

# Protocol for Councillors and Officers Dealing with Licensing Matters

## The General Role and Conduct of Councillors and Officers

1. It is important to appreciate that whilst both Councillors and Officers serve the public, Councillors are responsible to the Electorate while Officers are responsible to the Council as a whole. Officers advise Councillors and the Council and carry out the Council's work. They are employed by the Council, not by individual Councillors. A successful relationship between Councillors and Officers must be based on mutual trust and an understanding of each others' positions. This relationship must never be abused nor compromised.

## Conduct of Councillors

2. The DETR (now ODPM) 'New Council Constitutions' guidance pack states:

'Many of the licensing and enforcement functions of ordinary committees will entail them acting in a quasi-judicial capacity. The Council, a councillor or an officer acting as a tribunal or in a quasi-judicial manner will follow a proper procedure which accords with the requirements of natural justice and the right to a fair trial contained in Article 6 of the European Convention on Human Rights.'
3. Councillors must act in accordance with the Council's Code of Conduct for Members and co-opted Members, which provides guidance and standards for Councillors. Breaches of the Code can be referred to the Monitoring Officer (Assistant Director Law and Governance).
4. Regulatory matters such as planning and licensing, are particularly sensitive. You should adopt a particular cautious approach to planning and licensing matters.
5. It should be noted that a Councillor representing a Ward which would be directly affected by an application is most at risk of being accused of bias as these Councillors are most likely to be put under pressure to represent local 'interested parties' or 'responsible authorities' as regards a licensing application. Whilst there are no statutory requirements for Ward Councillors to excuse themselves from such licence application sub-committees (unless they have a personal and

prejudicial interest) the Councillor must carefully consider whether, in all the circumstances, an impartial observer would consider they would be biased and, if so, should decline to take part in the hearing. Members whose Ward includes the application premises, or whose Ward is likely to be directly affected by the application, may act as, or represent, an interested party.

6. Whilst Councillors have a special duty to their Ward constituents, including those who did not vote for them, their overriding duty is to the whole community. Councillors should not favour any individuals or groups and, although they may be influenced by the opinions of others, they alone have a responsibility to decide what view to take. Councillors must therefore represent their constituents as a body and vote in the interests of the whole Borough. The basis of the Licensing system is the consideration of private proposals against wider public interests. Much is often at stake in this process and opposing views are often strongly held by those involved. Councillors should take account of those views but they should not favour any person, company, group or locality or put themselves in a position where they appear to do so. Councillors who do not feel that they can act in this way should consider whether they are best suited to serving on the Licensing Committee.
7. Councillors should be extremely cautious about accepting gifts and hospitality and must act in accordance with the Council's Code of Conduct and any relevant Protocol.
8. No Member should be appointed to the Licensing Committee without having agreed to undertake a period of training in licensing procedures as specified by the Council.

### **Declaration and Registration of Interests**

9. The Council's Code of Conduct and relevant legislation must be followed scrupulously. Not only should impropriety be avoided but also any appearance or grounds for suspicion of improper conduct should be avoided. It is for each Councillor to consider the application of the Council's Code of Conduct to his or her personal circumstances.
10. Members must also be aware of the need to register certain financial and other interests in a register maintained by the Monitoring Officer. It is good practice to review those entries on a six-monthly basis, although any changes should be notified by Councillors within 28 days. Councillors who have interests which would prevent them from

voting on a regular basis, should avoid serving on the Licensing Committee.

11. The position with regard to pecuniary and non-pecuniary interests is contained within the Council's Code of Conduct. The guiding rule for Councillors must be that one should not use one's position to further a private or personal interest rather than the general public interest or give grounds for such suspicion. Such private interests could arise through family, friends, clubs, freemasons, trade unions and voluntary bodies.
12. A situation may occur where the Councillor carries out a function for another public authority or another local authority which is making an application for a licence, or which is making a representation. For example, if a local school is applying for a premises licence and the Councillor is on the governing body of the school. It may also occur where the Councillor is dual-hatted and is a member of a parish council as well as the Licensing Committee.
13. Members are advised to refer to the Council's Code of Conduct for the circumstances in which they will need to declare a pecuniary interest and withdraw from the meeting during consideration of an item.

### **Examples of situations where an interest ought to be declared and the Member ought to leave the meeting**

- A Licensing application submitted by a local Golf Club of which a Councillor is a Member.
- An application related to premises adjacent to or in close proximity to a Member's own residence.
- An application lodged by a member of a Councillor's own family.
- An application by a company or individual for whom a Councillor or a member of a Councillor's family may work.
- Where the Councillor belongs to a lobby or campaign group which supports the aims of the application or those who may make representations against the application. (Although it is relevant in this case to take into account how active the Councillor is on the particular issue).

## **Conduct of Officers**

### 14. Officers shall :-

- (a) not discriminate, in all their professional activities, on the grounds of race, sex, creed, religion, disability or age and shall seek to eliminate such discrimination by others and to promote equality of opportunity;
- (b) not make or subscribe to any statements or reports which are contrary to their own bona fide professional opinions and shall not knowingly enter into any contract or agreements which requires them to do so;
- (c) take all reasonable precautions to ensure that no conflict of duty arises between the interests of the Borough Council and the interests of themselves or any third party. Any such conflict shall be immediately reported and subsequently confirmed in writing to all the parties concerned;
- (d) not disclose or use to the advantage of themselves or the Borough Council information acquired in confidence in the course of their work; or
- (e) decline any discounts, gifts or commissions offered by any third parties in connection with their work.

## **Applications submitted by Councillors and Officers, and Applications in respect of Council Premises and Employees**

- 15. Applications submitted to the Council by serving and former Councillors and Officers and their close friends and relatives can easily give rise to suspicions of impropriety. It is vital that they are handled in a way which gives no grounds for accusations of favouritism.
- 16. Serving Councillors who prepare applications or generally act as agents for people pursuing a Licensing matter should play no part in the decision-making process for that proposal. Similarly, if they submit a proposal themselves, they should take no part in the processing of that application.
- 17. The Group Director of Services will endeavour to ensure that all such applications are identified and highlighted and will also take steps to ensure that the Councillor in question is aware of the contents of the

Protocol and refer him or her to the Council's Code of Conduct.

18. The Council's Monitoring Officer should be informed of any such proposals.
19. Those applications are to be reported to the Licensing Committee for consideration and not dealt with by Officers under delegated powers; the Monitoring Officer should be able to confirm in that report that the application has been processed normally and therefore must be given the opportunity to review the file.
20. Serving Officers should not prepare applications or generally act as agents for people pursuing a Licensing matter, with this Council. If they submit an application on their own behalf, they should take no part in the processing of that application.
21. Applications for the Council's own premises and employees must be treated in the same way as those of private applicants, in full accordance with the Council's Constitution and the licensing objectives.

### **Lobbying of and by Councillors**

22. Lobbying is a perfectly proper part of the political process; those who may be affected by a Licensing decision will often seek to influence it through an approach to their elected Ward Member or a Member of the Licensing Committee. That is quite understandable and part of the political/representative process. However, such lobbying can call into question the impartiality and integrity of a Councillor.
23. The Council's Code of Conduct requires, amongst other things that Members (and co-opted Members) of the Council must not do anything which compromises or which is likely to compromise the impartiality of those who work for, or on behalf of, the Authority. Furthermore, a Member (or co-opted Member) must not conduct himself or herself in a manner which could reasonably be regarded as bringing his Office or Authority into disrepute.
24. Members and Officers should avoid indicating the likely decision on an application or otherwise committing the authority during contact with applicants and objectors.
25. Members of the Licensing Committee must not express an opinion to a person lobbying, they must make it clear that they will only be in a position to take a decision after having heard all the relevant evidence

and arguments at the hearing. Councillors should not commit themselves one way or the other before hearing all the arguments and evidence. Councillors who are members of the Licensing Committee should not participate in lobbying for a particular outcome unless they are prepared not to sit on the licensing sub-committee which considers the application.

26. A Councillor with a pecuniary interest must not use any advantage available to them as a Member, which would include, for example, access to officers and other Council members. The Councillor should not ask for, nor be allowed access to, papers and persons which would not be available to an ordinary member of the public, and must not be able to view the proceedings of the Licensing sub-committee, which are not available to members of the public. A Councillor should not lobby other Councillors to the extent, for example, of attempting to obtain a commitment as to how the Councillor might vote.

### **Site Visits**

27. LACORS guidance states

‘Site visits by Licensing Sub-Committee Members are generally unnecessary and can put the Members and the Licensing Authority at risk of accusations of bias. If a Licensing Authority believes that there might be occasions where visits are required then it would be advised to have set out the reasons why this might be the case in local guidance, so that there are clear criteria for justifying any visit, which can be documented. Licensing Authorities would also be advised to have clear guidance as to how the visits are conducted.’

Site visits should only be used where the expected benefit is substantial. Examples of situations where the expected benefit would be substantial include :-

- (a) cases where a plan of the premises and also its surrounding area does not adequately indicate the relationship of the application to neighbouring property;
- (b) cases where the effect on objectors areas and property cannot be readily discerned from plans and such effect is likely to be substantial; and
- (c) cases where the application is particularly contentious.

28. A record of the reasons why a site visit is called should be maintained by the Assistant Director Law and Governance.
29. The site visit should consist of an inspection by the Sub-Committee, with Officer assistance, to explain the impact of the application requirements.
30. The applicant and objectors will be informed that a site visit is taking place and may be present but the Sub-Committee will not be able to hear representations. The site visit will enable the parties to make clear various aspects relating to the application.
31. Site visits must not be used as a forum for debate and should only be used in exceptional circumstances.

### **Other Relevant Matters**

32. There should be no political group meetings prior to the Sub-Committee meeting to decide how Councillors should vote.
33. Councillors must not put pressure on Officers to make any particular representations or recommendations.
34. Councillors who are unsure whether an interest should be declared should seek the advice of the Monitoring Officer.

### **Pre-Application Discussions - Requirements of Officers**

35. It should be made clear at the outset that any such discussions will not bind the Council to making a particular decision and that any views expressed are personal and provisional.
36. Advice should be consistent and based upon the Licensing Policy and all other material considerations. All Officers taking part in such discussions should make clear whether or not they are the decision maker.
37. A written note must be made of all potentially contentious meetings. At least two Officers should attend such meetings (for corroborative purposes) and a follow-up letter is advisable when documentary material has been left with the Council. A note similarly should be taken of potentially contentious telephone discussions.
38. Advice must not be partial nor seen to be partial.

## **Officer Reports to Committee**

39. All applications considered by the Licensing Sub-committees should be the subject of full written reports from Officers.