

# Licensing Code of Good Practice

## Introduction

**The aim of this Code of Good Practice:** to ensure that decisions made as part of the Licensing process are evidence based and that there are no grounds for suggesting that a decision has been biased, partial or not well founded in any way.

**Your role as a Member of the Licensing Authority is** to make decisions openly, impartially, with sound judgement and for justifiable reasons. You are also a democratically accountable decision-taker who has been elected to provide and pursue policies.

**When the Code of Good Practice applies:** this code applies to Members at all times when involving themselves with the Licensing process. This includes when taking part in the decision making meetings of the Council in exercising the functions of the Licensing Authority or when involved on less formal occasions, such as meetings with officers or the public and consultative meetings. It applies as equally to Licensing Enforcement matters as it does to Licensing applications.

**If you have any doubts about the application of this Code to your own circumstances you should seek advice early, from the Monitoring Officer or one of his or her staff, and preferably well before any meeting takes place.**

## 1. Relationship to the Members' Code of Conduct

- **Do** apply the rules in the Authority's Code of Conduct first, which must always be complied with. This relates to both the rules on interest, Disclosable Pecuniary Interests (DPIs) and any other interests identified by the Authority, and the general rules giving effect to the seven principles of public life: selflessness, integrity, objectivity, accountability, openness, honesty and leadership.
- **Do** then apply the rules in this Members' Licensing Code, which seek to explain and supplement the Members' Code of Conduct for the purposes of Licensing. If you do not abide by this Members' Licensing Code, you may put:
  - the Council at risk of proceedings on the legality or maladministration of the related decision; and
  - yourself at risk of either being named in a report made to the Standards Committee or Council or, if the failure is also likely to be a breach of the interest provisions of the Localism Act 2011, a complaint being made to the police to consider criminal proceedings.
- **Do** be aware that, like the Authority's Code of Conduct, this Licensing Code is a reflection and summary of the law on decision making and not a direct replication of it. If in doubt, seek the advice of your monitoring officer or their staff advising at the meeting.

## 2. Interests under the Members' Code

- **Do** disclose the existence and nature of your interest as required by your members Code of Conduct.
- **Do take into account when approaching a decision that** the Principle of Integrity is defined, by the Committee on Standards in Public Life in 2013, in terms that -

*“Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. **They must declare and resolve any interests and relationships**”.*

It is therefore advisable that you:

- **Do not** seek or accept any preferential treatment, or place yourself in a position that could lead the public to think you are receiving preferential treatment, because of your position as a councillor. This would include, where you have a disclosable or other personal conflict of interest in an application, using your position to discuss that application with officers or Members when other members of the public would not have the same opportunity to do so.
- **Do** note that you are not prevented from seeking to explain to an appropriate officer that you may have a conflict of interest in an application, in person or in writing, but that the Members' Code of Conduct may place additional limitations on you in making representations in respect of that application.
- **Do** notify the Monitoring Officer in writing where it is clear to you that you have a disclosable pecuniary interest or other personal conflict of interest and note that:
  - you should send the notification no later than submission of that application where you can;
  - you must not get involved in the processing of the application; and
  - it is advisable that you employ an agent to act on your behalf in respect of the proposal when dealing with officers and in public speaking at Committee.

### **3. Fettering Discretion in the Licensing Process**

(natural justice, predisposition and predetermination)

- **Do not** fetter your discretion and therefore your ability to participate in Licensing decision making by approaching the decision with a closed mind or clearly appearing to have made up your mind prior to hearing the representations and evidence on both sides. Fettering your discretion in this way and taking part in the decision will put the Council at risk of a finding of maladministration and of legal proceedings on the grounds of bias, pre-determination or a failure to take into account all of the factors enabling the application to be considered on its merits.
- **Do** keep at the front of your mind that, when you come to make the decision, you
  - must keep an open mind and hear all of the evidence before you, the officers' presentation of the facts, their advice and the representations from all parties.
  - are only entitled to take account of the evidence presented and must disregard considerations irrelevant to the circumstances of the application.
  - are to come to a decision after giving what you feel is the right weight to the evidence presented in respect of the application.
- **Do not** fetter your discretion by failing to declare a personal and/or prejudicial interest.
- **Do not** sit as a member of a Sub-committee to consider an application if the applicant lives or the premises are situated in the Ward that you represent or if an application is made to review a Premises Licence or Club Premises Certificate held by a resident or premises in your Ward.

- **Do** be aware that you can be biased where the Council is the landowner or applicant and you have acted as, or could be perceived as being, a chief advocate for the application. Members who were part of the Authority's decision to apply for the licence, or who express a firm view in respect of such an application, should not sit on the Licensing Sub-Committee to determine the application.
- **Do** take the opportunity if you are not sitting on the Committee determining the application to exercise your separate speaking rights as a Ward/Local Member where you have represented your views or those of local electors and fettered your discretion, but do not have a disclosable or other personal conflict of interest. Where you do:
  - advise the proper officer or Chair that you wish to speak in this capacity before commencement of the item;
  - ensure that your actions are recorded in accordance with the Authority's committee procedures.

#### 4. **Contact with Applicants, Interested Parties and Objectors**

- **Do** refer those who approach you for Licensing, procedural or technical advice, to officers.
- **Do not** agree to any formal meeting with applicants, interested parties or objectors. Where you feel that a formal meeting would be useful in clarifying the issues, you should seek to arrange such a meeting through the Licensing Manager. The officer(s) will then ensure that those present at the meeting are advised from the start that the discussions will not bind the authority to any particular course of action, that the meeting is properly recorded on the application file and the record of the meeting is disclosed when the application is considered and determined by the appropriate Committee of the Licensing Authority.
- **Do** meet with an applicant, interested party or objector if you are considering representing their interests or speaking on their behalf at a hearing of a sub-committee.
- **Do** otherwise:
  - follow the Authority's rules on lobbying;
  - consider whether or not it would be prudent in the circumstances to make notes when contacted; and
  - report to the Licensing Manager any significant contact with the applicant and other parties, explaining the nature and purpose of the contacts and your involvement in them, and ensure that this is recorded on the Licensing file.

#### **Presentations by Applicants**

- **Do not** attend a presentation relating to a Licensing application without requesting an officer to be present.
- **Do** ask relevant questions for the purposes of clarifying your understanding of the proposals.
- **Do** remember that the presentation is not part of the formal process of determination of any subsequent application, this will be carried out by the appropriate Committee of the Licensing Authority.
- **Do** be aware that a presentation is a form of lobbying and, whilst you may express any view on the merits or otherwise of the proposal presented, you should never state

how you or other Members would intend to vote at a Committee.

## 5. Lobbying of Councillors

If a Member of a Licensing Sub Committee is approached by a person(s) wishing to lobby him/her on a licence application then that Member should explain that they cannot discuss the matter and refer the lobby person(s) to the Licensing Officer or his/her Ward Member who can explain the process of decision making.

- **Do** explain to those lobbying or attempting to lobby you that, whilst you can listen to what is said, it may subsequently prejudice your impartiality, and therefore your ability to participate in decision making to express an intention to vote one way or another or formulate such a firm point of view that it amounts to the same thing.
- **Do** remember that, as a member of the Licensing Committee, you will probably be unaware whether an application will be determined by a sub-committee or whether you will be a member of that determining sub-committee until you have been notified by officers. If you have been lobbied by an applicant or interested party, you should notify officers as soon as it comes to your attention that you have been invited to sit on a relevant sub-committee. In such circumstances, you should consider whether it is still appropriate to take part in the hearing having regard to Section 25 of the Localism Act 2011.
- **Do not** feel constrained, if you are not a member of a sub-committee considering a particular application, to receive an approach from an applicant, interested party or objector and, having considered the information that they have supplied, to agree to speak or make representations on their behalf at a meeting of a sub-committee.
- **Do** remember that your overriding duty is to the whole community not just to the people in your ward and, taking account of the need to make decisions impartially, that you should not improperly favour, or appear to improperly favour, any person, company, group or locality.
- **Do not** accept gifts or hospitality from any person involved in or affected by a Licensing application. If a degree of hospitality is entirely unavoidable, ensure it is of a minimum, its acceptance is declared as soon as possible, including its addition to your register of interests where relevant.
- **Do** copy or pass on any lobbying correspondence you receive to a Licensing Officer at the earliest opportunity. Any written representations received by a Member of the Licensing Committee should be passed to the Licensing Officer and reported at the hearing at which the application is being determined. Requests for procedural advice with regards to licensing applications should be referred to Council Officers for advice and information.
- **Do** inform the Monitoring Officer where you feel you have been exposed to undue or excessive lobbying or approaches, including inappropriate offers of gifts or hospitality, who will in turn advise the appropriate officers to follow the matter up.
- **Do** note that, unless you have a disclosable or overriding other personal conflict of interest, you will not have fettered your discretion or breached this Licensing Code of Best Practice through:
  - seeking information through appropriate channels; or
  - being a vehicle for the expression of opinion of others in your role as a Ward Member.

## 6. Lobbying by Councillors

- **Do not** become a member of, lead or represent an organisation whose primary purpose is to lobby to promote or oppose Licensing applications. If you do, you will be seen to have fettered your discretion on the grounds of bias.
- **Do not** lobby fellow Councillors regarding your concerns or views nor attempt to persuade them that they should decide how to vote in advance of the meeting at which any Licensing decision is to be taken
- **Do** be aware of the power of social media posts or re-posting and be careful not to give the impression that you will definitively vote in a certain way or act with a closed mind if you intend to participate in the decision making on behalf of the Licensing Authority.
- **Do not** decide or discuss how to vote on any application at any sort of political group meeting, or lobby any other Member to do so. Political Group Meetings should never dictate how Members should vote on a Licensing issue.

## 7. Site Visits/Inspections

The Licensing Sub-Committee may undertake a site visit to the premises which are the subject of an application. If required, the site visit may occur prior to the hearing or the Licensing Sub-Committee may adjourn the hearing part way through to undertake a site visit. The Chair of the Licensing Sub-Committee shall give reasons justifying the need for a site visit and these shall be notified to the Parties. A record should be kept of those attending the visit, the questions asked, and answers given.

- **Do** attend site visits organised by the Council where possible.
- **Do** ensure that you report back to the Committee any information gained from the site visit that you feel would benefit all Members of the Committee
- **Do** ensure that you treat the site visit only as an opportunity to seek information and to observe the site.
- **Do** ask the officers at the site visit questions or seek clarification from them on matters which are relevant to the site inspection.
- **Do not** hear representations from any other party. Where you are approached by the applicant or an Interested Party, direct them to or inform the officer present.
- **Do not** express opinions or views on the likely outcome of the application.
- **Do not** enter a site which is subject to an application other than as part of an official site visit, even in response to an invitation, as this may give the impression of bias unless:
  - you feel it is essential for you to visit the site other than through attending the official site visit,
  - you have first spoken to the Licensing Manager about your intention to do so and why which will be recorded on the Licensing file and
  - you can ensure you will comply with these good practice rules on site visits.

## 8. Public Speaking at Meetings

- **Do not** allow members of the public to communicate with you during the Committee's proceedings orally, in writing or by social media other than through the scheme for public speaking or through the Chair, as this may give the appearance of bias.
- **Do not** participate in social media or exchanges by texting as a member of the committee during the committee's proceedings as this may give the impression of undue external influence and may give the appearance of bias.
- **Do** ensure that you comply with the Council's procedures in respect of public speaking.

## 9. Officers

- **Do** recognise that officers are part of a management structure and only discuss an application, outside of any arranged meeting, with the Licensing Manager or those officers who are authorised to deal with the application at a Member level.
- **Do** recognise and respect that officers involved in the processing and determination of licence applications must act in accordance with the Council's Code of Conduct for Officers.

## 10. Decision Making

- **Do** come to meetings with an open mind and demonstrate that you are open-minded.
- **Do** comply with the relevant licensing legislation.
- **Do** have regard to:
  - the material relevant facts in light of the evidence presented
  - the relevant statutory provisions
  - the relevant national guidance and the relevant council policy statement
  - the relevant licensing objectives
  - the individual merits of the case.
- **Do** come to your decision only after due consideration of all of the information reasonably required upon which to base a decision. If you feel there is insufficient time to digest any new information presented at a meeting to determine an application you may request that the meeting be adjourned or deferred to a future date.
- **Do** disregard any information or evidence given which is not relevant to the application, representations or notice; or to the promotion of the licensing objectives.
- **Do not** be influenced by any political party direction whether given at a previous party group meeting or otherwise.
- **Do not** vote or take part in the meeting's discussion on an application unless you have been present to hear the entire debate, including the officers' introduction to the matter. Where a matter is adjourned and its consideration recommences at a subsequent meeting, only Members who were present at the previous meeting will be able to vote. If this renders the Committee inquorate then the item will have to be considered afresh and this would include public speaking rights being triggered again.

- **Do** have recorded the reasons for a Committee decision to defer any determination .

## 11. Training

- **Do not** participate in decision making at meetings dealing with Licensing matters if you have not attended the mandatory Licensing training prescribed by the Council.
- **Do** endeavour to attend any other specialised training sessions provided, since these will be designed to extend your knowledge of Licensing law, regulations, Statutory Guidance and Best Practice guides produced by Government Departments, beyond the minimum referred to above and thus assist you in carrying out your role properly and effectively.

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