

Tendring **District Council**



Part 6 – Licensing and Registration Probity Protocol

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1 INTRODUCTION

1.1 In this Protocol:

- **“Councillors” or “Members”** - unless stated otherwise, references to Councillors/Members in this Code are to those Councillors dealing with Licensing matters via their appointment to Licensing Committee.
- **“Licensing Committee”** means the Licensing and Registration Committee, the Premises/Personal Licences Sub-Committee and Miscellaneous Licensing Sub-Committee. It also refers to the Planning Committee should it consider a combined matter involving premises matters under the Licensing Act 2003 and to the Full Council when dealing with licensing matters.
- **“Licensing matters”** include all applications for, and reviews of, licences, consents, permits and registrations etc. as set out in the Committee's terms of reference within Part 3 of the Council's Constitution.
- **“Party”** for Licensing purposes includes an applicant, or an objector.
- **“Interested party”** is any other person who has submitted a valid representation within the prescribed timescales in respect of the matter concerned and has a right to attend the hearing.
- **“Licensing administrative fairness duty”** means the particular responsibilities of the Licensing Committee Members who sit in formal administrative hearings and consider matters fairly following rules of natural justice and the relevant principles of the Human Rights Act 1998 in a non-political manner and make decisions in the public interest within (and for the purposes) of the particular licensing legislative framework.
- **“Monitoring Officer”** means the designated Officer and in their absence the reference to Monitoring Officer shall be deemed to include the Deputy Monitoring Officer.
- **“Open-minded”** means the willingness to consider new, different, or opposing ideas, perspectives, and experiences without immediate judgement. It involves setting aside personal biases to evaluate alternative viewpoints fairly, often stemming from an awareness that one's own beliefs might be limited.

1.2 There are fundamental principles of English Law that every decision-making body must observe and be seen to observe. These are called “the principles of natural justice” and they include: -

- (1) the right to have a fair determination;
- (2) there should be no bias leading up to, or in, the decision reached.

In arrangements for licensing matters to be heard and determined the Council will be focused on these principles. In certain cases, the Council will be a party to a hearing by the Licensing Committee. In seeking to apply rules of natural justice in those cases, there will be clear separation of roles between those supporting the administrative process concerned and support for the Committee from those acting as the party to the licensing matter to be heard. In the spirit of openness, the Committee will be requested to note this separation at the commencement of the hearing.

1.3 This Protocol has been prepared: -

- (1) to assist Members to observe these principles in relation to reaching decision on licensing matters; and
- (2) to provide guidance to Members on how to maintain high standards of conduct in relation to their licensing responsibilities and on how the Council's Code of

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Conduct applies to the licensing systems. It does not however replace or in any way modify that Code.

- 1.4 In view of 1.2 and 1.3 above, Members should follow this Protocol when they deal with licensing matters. It is also important that Members follow all other Protocols of the Standards Committee as the Protocol has been adopted in accordance with the Standards Committee's delegation to promote and maintain high standards of conduct by Members of the Council.

Licensing Act 2003 Licensing Matters

- 1.5 One of the single largest areas of licensing that the Council is the licensing authority for relates to authorisations under the Licensing Act 2003. The activities regulated under this Act are:
- the sale of alcohol
 - the supply of alcohol by a members' club
 - regulated entertainment
 - late night refreshment
- 1.6 The Licensing Act 2003 is underpinned by four specific licensing objectives, which the licensing authority and the responsible authorities are required to promote in relation to premises and people licenced under the Act. The objectives are:
- the prevention of crime and disorder
 - public safety
 - the prevention of public nuisance
 - the protection of children from harm
- 1.7 For Licensing Act 2003 matters, each of the objectives carries an equal significance.
- 1.8 The Licensing Act 2003 identifies the Authority itself as a designated Responsible Authority along with the Police, Trading Standards, Environmental Health, Planning, Children's Services etc. In very specific parts of the Licensing Act 2003 there are allocations of specific powers to individual Responsible Authorities. Other than in these specific areas all Responsible Authorities have identical powers across all four licensing objectives. Accordingly, there is an importance of effective co-operation and liaison to ensure that licence holders, designated premises supervisors, personal licence holders and club premises certification holders both understand and comply with the law and the requirements of their authorisation under the Licensing Act 2003. Members considering licensing matters in a Licensing Committee are entitled to question Responsible Authorities who are parties to a hearing on the use of their powers in respect of the matters being considered.
- 1.9 Section 20 of the Licensing Act 2003 provides that where a Premises Licence or Club Premises Certificate authorises the exhibition of a film(s), the licence must include a condition requiring the admission of children to films to be restricted in accordance with recommendations given either by a body designated under Section 4 of the Video Recordings Act 1984 specified in the licence, currently only the British Board of Film Classification (BBFC), or by the Licensing Authority itself.

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The Licensing Authority may be requested to authorise the showing of an unclassified film(s) within the Tendring District Council area. Typically, this will be for: -

- A film festival covering a specific period of time;
- A one-off screening of a film(s); and
- A trailer for a film.

As such, the provisions of this protocol shall apply in respect of the intended site for the showing of the film. This though, of itself, does not preclude showings at other sites in the district once a determination of the classification has been made.

Applications for authorisations of film(s) shall be determined by the appropriate Licensing Committee.

Gambling Act 2005

- 1.10 The Licensing Act 2003 is not the only legislative framework that the Council is the Licensing Authority for. Each framework applies different tests and responsibilities on the Council and others. One other such licensing framework is the Gambling Act 2005, and the Council (as Licensing Authority) is charged with promoting the three objectives in that Act in respect of applications, notices and determinations under that Act. The 2005 Act 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; and
 - * protecting children and other vulnerable people from being harmed or exploited by gambling.
- 1.11 The Licensing Act 2003 and the Gambling Act 2005 put local authorities firmly at the centre of decision making upon licences for regulated entertainment, the provision of alcohol, late night refreshment and the licensing of gambling/gaming establishments and small lotteries. In exercise of its powers under the Gambling Act 2005, the Council must have regard to guidance issued by the Gambling Commission which sets the overall direction of regulation nationally and within which the Council, as Licensing Authority, may exercise its discretion. Members in a hearing are entitled to seek clarity on the evidence available to it in relation to the national guidance referenced.
- 1.12 As with the Licensing Act 2003, the Gambling Act 2005 identifies Responsible Authorities who have responsibilities and powers under the 2005 Act concerning gambling/gaming provision locally. Many of the Responsible Authorities are the same as under the Licensing Act 2003. However, there are differences and the Gambling Licensing Principles are distinct from those in the Licensing Act 2003. It is important that Members of Licensing Committee apply the relevant requirements of the appropriate legislation in the hearing they are involved in. They are entitled to seek clarification from those supporting them. In addition, and as referenced in relation to the Licensing Act 2003, the Council itself is a Responsible Authority under the Gambling Act 2005. A similar separation of functions must be observed where those Responsible Authority powers are applied.
- 1.13 Regulation of the National Lottery is not a matter within the scope of this Council.

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Town Police Clauses Act 1847 and the Local Government (Miscellaneous Provisions) Act 1976

- 1.14 Another significant area of work of the Council in respects of licensing is that related to Taxi and Private Hire Services. The framework for this area of licensing is set out in the Town Police Clauses Act 1847 and the Local Government (Miscellaneous Provisions) Act 1976 (as amended and otherwise impinged by a range of other more recent legislation). Nationally there is guidance around vehicle standards and statutory guidance around driver expectations. While there are not the same 'objectives' clauses in the relevant Acts for Taxi and Private Hire Services, there is a clear approach that the fundamental consideration of the licensing Authority is public safety and consumer protection.
- 1.15 The following are circumstances where matters are often referred to the Miscellaneous Licensing Sub-Committee for determination: -
- Renewal applications for Hackney Carriage and Private Hire Licences where the application has more than 3 penalty points on his/her DVLA licence or does not meet the current policy requirements, save where the Committee has previously be determined that an application need not be referred back to it, and can instead be determined by Officer under delegated powers;
 - Hackney Carriage and Private Hire Licences where the Taxi licence has received 12 or more Enforcement Penalty Points;
 - Applicants for licences who have convictions or who do not meet the current policy requirements;
 - Applications for renewal of licences where the circumstances of the applicant have changed since the grant of the previous licence; and
 - Any other circumstances where Officers wish the case to be referred to the Committee.
- 1.16 The Sub-Committee will usually meet in private to protect personal and sensitive information relation to an applicant. Each meeting will have to formally decide to exclude the public. To ensure impartiality, all Officers (apart from the Council's legal advisor and Democratic Services Officer) are absent during the decision-making process.
- 1.17 Members of the Licensing Committee are also responsible for Caravan sites, Acupuncture, Charity Collectors, Sexual Establishment Venues, Street Trading, Scrap Metal, and Pavement Licences.
- 1.18 The role of Members as part of the Licensing Committee is to examine the matters before them and apply the requirements upon them (and the Authority more generally) with an open mind and consider all relevant facts in determining the appropriate outcome of the matter. 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. This protocol is intended to ensure that this is achieved.
- 1.19 This Protocol is part of the Council's Constitution, and all Members are expected to comply strictly with its provisions. Any breach of the Protocol will be referred to the Monitoring Officer. If the alleged breach is also a breach of the Code of Conduct for Members the matter will be dealt with through its associated complaints process for breaches of that Code.

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1.20 The Protocol can be changed at any time by resolution of Council.

2 ROLE OF COUNCILLORS

2.1 The role of a Member at the Licensing Committee involves sitting in a formal hearing and following the rules of natural justice and the relevant principles of the Human Rights Act 1998 in making decisions within the relevant framework for the licensing matter concerned.

2.2 Applying those principles, the following approach to hearings will be applied: -

- (1) Any member of the Committee having a Disclosable Pecuniary Interest or Other Registerable Interest in the matter before the Committee must declare the nature of that interest and in the case of both types of Interest must withdraw from the room in which the meeting is being held whilst the matter is being considered;
- (2) the Committee should not make an irrational decision by considering matters it ought not to take into account of and/or not taking into account matters of which it should do;
- (3) there should be no bias leading up to, or in, the decision reached; and
- (4) in its decision making, the Committee must ensure that its decision is proportionate to the case before it.

2.3 Councillors serve the public and are responsible to the electorate. Officers advise Councillors and the Council and carry out the Council's work. Officers are employed by the Council, not by individual Councillors, and it follows that instructions may only be given to Officers through a decision (within the relevant powers): -

- at a meeting of the Executive or of the Council, or a Committee or a Sub-Committee of either, or
- by an individual decision of the Leader or a Portfolio Holder properly taken in accordance with the decision-making protocol.

In so far as this Protocol is concerned, instructions will be taken by the Licensing Committee and relate to the matter being considered by the Committee. Members should seek advice about their powers to make decisions to ensure they are capable of being made within the Council's Constitution.

2.4 It is crucial that Councillors serving on the Licensing Committee, or who become involved in the process by which licensing decisions are to be made (by Officers or by a Licensing Committee), must observe the requirement that a Member: -

"must not use or attempt to use [their] position as a Member improperly to confer on or secure for [themselves] or any other person, an advantage or disadvantage"

2.5 Councillors and Officers have different but complementary roles. Both Officers and Councillors are also subject to Codes of Conduct with which they must comply.

2.6 Councillors and Officers will treat each other with respect and not engage in personal criticism during any meeting and, more generally, when performing their respective roles. Concerns about Officer and Councillor conduct should be addressed to the Monitoring Officer.

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- 2.7 Councillors can expect Officers to give them all reasonable assistance in answering questions on licensing matters. Such a right does not extend beyond their 'right to know' for the performance of their role and does not over-ride legal rules such as data protection. An Officer will state the reason if there are any such limitations on their ability to provide information in response to a Councillor's queries.
- 2.8 Councillors serving on the Licensing Committee must determine each application/matter on the evidence presented by (or on behalf of) both the applicant/licensee and interested parties at a hearing. Councillors need to take account of relevant representations made by the applicant/licensee and interested parties but should not favour any person, group, company or locality, not put themselves in a position where they appear to do so, in making the decision.
- 2.9 Councillors are only prohibited from sitting on any Licensing Sub-Committee determining applications which fall within their own Wards where they have an Interest, as defined within the Members' Code of Conduct.
- 2.10 Members are not allowed to discuss any blue page documents outside of the Licensing Committee membership

3 RELATIONSHIP TO MEMBERS' CODE OF CONDUCT

- 3.1 Members must comply with the provisions of the Members' Code of Conduct which has been adopted by the Council, and which sets out the required standards of conduct for Councillors. The Code not only covers issues central to the preservation of an ethical approach to council business but also appropriate relationships with other Members, staff and the public which will impact on the way in which Members participate in the licensing process.
- 3.2 The rules contained in the Members' Code of Conduct must always be complied with first. These are both the rules on Disclosable Pecuniary Interests (DPIs) and any Other Registerable or Non-Registerable interests as defined, and the general rules and obligations giving effect to the (Nolan) Seven Principles of Public Life: Selflessness, Integrity, Objectivity, Accountability, Openness, Honesty and Leadership.
- 3.3 The requirements set out in the Code of Conduct on dealing with gifts and hospitality can be particularly relevant when dealing with licensing issues. Councillors and Officers should be very circumspect in response to any offers of gifts and hospitality, should seek appropriate advice where necessary, and should record in the relevant register any gifts and/or hospitality they do receive or refuse. This applies particularly in circumstances where it is known that licensing applications have been submitted, or are likely to be submitted, by the parties making such offers.

DECLARATIONS OF INTEREST

- 3.4 The Council's Members' Code of Conduct sets out requirements for Members on declaring Disclosable Pecuniary Interests, Other Registerable Interest and Non-Registerable Interests and the consequences on participation of having such an interest. These must be followed scrupulously, and Members should review their situation regularly. Not only should impropriety be avoided but also any appearance or grounds for suspicion of improper conduct.

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- 3.5 A Member sitting on the Committee at the time of hearing with a Disclosable Pecuniary Interest in respect of a particular licensing matter must declare it and take no part in the discussion or the determination of the proposal. Preferably this should take place prior to the hearing itself as a consequence of enquiries proceeding the despatch of the meeting papers or following this point upon the Member reading those papers. If the declaration takes place at the hearing, he or she should leave the room before the item is considered. The responsibility for this rests with each Member. Advice can be obtained in advance from the Monitoring Officer if required, in advance of a Licensing Committee. It is unsatisfactory if a Member asks for guidance in the course of a debate.

- 3.6 **Do take into account when approaching a decision that the principle of Integrity (one of the Nolan Principles – one of the Seven Principles of Public Life) is defined as**

*“Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family or their friends. **They must declare and resolve any interests and relationships.**”*

- 3.7 It is therefore advisable that Members:

- (i) Note that you are not prevented from seeking to explain and justify a proposal in which you may have a conflict of interest to an appropriate Officer, in person or in writing, but that your role as a Councillor may place additional limitations on you in representing the proposal in which you have an interest; and
- (ii) Notify the Monitoring Officer in writing where it is clear to you that you have a Disclosable Pecuniary Interest or other personal conflict of interest and note that:
 - you should send the notification no later than submission of that application where you can;
 - provided the licensing framework permits this, the proposal will be reported to the Committee as a main item and not dealt with by Officers under delegated powers or, if the framework prevents this, it will be reported for information to the Committee at its next meeting setting out relevant officer decision and the decision;
 - you must not get involved in the processing of the application; and
 - it is advisable (but not mandatory) that you employ an agent to act on your behalf in respect of the proposal when dealing with Officers and in public speaking at Committee

4 APPLICATIONS SUBMITTED BY COUNCIL, MEMBERS OR OFFICERS

- 4.1 A licensing application to the Council as Licensing Authority by serving and/or former Councillors, their family members and close associates, are perfectly legitimate. However, it is vital to ensure that they are handled in such a way that provides no grounds for accusations of favouritism or genuine suspicion of impropriety.
- 4.2 Councillors on the Licensing Committee should not act as agents for people pursuing licensing matters within their Authority's administrative area. Similarly, if they submit

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their own proposal to the Council as Licensing Authority, they should state the nature of their interest and play no part in its processing and should, unless they are named specifically as the applicant on the requisite forms, notify the Council's Monitoring Officer of its submission.

- 4.3 Submission of an application by, or concerning, a Councillor would be regarded as a Disclosable Pecuniary Interest for the Councillor under the Council's Code of Conduct and as such, they must not attend any hearing during the consideration of the matter other than to exercise any rights that applicants or the wider public have to make representations, answer questions or give evidence.
- 4.4 The Council's Code of Conduct provides that Members should "not seek improperly to influence a decision about this matter" – this however does not imply that a Member is not able to explain their position to an Officer in advance of consideration by a Committee. The Member should take great care, of course, not to compromise the impartiality of anyone who works for, or on behalf of, the Council. They should also be aware that:
 - they should have no further access to Officers, documentation, etc than would be available to a member of the public;
 - they should scrupulously avoid placing pressure on any Officer; and
 - their position as a Councillor creates a public expectation that the Member will observe the requirements of licensing legislation in relation to their own private property interests, or a property-owning company in which they have a material interest.
- 4.5 Applications under the Licensing Act 2003/Gambling Act 2005 may be received by the Council as the Licensing Authority from the Council itself acting in another capacity. This could include a licence application for a Council sponsored event or for Council owned premises. In addition, there could be an application for a review of a premises licence/club premises certificate (including for a premises not owned by the Council) by the Council as a Responsible Authority under the Licensing Act 2003/Gambling Act 2005 in respect of its functions as Environmental Health, Planning or Licensing Authority. Such applications will be dealt with in the same way as any other application and will give no advantage or disadvantage to the fact that it has been submitted by the Council (or following a recommendation).
- 4.6 No Member of the Executive or any Committee making an application under the Licensing Act 2003/Gambling Act 2005 should seek to influence in any way the determination of the application/review by the Licensing Committee other than by having participated in the decision to apply for the licence/call for a review. Where the application is on behalf of the Council and is to be determined by the Licensing Committee, that Committee shall not be comprised of a Member of the Cabinet/Executive. They shall excuse themselves from participation as a Member of the Cabinet.
- 4.7 As identified earlier within Section 4, applications submitted by Councillors, or by Officers in the Licensing Service, will where legally permissible and where relevant elements of the application impinge on the Council's own policies (or otherwise where relevant representations from others require), be referred to the Licensing Committee for information. However, for legal reasons it will not be possible for the Licensing Committee to determine all such applications – for example, the Council normally has no option but to grant an uncontested application under the Licensing Act 2003. However, where such applications are received, an information report will be submitted

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to the next meeting of the Committee in the spirit of openness and transparency summarising the application and its determination (by Officers or in Committee). At that meeting, Members of the Committee will be free to ask about compliance with this Protocol by those involved in the application.

- 4.8 Where a Councillor frequently declares a pecuniary or other registerable interest in the business transacted at a Committee meeting and therefore is unable to take part in the proper consideration of licensing matters it will be referred to the Monitoring Officer who will decide whether to raise the matter with the relevant Group Leader, solely, for the purposes of determining whether another Member of that Group should take that allocated seat on the Committee.
- 4.9 Members who are part of the Council's decision to apply for a licence, or who express a view in respect of such an application, should not be part of any hearing to determine the licence. Expressly there must not be any predetermination to grant the application solely because it has been submitted by the Council.

5 MEMBER TRAINING

- 5.1 A Member (or designated named Substitute Member) cannot sit as a member of the Licensing and Registration Committee unless they have received specific training regarding the determination of licensing applications (Part 4 – of the Constitution – Council Procedure Rules).
- 5.2 From time to time, the Council will provide training for Councillors on licensing matters. This will achieve compliance with the requirements for training under paragraph 5.1 above, new legal requirements on changes in national guidance from Government, the Gambling Commission etc or otherwise to extend the knowledge of Councillors sitting on the Licensing Committee. Training is also available 24/7 on the LGA's Learning Portal and is a good basis for introducing the requirements of the various licensing frameworks. The LGA also has an annual licensing conference, and the Committee's Chairman and Vice-Chairman will be invited to attend this each year.
- 5.3 Members should not participate in decision making at meetings dealing with licensing matters if they have not attended the mandatory licensing training prescribed by the Council or otherwise feel that their knowledge of licensing requirements is below that which is fair-minded and informed observer would expect of a Member of the Committee hearing the licensing matter.
- 5.4 In relation to licensing issues, the procedures followed by the Council's Licensing Committee are set down in detailed guidance documents issued to both the applicant and other interest parties. These are reviewed periodically in the light of experience.
- 5.5 The Council is committed to a culture of continuous improvement in all of its services and will ensure that Officers and Members involved in the licensing process receive proper training/development to ensure that they are able to undertake their responsibilities.
- 5.6 Members are only allowed to sit on the Licensing and Registration Committee and Sub-Committees if they have received training from the Council itself, but Members are allowed 'top-up' training through other means such as the LGA.

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6 PREDISPOSITION, PREDETERMINATION AND BIAS

PREDISPOSITION

- 6.1 A distinction is drawn by the Courts between a Councillor having clearly expressed an intention to vote in a particular way before a meeting (pre-determination) and a predisposition to an initial view. Where the Councillor is clear they have an open mind and are willing to listen to all the material considerations presented at the Licensing Committee before deciding on how to exercise their vote, there is no predetermination.
- 6.2 The following diagram is produced to help Councillors appreciate the range of circumstances (the following guidance only; any specific questions should be raised with the Council's Monitoring Officer):

Lawful	No view	
	Predisposition	• Manifesto pledges/commitments • Policy making and setting
Unlawful	Predetermination	• Clearly expressed intention to vote in a particular way on an individual application whatever the information provided
	Bias	• Membership of an organisation that supports or opposes particular developments or development types

PREDETERMINATION

- 6.3 Predetermination occurs where someone closes their mind to any other possibility beyond that predisposition, with the effect that they are unable to apply their judgement fully and properly to an issue requiring a decision. The leading case on local authority bias and predetermination acknowledges the difference between Judges sitting judicially and Councillors making decisions in a democratic environment. Given the role of Councillors, there must be 'clear pointers' before predetermination is established. Where there is predetermination, the Councillor should not participate in the consideration of a licensing matter.

BIAS

- 6.4 Councillors should not participate in the consideration of a licensing application if to do so would give the appearance of bias, and the decision may be challenged on the grounds of bias in the Courts. The test for bias is: "Would the fair-minded observer, knowing the background, consider that there was a real possibility of bias?" It is not the Councillor's view of whether they are biased that is relevant but the view of the independent observer. Perception is important and can lead a fair-minded observer to consider that there is a real possibility of bias, they should not participate in making the decision and should withdraw from the room. Further, Councillors do not have to have a Other Registrable or Non-Registrable interest in order to come within the definition of bias. The Courts have held that it is primarily a matter that the Councillor should always err on the side of caution. Whilst not every application will raise the question of bias, there will be occasions when a member of the public in possession

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of all facts might consider that there is a real risk of bias. In these circumstances, the Councillor should seek early advice ahead of the Committee hearing concerned from the Monitoring Officer.

6.5 To avoid an appearance of bias:

- no Member sitting on the Licensing Committees can represent one of the interested parties or the applicant. If they wish to do so they must excuse themselves from membership of the Committee which is considering the application and address the Committee as an 'interested party' or as the applicant's representative/witness.
- If a Member who sits on the Licensing Committee is approached by persons wishing to lobbying, please refer to the section in this document regarding lobbying.
- A Member who are part of the Licensing Committee must avoid expressing personal opinions prior the the Committee decision. To do so may 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 relevant licensing legislative and policy framework (including taking account of any relevant national guidance).
- Political group meetings should never be used to decide how any Members on the Licensing Committee should vote. The view of the Local Government and Social Care Ombudsman is that using political whips in this manner may well amount to findings of maladministration.
- Councillors must not be Members of the Licensing Committee if they are involved in campaigning on the particular application (for or against its approval).
- Other Members (ie those which do not sit on the Licensing Committee) need to be careful when discussing issues relating to matters which may come before the Licensing Committees as this can easily be viewed as bias/pressure and may well open that Member to accusations of such.
- Members must not pressurise Licensing Officers to make any particular decisions or recommendations as regards applications (such as the ability to decide whether a representation is frivolous or vexatious).

6.6 Any attempt to put pressure on a Licening Officer from any Member (whether they sit on the Licensing Committee or not) shall be recorded by the Officer and the application referred to the Assistant Director (Corporate Policy and Support) to oversee the remaining elements of the determination of the application and reference the intervention to the Monitoring Officer.

6.7 It should be noted that a Member for a Ward, which would be directly affected by the application, is most as risk to being accused of bias. Such Members are also likely to be put under pressure to represent local 'interested parties' (i.e. objectors/supporters) or indeed 'responsible authorities' as regards a licence application. It is for this reason that, whilst there are no statutory requirements for Ward Members to excuse themselves from such licence applications (unless they have an interest), Members whose Ward includes the application, or whose Ward is likely to be affected by the application, will not sit on the Committees considering the application but s/he may wish to act as/or represent an 'interested party'. In this respect they must observe the same timelines as anyone else seeking to be an 'interested party'. Earlier in this Protocol, there is reference to the same approach as described in this paragraph applying to the Ward represented by the spouse of the Member concerned.

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- 6.8 Bias has been defined as “an attitude of mind which prevents the decision-maker from making an objective determination of the issues that he/she has to resolve”. The importance concept as regards bias is that 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’.
- 6.9 ‘Bias’ also includes the situation where it is felt that the decision-maker has pre-determined the case upon his/her own prejudices. In the local government context, the most obvious example of pre-determination is where the impression is clearly given to persons (such as members of the public or a lobbyist) beyond conveying a mere pre-disposition, that ‘the Member or authority will approach the matter with a closed mind and without impartial consideration of all relevant issues’. In short, to avoid a claim of determination, you must be able to say with honesty that your mind is open and that you will determine the matter on the evidence, regardless of any pre-disposition that you may have conveyed.

PARTICIPATING IN DECISION MAKING

- 6.10 Decision-makers must not fetter their discretion by approaching the decision to determine a licensing application with a closed mind. It is a legal requirement to approach the determination of a licensing application with an open mind to prevent a legal challenge for pre-determination or bias (both being judicial grounds in administrative law).
- 6.11 When Councillors come to make the decision, they:
- are entitled to have and to express their own views on the matter, provided they are prepared to consider their position in the light of all the evidence and arguments;
 - must keep an open mind and hear all of the evidence before them, both the Officers’ presentation of the facts and their advice as well as the arguments from all sides; and
 - must be prepared to change their view right up to the point of making the decision.
- 6.12 Councillors can listen to applicants and objectors, and indicate their view, but must not be biased in their consideration of their issues. Councillors can support or oppose an application and represent the views of their residents in their role as a Ward Councillor. To do so as a Licensing Committee Member MIGHT compromise their role on the Committee and Councillors are advised to seek advice from the Monitoring Officer.

7 OFFICER DISCUSSION & MEETINGS WITH APPLICANTS, OBJECTORS AND INTERESTED PARTIES

- 7.1 Councillors should refer those who approach them for licensing, procedural or technical advice to Officers.

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- 7.2 Councillors should only attend those meetings organised in accordance with this Protocol and must not attend private meetings with applicants or groups of objectors.
- 7.3 Discussions between applicants, interested parties, and responsible authorities (where relevant) can often be encouraged to understand issues entailed and can explore areas of agreement and contributing to resolution of issues when the application is submitted. Where you feel that a formal meeting would be useful in clarifying the issues, you should seek to arrange that meeting yourself through a request to the Assistant Director (Corporate Policy and Support) to organise it. The Officer(s) will ensure that those present at the meeting are advised from the start that the discussions will not bind the Authority to any course of action, that the meeting is properly recorded on the public file at the earliest convenience. In all cases, the involvement of Councillors will be recorded in any subsequent licensing application, whether in any delegated report or in any Committee report.
- 7.4 **Do** otherwise:
- follow the Authority's rules on lobbying set out in Section 8;
 - consider whether it would be prudent in the circumstances to make notes when contacted; and
 - report to the Assistant Director (Corporate Policy and Support) or Licensing Manager any significant contact with the applicant and other parties, explaining the nature and purpose of the contacts and your involvement in them, and ensure that this is recorded on the licensing file.
- 7.5 Discussion between a potential applicant and the Council as Licensing Authority prior to the submission of an application can be of benefit to both parties. Such discussions should however only be dealt with by Officers.
- 7.6 Discussions between the licence applicant and the Licensing Authority 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 Authority must ensure it is not open to accusations of appearance of bias. Accordingly, Licensing Committee members should ensure that they do NOT take part in any pre-application/pre-decision discussions and that applicants are referred to the Licensing Officer.

8 LOBBYING OF/BY COUNCILLORS AND EXPRESSING VIEWS

- 8.1 Although lobbying is a normal and perfectly proper part of the political process, it is **not** acceptable in the case of Members who serve on the Licensing Committee about licensing matters given the "Licensing administrative fairness duty".
- 8.2 With the possible exception of Ward Councillors who are not involved in the decision-making process, Councillors should avoid organising support for or opposition to a forthcoming licensing decision and should not lobby other Councillors. Councillors who decide to go public in support for a particular outcome will not be able to argue convincingly when it comes to a decision being made on the application that they have maintained an open mind. In such cases, the appropriate course for the Councillor to take is to make a declaration, withdraw from the meeting, and take no part in the decision-making process.

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- 8.3 Ward Councillors have an important role to play as representatives of their communities and to bring local information to the decision-making process. Ward Councillors may therefore become involved in discussions with Officers about individual licensing issues. They should however remember that it is very easy to create the impression that they are using their position to influence the outcome.
- 8.4 Lobbying can be oral or by the circulation of letters or documents to all or some Councillors. Problems can occur if Councillors are given information or assurances by, for example, the licensee or applicant, their agents, neighbours, objectors or business colleagues/rivals, which are not part of the formal application or hearing process. Problems can also arise if the information provided to Councillors outside the formal process is misleading or untrue. Furthermore, there is a danger Councillors are manoeuvred into inadvertently confirming or denying confidential information to a third party. In the Hope and Glory case the judge ruled Licensing Act 2003 applications are not considered in quasi-judicial manner but an administrative one (with ultimately the same safeguards).
- 8.5 Councillors on a Licensing Committee must not put themselves in a position where they appear to favour a person, company or group. Even a 'friendly' private discussion with an interested party could cause others to mistrust the impartiality of Councillors.
- 8.6 Specific guidance for Councillors who are also Members of the Licensing Committee is as follows, in relation to external lobbying:

The Member:

- Should endeavour to avoid the hearing, and must avoid entering correspondence over, a case that is being put to them by any interested party outside of the official process for dealing with Licensing matters. It may be necessary to politely interrupt a person trying to raise such an issue.
- Should politely point out the reason why the matter must not be heard or considered by them in this situation, asking the person kindly not to continue, and not to raise further points direct with them. If the matter has been raised by correspondence, the Member need only pass the letter or email to the Licensing Officer and Officers will respond with the appropriate advice.
- Should explain how the matter may be raised in the correct manner, i.e. in writing, to the Licensing Service.

The Member may also:

- provide procedural advice e.g. how to obtain further advice via Licensing Officers, the right to address the Licensing Committee as a deputation, how to make representations, where to obtain advice on appealing a decision, and so on;
- should not under any circumstances indicate how they are going to vote, or reaction to, the matter being raised;
- should report all such contacts, with the details and any connected correspondence/paperwork, as soon as possible after they have occurred to the Licensing department, so that the incident can be recorded;
- should not provide any information on the matter gained by virtue of their position that is not already in the public domain e.g. details from a report that may be heard with the press and public excluded by the Licensing Committee. In any case, where information is requested, best practice is to signpost the enquirer to official Council sources of information. This avoids any

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accidentally selective provision of information by the Member, which although well intentioned, could be interpreted as bias

- refer the person to a Councillor who is not a Member of the Licensing Committee e.g. a colleague Ward Councillor, if the interested party is insistent on speaking to a Councillor. If despite the best efforts of the Member in compliance with the above, the person has not desisted as requested, and continues to put forward his/her view by contacting or making submissions direct to the Member, the Member must:
 - o in the absence of any written submission from the person appearing with the official papers at the Licensing Committee hearing, **or**
 - o in the event that the official submission from the person is not the same as the information given to the Member declare at the relevant Committee meeting the nature of the lobbying, who with, when, and the content of the issues raised, by whom and when.

- 8.7 Failure to follow these procedures above could prejudice the proper legal processing of the licensing matter, and this may have serious legal and financial consequences for the Council, also implications for the individual Councillor involved.

9 PRE-APPLICATION DISCUSSIONS

- 9.1 Any pre-application discussions on licensing matters are normally between Officers and either the applicants or interested parties, not with Members other than in general terms to determine what the local Ward Councillors may think.
- 9.2 Members will send applicants to the Licensing Officers for pre-applications discussions if approached.

10 SITE VISITS

- 10.1 Site visits are generally unnecessary in respect of licensing applications and should only be held under exceptional circumstances where particular site factors cannot be ascertained from plans provided with the application. Where a site visit is deemed necessary, it will be part of the Licensing Committee's formal hearing process. No representations from the applicant or other interested parties will be heard or accepted on site. No indication of the likely outcome of the application will be given on site. The
- 10.2 Councillors on the Licensing Committee are advised not to conduct their own site visits.

11 MEETINGS OF THE LICENSING AND REGISTRATION COMMITTEE AND SUB-COMMITTEES

- 11.1 Councillors must have the proper information to make an informed decision.
- 11.2 The following information will be included in an Officer report to the Licensing and Registration Committee: -
- A clear description of the issue, application and/or decision required;
 - Any relevant history in relation to the matter;
 - All relevant evidence (even if apparently conflicting) that will enable Members to reach an informed decision;

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- Details of any persons making witness statements and indicating willingness to provide verbal evidence to the Licensing Committees – such persons shall normally be available at the time of the meeting to be called if required, unless some other arrangement is made for the taking of evidence; and
 - A list of the options available.
- 11.3 Members of the Licensing Committee are entitled to this information and question if they consider that anything is not there.
- 11.4 Details of any persons making representations, (are also given to the Members but may not be contained within the report) together with an advance indication of a wish to address the hearing personally, or through their representative. Members should consider these in respect of whether they have an interest and declare.
- 11.5 Where a change in policy is being considered the following information will be included:
- Relevant existing requirements and policies
 - An appraisal of the implications of the decision
 - An accurate summary of the response to consultation, or if this is to be a decision 'in principle', the recommended consultation that is to be carried out if Members agree.
 - An Officer recommendation.
- 11.6 The majority of reports will be available for public inspection in accordance with the provisions for access to information and freedom of information. Occasionally the Licensing Committees will be asked to hear matters in private with the press and public excluded due to a need to respect personal confidentiality and privacy where sensitive issues are involved. This most often occurs in connection with Public Carriage driver hearings. In these circumstances the papers will not be publicly available in advance of the meeting, and the Licensing Committees will be asked to determine whether the meeting should be held in private to consider the report. Legal advice will be provided where necessary to assist with this decision. The Licensing Committee will also normally adjourn a public hearing to consider evidence together ahead of then returning to conclude the hearing in public where the decision will (again, normally) be provided orally.

COUNCILLOR ATTENDANCE

- 11.7 It is important that the Councillors' decision takes account of all material issues, not solely those contained in the Officers' report, but also those which may be legally permitted to be presented orally or otherwise at the meeting. Any Councillor absent from any part of the meeting during consideration of a licensing matter must not vote on that matter.

MAKING REPRESENTATION ON LICENSING APPLICATIONS

- 11.8 Members of the Licensing Committees may from time to time make representations on licensing applications. In these circumstances they are required to make their comments in writing and will also be afforded the opportunity to present their view at the appropriate meeting of the Licensing Committee. They may not participate in any part of the determination process.

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PUBLIC SPEAKING AT COMMITTEE MEETINGS

- 11.09 Where applications are considered pursuant to the Licensing Act 2003 or the Gambling Act 2005, by the Licensing Committees, the conduct of the meeting will be governed by the appropriate Hearings Regulations. The right to make representations under these Acts and Regulations is accordingly limited.
- 11.10 Consideration of applications for drivers of public carriages are held in closed sessions due to the sensitive nature. Consideration of other Licensing matters at a Licensing Committee will be judged against the information to be disclosed and the likelihood of exempt information being considered. The public, who are not parties to the application hearing (by virtue of having submitted representations) will not normally be permitted to address the Committee. The Council's hearing procedures will be followed in all cases.

DEFERMENT

- 11.11 The Licensing Committees should only defer a decision where there are clear and legally permissible reasons for doing so.

12 RIGHT TO FAIR DETERMINATION & OPEN AND FAIR HEARING

- 12.1 It is important that all the Licensing Committee Members read all of the agenda papers prior to each meeting and listen to all points raised during those meetings. Members have a duty to take into account all relevant matters, including licensing advice, and to ignore relevant matters. Members should present during the whole discussion of an item, or they should take no further part in the debate and should not vote on that item. Infrequently, certain applications may be adjourned at meetings for site visits etc and it is important that the same Members attend the subsequent meeting in order to determine the application.
- 12.2 Councillors, and Members of the Licensing Committees in particular, need to take account of the public's expectation that a licensing matter will be processed and determined in an open and fair manner, in which the Members taking the decision will take account of all of the relevant evidence presented before arriving at a decision, and that committing themselves one way or another before hearing all the arguments makes them vulnerable to an accusation of partiality.
- 12.3 Determination of a licensing matter is a formal and fair administrative process involving the following rules and procedures, including the rules of natural justice, and is subject to rights of appeal and an expectation that people will act reasonably and fairly. There is an added possibility that an aggrieved party may seek judicial review of the way in which a decision has been arrived at; or complain to the Local Government and Social Care Ombudsman on the grounds of maladministration; or that a Member has breached the local Code of Conduct.
- 12.4 Whilst Section 25 of the Localism Act 2011 provides some comfort to Member on the extent to which they are entitled to express firm views on matters before decisions are made it is still the case that Members must retain an open mind at the time the decision is made and be prepared to listen to and consider the arguments, together with any advice or information from Officers, at the Committee meeting before finally making up their mind on how to vote.

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- 12.5 Given the formal hearings nature of licensing matters and the licensing administrative fairness duty. Members of the Licensing Committee should not participate in any discussion on the merits or otherwise of particular cases including whether or not to grant or refuse any application. There should be no discussions at political group meetings to decide how Members will vote; this includes any pre-committee meeting or discussions between Licensing Committee members of a political group.
- 12.6 The fundamental principle is that a Member on a Committee determining a licensing matter must both: -
- (a) have an open mind; and
 - (b) be capable of being seen by an objective and reasonable third party as having an open mind.
- 12.7 A Member of the Licensing Committee can pass on the views of a resident to the appropriate Officer prior to its hearing, but the Member must be careful not to be seen to be an advocate trying to influence the decision in any way on behalf of the resident. It would be inappropriate for the Member to pass on the views to a Member involved in the determination of the licensing matter.
- 12.8 Even if a Member of the Licensing Committee has not expressed a view on a licensing matter, if their mind is closed the Member should not participate in the hearing/determination of the matter. In these circumstances, another Member of the Committee or a substitute may attend to replace the Member (subject to the rules permitting or preventing such replacements and to them having undertaken the required training). It is not possible for a Member merely to act as a replacement for part of the meeting only while a particular licensing matter is determined. Any replacement Member must accept all of the principles set out in this guidance, including the need to have an open mind. In other words, the Member has declared an interest must not give an instruction or even an indication to the replacement Member on how that Member should vote. In addition, the Member should not seek or be seen to seek to influence the decision in any way, otherwise the integrity of the licensing processes would be damaged.

13 APPENDICES

DECISIONS CONTRARY TO THE STATEMENT OF LICENSING POLICY (LICENSING ACT 2003 OR GAMBLING ACT 2005) AND/OR OFFICER RECOMMENDATIONS

- 13.1 The law requires that regard should be had to the statement of licensing policy in making decisions.
- 13.2 If a Licensing Committee intends to make a decision contrary to the statement of licensing policy or to an Officer's recommendation (whether for approval or refusal), the Officer should first be given an opportunity to explain the implications of the contrary decision. The Chairman should ensure that the Committee's reasons made clear at the meeting. A full record of the reasons should be made in the minutes and a copy placed on the application file. The courts have expressed the view that such reasons should be clear and convincing.

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LICENSING SUB-COMMITTEE HEARINGS GENERAL INFORMATION

- 13.3 The Licensing Sub-Committees will undertake those functions of the Licensing Authority under the Licensing Act 2003 and the Gambling Act 2005 which have been delegated to the Sub-Committees, as defined in the Council's Constitution.
- 13.4 A Licensing Sub-Committee consists of three Members of the Licensing Committee.
- 13.5 Each Licensing hearing will be in public and will usually be conducted virtually. Each hearing will be recorded, and the recording of the meeting will be publicly available on the Council's YouTube channel.
- 13.6 Only those parties who have made written representations will be invited to and allowed to address the licensing hearing. A party may be assisted or represented by any person at the meeting, whether or not that person is legally qualified. A party may be represented by a Councillor, usually their Ward Councillor, but not by a Member of the Licensing Sub-Committee. The Democratic Services Officer must be notified in advance of the meeting with the details of any assistant or person representing any party.
- 13.7 For each hearing the Licensing Sub-Committee will consider a report from the Licensing Authority which will be displayed on the Council's website and available to all parties in advance of the hearing.
- 13.8 Only those parties who have made written representations will be invited to and allowed to address the licensing hearing. A party may be assisted or represented by any person at the meeting, whether or not that person is legally qualified. A party may be represented by a Councillor, usually their Ward Councillor, but not by a Member of the Sub-Committee. The Democratic Services Officer must be notified in advance of the meeting with the details of any assistant or person representing any party.
- 13.9 For each hearing, the Sub-Committee will consider a report from the Licensing Authority which will be displayed on the Council's website and available to all parties in advance of the hearing.
- 13.10 The Licensing Authority may take into account additional material produced by a party in support of their application, representation or notice (as applicable) supplied after the closing date for making written representations. Such material must be supplied to the Democratic Services Officer 5 working days before the date of the hearing. Additional material submitted after that date will not be considered and permission to rely upon it must be sought from the Sub-Committee at the hearing. Where permission to rely upon additional material is sought at the hearing, the Sub-Committee may grant permission and may seek advice from the Legal Advisor to the Sub-Committee as appropriate.
- 13.11 The Sub-Committee will disregard such additional documents or information which is not relevant to: -
- (a) the application, representations or notice (as applicable), or
 - (b) the promotion of licensing objections or,
 - (c) in relation to a hearing to consider a notice given by a Chief Officer of Police, the crime prevention objective. If accepted, the material submitted 5 days prior to the hearing date will be published with the remainder of the hearing papers.

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CONDUCT OF THE MEETING

- 13.12 Meetings can be conducted virtually. The onus is on all parties to be conversant with the technology required.
- 13.13 When joining the virtual meeting, the party joining online will be held in a lobby to start with.
- 13.14 During the meeting, all participants will be in control of their own microphone. The microphone should be set to mute at all times, until the Chairman invites you to address the Sub-Committee. The online chat facility on the virtual platform for a virtual hearing is not permitted.
- 13.15 The Chairman will have complete discretion of the procedure to be adopted for the meeting and the order in which those entitled to address the Sub-Committee are permitted to make their submissions.
- 13.16 The Chairman will strictly manage time allocations. The applicant and those making representations will be afforded equal time to present their case. The maximum time for a party to speak will be determined by the Chairman, taking into account the complexity of the case and the number of participants. By default, the maximum time will be set at 15 minutes; however, for more complex cases or numerous participants, the Chairman may adjust time allocations where needed.
- 13.17 Those addressing the Sub-Committee should avoid repetition and use their allocated time efficiently.
- 13.18 The hearing shall not adversarial but will take the form of a discussion led by Members. Cross-examination of any party will not be permitted unless the Chairman of the Sub-Committee considers, in exceptional circumstances, that cross-contamination maybe appropriate for a specific issue.
- 13.19 At the end of the hearing, the Chairman will announce a general discussion. Should the party wish to speak during this part, the party should activate the 'raised hand' function. Please be patient, the Chairman will be aware the party wishes to speak and will come to them in due course.
- 13.20 The Sub-Committee may require any person attending the hearing who, in their opinion, is behaving in a disruptive manner to leave the hearing and may: -
- (a) refused to permit that person to return, or
 - (b) permit them to return only on the conditions that they give assurance of no further interruptions, or
 - (c) exclude the individual from the hearing.

PROCEDURE AT THE MEETING OF THE SUB-COMMITTEE SHALL HAVE THE OPPORTUNITY TO ASK QUESTIONS AT ANY TIME

- 13.21 The Chairman will ascertain whether the parties and their assistant, if any, are present. If any party has indicated that they will not attend or failed to indicate whether or not they will attend, or do not attend, the Sub-Committee will normally hold the hearing in that party's absence but may decide to adjourn depending upon the circumstances and nature of the hearing.

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- 13.22 The Chairman will ascertain that parties understand that they may be assisted or represented, legally or otherwise.
- 13.23 The Licensing Officer will give details of each application case and of the number and type of objections/representations received as set out in the Officer report.
- 13.24 The applicant and/or their representative and their witnesses will then be invited to address the Sub-Committee confirming why they consider the issues that have been raised by written representations against the application are not relevant with regard to the licensing objectives and why they consider the Sub-Committee should grant the application, or notice, as applicable. The maximum amount of time allowed will normally be 15 minutes; however, this may be extended at the discretion of the Chairman depending on the complexity of the application.
- 13.25 Those making representations, or their representatives, will be invited to address the Sub-Committee confirming why they consider the issues they have raised to be relevant to the licensing objectives and how they impact upon the promotion of the licensing objectives, to enable the Sub-Committee in its deliberation of its decision. The maximum amount of time allowed will normally be 15 minutes; this may be extended at the discretion of the Chairman depending on the complexity of the application.
- 13.26 A discussion involving parties will ensue at the discretion of the Chairman of the Sub-Committee. Cross-examination of any party shall not be permitted; however, it may be allowed in exceptional circumstances at the discretion of the Chairman of the Sub-Committee.
- 13.27 Upon conclusion of submitted and discussions, the hearing will come to an end. The Sub-Committee will then retire to deliberate its decision. The decision of the Sub-Committee will be notified to all parties by email within 5 working days, or earlier where required by law, together with the right of appeal.

PROCEDURE FOR CONSIDERING LICENSING ISSUES OTHER THAN THOSE THAT FALL UNDER THE LICENSING ACT 2003 OR THE GAMBLING ACT 2005

The procedure will be as follows: -

1. The Chairman will ascertain that the applicant knows that they may be represented.
2. The Lead Officer will give details of each application in each case and of the number and type of objections received.
3. The applicant, or the applicant's representative, and the applicant's witnesses will then be invited to address the Sub-Committee.
4. The objectors, or their representatives, will then be allowed to speak. They should cover the points that relate to something that the applicant may have raised during their address that was previously unknown to the objector. (The applicant should be advised to note specific points during the objectors' presentation.)
5. The applicant, or applicant's representative, will be permitted to put questions to each objector immediately after they have addressed the Sub-Committee and to answer any new points raised by the objector.

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6. The Sub-Committee Members will be able to ask questions at any time but will generally restrict most questions to the end of the statement made by the objector, applicant or witness, as appropriate.
7. The Sub-Committee will then discuss the application and the objections, and give their decision, giving clear reasons for their decision reached.
8. Should Members wish to discuss certain issues such as whether an applicant is a “fit and proper person” to hold a licence, the Sub-Committee will move into a closed session, and the public will be excluded for the duration of the discussion prior to a decision on the application being announced.
9. A few days after the meeting, the written Decision Notice will be issued to the applicant, which will include details of the applicant’s right of appeal if appropriate. Notification of the decision will be sent to the objectors.