

CODE OF PRACTICE FOR THE DETERMINATION OF LICENSING MATTERS

1.0 BACKGROUND

- 1.1 This Code of Practice for the determination of licensing matters substantially follows the Guidance produced by LACORs (Local Authority Co-ordinators of Regulatory Services) in consultation with the Standards Board for England, the Association of Council Secretaries and Solicitors (ACSeS), the Association of London Government (ALG) and the Society of Local Authority Chief Executives (SOLACE) for Licensing Committee Hearings under the Licensing Act 2003 (Updated October 2007).

2.0 SCOPE

- 2.1. This code **applies** to all licensing decisions including
Decisions of the Licensing and Regulatory Panel
Decisions of the Licensing Committee
Decisions of any Licensing Sub committee
Delegated decisions within the terms of reference of the above bodies

All decisions made by the above bodies will be referred to within this code as decisions of the licensing authority

This code **also applies** at all times when Members are involved in the licensing process. This includes taking part in decision making meetings of the Council in exercising the functions of the licensing authority and on less formal occasions such as meetings with officers or the public and consultative meetings. It applies as equally to licensing enforcement matters, reviews, or site specific issues as it does to licensing applications.

- 2.2 **The aim of this code of good practice is** 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.
- 2.3 Sections 3-5 apply to all Members. Sections 6-14 apply particularly to Members of the Licensing Committee or Licensing and Regulatory Panel. Sections 15-16 apply to officers. Sections 17-19 deal with procedures, monitoring and review
- 2.4 **If you have any doubts** about the application of this Code, you should seek early advice, preferably well before any meeting takes place from the Assistant Chief Executive (Corporate Governance).

3.0 RELATIONSHIP WITH THE MEMBERS CODE OF CONDUCT

- 3.1 Leeds City Council's Members Code of Conduct was adopted by the Council on the 24th May 2007 and must be complied with throughout the decision making process.

Do apply the rules in the Members Code of Conduct first and at all times.

Do then apply the rules of this Code which seek to explain and supplement the Members Code of Conduct for the purposes of licensing. If you do not abide by this 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 Members Code of Conduct, a complaint being made to the Standards Committee.

4.0 DECLARATIONS OF INTERESTS UNDER THE MEMBERS CODE OF CONDUCT

4.1 It is your responsibility to declare any personal or prejudicial interest you may have, or be perceived as having, in a matter at any relevant meeting, including informal meetings or discussions with officers and other Members preferably at the beginning of the meeting. You should declare the existence and nature of that interest.

If your personal interest in a matter arises due to solely from your membership of, or position of control/ management on:

- Any other body to which you were appointed or nominated by the authority;
- Any other body exercising functions of a public nature (for example another local authority).

The Model Members Code of Conduct states¹ that in these cases, provided that you do not also have a prejudicial interest, you only need to declare that interest if you intend to speak on the matter.

If you have a personal or prejudicial interest in a matter do then act accordingly depending on the interest that you have declared.

Where your interest is personal and prejudicial you should withdraw from the room or chamber where the meeting is being held:-

Do not participate or give the appearance of trying to participate in any part of the meeting which involves the matter in which you have a prejudicial interest. You may however make representations, answer questions on a matter or give evidence on a matter if the public also have the right to do so². You only have the same right as the public to make representations You will be brought into the meeting when the other parties are called in. You will be subject to the same time limits as all other parties and have the same rights i.e. to make representations, give evidence and answer questions but not to cross examine other parties You must leave the room

¹ Paragraph 9(2) Model Code of Conduct for Members

² Paragraph 12(2) Model Code of Conduct for Members

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immediately after making representations, answering questions or giving evidence and must take no part in the decision making. If the public have no right to make representations, answer questions on a matter or give evidence on a matter then you must withdraw from the meeting room when the matter in which you have a prejudicial interest is discussed.

Where you have a prejudicial interest in the matter is to be determined by a Licensing Sub Committee you should ensure that you have arranged for a substitute to attend the hearing in your place as although you may have a right to make representations, answer questions on a matter or give evidence on a matter you are not able to take part in the decision.

Do not get involved in the processing of the application.

Do not seek to improperly influence a decision on a matter in which you have a prejudicial interest. Not all attempts to influence a decision will be improper. Improper influence would be any attempt to use your position to further your own interests in a way that would not be open to an ordinary member of the public. 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.

Do be aware that, whilst you are not prevented from seeking to explain or justify a proposal in which you have a personal or prejudicial interest to an appropriate officer, the Code places greater limitations on you than would apply to an ordinary member of the public and sensible steps must be taken to ensure openness and fairness in the decision making process. In particular you should:

- Notify the Monitoring Officer in writing of your own application (or that of a relative or employer where known) or where you are employed as an agent.
- Consider whether it is advisable to employ an agent to act on your behalf in dealing with officers and any public speaking at a licensing hearing.

5.0 MEMBERS SPEAKING AT LICENSING HEARINGS

5.1 All Members of the Council should be aware of the planning case involving a North Yorkshire Councillor, Councillor Richardson. The Councillor was not a member of the Planning Committee but sought to represent the views of his constituents. However his property was affected by the application and the Standards Board for England disqualified him from being a Councillor on the basis that he did not disclose a Personal and Prejudicial interest even though he was not the decision maker and was making representations as either the ward member or in an individual capacity. The Court of Appeal upheld the Standards Board decision.

As a result of this case the Model Members Code of Conduct was amended and now provides that you can make representations, answer questions on a matter or give evidence on a matter in which you have a prejudicial interest if the public also have the

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right to do so. You must leave the room immediately after making representations, answering questions or giving evidence.

You only have the same right as the public to make representations. You will be brought into the meeting when the other parties are called in. You will be subject to the same time limits as all other parties and have the same rights i.e. to make representations, give evidence and answer questions but not to cross examine other parties. You must not remain in the room when the decision is made even if you are not making the decision.

6.0 BIAS AND PREDETERMINATION IN THE LICENSING PROCESS

6.1 Given the requirement that Members of the Licensing and Regulatory Panel or Licensing Committee or Sub committee should exercise an independent mind and decide proposals in accordance with the relevant licensing considerations, Members must not favour any person, company, group or locality or commit themselves to a particular point of view on a licensing application prior to its full consideration at the Licensing and Regulatory Panel or Licensing Committee or Sub committee.

Do not make up your mind or give the impression of making up your mind (particularly in relation to an external interest or lobby group) prior to the decision making meeting and of your hearing the officer's presentation and the evidence and arguments on both sides.

Do be aware that you are likely to be biased or pre-determined where the Council is the landowner or applicant **if** you have been or are perceived as being, a chief advocate for the proposal. This will not necessarily arise from being a member of the proposing board or the Executive but through a significant personal involvement in preparing or advocating the proposal by which you may be perceived as being unable to act impartially or determine the proposal purely on its licensing merits and in the public interest.

Do remember that you are, of course, free to listen to a point of view about a licensing proposal, give procedural advice and agree to forward any comments, but should then refer the person to the appropriate licensing officer.

Do not use any political group meetings prior to the Licensing and Regulatory Panel or Licensing Committee or Sub committee meeting to determine how you or other Councillors should vote. There is no objection to a political group having a predisposition, short of predetermination, for a particular outcome or for you to begin to form a view as more information and opinions become available but decisions can only be taken after full consideration of the Licensing Officer's report and documents and information considered at the Hearing.

The Standards Board for England have provided advice and guidance on bias and pre-determination which can be obtained from www.standardsboard.gov.uk.

7.0 MEMBERSHIP OF PARISH COUNCILS AND OUTSIDE BODIES

7.1 This section concerns the position of Members of Leeds City Council who are also Parish Councillors or members of an outside body. These should be recorded on your register of interests.

Do consider if you have a prejudicial interest in a matter by virtue of you being a member of the Parish Council or a Member of the outside body. If the matter affects the financial position of the Parish Council or outside body, or the matter relates to an application made by the Parish Council or outside body then it is capable of being a prejudicial interest.³ (If the matter does not affect the financial position or relate to an application made then it cannot be a prejudicial interest)

If the matter is capable of being a prejudicial interest then you should go onto consider whether the interest is one that a member of the public with knowledge of all the relevant facts would reasonable regard as so significant that it would be likely to prejudice your judgement of the public interest.⁴

Do not take part in the licensing decision making process but withdraw from the meeting or arrange a substitute when you have a prejudicial interest in that matter by virtue of you being on the Parish Council or a member of the outside body. (However you may make representations, answer questions on a matter or give evidence on a matter if the public also have the right to do so)

Do consider yourself able to take part in a licensing debate and vote on a proposal at a meeting of the Parish Council or outside body is a consultee provided:

- The proposal does not substantially affect the well being or financial standing of the consultee body.
- You make it clear that that you are keeping an open mind and may vote differently at the licensing hearing when full details are available.
- You do not commit yourself so far to a particular point of view that you cannot be considered as open to persuasion at a licensing hearing when the proposal is decided.
- You disclose a personal interest regarding your membership or role when the proposal comes to a licensing hearing.

8.0 AREA COMMITTEES

8.1 The introduction of Area Committees within Leeds City Council also requires recognition of the “Dual Hatted” roles which members of the Licensing Committee or Licensing and Regulatory Panel and Area Committees must consider. It is unlikely you would have a Personal and Prejudicial Interest for the purpose of the Members Code of Conduct purely by being a member of the Area Committee but there is a possibility that you may be considered as pre determining a matter if you

³ Paragraph 10(2) Model Code of Conduct for Members

⁴ Paragraph 10(1) Model Code of Conduct for Members

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have spoken in support or against it or are closely associated with such a decision taken at the Area Committee.

Do consider whether it is appropriate for you to speak at the Area Committee if you wish to speak also on the application at a licensing hearing.

Do consider, whatever your own views, whether as Chair of the Area Committee or a member of any Panel, Committee or Sub Committee, you would be so closely associated with that decision that it would be unreasonable to expect you to disregard it.

Do remember that you can speak and vote on an application which is before the Area Committee for consultation so long as you make it clear that you have only formed a provisional view and will still approach the issue with an open mind and be open to persuasion when the matter is discussed at the licensing hearing.

Do remember that it is not always sufficient to make such a statement if it is not demonstrably genuine. The more controversial the application and or the more vehemently you have supported or opposed it, the more difficult it will be to show that you have not predetermined the matter and therefore render the decision susceptible to challenge. In those circumstances you should not attend the hearing for that application.

9.0 SPOUSE/PARTNER COUNCILLORS

9.1 There may be occasions when the spouse or partner of a Member, usually a member for the same Ward, is also a Member of the Licensing Committee or Sub Committee or the Licensing and Regulatory Panel. That Member might quite properly refer constituents who wish to make representations to his or her spouse or partner rather than be directly lobbied. Generally the fact that the spouse or partner Councillor has been approached will not affect your ability to speak and vote at a licensing hearing.

Be aware that the Members Code of Conduct defines that you have a personal interest in any business of the authority where a decision in relation to that business might reasonably be regarded as affecting your well being or financial position, or the well being or financial position of a relevant person to a greater extent than the majority of other council tax payers, ratepayers or inhabitants of the ward affected by the decision.

Relevant person⁵ includes your spouse or partner.

Acknowledge that in certain circumstances, such as a particularly controversial application in the run up to an election, there is the possibility that a Personal and Prejudicial interest could exist.

Consider if your spouse or partner is so closely involved with the support for, or opposition to, an application that a member of the public might reasonably think that the involvement is such that you must be biased or have predetermined the application.

⁵ Paragraph 8(2) Model Code of Conduct for Members
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10.0 EXECUTIVE BOARD MEMBERS

- 10.1 There is no Constitutional or legal reason why an Executive Board Member should not also be a Member of the Licensing and Regulatory Panel or Licensing Committee and take part in the decision making processes which are not part of the executive function.

Be aware that you should not speak or vote on any matter which you have discussed at Executive Board unless you have demonstrated there and can do so at the licensing hearing that you have not predetermined the application.

Do not take part in any meeting of the Licensing and Regulatory Panel or Licensing Committee or Sub Committee on a matter in which you may have been seen as advocating a proposal as an Executive or Lead Member.

11.0 CONTACT WITH APPLICANTS AND OBJECTORS

- 11.1 In order to maintain impartiality, it is preferable that Members are not involved in pre-application discussions but there will be occasions when this can be unavoidable. The following guidance is given:

Do not agree to any formal meeting with applicants, or groups of objectors where you can avoid it. Where you feel that a formal meeting would be helpful in clarifying the issues, you should not arrange it yourself, but request the Licensing Officer to do so. The officer will then ensure that those present are aware that any discussion will not bind the Council and maintain a written file record of the meeting.

Do refer those who approach you for advice to officers.

Do follow the rules on lobbying

Do report any significant contact with the applicant or other parties to the Assistant Chief Executive (Corporate Governance) explaining the nature and purpose of the contacts and your involvement and ensure that this is recorded on the licensing file.

Do not attend a presentation by an applicant unless an officer is present and/or it has been arranged by an officer.

Do ask relevant questions for the purpose of clarifying your understanding of the proposals but do not express any strong view or state how you or other members might vote.

Do make it clear that the presentation is not part of the formal decision making process and any view is both personal and provisional since not all relevant information will be to hand and the views of interested parties will not have been obtained.

12.0 MEMBERSHIP OF A LOBBY GROUP

12.1 Lobbying by Councillors is a legitimate activity but in the case of Members of the Licensing and Regulatory Panel or Licensing Committee or Sub Committee significant care needs to be taken to avoid any challenge of bias or predetermination or an allegation of bringing the Council into disrepute.

Do declare the existence and nature of your interest in any lobby group at a licensing hearing so that members of the public are informed about interests that may relate to your decisions. Often this will be a personal interest and you can continue to participate but note that it can sometimes be a prejudicial interest or lead to allegations of bias or predetermination and in those circumstances you must withdraw from the meeting.

Do not take part in any matter that affects the financial position of the lobby group or that relates to the determination of any application for approval, consent, licence, permission or registration made by the lobby group of which you are a member. If the Licensing and Regulatory Panel or Licensing Committee or Sub committee is discussing such a matter you should consider whether you have a prejudicial interest and should act accordingly.

You may take part in a matter than involves issues upon which your lobby group has simply campaigned as long as your involvement has not resulted in you being biased and/or predetermining the matter. You will have personal interest in this matter as the lobby group should be registered on your register of interests and a personal interest arises when the matter directly affects the lobby group, or where the lobby group is otherwise concerned about the outcome of the matter.

Do weigh up the following factors where your lobby group has expressed a public view on a matter and consider whether a reasonable member of the public, knowing the relevant facts, would think that you are biased or have pre-determined a matter. The factors are:

- the nature of the matter to be discussed
- the nature of your involvement with the lobby group
- the publicly expressed views of the lobby group
- what you have said or done in relation to the particular issue

Do not lead, be part of the management of, or represent an organisation whose primary purpose is to promote or oppose licensing proposals. If you do, you may have fettered your discretion (be biased/pre-determined) and have to withdraw.

Do not become a member of an organisation whose primary purpose is to promote or oppose specific licensing proposals or those within a limited geographical area as you may be perceived as having fettered your discretion (be biased/pre-determined).

Do join general interest groups which reflect your areas of interest and which concentrate on issues beyond particular licensing proposals such as a local Civic Society but declare a personal interest where that organisation has made representations on a particular proposal and make it clear to both the organisation

and the Panel or Committee that you have not made up your mind on each separate proposal

Do remember that if the local branch of a general interest group has been vociferous or active on a particular issue or you are closely associated with the management or decision making process of that organisation such as being the Chairperson or a member of the Board or Committee, it will become increasingly difficult to demonstrate your ability to judge the matter with an open mind and you may consider that you are biased and/or pre-determined and should withdraw from the meeting.

Do not excessively lobby fellow members regarding your concerns or views or attempt to persuade them that they should decide how to vote in advance of the hearing at which the decision is to be made. It is difficult to define 'excessively' but you need to consider whether a member of the public, knowing the facts would think that, through your representations, the lobbied member was no longer able to take a view on the matter in the public interest but had predetermined it.

Do not publicly support a particular outcome on a proposal or actively campaign for it if you wish to take part in the decision making process. Although in most circumstances this would not amount to a prejudicial interest, it would be very difficult for you to demonstrate that you had the necessary degree of impartiality to properly weigh the arguments presented and the decision would be open to challenge. Again it is a question of maintaining the fine balance between a predisposition where your mind is not totally made up and a predetermination. This would, however, not prevent you from expressing the views of your constituents provided you are capable of determining the Application in accordance with the law.

13.0 SITE VISITS

13.1 Site Visits can play a legitimate part in the decision making exercise but due to the tight timescales involved in licensing decisions will be the exception rather than the rule. They must be limited to inspections by viewing and as a fact finding exercise. They are not to be used to determine a proposal prior to the meeting of the Licensing and Regulatory Panel or Licensing Committee or Sub Committee.

The need for a site visit may be discussed at a Hearing and, if approved, the reasons for it and the name of the member requesting it should be recorded.

Do not request a site visit unless there is a real benefit from viewing the site. This might arise where particular site factors are significant in terms of the weight attached to them relative to other factors or the difficulty of their assessment in the absence of a site inspection; or

Do ensure that you treat the site visit as an opportunity to seek information and to observe the site. It is not to be used to determine a matter prior to the licensing hearing;

Do ask the officers at the site visit questions or seek clarification from them on matters which are relevant to the site inspection;

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Do be prepared to listen to and ask questions of fact from the Applicant or other parties but do not be drawn into arguments or detailed discussions on the individual merits of an application or give the impression that you have made up your mind. The decision can only be made at the Licensing Hearing and you should make this clear to any applicant or other party;

Do not express opinions or views to anyone which may suggest bias or predetermination. As indicated above you should make it clear that formal consideration of the proposal will take place in public at the licensing hearing;

Do not enter a site which is subject to an application otherwise than on a formal site visit although this does not prevent you from viewing the site from the highway or other publicly accessible area.

14.0 TRAINING

14.1 Members making licensing decisions must attend two training sessions each and every year: a Licensing Update session, to receive guidance in relation to regulations and procedures and a Governance and Conduct session for training on declaration of personal and prejudicial interests. Failure to undertake either or both sessions will result in the Elected Member being unable to sit on Licensing and Regulatory Panel or Licensing Committee or Sub Committee.

- **Do not** participate in decision making on licensing matters if you have not undertaken mandatory training.
- **Do** try to attend any other specialised training session provided, since these will be designed to extend your knowledge of licensing law, regulations, procedures and Policies beyond the minimum required and assist you in carrying out your role properly and effectively.
- **Do** revisit a sample of implemented licensing decisions to assess the quality of the decisions. Such a review should improve the quality and consistency of decision-making, thereby strengthening public, confidence in the licensing system, and can help with reviews of planning policies.

15.0 OFFICERS

15.1 Councillors and officers have different but complementary roles. Both serve the public but Councillors are responsible to the electorate whilst officers are responsible to the Council as a whole. Officers are employed by the Council and not by individual Councillors and instructions can only be given through a decision of the Council, the Executive or a Panel or Committee. A successful relationship can only be based on mutual respect, trust, courtesy and understanding of each others positions.

15.2 The role of the Legal officer is to assist the panel in gathering evidence and understanding all relevant issues in order for Members to make a decision; to advise on the sub committees legal duties under the relevant legislation and on the admissibility of evidence.

- 15.3 All legal advice should be given or repeated in open session for all parties to be made aware of
- 15.4 The role of the Governance Officer is to facilitate the smooth running of the hearing; advise on the Rules of Procedure and Regulations relating to hearings; make notes of the proceedings and reasons for granting or refusing applications and ensure that decision letters are sent to all parties as soon as possible after the hearing.
- 15.5 The role of the Licensing Officer is neutral. They will make no recommendations to the Panel or Committee and attend hearings only to provide a summary report of the application, giving details of the representations received and any relevant legislative or policy considerations.

Do not put pressure on officers to put forward a particular recommendation.

Do recognise that officers are part of a management structure and only discuss an application, outside of any arranged meeting with those officers who are authorised to deal with the application at Member level.

Do recognise and respect that officers involved in the processing and determination of licensing application must act in accordance with the Council's Code of Conduct for Officers. As a result, officers reports will be presented on the basis of their overriding obligation of professional independence

16.0 RELATIONSHIP WITH THE OFFICER CODE OF CONDUCT

- 16.1 The Council has an approved Officer Code of Conduct.

That Code applies at all times when officers are involved in the licensing process. This includes decision making by officers under delegated powers and attendance at meetings whether those are formal decision making meetings or informal meetings with members or the public.

Officers must apply the rules in the Officer Code of Conduct at all times. If they do not they may put the Council at risk of proceedings on the legality maladministration of any related decision put themselves at risk of disciplinary action.

- 16.2 Generally licensing officers have little discretion in making licensing decisions. For example they may only grant licences where there are no objections. However there may be situations where they are called upon to exercise discretion such as deciding whether an objection is relevant. Other officers such as those employed by Environmental Health or Development have discretion on whether to object. Legal officers and committee clerks remain in the room with Members when decisions are made.

In all cases officers must avoid any improper conduct or occasion for suspicion of the appearance of improper conduct and should:-

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- Ensure that they have given notice of any financial interest in any contract which has been or is proposed to be entered into by the Council
- Not accept gifts, entertainment, hospitality or any benefits in kind as set out in the Officers Code of Conduct
- Declare to their Departmental Chief Officer by completing the Register of Interests Form any personal interests which may conflict with licensing applications such as
 - any involvement with an outside organisation which has an interest in any licensing application
 - any financial interest in any licensing application
 - any other interest where others may think that a conflict of interest may arise
 - Examples of such situations include where the officer lives adjacent to any licensed premises or visits the premises in a personal capacity on a regular basis

16.3 Officers should also consider whether their spouse, partner or close relative has a financial or other interest in a licensing application which may give rise to the suspicion of the appearance of improper conduct and where the officer may therefore need to declare an interest.

16.4 Where an officer has declared an interest he or she should not participate in the processing of a licensing application but should instead refer the matter to his or her Manager who will arrange for another officer to discharge the duties.

17.0 PROCEDURES AT LICENSING HEARINGS

17.1 Procedure Rules exist for hearings before the Licensing Committee and Sub committees. Hearings before the Licensing and Regulatory Panel will be governed by the Council Procedure Rules as they apply to Regulatory Panels.

18.0 MONITORING AND REVIEW

18.1 The Assistant Chief Executive (Corporate Governance) will report annually to the Standards Committee regarding whether the arrangements set out in this Code have been complied with and will include any proposals for amendment in the light of any issues that have arisen during the year.

18.2 In particular, the Assistant Chief Executive (Corporate Governance) shall monitor the following:-

- the number of complaints made about breaches of the Code and the outcome of those complaints
- the number of appeals upheld
- any external inspection reports in respect of relevant issues
- any ombudsman complaints or reports in respect of relevant issues

19.0 BREACHES OF THE CODE OF PRACTICE

19.1 Maintaining high ethical standards enhances the general reputation of the Council, its Members and its officers. Open and transparent decision making enhances local democracy and should lead to better informed citizens. This Licensing Code, along with Leeds Council's Members Code of Conduct, and the Officer Code of Conduct are intended to promote these standards.

Do be aware of your responsibilities under this Code and the Members Code of Conduct

Do report any apparent breaches of either Code to the Monitoring Officer.

Do seek advice if you are in doubt.

19.2 Failure to comply with the Members Code of Conduct may lead to a complaint to the Standards Board for England who can, in certain circumstances disqualify a Councillor. Failure to comply with this Licensing Code may lead to a finding of Maladministration by the Ombudsman or could lead to a decision being challenged in the courts.

19.3 Allegations of breach of this Licensing Code of Practice by Members may be referred to the Assistant Chief Executive (Corporate Governance) for referral to the Standards Committee, the relevant Leader and/or Chief Whip of the Party.

19.4 Allegations of breach of this Licensing Code by Officers will be referred to the relevant Director for consideration under the Council's Disciplinary Procedure.