

## Appendix G

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### *West Berkshire Code of Conduct for Licensing*

~~December~~ March 2014~~2~~

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#### **1. Introduction**

- 1.1 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, the Gambling Act 2005 and associated Regulations and the Council's Licensing Policy.
- 1.2 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.
- 1.3 This Code is intended as a guide to Councillors, Officers and licensing applicants on the standard of behaviour expected throughout the process.
- 1.4 The Licensing Committee will consist of 14 Members, reflecting the political composition of the Authority and may not appoint Substitutes. The Licensing Committee will appoint as and when necessary a Sub-Committee to determine applications where representations have been received. The Sub-Committee shall comprise three Members drawn from the Membership of the Licensing Committee. A Substitute (who is a Member of the Licensing Committee) will be appointed for each Sub-Committee meeting.
- 1.5 If Councillors need any guidance on any matter under this Code, they should seek it from the Monitoring Officer but it is the Councillor's responsibility to comply with the Code

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

- 2.1 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.
- 2.2 The Licensing Code of Conduct should be read in conjunction with the Council's Code of Conduct.
- 2.3 The governance structures and rules of procedure for the Licensing Committee is set out in Part 7 (Regulatory and Other Committees Rules of Procedure) of the Constitution.

#### **3. Breaches**

- 3.1 A breach of this Code, ~~will~~ will not usually amount to a breach of criminal law but it may adversely affect the reputation of the Council and the reputation of an individual Councillor. It could result in a decision being judicially reviewed

or result in a complaint to the Local Government Ombudsman, or an allegation of a breach of the Code of Conduct.

3.2 Any alleged breach of this Code will be investigated locally in accordance with the procedures associated with the Code of Conduct (see Appendix H to Part 13 of the Council's Constitution). It is the responsibility of the Monitoring Officer to investigate the case and prepare a report for the Standards Committee if a breach of the Code of Conduct or Licensing Code of Conduct is alleged to have occurred.

~~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.~~

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

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

4.1 Councillors and Officers have different, but complementary, roles in the licensing process and it is important that an open, respectful and transparent relationship is developed based upon mutual trust and understanding of each other's positions. It is important for the overall standing of the Council that they work as an effective team.

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

4.2 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.

4.3 When considering licensing applications Councillors need to ensure that only the four licensing objectives (the prevention of crime and disorder; public safety; the prevention of public nuisance; and the protection of children from harm), in the case of the Licensing Act 2003 and (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; protecting children and other vulnerable persons from being harmed or exploited by gambling) in the case of the Gambling Act 2005 are taken into account. In reaching a decision Councillors should ensure they read, consider and take account of the relevant material considerations connected with the application and should not favour any person, group or locality or put themselves in a position where they may appear to do so.

~~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. Gifts and Hospitality**

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

5.2 Any Councillors offered any gift or hospitality, in their capacity as Members must treat the offer in accordance with Appendix D (Gifts and Hospitality: A Code of Conduct for Councillors) to Part 13 (Codes and Protocols) of the Constitution. Officers offered any gift or hospitality must treat the offer in accordance with paragraphs 13.5.2 (Gifts & Hospitality – General), 13.5.3 (Rules and Procedure for Gifts and Hospitality) and 13.5.4 (Hospitality) of the Council's Constitution.

## **6. ~~Declarations of Interest~~**

6.1 A Register of Councillors' interests is maintained by the Council's Monitoring Officer, is available for public inspection and is published on the Council's website.

6.2 Written details of Disclosable Pecuniary Interests (DPI) must be provided to the Monitoring Officer within 28 days of election or appointment to office and any changes to those interests must also be provided to the Monitoring Officer in writing within 28 days of the councillor becoming aware of such changes.

6.3 Where Councillors have a personal interest they must disclose to that meeting the existence and nature of that interest at the start of the meeting or when the interest becomes apparent. Councillors who have a personal interest in an item are permitted to take part in the discussion and vote on the item.

6.4 Where Councillors have a Disclosable Pecuniary Interest (DPI) they may attend a meeting either as a member of the committee and/or as a Ward Member but only for the purposes of making representations, answering questions or giving evidence relating to the business (provided the meeting is one where members of the public are allowed to make representations). They may not propose a motion, vote or take part in the decisions making process of the Committee. They must withdraw from the meeting before the vote is taken and their vacating the room will be noted in the Minutes of the meeting. It is for the individual Councillor to decide what the interest is. They may seek advice from the Monitoring Officer or from Legal Services but it is their decision. If advice is sought it should be sought as early as possible. It is therefore important that agenda are read in good time and that, if possible, advice is sought no later than the day before the meeting. It is better not to raise a query on interests in a public forum. By doing so, public perception may well lead to the conclusion that the interest is a DPI.

- 6.5 Members who have a DPI may, in certain circumstances, apply for a dispensation which would allow them to take part in discussions and vote on an item, The procedure for applying for and the granting of dispensations is set out in Appendix 2 to Appendix H (the Code of Conduct) to Part 13 (Codes and Protocols) of the Council's Constitution.

## **7. The Role of the Executive**

- 7.1 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.

## **8. Lobbying**

- 8.1 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 and heard all the evidence.

- 8.2 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 Sub-Committee hearing or the Committee Meeting.

- 8.3 Apart from Ward Members (see paragraph 9.1), 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.

- 8.4 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 an 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.~~

## **9.1. Ward Members**

- 9.1 If a Licensing Committee Member representing a wWard 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.]*

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

**10.1** 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.

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

**10.3** If the application is by a Licensing Officer or a member of their family, it will be dealt with by the Team Manager Licensing~~Senior Licensing Officer~~. If the application is connected to the Team Manager Licensing~~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, the Corporate Director, not the Head of Service will exercise the delegated power (in consultation with the Monitoring Officer).

**10.4** -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.

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

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

**11.1** Councillors have a role to play in helping consultation between their constituents and the licensed ed and gambling trades.~~ing 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 Committee or Licensing Sub-Committee hearing applications for premises in their own ~~w~~Ward, it is anticipated that lobbying would not normally affect those Members hearing any application.

**11.2** 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.  
Whenever possible the meetings should take place on Council premises.

**11.3** 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.~~

## **142. The Licensing Hearing itself**

**12.1** Ten-minute slots within each application are allocated as a total for all parties wishing to address the Sub-Committee. This means all objectors or supporters have a total of ten minutes per group, which they may share as they wish. Responsible authorities, where they wish to address the Sub-Committee, will also have ten minutes each. The Chairman 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.

**12.2** 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 through the Chairman;
- address the Sub-Committee.

**12.3** 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 and the Gambling Act 2005 in order to maintain the focus of the proceedings. Any other party may also ask questions but these should be directed through the Chairman and again should relate to the application and the four-Licensing Objectives. The procedure is not intended to be adversarial.

**12.4** 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).

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

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

**13.2** 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.

## **164. The Role of the Chairman**

**14.1** The role of the Chairman will be key and specific training for this will be provided.

## **175. Complaints**

**15.1** Complainants alleging a breach of this protocol may direct their allegations to the Monitoring Officer.

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

15.3 Decisions taken under delegated powers should be as well documented and recorded as those taken by Councillors at a Licensing Sub-Committee. Complaints pertaining to delegated decisions will be dealt with under the Council's Corporate Complaints Procedure.

15.4 A complaint may be made to the Local Government Ombudsman in the event that a complainant was not satisfied with the result of an investigation under the Council's complaints procedure. This must be made on the appropriate prescribed form and submitted direct to the Local Government Ombudsman.

~~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.~~

## **186. Training**

16.1 All Members of the Licensing Committee (including ssubstitutes) to receive appropriate training before being able to make formal decisions on the Committee and then to attend subsequent refresher training to remain on the Committee.

