



LICENSING COMMITTEE

MEETING TO BE HELD IN CIVIC HALL, LEEDS ON
TUESDAY, 2ND JUNE, 2009 AT 10.00 AM

MEMBERSHIP

Councillors

- D Wilson (Chair) - Rothwell;
S Armitage - Cross Gates and Whinmoor;
M Dobson - Garforth and Swillington;
J Dunn - Ardsley and Robin Hood;
T Grayshon - Morley South;
T Hanley - Bramley and Stanningley;
G Hyde - Killingbeck and Seacroft;
V Morgan - Killingbeck and Seacroft;
B Selby - Killingbeck and Seacroft;
A Castle - Harewood;
R D Feldman - Alwoodley;
D Hollingsworth - Burmantofts and Richmond Hill;
L Rhodes-Clayton - Hyde Park and Woodhouse;
C Townsley - Horsforth;
G Wilkinson - Wetherby;

Agenda compiled by:
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A G E N D A

Item No	Ward/Equal Opportunities	Item Not Open		Page No
1			<p>APPEALS AGAINST REFUSAL OF INSPECTION OF DOCUMENTS</p> <p>To consider any appeals in accordance with Procedure Rule 25 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 25, written notice of an appeal must be received by the Chief Democratic Services Officer at least 24 hours before the meeting)</p>	
2			<p>EXEMPT INFORMATION - POSSIBLE EXCLUSION OF THE PRESS AND PUBLIC</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>RESOLVED – 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>LATE ITEMS</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>DECLARATIONS OF INTEREST</p> <p>To declare any personal/prejudicial interests for the purpose of Section 81(3) of the Local Government Act 2000 and paragraphs 8 to 12 of the Members Code of Conduct</p>	
5			<p>APOLOGIES FOR ABSENCE</p>	
6			<p>MINUTES</p> <p>To approve the minutes of the last meeting held on 7th April 2009 as a correct record</p> <p>(Copy attached)</p>	1 - 4
7	All Wards;		<p>TERMS OF REFERENCE - THE LICENSING COMMITTEE</p> <p>To receive the report of the Assistant Chief Executive (Corporate Governance) setting out the Terms of Reference and Officer Delegation Scheme for the Licensing Committee as approved by Annual Council on 21 May 2009. The report also includes the Code of Practice for Determining Licensing Matters which incorporates the site visit protocol.</p> <p>(Report attached)</p>	5 - 28

Item No	Ward/Equal Opportunities	Item Not Open		Page No
8	All Wards;		<p>CREATION OF THE LICENSING SUB COMMITTEES AND TERMS OF REFERENCE</p> <p>To consider the report of the Assistant Chief Executive (Corporate Governance) setting out the Terms of Reference for the Licensing Sub Committee as approved by Annual Council on 21 May 2009 and seeking approval for the appointment of the Sub Committees</p> <p>(Report attached)</p>	29 - 36
9	All Wards;		<p>LICENSING PROCEDURE RULES</p> <p>To consider the report of the Assistant Chief Executive (Corporate Governance) setting out the Procedure Rules associated with the work of the Licensing Committee and the Licensing Sub Committees</p> <p>(Report attached)</p>	37 - 50
10	All Wards;		<p>THE POLICING AND CRIME BILL</p> <p>To consider the report of the Assistant Chief Executive (Corporate Governance) on the main proposals contained within The Policing and Crime Bill concerning the regulation of licensed premises</p> <p>(Report attached)</p>	51 - 54
11	All Wards;		<p>IMPLICATIONS OF THE RECENT CASE OF R (ON THE APPLICATION OF BRISTOL CITY COUNCIL) V BRISTOL MAGISTRATES COURT</p> <p>To consider the report of the Assistant Chief Executive (Corporate Governance) advising of the implications of the recent case of the High Court of Justice where Bristol City Council applied for Judicial Review of a decision of the Bristol magistrates Court</p> <p>(Report attached)</p>	55 - 60

Item No	Ward/Equal Opportunities	Item Not Open		Page No
12			DATE AND TIME OF NEXT MEETING To note the date and time of the next meeting as Tuesday 4 th August 2009 at 10.00 am	

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Agenda Item 6

Licensing Committee

Thursday, 23rd April, 2009

PRESENT: Councillor D Wilson in the Chair

Councillors T Grayshon, G Hyde,
V Morgan, B Selby, A Castle,
D Hollingsworth and G Wilkinson

53 Declarations of Interest

Councillor A Castle – The Leeds Festival - declared a personal interest as a resident of Thorner which lies close to the Festival site (minute 56 refers)

54 Apologies for Absence

Apologies for absence were received from Councillors Armitage, Dowson, Dunn, R D Feldman and Townsley

55 Minutes

RESOLVED – That the minutes of the meeting held 7 April 2009 be agreed as a correct record

56 The Leeds Festival 2009 - Traffic Management Plan Site Visit and Presentation

Further to minute 49 of the meeting held 7 April 2009 the Committee convened to consider a short report submitted by the Assistant Chief Executive (Corporate Governance) outlining the Committee decision to undertake a site visit in order to view the proposed traffic routes for the Leeds Festival 2009.

The Committee then adjourned to undertake the site visit. Members were joined by Ms H Blake (representative of Festival Republic Ltd) and Mr G Sharp (LCC Highways) for the site visit which included a tour of the proposed Festival traffic routes and particularly concentrated on the routes to be used on the Thursday of the event.

Members then received an informal presentation on the draft TMP made by Mr M Benn, Festival Republic Ltd which covered:

- Red Route (A64) to be employed on the Thursday of the event only. That part of the A64 between the Fox & Grapes public house and the Bramham Interchange (A1M) proposed to be closed eastbound to utilise both westward lanes for incoming Festival goers
- Improvements to be made to the Red Gate access points along the A64, provision of internal routes for drop-off points and provision of additional car parking on Red Route
- Brown Route (A1M A659) to be employed at all times and assessment of the capacity of Brown Route to cope with congestion/stacking of vehicles queuing
- Consultation undertaken with relevant agencies and residents of the key routes

- Positioning and timing of signage to be employed on various routes to the event.
- An outline of contingency plans should congestion or incidents occur on the routes
- Festival Republic Ltd to provide staff at various points along the routes to ensure traffic flow and restrict access to the site as appropriate with support from relevant agencies such as West Yorkshire Police and/or the AA
- Details of the specified routes to be included in every ticket pack; to be available to download to input into SATNAV systems; to be displayed on the Leeds Festival website and included for discussion on various web forums. Additionally LCC's own website to include details plus up to date information daily during the event

The Committee viewed a computer generated model of traffic flows along the designated "Red Route" and "Brown Route" produced by Faber Maunsell, the traffic consultants employed by Festival Leeds Ltd. This took into account the number/type of vehicle attending the Festival in previous years and those making use of the surrounding highways network at all other times and produced what was described as a robust assessment of likely traffic movements to the site at key points such as Hook Moor (A1M/A64)

Mr Benn assured Members the draft TMP as presented had received the support of the relevant traffic and highways authorities. The Committee commented that more emphasis and early notification was required on the proposed partial closure of the A64; the non-availability of local routes and routes previously used by Festival goers and that entry would only be by the Red or Brown routes as designated by Festival Republic Ltd.

Members expressed their thanks to Mr Benn, Ms Blake and Mr Clelland for their presentation and for the information conveyed during the site visit. The Committee welcomed those measures proposed to address the traffic congestion and subsequent problems experienced during the 2008 Festival.

(Councillors Castle and Wilkinson withdrew from the meeting at this point)

The Committee then re-convened the formal meeting and

RESOLVED –

- a) That the representatives of Festival Republic Ltd be thanked for their presentation
- b) That the comments of the Committee having regard to the findings of the site visit and the contents of the presentation be noted
- c) To note the contents of the draft TMP at this stage
- d) To note that the final TMP will form part of the final overall Event Management Plan for the 2009 Leeds Festival which will be presented to the Committee in due course

57 Proposed Date of the Next Meeting

RESOLVED – To note the next Committee meeting will be held at the start of the new Municipal Year and is proposed to be Tuesday 2nd June 2009 at 10.00 am

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Report of the Assistant Chief Executive (Corporate Governance)

Report to the Licensing Committee

Date: 2nd June 2009

Subject: TERMS OF REFERENCE – LICENSING COMMITTEE

Electoral Wards Affected:	Specific Implications For:
All	Equality and Diversity <input type="checkbox"/>
	Community Cohesion <input type="checkbox"/>
	Narrowing the Gap <input type="checkbox"/>

Executive Summary

Under the Licensing Act 2003 and the Gambling Act 2005 the Licensing Committee is authorised to discharge the licensing functions of the licensing Authority. This report sets out the Terms of Reference for the Licensing Committee as agreed at the Annual Meeting of Council on 21st May 2009.

1.0 Purpose Of This Report

1.1 This report is presented to Members in order that they note the agreed Terms of Reference of the Licensing Committee. The Terms of Reference for the Licensing Committee are attached at **Appendix A** of this report and were agreed at the Annual Council meeting on the 21st May 2009.

2.0 Background Information

2.1 The Council is the Licensing Authority under the Licensing Act 2003. (“the 2003 Act”) and the Gambling Act 2005 (the “2005 Act”)

2.2 The Licensing Committee is authorised to discharge the licensing functions of the authority under the two Acts. This discretion does not extend to any licensing function reserved to full Council or a licensing function where full Council has referred a matter to another committee.

2.3 The Licensing Committee is also authorised to delegate functions of the authority to the relevant officers. The Officer Delegation Scheme as previously approved by the Licensing Committee and presented to Annual Council on 21st May 2009 is attached at **Appendix B** for Members reference

2.4 Members attention is also drawn to the Code of Practice for the Determination of Licensing Matters which now incorporates the site visit protocol, attached at **Appendix C** for reference .

3.0 Main Issues

3.1 There are no issues raised in this report . It is for Member's information only.

4.0 Implications For Council Policy And Governance

4.1 There are no issues raised in this report. It is for Member's information only.

5.0 Legal And Resource Implications

5.1 Without a properly constituted Committee with agreed Terms of Reference the Council will be open to challenge.

6.0 Recommendations

6.1 Members of the Licensing Committee are requested to note the Terms of Reference for the Licensing Committee as attached at **Appendix A**.

6.2 Members are requested to note the contents of the current Officer Delegation Scheme as attached in **Appendix B**.

6.3 Members are asked to note the Code of Practice for the Determination of Licensing Matters as attached at **Appendix C**.

The Licensing Committee

With the exception¹ of

- any licensing function under the Licensing Act 2003 (the 2003 Act) or the Gambling Act 2005 (the 2005 Act) reserved to full Council;² or
- any licensing function where full Council has referred a matter to another committee,³

the Licensing Committee is authorised to discharge⁴ the following functions⁵:

1. to discharge the licensing functions of the licensing authority;⁶
2. to discharge any other function of the authority referred to it by full Council;⁷
3. to make recommendations to full Council in connection with the discharge of its functions as licensing authority;⁸ and
4. to receive reports from, and to make recommendations and representations to other committees or bodies as appropriate.⁹

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

² Part 3, Section 2A of the Constitution sets out licensing functions reserved to full Council, as licensing authority under the 2003 Act and under the 2005 Act.

³ Under the provisions of Section 7(5)(a) of the 2003 Act.

⁴ 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.

⁵ "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.

⁶ This includes the power to set fees under Section 212 of the 2005 Act

⁷ 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 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.

Pursuant to this provision on 11 January 2006 Council delegated to the Licensing Committee the power to make a designated public places order in respect of alcohol consumption under the Criminal Justice and Police Act 2001

⁸ Including recommendations arising from the monitoring of the operation and impact of the licensing or Gambling policy by the Licensing Committee.

⁹ 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)).

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Assistant Chief Executive (Corporate Governance)

1. The Assistant Chief Executive (Corporate Governance) is the Monitoring Officer for the Council.
2. The Assistant Chief Executive (Corporate Governance) is deputy Electoral Registration Officer¹.
3. The Assistant Chief Executive (Corporate Governance) is authorised to discharge the following Local Choice Functions which have been assigned to full Council (see Part 3 Section 1 of the Constitution)

(a)	To appoint review boards under the Social Security Act 1998 ²
(b)	To make arrangements for appeals against exclusion of pupils from maintained schools
(c)	To make arrangements for appeals regarding school admissions ³
(d)	To make arrangements for appeals by governing bodies ⁴
(e)	To make arrangements to enable questions to be put at Council meetings on the discharge of the functions of a police authority ⁵

4. Subject to the exceptions listed below, the Assistant Chief Executive (Corporate Governance)⁶ is authorised to discharge the following Council (non-executive) functions:

Licensing and Regulatory:

(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
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¹ The Chief Officer (Legal Licensing and Registration) and the Electoral Services Manager are also appointed as deputy Electoral Services Managers.

² s34 (4) Social Security Act 1998

³ s94 (1), (1A) and (4) School Standards and Framework Act 1998

⁴ s95 (2) School Standards and Framework Act 1998

⁵ s20 Police Act 1998

⁶ The fact that a function has been delegated to the Assistant Chief Executive (Corporate Governance) does not require the Assistant Chief Executive (Corporate Governance) to give the matter his/her personal attention and the Assistant Chief Executive (Corporate Governance) may arrange for such delegation to be exercised by an officer of suitable experience and seniority. However the Assistant Chief Executive (Corporate Governance) remains responsible for any decision taken pursuant to such arrangements.

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

(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 licence sex shops and sex cinemas	The Local Government (Miscellaneous Provisions) Act 1982, Section 2, Schedule 3
(e)	*To license dealers in game and the killing and selling of game	Sections 5, 6, 17, 18 and 21 to 23 of the Game Act 1831; sections 2 to 16 of the Game Licensing Act 1860 section 4 of the customs and Inland Revenue Act 1883, sections 12(3) and 27 of the Local Government Act 1874 and section 213 of the Local Government Act 1972
(f)	*To license scrap yards	Section 1 of the Scrap Metal Dealers Act 1964
(g)	*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)
(h)	*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
(i)	To register motor salvage operators	Part I of the Vehicles (Crime) Act 2001

Functions relating to elections⁷:

(a)	Functions relating to community governance	
i	Duties relating to community governance reviews	Section 79 of the Local Government and Public Involvement in Health Act 2007
ii	Functions relating to community governance petitions.	Sections 80, 83 to 85 of the Local Government and Public Involvement in Health Act 2007
iii	Functions relating to terms of reference of review	Sections 81(4) to (6) of the Local Government and Public Involvement in Health Act 2007
iv	Power to undertake a community governance review.	Section 82 of the Local Government and Public Involvement in Health Act 2007
v	Duties when undertaking review.	Section 93 to 95 of the Local Government and Public Involvement in Health Act 2007
vi	Duty to publicise outcome of review.	Section 96 of the Local Government and Public Involvement in Health Act 2007
vii	Duty to send two copies of order to Secretary of State and Electoral Commission.	Section 98(1) of the Local Government and Public Involvement in Health Act 2007

⁷ Functions relating to making of recommendations under section 87 – 92 of the Local Government and Public Involvement in Health Act 2007 (Item 5 Paragraph EB of Schedule 1 of the Local Authorities (Functions and Responsibilities) (England) Regulations 2000/2853) are reserved to the relevant committee that is responsible for making recommendations to full council.

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

(b)	To dissolve small parish councils	Section 10 of the Local Government Act 1972
(c)	To make orders for grouping parishes, dissolving groups and separating parishes from groups	Section 11 of the Local Government Act 1972
(d)	To make temporary appointments to parish councils	Section 91 of the Local Government Act 1972

Functions relating to changing governance arrangements:

(a)	To consult prior to drawing up proposals ⁸	S33E Local Government Act 2000
(b)	To make arrangements to hold a referendum ⁹	S33K(2) Local Government Act 2000
(c)	To publish a notice if proposals are not approved in referendum	S33K(6) Local Government Act 2000
(d)	To implement new governance arrangements	S33G and S33H Local Government Act 2000
(e)	To comply with any direction from the Secretary of State	S33I Local Government Act 2000

Functions relating to standing orders:

(a)	To make standing orders	Section 106 of, and paragraph 42 of Schedule 12 to the Local Government Act 1972
(b)	To make standing orders as to contracts	Section 135 of the Local Government Act 1972

Exceptions¹⁰:

The Assistant Chief Executive (Corporate Governance) is not authorised to discharge those functions marked *above where objections have been received.

Licensing Functions delegated by Licensing Committee:

<p>Subject to the exceptions listed below, the Assistant Chief Executive (Corporate Governance) is authorised to discharge the licensing functions¹¹ of the licensing authority.</p> <p><u>Exceptions:</u></p> <ul style="list-style-type: none"> • any licensing function¹² reserved to full Council¹³; and • any licensing function where full Council has referred a matter to a committee other than the Licensing Committee¹⁴; and • any licensing function within the terms of reference of the Licensing Sub-committees¹⁵; and 	Licensing Act 2003 and the Gambling Act 2005.
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⁸ Subject to consultation with party Leaders about the consultation plan

⁹ Where the Council has decided to hold a referendum

¹⁰ Under this delegation scheme (council functions). The Licensing and Regulatory Panel may however arrange for the discharge of any of its functions by the Assistant Chief Executive (Corporate Governance) - (Section 101(2) Local Government Act 1972.

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| <ul style="list-style-type: none">• to object when the Authority is consultee and not the relevant authority considering an application under the 2003 Act | |
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Appointments to Committees Boards and Panels

To appoint members to vacancies during the period between the local elections and the Annual Council meeting, in consultation with appropriate whips, in order to secure that meetings necessary to be held during that period can proceed with adequate and appropriate membership levels.

¹¹ "Licensing functions" means functions under the 2003 Act and the 2005 Act.

¹² "Licensing functions" means functions under the 2003 Act and the 2005 Act.

¹³ Part 3, Section 2A of the Constitution sets out licensing functions reserved to full Council, as licensing authority under the 2003 Act.

¹⁴ Under the provisions of Section 7(5)(a) of the 2003 Act

¹⁵ Except where a Licensing sub-committee has arranged for the discharge of any of their functions to an Officer

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 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 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

- 6.1.1 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 judgment of the public interest.

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 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 persons 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.

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 Deputy Executive 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/predetermined).

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 TRAINING

13.1 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.

14.0 OFFICERS

- 14.1 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.
- 14.2 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.
- 14.3 All legal advice should be given or repeated in open session for all parties to be made aware of
- 14.4 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.
- 14.5 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

15.0 RELATIONSHIP WITH THE OFFICER CODE OF CONDUCT

- 15.1 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.

- 15.2 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:-

- 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 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
 - 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

- 15.3 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.

- 15.4 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.

16.0 PROCEDURES AT LICENSING HEARINGS

- 16.1 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.

17.0 MONITORING AND REVIEW

- 17.1 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.
- 17.2 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

18.0 BREACHES OF THE CODE OF PRACTICE

- 18.1 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.

- 18.2 Failure to comply with the Members Code of Conduct may lead to a complaint to the Standards Committee – Assessment Sub-Committee 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.
- 18.3 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.
- 18.4 Allegations of breach of this Licensing Code by Officers will be referred to the relevant Director for consideration under the Council's Disciplinary Procedure.

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<p>PROTOCOL FOR LICENSING SITE VISITS BY THE LICENSING COMMITTEE; LICENSING SUB COMMITTEES AND LICENSING AND REGULATORY PANEL</p>

1.0 BACKGROUND

- 1.1 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.
- 1.2 They are not to be used to determine a proposal prior to a hearing.
- 1.3 Due to the tight timescales involved in licensing decisions, site visits must be viewed as an exception rather than the rule
- 1.4 When undertaking a site visit Members should have regard to the following paragraphs of the Code of Practice for Determining Licensing Matters
 - ❖ Paragraph 6 Fettering Discretion in the Licensing Process
 - ❖ Paragraph 11 Contact with Applicants/Objectors

2.0 THIS SECTION APPLIES TO MEMBERS REQUESTS FOR A SITE VISIT

- 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 the Principal Licensing or Gambling 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.
- 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.
- 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 will be re-convened at a later date
- In the case of a meeting of the Licensing Committee or the Licensing and Regulatory Panel, a majority of the Members present must be in favour of a site visit
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

- **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.
- **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
- ❖ There are significant policy or precedent implications and specific site factors need to be carefully addressed or
- ❖ 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

3.0 THIS SECTION APPLIES TO SITE VISITS AS PROPOSED BY OFFICERS

- The Principal Licensing or Gambling 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.
- 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
- 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 day.
- In such cases it is usual for the site visit 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.
- Having done this, officers will seek confirmation from the Members able to attend that they are happy to undertake the propose site visit

4.0 ON THE SITE VISIT

- **DO** ensure that any information gained from the site visit is reported back at the subsequent hearing.
- **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

- **DO** ask the officers at the site visit questions or seek clarification from them on matters which are relevant to the site inspection.
- **DO** be prepared to listen to and ask questions of fact from the Applicant or other parties
- **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.
- **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.
- **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

- **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.
- **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.

- **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.

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Report of the Assistant Chief Executive (Corporate Governance)

Report to the Licensing Committee

Date: 2nd June 2009

Subject: CREATION OF THE LICENSING SUB COMMITTEES AND TERMS OF REFERENCE

Electoral Wards Affected:

All

Specific Implications For:

Equality and Diversity

Community Cohesion

Narrowing the Gap

Executive Summary

The Licensing Committee is, with specified exceptions, authorised to discharge licensing functions. On 21st May 2009 Annual Council approved Terms of Reference for the Licensing sub committees which are appended for Members information. Members are asked to appoint the sub committees for the 2009/10 Municipal Year.

1.0 Purpose Of This Report

- 1.1 To note the Terms of Reference of the Licensing sub committees
- 1.2 To appoint Licensing sub-committees for the 2009/10 Municipal Year

2.0 Background Information

- 2.1 Members will note the Terms of Reference for the Licensing Committee as set out in the report of the Assistant Chief Executive (Corporate Governance) earlier on this agenda.

In accordance with both the Licensing Act 2003 (the "2003 Act") and the Gambling Act 2005 (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 referred to its Licensing Committee.

2.2 Legislation.

Section 101 of the Local Government Act 1972 sets out the arrangements for the discharge of functions by local authorities. Section 101 is, however, amended by the 2003 Act, to dis-apply these provisions in respect of any functions of the Licensing Authority.

Instead, the 2003 Act specifically provides that a Licensing Committee may establish one or more sub-committees consisting of 3 Members of the Committee (section 9). It also provides that regulations may make provisions about the proceedings of Licensing Committees, and their sub-committees (including the validity of proceedings and the quorum for meetings).

Subject to any such regulations the Licensing Committee may regulate its own procedure and that of its sub committees (section 9 (3) of the 2003 Act).

The 2003 Act also provides that the Licensing Committee may arrange for the discharge exercisable by it –

- (a) by a sub- committee established by it, or
- (b) an officer of the licensing authority

Where arrangements are made for a sub committee to discharge functions, that sub-committee may in turn arrange for the discharge of the function by an officer of the licensing authority.

The power of the sub-committee to delegate to officers are subject to any direction given by the Licensing Committee to the sub- committee (section 10 (5) of the 2003 Act).

The arrangements may provider for more than one sub-committee or officer to discharge the same function concurrently (Section 10(3)).

There are limitations to the power to delegate in relation to a number of different functions. Generally where representation or objections have been made in respect of particular applications decisions cannot be delegated to an officer. These limitations are set out in Section 10(4) of the 2003 Act.

3.0 **Main Issues**

3.1 Sub committee Terms of Reference

3.2 In April 2007 the Licensing Committee considered the impact of the implementation of the Gambling Act 2005 on the work of the Authority. It was agreed that the implementation of the 2005 Act would be dealt with through the Licensing Committee and its sub committees in a similar fashion to the 2003 Act.

3.3 The Licensing Authority has approved Terms of Reference as set out at **Appendix 1** to this report. Essentially this has enables the sub committees to conduct the bulk of the hearings required under both the 2003 and 2005 Acts.

3.4 Members will recall that sub committees do not deal with large scale or outdoor events like the Leeds Festival. Such events raise serious issues of public safety,

crowd control and public nuisance. As such it was felt they should be the subject of Consideration by the full Licensing Committee.

3.5 Sub committees will still deal with smaller outdoor events such as the Garforth Arts Festival. The sub committees will also deal with all outdoor events applications such as those made by Parks and Countryside to licence Council Parks. These applications do not raise the same issues as large scale outdoors events.

3.6 Sub committees are also empowered to deal with Reviews of Premises Licences.

4.0 Sub Committees

4.1 Appointment of sub-committees.

As referred to above, the Licensing Committee may establish one or more sub-committees consisting of 3 Members of the committee. Previously 5 sub-committees were established, each with three Members. It is again proposed that 5 sub-committees are established. Due to changes in the Membership of the Licensing Committee it is now necessary to re-appoint the sub committees.

4.2 Membership

The membership of the full Licensing Committee is not yet known. As such the memberships of each sub-committee as set out in **Appendix 2** to this report is purely a proposal.

It is hoped that by the time of the Committee meeting on 2nd June 2009 all nominees will be known and the memberships of the sub-committees can be completed. Previously, membership has been allocated to each sub-committee alphabetically by surname given that the rules on political balance do not apply, however it should be noted that during 2006/07, 2007/08 and 2008/09 the three Members for Killingbeck and Seacroft were split amongst the sub committees.

4.3 Substitutes.

The approved Licensing Procedure Rules provide that the 15 Members of the Licensing Committee form a pool for the purposes of substitutions to the sub-committees. Therefore any Member of the Licensing Committee may substitute for any other Member of the Licensing Committee at any meeting of a sub-committee.

4.4 Appointment of Chairs

Chairs are not appointed to each sub-committee, but instead, the Members present at each meeting of a sub-committee appoint the Chair from their numbers.

4.5 Quorum

The quorum for meetings of the Licensing Committee is five, and for the sub-committees, three.

However, on the 5th June 2007 Licensing Committee did approve that, in exceptional circumstances on the day of a sub committee hearing and after all avenues to seek a third member have been exhausted, a quorum of 2 will be permissible.

5.0 Implications for Council Policy and Governance

The appointment of sub committees to carry out the licensing functions within their terms of reference is consistent with good corporate governance.

6.0 Legal and Resource Implications

6.1 This report raises no legal or resource implications.

7.0 RECOMMENDATIONS

Members are asked to note the contents of this report and:

(a) establish 5 Licensing Sub-Committees; noting the arrangements for the membership as set out in Para.4 above

(b) note the terms of reference for the sub-committees set out as Appendix 1 to this report;

(c) approve the membership of each sub-committee as set out in Appendix 2 to this report

Licensing Sub-Committees

The Licensing Sub-Committees are authorised to discharge¹ the following functions² concurrently³:

1. functions⁴ under:

- (a) section 18(3) of the 2003 Act (determination of application for premises licences where representations have been made);
- (b) section 31(3) of the 2003 Act (determination of application for provisional statements where representations have been made);
- (c) section 35(3) of the 2003 Act (determination of application for variation of premises licence where representations have been made);
- (d) section 39(3) of the 2003 Act (determination of application to vary designated premises supervisors following police objection);
- (e) section 44(5) of the 2003 Act (determination of application for transfer of premises licences following police objection);
- (f) section 48(3) of the 2003 Act (consideration of police objection made to an interim authority notice);
- (g) section 52(3) of the 2003 Act (determination of an application for review of a premises licence);
- (h) section 72(3) of the 2003 Act (determination of application for club premises certificates where relevant representations have been made);
- (i) section 85(3) of the 2003 Act (determination of application to vary club premises certificates where representations have been made);
- (j) section 88(3) of the 2003 Act (determination of application for review of a club premises certificate);
- (k) section 105(2)(decision to give counter notice following police objection to a temporary event notice);
- (l) section 120(7) of the 2003 Act (determination of application for grant of personal licence following police objection);
- (m) section 121(6) of the 2003 Act (determination of application for renewal of personal licences following police objection);
- (n) section 124(4) of the 2003 Act (revocation of licence where convictions come to light after grant or renewal of personal licences);
- (o) section 20(3) of the 2003 Act (making recommendations for restricting the admission of children to the exhibition of any film)
- (p) section 159 of the 2005 Act (determination of application for premises licences where representations have been made)⁵

¹ With the exception of those functions set out in paragraphs 1 and 2 above, 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)).

² "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.

³ Section 10(3) of the 2003 Act.

⁴ Including agreeing whether a hearing is necessary.

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

Council Committees' Terms of Reference

- (q) section 187 of the 2005 Act (determination of application for variation of premises licence where representations have been made);⁵
 - (r) section 188 of the 2005 Act (determination of application for transfer of premises licences following objection);⁶
 - (s) section 195 of the 2005 Act (consideration of objection made to an application for reinstatement);⁶
 - (t) section 203 of the 2005 Act (determination of review of a premises licence);
 - (u) section 204 of the 2005 Act (determination of application for provisional statements where representations have been made);⁶
 - (v) section 224 of the 2005 Act (decision to give counter notice following an objection to a temporary use notice);
 - (w) schedule 10 of the 2005 Act (consideration of representations in relation to the proposed rejection of a family entertainment centre permit);
 - (x) schedule 14 of the 2005 Act (consideration of representations in relation to the proposed rejection of a prize gaming permit);
 - (y) schedule 13 of the 2005 Act (consideration of representations in relation to the proposed rejection of an alcohol licensed premises gaming machine permit);
 - (z) schedule 12 of the 2005 Act (consideration of representations in relation to the proposed rejection of a club gaming permit or club machine permit);
2. 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.

A Sub Committee is not authorised to discharge functions under paragraph 1 (p) to (u) above where the application relates to a licence for a large casino pursuant to s174 of the 2005 Act.

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

LICENSING COMMITTEE 09/10**A**

S ARMITAGE (Lab)
A CASTLE (Cons)
M DOBSON (Lab)

B

J DUNN (Lab)
R D FELDMAN (Cons)
T GRAYSHON (MBI)

C

T HANLEY (Lab)
D HOLLINGSWORTH (Lib Dem)
V MORGAN (Lab)

D

G HYDE (Lab)
L RHODES-CLAYTON (Lib Dem)
C TOWNSLEY (Lib Dem)

E

B SELBY (Lab)
G WILKINSON (Cons)
D WILSON (Lib Dem)

**LICENSING COMMITTEE 2009 - 2010
SUB COMMITTEE MEMBERSHIP**

A	SUZI ARMITAGE	LAB	Crossgates & Whinmoor
	ANN CASTLE	CONS	Harewood
	MARK DOBSON	LAB	Garforth & Swillington
B	JACK DUNN	LAB	Ardsley & Robin Hood
	RONALD FELDMAN	CONS	Alwoodley
	TERRY GRAYSHON	MBI	Morley South
C	TED HANLEY	LAB	Bramley & Stanningley
	DAVID HOLLINGSWORTH	LIB DEM	Burmantofts & Richmond Hill
	VONNIE MORGAN	LAB	Killingbeck & Seacroft
D	GRAHAM HYDE	LAB	Killingbeck & Seacroft
	LINDA RHODES-CLAYTON	LIB DEM	Hyde Park & Woodhouse
	CHRIS TOWNSLEY	LIB DEM	Horsforth
E	BRIAN SELBY	LAB	Killingbeck & Seacroft
	GERALD WILKINSON	CONS	Wetherby
	DONALD WILSON	LIB DEM	Rothwell



Report of the Assistant Chief Executive (Corporate Governance)

Report to the Licensing Committee

Date: 2nd June 2009

Subject: Licensing Procedure Rules

<p>Electoral Wards Affected:</p> <p>All</p>	<p>Specific Implications For:</p> <p>Equality and Diversity <input type="checkbox"/></p> <p>Community Cohesion <input type="checkbox"/></p> <p>Narrowing the Gap <input type="checkbox"/></p>
----------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

Executive Summary

This report sets out the proposed Rules of Procedure to be utilised in support of the work of the Licensing Committee and the Licensing Sub Committees under the provisions of both the Licensing Act 2003 and the Gambling Act 2005. It is necessary for the Licensing Committee to re-affirm the Rules of Procedure each time the Committee is appointed. The rules are substantially the same as those approved previously save that the quorum has been altered to reflect the amendment previously approved to allow two Member sub committees in exceptional circumstance

1.0 Purpose Of This Report

1.1 To put forward for Members' consideration, draft procedure rules relating to hearings and other meetings of the Licensing Committee and Sub Committees and to seek the approval of Members to the adoption of these to govern committee procedure under the Licensing Act 2003 (the "2003 Act") and the Gambling Act 2005 (the "2005 Act")

2.0 Background Information

2.1 Under the Licensing Act 2003 Leeds City Council was appointed as the licensing authority for the Leeds district. With the exception of certain functions (most notably the development of a licensing policy), the Act referred all matters relating to the discharge of licensing functions to a licensing committee, which had to be created and which must discharge those functions on behalf of the authority.

2.2 Section 9(2) of the 2003 Act provides that the Secretary of State may issue regulations governing

- The proceedings of licensing committees and their sub-committees (including provision about the validity of proceedings and the quorum for meetings)
- Public access to the meetings of those committees and sub-committees
- The publicity to be given to those meetings
- The agendas and records to be produced in respect of those meetings
- Public access to such agenda and records and other information about those meetings

Subject to the regulations, each licensing committee may regulate its own procedure and that of its sub-committees.

- 2.3 On 12 January 2005 the Secretary of State issued regulations under Section 9(2) of the 2003 Act¹. In respect of licensing matters, although these only apply to the procedure to be followed in respect of hearings as defined in column 1 of Schedule 1 to the Regulations. Effectively this relates to the normal business of Licensing Sub Committees such as determining applications for premises licences, variations and transfers of licences and reviews.
- 2.4 On 2 March 2005 the Licensing Committee approved two sets of procedures rules under the 2003 Act and the associated regulations. The first set of rules were referred to as the Licensing Committee General Procedure Rules and the second as the Licensing Committee Hearings Procedure Rules. The second mirrored the Regulations issued by the Secretary of State referred to in paragraph 2.3 above.
- 2.5 Under the Gambling Act 2005 the functions of the council as licensing authority for gambling are also automatically referred to the Licensing Committee created under the 2003 Act. Section 154(5) of the 2005 Act ensures that the provisions of section 9 of the 2003 Act apply to the proceedings of Licensing Committee and Sub Committees when exercising functions under part 8 of the 2003 Act (premises licensing(. The Secretary of State can therefore use this provision to make regulations that may apply to both licensing and gambling functions, or she may make separate regulations for each Act.
- 2.6.1 On 27 January 2007 the Secretary of State issued regulations in respect of premises licensing under the 2005 Act². These regulations apply only to the exercise of functions in respect of premises licensing and provisional statements under the 2005 Act. Therefore there are two separate sets of regulations which apply to the conduct of Licensing Committee and Sub Committees dependant upon which functions are being exercised.
- 2.7. On 3 April 2007 the Committee considered whether the provisions of the Gambling Regulations could be incorporated into the then existing Procedure Rules and concluded that they could not. The Committee then considered whether two full sets of rules should be drafted in relation to the gambling and licensing functions and agreed instead that a revised set of Rules be approved which cross refer to the two sets of regulations without setting out the full provisions of either.

3.0 Main Issues

- 3.1 One set of Licensing Committee Procedure Rules, which apply to both the 2003 Act and the 2005 Act and which cross refer to the relevant regulations were approved

¹ Licensing Act 2003 (Hearings) Regulations 2005 SI 2005/44

² The Gambling Act 2005 (Proceedings of Licensing Committees and Sub Committees) (Premises Licence and Provisional Statements) (England and Wales) Regulations 2007 SI 2007/173

by the Licensing Committee in March 2007. On 5 June 2007 the Committee considered and approved an amendment to these rules to permit two Members Sub Committees in exceptional cases (Minute 11(c)refers). The Rules proposed at **Appendix 1** to this report are substantially the same as those approved in 2008

- 3.2 A Simple information Sheet has been drafted and is available to members of the public at hearing s and is attached at Appendix 2

4.0 Implications for Council Policy and Governance

The Licensing Committee must operate within the relevant statutory provisions to ensure that it's decisions are valid and can withstand challenge.

5.0 Legal and Resource Implications

- 5.1 Failure to adopt and adhere to relevant procedure rules might render decision susceptible to challenge.

- 5.2 There are no resource implications in adopting the rules.

6.0 Conclusions

- 6.1 That the updated Rules of Procedure should be approved.

7.0 Recommendations

That Members approve the Licensing Procedure Rules as set out as Appendix 1 to this report and note the contents of the associated information sheets as attached at Appendix 2

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LICENSING 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 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 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 (Hearings) Regulations 2005 shall apply to any hearings conducted under the provisions of the Licensing Act 2003¹ 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.

¹ 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 provide 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

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 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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COMMITTEE PROCESS

LICENSING ACT 2003	GAMBLING ACT 2005
<p>Time within which hearing is to be held:-</p> <ul style="list-style-type: none"> - Set out in Schedule 1 – generally 20 working days starting the day after the end of the period for representations. 	<p>Time within which hearing is to be held:-</p> <ul style="list-style-type: none"> - As soon as reasonably practicable after the end of the period for representations
<p>Hearings longer than 1 day to be held on consecutive days.</p>	<p>Hearings longer than 1 day to be held on consecutive days.</p>
<p>Notice of hearing:-</p> <ul style="list-style-type: none"> - Generally 10 working days - Shorter periods for tens, interim authority notice (2 days) and review of closure order (5 days) 	<p>Notice of hearing:-</p> <ul style="list-style-type: none"> - Sent so it is received no later than 10 working days before the first day of the hearing
<p>Notice to be given to:-</p> <ul style="list-style-type: none"> - Licence holder/applicant and those who made reps. 	<p>Notice to be given to:-</p> <ul style="list-style-type: none"> - Licence holder, applicant and those who made reps.
<p>Information to be given with notice:-</p> <ul style="list-style-type: none"> - Rights of the parties - Consequences of failing to attend - Procedure at hearing - Points requiring clarification - Copies of relevant reps 	<p>Information to be given with notice:-</p> <ul style="list-style-type: none"> - Rights of the parties under reg 8 and 9. - Consequences of failure to attend. - Procedure at the hearing. - Time limit (if any) for informing that the party:- <ul style="list-style-type: none"> • Wishes to attend. • Wishes to be represented. • Will be calling witnesses. • Wishes to withdraw representations. • Is content to have the matter determined without a hearing. - Points requiring clarification - Copy documents to licence holder/applicant - Right to request documents to those making reps.

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LICENSING ACT	GAMBLING ACT
<p>Action following notice of hearing:-</p> <ul style="list-style-type: none"> - Parties to return counter notice to include:- <ul style="list-style-type: none"> • Request for permission to call witnesses • Whether he will attend/be represented • Whether he considers a hearing to be necessary <p>Dispensing with a hearing:-</p> <p>All parties give notice that they consider a hearing is unnecessary and the Authority agrees.</p> <p>Notice that hearing has been dispensed with must be given forthwith</p> <p>Withdrawal of representations:-</p> <ul style="list-style-type: none"> - In writing up to 24 hours before hearing. - Orally at the hearing. <p>Power to extend time:-</p> <ul style="list-style-type: none"> - Any time limit can be extended unless it relates to a review following closure order. - If time limit is extended a notice to that effect must be given forthwith 	<p>Dispensing with a hearing:-</p> <p>All parties notify the Authority that they consent to matter being dispensed with.</p> <p>Notice that hearing has been dispensed with must be given as soon as reasonably practicable.</p> <p>Power to extend time:-</p> <ul style="list-style-type: none"> - Applies only to time for determining an application or review following a hearing.

HEARING PROCEDURE

	LICENSING ACT	GAMBLING ACT
<p>Postponing/adjourning the hearing:-</p> <ul style="list-style-type: none"> - Where it is considered necessary the hearing may be adjourned to a specified date. - Notice of adjournment must be given forthwith. 	<p>Postponing/adjourning the hearing:-</p> <ul style="list-style-type: none"> - If necessary to consider any information or documents. - Or if necessary having regard to the ability of any party, representative or witness to attend. - Notice of adjournment must be given as soon as reasonably practicable. 	
<p>Hearings in public:-</p> <ul style="list-style-type: none"> - General rule that the hearing must be in public. - May exclude the public if the public interest in excluding the public outweighs the public interest in having a public hearing. - A party or representative may be regarded as a member of the public. 	<p>Hearings in public:-</p> <ul style="list-style-type: none"> - General rule that the hearing must be in public. - May exclude the public if necessary in the circumstances having regard to:- <ul style="list-style-type: none"> • Any unfairness that is likely to result to a party from a public hearing • The need to protect as far as possible the commercial or other legitimate interests of a party. 	
<p>Failure to attend:-</p> <ul style="list-style-type: none"> - If a party has indicated they will not attend the hearing may proceed in his absence. - If a party has not notified the Authority it may either adjourn the hearing or proceed in his absence. - If the hearing proceeds in absence the party's application, representation or notice must be considered. 	<p>Failure to attend:-</p> <ul style="list-style-type: none"> - If a party has indicated they will not attend the hearing may proceed in his absence. - If a party has failed to notify the Authority whether he intends to attend the hearing may proceed in his absence. - If a party has left the hearing in circumstances where the committee reasonably concludes he does not intend to participate further the hearing may proceed in his absence. - If a party has said they intend to attend but does not the Authority may adjourn if it is in the public interest to do so or proceed in his absence. - If the hearing proceed in absence the party's application or representation must be considered. 	

LICENSING ACT	GAMBLING ACT
<p>Representation at the hearing:- A party may attend and be assisted or represented by any person whether or not they are legally represented (subject to exclusion of the public or disruptive persons).</p>	<p>Representation at the hearing:- A party may attend and be assisted or represented by any person whether or not they are legally represented (subject to exclusion of the public or disruptive persons).</p>
<p>Rights of a party:- A party has a right to address the committee. A party has a right to give further information on any matter where clarification has been requested.</p>	<p>Rights of a party:- A party has a right to address the committee. A party has a right to give further information on any matter where clarification has been requested.</p>
<p>Calling Witnesses:- If given permission by the committee following a request in a party's notice of intention</p>	<p>Calling Witnesses:- Right to call witnesses to give evidence on a matter relevant to the application or representation.</p>
<p>Questions of other parties:- Only if given permission to do so by the committee.</p>	<p>Questions of other parties:- Party must be allowed to question any other party or representative on any relevant matter where the committee considers it appropriate to do so.</p>
<p>Documents in support:- May be considered where produced before the hearing or (with the consent of all parties) at the hearing.</p>	<p>Documents in support:- Must be considered if produced before the hearing or at the hearing with the consent of all those in attendance.</p>
<p>Time Limits:- All parties must have equal maximum periods of time to exercise their rights.</p>	<p>Time Limits:- No provision.</p>
<p>Disruptive Parties:- May be required to leave and not permitted to return or may impose conditions on their return. But such a person may before the end of the hearing make submissions in writing.</p>	<p>Disruptive Parties:- May be required to leave and not permitted to return or may impose conditions on their return. But such a person may before the end of the hearing make submissions in writing.</p>

Licensing Committee

Procedure adopted under the Licensing Act 2003



Leeds
CITY COUNCIL

Rights of a party at the hearing

If you have made an application or representation within the 28 day time limit you are a party to the hearing.

As a party you have the right

- To address the Committee
- To give further information on any matter which requires clarification

Documents

Additional documents may only be tabled at the hearing with the consent of all parties

Calling witnesses

You may only call witnesses where the Committee has given you permission to do so. You will need to explain why you want to call the witness and why the Committee will find their evidence useful in making the decision.

Cross Examination

Is not usually permitted although you can ask the chair of the Committee to consider and ask any questions you feel are necessary

Order of Speeches (time limits can be imposed – see below)

On an application

- Those objecting address the Committee first. Responsible Authorities (e.g. the police) usually start, Residents address the Committee second
- Those making the application address the Committee last

On a Review

- The party requesting the review address the Committee first
- Those making representations after the review request go second
- The licence holder goes last

There is no right to open the case (all papers have been circulated and read)

Summing up is not generally allowed.

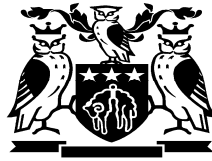
Time Limits

The Committee can impose a time limit on presentations. This must be the same time limit for all parties

Members can ask questions after each presentation. This does not form part of the time allowed.

Licensing Committee

Procedure adopted under the Gambling Act 2005



Leeds
CITY COUNCIL

Rights of a party at the hearing

If you have made an application or representation within the 28 day time limit you are a party to the hearing.

As a party you have the right

- To address the Committee
- To give further information on any matter which requires clarification
- To call witnesses on a matter relevant to the application or representation
- To question any other party or representative on a relevant matter IF THE COMMITTEE CONSIDERS IT APPROPRIATE

Documents

Additional documents may only be tabled at the hearing with the consent of all parties

Cross Examination

Is not usually permitted but you can ask permission from the Chair of the Committee to ask questions (see parties rights above)

Order of Speeches

On an application

- Those objecting address the Committee first. Responsible Authorities (e.g. the police) usually start, Residents address the Committee second
- Those making the application address the Committee last

On a Review

- The party requesting the review address the committee first
- Those making representations after the review request go second
- The licence holder goes last

There is no right to open the case (all papers have been circulated and read)

Summing up is not generally allowed.



Report of the Assistant Chief Executive (Corporate Governance)

Licensing Committee

Date: 2nd June 2009

Subject: The Policing and Crime Bill

Electoral Wards Affected:

All

Specific Implications For:

Ethnic minorities

Women

Disabled people

Executive Summary

This report advises the Licensing Committee of the main proposals concerning the regulation of licensed premises in the Policing and Crime Bill.

1.0 Purpose of this Report

- 1.1 This report informs Members of the provisions of the Policing and Crime Bill, and in particular draws the attention of Members to those proposals which impact on the regulation of licensed premises.
- 1.2 Members are invited to respond to the Home Office consultation on a proposed code of practice for alcohol retailers ("the Code").

2.0 Background Information

- 2.1 In December 2008 the government published the Policing and Crime Bill ("the Bill") The Bill aims to increase the effectiveness and public accountability of policing. The Bill also contains provisions relating to the regulation of alcohol licensing and sex establishments.
- 2.2 The Bill intends to introduce the following provisions for alcohol licensing:
- a) A statutory Code of Practice on the supply of alcohol;
 - b) Mandatory licensing conditions;
 - c) Discretionary local licensing conditions that can applied to groups of two or more premises imposed by a local authority; and
 - d) A requirement for the display alcohol unit content and health related information at the point of sale.

- 2.3 The Bill also aims to tighten the regulation of lap dancing establishments. It is proposed that the statutory definition of “sex establishments” will now include lap dancing establishments and that they will not be classified as regulated entertainment under the Licensing Act 2003. The Bill proposes these establishments are to be called “sex encounter venues” and will be licensed by local authorities.
- 2.4 Local authorities will be permitted to grant licences for lap dancing establishments and impose conditions. A local authority will be able to restrict the number of licensed lap dancing establishments within its area. Members will recall the licensing of sex establishments is matter for Licensing and Regulatory Panel.
- 2.5 The Bill is currently being debated in the House of Lords. It is unclear at this stage when the bill will be made law. The Code is subject to a public consultation which runs from the 13th May 2009 to the 5th August 2009. Licensing authorities have been invited to respond to this consultation. The consultation response forms are attached to this report at **Appendix 1**.

3.0 Main Issues

- 3.1 Central government recognises that there is a need for some alcohol retailers to raise standards in how licensed premises operate. The Bill contains provisions for a new code of practice to those who supply alcohol. The main aim of the Code is to raise standards in the alcohol industry by addressing those practices that are seen to encourage irresponsible drinking. The Code will be broken down into four distinct constituent parts.
- Mandatory conditions introduced by the Secretary of State.
 - Discretionary local licensing conditions
 - Point-of-sale alcohol unit content and health information
 - Guidance.

Members are invited to consider **Appendix 2** to this report which succinctly summarises the proposed Code.

3.2. Mandatory conditions.

Under the Bill the Secretary for State will have the ability to apply mandatory conditions to all existing premises which hold a premises licence or club premises certificate which allow the sale or supply of alcohol. The same will also be true of licences and certificates granted after the Bill becomes law. The Secretary will also have the discretion to designate which premises these conditions will apply to or exclude certain premises from the mandatory conditions regime.

Once the Bill becomes law the Secretary of State will set out what the conditions will be, which premises the conditions will apply to and when they will take affect. The mandatory conditions will therefore be imposed by way of an Order sometime after the Bill becomes law. The mandatory conditions will be retrospective.

The Home office has prepared a proposed list of mandatory conditions which are attached to this report at **Appendix 3**. Members will note from this document the Home Office believes these proposed conditions will address industry practices which encourage or condone irresponsible drinking.

These proposed conditions are subject to the consultation exercise. The Secretary State will have regard to the consultation responses when making the final decision on the composition of the pool of mandatory conditions.

3.2 Discretionary local licensing conditions.

The Bill proposes that local authorities should have the ability to impose conditions on groups of two or more premises at the same time, where the licensing authority is satisfied it is necessary and proportionate to do so. In reaching this conclusion the licensing authority will be expected to follow a statutory procedure set by the Secretary of State. An illustration of how this procedure may look is attached at this report at **Appendix 4**.

3.3 Under the Bill licensing authorities will be able propose the imposition of conditions in this manner after concluding that:

- There has been nuisance to members of the public, or a section of the public, or disorder, on or near the premises;
- The nuisance or disorder is associated with the consumption of alcohol on the premises or supplied by the premises;
- There is likely to be a repetition of nuisance or disorder that is so associated;
- It is appropriate to impose the conditions for the purposes of mitigating or preventing the nuisance or disorder.

3.4 These discretionary conditions will be drawn from a pool of conditions to be set by the Secretary Of State. Again this list is currently subject to the same consultation exercise as the proposed mandatory conditions. The proposed list of conditions is attached at **appendix 5**.

3.5 Under the proposals licensing authorities can be more proactive and initiate the imposing of conditions to address groups of existing licensed premises, undermining the licensing objectives in a particular locality. Their discretion in imposing the local conditions will not be based on representations received made after an application for a new licence or a variation. The Bill also provides that responsible authorities can invite the licensing authority to consider imposing the conditions.

3.6 Point-of-sale alcohol unit content and health information

Under the Bill there are proposal to supply information to drinkers about the alcohol content of drinks and the health risks of excessive and binge drinking. These proposals are summarised in Appendix 1 will be enforced by regulations issued under the Food Safety Act 1990 rather than the Licensing Act 2003.

3.7 Statutory Guidance.

Central Government intends to issue statutory on the proposal in the Bill once they become law. This will certainly mean that the section 182 Guidance that Members are familiar with will be revised. At the appropriate time Officers will draw any revisions made to Members of the Licensing Committee in the most appropriate manner.

3.8 This guidance is likely to set out central government's expectation that licensing authorities adopt the "yellow card/red card" approach when considering breaches of the proposed conditions.

3.9 Responsible authorities will be expected to review premises that breach these conditions. Responsible authorities will be expected to seek a robust package of conditions to prevent further breaches. The premises is essentially given a "yellow card" and put on probation. Should the premises continue operate in a manner that undermines the licensing objectives, then it will reviewed again. If the licensing authority is satisfied there has been a continued failure to promote the licensing objectives, the premises will be expected to have its licence revoked. The revocation of the licence being the "red card."

4.0 Implications for Council Policy and Governance

4.1 The measures contained the Bill remain proposals subject to a public consultation and the scrutiny of Parliament. There are no implications for Council Policy until such proposals become law.

5.0 Legal and Resource Implications

5.1 No significant resource implications identified.

6.0 Recommendations

6.1 Members are requested to:

6.2 Note the contents of this report and the terms of the consultation on the Code.

6.3 Appraise Officers of their response to the consultation and ask that Officers draft a formal response to the consultation.

6.4 That the draft response be cleared by the Chair of the Committee before the consultation ends.



REPORT OF THE ASSISTANT CHIEF EXECUTIVE (CORPORATE GOVERNANCE)

TO: LICENSING COMMITTEE

DATE: 2 JUNE 2009

SUBJECT: IMPLICATIONS OF THE RECENT CASE OF R (ON THE APPLICATION OF BRISTOL CITY COUNCIL) V BRISTOL MAGISTRATES COURT

Electoral wards affected:

All

Specific implications for:

Ethnic minorities

Women

Disabled people

Narrowing the gap

Executive Summary

1. This report advises Members of the implications of the recent case in the High Court of Justice. In that case, the Bristol City Council applied for the Judicial Review of a decision of the Bristol Magistrates Court in respect of the grant of a Premises Licence under the provisions of the Licensing Act 2003.
2. In that case the High Court decided that:-
 - Conditions should not be imposed on a Premises Licence which are adequately dealt with in other legislation;
 - Matters in the Operating Schedule are not automatically included in any Premises Licence which is granted. This will apply whether or not representations are made.
 - The Licensing Authority has to be sure that it is necessary to impose any conditions in order to promote the licensing objectives, and in order to do this must consider each condition individually.
3. This case raises implications for how hearings are conducted.

1.0 Purpose of this report

- 1.1 The purpose of this report is to advise Members of the implications of the above case, with particular reference to the way in which this Licensing Authority carries out its functions under the Licensing Act 2003.

2.0 Background information

2.1 The Application

On 5 July 2007, Somerfield Stores Ltd applied to the Bristol City Council for a Premises Licence for one of their stores, where they also operate a petrol filling station. They applied for permission to sell alcohol off the premises 24 hours a day, 7 days a week, and to provide late night refreshment indoors and outdoors between 1.00 pm and 5.00 am, 7 days a week. As relevant representations were received, the Council's Licensing Sub-Committee held a hearing into the application and decided on 29 August 2007 to impose a number of conditions on the Premises Licence, which they granted.

2.2 The Magistrates' Decision

Somerfield appealed to the Magistrates Court and they allowed their appeal in relation to five of the conditions imposed, and decided that they should be granted a licence without those conditions.

2.3 The conditions removed by the Magistrates Court were as follows:

- 2.3.1 Noise from ventilation, refrigeration or air conditioning plant or equipment shall not cause nuisance to the occupants of any properties in the vicinity.
- 2.3.2 All gangways, passages, staircases and exit ways shall at all times be kept entirely free from chairs or any other obstructions, and from any article or substance which may cause a person to slip, trip or fall.
- 2.3.3 The floor covering shall be secured so as not to ruck up or cause obstruction. Mats more than 1cm thick shall be sunk to floor level unless of rubber with wide bevelled edges.
- 2.3.4 The floors of all gangways, lobbies, corridors, passages and other exit routes and the tread of all steps and stairways shall be non-slippery and flat. The nosings of the treads with steps, changes of level and stairways shall be of a contrasting colour to the remainder of the tread. The nosing shall show up clearly under emergency lighting conditions.
- 2.3.5 No accumulation of combustible rubbish, dirt, surplus material or stored goods shall be permitted to remain in any part of the premises except in an appropriate place, and of such quantities so as not to cause nuisance.

- 2.4 The basic ground upon which the Magistrates Court allowed Somerfield's appeal was that they did not consider that the five conditions were necessary to promote the licensing objectives, as the matters covered were adequately dealt with by other legislation.

2.5 The High Court

The Council contended that the Operating Schedule submitted with Somerfield's application was deficient, and that the Magistrates Court failed to recognise that conditions had to be imposed to deal with that deficiency. The High Court recognised that any application for a Premises Licence must be accompanied, amongst other things, by an Operating Schedule. That is a document which, in accordance with Section 17(4) of the Licensing Act 2003, must be in a prescribed form and must include a statement about certain prescribed matters. Those matters include a statement of the steps which it is proposed to take to promote the licensing objectives. Members will be familiar with the application form for a Premises Licence, and are advised that the Operating Schedule is at Box P of that form.

2.6 The High Court also accepted that an application must be determined by the Licensing Authority in accordance with Section 18 of the Act, and that subject to certain exceptions the Authority must grant the Licence in accordance with the application, subject only to the mandatory conditions and also such conditions as are consistent with the Operating Schedule accompanying the application.

2.7

- The Barrister representing Bristol City Council submitted that a Licensing Authority is under a duty to impose conditions consistent with an Operating Schedule, regardless of whether they will be required to promote the licensing objectives.
- The High Court decided that this is not the case. It said that the Operating Schedule is not automatically included in any Premises Licence which is granted.
- It further said that it is a criminal offence to fail to comply with whatever the Operating Schedule contains only if, and to the extent that, what is in the Schedule is included in the Premises Licence ultimately granted, for example, by way of conditions.
- A Licensing Authority, therefore, has the power to impose conditions consistent with the Schedule. However, it does not impose a duty to impose conditions that reproduce the effect of the Operating Schedule.

3.0 **Main issues**

3.1 The Licensing Authority has a power to impose conditions from the Operating Schedule, but does not have a duty to do so. The Licensing Authority is also under a duty not to include conditions relating to matters which are adequately covered by other legislation. The Committee will therefore need to consider each condition in the Operating Schedule and will need to be satisfied that:

- (i) It is necessary to promote a licensing objective, and
- (ii) that it does not duplicate other legislation

before it can be imposed as a condition.

- 3.2 The position is more complicated where a Part B has been signed by the applicant. A Part B is effectively a request by the applicant to incorporate into the Operating Schedule agreed measures as conditions. The Committee still needs to be satisfied that it is necessary to promote a licensing objective, and that it does not duplicate other legislation before even agreed conditions can be incorporated into the Operating Schedule and then imposed as conditions.
- 3.3 This is likely to cause difficulties for the responsible Authorities, especially the Police, who would have to attend even where a Part B has been agreed in order to make representations to Committee that the conditions are necessary. The alternative would be that the Responsible Authority does not attend, and the Committee will then have to decide, without hearing representations, whether a condition is necessary.
- 3.4 Meetings have been scheduled between Legal, Licensing and Registration and the Responsible Authorities to look at the existing and any proposed conditions to establish which of these are adequately covered by other legislation.

4.0 Implications for council policy and governance

- 4.1 The High Court decided that there is no statutory provision which automatically incorporates the Operating Schedule submitted into any Premises Licence. The implication of this is that the Committee has to consider each condition included in the Operating Schedule to ensure that it is necessary in order to promote the licensing objectives.
- 4.2 The High Court also decided that conditions cannot be imposed which are adequately covered by other legislation.
- 4.3 The case raises implications for how hearings are conducted and for officers and Members.

5.0 Legal and resource implications

- 5.1 A Licensing Officer or Committee must always examine the Operating Schedule and determine whether or not it is necessary to convert the content into conditions. It may not be necessary to do so if matters are adequately covered in other legislation. That exercise must be done on an individual case basis. Responsible Authorities must be aware, when considering Operating Schedules and whether to make representations, that not all matters in the Operating Schedule will appear as conditions. Also, the fact that conditions are "agreed" via the Part B process does not mean that they will automatically appear as conditions. Responsible Authorities must decide whether to appear at the hearing to make comment on the specific premises, or to reach agreement with the applicant and then allow the case to be presented without the parties attending, but with the risk that some of the agreed matters may not ultimately appear as conditions if Members consider they are not necessary.
- 5.2 There are resource implications in that every application where a representation has been made will need to be referred to Committee irrespective of any agreement subject to the provision that a hearing may be dispensed with if the Licensing Authority, the applicant and each person who has made a representation agree that a hearing is unnecessary. This may result in there being more hearings before Committee.

6.0 Conclusions

- 6.1 Conditions should not be imposed which are adequately dealt with by other legislation.
- 6.2 Matters in the Operating Schedule are not included automatically in any Premises Licence which is granted. Where representations are made, this will include additional conditions contained in the Part B which the applicant requests be incorporated into the Operating Schedule. Where there are no representations, the conditions proposed in the Operating Schedule will still not be imposed as conditions unless considered necessary in order to promote the licensing objectives.
- 6.3 The Panel has to be sure that it is necessary to impose any conditions in order to promote the licensing objectives, and in order to do this must consider each condition individually.

7.0 Recommendations

- 7.1 That Members note the contents of this report.

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