

Local Code of Good Practice – Members and Employees Involved in the Licensing Process

Contents **Document to be renumbered following review approval by Council**

1. Introduction
 2. Relationship with the Council's Codes of Conduct
 3. Application of this local code
 - ~~4. Licensing and human rights~~
 5. The roles and conduct of members and employees
 6. Registration and declaration of interests
 - ~~7. Bias, pre-determination and pre-disposition~~
 8. Licensing applications by members and employees
 - ~~9. Licensing applications by the council~~
 10. Lobbying of and by members
 - ~~11. Pre-application discussions~~
 12. Employees' discussions and negotiations with applicants
 - ~~13. Officer reports to committee~~
 - ~~14. Employees' role where a recommendation is not followed~~
 15. The decision-making process - general
 16. Decision making – delegation to employees
 17. Public speaking at licensing committees (or sub-committees)
 18. Committee site visits
 19. Reviews of decisions
 - ~~20. Enforcement of licensing control~~
 21. Training in the licensing process for members
 - ~~22. Complaints~~
- Appendix 1: Licensing Attendance Note
- ~~Appendix 2: Hearings Required Under Licensing Act 2003~~

1. Introduction

- 1.1 The Council has a variety of duties to undertake in relation to permits, consents and licences set out within legislation, some of which have been in effect for centuries. This sets down rules by which certain activities can only be lawfully carried out if a formal permission has been issued. This process is necessary to ensure that appropriate checks are made and any necessary conditions imposed on the activity in order to preserve the amenity of an area, minimise inconvenience to the public and ensure fairness and equality of opportunity. There may also be a need to enquire into the background of an applicant, assess their suitability for the matter under consideration and, in some cases, their honesty. This is because the public must have confidence in the robustness of such processes and be sure that the Council's corporate responsibility is being satisfactorily discharged. ~~In this respect, there is a need to act strongly and effectively against those who do not observe the necessary controls.~~
- 1.2 Every member of the public will at some time encounter a service or business which has been required to obtain an appropriate permission for its activities. Licensing decisions will therefore impact frequently upon the daily lives of ~~local people and the private lives of~~ individuals. It is therefore essential that licensing decisions be taken openly and impartially, ~~with sound judgement and for justifiable reasons.~~ The licensing process must leave no grounds for suggesting that a decision has been partial, biased or not well founded in any way.
- 1.3 On the passing of the Licensing Act in 2003, it was decided by Parliament that decisions in relation to alcohol, entertainment and late night refreshment licensing would best be left to elected members who would be accountable to the local electorate. An elected member is required to take forward concerns, drive change, participate in community and action groups and make decisions for the community as a whole. As the Standards Board for England noted in 2004, these roles and responsibilities can often conflict and there needs to be a balance between representation and ensuring that the authority can even-handedly decide matters on their merits. Not only that but it must be seen doing so by maintaining public confidence in the fairness and impartiality of the licensing decision-making process.
- 1.4 The purpose of this Local Code is to provide clarity in the way in which members and employees of the Council (or 'officers') will deal with licensing matters and to set the standard of conduct that other parties to the process are entitled to expect of the Council. Whilst this Local Code deals primarily with the determination of licensing applications under the Licensing Act 2003, the principles it endorses must be taken into account when considering how other licensing and registration activities are to be dealt with, how local policies are considered and followed, how applicants are dealt with during the process and what involvement members can have with such matters prior to their determination.
- 1.5 In this Local Code, 'member' includes ~~the elected Mayor and~~ all elected members of the Council.
- 1.6 This Local Code is intended to ensure that the licensing process is characterised by open and transparent decision making. Adherence to the Local Code will help to protect the Council against allegations of maladministration, legal challenges to its decisions and applications for costs based on the grounds of such decisions being

~~unfair, unsound or~~ unlawful. The Local Code is based on three main principles:

- (a) Decision-makers must **not** favour unfairly (or appear to favour unfairly) any individual or group.
- (b) Decision-makers must **not** make decisions in advance of being presented with all the relevant facts.
- (c) Members and employees have different but complementary roles in consequence of which a successful relationship must be based upon mutual trust and respect for the positions of each other.

2. Relationship with the Council's Codes of Conduct

2.1 This Local Code is concerned with the integrity of the licensing process and maintaining public confidence in the licensing system. Whilst there is a degree of overlap with the Council's Codes of Conduct for Members and Employees, this Local Code of Good Practice also imposes additional obligations in the specific context of licensing and control.

2.2 ~~This Local Code contains advice based upon recommendations from the Local Government Association, the former Standards for England and the Local Authority Co-ordinators of Regulatory Services (LACORS).~~ Failure to follow this Local Code may be taken into account in investigations into possible maladministration and may result in allegations that a member or employee has breached the Council's Codes of Conduct (and a member being referred to the Monitoring Officer for investigation or an employee being subject to disciplinary action).

3. Application of This Local Code

3.1 This Local Code applies to both members and employees who become involved in licensing issues. It applies to all licensing decisions (whether taken at Council, Committee, Sub-Committee or by employees under delegated powers).

3.2 The Local Code also applies to site visits, meetings, forums and all other formal and informal contacts between members, employees, applicants, agents, objectors, legal advisors and other members of the public involved in the licensing process. Whilst this Local Code primarily addresses the determination of licensing applications its underlying principles must also be applied to the processes up to that stage and subsequent enforcement issues.

3.3 When determining whether there has been a breach of this Local Code the standard to be applied will be that of the reasonable member of the public with knowledge of the relevant facts and the standard of proof will be that of the balance of probabilities.

~~4. Licensing and Human Rights~~

~~4.1 The Human Rights Act 1998 requires all public bodies to exercise their powers and duties in ways that do not breach the rights of individuals, as identified in the European Convention on Human Rights.~~

~~4.2 The following provisions of the European Convention on Human Rights are most~~

likely to be relevant to the licensing system:

~~**Article 6: the right to a fair trial.** In the context of licensing, this means that where their property or life is affected by a decision, everyone is entitled to a fair and public hearing (within a reasonable time) by an independent and impartial tribunal established by law. This is provided for applicants and objectors alike, who may be dissatisfied with a licensing decision, through the appeals process or, in appropriate circumstances, through the availability of judicial review. However, the principles underpinning this Article also require openness and transparency throughout the decision-making process.~~

~~**Article 8: the right to respect for private and family life.** Everyone has the right to respect for his or her private and family life, home and correspondence. This may only be subject to interference by a Public Authority in accordance with the law and only so far as is necessary in a democratic society. This means that any such interest must be justifiable on the grounds of national security, public safety, the national economic well being, the prevention of disorder or crime, the protection of health or morals or for the protection of the rights and freedoms of others.~~

~~**The First Protocol – Article 1: protection of property.** Every person (including legal persons, such as companies) is entitled to the peaceful enjoyment of their possessions. This may only be restricted or prevented in the public interest in accordance with the law. A licence or permission can be considered to be a possession. Accordingly, whilst the Council may enforce licensing laws where it is necessary to exercise the necessary controls in accordance with the general interest, its action must be *proportionate* in all the circumstances.~~

54. The Roles and Conduct of Members and Employees

- 54.1** Members and employees have different but complementary roles. These are explored in detail in the Council’s Local Protocol on Member and Officer Relations contained in Part 5 of the Council’s Constitution. The guidance contained in that Protocol is relevant to the licensing process.
- 54.2** Both members and employees are subject to formal Codes of Conduct adopted by Torbay Council **and set out in the Constitution**. These cover issues central to the preservation of an ethical approach to Council business. In particular, members **must register and declare pecuniary and non-pecuniary interests** and employees must register and declare personal interests **in accordance with the Employee Code of Conduct (see Part 6 of this Local Code)**. However, the Codes also govern relationships between members, employees and the public and these provisions will impact on the way in which members and employees participate in the licensing process. Of particular relevance to members and employees involved in licensing decisions is the requirement that they;
- ‘must not in his/her official capacity, or any other circumstances, use his/her position as a member/employee improperly to confer on or secure for him/herself or any other person, an advantage or disadvantage’**
- 54.3** The licensing system involves the consideration of proposals which often impact greatly upon wider public interest. Much is often at stake in this process and opposing views are frequently very strongly held by those involved. Whilst members

and employees need to listen to these views, if they are involved in the **determination** of a licensing matter, they must **not** unfairly favour (or appear to unfairly favour) any person, body or organisation, or any group or locality, nor put themselves in a position where they **appear** to do so. **Members or employees who do not feel that they can act in this way must ensure that they do not take part in the determination of a licensing matter.**

~~5.4 — Members and employees must be especially cautious about accepting gifts or hospitality in the context of the licensing process. As a minimum standard, they must comply with the requirements of the Council's Codes of Conduct and the Local Protocol on Gifts and Hospitality (see Part 5 of the Council's Constitution).~~

5.5 It is wholly unacceptable for any member or employee ever to receive (or seek) any gift or hospitality as part of the licensing process. It exposes the recipient to the most serious allegations of impropriety and may result in criminal charges for corruption (punishable on conviction by a long prison term and/or heavy fine and/or referral to the Monitoring Officer).

~~5.6 — All offers of hospitality (greater than a cup of tea, or equivalent) from people with any interest in a licensing proposal should also be politely but firmly declined. If the refusal of very modest hospitality is likely to cause real offence, members and employees should ensure that it is of the minimum level and declare its receipt as soon as possible. Occasionally, in appropriate circumstances, it may also be reasonable to accept hospitality by way of a modest working lunch (or other meal) if that is conducive to the effective and professional conduct of a matter. Any hospitality accepted (or offered) should be recorded in the relevant member or employee Hospitality Book should be dealt with in accordance with the Local Protocol on Gifts and Hospitality in respect of members and the Employee Code of Conduct for officers (see Part 5 of the Council's Constitution).~~

5.7 The functions of employees are:

- (a) To carry out the administrative tasks associated with licensing applications and enquiries, to negotiate, where appropriate (and in accordance with this Local Code), with consultees, applicants, respondents, those who have made representations and their agents.
- (b) To prepare a comprehensive and balanced report indicating the background and relevant issues arising from the application. Where Licensing Act 2003 applications are concerned, details will, in particular, include matters relating to the promotion of the licensing objectives but, in order to retain the required position of neutrality, no recommendation will be made. WithIn respect of other licensing matters, the report maywill include a clear recommendation which will be determined by a Licensing Committee or (Sub-Committee). of either approval, either with or without a requirement for a licensing condition, or refusal of an application which is to be determined by a Licensing Committee (or Sub-Committee). (For further information see Section 13).
- (c) To determine licensing matters as authorised by the Council's Scheme of Delegation and in accordance with licensing law and policies and fulfil any duties, other than determinations, provided for within that Scheme.
- (d) To advise and assist members and the general public in respect of any

queries falling within the function of the Licensing Section.

5.8 In carrying out these responsibilities, employees will:-

- (a) Provide impartial guidance to all parties including applicants, [respondents](#), objectors, consultees and members and provide professional advice to the Council.
- (b) Ensure, so far as possible, that all information necessary to make a decision has been obtained, evaluated and properly taken into account (when making a decision or formulating a recommendation) and (if applicable) properly reported to the decision making person or body.

6. Registration and Declaration of Interests

6.1 The Council's Codes of Conduct for Members and Employees (set out in Part 5 of the Constitution) require certain personal interests to be registered and declared. These requirements **must** be followed scrupulously, by Members and Employees when dealing with Licensing matters. ~~Responsibility for fulfilling the requirements rests individually with each member and employee and includes an obligation to ensure that their entries in the Registers of Interests are kept up to date.~~

~~6.2 All relevant personal interests must be declared at every Council, Committee, Sub-Committee or working party meeting where the interest is relevant to an item for discussion and on all other relevant occasions (such as site visits).~~

~~6.3 The Codes of Conduct define personal interests as in any business of the Council where either:~~

~~(a) it relates to or is likely to affect –~~

~~(i) any body of which you are a member or in a position of general control or management and to which you are appointed or nominated by your authority;~~

~~(ii) any body –~~

~~(aa) exercising functions of a public nature;~~

~~(bb) directed to charitable purposes; or~~

~~(cc) one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union),~~

~~of which you are a member or in a position of general control or management;~~

~~(iii) any employment or business carried on by you;~~

~~(iv) any person or body who employs or has appointed you;~~

~~(v) any person or body, other than a relevant authority, who has made a payment to you in respect of your election or any expenses incurred by you in carrying out your duties;~~

- ~~(vi) — any person or body who has a place of business or land in your authority’s area, and in whom you have a beneficial interest in a class of securities of that person or body that exceeds the nominal value of £25,000 or one hundredth of the total issued share capital (whichever is the lower);~~
- ~~(vii) — any contract for goods, services or works made between your authority and you or a firm in which you are a partner, a company of which you are a remunerated director, or a person or body of the description specified in paragraph (vi);~~
- ~~(viii) — the interests of any person from whom you have received a gift or hospitality with an estimated value of at least £25;~~
- ~~(ix) — any land in your authority’s area in which you have a beneficial interest;~~
- ~~(x) — any land where the landlord is your authority and you are, or a firm in which you are a partner, a company of which you are a remunerated director, or a person or body of the description specified in paragraph (vi) is, the tenant;~~
- ~~(xi) — any land in the authority’s area for which you have a licence (alone or jointly with others) to occupy for 28 days or longer; or~~
- ~~(b) — a decision in relation to that business might reasonably be regarded as affecting your well-being or financial position or the wellbeing or financial position of a relevant person to a greater extent than the majority of other council tax payers, ratepayers or inhabitants of the electoral division or ward, as the case may be, affected by the decision.~~
- ~~(2) — In sub-paragraph (1)(b), a relevant person is —~~
 - ~~(a) — a member of your family or any person with whom you have a close association; or~~
 - ~~(b) — any person or body who employs or has appointed such persons, any firm in which they are a partner, or any company of which they are directors; or~~
 - ~~(c) — any person or body in whom such persons have a beneficial interest in a class of securities exceeding the nominal value of £25,000; or~~
 - ~~(d) — any body of a type described in sub-paragraph (1)(a)(i) or (ii).~~
- ~~6.4 — If a member or employee considers that they have a personal interest in a matter under discussion, they must declare the interest on every occasion it is relevant, even if the interest is recorded in the Register of Interests. However, **it does not then necessarily follow that the personal interest debars the member/employee from participation in the discussion.**~~
- ~~6.5 — The member/employee then needs to consider whether the personal interest is a **prejudicial** one. The Codes of Conduct provide that a personal interest becomes a prejudicial one when~~
 - ~~‘... if the interest is one 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/employee's judgement of the public interest'.~~

~~If a member/employee has such an interest, they must not participate in any discussion on the matter and **must** withdraw from the room. In addition, they **must not** seek **improperly** to influence the decision.~~

~~6.2~~ Where a member has a pecuniary interest or an /employee has a ~~prejudicial~~ personal interest in a licensing matter, he/she may attend a meeting, but only for the purpose of making representations, provided that the public are also allowed to attend the meeting for the same purpose. In the case of a member, Hhaving made his/her representations he/she must withdraw from the meeting room and can not vote on the matter.

~~6.36~~ Where an application is made under the Licensing Act 2003 in respect of which ~~you~~ a member or an officer can be considered to live “in the vicinity” of the premises, ~~you~~ the member or officer will be entitled to raise, on a personal basis, a representation, as to whether the licensing objectives will be promoted by that application. Representations will then be dealt with in accordance with the Licensing Hearing Regulations. ~~However, it is clear that the member will also have a pecuniary interest or an officer you will also have a personal prejudicial interest and will not be able to take part in or be present at any hearing of the matter.~~

~~6.47~~ If ~~a member is you are~~ a member of an outside body that is making (or supporting or objecting to) a licensing application it is very likely that ~~you~~ the member will have a declarable personal non-pecuniary interest and quite likely that ~~the member you will~~ have a ~~personal prejudicial~~ pecuniary interest that will preclude ~~you he/she~~ from taking part in the matter or even being in the room when the Committee (or Sub-Committee) consider the matter. In these circumstances it is strongly recommended that ~~members you~~ seek advice from the Monitoring Officer.

~~6.85~~ ~~The Codes of Conduct include some exceptions where a member/employee may regard a personal interest as not being prejudicial. These are listed in the respective Codes. The most important exception is where a member has been appointed by the Council as its representative on an ‘outside body’.~~

~~6.96~~ ~~If a licensing matter under consideration relates to an outside body to which a member has been nominated by the Council, careful thought must be given by the member before deciding that it is appropriate to rely upon the potential exemption in the Code of Conduct and participate in the decision-making process; i.e. that membership of the outside body does not constitute a prejudicial interest which should bar the member.~~

6.10 It will **not** normally be appropriate for a member who is a Council representative on an outside body to decide on a licensing matter affecting that body if they are a director or trustee of the outside body. This is because those roles involve some obligation to act in the best interests of the outside body and may create an inherent conflict with the member's role as a councillor. In the case of bodies such as trusts, the obligation to act in the best interests of the trust is a legal one and overrides duties as a Councillor. If in doubt, the advice of the Monitoring Officer should be sought on this issue.

6.11 Where a member who is a Council representative on an outside body (in whatever

capacity, not just as a director or trustee) has taken a firm view on a licensing matter, either in meetings of the outside body or otherwise, they may be open to an accusation of predetermination and must **not** vote on the matter at any Council meeting. This is discussed more fully in part 7 below. Failure to follow this advice may result in a licensing decision being challenged in the courts.

~~7. Bias, Pre-Determination and Pre-Disposition~~

~~7.1 Irrespective of whether a member or employee has a personal interest in a licensing matter, they must not determine (i.e. vote on, or take a decision in relation to) a licensing matter if it would render such decision liable to challenge in the courts on the grounds of bias, pre-determination or pre-disposition. These are common law concepts which have been developed by the courts over the years and which are continuing to evolve.~~

~~7.2 The test for bias (or apparent bias) was summarised by Mr Justice Richards in the case of *Georgiou v. Enfield London Borough Council* in 2004 as follows:~~

~~‘... in considering the question of apparent bias in accordance with the test in *Porter v Magill*, it is necessary to look beyond ... personal interests and to consider in addition whether, from the point of a view of a fair minded and informed observer, there was a real possibility that the Licensing Committee or some of its’ members were biased in the sense of approaching the decision with a closed mind and without impartial consideration of all relevant licensing issues.’~~

~~7.3 The courts will quash a decision even if just one person involved in the decision is tainted by bias. This would have very serious financial consequences for the authority and very likely result in significant reputational harm to it and the member or employee in question.~~

~~7.4 Pre-determination is very like bias, but probably has a less pejorative connotation. **Any member or employee who wishes to vote on (or take a decision in relation to) a licensing matter must ensure that they do not appear to pre-determine the issue by stating in advance how they will vote at Committee (or Sub-Committee) or how they propose to determine the matter.**~~

~~7.5 Any member or employee taking a licensing decision must have regard to all material considerations and must consider all relevant views, representations, consultation responses and any other relevant matters before coming to their definitive conclusion. **If a member indicates prior to Committee (or Sub-Committee) that he/she is ‘for’ or ‘against’ a licensing matter, he/she must not vote on the matter at Committee (or Sub-Committee).**~~

~~7.6 In addition, in order to maintain public confidence in the licensing process, a member when deciding whether or not to vote at Committee (or Sub-Committee) must have regard to any remarks that have been **attributed** to him/her by the press/media. Whilst a swift and clear public rebuttal of any inaccurately attributed statements will normally enable a member to continue to vote in the determination of a licensing matter, this is an area where great care must be exercised and the advice of the Monitoring Officer sought in any cases of doubt.~~

~~7.7 Pre-disposition is a more complex concept than pre-determination or bias. However,~~

~~a member who is associated with policy statements that are relevant to an application is at risk of being accused of having a pre-disposition to determine that application in a certain manner. In these circumstances the member should give very careful consideration before deciding that it is appropriate to vote on the matter at Committee (or Sub-Committee) and if in any doubt seek the advice of the Monitoring Officer.~~

~~7.8 This situation might arise, for example, where an Executive Cabinet Member is perceived as advocating certain types of development as part of their portfolio responsibilities. It would best preserve public confidence in the impartiality of the licensing process if the member in question does not vote in the determination of licensing applications that are relevant to his/her portfolio responsibilities.~~

~~7.9 The overriding principle is that a person must not be both an advocate for (or against) a licensing proposal prior to the Committee (or Sub-Committee) meeting and then vote on the determination of the application at Committee.~~

8. Licensing Applications by Members and Employees

8.1 Any councillor or employee involved in the licensing process who makes an application (or who has any other ~~personal prejudicial councillor pecuniary~~ interest or employee personal interest in an application) shall:

- (a) Promptly inform the ~~Assistant Director Community and Customer Services~~ Assistant Director of Community Services who shall ensure that a written record of such interest is placed on the application file.
- (b) Take no part in the processing or determination of the application.
- (c) If in any doubt as to the nature of any ~~personal~~ interest, take advice from the Monitoring Officer in relation to the matter.

(This does not preclude members or employees from exercising their right to make written representations as a private individual following the requirements set out in paragraph 6.5 above.)

8.2 The ~~Assistant Director Community and Customer Services~~ Assistant Director of Community Services will ensure that all applications in which an officer involved in the licensing process has a personal ~~prejudicial~~ interest are determined by a Committee (or Sub-Committee) and not under powers delegated to officers.

8.3 Applications by officers or by their friends or relatives (as defined in the Employee Code of Conduct) will not be determined under powers delegated to officers. The ~~Assistant Director Community and Customer Services~~ Assistant Director of Community Services may decide that this procedure will apply to any other employee of the Council on a case by case basis. The paramount consideration in exercising this discretion will be to maximise public confidence in the impartiality of the licensing process.

~~8.4 Where appropriate, prior to the determination of an application which has been made by a member (or their immediate family) or on behalf of a political group (or related body) an opinion shall be sought from an independent external person as to the merits of the application. All members will determine such applications in an~~

~~impartial and professional manner having regard only to consideration in relation to the promotion of licensing objectives, policies and legal requirements.~~

- 8.5 Where a member has a pecuniary interest or employee has a personal **prejudicial** interest in a licensing matter, the Council's Codes of Conduct also require that they must not seek **improperly** to influence a decision about a matter.
- 8.6 It is important to emphasise that *improperly* does not imply that a member or employee is to be precluded from seeking to explain and justify their proposal to a Licensing Officer (whether over the phone, face to face or in writing) in advance of consideration of the matter by Committee (or Sub-Committee).
- ~~8.7 However, the effect of the Codes of Conduct is that where a member has a pecuniary interest or an employee has a personal prejudicial interest in a licensing matter, they **do** have fewer rights than an ordinary member of the public. In particular, the courts have made clear that they may **not** speak at Committee (or Sub-Committee) under the standing orders enabling public participation. Nor may they even remain in the public gallery to observe or listen to the Committee debate (and failure to adhere to this requirement has been found to be maladministration). In these circumstances, the member with a pecuniary interest or the employee with the personal prejudicial interest may request a spouse/partner/agent/friend to attend and speak on their behalf.~~
- 8.8 References to the right to appear and speak at hearings and meetings, or to nominate others as representatives, will be relevant only where the legal procedures allow such attendance and participation.

~~9. Licensing Applications by the Council~~

- ~~9.1 The Council itself requires licensing permission to carry out or authorise certain types of development on land it owns. These applications will be determined by the Licensing Committee (or Sub-Committee) (or Council) and this Local Code will apply to such applications.~~

10. Lobbying Of and By Members

- 10.1 If members are to undertake fully their constituency roles, it is inevitable that they will be subject to lobbying on licensing matters. **Lobbying is a normal and perfectly proper part of the political process.** Local concerns about licensing developments and proposals need to be adequately aired as part of the licensing process. **However, a member must not lobby or act as advocate for (or against) a licensing proposal and vote on the determination of the matter.** Members must comply with the guidance in relation to pre-determination as set out in part 7 of this Local Code.
- 10.2 Members may organise support for or against a licensing application or lobby other members. However, whilst they may be able, following the submission of a relevant representation, ~~to~~ speak at the Committee (or Sub-Committee) meeting when the application is determined they must not preside at the Committee that determines the matter~~vote on the item.~~
- ~~10.3 Great care is required by members and employees in order to maintain public confidence in the integrity and the impartiality of the licensing process and the Council. A failure to follow the advice in this section may result in a finding of~~

~~maladministration against the Council or a legal challenge to the Council's decision.~~

- 10.4 When being lobbied, members in general, but members of the Licensing Committee in particular, must take care about expressing an opinion that may be taken as indicating that they have already made up their mind on the issue before they have considered all relevant matters at Committee (or Sub-Committee). In such circumstances it is preferable for a member to restrict their comments to procedural advice and to encourage the lobbyist to make a representation to the Licensing Authority~~those lobbying to speak or write to the Licensing Officer~~ in order that their opinions can be ~~included~~considered as part of the decision-making process, if they can be considered to be relevant under the legislation.
- 10.5 Where the Monitoring Officer (or his/her representative at Committee) reasonably believes that a member has prejudiced his/her position by expressing a conclusive view on an application before its determination by the Committee (or Sub-Committee), he/she will advise the member that it would be inappropriate for the member to vote on the application. ~~In addition, where the member has a personal prejudicial~~pecuniary ~~interest in the matter under discussion, he/she shall withdraw from the meeting room whilst the application is considered.~~
- ~~10.6 Whilst lobbying is a normal and perfectly proper part of the political process, in order to protect their impartiality and integrity from being called into question, Members of the Licensing Committee must, so far as is practicable, minimise their contacts (including social contacts) with prominent members of the licensed trade.~~
- ~~10.7 Members shall normally avoid requesting information from professional applicants or objectors and direct their enquiries to the Licensing Officer. If interested parties provide members with new information or additional documents they shall pass this to the Licensing Officer as soon as possible. Where a person requires licensing or procedural advice, he/she shall be referred to the appropriate officer but this will not preclude members from giving advice to general members of the public to assist them in understanding the licensing process.~~
- 10.8 If a member is approached in their role as ward councillor by a third party, neighbour, potential objector or supporter and they will preside over that application then the Member must direct such persons to officers of the Licensing Authority and not express opinions which may be of a licensing application, then it is natural that they will want to consider the representations. ~~This can help members' understanding of the issues and concerns associated with an application. However, members must take care to avoid expressing an opinion which may be~~ taken as indicating that they have already made up their minds on an issue before they have heard all the evidence and arguments at Committee (or Sub-Committee). Where a Member believes it is more suitable to represent their constituents, the Member must withdraw from determining the matter.
- ~~10.9 Unless a member is prepared to refrain from voting on an application (i.e. to be regarded as an advocate for (or against) the application) they must take great care to maintain impartiality when attending public meetings in relation to licensing matters, or during telephone discussions with a constituent. During such meetings or discussions it is preferable for no view on the merits or otherwise of a proposal to be given. If a view is expressed it must be made clear that this view is a provisional opinion and will be reconsidered in the light of all the information at the Committee (or Sub-Committee) meeting.~~

~~10.10 Where a member is lobbied they shall explain clearly that whilst they can listen to what is said, it would prejudice their impartiality to express a firm point of view or an intention to vote one way or the other. Where members are invited to attend such meetings, wherever possible they shall only do so in the presence of an officer and, in any event, shall always declare such attendance prior to the consideration of the item at Committee (or Sub-Committee).~~

10.11 Members are encouraged where practicable (and particularly if the application is obviously highly contentious) to keep a dated written record of lobbying and the response given. Appendix 1 contains a form designed for this purpose. In accordance with this Local Code it will be considered to be good practice for members to hand in any completed form at prior to the relevant Committee (or Sub-Committee) meeting. All completed records must be submitted to the Head of Governance made available to the Monitoring Officer on request.

~~10.12 Where a member's ward may be affected by a licensing application which is to be considered by the Licensing Committee (or Sub-Committee), but that councillor is not a member of the Committee (or Sub-Committee), he/she may address the Committee (or Sub-Committee) in order to represent the views of residents who live in the vicinity. The procedure is laid down in the Council's Standing Orders. In circumstances where the views of residents are being put forward, it will be necessary, if required, to identify the individuals concerned. This is so that a determination may be made as to whether they are "interested parties" who live in the vicinity of the subject premises and who have given notice of their representations within the necessary time scale and, consequently, have been determined to be a "party" to the hearing. However, it should be borne in mind that the applicant will, in most cases, also be a constituent and may ask you also to support the application on their behalf or ask you why you have chosen not to take an opposite view in their personal or business interests.~~

~~10.13 It is advisable that, in circumstances where you a member are is asked to present the views of such interested parties, a written authority is obtained to this effect.~~

~~11. Pre-Application Discussions~~

~~11.1 It is both proper and important that members involve themselves in discussions with their constituents and others about licensing matters. However, potential difficulties will be minimised if all members adhere to the general guidelines that are set out in Appendix 3 to this Local Code. These have been derived from advice given by the Local Authorities Co-ordinators of Regulatory Services.~~

12. Employees' Discussions and Negotiations with Applicants

12.1 It is recognised that employees undertake differing, but complementary, tasks which may overlap. Legislation, and in particular the Licensing Act 2003, requires that a distinction be drawn between the duties of the Council as Local Authority and, separately, as a Licensing Authority. Consequently, those involved with the administration of applications will be required to adopt a position of neutrality where this is required. Other employees may be acting as statutory consultees in these matters and providing representations to be considered when the matter is determined. The way in which discussions and negotiations are conducted will be affected by the type of application and matter under consideration.

~~12.2—Pre-application meetings and informal discussions between employees, and potential applicants and responsible authorities are an unavoidable and integral part of the licensing process. They are most often instigated by enquirers and potential applicants and this approach is encouraged to negotiate and determine, where possible, an acceptable application and, where relevant, plan and operating schedule prior to a licensing application being submitted.~~

12.3 In any discussions on licensing issues, the position of the employee concerned will always be made clear at the outset. This will be either that:-

the discussion and any views expressed are based on the employee's professional judgement but will not bind the Council to any particular decision. This is because, by the nature of such meetings, not all the relevant information will be to hand and consultations with interested parties will not normally have taken place;

or

the intention of the discussion will be to assist the formulation of an application which addresses the appropriate licensing objectives, so reducing the likelihood of a representation being provided and, consequently, consideration of the matter at a hearing.

12.4 Advice given will be consistent and based on the legislation, relevant guidance, local licensing policies and any other material licensing considerations. Every effort will be made to ensure consistent interpretation of licensing policies by different employees. It will be made clear, however, when the employee is providing a personal view or interpretation rather than qualified legal advice which should be confirmed by the enquirer from an independent source.

~~12.5—Written notes shall be taken at all such meetings detailing attendees, the nature of the proposal, advice sought and given and any other matters discussed. Notes shall be retained in a form readily retrievable by employees and their managers. Any request to inspect such notes shall normally be granted during the pre-application stage.~~

~~12.6—Confidentiality will not normally be an issue, in view of the necessity to involve other parties, authorities and those living in the vicinity early in the process. However, it is recognised that, if requested by the applicant, some information relating to the proposal may need to remain confidential where this is not relevant to the licensing objectives. Where appropriate more than one officer will attend meetings on major licensing issues.~~

~~12.7—Members will not normally be encouraged to take part in the pre-application discussions with potential applicants but should deal directly with appropriate Licensing Officers. When members are involved, which will be a rare occurrence, they will normally be advised by appropriate officers (which will normally include a Senior Licensing Officer). Member involvement in such discussions will be recorded on file.~~

~~12.8—In order to assist the Council in meeting the strict requirements of consultation under the legislation and achieving best practice, it is the Council's policy normally not to enter into negotiations once an application has been submitted, particularly where formal pre-application negotiations have taken place. If, however, the best interests of local people and the Council would be best served by reaching agreement on, for~~

~~example, the specific wording of a licence condition, such discussions may be undertaken.~~

~~12.9—Amendments that, in the Licensing Officer’s view, improve submitted applications may be considered, provided the nature of the application is not significantly altered to a degree which could reasonably require additional consultation. No further negotiations or significant amendments will be permitted after the Committee (or Sub-Committee) agenda has been printed. An exception to this policy may be made if to do so would be in the best interests of local people or the Council. The reasons for making an exception to this policy will be reported to any Committee (or Sub-Committee) determining the application. The decision as to whether such exceptional circumstances exist will be taken by the Assistant Director Community and Customer Services Executive Head of Community Services in consultation with the Chairman/woman of the Licensing Committee.~~

~~13.—Officer Reports to Committee~~

~~13.1—Reports to Committee (or Sub-Committee) on licensing matters must be accurate and cover all relevant points and no irrelevant matters.~~

~~13.2—The report will clearly identify the key licensing issues and material considerations to be taken into account. The report shall, where appropriate, contain factual information, which is relevant to the matter, legislation, licensing objectives and any local policies. It will refer to the provisions of the legislation and all other relevant material, licensing considerations and, where appropriate, any relevant issues arising under the Human Rights Act 1998 and any other relevant legislation. It will include the substance of representations and the views of consultees.~~

~~13.3—The report shall also contain the merits for and against the application and will give an appraisal that clearly justifies the stated recommendation, if one is given. Oral reporting to the Committee (or Sub-Committee) (other than to up-date an existing report), will not normally occur unless a late representation identifies a material licensing consideration which has not been addressed in the report in which case it will be reported by the Licensing Officer together with any consequent action which has been taken.~~

~~13.4—All reports, unless in relation to applications under the Licensing Act 2003, will normally have a written recommendation either to conditionally approve or refuse the application. Where such a recommendation is made, appropriate reasons will be provided for it. Any conditions suggested will be worded in such a way that they can be seen to be relevant and proportionate to the issues, reasonable, necessary, precise and enforceable.~~

~~13.5—Alternative options, and their effect, will also be shown. A Licensing Officer may recommend that the matter is deferred if information needed for the meeting has not arrived or if significant issues have arisen since the preparation of the report which warrants deferment.~~

~~13.6—For applications to be determined under the Licensing Act 2003, the report will not contain a recommendation as the Committee (or Sub-Committee) deals with the matter as Licensing Authority. Consequently, it, and any employees dealing with the application (who are not also Responsible Authorities who have been involved in the consultation process), must retain a neutral position. Where a recommendation is~~

~~made that the matter be deferred, it must be shown that it is in the public interest to do so. The Licensing Officer, although maintaining a neutral position, may be able to assist the Committee (or Sub-Committee) in deciding whether sufficient information has been received to reach a determination or whether a deferment is necessary.~~

~~14. Employees' Role Where a Recommendation Is Not Followed~~

~~14.1 By the provisions of LACORS (Local Authority Co-ordinators of Regulatory Services) Guidance Document: "The Role Of Elected Members In Relation To Licensing Committee Hearings Under The Licensing Act 2003", Licensing Officers have no ability under the Licensing Act 2003 to make representations or to be a party to the hearing. There is no legal provision for Licensing Officers to make recommendations to the Committee (or Sub-Committee) in terms of the outcome of the Committee (or Sub-Committee) hearing as is seen in planning cases. However, a summary report of the application, the representations, and the officer's comments as to how these relate to the Licensing Act 2003, the Guidance and the local Licensing Policy Statement may be useful.~~

~~14.2 In respect of other licensing matters, recommendations can be made so that the officer concerned can, from their own experience, judgement and professional expertise, provide guidance to the Committee (or Sub-Committee).~~

~~14.3 Employees shall, therefore, give full support to the Council's case where an appeal is made against the Local Authority's decision whether it be by written representations, informal hearing or appeal to the Magistrates' Court or Crown Court. However, in doing so, Licensing Officers shall adhere to the good practice advocated by professional bodies, used in other aspects of the Council's duties, and shall not make or subscribe to any statements or reports which are contrary to their own bona fide professional opinions.~~

~~14.4 Where, however, a Licensing Officer believes that a Committee (or Sub-Committee) decision is based on no reasonable licensing grounds and is therefore "improper", they will normally seek to draw this to the attention of the Committee (or Sub-Committee) and must also draw this to the attention of the Council's Executive Director of Operations and Finance Chief Executive and the Monitoring Officer.~~

~~14.5 Where a Licensing Officer has advised a Committee (or Sub-Committee) that its decision is, in their professional opinion, improper then that officer will only be required to give evidence on appeal in exceptional circumstances and other limitations may also apply. The advice of the Council's Monitoring Officer will be sought if such a situation arises. In such circumstances members may be asked to give evidence on behalf of the Council at any appeal.~~

15. The Decision-Making Process - General

~~15.1 In determining all types of applications submitted applications pursuant to the Licensing Act 2003 and the Gambling Act 2005, the Licensing Committee or Sub-Committee Council will follow the procedure laid down in the Hearing Regulations – Licensing Act 2003 (Hearings) Regulations 2005. relevant Government guidance, as interpreted by the courts.~~

~~15.2 The licensing system involves making decisions about the use and development of land, building, roads and property for activities such as the sale of alcohol, music,~~

~~dancing, refreshments, fund raising and taxis.~~

- 15.3 When determining licensing matters members and employees must approach each application with an open mind and carefully weigh up material licensing considerations, particularly with reference to the local Statement of Licensing Policy and [national statutory](#) guidance. They must disregard all considerations that cannot lawfully be taken into account. ~~(for example, the fact that a licensing application may be made retrospectively).~~
- 15.4 No group of members (for example, from the same political group, or from the same ward) and no informal meeting of a particular group on a Committee (or Sub-Committee) will be used to decide how members shall vote in a Committee (or Sub-Committee) determining an application. **It is unlawful for a licensing decision to be subjected to the discipline of the political whip and to do so would also constitute maladministration.** ~~This does not preclude the holding of pre-meetings prior to the commencement of a formal licensing related meeting in order to discuss the business management of the forthcoming public meeting (but not the merits of individual agenda items). However, such pre-meetings must be open to all members entitled to attend the subsequent public meeting and the rules relating to the declaration of interests must be strictly applied.~~
- ~~15.5 Where an application is to be determined by the Licensing Committee (or Sub-Committee) there will be an opportunity for interested parties to address the Committee (or Sub-Committee) prior to the determination of the application. The procedure is laid down in Council's Standing Orders.~~
- 15.6 Members [with a pecuniary or non-pecuniary interest](#) and employees with a personal interest in an application must declare the interest in accordance with the Council's Codes of Conduct [for Members and Employees](#) and this Local Code.–
- 15.7 Members and officers will address one another during the debate in a proper manner and through the Chairman/woman. Members shall respect the impartiality and integrity of officers.
- 15.8 Senior Legal and Licensing Officers shall always attend meetings of the Licensing Committee (or Sub-Committee) to ensure that procedures have been properly followed and licensing issues properly addressed.
- 15.9 In discussing and determining a licensing application, members will confine themselves to the licensing merits of the case and the reasons for making a final decision shall be clear [and reasoned based.](#), ~~convincing and supported by appropriate evidence.~~
- 15.10 On occasions the Licensing Committee (or Sub-Committee) will disagree with the officer's recommendation, where one has been made. Licensing Committees (or Sub-Committees) are entitled to reach their own decisions by attaching different weight to the various licensing criteria which are relevant to the application. However, the same strict legal requirements have to be met, as the reasoning in the officer's report will no longer apply.
- ~~15.11 Where members propose approval with conditions or wish to impose additional conditions, they must apply the same criteria referred to at paragraph 13.4 above. They must be of the opinion that if the condition were not applied then the licensing application ought to be refused. Conditions shall be tailored to tackle specific~~

~~problems rather than impose general control.~~

15.12 Where a member proposes to recommend approval contrary to an officer's recommendation of refusal, the Chairman/woman will give the Licensing Officer an opportunity to respond to that recommendation and to discuss any appropriate conditions. The officer may request further time in order that appropriate consideration can be given to the proposed recommendations~~conditions may be drafted.~~

~~15.13 Where a member moves refusal of an application contrary to the officer's recommendation, the member must give reasons based upon licensing grounds and objectives. Such reasons must be sufficiently clear and precise to enable the officer to apply the appropriate legislation and provide details of such reasons to the applicant and any other interested party or responsible authority.~~

~~15.14 Where it is the Licensing Officer's professional view that a proposal for refusal is improper, this advice will be given to the Committee (or Sub-Committee) and, where necessary, further advice shall be given by the Senior Legal Officer as to the potential implications of such a decision.~~

15.15 Before any matter is put to the vote any member of the Committee (or Sub-Committee) may request the Chairman/woman to ask the clerk to read to the meeting the full text of the proposal to be voted upon.

16. Decision Making – Delegation to Employees

16.1 The Council's Scheme of Delegation specifies clearly the categories of applications that may be determined by officers; those that will be referred to the Licensing Committee (or Sub-Committee) and those that must be determined by Council. ~~The Chairman/woman or (in his/her absence) the Vice Chairman/woman of the Licensing Committee may in exceptional circumstances request the Assistant Director Community and Customer Services~~Executive Head of Community Services ~~to refer a licensing application which would normally be delegated to employees to the Licensing Committee (or Sub-Committee). The terms of reference of the Licensing Committee and Licensing Sub-Committee are set out in Part 3, Schedule 5 of the Council's Constitution.~~

~~16.2 Where officers are determining applications under their delegated powers, the officer(s) processing the application will complete an audit sheet which must record that all material licensing considerations have properly been taken into account. Where a decision has been made to determine the matter by the issue of a licence, this decision will be confirmed by the appropriate licence being issued and signed by the Assistant Director Community and Customer Services~~Executive Head of Community Services. ~~In the absence of the Assistant Director~~Executive Head of Community Services, ~~this task shall be undertaken by the Principal Officer (Safety and Licensing).~~

~~16.3 In cases where the issue of documents, licences and identity cards is generated by an integrated software system, appropriate audit documentation shall be kept in the case file which must record that all material licensing considerations have properly been taken into account before the appropriate permission was issued. This will be entered with details of the officer(s) undertaking the various stages of the application and appropriate regular checks of the procedures will be undertaken by the Assistant~~

~~Director Community and Customer Services~~Executive Head of Community Services

17. Public Speaking At Licensing Committees (Or Sub-Committees)

- 17.1 Members of the public are entitled to speak at meetings of the Licensing Committee, ~~Licensing Sub-Committee and Council when licensing applications~~, apart from when the Licensing Committee (or Sub-Committee) are considering matters pursuant to those under the Licensing Act 2003, are being considered. -For applications under the Licensing Act 2003 'Interested partiesrelevant persons' or 'responsible authorities' can make written representations, these representations must be valid and submitted to the Licensing Authority within the prescribed consultation period (for further detail refer to the Licensing Act 2003 (Hearings) Regulations 2005). ~~Definitions of 'interested parties' and 'responsible authorities' are as follows:~~

~~Interested parties are any of the following:~~

- ~~—— (i) —— a person living in the vicinity of the premises;~~
- ~~(ii) —— a body representing persons who live in that vicinity;~~
- ~~(iii) —— a person involved in a business in the vicinity of the premises;~~
- ~~(iv) —— a body representing persons involved in these businesses.~~

~~Responsible authorities are any of the following:~~

- ~~(i) —— the chief officer of police for the area in which the premises are situated;~~
- ~~(ii) —— the fire authority for the area in which the premises are situated;~~
- ~~(iii) —— the health and safety authority with responsibility for enforcement for the area in which the premises are situated;~~
- ~~(iv) —— the local planning authority for the area in which the premises are situated;~~
- ~~(v) —— the local authority for the area in which the premises are situated who has responsibility for preventing the risk of pollution of the environment or of harm to human health (environmental health);~~
- ~~(vi) —— the body recognised as being responsible for protection of children from harm for the area in which the premises are situated (Local Safeguarding Children's Board);~~
- ~~(vii) —— with regard to a vessel —— the relevant navigation authority, the Environment Agency, British Waterways Board or the Secretary of State (maritime coastguard agency); and~~
- ~~(viii) —— inspectors of Weights and Measures (trading standards officers).~~

- 17.2 For a representation to be relevant it must:

- relate to the effect of the grant of the licence on the promotion of the licensing objectives and be submitted within the prescribed consultation period;
- be made by ~~an interested party or responsible authority~~ relevant person, within the prescribed consultation period;
- not have been withdrawn
- not be ‘frivolous or vexatious’ or, in the case of a review, ‘repetitious’ if made by an interested party; or
- if it concerns the premises supervisor be made by a chief officer of police and include a statement explaining the reasons for the objection.

17.3 On receipt of relevant written representations ~~from interested parties and/or responsible authorities~~, a hearing is required and notices are sent to the applicant, as well as those making representations, requiring them to return a second notice, within five days advising the Licensing Authority whether or not they will be attending the hearing which will determine the application.

17.4 If a notice is not received from interested parties, relevant authorities or the applicant it is at the discretion of the Committee/Sub-Committee to allow that person to speak at the hearing.

18. Committee Site Visits

18.1 ~~Where the Licensing Authority determines that a site visit is deemed necessary, the Licensing Authority will make the relevant arrangements. LACORS has provided guidance to the effect that “site visits by Licensing Committee/Sub-Committee members are generally unnecessary and can put the Members and the Licensing Authority at risk of accusations of bias”. If a Licensing Authority believes that there might be occasions where visits are required then it would be advised to have set out the reasons why this might be the case in local guidance, so that there are clear criteria for justifying any visit, which can be documented. Licensing Authorities would also be advised to have clear guidance as to how the visits are conducted.”~~

~~18.2 In these circumstances, if such clear and necessary reasons for site visits can be established and recorded, a request shall be made in the first instance to the Governance Support Manager~~

19. Reviews of Decisions

19.1 The Licensing Committee will regularly review, at least annually, details of decisions made under the Licensing Act 2003, including those made under Delegated Powers, to maintain an overview of the general situation, the purpose is to improve the quality of decisions. ~~Members and officers may undertake reviews together and include consideration of whether there is a need to initiate a review of any policies or practices. Visits to licensed premises will not normally be incorporated into this, or any other, Committee process. (See Section 18).~~

~~20. Enforcement of Licensing Control~~

~~20.1 The Council has various powers to take enforcement action in respect of breaches of licensing control. These powers may arise for example if activities have been carried out without the requisite licensing permission or a person has failed to comply with a~~

~~condition imposed on any licensing permission. Enforcement Protocols, as required by legislation or guidance, may be entered into with other Responsible Authorities to facilitate a partnership approach.~~

~~20.2 The Council has dedicated licensing enforcement officers who can be contacted by a member or member of the public if they believe a breach of licensing control has occurred. The licensing enforcement officer will investigate such matters as appropriate and necessary, obtaining the information which it is believed to be necessary to adequately deal with the issues arising.~~

~~20.3 The licensing enforcement officer will also follow up any matter which comes to his or her notice as a result of their normal day to day inspections. Full details of such matters will be noted on any case file and/or the personal notebook of the officer concerned, together with details of any final action taken.~~

~~20.4 All enforcement activity, and any resulting recommendations for formal action, will be in accordance with any appropriate Council Enforcement Policy. In addition, the Enforcement Concordat and/or the Regulatory Compliance Code will be observed, as will any appropriate legislation which controls the activities of investigating officers, i.e. the Regulation of Investigatory Powers Act 2000.~~

21. Training in the Licensing Process for Members

~~21.1 In accordance with Council's Standing Orders a~~All members of the Council on being elected must undertake initial inductionlicensing training. ~~This will be provided by the Council in a seminar and/or workshop programme. This training will include guidance on Licensing Act, the Local Government (Miscellaneous Provisions) Acts and other relevant legislation covering matters which are likely to come before the Committee (or Sub-Committee) for determination.~~ Members of the Council may be given refresher training when changes are made to licensing law or procedure.

~~21.2 All elected Members are required to comply with the core requirements of the Council's annual Members' Development Programme which includes Licensing training. This is a core requirement of the Council's Code of Conduct for Members.~~

~~21.23~~ Members who have not undertaken the relevant licensing training shall not be permitted to be a member of or substitute for other members on the Licensing Committee (or Sub-Committee) ~~or take part in consideration of any licensing matters referred to full Council.~~

~~21.34~~ Any failure to comply with the core licensing training requirements may be referred to the Monitoring Officer in accordance with the Code of Conduct for Members and to the appropriate Group Leader.

22. Complaints

~~22.1 Any issues of concern arising from this Code may, in the interest of speed, be raised informally with the Monitoring Officer in the first instance. Should a member of the public wish to make a formal complaint within the framework of the Council's complaints system then they shall write to the Executive Director of Operations and Finance~~Chief Executive, Torbay Council, Town Hall, Castle Circus, Torquay, Devon, TQ1 3DR.

~~22.2 Where a member alleges a breach of this Local Code in respect of another member,~~

~~they will refer the matter to the Council's Monitoring Officer who will investigate the complaint, make a preliminary finding and, if necessary, report the matter to the Council's Standards Committee which has been authorised by the Council to enforce this Local Code.~~

~~22.3 Where there are issues of maladministration, these can be referred to the Local Government Ombudsman.~~

Licensing Attendance Note

Licensing application type:
Premises and address :
Enquiry from:
Nature of Representations:
Response Given:
Member:
Date:

Appendix 2

Hearings Required Under Licensing Act 2003

~~Where the Council receives a representation, notice or request from an Interested Party or Responsible Authority which, according to the Act, confirms that determination of any licensing application, notice, review or order of a licence or an application must not take place using Delegated Powers, it must hold a hearing by a Sub-Committee/Committee. To be a relevant representation under the Act, it must be made and received within the appropriate consultation period and not withdrawn. It must also relate to the likely effect of the matter in hand on the promotion of the Licensing Objectives. These are:-~~

~~The Protection of Children
The Prevention of Crime and Disorder
The Prevention of Public Nuisance
Public Safety~~

~~The only exceptions to the requirement to hold a hearing are where a representation is considered to be:-~~

~~not relevant;~~

~~and/or, where the representation is made by an interested party, is~~

~~frivolous
vexatious
repetitious (in the case of a review)~~

~~Determination of these aspects is delegated to the Assistant Director Community and Customer Services~~Executive Head of Community Services.

~~Under the Licensing Act 2003, hearings may arise in a variety of circumstances, including determining applications:-~~

~~For a premises licence;~~

~~For a provisional statement;~~

~~To vary a premises licence;~~

~~To vary the details of an individual specified in a premises licence as the designated premises supervisor;~~

~~For transfer of a premises licence;~~

~~For a review of a premises licence;~~

~~For review of a premises licence following a closure order issued by the Police and the exercise of powers by a Magistrates Court;~~

~~For a club premises certificate;~~

~~To vary a club premises certificate;~~

~~For a review of a club premises certificate;~~

~~For the grant of a personal licence;~~

~~For renewal of a personal licence;~~

~~They can also arise in the context of:~~

~~The cancellation of an interim authority notice following a police objection;~~

~~A counter notice following a Police objection to a temporary event notice; and~~

~~Convictions coming to light after grant or renewal of a personal licence.~~

~~The Committee (or Sub-Committee) may grant, refuse or partly approve and partly refuse an application, impose conditions, review the premises licence/club premises certificate, suspend or revoke a licence, exclude specific licensable activities from the licence or modify the operating times and conditions.~~

~~The Licensing Authority is only empowered to dispense with a hearing if all other parties (specified in the Act) agree that a hearing is unnecessary. It must, in these circumstances determine the matter without hearing from the parties concerned. The licensing authority may extend time limits required to hold a hearing if such extension would be in the public interest.~~

~~All hearings must:~~

~~Be held in public (except where it considers that the public interest in doing so outweighs the public interest in the hearing taking place in public);~~

~~Provide the Licensing Authority with the discretion to disregard any evidence produced by parties or witnesses which is not relevant;~~

~~Provide the Licensing Authority with the discretion to take into account any documentary or other evidence produced by a party in support of their application, representations or notice, (as applicable) either before the hearing or, with the consent of all parties, at the hearing.~~

~~The Licensing Authority will disregard any information given or evidence produced by a party or witness which is not relevant to the application, representations or notice (as applicable), and the promotion of the licensing objectives or, in the case of a hearing to consider a notice given by a chief officer of police, the crime prevention objective.~~

Failure of Parties To Attend A Hearing

~~A Hearing may proceed in the absence of any party who has informed the Authority that he/she does not intend to attend or be represented at a hearing. Where a party who has not so notified the Authority fails to attend, the Authority may, if considers it to be necessary in the public interest, adjourn the hearing to a specified date. Such adjournments must be notified to all the parties forthwith. Alternatively the Authority may decide to proceed with the hearing in the party's absence. Where the licensing authority decides to proceed, it~~

~~must consider the application, representations or notice (as applicable) made by the absent party. There is no requirement for a party to attend and, in these circumstances, no adverse view shall be taken of a party who does not attend and their representations must be given appropriate weight.~~

Determination of Applications

~~In the case of hearing relating to the following matters, the Licensing Authority must give its determination at the conclusion of the hearing:~~

~~Police objections to temporary event notices;
Reviews of premises licences following closure orders;~~

~~In any other case, the Licensing Authority must make its determination within a period of 5 working days beginning with the day or the last day on which the hearing was held.~~

~~However, where Hearings have been dispensed with, the Authority must make its determination within 10 working days beginning with the day the Authority gives notice informing the parties that the hearing has been dispensed with.~~

~~All decisions shall be limited to consideration of the four licensing objectives and how they may be promoted. Reasons for decisions shall therefore include appropriate reasons.~~

Record of Proceedings

~~The Licensing Authority must keep a permanent and intelligible record of the hearing and keep it for 6 years from the date of determination or, where an appeal is brought against the determination, from the disposal of the appeal.~~