

**1. General**

1.1 These rules of procedure are subject to the provisions of the Licensing Act 2003 (Hearings) Regulations 2005 (the 'Regulations') and will apply equally to the determination of applications under the Gambling Act 2005. Where appropriate, the provisions of the Regulations have been incorporated into these rules.

**2. Composition of Sub-Committee**

2.1 The Sub-Committee shall comprise three Members of the Council appointed by the Licensing Act 2003 Committee, in accordance with section 9 of the Licensing Act 2003 (the 'Act'). The quorum shall be three. One Member shall be appointed Chairman.

2.2 Sub-Committee members are bound by the Council's Standing Orders and the Member Code of Conduct. Members must not prejudge or show bias in any matter and must declare personal interests at the start of every Sub-Committee meeting.

2.3 The Sub-Committee comprises experienced councillors who do not have interests in licensing matters which are likely to debar them from consideration of, or voting on, any particular issue.

**3. Notice of hearing**

3.1 The licensing authority shall give to the parties a notice stating the date and time and place at which the hearing is to be held (the 'notice of hearing') in accordance with the provisions of the Regulations.

3.2 The notice of hearing shall be accompanied by information regarding the following: -

- (a) the rights of a party provided for in paragraphs 4.1 and 8.5;
- (b) the consequences if a party does not attend or is not represented at the hearing;
- (c) the procedure to be followed at the hearing;
- (d) any particular points on which the licensing authority considers that it will want clarification from a party at the hearing.

**4. Right of attendance, assistance and representation**

4.1 Subject to paragraphs 6.2 and 6.4, a party may attend the hearing and may be assisted or represented by any person whether or not that person is legally qualified. For the avoidance of doubt a party may be assisted or represented by their ward councillor in accordance with the rules detailed in paragraph 4.5. Any councillor undertaking such a role would take no part in the determination of the matter before the Sub-Committee.

4.2 Upon receipt of the notice of hearing and within the period of time prescribed by the Regulations\*, each party shall give to the licensing authority a notice stating:-

- (a) whether he/ she intends to attend or be represented at the hearing;
- (b) whether he/ she considers a hearing to be unnecessary.

*\*the notice of hearing given by the licensing authority to the parties shall specify the relevant period of time within which each party must give the notice described in this paragraph*

- 4.3 In a case where a party wishes any other person (other than the person he/she intends to represent him/her at the hearing) to appear at the hearing, the notice referred to in paragraph 4.2 above shall contain a request for permission for such other person to attend at the hearing accompanied by details of the name of that person and a brief description of the point or points on which that person may be able to assist the licensing authority in relation to the application, representations or notice of the party making the request.
- 4.4 A party who wishes to withdraw any representations they have made may do so:
- (a) by giving notice to the Licensing Section no later than 24 hours before the day or first day on which the hearing is to be held; or
  - (b) orally at the hearing.
- 4.5
- (a) The law precludes ward councillors from making an objection to any licensing application in their capacity as ward councillor. Any objection lodged by a ward councillor must be on behalf of residents and/or businesses in the vicinity of the application site.
  - (b) Councillors may object in their own right if they live in the vicinity of the application site.
  - (c) Local residents and businesses may be represented by their ward councillor only if the ward councillor is not acting in a professional capacity and/or receiving remuneration for his/her services.
  - (d) Parliament made it quite clear that ward councillors are available if a local resident wishes to use their services but they should not express views on residents' behalf unless they have been consulted. Ward councillors should not be able to exercise a veto over the wishes of local residents and businesses or gainsay the views of experts on individual license applications and neither should ward councillors make representations in their own right if they do not live near the premises concerned.

## **5. Right to dispense with hearing if all parties agree**

- 5.1 The licensing authority may dispense with holding a hearing if all persons (as required by the Act) agree that such a hearing is unnecessary, other than the licensing authority itself, have done so by giving notice to the authority that they consider a hearing to be unnecessary.
- 5.2 Where all the persons required by the Act to agree that a hearing is unnecessary have done so in accordance with paragraph 5.1, the licensing authority, if it agrees that a hearing is unnecessary, shall forthwith give notice to the parties that the hearing has been dispensed with.

## **6. Hearing to be in public**

- 6.1 Subject to paragraph 6.2 below, the hearing shall take place in public.

- 6.2 The Sub-Committee may exclude the public from all or part of a hearing where it considers that the public interest in doing so outweighs the public interest in the hearing, or that part of the hearing, taking place in public.
- 6.3 For the purposes of paragraph 6.2, a party and any person assisting or a representing a party may be treated as a member of the public.
- 6.4 The Sub-Committee may require any person attending the hearing who is in their opinion behaving in a disruptive manner to leave the hearing and may –
- (a) refuse to permit that person to return, or
  - (b) permit him/her to return only on such conditions as the Sub-Committee may specify,

but such a person may, before the end of the hearing, submit to the Sub-Committee in writing any information which they would have been entitled to give orally had they not been required to leave.

## **7. Report**

- 7.1 A report will be put before the Sub-Committee, prepared by the Licensing Section.
- 7.2 The Licensing Section shall send a copy of the report to the parties in advance of the hearing.

## **8. Procedure at hearing**

*As a matter of practice, the Sub-Committee will seek to focus the hearing on the steps needed to promote the particular licensing objective(s) which has given rise to the specific representation(s) and will avoid straying into undisputed areas*

- 8.1 The order of business shall be at the discretion of the Sub-Committee, but will normally proceed in accordance with the following paragraphs.
- 8.2 The Chairman shall at the beginning of the hearing introduce the Members of the Sub-Committee, invite the parties to identify themselves and then explain to the parties the procedure that the Sub-Committee intends to follow.
- 8.3 The Sub-Committee shall then proceed to consider any request made by a party under paragraph 4.3 (request for permission for another person to appear at the hearing). Permission shall not be unreasonably withheld.
- 8.4 The Chairman may ask a representative of the licensing authority to introduce the report, and outline the matter before the Sub-Committee. Alternatively, the Chairman may proceed directly to paragraph 8.5 below.
- 8.5 All parties shall be entitled to: -
- (a) give further information in support of their application, representations or notice (as applicable) in response to a point upon which the licensing authority has given notice that it will want clarification under paragraph 3.2(d),
  - (b) question any other party\* if given permission by the Sub-Committee,
  - (c) address the Sub-Committee.

*\*cross examination shall not be permitted unless the Sub-Committee considers that cross examination is required for it to consider the representations, application or notice as the case may require*

- 8.6 The parties will normally be invited to address the Sub-Committee in the following order: -
- (a) Applicant
  - (b) Responsible Authorities
  - (c) Interested Parties
- 8.7 Members of the Sub-Committee may ask any question of any party or other person appearing at the hearing.
- 8.8 Where there is more than one representation raising the same or similar grounds, the Sub-Committee will request that only one party address them on behalf of the parties who have made the representations in question.
- 8.9 In considering any representations or notice made by a party the Sub-Committee may take into account documentary or other information produced by a party in support of their application, representations or notice (as applicable) either in advance of the hearing date or, with the consent of all the other parties or the Chairman, at the hearing.

*As a matter of good practice, documentation produced in advance of the hearing date shall be produced no later than two days before the hearing. Failure to comply with this rule may result in the documentation being deemed to have been produced at the hearing requiring the consent of all the other parties or the Chairman.*

- 8.10 The Sub-Committee shall disregard any information given or evidence produced by a party or any person to whom permission is given to appear at the hearing is given by the licensing authority which is not relevant to:
- (a) their application, representations or notice (as applicable) or in the case of another person, the application, representations or notice of the party requesting their appearance, and
  - (b) the promotion of the licensing objectives or, in relation to a hearing to consider a notice given by a chief officer of police, the crime prevention objective.

*At the hearing, a responsible authority or interested party may choose to rely on their written representation that gave rise to the hearing, but they may not add further representations to those disclosed to the applicant prior to the hearing. They may amplify their existing representations.*

- 8.11 Hearsay evidence may be admitted before the Sub-Committee, but consideration will always be given to the weight, if any, to be attached to such evidence, depending upon the circumstances in which it arises.
- 8.12 The parties shall be entitled to make closing submissions. The closing submissions of the applicant shall follow the closing submissions of any interested party or responsible authority.

- 8.13 The Sub-Committee may place a time limit on the exercise of the rights set out in paragraphs 8.5 and 8.12 above. This may be by setting realistic time limits for constituent elements of the hearing and for the hearing overall. All parties shall be allowed an equal maximum period of time overall for the presentation of their case and the testing of their opponents' cases.
- 8.14 The Sub-Committee may, after hearing the representations of the parties, withdraw from the room to make their deliberations. Alternatively, the Sub-Committee may ask all parties and the public to leave the room.
- 8.15 The committee co-ordinator will accompany the Sub-Committee when they retire to make their deliberations.

**9. Role of Legal Adviser**

- 9.1 The Sub-Committee may seek advice or clarification of any procedural, technical or legal matter from the legal adviser at any time during the course of the hearing.
- 9.2 The legal adviser will provide the Sub-Committee with any advice it requires properly to perform its functions whether or not the Sub-Committee requested that advice, on:
- (a) Questions of law;
  - (b) Questions of mixed fact and law;
  - (c) Matters of practice and procedure;
  - (d) The range of options available to the Sub-Committee;
  - (e) Any relevant decisions of higher courts;
  - (f) Relevant national guidance or policy;
  - (g) Other issues relevant to the matter before the Sub-Committee;
  - (h) The appropriate decision-making structure to be applied in any given case.
- 9.3 The legal adviser will assist the Sub-Committee where appropriate as to the formulation of reasons and the recording of those reasons.
- 9.4 The legal adviser will play no part in making findings of fact but may assist the Sub-Committee by reminding it of the evidence taken from his/her own or the committee co-ordinator's notes.
- 9.5 The legal adviser may ask questions of witnesses and the parties in order to clarify the evidence and any issues in the case. The legal adviser is under a duty to ensure that every case is conducted fairly.
- 9.6 When advising the Sub-Committee the legal adviser should:
- (a) ensure that he/she is aware of the relevant facts;
  - (b) invites representations from the parties on the advice;
  - (c) provides the parties with the information necessary to enable them to make such representation.
- 9.7 The legal adviser may join Members during the course of their deliberations either when asked to do so or if he/ she realises there is a point of law on which they may need assistance but on which he/ she omitted to advise them in open session.

9.8 Any advice given by the legal adviser to Members of the Sub-Committee shall be provisional until the substance of that advice has been repeated in open session and the parties have had an opportunity to comment on it. The legal adviser will then state in open session whether the advice is confirmed or varied (and if it is varied, in what way) before Members act upon it.

#### **10. Role of Committee Co-ordinator**

10.1 The committee co-ordinator's role shall be to make a record of the proceedings, summarise and record decisions and to provide help and assistance to members of the public attending hearings.

10.2 The committee co-ordinator shall remain with the Sub-Committee when it retires to make its deliberations.

#### **11. Determination of applications**

*The Sub-Committee will give appropriate weight to:*

- (a) the representations (including supporting information) presented by all the parties;*
- (b) national guidance;*
- (c) the licensing authority's licensing policy;*
- (d) the steps that are necessary to promote the licensing objectives.*

11.1 The Sub-Committee shall make its determination:

- (a) at the conclusion of the hearing for conversion/simultaneous applications for variation/temporary event notices/review of premises licence/applications to vary designated premises supervisor; or
- (b) within 5 days thereafter (all other cases)

11.2 The determination shall be issued by the Strategic Director under delegated authority. The Licensing Section shall append the Licence and a Summary to the determination.

#### **12. Failure of parties to attend the hearing**

12.1 If a party has informed the licensing authority that he/she does not intend to attend or be represented at the hearing, the hearing may proceed in his/her absence.

12.2 If a party who has not so indicated fails to attend or be represented at a hearing the Sub-Committee may:

- (a) where it considers it to be necessary in the public interest, adjourn the hearing to a specified date; or
- (b) hold the hearing in the party's absence.

12.3 Where the Sub-Committee holds the hearing in the absence of a party, the Sub-Committee shall consider at the hearing the application, representations or notice made by that party.

**13. Adjournments**

13.1 Subject to the provisions of the Regulations, the Sub-Committee may:

- (a) adjourn the hearing to a specified date;
- (b) arrange for a hearing to be held on specified additional dates;

where it considers it necessary for its consideration of any representations or notice made by a party.

13.2 Where the Sub-Committee adjourns the hearing to a specified date it shall forthwith notify the parties of the date, time and place to which the hearing has been adjourned.

13.3 Similarly, when the Sub-Committee arranges for the hearing to be held on a specified additional date it shall forthwith notify the parties of the additional date on which and time and place at which the hearing is to be held.

**14. Record of proceedings**

14.1 A record of the hearing shall be kept for 6 years from the date of determination or, where an appeal is brought against the determination, the disposal of the appeal.

**15. Waiver of rules**

15.1 Except where prescribed by the Regulations, the Sub-Committee may in any particular case dispense with or modify these Rules.

15.2 In particular, the licensing authority may extend a time limit provided for in the Regulations for a specified period where it considers this to be necessary in the public interest.

15.3 Where the licensing authority has extended a time limit it shall forthwith give a notice to the parties stating the period of time of the extension and the reasons for it.

**16. Qualified Privilege**

Statements made in Committee meetings are subject to the general principles of the law of defamation. However, the Committee's proceedings are regarded in law as a 'privileged occasion' to which the doctrine of qualified privilege attaches to statements made in the Committee's proceedings (quasi-judicial in nature) providing the following criteria are met:

- a. any opinions expressed are honestly held;
- b. opinions/statements are based on the facts of the matter;
- c. opinions/ statements are on a matter of public interest;
- d. a clear distinction is made between what is fact and what is opinion;
- e. no malice.

**17. Licensing Panel Hearings**

These rules of procedure shall apply to hearings before the Licensing Panel except to the extent that the Member composition of the Panel shall comprise no less than 10 members.

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**NOTE:**

**Human Rights**

The Human Rights Act 1998 incorporates the European Convention on Human Rights and makes it unlawful for a local authority to act in a way which is incompatible with a convention right. The Sub-Committee will have regard to the Human Rights Act when exercising its licensing functions, with particular reference to the following provisions: -

- Article 1 of the first protocol – every person is entitled to the peaceful enjoyment of his/her possessions
- Article 6 - in the determination of civil rights and obligations everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law
- Article 8 – everyone has the right to respect for his/her home and private and family life

## **RIGHT OF APPEAL**

### **THE APPLICANT**

The applicant has a right of appeal to the Magistrates' Court within 21 days [beginning with the day on which the applicant was notified of the decision of the licensing authority] against a decision:

- (a) to reject the application for a premises licence; or
- (b) to impose conditions on the premises licence; or
- (c) to exclude a licensable activity; or
- (d) to refuse to specify a person as a premises supervisor.

### **PERSON MAKING RELEVANT REPRESENTATIONS AND CHIEF OFFICER OF POLICE**

A person who made relevant representations and the Chief Officer of Police has a right of appeal to the Magistrates' Court within 21 days [beginning with the day on which the person was notified of the decision of the licensing authority] against a decision:

- (a) to grant a premises licence; or
- (b) in relation to the conditions imposed; or
- (c) in relation to the licensable activities authorised; or
- (d) the person specified as premises supervisor.