

# **Local Code of Best Practice for the Licensing Process**

## **1. Role and Conduct of Councillors and Officers**

Councillors and Officers have different but complementary roles. Unless stated otherwise, references to Councillors in this Code are to those Councillors dealing with Licensing matters via their appointment to Licensing Committee. Both officers and Councillors are also subject to codes of conduct with which they must comply (see background papers to report).

Councillors and Officers will treat each other with respect at all times, and not engage in personal criticism in the course of any meeting. Concerns about Officer conduct should be addressed to the Assistant Director (Environment). Concerns about the conduct of Councillors should be addressed to the Council's Monitoring Officer for these purposes.

Councillors can expect officers to give them all reasonable assistance in answering questions on licensing matters, except where that would infringe this or other codes, or contravene legal rules such as data protection. An officer will state the reason if there are any such limitations on their ability to assist with Councillor queries.

Officers are protected from undue pressure by the Council's policy on bullying and harassment. They should not be put under pressure to make a particular recommendation in relation to any licensing matter, application, or decision.

## **2. Voting and Impartiality**

Councillors must reach licensing decisions by collectively applying their delegated legal powers on the basis of the interests of the whole District; their overriding duty is to the whole community rather than just the people living in their Electoral Ward. However it is also important that Councillors, in reaching their decisions, should take into account what the law requires, and take legal advice where necessary as to the scope of their powers.

Councillors will take due notice of any recommendations made by Officers, but it is Councillors of the District Council who make the decisions, except where applications or other matters have been delegated to the Assistant Director (Environment) and/or the Licensing Manager in accordance with the Scheme of Delegation agreed by the Council.

Recommendations and decisions shall not discriminate against or in favour of any individuals or groups, and shall be based firmly on the policies of the Council and the legal requirements currently in force. The Licensing Committee acts as a quasi-judicial body with a right of appeal against some of its decisions to the Courts. In such cases officers are expected to avoid making recommendations or expressing opinions that might be seen as giving rise to prejudice or bias.

Licensing Committee members should avoid expressing an opinion on an issue that is to come before the Licensing Committee until after the hearing has taken place and a decision has been made. Even then, caution is advisable where a matter remains subject to appeal.

Councillors must form judgements and make decisions on the basis of the relevant reports, supporting evidence and recommendations presented, in a non-partisan manner, with no pre-arrangements by any party or group as to how Councillors will vote. A proper decision can only be made at the Licensing Committee, when all available information is to hand, and has been duly considered; therefore, any political group meeting prior to the meeting must not be used to decide how Councillors should vote.

A member of the Licensing Committee must not make any public statement, which may give the impression that they may not be objective when sitting on the Licensing Committee. Bias may include pre-judged ideas based on his/her own prejudices or political affiliations.

Suitable conditions for a “fair hearing” must exist – the right of the individual to know the opposing case, the right to call witnesses, the ability to question witnesses, the right to legal representation and the right to be given reasons for any decisions made (although such reasons may be deferred/given in writing). Members should not, by their actions at a Licensing Committee hearing or elsewhere, appear to deny, exclude or restrict such rights. If in doubt, legal advice should be sought.

Licensing Committee Members should be aware of the dangers in publicly discussing the reasons for decisions of the Committee, other than with relevant Council Officers, prior to the formal publication of the minutes. Where a Member seeks to do so, they must consult with the Council’s Legal Officers, Licensing Officers and Communications Officer, and the general content of the public statement must be agreed in advance.

### **3. Lobbying by Members**

It is important to recognise that lobbying is a normal and perfectly proper part of the political process. However, lobbying can lead to the impartiality of a Councillor or the Council’s decision being called into question unless all the parties concerned exercise care and common sense.

With the possible exception of Ward Councillors who are not involved in the decision-making process, Councillors should avoid organising support for or opposition to a forthcoming licensing decision and should not lobby other Councillors. Councillors who decide to go public in support for a particular outcome will not be able to argue convincingly when it comes to a decision being made on the application that they have maintained an open mind. In such cases, the appropriate course for the Councillor to take is to make a declaration, withdraw from the meeting, and take no part in the decision-making process.

Ward Councillors have an important role to play as representatives of their communities and to bring local information to the decision-making process. Ward Councillors may therefore become involved in discussions with Officers about individual licensing issues. They should however remember that it is very easy to create the impression that they are using their position to influence the outcome.

Any discussions with Officers should be open and transparent. Officers should make a written note of any such discussions. Ward Councillors who are members of the Licensing Committee and who are involved in this manner with a Ward issue should make a declaration and not vote or take part in the decision making process at the relevant Licensing Committee meeting. In relation to licensing sub-committee meetings to determine individual applications, such Ward Councillors must not sit on sub-committees, should they be selected so to do, must declare their interest and stand down.

Situations may arise where Members wish to make representation in their own right as a private citizen – for example, because they wish to object to an application that affects an area where they live. In such circumstances, the Member may be acting entirely outside of their office and in a private capacity. Although the model code strictly only applies to Members acting within their office, Members are cautioned to be conscious of the public interpretation that may be placed on such a situation - for example if an intervention they make when acting in a private capacity is perceived as very persuasive. It is therefore highly advisable in order to avoid perception of bias or influence that Members comply with the spirit of the model Code and this Code in all circumstances relating to Licensing Committee hearings, even when acting in a private/personal capacity.

### **4. External Lobbying**

Lobbying can be oral or by the circulation of letters or documents to all or some Councillors. Problems can occur if Councillors are given information or assurances by, for example, the

licensee or applicant, their agents, neighbours, objectors or business colleagues/rivals, which are not part of the formal application or hearing process. Problems can also arise if the information provided to Councillors outside the formal process is misleading or untrue. Furthermore, there is a danger Councillors are manoeuvred into inadvertently confirming or denying confidential information to a third party. In relation to the quasi-judicial processes of the Licensing Committee and the need to conduct certain hearings in private, this action could leave the Council open to legal challenge. Caution may be necessary even after a matter is formally decided, if it is subject to legal appeal.

Councillors must not put themselves in a position where they appear to favour a person, company or group. Even a 'friendly' private discussion with an interested party could cause others to mistrust the impartiality of Councillors. All Councillors, not just those on the Licensing Committee, should exercise caution in this regard. They should generally avoid any situation where they might be seen to be biased in advance of any official Council Licensing decision, and while not in possession of the full facts.

Specific guidance for Councillors who are also Members of the Licensing Committee is as follows, in relation to external lobbying.

The Member:

- should endeavour to avoid hearing, and must avoid entering into correspondence over, a case that is being put to them by any interested party outside of the official process for dealing with Licensing matters. It may be necessary to politely interrupt a person trying to raise such an issue.
- should politely point out the reasons why the matter must not be heard or considered by them in this situation, asking the person kindly not to continue, and not to raise further points direct with them. If the matter has been raised by correspondence, the Member need only pass the letter or email to the Licensing Office and officers will respond with the appropriate advice.
- should explain how the matter may be raised in the correct manner, i.e. in writing, to the Licensing Service. The Member may also:
  - provide procedural advice e.g. how to obtain further advice via Licensing Officers, the right to address the Licensing Committee as a deputation, how to make representations, where to obtain advice on appealing a decision, and so on.
  - should not under any circumstances indicate how they are going to vote, or give any opinion on, or reaction to, the matter being raised.
  - should report all such contacts, with the details and any connected correspondence/paperwork, as soon as possible after they have occurred to the Licensing department, so that the incident can be recorded.
  - should not provide any information on the matter gained by virtue of their position that is not already in the public domain e.g. details from a report that may be heard with the press and public excluded by the Licensing Committee. In any case, where information is requested, best practice is to signpost the enquirer to official Council sources of information. This avoids any accidentally selective provision of information by the Member, which although well intentioned, could be interpreted as bias.

- may refer the person to a Councillor who is not a Member of the Licensing Committee e.g. a colleague Ward Councillor, if the interested party is insistent on speaking to a Councillor. If despite the best efforts of the Member in compliance with the above, the person has not desisted as requested, and continues to put forward his/her view by contacting or making written submissions direct to the Member, the member must:
- in the absence of any written submission from the person appearing with the official papers at the Licensing Committee hearing, **or**
- in the event that the official submission from the person is not the same as the information given to the Member
- declare at the relevant Committee meeting the nature of the lobbying, who with, when, and the content of the issues raised, by whom and when.

Failure to follow these procedures could prejudice the proper legal processing of the licensing matter, and this may have serious legal and financial consequences for the Council, also implications for the individual Councillor involved.

### **5. Licensing Applications made by Councillors or Officers**

Applications submitted by Councillors, or by Officers in the Licensing Service, will as a general principle, be referred to the Licensing Committee for information. However, for legal reasons it will not be possible for the Licensing Committee to determine all such applications – for example the Council normally has no option but to grant an uncontested application under the Licensing Act 2003.

References will be made to the Council, Councillor or Officer interest. The Councillor or Officer concerned will take no part in handling the application or determining the recommendation or making the decision on the application.

Where a Councillor frequently declares an interest and therefore is unable to take part in the proper consideration of licensing matters it will be referred to the full Licensing Committee. The Council should review the presence of that Councillor on the Committee with a view to replacing him or her with another Councillor whose interests would not prevent him or her considering and deciding on licensing issues referred to the Committee.

### **6. How the Council deals with its own Applications**

A decision on the Council's own licensing applications will be made in accordance with the same procedures applying to licensing applications submitted by other applicants. Licensing Committee Members must give no regard to the interests of the Council itself, aside from receiving and taking into account, as permitted by law, any relevant representations received.

Members who are part of the Council's decision to apply for a licence, or who express a view in respect of such an application, should not be part of any hearing to determine the licence.

Councillors serving on other Council Committee/Scrutiny and Review Panels who also sit on the Licensing Committee are not permitted to have any prejudicial interest, which would disqualify them from taking part in the decision. If individual Councillors in this situation consider that they should declare a personal interest, they *may* still be permitted to speak and vote. Councillors are also at liberty to withdraw from the meeting if they so wish. Relevant Council Officers and, in particular, the Monitoring Officer will be pleased to give advice when Councillors are concerned over a conflict of interest.

## **7. Mediation**

Licensing Officers have a mediation role under the Licensing Act 2003 where valid objections to a licence application are received. Sometimes mediation will result in the applicant modifying the application and/or the objector modifying their objections. Where agreement is reached then in most instances, the licence must be issued and will not require a hearing. Where agreement is not reached, only the remaining issues will come to a hearing. Licensing Committee members should not therefore be involved in the mediation process. This is important for the maintenance of impartiality, since Members must not be influenced by objections that have subsequently been withdrawn through the mediation process.

## **8. Reports to Committee / Council**

Councillors must have the proper information to make an informed decision. An officer recommendation is not provided in cases where this may prejudice Licensing Committee Members, who must reach a collective decision based solely on the facts (subject to legal guidance).

The following information will be included in an officer report to the Licensing Committee:

- A clear description of the issue, application and/or decision required.
- Any relevant history in relation to the matter.
- All relevant evidence (even if apparently conflicting) that will enable Members to reach an informed decision.
- Details of any persons making witness statements and indicating willingness to provide verbal evidence to the Licensing Committee – and such persons shall normally be available at the time of the meeting to be called if required, unless some other arrangement is made for the taking of evidence.
- A list of the options available.

Details of any persons making representations, (are also given to the members but may not be contained within the report) together with an advance indication of a wish to address the hearing personally, or through their representative.

Where a change in policy is being considered the following information will be included:

- Relevant existing requirements and policies.
- An appraisal of the implications of the decision.
- An accurate summary of the responses to consultation, or if this is to be a decision 'in principle', the recommended consultation that is to be carried out if Members agree.
- An officer recommendation.

The majority of reports will be available for public inspection in accordance with the provisions for access to information and freedom of information. Occasionally the Licensing Committee will be asked to hear matters in private with the press and public excluded due to a need to respect personal confidentiality and privacy where sensitive issues are involved. This most often occurs in connection with Public Carriage driver hearings. In these circumstances the papers will not be publicly available in advance of the meeting, and the Licensing Committee will be asked to determine whether the meeting should be held in private to consider the report. Legal advice will be provided where necessary to assist with this decision.

## **9. Delegated Decisions**

The Council's Scheme of Delegation authorises the Assistant Director (Environment) to decide specific categories of licence applications. These are typically non-contentious and/or uncontested applications, which the Council has no legal option but to grant.

#### **10. Making Representations on Licensing Applications**

Members of the Licensing Committee may from time to time make representations on licensing applications. In these circumstances they are required to make their comments in writing and will also be afforded the opportunity to present their view at the appropriate meeting of Licensing Committee or its sub-committee. They may not participate in any part of the determination process.

#### **11. Public Speaking at Committee Meetings**

Where applications are considered pursuant to the Licensing Act 2003 or the Gambling Act 2005, by the Licensing Committee, the conduct of the meeting will be governed by the appropriate Hearings Regulations. The right to make representations under these Acts and Regulations is accordingly limited.

Consideration of applications for drivers of public carriages are held in closed session due to the sensitive nature; however where the application is for a vehicle licence, this will be held in open session.

#### **12. Deferment**

The Licensing Committee should only defer a decision where there are clear and legally permissible reasons for doing so.

#### **13. Councillor Attendance**

It is important that the Councillors' decision takes account of all material issues, not solely those contained in the Officers' report, but also those which may be legally permitted to be presented orally or otherwise at the meeting. Any Councillor absent from any part of the meeting during consideration of a report must not vote on that matter.

#### **14. Site Visits by the Licensing Committee**

The majority of site visits are carried out by officers in preparing reports and recommendations to Members; therefore site visits are not normally required by the Licensing Committee or a Sub-Committee. Any such visits must be justified in licensing terms, and legal advice will be provided by Legal Officers on a case-by case basis. Possible exceptions may include situations where the impact of proposals are difficult to visualise, or where comments made by the applicant or via representations cannot be expressed adequately in writing. Further the chairperson of the Licensing Committee should be advised before Members visit any premises prior to a hearing and they should be accompanied by a relevant officer.

At site visits, Members should keep together as a group and not allow themselves to be addressed or lobbied by any party as an individual. The purpose of the site visit is fact-finding only so no comment should be made that is likely to be interpreted as opinion about the suitability or otherwise of the arrangements being viewed, the validity of the case or the strength of objections. Members should restrict themselves to questions as to the facts. Legal advice will be provided to Members during the course of any site visit where necessary.

#### **15. Training**

All new Councillors, who are to be members of the Licensing Committee, must attend a mandatory training seminar giving an introduction to the Licensing system as part of their induction programme. This mandatory training will be held as soon as possible after a Councillor's appointment to the Committee and prior to his or her first committee meeting. Regular briefings will be provided by Officers or consultants as appropriate to keep Councillors advised of changes to Government policy, guidance or best practice; attendance at such briefings will also be mandatory.

## **16. Complaints**

Complaints will be fully investigated in accordance with the Council's agreed procedure.

It is particularly important that individual Councillors do not become engaged with, or appear to be investigating on their own initiative, complaints and allegations about officers, the work of the Licensing Authority, or other Councillors. In doing so they may jeopardise their impartiality - for example it may appear they give credence to malicious allegations from disgruntled licensees/applicants. The Council's complaint process provides the necessary impartiality and transparency. It is therefore vital to report all such complaints through this process and to disengage from further involvement e.g. by referring further contacts about the matter to the Manager investigating the complaint.

Complaints concerning licensed premises/premises subject to another form of authorisation must be passed to the Licensing Service who will investigate them in accordance with the current enforcement policy.

## **17. Breach of Code**

If anybody wishes to make an allegation that a Councillor has breached this Code, such allegation should be made in writing to the Monitoring Officer. If there is at first sight a case to answer, this Officer will report the matter to the Standards Committee. The Standards Committee shall deal with such allegations as if it were a breach of the model Code, which had been referred to them for local determination.

If anybody wishes to make an allegation that an Officer has breached this Code, such allegation will be dealt with in accordance with the Council's Disciplinary Procedure and Rules.