



Report of the Assistant Chief Executive (Corporate Governance)

Report to Licensing Committee

Date: 4 August 2009

Subject: Proposed Procedure to be adopted where Parties agree Conditions to be applied to Premises Licences and Club Premises Certificates

Electoral wards affected:

All

Specific implications for:

Ethnic minorities

Women

Disabled people

Narrowing the gap

Executive Summary

1. This report follows on from the report to Licensing Committee dated 2 June 2009 regarding the implications of the recent case of R (on the application of Bristol City Council) v Bristol Magistrates Court. That report advised Members as follows:

- Conditions should not be imposed which are adequately dealt with by other legislation.
- Matters in the Operating Schedule are not automatically included in a Premises Licence which is granted, even if agreed to by the applicant.
- Sub-Committee Members must be sure that it is necessary to impose any conditions in order to promote the licensing objectives, even where such

conditions have been agreed by the parties.

2. The report noted the implications of the case for the existing process by which parties agree conditions to be incorporated into the Operating Schedule, and noted that in future such cases will need to be referred to Committee irrespective of that agreement, subject to the power to dispense with a hearing. Members were advised that more hearings may be necessary in future.

3. This report deals with the power to dispense with a hearing if all parties agree, and suggests amendments to the existing process of reaching agreements with the applicants. The revised process will allow parties to reach agreement and dispense with a hearing so that the Sub-Committee can consider the matter administratively without the parties present. This would enable such cases to be dealt with speedily at the beginning or end of the Sub-Committee sitting.

1.0 Purpose of this Report

- 1.1 The purpose of this report is to advise Members of a proposed procedure for dispensing with hearings where all the parties concerned reach agreement and to seek approval for the process.

2.0 Background Information

- 2.1 On 2 June 2009, the Licensing Committee considered a report on the implications of recent case of R (on the application of Bristol City Council) v Bristol Magistrates Court. The effect of that case was that the existing process by which parties reach agreement was called into question.
- 2.2 Under the process pre Somerfield, parties used to negotiate on proposed conditions. Once those conditions had been agreed, the applicant would sign a "Part B" signifying their consent to incorporating the matters into the Operating Schedule, whereupon the relevant agency would withdraw the representation. One of the matters raised in the Somerfield case was that there is no automatic conversion of conditions within the Operating Schedule to conditions on the Premises Licence or Club Premises Certificate. In future, it will be necessary for conditions proposed in the Operating Schedule to be considered, and they will only be incorporated into the Premises Licence if they are necessary to promote the licensing objectives and they do not duplicate other legislation.
- 2.3 The effect of the Somerfield decision is that the parties could no longer have confidence that the agreement they had reached with the applicant would result in conditions on the Operating Schedule, and as such they may prefer not to withdraw their representation. Where a representation is not withdrawn, the matter must proceed to a hearing.
- 2.4 The effect of this has been to increase the number of hearings before Sub-Committees. In a number of such cases, agreements have been reached between the parties, but it has been necessary for the parties to attend and to confirm that agreement to the Sub-Committee, who would then consider whether or not conditions needed to be imposed on the Licence.

3.0 Main Issues

- 3.1 Hearings under the Licensing Act 2003 are governed by the Licensing Act 2003 (Hearings) Regulations 2005, SI 2005, No.44. Regulation 9 provides as follows:

Right to dispense with hearing if all parties agree

9(1) – an authority may dispense with holding a hearing if all persons required by the Act to agree that such a hearing is unnecessary, other than the authority itself, have done so by giving notice to the authority that they consider a hearing to be unnecessary.

9(2) – where all the persons required by the Act to agree that a hearing is unnecessary have done so in accordance with paragraph (1), the authority, if it agrees that a hearing is unnecessary, must forthwith give notice to the parties that the hearing has been dispensed with.

- 3.2 It is therefore proposed that a new procedure be adopted where agreements have been reached between the parties. That new procedure is summarised at Appendix

A to this report, and utilises the power to dispense with a hearing where it is unnecessary.

- 3.3 It is proposed that in future where agreements are reached, the parties sign a revised Part B which signifies the applicant's agreement to the conditions proposed by the responsible authority, and confirms that the conditions agreed to are both necessary and do not duplicate other legislation. When all representations have been the subject of a signed Part B, then the Entertainment Licensing Section will give notice dispensing with a hearing, advising the parties that the matter will be dealt with by the Sub-Committee administratively.
- 3.4 Members should note that Officers may not determine the matter administratively even though a hearing has been dispensed with as the representations have not been withdrawn.
- 3.5 The effect of this proposal is that the Sub-Committee will consider the matter on paper without the attendance of any party. If the Sub-Committee are satisfied that it is necessary to impose the agreed conditions, then it will do so without hearing any representations. In the event that the Committee is not so satisfied, then the application should be adjourned using the powers in Regulation 12 on the grounds that it is necessary to do so for consideration of any representations made or notice made by a party. Adjournments must be to a specified date, and will therefore be to the next available Sub-Committee Schedule. In that way, parties who reach agreement can have confidence that either their agreement will be upheld by the Sub-Committee or, if there are concerns about the agreement, the matter will be adjourned off, giving them a right to be heard.
- 3.6 The proposal outlined at 3.3 and 3.5 above allows for the scheduling of such matters together, either at the beginning of a Sub-Committee sitting between say 10.00 am and 10.30 am, before moving on to contested matters. Alternatively, such hearings could be dealt with at the conclusion of the contested matters before the Licensing Sub-Committee.
- 3.7 An additional advantage of this proposal is that in those cases where representations are made by interested parties (the public) as well as by responsible authorities, the hearing will not be dispensed with unless all parties, including the public, agree. Effectively, therefore, the responsible authorities will need to attend such hearings on the basis that there are still outstanding representations from members of the public, even though they may be able to reach an agreement with the applicant.

4.0 Implications for Council Policy and Governance

- 4.1 The proposed procedure is in line with the recent decision in the Somerfield case. It also ensures that the duly appointed Members of the Licensing Sub-Committees make decisions in accordance with their delegated authority.
- 4.2 The proposed process will also allow Sub-Committee Members to hear the views of responsible authorities as well as those of the public, whereas under the previous process the responsible authorities would not be in attendance wherever they have reached agreement, irrespective of the fact that there were still public representations outstanding.

5.0 Legal and Resource Implications

- 5.1 The proposed procedure is in line with the recent decision in the Somerfield case.
- 5.2 On 2 June 2009, Members resolved to revert to a weekly Sub-Committee schedule, and therefore there are no additional resource implications from this process. Adopting this procedure will reduce the number of cases coming to full hearings where agreement has been reached. The implications for the schedule of applications before Sub Committees should be reviewed after 6 months of operation

6.0 Conclusions

- 6.1 The decision in the Somerfield case requires the Council to consider how it deals with applications in future, where the Part B process would previously have been utilised.
- 6.2 The proposed procedure outlined in this report is compliant with the legal requirements, makes best use of resources and promotes good decision making.

7.0 Recommendations

- 7.1 That Members approve the process for dispensing with a hearing where all parties have reached agreement, as outlined in this report under Appendix A and agree to review the implications of the new process for committee schedules after 6 months.