

PART 5 : MEMBERS' LICENSING CODE

1.0 Introduction

- 1.1 This Code provides guidance to Members on their role in the discharge of the Council's licensing and registration functions. It is intended to support fair, open and consistent decision-making and to ensure that licensing decisions are taken on proper grounds and in accordance with relevant legislation, Council policies and the principles of natural justice.
- 1.2 The Code applies to Members involved in the Council's licensing and registration functions, including Members of the Licensing Committee and Licensing and Regulatory Sub-Committees.
- 1.3 This Code should be read alongside the Members' Code of Conduct, the Terms of Reference of the Licensing Committee and Licensing and Regulatory Sub-Committees, relevant licensing policies and any procedures applying to licensing hearings.
- 1.4 A Member who is unsure how this Code applies to a particular matter should seek advice from the Monitoring Officer or their representative at the earliest opportunity.

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2.0 The role of Members in licensing decisions

- 2.1 Licensing decisions can involve balancing competing interests and making a judgement based on the evidence presented. Members determining an individual licensing matter must act fairly and impartially, approach the matter with an open mind and consider each matter on its individual merits.
- 2.2 Members must take account of all relevant information and evidence properly presented to them and disregard matters which are not relevant to the decision. They must have regard to the relevant legislation, statutory guidance, Council policies and licensing objectives, where applicable, and give reasons for their decision.
- 2.3 Members must not allow political considerations, lobbying, personal views or other irrelevant considerations to influence the determination of an individual licensing matter. They must not favour, or appear to favour, an applicant, licence holder, responsible authority, person making a representation, business, group or locality.
- 2.4 The role of a Member determining an individual licensing matter is different from their wider representative role as a councillor. Members must ensure that these roles are kept separate where necessary to protect the fairness of the decision-making process.

3.0 Interests and conflicts of interest

- 3.1 Members must comply with the Members' Code of Conduct and the Council's requirements relating to the registration and declaration of interests. A Member should identify any potential interest or conflict at the earliest opportunity and seek advice where they are unsure whether they may participate.
- 3.2 A Member must not participate in the determination of a licensing matter where they have a disclosable pecuniary interest or where participation is otherwise prohibited by the Members' Code of Conduct.
- 3.3 Compliance with the Members' Code of Conduct does not remove the separate requirement to consider actual or apparent bias. A personal, business or financial connection with a party, connection with the premises or business concerned, significant involvement with an organisation or campaign concerned with the matter, or previous involvement in the matter may mean that it is inappropriate for the Member to participate.
- 3.4 Where a Member considers that their involvement could give rise to actual or apparent bias, they should not participate in the determination and should seek advice from the Monitoring Officer or their representative where necessary.

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4.0 Predisposition, predetermination and bias

- 4.1 Members determining a licensing matter must approach the matter with an open mind and must not have predetermined the outcome. A Member may have a preliminary view but must remain willing to consider all relevant information and evidence presented before reaching a decision.
- 4.2 A Member must not participate where they have committed themselves to a particular outcome or where their conduct would give rise to a reasonable perception that they are unable to consider the matter fairly and impartially.
- 4.3 Particular care should be taken when making public statements or comments on social media, signing or promoting a petition, participating in a campaign or otherwise expressing a view about a licensing matter which may subsequently come before the Member for determination.
- 4.4 A Member who considers that something they have said or done may give rise to an appearance of predetermination or bias should seek advice before participating in the determination.

4.5 Ward Members and the representative role

- 4.6 Members have an important role in representing their residents and

communities. Nothing in this Code prevents a Member from assisting a constituent in relation to a licensing matter or, where the relevant licensing regime permits, making or supporting a representation.

- 4.7 A Member may advise constituents on how to engage with the licensing process and may represent the views of residents or businesses. Where a Member has actively advocated for or against an application or other licensing matter, however, they must not subsequently participate as a Member of any Licensing or Regulatory Sub-Committee determining that matter.
- 4.8 A Member who wishes to retain the ability to participate in the determination of a matter should avoid expressing a concluded view or becoming involved in campaigning or advocacy concerning that matter.
- 4.9 A Member who is uncertain whether their previous involvement prevents them from participating should seek advice from the Monitoring Officer or their representative.

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5.0 Lobbying and approaches to Members

- 5.1 Applicants, licence holders, residents, businesses, community groups or other persons may seek to approach Members about a licensing matter. A Member who may participate in determining that matter should avoid discussing its merits outside the formal decision-making process.
- 5.2 Where a Member receives information, correspondence or other material about a matter which may come before a Licensing Sub-Committee, they should avoid expressing a view on its merits and should advise the person, where appropriate, to make their representation through the formal licensing process. Relevant correspondence or information should be passed to the Licensing Service so that it can be dealt with appropriately.
- 5.3 Members should not seek or receive information about an individual licensing matter which is not available through the proper decision-making process. Any significant contact with a party concerning a matter to be determined should be disclosed to the appropriate officer.
- 5.4 Members must comply with the Members' Code of Conduct in relation to gifts and hospitality and must not accept any gift or hospitality which could reasonably be perceived as seeking to influence a licensing decision.

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6.0 Contact with applicants and other parties

- 6.1 Once an application or other licensing matter has been submitted for determination, a Member who may sit on the Licensing Sub-Committee should

not normally enter into discussions about its merits with the applicant, licence holder, their representative, a responsible authority, a person who has made a representation or another person directly involved in the matter.

6.2 Where contact does occur, the Member should avoid expressing a view on the merits and should refer the person to the Licensing Service where appropriate. Any substantive discussion or information which may be relevant to the determination should be reported to the Licensing Service.

6.3 Members should not attend private meetings concerning the merits of a pending licensing matter where doing so could compromise, or reasonably appear to compromise, their ability to determine the matter impartially.

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7.0 Applications involving the Council, Members or officers

7.1 An application made by or on behalf of the Council must be determined in the same fair and impartial manner as any other application. A Member who has been materially involved in promoting or developing a Council application must not participate in its determination where that involvement could give rise to actual or apparent bias.

7.2 Where a Member makes a licensing application to the Council, or acts as an agent or representative for another person in relation to a licensing matter, they must take no part in determining that matter.

7.3 Applications involving Members or officers must be handled transparently and without actual or perceived preferential treatment. The Monitoring Officer may advise on any additional arrangements required to ensure that a matter is determined fairly.

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8.0 Site visits

8.1 A site visit should only take place where it is necessary to assist Members to understand matters relevant to the determination which cannot adequately be understood from the application, reports, plans, photographs or other information available to a Licensing or Regulatory Sub-Committee.

8.2 A site visit is an information-gathering exercise and must not be used as an opportunity to debate the merits of the application or receive representations. Members must not express a view on the merits of the matter during the visit.

8.3 Site visits will be arranged through officers and conducted in accordance with any procedure agreed by the Council. A Member should not undertake an individual site visit at the invitation of an applicant, licence holder, person making a representation or other interested party in relation to a matter which they may subsequently determine.

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9.0 *Licensing and Regulatory Sub-Committee hearings*

- 9.1 Members of a Licensing or Regulatory Sub-Committee must determine the matter before them on the basis of the relevant information and evidence properly presented through the decision-making process.
- 9.2 Members must listen to the parties, ask questions where clarification is required and ensure that everyone participating in the hearing is treated fairly. Only matters relevant to the decision should be taken into account.
- 9.3 Members must not conduct their own investigation into a matter or rely upon information which has not been made available through the proper decision-making process.
- 9.4 The Chair is responsible for ensuring that the hearing is conducted fairly and in accordance with the relevant procedure. The Sub-Committee must reach its decision only after the hearing has concluded and all relevant information has been considered and must give clear reasons for its decision.

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10.0 *Licensing enforcement*

- 10.1 Members may bring suspected breaches of licensing requirements to the attention of the relevant department, so that the matter can be considered in accordance with the Council's normal enforcement arrangements.
- 10.2 Members should not seek to direct the investigation of an individual case or require officers to take a particular enforcement action. Decisions which are delegated to officers must be taken in accordance with the relevant legislation, Council policies and officer delegations.

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11.0 *Appeals and legal challenge*

- 11.1 Licensing decisions may be subject to a statutory right of appeal and may also be subject to legal challenge or complaint. Members must therefore ensure that decisions are taken fairly, on relevant grounds and in accordance with the applicable legislation and Council policies.
- 11.2 The reasons for a Sub-Committee's decision must be clearly recorded. Where a decision is appealed or challenged, Members should not comment publicly on the merits of the proceedings and should seek advice where necessary.

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12.0 *Member training*

- 12.1 Members must undertake the mandatory licensing training required by the Terms of Reference of the Licensing Committee before participating in the business of the Committee or determining an individual licensing matter.

- 12.2 Members are expected to undertake refresher or additional training where required to ensure that their knowledge remains up to date. Training will cover the statutory and policy framework relevant to the Committee's work, the role and responsibilities of Members, interests and bias, fair decision-making and the conduct of licensing hearings.
- 12.3 Members should seek advice from the Monitoring Officer or their representative, or the relevant Service where they require guidance on a licensing matter.