



CHELTENHAM

BOROUGH COUNCIL

Notice of a meeting of Licensing Committee

Wednesday, 12 October 2016
6.00 pm
Pittville Room - Municipal Offices

Membership	
Councillors:	Wendy Flynn (Chair), David Willingham (Vice-Chair), Mike Collins, Tim Harman, Adam Lillywhite, Paul McCloskey, Dennis Parsons, Diggory Seacome, Max Wilkinson and Pat Thornton

The Council has a substitution process and any substitutions will be announced at the meeting

Agenda

1.		APOLOGIES	
2.		DECLARATIONS OF INTEREST	
3.		PUBLIC QUESTIONS These must be received no later than 12 noon on the fourth working day before the date of the meeting	
4.		MINUTES OF LAST MEETING To approve the minutes of the last meeting held on 29 July 2016.	(Pages 3 - 6)
5.		MINUTES OF SUB COMMITTEE MEETINGS To approve the minutes of the three Licensing Sub Committees held on 19 August 2016, relating to Chelsea Bar and Brasserie, Indian Voojan and Masala Bites.	(Pages 7 - 20)
6.		REVIEW OF A HACKNEY CARRIAGE DRIVER'S LICENCE Mr Mohammed Shahin Ahmed	(Pages 21 - 24)
7.		REVIEW OF THE LICENSING CODE OF CONDUCT Report of the Senior Legal Officer	(Pages 25 - 44)
8.		LOCAL GOVERNMENT ACT 1972 - EXEMPT INFORMATION That in accordance with Section 100A(4) Local Government	

		<p>Act 1972 the public be excluded from the meeting for the remaining items of business as it is likely that, in view of the nature of the business to be transacted or the nature of the proceedings, if members of the public are present there will be disclosed to them exempt information as defined in paragraph 1, 2 and 7, part 1 Schedule 12A (as amended) Local Government Act 1972, namely:</p> <p>Information relating to any individual,</p> <p>Information which is likely to reveal the identity of an individual,</p> <p>Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime.</p>	
9.		<p>EXEMPT MINUTES To approve the exempt minutes of the meeting held on 29 July 2016.</p>	(Pages 45 - 48)
10.		<p>ANY OTHER ITEMS THE CHAIRMAN DETERMINES TO BE URGENT AND WHICH REQUIRES A DECISION</p>	
11.		<p>DATE OF NEXT MEETING Wednesday 9 November 2016 at 6pm</p>	

Contact Officer: Annette Wight, Democracy Assistant, 01242 264130
Email: democratic.services@cheltenham.gov.uk

Licensing Committee

Friday, 29th July, 2016

2.15 - 3.45 pm

Attendees	
Councillors:	Wendy Flynn (Chair), David Willingham (Vice-Chair), Mike Collins, Adam Lillywhite, Dennis Parsons, Diggory Seacome, Max Wilkinson and Pat Thornton
Also in attendance:	Vikki Fennell and Phil Cooper

Minutes

- 1. APOLOGIES**
Apologies were received from Councillors Harman and McCloskey.

- 2. DECLARATIONS OF INTEREST**
None

- 3. PUBLIC QUESTIONS**
None

- 4. MINUTES OF LAST MEETING**
The minutes of the last meeting held on 1 July 2016 were approved and signed as a true record.

- 5. APPLICATION FOR A STREET TRADING CONSENT**
The Licensing Officer, Phil Cooper, introduced the report regarding an application from Mr Angel Andreev for a street trading consent to sell hot spiral chips and sweet corn from a catering unit measuring 1.2m long, 0.6m wide and 2.0m high on The Promenade adjacent to Long Gardens. The council has determined this location to be suitable for street trading, with restrictions on the type of goods to be sold limited to ice cream, confectionary/cakes, busking (when also selling merchandise) and sign up services. The applicant had previously been refused consent to trade on the highway outside 202 High Street Cheltenham. The applicant has applied to trade on Fridays and Saturdays from 10.00 to 18.00 hours. Appendices 1 and 2 show the location, with a photograph of the unit at Appendix 3.

The Officer reported that one objection had been received from the council's planning enforcement officer, on the grounds of the visual appearance of the trading unit and it not enhancing the streetscape. Members were advised they were to consider granting the application because they were satisfied that the location was suitable or to refuse it.

In response to questions from members, the Officer confirmed that although the objector had indicated that it did not comply with the street trading policy, the matter had to come before committee in relation to the type of goods to be sold.

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The Officer also advised, that whereas the applicant's previous application was for a 3 month trial period, this was not the case this time and a standard 12 month trading period would apply if granted. However members could restrict the consent to a 3 month trial period.

The Chair invited the applicant to speak in support of his application. Mr Andreev said he would be happy to accept a 3 month trial period in this location. His application was refused last time and he would be happy to get the chance to trade his products in the town centre at this site.

In reply to a question from a member, Mr Andreev said that he was in negotiation with Cheltenham Borough Council property section about use of electricity.

During the ensuing debate, many members said they liked the product, it being interesting, inventive and different and members also wished to support this business initiative. However, members also felt that the appearance of the trading unit was too garish, unsuitable and out of character for this location in the Promenade where it didn't enhance the street trading scene. Some felt it was more suitable for location in other parts of the town or appropriate later at night, but as this application had already been refused in a different town centre location, members questioned the Officer on the policy and the guidance that had been given to the applicant.

The Officer informed members that the town centre area covered by the policy only had 2 locations approved for the sale of hot food; one was permanently occupied and one was only occupied during the school holidays. The Officer suggested that if the applicant wished to use the latter site during term time, then this could be discussed and, as it was an approved site for the sale of hot food, the applicant would not have to come before the committee again. The Officer also informed members that there were locations outside of the town centre area where street trading units could sell hot food. The Chair confirmed that the partially used site was opposite the Next store and was seasonally used by Danter's selling crepes and donuts. The Officer did not know if there was an electricity supply to this location or whether there was space for the 2 units to trade side by side. Members recommended that as it would be beneficial to have an electricity supply to these locations, this matter be taken up with the Council.

If the applicant was unsuccessful, one member asked if his application fee could be waived or reduced should he wish to make a further application. The Officer advised that he did not have the authority to grant this, but stressed that the applicant had been advised against this location, but he had still applied to be in the town centre.

Members felt trading units should enhance not detract from the street scene landscape, but again questioned the policy on the restriction of locations for selling hot food, as members were keen to support business set-ups.

As the applicant had nothing further to add, the chair moved to vote on granting the application.

Upon a vote, it was 2 for, 5 against, 1 abstention

On voting for refusal of the application, it was 5 for, 1 against, 2 abstentions

RESOLVED THAT, Mr Angel Andreev's application for a street trading consent be refused as it did not comply with the provision of the street trading policy.

6. **LOCAL GOVERNMENT ACT 1972 - EXEMPT INFORMATION**
RESOLVED THAT in accordance with Section 100A(4) Local Government Act 1972 the public be excluded from the meeting for the remaining items of business as it is likely that, in view of the nature of the business to be transacted or the nature of the proceedings, if members of the public are present there will be disclosed to them exempt information as defined in paragraph 1, 2 and 7, part 1 Schedule 12A (as amended) Local Government Act 1972, namely:

Information relating to any individual,

Information which is likely to reveal the identity of an individual,

Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime.

7. **REVIEW OF A PRIVATE HIRE DRIVER'S LICENCE**

Members were advised that they had the following recommendation to vote on:

Whether the licence holder's Private Hire driver's licence be continued with no further action, because the Committee was satisfied that he was a fit and proper person to hold such a licence: or

Whether the licence holder's Private Hire driver's licence be revoked as the Committee considered him not a fit and proper person to hold such a licence.

Upon a vote that the driver's licence be continued with no further action,

It was for 0, against 8.

Upon a vote that the driver's licence be revoked with immediate effect,

It was for 8, against 0.

RESOLVED THAT, the Private Hire driver's licence be revoked with immediate effect, as the members considered him not a fit and proper person to hold such a licence.

8. **ANY OTHER ITEMS THE CHAIRMAN DETERMINES TO BE URGENT AND WHICH REQUIRES A DECISION**

A member requested that when the review of licensing committees is undertaken that it includes a review of the street trading policy, as new members now sit on the committee. The Chair replied that there is a policy in place which has to be adhered to, but maybe it could be looked at again.

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Another member questioned the lack of substitutes on the committee with only 8 out of 10 members being present. The Democracy Assistant informed members that substitutes had been requested, but the sub for the conservative party had not attended the licensing training and no one had been able to sub for the Lib Dems.

The committee requested that a non-personal press release be issued regarding the private hire driver's licence being revoked.

The Chair confirmed that Licensing meetings would now be held at 6pm in the evening on the dates as set out in the Information note that went to council on 18 July, which for ease of reference are:-

2016

Wed 7 September

Wed 12 October

Wed 9 November

Wed 7 December

2017

Thur 12 January

Wed 8 February

Wed 8 March

Wed 12 April

Wed 10 May

Wed 7 June

Mon 10 July

Wed 2 August

9. DATE OF NEXT MEETING

Wednesday 7 September at 6pm.

Wendy Flynn
Chairman

Licensing Sub-Committee (Chelsea Bar & Brasserie)

**Friday, 19th August, 2016
10.00 - 11.40 am**

Attendees	
Councillors:	Diggory Seacome (Chairman), Mike Collins and Pat Thornton
Officers:	Phil Cooper and Fiona Samuda
Also in attendance:	PC Steve Kiernan, Licensing Officer, Gloucestershire Constabulary; PC Jaine Simner, Licensing Manager, Gloucestershire Constabulary; DC Sarah Stewart, Avon and Somerset Constabulary seconded to Home Office Immigration; Mr Tim Burnham, Chief Immigration Officer, Home Office; Mr Michael Parrott, Director Gregg Latchams Solicitors; Mr Abdul Mannan, Licence Holder and Designated Premises Supervisor, Chelsea Brasserie; Ms Sammy Badat, Manager Chelsea Brasserie.

Minutes

- 1. ELECTION OF CHAIRMAN**
Councillor Diggory Seacome was elected as Chairman.

- 2. APOLOGIES**
None

- 3. DECLARATIONS OF INTEREST**
None

- 4. DETERMINATION OF AN APPLICATION FOR A REVIEW OF A PREMISES LICENCE**
Licensing Officer, Phil Cooper, introduced the report regarding an application received on 29 June 2016 from Gloucestershire Constabulary to review the premises licence of Chelsea Bar and Brasserie, 60 St Georges Place. This establishment has a premises licence authorising the sale of alcohol, the performance of recorded music and the provision of late night refreshment.

The Licensing Act 2003 allows any responsible authority or other person to apply to review a premises licence at any time, if their grounds relate to the premises and to one or more of the licensing objectives, which are
 - The prevention of crime and disorder
 - Public safety
 - The prevention of public nuisance and
 - The protection of children from harm

Gloucestershire Constabulary had applied to review the premises licence following a visit by home office immigration officers in February 2016. During

the visit the officers carried out immigration checks on persons present and concluded that they were employed illegally at the premises.

The matter was subsequently referred for consideration of a civil penalty, after which the constabulary made their application to review the premises licence on the grounds of the prevention of crime and disorder and public safety.

Further reasons for the constabulary's application to review the licence were outlined in their application, which was attached as Appendix A to the report.

The Officer continued that the civil penalty had been disputed and informed members of the Sub-committee, that they had to consider whether, in light of the facts presented, the operation of the premises was adversely affecting the licensing objectives and if so, what action to take. The options available to the Sub-committee, if they determined that action must be taken, were:

- To modify the conditions on the premises licence
- Exclude a licensable activity from the scope of the licence
- Remove the designated premises supervisor
- Suspend the licence for a period of up to 3 months
- Or revoke the licence

The decision of the Sub-committee carried with it the right of appeal to the magistrates' court.

There being no questions to the Officer, the Chair invited the applicant to present the case. PC Steve Kiernan, Licensing Officer for Gloucestershire Constabulary, commenced by stating that the Chelsea Bar and Brasserie was from a policing perspective a well-run established restaurant that had not been in anyway problematic, with no reports pertaining to the premises at all over the last 12 month period. The matter had been brought to committee because they felt that none of the options available for consideration were appropriate to address the gravity of the claim. He explained that as a result of Immigration attending the restaurant in February 2016 and finding two males working there illegally, a civil penalty fine of £15,000 had been served on the premises on 23 June 2016 which had been objected to but maintained. PC Kiernan acknowledged that inevitably the facts presented in the review submission would be contested due to the huge implications on the business, but stated that the illegal employment of workers in licensed premises in Cheltenham was not only detrimental to the licensing objectives but also to the reputation of Cheltenham and thus felt it right and proper to bring before this sub-committee.

The Chair invited a representative of the premises to address the sub-committee. Mr Michael Parrott, Solicitor, representing Mr Abdul Mannan, the Licence holder and Designated Premises Supervisor and Ms Sammy Badat, Manager of Chelsea Brasserie, expressed gratitude for the comments on the well run restaurant over the last 12 months which had been under the new licence holder. He stated the restaurant had 70 covers and was a bar and restaurant with European cuisine.

Mr Parrott informed members that in February 2016 a man, Mr Momin Dawlatzai, had approached the restaurant for work and had produced what appeared to be an Italian passport, which thus gave him the right to work and he was given 2 days unpaid work to see if he was suitable. If he were to have

been taken on, full and further checks on his right to work would have been carried out. It transpired that his documents were not correct and therefore he was not entitled to work, however the raid on the restaurant happened on the second day of his trial period. Mr Parrott continued that Chelsea Brasserie was in a joint venture agreement with Gloucestershire College, whereby many students worked at the restaurant to develop their hospitality careers. Many of these students were from overseas, so the restaurant was accustomed to being approached by foreign students and it was an agreement with the college that the college checked their eligibility to work and papers. The restaurant manager was aware of the procedures and guidance on employing overseas personnel, but Mr Parrott stressed that as seemingly correct ID had been presented, further checks would have been made after his 2 day trial period and he pointed out again that the raid happened on the second day.

Mr Parrott said it would be foolish to say no error had occurred, but lessons had been learnt from this and with no prior or subsequent incidents since the raid and the fact the restaurant didn't have staff shortages due to the students from the college and therefore no need to take on illegal workers, he felt the civil penalty fine was punishment itself. Mr Parrott concluded that, although this was a serious offence from a Licensing Act perspective, this was at the lower end of considerations. This was a solo incident, a severe financial penalty had been issued, a log of payslips showing correct payment and National insurance numbers of staff had been submitted, his clients were now even better informed on worker employment and guidance, and thus Mr Parrott requested members to consider that revocation was too serious a step to be taken for something that happened six months ago.

In response to questions from members, the licensee, manager and their legal representative replied as follows:-

- Momin Dawlatzai was not a student at Gloucestershire College.
- The financial penalty of £15,000 had not yet been paid. An appeal had been turned down, but this would be the subject of a further appeal to the County Court, and whilst awaiting this, the fine would not be paid.
- The restaurant employed 3 fulltime employees in the kitchen and 3 in front of house, with 2 or 3 hourly staff across both areas.
- The building is rented and registered as College Brasserie Ltd with Abdul Mannan as a Director.
- No employees slept upstairs, as this is all offices and there is no accommodation.
- Upon clarification on the link with the college, it was explained that students were taken on for work experience to learn real on hand skills and to experience full shifts. Students were not paid and the restaurant could have different students working on different days. Over 30 students had so far benefitted from this joint venture. The college carried out all the necessary checks on documentation which was necessary in order for them to attend the college in the first instance.

- The Designated Premises Supervisor explained that anyone who approached them for work does a 2/3 day trial period, after which senior staff discuss whether the person will be taken on. If yes, then at this point further checks are carried out and further documentation requested and these checks are carried out before the person starts work. He repeated that Mr Momin Dawlatzai had supplied an EU document, so they had no reason to think he couldn't work in the UK.

The Home Office representative advised that there were conditions around being a student and working and that it would be good practice to in future ensure all documentation was correct and that they should call the Home Office helpline before taking on anyone.

A member referred to correspondence from the Home Office sent to Chelsea Brasserie that had not been replied to. The Manager replied that all post goes to the custodian of the building, who sorts it out and delivers to the 15-30 offices on the upper floors of the building and to the businesses on the ground floor. She confirmed that it had always been like this and that for some reason the letter in question was not received. She has subsequently asked to receive direct post and to have their own post box and this was currently being discussed.

The Council's Solicitor questioned what happened to the second person who was found at the premises. The manager informed members that Kowsar Ahmad was a student in London on a marketing course who wanted some work experience and being the partner of a friend, offered him the opportunity to see how the restaurant was run. He was not paid and she had assumed he had leave to remain in the UK.

One member, although supportive of the link between the college and the business, felt this was irrelevant as neither of the men found at the premises at the time of the raid were from the college. He was more concerned about the production of a bus ticket, which could have belonged to anyone, a copy of a passport being produced rather than the original and concerns about people being taken on, even if only for work experience, without basic health and safety and hygiene checks. He felt the manager had a responsibility to ensure the premises was run properly and wanted to know what would be done to avoid a repeat.

The licensee's Solicitor replied that his clients were now fully aware of the Home Office Immigration guidance and more so of the Home Office helpline. He confirmed they were aware that the original papers had to be produced from which a copy could be taken, and from the lessons learned and financial cost implications, that his clients would be much more aware in future.

In response to a member question, the Home Office representative stated that the visits had been triggered on the basis of information received regarding several premises and was part of a larger scale investigation.

The License holder and Designated Premises Supervisor suggested it felt like someone was against them. They wanted to help the community and the

younger generation of students interested in hospitality to gain an insight into front of house management, being a chef and running a business and he felt someone had wrongly informed on them. He stated that they would now ask for documents straightaway and do full checks on people they take on in future.

There being no further questions, the Solicitor for the licence holder summed up saying that his clients hadn't 'knowingly' employed a person who was unlawfully in the UK as the incorrect form of ID had been produced and it had been an honest error. He felt a number of the clauses in the East Lindsey District Council case, were not appropriate in this case and asked the sub-committee to exercise discretion and to keep the licence as is, as lessons had been learnt and new procedures put in place.

The Police in summing up, stated that they expected the licensing policy to be adhered to and requested suspension or revocation.

The sub-committee adjourned from the Chamber at 10.56 and reconvened at 11.38, when the Chair read out the following statement.

The sub-committee has considered the Licensing Act 2003, the Section 182 guidance and the licensing objectives and is confident that the prevention of crime and disorder and public safety matters are engaged. The sub-committee has further considered the evidence and representations before it today.

We have taken into consideration the mitigating factors presented by the respondents, including the contribution they make to the community by offering opportunities to students.

We do find that Chelsea Bar and Brasserie allowed persons whose credentials were not adequately checked to work there illegally. Consequently, we have decided to suspend the liquor licence for 2 weeks.

We also advise that the Designated Premises Supervisor should take a more active role in the running of the premises.

The Council's Solicitor advised that they had the right of appeal for a period of 21 days from the date of the decision being formally notified in writing.

Diggory Seacome
Chairman

**Licensing Sub-Committee
(Indian Voojan)**

**Friday, 19th August, 2016
11.45 am - 1.12 pm**

Attendees	
Councillors:	Diggory Seacome (Chairman), Mike Collins and Pat Thornton
Officers:	Phil Cooper and Fiona Samuda
Also in attendance:	PC Steve Kiernan, Licensing Officer, Gloucestershire Constabulary; PC Jaine Simner, Licensing Manager, Gloucestershire Constabulary; DC Sarah Stewart, Avon and Somerset Constabulary seconded to Home Office Immigration; Mr Tim Burnham, Chief Immigration Officer, Home Office; Mr Michael Parrott, Director Gregg Latchams Solicitors; Mr Ali Ansar, Licence Holder and Designated Premises Supervisor, Indian Voojan

Minutes

1. ELECTION OF CHAIRMAN

Councillor Diggory Seacome was elected as Chairman.

2. APOLOGIES

None

3. DECLARATIONS OF INTEREST

None

4. DETERMINATION OF AN APPLICATION FOR A REVIEW OF A PREMISES LICENCE

Licensing Officer, Phil Cooper, introduced the report regarding an application received on 29 June 2016 from Gloucestershire Constabulary to review the premises licence of Indian Voojan, 5 Rotunda Terrace, Montpellier Street. This establishment has a premises licence authorising the sale of alcohol, the performance of live music and the provision of late night refreshment.

The Licensing Act 2003 allows any responsible authority or other person to apply to review a premises licence at any time, if their grounds relate to the premises and to one or more of the licensing objectives, which are

- The prevention of crime and disorder
- Public safety
- The prevention of public nuisance and
- The protection of children from harm

Gloucestershire Constabulary had applied to review the premises licence following a visit by home office immigration officers in February 2016. During the visit the officers carried out immigration checks on persons present and concluded that they were employed illegally at the premises.

The matter was subsequently referred for consideration of a civil penalty, after which the constabulary made their application to review the premises licence on the grounds of the prevention of crime and disorder and public safety.

Further reasons for the constabulary's application to review the licence were outlined in their application, which was attached as Appendix A to the report.

The Officer continued that the civil penalty had been disputed and informed members of the sub-committee, that they had to consider whether, in light of the facts presented, the operation of the premises was adversely affecting the licensing objectives and if so, what action to take. The options available to the sub-committee, if they determined that action must be taken, were:

- To modify the conditions on the premises licence
- Exclude a licensable activity from the scope of the licence
- Remove the designated premises supervisor
- Suspend the licence for a period of up to 3 months
- Or revoke the licence

The decision of the sub-committee carried with it the right of appeal to the magistrates' court.

There being no questions to the Officer, the Chair invited the applicant to present the case. PC Steve Kiernan, Licensing Officer for Gloucestershire Constabulary, commenced by stating that the Indian Voojan was from a policing perspective a well-run established restaurant that had not been in any way problematic, with no reports pertaining to the premises at all over the last 12 month period. The matter had been brought to sub-committee because they felt that none of the options available for consideration were appropriate to address the gravity of the claim. He explained that as a result of Immigration attending the restaurant in February 2016 and finding four males working there illegally, a civil penalty fine of £30,000 had been served on the premises on 6 July 2016 which had been objected to but not yet considered. PC Kiernan acknowledged that inevitably the facts presented in the review submission would be contested due to the huge implications on the business, but stated that the illegal employment of workers in licenced premises in Cheltenham was not only detrimental to the licensing objectives but also to the reputation of Cheltenham and thus felt it right and proper to bring before this sub-committee.

The Chair invited Mr Michael Parrott, Solicitor representing Mr Ali Ansar the joint license holder and Designated Premises Supervisor, to address the sub-committee. Mr Parrott informed members that Mr Ansar had run this well established, good quality premium restaurant for 9 years building up a good reputation with good reviews. Mr Ansar was also the proprietor and he also ran the adjacent Soho Bar, where he spent most of his time. The day to day running of Indian Voojan was done by the manager, Mr Amit Chowdhury. Mr Ansar did not know of the visit by the Home Office in February 2016 until after it had taken place. Furthermore, Mr Ansar did not know about these 3 men being employed at the restaurant, as his manager would have interviewed any new employees, nor was Mr Ansar aware of the need for more staff, as staff from the Soho Bar could be used if the restaurant is under staffed. As far as Mr Ansar had been told by his manager, three of the men were visitors and one

was seeking employment but not given it. Mr Parrott also referred to the record of staff payslips showing National Insurance numbers.

Mr Parrott continued that there had been some mitigation on the 3 civil penalties relating to the premises, with a reduction from £20,000 each to £10,000 each and that advice was being taken on the further right of appeal. This penalty of £30,000 though would have a big impact on the business and was a punishment in itself.

The Chair questioned that four people had been reported as being in the restaurant illegally, and that the civil penalty notice only applied to three, confirming that nothing had been found against one of the men.

Mr Ansar addressed the sub-committee, stating he had run the restaurant since 2008, managing it well regarding its licence and employment. When he got the Soho Bar he spent more time there building it up and left the day to day running of the restaurant to Mr Chowdhury who had been with him since 2008 so knew all about the running of it. Mr Ansar said he was confused as to how this had all happened, but explained that on Fridays many of his fellow countrymen gathered in the local mosque in Cheltenham and that as many didn't live in Cheltenham, they would go into the restaurant to see their friends and are offered food.

A member put several questions to Mr Ansar, to which he replied that visitors can eat in the restaurant or downstairs as there is a large kitchen with sitting area and that he didn't know anything about the man who claimed to have been there 2 months. He said he had been in Birmingham the day of the raid and on returning to Cheltenham the men had all left the premises. Mr Ansar stated that he did not know why his manager had made no comment in his interview with the Home Office. He was angry about this as it put him in a difficult position. Mr Chowdhury had told him he had been too nervous to answer and he was having some personal problems, so Mr Ansar suggested that could have been the reason.

Mr Ansar informed members that Mr Chowdhury was still at the premises as manager, but that since this incident he had tried to get a new manager as this had put him in trouble and in a bad financial situation. However he had so far been unsuccessful in finding a suitable replacement, as he claimed it was very difficult to recruit and find the right person to run the restaurant to the standard he wanted in order to maintain his good reputation of the last 8 years. Mr Ansar confirmed that he did the PAYE, with Mr Chowdhury running the day to day management.

Mr Ansar confirmed he was the Designated Premises Supervisor for Voojan and in response to what this role entailed, he replied to prevent crime and disorder and noise pollution, to maintain the high quality of his premises and to adhere to the rules on the sale of alcohol. He thought he had managed well as a DPS as he hadn't had any issues over the last 9 years.

One member asked Mr Ansar about the rooms above the premises and he said there were 2 rooms above Voojan, with a maximum of 4/5 staff staying there and 4 staying above the Soho Bar.

The Council's Solicitor asked Mr Ansar if Mr Chowdhury had offered an explanation as to events on the day of the raid in February 2016. He replied that Mr Chowdhury had thought it was a terrorist raid at first and was very scared because the officers had been wearing full riot gear. Mr Chowdhury had explained that the men in question had come into see the chef in the kitchen which is very common in Indian restaurants as a way of socialising.

Mr Burnham, the Chief Immigration Officer, confirmed that there were five officers present at the time of the raid, that they were not in full riot gear but did have to wear stab vests as is standard procedure when visiting a kitchen. He also advised Mr Ansar to use the Home Office helpline for guidance on checking and recruiting staff.

There being no further questions, the Solicitor for Mr Ansar asked members to consider Mr Ansar's good conduct over the last 9 years and his honesty at this hearing and to exercise discretion as Mr Ansar was seeking to put matters right and he hoped revocation would not be the decision taken.

The Police in summing up, stated that four people had been found working in the kitchen illegally, this was a crime and prevention matter and although Mr Ansar had always been very supportive, this was illegal. As the DPS, Mr Ansar should be responsible for the day to day running of the restaurant and yet this had been given over to Mr Chowdhury. They expected the licensing policy to be adhered to and requested suspension or revocation.

The sub-committee adjourned from the Chamber at 12.26 and reconvened at 13.05, when the Chair read out the following statement.

The sub-committee has considered the Licensing Act 2003, the Section 182 guidance and the licensing objectives and is confident that the prevention of crime and disorder and public safety matters are engaged. The sub-committee has further considered the evidence and representations before it today.

We do find that Indian Voojan allowed persons whose credentials were not adequately checked to work there illegally. Consequently, we have decided to suspend the liquor licence for four weeks.

We did contemplate the removal of the Designated Premises Supervisor whose performance we considered to be less than adequate. The sub-committee, therefore, feels that he should take a more active role in the management of the business to ensure that this situation does not occur again.

The Council's Solicitor advised that they had the right of appeal for a period of 21 days from the date of the decision being formally notified in writing.

Diggory Seacome
Chairman

**Licensing Sub-Committee
(Masala Bites)**

**Friday, 19th August, 2016
2.00 - 3.14 pm**

Attendees	
Councillors:	Diggory Seacome (Chairman), Mike Collins and Pat Thornton
Officers:	Phil Cooper and Fiona Samuda
Also in attendance:	PC Steve Kiernan, Licensing Officer, Gloucestershire Constabulary; PC Jaine Simner, Licensing Manager, Gloucestershire Constabulary; DC Sarah Stewart, Avon and Somerset Constabulary seconded to Home Office Immigration; Mr Tim Burnham, Chief Immigration Officer, Home Office; Mr Michael Parrott, Director Gregg Latchams Solicitors; Mr Ahmed Shareef, Licence Holder

Minutes

1. ELECTION OF CHAIRMAN

Councillor Diggory Seacome was elected as Chairman.

2. APOLOGIES

None

3. DECLARATIONS OF INTEREST

None

4. DETERMINATION OF AN APPLICATION FOR A REVIEW OF A PREMISES LICENCE

Licensing Officer, Phil Cooper, introduced the report regarding an application received on 29 June 2016 from Gloucestershire Constabulary to review the premises licence of Masala Bites, 22-24 Albion Street. This establishment has a premises licence authorising the sale of alcohol.

The Licensing Act 2003 allows any responsible authority or other person to apply to review a premises licence at any time, if their grounds relate to the premises and to one or more of the licensing objectives, which are

- The prevention of crime and disorder
- Public safety
- The prevention of public nuisance and
- The protection of children from harm

Gloucestershire Constabulary had applied to review the premises licence following a visit by home office immigration officers in February 2016. During the visit the officers carried out immigration checks on persons present and concluded that they were employed illegally at the premises.

The matter was subsequently referred for consideration of a civil penalty, after which the constabulary made their application to review the premises licence on the grounds of the prevention of crime and disorder and public safety.

Further reasons for the constabulary's application to review the licence were outlined in their application, which was attached as Appendix A to the report.

The Officer continued that the civil penalty had been disputed and informed members of the sub-committee, that they had to consider whether, in light of the facts presented, the operation of the premises was adversely affecting the licensing objectives and if so, what action to take. The options available to the sub-committee, if they determined that action must be taken, were:

- To modify the conditions on the premises licence
- Exclude a licensable activity from the scope of the licence
- Remove the designated premises supervisor
- Suspend the licence for a period of up to 3 months
- Or revoke the licence

The decision of the sub-committee carried with it the right of appeal to the magistrates' court.

There being no questions to the Officer, the Chair invited the applicant to present the case. PC Steve Kiernan, Licensing Officer for Gloucestershire Constabulary, commenced by stating that Masala Bites was, from a policing perspective, a well-run established restaurant that had not been in anyway problematic, with no reports pertaining to the premises at all over the last 12 month period. The matter had been brought to sub-committee because they felt that none of the options available for consideration were appropriate to address the gravity of the claim. He explained that as a result of Immigration attending the restaurant in February 2016 and finding two males working there illegally, a civil penalty fine of £15,000 had been served on the premises on 1 July 2016 which had been objected to but not yet considered. PC Kiernan acknowledged that inevitably the facts presented in the review submission would be contested due to the huge implications on the business, but stated that the illegal employment of workers in licensed premises in Cheltenham was not only detrimental to the licensing objectives but also to the reputation of Cheltenham and thus felt it right and proper to bring before this sub-committee.

The Chair invited Mr Michael Parrott, Solicitor representing Mr Ahmed Shareef the license holder, to address the sub-committee. Mr Parrott informed members that the initial civil penalty notice had been withdrawn and another issued against Ansar Ali (no connection to Mr Ali Ansar in the previous hearing) on 7 August 2016 with the appeal period running until 14 September 2016, so he had no further information on this. However, the current notice was now £10,000 and related to only one worker. Again members' attention was drawn to the payslips confirming National Insurance numbers. Mr Parrott confirmed that Masala Bites was currently closed for refurbishment and possible onward sale. Mr Parrott further explained that Mr Shareef had been the owner of this Indian restaurant and take away for two years, before Mr Ansar Ali took over the running of it on a trial basis from January 2016. In February 2016, the Home Office found two illegal workers at the premises, but they have not proceeded against the one person and have reduced the penalty against the other. Mr Ali was aware that Mr Farid Ahmed was looking for work and would give him work

if he provided the correct paper work. On the day of the raid he was visiting and in the kitchen making a cup of tea. He was not in uniform. Mr Ali had been in effective charge of the day to day business but Mr Shareef was clear about his responsibilities for checking on staff. The fixed penalty notice was against Mr Ali and as the visit by the Home Office was over 6 months ago and there had been no complaints since, the Solicitor suggested that expensive lessons had been learnt and asked the sub-committee to exercise discretion and not revoke the licence.

Mr Tim Burnham, the Chief Immigration Officer from the Home Office, asked for clarification on the roles of management. It was confirmed that the Designated Premises Supervisor was listed as Mr Abdul Mannan. The Licence holder was Mr Ahmed Shareef, who was also a silent partner in the business with the registered owner Rayhan Chowdury. The Manager was Mr Ansar Ali. It was confirmed that Mr Ansar Ali was in charge in February 2016. Mr Shareef stated that he took over the business two years ago and that Mr Ali came in in January 2016 to try and help the business as many were closing in the area. However the business was now closed for refurbishment or for sale. When asked why Mr Ali was not present at this hearing, Mr Shareef confirmed that as the premises was now closed Mr Ali was no longer around and that he was present as the premises licence holder.

The Chief Immigration Officer referred to another civil penalty notice of £20,000 that had been served on the same restaurant in November 2014 and asked Mr Shareef if he was aware of this. Mr Shareef said he did know about it and that as a result of that notice, he visited the restaurant more often and asked that visitors from the mosque did not visit. When further questioned on this by the Council's Solicitor, Mr Shareef replied that he was not aware of anyone being illegally employed and that he had taken extra steps to try and enforce that visitors didn't come into the restaurant. A member asked if the penalty of November 2014 had been paid, to which Mr Shareef replied that it had not been paid in full as it was being paid in instalments. Mr Shareef's Solicitor was unable to comment as he was unaware of the November 2014 penalty.

During further questioning, there seemed to be confusion over who owned the business at the time, as well as discrepancies in the details provided about the two men listed for the current civil penalty and whether they were working at the premises or not. A member pointed out that in interview notes contained in the background papers supplied by the Police, both of the alleged illegal workers confirmed that they were employed at the premises. Mr Shareef said he had no recollection of the details, but stressed that the two men in question shouldn't have been working there and weren't employed by the restaurant. He said they were probably visiting from the local community centre and, as is the custom, were offered food and drink. When asked about the men's statement that they slept above the premises, Mr Shareef said he was not aware of them sleeping there, but if friends stayed over it was beyond his control. Mr Shareef confirmed that Masala Bites had three rooms upstairs and six rooms at the back and that people could be staying there, he didn't know. This raised a statement from a member regarding health and safety, food hygiene and fire regulations. Mr Shareef did state there was a separate entrance to the restaurant.

Mr Shareef continued that he was aware of health and safety rules and said that visitors didn't use the kitchen but used the second room of the restaurant as the

restaurant was in two sections. He explained that the restaurant had not been doing well recently. It used to be a busy area with the Odeon cinema and other pubs and restaurants nearby, but with the closure of the Odeon, many premises had closed and with the construction of the new development on the former Odeon site, not many people visited this area now. Thus Masala Bites closed on 22 July 2016 and Mr Shareef said that he was currently looking for someone to buy the premises as it was no longer viable for him.

In reply to a question from the Council's Solicitor on surrendering his licence, Mr Shareef said he had thought about it, but considered he had more chance of selling the premises with a liquor licence than without.

There being no further questions, the Solicitor for Mr Shareef stated that being unaware of the previous civil penalty he could not comment on that, but that otherwise this well-known restaurant had had no other issues other than the visit in February 2016. He reconfirmed that the current penalty was subject to appeal. He asked members to consider that suspension of the licence would have less of an impact as the restaurant was already closed and the licence could then be resurrected in the 21 day period, to help facilitate the sale of the premises. He hoped the sub-committee would not revoke the licence.

The Police in summing up, stated that the management of the restaurant seemed to be chaotic, with Mr Shareef not aware of what was happening or who was working there and that the Designated Premises Supervisor, being another man, could not be in control if he was not around. They had concerns about the regular visits of the people from the mosque, plus the fact no one was in charge of the rooms upstairs and ultimately that there had been one illegal worker present. The Police expected the licensing policy to be adhered to and requested revocation.

The sub-committee adjourned from the Chamber at 14.50 and reconvened at 15.08, when the Chair read out the following statement.

The sub-committee has considered the Licensing Act 2003, the Section 182 guidance and the licensing objectives and is confident that the prevention of crime and disorder and public safety matters are engaged. The sub-committee has further considered the evidence and representations before it today.

We do find that Masala Bites allowed persons whose credentials were not adequately checked to work there illegally. Consequently, we have decided to revoke the licence. We did also find that the running of the restaurant left a lot to be desired.

The Council's Solicitor advised that they had the right of appeal for a period of 21 days from the date of the decision being formally notified in writing.

Diggory Seacome
Chairman

Cheltenham Borough Council

Licensing Committee – 12 October 2016

Review of a Hackney Carriage Driver's Licence

Mr Mohammed Shahin Ahmed - HCD104

Report of the Licensing Team Leader

1. Executive Summary and Recommendation

- 1.1 Mr Mohammed Shahin Ahmed holds Hackney Carriage driver's licence HCD104.
- 1.2 On Monday 19 September 2016 officers received information that Mr Ahmed was convicted of a fraud related offence earlier in the month. The details of the conviction are outlined in the enclosed background papers.
- 1.3 Mr Ahmed failed to notify the council of his conviction in accordance with the Council's requirements.
- 1.4 The Committee can decide that:**
- 1.4.1 Mr Ahmed's Hackney Carriage driver's licence be continued with no further action, because the Committee is satisfied that he is a fit and proper person to hold such a licence; or**
- 1.4.2 Mr Ahmed's Hackney Carriage driver's licence be revoked as the Committee considers him not to be a fit and proper person to hold such licence.**
- 1.4.3 Subject to recommendation 1.4.2 above, Mr Ahmed's Hackney Carriage driver's licence be revoked with immediate effect if the Committee considers this to be necessary in the interest of public safety.**

1.5 Implications

- 1.5.2 Legal There is a right of appeal against a decision to revoke a licence which, in the first instance, is to the Magistrates' Court.

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2. Background

- 2.1 The Borough Council must be satisfied that the holder of a Hackney Carriage licence is a fit and proper person to hold that licence (Section 59 Local Government (Miscellaneous Provisions) Act 1976).
- 2.2 Under the Rehabilitation of Offenders Act 1974 (Exceptions)(Amendment) Order 2002 (SI2002/441) hackney carriage and private hire drivers are exempted from the provisions of the Rehabilitation of Offenders Act 1974 and convictions are never spent.

The question for the committee is therefore whether, given the nature of the convictions, the applicant is a fit and proper person to hold a licence.

3. Policy Considerations

Appendix J - Relevance of Convictions, Cautions and Fixed Penalty Notices in Relation to the Licensing of Drivers and Operators

3.1 General Policy

Each case will be decided on its own merits. Although an applicant may have convictions that would fall under the guidelines in this policy, the Council will always consider the full facts of the case and any mitigating or other circumstances before reaching a decision.

The overriding consideration is the safety of the public. The Council has a duty to ensure so far as possible that those licensed to drive hackney carriage and private hire vehicles are suitable persons to do so, that they are safe drivers with good driving records and adequate experience, sober, courteous, mentally and physically fit, honest and not persons who would take advantage of their employment.

Hackney carriage and private hire drivers are listed occupations under the Rehabilitation of Offenders Act 1974. This means that an applicant must disclose ALL convictions when applying for the grant of a licence. The Council may take into account anything they consider relevant to the determination of the application.

When the relevant required information has been returned, the application will be considered in the light of the information provided. The information will be used to ascertain whether the information given on the original application form was correctly and truthfully provided. It is therefore necessary to ensure that details of ALL convictions and cautions are provided at the initial stage.

A serious view will be taken of any application which seeks to conceal any caution or conviction in order to obtain a Licence. This is a criminal offence and, as such, may lead, not only to consideration of the applicant as not being a “fit and proper person”, but criminal proceedings.

In the event that there are no relevant convictions, cautions or fixed penalties held, the applicant will be considered to be a “fit and proper person” and the matter will be determined by the issue of the licence [subject to the successful completion of all other assessments].

Applications where convictions, cautions or fixed penalties are held will be considered by a Licensing Officer who, having regard to this policy may refer the application to a Licensing Committee for determination. This will result in either the determination of the applicant as a “fit and proper person”, indicated by the issue of a licence, or the application being refused. In these circumstances, the applicant has the right of appeal to the Magistrates’ Court, such appeal to be lodged within 21 days of the decision being notified.

The Council will only consider spent convictions if it appears to be relevant for deciding whether the applicant is a fit and proper person to hold a licence and that justice cannot be done in the case, except by admitting or requiring evidence relating to that spent conviction.

For the purpose of these guidelines formal cautions and endorsable fixed penalties shall be treated as though they were convictions.

There is no absolute definition as to what constitutes a “fit and proper person”. However, considering the range of passengers that a driver may carry, for example, elderly people, unaccompanied children, people with disabilities, those who have had too much to drink, lone women and foreign visitors, the Council will want to have confidence that such people would be able to rely on the driver.

Some important areas that will be considered by the Council are:

- a) Honesty and trustworthiness – licensed drivers and operators often have knowledge that a customer is leaving a house empty; they have opportunities to defraud drunken, vulnerable or foreign people or to steal property left in cars. For example, any passenger would expect to be charged the correct fare for a journey and then given the correct change, they would also expect a driver to hand in any article left by a passenger in a vehicle, and also to maintain confidentiality between driver and fare.
- b) Courtesy - taxi drivers are often subject to unpleasant or dishonest behaviour. The Council does not consider that this excuses any aggressive or abusive conduct on the part of the driver. A driver will not be expected to have any convictions or cautions for offences of a violent or threatening nature.
- c) Consistently good and safe driving - those paying for a transport service rely on their driver to get them to their destination safely. They are professional drivers and should be fully aware of all Road Traffic legislation and conditions attached to the licence.
- d) Good knowledge of the area that they are working in.
- e) Good physical and mental health.
- f) Ability to read, speak and understand English, together with a working knowledge of arithmetic in giving the correct change, etc.

3.3 Offences of Dishonesty

The Council’s policy relating specifically to offences of dishonesty for existing licensed drivers states:

Drivers of hackney carriage and private hire vehicles are expected to be persons of trust. It is comparatively easy for a dishonest driver to defraud the public by demanding more than the legal fare and in other ways.

Passengers may include especially vulnerable people.

Members of the public entrust themselves to the care of drivers both for their own safety and for fair dealing. In certain situations drivers will know that a property is empty whilst the occupants are away on holiday for a set period of time after taking them to the airport or railway station.

The widespread practice of delivering unaccompanied property is indicative of the trust that businesses put into drivers.

For these reasons a serious view is taken of any convictions involving dishonesty.

An existing licence holder who is convicted of one or more of the following offences, is likely to have their licence revoked.

- a. Theft
- b. Burglary
- c. Fraud
- d. Benefit fraud

- e. Handling or receiving stolen goods
- f. Forgery
- g. Conspiracy to defraud
- h. Obtaining money or property by deception
- i. Other deception

3.4 Part 1 – Driver Licences

Convictions / cautions / fixed penalty notices

Licence holders must notify the Council in writing within 7 days if he or she is convicted or cautioned for an offence or receives a fixed penalty notice.

4. Licensing Comments

- 4.1 The Committee is under a statutory obligation to ensure that persons licensed as Hackney Carriage drivers are, and remain, fit and proper people.
- 4.2 In the case of Mr Ahmed's driver's licence, it is therefore necessary for the Committee to consider what action is necessary to ensure the Council complies with this duty.
- 4.3 It is the Council's policy that all licensed drivers must notify the Council in writing within 7 days if they have, amongst other things, been convicted of any offence.
- 4.4 Mr Ahmed failed to notify the Council of the conviction.
- 4.5 Mr Ahmed should be fully aware of the policy requirement to notify the Council because he correctly answered the question about the notification period when he took his local knowledge test in 2013.
- 4.6 Mr Ahmed has been sent a copy of this report and invited to attend this meeting to answer Members' questions or to be represented. In considering the application on its own merits Members should have regard to the adopted Probity Guide.

Background Papers

Service Records

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Cheltenham Borough Council

Licensing Committee – 12 October 2016

Review of the Licensing Code of Conduct

Report of the Legal Officer

1. Executive Summary and Recommendation

- 1.1 The Licensing Code of Conduct, Part 5E of the Constitution, which was adopted by Full Council on the 6th December 2004 has been reviewed and amended by a Working Group of Members.
- 1.2 The Working Group has suggested changes to the Code to reflect changes in legislation, Code of Conduct and best practice. The draft amended Licensing Code of Conduct is attached at Appendix 1 for comments by the Committee before it put before Standards Committee on the 20th October 2016 with a view to them approving it and recommending it to Full Council.
- 1.3 **The Committee is asked to provide any comments they may have on the draft revised Licensing Code of Conduct as attached at Appendix 1**

1.4 Implications

- 1.4.1 Financial No financial implications
- 1.4.2 Legal None arising specifically from the report. However the Licensing Code applies to both Councillors and licensing officers who become involved in operating the licensing system. The successful operation of the licensing system relies on mutual trust and understanding of each other's role. It also relies on both Members and Officers ensuring that they act in a way which is not only fair and impartial but is also clearly seen to be so. It is therefore important that all Members and Officers involved in the licensing system are made aware and adhere to the revised code.
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2. Background

- 2.1 The Standards Committee established a Working Group comprising members of the Standards and Licensing Committees assisted by officers from the Licensing Department and One Legal to review the Licensing Code of Conduct.
- 2.2 The current Licensing Code of Conduct (Part 5E of the Council's Constitution) was adopted by Council on the 6th December 2004. Its purpose is to provide more detailed guidance for members involved in the licensing process and is intended to complement the Cheltenham Borough Council Code of Members' Conduct.
- 2.3 There have been significant changes to the Standards/Code of Conduct regime since the adoption of the Licensing Code of Conduct in December 2004 and, with in particular the adoption of Code of Members Conduct on 25 June 2012 (as took effect on 1 July 2012) the terminology in the current version of the Licensing Code of Conduct is out of date and therefore the Working Group was asked to review the Licensing Code to bring it up to date in respect of the Code of Members' Conduct and recent best practice.

3. Revisions to the Licensing Code of Conduct

- 3.1 The Working Group has met on a number of occasions and the revised Licensing Code of Conduct attached at Appendix 1 is the version which is now, subject to approval by the Standards Committee, recommended for adoption by the Council
- 3.2 The revised Licensing Code of Conduct follows the format of the current one.
- 3.3 In the draft revised Licensing Code of Conduct there has been a slight re-organising and a contents page added in addition to page numbers for the ease of Members.
- 3.4 The main substantive changes reflect changes in the Standards Code of Conduct in relation to Members interests from personal and prejudicial interests to disclosable pecuniary interests and other interests. There has also been an addition relating to predetermination.
- 3.5 There has been an addition to the Code in relation to the Role of Ward Members so that Members sitting on licensing committee understand their role if the matter discussed falls in their ward.

4.0 Reasons for Recommendations

- 4.1 To ensure that the Licensing Code of Conduct is up to date and fit for purpose

Background Papers: Licensing Code of Conduct
Cheltenham Borough Council Code of Members' Conduct

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PART 5

Codes and Protocols

Part 5E – Licensing Code of Conduct

Cheltenham Borough Council

Licensing Committee

Probity in licensing

**A guide to procedures and
protocol for Councillors and officers
involved in making decisions
on licensing applications and
other licensing matters**

Approved by Council

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Introduction

Cheltenham Borough Council's Licensing Committee operates in a quasi-judicial way in determining contentious licensing applications and related matters. Most applications are free of objection and are determined under powers delegated to the relevant director. This Code is written having regard to the council's commitment to the principles of good enforcement, particularly openness and consistency.

The Committee deals with most of the council's statutory licensing and registration responsibilities including: licensable activities under the Licensing Act 2003 (alcohol, regulated entertainment and late night refreshment); hackney carriages and private hire; sex establishments; gaming; charity collections; street trading; acupuncture, tattooing and ear piercing; pet shops; riding establishments; animal boarding; dog breeding; dangerous wild animals; zoos; and tables and chairs on the highway. The Committee hears major and contentious applications. Applications are referred for Members' consideration where they are contentious and/or objections have been lodged by statutory consultees, residents, other third parties or where officers have reservations about the appropriateness of an application or the suitability of an applicant. Hackney carriage and private hire disciplinary matters are also dealt with by the Committee in accordance with the provisions of the council's hackney carriage and private hire licensing policy.

The decisions that the Committee makes are significant and weighty. The Committee operates, for the most part, under its extensive delegated powers and it, rather than any other part of the council, actually makes the decisions. The decisions can have a considerable effect on the value of premises or other capital assets, on the amenities of people living near licensed premises and on the lives of applicants. Furthermore if the Committee makes a wrong or irrational decision this may mean that the council will face substantial costs if there is a successful appeal against the decision or if the decision is the subject of a legal challenge from an aggrieved third party.

Some licensing legislation specifies procedures to be followed but in all cases human rights and natural justice considerations dictate that the Committee adheres to the following principles in that decisions **must**:

- ❑ Be made on the individual merits of a case
- ❑ Have regard to all relevant national and local guidance
- ❑ Be made impartially and in good faith
- ❑ Be made by the body that receives all the relevant information and evidence
- ❑ Relate to the issue or question placed before the committee
- ❑ Be based only on consideration of relevant and material matters
- ❑ Be proportionate, rational and reasoned
- ❑ Be made in a way that engenders public confidence

The purpose of this local Code of Practice is to set out in detail how Members should act and the procedures which should be followed to ensure that Members not only act in a fair and proper manner, but are also seen to do so.

This Code has been prepared with a particular emphasis on Members who serve on the council's Licensing Committee but its content is also relevant to all other councillors and also to officers in all other services.

The Borough Council, along with all other local authorities, adopted a Code of Conduct which specifies the obligations imposed on Members and defines 'Disclosable Pecuniary Interests' and 'Other Interests' and how these will affect the way a Member behaves. This Code of Conduct is the statutory base to which this Code of Practice is added. In some areas this Code of Practice will extend, or go further than the Code of Conduct. In the case of a conflict between the two the Code of Conduct will take precedence.

It is possible that breaches of this Code of Practice could be considered to be a breach of the Code of Conduct.

This Code of Practice is part of the council's constitution and can be viewed online at www.cheltenham.gov.uk.

Notes

1. All references to the Licensing Committee include any sub-committee of the Licensing Committee as appropriate.
2. All references to the applicant refer to the applicant (which includes a person calling for a review of a licence), the licensee or the applicant's or licensee's representative as appropriate.

Part one: Conduct of Councillors and Officers

A. Voting and Impartiality

- 1. Licensing Committee Members must vote in the best interests of the Borough as a whole and must not vote on the basis of local ward interests that may be contrary to a balanced licensing assessment in the light of the evidence before the members and wider policies and guidance.**

The overriding duty of a committee Member is to the whole community, rather than just the people living in their ward. This is a fundamental principle of the local democratic system but is not universally known or regularly referred to.

- 2. Members of the licensing committee must not declare which way they intend to vote in advance of the consideration of an application by the committee.**

This can be a difficult issue for Members as they may be exposed to pressure from residents or the media to express a particular viewpoint. However it is essential that Members are measured and circumspect in the comments they make. If a Member declares which way they intend to vote it would in effect be pre-judging the application without having considered all of the relevant information. This could expose the council to the possibility of legal challenge or a charge of maladministration. Members must not make up their minds until they have read the relevant Committee reports and heard the evidence and arguments on both sides.

- 3. If a Member of the Licensing Committee declares support for or opposition to a proposal before the matter has been put before the Committee, the Member must make an open declaration of their views to the Committee and take no part in the consideration of and voting on that particular item.**

This rule follows on from item 2 above. It does not mean that Members cannot make a comment or reflect local concerns about a proposal before the Licensing Committee considers it. However the view or comment must not predetermine or be seen to predetermine the way that Member will vote.

Predetermination is a legal concept that the courts have used in connection with local authority decision making. It predates the Code of Conduct and is not altered by it. Predetermination occurs where a Member's mind is closed to the consideration and weighing of relevant factors in the decision making itself.

It is important that Licensing Committee members be open to any new argument at all times up to the moment of decision. A Licensing Committee Member with a predetermined view on a licensing application is disqualified from participating in the Committee's decision-making on the application.

- 4. Licensing committee members who are also members of a parish council must exercise particular care in reconciling their two roles.**

This rule would apply in the case of a Member(s) holding office in both the borough council and a parish council. Such Member(s) may find that they are expected to express a view at a parish council meeting or vote on whether or not the parish should object or comment on a proposal from a parish point of view. In such circumstances Members are advised to abstain from both the debate and voting at the parish council. This is not inconsistency, but the consequence of having to fulfil two totally separate roles. If a Member does declare his or her support for or opposition to a licensing proposal at a parish meeting or elsewhere they must make an open declaration to the borough council's Licensing Committee to that effect and take no part in the voting and debate on that item, and leave the meeting.

5. Licensing Committee Members who are also county councillors must exercise particular care in reconciling their two roles.

There are often a number of Members that hold office in both the borough and county councils. As a general rule such Members should declare an interest in any applications either made by the county council or by third parties in relation to county council premises or land. When an interest is declared Members should withdraw from the meeting. This will ensure that the borough's licensing process is not unfairly influenced or perceived as being susceptible to unfair influence by a Councillor(s) who has two roles.

6. Licensing Committee Members should not organise support for or against a licensing application and should not lobby other licensing Councillors.

Committee Members should not place themselves in a position where they may give the impression that they had made up their mind before hearing the evidence. Each Member should make up his or her own mind on the evidence and facts presented to the Committee (see section G on lobbying). With regard to other Members it could give the impression that they were seeking to influence Committee Members (again see section G on lobbying). In addition, Committee Members who do campaign against any particular type of licensable activities that Parliament has determined are lawful such as alcohol sales or sex establishments, the Member must make an open declaration of their views to the Committee and should not sit on the Committee.

7. Licensing Committee Members must not favour or show bias against any particular person, company or group, or any particular site or locality in respect of licensing matters.

Furthermore they should not put themselves in a position where they may appear to do so.

8. Confidentiality

It will be unusual for licensing applications or other matters to be treated as confidential items with the exclusion of the press and public, but it may occur.

The grounds why this may occur are set down in the Local Government Act 1972 and the council's constitution, and are most likely to be in relation to the conduct of legal proceedings, or disclosure of personal details.

Information which is of a confidential nature may also be provided to Members before committee.

Members are expected to treat the information as confidential and are referred to the Code of Conduct which indicates that a breach of this confidentiality may be a breach of the Code of Conduct and result in a complaint to the Monitoring Officer and/or Standards Committee.

B. Gifts and hospitality

1. Members and officers must abide by the council's policy on gifts and hospitality.

The policy on gifts and hospitality is contained in the council's constitution and Members and officers must be extremely careful in this respect to ensure no question of bias can be raised. Notwithstanding the council's protocol on gifts and hospitality as far as licensing is concerned the general rule is that only gifts of nominal value should be accepted and that only modest hospitality connected with the work concerned should be accepted.

C. Independence and impartiality of licensing officers

1. Members or other officers within the council must not instruct or lobby licensing officers to make or not to make a particular recommendation on a licensing application.

Licensing officers are trained to deal with licensing issues and will be aware of Government advice, case law etc., and will put forward professional advice. Officers from other departments will provide advice as appropriate.

2. Officers must always act impartially and advise the council of their professional opinion.

The Borough Council's Licensing Officers must always act impartially to give advice based upon a professional assessment of the individual merits of each case taking into account all relevant policies, guidance and other relevant material considerations. If they do not, or even if it appears that they are not, the integrity of the licensing process is severely compromised. Where an appeal has been made against a decision made against officer recommendation, officers will always present the council's case to the best of their ability.

D. Declarations of interest

1. Members must always declare personal, and personal and prejudicial, interests in accordance with the council's current Code of Conduct.

The Code of Conduct is contained in the council's Constitution and must be read in conjunction with this Code of Practice.

All interests must be disclosed at the start of the meeting or when such interests become apparent, and an agenda item on this is included for every meeting.

Depending on the nature of the interest (Disclosable Pecuniary Interest or Other Interest), the Member may not be allowed to participate in the discussion or vote on the matter unless a dispensation has been granted. They must also not seek to improperly influence any decision on that matter.

NB: Failure to disclose a Disclosable Pecuniary Interest is a criminal offence.

The test Members should apply is not whether they themselves think they have an interest but whether a reasonable person in possession of all of the relevant facts, might think they have.

If a Member has any doubt, advice can be taken, but if that doubt still remains it is best that an interest be declared. However, the responsibility for declaring an interest rests solely with the Member and these will be noted in the Committee minutes.

There will, however, be times when it only becomes apparent during the meeting that there is a declarable interest. Then the interest must be declared as soon as the Member becomes aware of it, even if it is during discussions on that particular item.

The Monitoring Officer should be informed of any declarable interests which should also be registered in the Register of Members' Interests.

E. Involvement of Councillors with Applicants

1. Members of the Licensing Committee should not act as agents, or submit licensing applications for other parties or voluntary bodies.

Any close involvement, or even perception of close involvement, can compromise the integrity of the licensing process. A Member acting as a licensing agent could give rise to suspicion that the Member was not impartial or may influence other Members in the decision making process.

2. Any Member who is a Licensing advisor or similar professional agent will not be appointed to the Licensing Committee.

Where Members need to submit licensing applications on their own behalf, or on behalf of their employer as part of their job, they must declare an interest and take no part in the processing of the application or in the decision making process. Decisions on any proposals submitted by or relating to premises / land / vehicle(s) etc. owned or controlled by a serving Member(s) should only be determined by the Licensing Committee (or the full Council). The Committee (or Council) alone should determine an application submitted by a Member's

employer, irrespective of whether the Member is involved in the application, its preparation or submission.

F. Council Licensing Applications

- 1. Proposals to license the council's own land or premises must be dealt with the same as all other applications.**

The council's own proposals, or those of others on council owned premises/land, must be dealt with on exactly the same basis as applications submitted by any other applicant. Members must not have any regard to any other benefit, financial or otherwise, which may accrue to the council as a result of any particular decision on a licensing proposal.

All licensing applications, irrespective of the applicant, must be considered and dealt with on the merits of the application, not any extraneous gain or loss that might accrue to the council.

- 2. Other proposals that may have an impact on a council landholding or application/proposal must be dealt with strictly on their licensing merits.**

Local authorities are often landowners. They may operate licensed premises and may submit their own applications or third parties may submit applications for new licensed premises on land or premises due to be sold to them by the council. Furthermore situations may arise where a licensing proposal may have an impact on the prospects and value of a council landholding or premises. These circumstances present special challenges to ensure that the licensing system operates, and is seen to operate, fairly.

G. Lobbying of Councillors and Formal Submission of Information

- 1. Any lobbying of Members must be dealt with carefully to minimise the perception of influence.**

Members should treat lobbying with care and should ensure that "unofficial" views, promises or documents do not unduly influence them. Members should advise lobbyists to present their views in writing to the licensing case officer in order that they can be formally considered in a balanced way at the Committee meeting. Alternatively Members may choose to pass on the views and or submissions of lobbyists to the officer but should make clear that they are not giving their own views as this is a matter for formal consideration by the Licensing Committee.

This is a complex area and one that requires special care. Lobbying is an attempt to influence a Member's view in order to achieve a particular decision. It is a normal part of the political process but where Members are making statutory decisions, such as licensing decisions, it can result in decisions being made improperly.

Licensing decisions must be rational and be made strictly on the basis of the relevant facts, guidance and policies relating to each case. Members must not only act in a way that is fair to all parties but must be seen to do so. In particular Members must not prejudge proposals before they have read the officer's reports and considered all the evidence.

Lobbying can take two forms:

- Lobbying of Councillors by applicants, agents or objectors.
- Lobbying by other Councillors.

Lobbying may be verbal or by the circulation of letters or documents to all or some Councillors.

Lobbying can be particularly problematical if Members are given information or assurances by applicants that do not form part of their formal application and are, therefore, unenforceable. Problems can also arise if Members are given information by objectors which may be misleading, untrue or irrelevant. Officers face particular difficulties if they are unaware of submissions by applicants and objectors and are therefore unable to consider them and advise the Committee about them.

This would cause particular problems if the Committee based a refusal on matters which officers, applicant(s) nor objectors had had an opportunity to consider and comment upon.

Circulation of unofficial papers at a Committee meeting also constitutes a form of lobbying.

2. Licensing applications must be determined on the basis of the documents and information that have been formally submitted and where all parties have had a proper opportunity to consider them.

Only submissions from applicants, agents or objectors, which are formally received by licensing officers, can properly be taken into account in making a decision. The Committee could be materially misled if Members or other parties circulated 'unofficial' documents or introduced new information on behalf of an applicant or objector, or expressed what they believed to be an applicant's intention, if this did not form part of the application documents and correspondence. In all circumstances copies of any letters, documents or correspondence should be given to the licensing officer to consider and comment on. Such material should always be provided at least 7 clear working days ahead of a committee meeting. Where fresh information comes to light after a committee report has been finalised and circulated it may only be tabled with the Chair's consent.

H. Political decisions on licensing applications

Decisions on licensing applications must be made on the individual merits of each case with adherence to the other principles that are set out in this guide. The establishment of a party whip or “party lines” made in political group meetings prior to a committee meeting would be wholly inappropriate.

The view of the Ombudsman is that ‘the use of political whips at group meetings is contrary to the National Code and amounts to maladministration’. It could also give rise to a legal challenge of any decision by Judicial Review.

I. Application by Councillors, officers or their relatives or friends

These applications must be dealt with, and be seen to be dealt with, openly, fairly and without any bias. Accordingly despite the scheme of delegation to officers to decide certain applications, all such applications will be reported to Committee.

J. The Role of Ward Members

1. Being a ward Member does not in itself constitute an interest in an application or create a risk of apparent bias. Providing the ward Member does not have a Disclosable Pecuniary Interest or any Other Interest in applications before the Committee or providing there is nothing to indicate any risk of bias or predetermination, a ward Member’s local knowledge may in fact give an additional insight to an application and its implications on the licensing objectives. Ward Members may use their local knowledge to ask relevant questions and clarify facts.
2. The right of ward Members to speak at Committee meetings may be constrained by statute. For example, under the Licensing Act 2003 ward Members may only speak if they have lodged a written relevant representation within the prescribed period of time and/or to represent their constituents. In the absence of any specific rules, ward Members may be invited to address the Committee at the Chair’s discretion.
3. The role of ward Members is, therefore, different from that of those Members making the decision, in that ward Members can engage with their constituents and make representations to the Committee on their behalf. It is for this reason, and to safeguard Members, that the restriction identified in Paragraph 2 above has been made.
4. The views of ward Members do carry weight with their colleagues who make the decisions. Ward Members should not become too closely identified with special interest groups and be careful to avoid pressure by applicants, objectors or supporters. There may be occasions where ward Members are invited to attend meetings (for example, a formal meeting called by an applicant or objector) where it would be prudent for a Member to also invite an officer to be present.

Part two: the decision making process

A. Pre-application discussions and negotiations on submitted applications

1. Councillors should not, themselves, seek to advise applicants or agents about the likely acceptability of licensing proposals.

Pre-application discussions should always be undertaken by the council's officers to ensure that advice is given professionally, comprehensively and in a way that is clearly removed from the political forum. Licensing Committee Members should advise prospective applicants to contact the appropriate officer for advice on both merits and procedures. If Members, whether or not they sit on the Licensing Committee, do give an indication of their initial reaction to a proposal they must make clear that any proposals will need to be formally considered by officers and/or the Licensing Committee. They should also make clear that officers and/or the Licensing Committee could only make a final decision after a full and formal consideration of the proposal.

Similarly Members should not normally be involved in negotiations and discussions about submitted applications. There may be exceptional circumstances in respect of major or contentious applications where there may be merit in Member involvement to explain a particular local viewpoint or issue. However such discussions should take place only where at least one officer is present. The officer(s) will make a written record of any such meetings held and will place a copy on the application/premises file. Such a record will constitute a background paper for the purposes of the Freedom of Information Act 2000 and may be inspected by any interested person.

The fact that Committee Member(s) have discussed any such proposal with the applicant or objectors must be made clear when the application is before the Committee for determination. Under no circumstances should Members put pressure on officers to make, or change, any recommendations on an application.

2. Officers' role in processing licensing applications

The council employs professional officers whose job is to deal with the applications received, ensure the necessary publicity requirements are dealt with, negotiate with the applicant and/or their agents, and then report to Committee with their recommendations.

Officers will have pre-application discussions and/or issue guidance to help applicants to submit applications in accordance with council policies and to assist with the smooth processing of the application.

The officers will always put forward their professional view to Committee and be available to answer Members' questions.

B. Reports to Committee

- 1. Officers will provide written reports for all matters to be considered by the Licensing Committee (with the exception of matters of urgency) or when Committee has requested verbal updates on ongoing matters.**

There will be occasions when matters arise after the committee papers have been prepared and sent out, but a decision of Committee will be required. If possible a written report will be tabled, or if this is not possible the appropriate officer will provide a detailed verbal report on the issue, explaining why it is urgent and providing recommendations. This shall be minuted.

Members are also permitted to raise matters of urgency under the Local Government Act 1972. However if they do intend to do this the licensing officers should be informed prior to the meeting of the nature and content of the matter. Officers will attempt to answer any questions, but depending on the length of notice of the matter of urgency this may not be possible at that meeting.

Any matters of urgency can only be raised with the agreement of the Chair of the Licensing Committee who must give reasons as to why it is considered to be an urgent item.

- 2. Officer reports to the Licensing Committee will be accurate and will, subject to statutory requirements, comprehensively cover all relevant: i) policies, guidance, considerations and issues; ii) information about the application/case; and, iii) the views of consultees and objectors.**
- 3. In all cases applicants/licenseses will be given the opportunity of providing written material for inclusion in the report. Material for inclusion must be received by the licensing officers at least 7 clear working days before the committee meeting. Where reliance is placed upon case law advance notice must be given of the case(s) in question.**
- 4. Members must read and carefully consider the content of the circulated report before the meeting and they must have regard to its contents in reaching their decisions.**

Written reports have always been a cornerstone of probity in the council's system for committee determination of licensing matters. In the context of planning malpractice the Audit Commission and others have made it clear that written reports are essential. The same principles should apply to the council's licensing functions.

C. The Committee hearing

- 1. The Council's Constitution will apply to the conduct of business.**
- 2. Applicants/Licensees will be invited to attend the committee and be represented if they so choose, and they will be sent a full copy of the report**

about their application/case including all appendices and details of objections.

If they do not attend the Committee can decide whether or not to deal with their item in their absence on the basis of the written report and the procedure as set out below.

3. Committee Procedure

(a) Chair introduces the item on the Agenda, briefly stating what it is about and inviting applicant/licensee/representative(s) to come forward to be seated. Where exempt information under the Local Government Act 1972 (as amended) is included in the report it will be written and circulated as a confidential item. In such cases the Chair will offer the licensee/ representative(s) the opportunity of a public hearing and the press and public will only be excluded once a preference for a confidential hearing has been expressed.

(b) Members who intend to vote must be present in the meeting room throughout the committee's consideration of an item so that they hear all of the evidence and hear/participate in the debate.

(c) Report author or other appropriate officer presents the report to the committee, outlining the key issues and background to the recommendation(s). This must be done in a maximum of 5 -10 minutes unless the Chair expressly approves otherwise. Members and the applicant/ licensee will have the opportunity of asking the officer questions.

(d) Objectors will be given the opportunity to make representations through their appointed spokesperson, this must be done in a maximum of 5 -10 minutes unless the Chair expressly approves otherwise. The applicant/licensee, Members and, if appropriate officers, will have the opportunity of asking the spokesperson questions.

(e) The applicant/licensee (or their representative) will present their application/case and, if they choose, put forward witnesses. This must be done in a maximum of 5-10 minutes unless the Chair expressly approves otherwise. The applicant/licensee (or their representative) has the right to present their case without undue interruptions. When they have done so questions may be asked by Members and in some cases by officers and representatives of statutory bodies who are licensing consultees, e.g. the police, fire and rescue service.

(f) The Chair will then invite responses from officers and if appropriate the representatives of statutory bodies. The applicant/licensee (or their representative) and Members are to be given the opportunity to ask questions.

(g) The applicant/licensee (or their representative) will be given the final right of reply.

(h) The Committee Members debate the application and reach their decision. In cases involving disciplinary and/or confidential matters the Members will retire to another room (usually the Members' Room) and the applicant/licensee/representative, witnesses, officers and representatives of

statutory bodies will be asked by the Chair to remain and await the Committee's return. Members have the option to retire whenever they feel it is necessary.

(i) When the Committee has reached a decision the Members will re-enter the room to announce their decision.

(j) The decision will be confirmed in writing giving reason(s) for the decision and details of any appeal rights. The decision notice/letter will be sent as soon as practicable after the meeting and any statutory timescales will be followed.

(k) The following good practice rules assist the smooth operation of the Committee and promote probity:

- i. The meeting will be conducted without any undue formality
- ii. Members should not report new information that they may have been given by applicants or third parties which has not been submitted to officers for formal consideration and comment (see rule on lobbying in Part 1 section G)
- iii. Members should seek any necessary clarification from officers on key issues before the meeting as this enables full replies to be given
- iv. Members should not introduce any non-licensing matters to the debate
- v. Members should not speak at length on items where they are in full agreement with the officer report
- vi. At the discretion of the Chair of the Committee a ward Councillor(s) may be allowed to speak at Committee to express their own views or those of their constituents

D. The Committee's decisions

- 1. Where Members propose to make a decision contrary to the existing policy or guidance clear licensing reasons must be established and these must be seconded and minuted.**

The Member, or Members, proposing the decision contrary to existing policy or guidance must give clear reasons for their proposal before any vote is taken. Their reasons must be relevant and material considerations.

- 2. The Chair will allow all the concerned parties an opportunity to address the Committee before a vote is taken (in accordance with the procedure outlined above).**

Decisions must be reasoned, rational and in accordance with the facts of the case and have regard to the provisions of all relevant policies and guidance. However decision making requires assessment and judgement of the weight to be attached to policies and guidance issues which, no matter how current, will never provide an answer for all, or even most, applications. Any decision made by the Licensing Committee which is contrary to the provisions of existing policy or guidance must be clearly justified and recorded.

E. Deferrals and committee site visits

- 1. Deferrals: Where Members propose to defer consideration of an application they must set out clear reasons for doing so and these will be minuted.**

A proposal to defer any application must be valid and defensible. Justification for deferring a decision might be to ensure that all the proper consultation procedures have been followed, or to secure amendments, without which the application would have to be refused. The reason for deferring for a site visit must be clearly set out by the proposer and recorded in the Minutes. Deferring for the purpose of political expediency is never an acceptable course of action.

- 2. Site Visits: All site inspections whether involving Members individually or collectively will be conducted in a strictly fact-finding way and there shall be no on-site debate about the merits of the proposal or any negotiations or discussions with applicant, agents or residents.**

A request for a site visit should be made two weeks in advance of any relevant Committee.

F. Public attendance at Committee meetings

- 1. Most licensing applications on the Committee agenda will be considered in public session.**

Open public debate is a fundamental prerequisite of probity in the licensing system. However where exempt information under the Local Government Act 1972 (as amended) is included in a report it will be circulated as a confidential item and, subject to the applicant/licensee's right to a public hearing (see Part Two Section C3 above) such items will be considered with press and public excluded.

Any person in attendance at the Licensing Committee meetings is entitled to make use of the public question time item to speak, however the question should be submitted in writing before the Committee. Applicants, licensees or their agents will only be allowed to speak or make representations during consideration of their particular agenda item in accordance with (Part Two) section C above.

Any member of the public who disrupts the meeting in any way will not be allowed to remain in the room.

- 2. Members of the Committee should be extremely careful in meeting with and talking to applicants or objectors either before or after the meeting. This could give the impression that Members had either prejudged a particular application, or had supported a particular view without looking at, and taking into account all the facts presented by the officers.**

Part three: Administrative matters

A. Member training

- 1. Members who are exercising powers to determine applications are exercising a quasi judicial function, in an area where there is a large amount of Government advice and law. Members and substitute members must ensure they are adequately trained to carry out the task. Accordingly any Member or substitute member who is on the Licensing Committee must take part in training organised by the relevant director either before the first meeting of the Committee or within 3 months after being nominated to serve on the Committee, whichever is the later. If they do not, or cannot, they must step down.**

Members and substitute members are also encouraged to research pertinent issues by reference to the relevant director who can arrange access to publications, legislation, policy documents and guidance.

Members and substitute members will be given regular updates and offered refresher courses to keep them informed of important changes in legislation, procedures or practices either orally, at training sessions, or as briefing notes.

B. Record Keeping

- 1. Officers will ensure that licensing application records contain sufficient information so that the reason for the ultimate decision can be understood by anyone who reads a file/record without a detailed knowledge of the application**

C. Complaints

- 1. Any complaints received in writing about the way in which a licensing application or other licensing matter have been dealt with in terms of probity, procedures or fairness, will be investigated under the council's complaints procedure. However, the fact that someone may disagree with the decision reached in relation to a particular application or other matter is not a complaint which will necessitate investigation as such, although officers will always endeavour to explain the reasons for the council's decision.**

Where any complaint about a council decision made contrary to the existing policy or guidance is received, a copy will be forwarded to the Chair of the Committee.

Complaints can also be made to the Local Government Ombudsman regarding administrative maladministration, or to the Monitoring Officer regarding breaches of the Code of Conduct.

D. Further Advice

- 1. This Code deals with the main issues of probity and conduct but cannot be expected to cover all eventualities that may arise. If Members are in any doubt about any probity related issue they are advised to contact the Monitoring Officer and/or Head of Legal Services.**

