

# **Tribunal decisions on CAMRA Branches' eligibility to nominate Assets of Community Value (ACVs) – an informal briefing note from Greater London CAMRA**

## **1. Introduction:**

In order to be an eligible nominating body an organisation must:

- demonstrate a 'local connection' through its own activities and expenditure;
- be 'a voluntary or community body' as defined in the legislation.

The eligibility of CAMRA Branches to nominate has so far been upheld by three First-tier Tribunal decisions.

## **2. Extracts from the Assets of Community Value (England) Regulations 2012:**

'4.—(1) For the purposes of these regulations and section 89(2)(b)(iii) of the Act, a body other than a parish council has a local connection with land in a local authority's area if –

- (a) the body's activities are wholly or partly concerned –
  - (i) with the local authority's area, or
  - (ii) with a neighbouring authority's area;
- (b) in the case of a body within regulation 5(1)(c), (e) or (f), any surplus it makes is wholly or partly applied –
  - (i) for the benefit of the local authority's area, or
  - (ii) for the benefit of a neighbouring authority's area; and
- (c) in the case of a body within regulation 5(1)(c) it has at least 21 local members.'

'5.—(1) For the purposes of section 89(2)(b)(iii) of the Act, but subject to paragraph (2), "a voluntary or community body" means –

- (a) a body designated as a neighbourhood forum pursuant to section 61F of the Town and Country Planning Act 1990;
- (b) a parish council;
- (c) an unincorporated body –
  - (i) whose members include at least 21 individuals, and
  - (ii) which does not distribute any surplus it makes to its members;
- (d) a charity;
- (e) a company limited by guarantee which does not distribute any surplus it makes to its members;
- (f) a co-operative or community benefit society which does not distribute any surplus it makes to its members; or
- (g) a community interest company.'

## **3. Extracts from Tribunal Decisions:**

### **3.1 St Gabriel Properties Limited v London Borough of Lewisham and CAMRA – South East London Branch (re. the Windmill, Sydenham)**

***Tribunal Reference Number: CR/2014/0011***

Judge Warren made the following findings:-

"19. At one point during the hearing, it was suggested on behalf of Lewisham that a national body such as CAMRA might be taken to fulfil the definition of 'local connection' in regulation 4 unless it could be shown that its national activities did not impinge upon the relevant local authority and its neighbours. I am unable to accept that submission. It seems to me to be implicit in section 89(2) of the Act that a 'community nomination' cannot come from a national organisation relying solely on its national activities. Something more by way of local connection is required.

20 The case is different, in my judgement, subject to the facts of any one individual case where a national charity or national company limited by guarantee also has a network of branches. In these circumstances, to regard a local branch and a national organisation as legally separate does not accord with actualities or with the purpose of the statute. It seems to me to be entirely artificial to regard a branch's link with a national organisation as strong enough to prohibit the branch from having an independent existence under reg 5(1)(c) and yet not strong enough to permit the branch to take advantage of the national organisation status under regulation 5(1)(e). A proper application of the regulations, in my judgment, treats organisations such as this in a hybrid way. CAMRA South East London Branch is entitled to rely on CAMRA's status as a company limited by guarantee which does not distribute any surplus it makes to its members in order to satisfy Regulation 5(1)(e). It is then entitled to rely on its own activities in order to satisfy Regulations 4(1)(a) and (b) and I find those sub-paragraphs to be satisfied in this case.

21. I should record that, for Lewisham, Mr Hopkins also submitted that the South East London Branch satisfied regulation 5(1)(c) as an unincorporated body. I prefer to rest my decision on what I regard as the proper and realistic approach to national organisations with local Branches. However, if I am wrong in this approach then I would accept this submission. 'Unincorporated body' is a broad term which includes community groups of any descriptions. St Gabriel Properties correctly point out that the Branch Constitution, unlike CAMRA's national articles of association, does not prohibit distribution of any surplus to members. There is no requirement, in my judgement however, for an unincorporated body within Reg 5(1)(c) to even have a written constitution; let alone a further requirement that a particular clause should be included.

22. Taking into account the branch's link with CAMRA nationally, and having heard evidence of what the branch actually does with its money, I consider that, as a matter of fact, CAMRA South East London Branch would satisfy Regulation 5(1)(c)(ii)."

### **3.2. Anthony Hibbert v Wycombe District Council and Aylesbury Vale & Wycombe CAMRA (re. the Red Lion, Whiteleaf)**

***Tribunal Reference Number: CR/2015/0014***

Judge Lane made the following findings:-

11. I am fully satisfied on the evidence that CAMRA is a company limited by guarantee, which does not distribute any surplus it makes to its members. For the reason given by Judge Warren in the St Gabriel Properties case I am satisfied that these findings are relevant in deciding whether the relevant branch should be treated as satisfying regulation 5(1)(e).

12. In any event, however, I accept the statement of the Aylesbury Vale & Wycombe CAMRA branch, as set out in the nomination, that it, as a branch, does not distribute any money to its members. Instead, its income is spent on supporting local breweries, publishing its magazine and campaigning activities.

13. The appellant contends that the legislation requires the nominator to put before the local authority a list of at least 21 members who are registered in the local authority's area, or that of a neighbouring authority, as local government electors in the register of electors. As can be seen from regulation 4, there is, in fact, no such requirement. In practice, such a list is often supplied to the local authority, which then makes the list available to the appellant (usually with addresses redacted for data protection purposes), having satisfied itself that the requirements of regulation 4(1)(c) and (3) are met. That represents "best practice" and, if it had been adopted in the present case, the appellant's challenge on this ground would not have been pursued. The appellant says as much in one of his documents.

14. In the present case, I am satisfied that the respondents have shown to the requisite standard (namely, the balance of probabilities) that the relevant requirements of regulation 4 have been satisfied. This is because the first respondent saw a list of 21 names of local members of the Aylesbury Vale & Wycombe CAMRA branch, which satisfied the relevant requirements, in connection with the nomination by the branch of the Red Lion at Longwick in April 2015. In its response, the first respondent says:

“3. In the process of assessing the application (document 5) the Respondent not only noted the nominator’s confirmation in the nomination that 850 of its branch members lived in the Wycombe district or in neighbouring authorities, but also verified that the names of 21 members of the nominator actually appeared on the electoral role within Wycombe district. This was because the 21 names were received in relation to another bid by the nominator in respect of the Red Lion, Longwick, on or around 27 April 2015, before the nomination assessment and decision took place in respect of the Red Lion.”

15. I cannot see that the appellant has challenged the truthfulness of this statement, which in any event I find more likely than not to be true.

16. Were it not for that statement, the first respondent would have to rely solely on the implication that, given the fact 850 members of the branch live in relevant areas for the purposes of regulation 4, it is more likely than not that at least 21 of them are registered as local government electors. In view of the extremely large number of members, I consider that it is, indeed, more likely than not that 21 of the 850 satisfy the requirement.

17. In order to avoid similar issues arising in the future, the Tribunal considers that it would be expedient for local authorities to request from nominators actual names and addresses for the purposes of regulation 4.

### **3.3 Hamna Wakaf Ltd v London Borough of Lambeth and CAMRA South West London (re. the Grosvenor, Stockwell)**

***Tribunal Reference Number: CR/2015/0026***

Judge Lane made the following findings:-

86. I consider that Ms Linton’s approach was entirely permitted by the legislation. Subject to issues of procedural fairness, regulation 6(d), properly construed, enabled her to consider evidence, albeit not submitted at the time of the nomination, which showed that the nominator was at that time a body within regulation 5(1)(c). For the reasons I have given earlier, Parliament cannot in my view be regarded as contemplating that regulations made under section 89(4) could prohibit a local authority from (as here) ignoring a tick or cross, which turns out to have been placed in the wrong box on a form.

87. What I have just said is, of course, predicated on the basis that, as both Mr Elvin and Mr Adamyk submitted, CAMRA South West London Branch did not have authority to make the nomination on behalf of the Campaign for Real Ale Limited. I accept all that has been said (as recorded above) on this issue. Insofar as what the Tribunal said in the St Gabriel case conflicts with the law of agency and company law, I accept it must be regarded as wrong.

88. That is, however, not to say that the character of a body such as the Campaign for Real Ale Limited cannot play any part in determining the characteristics of the Branch, for the purposes of the legislation with which we are concerned. For example, in deciding whether the requirement in regulation 5(1)(c)(ii) is met in the case of the Branch, the fact that the Campaign for Real Ale Limited meets this requirement may dispel any doubt that may exist as to whether the Branch does so.

89. I reject the appellant’s contention that CAMRA’s Branches cannot legally be distinguished from the Campaign for Real Ale Limited, for the purposes of regulation 5. It is clear from the materials to which I have referred, especially the model Branch Constitution and the internal memoranda, that the South West London Branch has an identity as an organised group of people in South West London, with the common functions described in the nomination form. That form also specified that 358 members of the Branch live in Lambeth.

90. In the light of my findings, I conclude that the Council was entitled, after the nomination was made, to seek additional evidence on the subject of the Branch’s eligibility to make a community nomination.

That evidence resulted in material being supplied, which put beyond any doubt that the Branch had at least 21 local members, registered as local government electors, as described in regulation 4(3). In any event, however, I accept Mr Laurence's submission that, in the light of the very large numbers of members specified in the nomination form, it was more likely than not that at least 21 individuals fell within regulation 4(3).

#### **4. Advice to CAMRA Branches and Local Authorities**

**4.1** The paragraphs quoted from the Grosvenor decision helpfully clarify whether the relevant Branch should be treated as satisfying regulation 5(1)(e), the point to which Judge Lane had alluded in paragraph 11 of the Red Lion decision. (The Red Lion nomination had been submitted under regulation 5(1)(c).)

**4.2** What had been said at the Grosvenor tribunal 'as recorded above' in the context of paragraph 87 included the following:

'In order for a CAMRA Branch to bind the company, the Branch needed to have express, implied or apparent authority to act on behalf of the company. The CAMRA material before the Tribunal demonstrated that no such authority existed in the present case. The St Gabriel case was wrongly decided, in that the Tribunal had impermissibly conflated the different "heads" set out in regulation 5. The Regulations could be taken to have been made against the background of established company and agency law.' (paragraph 62)

'CAMRA had followed the approach taken in the St Gabriel case but, in the light of recent experience, it had now been decided that a Branch nominating a pub as an asset of community value would include in the nomination a "statement of support" letter from the Campaign for Real Ale Limited, making it plain that the Branch "is acting on behalf of and with full authority of the Campaign for Real Ale (CAMRA). CAMRA is a limited company, registered in England with company number 1270286.' (paragraph 63)

**4.3** The absence of such a statement accompanying any nomination under regulation 5(1)(e) might therefore need to be remedied, if challenged, owing to the conflict with company and agency law that might otherwise be argued, and the Grosvenor tribunal validated the alternative action Lambeth Council had taken in treating the Branch nomination instead as if it had been submitted under regulation 5(1)(c).

**4.4** In summary, CAMRA Branches have a choice in submitting pub ACV nominations. The nomination can be made

- either on behalf of the Campaign for Real Ale Ltd as a non-profit distributing company limited by guarantee as per regulation 5(1)(e) through the agency of the Branch as documented by the company's express statement of authority, the membership and activities of the Branch then demonstrating sufficient local connection for the purposes of regulation 4;
- or in the name of the Branch as an unincorporated body as per regulation 5(1)(c) with at least 21 qualifying signatories, the constitutional relationship with the Campaign for Real Ale Ltd then satisfying the non-profit distributing requirement of regulation 5(1)(c)(ii), and Councils may confidently accept the validity of either approach.

**4.5** Going forward, Branches submitting ACV nominations are therefore advised first to ascertain whether the Council's decision maker would prefer to treat the Branch as the duly authorised agent of the company limited by guarantee and receive a regulation 5(1)(e) nomination accompanied by the all-important statement of authority, or as an unincorporated body ticking the regulation 5(1)(c) box.

**4.6** In any event, following paragraph 17 of the Red Lion decision, Branches are advised to accompany their nominations with enough nominators' actual names to leave no doubt regarding the local connection required in order to meet regulation 4.