

# LICENSING SUB COMMITTEE HEARINGS CODE OF PRACTICE

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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.