



## LICENSING COMMITTEE

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MEETING TO BE HELD IN CIVIC HALL, LEEDS ON  
FRIDAY, 27TH MAY, 2022 AT 11.00 AM

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### MEMBERSHIP

#### Councillors

Please note the Membership of this Committee will be confirmed following the Annual Meeting of Council to be held on Thursday 26<sup>th</sup> May 2022

Please do not attend the meeting in person if you have symptoms of Covid-19 and please follow current public health advice to avoid passing the virus onto other people.

**Note to observers of the meeting.** To remotely observe this meeting, please click on the 'View the Meeting Recording' link which will feature on the meeting's webpage (linked below) ahead of the meeting. The webcast will become available at the commencement of the meeting.

[https://www.youtube.com/playlist?list=PLPjmOAZpvCo\\_a7x\\_DHQ\\_QBLZPMrBnXC9n](https://www.youtube.com/playlist?list=PLPjmOAZpvCo_a7x_DHQ_QBLZPMrBnXC9n)

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# A G E N D A

Item No	Ward/Equal Opportunities	Item Not Open		Page No
1			<p><b>APPEALS AGAINST REFUSAL OF INSPECTION OF DOCUMENTS</b></p> <p>To consider any appeals in accordance with Procedure Rule 15.2 of the Access to Information Procedure Rules (in the event of an Appeal the press and public will be excluded)</p> <p>(*In accordance with Procedure Rule 15.2, written notice of an appeal must be received by the Head of Governance Services at least 24 hours before the meeting)</p>	
2			<p><b>EXEMPT INFORMATION - POSSIBLE EXCLUSION OF THE PRESS AND PUBLIC</b></p> <p>1 To highlight reports or appendices which officers have identified as containing exempt information, and where officers consider that the public interest in maintaining the exemption outweighs the public interest in disclosing the information, for the reasons outlined in the report.</p> <p>2 To consider whether or not to accept the officers recommendation in respect of the above information.</p> <p>3 If so, to formally pass the following resolution:-</p> <p><b>RESOLVED</b> – That the press and public be excluded from the meeting during consideration of those parts of the agenda designated as containing exempt information on the grounds that it is likely, in view of the nature of the business to be transacted or the nature of the proceedings, that if members of the press and public were present there would be disclosure to them of exempt information</p>	

Item No	Ward/Equal Opportunities	Item Not Open		Page No
3			<p><b>LATE ITEMS</b></p> <p>To identify items which have been admitted to the agenda by the Chair for consideration</p> <p>(The special circumstances shall be specified in the minutes)</p>	
4			<p><b>DECLARATION OF INTERESTS</b></p> <p>To disclose or draw attention to any interests in accordance with Leeds City Council's 'Councillor Code of Conduct'.</p>	
6			<p><b>MINUTES</b></p> <p>To approve the minutes of the last meeting held on 8<sup>th</sup> March 2022.</p>	5 - 10
7			<p><b>LICENSING COMMITTEE - ANNUAL GOVERNANCE ARRANGEMENTS</b></p> <p>To consider the report of the City Solicitor which seeks to establish the governance arrangements for the Licensing Committee for the 2022/23 municipal year, namely:</p> <ul style="list-style-type: none"> <li>• Noting the terms of reference of the Licensing Committee.</li> <li>• To appoint licensing sub-committees for the 2022/23 municipal year.</li> <li>• To approve terms of reference for the licensing sub-committees.</li> <li>• To approve the delegation of functions to Officers as appropriate</li> </ul>	11 - 30

Item No	Ward/Equal Opportunities	Item Not Open		Page No
8			<p><b>LICENSING PROCEDURE RULES, THE CODE OF PRACTICE FOR DETERMINING LICENSING MATTERS AND PRESCRIBED LICENSING TRAINING</b></p> <p>To consider the report of the City Solicitor on the draft procedure rules relating to meetings and hearings of the Licensing Committee and sub-committees and seeking the approval of Members to the adoption of these to govern Committee procedure. The report also seeks consideration of the Code of Practice for the Determination of Licensing Matters and asks Members to approve and resolve to follow the Code.</p>	31 - 50
9			<p><b>DATE AND TIME OF NEXT MEETING</b></p> <p>To note the date and time of the next meeting is proposed as Tuesday 5<sup>th</sup> July 2022 at 10.00 am</p>	

**Use of Recordings by Third Parties – code of practice**

- a) Any published recording should be accompanied by a statement of when and where the recording was made, the context of the discussion that took place, and a clear identification of the main speakers and their role or title.
- b) Those making recordings must not edit the recording in a way that could lead to misinterpretation or misrepresentation of the proceedings or comments made by attendees. In particular there should be no internal editing of published extracts; recordings may start at any point and end at any point but the material between those points must be complete.

**Webcasting**

**Please note** – the publically accessible parts of this meeting will be filmed for live or subsequent broadcast via the City Council’s website. At the start of the meeting, the Chair will confirm if all or part of the meeting is to be filmed.

# Public Document Pack Agenda Item 6

## Licensing Committee

Tuesday, 8th March, 2022

**PRESENT:** Councillor P Wray in the Chair

Councillors P Alderson, N Buckley,  
R Downes, B Flynn, A Garthwaite,  
J Gibson, Illingworth, J Lennox, L Richards  
and L Martin

### **53 Chair's Opening Remarks**

The Chair announced the retirement of John Grieve, Senior Governance Officer within Democratic Services.

In paying tribute, the Chair said John had worked for the Council for almost 45 years, many of those years servicing the Licensing Committee and its Sub Committees together with a variety of other Committees/ Boards and Panels, his knowledge and experience would be greatly missed.

Members and Officers Joined the Chair in expressing their thanks and best wishes to John in his future retirement.

### **54 Appeals Against Refusal of Inspection of Documents**

There were no appeals against the refusal of inspection of documents.

### **55 Exempt Information - Possible Exclusion of the Press and Public**

There were no items identified where it was considered necessary to exclude the press or public from the meeting due to the nature of the business to be considered.

### **56 Late Items**

There were no late items identified where it was considered necessary to exclude the press or public from the meeting due to the nature of the business to be considered.

### **57 Declaration of Interests**

There were no declarations of interests made at the meeting.

### **58 Apologies for Absence**

Apologies for absence were received from Councillors: H Bithell, A Hutchison and A Smart.

### **59 Minutes of the Previous Meeting**

Draft minutes to be approved at the meeting  
to be held on Friday, 27th May, 2022

**RESOLVED** – That the minutes of the previous meeting held on 14<sup>th</sup> December 2021, were accepted as a true and correct record.

## **60 Matters Arising from the Minutes**

There were no issues raised under Matters Arising.

## **61 Licensing Annual Report**

The Chief Officer Elections and Regulatory submitted a report which presented the Licensing Committee Annual Report. The report sought to provide information and statistics on the type and number of licensing applications processed by Entertainment Licensing and Taxi and Private Hire Licensing. It also provided information about the enforcement activity and liaison work undertaken by both Sections.

Addressing the Entertainment Licensing element of the report, the Principal Licensing Officer provided further details of the activities undertaken by the Section, in particular:

- The impact on service as a result of the Coronavirus
- Business Support
- Office Arrangements
- Licensing Processing
- Temporary Event Notices
- Complaint Handling
- Covid Related Actions

The Taxi and Private Hire Manager then spoke on the activities of the Taxi and Private Hire Licensing Service which included:

- The impact on service as a result of the Coronavirus
- Statutory Taxi and Private Hire Vehicle Standards
- Vehicle Inspections
- Enforcement and Compliance
- Licensing Statistics
- Decisions Taken
- Refusal and Revocation Decisions
- Suspensions
- Complaints Received

## Questions to Entertainment Licensing

Referring to Complaint Handling, Members asked if further details could be supplied in respect of “uncategorised Complaints” – Could a breakdown be provided of the type of complaint within this category.

The Principal Licensing Officer said that information was not readily available, but the requested information would be circulated to Members in due course.

Referring to “Licensing Processing” and the sentence “Sub-committee meetings resumed face-to-face in May 2021, to the disappointment of Members”. A number of Members considered this sentence to be inaccurate, suggesting some Members wished to return to more normal working.

Commenting on the number of Licensing Sub Committees, Members suggested there appeared to be more “additional” meetings required and obtaining enough Members was at times difficult. In responding, the Senior Governance Officer said that at the start of the Municipal Year around 30 Sub Committees are scheduled with approximately one third being cancelled due to lack of business or applications being withdrawn. Additional meetings are often required when an application needs to be considered within a certain timeframe. This year had seen an increase in the number of additional Licensing Sub Committee meetings. The comment by Members that obtaining sufficient Members to serve on these meetings had been a challenge, was accurate.

#### Questions to Taxi and Private Hire Licensing

Referring to Enforcement and Compliance, Members queried; of the 82 vehicles issued with rectification notices, how many vehicle licenses were later suspended.

In responding the Taxi and Private Hire Licensing Manager said any defects identified were likely to be minor ones and the driver would be able to easily rectify the problem. It would be difficult to identify how many vehicles were later suspended without manually checking each record, but it was likely there would be very few suspensions.

Members noted that 1172 roadside vehicle inspections had been undertaken, of which 34 were vehicles licensed by neighbouring authorities. Members queried why this figure was so low.

Members were informed that a significant number of the vehicle checks were by the police or other partners. The figure of 34 related only to the vehicles checked and recorded by enforcement officers from Leeds City Council.

Members referred to the term “inappropriate behaviour” and asked how this term was defined.

Members were informed that “inappropriate behaviour” was defined as not the most serious offences and could include such issues as rudeness, bad language and not switching the radio off when requested.

With reference to complaints, Members noted that for 2021 a total of 794 complaints had been received, but it was not apparent how many of those complaints were upheld. It was also noted that licence breaches had also risen significantly and Members asked could a breakdown be provided for that category.

Members were informed that information for both of the above was not immediately available and would be circulated to Members in due course.

In offering comment generally, on complaints it was noted that of the millions of journeys made each year in Leeds only 700 complaints had been received, as a percentage this was a very low figure and the trade should be thanked for this.

In responding, the Chair said 99% of drivers were conscientious decent people and we shouldn't always just focus on the small minority who were the subject of complaints. The trade played a vital role in the city, in particular the night-time economy.

Reference was made to the Licensing Statistics, Members noting that more than 650 hackney carriage and private hire drivers had reported to the council that they were not working as licensed drivers, although they had retained their licence, and may in the long run return to the trade. Members asked how this shortfall was made up: was there simply no demand or were drivers licensed elsewhere being used?

The Taxi and Private Hire Licensing Manager said taxi drivers often combine taxi work with other work. During the pandemic the demand for "other work" had increased significantly resulting in some drivers not returning to "taxi and private hire work". Members were informed that currently there were approximately 300 applications for driver training, so the number of new drivers should increase. In terms of any shortfall, it was not being picked up by out of town drivers.

The Chief Officer Elections and Regulatory said that nationally there was a reduction in the number of taxi drivers, many not returning to the trade following the pandemic. It was reported in the media that in some instances, local authorities had reported a 50% reduction in the number of drivers, whereas national statistics produced by the Department for Transport suggest around a 15.9% reduction in drivers nationally and Leeds appears to be comparable with that figure. A link to the national statistics would be circulated to Members following this meeting.

Referring to driver safety, it was suggested that there was a lot of guidance around passenger safety, but nothing about what measures are being put in place to keep the trade safe. The Chair agreed as this was the focus of national guidance from government but that the Executive Member wanted to address driver safety with partners, despite it not being part of the licensing authority's remit.

The Taxi and Private Hire Licensing Manager said that one area that had been considered was the use of CCTV, passengers were supportive of its use, the drivers wanted it and the Licensing Authority were supportive of its introduction, but issues around privacy and how such schemes would be funded were matters which required further consideration.

Referring to the relationship with the trade, one Member said there had been several demonstrations in recent years, there was a huge amount of dissatisfaction from the trade who had no confidence in the taxi and private hire licensing service, the review of the convictions policy together with a number of other policy reviews was a major concern.

The Chair accepted that a lot of tensions had been created, but many conversations had now taken place and good progress had been made in the past ten months. Referring to the review of the accumulation of minor motoring convictions criteria of the Suitability and Convictions Policy, the Chair said a good deal of feedback had been received and was being analysed now before a recommendation would be made to the Licensing Committee for consideration. He also said other areas of the Suitability and Convictions Policy were being looked at, at the request of trade representatives to find solutions which would be fair and reasonable for the trade. The Chair confirmed the Suitability and Convictions Policy would be reviewed in full and this was currently scheduled for 2024 and that the ongoing dispute was a matter of when the process would begin – not if.

As relations between the trade and officers had been raised, the Chair invited Mike Utting, a Trade Representative to contribute to the discussion.

Addressing the Committee Mr Utting confirmed there had been difficulties in the past with the taxi and private hire service. He said the Covid Pandemic had caused a lot of problems for the trade who in turn had to adapt and manage. Recently some positive discussions had taken place with both Councillor Wray and Councillor Coupar and he felt positive steps were being taken. He said the trade representatives were continuing to discuss the Suitability and Convictions Policy, but he remained of the view that the adopted Policy is too vague in parts and could be improved, and these issues should be reviewed. He said we need to rely on good drivers, but without any draconian rules.

In bringing the discussion to a conclusion, the Chair thanked Members, trade representatives and officers for their attendance and contributions.

#### **RESOLVED –**

- (i) That the contents of the report be noted
- (ii) That details of the number of complaints upheld, details of the uncategorised complaints for Entertainment Licensing (broken down into the type of complaint) and the number of licence breaches relating to the Taxi and Private Hire Licensing Service (broken down into category) be circulated to all Members of the Committee
- (iii) That details of the reduced number of taxi drivers nationally be circulated to all Members of the Committee.

#### **62 Work Programme 2022**

Members considered the ongoing Licensing Committee Work Programme for 2022/23.

**RESOLVED** – That the Licensing Committee Work Programme for 2022/23 be approved.

**63 Date and Time of Next Meeting**

**RESOLVED** - To note that the next meeting will take place on Friday, 27<sup>th</sup> May 2022 at 10.00am in the Civic Hall, Leeds.

## Licensing Committee – Annual Governance Arrangements

Date: 27 May 2022

Report of: City Solicitor

Report to: Licensing Committee

Will the decision be open for call in?  Yes  No

Does the report contain confidential or exempt information?  Yes  No

### What is this report about?

This report deals with the appointment of licensing sub-committees, approval of their terms of reference and approval of the delegation of functions to officers. No changes are proposed to the current terms of reference or to the officer delegations.

### Including how it contributes to the city's and council's ambitions

The licensing functions falling within the Licensing Committee and licensing sub-committee's respective terms of reference and those licensing functions exercised by officers under the Director of Communities, Housing and Environment's Officer Delegation Scheme contribute to:

- Inclusive growth in the city's economy by supporting business and employment.
- Safe, strong communities, culture and a child-friendly city by promoting the statutory objectives, including the prevention of crime and disorder, public safety, the prevention of public nuisance and the protection of children from harm.

### Recommendations

- a) That members of the Licensing Committee note its own terms of reference.
- b) That the Licensing Committee appoints licensing sub-committees for the 2022/2023 municipal year.
- c) That the Licensing Committee approves the licensing sub-committee's terms of reference.
- d) That the Licensing Committee approves the delegation of specified licensing functions to officers in accordance with the Officer Delegation Scheme (Council (Non-Executive) Functions) of the Director of Communities, Housing and Environment.

### Why are the proposals being put forward?

- 1 The Council is the Licensing Authority under the Licensing Act 2003 (“the 2003 Act”) and the Gambling Act 2005 (“the 2005 Act”).
- 2 In accordance with both the 2003 Act and the 2005 Act, with the exception of specified functions (which largely relate to the Authority’s statement of licensing policy), all matters relating to the discharge by the Authority of its licensing functions are automatically referred to the Licensing Committee. This discretion does not extend to any licensing function reserved to full Council or a licensing function where full Council has referred the matter to another committee.
- 3 The Licensing Committee is also authorised to create sub-committees and to delegate functions of the Licensing Authority to sub-committees (to be specified in the terms of reference of those sub-committees) and, subject to a number of statutorily excepted matters, to Officers.
- 4 Because the membership of the Licensing Committee is determined annually by full Council, it is necessary for the new Licensing Committee’s terms of reference to be noted by its members and for annual approval of the licensing sub-committees’ membership and its terms of reference and for the Officer Delegation Scheme (Council (Non-Executive) Functions) of the Director of Communities, Housing and Environment to be approved annually.

### What impact will this proposal have?

**Wards affected:** All

Have ward members been consulted?

Yes

No

- 5 The appointment of sub-committees to carry out the licensing functions and delegations to Officers as appropriate is consistent with good corporate governance arrangements.
- 6 Making members aware of the Licensing Committee’s terms of reference will help ensure that the Committee does not exceed its remit.
- 7 Approval of the licensing sub-committee’s terms of reference and the Director of Communities, Housing and Environment’s Officer Delegation Scheme clarifies responsibility for decision-making, reducing the risk of a successful legal challenge to a decision.

### What consultation and engagement has taken place?

- 8 This report and its appendices have been published on the Council’s website. No changes to the current governance arrangements are being proposed. The licensing functions are statutory and no public consultation has been conducted.

### What are the resource implications?

- 9 Adopting the recommendations of this report will ensure efficient decision making and reduce the risk of successful legal challenges. The 2003 Act requires licensing authorities to establish a Licensing Committee consisting of at least 10 but no more than 15 members. It is more cost

effective for the Licensing Committee to delegate the exercise of some functions to licensing sub-committees and, where appropriate and where permitted by legislation, to officers, rather than exercising all of its licensing functions itself.

### **What are the legal implications?**

10 A clear delegation framework should minimise the risk of a successful legal challenge to a licensing decision.

### **What are the key risks and how are they being managed?**

11 There are no risks associated with this report.

### **Does this proposal support the council's three Key Pillars?**

Inclusive Growth       Health and Wellbeing       Climate Emergency

12 Efficient and effective licensing governance supports business and therefore employment.

13 Clarity and consistency in decision-making helps promote the licensing objectives, including the prevention of crime and disorder, the prevention of public nuisance and the protection of children from harm.

### **Options, timescales and measuring success**

#### **What other options were considered?**

14 None. The Council's Constitution requires the licensing governance arrangements to be approved annually.

#### **How will success be measured?**

15 By the approval of the licensing sub-committee's terms of reference and the Officer Delegation Scheme (Council (Non-Executive) Functions) of the Director of Communities, Housing and Environment.

#### **What is the timetable for implementation?**

16 This report's recommendations are to be considered by the Licensing Committee at the meeting on 27 May 2022.

### **Appendices**

17 Appendix 1 – Licensing Committee Terms of Reference

Appendix 2 – Licensing Sub-Committee Memberships

Appendix 3 – Licensing Sub-Committee Terms of Reference

Appendix 4 – Officer Delegation Scheme for the Director of Communities, Housing and Environment

### **Background papers**

18 None

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## The Licensing Committee

With the exception<sup>1</sup> of

- any function of the licensing authority under the Licensing Act 2003 (the 2003 Act), the Gambling Act 2005 (the 2005 Act), or the Police Reform and Social Responsibility Act 2011 (the 2011 Act) reserved to full Council;<sup>2</sup> or
- any licensing function where full Council has referred a matter to another committee,<sup>3</sup>

the Licensing Committee is authorised to discharge<sup>4</sup> the following functions<sup>5</sup>:

1. to discharge the licensing functions of the licensing authority;<sup>6</sup>
- 2.1 to discharge any other function of the authority referred to it by full Council;<sup>7</sup>
- 2.2 pursuant to the provision in section 2.1 above full Council has delegated to the Licensing Committee the following functions:
  - 2.2.1 Hackney carriages and private hire vehicles<sup>8</sup>
  - 2.2.2 Sexual entertainment venues, sex shops and sex cinemas<sup>9</sup>
  - 2.2.3 Performances of hypnotism<sup>10</sup>
  - 2.2.4 Charitable collections<sup>11</sup>
  - 2.2.5 The late night levy<sup>12</sup>

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<sup>1</sup> In accordance with Section 7(2) of the 2003 Act or s154 (2) (a) and (c) of the 2005 Act.

<sup>2</sup> Part 3, Section 2A of the Constitution sets out functions of the licensing authority reserved to full Council, as licensing authority under the 2003 Act, 2005 Act or 2011 Act.

<sup>3</sup> Under the provisions of Section 7(5)(a) of the 2003 Act.

<sup>4</sup> The Committee may arrange for any of its functions to be discharged by one or more sub-committees, or by an officer, subject to the exceptions set out in Section 10(4) of the 2003 Act; see also Section 154 of the 2005 Act.

<sup>5</sup> 'Functions' for these purposes shall be construed in a broad and inclusive fashion and shall include the doing of anything which is calculated to facilitate or is conducive or incidental to the discharge of any of the specified functions.

<sup>6</sup> This includes the power to set fees under Section 212 of the 2005 Act

<sup>7</sup> Full Council may arrange for the Licensing Committee to discharge any function of the authority which relates to a matter referred to the Committee but is not a licensing function (Section 7(3)). It may also refer a matter to the Committee where a matter relates to both a licensing function and to a function of the authority which is not a licensing function and arrange for the Committee to discharge the other function (Section 7(5)(b) of the 2003 Act). Before exercising this power, the Council must consult with the Committee.

<sup>8</sup> Item 3 – 5 of Para. B of Schedule 1 to the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 ("the 2000 Regulations")

<sup>9</sup> Item 15 of Para. B of Schedule 1 to the 2000 Regulations and Section 27 Policing and Crime Act 2009 and Schedule 3 Local Government (Miscellaneous Provisions) Act 1982

<sup>10</sup> Item 16 of Para. B of Schedule 1 to the 2000 Regulations

<sup>11</sup> Item 39 of Para. B of Schedule 1 to the 2000 Regulations

<sup>12</sup> In accordance with Chapter 2 of Part 2 of the 2011 Act including decisions in relation to the late night supply period, permitted exemption categories and permitted reduction categories in accordance with Sections 132 and 133 of that Act.

## *Council Committees' Terms of Reference*

- 3 in respect of any approval, consent, licence, permission, or registration which they may grant,
  - (a) To impose conditions limitations or restrictions;
  - (b) To determine any terms;
  - (c) To determine whether and how to enforce any failure to comply;
  - (d) To amend, modify, vary or revoke;
  - (e) To determine whether a charge should be made or the amount of such a charge.
4. to make recommendations to full Council in connection with the discharge of its functions as licensing authority;<sup>13</sup> and
5. to receive reports from, and to make recommendations and representations to other committees or bodies as appropriate.<sup>14</sup>

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<sup>13</sup> Including recommendations arising from the monitoring of the operation and impact of the Licensing or Gambling Policy by the Licensing Committee.

<sup>14</sup> Where the licensing authority exercises its power under Section 7(5) (a) of the 2003 Act the other Committee must consider a report of the Licensing Committee. Where the Council does not make arrangements under Section 7(3), it must (unless the matter is urgent) consider a report of the Licensing Committee with respect to the matter before discharging the function (Section 7(4)).

**LICENSING COMMITTEE 2022/23**

**SUB-COMMITTEE MEMBERSHIP**

<b>A</b>			
<b>B</b>			
<b>C</b>			
<b>D</b>			
<b>E</b>			

Names to be added.

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**Licensing Sub-Committees**

The Licensing Sub-Committees are authorised to discharge<sup>1</sup> the following functions<sup>2</sup> concurrently<sup>3</sup>:

1. functions<sup>4</sup> under:

- (a) section 18(3) of the 2003 Act (determination of application for premises licences where relevant representations have been made);
- (b) section 31(3) of the 2003 Act (determination of application for provisional statements where relevant representations have been made);
- (c) section 35(3) of the 2003 Act (determination of application for variation of premises licence where relevant representations have been made);
- (d) section 39(3) of the 2003 Act (determination of application to vary designated premises supervisors following the giving of a notice by the police pursuant to section 37(5) of the 2003 Act (police objection));
- (e) section 44(5) of the 2003 Act (determination of application for transfer of premises licences following the giving of a notice by the Police pursuant to section 42(6) and/or the giving of a notice by the Secretary of State pursuant to section 42(8) of 2003 Act (police and/or Secretary of State objection));
- (f) section 48(3) of the 2003 Act (consideration of police notice and/or notice given by the Secretary of State regarding (objection made to) an interim authority notice);
- (g) section 52(2) or (3) of the 2003 Act (determination of an application for review of a premises licence);
- (h) section 53A-D of the 2003 Act (summary (expedited) review hearings);
- (i) section 72(3) of the 2003 Act (determination of application for club premises certificates where relevant representations have been made);
- (j) section 85(3) of the 2003 Act (determination of application to vary club premises certificates where relevant representations have been made);
- (k) section 88(2) or (3) of the 2003 Act (determination of application for review of a club premises certificate);
- (l) section 105(2) (consideration of objection notice given by a relevant person relating to a standard temporary event notice);
- (m) section 120(7) of the 2003 Act (determination of application for the grant of a personal licence where an objection notice is given by the Police and/or an immigration objection notice is given by the Secretary of State (following police objection));
- (n) section 121(6) of the 2003 Act (determination of application for renewal of personal licences following police objection)

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<sup>1</sup> With the exception of those functions set out in paragraphs 1 and 2 of these Terms of Reference, and subject to any direction given by the Licensing Committee, the Licensing Sub-Committees may arrange for any of these functions to be discharged by an officer (Section 10(2) and (5) of the Licensing Act 2003 (the 2003 Act) and s154 of the Gambling Act 2005 (the 2005 Act)).

<sup>2</sup> "Functions" for these purposes shall be construed in a broad and inclusive fashion and shall include the doing of anything which is calculated to facilitate or is conducive or incidental to the discharge of any of the specified functions.

<sup>3</sup> Section 10(3) of the 2003 Act.

<sup>4</sup> Including agreeing whether a hearing is necessary.

- (o) section 124(4) of the 2003 Act (consideration of an objection notice given by the Police and/or an immigration objection notice given by the Secretary of State where convictions come to light after grant or renewal of personal licences);
  - (p) section 167(5) of the 2003 Act (review following closure order)
  - (q) section 20(3) of the 2003 Act (making recommendations for restricting the admission of children to the exhibition of any film)
  - (r) section 132A of the 2003 Act (consideration whether to suspend or revoke a personal licence where the licence holder has been (a) convicted of any relevant offence or foreign offence, or (b) required to pay an immigration penalty)
  - (s) section 162 and 163 (159) of the 2005 Act (determination of application for premises licences (where representations have been made)<sup>5</sup>)
  - (t) section 187 of the 2005 Act (determination of application for variation of premises licence (where representations have been made);<sup>5</sup>)
  - (u) section 188 of the 2005 Act (determination of application for transfer of premises licences following receipt of representations (objection));<sup>6</sup>
  - (v) section 195 of the 2005 Act (consideration of representations regarding (objection made to) an application for reinstatement); <sup>6</sup>
  - (w) section 201 of the 2005 Act (determination of review of a premises licence);
  - (x) section 204 of the 2005 Act (determination of application for provisional statements (where representations have been made);<sup>6</sup>);
  - (y) section 222 of the 2005 Act (determination of temporary use notice following receipt of a notice of objection);
  - (z) section 224 of the 2005 Act (decision to give counter notice following an objection to a temporary use notice);
  - (aa) schedule 10 of the 2005 Act (consideration of an application for a family entertainment centre permit);
  - (bb) schedule 14 of the 2005 Act (consideration of an application for a prize gaming permit);
  - (cc) schedule 13 of the 2005 Act (consideration of an application for an alcohol licensed premises gaming machine permit);
  - (dd) schedule 12 of the 2005 Act (consideration of an application for a club gaming permit or club machine permit);
2. Functions relating to any other hearings required under the 2003 Act or the 2005 Act that have not been reserved to the Licensing Committee.

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<sup>5</sup> Including deciding whether representations are vexatious, frivolous, or will certainly not influence the authority's determination of the application

<sup>6</sup> Including deciding whether representations are vexatious, frivolous, or will certainly not influence the authority's determination of the application

3. The function of hearing appeals against the refusal to grant a contract driver permit.
4. The function of licensing performances of hypnotism<sup>7</sup> where an officer has considered they should not exercise their delegated authority and has referred the matter to the sub-committee for determination.
5. The function of licensing sex establishments<sup>8</sup> (sex shops, sex cinemas or sexual entertainment venues) where either the application is for the grant, renewal or transfer of a licence irrespective of whether objections have been received, or in any other case where an officer has decided not to exercise their delegated authority and has referred the matter to the sub-committee for determination.
6. The function of licensing persons to collect for charitable and other causes<sup>9</sup> where either objections have been received, or an officer has decided not to exercise their delegated authority and has referred the matter to the sub-committee for determination.
7. Hearing any appeal against an officer decision to refuse to recognise an applicant for the purposes of the constitution for the Hackney Carriage Trade Forum or the removal of recognition under the terms of that document.
8. To discharge any other function referred by the Licensing Committee, including making representations to the Licensing Committee in connection with the discharge of its functions.

### Exceptions

A Sub Committee is not authorised to discharge functions under paragraph 1 (a) to (e) above where the application relates to an event in the open air, in a temporary structure and where the proposed capacity of the event exceeds 30,000 people.

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<sup>7</sup> The Hypnotism Act 1952

<sup>8</sup> s2 and schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982

<sup>9</sup> Section 5 of the Police, Factories etc (Miscellaneous Provisions) Act 1916 and section 2 of the House to House Collections Act 1939

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## Director of Communities, Housing and Environment

Subject to the exceptions listed below, the Director of Communities, Housing and Environment<sup>1</sup> is authorised to discharge the following Council (non-executive) functions:

### 1. Regulatory Functions

(a)	To approve premises for the solemnisation of marriages	Section 46A of the Marriage Act 1949 and the Marriages (Approved Premises) Regulations 1995(SI 1995/510)
(b)	To license premises for acupuncture, tattooing, ear-piercing and electrolysis	Sections 13 to 17 of the Local Government (Miscellaneous Provisions) Act 1982
(c)	To license premises for the breeding of dogs	Section 1 of the Breeding of Dogs Act 1973 and Section 1 of the Breeding and Sale of Dogs (Welfare) Act 1999
(d)	To license pet shops and other establishment where animals are bred or kept for the purposes of carrying on a business	Section 1 of the Pet Animals Act 1951, section 1 of the Animal Boarding Establishments Act 1963, the Riding Establishments Act 1964 and 1970, section 1 of the Breeding of Dogs Act 1973 and sections 1 and 8 of the Breeding and Sale of Dogs (Welfare) Act 1999
(e)	To register animal trainers and exhibitors	Section 1 of the Performing Animals (Regulation) Act 1925
(f)	To license zoos	Section 1 of the Zoo Licensing Act 1981

<sup>1</sup> The fact that a function has been delegated to the Director does not require the Director to give the matter his/her personal attention and the Director may arrange for such delegation to be exercised by an officer of suitable experience and seniority. However, the Director remains responsible for any decision taken pursuant to such arrangements.

*Officer Delegation Scheme (Council (non-executive) functions)*

(g)	To license dangerous wild animals	Section 1 of the Dangerous Wild Animals Act 1976
(h)	To grant consent for the operation of a loudspeaker	Schedule 2 to the Noise and Statutory Nuisance Act 1993
(i)	To issue licences for the movement of pigs	Article 12 of the Pigs (Records, Identification and Movement) Order 1995 (SI 1996/11)
(j)	To license the sale of pigs	Article 13 of the Pigs (Records, Identification and Movement) Order 1995
(k)	To license collecting centres for the movement of pigs	Article 14 of the Pigs (Records, Identification and Movement) Order 1995
(l)	To issue a licence to move cattle from a market	Article 5(2) of the Cattle Identification Regulations 1998 (SI 1998/871)
(m)	To sanction use of parts of buildings for storage of celluloid	Section 1 of the Celluloid and Cinematograph Film Act 1922
(n)	Duty to enforce Chapter 1 and regulations made under it	Section 10(3) of the Health Act 2006
(o)	Power to authorise officers	Section 10(5) of, and paragraph 1 of Schedule 2 to, the Health Act 2006
(p)	Functions related to fixed penalty notices	Paragraphs 13,15 and 16 of Schedule 1 to the Health Act 2006. Smoke-free (Vehicle Operators and

Officer Delegation Scheme (Council (non-executive) functions)

		Penalty Notices) Regulations 2007 (SI 2006/760)
(q)	Power to transfer enforcement functions to another enforcement authority	Smoke-free(Premises and Enforcement) Regulations 2006 (SI 2006/3368)
(r)	To license pleasure boats and pleasure vessels	Section 94 of the Public Health Acts Amendment Act 1907
(s)	To authorise erection of stiles etc on footpaths or bridleways <sup>2</sup>	Section 147 of the Highways Act 1980
(t)	To create footpath bridleway or restricted byway by agreement	Section 25 of the Highways Act 1980
(u)	To create footpaths bridleways and restricted byways	Section 26 of the Highways Act 1980
(v)	Duty to keep register of information with respect to maps, statements and declarations	Section 31A of the Highways Act 1980
(w)	To stop up footpaths bridleways and restricted byways	Section 118 of the Highways Act 1980
(x)	To determine application for public path extinguishment order	Sections 118ZA and 118C(2) of the Highways Act 1980
(y)	To make a rail crossing extinguishment order	Section 118A of the Highways Act 1980
(z)	To divert footpaths bridleways and restricted byways	Section 119 of the Highways Act 1980
(aa)	To make a public path diversion order	Sections 119ZA and 119C(4) of the Highways Act 1980
(bb)	To make a rail crossing diversion order	Section 119A of the Highways Act 1980
(cc)	To make a special diversion order	Section 119B of the Highways Act 1980
(dd)	To require applicant for order to enter into agreement	Section 119C(3) of the Highways Act 1980

<sup>2</sup> Functions (v) – (xx) are limited to areas contained within the Definitive Map of Public Rights of Way. Functions (u), (jj), (kk) and (ss) are also delegated to the Director of City Development whose powers are not limited to areas contained within the Definitive Map of Public Rights of Way.

*Officer Delegation Scheme (Council (non-executive) functions)*

(ee)	To make an SSSI diversion order	Section 12B of the Highways Act 1980
(ff)	To keep register with respect to applications under sections 118ZA, 118C, 119ZA and 119C of the Highways Act 1980	Section 121B of the Highways Act 1980
(gg)	To decline to determine certain applications	Section 121C of the Highways Act 1980
(hh)	To assert and protect the rights of the public to use and enjoyment of highways	Section 130 of the Highways Act 1980
(ii)	To apply for variation of order under section 130B of the Highway Act 1980	Section 130B(7) of the Highways Act 1980
(jj)	To authorise temporary disturbance of surface of footpath bridleway or restricted byway	Section 135 Highways Act 1980
(kk)	To divert footpath bridleway or restricted byway temporarily	Section 135A of the Highways Act 1980
(ll)	To extinguish certain public rights of way	Section 32 of the Acquisition of Land Act 1981
(mm)	To keep definitive map and statement under review	Section 53 of the Wildlife and Countryside Act 1981
(nn)	To include modifications in other orders	Section 53A of the Wildlife and Countryside Act 1981
(oo)	To keep register of prescribed information with respect to applications under section 53(5) of the Wildlife and Countryside Act 1981	Section 53B of the Wildlife and Countryside Act 1981
(pp)	To prepare map and statement by way of consolidation of definitive map and statement	Section 57A of the Wildlife and Countryside Act 1981
(qq)	To designate footpath as cycle track	Section 3 of the Cycle Tracks Act 1984
(rr)	To extinguish public right of way over land acquired for clearance	Section 294 of the Housing Act 1981
(ss)	To authorise stopping up or diversion of footpath bridleway or restricted byway	Section 257 of the Town and Country Planning Act 1990

(tt)	To extinguish public rights of way over land held for planning purposes	Section 258 of the Town and Country Planning Act 1990
(uu)	To enter into agreements with respect to means of access	Section 35 of the Countryside and Rights of Way Act 2000
(vv)	To provide access in absence of agreement	Section 37 of the Countryside and Rights of Way Act 2000

### Exceptions<sup>3</sup>

The Director of Communities, Housing and Environment is not authorised to discharge the function above where objections have been received.

## 2. Functions of the Licensing Authority delegated by Full Council

Subject to the exception set out below, the Director of Communities, Housing and Environment is authorised to discharge the functions of the licensing authority as set out below:-

(a)	Any function of a Licensing Authority <sup>4</sup>	Licensing Act 2003 and any regulations or orders made under that Act <sup>5</sup> .
(b)	Powers and functions relating to late night levy requirements	Chapter 2 of Part 2 of the Police Reform and Social Responsibility Act 2011 and any regulations made under that Chapter.

### Exceptions:

- any function of the Licensing Authority reserved to full Council<sup>6</sup>;

## 3. Functions of the Licensing Authority delegated by Licensing Committee

<sup>3</sup> Under this delegation scheme (Council functions). The General Purposes Committee may however arrange for the discharge of any of its functions by the Director of Communities, Housing and Environment - (Section 101(2) Local Government Act 1972.

<sup>4</sup> These functions will be carried out to support those matters which cannot be delegated by the Licensing Authority.

<sup>5</sup> Including functions which, by virtue of the Gambling Act 2005 Act are delegated to the Licensing Committee.

<sup>6</sup> Part 3, Section 2A of the Constitution sets out licensing functions reserved to full Council, as licensing authority under the 2011 Act.

Subject to the exceptions listed below, the Director of Communities, Housing and Environment is authorised to discharge the licensing functions<sup>7</sup> of the licensing authority as set out below:-

(a)	Any function of a Licensing Authority	Licensing Act 2003 and any regulations or orders made under that Act <sup>8</sup> .
(b)	Powers and functions relating to late night levy requirements	Chapter 2 of Part 2 of the Police Reform and Social Responsibility Act 2011 and any regulations made under that chapter
(c)	Duty to comply with requirement to provide information to Gambling Commission.	Section 29 of the Gambling Act 2005
(d)	Functions relating to the exchange of information	Section 30 of the Gambling Act 2005
(e)	Functions relating to occasional use notices	Section 39 of the Gambling Act 2005
(f)	Power to designate officer of a licensing authority as an authorised person for a purpose relating to premises	Section 304 of the Gambling Act 2005
(g)	Power to institute criminal proceedings	Section 346 of the Gambling Act 2005
(h)	Power to exchange information	Section 350 of the Gambling Act 2005
(i)	Functions relating to the registration and regulation of small society lotteries	Part 5 of Schedule 11 to the Gambling Act 2005

**Exceptions:**

- any function of the Licensing Authority<sup>9</sup> reserved to full Council<sup>10</sup>;
- any function of the Licensing Authority where full Council has referred a matter to a committee other than the Licensing Committee<sup>11</sup>;
- any function of the Licensing Authority reserved to the Licensing Committee;
- any function of the Licensing Authority within the terms of reference of the Licensing Sub-committees<sup>12</sup>;and
- to object when the Authority is consultee and not the relevant authority considering an application under the 2003 Act

<sup>7</sup> “Licensing functions” means functions under the Licensing Act 2003 Act, the Gambling Act 2005 2005 and the Police Reform and Social Responsibility Act 2011.

<sup>8</sup> Including functions which, by virtue of the 2005 Act are delegated to the Licensing Committee.

<sup>9</sup>“Licensing functions” - see footnote 6 above

<sup>10</sup> Part 3, Section 2A of the Constitution sets out licensing functions reserved to full Council, as licensing authority under the 2003 Act.

<sup>11</sup> Under the provisions of Section 7(5)(a) of the 2003 Act.

<sup>12</sup> Except where a Licensing sub-committee has arranged for the discharge of any of their functions by an Officer.

#### 4. Functions related to the Licensing Functions delegated by Licensing Committee<sup>13</sup>

Subject to the exceptions listed below, the Director of Communities, Housing and Environment is authorised to discharge the functions set out in the following table which are delegated to the Director by Licensing Committee<sup>14</sup>

(a)	To license hackney carriages and private hire vehicles	(a) As to hackney carriages, the Town Police Clauses Act 1847 as extended by section 171 of the Public Health Act 1875 and section 15 of the Transport Act 1985 and sections 47, 57, 58, 60 and 79 of the Local Government (Miscellaneous Provisions) Act 1976 (b) As to private hire vehicles, sections 48, 57, 58, 60 and 79 of the Local Government (Miscellaneous Provisions) Act 1976
(b)	To license drivers of hackney carriages and private hire vehicles	Section 51, 53, 54, 59, 61 and 79 of the Local Government (Miscellaneous Provisions) Act 1976
(c)	To license operators of hackney carriages and private hire vehicles	Sections 55 to 58, 62 and 79 of the Local Government (Miscellaneous Provisions) Act 1976
(d)	** To license sex shops and sex cinemas and sexual entertainment venues.	The Local Government (Miscellaneous Provisions) Act 1982, Section 2, Schedule 3, the Policing and Crime Act 2009, Section 27.
(e)	To license performances of hypnotism.	The Hypnotism Act 1952
(f)	*** To license persons to collect for charitable and other causes	Section 5 of the Police, Factories etc (Miscellaneous Provisions) Act 1916 and section 2 of the House to House Collections Act 1939

<sup>13</sup> These functions were delegated to the Licensing Committee by full Council on 14 July 2010.

<sup>14</sup> These delegations include functions where these have been delegated to Leeds City Council by any other Council.

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**Exceptions**

The Director of Communities, Housing and Environment is not authorised to discharge those functions marked \*\* above where the application is for the grant, renewal or transfer of a sexual entertainment venue licence irrespective of whether objections have been received, or the grant of a sex shop or sex cinema licence irrespective of whether objections have been made, or renewal or transfer of a sex shop or cinema licence where objections have been received

The Director of Communities, Housing and Environment is not authorised to discharge those functions marked \*\*\* above where objections have been received.

## Licensing Committee – Licensing Procedure Rules, the Code of Practice for Determining Licensing Matters and Prescribed Licensing Training

Date: 27 May 2022

Report of: City Solicitor

Report to: Licensing Committee

Will the decision be open for call in?  Yes  No

Does the report contain confidential or exempt information?  Yes  No

### What is this report about?

This report concerns the proposed Rules of Procedure to be followed by the Licensing Committee and the licensing sub-committees in respect of all meetings and hearings including those held under the provisions of both the Licensing Act 2003 (“the 2003 Act”) and the Gambling Act 2005 (“the 2005 Act”). It is necessary for the Licensing Committee to re-affirm the Rules of Procedure each time the Committee is appointed.

This report also highlights the Code of Practice for the Determination of Licensing Matters for Members’ information.

Finally, the report sets out the arrangements for the prescribed Member Training on licensing under the provisions of Article 8A of the Constitution and the Code of Practice.

### Including how it contributes to the city’s and council’s ambitions

The licensing functions falling within the Licensing Committee and licensing sub-committee’s remit contribute to:

- Inclusive growth in the city’s economy by supporting business and employment.
- Safe, strong communities, culture and a child-friendly city by promoting the statutory objectives, including the prevention of crime and disorder, public safety, the prevention of public nuisance and the protection of children from harm.
- The Procedure Rules, and the licensing regime generally, contribute to ongoing engagement with communities and individuals and to the best use of the Council’s resources.

### Recommendations

- a) That Members approve the Licensing Procedure Rules as set out at **Appendix 1** to this report.

- b) That Members approve and resolve to follow the contents of the Code of Practice for the Determination of Licensing Matters as attached at **Appendix 2**.
- c) That Members note the arrangements for the prescribed training programme.
- d) That Members note that, once approved, the Code of Practice for the Determination of Licensing Matters will be brought to the attention of all elected Members.

**Why are the proposals being put forward?**

- 1 The Committee has previously approved one set of Licensing Committee and Sub-Committee Procedure Rules, which apply to proceedings under both the 2003 Act and the 2005 Act and which cross-refer to the relevant regulations. The Rules proposed for adoption by the Licensing Committee are at **Appendix 1**.
- 2 In relation to hearings held under the 2003 or 2005 Acts before a licensing sub-committee, these must comply with the Licensing Act 2003 (Hearings) Regulations 2005 (“the 2005 Regulations”). A legal adviser is present at all hearings of the sub-committee and will provide advice as required.
- 3 The Code of Practice provides clarity for Members and, where applicable, to officers, to ensure that in the licensing process there are no grounds for suggesting that a decision has been predetermined, biased, partial or not well founded in any way.
- 4 Members will note from paragraph 8 of the Code of Practice at **Appendix 2** that Members on the Licensing Committee are required to attend a Licensing Update training session to receive guidance in relation to regulations and procedures in each municipal year.
- 5 In addition, Article 8A of the constitution provides that Members of the Licensing Committee must complete all compulsory training and shall not sit as a member of the committee or its sub-committees unless such training has been undertaken in accordance with the Council’s prescribed training programme.
- 6 Members are asked to note that the prescribed training programme consists of a training session for new members appointed to the Licensing Committee. There will be a licensing update session each year for all members, usually at the November committee meeting.

**What impact will this proposal have?**

<b>Wards affected:</b> All		
Have ward members been consulted?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

- 7 Following the Licensing Committee and Sub Committee Procedure Rules and the Code of Practice for the Determination of Licensing Matters will assist in preventing claims that decisions have been predetermined, biased, partial or not well founded, reducing the risk of a successful legal challenge to a decision.

**What consultation and engagement has taken place?**

- 8 This report and its appendices have been published on the Council’s website. No changes to the Procedure Rules, the Code of Practice or training requirements are being proposed and no public consultation has been conducted.

### **What are the resource implications?**

- 9 Adopting the recommendations of this report will ensure procedurally robust, efficient and sound decision making and reduce the risk of successful legal challenges.

### **What are the legal implications?**

- 10 A clear procedure and decision-making framework should minimise the risk of a successful legal challenge to a licensing decision.

### **What are the key risks and how are they being managed?**

- 11 There are no risks associated with this report.

### **Does this proposal support the council's three Key Pillars?**

- Inclusive Growth       Health and Wellbeing       Climate Emergency

- 12 Efficient and effective licensing decision making supports business and therefore employment.
- 13 Clarity, procedural fairness and consistency in decision-making helps promote the licensing objectives, including the prevention of crime and disorder, the prevention of public nuisance and the protection of children from harm.

### **Options, timescales and measuring success**

#### **What other options were considered?**

- 14 None. The Council's Constitution mandates a training programme for members of the Licensing Committee and the licensing authority is obliged to comply with the 2005 Regulations and to have a procedure for hearings.

#### **How will success be measured?**

- 15 By the outcome of any challenges to licensing decisions.

#### **What is the timetable for implementation?**

- 16 This report's recommendations are to be considered by the Licensing Committee at the meeting on 27 May 2022.

### **Appendices**

- 17 Appendix 1 – Licensing Committee and Sub-Committee Procedure Rules  
Appendix 2 – Code of Practice for the Determination of Licensing Matters

### **Background papers**

- 18 None

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**LICENSING COMMITTEE AND SUB COMMITTEE PROCEDURE RULES****1. INTERPRETATION**

‘The Chair’ means the Chair of the Licensing Committee.

‘The Committee’ means the Licensing Committee or Licensing Sub Committee.

‘The Relevant Regulations’ means the Licensing Act 2003 (Hearings) Regulations 2005 SI 2005/44 (as amended) and the Gambling Act 2005 (Proceedings of Licensing Committees and Sub Committees) (Premises Licences and Provisional Statements) (England and Wales) Regulations 2007 SI 2007/173

‘The 2003 Act’ means the Licensing Act 2003

‘The 2005 Act’ means the Gambling Act 2005

**2. SCOPE**

These Procedure Rules will apply in respect of all matters which are dealt with by the Committee under either the 2003 Act or the 2005 Act.

**3. APPLICATION OF COUNCIL PROCEDURE RULES/ACCESS TO INFORMATION PROCEDURE RULES**

Except where the Relevant Regulations provide differently, the Council Procedure Rules and Access to Information Procedure Rules (in so far as they apply to committees and sub-committees) will be followed for all meetings of the Committee.

**4. APPLICATION OF THE RELEVANT REGULATIONS**

The provisions of the Licensing Act 2003 (Hearings) Regulations 2005 shall apply to any hearings conducted under the provisions of the Licensing Act 2003<sup>1</sup> and in the event of any conflict between the Relevant Regulations and the Council Procedure Rules/Access to Information Procedure Rules in relation to such hearings the provisions of the Relevant Regulations shall prevail.

The provisions of the Gambling Act 2005 (Proceedings of Licensing Committees and Sub Committees) (Premises Licences and Provisional Statements) (England and Wales) Regulations 2007 shall apply to the exercise of functions under Section 162 (1) and (2) and Section 201 (4) of the Gambling Act 2005 and in the event of any conflict between the Relevant Regulations and the Council Procedure Rules/Access to Information Procedure Rules in relation to the exercise of such functions the provisions of the Relevant Regulations shall prevail.

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<sup>1</sup> Hearings are defined as those matters referred to in column 1 of schedule 1 to the Regulations.

## **5. APPOINTMENT OF CHAIR**

The Authority shall appoint the Chair of the Licensing Committee at its AGM.

The Chair of each Licensing Sub-Committee shall be elected by the Sub-Committee at the start of each meeting.

## **6. QUORUM**

Five Members (including the Chair) shall form a quorum for meetings of the Licensing Committee.

Three Members shall normally form a quorum for meetings of a Licensing Sub-Committee.

In exceptional circumstances, such as illness or unanticipated non availability of a Sub-Committee Member, it shall be possible for a sub-committee to conduct a hearing with only two Members present provided that

- Attempts have been made to identify a Member who can substitute for the Member who is not available without success and
- The parties present agree to a quorum of two and
- The resultant decision is unanimous

The Large Casino Sub-committee and the Sexual Entertainment Venues (SEVs) Sub-committee may not operate to a quorum of less than 3 Members present.

Except where authorised by statute, business shall not be transacted at a meeting unless a quorum is present.

## **7. SUBSTITUTE MEMBERS**

### Allocation

No substitute Members are appointed for the Licensing Committee.

In relation to each ordinary business Licensing Sub-Committee, the Licensing Committee has appointed substitute Members, comprising all other Members of the Licensing Committee.

### Substitution

A substitute Member shall be entitled to attend in place of a regular Member provided that the Committee Clerk has been notified of this before the meeting begins. Once the meeting has begun, the regular Member in respect of whom notification has been received, shall no longer be entitled to attend that agenda item as a Member of the Licensing Sub-Committee concerned.

### Powers and duties

A substitute Member will have all the powers and duties of any regular Member of the Licensing Sub-Committee but will not be able to exercise any special powers or duties exercisable by the person for whom s/he is substituting.

A substitute Member shall be for all purposes a duly appointed Member of the Licensing Sub-Committee to which s/he is appointed as a substitute Member for the meeting in question and shall have the like duties, powers and responsibilities as the member whom s/he is replacing.

## **8. MEETINGS OF THE COMMITTEE**

The Chair of the Committee or the Chief Executive may call a meeting at any time.

A special meeting of the Committee may be called on the requisition of any 3 Members of the Committee delivered in writing to the Chief Executive. The summons to such a special meeting shall set out the business to be considered and no business other than that set out in the summons shall be considered at that meeting.

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**CODE OF PRACTICE FOR THE DETERMINATION OF LICENSING MATTERS****1.0 INTRODUCTION**

1.1 **This Code applies** to all licensing decisions including:

- 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.

1.2 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.

1.3 This Code of Practice applies as follows:

- Sections 1-2 apply to all Members.
- Sections 3-8 apply particularly to Members of the Licensing Committee.
- Sections 9-10 apply to Officers.
- Sections 11-13 deal with monitoring and review

1.4 **The aim of this Code** of 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.

1.5 **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 Monitoring Officer.

1.6 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.

1.7 If you make or are involved in a licensing application, 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.
- Ensure that you have arranged for a substitute to attend the hearing in your place.

## **2.0 BIAS AND PREDETERMINATION IN THE LICENSING PROCESS**

- 2.1 Section 25(2) of the Localism Act 2011 sets out that a decision maker is not to be taken to have had, or to have appeared to have had, a closed mind when making a decision just because –
- (a) the decision maker had previously done anything that directly or indirectly indicated what view the decision maker took, or would or might take in relation to a matter, and
  - (b) the matter was relevant to the decision.
- 2.2 The above section was enacted to clarify that predetermination occurs where someone has a closed mind, with the effect that they are unable to apply their judgement fully and properly to an issue requiring a decision. The section makes it clear that if a councillor has given a view on an issue, this does not show that the councillor has a closed mind on that issue, so that if a councillor has campaigned on an issue or made public statements about their approach to an item of council business, he or she will be able to participate in discussion of that issue in the council and to vote on it if it arises in an item of council business requiring a decision.
- 2.3 Having said this, the words ‘just because’ in Section 25 suggest that other factors when combined with statements made etc. can still give rise to accusations of predetermination so care still needs to be taken.
- 2.4 Given the requirement that Members of the 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 decision prior to its full consideration at the Licensing Committee or Sub-Committee.
- 2.5 **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.
- 2.6 **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.
- 2.7 **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.
- 2.8 **Do not** use any political group meetings prior to the 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.

### **3.0 MEMBERSHIP OF PARISH COUNCILS, AREA COMMITTEES AND OUTSIDE BODIES**

3.1 This section concerns the position of Members of Leeds City Council who are also Parish Councillors or members of an outside body.

3.2 **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 where it is a consultee provided:

- 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.

### **4.0 SPOUSE/PARTNER COUNCILLORS**

4.1 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. 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.

4.2 **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.

### **5.0 CONTACT WITH APPLICANTS AND OBJECTORS**

5.1 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 Monitoring Officer 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.

## **6.0 MEMBERSHIP OF A LOBBY GROUP**

- 6.1 Lobbying by Councillors is a legitimate activity but in the case of Members of the 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.
- 6.2 **You may** take part in a matter that 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.
- 6.3 **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
- 6.4 **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.
- 6.5 **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).

- 6.6 **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 where that organisation has made representations on a particular proposal, you should make it clear to both the organisation and the Committee that you have not made up your mind on each separate proposal.
- 6.7 **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.
- 6.8 **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.
- 6.9 **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. 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.

## **7.0 SITE VISITS**

- 7.1 Site Visits can play a legitimate part in the decision-making exercise but 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 a hearing. Due to the tight timescales involved in licensing decisions, site visits must be viewed as an exception rather than the rule.
- 7.2 When undertaking a site visit Members should also have regard to the following paragraphs of the Code of Practice for Determining Licensing Matters:
- ❖ Paragraph 2 - Bias and Predetermination in the Licensing Process.
  - ❖ Paragraph 5 - Contact with Applicants and Objectors.

## **7.3 THIS SECTION APPLIES TO MEMBERS REQUESTS FOR A SITE VISIT**

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- 7.3.1 If a Member feels, on receipt of the report on an application, that a site visit would be beneficial, s/he should first discuss their concerns with a Principal Licensing Officer. Officers have powers to request additional information from parties, which can then be discussed at the hearing. This information may resolve the issues without the need for a site visit. If a Member still feels that a site visit is necessary then, in the interest of fairness, it is preferable that concerns should be expressed at the scheduled hearing since Members may find that the applicant, interested parties or responsible authorities can provide verbal information to the satisfaction of the Members present.
- 7.3.2 Views of the parties present must be canvassed and considered before a site visit is agreed since that is likely to result in a delay to the decision making.
- 7.3.3 In the case of a Sub Committee hearing, three Members or a 2:1 majority must be in favour of a site visit for arrangements to be made. The same three Members will be expected to undertake the requested site visit and attend the hearing for the application, which may be re-convened at a later date.
- 7.3.4 In the case of a meeting of the Licensing Committee, a majority of the Members present must be in favour of a site visit.
- 7.3.5 The same Members will be expected to undertake the requested site visit and be able to attend the re-convened meeting which will consider the application subsequent to the site visit.
- 7.3.6 **DO** raise the need for a site visit at a hearing and be prepared to give reasons why it is of real benefit. The reason will be recorded in the Minutes.
- 7.3.7 **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.
  - There are significant policy or precedent implications and specific site factors need to be carefully addressed.
  - Relevant factors cannot be fully ascertained from any supporting information or the plans submitted to the Licensing Officer and available at the hearing, to Members satisfaction.

## **7.4 THIS SECTION APPLIES TO SITE VISITS AS PROPOSED BY OFFICERS**

- 7.4.1 The Principal Licensing Officer may suggest the Committee or a Sub Committee undertake a Site Visit without prior discussion at a hearing, where in the professional opinion of the Officer there is a real benefit from viewing the site.
- 7.4.2 In such cases, Officers will approach Members seeking a date for the site visit and hearing – usually in the form of an e-mail in the first instance.

- 7.4.3 The e-mail should set out the proposal for a site visit, the reasons behind the request; the projected benefit for Members; the address of the premise; the type of application and set out the arrangements for the visit.
- 7.4.4 Some site visits can only be conducted at night in order to gauge an accurate impression of the proposal being discussed. On occasion the site visits will also include a viewing of the site 'in performance'.
- 7.4.5 In other cases it is usual for the site visit on an application to commence at 9.30 am (departing from the Civic Hall) and for the formal meeting to commence at 11.00 am in the Civic Hall to determine the application. As such it is anticipated that hearings will not conclude until the afternoon.
- 7.4.6 Having made proposals for a site visit, Officers will seek confirmation from the Members able to attend that they are happy to undertake the propose site visit.

## **7.5 ON THE SITE VISIT**

- 7.5.1 **DO** ensure that any information gained from the site visit is reported back at the subsequent hearing.
- 7.5.2 **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 hearing.
- 7.5.3 **DO** ask the Officers at the site visit questions or seek clarification from them on matters which are relevant to the site inspection.
- 7.5.4 **DO** be prepared to listen to and ask questions of fact from the Applicant or other parties.
- 7.5.5 **DO** be aware that Officers will make all parties aware of the site visit. All parties may attend subject to being granted access by the owner (see below). If only one party is present be particularly careful only to obtain information and ensure that that information is repeated at the public meeting where the other parties have a right to comment on it.
- 7.5.6 **DO** be aware that access to the site is at the discretion of the owner. The owner can legitimately refuse access to objectors and even Members. If access is to be refused consider whether it is still appropriate to undertake the visit.
- 7.5.7 **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.
- Note that** the decision can only be made at the Licensing Hearing and you should make this clear to any applicant or other party.
- 7.5.8 **DO** note comments of the applicant or other parties which are made solely for the purpose of making members aware of any specific local circumstances and issues relevant to the application site.

- 7.5.9 **DO NOT** express opinions or views to anyone which can 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 subsequent hearing/meeting.
- 7.5.10 **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.

## **8.0 TRAINING**

- 8.1 Members making licensing decisions must attend a Licensing Update training session to receive guidance in relation to regulations and procedures each and every year.
- 8.2 Failure to undertake a Licensing Update session will result in the Elected Member being unable to sit on the Licensing Committee or Sub Committee. Therefore, **do not** participate in decision making on licensing matters if you have not undertaken mandatory training.
- 8.3 **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.
- 8.4 **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.
- 8.5 Members are required to keep themselves up to date in relation to Governance and Conduct matters. Members are referred to the quarterly email from Governance Services and are reminded to review regularly their register of interests.

## **9.0 OFFICERS**

- 9.1 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 to Officers can only be given through a decision of the Council, the Executive or a Panel or Committee or through appropriate delegation schemes. A successful relationship can only be based on mutual respect, trust, courtesy and understanding of each other's positions.
- 9.2 The role of the Legal Officer is to assist the committee in gathering evidence and understanding all relevant issues in order for Members to make a decision, and to advise on the sub-committees' legal duties under the relevant legislation and on the admissibility of evidence.

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- 9.3 As and when appropriate legal advice should be given or repeated in open session for all parties to be made aware of.
- 9.4 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.
- 9.5 The role of the Licensing Officer attending the hearing is neutral. They will make no recommendations to the 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. However there is a separate but distinct officer role which is exercised by Liaison and Enforcement Officers from Entertainment Licensing (and occasionally by the Section Head and/or Principal Licensing Officers) who may make representations on applications or seek reviews. The roles of these Officers and the Licensing Officer processing applications and hearing reports are (and must remain) separate.
- 9.6 **Do not** put pressure on Licensing Officers to make any recommendations.
- 9.7 **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.
- 9.8 **Do** recognise and respect that Officers involved in the processing and determination of a licensing application must act in accordance with the Council's Employee Code of Conduct. As a result, Officers' reports will be presented on the basis of their overriding obligation of professional independence.

### **10.0 RELATIONSHIP WITH THE EMPLOYEE CODE OF CONDUCT**

- 10.1 The Council has an Employee 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.
- 10.2 Officers must apply the rules in the Employee Code of Conduct at all times. If they do not they may put the Council at risk of proceedings on the legality of any related decision, and may put themselves at risk of disciplinary action.
- 10.3 Generally Entertainment licensing Officers have limited discretion in making licensing decisions. However there may be situations where they are called upon to exercise discretion such as deciding whether an objection and/or representation 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.

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

- 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 Employee Code of Conduct.
- Declare to their Director 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; and
  - 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.

10.5 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.

10.6 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.

### **11.0 PROCEDURES AT LICENSING HEARINGS**

11.1 The Licensing Committee and Sub Committee Procedure Rules (Part 4(I) of the Constitution), set out the procedure for hearings before the Licensing Committee and Sub Committees.

### **12.0 MONITORING AND REVIEW**

12.1 The Monitoring Officer shall monitor the following, and will report annually to the Corporate Governance and Audit Committee in relation to these matters:-

- the number of appeals upheld;
- any external inspection reports in respect of relevant issues; and
- any ombudsman complaints or reports in respect of relevant issues.

### **13.0 BREACHES OF THE CODE OF PRACTICE**

13.1 Failure to comply with this code of practice may lead to a finding of maladministration by the Ombudsman or could lead to a decision being challenged in the courts.

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- 13.2 Allegations of a breach of this code of practice by Officers will be referred to the relevant Director for consideration under the Council's Disciplinary Procedure.

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