From bar to Bar: the notorious case of the Porky Pint

During the height of the pandemic, a strand of US-inspired libertarianism centred briefly on a humble UK boozer, the Porky Pint in Billingham, which has become the first pub in recent memory to be immortalised in the name of an actual High Court case. *The Porky Pint Ltd v Stockton on Tees Borough Council* [2023] EWHC 128 (Admin). It is a kind of legacy, but not one sought by its owner, Paul Henderson, who actually wanted to draw attention to the oppressive tendencies of an overly officious nanny state, imperiously ordering its citizens about without evidence, authority or right, muzzling them by forcing them to wear masks and other strictures. He did so by declaring the Great Reopening, inviting in the world at large to sup and commune, in defiance of the transmogrifying but ever-stern Covid-19 regulations. That attempt washed up on the rocks of the Administrative Court sitting in Leeds, which dismissed his challenge against the revocation of his licence by the licensing sub-committee of Stockton on Tees Borough Council, and which was distinctly unimpressed by the parallel drawn by his erstwhile advocate (someone called Kolvin) between his civil disobedience and that of the suffragettes.

Along the way, Mr. Henderson has done a great service to the licensing profession, by giving the august personage of the Judge, Sir Michael Fordham, an occasion to expatiate on the nature of the public safety licensing objective and the approach to interpretation of the licensing objectives more generally. Are they hard-edged concepts with opportunity for whole cases to fall through the gaps, or are they made of more pliable stuff, a sort of legislative epoxy resin, to ensure seamless control? You guess which.

Learned Counsel to the Porky Pint argued that Parliament had made a deliberate choice to legislate for public safety and not public health, which are distinct concepts, and it was not for a licensing sub-committee to fill the gaps. In essence (I respectfully paraphrase the submission) the sub-committee is not Humpty Dumpty, who notoriously insisted that "When I use a word it means just what I choose it to mean". Rather, the words used by Parliament have an objective, ascertainable meaning. The Scottish Parliament had included a fifth licensing objective of public health, but the UK Parliament hadn't, so however egregious Mr Henderson's conduct may have been, it did not engage any of the licensing objectives, and therefore was not something of which the licensing system could take cognisance.

Some more recondite themes were also pursued including that the Covid-19 pandemic, in reality, was not a great and particular threat and was arguably not a pandemic at all. I note these not for their wider licensing significance, but as a mark of respect to members of my profession, who are obliged to run arguments with a straight face.

Cutting to the chase, the Honourable Mr Justice Fordham was not buying any of it. He was on board with the notion that the meaning of the licensing objective of public safety is a question of law for the court, derived from the words used by Parliament and the discernible statutory purpose. But objectives are not hard-edged: they are capable of overlapping. Just because public health is involved does not mean that public safety is not engaged. There is room for evaluative judgement in the way the objectives are applied. This case, he thought, was not about what the licensing objectives mean, but how they come to be applied.

I have tried to paraphrase a sophisticated judgment by an esteemed public lawyer. At the risk of reductivism, I shall summarise it in this way. Walking into a pub and giving someone your cold is, at worst, public health. Walking in and giving everyone Covid can be public safety: whether it is public safety is a matter for the evaluative judgment of the sub-committee. And there the matter rests.

Time gentlemen please.

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