

Members Licensing Code of Practice
(September 2007)

1. This Code of Practice applies only to hearings of the Licensing Committee or Licensing Sub-Committee to consider licence applications under the Licensing Act 2003 or the Gambling Act 2005. All references to “Sub-Committee” within this Code will be construed also to refer to meetings of the Licensing Committee considering such applications.

This Code of Practice has been prepared for all Members who may attend licensing sub-committee meetings, whether as Members of a Licensing Sub-Committee, or in any other capacity, including to make representations to such a sub-committee as a Ward Member, or as an applicant, or an interested party.

This note has been drawn from good practice, the local code of conduct, Standards Board for England guidance and the LACORS (Local Authorities Co-ordinators of Regulatory Services) guidance: “The role of Elected Members in relation to Licensing Committee Hearings under the Licensing Act 2003” (February 2005).

The definitions of ‘personal’ and ‘prejudicial’ interests in the context of the Licensing Act are the same as for all other areas of the Council’s work, and are provided at paragraphs 8 and 10 of the Members’ Code of Conduct contained within the Constitution. The Standards Board has stated “Regulatory matters such as planning and licensing are particularly sensitive...you should adopt a particularly cautious approach” [Lobby groups, dual hatted members and the Code of Conduct, Standards Board for England September 2004].

2. The following general advice is provided specifically in the context of licensing hearings:-
 - a) where an application relates to a premises very close to where a Member, (or their close associate) lives so that s/he is affected more than the majority of inhabitants of the Ward the interest is likely to be personal and potentially prejudicial.
 - b) where the member is a frequent visitor to the premises in a personal capacity there is potentially a personal and a prejudicial interest.
 - c) where the member belongs to a lobby or campaign group which may be directly impacted by the outcome of the hearing, the interest is personal and potentially prejudicial.

3. Members of the Licensing Committee:

- a) who have a personal and prejudicial interest in an application should not sit on the sub-committee considering that application and cannot sit in the public gallery but must withdraw from the committee room

completely unless they are attending in a specific other capacity as in (4) below.

- b) who have a personal interest which is not prejudicial are advised that whilst the Standards Board has advised they could sit on the sub-committee that the LACORS guidance advises they should not sit. Whilst the decision is that for the individual Member, the advice given here is that it would reduce the risk of legal challenge to a decision if the Member were to decline to sit on the sub-committee at that hearing.
- c) are advised not to sit on a Licensing Sub-Committee when that sub-committee is considering an application in the Member's Ward, to avoid accusations of pre-determination, reduce the risk of legal challenge and to enable Ward Members to represent their constituents at committee hearings.

4. Members wishing to make representations:

- a) who are personally affected by an application (and thus have a personal and prejudicial interest) may make written representation to the sub-committee and may attend the meeting to make representations, answer questions and give evidence, provided that the public are also allowed to attend the meeting for the same purpose, but must withdraw from the committee room immediately afterwards.
- b) who are personally affected by an application (and thus have a personal and prejudicial interest) may appoint a representative to represent them if they prefer.
- c) who have a personal and prejudicial interest may attend the meeting to make representations, answer questions and give evidence on any other party's behalf, including in their capacity as a Ward Councillor representing their constituents, provided that the public are also allowed to attend the meeting for the same purpose, but must withdraw from the committee room completely immediately afterwards.
- d) who have a personal interest that is NOT prejudicial, are advised that they can appear on behalf of another party, including in their capacity as a Ward Councillor representing their constituents. They may remain in the room for the entire hearing.
- e) Where Ward Members are representing a constituent it will be advisable, to reduce the risk of legal challenge, for the Member to:
 - be able to identify the person(s) whom they represent in the form of e.g. Mr X of Smith Street or Mrs Z of Jones Lane
 - have a written record of their constituent's concerns. This may be in the form of an email or letter from the constituent, or the Member's note of a telephone conversation or personal meeting. Should the sub-committee hearing result in an appeal it may be

necessary for the Member to substantiate the representations they have made, and documentary evidence will be of great assistance.

5. Lobbying

Members are frequently approached by applicants and objectors who wish either to 'lobby' Members or to ask advice. The LACORS guidance reaffirms the legitimacy of lobbying but gives certain guidelines:

- If a sub-committee member is approached by any means by persons writing to lobby them regarding a licence application to be heard by that sub-committee then the Member is strongly advised to explain they cannot discuss the matter, and to refer the person to their Ward Member and/or Licensing Officer. It is also recommended that Members make and keep notes of these instances in case the matter proceeds to an appeal.
- Members of the sub-committee cannot represent an applicant or other interested party. If they wish to do so they must excuse themselves from the sub-committee.

6. Guidance on Site Visits

The LACORS guidance is that 'site visits by Licensing Sub-Committee Members are generally unnecessary and can put the Members and the Licensing Authority at risk of accusations of bias'.

Site visits are only likely to be appropriate:

- where the application to be considered by the sub-committee is factually complicated; or
- where a hearing is expected to last a full day or more; and
- where a site visit would materially reduce the time required by the sub-committee to clarify factual matters such as details of premises layout.

Thus assisting the sub-committee in making a more informed decision in a shorter time.

There are restrictions on the organisation and attendance at site visits, which would be organised by Licensing Officers. These include that:

- Licensing Officers would accompany the sub-committee members
- Legal Officers and Democratic Services Officers would not be present
- All Sub-Committee Members would visit at the same time
- All other parties (e.g. objectors) would be invited to attend at the same time
- The applicant would be requested to consent to allowing objectors to attend, if permission was not granted the visit could not proceed
- No refreshments or the like should be provided (although the use of lavatories by the visitors should be permitted)

- There should be no discussion as to the application, save as was strictly necessary to clarify factual queries eg re. layouts.

A report of the visit would be prepared by the Licensing Officer and would form part of the full report presented to the sub-committee.