

Licensing Act 2003 Committee hearings - FAQs

In offering this advice LACORS wishes to make it clear that:

- *Legislation may change over time and the advice given is based on the information available at the time the guidance was produced. It is not necessarily comprehensive and is subject to revision in the light of further information.*
- *Only the courts can interpret statutory legislation with any authority.*

This advice is not intended to be a definitive guide to, nor substitute for, the relevant law. Independent legal advice should be sought where appropriate.

How many members should constitute a sub committee?

The Act stipulates that 'A licensing committee may establish one or more sub-committees consisting of three members of the committee' (LA2003 9(1)). However, the Act is silent on quorum for full committee and the sub-committee. LACORS advice is that quorum should be recommended at three because, as there would be a Chair's casting vote, it would create the equivalent of one decision maker with consultation from another. However, it is recognised that it is for each licensing committee to set its own quorum within the confine of a maximum of three in the absence of any relevant regulations.

LACORS suggests that if less than three members sit at the sub committee; this only happens in extraordinary circumstances and that the written agreement of all interested parties to this arrangement is obtained before the hearing commences. This agreement should then be stored with all other relevant papers.

Can members make representations at licensing committees?

Councillors either need to be 'interested parties' in their own right or need to be asked by an 'interested party', specifically, to represent them.

Nearly all councillors are now "interested parties" and can make representations in their own right in response to premises licence and club premises certificate applications. If the council is a licensing authority, then all its elected councillors are interested parties under s13(3) Licensing Act 2003 (as amended by s33 Policing and Crime Act 2009). Elected members can make representations in respect of any premises within any ward in the licensing authority area.

If the council is not a licensing authority then its elected councillors are not automatically included within the list of interested parties.

For further information on the role of councillors as interested parties please see LACORS' FAQs for Councillors as Interested Parties and the revised DCMS Guidance, in particular paragraphs 8.5 to 8.15 (both available via www.lacors.gov.uk)

Councillors can also represent residents and other interested parties when specifically requested to do so, for example, by acting as an advocate at hearings and during negotiations.

(The other types of people and organisations defined as interested parties include local residents and businesses. "Business" is loosely defined, and includes charities, churches, community organisations and medical practices, for example.)

The DCMS Guidance states at 8.7 that "*Any of these individuals or groups may specifically request a representative to make his, her or its representation on his, her or its behalf. For example, a legal representative, a friend, a Member of Parliament, a Member of the National Assembly for Wales, or a local ward or parish councillor could all act in such a capacity.*"

Councillors should ensure that they adhere to the requirements set out in the Model Code of Conduct (The Local Authorities (Model Code of Conduct) Order 2007) when representing other interested parties.

Should personal information of interested parties be disclosed to other parties to the hearing?

Written letters of objection and support are often received concerning applications, and clearly it is important that these are seen by members of the committee (and available to the applicant and interested parties) so that they can make an informed decision on the application. The addresses of these representations will also need to be considered by the committee in many instances including considering the weight of representations made concerning noise. However, it is worth remembering that for data protection reasons and in the interest of the parties concerned, that personal information (e.g. names and house numbers) are withheld from public circulation, or if the information is requested by the committee or interested parties, that it is only circulated with prior permission of those making the representation. Where this permission is not acquired these written representations should be mentioned in an abstract way such as: '*12 letters of objection were received from residents in Brewery Lane*'

Data protection considerations should also be remembered during dialogue at the committee hearing.

*It should also be noted that **paragraphs 9.14 to 9.18** of the revised Guidance (December 2009) advise that in may be prudent in exceptional and isolated circumstances to withhold some or all of an interested party's personal details to mitigate any intimidation or violence which might occur should such details be divulged.*

Do all copies of all representations need to be sent to the people making representations?

For petitions specifically do copies of these, and notifications of the time of the hearing, need to go to all signatories or just to the main petition contact?

LACORS is of the view that where at all possible, a lead contact should be given for the received petition. This is so that the licensing authority can verify that this individual fits the criteria of an 'interested party' (LA2003 13 (3)) and for verification of which licensing objective the representation is in relation to. For petitions with a large number of signatories, licensing authorities may wish to consider adding a disclaimer to the following effect:

'Whilst the licensing authority can verify the authenticity of the lead contact for this petition, it cannot guarantee the status of other signatories in relation to the criteria stipulated by the Licensing Act 2003 for relevant representations'

Copies of representations should then be sent to that lead contact and made publicly available with all other papers for viewing by members of the public in the interest of local authority cost and efficiency. How the authority intends to approach petitions should be described in the committee protocol.

Generally, copies of representations should be sent to all interested parties, but in cases where this is administratively unmanageable (e.g. contentious applications that attract hundreds of lengthy written representations) local authorities may wish to consider making these documents available for public inspection and informing interested parties where and how these can be accessed for inspection.

Should members be encouraged to make site visits in relation to applications?

LACORS is of the view that site visits are generally unnecessary and can put Members and the Licensing Authority at risk of accusation of bias. If a site visit were believed to be justified then a local authority would be advised to have guidance providing clear criteria for the visit being required and as to the conduct of the visit.

How should members of the licensing authority decide applications made by the local authority? E.g to licence public spaces.

The Government has encouraged local authorities to consider applying for their own premises licences for public space. It is important that such applications are seen to be dealt with fairly and it might therefore be worth considering whether such applications are always decided by a licensing committee and not the licensing officer even where there are no representations. If a member has been involved in agreeing a policy to apply for a premises licence for local authority space, or for example, is on the board of a school which is applying for a licence then the member needs to consider carefully with his/her licensing/legal officer whether this may amount to bias and possibly withdraw from the sub-committee considering the application.

Can a councillor who sits on the licensing committee also be a magistrate?

LACORS has discussed this issue with the Justices Clerks Society who have been clear in stating the following: *"There is no problem with a Councillor being a magistrate provided that they do not hear any matters relating to their local authority. When appointed they receive guidance from the Lord Chancellor that they should not sit on such matters"*.

LACORS has also discussed with the Justices Clerks Society, the Standards Board and the Department for Constitutional Affairs; whether a councillor sitting on the licensing committee should hear cases (licensing or otherwise) against the local authority, and whether a councillor sitting on the licensing committee should hear appeals against the local authority's licensing decision. The answer to both these questions was 'no'.

For more advice on these areas, please see our website www.lacors.gov.uk, and access the reference section/alcohol and public entertainment licensing/licensing committees.

LACORS has also issued specific guidance concerning the role of elected Members under the Act. This document offers guidance on personal and prejudicial interests and matters such as common law bias. This document can be accessed on the LACORS website.

LACORS has also issued guidance to local authorities concerning the administration of licensing committees under the Act. This guidance includes advice on receiving representations, the Chairs and officers role at committee and model versions of the committee protocol and committee agenda. This document can be obtained via the following link:

<http://www.lacors.gov.uk/lacors/upload/16571.doc>