

# Members' Licensing Code

## 1. Context

- 1.1 This Code has been prepared for all Members who may attend Licensing Committee or Sub-Committee meetings or make representations to such committees as a Ward Member or as an Applicant or an Interested Party. It applies at all times when Members are involving themselves in the licensing process and not just at meetings.
- 1.2 The aim of this Code is to ensure that in the Licensing process there are no grounds to suggest that a decision has been in any way biased, partial or ill-founded. It should be applied in accordance with the Members Code of Conduct and, should there be any apparent conflict, the requirements of the Members Code of Conduct takes priority.
- 1.3 Decisions that the Council makes about Licensing matters can be quite controversial. Any application is likely to have significant impact on the neighbourhoods where people live and therefore they are subject to close public scrutiny.
- 1.4 Licensing Committee decisions can be appealed to the Magistrates Court, potentially challenged in the High Court and they can be the subject of a complaint to the Local Government Ombudsman. Licensing Committee members will usually be acting in a quasi-judicial manner, without reference to their political considerations and taking into account the issues which the law says are relevant to the decision.

## 2. Role and Conduct of Members and Officers

- 2.1 When Members are making Licensing decisions, they must be:-
  - a) Open-minded: a Member must not make up his/her mind until s/he has heard and considered all the relevant evidence, which will not happen until the meeting itself.
  - b) Open and Transparent: The rules about interests in the Code of Conduct apply with particular relevance to Members who are making Licensing Committee decisions.

The following general advice should be considered by all Members likely to become involved in the Licensing process in any way:

    - An application relating to a premises in the vicinity where a Member lives or has a legal interest in property is likely to involve a pecuniary interest as it may affect the Member's wellbeing.
    - A Member being a frequent visitor to the premises in a personal capacity is likely to involve a pecuniary interest as the decision may affect the Member's wellbeing.

- A Member belonging to a lobby or campaign group that may be directly impacted by the outcome of an application is likely to have a pecuniary interest.
  - A Member having any doubts as to how the Licensing Code of Practice applies should seek advice from the Monitoring Officer or their representative as early as possible.
- c) Reasonable: Another aspect of the requirement for openness is the requirement on the Council to give clear and accurate reasons for any decision that has been taken.
- d) Impartial: Members should not favour any person, company, group or locality, nor put themselves in a position where they appear to do so. Members, who do not feel that they can be impartial in this way, should consider whether they are best suited to serve on the Licensing Committee. Members should not meet with applicants or interested parties other than at meetings arranged through the Council's officer(s). A written record should be kept of any such discussions that take place prior to the meeting of the sub-committee.

### **3. Members who are Applicants or Interested Parties**

- 3.1 It is perfectly legitimate for licencing applications to be submitted by Members and Officers. However, it is essential to ensure that such applications are handled in a way that gives no grounds for accusations of bias or predetermination. Members or Officers who are applicants should take no part in processing the application or in its determination.
- 3.2 A Member may wish to exercise a right to speak on his/her own behalf or on behalf of a close associate. Such a Member:
- a) may make written representations to the sub-committee and may attend the meeting to make representations, answer questions and give evidence, in the same way that the public are allowed to attend the meeting for the same purpose.
  - b) May appoint someone to represent him/her if s/he prefers and are advised that this is often the simplest and therefore the preferable way to proceed;
  - c) Must conform to the usual deadlines for interested parties;
  - d) Must not seek or accept, or appear to seek, preferential treatment.
- 3.3 A Member considering becoming involved in any way with a matter falling within the remit of the Licensing Committee, relating to a close associate should always consider, given the potential for perception of bias, whether their involvement is necessary.

#### **4. Ward Members**

- 4.1 A Member may wish to exercise a right to speak on behalf of another party, most likely in the role of Ward representative.
- 4.2 Where Ward Members are representing a constituent in respect of Licensing matters it is advisable, to reduce the risk of legal challenge, for the Member to:
- a) Identify the person(s) whom they represent in the form of e.g. Mr X of Smith Street or Mrs Z of Jones Lane
  - b) Have a written record of their constituent's concerns. This may be in the form of an email or letter from the constituent, or the Member's note of a telephone conversation or personal meeting. Should the Sub-Committee hearing result in an appeal, it may be necessary for the Member to substantiate the representations they have made, and documentary evidence will be necessary.
  - c) Use their judgement and, as far as possible, adhere to the concerns of the interested parties.
- 4.3 Members wishing to speak at a hearing before a Licensing Sub-Committee or to have his/her representations considered in respect of Licensing matters must also:
- a) Comply with the deadlines for making valid representations applicable to all other parties; OR
  - b) Advise the Chairman, Head of Governance or Governance officer appointed to the sub-committee of their wish to speak as a representative of an other party who has made a valid representation as soon as possible and at least 15 minutes before the commencement of the meeting of the sub-committee.
  - c) Not seek, or accept, or appear to seek or accept, preferential treatment.
- 4.4 For Gambling Act matters related to a premises licence, Members may make representations without being asked by a resident specifically to do so although Members are reminded of the wider issues of bias, and disclosable pecuniary and non pecuniary interests.

#### **5. Lobbying**

- 5.1 Members are frequently approached by applicants and interested parties who wish either to 'lobby' Members or to ask advice. It is very important that no licencing committee Member makes up his/her mind, or appearing to have done so, prior to the matter's formal consideration and the hearing of the officer's presentation and the evidence and arguments from applicants and interested parties at the sub-committee.
- 5.2 If a licencing committee member is approached by any means by persons wanting to lobby them regarding a Licensing matter to be

heard by that sub-committee then the Member is strongly advised to:

- a) Explain they cannot discuss the matter;
- b) To refer the person to their Ward Member (not being on the sub-committee) and/or Licensing Officer;
- c) Make and keep a written record of these instances in case the matter proceeds to an appeal;
- d) Declare the circumstances of the lobbying at the meeting considering the item;
- e) Pass any correspondence to the Monitoring Officer at the earliest opportunity and encourage the applicant to submit written information to the Licensing Officer;
- f) Avoid giving any commitment or impression of a commitment; that they hold any particular view about the matter or how they will vote;
- g) Where possible, provide information on the Council's general Licensing policies and procedures only.

- 5.3 Licencing committee Members, if they wish to be free to debate and vote on an application, should avoid organising support for or opposition to a Licensing matter to be determined by Committee and should not lobby other Members as such actions can easily be misunderstood by parties to the application and by the general public.
- 5.4 If a Member realises that s/he has made up their mind before the committee meeting then this must be declared and the Member should withdraw from that sub-committee.
- 5.5 Decisions should be taken in accordance with any statutory requirements and should not be improperly influenced by or in favour of any person, company, group or locality. The key is to demonstrate that each Member's decision was taken on relevant considerations alone.
- 5.6 No Member should accept any gifts or hospitality from an applicant or interested party in a Licensing Committee matter. If a degree of hospitality is entirely unavoidable then the Member should ensure it is of a minimum value, its acceptance is declared as soon as possible and it must be recorded in the Member's Register of Interests if its value is over £25.
- 5.7 Members of the Licensing Committee should discourage applicants or agents from approaching them, should aim to minimise social contacts with known Licensees or agents, and refrain from such contacts when an application has been submitted.

## **6. Guidance on Site Visits**

- 6.1 Site visits by Licensing Sub-Committee Members are extremely rare and generally unnecessary and can put individual Members and the Licensing Authority at risk of accusations of bias.

- 6.2 Site visits are only likely to be appropriate where one would assist the sub-committee in making a more informed decision in a shorter time such as:
- Where the application to be considered by the sub-committee is factually complicated; or
  - Where a hearing is expected to last a full day or more; and
  - Where a site visit would materially reduce the time required by the sub-committee to clarify factual matters such as details of premises layout.
- 6.3 There are restrictions on the organisation and attendance at site visits, which would be organised by Licensing Officers. These include that:
- a) Licensing Officers would accompany the sub-committee members
  - b) All Sub-committee Members must visit at the same time
  - c) The site visit should only be an opportunity to seek factual information and to observe the site
- 6.4 A report of the visit would be prepared by the Licensing Officer and would form part of the full report presented to the sub-committee.

Sub-committee Members should not visit a site that is subject to an application (or one subject to any enforcement) other than as part of an official site visit.

## **7. The Ombudsman**

- 7.1 The Local Government Ombudsman (more properly known as the Commissioner for Local Administration in England) has a variety of powers.
- 7.2 In essence, however, the Ombudsman cannot challenge the decision made by any Licensing Sub-committee but can challenge the way in which that decision was made. If a Sub-committee fails to address a number of issues properly, then the Ombudsman might decide that this amounted to “maladministration.” If the Ombudsman also considers that injustice has been done, he then has a variety of powers to call for a remedy.
- 7.3 However, that does not mean that the Ombudsman has the power to overturn Licensing decisions; only the courts of law can do that and only in strictly defined circumstances.
- 7.4 The potential for maladministration, however, is a concern to the Council as, amongst other things, this could result in an award of cost and compensation against the Council.

8. **Councillor Training**

- 8.1 All new Members, newly appointed Chairmen and returning Members of the Council's Licencing Committees should attend annual induction or refresher training at the earliest date possible and ideally before the first committee meeting. Other Members are encouraged to attend the training so that they can ensure that they keep up-to-date on these matters.