

# APPENDIX

## DRAFT

### 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 Committee and who sit on hearing panels
  - Wish to address the committee or a hearing panel on any licensing issue.
  - Are involved outside the committee on licensing applications or other licensing matter – including informal occasions such as meetings with Officers or public and consultative meetings.
  - Are involved in applications for licences under the Licensing Act 2003.
- 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 Declaration of interests**

- 3.1 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.
- 3.2 A Councillor can have a personal prejudicial interest in a licensing application, which affects them, their friends, relatives or employer. 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, a friend, relative or employer.
  - The member or a relative or friend 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 a friend, relative or employer of the Member.
- 3.3 If a Councillor has a personal and prejudicial interest in an application then they
- must not sit on a hearing panel 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 – you will 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 your 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 3 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.

- 3.4 A personal prejudicial interest should also be declared at informal meetings or discussions including those held with Officers and other Councillors.
- 3.5 Whilst having a personal 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 does mean there are greater limitations on Councillors than on a member of the public.
- 3.6 The Members` Code provides that the following are not automatically personal prejudicial interests
- matters relating to another relevant authority of which they are a member or another public authority where they hold a position of management or control.
  - matters relating to a body the Councillor has been nominated as a representative of Medway.

However the above are personal interests and a Councillor who has taken a leading role in the submission or negotiation of a licensing proposal for one of the above organisations would still have a personal prejudicial interest. Regard should also be had to Section 4 of the Licensing Code in deciding whether or not to participate.

- 3.7 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.
- 3.8 *Members should not sit on Hearing panels for applications in their own Wards. However they can represent ward views unless they also have a prejudicial interest.*

#### 4. **Fettering discretion**

- 4.1 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.
- 4.2 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.
- 4.3 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 2003 Act,
- 4.4 As long as a Councillor does not have a personal prejudicial interest, they can still make representations to a hearing panel.
- 4.5 Areas, which need particular attention, are set out below.
- 4.6 Membership of a Parish Council

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 Parish Council on which they serve.

- 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
- 4.8 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.
- 4.9 Lobbying by Councillors

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 personal prejudicial interest.

- 4.10 The position in 4.9 is distinct from membership of general interest groups, which reflect a Councillor's area of interest e.g. CAMRA, 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 in the usual way as long as the interest is not prejudicial. 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 personal prejudicial interest.
- 4.9 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.
- 4.10 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.

#### 4.11 Lobbying of Councillors

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.

- 4.12 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.
- 4.13 When a Councillor participates in a licensing 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.

4.14 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.

4.15 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.

## **5. Contact with Applicants and Objectors**

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

5.2 Councillors who wish to consider an 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.

## **6 Site Inspections**

6.1 Site inspections should only be made in accordance with any agreed procedure. Site inspections will normally only be carried out when there is an application for new premises. It is important to remember that site inspections are a formal part of the licensing hearing process. 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.

6.2 No hospitality should be accepted at site inspections.

6.3 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.

6.4 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 re-hearing by a new panel.

- 6.5 It is acceptable to ask Officers at the site inspection questions to seek clarification on matters relevant to the site inspection.
- 6.6 The site inspection should be properly recorded and reported back to the Committee.
- 6.7 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 Contact With Officers**

- 7.1 General guidance is given in the Protocol on Member/Employee in the Constitution and that is not repeated here.
- 7.2 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.
- 7.3 Officers must act in accordance with the Employee Code of Conduct and any relevant professional codes of conduct which may on occasion they take a view, which will be at odds with the views, opinions or decisions of the Committee or its Members.

## **8 Licensing Applications By Councillors and Officers; and Council Applications**

- 8.1 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.
- 8.2 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.
- 8.3 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.
- 8.4 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 and avoid contact, whether direct or indirect with Members of the committee concerning the application.

## **9 Decision Making**

### **9.1 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

## **10 Training**

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