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Fractions of a day in law

In his letter last week (page 680 above) Mr Craig Cleminson raised a question on the construction of the Licensing Act 1964, sch. 2, para. 1, which says that a person proposing to apply for transfer of a justices' licence shall give notice in writing 'not less than 21 days before the day of the licensing sessions'.

The question was whether or not these 21 days must be clear days. If for example the day in question is the 23rd of the month must the notice be served on or before the 1st, allowing 21 clear days? Or will it do if the notice is served on the 2nd? This should not be a question admitting any doubt. It is a reproach to our law that the matter is not entirely straightforward. There are however conflicting rulings.

I cannot go into all the difficulties in a letter, but one problem is the ancient rule of the common law that fractions of a day are generally to be disregarded. This goes back at least to the sixteenth century. In *Clayton's Case* (1585) 5 Co Rep 1a, 1b a lease which was dated 26 May and delivered at 4 p.m. on 20 June was expressed to run for three years 'from henceforth'. It was held that the exact time of delivery was immaterial, 'for the law in this computation doth reject all fractions and divisions of a day for the uncertainty, which is always the mother of confusion and contention'. Accordingly the lease was operative from midnight on 19 June.

If this reasoning were followed, a notice delivered under the 1964 Act provision at 4 p.m. on the 2nd would be taken to be effective from midnight on the 1st, so there would be 21 clear days. However it might be that a court would instead follow $R \ v \ Long \ [1960] \ 1 \ QB \ 681$, assuming that case was drawn to its attention. Here it was held that an enactment requiring a notice to be given three days before a trial meant that there must be three clear days between the giving of the notice and the trial.

Because of the complexity of the law in this area, a court's decision is likely to depend on whether or not the advocates bring to its attention all relevant points of law. Sometimes this is not done. For example in the recent case of *Okolo v Secretary of State for the Environment* [1997] 4 All ER 242 it was conceded on both sides, apparently without mention of the fraction of a day rule, that a provision of this sort required clear days. The Court of Appeal accepted this without demur.

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