

LICENSING COMMITTEE

19 JUNE 2014

REPORT OF THE MONITORING OFFICER

A.1 LICENSING HEARING PROCEDURES

(Report prepared by Lisa Hastings and Linda Trembath)

PART 1 – KEY INFORMATION

PURPOSE OF THE REPORT

To approve the Hearing Procedure for the Determination of Licence Applications made under the Licensing Act 2003 and the Hearing Procedure for any Driver/Licence Holder applications (under the Local Government (Miscellaneous Provisions) Act 1976 and the Town Police Clauses Act 1847).

EXECUTIVE SUMMARY

The Council's Licensing Committee has delegated certain functions to the following Sub-Committees:

- **The Licensing (General Purposes) Sub-Committee** exercises and performs appropriate functions relating to the issue, renewal, suspension or revocation of Licences relating to individual Hackney Carriage Vehicles, Hackney Carriage Drivers, Private Hire Operators, Private Hire Drivers and Private Hire Vehicles; and (also Scrap Metal Licences, Street Trading Consents and Street and House to House Collection Permits)
- **The Premises/Personal Licences Sub-Committees** exercise and performs appropriate functions relating to all matters pursuant to the provisions of the Licensing Act 2003, and Gambling Act 2005.

Both Sub-Committees through the performance of their functions are acting on a quasi-judicial basis and making determinations, after considering evidence and mitigation. It is considered best practice to produce, adopt and keep under review the procedures which will be followed by the Sub-Committee ensuring a fair hearing and compliance with natural justice principles.

Officers have undertaken a review of the formal procedures adopted for both Sub-Committees and revised documents for each Sub-Committee are attached as Appendices A and B.

The changes made to the procedures are:

- Reference to the Licensing Officers report;
- Reference to Declaration of Interests and revisions made under the Localism Act 2011, Regulations and the Members' Code of Conduct
- A revised format setting out the order to be followed in a clear manner;
- Flowcharts now included for ease of reference during the hearings; and
- Ensuring compliance with the Licensing Act 2003 (Hearing) Regulations 2005 (the

Regulations).

Once approved and adopted by the Council, these procedures will be sent to the relevant parties when a Sub-Committee is convened to consider an application, renewal or review etc. in accordance with the relevant legislation. These not only support the Council in its decision making but also provide guidance to assist drivers, vehicle owners, operators, applicants, responsible authorities, other persons and interested parties to understand the procedural requirements that will be followed in respect of applications which are to be determined by the relevant Sub-Committee.

Members will be aware from recent training sessions that although both sub-committees consider matters under different pieces of legislation, the principles of holding a hearing are essentially the same in that both sit as a quasi-judicial body and therefore must follow the rules of natural justice and anyone affected by their decision has a right to be heard and no one should be a judge in his own cause or prejudge the matter to be heard before them.

There are however important distinctions between the two Sub-Committees:

- The Licensing Act 2003 and Gambling Act 2005 hearings follow specific legislative requirements and will generally take place in public. There is a potential that public will wish to attend due to the nature of the applications and responsible authorities and interested parties are permitted to make representations if they've made objections.
- However, the Sub-Committee may exclude the public from all or part of a hearing where it considers that the public interest in so doing outweighs the public interest in the hearing, or that part of the hearing, taking part in public. In such circumstances, a party and any person assisting or representing a party may be treated as a member of the public. The Sub-Committee will exclude the public (and the parties and their representatives) during the decision making process.
- The General Purposes Sub-Committee will normally always consider matters, to which these procedures would apply, in private, due to the personal information of the driver, operator or vehicle owner or applicant and the likely disclosure of exempt information as defined in Paragraph 1 of Part 1 of Schedule 12A of the Local Government Act.

This report does not cover the pre-hearing procedures which are set down in the Regulations.

Each sub-committee should make all reasonable endeavours to agree unanimously on the decision, however if this is not possible and a member who is opposed to the final determination wishes their objections to be recorded, the member can request this be done in the open part of the meeting. Any legal advice provided on this aspect linking to the licensing objectives will be repeated in open session following the recording this objection.

Procedures will be drafted in a similar format to Appendices A & B, for hearings to determine applications made under the Gambling Act 2005 (Proceedings of Licensing Committees and Sub Committees) (Premises Licence and Provisional Statements) (England and Wales) Regulations 2007

RECOMMENDATION(S)

That the Committee approves and adopts:

- (a) the Hearing Procedure for the Determination of Licence Applications made under the Licensing Act 2003, as set out in Appendix A;**
- (b) the Hearing Procedure for any Driver/Licence Holder applications, as set out in Appendix B;**
- (c) Authority is delegated to the Legal Services Manager to agree the Hearing Procedures for the determination of licence applications made under the Gambling Act 2005 in compliance with The Gambling Act 2005 (Proceedings of Licensing Committees and Sub Committees) (Premises Licence and Provisional Statements) (England and Wales) Regulations 2007 following the format approved for Appendices A&B; and**
- (d) Authority is delegated to the Legal Services Manager to make any necessary minor changes to the hearing procedures, following legislative requirements or good practice.**

PART 2 – IMPLICATIONS OF THE DECISION

DELIVERING PRIORITIES

It is important that both Members and the wider community, including the general public and external stakeholders have confidence in the Council's procedures for dealing with quasi-judicial decisions. This report and the attached appendices set out the proposals to maintain high confidence in the determination of licensing functions.

FINANCE, OTHER RESOURCES AND RISK

Finance and other resources

Any decisions made by the Sub-Committees in regards to matters of grant, renewal, suspension, review, revocations, or conditions of its licences are appealed to the Magistrates' Court and thereafter to the Crown Court. In the event of the appeal being allowed by these Courts, the costs of any such hearing could be awarded against the Council.

Risk

If a Council fails to keep its hearing procedures up to date or fails to follow them when making determinations affecting an individual or business, this could form part of an appeal against a decision. Grounds for appeal could include that a fair hearing was not conducted or was against the principles of natural justice. Up to date procedures help to provide protection for the Council to defend this area of challenge.

LEGAL

The Licensing Act 2003 (Hearing) Regulations 2005 and The Gambling Act 2005 (Proceedings of Licensing Committees and Sub Committees) (Premises Licence and Provisional Statements) (England and Wales) Regulations 2007 make provision for the procedure to be followed by the Council, acting as Licensing Authority when considering how objections and/or representations received will be dealt with and determined.

The Council also has a responsibility as the 'Enforcement Agency' of the drivers, vehicles and operators it has licensed. Enforcement covers offences related to 'taxi' legislation, drivers' behaviour, the condition of the vehicles and the investigation of complaints made by the public against any licence holder. As well as granting and issuing licences the Council also has the power to suspend or revoke licences and take Court action if necessary against any offending licence holder. The sub-committee will determine whether they believe the licence holder is a fit and proper person to hold a Hackney Carriage/ Private Hire Drivers Licence or why they feel action should not be taken.

OTHER IMPLICATIONS

Consideration has been given to the implications of the proposed decision in respect of the following and any significant issues are set out below.

HUMAN RIGHTS IMPLICATIONS:

A licence is to be regarded as the property of the holder and their right to the use of that property must be balanced against any other public interest in this matter.

CRIME AND DISORDER

There are no crime and disorder implications.

EQUALITY AND DIVERSITY

These procedures would apply equally to all hackney carriage and private hire vehicle licence proprietors and personal and premises licence holders.

PART 3 – SUPPORTING INFORMATION

APPENDICES

Appendix A: Hearing Procedure for the Determination of Licence Applications made under the Licensing Act 2003

Appendix B: Hearing Procedures for any Driver/Licence Holder applications.

TENDRING DISTRICT COUNCIL

Procedure for hearings – Premises/Personal Licences Sub-Committee

Licensing Act 2003 and Hearing Regulations 2005

The Licensing Committee officers and their roles

- The Committee Clerk (Democratic Services Officer) records the proceedings;
- The Legal Advisor provides independent advice to the Committee Members on legal matters; and
- The Licensing Officer introduces the matter, outlines the application or review as set out in the Report, and answers any questions Members may have.

Committee Members (Councillors):

Members have a responsibility to declare interests, those who declare **Discloseable Pecuniary Interest (DPI)** as defined by The Relevant Authorities (DPI) Regulations 2012 must not take part in the hearing of the application.

If a Member declares a **Pecuniary or Non-Pecuniary Interests**, as defined by Tendring District Council's Members' Code of Conduct (paragraphs 5 and 6), they must consider the impact of that interest on participation and the public perception;

- Matters for Members to consider would cover, but not exclusively:
 - they know the applicant or any of the objectors; or
 - they wish either to support or oppose the granting or continuation of a licence either personally or on behalf of their constituents.
 - whether they have expressed a view on the application site especially, if situated either in their ward or an adjacent ward;

Other Persons or Interested Parties:

This is the term given to an individual, body or business or a representative acting on their behalf-that raises an objection or make a representation to an application for a premises/personal licence. It should be noted that only the Police can make a representation against a Personal Licence application however. These other persons or interested parties are separate to Responsible Authorities, who may also be a party to the hearing.

PROCEDURE

THESE SUB-COMMITTEES MEETINGS & THE HEARING ARE HELD IN PUBLIC, UNLESS THERE IS A LEGAL REASON NOT TO DO SO, HOWEVER THESE ARE IN LIMITED CIRCUMSTANCES.

Note: if the Sub-committee does not have an elected Chairman already, the election of one Member as Chairman will be the first item of business.

HEARING

Step	By whom	
1	Chairman	<p>The Chairman will welcome everyone to the meeting then:</p> <ul style="list-style-type: none"> a. introduce themselves and the other 2 members and explain that the 4th member (substitute) will not take any part in the hearing or decision making process unless there is a valid objection to one of the other members sitting, if any interest declared debar a member or a member falls ill; b. announce the item to be considered; c. confirm that this procedure will be followed at the hearing, including any maximum periods of time for each side to put their case or objections (*); d. ask all parties, including any “Responsible Authority”, to introduce themselves indicating whether or not they are represented, if they are calling any witnesses and if so to identify the witnesses they will be calling. Where there are a number of objectors they will be asked to confirm who their spokesperson is if it is relevant or appropriate for them to do so. e. if a party or Responsible Authority who has made relevant representations is not present, the Sub-Committee will decide whether they consider it in the public interest to (a) continue with the hearing or (b) defer it to enable the party or authority to attend. In reaching a decision on this point, the Sub-Committee will consider any information received from the party either directly or via the Licensing Officer or any other interested person/party where relevant or appropriate; f. remind all present that the Sub-Committee can only make its decision based on the four licensing objectives, namely: <ul style="list-style-type: none"> (1) prevention of crime and disorder, (2) public safety, (3) prevention of public nuisance and (4) protection of children from harm.

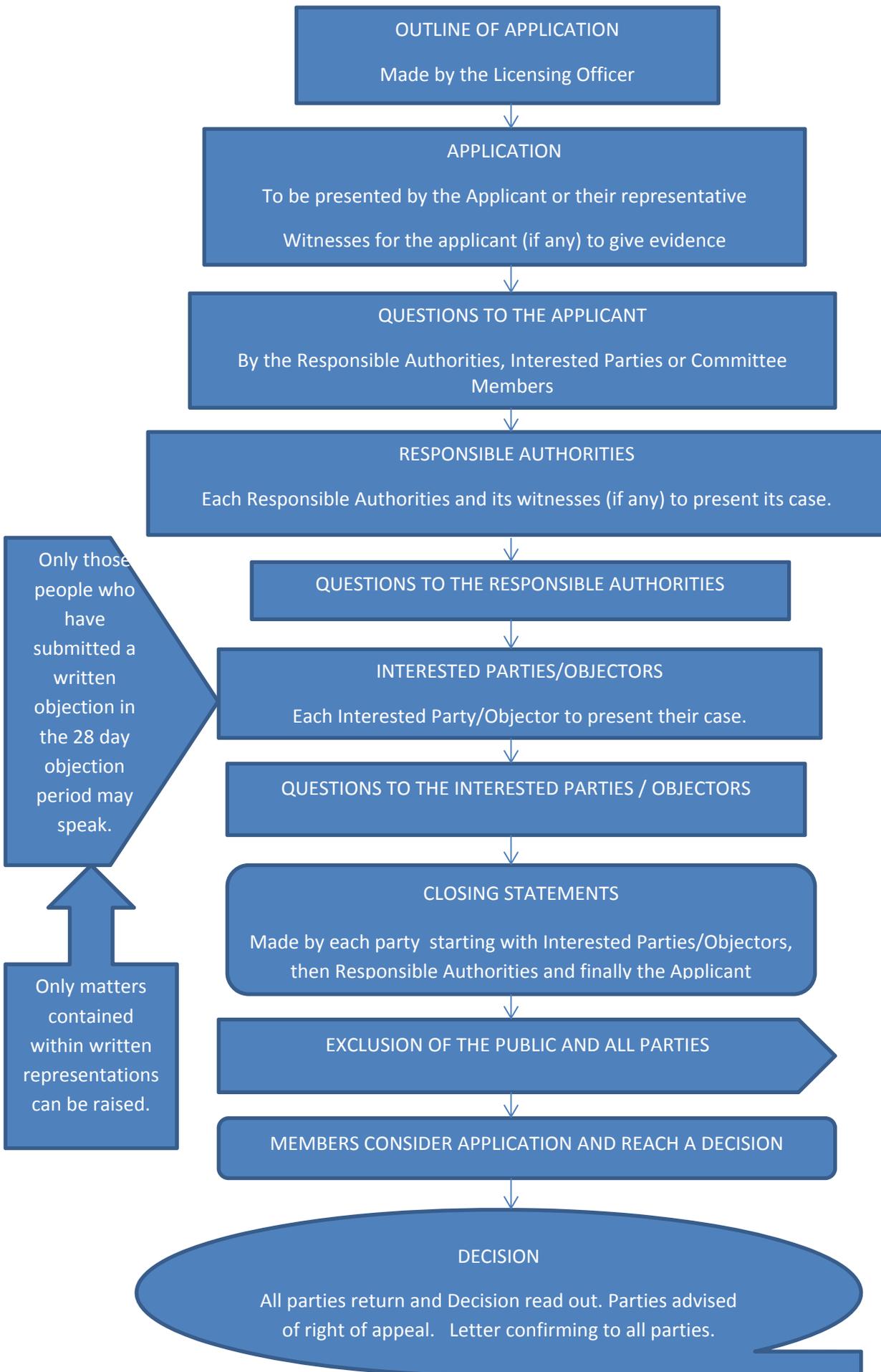
2	Licensing Officer	Will introduce the application or review, highlighting areas of contention or dispute.
3	Committee members	May ask questions of the Licensing Officer.
<p>The Applicant's case</p> <p>(If a person or party requests a review of an existing licence, they would in effect be the Applicant for the review. In those circumstances they would present their case following the summary given by the Licensing Officer)</p>		
4	Applicant or their representative	Will present their case and call witnesses.
5	Responsible authorities or Interested Parties	Each, in turn, may ask questions of the Applicant by way of clarification.
6	Committee members	In turn, each may ask questions of the Applicant.
7	Applicant	May ask any further questions of any witnesses to clear up any points raised in the earlier questioning.
<p>The Responsible Authorities and/or Interested Parties</p>		
8	Responsible Authorities	Will make their representations to the Sub-Committee.
9	Applicant or their representative	May ask questions of the Responsible Authorities by way of clarification.
10	Other persons	May ask questions of the Responsible Authorities or Licensing Officer by way of clarification. Note: this is not the time for other persons to put their objections.
11	Committee Members	May ask questions of the Responsible Authorities by way of clarification. Committee can also ask questions of the objectors by way of clarification.
12	Interested Parties	At this point those who have objected to the application will be asked to present their objections and make observations on the application if appropriate.

13	Applicant or their representative	May ask questions of the Interested Parties /objectors by way of clarification.
14	Committee members	May ask questions of the Interested Parties /objectors.
Closing statements or summary		
15	Chairman	<p>Will ask:</p> <ol style="list-style-type: none"> a. both the Responsible Authorities and Interested Parties /objectors to comment, briefly, on the application or review and summarise their position. No new issues can be raised at this point. b. the applicant or their representative to summarise the application or review and briefly comment on the representations or objections made. c. if everyone is satisfied that they have said what they wanted to say, but making clear that no new issues can be raised at this point.
DECISION MAKING		
16	Sub-Committee	Will retire to consider the application or review and may request the Legal Advisor and/or Committee Clerk to retire with them.
RESUMING THE MEETING AND CONCLUSION		
17	Legal Advisor	If legal advice has been given to the Members whilst in retirement, this advice will be summarised and repeated in the presence of all parties.
18	Chairman	<p>Will:</p> <ol style="list-style-type: none"> a. announce the decision made by the sub-committee and the reasons for that decision; b. advise that the decision, and reasons, will be confirmed in writing to all the parties who made representations; and c. advise all parties of their rights of appeal to the Magistrates' Court.

(*) after receiving copies of this procedure, all parties are requested to give the Council's Licensing Department an indication of the time estimated to present their case. This will be taken into consideration when deciding whether maximum periods of time will be necessary.

TENDRING DISTRICT COUNCIL

THE LICENSING SUB-COMMITTEE HEARINGS PROCEDURE



TENDRING DISTRICT COUNCIL
LICENSING (GENERAL PURPOSES) SUB-COMMITTEE MEETING

PROCEDURE FOR ANY DRIVER / LICENCE HOLDER APPLICATIONS
(Adopted June 2014)

The Licensing Committee, Officers and their roles:

- The Committee Clerk (Democratic Services Officer) records the proceedings;
- The Legal Advisor provides independent advice to the Committee Members on legal matters; and
- The Licensing Officer introduces the matter, outlines the application or review as set out in the Report, and answers any questions Members may have.

Committee Members (Councillors):

Members have a responsibility to declare interests, those who declare **Discloseable Pecuniary Interest** (DPI) as defined by The Relevant Authorities (DPI) Regulations 2012 must not take part in the hearing of the application.

If a Member declares a **Pecuniary or Non-Pecuniary Interests**, as defined by **Tendring District Council's Members' Code of Conduct** (paragraphs 5 and 6), they must consider the impact of that interest on participation and the public perception;

Matters for Members to consider would cover, but not exclusively:

- they know the applicant; or
- they wish either to support or oppose the granting or continuation of a licence either personally or on behalf of their constituents; or
- whether they have expressed a view on the application.

PROCEDURE

- **PART A OF THESE SUB-COMMITTEE MEETINGS ARE HELD IN PUBLIC**
- **PART B OF THESE SUB-COMMITTEE MEETINGS ARE HELD IN PRIVATE.**

PART A		
STEP		
1	Chairman	The Chairman will open the meeting: <ul style="list-style-type: none"> a. Introduce themselves and explain that first of all the Sub-Committee will deal with matters at Part A on the agenda; and b. move to pass a resolution to exclude the press and the public when dealing with Part B, driver/licence holder applications, because such applications include personal information.
2		Any press or public present are now asked to leave.

PART B		
3	Chairman	<p>a. Asks for any Members' Declarations of Interest;</p> <p>b. announces the item and asks the Licensing Officers to invite the person concerned to come into the meeting; and</p> <p>c. welcomes the Applicant/Driver or Licence Holder (*), introduces themselves to the Applicant and summarises the procedure to be followed.</p> <p><i>(* References to the Applicant/Driver or Licence Holder, in the rest of the procedure will be to 'Applicant'.</i></p>
4	Licensing Officer	Will present the application/review/appeal to the Sub-Committee following the content of the Licensing Officer's Committee Report.
5	Chairman	Will ask the Applicant whether they wish to say anything on their own behalf, make any comment upon what the Sub-Committee has been told or ask any questions about the report and/or update/presentation.
6	Applicant (or Applicants representative/s (**))	<p>Will tell the Sub-Committee anything they wish the Sub-Committee to take into account when considering the matter and comment upon the information already presented to the Sub-Committee.</p> <p>(** the Applicant or their representative can also request witnesses or character witnesses to present information to the Committee.</p>
7	Licensing Officer	Will be invited to respond to any points raised by the Applicant, and clarify any relevant aspects.
8	Sub-Committee Members	May ask any questions seeking further information or clarification of the Applicant, their representative/witness or the Licensing Officer(s).
9	Chairman	<p>Will ask:</p> <p>a. Whether officers, Members or Applicant wish to add anything further;</p> <p>b. Applicant and Licensing Officers to leave the room while the Sub-Committee consider the application and make their decision;</p> <p>c. The Applicant and Licensing Officers to return once a decision has been made.</p>
10	Legal Advisor	The substance of any relevant legal advice given to the Sub-Committee when the Applicant was outside the meeting will be openly stated by the Council's solicitor to the meeting. This may include repeating the matters Members must consider when their decision as contained within the Report.
11	Chairman	Will announce the Sub-Committee's decision giving reasons for the decision and advise the Applicant/Driver/Licence holder of their rights of appeal.

12	Chairman	When all matters completed will close the meeting.