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

1. Introduction

1.1 The Licensing Act 2003 and the Gambling Act 2005 gave local authorities responsibility for deciding on licences for regulated entertainment, and the use of premises for gambling activities.

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.

1.5 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.

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.

2. Declaration of Interests

2.1 Members must always declare their interests in accordance with 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 fro the Monitoring Officer as soon as they can.

3. Improper Influence

3.1 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.

3.2 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

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". 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'

4.2 Predisposition and Predetermination: Localism Act 2011

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 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.

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.

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.

4.5 There will also be occasions when a Licensing 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 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 Portfolio Holder 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.

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 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.

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. 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 avoiding 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.

- 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.

6. Pre-application / pre-decision discussions

6.1 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.

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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 Sub-Committee. 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.

8. Decision making

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

9. Site visits

9.1 A site visit will not normally be undertaken by members of a Licensing Sub-Committee in respect of premises licence applications unless for some particular reason members consider that it would be helpful to their consideration of the application

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 will report the site visit to the meeting of the Licensing Sub-Committee which considers the application.

10. Public speaking – Licensing Committee Meetings

10.1 Members of the public, and other interested parties, shall be entitled to participate in parent Licensing Committee meetings.

10.2 A person wishing to address the Licensing Committee must give notice to the Democratic Services Team of his or her intention to do so by 12 noon two working days before the day of the Licensing Committee meeting in question.

10.3 Members of the public who register to speak at meetings of the Licensing Committee will each be allowed to speak for no more than three minutes.

Members of the public who register to address a meeting of the parent Licensing Committee under the rules set out in this section can do so using one of the three options below:-

- By attending in person and addressing the committee verbally;
- By joining the meeting virtually by video link and addressing the committee verbally; or
- By providing a written statement in advance of the meeting to be read out by an officer (such statement to be provided no later than the cut off point for registration to speak as set out in paragraph 10.2).

10.4 At any meetings not more than 15 minutes in total shall be devoted by the Licensing Committee to Public Speaking, provided that the Chair may at his or her discretion extend the time if the Chair and a majority of those present agree.

10.5 The Committee Chair shall have the discretion:

(i) In exceptional circumstances, to allow late additions to the list of public speakers.

(ii) To decide not to allow speeches, which merely repeat representations made in earlier speeches and which are inaccurate.

(iii) Depending on circumstances, to vary the periods of time referred to in paragraphs 10.3 and 10.4 where s/he deems it appropriate.

10.6 Direct or open questioning and discussion / debate between Public Speakers and either Members or Officers will not be allowed during Public Speaking. Any such matters raised may be answered by Members / Officers only after the close of Public Speaking, or will be addressed during the subsequent debate. At no time will direct discussion between Members or Officers with a Public Speaker be permitted.

10.7 After the close of Public Speaking, no other inputs will be permitted from the 'public gallery', other than at the discretion of the Chair, and subject to relevant Officer advice, if exceptional circumstances warrant this.