

LICENSING CODE OF CONDUCT

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1. INTRODUCTION

- 1.1 This Code of Conduct (the Licensing Code) gives advice to members who:
- Are members of the Licensing Committee and who sit on Licensing Sub-Committee.
 - Wish to address the Committee or a hearing panel on any licensing issue.
 - Are involved outside the Committee on licensing applications or other licensing matters - including informal occasions such as meetings with officers or public and consultative meetings.
 - Are involved in applications for licences under the Licensing Act 2003.
- 1.2 Most decisions taken by councillors are administrative in nature. The work of the Licensing Sub-Committee is different in that its proceedings are quasi judicial and the rules of natural justice apply. This imposes a new and higher set of standards on those councillors who are involved in the decision-making process. Failure to abide by these standards may render the Council or individual councillors open to challenge either through the courts or the Standards Board for England.
- 1.3 This Code provides a set of guidelines for councillors. It is part of the Council's ethical framework and should be read in conjunction with the Members' Code of Conduct and the Protocol on Member/Officer Relations.
- 1.4 A key aim of the Licensing Code is to ensure that there are no grounds for suggesting that a licensing decision has been biased, partial or is not well founded in any way. Members must make these decisions openly, impartially with sound judgement and for justifiable reasons.
- 1.5 The Human Rights Act 1998 has implications for the licensing system and has created enhanced requirements for procedural fairness, transparency and accountability in decision-making.

1.6 The Licensing Code is intended to minimise the prospect of legal or other challenge to decisions. Non-compliance without good reason could be taken into account in investigations into possible maladministration or may have implications for the standing of councillors and the Council as a whole.

2. RELATIONSHIP WITH THE MEMBERS' CODE OF CONDUCT

2.1 Members must comply with the Members' Code of Conduct and the rules in that Code must be applied before considering the Licensing Code.

2.2 The Licensing Code is not intended to form a part of the adopted Members' Code of Conduct but is a separate document, which is complimentary and supportive of the Members' Code of Conduct and also the source of expanded guidance in the particular area of licensing.

3. LEGAL BACKGROUND

3.1 Human Rights Act

3.1.1 The Human Rights Act 1998, which came into full effect on 2 October 2000, incorporated the key articles of the European Convention on Human Rights into domestic law. The Convention guarantees certain basic human rights. As far as possible legislation (including the licensing laws) must be interpreted in such a way as to conform with Convention rights. Decisions on licensing issues are actions of a public authority and so must be compatible with Convention rights.

3.1.2 Members of the Sub-Committee need to be aware of the rights contained in the Convention when making decisions and in particular:

- **Article 6: Right to a fair trial**

In the determination of a person's civil rights and obligations ... everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.

- **Article 8: Right to respect for family and private life**

Everyone has a right to respect for his or her private life, and his or her home and correspondence.

- **Article 1 of the First Procedure: Protection of property**

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his or her possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

- **Article 14: Prohibition of discrimination**

The enjoyment of the rights and freedoms in the Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

3.1.3 Most Convention rights are not absolute and there are circumstances when an interference with a person's rights is permitted although any interference with the rights must be proportionate and go no further than is necessary.

3.2 Quasi-Judicial Hearings

3.2.1 A quasi-judicial hearing is one:

- which affects a person's livelihood
- which involves disciplinary action
- which affects property.

3.2.2 These hearings are subject to the rules of natural justice. Properly applied, the rules of natural justice will ensure that the requirements of the Convention, that a hearing is both "fair" and presided over by an "independent and impartial tribunal", are met.

- 3.2.3 There are two principles underlying the rules of natural justice. First, all parties must be given a chance to put their case under conditions which do not put one party at a substantial disadvantage to the other party. All parties should be given sufficient notice of the hearing, the applicant should have disclosure of the nature of the objections/representations as well as knowing who is objecting/making a representation and there should be a right to question witnesses.
- 3.2.4 Second, a person who has an interest in an application must be disqualified from considering it. The Licensing Sub-Committee must be impartial - not only must there be no actual bias but there must be no perception of bias.
- 3.2.5 The procedure rules which govern hearings of the Licensing Sub-Committee reflect the requirements of the Human Rights Act and the rules of natural justice. To avoid any allegations of bias or perceived bias, councillors sitting on the Licensing Sub-Committee must strictly observe those procedure rules.

4. TRAINING OF COUNCILLORS

- 4.1 Because the technical and propriety issues associated with licensing are not straightforward, it is the Council's policy to arrange training on the work of the Licensing Sub-Committee for all councillors who sit on the Sub-Committee. Councillors must undertake the training before participating in a meeting of the Sub-Committee. Other councillors are free to attend the training in order to gain an understanding of licensing issues.

5. LICENSING APPLICATIONS BY COUNCILLORS, OFFICERS AND THE COUNCIL

- 5.1 Proposals to the Council by serving and former councillors and officers and their close friends and relatives can easily give rise to suspicions of impropriety. So can proposals for a Council's own applications.
- 5.2 It is perfectly legitimate for such proposals to be submitted. However, it is vital to ensure that they are handled in such a way that gives no grounds for accusations of favouritism.

- 5.3 Recent decisions by the Adjudication Panel on standards issues make it very difficult for members who have a professional qualification to act in presenting cases in that capacity for applicants or to act as professional witnesses in hearings.
- 5.4 Councillors and officers who submit their own proposal should notify the Monitoring Officer of the proposal and play no part in its processing or determination and avoid contact, whether direct or indirect with members of the Sub-Committee concerning the application.

6. LOBBYING

- 6.1 Councillors may be approached or lobbied by an applicant, councillor, agent or objector about a particular licensing application. Lobbying is a normal and perfectly proper part of the political process but it does not sit well with the quasi judicial nature of the Licensing Sub-Committee when a councillor must enter the meeting with an open mind and make an impartial determination on the relative merits of all the evidence presented at the hearing. Being lobbied in advance of the meeting is incompatible with this high standard.
- 6.2 If a member is approached, he or she should advise the lobbyist to address any comments or concerns to the Director of Environment. In no circumstances should a councillor give an indication of voting intentions or otherwise enter into an unconditional commitment to oppose or support the application. To do so without all relevant information and views would be unfair and prejudicial. A councillor who feels that he or she has been exposed to undue or persistent lobbying should advise the Monitoring Officer.
- 6.3 Other councillors should not lobby members of the Licensing Sub-Committee, directly or indirectly, about issues which are due to be determined by the Licensing Sub-Committee.
- 6.4 When attending a public meeting at which a licensing issue is raised, a member of the Licensing Sub-Committee should take great care to maintain an impartial role and not express a conclusive view on any pre-application proposals or submitted application.

6.5 Correspondence received by any member of the Council (whether on the Licensing Sub-Committee or not), should be passed without delay to the Director of Environment so that all relevant views can be made available to those councillors or officers responsible for determining the application. A reply by a councillor should, as a rule, simply note the contents of the correspondence and advise that it has been passed to officers.

7. DISCUSSIONS BEFORE THE HEARING

7.1 **Pre-application discussions** - discussion between a potential applicant and representatives of the Council may be of considerable benefit to both parties. Similarly, a meeting between the Council and potential objectors may also be beneficial. However, it would be easy for such discussions to become or be seen (especially by objectors/persons making representations) to become part of a lobbying process. In the circumstances, pre-application discussions should be avoided by members of the Licensing Sub-Committee.

7.2 **Post-application discussions** - a councillor should not approach an applicant for a licence in an effort to securing changes to the application. Such an approach would inevitably give rise to allegations of partiality or bias.

7.3 Generally, any contact with applicants should be conducted with an through officers and should always be reported to the Licensing Sub-Committee. Requests to a councillor for a meeting should be passed to the Director of Environment.

8. DECLARATION OF PERSONAL AND/OR PREJUDICIAL INTERESTS

8.1 The Code of Conduct for Members and the Council's Member/Officer Protocol gives advice on the declaration of personal and/or prejudicial interests.

8.2 Where interests arise, the member must declare these in accordance with this Code of Conduct.

8.3 It is important that all councillors are familiar with the Code of Conduct for Members. Where in relation to any item any councillor has a personal interest in an application (as defined

in the Code), this must be declared at the earliest opportunity in the declaration of interests section of the agenda, or at any time subsequently, or as soon as practicable when the interest becomes apparent. Where a councillor has a prejudicial interest he should advise the relevant officer as soon as practicable. This is important as the quorum of a Licensing Sub-Committee is its full compliment of 3 members and a late declaration of a prejudicial interest may leave the meeting inquorate and unable to proceed.

- 8.4 Where a member is in any doubt about whether they have an interest, they may always seek the advice of the Council's Monitoring Officer or legal advisor at the meeting, disclosing all material facts. Whenever possible, advice should be taken before meetings. Ultimately however, the duty to declare and the decision as to whether an interest should be disclosed rests with the elected member concerned. In making that decision, members should be aware that the test is whether a reasonable member of the public, with the same knowledge of the matter, would reasonably consider that there was an interest. A member may remain and vote on an item where a personal interest (which is not prejudicial) has been declared. To assist members' thinking on this matter members are advised to adopt a sequential approach to the consideration of personal and prejudicial interests. See Appendix 1 of this document - Declaring Interests Flowchart - Questions to Ask Yourself.

9. PRE-DETERMINATION AND BIAS

- 9.1 The right to a fair and unbiased hearing (particularly in the light of the Human Rights Act 1998) is a general legal requirement and applies to licensing decision-making in addition to the Code of Conduct for Members.
- 9.2 If a councillor has taken a firm view on a licensing matter, or appears to have made up their mind before the formal consideration of an application, that councillor is said to have fettered their decision and pre-determined the matter.
- 9.3 If a member who has fettered their discretion takes part in the decision that will put the Council at risk of a finding of maladministration. It could also lead to legal proceedings on grounds of there being a danger of bias or predetermination or

a failure to take into account all factors enabling the proposal to be considered on its merits.

- 9.4 There is acceptance that a member may consider matters in several capacities as different factors may apply to different decisions. However, given the size of Licensing Sub-Committee and the proportionately greater influence an individual member will have, members should exercise caution in such situation, as it may preclude them from taking part in a licensing hearing.
- 9.5 A councillor may make representations as an interested party (if they satisfy the criteria defining an interested party in the Licensing Act 2003). They may speak at the Sub-Committee hearing which considers the matter provided that they do not have a personal or prejudicial interest. Members are strongly recommended to seek advice from the Monitoring Officer on this point.

10. MEMBERSHIP OF A PARISH/TOWN COUNCIL

- 10.1 Where a parish council makes representations on a licensing application as an “interested party” under the Licensing Act 2003, then a District member who is also a member of that parish/town council should not sit on the Licensing Sub-Committee. It goes without saying that a member should not become involved at a District level in applications for licences made by a parish council on which they serve.
- 10.2 However, a parish councillor who is also a Licensing Committee member can, in the above circumstances, address the Licensing Sub-Committee on behalf of the parish council providing they do not have a prejudicial interest.

11. CONDUCT AT THE HEARING

- 11.1 The essence of the rules of natural justice are that councillors not only act fairly but are also seen to act fairly. Councillors must follow the agreed procedure at all times and should only ask questions at the appropriate points in the procedure. At no time should a councillor express a view which could be seen as pre-judging the outcome. During the course of the hearing councillors should not discuss (or appear to discuss) aspects of

the case with the applicant, an objector, their respective advisers or any member of the public nor should they accept letters or documents from anyone other than the clerk.

- 11.2 Again, to ensure compliance with the rules of natural justice, councillors on the Sub-Committee must ensure that they hear the evidence and arguments for and against the application and must be present for the entire hearing.

12. COUNCILLORS WHO ARE NOT ON THE SUB-COMMITTEE

- 12.1 A councillor who is not a member of the Sub-Committee may speak at the hearing provided they do not have a prejudicial interest, if they have made a relevant representation on their own behalf as an interested party or if authorised to act as an advocate by either the applicant or any interested parties. The applicant has the right to see any representations in advance. He or she also has a right of reply.
- 12.2 Councillors addressing the Sub-Committee should disclose any interests they may have, including the fact that they have been in touch with the applicant, or any interested party, and whether they are speaking on behalf of any of those people at the meeting.
- 12.3 A councillor who is not on the Committee but who is at one of its meetings should normally sit apart from the Sub-Committee to demonstrate that they are not taking part in the discussion, consideration or vote. He or she should not communicate with councillors on the Sub-Committee or pass papers or documents to them before or during the meeting. They may not attend briefings or accompany the Sub-Committee if it retires to deliberate in private.
- 12.4 A councillor who has submitted an application or who otherwise has a prejudicial interest in the application, should not attend the meeting at all.
- 12.5 Councillors who are opposed in principle to any category of application or alcoholic liquor or form of public entertainment, either in their own ward or District wide, should not seek nomination to the Sub-Committee.

DECLARING INTERESTS FLOWCHART – QUESTIONS TO ASK YOURSELF



