

**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 .....**

<b>CONTENTS</b>	<b>Pg</b>
Introduction	3
<b>Part one: Conduct of Councillors and Officers</b>	
A Voting and Impartiality	5
B Gifts and Hospitality	7
C Independence and Impartiality of Officers	7
D Declarations of Interests	7
E Involvement of Councillors with Applicants	8
F Council Licensing Applications	9
G Lobbying of Councillors and Formal Submission of Information	9
H Political Decisions on Licensing Applications	11
I Application by Councillors, Officers or their relatives or friends	11
J The Role of Ward Members	11
<b>Part two: The Decision Making Process</b>	
A Pre-Application Discussions	12
B Reports to Committee	13
C Committee Procedure	13
D The Committee's Decisions	15
E Deferrals and Site Visits	15
F Public Attendance at Committee Meetings	16
<b>Part Three: Administrative Matters</b>	
A Member Training	17
B Record Keeping	17
C Complaints	17
D Further Advice	18

## Introduction

Cheltenham Borough Council's Licensing Committee operates in a quasi-judicial way ~~or more accurately it carries out an administrative function-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~~ sound decision making, fairness, , 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 Conduct 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.***

The Borough Council, along with all other local authorities, adopted a Code of Members' 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 Licensing Code of Conduct will extend, or go further than the Code of Members' Conduct. In the case of a conflict between the two the Code of Members' Conduct will take precedence.

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

This Licensing Code of Conduct (Probity in Licensing) is part of the council's constitution and can be viewed online at [www.cheltenham.gov.uk](http://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-act in the best interests of the Borough as a whole and must not vote-act 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.

Members must consider each case on its merits and must not do anything which may preclude them for taking part in the determination process. You must only make your decision after reading the report, hearing the Officer's presentation and any points of clarification and all the arguments on both sides.

It is acceptable to have a legitimate predisposition in relation to a matter. A member who has expressed a preference for a particular outcome will not be taken to have a closed mind when making their decision, provided that a fair-minded observer would think that you were open to changing your mind in the light of different or additional information, advice or evidence presented.

A member may however be considered as predetermining an application if they have been an active supporter or objector. In any circumstance where a member is unclear they should consult the Monitoring Officer.

~~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~~their 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~~ There will often may be occasions when licensing applications or other matters need to be treated as confidential items, resulting in ~~with~~ the exclusion of the press and public, ~~but it may occur.~~

Taxi driver applications and reviews of such licences are likely to include reference to personal information and sensitive information. Although there is a clear public interest in such matters, it must be remembered that it would not be appropriate to discuss fully and openly certain matters without prejudicing the subject of such a matter regardless of their likely culpability or otherwise.

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, but this should never be done without strong and compelling reasons, and any threat to the fairness of a hearing must be mitigated as far as possible through appropriate disclosure.

Members are expected to treat the information as confidential and are referred to the Code of Members' 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.**

As a Member of the Council you are discouraged from receiving hospitality generally but are expressly prohibited from receiving any gifts or hospitality from people with an interest in a licensing matter.

~~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.~~

**C. Independence and impartiality of licensing officers**

- 1. Members or other officers within the council must not instruct nor 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**

- ~~4. Members must comply with the rules regarding the registration and disclosure of Interests as set out in the Members Code of Conduct must always declare personal, and personal and prejudicial, interests in accordance with the council's current Code of Conduct.~~

Members attention is specifically drawn to the following:

- Do not use your position improperly for personal gain or to advantage your friends or close associates.
- Keep your register of interests up-to-date
- Disclose the existence and nature of your interest at any relevant meeting, including informal meetings or discussions with officers and other Members. Preferably, disclose your interest at the beginning of the meeting and not just at the commencement of discussion on that particular matter.

Where you have a Disclosable Pecuniary Interest (as defined within the Member's Code of Conduct):

- Disclose the Disclosable Pecuniary Interest to the Committee, unless the Monitoring Officer considers it to be sensitive in nature
- Leave the meeting
- Do not vote on the matter, participate (or further participate) in the discussion of the matter unless a dispensation has been granted



Where you have an Other Interest you may attend the meeting for the purposes of making a representation however, you must:

- Disclose the Other Interest to the Committee
- Leave the meeting (once you have made your representation) and **do not** vote on the matter, participate (or further participate) in the discussion of the matter, if the matter affects:
  - your well-being or financial position;
  - the interest you hold that constitutes an Other Interest;
  - the well-being or financial position of a member of your family or a person with whom you have a close association;
  - a person with whom you, a close member of your family or a close associate have a contractual relationship; or
  - the determination of an application submitted by you, a close member of your family or a close associate; and a reasonable member of the public knowing the facts would reasonably regard the interest as so significant that it is likely to prejudice your judgement of the public interest

unless a dispensation has been granted.

You may apply to the Monitoring Officer for a dispensation. If granted, this will allow you to participate in a discussion and vote on a matter notwithstanding a Disclosable Pecuniary Interest or Other Interest as set out above

Where a member is making an Licensing application to the Council they should advise the notify the Monitoring Officer in writing no later than submission of the application.

Licensing Applications made by members will always be reported to the Committee as a main item and not dealt with by officers under delegated powers

~~The Code of Members' Conduct is contained in the council's Constitution and must be read in conjunction with this Licensing Code of Conduct (Probity in Licensing).~~

~~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.**

Lobbying or seeking to influence a decision is a normal and perfectly proper part of the political process. However, it can lead to impartiality being called into question and the need to declare publicly that an approach of this nature has taken place. Problems could arise if Members indicate or give the impression of support or opposition to a proposal or particular application, or declare their voting intention to anyone, before a decision is to be taken. To do so without all of the relevant information (including the officer report) and views to hand would be unfair and would prejudice the impartiality of the decision making process. Although the Localism Act does allow a member to express a particular predisposed position.

Lobbying can take place by way of an approach to you, by telephone, or on a chance meeting, or by way of a request to see all or some of the Members of the Licensing Committee. It is an essential part of the democratic process that members of the public should be able to make their views known to you. However, to avoid compromising your position before you have received all the relevant information, evidence and arguments, you will:

- avoid discussing with an applicant or any other person your thoughts about the merits and flaws of an application;
- pass any written material provided to you to the licensing officer dealing with the application for inclusion and evaluation in their report;
- not make it known in advance of the consideration of the application by Committee whether you support or oppose a proposal or application unless you accept that this will mean that you may not take part in the decision;
- restrict your response to giving procedural advice, and make it clear that that is all you are prepared and allowed to do;
- direct lobbyists or objectors to the licensing officer and advise that their views should be expressed in writing, and
- advise the licensing officer as soon as possible of the existence of any substantial lobbying activity.

Members should avoid signing any Petition on a matter likely to be determined by the Licensing Committee. If you express publicly a final view on an application prior to the meeting at which a decision is to be taken, you will be required to withdraw from the meeting whilst the application is discussed and determined. Public expression of a view would include, for example, making a statement to the press of your firm attitude to an application, or in any document to be made publicly available, at a meeting of the Council or a Parish Council (or one of their Committees), or in any situation where the view expressed might reasonably be expected to gain wider circulation.

~~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 ~~72~~ 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 [Local Government and Social Care](#) 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~~<sup>72</sup> 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 explaining the process to be followed at the hearing—and inviting applicant/licensee/representative(s) to come forward to be seated. The Chair will introduce all parties to the hearing. 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.

~~(a)(b)~~ The Chair will ask all Members, and council officers present whether they need to declare any interests in relation to the business on the agenda.

~~(b)(c)~~ 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.

~~(e)(d)~~ 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 10 minutes unless the Chair expressly approves otherwise.~~ Members, other persons and responsible authorities and the applicant/ licensee will have the opportunity of asking the officer questions.

~~(e)~~ The Chair will then invite officers from the responsible authorities or statutory bodies to amplify and/ or clarify comments that they have already submitted in writing or by email and if appropriate the representatives of statutory bodies. The applicant/licensee (or their representative), objectors and or their spokesperson and Members are to be given the opportunity to ask questions.

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

~~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.~~

~~(e)(g)~~ -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 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, other persons and responsible authorities and ~~in some cases~~ by officers ~~and representatives of statutory bodies who are licensing consultees, e.g. the police, fire and rescue service.~~

~~(f)(a) 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.~~

(h) The objectors and/ or their spokespersons and officers from statutory bodies and the responsible authorities will be given a final right of reply.

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

~~(h)(i) The Committee retires to debates the application and reaches its decision. In cases involving disciplinary and/or confidential matters the Committee may decide to exclude the other parties (the applicant/licensee/representative, witnesses, officers and representatives of statutory bodies) whilst it debates the application and reaches its decision.~~

(k) When the Committee has reached a decision, the Committee will return and will announce the decision. They will explain their findings, their consideration of the evidence and the weight they have given it and give clear and cogent reasons for their decision in public.

(i)(l) The Committee does reserve the right at the discretion of the Chair to adjourn to a later date within not more than 5 working days to determine a case, if it is unable to do so on the day of the hearing.

(j)(m) The decision will be confirmed in writing or by email 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. This will usually be within 5 working days of the decision being made.

(k)(n) 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. This discretion does not apply to any matter involving a notice or application under the Licensing Act 2003, as a party may only address the committee if they have submitted a relevant representation.
- vii. Applicants, responsible authorities and other persons should only be permitted to amplify and clarify points that they have properly submitted in writing or by email. Where any party addresses the committee and goes beyond those constraints the Licensing Officer may draw this to the attention of the Chair and ask that the party be guided by the Chair to not stray beyond their written submission. The exception being where a party responds to new evidence adduced at the committee by another party, and only with the permission of the Chair.

~~vi-viii. Where any party answers questions from another party or a Member and appears to go beyond their original representation and/ or repeats points that they have already made to the committee, the Licensing Officer may draw this to the attention of the Chair and ask that the party be guided by the Chair to not stray beyond their written submission, to not (continually) repeat points already made and to limit their answers to the question they have been asked. The exception being where a party responds to new evidence adduced at the committee by another party, and only with the permission of the Chair.~~

#### D. The Committee's decisions

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

~~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 they retire to determine the application (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 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.

**3. For certain applications that are particularly complex and/or contentious, Members of the licensing sub-committee has the discretion to defer the determination of the application in accordance with regulation 26 of the Licensing Act 2003 (Hearings) Regulations 2005.**

A deferment might be helpful for the licensing sub-committee to more fully consider particularly complex and/or contentious application and allow sufficient time to draft the decision notice(s).

Where Members wish to exercise this discretion, it should advise parties attending the hearing and must make a determination within five working days beginning with the day or the last day on which the hearing was held in accordance with the requirements set out in the hearing regulations.

## **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 (with the exception of new taxi driver applications or reviews of such licences) 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, interested parties, 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 an important quasi-judicial function, in an area where there is a large amount of Government advice, case law and lawegislation. 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. Substitute members are also encouraged to attend meetings of the Committee from time to time to observe proceedings by way of a refresher

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 Members' 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~~.