

APPENDIX D

LICENSING AND GAMBLING ACTS PROTOCOL

“Licensing Committee” refers to Members of the Regulatory Committee. It is established in accordance with Section 6 of the Licensing Act 2003 and consists of at least ten, but not more than fifteen, Members of the authority. The Licensing Committee forms the general pool from which Sub-Committees are established.

“Sub-Committee” refers to no more than three Members of the Licensing Committee meeting as its Sub-Committee. The Sub-Committee is responsible for hearing applications made under the Licensing Act 2003 and the Gambling Act 2005.

Introduction

1. This Protocol relates to the conduct of all Members regarding both licensing and gambling, including Members of the Licensing Committee and any Licensing Sub-Committees appointed.
2. This Protocol forms part of the Members’ Protocol, published by the London Borough of Richmond upon Thames (the Council), which itself supplements the Members’ Code of Conduct.

Guiding principles for Licensing Sub-Committee Members

3. Licensing Sub-Committee Members must avoid expressing personal opinions prior to the hearing. To do so would indicate that the Member has made up his or her mind before hearing all the evidence.
4. Licensing Sub-Committee Members must not take nor declare a view on the merits of the application nor organise support or opposition in advance of the hearing, and must keep an open mind until after they have considered all the evidence and arguments presented.
5. Licensing Sub-Committee Members should not form or show bias against or in favour of any particular person, company or group or any particular site or locality nor give the impression that they have done so.
6. Any Licensing Sub-Committee Member who has been involved in a licence application should withdraw from the Sub-Committee hearing at which the licence application is to be determined.
7. Decisions of the Licensing Sub-Committee shall not be taken in accordance with a political party direction given at a previous party group meeting or otherwise.

8. No Sub-Committee Member can represent one of the interested parties or applicant.
9.
 - i) For applications heard under the Licensing Act 2003, the Sub-Committee must make their determinations based on the Licensing Objectives only, having regard to the Guidance and Licensing Policy.
 - ii) For applications heard under the Gambling Act 2005, the Sub-Committee should aim to permit the use of premises for gambling in so far as they think it:
 - a) in accordance with any relevant Code of Practice
 - b) in accordance with any relevant Guidance
 - c) reasonably consistent with the Licensing Objectives (subject to (a) and (b) above); and
 - d) in accordance with the authority's statement of Gambling Policy (subject to paragraphs (a) and (c) above)

Natural Justice

10. Members of the Licensing Sub-Committee must comply with the rules of natural justice, ensuring that parties have an opportunity to be heard, whilst acting fairly and impartially. When the Sub-Committee is making its determinations, the following principles must be considered:
 - a) Free from the appearance of bias – Sub-Committee Members must make an objective and impartial determination of the issues based on the evidence and should not make, or give the appearance of making, a biased decision. Members of the Licensing Committee should not make any public statements which may give the impression to the public that they may not be objective when sitting on any Licensing Sub-Committee. Bias may include pre-judged ideas based on his/her own prejudices or party political influences.
 - b) Fair hearing – For a hearing to be 'fair' a number of conditions must be satisfied, including the right for the individual to know the opposing case; generally the right to call witnesses; the ability to question witnesses; the right to legal representation; and generally the right to be given reasons for any decision made.

Members' role in opposing applications under the Licensing Act 2003 and the Gambling Act 2005

11. The role of Members in opposing applications differs depending on whether the application was made under the Licensing Act 2003 or the Gambling Act 2005.
12. The role of Members in opposing applications for premises licence or club premises certificate under the Licensing Act 2003 is as follows:
 - a) Members may represent persons who live in the vicinity or persons involved in a business in the vicinity, but only when asked to do so.

Members may also sum up on behalf of the person/s they are representing. Where interested parties present at the hearing ask Members to sum up on their behalf, Members may choose to do so, but then must confine themselves to matters which arose during the hearing and/or were contained within the letters of representation.

- b) Members may make representations in a personal capacity, subject to the restrictions as set out in paragraph 18. below.
13. The role of Members in opposing applications for premises licence under the Gambling Act 2005 is as follows:
- a) Members may represent persons who live “sufficiently close to the premises to be likely to be affected”, or persons who have business interests that “might be affected by the authorised activities”, but only when asked to do so. Members may also sum up on behalf of the person/s they are representing. Where interested parties present at the hearing ask Members to sum up on their behalf, Members may choose to do so, but must then confine themselves to matters which arose during the hearing and/or were contained within the letters of representation.
 - b) Members may make representations in a personal capacity, subject to the restrictions as set out in paragraph 18. below.
 - c) Members may send a letter of representation to the Head of Licensing (or an Officer of the Licensing Authority) and then may orally address the Licensing Sub-Committee without being asked by a resident specifically to do so (i.e. a general ward representation).

In order to make oral representations before the Licensing Sub-Committee, Members must first send a letter of representation to the Licensing Authority within the specified timeframe. Where Members have a personal and prejudicial interest, the letter of representation must also outline the existence and nature of the interest.

If a Member decides not to attend the Licensing Sub-Committee hearing to make oral representations, their letter of representation will still be taken into account if it relates to one of the grounds for determination (see paragraph 9).

If Members making a general ward representation have no interest, or a personal interest only, they may remain for the duration of the hearing.

If Members making a general ward representation have a personal and prejudicial interest, they may attend the Licensing Sub-Committee hearing to make oral representations, answer questions or give evidence about the matter (provided that the public are also allowed to attend the meeting for the same purpose). The Member must thereafter leave the room, but may be present for the announcement of the decision. (In addition, whilst this is a matter for the Member, it is suggested that a Member with a personal and prejudicial interest may wish to consider whether or not their involvement could be such as to make it unwise for them to participate because of an adverse potential impact on the reputation of themselves or of the Council.)

Members' Interests - licensing and gambling applications

Members must comply with Part 2 of the Members' Code of Conduct which deals with Interests.

14. Members must always declare any personal interest, or personal and prejudicial interest, as defined by the Code of Conduct. The existence and nature of an interest must be declared regardless of whether Members are sitting on the Sub-Committee or appearing before the Sub-Committee. This should include interests where Members have some doubt whether or not it is declarable and such an interest should be notified in advance of the hearing to the Head of Licensing so that officers can provide advice.
15. Members with a personal and prejudicial interest must not sit on the Licensing Sub-Committee and determine the application. As a general rule, the Committee Manager does not select Members to sit on the Sub-Committee for a ward which they represent or live in.
16. Members with a personal and prejudicial interest may make an application under the Licensing Act 2003 or Gambling Act 2005, or act as a representative for the applicant, and may then attend the Sub-Committee hearing for the purpose of making the case, answering questions or giving evidence (provided that the public are also allowed to attend the meeting for the same purpose). Where such a Member is an applicant or their representative, they should then leave the room unless the Sub-Committee wishes them to remain to answer questions and shall in any event withdraw while the Sub-Committee is deliberating.
17. Members may be present for the announcement of the decision whether or not they are representing a party or have a personal and prejudicial interest.
18. Members who live in the vicinity of an applicant's premises for an application made under the Licensing Act 2003, or who live sufficiently close to the applicant's premises to be likely to be affected by gambling, would generally be regarded as having a personal and prejudicial interest. In such circumstances Members with a personal and prejudicial interest may:
 - a) Send a written letter of representation to the Head of Licensing (or an Officer of the Licensing Authority) within the specified timeframes for making representations. The letter of representation must also outline the existence and nature of the interest.
 - b) Attend the Licensing Sub-Committee hearing to make oral representations, answer questions or give evidence about the matter (provided that the public are also allowed to attend the meeting for the same purpose). The Member must thereafter leave the room but may be present for the announcement of the decision. (In addition, whilst this is a matter for the Member, it is suggested that a Member with a personal and prejudicial interest may wish to consider whether or not their involvement could be such as to make it unwise for them to participate because of an adverse potential impact on the reputation of themselves or of the Council.)

In order to be able to make oral representations before the Licensing Sub-Committee, Members must first send a letter of representation to the

Licensing Authority. If a Member decides not to attend the Licensing Sub-Committee hearing to make oral representations, the letter of representation will still be taken into account if it relates to one of the grounds for determination (see paragraph 9) and the Member lives in the vicinity (Licensing Act 2003) / sufficiently close (Gambling Act 2005).

19. It is accepted that Members of the Licensing Sub-Committee may have visited the licensed premises in their personal lives. Members should declare if it amounts to a personal interest, or a personal and prejudicial interest.
20. Members involved in Council meetings which approved the Licensing Policy and Gambling Policy, are not excluded from the Licensing Sub-Committee because of such involvement.

Gifts and hospitality

21. Members must comply with Part 3 of the Members' Code of Conduct and Part B of the Members' Protocol concerning gifts and hospitality.
22. Members should have particular regard to public perception when accepting any gift of hospitality from licensed premises (being premises licensed under the Licensing Act 2003 or Gambling Act 2005) and should act with extreme caution when accepting any gift whatsoever, regardless of the monetary value.
23. It is generally acceptable for Members of the Licensing Committee to accept light non-alcoholic refreshments (such as tea, coffee, soft drink, juice, biscuits, light snacks) whilst attending a meeting in an official capacity.

Applications submitted by the Local Authority

24. Where the Local Authority applies for a premises licence under the Licensing Act 2003 for open spaces or buildings which it owns, or where there is a variation application or review in respect of such open spaces or buildings, the Licensing Sub-Committee must hear and determine this application / review in exactly the same manner as other applications / reviews. The Licensing Sub-Committee must give no regard to the interests of the Council itself, aside from receiving relevant representations on this issue.
25. A dispensation to hear such applications will not usually be necessary, as a Member will not have a personal and prejudicial interest solely through being a Councillor.
26. Members who are part of the authority's decision to apply for the licence, or who express a view in respect of such an application, should not also be part of the Licensing Sub-Committee.
27. Members of the Licensing Sub-Committee must be aware of any potential appearance of bias and must endeavour to avoid giving any potential appearance of bias even though none exists.

Lobbying

Of Licensing Committee Members

28. If a Licensing Sub-Committee Member is approached by persons wishing to lobby him/her about a licence application under the Licensing Act 2003 or Gambling Act 2005 that they will be determining, then that Licensing Sub-Committee Member must politely explain that they cannot discuss the matter and refer the lobbyist to the Head of Licensing or to his/her Ward Member, who can explain the process of decision making.
29. Any written representations received by a Licensing Sub-Committee Member should be passed to the Head of Licensing. Any such approach received in time should also be reported at the hearing at which the application is being determined.
30. Requests for procedural advice with regards to licensing applications should be referred to Council officers for advice and information.

Of or by all other Members

31. Other Members must not lobby Members who sit on the Licensing Sub-Committee, directly or indirectly, in writing or otherwise, in respect of items to be decided by the Licensing Sub-Committee with a view to influencing their decision. Any representation by other Members, on behalf of an interested party, should be sent to the Head of Licensing for inclusion in his report.

Recording of reasons

32. The Licensing Sub-Committee must give reasons for its decisions. The reasons will be published in the minutes.
33. Members of the Licensing Sub-Committee should be aware of the dangers in publicly discussing the reasons with persons other than relevant Council officers prior to the formal publication of the minutes and subsequently. Where a Sub-Committee Member seeks to do so, they must consult with Legal Services or the Head of Licensing and the general content of the public statement must be agreed.

Site visits

34. Site visits are generally unnecessary and can risk putting the Members and the Licensing Authority at risk of accusations of potential bias.
35. In special circumstances, the Head of Licensing may make a recommendation that the Licensing Sub-Committee visit the premises prior to the hearing. In such cases, the Head of Licensing must provide full written reasons justifying the visit and this must be provided to the applicant and any other parties making representations.
36. Members of the Licensing Sub-Committee may adjourn the hearing in special circumstances, part way through hearing any application, to undertake a site

visit. The Chair of the Licensing Sub-Committee must give oral reasons justifying the need for the site visit. The judgement whether special justification exists for an adjournment should take into account in general terms the delay, inconvenience and expense of carrying out a visit to all involved including the applicant.

37. The following procedure should be observed where a site visit by the Licensing Sub-Committee is deemed necessary:
- a) The visit should be undertaken as a group visit attended by all the Licensing Sub-Committee and its purpose should be confined to that indicated by the Head of Licensing or the Chair;
 - b) The visit should be attended by an officer, who may be asked factual questions by the Members;
 - c) No indication of the likely outcome of the application should be given on the visit;
 - d) No representation from the applicant or from those making representations shall be heard or accepted on the visit;
 - e) The Licensing Sub-Committee should keep together as a group and not engage individually with any parties;
 - f) Details of those attending the visit, questions asked, and answers given should be recorded.

Conduct at hearings

38. Members of the Licensing Sub-Committee should not communicate directly with the applicant, interested party or responsible authority (excluding the Council officers) either immediately prior to the hearing, during the hearing, or after the hearing, other than publicly through the Chair.
39. Licensing Sub-Committee Members' questioning of speakers is to clarify arguments and views, and care should be taken not to express or indicate a view at that stage, nor to intimidate speakers.
40. Any material considered by the Licensing Sub-Committee that does not comprise part of any material supplied by the Licensing Authority must originate only from the applicant, an interested party or responsible authority, and must be tabled through the Chair. The nature of any such material must be clear to all present at the hearing and available for inspection.
41. Members must comply with the Licensing Procedures as amended from time to time.
42. Members should not take part or vote on an item if they have not familiarised themselves with the report and letters of representation and been present throughout consideration of the item.

TABLE TO APPENDIX D

GUIDANCE FOR MEMBERS WHO ARE NOT ON THE LICENSING SUB-COMMITTEE

This table should be used as an aide-memoire only for Members who do not sit on the Licensing Committee regarding applications under the Licensing Act 2003 and Gambling Act 2005. For full guidance, please refer to the Licensing and Gambling Acts Protocol.

Action	Member in person	Family member or close associate	Agent	Other Councillor
Attending the Licensing Hearing as an observer with no personal and prejudicial interest	Yes	Yes	N/A	N/A
Attending the Licensing Hearing with a personal interest	Yes	Yes	N/A	N/A
Attending the Licensing Hearing with a personal and prejudicial interest	Yes – Must leave after making the representation, giving evidence or answering questions (but can attend for the announcement of decision)	Yes – Must leave after making the representation, giving evidence or answering questions (but can attend for the announcement of the decision)	N/A	N/A
Acting as representative for an interested party or applicant	Yes – when asked to do so	Yes – when asked to do so	N/A	N/A
Have a representative (including other Member) represent a Member with a personal and prejudicial interest	N/A	Yes - Must leave after making the representation, answering questions or giving evidence	Yes - Must leave after making the representation, answering questions or giving evidence	Yes - Must leave after making the representation, answering questions or giving evidence
Member with a personal and prejudicial interest sending written representations to the Head of Licensing	Yes - if live in vicinity (Licensing) / or sufficiently close (Gambling)	Yes - if live in vicinity (Licensing) / or sufficiently close (Gambling)	No	No

Make representations on behalf of the ward generally (with no interest, or personal interest only)	No – Licensing Yes - Gambling	N/A	N/A	N/A
Make representations on behalf of the ward generally (with personal and prejudicial interest) (e.g. you also live close to the applicant's premises)	No - Licensing Yes – Must leave after making the representation, answering questions or giving evidence (but can attend for the announcement of decision)	N/A	N/A	N/A
Acceptance of gifts at licensed premises	Act with extreme caution	Act with extreme caution	N/A	N/A
Acceptance of alcoholic drinks or meals	No	No	N/A	N/A
Acceptance of light non-alcoholic refreshments whilst attending meeting in official capacity	Yes (but act with extreme caution)	Yes (but act with extreme caution)	N/A	N/A
Lobbying Members who sit on the Licensing Sub-Committee	No	No	No	No