeit the lease.

### **Conclusion**

Those wishing to oppose the opening of a lap dancing club may, particularly if the premises are already licensed, have few weapons in their armoury. They do, however, have the powerful remedy of review. If there is evidence that the lap dancing club is, in fact, creating crime and disorder, public nuisance, or is detrimental to public safety or the protection of children from harm, a Licensing Sub Committee, made up of locally elected councillors, may be sympathetic and revoke the licence or impose conditions restricting the activities of the club. Those considering a review should prepare their case carefully and try to enlist the support of the police or other responsible authorities.

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