

## **5.5: LICENSING CODE OF CONDUCT**

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## 5.5 LICENSING CODE OF CONDUCT

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### 1. INTRODUCTION

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- 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 and the Gambling Act 2005.
- 1.2** Most decisions taken by councillors are administrative in nature. The work of the Licensing Committee and Sub-committees are 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 Audit and Governance Committee.
- 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

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- 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

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### 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 Protocol: 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

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- 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

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- 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

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- 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 Strategic Director of Place. 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. 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 Chief Executive 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**

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- 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 and through officers and should always be reported to the Licensing Sub-committee. Requests to a councillor for a meeting should be passed to the Chief Executive.

## **8. DECLARATION OF DISCLOSABLE NON-PECUNIARY AND PECUNIARY INTERESTS**

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- 8.1** The Code of Conduct for Members and the Council's Member/Officer Protocol gives advice on the declaration of 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 Disclosable Pecuniary 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. This is important as the quorum of a Licensing Sub-committee is its full complement of 3 members and a late declaration of a Disclosable Pecuniary 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.

## **9. PRE-DETERMINATION AND BIAS**

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- 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** Whilst the Localism Act 2011 provides for councillors to take a more proactive stance in relation to local issues, councillors must attend Sub-committee meetings with an open mind and only determine applications on the basis of the evidence and representations made to them at the hearing. If a councillor fails to determine an application on this basis it may amount to bias and to a breach of their obligations under the Code of Conduct.
- 9.3** The suggestion of any bias may put the Council at risk of a finding of maladministration and it could also lead to legal proceedings for bias or a failure to take into account all factors enabling the proposal to be considered on its merits.
- 9.4** There is a general 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 situations, as it may preclude them from taking part in a licensing hearing.

## **10. MEMBERSHIP OF A PARISH/TOWN COUNCIL**

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- 10.1** Where a parish/town council makes representations on a licensing application they are an "interested party" under the Acts. A District member who is also a member of that parish/town council may have a Disclosable Interest and are advised to seek advice from the Council's Monitoring Officer before sitting on the Licensing Committee.
- 10.2** Members are also advised that in the interests of transparency they should not become involved at a District level in applications made by a parish

council on which they serve. If they wish to do so they must make clear that they are acting in the capacity of parish councillor and not District.

## **11. CONDUCT AT THE HEARING**

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- 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 advisors 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 AS INTERESTED PARTIES UNDER THE LICENSING ACT 2003**

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- 12.1** Since January 2010 Councillors are regarded as interested parties in their own right. They are entitled to make representations or call for reviews in respect of any premises in any Ward licensed within the Councils area.
- 12.2** They do not have to await instructions from residents or other organisations, but can act on their own initiative. The representation must be relevant. That is, it is made within the timescales allowed, relates to one or more of the Licensing Objectives and is not malicious or vexatious.
- 12.3** A Councillor can still represent another interested party/parties (provided that interested party is not a family member or close associate) who has made a representation. The Councillor will still be subject to the Code of Conduct when representing interested parties. The Councillor must demonstrate to the licensing authority that they have been requested to represent the interested party and only put forward the views of the interested party.
- 12.4** A member of the Licensing Committee can make representations, call for a review and address the Committee as an interested party, but would not be able to sit as a member of the sub-committee when the application is considered.
- 12.5** The representation made by the Councillor carries no less nor any more weight than the representations made by other interested parties.



- 12.6** The Act and Hearing regulations govern the procedure and specify the rights for applicants, responsible authorities and interested parties. The Councillor will be bound by these procedure rules.
- 12.7** Councillors addressing the sub-committee should disclose any interests they may have and their standing at the hearing.
- 12.8** The Code of Conduct for members states that a Councillor with a Disclosable Pecuniary Interest cannot act as a representor where that interest relates to himself/herself, a member of his/her family or a close associate. A member may, however, act in a private capacity in such circumstances provided that it is made clear to the Committee that the member is exercising his/her private rights.
- 12.9** A Councillor who is not on the Committee but who is at one of its meetings in his/her professional capacity should sit apart from the Committee or Sub-committee to demonstrate that he/she is not taking part in the discussion or determination unless his/her presence in that capacity would be a breach of the obligations of the Code of Conduct, for example, influencing a decision by presence. If the Councillor is attending in his/her private capacity as a member of the public, this should be made clear to the Committee and his/her rights are the same as those afforded to any member of the public.
- 12.10** Councillors who are opposed in principle to any category of application or alcoholic liquor, form of entertainment or gambling, either in their own Ward or District wide should not seek nomination to the Committee.