

## LICENSING COMMITTEE

<b>Date:</b> Monday 4th July, 2022
<b>Time:</b> 1.00 pm
<b>Venue:</b> Council Chamber/Mandela

### AGENDA

1. Apologies for Absence
2. Declarations of Interest  
To receive any declarations of interest.
3. Minutes - Licensing Committee - 13 June 2022 3 - 8
4. Licensing Committee Code of Practice 9 - 62
5. Exclusion of Press and Public  
To consider passing a Resolution Pursuant to Section 100A (4) Part 1 of the Local Government Act 1972 excluding the press and public from the meeting during consideration of the following items on the grounds that if present there would be disclosure to them of exempt information falling within paragraphs 1, 2, 3 and 7 of Part 1 of Schedule 12A of the Act and the public interest in maintaining the exemption outweighs the public interest in disclosing the information.
6. Application for Review of Private Hire Vehicle Driver Licence Ref: 07/22 63 - 78
7. Any other urgent items which in the opinion of the Chair, may be considered.

Charlotte Benjamin  
Director of Legal and Governance Services

Town Hall  
Middlesbrough  
Friday 24 June 2022

MEMBERSHIP

Councillors R Arundale (Chair), E Polano (Vice-Chair), A Bell, C Cooke, S Dean, T Higgins, S Hill, D Jones, L Lewis, D McCabe, M Smiles, J Walker and S Walker

**Assistance in accessing information**

**Should you have any queries on accessing the Agenda and associated information please contact Joanne Dixon / Scott Bonner, 01642 729713 / 01642 729708, joanne\_dixon@middlesbrough.gov.uk / scott\_bonner@middlesbrough.gov.uk**

**LICENSING COMMITTEE**

A meeting of the Licensing Committee was held on Monday 13 June 2022.

**PRESENT:** Councillors R Arundale (Chair), E Polano (Vice-Chair), J Platt (Substitute for A Bell), C Cooke, S Dean, T Higgins, S Hill and D Jones

**OFFICERS:** S Bonner, J Dixon, C Cunningham and T Hodgkinson

**APOLOGIES FOR ABSENCE:** Councillors A Bell, L Lewis, D McCabe, M Smiles, J Walker and S Walker

22/1 **DECLARATIONS OF INTEREST**

There were no declarations of interest received at this point in the meeting.

22/2 **MINUTES - LICENSING COMMITTEE - 4 APRIL 2022**

The minutes of the Licensing Committee meeting held on 4 April 2022 were submitted and approved as a correct record.

22/3 **APPOINTMENT OF CHAIRS TO THE FOLLOWING COMMITTEES**

The Licensing Committee appointed the Chair to the following Committees:

Licensing Sub Committee B: Councillor Teresa Higgins

Licensing Sub Committee C: Councillor Chris Cooke

**ORDERED:** That the Councillors appointed act as Chair of their respective Sub Committees.

22/4 **COUNCIL APPOINTMENT OF CHAIRS TO THE FOLLOWING SUB-COMMITTEES**

The Committee was asked to note that at the Council's Annual General Meeting of 25 May 2022:

- Cllr Ron Arundale was appointed as Chair of Licensing Committee, Chair of Licensing Sub-Committee A and Licensing Sub Committee (General);
- Cllr Eric Polano was appointed Vice Chair of Licensing Committee and Vice Chair of Licensing Sub Committee A.

**NOTED**

22/5 **EXCLUSION OF PRESS AND PUBLIC**

**ORDERED** that the press and public be excluded from the meeting for the following items on the grounds that, if present, there would be disclosure to them of exempt information as defined in Paragraphs 1, 2, 3 and 7 of Part 1 of Schedule 12A of the Local Government Act 1972 and that the public interest in maintaining the exemption outweighed the public interest in disclosing the information.

22/6 **DRINK SPIKING - HOME OFFICE GUIDANCE**

The Licensing Manager presented information relating to Drink Spiking. Members were made aware this was a national concern and that Licensing Committees were being encouraged to continue working with partners to address the problem.

Members were also advised that further information was awaited from the Police about drink spiking incidents in the Middlesbrough area.

Members were keen to receive statistical information about this problem, including a gender breakdown.

Members were also advised that, depending on further information received, current policies could be amended in an effort to combat the problem drink spiking.

**ORDERED** that:

1. Members be provided with statistical information about drink spiking incidents in Middlesbrough
2. The information presented be noted.

22/7

**APPLICATION FOR PRIVATE HIRE VEHICLE DRIVER LICENCE REF:-05/22**

The Director of Adult Social Care and Health Integration submitted an exempt report in connection with an application for a Private Hire Vehicle Driver Licence, Ref: 05/22, where circumstances had arisen which required special consideration by the Committee.

The Chair introduced those present and outlined the procedure to be followed. The applicant, who was in attendance at the meeting accompanied by a representative of Royal Cars, verified his name and address and confirmed that he had received a copy of the report and understood its contents.

The Licensing Manager presented a summary of the report. The Applicant was first licenced with the Council in 2019 subject to a warning based on a number of offences that pre-dated 2004 and those detailed at (1) and (2) in the report.

The applicant appeared before Members with a new application for a Private Hire Vehicle Driver Licence. Members were advised he was interviewed by a Licensing Enforcement Officer on 5 May 2022 when he confirmed his previous explanation for the offences detailed in the report and provided an explanation for his disqualification from driving.

On 6 February 2020 this licence was revoked with immediate effect by Officers following the Applicant's disqualification from driving as a result of offence (3) in the report which was detailed in Appendix 2. Members were also advised the Applicant's driver's licence was reinstated in February 2022.

Members were advised the Applicant did not disclose the offences detailed in the report as he believed the Council was already aware of them.

The Applicant confirmed that the report was an accurate representation of the facts and was invited to present his case in support of his application and also responded to questions from Members, the Licensing Manager and the Council's Legal Representative.

It was confirmed that there were no further questions and the applicant, his representative, and Officers of the Council, other than representatives of the Council's Legal and Democratic Services, withdrew from the meeting whilst the Committee determined the application.

Subsequently, all parties returned and the Chair announced a summary of the Committee's decision and highlighted that the applicant would receive the full decision and reasons within five working days.

**ORDERED:** that the application for a Private Hire Vehicle Driver Licence, Ref No: 05/22, be granted, as follows:-

Authority to Act

1. Under Section 51 of the Local Government Miscellaneous Provisions Act 1976 ("the Act") the Committee may decide to grant a private hire vehicle driver's licence only if it is satisfied the driver is a fit and proper person to be granted such a licence.
2. The Committee considered Section 51 of the Act, Policy Guidance to Applicants, Licensed Drivers and Members of the Licensing Committee which came into force on the 1 November 2019 ("the Policy"), the report and representations made by the Applicant and his representative.
3. The Application was considered on its own particular facts and on its merits.

### Decision

4. After carefully considering all of the information the Licensing Committee decided refuse to grant the Application for a private hire vehicle driver's licence on the grounds that the Committee was not satisfied the Applicant was a fit and proper person to be granted the licence. The reasons for the decision are as follows:

### Reasons

5. The Applicant had five convictions for speeding since 2016 to 2020 and since 2016 overall was given 23 points, although the Committee accepted that points were removed at various stages following the relevant period.
6. On the 25 June 2018 the Applicant had 17 points however avoided disqualification due to an upheld claim of exceptional hardship.
7. However, after being given a further chance to keep his licence and to continue to drive, the Applicant continued to drive unsafely and on the 25 August 2020 was convicted of speeding at 101 miles per hour in a 70 miles per hour zone. The Applicant was given six points and disqualified from driving until the 24 February 2021.
8. Four of the offences occurred whilst the Applicant was licensed as a private hire vehicle driver. The Committee did not accept that for two offences the Applicant claimed that he was not used to accelerating in a high powered curtesy car. The Committee considered that the Applicant is in control and as driving was his profession should take even extra care to ensure he keeps to the speed limit.
9. The Applicant failed to declare the offences on the 27 September 2016 and the 30 January 2017 which was a condition of his private hire vehicle driver's licence. The offences were left to be discovered by officers following a DVLA check on the 7 July 2017. It is imperative that Licensees report any motoring offences within the time period required in accordance with the conditions of the licence in order for officers to assess whether the Applicant poses a risk to the public.
10. The Applicant did not report the convictions on the 21 June 2018 (6 points) and 25 June 2018 (5 points) until 20 June 2019 which was the date for renewal of his licence. There were disclosed at this point because the Applicant decided not to apply to renew his licence in view that at that point he had 17 points on his DVLA licence. This was a further breach of the condition on his licence.
11. The Applicant as result of previous points on his licence was required to undertake a driver improvement scheme this was completed on the 25 October 2018. Yet despite this and despite in 2018 having 17 points on his licence the Applicant subsequently drove at 101 miles per hour.
12. The Applicant's DVLA licence was restored on the 24 February 2022.
13. The Committee noted the representations that the Applicant since his disqualification has learnt his lesson, that he has had no issue or incident since the restoration of his licence (approximately 16 months), drives carefully and is aware of the risks. However, the committee considered the history was serious, it was aggravated by the Applicant's failure to comply with his licensing conditions and considered, in order to protect the public, an insufficient incident free period had lapsed.
14. The Council's Policy states the Council takes a serious view if a licensed driver commits a motoring offences as driving is his profession and he is responsible to ensure he drives his passengers safely and is not a risk to other road users.
15. For minor traffic offences the Policy states, if an applicant has a significant history of offences showing a disregard for safety or has been disqualified, for example, through the totting up process, an application will not normally be considered until their DVLA licence has been restored and a conviction free period of at least 12 months to 3 years

depending on the severity of the risk has lapsed since reinstatement of the DVLA licence.

16. The Policy states also that code TT99 is assessed as a major traffic offence. TT99 states - to signify a disqualification under totting-up procedure. If the total of penalty points reaches 12 or more within 3 years, the driver is liable to be disqualified. The Policy states usually a minimum of four years is required free of conviction since the restoration of a DVLA licence.
17. The Committee accepts there is overlap between minor and major convictions in the policy. However, even if it only considers the policy in relation to minor convictions, in view of the circumstances of the speeding offences and the Applicant's history it decided the risk to the public and other road users warrants the higher end of the incident free period to have lapsed. In addition to this the Committee was seriously concerned about the Applicant's previous failure to report the offences which could have put the public at risk.
18. If the Applicant is aggrieved by the decision he may appeal to a Magistrates Court within 21 days from the date of the notice of the decision. The local magistrates for the area is the Teesside Justice Centre, Teesside Magistrates, Victoria Square, Middlesbrough.
19. If the Applicant does appeal the decision and the appeal is dismissed by the Magistrates Court, the Council will claim its costs in defending its decision from the Applicant which could be in the region of £1000.

22/8

#### **APPLICATION FOR PRIVATE HIRE VEHICLE DRIVER LICENCE REF:- 06/22**

The Director of Adult Social Care and Health Integration submitted an exempt report in connection with an application for a Private Hire Vehicle Driver Licence, Ref: 06/22, where circumstances had arisen which required special consideration by the Committee.

The Chair introduced those present and outlined the procedure to be followed. The applicant, who was in attendance at the meeting accompanied by his legal representative, verified his name and address and confirmed that he had received a copy of the report and understood its contents.

The Licensing Manager presented a summary of the report. The Applicant was first licensed as a Private Hire Vehicle Driver on 3 July 2008 until 30 June 2019 when he failed to renew his licence. He appeared before Members with a new application for a Private Hire Vehicle Driver Licence following his disqualification from driving on 25 August 2020.

The Applicant was interviewed by a Licensing Enforcement Officer on 12 May 2022 when he provided explanations for the offences (1) to (5) detailed in the report. Members were made aware that, in 2017, Licensing Officers checked the Applicant's licence details via the DVLA and found he had nine penalty points. The Applicant subsequently attended a Driver Improvement Scheme in September 2018. The details of this were described in Appendix 1 of the report.

Members were also made aware that, other than the 20 June 2019, the Applicant did not report his convictions to the Licensing Office as he was required by the conditions of his licence. His declaration of 20 June 2019 revealed the Applicant had 17 penalty points. Members were also advised the Applicant's driving licence was reinstated on 25 February 2021.

The Applicant confirmed that the report was an accurate representation of the facts and was invited to address the Committee.

The Applicant's legal representative presented the case in support of the applicant. The applicant also spoke in support of his case and responded to questions from Members, the Licensing Manager and the Council's Legal Representative.

It was confirmed that there were no further questions and the driver, his representative and Officers of the Council, other than representatives of the Council's Legal and Democratic Services, withdrew from the meeting whilst the Committee determined the review.

Subsequently, all parties returned and the Chair announced a summary of the Committee's decision and highlighted that the Applicant would receive the full decision and reasons within five working days.

**ORDERED** that the Application for a Private Hire Vehicle Driver Licence Ref No: 06/22, be refused.

#### Authority to Act

1. Under Section 51 of the Local Government Miscellaneous Provisions Act 1976 ("the Act") the Committee may decide to grant a private hire vehicle driver's licence only if it is satisfied the driver is a fit and proper person to be granted such a licence.
2. The Committee considered Section 51 of the Act, Policy Guidance to Applicants, Licensed Drivers and Members of the Licensing Committee which came into force on the 1 November 2019 ("the Policy"), the report and representations made by the Applicant and his representative.
3. The Application was considered on its own particular facts and on its merits.

#### Decision

4. After carefully considering all of the information the Licensing Committee decided refuse to grant the Application for a private hire vehicle driver's licence on the grounds that the Committee was not satisfied the Applicant was a fit and proper person to be granted the licence. The reasons for the decision are as follows:

#### Reasons

5. The Applicant had five convictions for speeding since 2016 to 2020 and since 2016 overall was given 23 points, although the Committee accepted that points were removed at various stages following the relevant period.
6. On the 25 June 2018 the Applicant had 17 points however avoided disqualification due to an upheld claim of exceptional hardship.
7. However, after being given a further chance to keep his licence and to continue to drive, the Applicant continued to drive unsafely and on the 25 August 2020 was convicted of speeding at 101 miles per hour in a 70 miles per hour zone. The Applicant was given six points and disqualified from driving until the 24 February 2021.
8. Four of the offences occurred whilst the Applicant was licensed as a private hire vehicle driver. The Committee did not accept that for two offences the Applicant claimed that he was not used to accelerating in a high powered curtesy car. The Committee considered that the Applicant is in control and as driving was his profession should take even extra care to ensure he keeps to the speed limit.
9. The Applicant failed to declare the offences on the 27 September 2016 and the 30 January 2017 which was a condition of his private hire vehicle driver's licence. The offences were left to be discovered by officers following a DVLA check on the 7 July 2017. It is imperative that Licensees report any motoring offences within the time period required in accordance with the conditions of the licence in order for officers to assess whether the Applicant poses a risk to the public.
10. The Applicant did not report the convictions on the 21 June 2018 (6 points) and 25 June 2018 (5 points) until 20 June 2019 which was the date for renewal of his licence. There were disclosed at this point because the Applicant decided not to apply to renew his licence in view that at that point he had 17 points on his DVLA licence. This was a further breach of the condition on his licence.
11. The Applicant as result of previous points on his licence was required to undertake a driver improvement scheme this was completed on the 25 October 2018. Yet despite this and despite in 2018 having 17 points on his licence the Applicant subsequently drove at 101 miles per hour.

12. The Applicant's DVLA licence was restored on the 24 February 2022.
13. The Committee noted the representations that the Applicant since his disqualification has learnt his lesson, that he has had no issue or incident since the restoration of his licence (approximately 16 months), drives carefully and is aware of the risks. However, the committee considered the history was serious, it was aggravated by the Applicant's failure to comply with his licensing conditions and considered, in order to protect the public, an insufficient incident free period had lapsed.
14. The Council's Policy states the Council takes a serious view if a licensed driver commits a motoring offences as driving is his profession and he is responsible to ensure he drives his passengers safely and is not a risk to other road users.
15. For minor traffic offences the Policy states, if an applicant has a significant history of offences showing a disregard for safety or has been disqualified, for example, through the totting up process, an application will not normally be considered until their DVLA licence has been restored and a conviction free period of at least 12 months to 3 years depending on the severity of the risk has lapsed since reinstatement of the DVLA licence.
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18. If the Applicant is aggrieved by the decision he may appeal to a Magistrates Court within 21 days from the date of the notice of the decision. The local magistrates for the area is the Teesside Justice Centre, Teesside Magistrates, Victoria Square, Middlesbrough.
19. If the Applicant does appeal the decision and the appeal is dismissed by the Magistrates Court, the Council will claim its costs in defending its decision from the Applicant which could be in the region of £1000.

22/9

**ANY OTHER URGENT ITEMS WHICH IN THE OPINION OF THE CHAIR, MAY BE CONSIDERED.**

The Licensing Manager was asked to describe how prospective Taxi Drivers were informed about their requirement to declare offences and convictions.

Members were advised that the licensing online application system contained areas specifically for the declaration of offences and convictions. They were also advised that applicants could not proceed through the online application process without completing that section of the form.

**NOTED**

<b>MIDDLESBROUGH COUNCIL</b>	
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<b>Report of:</b>	Head of Democratic Services
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<b>Submitted to:</b>	Licensing Committee
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<b>Date:</b>	4 July 2022
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<b>Title:</b>	Licensing Meeting Codes of Practice
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<b>Report for:</b>	Decision
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<b>Status:</b>	Public
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<b>Strategic priority:</b>	Quality of service
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<b>Key decision:</b>	Not applicable
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<b>Why:</b>	Choose an item.
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<b>Urgent:</b>	Not applicable
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<b>Why:</b>	
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<b>Executive summary</b>	
<p>To ensure the Licensing Committee discharges its functions in accordance with its statutory requirements and the best practice principles of good governance. The attached Codes of Practice have been updated to reflect the most up to date good governance best practice requirements for Members.</p>	

## **Purpose**

1. To ensure the Licensing Committee discharges its functions in accordance with both its statutory requirements, and the principles of good governance, these Codes of Practice have been refreshed to reflect best practice governance requirements for Members.

## **Background and relevant information**

2. This Licensing Code of Practice has been prepared in order to assist Members in understanding and making decisions in relation to the Council's licensing functions conducted by the Licensing Committee. The aim is ensure that in the licensing process there are no grounds for suggesting a decision has been biased or unfair or that there has been any procedural impropriety. The Code of Practice also supplements the Member's Code of Conduct.
3. The Licensing Committee has a dual role. Firstly, it is responsible for general licensing functions delegated to it under the Constitution by virtue of Section 101 of the Local Government Act 1972.
4. Secondly, it is the Statutory Committee created under Sections 6 and 7 of the Licensing Act 2003 to deal with all licensing functions under that Act and Section 154 of the Gambling Act 2005 to deal with functions relating to premises licenses and permits used for gambling.
5. The licensing functions under the Licensing Act 2003 and Gambling Act 2005 have been delegated to Licensing Sub Committees comprising of three Members of the Licensing Committee. Consideration of Applications for licenses and reviews of licenses under the Scrap Metal Dealers Act 2013 have also been delegated to Licensing Sub Committees.
6. There is a separate Code of Practice for the conduct of Licensing Sub Committee Hearings, the decision making process and the rules of probity specifically to Licensing Sub Committee functions which should be referred to when Members attend those hearings.
7. Premises Licensing affects land and property interests, including the financial value of land and the quality of their settings. Personal Licences affect individuals. Licensing is often highly contentious because decisions affect the daily lives of everyone. Opposing views are often strongly held by those involved.
8. The licensing system can only function effectively if there is trust among those involved. There must be trust between Councillors and Officers and between the public and the Council.
9. The general principles that underlie the Council's Code of Conduct for Councillors and apply to this Code of Practice are:
  - Councillors should serve the public interest and should never improperly confer an advantage or disadvantage on any person.

- Councillors should not place themselves in situations where their honesty or integrity may be questioned.
- Councillors should make decisions on merit.
- Councillors should be as open as possible about their actions and those of their authority, and should be prepared to give reasons for those actions.
- Councillors may take account of the views of others but should reach their own conclusions on the issues before them and act in accordance with those conclusions.
- Councillors should respect the impartiality and integrity of Officers

10. The attached Codes of Practice (Appendices 1 and 2) set out practices and procedures that Councillors and Officers of the Council shall follow when involved in licensing. Licensing matters include the consideration of applications, the preparation of policy and the enforcement of licensing law

### **What decision(s) are being recommended?**

11. That the Licensing Committee:

- Approve the Licensing Codes of Practice and for it to be placed in the Members Handbook as a source of guidance for elected Members

### **Rationale for the recommended decision(s)**

12. The Code of Practice sets out practices and procedures that Councillors and Officers of the Council shall follow when involved in licensing. Licensing matters include the consideration of applications, the preparation of policy and the enforcement of licensing law. To ensure the Licensing Committee discharges its functions in accordance with both its statutory requirements, and the principles of good governance.

### **Other potential decision(s) and why these have not been recommended**

13. Do nothing – if the Codes of Practice are not approved by Licensing Committee it is possible the Council's Licensing functions may not adhere to the principles of good governance and negatively impact on the Councils governance improvement programme.

### **Impact(s) of the recommended decision(s)**

#### ***Legal***

14. Failure to follow this Code without good reason could be taken into account in investigations into possible maladministration against the Council, or have implications for the position of individual elected Councillors and officers. Breaches of this Code may also amount to breaches of the Members' Code of Conduct.

### ***Strategic priorities and risks***

15. Failure to achieve Good Governance.

***Human Rights, Equality and Data Protection***

16. NA

***Financial***

17. NA

**Actions to be taken to implement the recommended decision(s)**

Action	Responsible Officer	Deadline
If approved The Members Handbook be updated.	Head of Democratic Services	

**Appendices**

1	Draft LICENSING COMMITTEE CODE OF PRACTICE
2	Draft LICENSING SUB COMMITTEE CODE OF PRACTICE
3	

**Background papers**

Body	Report title	Date

**Contact: Sylvia Reynolds**  
**Email: [sylvia\\_reynolds@middlesbrough.gov.uk](mailto:sylvia_reynolds@middlesbrough.gov.uk)**

# LICENSING COMMITTEE CODE OF PRACTICE

Last updated July 2022

## LICENSING COMMITTEE CODE OF PRACTICE

### INDEX

1. Introduction
2. The Licensing Committee' Delegated Functions and Membership
3. Main Functions of the Licensing Committee
4. Taxi and Private Hire Licensing
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  - b. Terminology
  - c. Legislation
  - d. Differences between Taxis and PHVs
  - e. Local Authorities' Role in Taxi an PHV licensing in England and Wales
  - f. The Department of Transport's (Dft) role
  - g. The Taxi and Private Hire Policy
  - h. When is the Licensing Committee's Discretion Engaged?
  - i. How are Licensing Decisions Made - Fit and Proper Test?
  - j. What Decisions can be made?
  - k. Consideration of Convictions and Behaviour
  - l. General Principles of decision making
  - m. The Decision must be Reasonable
  - n. The Decision must be within the rules of Natural Justice
  - o. Application of Human Rights
  - p. Appearance of Bias
  - q. Personal and Prejudicial Interests
  - r. Gifts and hospitality
  - s. Confidential and Exempt Information
5. Agenda and Information provided before the Licensing Committee
6. The Role of Officers
7. The Equality Act 2010
8. Procedure at Committee
9. Councillor Training

## **1. INTRODUCTION**

This Code of Practice has been prepared in order to assist Members in understanding and making decisions in relation to the Council's licensing functions conducted by the Licensing Committee. The aim is ensure that in the licensing process there are no grounds for suggesting a decision has been biased or unfair or that there has been any procedural impropriety.

## **2. THE LICENSING COMMITTEE'S DELEGATED FUNCTIONS AND MEMBERSHIP**

- a. The terms of reference for the Licensing Committee is to have delegated powers to exercise the functions of the Council in relation to all licensing functions except insofar as such functions are delegated to an officer.
- b. The Licensing Committee is comprised of between 10 and 15 elected Members.
- c. The Licensing Committee has a dual role. Firstly, it is responsible for general licensing functions delegated to it under the Constitution by virtue of Section 101 of the Local Government Act 1972.
- d. Secondly, it is the Statutory Committee created under Sections 6 and 7 of the Licensing Act 2003 to deal with all licensing functions under that Act and Section 154 of the Gambling Act 2005 to deal with functions relating to premises licences and permits used for gambling.
- e. The licensing functions under the Licensing Act 2003 and Gambling Act 2005 have been delegated to Licensing Sub Committees comprising of three Members of the Licensing Committee. Consideration of Applications for licences and reviews of licences under the Scrap Metal Dealers Act 2013 have also been delegated to Licensing Sub Committees.
- f. There is a separate Code of Practice for the conduct of Licensing Sub Committee Hearings, the decision making process and the rules of probity specifically to Licensing Sub Committee functions which should be referred to when Members attend those hearings.

## **3. MAIN FUNCTIONS OF THE LICENSING COMMITTEE**

- a. The main day to day functions that fall within the remit of the Licensing Committee are the regulation of Taxi (hackney carriage) drivers and vehicles; Private Hire drivers, vehicles and operators which this code of practice will focus on.
- b. Occasionally, the Licensing Committee is also required to consider and / or determine

- Applications for the registration of Village Greens and Common Land under the Commons Act 2006
  - Application for sexual entertainment venues under Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 as amended by Section 27 of the Policing and Crime Act 2009.
  - Street Trading Designations under Schedule 4 the Local Government (Miscellaneous Provisions) Act 1982
  - Safety Certificates for sports grounds, regulated stands at sports grounds and fire certificates (The Safety of Sports Grounds Act 1975, Part III the Fire Safety and Safety of Places of Sport Act 1987 and Fire Precautions Act 1971
  - Charitable Collections
  - Licensing Policy reviews in a consultant capacity
  - Yearly consideration of Applications and Reviews of Licensing by Officers and the Licensing Sub Committees.
- c. There may be other matters that the Licensing Committee must consider or determine not listed in this code of practice but the principals contained in this code of practice may apply to matters considered or determined by the Committee

## **4. TAXI AND PRIVATE HIRE LICENSING**

### **a. Primary Function**

The Council and the Committee's primary function is the safety and protection of the public.

### **b. Terminology**

Taxis are referred to in legislation, regulation and common language as 'hackney carriages', 'black cabs' and 'cabs'. The term 'taxi' is used throughout this Code and refers to all such vehicles.

Private hire vehicles (PHVs) include a range of vehicles such as minicabs, executive cars, limousines and chauffeur services. The term 'PHV' is used throughout this Code to refer to all such vehicles.

Councils are only responsible for the licensing of vehicles which carry up to a maximum of eight passengers. Vehicles with a seating capacity of more than eight passenger seats, which can include some stretch limousines, are licensed by the Traffic Commissioners, who are appointed by the Transport Secretary.

### **c. Legislation**

Taxi and Private Hire Vehicle (PHV) legislation is primarily in the Town Police Clauses Act 1847 (the 1847 Act) and the Local Government (Miscellaneous Provisions) Act 1976 (the 1976 Act).

The legislation provides a broad framework for the licensing of drivers, vehicles and operators, but the detail of how this is done, including standards and conditions, is the responsibility of individual district and unitary councils ('licensing authorities').

There are a number of other Acts which also have an impact; for example the Equalities Act 2010, which places a duty on councils to take steps to meet the needs of disabled people where these are different from the needs of other people, and enables regulations to improve disabled access to taxis.

### **d. Differences between taxis and PHVs**

One of the key differences between the vehicles is that a PHV, unlike a taxi, cannot ply for hire, which means that all journeys must be pre-booked in advance through a licensed operator.

It is an offence for PHVs to pick up passengers from any location unless pre-booked. Local councils can also regulate the fares charged by taxis, whereas there is no power to do so with PHVs.

	Taxi	Private Hire
Ply for hire	✓	x
Pre booked	✓	✓
Operating from a rank	✓	x
Fare meter required	✓	x
Fare tariff set by council	✓	x
Number of vehicles may be restricted by councils	✓	x
Taxis require two types of licence:		Hackney carriage proprietors (vehicle) licence Hackney carriage drivers licence
The provision of a private hire service requires three types of licence:		Private hire operators licence Private vehicle licence Private hire drivers licence

### e. Local Authorities' role in taxi and PHV licensing

Taxi and PHV licensing in England and Wales is undertaken by licensing authorities (district and unitary councils). Middlesbrough Council has the responsibility for ensuring the public travel in safe, well maintained vehicles driven by safe competent drivers, as well as providing a fair and reasonable service for the taxi and PHV trade.

To deliver their responsibilities, councils' core functions in taxi and PHV licensing can be summarised as:

- setting the local framework, which can include safeguarding standards, fares, vehicles standards or limits on vehicle numbers – Policy
- considering applications and safeguarding the public by issuing, reviewing, suspending or revoking licenses
- undertaking inspection and enforcement activities to ensure the required standards are being maintained.

In providing the licensing function, the Council, under the provisions of the 1976 Act, is entitled to levy fees to recover the reasonable cost associated with:

- recovering the costs of the issue and administration of drivers' licences
- the inspection of vehicles for the purposes of determining whether any such licence should be granted or renewed
- the provision of hackney carriage stands
- any administrative or other costs in connection with the control and supervision of hackney carriage and private hire vehicles.

The Council consults upon the fees it intends to levy through a public notice procedure.

Licensing income from these schemes is ring-fenced, in that licensing fees and charges cannot be spent on other areas of council activity.

#### **f. Department for Transport's (DfT) role**

The DfT's role is that of regulatory ownership and maintenance of the regulatory framework for taxis and private hire vehicles. The Department collects and publishes statistics on an annual basis and produces statutory and best practice guidance to assist local councils in carrying out their taxi and PHV licensing functions.

The DfT produced Statutory Taxis and Private Hire Vehicle Standards which were published in July 2020. The Council and the Licensing Committee must have regard to these statutory standards when exercising their functions.

The focus of the new standards is on safeguarding with recommendations centred on ensuring robust decision-making processes and procedures are in place for licensing drivers and operators.

#### **g. The Taxis and Private Hire Policy ("the Policy")**

In accordance with the DfT's statutory standards Middlesbrough Council has published a single licensing Policy for taxi and PHV licensing that brings together all its procedures in one place. This includes policies on convictions, determining the 'fit and proper' person test, licence conditions and vehicle standards.

The Policy is reviewed on a regular basis and provides clarity for drivers, vehicle proprietors and operators, as well as strengthening the council's position if there is a challenge against a decision in court. The DfT recommends policies should be reviewed every five years but that interim reviews should also be considered where significant issues arise.

The views of the trade, customers, and other stakeholders are taken into consideration when establishing the Policy.

#### **h. When is the Licensing Committee's Discretion Engaged?**

Decisions in respect of applications for licences where there are grounds to refuse and reviews of current licences if an issue has been raised are made by the Licensing Committee.

However, Officers have been delegated the power to take action if a licensee has been arrested or charged with a serious offence or where urgent action is required to protect the public.

Both applicants seeking new licences and the holders of existing licences will have the right of appeal to the local magistrates' court if they are aggrieved by the decision of

the Licensing Committee or Officers to refuse to grant, condition, suspend or revoke a licence.

**i. How Are Licensing Decisions Made? - Fit and Proper Test**

The Licensing Committee must not grant a taxi or PHV driver's licence or permit a licensee to continue to be licensed unless it is satisfied the Applicant / Licensee is a fit and proper person to hold such a licence.

The Statutory Standards advised the following test be used:

*Without any prejudice, and based on the information before you, would you allow a person for whom you care, regardless of their condition, to travel alone in a vehicle driven by this person at any time of day or night? If, on the balance of probabilities, the answer to the question is 'no', the individual should not hold a licence.*

Properly applying the "fit and proper" person test is essential for ensuring a robust licensing scheme that protects safety and commands the confidence of the general public.

**j. What Decisions can be made?**

The Licensing Committee has range of options available to them including:

- in the case of licence applications, to grant a licence, with or without conditions (but not for taxi drivers)
- in the case of licence applications, to refuse a licence
- in the case of existing licences where matters are brought to the council's attention to do nothing (but members should set out reasons for this to protect the council in the future)
- in the case of existing licences where matters are brought to the council's attention to suspend a licence
- in the case of existing licences where matters are brought to the council's attention to introduce conditions on a PHV driver's or operator's licence
- in the case of existing licences where matters are brought to the council's attention to revoke a licence.
- If it is in the interests of public safety, the Committee can decide that a suspension or revocation of a Taxi or PHV driver's licence is to have immediate effect. This means the suspension or revocation will be effective from the date the Driver receives notice of the decision, rather than at the expiration of 21 days permitted for a Driver to appeal the decision or the determination of any

such an appeal by the court. This protects the public in that interim period. The Committee must explain in its decision why it considers an immediate suspension or revocation in the interests of public safety is required.

Suspension can be particularly helpful in improving standards or addressing complaints. For instance, a licence can be suspended until such time as the driver can undergo additional driver training or receive other improvement support. However, you cannot suspend a licence as an interim measure pending a final decision being made at a later date – it must always be used as a final decision (this was established in *R (application of Singh) v Cardiff City Council*). In other words, the suspension is lifted once the required action has been completed, with no threat of further penalty. In this context, suspension is not a punishment but a tool to protect the public from risk until corrective action has been completed by the driver.

Although the suspension must in itself be a final decision, if new evidence comes to light at a later date, as can happen in a court case, the Licensing Committee may take a new decision based on the new evidence. This would not fall foul of the *Singh v Cardiff* court case and decision, which considered the issue of suspension, because the decision to suspend would be made on the facts known at that time, and the decision to revoke would be made on the facts known at the later date.

However, the same case law has also determined that there are instances where a suspension can be used as a lesser sanction than revocation.

The Licensing Committee may attach bespoke conditions to taxi and PHV licences (except taxi driver licences) over and above the standard conditions contained in the Policy however, the conditions must not:

- exceed the council's powers set out in the controlling legislation ('ultra vires')
- be unreasonable or disproportionate
- be beyond the applicant's powers to comply with
- be for an ulterior motive.

They must:

- be clearly stated in order that they can be properly understood to be complied with and enforced.

#### **k. Considerations of Convictions and Behaviour**

The Policy includes the relevance of convictions, cautions, reprimands warnings, complaints and character and how this assists in determining whether an applicant is fit and proper.

Whilst each application must be determined on its individual merits, the Policy sets out a recommended minimum period free of conviction or incident for offences falling into broad categories. The conviction or incident free period starts once any sentence is completed.

The Policy should generally be followed unless there are good reasons to depart from it and those reasons are recorded.

The reason a person's past criminal or inappropriate conduct is taken into consideration is that it can indicate what is likely to happen in the future if a licence is granted.

When making decisions, the Licensing Committee can take into account any spent conviction, but must do so in a fair and proportionate way, following the Policy.

Sometimes an applicant/driver will assert that he was wrongly convicted, or only pleaded guilty to get it over with, to shield a family member or to avoid the risk of a more severe sentence. However the Licensing Committee must not go behind the existence of the conviction in an attempt to 're-try' the case (a principle established in Nottingham City Council v Farooq 1998).

Licensing Committee members should also be mindful that if a person claims to have perverted the course of justice by lying to protect as relative or friend, that in itself may demonstrate a dishonest character.

The Licensing Committee should not focus solely on an applicant's convictions as an indication of their character, but also their conduct.

It is not necessary for a criminal offence to have been committed to refuse to grant an application or suspend or revoked a licence.

A taxi / PHV driver is in a position of extreme trust in a very high risk environment where vulnerable adults and children will be travelling alone.

For instance, failure to comply with regulatory requirements, conditions or codes of conduct may not itself be criminal but may demonstrate a concern as to the fitness and suitability of an Applicant or licensee. Factors such as anti-social behaviour, solvency and sobriety would also be relevant. Certain behaviours or inappropriate actions by an Applicant or Driver may result in them being unfit in the interests of the public's safety or protection.

The Licensing committees can consider soft intelligence provided by the police and other partners, as well as of the applicant's responses in the committee hearing. It can consider complaints by Members of the public and other allegations.

The evidential threshold for licensing committees is not the 'beyond reasonable doubt' standard which is the criminal standard of proof for criminal trials but on the balance

of probabilities or whether it is more likely than not, based on the information provided, that the Applicant or Licensee is not fit and proper.

In short, the Statutory Standards advise, if you are 51 per cent sure that the applicant may not be a fit and proper person then you are able to, and should, refuse the licence. You should not give a driver the benefit of the doubt at this stage in the process.

When making decisions at both the application stage, or in a disciplinary situation with an existing driver, the sole deciding factor should be the safety of the travelling public. Exceptional mitigation may be relevant to assessing the risk to the travelling public if it shows that the driver/applicant acted out of character, so that the misdemeanour is unlikely to be repeated – but personal circumstances, and specifically the potential economic hardship of an applicant or driver, are not a factor to weigh in the balance against the safety of passengers.

## **L. General Principles of Decisions Making**

The Licensing Committee has a broad discretion when refusing to grant a licence or deciding what action to take on a review of a licence, providing the decision is reasonable, proportionate and follows the Policy unless there are good reasons to depart from it. Full reasons must be given by the Licensing Committee for departing from the Policy.

Detailed reasons must be given by the Licensing Committee for every decision reached. Applicants have a right of appeal to the magistrates' court against those decisions which involve refusal, suspension, revocation or the imposition of conditions.

Councillors' decisions shall not discriminate in favour of any individuals or groups and, although they may be influenced by the opinions of others, they alone have the responsibility to decide what view to take. Councillors must, therefore, consider all of the relevant issues in the light of Council policies, Government advice and their own individual judgement.

Whilst Councillors should take account of all views expressed, they shall not favour any person, company, group or locality, nor put themselves in a position where they appear to do so

### **m. The Decision must be reasonable.**

The decision must accord with the Wednesbury principle of reasonableness otherwise it would be unlawful

*Wednesbury principle: 'A decision so outrageous in its defiance of logic or accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it.'*

Wednesbury criteria:

- in making the decision, the committee took into account factors that ought not to have been taken into account, or
- the committee failed to take into account factors that ought to have been taken into account, or
- the decision was so unreasonable that no reasonable authority would ever consider imposing it.

**n. The decision must be within the rules of natural justice.**

*A party must know the case against them; anyone affected by a decision has a right to be heard; and no one should be a judge in his own cause. The Applicant or Licensee should have a fair hearing.*

The Decision should be justified and reasons should be given why the decision was made.

**o. Application of Human Rights**

A decision to revoke, suspend or refuse to renew a licence will engage the licensee's rights under the Human Rights Act 1998 (the 1998 Act) by providing a right to a fair hearing and a right to an independent and impartial appeal tribunal (in this case the magistrates' court). It may also engage the licensee's rights not to be deprived of their underlying economic interests in the licence unless that can be justified in the public interest and is proportionate.

There have been a number of challenges to decisions to suspend or revoke licences on the basis that a licence is a personal piece of property, and therefore revocation infringes the driver's human rights. However, case law has established that a decision maker dealing with a currently licensed driver should not regard the licence as a piece of property under the 1998 Act (*Cherwell District Council v Anwar 2011*).

**p. Appearance of bias**

While third party lobbying of elected members is legitimate and certain councillors may make representations to the licensing committee on behalf of 'interested parties', it is crucial for the Licensing Committee to ensure that there is neither actual nor an appearance of bias in its decision-making. It should also be remembered that concerns about political lobbying were the basis of the concerns which lead to the first Nolan Committee on Standards in Public Life.

Section 25 of the Localism Act 2011 does not prevent members from publicly expressing a view about an issue or giving the appearance of having a closed mind towards an issue on which they are to adjudicate

However, it is recommended that to avoid an appearance of bias the following advice should be observed:

- No member sitting on the licensing sub-committee can represent one of the interested parties or the applicant. If s/he wishes to do so s/he must excuse him/herself from membership of the sub-committee which is considering the application. Case law has also established they should not be in the room for the hearing once an interest has been declared.
- If a member who sits on the licensing committee is approached by persons wishing to lobby him/her as regards the licence application then that member must politely explain that they cannot discuss the matter and refer the lobbyist to his/her ward member or the licensing officer who can explain the process of decision making. If the member who sits on the licensing sub-committee wishes to represent them then s/he will need to excuse him/herself from the licensing committee.
- Members who are part of the licensing committee must avoid expressing personal opinions prior to licensing committee decision. To do so will indicate that the member has made up his/her mind before hearing all the evidence and that their decision may not be based upon the licensing objectives nor the statement of licensing policy.
- Members must not pressurise licensing officers to make any decisions or recommendations as regards applications.
- Political group meetings should never be used to decide how any members on the licensing committee should vote. The view of the Ombudsman is that using political whips in this manner may well amount to findings of maladministration..
- Councillors must not be members of the licensing committee if they are involved in campaigning about the application.
- Other members (i.e. those who do not sit on the licensing committee) need to be careful when discussing issues relating to matters which may come before the licensing committee members as this can easily be viewed as bias / pressure and may well open that committee member to accusations of such. While a full prohibition upon discussing such issues with committee members by other members may be impractical and undemocratic, Members are subject to the Council's Members Code of Conduct.
- Members must also be aware of the need to declare any pecuniary or non-pecuniary interests in matters that may come before them, whether these relate to policy issues or to specific applications.
- Member behaviour is also governed by the member's code of conduct which you should have regard to.
- Members should consult the monitoring officers for further advice where necessary.

## **q. Personal and Prejudicial Interests**

The Code of Conduct for Councillors provides guidance as to disclosable interests which may (depending on their nature) affect a Councillor's ability to take part in the decision-making process.

Where Councillors have interests which may be thought likely to influence their decision, the fact should be declared at the meeting.

Where the interest is such that members of the public may feel that the Councillor will not be able to approach matters with an open mind and consider the application on its merits, Councillors should consider withdrawing from the Committee.

As a minimum, the integrity of the licensing system requires openness on the part of Councillors; it must operate fairly and be seen to operate fairly

## **Pecuniary Interests**

If you have a pecuniary interest in an Application or Review you must make a verbal declaration of the existence and nature of the disclosable pecuniary interest at the Committee at which you are present at which an item of business which affects or relates to the subject matter of that interest is under consideration, at or before the consideration of the item of business or as soon as the interest becomes apparent.

## **Other Interests**

If you attend a Committee at which any item of business is to be considered and you are aware that you have a "non-disclosable pecuniary interest or non-pecuniary interest" in that item, you must make verbal declaration of the existence and nature of that interest at or before the consideration of the item of business or as soon as the interest becomes apparent.

You have a "non-disclosable pecuniary interest or non-pecuniary interest" in an item of business where a decision in relation to that business might reasonably be regarded as affecting the well-being or financial standing of you or a member of your family or a person with whom you have a close association to a greater extent than it would affect the majority of the Council Tax payers, ratepayers or inhabitants of the ward or electoral area for which you have been elected or otherwise of the authority's administrative area.

## **Gifts and hospitality**

Councillors shall follow the advice in the Member's Code of Conduct about accepting gifts and hospitality. Councillors should treat with extreme caution any offer which is made to them personally; the normal presumption should be that such offers must be courteously declined. Similarly, officers shall politely decline offers of hospitality from people with an interest in a proposal. If receipt of hospitality is unavoidable, Officers shall ensure it is of a minimal level and declare it in the hospitality register as soon as possible

## **r. Exempt and Confidential Information**

Most Reports regarding applications or reviews will contain confidential information about an individual's previous convictions or conduct. As it is in the public interest that the Licensing Committee is able to consider this confidential information in order to reach an informed decision the press and the public are usually excluded from the meeting when such reports are being considered.

The Press and Public are therefore usually excluded under Section 100A (4) Part 1 of the Local Government Act 1972 on the grounds that if present there would be disclosure to them of exempt information falling within paragraphs 1, 2, 3 and 7 of Part 1 of Schedule 12A of the Act and the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

Members of the Licensing Committee are therefore under a duty to keep the information contained in the reports and discussed at the meeting confidential. If information is shared there would be a breach of the Members Code of Conduct and if harm is caused as a result the Council may be liable for damages.

## **5. AGENDA AND INFORMATION PROVIDED BEFORE THE LICENSING COMMITTEE**

Members will receive the Agenda.

The Agenda will include, Apologies for Absence, Declaration of Interests, Minutes of the Previous Committee, any reports that are not confidential for consideration, Consideration of excluding the press and the public in order for the Committee to consider confidential reports, any applications or reviews to be considered, followed by an entry for any other urgent business that in the opinion of the Chair should be considered.

Members will receive the Licensing Officers Reports in respect of Applications and / reviews.

The Reports will include the details of the issues to be considered, the relevant parts of the Policy that apply and any further appended information.

Prior to the Committee the Members should have received and read the Agenda and Reports

Members should be aware of the parts of the Policy that apply to the individual Applications or Reviews.

Members should declare if they have any personal or pecuniary interests in any of the matters prior to the meeting and, if required, arrange for a substitute who has been fully trained to attend

Members should sign the attendance sheet prior to the opening of the Committee

## **6. THE ROLE OF OFFICERS**

Officers in their role of advising Councillors shall provide:

- Impartial and professional advice;
- Complete written reports covering all necessary information for a decision to be made.

Officers shall follow the guidance on their standards of conduct as set out in the Code of Conduct for Employees in the Council's Constitution and any National Code of Conduct for Local Government Officers issued by the Secretary of State under Section 82 Local Government Act 2000

An Officer from the Licensing Team will be present at the hearing to summarise the report answer any questions, clarify any matter and to ask questions of an Applicant or Licensee.

An Officer from the Governance Team will be present at the hearing to take a record of proceedings and to answer any questions relating to the Governance of the meeting and proceedings.

An Officer from Legal Services will be present to advise the Committee.

## **7. EQUALITY ACT 2010**

Section 149 provides that:

A council must, in the exercise of its functions, have due regard to the need to:

- (a) eliminate discrimination, harassment, victimisation and any other conduct which is prohibited by or under the Equality Act 2010;
- (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- (c) foster good relations between persons who share a protected characteristic and persons who do not share it.

The above powers relate to the following protected characteristics:

(a) Ages; (b) Disability; (c) Gender reassignment; (d) Marriage and civil partnership; (e) Pregnancy and maternity; (f) Race (including colour, nationality and ethnic or national origins); (g) Religion or belief; (h) Sex; or (i) Sexual orientation

## **8. THE PROCEDURE OF THE LICENSING COMMITTEE**

The Licensing Committee will generally following the following procedure however the Chair may depart from or change the order as and when required.

- Chair of the Licensing Committee opens the Meeting and proceeds through the Agenda
- Apologies for Absence
- Declarations of Interest
- Approval of Minutes of previous meeting
- Consideration of any public reports
- Exclusion of the Press and Public
- Consideration of Each Report
- Chair Introduces the Members and Officers to the Applicant / Licensee
- Chair asks Applicant / Licensee to provide their name and address and confirms that they have received the report and any appendices
- An Applicant is entitled to be represented by another person or persons or bring witnesses to support their case. A representative may or may not be legally qualified
- Chair explains the procedure of the Committee to the Applicant / Licensee
- Chair Asks the Licensing Officer to summarise the Report and any appendices
- Chair asks Members if they have any questions in relation to the report only
- Chair asks the Applicant / Licensee if they agree the Report is correct, if not advice sought and decision made whether or not to proceed
- If there is a witness the Chair calls for the witness to enter the Committee, the chair explains this part of the procedure to the witness, the witness is asked to give their information to the Committee. Members, the Licensing Officer, Legal Officer and the Chair can ask questions of the Witness. The Applicant / Licensee may be permitted to ask questions of the witness but not to cross exam or make statements. A witness is entitled to bring a representative to support them. Once the witness has provided the information and answered any questions the Chair will request they leave the Committee. There may be situations where special measures are required, for example screening, video link or excluding the Applicant / Licensee whilst the witness provides their information. If the latter is the case the Applicant / Licensee should be advised of a summary of the information provided and given an opportunity to consider and respond to ensure a fair hearing.
- If there is any footage the Chair will request this is shown to the Committee
- The Chair asks the Applicant / Licensee to present their case
- The Chair gives permission for Members to ask questions of the Applicant / Licensee. Open questions should be asked. Members should not make statements as to what their view is at this stage as this gives the appearance that their minds have been made up and may result in an unfair hearing.
- The Chair gives permission for Officers to ask questions

- The Chair may ask questions at any point
- If permission is given by the Chair, the Applicant / Licensee is given the opportunity to sum up their case
- The Chair informs the Applicant / Licensee that the Members, Governance Officer and Legal Officer will retire into closed session in order to consider the case and for Members to make a decision.
- The Applicant will be informed whether or not the decision will be given in writing in five working days at the Chair's discretion.
- Members and Officers go into closed session, the Applicant / Licensee, any representatives and the Licensing Officer leave the room
- Members debate the case in closed session and consider the report, appendices, oral representations, relevant policy, legal advice, proposals and reasons. A proposal may be put forward and seconded. Proposals are then put to the vote. Members should raise their arms for a vote in favour, against or to abstain. The Chair has the casting vote in the case of a tie. If the first proposal has a majority vote in favour that is the decision of the Committee.
- The Applicant / Licensee and any representatives are called back into the room unless informed the decision will be supplied in writing in five working days.
- The Chair informs the Applicant / Licence of the summary of the decision and that a letter setting out the decision and all of the reasons will sent to the Applicant / Licensing within five working days. The Chair informs the Applicant / Licensee of their right of appeal if applicable.
- Chair considers any other business and closes the meeting.

## 9. COUNCILLOR TRAINING

No decision makers should be permitted to sit on the Licensing Committee without having been formally trained.

In accordance with DfT's statutory standards, training covers licensing procedures, natural justice, understanding the risks of child sexual exploitation, and disability equality, as well as any additional issues deemed locally appropriate. It covers the making of difficult and potentially controversial decisions. All training is formally recorded by the council and requires a signature from the Councillor.

Trained Members of the Licensing Committee will have or access to

- Membership and Terms of Reference
- Procedure at Licensing Committee
- Training Materials
- The Taxi and Private Hire Policy
- Statutory Taxi and Private Hire Standards

Failure to follow this Code without good reason could be taken into account in investigations into possible maladministration against the Council, or have implications for the position of individual elected Councillors and officers.

Breaches of this Code may also amount to breaches of the Council's Members Code of Conduct. If in doubt about what course of action to take, a Councillor or officer should seek the advice of the Council's Monitoring Officer.



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# LICENSING SUB COMMITTEE HEARINGS CODE OF PRACTICE

Last updated July 2022

# LICENSING SUB COMMITTEES CODE OF PRACTICE INDEX

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## **PART I**

### **Introduction**

1. This Code of Practice has been prepared in order to assist Members in understanding and making decisions in relation to the Council's licensing functions conducted by the Licensing Sub Committees. The aim is ensure that in the licensing process there are no grounds for suggesting a decision has been biased or unfair or that there has been any procedural impropriety.

### **The Licensing Sub Committees Delegated Functions and Membership**

1. The terms of reference for the Licensing Sub Committees is to have delegated powers to exercise the functions of the Council in relation to the Licensing Act 2003, Gambling Act 2005 including the determination of a large casino competition and the Scrap Metal Dealers Act 2013.
2. The Licensing Sub Committees are comprised of three Members of the parent Licensing Committee. The Chair and the Vice Chair of the Licensing Committee are the Chairs of the Licensing Sub Committees. Each Licensing Sub Committee has a Chair and two Members who make the decisions. The Membership can be no more nor less than three.
3. The Licensing Committee is the Statutory Committee created under Sections 6 and 7 of the Licensing Act 2003 to deal with all licensing functions under that Act and Section 154 of the Gambling Act 2005 to deal with functions relating to premises licences and permits used for gambling.
4. When the Acts were implemented consideration of applications reviews and associated functions were delegated to the Licensing Sub Committees in accordance with Section 10 of the Licensing Act and Section 154 of the Gambling Act.
4. Functions under the Scrap Metal Dealers Act 2013 were delegated to the Licensing Committee and by the Licensing Committee to the Licensing Sub Committees when the Act was implemented under Section 101 of the Local Government Act 1972.

### **Main Functions of the Licensing Sub Committees**

1. The main day to day functions that fall within the remit of the Licensing Sub Committees are the licensing of alcohol, entertainment and late night refreshment at venues in Middlesbrough under the Licensing Act 2003 which this Code of Practice will focus upon.
2. Occasionally, Licensing Sub Committees will also be required to consider licensing functions relating to gambling at venues under the Gambling Act 2005 and to scrap metal collectors or sites / dealers under the Scrap Metal Dealers

Act 2013.

3. Unlike usual Committees of the Council which follow the procedural rules set down by the Constitution, the rules and procedure of Licensing Sub Committees dealing with functions under the Licensing Act are governed by that Act and the Licensing Act (Hearings) Regulations 2005. Likewise, functions relating to gambling venues under the Gambling Act 2005 are governed by that Act and the Gambling Act 2005 (Proceedings of Licensing Committees and Sub-committees) (Premises Licences and Provisional Statements) (England and Wales) Regulations 2007.
4. This Code of Practice will focus on the rules and procedures of Licensing Sub Committees considering Licensing Act functions. However, it will provide an overview of the functions of a Licensing Sub Committee under the Gambling Act 2005 and the Scrap Metal Act 2013. If a Licensing Sub Committee is required to consider functions under the Gambling Act 2005 or the Scrap Metal Dealers Act 2013 specific advice in relation to those matters will be provided at the time.
5. However the general principles contained in this Code of Practice notwithstanding specific Regulations should apply to all matters, especially parts III and IV. Members who sit on Licensing Sub Committees should also comply with the Members Code of Conduct.

## **OVERVIEW OF GAMBLING LICENSING FUNCTIONS**

1. Under the Gambling Act 2005, the Gambling Commission is responsible for issuing operators and personal licences and the Council is responsible for issuing, reviewing or cancelling Premises Licence or Permits for gambling venues.

2. Under the Gambling Act the Council through its Licensing Committee and Licensing Sub Committees will be responsible for functions relating to

- the grant renewal and review of premises licences in respect of casinos, bingo premises, adult gaming centres, family entertainment centres and betting premises and
- the grant, renewal and cancellation of Permits for gaming, prize gaming and gaming machines in family entertainment centres, clubs or premises licensed under the Licensing Act 2003.

3. The Gambling Act introduced three licensing objectives (s.1 of the Act) which guide the way that the Licensing Sub Committees perform their functions and the way that gambling businesses carry on their activities, the objectives are:

- preventing gambling from being a source of crime or disorder, being associated with crime or disorder, or being used to support crime
- ensuring that gambling is conducted in a fair and open way
- protecting children and other vulnerable persons from being harmed or exploited by gambling

4. As required by the Act the Council has produced a Statement of Principles (Policy) this sets out how the council views the local risk environment and its expectations in relation to operators with premises in its area.

5. The Act (section 153) requires that decisions of the Licensing Sub Committee shall aim to permit the use of premises for gambling in so far as they think it is:

- in accordance with any relevant code of practice issued by the Gambling Commission
- in accordance with any Guidance issued by the Commission
- reasonably consistent with the licensing objectives
- in accordance with the Council's statement of licensing policy



6. Authorised Officers together with the police and the Gambling Commission's enforcement officers will be responsible for inspection of premises and enforcement of the Act.

7. Specific Advice will be given if an Application is required to be considered by the Licensing Sub Committee. However Members should comply with the Members Code of Conduct and the advice set out in this Code of Practice particularly at Parts III and IV

8. The following is a table of the delegation of the functions under the Act

Matter to be dealt with	Full Committee	Licensing Committee	Sub Officers
Application for a premises licenses		Where relevant representations have been received and not withdrawn	Where no relevant representations have been received/representations have been withdrawn
Application for variation of a premises licence		Where relevant representations have been received and not withdrawn	Where no relevant representations have been received/representations have been withdrawn
Application for a transfer of a premises licence		Where relevant representations have been received and not withdrawn	Where no relevant representations have been received/representations have been withdrawn
Representations to be made on behalf of the Licensing Authority			X
Decision on vexatious frivolous representations and representations which will not influence the determination of an application			X
Determination of a review		X	
Decision to initiate a review			X
Revocation of a licence for failure to pay a fee			X
Application for a provisional statement		Where relevant representations have been received and not withdrawn	Where no representations have been received/representations have been withdrawn



Consideration of a temporary use notice and modifications thereof		Where relevant representations have been received and not withdrawn	Where no representations have been received/representations have been withdrawn
Decision to give counter-notice to a temporary use notice		Where objections have been received	Where the maximum permitted period s is wholly or partly exceeded
Family Entertainment Centre Permits		X	



## **OVERVIEW OF SCRAP METAL LICENSING FUNCTIONS**

1. The Scrap Metal Dealers Act 2013 introduced a new licensing regime for scrap metal collectors and dealers as a result of increased metal thefts.
2. The Act creates two licences, a site licence and a collector's licence. A Site Licence requires all of the sites at which the licensee carries on the business as a Scrap Metal Dealer within the local authority area to be identified and a site manager to be named for each site. Once a Site Licence is issued the licensee will be permitted to operate from those sites as a scrap metal dealer, including transporting scrap metal to and from those sites from any local authority area. A Collector's Licence will permit the licensee to operate as a mobile collector to collect commercial and domestic scrap in the Middlesbrough area only.
3. The Act requires that Scrap Metal Licences must not be granted unless the Council is satisfied that the applicant is a suitable person to carry on a business as a scrap metal dealer or collector
4. Where there are no concerns Officers will grant a licence, where there are concerns about an applicant's suitability the matter will be determined by a Licensing Sub Committee.
5. When determining whether an applicant is a suitable person the Licensing Sub Committee may have regard to any information that it considers relevant, including in particular:-
  - Whether the applicant or site manager has been convicted of any relevant offence;
  - Whether the applicant or site manager has been the subject of any relevant enforcement action;
  - Any previous refusal of an application for the issue or renewal of a Scrap Metal Licence (and the reasons for the refusal);
  - Any previous refusal of an application for a relevant environmental permit or registration (and the reasons for the refusal);
  - Any previous revocation of a Scrap Metal Licence (and the reasons for the revocation);
  - Whether the applicant has demonstrated that there will be in place adequate procedures to ensure that the provisions of the Act will be complied with.
6. Specific Advice will be given if an Application is required to be considered by the Licensing Sub Committee. However Members should comply with the Members Code of Conduct and the advice set out in this Code of Practice particularly at Parts III and IV

## **PART II**

### **LICENSING FUNCTIONS UNDER THE LICENSING ACT 2003**

#### **1. Introduction**

The Licensing Act 2003 (the Act) was introduced to provide a clear, transparent framework for making decisions about applications by individuals or businesses wishing to sell or supply alcohol, or provide certain types of regulated entertainment and late night refreshment.

#### **2. The Licensing Objectives**

There are four licensing objectives which underpin the Act and which need to be taken into account and promoted throughout the licensing process. Each of these objectives is of equal weight.

The licensing objectives are the promotion of:

- the prevention of crime and disorder
- public safety
- the prevention of public nuisance
- the protection of children from harm.

#### **3. What activities are licensed?**

There are a number of different activities that were brought together under the Act which are referred to in legislation as 'licensable activities'.

Licensable activities are:

- the sale of alcohol by retail
- the supply of alcohol in qualifying members' clubs
- the provision of regulated entertainment
- the provision of hot food and hot drink ('late night refreshment') to the public between 11.00 pm and 5.00 am.

To count as regulated entertainment, the activity must be provided in front of an audience for the purpose of entertaining them and must fit into one of the following categories:

- it is provided for members of the public (anybody can buy a ticket or come to the event)
- it is exclusively for members of a (private) qualifying club and their guests
- it is arranged by someone who is trying to make a profit.

Regulated entertainment is defined as (subject to exemptions):

- live amplified and unamplified music
- recorded music
- exhibition of film
- performances of plays
- indoor sports
- boxing and wrestling.

There are certain forms of entertainment that are always regulated, for example entertainment provided to over 500 people (or over 1000 people for indoors sporting events), entertainment provided between 11.00 pm and 5.00 am and boxing and wrestling.

There are however a number of activities that are exempt under the Act from needing a licence, such as the performance of live music to a limited audience up to 11.00pm.

#### **4. Types of licence and permission**

Carrying out licensable activities requires a licence or other type of permission. The four types of 'authorisation' under the Act are summarised below.

<b>Premises licence</b>	A premises licence allows licensable activities to be provided 'at any place' either indefinitely or for a fixed duration. It must name a Designated Premises Supervisor if there are sales of alcohol.
<b>Personal licence</b>	Each sale of alcohol must be authorised by a personal licence holder. A personal licence is needed by an individual to act as a

	Designated Premises Supervisor where there is a premises licence to sell or authorise the sale of alcohol.
<b>Temporary event notice</b>	Allows licensable activities to be provided by any person at any place temporarily for no more than a maximum number of people.
<b>Club premises certificate</b>	Qualifying members' clubs (eg the Royal British Legion, working men's clubs and sports clubs) planning to sell or supply alcohol may need to apply for a club premises certificate.

## 5. Statutory Guidance

Statutory guidance for licensing authorities is issued by the Secretary of State under Section 182 of the Act, often referred to as 'Section 182 guidance'. Licensing authorities have a duty to have regard to this guidance and it should be followed unless there is good reason to depart from it. The Section 182 guidance is a comprehensive and useful tool for councils around the discharge of functions under the Act, including processes for hearings.

### **The Role of the Council**

The Council is the licensing authority for Middlesbrough. The core functions can be summarised as:

- setting the local framework through a statement of licensing policy
- considering applications with a view to promoting the licensing objectives
- undertaking inspection and enforcement activities to ensure conditions of licences are being met
- maintaining a register of licensed premises, activities and individuals
- providing bi-annual statistics to government as part of the National Statistics collection.

## 6. Statement of Licensing Policy

Under the Act, licensing authorities are required to prepare a statement of licensing policy (SLP). The Council's SLP sets out how licensable activities will be regulated and how licensing functions will be exercised in Middlesbrough, as well as expectations of licence holders and operators.

The SLP takes a strategic look across all of the licensable activities within Middlesbrough and sets out a vision for them.

The Licensing Sub Committees must have regard to the SLP when making considerations and determinations. A Licensing Sub Committee should only depart from the SLP if there are good reasons to do so

The SLP takes on additional significance in the event that there is a challenge or appeal to the sub-committee's decision. At this point the Magistrates court will adopt the licensing authority's policy as if it were its' own.

The SLP is formally adopted by the licensing authority (full council). A SLP runs for a maximum period of five years. The SLP and any reviews are thoroughly and widely consulted upon before being implemented

**7. Cumulative impact assessments**

If authorities have evidence that the high number or density of licensed premises in a particular area is having a detrimental effect on one or more of the licensing objectives, the licensing authority may consult on a cumulative impact assessment (CIA). A CIA is an evidence-based tool for licensing authorities to limit the growth of licensed premises in a problem area.

In an area where a CIA has been published it is setting down a strong statement of intent about its approach to considering applications for the grant or variation of premises licences or club premises certificates in the area described. If representations have been received the Licensing Sub Committee should be satisfied that new applications or variations will not add to the detriment to the objectives in those areas.

**8. When is the Licensing Sub Committee's Discretion Engaged?**

If an Application has been received and relevant representations have been received about the Application and not withdrawn, the Licensing Sub Committee must hold a hearing to consider the matter. The Licensing Sub Committee must hold a hearing if an Application has been made to review a current licence.

The Delegation of the functions are set out in the table below

<b>Matter to be dealt with</b>	<b>Full Licensing Committee</b>	<b>Licensing Sub-committee</b>	<b>Officers</b>
Application for Personal Licence		If Police / home office objection	If no objection
Application for Personal licence with unspent convictions		All cases	
Application for Premises Licence/Club		If relevant representation	If no relevant representation



Premises Certificate			
Application for Provisional Statement		If relevant representation	If no relevant representation
Application to vary Premises Licence/Certificate		If relevant representation	If no relevant representation
Application to vary Designated Premises Supervisor		If Police / home office objection	If no Police objection
Request to be removed as Designated Premises Supervisor			All cases
Application for transfer of Premises Licence		If Police, home office Objection	All other cases
Applications for Interim Authorities		If Police objection	All other cases
Application to review Premises Licence/Certificate		All cases	
Decision on frivolous/vexatious/ Repetitive/irrelevant representation		If referred by Officer	All other cases
Police or Environmental Health objection to Temporary Event Notice		All cases	
Inspections, rights of entry and enforcement authorised by the Licensing Act 2003 (including but not limited to the instigation of proceedings for an offence)			All cases

Statement of Licensing Policy	Comments can be submitted as consultee (full council approval)		
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## **9. Relevant Representations**

The Act enables scrutiny of applications both by experts, local residents and businesses who all have the opportunity to comment on an application.

A relevant representation is one made by a Responsible Authority or any other person that relates to the likely effect of the application on the promotion of the licensing objectives.

Representations must be made in writing within the required time period. Officers can reject representations that are out of time or irrelevant, or if they are from persons other than responsible authorities and are considered vexatious or frivolous. Statutory guidance recommends that the benefit of the doubt should be given to those making representations and borderline submissions allowed to be considered by the sub-committee.

## **10. Responsible Authorities**

Responsible authorities (RAs) are statutory bodies which are able to comment on applications made under the Act and can also apply for licence reviews in their own right.

The responsible authorities are:

- the licensing authority itself
- the chief officer of police
- the fire and rescue authority
- the body responsible for enforcing health and safety at work (this may be the Health and Safety Executive for council-run premises)
- the local planning authority
- environmental health

- the body designated by the local authority for the prevention of children from harm (eg the multi-agency safeguarding arrangements – previously local children’s safeguarding board)
- trading standards
- the council’s director of public health (England) or local health boards (Wales)
- with regard to a vessel – the Environment Agency, the Maritime and Coastguard Agency
- Home Office Immigration Enforcement.

## **11. Types of Decisions / Actions that can be made or taken by Licensing Sub Committees**

A hearing of the Licensing Sub Committee may consider a range of different applications under the Act where representations have been received. A Licensing Sub Committee has the power to take the following actions in respect of the varying types of Applications:

### Application for a Premises Licence

- grant the Licence subject to conditions that are consistent with those set out in the operating schedule by the Applicant
- grant the licence subject to the to the modification of conditions on the licence by altering or omitting conditions or by imposing new conditions
- grant the licence subject to excluding any of the licensable activities from the licence.
- Refuse to specify a person in the licence as a designated premises supervisor
- Reject the application.

### Application for a Variation of a Premises Licence

- grant the variation in accordance with the Application
- grant the variation subject to the modification of conditions on the licence by altering or omitting conditions or by imposing new conditions.
- reject the whole or part of the application to vary.

### Application for a Review a Premises Licence

- Take no action
- Modify the conditions of the licence by altering or omitting conditions or by imposing new conditions permanently or for a period of up to three months
- exclude a licensable activity from the scope of the Licence permanently or for a period of up to three months
- remove the designated premises supervisor
- to suspend the licence for a period of up to three months

- revoke the licence

#### Interim Review of a Premises Licence (also known as interim steps)

- modify the conditions on the licence by altering or omitting the conditions or by imposing new conditions
- exclusion of the sale of alcohol by retail from the scope of the licence
- removal of the designated premises supervisor
- suspension of the licence

#### Application for a Transfer of a Premises Licence

- Grant the Transfer
- Reject the Transfer if appropriate to promote the crime prevention objective or to prevent illegal working

#### Application for a Personal Licence

- Grant the Application
- Reject the application if it is appropriate from the crime prevention objective or to prevent illegal working.

A Provisional Statement in respect of premises an Applicant wishes to construct or alter before applying for a full Licence may also be considered and granted, refused or be subject to conditions by the Licensing Sub Committee.

There are similar actions that can be taken in respect of Club Premises Certificates under the Act however such applications rarely come before the Licensing Sub Committee.

## **PART III**

### **LICENSING SUB COMMITTEE HEARINGS**

#### **1. Introduction**

A hearing should be held if a relevant representation has been received in respect of an Application and not withdrawn and when an Application for a Review of a current licence has been made.

The Licensing Act (Hearings) Regulations 2005 govern the rules and procedure at hearings.

#### **2. Information Prior to a Hearing**

Members who have been trained to be able to sit on a Licensing Sub Committee will have been given or have access to

- The Act
- The Government Guidance under Section 182 of the Act
- The Council's Statement of Licensing Policy
- The Licensing Act (Hearings) Regulations 2005
- The Committee Procedure

Members will receive an Agenda. The Agenda will list the Order of business usually in order of: Apologies for Absence, Declarations of Interests, Consideration of holding the meeting in public and Consideration of the matter before the Committee.

Members will receive the Licensing Officer's Report in respect of the Application. The report will include the details of the application, representations received a copy of the notice of the hearing and any issues raised.

Members will receive additional documentation provided by any party as part of the report or as an additional bundle.

Prior to the Committee Members should have read all of the documentation. Members should be aware of the parts of Guidance and Policy that are relevant to the Application.

#### **3. Who can attend a hearing?**

Any party making an application or making a representation can attend the hearing, they may be accompanied by a representative and any witnesses who wish to give evidence on their behalf.

#### **4. Roles**

Officers in their role of advising Councillors shall provide:

- Impartial and professional advice;
- Complete written reports covering all necessary information for a decision to be made.

Officers shall follow the guidance on their standards of conduct as set out in the Code of Conduct for Employees in the Council's Constitution and any National Code of Conduct for Local Government Officers issued by the Secretary of State under Section 82 Local Government Act 2000

An Officer from the Licensing Team will be present at the hearing to summarise the report, answer any procedural questions and ask questions of the parties if permitted by the chair. The Officer will not go into private session with the Committee.

An Officer from the Governance Team will be present at the hearing to take a record of the hearing and answer any questions relating to the Governance of the meeting and proceedings. The Officer will go into private session with the Committee.

An Officer from Legal Services will be present to advise the Committee, the role is to guide and provide advice to the sub-committee, whether or not it is requested, for example:

- questions of law – interpreting any legislation
- matters of practice/procedure
- admissibility of evidence Licensing Act 2003 43
- range of options available to the committee
- any relevant higher court decisions
- drafting and formulation of conditions
- what the Section 182 guidance says.

The role of the chair of the licensing sub-committee is the oversight of the conduct of hearings, this includes ensuring that all relevant matters are discussed and that effective decisions are made. The chair is also responsible for deciding whether any individual councillors should be prohibited from sitting on the committee, for example where there is a conflict of interest.

#### **5. Procedure to be followed at the hearing**

Licensing Sub Committee Hearings should generally follow the following procedure unless in the interests of justice and fairness it is appropriate to depart from the procedure:

Introduction of the matter before the committee by the Chair:

- Chair welcomes the parties and introduces members and officers

- Chair deals with, apologies for absence and membership changes (if any)
- Chair deals with any declarations of interests
- Chair confirms if hearing is to be in public
- Chair asks each party present to introduce themselves and in what capacity they are at the meeting
- Chair deals with absent parties issue (if any)
- Chair briefly explains the application and the procedure
- Chair confirms that the parties have been sent and received all relevant documentation.
- licensing officer summarises report and documentation
- Chair confirms whether report is accurate
- members and parties (if permission granted) ask questions in respect of the report for clarification

The Applicant presents their case

- Chair asks whether the applicant is represented
- the committee considers requests for witnesses to appear (if any)
- applicant presents his case
- members ask questions
- interested parties and responsible authorities ask questions if permission is granted by the Chair

Interested parties / responsible authorities present their case

- the Chair determines the order of such representations
- the Chair asks each party if they are represented
- the committee considers any requests by the parties for witnesses to appear
- Each party presents their case
- members ask questions
- applicant or other party ask questions if permission is granted by the Chair

Interested parties / responsible authorities sum up their cases

Applicant sums up their case

Applicant and Parties at the hearing informed the decision and reasons of the Licensing Sub Committee will be provided in writing in five working days.

Members go into closed session to discuss and make their decision. The Legal and Governance Officers may go into closed session with the Members of the Licensing Sub Committee.

## **6. Licensing Sub Committee considerations**

Members of the Licensing Sub Committee must take into consideration:

- The relevant provision in the Act
- The promotion of the four Licensing Objectives, namely,
  - the prevention of crime and disorder
  - public safety
  - the prevention of public nuisance
  - the protection of children from harm
- Government Guidance issued under Section 182 of the Licensing Act 2003
- Middlesbrough Council's Statement of Licensing Policy, and
- The merits of the application and representations raised.
- The public interest

Members must take into account anything relevant, and use this to make judgements or inferences, about potential harm and what is necessary to avoid it. For example they can draw on local knowledge, regardless of whether it would qualify as 'evidence' in a court. However, it is sensible to raise any specific areas of local knowledge for comment by the parties. The committee must disregard any irrelevant considerations, including (but not limited to) information or evidence which is not relevant to the application or to the promotion of the licensing objectives.

## **7. Specific Procedural Issues Under the Licensing Act (Hearings) Regulations 2005**

### **7.1 Absent Parties**

Regulation 20 of the Hearings Regulations 2005 states that if a party notifies the authority they will not be attending the hearing, the hearing may proceed in their absence. In addition if a party fails to notify the authority of their intentions and does not appear, the Sub Committee can either adjourn the hearing if it is in the public interest to do so or proceed with the hearing in that party's absence. If the hearing is to proceed in a party's absence then Regulation 20 requires that any written representations received by the party should be considered.

Parties are informed if they fail to attend the hearing it may proceed in their absence. If a party fails to attend the hearing, except in exceptional circumstances, the hearing should still proceed in the interests of the parties present, costs and efficiency. The hearing should also proceed in order for a decision to be made within the time limits set down by the Act and Regulations

### **7.2 Parties and Representatives**

A party can be represented at a hearing by any person whether or not legally qualified under Regulation 15

### 7.3 Witnesses

Regulation 8(2) requires a party wishing to call a witness at a hearing to send a request for permission to the authority giving details of the name of the witness and a brief description of the point or points on which the witness may be able to assist the authority in relation to the application or representations.

### 7.4 Questions by Parties of other Parties at the Hearing

Regulation 23 requires the hearing to take the form of a discussion.

Cross examination is not permitted unless the Chair gives permission on the grounds it is required in order for the committee to consider the point at issue.

The Chair can give permission for open questions of other parties under Regulation 16

### 7.5 Evidence at Hearings

The Rules

Under the rules of Natural Justice and the Human Rights Act 1998 for there to be a fair hearing a party has the right to know their opposing case and to put their case

Regulation 16 states that at a hearing a party is entitled to give further information in support of their application or representations in response to any point raised in the Regulation 6 Notice.

Regulation 18 states that the authority may consider any information produced by a party in support of their application or representations before the hearing. It also states the authority may consider information produced at the hearing with the consent of the other parties.

Regulation 19 requires the authority to disregard any information given which is not relevant to the application or representations and the licensing objectives

Regulation 32 empowers the committee to cure an irregularity if a party has been prejudiced as a result.

What if a person wants to produce on documentary evidence at the hearing which is not agreed under Regulation 18? It should only be permitted in limited circumstances. For example, the committee considers it is necessary for it to come to a fair decision, the other parties are not prejudiced or where

prejudice can be rectified if the matter is adjourned for the information to be considered and responded to by the other parties.

The committee may accept hearsay evidence, such as when a witness gives evidence of something which they did not personally see or hear. For example, a newspaper report about a fight at the premises or a neighbour's description of dispersal noise from the premises at night. Hearsay is admissible but it inherently carries less weight than the direct evidence of a witness who experienced the events being described

## 7.6 Hearings In Public

Regulation 14 requires that hearings take place in public. However, the public may be excluded from all or part of the hearing if the committee feel that the public interest in being present is outweighed by the public interest in excluding the public from the hearing.

## 7.7 Exclusion of Disruptive Parties

Regulation 25 allows the committee to remove disruptive persons from the hearing, and allows the excluded party to submit for consideration, before the end of the meeting, any written representations they had wished to make orally to the hearing.

## 7.8 Adjournments and Extending Time

If it is in the public interest the Committee can extend time limit to hear an application or adjourn a hearing if it is in the public interest to do so under Regulations 11 and 12. However, this does not apply to reviews of licences following a summary review or closure.

The Legal advisor may provide advice on specific regulations if required at a hearing.

## 8. Training of Councillors

No Member should be permitted to sit on the Licensing Sub Committee without having been formally trained every year following the Council's Annual General Meeting. In addition to the annual training, training will be provided at intervals when there is a change in legislation or a significant court ruling.

It is important that training does not simply relate to procedures, but also covers the making of difficult and potentially controversial decisions, as well as the legal parameters within which the licensing sub committee as a decision-making body may operate.

All training is formally recorded by the council and requires a signature from the Councillor.

Failure to follow this Code without good reason could be taken into account in

investigations into possible maladministration against the Council, or have implications for the position of individual elected Councillors and officers. Breaches of this Code may also amount to breaches of the Council's Members Code of Conduct. If in doubt about what course of action to take, a Councillor or officer should seek the advice of the Council's Monitoring Officer.

## **9. Equality Act 2010**

Section 149 provides that:

A council must, in the exercise of its functions, have due regard to the need to:

- (a) eliminate discrimination, harassment, victimisation and any other conduct which is prohibited by or under the Equality Act 2010;
- (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- (c) foster good relations between persons who share a protected characteristic and persons who do not share it.

The above powers relate to the following protected characteristics:

- (a) Ages; (b) Disability; (c) Gender reassignment; (d) Marriage and civil partnership; (e) Pregnancy and maternity; (f) Race (including colour, nationality and ethnic or national origins); (g) Religion or belief; (h) Sex; or (i) Sexual orientation

## **PART IV**

### **MEMBER CONDUCT ON LICENSING SUB COMMITTEES**

Members must, at all times, comply with the council's member code of conduct:

#### **1. Appearance of bias**

It is crucial for the Licensing Sub Committee to ensure that there is neither actual nor an appearance of bias in its decision-making.

Section 25 of the Localism Act 2011 does not prevent councillors from publicly expressing a view about an issue or giving the appearance of having a closed mind towards an issue on which they are to adjudicate.

However it is recommended that to avoid an appearance of bias the following advice should be observed.

- No member sitting on the licensing sub committee can represent one of the interested parties or the applicant. If s/ he wishes to do so s/he must excuse him/herself from membership of the sub-committee which is considering the application. Case law has also established they should not be in the room for the hearing once an interest has been declared.
- If a member who sits on the licensing sub-committee is approached by persons wishing to lobby him/her as regards the licence application then that member must politely explain that they cannot discuss the matter and refer the lobbyist to his/her ward member or the licensing officer who can explain the process of decision making. If the member who sits on the licensing subcommittee wishes to represent them then s/ he will need to excuse him/herself from the licensing sub-committee.
- Members who are part of the licensing sub-committee must avoid expressing personal opinions prior to the licensing sub-committee decision. To do so will indicate that the member has made up his/ her mind before hearing all the evidence and that their decision may not be based upon the licensing objectives nor the statement of licensing policy.
- Members must not pressurise licensing officers to make any particular decisions or recommendations as regards applications.
- Political group meetings should never be used to decide how any members on the licensing sub-committee should vote. The view of the Local Government Ombudsman is that using political whips in this manner may well amount to findings of maladministration. It may be advisable that the chair of the licensing sub-committee should state, during proceedings, that no member of the sub-committee is bound by any party whip.
- Councillors must not be members of the licensing sub-committee if they are involved in campaigning about the particular application.
- Other members (i.e. those who do not sit on the licensing sub-committee) need to be careful when discussing issues relating to matters which may come before the licensing sub-committee members as this can easily be viewed as

bias/pressure and may well open that sub-committee member to accusations of such. While a full prohibition upon discussing such issues with committee members by other members may be impractical and undemocratic, local authorities are advised to produce local guidance for members on how such matters can be dealt with. Such guidance could include a definition of what is viewed as excessive, eg attempting to obtain a commitment as to how the member might vote.

- Councillors must also be aware of the need to declare any pecuniary or non-pecuniary interests in matters that may come before them, whether these relate to policy issues or to specific applications.
- Member behaviour is also governed by the code of conduct which members should have regard to, and most authorities also have a member/officer protocol which governs how members and officers should interact and the differences in their roles and responsibilities.
- Members should consult their monitoring officers for further advice where necessary.

## **2. Pecuniary Interests and Other Interests**

The Code of Conduct for Councillors provides guidance as to disclosable interests which may (depending on their nature) affect a Councillor's ability to take part in the decision-making process.

Where Councillors have interests which may be thought likely to influence their decision, the fact should be declared at the meeting.

Where the interest is such that members of the public may feel that the Councillor will not be able to approach matters with an open mind and consider the application on its merits, Councillors should consider withdrawing from the Committee.

As a minimum, the integrity of the licensing system requires openness on the part of Councillors; it must operate fairly and be seen to operate fairly

Members should inform the organiser if there is a risk they have a pecuniary interest or other interest that could lead to a presumption of bias in advance of the Hearing taking place to avoid wasted time and costs of the parties officers and members attending.

Councillors shall follow the advice in the Member's Code of Conduct about accepting gifts and hospitality. Councillors should treat with extreme caution any offer which is made to them personally; the normal presumption should be that such offers must be courteously declined. Similarly, officers shall politely decline offers of hospitality from people with an interest in a proposal. If receipt of hospitality is unavoidable, Officers shall ensure it is of a minimal level and declare it in the hospitality register as soon as possible.

## **3. Principles of good practice**

Members should not express a view on merits before giving decisions. There is a duty to behave impartially so members should not make up their mind until the end, nor appear to do so. Merits of the case should not be discussed with the press or residents or any of the parties to the hearing. If this does happen, disqualification from the hearing should be considered.

This also applies to the time leading up to the hearing. Members must not prejudge any application, express any view on the merits of any application, organise any support or opposition to any application, in advance of the hearing. Any member with a 'closed mind' on any application should be disqualified from sitting on the Licensing Sub Committee which considers that application.

#### **4. Decision making**

Licensing hearings are administrative in nature and strict rules of evidence generally do not apply – all information relevant to the impact on the licensing objectives can be considered.

Each application must be considered on its own merits and whilst consistency is important similar applications may be decided in different ways.

Members must take into account anything relevant, and use this to make judgements or inferences, about potential harm and what is necessary to avoid it. The committee must disregard any irrelevant considerations, including (but not limited to) information or evidence which is not relevant to the application or to the promotion of the licensing objectives

In reaching their decisions under the Act, the Licensing Committee must have regard to all relevant considerations including:

- The relevant provision in the Act
- The promotion of the four Licensing Objectives, namely,
  - the prevention of crime and disorder
  - public safety
  - the prevention of public nuisance
  - the protection of children from harm
- Government Guidance issued under Section 182 of the Licensing Act 2003
- Middlesbrough Council's Statement of Licensing Policy, and
- The merits of the application and representations raised.
- The public interest

#### **The Decision must be reasonable.**

It must accord with the Wednesbury principle of reasonableness otherwise it would be unlawful

*Wednesbury principle: 'A decision so outrageous in its defiance of logic or accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it.'*

Wednesbury criteria:

- in making the decision, the committee took into account factors that ought not to have been taken into account, or
- the committee failed to take into account factors that ought to have been taken into account, or
- the decision was so unreasonable that no reasonable authority would ever consider imposing it.

### **The decision must be within the rules of natural justice.**

*A party must know the case against them; anyone affected by a decision has a right to be heard; and no one should be a judge in his own cause.*

All the parties should be given a full and fair hearing, which should be conducted in an open, transparent and accountable manner.

The Decision should be justified with reasons should be given why that decision was made.

Each decision should robust, justifiable and defensible if there is an appeal: The steps to ensure this are to:

- Ensure proper administrative procedure is followed and that all parties are dealt with fairly.
- Avoid any instance of bias or having predetermined the case.
- Always set out the reasons for decisions.

## **5. Giving reasons**

Formulating effective reasons for any decision is vital. The sub-committee will need to make clear to the parties why they have reached a decision, not just what the decision is. Reasons must deal with the main issues: It is important to explain any findings of fact which were necessary to reach the decision. This ensures that a court can judge whether the decision was correctly made.

If the sub-committee has departed from the Statement of Licensing Policy or the statutory guidance, there should be good, cogent reasons for this and these should be clearly stated



As a minimum reasons should explain what decision was made, why that decision was made and upon what information that decision was made. They should address any contested issues and the reasons for the findings of those contested issues.

## **6. Appeals**

Any party at a hearing can appeal a decision of the licensing sub committee to the local magistrates court within 21 days from being given notice of the decision and reasons.

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By virtue of paragraph(s) 1, 2, 3, 7 of Part 1 of Schedule 12A of the Local Government Act 1972.

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