

LICENSING AND SAFETY COMMITTEE

2 MARCH 2010

LICENSING ACT 2003: REVISED GUIDANCE

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Summary

This report summarises guidance recently issued by the Department for Culture, Media and Sport (DCMS), under section 182 of the Licensing Act 2003. The report also seeks to consolidate the terms of reference for the Licensing and Safety Committee, Licensing Hearing Panel and the Licensing Sub-Committee and related sections of the Council's scheme of delegation.

1. Budget and Policy Framework

- 1.1 Any changes to the Members' Licensing Code of Good Practice will require a change to the Constitution, which is a matter for Council.
- 1.2 The Committee has the authority to agree the terms of reference for its Sub-Committees. The minor changes to the Committee's own terms of reference and the related section of the Council's scheme of delegation will be a matter for Full Council.

2. Background

Guidance issued under section 182 of the Licensing Act 2003

- 2.1 The Department for Culture, Media and Sport (DCMS) published revised guidance under section 182 of the Licensing Act 2003 in January 2010. This guidance had been prepared in consultation with other government departments, executive agencies and an Advisory Group comprising stakeholder representatives.
- 2.2 The Section 182 Guidance has been revised by the DCMS to take account of the new provisions under section 33 of the Policing and Crime Act 2009, which commenced on 29th January 2010, to enable councillors, in their capacity as elected members of the relevant licensing authority, to act as 'interested parties'.

- 2.3 The new provisions contained in the Police and Crime Act 2009 and the revised guidance requires amendments to be made to the Members' Licensing Code of Good Practice and the proposed amended Code of Good Practice is set out at appendix A to the report, for recommendation to Council.

Terms of Reference of this Committee and its Sub-Committees

- 2.4 This has presented an opportunity to review the terms of reference of the Committee and its Sub-Committees, namely the Licensing Hearing Panel and the Licensing Sub-Committee. The current Sub-Committees consider a range of licensing issues, mainly through the provisions of the Licensing Act 2003 and Gambling Act 2005, as well as other legislation, for example, for the determination of Hackney Carriage and Private Hire applications. Council has previously agreed the schemes of delegations for the discharge of these functions. The Council agreed the Statement of Licensing Policy in December 2004 and the Statement of Gambling Policy in December 2006.
- 2.5 However, whilst various changes terms of reference and delegations have been formally agreed, the Council's Constitution has not been amended to reflect the changes. Therefore, the Sub-Committees' terms of references are set out at appendix B to the report, for approval. The Council also agreed changes to the Employee Scheme of Delegation at the same time and these are also reflected in appendix B to the report.
- 2.6 In addition, it is proposed to recommend the Council to make some minor changes to the Committee's terms of reference. Again this is to reflect decisions previously made by the Council.

3. Advice and analysis

- 3.1 With effect from the 29 January 2010, the Policing and Crime Act 2009 amended the Licensing Act 2003 to add "a member of the relevant licensing authority" to the list of persons qualifying as "interested parties" who are able to make representations about the grant of licences or to call for a review of a licence. The statutory guidance has been amended to reflect this change and the revised sections on the role of Local Councillors (paras 8.9 to 8.15 of the guidance) are set out in Appendix C.
- 3.2 The guidance sets out three situations in which a councillor may now make a representation:
- (i) on behalf of another interested party (e.g. a resident) if specifically requested to do so by that interested party;
 - (ii) in their personal capacity (e.g. if they live or are involved in a business in the vicinity of the premises in question);
 - (iii) as an elected member of the relevant licensing authority

It is (iii) above that is the new right.

3.3 The guidance gives advice concerning the possibility of a member making a representation having a prejudicial interest and the consequences of this. The Members Licensing Code of Good Practice, which forms part of the Council's Constitution, has therefore been updated to take into account the new right and its implications. The proposed amended Members Licensing Code of Good Practice is attached as Appendix A

3.4 The proposed changes to the terms of reference of the Committee, its Sub-Committees merely consolidate previous decisions of the Council with regards to the scheme of delegations for consideration of issues through the Licensing Act 2003 and the Gambling Act 2005.

4. Risk Management

4.1 A key aim of the Members' Licensing Code of Good Practice is to ensure that there are no grounds for suggesting that a licensing decision has been biased, partial or is not well founded in any way. To do this it is important that the Code reflects the current state of the law and good practice guidance.

4.2 There are no risk implications arising from the proposal to formalise the terms of reference for the Sub-Committees.

5. Financial and legal implications

5.1 There are no financial implications arising from this report.

5.2 The legal implications are set out in the report.

5.3 A Committee has the authority to agree the terms of reference for its Sub-Committees.

6. Recommendations

6.1 The Committee is asked to recommend the Council to approve inclusion in the Council's constitution of the changes to the Committee's terms of reference and the employee scheme of delegation, as set out in Appendix B to the report.

6.2 The Committee is asked to approve the terms of reference for the Licensing Hearing Panel and the Licensing Sub-Committee as set out in Appendix B to the report.

6.3 The Committee is asked to recommend to Council approval of the revised Members' Licensing Code of Good Practice, as set out in Appendix A to the report.

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Background papers

Guidance issued under section 182 of the Licensing Act 2003 – DCMS – January 2010 <http://www.info4local.gov.uk/documents/publications/1450468>

Council Report and Minutes 14 January 2010 – Review of Council Statement of Gambling Policy

Council Report and Minutes 22 November 2007 – Statement of Licensing Policy

Council Report and Minutes 7 December 2006 – Gambling Act Policy

Council Report and Minutes 20 January 2005 – Licensing Act 2003 – Consequential Revisions to the Constitution

Licensing and Safety Committee Report and Minutes 11 January 2005 – Licensing Act 2003 – Establishment of Licensing Hearing Panels and Appointment of Members

Council Report and Minutes 9 December 2004 – Licensing Policy

Licensing and Safety Committee Report and Minutes 21 October 2004 – Licensing Act 2003 – Statement of Council Policy, Delegations and Draft Regulations

PART 7 – MEMBERS LICENSING CODE OF GOOD PRACTICE

1. Introduction

- 1.1 This Code of Good Practice (the licensing code) gives advice to members who:
- Are members of the Licensing and Safety Committee and who sit on hearing panels or sub committees
 - Wish to attend or address the Committee, a sub committee or a hearing panel on any licensing issue.
 - Are involved outside the Committee on licensing applications or other licensing matters – including informal occasions such as meetings with officers or public and consultative meetings.
 - Are involved in applications for licences under the Licensing Act 2003, the Gambling Act 2005 or any other licensing legislation.
- 1.2 A key aim of the licensing code is to ensure that there are no grounds for suggesting that a licensing decision has been biased, partial or is not well founded in any way. Members must make these decisions openly, impartially with sound judgement and for justifiable reasons.
- 1.3 This is particularly important, as licensing applications will be subject to close scrutiny both because applicants may be seeking to maximise the business potential of their premises and because the quality of the environment in which local residents and the wider community live and work may be detrimentally affected through inappropriate applications.
- 1.4 The Human Rights Act 1998 has implications for the licensing system and has created enhanced requirements for procedural fairness, transparency and accountability in decision making.
- 1.5 The licensing code is intended to minimise the prospect of legal or other challenge to decisions. Non-compliance without good reason could be taken into account in investigations into possible maladministration or may have implications for the standing of Councillors and the Council as a whole.

2. Relationship with the members' code of conduct

- 2.1 The members' code of conduct must always be complied with and the rules in that code must be applied before considering the licensing code.
- 2.2 The licensing code is not intended to form a part of the adopted members' code of conduct but is a separate document, which is both supportive of the members' code and the source of expanded guidance in the particular area of licensing.

2.3 To distinguish it from the members' code, this document is referred to as the licensing code.

3. Making representations to Licensing Hearing Panels

3.1 This licensing code deals with all licensing matters, but there are particular rules as to who can be heard at a Licensing Hearing Panel.

3.2 In accordance with s13(3) and 18 of the Licensing Act 2003 (as amended) any Medway Councillor can make representations in relation to an application to Medway Council for the grant of a premises licence and such representations will (if they met the other requirements of s18 of the 2003 Act) be treated as relevant representations for the purposes of the Act. In accordance with section 51 any Medway Councillor may (in accordance with the conditions set out in Regulations) apply for a review of a premises licence where Medway Council is the licensing authority.

3.3 A Member is therefore permitted to speak at a Licensing Hearing Panel in three situations:

(i) where the Member is personally interested in an application and has submitted a relevant representation (e.g. where he or she lives or is involved in a business in the vicinity of the premises)

(ii) where the Member has specifically been asked by another interested party (e.g. a local resident) to represent him or her

(iii) where the Member is exercising his or her rights as a member of the Council to make a representation (but (i) or (ii) do not apply).

It is helpful for Members when making representations to identify to officers which of the above categories they fall into.

3.4 Members need to consider carefully whether they have a personal or a prejudicial interest in an application before the Licensing Hearing Panel in any of the above situations. DCMS Guidance issued under s182 of the Licensing Act 2003 (section 8) provides some advice on this subject. General guidance on personal and prejudicial interests is given in paragraph 4 below. It is likely that a Member will have a prejudicial interest where he or she has made a representation in circumstances set out in paragraph 3.2(i) above. It is less clear in cases where representations have been made as set out in paragraphs 3.2(ii) or 3.2(iii) and members should consider all the relevant circumstances in such cases when making a decision.

3.5 Where a Member has made a representation on an application or has called for a review of a licence in any of the circumstances set out in paragraph 3.2 it is very likely that he or she will have fettered his or her discretion (see paragraph 5) and so should not sit on the Licensing Hearing Panel dealing with that application or review. To avoid any accusations of bias and/or

having to cancel meetings because of Member interests, Members should not sit on Licensing Hearing Panels to determine applications in their own wards.

3.4. Declaration of interests

3.14.1 The members' code places requirements on Councillors on the registration and declaration of their interests and participation in the business of the Council in light of those interests. These requirements must be followed scrupulously and Councillors should review their situation regularly. Whilst the Standards Board and Medway's Standards Committee produces guidance and advice can be sought from the Monitoring Officer, ultimate responsibility for compliance rests with individual Councillors.

3.24.2 In general, as matters considered at the Committee or a hearing panel relate to approvals, consents, licences, permissions or registrations a Councillor will have prejudicial interest in a matter under consideration at the Committee if he or she has a personal interest and a member of the public with knowledge of the relevant facts would reasonably regard that interest as so significant that it is likely to prejudice the Councillor's judgement of the public interest. . The list of personal interests is set out in paragraph 8(1) of the members' code

3.34.3 A Councillor can have a personal and prejudicial interest in a licensing application, which affects them, their employer, a member of their family or a person with whom they have a close association. Examples include but not be limited to

- applications from existing or proposed licensed premises or increased licensing hours or an intensification of use in close proximity to a property owned/occupied by the Councillor, his or her employer, a member of his or her family or a person with whom the Councillor has a close association.
- The member or a member of his or her family or a person with whom the member has a close association regularly visits the premises or is a member of any club, organisation or team which uses the premises as their base.
- applications made by a member or or his or her employer, or a member of his or her family or a person with whom the Councillor has a close association.

3.44.4 Other than as set out below (in relation to Licensing Hearing Panels only) if a Councillor has a prejudicial interest in an application then they

- must not sit on a Committee or otherwise take part in the business of the Committee when that application/premises is discussed.

- must leave the room when that item is being discussed and must not participate in or give the appearance of trying to participate in the making of a decision.
- must not represent ward or local views – they need to get another member to do so instead.
- must not lobby members who will be hearing the application – correspondence should be sent to officers.
- must not get involved in processing the licensing application.
- must not seek any preferential treatment. This includes using their position to discuss a proposal with officers when other members of the public would not have the same opportunity to do so.

As the quorum for licensing panels is three members, members will be expected to closely scrutinise the application they are nominated to sit on to ensure that they do not have a prejudicial interest in any of the matters they are due to hear.

3.54.5 In relation to licensing hearing panels only (which are the only licensing forums in which members of the public have a right to speak) the rules regarding attendance if the Councillor has a prejudicial interest are amended as follows:

- If a Councillor has a prejudicial interest in the matter being discussed he or she must declare it as soon as the interest becomes apparent to him or her (at the beginning of the meeting if possible).
- If members of the public are allowed to make representations, give evidence or answer questions about the matter, by statutory right or otherwise, the Councillor may also attend the meeting for that purpose.
- The Councillor must immediately leave the meeting once he or she has finished making representations, giving evidence or answering questions (or earlier if the meeting decides that the Councillor has finished). The Councillor cannot remain during any deliberation on the matter or during the vote.

3.64.6 A prejudicial interest should also be declared at informal meetings or discussions including those held with officers and other Councillors.

3.74.7 Whilst having a prejudicial interest does not prevent a Councillor from seeking to explain a proposal in which they have such an interest to an appropriate officer, the members' code and case law does mean there are greater limitations on Councillors than on a member of the public.

3.84.8 A personal interest must be declared as soon as a Councillor becomes aware of it. This should wherever possible be at the start of a meeting. A personal interest in itself does not prevent a member from speaking and voting. Good practice dictates that members with a personal interest in an application should wherever possible not sit on a hearing panel which will be deciding

that application – although there will be less restrictions on participating in the full Committee. Where a Councillor does not have a prejudicial interest and his or her personal interest arises solely from membership of, or position of control or management on, any other body to which the Councillor was appointed by the Council or any other body exercising functions of a public nature, the personal interest need only be declared if the Councillor speaks on the matter.

~~3.9 Members should not sit on hearing panels to determine applications in their own wards. However they can attend and represent ward views (if they also have a prejudicial interest they can only attend and represent ward views at a licensing hearing panel in line with the guidance set out in paragraph 3.5 above).~~

4.5. Fettering discretion

4.15.1 If a Councillor has taken a firm view on a licensing matter, or appears to have made up their mind before the formal consideration of an application, that Councillor is said to have fettered their discretion.

4.25.2 If a member who has fettered their discretion takes part in the decision that will put the Council at risk of a finding of maladministration. It could also lead to legal proceedings on grounds of there being a danger of bias or predetermination or a failure to take into account all factors enabling the proposal to be considered on its merits.

4.35.3 There is acceptance that a member may consider matters in several capacities as different factors may apply to different decisions. However given the size of licensing panels and the proportionately greater influence an individual member will have, members who sit on a planning Committee which deals with granting (or refusing) a planning application for new premises are advised not to sit on a hearing panel which considers the subsequent application for a licence under the Licensing Act 2003 or the Gambling Act 2005.

4.45.4 Areas, which need particular attention, are set out below.

Membership of a parish Council

5.6 ~~4.6~~—Where a parish Council makes representations on a planning application, then a member who is also a member of that Council should not sit on a hearing panel. It goes without saying that a member should not become involved at a Medway level in applications for licences made by the parish Council on which they serve.

5.7 ~~4.7~~—Even where a parish Councillor who is also a Medway Councillor has fettered their discretion they will have the same right as any other member to address the Committee providing they do not have a prejudicial interest.

4.85.8 Membership of parish Council constitutes a personal interest where the Licensing Committee considers an issue where that parish has been involved and this must be declared in the usual way.

Lobbying by Councillors

4.95.9 If you lead, represent or are a member of a group whose primary purpose is to lobby to promote or oppose a licensing application you will have fettered your discretion. Depending on your involvement you will probably also have a prejudicial interest.

4.105.10 The position in **45.9** is distinct from membership of general interest groups, which reflect a Councillor's area of interest, eg CAMERA, a church group or a body supporting live music. However the member will have as a minimum a personal interest where that body has made representations on an application and should not sit on the hearing panel but can make representations as set out above. The member will also have fettered their discretion if they have participated in making those representations and may also, depending on the level of involvement, have a prejudicial interest.

4.115.11 Councillors should not excessively lobby other Councillors regarding their views on licensing applications. Nor should they outside of the hearing panels try to persuade other Councillors how to vote.

4.125.12 Councillors should not decide or discuss how to vote on licensing applications at political group meetings or lobby other members to do so. Political group meetings should never dictate how members should vote on licensing applications.

Lobbying of Councillors

4.135.13 Lobbying is a normal and perfectly proper part of the political process. Those who may be promoting or affected by a licensing application will often seek to influence it through an approach to their elected ward Councillor, another Councillor or a member of the Licensing Committee. However such lobbying can, where a member subsequently sits on a hearing panel which will determine the application, lead to the integrity and impartiality of a Councillor being called into question, which can in turn affect the validity of a licensing decision.

4.145.14 A Councillor who wishes to participate in the determination of a licensing application should explain to persons lobbying or attempting to lobby that whilst they can listen to what is said it would prejudice their impartiality and ability to participate in the decision if they give a firm statement of how they intend to vote or express strong sympathies with a point of view in advance of the meeting. For the avoidance of doubt a Councillor will not have fettered their discretion

- by just listening to viewpoints from residents or interested parties

- making comments which fall short of prejudging the issue
- seeking information through appropriate channels
- asking questions at the hearing which reflect issues raised.

4.155.15 When a Councillor participates in a licensing hearing panel/decision their overriding duty is to the community as a whole. As decisions need to be taken impartially a Councillor should not improperly favour or appear to improperly favour or disadvantage any person, company, group or locality.

4.165.16 In addition to the requirement to declare the interests of any person from whom the Councillor has received a gift or hospitality with an estimated value of at least £25, Councillors should not accept gifts or hospitality from any person involved in or affected by a licensing application. It is advisable to let the Monitoring Officer know if you feel you have been exposed to excessive lobbying or offers of gifts or hospitality linked to a licensing application.

4.175.17 It is good practice for Councillors to

- forward copies of lobbying correspondence to the Monitoring Officer
- comply with guidance on lobbying or attending presentations or discussions set out in section 5 of the licensing code.

56. **Contact with applicants and objectors**

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

56.2 Councillors who wish to consider a licensing application should not agree to formal or informal meetings with applicants, or groups of objectors. Unlike in the case of planning applications it is considered that members who will be considering an application should not attend presentations on e.g. a major new licensing proposal even if it is part of a wider presentation organised by officers.

67. **Site inspections**

6-17.1 Site inspections should only be made in accordance with any agreed procedure. It is important to remember that they are a formal part of the licensing hearing process. The presumption is that site inspections will usually take place where there is an application for new premises. The visit may be made either prior to the hearing or at the conclusion of the evidence. Members must all attend and be accompanied by an officer. Inspections made prior to the hearing will primarily be intended to apprise members of conditions in the vicinity of the premises and will usually be conducted in the absence of the applicant and objector(s). Inspections following the conclusion of the evidence will primarily be used to clarify matters raised at the hearing and the applicant and objector(s) will be invited to attend.

6.27.2 No hospitality should be accepted at site inspections.

6.37.3 Councillors should endeavour to keep together as a group and not engage individually in discussions with any applicants, objectors or third parties who may be present.

6.47.4 Councillors taking part in the licensing decision must not express views to anyone present. If this happens it will usually lead to a cessation of the process and a rehearing by a new panel.

6.57.5 It is acceptable to ask officers at the site inspection questions to seek clarification on matters relevant to the site inspection.

6.67.6 The site inspection should be properly recorded and reported back to the hearing panel.

6.77.7 Councillors who wish to determine an application should not enter a site subject to a licensing proposal other than as part of an official inspection even in response to an invitation.

7.8. **Contact with officers**

7.18.1 General guidance is given in the protocol on member/employee relations in the constitution and that is not repeated here.

7.28.2 Members should not put pressure on officers to put forward a particular recommendation. However this does not prevent a Councillor asking questions or submitting views to a relevant officer.

7.38.3 Officers must act in accordance with the employee code of conduct and any relevant professional codes of conduct which may on occasion mean that they take a view, which will be at odds with the views, opinions or decisions of the Committee or its members.

8.9. **Licensing applications by Councillors and officers and Council applications**

8.19.1 Proposals to the Council by serving and former Councillors and officers and their close friends and relatives can easily give rise to suspicions of impropriety. So can proposals for a Council's own applications.

8.29.2 It is perfectly legitimate for such proposals to be submitted. However, it is vital to ensure that they are handled in such a way that gives no grounds for accusations of favouritism.

8.39.3 Recent decisions by the adjudication panel on standards issues make it very difficult for members who have a professional qualification to act in presenting cases in that capacity for applicants or to act as professional witnesses in hearings.

8.49.4 Councillors and officers who submit their own proposal should notify the Monitoring Officer of the proposal and play no part in its processing or determination (other than as set out in paragraph 43.5 above) and avoid contact, whether direct or indirect with members of the Committee concerning the application.

9.10. **Decision making**

911.1 Councillors making licensing decisions must

- come to meetings with an open mind and demonstrate they are open minded
- not vote or take part in the meeting's discussions on a proposal unless present to hear the entire case
- come to a decision only after due consideration of all information reasonably required upon which to base such a decision
- request further information if it is felt there is insufficient information before the Committee to reach a decision.

4011. **Training**

4011.1 Councillors should not participate in decision making meetings dealing with licensing matters unless they have attended any prescribed training.

- To consider objectively other ad hoc matters relating to the licensing process which officers or the Council deems appropriate;
- To determine new applications for sex establishment licences and to impose such terms, conditions and/or restrictions as may be lawful and are deemed necessary;
- To recommend to Council to determine a policy not to permit casinos, in accordance with section 166 of the Gambling Act 2005. (Council 7 December 2006)
- To recommend to Council final approval of the Statement of Gambling Act Policy. (Council 7 December 2006).
- To recommend to Council approval of the Statement of Licensing Policy, in accordance with the Council's policy framework rules (Council 9 December 2004)
- To determine matters relating to health and safety under any 'relevant statutory provision' within the meaning of Part 1 of the Health and Safety at Work Act 1974, to the extent that those functions are discharged otherwise than in the Council's capacity as employer

Note: for the purpose of these terms of reference the term "licence" or "licensing" includes any such controlling measure such as permit, certificate or registration.

6A. Licensing Sub-Committee

- To determine hackney carriage, private hire and other licensing issues not covered by the Licensing Act 2003 (Licensing and Safety Committee 11 January 2005), nor the Gambling Act 2005 (Council 7 December 2006)

6B. Licensing Hearing Panel

- **To consider all Licensing Act 2003 matters (Licensing and Safety Committee 11 January 2005)-**
- With regard to Licensing Act 2003 matters, to determine:
 - (i) An application for a personal licence if there is a police objection
 - (ii) An application for a personal licence with relevant unspent convictions
 - (iii) An application for a premises licence/club premises certificate, if relevant representation made
 - (iv) An application to vary a Designated Premises Supervisor if there is a police objection
 - (v) An application for provisional statement, if a relevant representation made
 - (vi) An application to vary premises licence/club premises certificate, if a relevant representation made
 - (vii) An application for a minor variation to a premises licence or club premises licence, if a relevant representation is made
 - (viii) An application for transfer of premises licence, if there is a police objection
 - (ix) Applications for interim authorities, if there are police objections
 - (x) An application to review premises licence/club premises certificate
 - (xi) A decision to object when the local authority is a consultee and not the relevant authority considering the application
 - (xii) A police objection to a temporary event notice.

Note: A relevant representation is one, which relates to the likely effect of the grant of the licence on the promotion of at least one of the four licensing objectives specified in the Licensing Act 2003. (Council 9 December 2004 and 22 November 2007)

- With regard to Gambling Act 2005 matters, to determine:
 - (i) Applications for premises licences where representations have been received and not withdrawn
 - (ii) Applications for a variation to a licence where representations have been received and not withdrawn
 - (iii) Applications for a transfer of a licence where representations have been received by the Commission
 - (iv) Applications for a provisional statement where representations have been received and not withdrawn
 - (v) A review of a premises licence
 - (vi) Applications for club gaming/club machine permits where objections have been made and not withdrawn
 - (vii) A cancellation of club gaming/club machine permits
 - (viii) A decision to give a counter notice to a temporary use notice (Council 7 December 2006)

3. Employee Scheme of Delegation (Assistant Director, Housing and Corporate Services)

6.6 Licensing:

- Except where a specific Council side responsibility, to manage all licensing and registration functions of the Council including the licensing and registration of ~~cinemas, theatres, pleasure boats, hackney carriage and private hire, late night refreshment houses, betting tracks, public entertainments, open air musicals, sex establishments, indoor sports licences, amusement with prizes and lotteries, street and house to house collections, motor sillage, scrap metal dealers, street trading consents, safety in sports grounds, animal establishments, skin piercing, caravan sites, game and rag flock, petroleum, fireworks, poisons~~ and such other services as may be authorised.
- With regard to Licensing Act 2003 matters, to determine:
 - (i) An application for a personal licence, if no objection made
 - (ii) An application for a premises licence/club premises certificate, if no relevant representation made
 - (iii) An application for a provisional statement, if no relevant representation made
 - (iv) An application to vary a premises licence/club premises certificate, if no relevant representation made
 - (v) An application to vary a designated premises supervisor in all cases other than where there is a police objection
 - (vi) A request to be removed as a designated premises supervisor
 - (vii) An application for transfer of premises licence in all cases other than where there is a police objection
 - (viii) Applications for interim authorities in all cases other than

Council

where there is a police objection

(ix) A decision on whether a complaint is irrelevant, frivolous, vexatious etc.

Note: A relevant representation is one which relates to the likely effect of the grant of the licence on the promotion of at least one of the four licensing objectives specified in the Licensing Act 2003 (Council 9 December 2004 and 22 November 2007)

- With regard to the Gambling Act 2005, to determine:
 - (i) Fee setting (when appropriate)
 - (ii) An application for a premises licence, where no representations received/representations have been withdrawn
 - (iii) An application for a variation to a licence, where no representations received/representations have been withdrawn
 - (iv) An application for a transfer of a licence, where no representations received from the Commission
 - (v) An application for a provisional statement, where no representations received/representations have been withdrawn
 - (vi) An application for club gaming/club machine permits, where no objections made/objections have been withdrawn
 - (vii) Applications for other permits
 - (viii) A cancellation of licensed premises gaming machine permits
 - (ix) The consideration of a temporary use notice. (Council 7 December 2006)

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THE ROLE OF LOCAL COUNCILLORS

- 8.9 Local councillors play an important role in their local communities. They can make representations in writing and at a hearing on behalf of an interested party such as a resident or local business if specifically requested to do so. They can also make representations as an interested party in their own right if they live, or are involved in a business, in the vicinity of the premises in question. Local councillors can also, as elected members of the licensing authority, make representations in their own right if they have concerns about any premises, regardless of whether they live or run a business in the vicinity of those premises. For example, councillors may apply for a review of a licence if problems at a specific premises which justify intervention are brought to their attention.
- 8.10 Local councillors are subject to the Local Authorities (Model Code of Conduct) Order 2007 which restricts their involvement in matters, and participation in meetings to discuss matters, in which they have a 'prejudicial' interest (i.e. an interest that a member of the public would reasonably regard as so significant that it is likely to prejudice the member's judgement of the public interest). In cases where a local councillor makes a representation as an interested party, they will be considered to have a 'prejudicial' interest in the local authority's decision on a resulting review and in the local authority's representation to any appeal on this decision.
- 8.11 According to the Model Code of Conduct, councillors with a 'prejudicial' interest must not exercise executive functions in relation to that business and must not seek improperly to influence a decision about that business. Councillors with a prejudicial interest are allowed to attend relevant meetings to make representations, answer questions or give evidence, provided that the public are also allowed to attend for the same purpose, whether under the licensing legislation or otherwise and as long as they withdraw from the meeting immediately afterwards. It must be emphasised that councillors have a duty to act in the interests of all of their constituents. Their role as a community advocate must therefore be balanced with their ability to represent specific interests.
- 8.12 The Code applies to any elected council member whether or not they are a member of the licensing committee. A member of a licensing committee, representing others or acting in their own right, would need to consider carefully at a committee meeting whether they had a prejudicial interest in any matter affecting the licence of the premises in question which would require them to withdraw from the meeting when that matter is considered. For example, where a councillor has made representations in their capacity as an elected member of the licensing authority. In addition, a member with a prejudicial interest in a matter

should not seek to influence improperly a decision on the licence in any other way.

- 8.13 In addition, councillors may wish to be kept informed of licensing related matters within the area, such as applications and reviews.
- 8.14 The Act does not prevent licensing authorities from providing this information to councillors, for instance by way of regular updates, as long as it is done in a neutral way that could not be seen as 'soliciting' representations. It should be remembered that the 'licensing authority' in most cases is the full council, including all ward councillors, and each is therefore entitled to information required to inform that role.
- 8.15 Where an officer of the authority, such as a licensing officer, has information that raises concerns about a licensed premises, they are entitled to bring that information to the attention of an elected councillor. For example, in the case of underage alcohol sales, they may wish to alert the child protection portfolio holder or the chair of the licensing committee, who may then wish to consider calling for a licence review (subject to the points raised above).