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Your reference:

Our reference: ENT/96 469/2/9

5 August 1996

The Chief Executive of District Councils in England
The Chief Executive of County & County Borough Councils in Wales
The Chief Executive of London Borough Councils
The Chief Executive of the Isle of Wight Council
The Town Clerk of the City of London
The Chief Officer of Police in England and Wales

HOME OFFICE CIRCULAR NO: 39/1996 STAGE HYPNOTISM: REVIEW OF THE HYPNOTISM ACT 1952

This circular advises local authorities of the outcome of the Home Office's review of the Hypnotism Act 1952 and sets out revised model conditions which authorities are encouraged to attach to licences for public performances of stage hypnotism.

Background

2. On 12 December 1994 the House of Commons held an adjournment debate to discuss public and parliamentary concern about alleged harm suffered by some participants in public performances of stage hypnotism. This followed a period when several cases of alleged harm had received considerable media attention. The cases concerned both physical and psychological effects. At the end of the debate the then Home Office Minister, Mr Michael Forsyth, announced that a review was to be undertaken into the workings of the Hypnotism Act 1952. The review would examine evidence of possible harm to people taking part in public entertainments involving hypnotism and consider the appropriateness of the present regime of control that the Act provides, including existing arrangements for enforcement.

3. The review of medical evidence and available research literature was carried out by a panel of experts who were nominated by the British Psychological Society and the Royal College of Psychiatrists. The panel members were not experts in hypnosis but were appointed on the strength of their professional expertise in the evaluation of clinical evidence and research literature.

4. The Home Office issued a questionnaire to all local authorities in England and Wales in March 1995 which sought information about current licensing practice (eg, whether separate authority is required for each performance and whether conditions are imposed), the numbers of performances taking place and the extent to which problems have been encountered. Almost 300 (over 70%) of the authorities replied. The Scottish Office conducted a similar exercise and received a further 51 replies.

5. Publication of the expert panel's report was announced in Parliament on 7 November 1995. The panel concluded that there was no evidence of serious risk to participants in stage hypnosis, and that any risk which does exist is much less significant than that involved in many other activities. They considered that the small potential risk which does exist could be alleviated through applying clearer conditions to the regulation of performances and providing more information to audiences to enable them to make an informed choice before deciding whether to participate.

6. On 18 December 1995 the Home Office issued a consultation paper which proposed how the recommendations of the expert panel and the issues raised by local authorities might best be addressed, and included draft revised model conditions.

7. We received 39 responses direct from stage hypnotists, local authorities and other interested parties. In addition, the Association of District Councils and the Association of Metropolitan Authorities provided summaries of responses received from their members.

Changes which would require legislation

8. Some of the issues arising from the review could only be addressed through primary legislation. These are set out at paragraphs 9 - 13 below. There is no immediate prospect of legislation to amend the 1952 Act, but we have indicated those changes which we consider potential candidates for legislation when an opportunity arises. In that event, any additional burden or cost thereby imposed would have to be justified under a formal process of compliance cost and risk assessment.

Local authority charges

9. There was general agreement in the responses to the consultation paper that local authorities outside London should be able to charge a fee for granting approval for stage hypnotism performances under the 1952 Act (such provision already exists for London authorities). It was regarded as inequitable that where applicants do not hold a public entertainments licence (PEL) the local authority has to meet the administrative and enforcement costs of licensing a commercial event from resources which might otherwise have been spent on local services.

10. Any future legislation would need to incorporate safeguards to prevent excessive charging. This might mean prohibiting further charges where the venue already held an annual PEL and limiting the charge for other approvals to no more than the cost of an occasional licence.

Powers of entry

11. The 1952 Act provides a power of entry for police constables where it is believed that a performance is taking place, or may be taking place, in contravention of the Act. There was strong support in the responses to the consultation paper for extending such a power to local authority officers. Whilst the Home Office would be willing to consider such a legislative amendment, we are content that a power of entry can effectively be provided for now by attaching a condition to that effect when approval is granted. Such a provision is included at Section 4(o) in the attached revised model conditions.

Private performances

12. There was some support for extending regulatory powers to cover private performances, but the vast majority of respondents thought the current legislation sufficient. Any attempt to regulate private performances would run into difficulties of definition as well as enforcement and, given the low level of risk identified by the review, we can see no justification for it.

Appeals procedures

13. There was also some support for incorporating a formal appeals procedure into the legislation, but most respondents supported development of local appeals procedures. The way in which local authorities process applications varies enormously, some being dealt with by officers under delegated powers whilst others are considered by councillors at committee meetings. For an appeals mechanism to be effective it needs to reflect these local procedures. One particular difficulty with an appeals mechanism is that unless the appeal can be heard and a judgement made relatively quickly it will often be too late to hold the performance whatever the outcome. Local authorities are encouraged to develop their own appeals procedures, taking due account of issues such as speed, the independence of the appeals body and cost.

Improvements to the present licensing arrangements

14. One particular criticism made in the consultation was that local authorities often have little information or understanding about the activity they are licensing. The organisations representing stage hypnotists have argued that hypnotists should be able to apply to a central licensing body for an annual performance licence.

15. Local authorities are responsible for all other public entertainments licensing and were opposed to losing control of stage hypnotism licensing. However, there was strong support for establishing a central information point to which local authorities could refer for information on performers whose acts had caused concern. This would save them time and resources when considering applications. Any such information point would need to incorporate adequate safeguards to ensure that information held was accurately and fairly recorded.

16. It has been suggested that either the Local Authority Co-ordinating Body on Food and Trading Standards (LACOTS) or The Local Government Licensing Forum might be able to provide this information. The Home Office is consulting those

organisations and the local authority associations about the feasibility of such a scheme. If a central information point is established details will be passed to authorities through the local authority associations.

Revised model conditions

17. The model conditions annexed to this circular incorporate a number of revisions to those included with the consultation paper issued on 18 December 1995. Our aim has been to keep administrative requirements to a minimum and to include only those conditions which are justified by the level of risk found by the review. It would be for individual local authorities to include additional conditions if they thought this necessary to meet local circumstances.

18. The main changes to the model conditions are as follows (the references to previous sections relate to the draft model conditions attached to the December 1995 consultation paper):

Sections 1 & 2: there is no reason why a local authority should require hypnotists to seek specific authority for all their stage performances, even where the venue holds a public entertainments licence (PEL). Local authorities are encouraged to allow stage hypnotism to take place under the PEL as long as the model conditions are adhered to and the authority is given adequate notice to enable it to amend the conditions or refuse authority for a particular performance within a specified period after notification is received. In such situations, where the local authority may merely wish to check the hypnotist's previous experience, the required notice period should be kept to a minimum.

The strict requirement for 28 days' notice of performances can seriously constrain stage hypnotists' ability to accept work, by preventing them from taking bookings at short notice. Local authorities are therefore encouraged, even where the venue does not hold a PEL, to accept shorter notice where possible, for example, if the hypnotist has previously performed at the venue without problems. Advertising, ticket sales etc, cannot reasonably go ahead until approval is granted and local authorities are encouraged to set targets for reaching decisions quickly.

Some local authorities saw no reason for most applications to be copied to fire authorities. We have therefore left this to local authorities' discretion.

Section 3(a): as there are no officially recognised qualifications or organisations, we have removed the request for details of previous experience, relevant qualifications and membership of any relevant organisation. This has been replaced with a request for details of the hypnotist's last three performances, to give an indication of the hypnotist's experience and allow the authority to make any necessary checks.

Previous section 2(b): we have removed the request for a description of the content of the proposed performance. On reflection we consider that as long as the hypnotist abides by the model conditions it is not necessary to have

details of the exact content. It would be difficult to provide if the hypnotist is to have some discretion to tailor the performance to the nature of the audience.

Section 3(b): we have added a final sentence in brackets. Previous refusal of a permission may have nothing to do with the acceptability or otherwise of the individual hypnotist.

Previous sections 3(a) & (b): these have been deleted because they related to the prior notification of the proposed content of the performance.

Section 4(b): the statement to be included on posters and programmes has been revised. The purpose of the statement is to help ensure that the audience are aware that participation remains entirely voluntary and do not feel forced to participate against their will.

Section 4(c): we have amended the insurance cover requirement to allow for it to be met by either the venue or the hypnotist. We have also removed the minimum level. The relatively low level of risk identified by the review does not necessarily justify a requirement for £1,000,000 insurance cover; local authorities will wish to make a judgement in relation to other relevant factors, such as the type and size of venue. We have added a requirement for proof of insurance cover to be available for inspection.

Section 4(e): this now makes it clear that the requirement for a line across the stage is only necessary when the stage is raised above the level of the auditorium. The condition also allows an exception to the prohibition on volunteers crossing the line, where they are told to do so as part of the performance (many performances include a participant being sent back to their seat only to keep returning to the stage having supposedly forgotten something),

Section 4(f): the final sentence before the suggested statement now indicates that the statement may be amended as necessary so long as the overall message remains the same.

Section 4(q): we have removed the prohibition on the use of inducements because this can be interpreted very widely and is not thought to add anything to the risks involved. The condition is now aimed exclusively at preventing use of any form of coercion to force participation.

Section 4(fh): this now relates to any requirement for attendants to be present specifically in **relation** to the hypnotism performance. Any wider requirement for attendants should have been considered when the PEL was issued or, if there is no PEL, can be separately considered by the local authority and added to this condition.

Section 4(i)(i): a hypnotist may often ask volunteers to behave as if they were a child; this is not age **regression**, which seeks to take the subject back to their own childhood.

Section 4(i)(iv): we have **limited** the prohibition to the consumption of harmful or noxious substances. In terms of risk to participants, there is no reason to prevent hypnotists from using normal edible items (onions, **lemons**, etc).

Previous section 3(l)(vi): this prohibited any suggestion which, if it occurred in reality, would cause anxiety or distress. Such a condition would prohibit many of the fanciful suggestions which hypnotists use as a part of their act. In practice volunteers do not react as if they truly believe that there is, for **example**, a giant spider behind them or a bomb under their chair. The opening sentence of section 4(j) prohibits any action which would be likely to cause harm, anxiety or distress.

Section 4(n): the additional sentence in brackets makes it clear that the hypnotist should not treat any problems beyond offering general reassurance and confirmation that all suggestions have been removed.

Section 4(o): as mentioned at paragraph 11 above, this provides a right of entry for local authority officers. Refusal would amount to a breach of the conditions and therefore an offence under the 1952 Act. Any future legislation to include a general power of entry for local authority officers could extend this power to cases where a performance is taking place in contravention of the Act, whether or not approval had been sought.

Enquiries

19. Please address any comments or questions arising from this circular to:

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20. The Annex to Home Office Circular No 42/1989 is hereby superseded.

Jennifer Flaschner

MRS J M FLASCHNER

MODEL CONDITIONS TO BE ATTACHED TO LICENCES FOR THE PERFORMANCE OF STAGE HYPNOTISM

Consents

1. Any **exhibition**, demonstration or performance (hereafter referred to as a "performance") of hypnotism (as defined in the Hypnotism Act 1952) on any person requires the express written consent of the licensing authority and must comply with any attached conditions. The authority may consent either under the terms of a public entertainments licence or under the provisions of the Hypnotism Act 1952.

Applications

2. An application for consent under condition 1 shall be in writing and signed by the applicant or his agent and shall normally be made not less than 28 days in advance of the performance concerned. This period may be reduced in the case of a hypnotist who has performed at the same venue within the last three years without any problems occurring. The authority will normally respond within 7-14 days; less where the hypnotist has previously performed at the same venue. The applicant must at the same time forward a copy of the application to the chief officer of police; and the authority may also copy it to the local fire authority if it considers this necessary.
3. The application shall contain the following;
 - (a) the name (both real and stage, if different) and address of the person who will give the performance (hereafter referred to as the "hypnotist"), along with details of their last three performances (where and when); and
 - (b) a statement as to whether, and if so giving full details thereof, the hypnotist has been previously refused, or had withdrawn, a consent by any licensing authority or been convicted of an offence under the Hypnotism Act 1952 or of an offence involving the breach of a condition regulating or prohibiting the giving of a performance of hypnotism on any person at a place licensed for public entertainment. (Refusal of consent by another authority does not necessarily indicate that the particular hypnotist is unacceptable and will not of itself prejudice the application.)

Conditions

4. The following conditions shall apply to any consent given:

Publicity

- (a) no poster, advertisement or programme for the performance which is likely to cause public offence shall be displayed, sold or supplied, by or on behalf of the licensee either at the premises or elsewhere;
- (b) every poster, advertisement or programme for the performance which is displayed, sold or supplied shall **include**, clearly and legibly, the following statement:

"Volunteers, who must be aged 18 or over, can refuse at any point to continue taking part in the performance."

Insurance

- (c) the performance shall be covered to a reasonable level by public liability insurance. The hypnotist must provide evidence of this to the local authority if requested; and it must be available for inspection at the performance;

Physical arrangements

- (d) the means of access between the auditorium and the stage for participants shall be properly lit and free from obstruction;
- (e) a continuous white or yellow line shall be provided on the floor of any raised stage at a safe distance from the edge. This line shall run parallel with the edge of the stage for its whole width. The hypnotist shall inform all subjects that they must not cross the line while under hypnosis, unless specifically told to do so as a part of the performance;

Treatment of audience and subjects

- (f) before starting the performance the hypnotist shall make a statement to the audience, in a serious manner, identifying those groups of people who should not volunteer to participate in it; explaining what volunteers might be asked to perform; informing the audience of the possible risks from embarrassment or anxiety; and emphasising that subjects may cease to participate at any time they wish. The following is a suggested **statement**, which might be amended as necessary to suit individual styles so long as the overall message remains the same:

"I shall be looking for volunteers aged over 18 who are willing to be hypnotised and participate in the show. Anyone who comes forward should be prepared to take part in a range of entertaining hypnotic suggestions but can be assured that they will not be asked to do anything which is indecent, offensive or harmful. Volunteers need to

be in normal physical and mental health and I must ask that no-one volunteers if they have a history of mental illness, are under the influence of alcohol or other drugs or are pregnant."

- (g) no form of coercion shall be used to persuade members of the audience to participate in the performance. In **particular**, hypnotists shall not use selection techniques which seek to identify and coerce onto the stage the most suggestible members of the audience without their prior knowledge of what is intended. Any use of such selection techniques (**eg**, asking members of the audience to clasp their hands together and asking those who cannot free them again to come onto the stage) should only be used when the audience is fully aware of what is intended and that participation is entirely voluntary at every stage;
- (h) if volunteers are to remain hypnotised during an interval in the performance, a reasonable number of attendants as agreed with the licensing authority shall be in attendance throughout to ensure their safety;

Prohibited actions

- (i) the performance shall be so conducted as not to be likely to cause offence to any person in the audience or any hypnotised subject;
- (j) the performance shall be so conducted as not to be likely to cause harm, anxiety or distress to any person in the audience or any hypnotised subject. In **particular**, the performance shall not include:-
 - (i) any suggestion involving the age regression of a subject (ie, asking the subject to revert to an earlier age in their life; this does not prohibit the hypnotist from asking subjects to act as if they were a child etc);
 - (ii) any suggestion that the subject has lost something (**eg**, a body part) which, if it really occurred, could cause considerable distress;
 - (iii) any demonstration in which the subject is suspended between supports (so-called "catalepsy");
 - (iv) the consumption of any harmful or noxious substance;
 - (v) any demonstration of the power of hypnosis to block pain (**eg**, pushing a needle through the skin);
- (k) the performance shall not include giving hypnotherapy or any other form of treatment;

Completion

- (l) all hypnotised subjects shall remain in the presence of the hypnotist and in the room where the performance takes place until all hypnotic suggestions have been removed;
- (m) all hypnotic or post-hypnotic suggestions shall be completely removed from the minds of the subjects and the audience before the performance ends. All hypnotised subjects shall have the suggestions removed both individually and collectively and the hypnotist shall confirm with each of them that they feel well and relaxed (the restriction on post-hypnotic suggestions does not prevent the hypnotist telling subjects that they will feel well and relaxed after the suggestions are removed);
- (M) the hypnotist shall remain **available** for at least 30 minutes after the show to help deal with any problems which might arise. (Such help might take the form of reassurance in the event of headaches or giddiness but this condition does not imply that the hypnotist is an appropriate person to treat anyone who is otherwise unwell.)

Authorised access

- (o) where-
 - i. a constable; or
 - ii. an authorised officer of the licensing authority; or
 - iii. an authorised officer of the fire authority

has reason to believe that a performance is being, or is about to be, given he may enter the venue with a view to seeing whether the conditions on which approval for the performance was granted are being complied with.