



**WEST BERKSHIRE CODE OF CONDUCT  
FOR LICENSING**

**DECEMBER 2004  
Third Draft**

## **1. Introduction**

The role of an elected Member on any Licensing Committee involves balancing the needs of both the community and the interests of individual constituents with those of the licensing trade, whilst making impartial decisions which comply with the Licensing Act 2003 and associated regulations and the Council's Licensing Policy.

An open and transparent process in the determination of licensing applications is essential.

Decisions made on licensing applications can affect livelihoods and the quality of life in the community.

This Code is intended as a guide to Councillors, Officers and licensing applicants on the standard of behaviour expected throughout the process.

## **2. The Council's Constitution**

This Licensing Code of Conduct forms part of the Council's Constitution. This Code is available to the public and is on the Council's website. The Licensing Code of Conduct has been approved by full Council for inclusion in the Constitution.

## **3. Breaches**

Any alleged breach of this Licensing Code of Conduct will be referred to the Standards Board for England by the Monitoring Officer.

The Standards Board may decide to refer the case to the Council's own Standards Committee to investigate. Where this is done it is the responsibility of the Monitoring Officer to investigate the case and prepare a report for the Standards Committee.

Where an Officer is concerned in an alleged breach of this code this will be investigated in accordance with the Council's disciplinary procedure.

## **4. Role and Conduct of Councillors and Officers**

Councillors and Officers have different but complementary roles in the Licensing process.

Officers are employed by the Council. Instructions may only be given to Officers by the Council, its Executive or a committee or by way of delegated powers. The relationship between Officers and Councillors should be one of mutual trust, understanding and respect. It is not appropriate for Councillors to direct Officers to determine a licensing application in any particular way

A Councillor must not use his position as a Member improperly to confer on, or secure for himself or any other person, an advantage or disadvantage (The Local Authorities (Model Code) Order 2001 as set out in the Council's Code of Conduct).

Councillors must not favour, or discriminate against, any person, company, group or locality nor put themselves in a position where they appear to do so.

## **5. Hospitality**

Both Officers and Councillors must be cautious about accepting gifts and hospitality.

This could be a particular issue with the licensing trade where both Members and Officers may visit licensed premises.

As agreed by Council in December 2002 any Councillor receiving a gift or hospitality (irrespective of value), in their capacity as a Member, must provide written details to the Monitoring Officer within 28 days of receipt of the gift or hospitality. Such notification will go in a register of gifts and hospitality and this will be open to public inspection.

Officers should record any gifts or hospitality in a hospitality book whether or not they are accepted. This book will be reviewed regularly by the Monitoring Officer and the Standards Committee, which is responsible for the ethical framework of the Council.

## 6. **Declarations of Interest**

A Register of Councillors' Interests is maintained by the Council's Monitoring Officer and is available for public inspection.

Written details of interests must be provided to the Monitoring Officer within 28 days of election or appointment to office (from The Local Authorities (Model Code) Order 2001 paragraph 13).

Any changes to those interests must be provided to the Monitoring Officer in writing within 28 days of the Member becoming aware of such changes.

## 7. **"Personal" and "Prejudicial" Interests**

These terms replace "pecuniary" and "non pecuniary".

An individual has a **personal** interest in a matter if that matter affects the well-being or financial position of the individual, his/her relatives or friends more than it would affect other people in the Authority's area or if the matter relates to an interest notice of which is in the statutory register (see Section 6).

In determining whether they have a personal interest in any application before the Licensing Committee, Members should consider how any decision reached by the Committee would affect:

- their own jobs or business or those of friends/relatives;
- their own or their employer's firm, where the Member or friends or relatives are a partner and companies of which either the Member, or friends/relatives are a director;
- corporate bodies in which the Member or friends or relatives have a beneficial interest in a type of share with a face value worth more than £5,000 and;
- organisations in which the Member or relatives/friends hold a position of general control or management.

If a Member has a **PERSONAL** interest he must declare it at the time that he is being invited to sit on a Licensing Sub-Committee. Although a personal interest means that the Member may take part, it is very important that all interests are declared at this point and not at the time of the appeal itself.

At the time when the Member is being invited to be part of a Licensing Sub-Committee, the Member needs to consider whether their interest is prejudicial, that is, is the interest one which a Member of the public with knowledge of all the relevant facts would reasonably regard as so significant that it is likely to prejudice the Member's judgement of the public interest.

## 8. The Effect of a Prejudicial Interest

If a Member has a **prejudicial** interest then they may not be part of that Licensing Sub-Committee determining that application. It is absolutely essential that the prejudicial interest is declared at the time of the invitation to the hearing and not at the hearing itself. If the declaration takes place at the start of the hearing, and there is no substitute Licensing Member to ensure that the Sub-Committee is quorate, it could invalidate the entire proceedings and leave the Council open to challenge. If the declaration is made after the hearing has started the whole proceedings will be invalidated.

It is for the individual Councillor to decide what the interest they have is. They may seek advice from the Monitoring Officer or from Legal Services but it is their decision. Where advice is sought, it should be sought as early as possible.

## 9. The Role of the Executive

Members of the Executive may be on the Licensing Committee and have interests in an application because of their role on the Executive. There may be occasions where the Council is sponsoring a development and an Executive Member may be seen as the chief advocate on the Executive. In such circumstances the appropriate approach is that the Executive Member should not sit on the Licensing Sub-Committee hearing that application.

## 10. Lobbying

Lobbying is a normal and proper part of the political process. Local concerns need a way of being aired and the most effective and suitable way is through the local elected representatives. However, lobbying can cause the impartiality and integrity of a Councillor to be called into question. Councillors must take care when being lobbied not to express an opinion that could be interpreted as indicating that they have made up their mind on the issue before they have seen all the evidence.

Comments should be restricted to procedural advice and should always make clear that the decision can only be made after hearing all the relevant evidence and arguments at the committee hearing.

Apart from Ward Members, Councillors should avoid organising support for or against a licensing application. If they do organise such support they will disqualify themselves from sitting on the Licensing Sub-Committee that hears that application.

Members who sit on more than one relevant authority, and those who are included on membership of campaign or lobby groups, should also consider whether they have a personal or prejudicial interest. For example, if the decision of a Licensing Sub-Committee could have a direct impact on a lobby or campaign group whose primary purpose is to influence public opinion, then it is likely that the Member will have a prejudicial interest. Members should consult the September 2004 edition of the Standards Board pamphlet "Lobby Groups, dual-hatted Members and the Code of Conduct" for further guidance or seek advice from the Monitoring Officer.

## 11. Ward Members

If a Licensing Committee Member representing a ward affected by a controversial application goes public in support of a particular outcome (which they may feel they have to do) then the Member may appear at the Sub-Committee meeting hearing the application, and argue their cause. They may not however sit on the Sub-Committee hearing the application.

**[Note: No Ward Member will be able to hear any licensing application for premises situated in their ward.**

**Care will also be needed where the premises are near ward boundaries where it may be inappropriate for neighbouring Ward Members to be on the Sub-Committee hearing such applications.]**

## **12. Licensing Applications by Councillors, Officers or the Council**

These can, by their very nature, arouse suspicions of impropriety. It is therefore vital that they are handled in a way that ensures there are no grounds for favouritism.

If it is a Council application it will be treated in the same way as any private application.

If the application is by a Licensing Officer or their family, it will be dealt with by the Senior Licensing Officer. If the application is connected to the Senior Licensing Officer then it will be dealt with under the direct supervision of the Head of Service. If it falls within delegated powers and relates to any Officer of the Council, including Amey employees, the Corporate Director, not the Head of Service will exercise the delegated power (in consultation with the Monitoring Officer). If it is an application by a Councillor, the Councillor is entitled to speak to Officers in the same way as any Member of the public. However, they shall not seek improperly to influence the decision and will clearly not be part of the Licensing Sub-Committee hearing that application. Councillors are advised to employ professionals to speak on their behalf at hearings involving their own applications.

The Council's Monitoring Officer shall be informed of all applications by Councillors and Officers and will register such applications.

## **13. Discussions before Decision is Made**

Councillors have a role to play in helping consultation between their constituents and the licensing trade. Consultation can be a huge benefit to all parties but can easily be seen as part of a lobbying process by the applicant if care is not taken. Since Ward Members will not be able to sit on any Licensing Sub-Committee hearing applications for premises in their own ward, it is anticipated that lobbying would not normally affect those Members hearing any application.

If any meeting between applicants and Councillors is held, a written note should be made of any such meeting. At least one Officer should attend such meetings and a follow-up letter is advisable summarising the discussion.

Councillors should also note that potentially contentious telephone discussions should also be recorded in writing, preferably immediately after the conversation, so recollection is fresh and should be reported to the Monitoring Officer.

Where any meeting concerns a major application, it is preferable that the meeting takes place on Council premises.

## **14. The Licensing Hearing itself**

Ten-minute slots within each application are allocated as a total for all parties wishing to address the Sub-Committee. This means all objectors have a total of ten minutes, which they may share as they wish. Responsible authorities, where they wish to address the Sub-Committee, will have ten minutes each. The chair of the meeting may extend the time slots if it is considered appropriate by the Sub-Committee in view of the large public interest in the

matter but this must be by a vote of the committee agreeing to suspend this provision of the constitution.

At the hearing, a party shall be entitled to:

- give further information ( subject to new information being submitted only with the agreement of all parties) and call any witness in support of their application, representations or notice ( as applicable);
- question any other party or witness;
- address the Sub-Committee.

Members of the Sub-Committee may ask any question of any party or witness. However, care should be taken to ensure that questions are relevant to the application and the furtherance of the four Licensing Objectives as stated in the Licensing Act 2003 in order to maintain the focus of the proceedings. Any other party may also ask questions but these should be directed through the Chair and again should relate to the application and the four Licensing Objectives. The procedure is not intended to be adversarial.

No new documentary evidence may be produced to the Sub-Committee at the meeting unless all parties are agreed this is acceptable (this does not prevent applicants or objectors raising new points verbally). If objectors or applicants wish to introduce new additional material they should provide such material to Licensing Officers at least 5 clear working days before the meeting (in line with the Local Authorities (Access to Meetings and Documents) (Period of Notice) (England) Order 2002

## **15. Decisions Contrary to the Licensing Policy**

The law requires that decisions will be in accordance with the Council's approved Licensing Policy.

If the Sub-Committee decides a matter contrary to the Council's Licensing Policy then a detailed minute of the reasons must be made and a copy of those reasons placed on the application file. This will be required should an appeal be lodged to the Magistrate's Court.

## **16. The Role of the Chair**

The role of the Chair will be key and specific training for this will be provided.

## **17. Complaints**

Complainants alleging a breach of the statutory local code of conduct may direct their allegations to the Standards Board for England.

To investigate complaints fully, record keeping should be complete and accurate.

Decisions taken under delegated powers should be as well documented and recorded as those taken by Councillors.

## **18. Training**

All Members of the Licensing Committee should receive training before taking their seat on the Committee or any Licensing Sub-Committee. If introductory training is not undertaken then Councillors may not be able to serve on any Licensing Committee or any Sub-Committee. Councillors will also undertake such updating training as may be recommended from time to

time. Failure to attend updating training will mean Councillors may not continue to sit on the Licensing Committee or any Sub-Committee.

Third draft

December 2004