

**CODE OF PRACTICE IN RELATION TO LICENSING MATTERS
UNDER THE LICENSING ACT 2003 AND THE GAMBLING
ACT 2005**

1. Introduction

1.1 The Licensing Act 2003 and the Gambling Act 2005 ~~have put~~ gave local authorities responsibility for deciding ~~firmly in the centre of decision making upon~~ on licences for regulated entertainment, the provision of alcohol, as well as late night refreshment and more recently the use of premises for gambling activities. ~~Concerns regarding this shift in responsibility have centred around doubts surrounding the impartiality of Councillors – especially as regards those who will make up the Licensing Committee or Licensing Sub-Committee that will decide upon applications. This concern arises from a view that Councillors are subject to local political pressures and a belief that they will regard the views of local residents as taking precedence over the other interests of their communities.~~

1.2 Elected Members fulfil different roles: being a Ward councillor, representing their communities is one of them.

1.3 Members of the Licensing Committee constitute the Local Licensing Authority and are charged with discharging the licensing functions of the Council. This is a broad and strategic role, discharged within the statutory licensing framework.

1.4 When sitting on a Licensing Sub-Committee the role of the elected member is to balance the multiple needs and interests of the community, while prioritising the licensing objectives if the relevant Act as a member of the Local Licensing Authority.

1.2 ~~As regards the Licensing Committee or Sub-Committee, the role of the Elected Member as part of that Committee will involve balancing the multiple needs and interests of the local community, whilst prioritising the Licensing Objectives associated with either the Licensing Act 2003 or the Gambling Act 2005.~~

1.5 Good decision making relies on ensuring that councillors act in a way that is lawful and is clearly seen to be fair, open and impartial.

~~In doing so the Elected Member must maintain his/her impartiality and, as public perception of probity is critical, his/her appearance of impartiality too, during the decision making process.~~

1.3 ~~This guidance therefore aims at enabling local Councillors to represent their constituents, whether they be residents, local businesses etc.~~

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~~should they wish to, by acting as an 'other interested party parties' at hearings, without~~

~~1.6 This guidance should be read in conjunction with other parts of the Constitution, including the Member Code of Conduct and the procedure rules for meetings. It is intended to assist councillors to participate in any of these roles at Licensing Committee, without:~~

- ~~(a) opening up the local authority to accusations of pre-determination, bias or maladministration; or~~
- ~~(b) leaving themselves open to allegations under the Members' Code of Conduct.~~

~~1.4 The guidance applies to all the Council's Elected Members, whether they sit on a Licensing Committee/Sub-Committee or not.~~

2. Declaration of Interests Personal and Prejudicial Interests in relation to Licensing Applications

~~2.1 Members must always declare their interests in accordance with are reminded of their responsibilities under the Council's Code of Conduct. Whether they can participate and to what extent will depend on the nature of any interest, which will ideally need to be considered prior to a meeting or raised at the time with the Legal Advisor.~~

~~2.2 Each councillor is personally responsible for deciding whether s/he has an interest that should be declared and the extent to which they can or can not participate in a meeting and should seek advice from the Monitoring Officer as soon as they can.~~

~~to declare a personal interest, and possibly also a prejudicial interest.~~

~~2.2 Personal interests might arise in relation to matters which:~~

- ~~• affect their well being or financial position;~~
- ~~• the well being or financial position of a relevant person (as defined in paragraph 8 of the Code of Conduct);~~

~~to a greater extent than other council tax payers, ratepayers or residents of the electoral division or ward, as the case may be, affected by the decision.~~

~~2.3 Personal interests also arise where the application relates to or is likely to affect any of the organisations you have listed in your Register of Interests form or which fall within the category of organisations listed in paragraph 8 (1) (a) of the Code of Conduct.~~

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~~2.4 Where you have a personal interest, you will also have a prejudicial interest in a licensing application if:~~

- ~~• it affects your financial position or the financial position of a person or body described in paragraph 8 (1) (a) of the Code of Conduct; or~~
- ~~• The licensing application is made by a person or body described in paragraph 8 (1) (a) of the Code of Conduct and~~

~~your personal interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice your judgment of the public interest.~~

~~2.5 Personal and possibly prejudicial interests are therefore likely to arise in relation to a licence application where the Member (or their relatives, friends, close associates or employer):~~

- ~~• makes the application;~~
- ~~• lives or has premises very near to the premises in question;~~
- ~~• is a frequent visitor to the premises in a personal capacity;~~
- ~~• belongs to or has been appointed by the Council to an organisation of which the Member is in a position of general control or management to which the application relates or is likely to affect~~

~~or where the Member is a relative or close friend or close associate of the applicant for a licence or of an objector to a licence.~~

~~2.6 An interest also may arise where the Member carries out a function for another organisation, public authority or another local authority which is making an application for a licence, or which is making a representation, for example, if the local hospital or school is applying for a premises licence either under the Licensing Act 2003 or the Gambling Act 2005 and the Member is on the Board of Governors of the school or involved in the management of the hospital. An interest may also arise where the Member is a 'dual-hatted' Member and is part of the District Council's Licensing Committee but also a Member of the County Council which is applying for a licence for its land. Members of the Licensing Committee or Sub-Committee should regard themselves as having a prejudicial interest in any application made by another local authority or public authority with which they are connected.~~

~~2.7 **The Code of Conduct applies not only to members of the Licensing Committee or Sub-Committee but also to Members who wish to attend a hearing perhaps as a Ward Councillor, as an Other Interested Party or member of the public. If that Member has a prejudicial interest, the general rule is that he or she is not allowed to even sit in the room to observe the hearing. However, the Code of Conduct allows that Member similar rights to those given to other members of the public and so a Member who is, for**~~

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~~example, an Other Interested Party may attend the meeting at which the application is considered to make representations. However, once the Member has made those representations, he or she must then leave the room until the matter has been decided.~~

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- 2.8 ~~When a Member with a prejudicial interest is considering whether to exercise this right to make representations he or she should consider whether their involvement may put the Council at risk of being accused of bias and of leading a member of the public to think the Licensing Sub Committee's judgement is likely to be prejudiced by the involvement of the Member.~~

3. Improper Influence

Members are also reminded of their obligation under the Code of Conduct not to use their positions as members to confer on or secure for themselves any advantage or disadvantage. This means that Members should not use anything which is available to them as Members (but which is not available to members of the public), e.g. access to officers or other Council members, or access to papers, to influence the outcome of a licensing application. Should a Councillor have an interest in respect of an item before the Committee, they must observe the provisions of the Code of Conduct regarding their declaration of any such interest/s.

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- 3.1 Each Councillor is personally responsible for deciding whether s/he has an interest that should be declared, although advice should be sought in advance from the Monitoring Officer, rather than having to have a discussion in the open forum at the meeting

4. Bias and Predetermination

- 4.1 Bias has been defined as "an attitude of mind which prevents the [decision-maker] from making an objective determination of the issues that he has to resolve". ~~In a quasi-judicial situation, such as a hearing by the Licensing Committee or Sub-Committee, there is no need for proof of actual or potential bias for there to be 'procedural impropriety' shown. It is sufficient that there is an appearance of bias. Accordingly, the test for bias is 'whether a fair-minded and informed observer, having considered the facts would conclude that there was a real possibility of bias'. The appearance of bias is sufficient to result in 'procedural impropriety'~~

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- 4.2 Predisposition and Predetermination: Localism Act 2011

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The law on bias and predetermination (which is a particular form of bias) is part of the general legal obligation to act fairly. The Localism Act 2011 codified the case law on predisposition and predetermination that had developed in the preceding years. Decision makers are

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entitled to be **predisposed** to particular views as it is acknowledged that it is almost inevitable that councillors may form some kind of prior view about the merits of a particular proposal. However, **predetermination** occurs where someone closes their mind to any other possibility beyond that predisposition, with the effect that they are unable to apply their judgment fully and properly to the issue requiring a decision.

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~~Bias at common law and personal and prejudicial interests under the Code of Conduct are related but do differ as concepts and in their effect. Although the wording and apparent objectives are similar, the test for common law bias has a lower threshold. Bias at common law includes those areas where the potential Licensing Sub-Committee Member has created a real danger of a perception that he/she has prevented him or herself from being able to make an impartial determination of the issues. This is also known as fettering one's discretion.~~

- 4.3 ~~Even where a councillor may have expressed a view about a matter, provided they demonstrate that they have come to the Committee "with an open mind" and will listen to all the material presented at the Committee before deciding on how to exercise their vote, this is acceptable. 'Predetermination' however, is not acceptable and would leave the decision open to challenge by Judicial Review.~~

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- 4.4 ~~It is each individual councillor's responsibility to consider whether their involvement with a particular matter / people / group, or their past comments or conduct before the decision-making stage, is such that it could give rise to a public perception that the councillor might not have an open mind. A councillor in this position will be judged on the objective test set out above – whether the reasonable onlooker with knowledge of the facts, would consider that s/he was biased. If in any doubt, early advice should be sought as to whether or not the councillor should be part of the decision-making process.~~

~~Members should therefore avoid participating as a member of a Licensing Sub-Committee where previous voting or statements of belief may give rise to a public perception that they have pre-determined the application based upon their own prejudices. Members should also be careful to ensure that they only come to a final conclusion on an application when they have given fair consideration to all the evidence and arguments which are presented and it is time to make the decision.~~

- 4.4 ~~However, a Member who has avoided participating as a member of the Committee because there might be a perception that he/she is biased, may still attend the meeting and make representations either in favour or against the application, provided that he/she leaves the room once those representations have been made as referred to above, and provided that he/she plays no part in the decision-making process.~~

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~~4.5 To help to avoid accusations of pre-determination and ensure that Ward Members are free to represent their constituents as Other Interested Parties, Ward Members should not sit on Licensing Sub-Committees where the Sub-Committee is considering an application in that Member's Ward.~~

~~4.6 A further potential issue concerning bias or pre-determination is where a Member sitting on the Licensing Sub-Committee is a Member for another authority function such as economic development/regeneration, where that authority's policy/decisions either impliedly or explicitly support (or oppose) the application. This might, for example, include the scenario where an 'Open Spaces' plan has been agreed and indicates that some areas of the local authority land will be licensed for entertainment purposes under the Licensing Act 2003 (explicit support); or where an economic regeneration plan includes the provision to encourage more theatres, restaurants or premises offering gambling facilities to an area (implicit support).~~

~~4.7 In such a situation, the Member concerned should make a disclosure of his/her position, in advance, to the Monitoring Officer who will advise the Member on the relevant law to enable the Member to decide whether he/she can take part in the decision-making.~~

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4.85 There will also be occasions ~~whenon which the a~~ Licensing ~~Sub-Committee or Sub-Committee~~ considers an application made by the Council itself, in respect of one of its buildings or a piece of its land. In such a situation, Members would not normally be excluded from the ~~Licensing Committee or~~ Sub-Committee in these circumstances as it would make the decision-making process unworkable, but any Member who has been a leading advocate for or against the application, or who is the ~~Cabinet Portfolio Holder Member~~ responsible for the building or land concerned, should not sit on the Sub-Committee when such an application is considered. Applications made by the Council itself will always be referred to the Sub-Committee even where there are no representations, to minimise any potential appearance of bias on the part of the Council.

5. Lobbying of or by Councillors

5.1 The Licensing Act 2003 and the Gambling Act 2005 set out the grounds for making representations on licence applications and limits the parties which may make such representations. It should be borne in mind that one of the key aims of both pieces of legislation is to localise decision-making or 'democratise' the process and Members are therefore legitimately concerned with their locality and the needs/wishes of its constituents, including both the needs for entertainment facilities and employment, as well as the undesirability of crime and public nuisance.

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- 5.2 ~~Once a proposal is in the public domain, interested parties may seek to persuade Committee members, to either approve or refuse an application. Lobbying is a normal and perfectly part of the political process, but unless care and common sense is exercised by all parties, lobbying can lead to the impartiality and integrity of a Committee member being called into question.~~

~~Whilst lobbying of Members is legitimate and certain Members may make representations to the Licensing Committee on behalf of Other Interested Parties, it is crucial for the Licensing Authority and its 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.~~

5.3 GUIDANCE

To avoid an appearance of bias the following rules should be adhered to:

- No Member sitting on the Licensing Sub-Committee can represent ~~an applicant or another party one of the Other 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 and address the Sub-Committee as an Interested Party.
- 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 Sub-Committee 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 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 relating to each piece of legislation nor the Licensing Authority's policy statements.
- Political group meetings should never be used to decide how any Members on the Licensing Sub-Committee should vote. The view of the Ombudsman is that using political whips in this manner may well amount to findings of maladministration.

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- Councillors must not be members of the Licensing Sub-Committee if they are involved in campaigning on the particular application.
- Other Members (i.e. those which 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 or pressure and may well open that Sub-Committee Member to accusations of such. There is no prohibition on discussing such issues with Committee Members but members should avoid taking measures which might be viewed as excessive e.g. attempting to obtain a commitment as to how the Member might vote.

~~•Members must not pressurise Licensing Officers to make any particular decisions or recommendations as regards applications (such as a decision on whether an application is frivolous or vexatious as per Section 18(7)(c)) of the Licensing Act 2003 and Section 161 and 162 of the Gambling Act 2005.~~

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6. Pre-application / pre-decision discussions

- 6.1 ~~Discussions between the licence applicant and Council officers prior to the submission of an application (or prior to a decision being made) are often helpful to both parties. For example, a premises licence applicant may ask for advice on how to complete an 'operating schedule'. However, these discussions can often be viewed by objectors as a form of 'lobbying' and the Council's officers must ensure that they are not open to accusations or appearance of bias, and must therefore ensure that such advice and assistance is clearly identified as being such and is not any type of 'predetermination'.~~
- 6.2 Although all applicants will be advised that all pre-decision discussions should be addressed to the officers in the Council's Licensing Section, Members of the Licensing Committee or Sub-Committee may also be approached by applicants before the meeting at which the application is to be decided. In such circumstances, a member should inform the person making the approach that they are unable to discuss the matter with him/her prior to the meeting at which the application will be decided and that he/she should address any enquiries to the relevant officer.
- 6.3 ~~Where the officers in the Licensing Section do enter into verbal pre-decision discussions with applicants, a record of any advice will be taken and the applicant will be asked to confirm details of that advice in accordance with the form attached as Appendix "A". Details of discussions which take place by telephone will be retained in the form of file notes and copies of correspondence and emails (which will also~~

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~~make it clear that their contents do not bind the Council to a final decision) will be retained on the appropriate file(s).~~

7. Role of the Licensing Officer

- 7.1 Licensing Officers have no ability under the Licensing Act 2003 to make representations or to be a party to the hearing of an application by the ~~Licensing Committee~~ or Sub-Committee. ~~There is no legal provision for Licensing Officers to make recommendations to the Sub-Committee in terms of the outcome of the application hearing as is seen in planning cases. However,~~ In presenting applications to the Licensing Committee or Sub-Committee, the Licensing Officer will provide a summary report of the application, the representations, and his/her comments as to how these relate to the Licensing Act 2003, the Guidance and the local Licensing Policy Statement.
- 7.2 Decisions taken by officers, e.g. as to whether an application is vexatious or frivolous, will be fully recorded, together with the reasons for them.
- 7.3 ~~Unlike the Licensing Act 2003, the Licensing Authority, in accordance with Section 157 of the Gambling Act 2005, has been identified as a public body who is entitled to make representations on an application and is therefore permitted to recommend to the Sub-Committee that conditions are imposed where necessary in light of local circumstances.~~

8. Decision making

Reasons for decisions made by ~~a the Licensing Committee or Licensing Licensing~~ Licensing Sub-Committee ~~must will~~ be clearly documented ~~in the Decision Notice, setting out clearly the rationale for the decision and also to ensure so~~ that any subsequent accusations of bias ~~or predetermination etc.~~ can be defended.

~~It is critical that it is clear that decisions are made according to the Licensing Objectives as set out in each appropriate piece of legislation as well as the Licensing Authority's Policy Statements. Whilst the Government's Guidance accompanying each Act indicates some other factors may influence decisions (e.g. live music/cultural considerations) these will always be subservient to the Licensing Objectives and the Policy Statements.~~

9. Site visits

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- 9.1 A site visit will not normally be undertaken by members of a Licensing Sub-Committee in respect of premises licence ~~each~~ applications unless for some particular reason members consider that it would be helpful to their consideration of the application ~~for a new Premises Licence or Club Premises Certificate or upon applications for a variation or review of an existing Premises Licence or Club Premises Certificate.~~ The visit will be carried out either as an announced visit to the interior of the premises, or as an unannounced visit to the exterior of the premises.
- 9.2 The site visit does not constitute a meeting of the Licensing Sub-Committee and members of a Sub-Committee must not discuss the merits of the application during the site visit, before or after the site visit or at any time until the Sub-Committee meets to consider the application. Members should leave each site with no collective view.
- 9.3 Since Members are attending a site merely to “see what is to be seen”; it is inappropriate to hear either the applicant or his representative. Similarly, it is inappropriate to hear anybody else who wishes to make representations such as the Ward Member or a Parish Councillor.
- 9.4 The Democratic Services Officer ~~Licensing Officer~~ will report the site visit to the meeting of the Licensing Sub-Committee which considers the application.



Record of Advice

In order to provide a clear record of what has been discussed, it is necessary for the District Council to request that members of the public and/or agents sign the following disclaimer when speaking to Officers of the Council with regard to general licensing enquires.

D. Hammond
Head of Planning and Environment Services

Proposal	
Address	
Agreed conclusion	
Signed	
Printed Name	
Date	
Officer seen	

I accept that the advice that I have received regarding my licensing enquiry was given by the Officer in the spirit of helpfulness and without prejudice to the Council's eventual decision, which can only be taken following statutory consultations and completion of formal processes.