



Committee: LICENSING ACT SUB-COMMITTEE

Date: WEDNESDAY, 21 NOVEMBER 2012

Venue: LANCASTER TOWN HALL

Time: 10.30 A.M.

A G E N D A

1. **Urban Spice, 21 Brock Street, Lancaster** (Pages 1 - 101)

Application for Review of a Premises Licence

ADMINISTRATIVE ARRANGEMENTS

(i) Membership

Councillors Roger Sherlock (Chairman), Josh Bancroft and Paul Woodruff

(ii) Queries regarding this Agenda

Please contact Jane Glenton, Democratic Services - telephone (01524) 582068, or email jglenton@lancaster.gov.uk.

MARK CULLINAN,
CHIEF EXECUTIVE,
TOWN HALL,
DALTON SQUARE,
LANCASTER, LA1 1PJ

Published on Wednesday, 14 November 2012

Meeting of: LICENSING ACT SUB-COMMITTEE

Date: 21st NOVEMBER 2012

Report of: LICENSING MANAGER

Reference: WP

Title: URBAN SPICE, 21 BROCK STREET, LANCASTER, LA1 1UR
LICENSING ACT 2003 – APPLICATION FOR REVIEW OF PREMISES
LICENCE

Members of the Sub-Committee have the following documents attached to this report:

1. Copy of application for review of premises licence (pages 7 to 75)
2. Copy of the current premises licence (pages 76 to 78)
3. Copy of representation from Lancaster City Council's Regeneration and Planning Department (pages 79 to 96)
4. Copy of notice of review posted on the premises (page 97)
5. Notice of hearing (page 98 to 101)

Current Licence under Licensing Act 2003

Urban Spice, 21 Brock Street, Lancaster, LA1 1UR, is currently covered by a premises licence under the Licensing Act 2003. The licence provides for the following licensable activity:-

Late night refreshment:

Monday to Sunday 23.00 - 03.00

Details of Review Application

Under Section 51 of the Licensing Act 2003, the Chief Constable of Lancashire Constabulary has submitted an application for a review of the premises licence for Urban Spice, 21 Brock Street, Lancaster, LA1 1UR. The grounds for a review are listed as the prevention of crime and disorder and public safety.

A copy of the application for review of the above premises licence is at Document 1.
A copy of the current premises licence for Urban Spice is at Document 2.

During the 28 day statutory review period a representation was received from Lancaster City Councils' Regeneration and Planning department, in relation to public safety. A copy of the representation is attached at document 3

Legal background to Review Application

Under Section 51 (1) of the Licensing Act 2003, a responsible authority or interested party may apply to the licensing authority for the review of a licence.

The grounds for review must relate to one or more of the licensing objectives and as Members will be aware, these are:

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

An application for review must be copied to the premises licence holder and to the responsible authorities. Once such an application is received, the licensing authority must place a notice at the premises, and there is then a period of 28 days during which representations may be made to the licensing authority.

A copy of the notice which was displayed at the premises during the 28 day period is attached at Document 4. Licensing Enforcement Officers made occasional checks throughout the 28 day period to satisfy that the notice was still in place.

One representation was received from Lancaster City Councils' Regeneration and Planning department on the grounds of public safety.

The licensing authority is required to arrange a hearing within 20 working days of the expiry of the period for making representations, and ten working days' notice of the hearing must be given. These time limits have been complied with, and a copy of the Notice of Hearing is attached as document 5.

Matter for Decision

The Sub-Committee is requested to consider the Chief Constable's application for review of the premises licence.

In accordance with Section 52 (3) and (4) of the Licensing Act 2003, the Sub-Committee must take such of the following steps as it considers necessary for the promotion of the licensing objectives:

- (a) to modify the conditions of the licence,
- (b) to suspend the licence for a period not exceeding three months,
- (c) to revoke the licence

The matter for decision, therefore, is which, if any, of these steps should be taken.

Government Guidance under Section 182 of the Licensing Act 2003

In relation to crime and disorder, Members may wish to note that paragraph 2.1 of the Guidance issued by the Government under Section 182 of the Licensing Act 2003 states that “The steps any licence holder or club might take to prevent crime and disorder are as varied as the premises or clubs where licensable activities may be carried on. Licensing authorities should therefore look to the police as the main source of advice on these matters”.

With regard to the powers of the Licensing Authority on the determination of a review, paragraph 11.16 states that “The licensing authority may decide that no action is necessary if it finds that the review does not require it to take any steps necessary to promote the licensing objectives. In addition, there is nothing to prevent a licensing authority issuing an informal warning to the licence holder and/or to recommend improvement within a particular period of time. It is expected that licensing authorities will regard such warnings as an important mechanism for ensuring that the licensing objectives are effectively promoted and that warnings should be issued in writing to the holder of the licence. However, where responsible authorities like the police or environmental health officers have already issued warnings requiring improvement – either orally or in writing – that have failed as part of their own stepped approach to concerns, licensing authorities should not merely repeat that approach”.

Relevant Parts of the Council’s Statement of Licensing Policy

With regard to the promotion of public safety and the prevention of crime and disorder the Policy provides as follows:

9. The prevention of crime and disorder

- 9.1 The central concerns of licensing in relation to law and order are acts of violence and vandalism brought about by consumption of alcohol and the use of licensed premises as part of a distribution network for illegal drugs.
- 9.2 It is not the function of licensing to impose good practice in the adoption of wider crime reduction measures, such as those for securing premises outside of trading hours. It is also not a purpose of licensing to require that measures be put in place to enhance the opportunities for gathering evidence in relation to crime of a general nature. However, the Licensing Authority recognises that CCTV cameras at premises have an important role in preventing crime and disorder.
- 9.4 The Licensing Authority’s starting point is to seek a reduction in crime and disorder throughout the area, consistent with its statutory duty under section 17 of the Crime and Disorder Act 1998. Licences may be granted if applicants can demonstrate that a positive reduction in crime and disorder will result, or that it will not increase, as a result of the application being granted.
- 9.5 Where there are relevant representations, the Licensing Authority will generally not grant a licence where it is likely that the premises will be used for unlawful purposes or where it is considered that the use of the premises is likely to cause an increase in crime and disorder in the area or the premises and this cannot be prevented by the imposition of conditions. When addressing crime and disorder, the applicant should identify any particular issues which are likely to adversely affect the promotion of the objective to prevent crime and disorder, taking account the location, size and likely clientele of the premises, and the type of entertainment (if any) to be provided. Such steps as are required to deal with these issues should be included within the applicant’s operating schedule, and may include:

- Use of CCTV inside and outside the premises. The Lancashire Constabulary has produced suggested minimum requirements for CCTV and these are available from the Lancashire Constabulary or from the Licensing Authority's administrative staff
- Use of metal detection or other search equipment or procedures
- Crime and disorder risk assessment in relation to the proposed activities
- Measures to prevent the use or supply of illegal drugs and procedures for searching customers
- Ensuring that all staff are appropriately trained
- Ensuring that all staff involved in the management of the premises have the capability, responsibility and training to supervise other staff and to ensure that the premises are operated in such a manner as to prevent crime and disorder
- Employment of sufficient security staff where appropriate, controlling admission, monitoring capacity within the premises as a whole and in separate rooms/levels and patrolling the interior and exterior of the premises (any such staff must be licensed by the Security Industry Authority). The Licensing Authority recognises that there is a greater need for security staff in some premises than in others. For example there will be a greater need for security staff in a town centre nightclub than in a village pub. It will be for the applicant to consider the appropriate number of doorstaff required for the particular premises.
- Ensuring that a register of doorstaff and their working times is maintained
- Participation in Pub Watch, Best Bar None or other relevant schemes and using radio links/pages as a means of connecting to other licensed premises.
- Use of plastic or polycarbonate glasses and bottles, where appropriate, or toughened glass. Applicants are advised that the Government believes that a risk-based, rather than blanket, approach to requiring licensed premises to use safer alternatives is the best way to tackle the problem of glass-related injuries
- Wherever possible, agreed protocols with police and other organisations and a commitment to co-operate and provide such evidence as the Police require.
- Adopting the "Night Safe Initiative" and "Safer Clubbing Guide" as statements of best practice
- Following the trade codes of practice, for example BBPA and Portman Group, and not carrying out any irresponsible drinks promotions
- Providing a suitable environment for customers having regard to the activities going on in the premises, in particular appropriate levels of seating
- Ensuring that there are sufficient transport facilities available to ensure that customers can leave the premises safely and swiftly.
- Maintaining an incident log
- The steps the applicant has taken to prevent crime and disorder issues from occurring in any open air parts of the premises, beer gardens, smoking shelters or areas that are used on an ad-hoc basis by patrons with the management consent for smoking, due to location, control within and management of such areas.

9.6 Following the receipt of relevant representations, the Licensing Authority will not normally allow a person to be specified as a designated premises supervisor where that is likely to undermine the prevention of crime and disorder by reason of that person's known past conduct. A person is likely to be considered unsuitable if he has previous unspent convictions for a relevant offence, notwithstanding that he may have been granted a personal licence. However, each case would be considered on its own merits in the light of representations received.

The promotion of public safety

- 10.1 The Act complements but does not seek to duplicate the statutory requirements of other legislation, which affect those who have responsibility for the conduct of licensed premises such as the Health and Safety at Work Etc. Act 1974.
- 10.2 One of the things which the licensing system can provide is agreement in advance on a standard layout for furniture, location of stage, placing of linked seats etc. so that licensees can be confident about their practical arrangements, provided that they stick to that way of doing things. With other legislative controls, there may be no official inspection of the arrangements made, unless there is an investigation when something has gone wrong.
- 10.3 As a consequence of the many common features of leisure businesses, such as the operation of door policies, competition for taxis and the interaction with people on the street late at night, individual premises necessarily function as part of a network of businesses, sharing information on crime and disorder issues which affect them all.
- 10.4 The Licensing Authority recognises that participation in forums such as Pub Watch and the proper use of network radios are key to the safe operation of the majority of leisure businesses. It may be appropriate for an operating schedule to include these practical matters.
- 10.5 Fire safety requirements are determined principally by specific fire safety legislation. The overall standard of fire safety is an important consideration in determining the suitability of premises for licensable activities.
- 10.6 The Licensing Authority will not use the licensing process to secure routine compliance with fire safety requirements, which arise from other legislation. Nevertheless in circumstances where fire safety inadequacies indicate that premises pose a risk to the health and safety to those who enter them and where specific fire safety enforcement does not provide a sufficient or sufficiently rapid remedy, the Licensing Authority will take appropriate steps to ensure that the risk is removed including, where necessary, and where a review of the licence is requested, revocation of the licence.
- 10.7 In addition the Licensing Authority will also consider and deal with the introduction of further hazards to public safety as part of an event and the exercise of controls over occupancy, so that premises can be cleared safely and efficiently, in the event of an emergency.
- 10.8 Where an applicant identifies an issue with regard to public safety (including fire safety) which is not covered by existing legislation, the applicant should indicate in the operating schedule the steps which will be taken to ensure public safety. Depending on the location, size and likely clientele of the premises, and the type of entertainment (if any) to be provided, the following issues may be of relevance:
 - The maximum capacity of the premises, and the arrangements for ensuring that a capacity limit is not exceeded and for monitoring capacity. This applies to the premises as a whole and to different rooms or levels within the premises.
 - Steps taken to ensure that all staff involved in the management of the premises have the capability, responsibility and training to supervise other staff and to ensure that the premises are operated in such a manner as to ensure the safety of the public

- The design of the premises and in particular the capability of the structure to bear the likely loads to be imposed at maximum occupancy.
- The structural condition of the premises and state of repair.
- The condition of the electrical and gas services, and arrangements for temporary electrical installations.
- The lighting, heating and ventilation systems.
- The fire resisting and fire separation properties of the premises.
- The means of escape from the premises.
- The adequacy of the sanitary arrangements.
- The use of flame retardant materials on fixtures and fittings.
- The protection and safety of the audience, particularly at any indoor sporting event or boxing or wrestling entertainment.
- The availability of qualified first aiders when the premises are open.
- The protection and safety of performers of entertainment.

The Licensing Authority will expect the applicant to have carried out a risk assessment on these matters in producing the operating schedule. The above list is not intended to be exhaustive, and the Licensing Authority will expect the applicant to have considered all relevant aspects of the safety and suitability of the premises which are not dealt with under other legislation, and which are within the control of the applicant.

It should be noted that this list is not intended to be exhaustive. It may be appropriate for the applicant to consider other steps. Equally, the Licensing Authority recognises that not all the items in the list will be applicable to all premises.

Members will of course be mindful that the Policy covers all types of premises in all types of location, and that not all the measures referred to above will be relevant to all premises.

Members are reminded that they should consider each application on its merits, and in the light of all the written and oral information before them at the hearing

Natural Justice and Human Rights

Members are reminded that they must follow the rules of natural justice, and must also consider human rights implications.

In particular, in accordance with Article 6, all parties are entitled to a fair hearing.

Consideration also needs to be given to the right to respect for private and family life and home, contained within Article 8, although this is a qualified right, and interference is permitted where this is in accordance with the law, or is necessary in a democratic society in the interests of public safety or the prevention of crime and disorder, or for the protection of the rights and freedoms of others. Article 1 of the First Protocol provides that every person is entitled to the peaceful enjoyment of his possessions, although again this right is qualified in the public interest.

Conclusion

Members should consider the application for review of the premises licence and any steps it considers necessary for the promotion of the licensing objectives.

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Governance
Licensing Section
Town Hall
Dalton Square
Lancaster
LA1 1PJ



Tel: (01524) 582000
email: licensing@lancaster.gov.uk

Premises Licence

LAPLNA0094

Part 1 - Premises Details

POSTAL ADDRESS OF PREMISES, OR IF NONE, ORDNANCE SURVEY MAP REFERENCE OR DESCRIPTION

Urban Spice

21 Brock Street, Lancaster, Lancashire, LA1 1UR.

WHERE THE LICENCE IS TIME LIMITED THE DATES

Not applicable

LICENSABLE ACTIVITIES AUTHORISED BY THE LICENCE

- provision of late night refreshment

THE TIMES THE LICENCE AUTHORISES THE CARRYING OUT OF LICENSABLE ACTIVITIES

Activity (and Area if applicable)	Description	Time From	Time To
L. Late night refreshment (Indoors)	Monday - Sunday	23:00	03:00

THE OPENING HOURS OF THE PREMISES

Description	Time From	Time To
Monday - Sunday	23:00	03:30

WHERE THE LICENCE AUTHORISES SUPPLIES OF ALCOHOL WHETHER THESE ARE ON AND / OR OFF SUPPLIES

Part 2

NAME, (REGISTERED) ADDRESS, TELEPHONE NUMBER AND EMAIL (WHERE RELEVANT) OF HOLDER OF PREMISES LICENCE

Siraj Moosa Bapu
sirajbapu@hotmail.co.uk

28 Blades Street, Lancaster, Lancashire, LA1 1TT.

REGISTERED NUMBER OF HOLDER, FOR EXAMPLE COMPANY NUMBER, CHARITY NUMBER (WHERE APPLICABLE)





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Licensing Section
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Dalton Square
Lancaster
LA1 1PJ



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Premises Licence

LAPLNA0094

ANNEXES

Mandatory condition where Door Supervisors are provided

All individuals who carry out security activities must be licensed by the Security Industry Authority (SIA)

Conditions consistent with the Operating Schedule

To install, maintain and operate a CCTV system, which complies with the minimum requirements, expected of the Lancashire Constabulary and shall record during all hours that a licensable activity takes place on the premises.

A minimum number of 2 members of door staff registered with the SIA will be on duty from 01:00 hours to close of business on Saturday and Sunday mornings.

The premises licence holder shall register and use community/network radio.

Operating schedule

- Food orders must cease 30 minutes before the premises closes
- Bins must be provided within the premises to stop littering
- All windows and doors must be closed by midnight to prevent noise causing a public nuisance.





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Premises Licence Summary

LAPLNA0094

Premises Details

POSTAL ADDRESS OF PREMISES, OR IF NONE, ORDNANCE SURVEY MAP REFERENCE OR DESCRIPTION

Urban Spice

21 Brock Street, Lancaster, Lancashire, LA1 1UR.

WHERE THE LICENCE IS TIME LIMITED THE DATES

Not applicable

LICENSABLE ACTIVITIES AUTHORISED BY THE LICENCE

- provision of late night refreshment

THE TIMES THE LICENCE AUTHORISES THE CARRYING OUT OF LICENSABLE ACTIVITIES

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WHERE THE LICENCE AUTHORISES SUPPLIES OF ALCOHOL WHETHER THESE ARE ON AND / OR OFF SUPPLIES

NAME, (REGISTERED) ADDRESS OF HOLDER OF PREMISES LICENCE

Siraj Moosa Bapu

28 Blades Street, Lancaster, Lancashire, LA1 1TT.

REGISTERED NUMBER OF HOLDER, FOR EXAMPLE COMPANY NUMBER, CHARITY NUMBER (WHERE APPLICABLE)

STATE WHETHER ACCESS TO THE PREMISES BY CHILDREN IS RESTRICTED OR PROHIBITED



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**NOTICE OF AN APPLICATION FOR A REVIEW OF
PREMISES LICENCE FOR URBAN SPICE
21 BROCK STREET, LANCASTER**

TAKE NOTICE THAT the Chief Constable of Lancashire Constabulary has applied to Lancaster City Council (The Licensing Authority), for a **Review of the Premises Licence** in respect of the above premises.

The grounds of the application for review as stated by the Chief Constable are (1) the prevention of crime and disorder and (2) public safety

Any interested parties or responsible authorities may make representations on this application to the Licensing Authority, and any such representations should be submitted in writing by the **5th November 2012** to **The Licensing Manager, Governance, Town Hall, Dalton Square, Lancaster, LA1 1PJ** or by email to licensing@lancaster.gov.uk.

The full application may be viewed at the **Town Hall Dalton Square Lancaster** between 10.00 – 12.00 and 14.00 and 16.00 Mon – Fri.

IT IS AN OFFENCE, to knowingly or recklessly make a false statement in connection with an application, and the maximum fine for which a person is liable on summary conviction for the offence is £5000.

Dated this 8th day of October 2012

Wendy Peck, Licensing Manager, Town Hall, Dalton Square, Lancaster, LA1 1PJ

LANCASTER CITY COUNCIL

**LICENSING ACT 2003 AND THE LICENSING ACT 2003 (HEARINGS)
REGULATIONS 2005**

NOTICE OF HEARING

To: The Applicants: **Chief Constable of Lancashire Constabulary**

The Licence Holder: **Siraj Moosa Bapu**

Responsible Authority: **Lancaster City Council (Regeneration & Planning)**

THE LANCASTER CITY COUNCIL, AS LICENSING AUTHORITY, HEREBY GIVES YOU NOTICE that a hearing before a Sub-Committee of the Licensing Act Committee to consider relevant representations in respect of a review under Section 51 of the Licensing Act 2003 in respect of premises known as **Urban Spice, 21 Brock Street, Lancaster**, will take place on the **21st November 2012** at **Lancaster Town Hall**, commencing at **10.30 a.m.**

AND TAKE NOTICE THAT each party as listed above is required to give to the Licensing Authority by no later than five working days before the day of the hearing a notice in writing stating whether that party intends to attend or be represented at the hearing, and whether he or she considers a hearing to be unnecessary.

AND TAKE NOTICE THAT if a party wishes any other person (other than the person he/she intends to represent him at the hearing) to appear at the hearing, the notice given by that party and referred to in the preceding paragraph must contain a request for permission for such other person to appear at the hearing, and must set out details of the name of that person and a brief description of the point or points on which that person may be able to assist in connection with the matter to be considered by the Sub-Committee.

GIVEN this 13th day of November 2012 by the Lancaster City Council as Licensing Authority.

INFORMATION TO ACCOMPANY NOTICE OF HEARING

1. Right of attendance, assistance and representation

A party may attend the hearing and may be assisted or represented by any person, whether or not that person is legally qualified.

The hearing will generally take place in public. However, the Sub-Committee may exclude the public from all or part of a hearing where it considers that the public interest in so doing outweighs the public interest in the hearing, or that part of the hearing, taking part in public. In such circumstances, a party and any person assisting or representing a party may be treated as a member of the public. The Sub-Committee will exclude the public (and the parties and their representatives) during the decision making process.

The Sub-Committee may require any person attending the hearing who in its opinion is behaving in a disruptive manner to leave the hearing, and may refuse to permit that person to return, or permit him to return only on such conditions as the Sub-Committee may specify. However, such a person may, before the end of the hearing, submit to the Sub-Committee in writing any information which he would have been entitled to give orally had he not been required to leave.

2. Representations and Supporting Information

At the hearing a party shall be entitled to:

- (a) Give further information as applicable in response to a point upon which notice has been given to that party that clarification is required. (Note – if such clarification is required from a party this will have been indicated in the Notice of Hearing).
- (b) Question any other party, but only if given permission by the Sub-Committee; and
- (c) Address the Sub-Committee

3. Failure of Parties to attend the Hearing

If a party has given notice that he does not intend to attend or be represented at a hearing, the hearing may proceed in his absence.

If a party who has not so indicated fails to attend or be represented at a hearing, the Sub-Committee may, where it considers it to be necessary in the public interest, adjourn the hearing to a specified date, or hold the hearing in the party's absence. If the hearing proceeds in a party's absence, the Sub-Committee will consider and give appropriate weight to the application, representation or notice given by that party in their absence.

4. Representations and Evidence

A party who wishes to rely on information or documentary evidence that has not been submitted in advance of the issue of the Notice of Hearing should ensure that such information or evidence, together with sufficient copies for all the parties, is submitted to the Licensing Manager at least **7 days before** the day of the hearing.

Parties are reminded that documentary or other information submitted on the day of the hearing may only be taken into account with the consent of all the other parties.

A party who wishes to produce audio/visual evidence should make such evidence available as soon as practical, and should give a minimum of two clear working days notice to the Licensing Manager to facilitate arrangements for the appropriate equipment to be available at the hearing.

5. Procedure

A summary of the procedure that will normally be followed at the hearing is enclosed.

It should be noted that this is a general procedure intended to cover matters that will normally be applicable at all hearings.

However, depending on the circumstances of each individual case, it is recognised that other issues may need to be considered as preliminary points at the hearing. These may include (but are not limited to):

- Whether to proceed in the absence of a party
- Whether to admit new documents/information submitted at the hearing
- Whether it is in the public interest to exclude members of the public from the hearing or any part of the hearing (other than the decision making process)
- Whether any party wished to withdraw representations previously submitted

6. Special Needs

Any person who intends to attend a hearing and who has special needs, for example in connection with access, language, hearing or vision, should inform the Licensing Manager as soon as practical prior to the day of the hearing, so that appropriate provision or arrangements may be made.

PROCEDURE TO BE FOLLOWED AT HEARINGS TO WHICH THE LICENSING ACT 2003 (HEARINGS) REGULATIONS 2005 APPLY

1. The Chairman will introduce the Members and the Legal Adviser and Democratic Support Officer.
2. The Chairman will ask the parties to introduce themselves and any persons with them.
3. The Chairman will confirm that there is no reason why any of the three sub-committee Members should not participate in this matter.
4. The Chairman will confirm that this is a discussion led by the authority, that any questions should generally be put through the Chairman, and that cross-examination will only be permitted if the Sub-Committee considers that it is necessary.
5. The Chairman will ask the parties if they have any requests to cross-examine, and such requests will be considered by the Sub-Committee.
6. The Sub-Committee will consider any requests from the parties for permission for another person to appear at the hearing.
7. The Chairman will explain to the parties that the procedure to be followed will be the published one (unless the circumstances of the case require the normal procedures to be varied) – that is,
 - that the Licensing Manager (or his representative) will introduce the details of the application, the reason for the hearing, and the documentation,
 - that each party making representations will address the sub-committee in turn and will call other persons where permission has been given
 - that the applicant/licence holder will present his case and will call other persons where permission has been given
 - that Members may ask questions of all parties and persons
 - that questions from the parties must be directed through the Chairman unless cross-examination has been permitted under 4 above
 - that all parties will have the opportunity to make a closing statement, with the applicant/licence holder having the final word
 - that the Sub-Committee will withdraw to make its decision and formulate the reasons for the decision in private, and will ask its Legal Adviser and the Democratic Support Officer to join it in order to assist in documenting the decision and the reasons, or to provide clarification on any point. The decision will be announced in public and confirmed in writing. (In certain circumstances, the decision may not be made on the same day as the hearing). In the event that the Legal Adviser has been asked for clarification on any point then the point raised and the advice given will be declared to all parties.
8. The Chairman will indicate the maximum period of time each party will be allowed in which to present their case, and will seek comments from the parties before the Sub-Committee makes its final indication on this point.
9. The hearing will then proceed following the procedure in 7 above. The Chairman will arrange for reasonable comfort breaks throughout the hearing.