Determining the appropriateness of Sexual Entertainment Venues

Accepted for publication in *Journal of Licensing*, 2013

A year-long study of the regulation of striptease and lap dance clubs in England and Wales by Professor Phil Hubbard and Dr Rachela Colosi has found evidence of divergent regulatory approaches and different policy guidance to applicants. Reviewing these in the light of objections to lap dancing clubs in a number of towns and cities, this paper suggests that standardized conditions may not be the route to locally-appropriate determinations, but that more attention needs to be paid to guiding applicants towards appropriate locations to ensure that the offence that lap dancing venues can cause is minimized.

The emergence of lap dance and striptease clubs since the late 1990s has prompted significant debate, with the opening of such clubs routinely opposed by local resident and business groups as well as those arguing such clubs represent a pernicious and damaging ‘sexualisation’ of society. One well-documented consequence was the inclusion of new adoptive powers in the *Policing and Crime Act 2009* which added the category of Sexual Entertainment Venue to the list of sex establishments controlled by the *Local Government (Miscellaneous Powers) Act 1982*.

Under the terms of this legislation, any premise where a live display of nudity is provided to a paying audience ‘solely or principally for the purposes of sexual stimulation’ on more than ‘eleven occasions…within the period of 12 months’ (Section 27, schedule 2A) needs to be licensed in the same manner as a sex shop or sex cinema. Moreover, a license may be refused simply if the local authority determines that ‘…the number of sex establishments, or of sex establishments of a particular kind, in the relevant locality at the time the application is determined is equal to or exceeds the number which the authority consider is appropriate for that locality’ (Home Office, 2010: 10). Given the definition of a ‘locality’ is left to the local authority, the new powers give authorities a potentially high degree of control over Sexual Entertainment Venues (SEVs).
As previously documented in this journal\(^1\), the introduction of these new powers has allowed for the emergence of an uneven geography of regulation, leaving operators facing different application procedures depending on where their club is located. Indeed, our survey of 327 licensing authorities in England and Wales suggested that around only one in ten appeared not to have adopted the new powers for regulating lap dance clubs (as of 1 September 2012). These included some rural and largely remote local authorities with no tradition of sex establishments but include some where lap dance clubs remain open (and licensed under a waiver to the licenses granted under the 2003 Licensing Act). At time of writing, these include Bolton, Charnwood, Kirklees, and Norwich. On the other hand there are many local authorities where the new powers have been adopted where there is currently no club offering striptease or related forms of sexual entertainment on a regular basis, seemingly on a precautionary basis in case an application might be made in the future. This latter group includes some local authorities that previously had lap-dancing clubs but do not have any currently (e.g. Bury, Bridgend, Cannock).

Beyond this evident variation in the adoption of the newer, and potentially more stringent, licensing regime, there are significant differences in the approaches taken by different authorities. Most state that each application will be considered on its merits, but stress there is a presumption against clubs in the vicinity of particular land-uses (e.g. shops, family housing, education facilities, transport hubs, historic districts and ‘areas in transition’). Yet some local authorities have gone further to suggest there are no suitable locations for new SEVs: these include Enfield, St Albans, Haringey, Harrow, Richmond on Thames, Tower Hamlets, Havant, Havering, North Tyneside, the City Corporation of London, Wellingborough, Winchester, and Hackney. The justification for the application of a ‘nil limit’ in these local authorities varies, and where there is no existing club operating, this raises the spectre of legal challenge given it might be considered legally unreasonable to prevent lap dance occurring in the totality of a local authority area: after all, the intention of the Policing and Crime Act 2009 was not to render striptease an illegal or criminal activity, but to provide local authorities with new powers to determine where it is appropriate in their jurisdiction.

---

This paper hence begins from the assumption that the adult population of England and Wales has the legally enshrined right to view sexual entertainment and sexually-charged performances, and that the role of local authority regulation should not be to presume refusal in all circumstances. Taking this as read, we are concerned with exploring how local authorities might determine the location and visibility of clubs in a way that mitigates the possibility for harm to residential populations and groups who live in the local authority boundaries. As this paper will detail, the evidence collected in our research suggests that the harms of lap dancing for the local community are more likely to be related to offence and disgust rather than physical harm or experiences of crime: while there is no question that licensing has a role to play in shaping the conduct and management of activities within the club, that is not our intention here. Rather it is to consider the evidence as to which populations and residents might be most troubled by the presence of lap dance clubs in their communities, and to think about how these might result in clear, proportionate and socially-just policies concerning the location and visibility of clubs in England and Wales.

**The licensing of SEVs**

As of the end of 2012, our research$^2$ estimates there were 241 licensed premises offering striptease or similar entertainment on more than 11 occasions per year. Of these, 198 had an SEV license and 38 operated on a waiver to a 2003 Licensing Act license. Initial analysis suggests that the widespread assumption that SEVs are lap dancing clubs marketed at a mainly male clientele holds true, but this should not distract from the fact that some other types of venue where nudity is performed for an audience have also sought, and obtained, a SEV license: this includes six gay clubs, two burlesque/variety venues, one sex on premise encounter and ‘swinging’ venue. The limited number of licenses granted to such venues immediately raises the question as to why some clubs and venues where nudity designed to sexually stimulate an audience is regularly performed (including some that even describe themselves as Adult Sexual Entertainment Venues!) are not being noted by the local authority,

---

$^2$ This work was supported by the Economic and Social Research Council, Grant ES/J002755/1 ‘Sexualisation, nuisance and safety: Sexual Entertainment Venues and the management of risk’.
whereas lap dancing and ‘gentleman’s clubs’ rarely escape scrutiny, with specific clubs being named in the committee discussions which deliberated on the value of adopting the new powers.

However, the preoccupation with regulating ‘lap dancing clubs’ is understandable given it was the emergence of such clubs in often-prominent city and town centre locations that has prompted campaigns of opposition both at the local and national level. This said, of those clubs licensed as SEVs since the introduction of the provisions of the 2009 Policing and Crime Act, 43% received no official objections at time of license determination. In fact, the vast majority (over 70%) receive only one or two objections, and only around one in ten applications receives upwards of 30 objections. This suggests that public opposition is uneven, with a relatively small number of clubs (mainly new venues) attracting most opposition.

Where venues are opposed, the range and scope of objections varies widely, with the unsuitability of clubs in particular locations being emphasized through representations which suggest clubs may lower the tone of areas, attract unsavory characters, add to existing problems of anti-sociality and have potentially negative consequences for women and children in particular. Where clubs are not already operating, such objections are of course conjectural, and based on stereotypes about the type of clientele venues might attract, and the kind of nuisances that might be generated. Significantly, where clubs are operating, little evidence has been presented by objectors about criminality or disorder around clubs, with the majority of representations talking about the generation of anxiety for local residents.

The idea that venues contribute to the fear of crime is of course important in the context of community safety, especially in situations where some women claim that the presence of a club makes it hard for them to feel safe in the city at night. But whether this type of position is based on a moral objection to lap dancing as a gendered form of entertainment is difficult to determine. Evidentially, it is hard for licensing authorities to distinguish between legitimate and illegitimate grounds for license refusal, as moral objections are supposedly inadmissible under the guidance provided by the Home Office. For example, in alleging that a lap dance club might be unsuitable in a location previously occupied by another licensed premises (e.g. a club or pub) it appears difficult to imagine that questions of morality would not infuse an
objection, with the character of SEVs and their potential impacts on a community projected on the basis of the entertainment they provide. For instance, the suggestion that an SEV might attract ‘unsavory characters’ rests on the assumption that an SEV provides a form of entertainment that appeals to a particular type of audience. The idea that those whose sexual standards do not reflect those of the ‘moral majority’ will also fail to respect other norms of behavior is then a judgment that could be dismissed as morally infused, and hence illegitimate, by those determining SEV applications. This noted, judgments of the size and character of the clientele a venue is likely to attract provides legitimate grounds for refusing a license in a given locality. ³

To date, 17 SEV applications have been refused: Saints & Sinners and The Pad (Bedford); Lounge@30 (Bristol); Baby Blue, Panache and Angels (Leicester) (the latter having been granted a license subsequent to initial refusal); Dazzle (Ealing); Piano Bar (Twickenham, Richmond); Pandoras (South Bucks); Kiss (Newquay); Shades (Warwick) (refused twice); Max 2 (Lambeth); Thirst Lodge (Oxford) (refused once, not renewed once) and Tantric Blue & 87 Bank Street (Maidstone). Overall, there is no statistical relationship between the number of objections made and the likelihood of license refusal. Interestingly, some clubs with large numbers of public objections, and some where police representations were made urging refusal, have been granted licenses.

The fact that the discretion granted to local authorities to refuse a license is considerable, and that only one of the refusals has gone to judicial review thus far, means that there is little case law in this area that helps us understand what considerations are given particular weight in licensing deliberations. In most cases of rejection, local authorities merely state that the granting of the license would be inappropriate having regard to the nature of the locality and/or the uses to which buildings in the vicinity are put. Further justification or elaboration as to why a particular locality is not suitable is often lacking, and the vexed question of what the relevant locality is left undefined. On occasion, reference is made to family housing areas or proximity of schools and other facilities, yet the potential harms or nuisances that might be created by the presence of a lap dance club left unstated. For example, it might be questioned why it is inappropriate to allow a lap dance club on

a street leading to a school if the opening hours are set so that those of school age are not around on the street at the time this club might be open. Conversely, it could be questioned why a club might be permitted near to family housing or accommodation if it opens late (e.g. after midnight) given a family home is, presumably, always a family home and does not stop being so at certain hours.

Clearly, the question of what the harms of lap dancing are, and how these might be minimized, are ones that licensing officers, and councilors, are spending much time grappling with, often without any reputable academic evidence or case law to draw upon. This means that decisions are made with reference to ‘common sense’ knowledge. For example, the idea that lap dance clubs are unsuitable near schools appears to be a social convention that is never questioned: the idea that children might be psychologically disturbed or morally corrupted by seeing lap dance clubs in their communities is not proven, but appears widely-enough shared that ensuring some sort of buffer between schools and SEVs seems sensible. How wide that buffer is appears to be a matter for local determination based on particular consideration of the prominence and visibility of clubs, albeit some local authorities have already determined that some wards are not suitable for clubs irrespective of how far away clubs might be from educational facilities or premises habitually used by children (without any consideration as to whether a ward is homogeneous in character or the varied nature of the uses to which premises might be put across a ward).

While we are not disputing here that ‘common sense’ knowledge might provide the basis for making licensing decisions, there is of course the possibility that these are grounded in misconceptions and myths that would not bear legal scrutiny (or at least might be considered morally infused). It is our contention that policy in this area – as in any area of licensing – would benefit from being evidence-based.

**Researching attitudes to SEVs in England and Wales**

As noted above, while there has been some attention given to dancer’s welfare within clubs, there has been no peer-reviewed research on the impacts of lap dancing clubs on the communities in which they are located. The purpose of our ESRC-sponsored
research was therefore to explore how local authorities can best achieve the broader aims of licensing - i.e. maximizing public safety, minimizing public nuisance, and reducing crime and disorder- in relation to SEVs. More widely, the aim was to explore whether any generalisations can be made about where clubs may be appropriate or inappropriate.

To examine local resident perceptions of Sexual Entertainment Venues, we explored four case study locations which possessed different numbers of SEVs and had different traditions of night-life. These included an expanding market town, a small city boasting a university, a large tourist resort with a substantial tradition of stag and hen tourism, and a regional capital boasting a very vibrant and vital night time economy. In each of these case study locations, we aimed to explore the ways that the presence of SEVs changed peoples’ experience of the night-time city, paying particular attention to questions of gender. Although all of the towns had venues such as gay saunas, swinger’s sex-on-premise venues and massage parlours that could be considered to be requiring SEV licensing, all of the currently licensed clubs considered in our study were lap dancing or gentleman’s clubs providing female dancers and performances aimed principally at heterosexual men.

To explore resident’s attitudes to these venues, a combination of online and paper surveys were administered, with the project being advertised through the local press in the four locations, which are nonetheless anonymised here. This survey was ultimately completed by 941 adult respondents recruited from the four case study locations (any responses from those living outside the local authority areas in question were ignored). 68% were female; 40% had children under 18 living in their household; 48% lived in a home that was owned or mortgaged. 87% described themselves as white British or white English and 61% claimed no religion. 46% were aged 25-39 but only 13 respondents (1.4%) were over 65. This means our survey may not be representative of national views, and that certain groups may be under-represented despite efforts to ensure the survey did not just solicit the views of those who hold strong anti- or pro- views towards lap dancing venues, noting that those who are more ambivalent are fairly unlikely to respond to local licensing applications for SEVs.

From the survey, 46 respondents were recruited for evening walk-along events which were audio-taped and photographed.
Respondents were asked to speak about their feelings about different parts of the town, with routes chosen to ensure some SEVs would be visible. Semantic rating scales were used to explore their feelings about different locations. The walk-along events were mixed gender, and included participants from a variety of age groups, again intended to be broadly representative of adult users of the night-time economy.

Key findings

Initial questions on the night-time economy explored perceptions of nuisance, and asked respondents to name particular premises that they felt caused nuisance in their local neighborhood and town centre respectively. One in five respondents identified a venue in their town that they thought caused particular nuisance: 65% of these were pubs or clubs, 20% take-aways or off-licenses and 15% SEVs. This implies only around 3% of our respondents felt that an SEV was a source of particular nuisance in their town or city, a figure that might still be considered as significant given the relatively small number of lap dance venues in our case study towns. Interestingly, our survey found that 22% of respondents who lived in towns with one or more SEVs present were unaware of these premises. One in four of those who were aware of such premises had visited a lap dance venue: of the rest, most had become aware of a venue by seeing on the street rather than reading about it in the media.

In terms of premises causing particular nuisance, lap dance clubs were identified as causing antisocial behavior, crime and noise problems, albeit that pubs were more frequently associated with the latter. In a more general sense, when asked about the impacts known SEVs were having on their local town, one quarter felt that these reduced safety, one third that these increased anti-sociality but the majority (three quarters) felt their presence was lowering the tone. Conversely, few cited negative impacts on property price, littering noise or parking as significant impacts of any SEVs (contrary to some of the views given in relation to pubs and take-ways, which were more frequently identified as problem premises). Those who have children in their home appear significantly more likely to describe existing SEVs as a source of nuisance than those without.
Overall, we found some significant divergence in attitudes to SEVs in our different case study areas which were not directly related to the number of clubs present but appeared to be more shaped by the location and visibility of clubs, particularly in areas where other ‘problem’ venues might be present (e.g. other licensed venues with reputations for anti-social behavior). Here, cited anti-sociality was primarily in the form of loud, drunken behavior (including public urination and petty vandalism), rather than sexual harassment or abusive behavior. In this sense, SEVs were seen to be exacerbating behavior which has become routinized in some spaces of night-life, and which cumulative area policies are often keen to discourage. The idea that SEVs lower the tone of particular areas appeared significant in many of our respondents’ minds in identifying them as playing a role in attracting a certain ‘class’ of clientele.

In terms of the general suitability of SEVs in different locations, 83% of our respondents thought SEVs unsuitable near Schools or Nurseries, 46% near Universities/Colleges, 65% near religious facilities, and 45% near shops. Only 3% think SEVs are suitable in residential areas, 10% in rural areas, and 15% in industrial areas, though the majority (55%) feel town centres are suitable. Around one in ten claim there are no suitable locations for SEVs at all. This group is most likely to regard SEVs as promoting sexism, and least likely to regard it as harmless entertainment. This group is most likely to report avoiding walking past SEVs at night. However, this group does not have an over-representation of people with children in the household, even though this was the population most likely to report nuisance from SEVs.

The implication here is that SEVs are not regarded as a significant source of nuisance by the majority, but that a significant minority feel such clubs are inappropriate because they promote sexism, crime and encourage antisocial behavior. This group appears to harbor concerns that SEVs might encourage and normalize particularly negative attitudes towards women. Perceptions of SEVs therefore appear to be strongly shaped by gender, though men living with children in their household, and those over 40, also appears significantly more likely to be opposed to lap dance venues. Religion, sexuality and ethnicity appear to make no significant difference to attitudes to SEVs. Interestingly, those who had a lap dancing club within a 400m radius appeared no more likely to object to their presence, or note nuisance, than those living further away.
Overall, it should be noted that around one in three of our respondents claimed to feel reasonably or very unsafe walking in the city at night. This group was significantly more likely to say there were too many SEVs in their town than those who felt safe, and more likely than any other group to say they would avoid walking past a lap dance club at night. Women were significantly over-represented in this group, suggesting the presence of SEVs in the night-time city may have gendered effects. This was explored in our guided walks, which suggested women were more likely to note, and comment on, the presence of SEVs in their local towns than men. Here, unease about SEVs appeared more related to questions of class, morality and disgust than fear, with SEVs contribution to antisocial behavior and rowdy behavior deemed marginal, and sometimes insignificant, compared with some other venues. Notably, SEVs that had discrete signage, were well-kept and did not overtly sexualize the public realm appeared least likely to provoke unease among participants in our walk-along events, who often spoke of their concerns about the impact of advertising on children.

**Implications for licensing policy**

The results of our survey and walk-along events are not consistent and at times appear contradictory, but some important messages emerge:

- The majority of people do not identify SEVs as a particular source of concern, and most consider them acceptable in town and city centres, but not in residential, industrial or rural areas. The fact proximity to schools was seen to be an issue by the majority lends support for considering the way that clubs are located relative to facilities to children (even if there is no evidence that such clubs do cause harm to children, the concern that children should be sheltered from the sight of sex businesses was commonly supported). This implies a presumption to licensing approval in town and city centres, and refusal elsewhere, unless there are concerns about the proximity of schools whose pupils might routinely pass city or town centre venues.
- Opposition to SEVs appears mainly based on perceptions that clubs normalize sexism and promote anti-social behavior
rather than any direct experience of crime. None of those claiming that SEVs cause antisocial behavior or criminality provided specific examples that suggest these venues were particularly problematic relative to other venues, albeit that there were concerns that lap dance clubs can lower the tone of certain areas of nightlife, and contribute to a general ambience that creates fear for some – especially women, who were the most likely group to argue for fewer lap dance clubs in their local town or city. This implies that SEVs are not to be encouraged in areas that have existing reputations for anti-sociality and drunkenness, even if these clubs do not necessarily exacerbate these problems. This might cause problems where particular areas of town or city centres are ‘saturated’ with licensed premises given the nuisance that many of our respondents associated with pubs, clubs and take-aways. The implication here is that the town and city centre should not always been considered as a single locality for SEV licensing purposes given the perceived differences in the character of particular streets and areas noted by our respondents, especially in the context of larger towns and cities.

• This stated, not all clubs are perceived to have similar impacts on their locality. Some clubs are judged to be better managed and less likely to be lowering the tone, primarily on the basis of their external appearance. Signage or club names that implied sexual connotations were more likely to attract comments and anxiety, while blacked out windows appeared to arouse suspicion and lend some clubs a ‘sleazy appearance’. This implies some role for licensing conditions in terms of changing the ways that clubs are visible in the landscape, noting that clubs that are less obviously SEVs are least likely to be viewed as problematic. Those viewed as ‘sexualising’ the street are most likely to cause offence, and create fear among those already fearful of the city at night.

Conclusions
Our research suggests the majority of the population is not especially concerned about lap dance clubs in their local town or city, albeit most do regard them as problematic in residential areas or near schools, and consider that they can lower the tone of the areas in which they are located. There is, however, a significant minority – around one in ten – that considers SEVs to have no
place in a civilized society, and the licensing process needs to take their views seriously given the importance of Gender Equity and Equality given this group mainly consists of women.

Rather than supporting a blanket ban on the basis of the objections of a minority, our interpretation suggests that licensing needs to proceed in favour of approval but must pay serious attention to lessening the offence caused to a minority by ensuring that clubs are not intimidating in appearance (noting most people first become aware of lap dancing clubs in their city by seeing them on their streets), and are restricted to locations where they cannot be accused of corrupting or influencing young people. Beyond this, it would appear that the mandatory conditions of holding an SEV license, and withdrawing licenses from clubs which are found to generate any criminality, might be sufficient for ensuring SEVs remain well run venues which have a place in our town and city centres, even if some object to them on moral grounds. Ultimately, just because some sections of society find SEVs distasteful or offensive does not provide a basis for banning them, but this does imply a need to ensure that clubs do not negatively impinge on the lives of those who want to avoid them. Certainly, until SEV licensing is able to recognize objections based on moral grounds (i.e. the idea striptease is distasteful or disgusting), any presumption towards license refusal certainly appears unreasonable given the tastes of a minority should not be allowed to dominate decisions made on behalf of the public as a whole.