

DRAFT

Protocol on Licensing Procedure

1 Introduction

The purpose of this protocol is to provide Members with guidance regarding their role in determining licensing applications and other related issues, whether in the Licensing Act Committee or the Licensing Regulatory Committee. It also provides guidance to ward members, who are not members of either Committee.

The protocol is designed to offer guidance to help Members understand their role and the responsibilities associated with that role, and to ensure that in the licensing process there are no grounds for suggesting that a decision has been biased, partial or not well founded in any way.

In summary, the most important issues for Members to consider are as follows:

- The Code of Conduct, and in particular whether a Member has an interest as defined in the Code, and if so whether that interest precludes the Member from participating in a particular item of business.
- Aside from the Code of Conduct, whether there is any other reason why a Member should not participate in a particular decision
- The need to exercise care and caution in any contact with applicants and objectors
- The dangers of lobbying or being lobbied

The protocol is a public document, forming part of the Council's Constitution, and is available on the Council's website. When contacted on licensing issues, Members may wish to consider providing a copy of the protocol to the person who has contacted them, if that would assist in explaining their role in the licensing process.

2 Natural Justice

These principles apply throughout public administration. They are fundamental principles of administrative law and should be adhered to when determining any licensing application, to ensure that there is no procedural impropriety.

The two principles of Natural Justice are :-

- (a) The rule against bias
- (b) The duty to act fairly/duty to hear both sides or the other side.

3 The Rule Against Bias

Bias is an attitude of mind which prevents the decision-maker from making an objective determination of the issue to be decided. Procedural impropriety does not require actual bias; an appearance of bias is sufficient. The test is whether a fair minded and informed observer, having considered the facts, would conclude that there was a real possibility of bias. Bias may arise by virtue of a member being closely connected with a person who has a vested interest in a licensing application or matter.

In addition to the common law rule against bias, Members must be mindful of the provisions of the Council's Code of Conduct with regard to interests, referred to below.

If Members are in any doubt about the application of the Code of Conduct, they should seek advice early, from the Monitoring Officer, Deputy Monitoring Officer or one of their staff. Failure to comply with the Code of Conduct may have implications for the individual Member, as there may be a complaint to the Standards Committee. There may also be implications for the decision making process, with criticism of the relevant Committee and possible challenge to the decision on the basis that a Member with an interest remained within the meeting room and tainted the integrity of the decision.

4 **The duty to act fairly/hear both sides or the other side - Predetermination and Predisposition**

"Predetermination" is where a Member is closed to the merits of any arguments relating to a particular application, and makes a decision without taking them into account.

"Predisposition" is where a Member holds a view in favour of or against an application, but has an open mind to the merits of the argument before making a final decision.

Predisposition is acceptable; predetermination is not.

The decision making body must consider all relevant information before coming to its decision. The Member's mind should not be closed until the final decision is made. A Member's mind will be closed if they have already come to a decision on an application prior to entering the meeting room. This is predetermination.

A decision will be open to challenge if a Member appears to have already decided how they will vote at the meeting so that nothing will change their mind. This impression can be created in a number of different ways such as quotes given in the press, and what Members have said at meetings or written in correspondence. However, it should be noted that Section 25 of the Localism Act 2011 provides that in the event that a decision is challenged, the court will not find that a member had a closed mind when making the decision just because of any previous conduct which might have indicated what view the member took, or would or might take, in relation to the matter. Simply listening to or receiving viewpoints from interested parties, seeking information through appropriate channels, or making comments, will not necessarily constitute predetermination, provided that the Member makes it clear that they are keeping an open mind.

It is not a problem for Members to be "predisposed", holding a view but having an open mind and being open to persuasion against that view. This includes having formed a preliminary view about how they will vote before they attend the meeting, and/or expressing that view publicly, provided it is clear that their mind is not closed to countervailing arguments.

5 **Declarations of Interest and Leaving the Meeting Room**

Disclosable pecuniary interests are defined in Regulations made under the Localism Act 2011, and the statutory provisions regarding such interests are reflected in Section 1 of Part B of the Council's Code of Conduct. If a Member has a disclosable pecuniary interest in any item of business before the Committee, the law requires the Member not to participate. The Council Procedure Rules require the Member to leave the meeting. This applies whether or not the Member is a member of the Committee, a ward member or an applicant or objector. If a Member with a DPI wishes to attend a meeting, the Member must obtain a dispensation.

Section 2 of Part B of the Council's Code of Conduct defines "other" interests which Members are required to register. These include details of any body to which the Member is appointed by the Council, and details of any body exercising functions of a public nature or directed to charitable purposes or whose principal purpose includes the influencing of public opinion or policy, of which the Member is a member or holds a position of general control or management. Where an item for consideration by the Committee relates to such a registered interest, the interest must be declared at the meeting.

In addition, where a decision might reasonably be regarded as affecting the well-being or financial position of a Member, or that of a relative or close associate of theirs, the Member must declare an "other" interest at the meeting. The phrase "close associate" is not defined in the Code, but covers both social and business associations. Simply knowing the applicant does not necessarily equate to an interest.

Where a Member has an "other" interest as set out in Section 2 of Part B of the Code of Conduct, in a licensing application being considered by a Committee, the Member must give careful consideration as to whether that interest is one which precludes them from participating in the debate and decision making. This will be the case if the interest is one which a member of the public with knowledge of the facts would reasonably regard as so significant that it is likely to prejudice the Member's judgement of the public interest. In other words, the interest must be perceived as likely to harm or impair the Member's ability to judge the public interest. However, a member will only be precluded from participating if the item of business affects the financial position of the Member or the person or body through whom the interest arises, or relates to a licensing application by or on behalf of such a person.

Under the Council Procedure Rules, a Member who is precluded from participating in a decision must leave the chamber – the Member is not permitted to return to the public gallery for the debate and should not be seen by other Members when they are making the decision. If a Member with such an interest was present or could be seen to watch the proceedings, this could be sufficient to taint the process.

When declaring interests at meetings, Members should make it clear what level of interest they are declaring, and whether the interest prevents them from taking part in the decision making process.

Members who have licensing interests or other interests that would prevent them from voting on a regular basis should avoid serving on a Licensing Committee.

6 Party Politics

A Member must not blindly follow the recommendations of their political party. A decision on a particular licensing application should not be dictated by party politics. Party whips should never be used. The Licensing Act Committee and Licensing Regulatory Committee sit in a quasi-judicial manner and each decision is made on its own merits, within the legislation and any licensing policy or guidelines adopted by the relevant Committee. Each decision has to be made on the information put before the Committee.

7 Media Exposure

A Member of the Licensing Act Committee or Licensing Regulatory Committee should never make any public declaration on an application. If a Member makes a statement that is one sided prior to the application being determined, then that Member is at risk from an allegation of bias i.e. they have not kept their mind open until all matters are before them. In these

circumstances it may be inappropriate for the Member to take part in the decision making process to ensure the decision is not tainted.

8 Lobbying

Those who may be promoting or be affected by a licensing decision may often seek to influence it. Whilst lobbying of members is legitimate, and certain members may make representations on behalf of applicants or other interested persons, there must be neither actual bias nor an appearance of bias in decision making.

If a member of the Licensing Act Committee or Licensing Regulatory Committee is lobbied, that member can:

- listen to what is being said
- give procedural advice (eg where and when any meeting is to be held, advise which licensing officer to approach, or how to make representations)
- refer the lobbyist to a ward member who does not sit on the relevant licensing committee or to a licensing officer
- report instances of significant, substantial or persistent lobbying to the Monitoring Officer

9 The Role of Members and Officers

All members and officers must ensure that contact between them in connection with licensing matters accords with the requirement of mutual respect and should not undermine the good working relationships which are critical to the success of the City Council and good local government.

Officers are available to discuss the issues relating to licensing applications with members and to inform them of all the facts and circumstances relating to the application.

10 Ward Members/Committee Members

It should be noted that a member of the Licensing Act Committee or the Licensing Regulatory Committee who is the member for a ward which would be directly affected by a licensing application, or who is the ward member for an individual who has an application or other matter for consideration by one of the committees, is most at risk of allegations of bias, and is most likely to be put under pressure to represent those interests in the decision making process. When a member participates in making a licensing decision, their overriding duty is to the community as a whole, and a member should not favour or appear to favour any person, company, group or locality.

It is for this reason that the Council's statement of policy under the Licensing Act 2003 provides that any sub-committee which deal with individual applications will not include any member who represents the ward in which the premises which are the subject of the application are situated.

For the same reason, it is strongly recommended that where the Licensing Regulatory Committee or a sub-committee of the Licensing Act Committee is considering an application or matter relating to an individual, a member for the ward in which that individual resides and who has had contact with that individual on the matter should not sit as a member of the Committee for that item.

If a member of the Licensing Act Committee or Licensing Regulatory Committee wishes to represent an applicant or other interested party, the member may do so, but should do so as a representative, and should not sit as a member of the Committee for that item.

11 **Speaking at Licensing Committees by Members who are not Members of the Committee**

A Member who is not a member of a Licensing Act Sub-Committee may speak on an application or matter if the member has made relevant representations in their own right, or may speak as the representative of or witness for any party to the proceedings.

At Licensing Regulatory Committee, agenda items which relate to individual licence holders or applicants are generally held in private because the matters include exempt or confidential information. A member who is not sitting as a member of the Licensing Regulatory Committee may act as a representative or witness in any such item before the Committee. However, no other member is permitted to attend for such items when the press and public are excluded.

Public speaking is permitted at meetings of the Licensing Regulatory Committee on public reports. A Member who is not a member of the Committee and who wishes to speak on such an item may do so, but must register in accordance with the Committee's arrangements for public speaking.

12 **Non –Committee Members**

Members who do not sit on a Licensing Committee need to be careful when discussing with Committee members issues relating to matters which may come before the Committee. It is unacceptable for the non-licensing member to attempt to obtain a commitment as to how another member might vote.

13 **Membership of other Committees**

There is acceptance that a member may legitimately consider matters in several capacities, as different factors may apply to different decisions. For example, where premises require both a licence and planning permission members may sit on both the Licensing Act Committee and the Planning and Highways Regulatory Committee. While the statutory regimes in such cases are different, the considerations to be taken into account may be similar, and Members should carefully consider whether anything they have said in making the earlier decision would demonstrate a pre-determination of the second decision.

14 **Contact with Applicants and other Interested Persons**

Members should refer those who approach them for assistance on procedural or technical licensing matters to relevant officers.

Members who wish to consider a licensing application should not attend formal or informal meetings with applicants or other interested persons.

15 **Hospitality Offered to Members**

It is advisable in all circumstances to simply refuse any hospitality. To accept creates the risk that there has been undue influence on the licensing process. In the rare event that the hospitality of an estimated value in excess of £50 is accepted it must be registered in the register of interests under Paragraph 8 of Section 2 of Part B of the Council's Code of

Conduct. It must also be declared as an “other” interest at any meeting where an item of business relating to the source of the hospitality is considered.

16 **Site Visits/Vehicle Inspections**

Site visits by members of the Licensing Committees are generally unnecessary. However, in exceptional cases members may not be able to appreciate points being put to them at a hearing without a site inspection. In matters relating to taxis, Members may need to undertake a vehicle inspection.

A site visit / vehicle inspection is a formal part of the licensing hearing process, and may be made either prior to the hearing or at the conclusion of the evidence. All members of the relevant committee must attend and will be accompanied by an officer.

Members should keep together as a group and not engage individually in discussions with any applicant, objector or third party who may be present. It is acceptable for Members to ask questions to seek clarification on matters relevant to the site visit / vehicle inspection.

17 **Training**

In accordance with the Council’s Constitution, members should not participate in decision making meetings dealing with licensing matters unless they have attended training provided for members of the relevant Committee.

18 **Enforcement of the Protocol**

This Protocol is ancillary to the Council’s Code of Conduct and is designed to help Members understand their role in the licensing process. It is intended to minimise the prospect of legal or other challenge to decisions.

Members should note that this Protocol is for guidance. The breach of its terms will not necessarily result in the decision being invalidated, but may well lead to a decision being challenged. A breach of the Council’s Code of Conduct may lead to a complaint to the Council’s Standards Committee and will be dealt with in accordance with the Standards Committee’s arrangements under the Localism Act 2011 for dealing with such complaints. A breach of this Protocol is not in itself a breach of the Council’s Code of Conduct Code but any complaint of a breach of the Protocol would be investigated by the Monitoring Officer and subsequently reported to the Standards Committee.

If Members have any concerns about the above they should contact the Chief Officer (Governance).