

LICENSING AND SAFETY COMMITTEE

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SETTLEMENT OF LICENSING ACT 2003 APPEALS DELEGATION TO THE CHIEF LEGAL OFFICER

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Summary

The purpose of this report is to seek the Committee's agreement to a delegation to the Chief Legal Officer to settle appeals made under the Licensing Act 2003 out of court, where this is in the interests of the Council.

1. Budget and Policy Framework

1.1 Chapter 3, Part 4 of the Constitution sets out the Employee Delegation Scheme and the delegations to the Chief Legal Officer in relation to licensing matters are listed in paragraph 6.15.

2. Background

2.1 The Licensing and Safety Committee is responsible for functions relating to the Licensing Act 2003 which it has delegated to the Licensing Hearing Panel or, where there are no relevant representations, the Chief Legal Officer.

2.2 Where an application for a licence or an application to review a licence has been determined by the Licensing Hearing Panel, an appeal against the decision can be made under section 181 and Schedule 5 of the Licensing Act 2003. Appeals must be made to the Magistrates Court within 21 days from the day the appellant is notified of the licensing authority's decision.

2.3 In the period between an appeal being submitted to the court and the date of the appeal hearing, there is an opportunity for negotiation between the parties to agree a compromise position, where this is in the interest of the Council, so that the appeal can be withdrawn by the applicant. For example, where an appeal is made by the applicant against the hours of licensable activity determined by the Licensing Hearing Panel in granting the application, agreement may be reached on an adjustment to the hours before the matter is considered by the Magistrates Court. This would be in the interests of the

Council where the Chief Legal Officer is of the opinion that the Council may not be successful in defending the appeal. Before any agreement is reached, the three members of the Licensing Hearing Panel that determined the application would be consulted.

2.4 It is anticipated that this delegation will be exercised infrequently. In the past 3 years, there have been 5 appeals and there has only been one occasion when an appeal has been withdrawn following settlement out of court. On that occasion the Members who had formed the Licensing Hearing Panel which had reached the original decision were consulted before any settlement was agreed.

2.5 All parties who submitted representations against the application for a premises licence should be informed of any settlement of an appeal out of court. This principle is recognised in the revised guidance issued in April 2018 under section 182 of the Licensing Act 2003. New paragraph 13.11 states:

“It is important that licensing authorities also provide all parties who were party to the original hearing, but not involved directly in the appeal, with clear reasons for any subsequent decisions where appeals are settled out of court. Local residents in particular, who have attended a hearing where the decision was subject to an appeal, are likely to expect the final determination to be made by a court.”

3. Proposed new delegation to the Chief Legal Officer

3.1 Paragraph 6.15 of the Employee Delegation Scheme as set out in Part 4 of the Council's Constitution, specifies a number of delegations to the Chief Legal Officer with regard to the Licensing Act 2003 (Hearings) Regulations 2005. It is proposed that an additional delegation be added as follows:

(xii) To settle appeals prior to their consideration by the Magistrates Court, where this is in the interests of the Council, in consultation with the members of the Licensing Hearing Panel that determined the application, and to inform all parties to the original hearing of the revised decision and the reasons for it.

4. Risk management

4.1 Risk management is an integral part of good governance. The Council has a responsibility to identify and manage threats and risks to achieve its strategic objectives and enhance the value of services it provides to the community. Article 14 of the Council's Constitution places an obligation on the Monitoring Officer to monitor and review the operation of the Constitution to ensure that its aims and principles are given full effect. It is important that this is done on an ongoing and regular basis to minimise the risk of the Council failing to operate its governance arrangements in line with current legislation and best practice.

4.2 There is a risk that the Council may receive a legal challenge if the processes put in place for licensing hearings do not comply with the relevant legislation.

5. Financial and legal implications

- 5.1 The proposed additional delegation to the Chief Legal Officer would provide an opportunity for the Council to avoid the costs of defending an appeal against a decision of the Licensing Hearing Panel, where the Chief Legal Officer is of the opinion that the Council may not be successful in defending the appeal.
- 5.2 Hearings held under the Licensing Act 2003 must follow the procedure set out in the Licensing Act 2003 (Hearings) Regulations 2005, as amended in April 2018.

6. Recommendation

- 6.1 That the Licensing and Safety Committee delegates authority to the Chief Legal Officer to exercise the additional function in relation to the procedure for hearings held under the Licensing Act 2003, as set out paragraph 3.1.
- 6.2 That the Licensing and Safety Committee recommends that the Monitoring Officer, who has delegated authority to make minor changes to the Constitution, amends the Employee Scheme of Delegation accordingly.

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Appendices

None

Background papers

Revised guidance issued under section 182 of the Licensing Act 2003, April 2018.