

**CLEAN DRAFT**

**PART 5E**

**CODE OF CONDUCT FOR MEMBERS**

**IN RELATION TO LICENSING COMMITTEE**

**HEARINGS UNDER THE LICENSING ACT 2003**

## **1. Introduction**

- 1.1 This Code of Conduct must be read in conjunction with the Member Code of Conduct, the Protocol on Member / Officer Relations, any other codes and protocols approved by the Full Council and the Licensing Committee Procedure Rules.
- 1.2 The Council's Licensing Committee comprises 15 elected Members and that committee has established sub-committees comprising any three of those elected Members. The sub-committees meet to determine licence applications where there are objections and/or relevant representations. Should the applicant or those who have made representations/objections be dissatisfied with the decision of the Licensing Committee there is the right of appeal to the Magistrates Court.
- 1.3 The Licensing Committee determines applications under the Licensing Act 2003 and applications under the Gambling Act 2005. The Licensing Committee will also consider applications for sexual entertainment venues under the Local Government (Miscellaneous Provisions) Act 1982 (as amended) but will not do so in its capacity as statutory licensing committee.
- 1.4 Whilst all local authority actions are subject to the rules regarding probity, as embodied in the Council's Code of Conduct for Members, the Licensing Committee (like the Development Control Committee) will need to be especially diligent in this respect. The licensing function of the Committee entails it acting in a quasi-judicial capacity so it must follow a fair and proper procedure which accords with the requirements of natural justice and the right to a fair trial contained in Article 6 of the European Convention on Human Rights.
- 1.5 Members must not, in their official capacity, or any other circumstances, conduct themselves in a manner which could reasonably be regarded as bringing their office or authority into disrepute). Members of the Licensing Committee must make all of their decisions in accordance with the rules of natural justice, which includes an obligation not to act with bias or where there is an appearance of bias (the test for appearance of bias being that there exists a "real possibility" of bias in the particular circumstances). A Member who accepted hospitality from an applicant for a licence to supply alcohol and/or provide regulated entertainment could well thereby give rise to an appearance that they are likely to be biased in favour of the applicant. This may be so even though the value of the hospitality is less than the £25 which would trigger an entry into the Authority's hospitality register. If a decision has been made which has shown bias to a party then this decision could be quashed. Any bias whether influencing a decision or not can bring the Councillor's office or the Authority into disrepute. Therefore whilst the receipt of hospitality under the value of £25 would not be declarable in the register this Code discourages the acceptance by Licensing Committee members of any gift or hospitality from applicants or others involved in applications under the Act, even where those gifts are of nominal value.

1.6 This Code is primarily aimed at Members of the Licensing Committee itself, however various parts of it (such as the Section on Councillors making representations on licensing applications) are relevant to all Bristol City Councillors.

## **2. The Councillor making a representation on a Licensing Application**

2.1 Councillors should understand this guidance in the context of the decision making processes established under the Licensing Act 2003. In particular, Councillors should be aware that under the Act there is now a right for any person to make representations on applications etc. and those representations will only be relevant representations (and therefore capable of being considered) if they relate to the effect that granting the application for licence or variation etc. would have on the promotion of one or more of the four licensing objectives. The four licensing objectives are the prevention of crime and disorder, the prevention of public nuisance, public safety and the protection of children from harm.

2.2 As far as individuals are concerned, any person may make a representation and has a right to be heard so long as that representation is relevant to one or more of the four licensing objectives. There is no longer a requirement that only persons whose residence or business is in “the vicinity of” the premises concerned may make relevant representations.

2.3 All representations must be made within a defined period. The Licensing Authority has no discretion whatsoever to accept late representations.

2.4 There are therefore numerous applications in respect of which a Councillor would be entitled to make representations.

2.5 A Councillor wishing to establish if she would be entitled to make a representation in her own right can seek guidance from a member of the Licensing team.

2.6 If a Member exercises a right to make representation then paragraph 4 of the Code of Conduct, which addresses the issue of when a personal interest is a prejudicial interest, should be considered as this action could be argued to give rise to an interest “which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice the Member’s judgement of the public interest”. Consequently, Councillors who have a statutory right to make relevant representations should exercise caution and take great care not to conduct themselves in a manner which may subsequently be viewed as being in breach of the Code. Further advice in respect of interests can be sought from the monitoring officer.

2.7 Councillor who is involved in an application as an interested party should take care not to abuse his position as an elected member to gain access to more information than would be available to an ordinary member of the public.

### **3. Constituents and Lobbying**

- 3.1. Lobbying of Members by their constituents is legitimate as is the practice of a Member who does not have a prejudicial interest acting as the representative of a constituent at a hearing if requested to do so. However, if a member of the Licensing Committee is approached by persons wishing to persuade them to make a decision one way or another on a pending application then the Member should politely explain that they cannot discuss the issue as it may be construed as an unlawful pre-determination of the matter. The person should be referred to the Licensing Officers who will provide suitable guidance in the circumstances of the particular case.
- 3.2. Where a Member, who is a serving member of the Licensing Committee, is asked to represent a constituent s/he cannot act as both a representative and a decision maker.
- 3.3. In assisting their constituents, Members should take care not to pressurise officers of the Licensing Authority or any of the Responsible Authorities to exercise their professional judgement in a particular way and of course any conduct towards officers which amounts to bullying is entirely inappropriate. If Members have concerns they should raise them through appropriate channels, such as an individual's line manager or through the established scrutiny processes.

### **4. The appearance of bias and pre-determination**

- 4.1. Decision making which may be described variously as being quasi judicial/being a hearing to which the rules of natural justice apply/being a decision to which to which Article 6 of the European Convention on Human Rights (the right to a fair trial) applies, requires the decision maker to be able to act judicially. This includes a requirement to act without actual bias or without the "appearance of bias". It is obvious what constitutes actual bias.
- 4.2. The appearance of bias arises where a fair minded observer informed of the facts and having regard to circumstances of the particular case would conclude that there was a real possibility (sometimes referred to as "real danger") of apparent bias effecting the Local Authority's decision.
- 4.3. Section 25 of the Localism Act 2011 introduced a codified test for dealing with issues of bias and pre-determination where the decision maker had "or appeared to have had" a closed mind when making the decision.
- 4.4. Section 25 of the Localism Act 2011 provides that:

"a decision maker is not to be taken to have had, or to have appeared to have had a closed mind when making the decision because:

  - a) The decision maker had previously done anything that directly or individually indicated what view the decision maker took, or would or might take, in relation to a matter, and;

b) The matter was relevant to the decision.”

- 4.5. The key point is that at the time the member considers the application they must have an open mind and appear to have an open mind when determining the application.
- 4.6. It is therefore particularly important for elected Councillors to have a clear understanding about the implications of expressing strong opinions or views on licensing matters.
- 4.7. A Councillor may be involved in discussions about a licensing application before the matter comes before the Licensing Committee. Such involvement need not on its own debar a Councillor from participating in the decision making process when the application comes before committee for determination, provided that the Councillor has not already decided how they will vote on the matter. Councillors should, however, always consider carefully whether in any particular case they can reasonably be seen to approach the application on its own merits and with an open mind. If the Councillor considers this is not possible, the Councillor should withdraw from consideration of that application.

## **5. Procedure and Conduct at Meetings**

- 5.1. Members of the Licensing Committee or its sub-committees who are considering applications which may affect an individual’s livelihood and/or the private and family life of residents etc. should take special care to ensure not only that justice is done but that it is seen to be done. To this end Councillors should conduct themselves at all times in an appropriate manner. They must remain alert and focussed on the business of the meeting and, importantly, they must appear to be alert and focussed on the business of the meeting during hearings. Councillors should not sleep, or appear to be asleep, consume food or drink, use electrical devices for any purpose not connected to the committee or allow other interruptions to the business in hand.
- 5.2. Councillors should not be over familiar with officers and other individuals who regularly appear before the Committee. Whilst the hearings are to be conducted as a discussion rather than as a formal debate, this does not lessen the importance of the role of the Chair in providing a firm steer. On the contrary, the role of the Chair in leading the discussion that is required under the Regulations is extremely important and Councillors should, like the parties to the meeting, be led in the discussion by the Committee Chair so that the discussion remains focussed on relevant issues and proceeds in an orderly fashion with all relevant points being explored fully around the table.
- 5.3. The Chair and his/her colleagues must under no circumstances engage in unwarranted joviality or make comments and asides which are not directly relevant to the matter under consideration. It may be considered that such conduct will serve to put applicants and members of the public at their ease, but there is always a risk that the opposite effect will be produced and that the Applicant and other

parties will feel that they are not being taken seriously. The Chair should therefore aim to foster a relaxed but nonetheless business like atmosphere in the hearing.

- 5.4. Whilst it is permissible for Members to make clear that they have relevant local knowledge (for example, the Chair may say “we all know the premises and their vicinity very well”) it is not appropriate for Members to engage in personal anecdotes which are not directly relevant to the business before the meeting; members should focus on their duty to have regard to the representations made by other persons and bodies and to consider guidance and policy. It is unlikely anecdotes will have any relevance to the business of the meeting and recounting them can give the appearance that the Committee is not taking the matter as seriously as the parties expect them to, or that the member is predisposed towards the interests of one party over another in advance of hearing from them all.

#### Fairness

- 5.5. When the Licensing Committee is considering an application, all parties will be given an opportunity to put their case before the Committee in accordance with the Regulations governing such hearings and the Licensing Committee Procedure Rules. If a party does not attend, the Licensing Committee may proceed in his or her absence in accordance with the Regulations.
- 5.6. All Members of the Licensing Committee shall be present throughout the consideration of a particular application. Where a Member arrives late or leaves the room once consideration of a particular application has started, that Member shall play no part in the decision making process for that particular application. Where an application is adjourned part heard, it shall be heard by the same Members, save for in exceptional circumstances.

#### Prejudicial and Disclosable Pecuniary Interests and the Prevention of Bias

- 5.7. The rules about prejudicial interests and disclosable pecuniary interests as set out in the Member Code of Conduct shall be firmly applied.
- 5.8. Members are also referred to the guidance about bias and pre-determination in paragraph 4 above.

#### Decision Making Process

- 5.9. When the Members of Licensing Committee move into private session to deliberate and reach a decision, they should be accompanied only by the Democratic Services Officer, Legal Advisor and Licensing Policy Advisor, all of who shall take no substantive part in the debate nor in the decision making process. Only Members of the Committee can take part in the decision making process.

## Site Visits

- 5.10. It is considered the need for site visits will only occasionally arise. While it is proper for the Committee to do this, care must be taken not to undermine the integrity of the licensing process. The following guidelines will help to prevent this: -
- a) Arrangements for visits should be approved by the Committee and arranged by officers. Members should not make their own arrangements. If Members are approached direct, they should refer the person concerned onto officers
  - b) There should be no discussion of individual applications (including those that have been determined) or of the application under consideration
  - c) At the site visit, there should be no one-to-one discussions between Members and others
  - d) Officers should always be in attendance at site visits.
  - e) Officers should keep a note of who attended the visits, what occurred and an outline of any discussions

## **6. Participation of Ward Members in Sub-Committees which are convened to consider applications in the Member's own Ward**

- 6.1. All Councillors are required to act in the public interest and this will prevail over the interests of individual constituents in their Ward. Therefore a well-informed observer would not consider that there was a real possibility of bias arising when Ward Members are participants in a Committee making decisions in respect of premises or individuals in their Ward. However, the volume of applications and the number of potential parties appearing before Committee Members is such that there is a higher risk in this area of the Council's work of a Member inadvertently serving on a Committee when they should have stepped down for example because they have provided assistance to one of the parties at an earlier stage. For this reason it would be good administrative practice in the context of this legislation to generally select Members to serve on Committees which will be dealing with matters in other areas of the City.

## **7. Training of Members**

- 7.1. All Members serving on the Licensing Committee and/or who have any decision making role on licensing matters including substitute members in accordance with the Council's Constitution shall be trained in licensing procedures prior to serving on the Committee. All Members serving on the Licensing Committee must attend further training on licensing procedures within each four year period although annual refresher training is recommended.

- 7.2. Members must not take part in the decision making process at committee meetings unless they have attended mandatory licensing training which will generally be provided in-house.
- 7.3. Members should attend any other specialised training sessions provided, since these will be designed to extend their knowledge of licensing law and procedures. All training will be devised to assist Members in carrying out their role properly and effectively.
- 7.4. A training record will be maintained in respect of all training received.