

## Part 4E

### Members' Licensing Code

#### 1. Purpose of this Code

- 1.1 This Licensing Code has been prepared to guide Members and Officers in the discharge of the Council's statutory licensing functions (under the Licensing Act 2003 and Gambling Act 2005).
- 1.2 This Code will also inform potential applicants and the public generally of the high standards of ethical conduct expected of the Council in the exercise of its licensing powers.
- 1.3 Members should abide by both this Licensing Code and also the Code of Conduct for Members.
- 1.4 The provisions of this Licensing Code are designed to ensure that licensing decisions are taken on proper licensing grounds and in a consistent and open manner. The Licensing Code is also designed to assist Members and Officers in dealing with approaches from applicants and residents.
- 1.5 If Members have any doubts about the application of this Licensing Code they should seek early advice preferably well before any meeting takes place, from the Monitoring Officer.

#### 2. Context

- 2.1 Licensing decisions are often based on balancing competing interests and making an informed judgement having taken account of all the evidence presented. Decision makers need to make fair and open decisions that are based on promoting the licensing objectives, in the wider public interest on what can be controversial proposals regardless of personal or political allegiances.
- 2.2 Licensing decisions can be controversial. Any application is likely to have significant impact on the neighbourhoods where people live and therefore they are subject to close public scrutiny.
- 2.3 Licensing decisions can be appealed to the Magistrates Court, they can be challenged in the High Court, and they can be the subject of a complaint to the Local Government Ombudsman. Members deciding a licensing matter are required to act in a largely quasi-judicial role, without reference to their political considerations and taking into account the issues which the law says are relevant to the decision.
- 2.4 One of the key aims of the licensing system is to balance private interests against the wider public interest. Opposing views are often strongly held by those involved. Whilst Councillors who sit on licensing sub committees must take account of these views, they should not favour any person, company, group, or locality, nor put themselves in a position where they may appear to be doing so.
- 2.5 The aim of this Code is therefore to ensure that the Council's processes are sound and that decisions are lawful, consistent, and procedurally correct.

#### 3. General Roles of Councillors and Officers

- 3.1 Members and officers have different but complementary roles. Both serve the public. Officers are responsible to the Council as a whole through the Chief Executive, whilst

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Members are responsible to the electorate and the Council. In licensing matters, unlike planning, officers present only the facts and do not form a view as this is for Members of the sub committee alone to determine. The exception to this is where a Council's Licensing team (in its capacity as one of the Responsible Authorities under the 2003 Act) submits a representation in respect of a licence application or makes an application for a review of a licence. In this case, an officer from the team making the representation/application will present their view and submissions to the Sub Committee for its consideration, alongside any representations from other parties. Where a representation / application is made by the licensing authority, as Responsible Authority a separate officer from the licensing authority who is not involved in the making of the representation may also attend to assist the Sub Committee and present the licensing report. Sub Committee members can ask officers questions in the meeting.

- 3.2 Members must not put pressure on officers to deal with a licensing matter in a particular way. This does not prevent a Councillor who is not a member of the panel from asking questions or submitting views to an officer. These views, when received in written form, will be placed on the licensing file and considered together with other material licensing considerations.
- 3.3 If Members wish to speak at any Licensing sub committee meeting, they can only do so if they have submitted a relevant written representation, unless they have been asked to speak on behalf of a party who has submitted a relevant written representation in which case they cannot go beyond the scope of that representation.
- 3.4 Representations on Licensing applications under the Licensing Act 2003 and the Gambling Act 2005

Type of application	Legislation	Who can make representations.
New premises licence/club premises certificate	Licensing Act 2003	Members of the public, namely residents or businesses, community groups; appropriate ward Councillors and neighbouring wards, and Responsible Authorities including Licensing, Metropolitan Police, London Fire Brigade, Pollution Control, Health and Safety Team, Food Safety Team, Planning Department, Children's Services, Trading Standards and Public Health.
Variation of premises licence/club premises certificate	Licensing Act 2003	Members of the public, namely residents or businesses, community groups; appropriate ward Councillors and neighbouring wards, and Responsible Authorities including Licensing, Metropolitan Police, London Fire Brigade, Pollution Control, Health and Safety Team, Food Safety Team, Planning Department, Children's Services, Trading Standards and Public Health.

Type of application	Legislation	Who can make representations.
Review of licence	Licensing Act 2003	Members of the public, namely residents or businesses, community groups; appropriate ward Councillors and neighbouring wards, and Responsible Authorities including Licensing, Metropolitan Police, London Fire Brigade, Pollution Control, Health and Safety Team, Food Safety Team, Planning Department, Children’s Services, Trading Standards and Public Health.
Summary review of licence	Licensing Act 2003	The Licence Holder  Note: the initial interim steps hearing can proceed without any representations from the premises licence holder and there is no requirement for the premises licence holder to be present at that initial hearing. That does not mean the Licensing Authority cannot afford the licence holder such an opportunity if it thinks it appropriate and feasible to do so in all the circumstances.
Temporary Event Notice	Licensing Act 2003	Police and Environmental Health  Ward Councillors and the public may not make representations as Relevant Persons may only speak and the Act defines these under s99A as police and Environmental Health only
Gambling Premises License (including variations)	Gambling Act 2005	Representations can only be made by Responsible Authorities or Interested Parties. These are defined by s 157-158 of the 2005 Act, with “Interested Parties” being a person who, in the opinion of the licensing authority, lives sufficiently close to the premises to be likely to be affected by the authorised activities, or have a business interest that might be affected by the authorised activities, or someone who represents either of these people. This can include Ward Councillors.
Review of Gambling Premises Licence	Gambling Act 2005	The Licensing Authority, a Responsible Authority, an Interested Person or the Premises Licence Holder

- 3.5 The Licensing Act 2003 requires that 'Responsible Authorities' such as the police, environmental health and others are notified of every application for a new premises licence or variation of an existing licence. An applicant is also obliged to advertise their application in a local paper and place a notice outside the premises for 28 days (10 days for a minor variation application). The 2003 Act enables Responsible Authorities and any other person to make relevant representations about the effect of the application on the promotion of the licensing objectives. This means that the community have a greater say in licensing decisions.
- 3.6 A representation may be an objection or a positive comment. Representations must be relevant to the premises. For a representation to be relevant, it must be about the likely effect of the application on the promotion of the four licensing objectives. A representation will not be relevant if it is vexatious or frivolous. If no relevant representations are made, the licence or variation must be granted in the form that the application was made.
- 3.7 When Members are making Licensing decisions, they must be open-minded: a Member must not make up his/her mind until s/he has heard all the relevant evidence, which will not happen until the meeting itself.

#### **4. Member interests**

- 4.1. It is always best to identify a potential interest early on. If a Councillor thinks that they may have an interest in a particular matter to be discussed at a Licensing Sub Committee he or she should raise this with the Monitoring Officer as soon as possible.
- 4.2. The following general advice should be considered by all Members likely to become involved in the Licensing process in any way:
- 4.2.1 An application relating to premises in the vicinity of where a Member lives or has a legal interest in property is likely to involve a Pecuniary Interest. (Please see the Member's Code of Conduct for further details)
- 4.2.2 A Member being a frequent visitor to the premises in a personal capacity is likely to involve an Interest or a perception of bias as the decision may affect the Member's wellbeing.
- 4.2.3 A Member belonging to a lobby or campaign group that may be directly impacted by the outcome of an application is likely to have any interest and there may be a perception of bias.
- 4.3. Where a Member has a Pecuniary Interest relating to an application they may not sit on the committee (including sub-committee) hearing that application. Any Member, whether or not a Member of the sub committee, with a Pecuniary Interest is precluded from taking part in that item at the meeting.
- 4.4. A Member with a Pecuniary Interest is advised to arrange for another Member to represent the views of the Councillor's constituents.
- 4.5. The Members Code of Conduct requires Members to declare interests and withdraw from meetings and this is to prevent most obvious forms of bias, e.g. not deciding your own licensing application. However, Members may also consider that a "Non-Pecuniary Interest" under the Code also gives rise to a risk of what is called apparent bias.

## 5. Predisposition, Predetermination and Bias

- 5.1. Licensing Sub Committee Members need to avoid any appearance of bias or of having predetermined their views before considering or hearing all the relevant evidence. Avoidance of bias or predetermination or the appearance of bias or predetermination is a legal requirement that the decision maker must respect.
- 5.2. A distinction needs to be made between situations which involve pre-determination or bias on the one hand and predisposition on the other. The former is indicative of a “closed mind” approach. Bias can also arise from a member’s relationships or interests, as well as their state of mind. Pre-determination and bias are unlawful and can make a decision unlawful and likely to leave the sub committee’s decision susceptible to legal challenge by appeal or Judicial Review.
- 5.3. The legal test is: “whether the fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the Sub Committee was biased’. A fair-minded observer takes an objective and balanced view of the situation but Members who think that they have a relationship or interest that may raise a possibility of bias, should seek advice.
- 5.4. Clearly expressing an intention to vote in a particular way before a meeting (predetermination) is different from where a Member makes it clear they are willing to listen to all the material considerations presented at the sub committee and keep an open mind before deciding on how to exercise their vote (predisposition). The latter is acceptable, the former is not and may result in a Court quashing such decisions.
- 5.5. The law provides that a Member should not be regarded as having a closed mind simply because they previously did or said something that, directly or indirectly, indicated what view they might take in relation to any particular matter. This reflects the common law position that a Councillor may be predisposed on a matter before it comes to Sub Committee, provided they remain open to listening to all the arguments and changing their mind in the light of all the information presented at the meeting. Nevertheless, a Councillor in this position will always be judged against an objective test of whether the reasonable onlooker, with knowledge of the relevant facts, would consider that the Member was biased.
- 5.6. A Licensing Sub Committee Member who has been lobbied and wishes to support their constituents or is a Ward Councillor and wishes to campaign for or against a proposal will not be able to sit on the sub committee hearing the proposal as this would amount to predetermination.
- 5.7. Participation as a Member in a Licensing Sub Committee where a Member is or may be perceived to be biased, in addition to the risk of a complaint against the individual Member, also places the decision of the Sub Committee at risk from legal challenge. As such, if a Licensing Sub Committee Member considers that they are or have given the impression that they are biased or predetermined they must carefully consider whether it is appropriate for them to participate in the matter.
- 5.8. A Member should stand down from any agenda item where they have a relevant and current or recent private business or personal relationship and association with any applicant or applicant’s representative. If in doubt about this Members should speak with the Monitoring Officer or his/her representative before any decision is made.

**6. Applications submitted by the council, councillors (members) or officers**

- 6.1. Licence applications by the council for its own use could give rise to suspicions of impropriety. It is perfectly legitimate for such proposals to be submitted to and determined by the Council. Proposals for licences associated with the council's own use will be treated no differently from any other application.
- 6.2. Certain Members may through their other roles outside of a Licensing Sub Committee, have been heavily committed to or involved in a Council's own licensing proposals. In such circumstances, when an item comes to be considered at Sub Committee the Member concerned, if they sit on the Sub Committee, must consider whether they have an interest or degree of involvement with the proposals that could give the impression of bias. If in doubt, they are encouraged to seek advice from the Monitoring Officer.

**Applications Submitted by Members or Officers**

- 6.3. It is perfectly legitimate for licensing applications to be submitted by Councillors and officers. However, it is vital to ensure that they are handled in a way that gives no grounds for accusations of bias or pre-determination.
- 6.4. If a Member or an officer submits their own licensing proposal to the Council which they serve, they should take no part in its processing and/or determination. A Member who acts as an agent or representative for someone pursuing a licensing matter with the authority should also take no part in its processing and/or its determination.
- 6.5. Where decisions relate to applications made by Members of staff or an elected Member these should be reported to Sub Committee where they relate to the following:
  - Members of the Council
  - Senior officers of the Council (Service Head and above)
  - Officers of the Local Licensing Authority.
- 6.6. The term "Officers of the Local Licensing Authority" means officers within the Council who are closely involved in the day-to-day work of the Council's licensing function and include all external persons such as lawyers, contractors and advisors who work for the Local Licensing Authority.

**7. Lobbying**

- 7.1. Those who may be affected by a licensing decision, will often seek to influence it through an approach to their Ward Councillor or to a Member of the Licensing Sub Committee.
- 7.2. A Licensing Sub Committee Member should explain to those lobbying or attempting to lobby them that if they were to discuss the matter with them that there is a danger that they would be seen to be predetermined. Licensing Sub Committee Members should therefore:
  - 7.2.1 Suggest to lobbyists that they submit written representations (within the permitted timeframe) to the Licensing Service in order that their views can be included in the officer reports prepared for determination under delegated powers or by Committee;
  - 7.2.2 Pass on any lobbying correspondence received (including plans, data, correspondence in respect of an application) to the Licensing Service as soon as practicably possible so that, if appropriate, it can be taken into account and included in the report on the application;

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- 7.2.3 Remember that their overriding duty is to the whole community not just to the residents and businesses within their ward and that they have a duty to make decisions impartially and should not improperly favour, or appear to improperly favour, any person, company, group or locality;
- 7.2.4 Not accept gifts or hospitality from any person involved in or affected by a licensing proposal, but if a degree of hospitality is unavoidable (e.g., refreshments at a meeting), ensure that they comply with the provisions in the Members' Code of Conduct on gifts and hospitality and inform the Monitoring Officer where they feel that they have been exposed to undue or excessive lobbying.

### **8. Post-submission discussions**

- 8.1. A Licensing Sub Committee Member should not usually be involved in discussions with an applicant or agent when a licensing application has been submitted and remains to be determined. Potentially, these discussions could be interpreted, particularly by objectors to a proposal, as an indicator of predetermination or bias.
- 8.2. If a Licensing Sub Committee Member is contacted by the applicant, their agent or objectors, they should follow the rules on lobbying and consider whether or not it would be prudent in the circumstances to make notes when contacted. A Licensing Sub Committee Member should report to the licensing team any significant contact with the applicant or other parties, explaining the nature and purpose of the contacts and their involvement in them, so that it can be recorded on the licensing file.
- 8.3. Licensing Sub Committee Members should not attend post-submission meetings that are not organised through officers.
- 8.4. Members should report any substantive discussion with applicants to the licensing team.

### **9. Site visits**

- 9.1. The purpose of a site visit conducted by Members and officers is to gain information relating to the land or buildings which are the subject of the licensing application and which would not be apparent from the licensing application to be considered by a Licensing Committee. A site visit may also assist Members in matters relating to the context of the application in relation to the characteristics of the surrounding area. Discussions on site visits shall be confined to the application as currently submitted.
- 9.2. The Chair (or Member chairing the visit) shall explain the purpose of the visit and how it will be conducted to all persons present at the site visit.
- 9.3. Under the Chair's guidance the role of the Licensing Officer attending the site visit will be to brief Members on the licensing applications(s) the subject of the visit.
- 9.4. Officers shall ensure, where practical, that applicants and Members are invited to attend the visit and that they are able to view all key parts within or adjoining the site.
- 9.5. Whilst on site visits, Members of Licensing Sub Committee should not express an opinion on the licensing application or its merits, and should avoid making comments or acting in a way which makes it clear beyond doubt that they have a completely closed mind, as this would amount to predetermination.
- 9.6. A site visit should not be on the basis of exposing Members of the Licensing Sub Committee (including sub-committees) to local opinion but should be to explore the licensing issues in the application.

**10. Licensing appeals**

- 10.1. Licensing decisions can be appealed to the Magistrates Court, they can be challenged in the High Court and they can be the subject of a complaint to the Local Government Ombudsman. Members are required to act largely in a quasi-judicial role, without reference to their political considerations and taking into account the issues which the law says are relevant to the decision.
- 10.2. An appeal against the decision of the Licensing Sub Committee is made to the Court while a complaint about the way in which that decision was made can be made to the Ombudsman.
- 10.3. Where the Licensing Sub Committee refuses or allows an application and there is an appeal Members may attend the appeal as observers if they so wish. The decision of the Committee will be documented in the minute and set out in the decision notice.

**11. Licensing enforcement**

- 11.1. Members should bring to the attention of the Licensing Service suspected breaches of licensing law so that they may be investigated to see whether any action is possible or necessary. They should bring these to the attention of the licensing team.

**12. Councillor training**

- 12.1. All new Members, newly appointed Chairs and returning Members of the Council's Licensing and General Purpose Committee 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.

**13. Meetings of the Licensing Sub committee**

- 13.1. No material revision to any licensing application shall be considered at any Licensing Sub Committee unless it has been submitted at least 14 clear days before the relevant Licensing Sub Committee meeting, and has been the subject of a written report prepared by the licensing department and any necessary public consultation has taken place.
- 13.2. Where there is any doubt as to the voting or of the actual counting of votes in relation to any particular application, clarification should be immediately sought by the Chair prior to dealing with the next agenda item This may be by recorded vote.
- 13.3. For the good conduct of the meeting the Chair should ensure:
  - 13.4.1 Members' comments at the Sub Committee only relate to the licensing merits of the application before them;
  - 13.4.2 Reference at the Sub Committee to non-licensing objectives issues by Members and those giving evidence are discouraged;
  - 13.4.3 The cross-questioning of speakers should only take place if there is need for clarification of what a speaker has already outlined;
  - 13.4.4 Residents and applicants understand that the late submission of further representations could lead to the deferral of the meeting and the further representations may not be permitted without agreement of all parties.