

# CHESHIRE EAST COUNCIL

## REPORT TO: LICENSING COMMITTEE

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**Date of Meeting:** 5<sup>th</sup> July 2010  
**Report of:** Licensing Manager  
**Subject/Title:** Regulation of hypnotism – Hypnotism Act 1952

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### **1.0 Report Summary**

- 1.1 The report provides information in relation to the Hypnotism Act 1952 together with proposed conditions to attach to authorisations granted under the provisions of the Act.

### **2.0 Recommendations**

- 2.1 The Licensing Committee is requested to:
- 2.1.1 authorise the Licensing Manager to carry out a consultation exercise, as set out within the report, in relation to the draft conditions set out within Appendix A;
- 2.1.2 in the event either that no consultation responses are received or that the responses received do not suggest amendments to the conditions, to approve the conditions as set out within Appendix A; and
- 2.1.3 approve the period of twenty-eight days from receipt of a complete application as the period within which an application must be determined and to note the position in relation to 'tacit authorisation.'

### **3.0 Reasons for Recommendations**

- 3.1 The Council has the power to authorise performances of hypnotism within its area, however the Council has yet not adopted conditions which will apply to such authorisations. The recommendation is requested in order to ensure that the Council has a set of conditions in place which will be of assistance to prospective applicants and will ensure consistency of decision-making.

### **4.0 Wards Affected**

- 4.1 All

### **5.0 Local Ward Members**

- 5.1 All

## **6.0 Policy Implications including - Climate change - Health**

- 6.1 The report proposes the adoption of standard conditions which would attach to authorisations granted by the Council.

## **7.0 Financial Implications for Transition Costs (Authorised by the Borough Treasurer)**

- 7.1 None.

## **8.0 Financial Implications 2009/10 and beyond (Authorised by the Borough Treasurer)**

- 8.1 There is no statutory provision for a fee to be charged in relation to the grant of an authorisation by a local authority outside London under the Hypnotism Act 1952.

## **9.0 Legal Implications (Authorised by the Borough Solicitor)**

- 9.1 Sub-section 2(1) of the Hypnotism Act 1952 provides that “no person shall give an exhibition, demonstration or performance of hypnotism on any living person at or in connection with an entertainment to which the public are admitted, whether on payment or otherwise, at any place unless – (a) the controlling authority have authorised that exhibition, demonstration or performance under this section.” ‘Controlling authority’ for the purposes of section 2 means the licensing authority (within the meaning in the Licensing Act 2003) in whose area the place in question is situated.
- 9.2 Sub-section 2(2) states that any authorisation under section 2 may be made “subject to any conditions.”
- 9.3 ‘Hypnotism’ is defined by section 6 of the Act as including “hypnotism, mesmerism and any similar act or process which produces or is intended to produce in any person any form of induced sleep or trance in which the susceptibility of the mind of that person to be increased but does not include hypnotism, mesmerism or any such similar act or process which is self-induced.”
- 9.4 It is an offence to give any exhibition, demonstration or performance of hypnotism in contravention of section 2 or of any conditions attached to an authorisation granted under the section.

## **10.0 Risk Management**

- 10.1 The proposals within the report seek to ensure that the Council has a formalised set of conditions in place which will ensure consistency.

## **11.0 Background and Options**

- 11.1 Prior to the introduction of the Licensing Act 2003, local authorities were able to authorise hypnotism performances by way of conditions attached to public entertainments licences (issued under the provisions of the Local Government (Miscellaneous Provisions) Act 1982). Amendments to the Hypnotism Act 1952 by Schedule 6 to the Licensing Act 2003 mean that this option now only applies in Scotland.
- 11.2 In England and Wales, an act of hypnotism is not a licensable activity under the Licensing Act 2003. Authorities in England and Wales can therefore only give permission for a display/performance of hypnotism under the provisions of the Hypnotism Act 1952 (as amended).
- 11.3 As set out within the legal implications at paragraph 9 above, the Hypnotism Act 1952 (as amended) makes it a criminal offence to conduct hypnotism for public entertainment unless a licence has been given by the Licensing Authority. The Act also imposes a restriction on hypnotising anyone under 18. There are saving provisions which make legitimate scientific or medical hypnotism exempt from the need for licensing provided that it is not undertaken for public entertainment.
- 11.4 It is open for the Licensing Authority to impose such conditions as it may see fit on any hypnotism authorisation. However it should be noted that there is guidance in the form of Home Office Circular 39/1996, which although released prior to the changes under the Licensing Act 2003 remains current. The proposed conditions attached as Appendix A to this report follow the model scheme within the Circular and are intended to strike a balance between legitimate concerns for public safety and the ability for hypnotists to trade.
- 11.5 Section 4 of the Act gives a right of entry to police officers in connection with suspected contravention of the Act. The proposed conditions include a requirement to admit authorised officers of the Licensing Authority to allow for inspection of a premises where hypnotism is being carried out under an authorisation granted by that Licensing Authority. It is suggested that this is a proportionate step in order to ensure compliance with an authorisation.
- 11.6 It is suggested that the draft conditions shall be subject to a consultation exercise running over a period of twelve weeks which will include consultation with Cheshire Constabulary, the Health and Safety Section of Cheshire East Borough Council, the Federation of Ethical Stage Hypnotists, Equity and a prospective applicant who has made contact with the Council. In addition, the details of the consultation will be included on the Council's website.
- 11.7 The issue of an authorisation under the Hypnotism Act 1952 is understood to be one of the 'formalities' (i.e. authorisations/ licences/ certificates/ registrations) which falls within the scope of the EU Services Directive. As a result, the Council is required to make prescribed information available to prospective applicants, including the timescales within which an application will be determined. Where no statutory timescale exists, local authorities have the

discretion to determine a reasonable and appropriate timescale. Where a timescale is exceeded then an application would be deemed acceptable and 'tacit authorisation' given. In accordance with the model conditions annexed to Home Office Circular 39/1996, it is proposed that an application must be made no less than 28 days before the date of the performance. This period is required so that the Licensing Section may have sufficient time to consult Cheshire Constabulary on an application. Whilst an application may be made with a greater period of notice, it is suggested that the period for determination of an application will be twenty-eight days (commencing on receipt of a valid application); therefore if an application was not determined within this period then, subject to the ability to extend the period for a limited period if the applicant is notified of this prior to the expiry date, the application would be deemed granted. The alternative would be for the Licensing Authority to determine that it is appropriate for different arrangements to be put in place in relation to this type of authorisation; any such decision would need to be based on overriding reasons relating to the public interest, including the legitimate interests of third parties.

- 11.7 The power to licence performances of hypnotism is delegated within paragraph 25.2.7 of the Constitution to the Head of Safer and Stronger Communities. This function has subsequently been delegated by the Head of Safer and Stronger Communities to the Licensing Manager.

## **12.0 Overview of Year One and Term One Issues**

- 12.1 Not applicable.

## **13.0 Access to Information**

The background papers relating to this report can be inspected by contacting the report writer:

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**HYPNOTISM ACT 1952**

**CONDITIONS REGULATING EXHIBITION, DEMONSTRATION OR PERFORMANCE OF HYPNOTISM**

**1. Applications**

The Licensing Authority to be informed in writing twenty-eight (28) days in advance of the performance of:

- 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'), together with details of their last three performances (when and where).
- 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 any theatre or other place of public amusement or public entertainment.

**2. 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 licence holder 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'.

**3. Insurance**

- a. The performance shall be covered by public liability insurance at a level which must be approved by the Licensing Authority. The hypnotist must provide evidence of this to the local authority if requested and it must be available for inspection at the performance.

**4. Physical arrangements**

- a. The means of access between the auditorium and the stage for the participants shall be properly lit and free from obstruction.

- b. 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 whilst under hypnosis, unless specifically told to do so as part of the performance.

## 5. Treatment of the audience and subjects

- a. Before stating 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 as 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, or are under the influence of alcohol or other drugs or are pregnant”.

- b. 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 out on stage the most suggestible members of the audience without their prior knowledge of what is intended. Any use of such selection techniques (e.g. 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.
- c. 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.

## 6. Prohibited actions

- a. The performance shall be conducted as not to cause offence to any person in the audience or any hypnotised subject.

- b. The performance shall be so conducted as not 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 (i.e. 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 (e.g. 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 (e.g. pushing a needle through the skin).
- c. The performance shall not include giving hypnotherapy or any other form of treatment.

## 7. Completion

- a. All hypnotised subjects shall remain in the presence of the hypnotist and in the room or place in which the performance takes place until all hypnotic suggestions have been removed.
- b. 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 confirm with each of them that they feel well and relaxed (the restriction on post-hypnotic suggestions does not prevent the hypnotist from telling subjects that they will feel well and relaxed after the suggestions are removed).
- c. The hypnotist shall remain available for at least 30 minutes after the show to help in dealing 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 inappropriate person to treat anyone who is otherwise unwell).

## 8. Authorised access

- a. Where:
  - i. a police officer; or
  - ii. an authorised officer of the Licensing Authority;has reason to believe that a performance is being, or is about to be, given, he/she may enter the venue with a view to seeing whether the conditions on which approval for the performance was granted are being complied with.

## APPENDIX B

### Application for consent to conduct an exhibition, demonstration or performance of hypnotism

(must be completed by the applicant)

<b>1</b>	<b>Personal/Business details</b>		
1.1	Name		
1.2	Stage name		
1.3	Home address		
1.4	Date of Birth		
1.5	Place of Birth		
1.6	Email address		
1.7	Position/job title		
1.8	Business name		
1.9	Registered (or other) business address		
1.10	Contact telephone number(s)		
1.11	Home country		
1.12	Commercial register on which registered		
1.13	Registration number		
1.14	VAT number		
1.15	Legal status (e.g. limited company)		

<b>2</b>	<b>Membership of a professional organisation</b>		
2.1	Are you a member of a recognised professional organisation?	Yes / No	If no, go to 4.1
	If yes, please provide details of the organisation		
2.2	Name of organisation		
2.3	Address of organisation		
2.4	Telephone number		
2.5	Membership number		
2.6	Are you a member of any other professional organisations? (If yes, please provide details of the organisation)	Yes / No	
2.7	Name of organisation		
2.8	Address of organisation		
2.9	Telephone number		
2.10	Membership number		

<b>3</b>	<b>Public liability insurance</b>		
3.1	Do you have public liability insurance?	Yes / No	If no, go to 5.1
	If yes, please provide details of the policy		
3.2	Insurance company		
3.3	Policy number		
3.4	Period of cover		
3.5	Extent of cover		

<b>4</b>	<b>Proposed venue for the performance(s)</b>	
4.1	Name of venue	
4.2	Address of venue	
4.3	Telephone number	
4.4	Venue manager's name	
4.5	Maximum number of people to be admitted to the venue for the performance	

<b>5</b>	<b>Planned performance(s)</b>	
5.1	Date(s) of planned performances	
5.2	Time(s) of planned performances on those dates	
5.3	Detailed description of the planned performances	

<b>6</b>	<b>Last three performances</b>		
	Please complete the following details about each of the last three performances given by the hypnotist		
6.1	Name of venue		
6.2	Address of venue		
6.3	Telephone number		
6.4	Venue manager's name		
6.5	Local authority which granted permission		
6.6	Date of performance		
6.7	Detailed description of the performance		
6.8	Other performance?	Yes / No	If yes, 2 sections follow next page
	Please complete the following details about each of the last three performances given by the hypnotist		
6.9	Name of venue		
6.10	Address of venue		
6.11	Telephone number		
6.12	Venue manager's name		
6.13	Local authority which granted permission		
6.14	Date of performance		
6.15	Detailed description of the performance		
	Please complete the following details about each of the last three performances given by the hypnotist		

<b>6</b>	<b>Last three performances</b>	
6.16	Name of venue	
6.17	Address of venue	
6.18	Telephone number	
6.19	Venue manager's name	
6.20	Local authority which granted permission	
6.21	Date of performance	
6.22	Detailed description of the performance	

<b>7</b>	<b>Previous refusals and convictions</b>		
7.1	Have you ever been refused or had consent for hypnotism withdrawn by any licensing authority?	Yes / No	
7.2	Have you ever been barred from the Federation of Ethical Stage Hypnotists or European Guild of Professional Stage Hypnotists or any similar body?	Yes/No	
7.3	Have you ever been convicted of an offence under the Hypnotism Act 1952?	Yes/No	
7.4	Have you ever been convicted of an offence involving the breach of a condition regulating or prohibiting a performance of hypnotism?	Yes/No	
7.5	If yes to any of these questions, please provide full details (please continue on a separate page if necessary)		

<b>8</b>	<b>Additional details</b>	
8.1	Please provide any additional information relevant to the application  (please continue on a separate page if necessary)	

<b>9</b>	<b>Declaration and signature</b>	
	I declare the above information to be true to the best of my belief and that knowingly making a false statement (s), may lead to delay, the withdrawal of an authorisation or legal action.	
	Signature	
	Date	

We will use the information you give in this form and in any supporting documentation you send us, to process your application. We may check information you have provided, or information about you that someone else has provided with other information held by us. We may also get information about you from certain third parties, or give them information to:

- make sure the information is accurate
- prevent or detect crime, and
- protect public funds

These third parties include Government departments, other departments of the Council and other local authorities. We will not give information about you to anyone else unless the law allow us to.

	<b>Congleton (01270) 537112</b>	<b>Crewe &amp; Nantwich (01270) 537114</b>	<b>Macclesfield (01625) 504206</b>
<b>LICENSING AUTHORITY Cheshire East Borough Council</b>	Licensing Section Municipal Buildings Earle Street, Crewe CW1 2BJ	Licensing Section Municipal Buildings Earle Street, Crewe CW1 2BJ	Licensing Section Macclesfield Town Hall Market Place, Macclesfield, Cheshire SK10 1DX