



PROTOCOL FOR MEMBERS OF THE LICENSING & REGULATION COMMITTEE AND APPEALS & DISPUTES COMMITTEE

1. INTRODUCTION

- 1.1 The majority of the Council's decision-making processes are administrative in nature. Before arriving at a decision, Members are required to take all relevant factors into account, but the realities of political life and the existence of political groups are recognised. In such circumstances, it is entirely appropriate for wide-ranging discussion to take place between Members and others about the subject matter, and not merely in the decision-making committee itself.
- 1.2 However, the law recognises that there are certain circumstances when different procedures should apply. In some instances, the principles of natural justice have to be followed and the extent to which this is required can vary, according to the circumstances of a particular function. The basic principles of natural justice are as follows:
- (a) No person is to be a judge in his/her own cause.
 - (b) No person is to be dealt with without having the opportunity of putting his or her case.
- 1.3 The detailed application of the rules of natural justice only applies to certain decisions of a quasi-judicial or judicial character. These often relate to circumstances where an individual's legal rights and livelihood are affected. The processing of licensing applications by the Licensing Sub-Committee and appeals on matters affecting staff by the Appeals and Disputes Committee, are two instances where strict procedural requirements exist, because of the semi-judicial nature of the functions concerned. This note sets out guidance for Members on these Committees. The basic requirement is a duty to act fairly. Failure to comply with the principles could lead to a decision being set aside by a court or tribunal.
- 1.4 Different procedural requirements exist for Planning matters and separate guidance has been produced for this purpose.

2. PRINCIPLES FOR A FAIR HEARING

- 2.1 The overriding principle is that the Committee should be able to demonstrate that the person appearing before it has been given a fair hearing.

3. ELIGIBILITY TO SIT ON A CASE

- 3.1 In addition to the normal rules on declarations of interests, a Member has to consider whether there may be a perception of bias on their part. It does not matter whether there is actual bias – the test is “would a reasonable person think there could be bias? For example, in licensing cases is the Member a regular customer at the premises concerned? Ward Members will need to consider whether the public might perceive that they hold a particular view in advance of the hearing. In staffing cases, does the Member have a particular working relationship with the individual that requires much closer liaison than with most other officers?
- 3.2 In such circumstances, Members should not take part in the decision-making process, and should not therefore sit on the Committee which determines the matter. However, a Member who cannot participate due to bias may (subject to the provisions on interests set out below and in Section 5) make representations to the Committee, provided the relevant procedural rules permit this.
- 3.3 Members should be aware that the revised Code of Conduct is also relevant to the question of whether a Member can participate in a hearing or meeting, either as a decision-maker, or as a person making representations. A Member having a personal interest in a matter should declare that at the start of the meeting. Where a Member has an interest which is personal and prejudicial, the general rule is that he/she should normally leave the room during the item.
- 3.4 However, provided the public has the right to address the Committee, the revised Code of Conduct allows Members with a prejudicial interest to attend the meeting for the purpose of making representations, answering questions or giving evidence. However, after making their representations or answering questions, they must immediately leave the meeting room for the duration of the item whether or not the public are still in attendance. It should be noted here that the Appeals & Disputes Committee is always held in exempt session from the outset, so there is no public right to address the meeting.
- 3.5 Members who believe they may have predetermined the matter, or that they have a personal and prejudicial interest should contact the Democratic Services Manager as soon as they are aware of it, so that another Member can be appointed to the Committee in their place. If this is likely to occur on a regular basis, then another appointment should be made.

4. OPEN MIND

- 4.1 Members involved in making a decision on an application need to show that they have come to the hearing with an open mind, and should make their decision based on the matters put before them at the meeting. They should not discuss the case before the meeting, either

with the applicant, local residents or other Members (in the case of licensing hearings) or other members of staff or Members (in respect of Appeals and Disputes matters). They should not express a view on the merits of the case before the hearing. Group Meetings are not appropriate when dealing with individual cases. Members also need to be able to demonstrate that they have not influenced the way in which the officers present the cases before them. Briefings by officers in advance of the meeting are limited to either the Monitoring Officer, or Head of Legal and Democratic Services, advising the Chairman on procedural points and not on the merits of the case. Finally, Members should not discuss or explain their deliberations after the meeting, save as part of the formal decision-making process where the reasons for the decision are set out.

5. LOBBYING AND THE REPRESENTATIONAL ROLE

- 5.1 Members should avoid any attempts by others to lobby them on particular cases. This could be by individuals or could arise at parish council or other community meetings. Members should normally point out the administrative nature of the proceedings and explain that they cannot enter into discussions.
- 5.2 In Appeals and Disputes cases, staff should be advised that they should approach their management, the Human Resources Team or their union.
- 5.3 With Licensing applications, Members should not accept invitations from individuals to discuss applications on site. Formal site visits should only be attended if they are arranged by the Council with officers present.
- 5.4 Licensing cases can pose a difficult problem for Ward Members and this has not been helped by the slightly different provisions about who can make representations, as set out in the Licensing Act 2003 and the Gambling Act 2005. Hopefully, the following will clarify the position.
- 5.5 For applications made under the Licensing Act 2003, representations can be made by “Responsible Authorities” (as prescribed in the legislation) and by “any person or body” [Guidance issued under section 182 of the 2003 Licensing Act in March 2015] Members can therefore make written representations on any application, whether or not it is situated in their ward, and, if they have made a relevant representation, can also appear at a Licensing Sub-Committee hearing, subject to complying with the Code of Conduct. “Bodies” can include chambers of commerce, parish councils, etc.
- 5.6 Guidance issued under the Licensing Act makes clear that a Member can represent a person who is a Party to the hearing, provided that person asks the Member to do so. A “Party to the hearing” is a person who has made a relevant representation on an application. This representation of a Party by a Member could cover both submitting a

written representation on an application on behalf of that person, as well as appearing for that person at a subsequent hearing (subject to the code of conduct rules). If a Member is acting in this capacity, they should where possible obtain a written request from the person concerned, to ensure compliance with the legislative requirements.

- 5.7 For applications made under the Gambling Act 2005, representations can be made by any "Interested Party" This term covers residents or businesses who are "sufficiently close to the premises to be affected by them, and also covers "persons representing such residents/businesses". This means that Ward Councillors can make representations and, subject to the Code of Conduct, appear at hearings, as a Ward Member or as a representative of an Interested Party.
- 5.8 Hearings under either Act do allow a Party to be represented, e.g. by a solicitor or other professional representative, or by any other person, such as a Ward Councillor. It is possible, therefore, in either case for a person who is a Party (and who has made written representations on an application within the time limits) to ask their Ward Member to represent them at the hearing. The Member can then represent the constituent's views to the hearing (but a Member cannot use such an opportunity to make their own views known, unless these happen to be the same as the person being represented or they have made a relevant written representation themselves). Again, the Code of Conduct must be considered to decide how long the Council Member can remain in the room.
- 5.9 With regard to the Code of Conduct, if a Member attends a hearing (either as a Party to the hearing, or as a representative of a Party) and he/she has a personal and prejudicial interest, this must be declared. Previously, where this was the case, the Member would have had to leave the room and not take part. The revised Code allows a Member with a personal and prejudicial interest to remain in the meeting, but only for the purpose of making representations, answering questions or giving evidence , and provided that the public are also allowed to attend the meeting for the same purpose, whether under a statutory right or otherwise.
- 5.10 This would mean that even if a Member had a personal and prejudicial interest, they could still attend a hearing for the purpose of making representations, provided the public were also able to attend for this purpose, which is the case for Licensing Sub-Committee hearings. The Member should leave the room after they have made their representations and answered any questions.
- 5.11 As general guidance, for Licensing applications, it is considered that if a Member lives or runs a business "in the vicinity" of the premises, they will generally have a personal and prejudicial interest. For Gambling applications, a Member will have a personal and prejudicial interest if they are an Interested Party because they live/run a business "close to

the premises". If, however, the Member is an Interested Party because they represent residents as a Ward Member (but are not otherwise affected by the application), then a personal and prejudicial interest will not exist. Where a Member has a personal and prejudicial interest (whatever their role in the proceedings), that interest should be declared, and he or she should leave the room as soon as they have completed their representations and answered any questions which the Committee may wish to ask. Normally, this would allow the Member to remain until the end of the hearing (prior to the Committee retiring "in camera" to deliberate on the application), but Members who have a personal and prejudicial interest and who are asked to represent constituents may wish to consider whether these rules would affect their ability to properly represent their constituent.

- 5.12 Another option to the above is to ask the constituent to approach another Ward Member, or in the case of a single Member ward, to find a Member from another ward to help them.

6. PRESS STATEMENTS

- 6.1 In licensing applications, only the Chairman should make statements to the press prior to the hearing. Statements should be of an explanatory nature and not express a view on the merits of a particular application. After the hearing, Members should take particular care with any press statements due to the possibility of an appeal. In Appeals and Disputes cases, it will normally be inappropriate for Members to make any statements to the press because of the confidential nature of individual staff matters. Any enquiries received should be directed to the officers.

7. PROCEDURES AT MEETINGS

- 7.1 Detailed procedure notes exist for each Committee and these have to be followed. Members ask questions with all parties present but the debate and decision are normally held in private when the parties have left the room. Members should maintain the confidentiality of the discussion and voting. The decision, and the reasons for it, will be announced by the Chairman when the parties are called back.
- 7.2 A Councillor must be present for the whole case. If a Member is late at a meeting then he/she will not be allowed to participate in that item. If a case is adjourned then the same Members must deal with it at a subsequent date. If a Member is not available, another Member cannot take their place.

8. WHEN IN DOUBT...

- 8.1 Seek advice! The Monitoring Officer or the Head of Legal and Democratic Services will be happy to assist.