

LOCAL CODE OF CONDUCT FOR

COUNCILLORS AND OFFICERS

DEALING WITH LICENSING MATTERS

Adopted by the Licensing Act 2003 Committee on 28 April 2005
By Standards Committee on 13 June 2005
And by the Council on 27 July 2005

BACKGROUND TO THE CODE

The Code is based on the Lacor's Guidance: The Role of Elected Members in Relation to Licensing Committee Hearings under the Licensing Act 2003, which was produced to help ensure that Councillors make licensing decisions in an open, impartial, and lawful manner, with sound judgement and for justifiable reasons. For Licensing Committee, also read as Licensing Sub-Committee.

1. THE GENERAL ROLE AND CONDUCT OF COUNCILLORS AND OFFICERS

- Councillors and Officers have different, but complementary, roles. Officers advise Councillors and the Council, and carry out the Council's work. They are employed by the Council, not by individual Councillors and it follows that instructions may only be given to Officers through a decision of the Council or its Executive or a Committee or Sub-Committee. A successful relationship between Councillors and Officers can only be based upon mutual trust and understanding of each others positions. This relationship, and the trust which underpins it, must never be abused or compromised.

 - Both Councillors and Officers are guided by codes of conduct. The statutory Local Code of Conduct supplemented by guidance from the Standards Board, provides standards and guidance for Councillors. Employees will be subject to a statutory Employees' Code of Conduct. In addition to these codes, a Council's standing orders set down rules which govern the conduct of Council business.
- (a) The Model Code sets out the requirements on Councillors in relation to their conduct. It covers issues central to the preservation of an ethical approach to Council business, including the need to register and declare interests, but also appropriate relationships with other Members, staff and the public, which will impact on the way in which Councillors participate in the licensing process. Of particular relevance to Councillors serving on licensing committees, sub-committees, or who become involved in making a licensing decision is the requirement that a Member:

*“must not in his official capacity, or any other circumstances, use his position as a Member **improperly** to confer on or secure for himself or any other person, an advantage or disadvantage;” (Paragraph 5(a) of Model Code).*

Councillors serving on the Licensing Committee, or Sub-Committee, or who otherwise become involved in making a licensing decision will represent their constituents as a body and vote in the interests of the whole Borough. The basis of the licensing system is the consideration of private proposals against wider public interests. Much is often at stake in this process, and opposing views are often strongly held by those involved. Whilst Members of the Licensing Committee should take account of those views, they should not

favour any person, company, group or locality, nor put themselves in a position where they appear to do so.

(1) The role of an Elected Member on the Licensing Committee will involve balancing the multiple needs and interests of the community, whilst giving priority to the Four Licensing Objectives of the Licensing Act 2003, namely:

- The prevention of Crime and Disorder
- Public Safety
- The prevention of public nuisance
- The protection of children from harm

Councillors who do not feel that they can act in this way should consider whether they are best suited to serving on the Licensing Committee. Councillors should also be very cautious about accepting any gifts and hospitality. The Code requires any Members receiving any gift or hospitality **in their capacity as Members**, over the value of £25, to provide within 28 days of its receipt written notification of the details to the Monitoring Officer of the Council. However, Members of the Licensing Committee should not accept any gifts of hospitality from persons involved in licensing applications.

(b) Similarly, Officers, during the course of carrying out their duties, may be offered hospitality from people with an interest in a licensing proposal. Wherever possible, such offers should be declined politely. If the receipt of hospitality is unavoidable, Officers should ensure that it is of the minimal level and register its receipt as soon as possible, Officers should also register any offer of gifts or hospitality which they have declined.

Employees must always act impartially. In order to ensure that Senior Officers do so, the Local Government and Housing Act 1989 enables restrictions to be set on their outside activities, such as Membership of political parties and serving on another Council.

A requirement for staff to act impartially is likely to be a requirement of the statutory Employees' Code.

Such impartiality (particularly crucial in highly contentious matters) is reinforced by requirements on Members in the Model Code. Members are placed under a requirement by paragraphs 2(b) and (c) 3(2)(c) of the Model Code to:

- Treat others with respect; and
- Not to do anything which compromises or which is likely to compromise the impartiality of those who work for, or on behalf of, the authority.

(c) The Council has agreed that no member will be able to serve on this Committee without having agreed to undertake a minimum period of training on the policies and procedures of this Committee as specified by the

Committee. This training should be completed to an agreed level according to an agreed programme within an agreed time period set by the committee for newly appointed members and substitute members of the committee. If the specified training has not been completed by the due date, the member will cease to be a member/substitute member of this Committee until the training has been completed. The Head of Housing and Community services will keep a record of the training requirements of this Committee and of member's compliance with the requirements. Existing members of this Committee should be updated regularly on changes of legislation and procedures and receive refresher training on an annual basis. All Members of Licensing Committee should receive refresher training annually.

2. REGISTRATION OF INTERESTS BY COUNCILLORS

The Local Government Act 2000 and the Model Code place requirements on Members on the registration and declaration of their interests and the consequences for the Member's participation in consideration of an issue, in the light of those interests. These requirements must be followed scrupulously and Councillors should review their situation regularly. Guidance on the registration and declaration of interests will be issued by the Standards Board for England and advice may be sought from the Council's Monitoring Officer. Ultimate responsibility for fulfilling the requirements rests individually with each Councillor.

A register of Members' interests will be maintained by the Council's Monitoring Officer, which will be available for public inspection. A Member must provide the Monitoring Officer with written details of relevant interests within 28 days of his election, or appointment to office. Any changes to those interests must similarly be notified within 28 days of the Member becoming aware of such changes.

3. DECLARATION OF INTERESTS

The Model Code abandons the use in the old National Code of the terms 'pecuniary' and 'non-pecuniary' interests. Instead, it uses the terms '**personal**' and '**prejudicial**' interests. The code defines a personal interest in any matter under discussion as:

- (1) If the matter relates to an interest in respect of which the Member has given notice in the statutory register of Members' interests; and
- (2) If a decision upon it might reasonably be regarded as affecting **to a greater extent than other Council tax payers, ratepayers or inhabitants of the authority's area**, the well-being or financial position of themselves, a relative or a friend, or
 - Any employment or business carried on by such persons;
 - Any person who employs or has appointed such persons, any firm in which they are a partner, or any company of which they are Directors;
 - Any corporate body in which such persons have a beneficial interest in a class of securities exceeding the nominal value of £5,000; or

- Any body which the Member is required to register in the statutory register of interests, in which such persons hold a position of general control or management.

Where a Member considers he has such a personal interest in a matter, he must always declare it, but *it does not then necessarily follow that the personal interest debars the Member from participation in the discussion*

The Member then needs to consider whether the personal interest is a **prejudicial** one. The code provides that a personal interest becomes a prejudicial one “...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’s judgement of the public interest”. *If a Member has such an interest, he should not participate in a discussion on the matter and must withdraw from the room and must not seek improperly to influence a decision in the matter.*

The code includes some exceptions to this. For example, if the matter under discussion relates to:

- Another authority of which the Councillor is a Member;
- Another public authority in which the Councillor has a position of general management or control;
- A body to which the Councillor has been appointed or nominated as a representative of the authority.

Then, in these circumstances, the interest **may not be regarded as prejudicial**. In practice, therefore, the Member would need to declare the interest, but could participate, if appropriate, having regard to all the circumstances. The Member, in such circumstances, should seek advice of the Monitoring Office.

It can be seen that these provisions of the Code are an attempt to separate out interests arising from the personal and private interests of the Councillor and those arising from the Councillor’s wider public life. The emphasis is on a consideration of the status of the interest in each case by the Councillor personally, and included in that judgement is a consideration of the perception of the public, acting reasonably and with knowledge of the facts. The Standards Board has provided guidance on this aspect of the Code. In the end, however, the decision will be for the Councillor alone to take.

Translated to a Councillor’s involvement in licensing issues, the two stage test of personal and prejudicial interests and taken a firm view on the licensing matter, either in meetings of the other body or otherwise, they would not be able to demonstrate that, in participating in a decision, all the relevant facts and arguments had been taken into account – they would have fettered their discretion. Were they to participate in a decision in those circumstances, they might place their authority in danger of judicial review.

The advent of new forms of political management in local authorities has given rise to a potentially difficult issue. Authorities operating forms of the Executive Model will typically have an Executive Member responsible for economic development. That Member may be a member of the authority's Licensing Committee or other decision-making body for licensing matters. There may be occasions when that Executive Member will wish to press for a particular development which the Member regards as beneficial to the development of the area. Should that Executive Member be able to vote on any licensing application relating to that proposal? The appropriate action is not clear cut, and may depend on the particulars of the case. However, the general advice would be that a Member in such circumstances may well be so committed to a particular development as the result of undertaking the responsibilities of furthering the development of the area, that he or she may well not be able to demonstrate that they are able to take account of counter arguments before a final decision is reached. Indeed, the Member may be seen as the chief advocate on behalf of the authority for the development in question. In that sense, the Member becomes almost the 'internal applicant'.

Any Member who is a Parish Councillor and/or a County Councillor must consider carefully the potential conflicts of interest that might arise by serving on the Licensing Committee when considering taking up an appointment on that Committee, but provided that the Member has not voted on the application when considered by that Council and provided that he does not believe himself to be under an obligation to vote in the same way as the Parish Council recommends, dual Membership should not be a bar to sitting on the Licensing Committee when considering such applications.

4. APPLICATIONS SUBMITTED BY COUNCILLORS AND THE LOCAL AUTHORITY

Proposals to their own Authority by serving and former Councillors, Officers, and their close friends and relatives can easily give rise to suspicions of impropriety. So indeed can proposals for a Council's own development.

Local Authorities may apply for their own Premises Licenses so as to licence areas of public space (either indoor or outdoor). Indeed the Government's guidance encourages this:

3.5.9 "To ensure cultural diversity thrives, Local Authorities should consider establishing a policy of seeking premises licenses from the Licensing Authority for public spaces within the community in their own name. This could include, for example, village greens, market squares, promenades, community halls, local authority owned art centres, and similar public areas."

Such applications must be and seen to be dealt with in exactly the same manner in all other applications, with no regard given to the interests of the Council itself. During such an application process, it is therefore important to be aware of any potential appearance of bias.

It is perfectly legitimate for such proposals to be submitted. However, it is vital to ensure that they are handled in a way which gives no grounds for accusations of favouritism. Accordingly:-

- Councillors who act as agents for people pursuing a licensing matter with the Authority should play no part in the decision-making process for that proposal. Similarly, should they submit their own proposal to the Council which they serve they should take no part in its processing.
- The Monitoring Officer shall be informed of such proposals by the Councillor concerned and by Officers when they submit licensing applications on behalf of themselves or their spouses.
- Applications by Councillors, Officers and by the Council itself will be dealt with by the Licensing Sub-Committee.

5. LOBBYING OF AND BY COUNCILLORS

- Local Democracy – the Licensing Act 2003 sets out the grounds for making representations on licensing applications and limits the parties that may make such representations. The scope of lobbying may be restricted whereby, for example, local Councillors are only permitted to make representations to the Licensing Authority where they live in the vicinity of the premises concerned, or have been requested by one of the “interested parties” (e.g. residents/local businesses) to act on its behalf (see Licensing Act 2003 – Section 13 “3”). However, it should be borne in mind that one of the key aims of the Licensing Act 2003 is to localise decision making or “democratise” the process and members are therefore legitimately concerned with their locality and the needs/wishes of its constituents, including both the needs for entertainment and employment as well as the undesirability of crime and public nuisance.

It is important to recognise that lobbying is a normal and a perfectly proper part of the political process. Those who may be affected by a licensing decision will often seek to influence it through an approach to their elected Ward Councillor or to a Member of the Licensing Sub-Committee.

- However, such lobbying can, unless care and common sense are exercised by all the parties concerned, lead to the impartiality and integrity of a Councillor being called in question. When being lobbied, Members of the Licensing Committee should not express an opinion which may be taken as indicating that they have already made up their mind on the issue before they consider the matter in Committee. In such situations, they should restrict themselves to giving procedural advice and refer the lobbyist to his/her Ward Member, who is not a Member of the Licensing Committee or the Licensing Officer who can explain the process of decision making.
- Councillors, and Members of the Licensing Committee in particular, need to take account of the expectations of the general public (and the Courts and the Ombudsman) that a licensing application will be processed and determined in a transparently open and fair manner, in which Members taking the decision will take account of all the Officers’ advice and other relevant representations made

before arriving at a decision, and that to commit themselves one way or the other before the Committee meets makes them vulnerable to an accusation of partiality. Determining a licensing application is a formal administrative process involving rules of procedure, rights of appeal and an expectation that the Council will act reasonably and fairly. There is also the added possibility that an aggrieved party may seek Judicial Review of the way in which a decision has been arrived at, or complain to the Ombudsman on grounds of maladministration, or to the Standards Board that any Member has breached the Local Code.

- In reality, of course, Councillors will often form a judgement about an application early on in its passage through the system, whether or not they have been lobbied. The difficulty created by the nature of the Licensing Committee's proceedings (as set out in the paragraph above) is that Members of the Licensing Committee must not decide which way they intend to vote in advance of the Licensing Committee meeting.
- Political reality suggests that it is often important to distinguish between the role of the Licensing Committee Member who is, and who is not, a Ward Member for the area affected by a particular licensing application.

A Licensing Committee Member who does not represent the Ward affected is in an easier position to adopt an impartial stance, however strong his or her feelings about the application may be, and to wait until the Licensing Committee meeting before declaring one way or the other.

A Licensing Committee Member who represents a Ward affected by an application is in a difficult position if it is a controversial application around which a lot of lobbying takes place. If the Member responds to lobbying by deciding to go public in support of a particular outcome - or even campaign actively for it - it will be very difficult for that Member to argue convincingly when the Licensing Committee comes to take its decision that he/she has carefully weighed the evidence and arguments presented - perhaps in some respects for the first time - at the Licensing Committee. Although not amounting to a prejudicial interest according to the Code of Conduct, the proper course of action for such a Member would be not to participate in consideration of the application.

It should be evident from the previous paragraphs that it is very difficult to find a form of words which covers every nuance of these situations and which gets the balance right between the duty to be an active Ward representative and the requirement when taking decisions on licensing matters to take account of all arguments in an open-minded way.

- It cannot be stressed too strongly that the striking of this balance is, ultimately, the responsibility of the individual Member, and that in doing so regard needs to be paid to the general rules laid down in the Code of Conduct.
- Given that the point at which a decision on a licensing application is made cannot occur before the meeting, when all available information is to hand and has been duly considered, any political group meeting prior to the Licensing Committee meeting must not be used to decide how Councillors should vote.

- Members of the Licensing Committee should avoid organising support for or opposition to a licensing application, and avoid lobbying other Councillors. Such actions can easily be misunderstood by parties to the application and by the general public.
- Councillors should not put improper pressure on Officers for a particular application and should not do anything which compromises, or is likely to compromise, their impartiality.
- Councillors who are unsure whether an interest should be declared should seek the advice of the Monitoring Officer, although as indicated above, the decision rests with the Councillor.
- Where a Councillor receives written representations directly in relation to a licensing application he/she shall pass the correspondence to the Licensing Officer in order that those representations may be referred to in any Committee report.
- Members of the Licensing Committee will remain in the meeting for the whole time that an item is being debated and will not be able to vote on the matter unless they have done so.

6. PRE-APPLICATION DISCUSSIONS

Councillor(s) will not be involved in discussions with an applicant or agent concerning a licensing proposal when a licensing application is imminent or has been submitted and remains to be determined. This is because the Councillor could all too easily compromise his/her own position or the position of the Council.

7. SITE VISITS

The Protocol for site visits, which take place during a hearing, is as follows:-

Purpose of Visits

- (i) The purpose of the site visits is to enable Members to inspect proposed application sites to enable Members to better understand the impact of that proposal;
- (ii) It is not the function of the visit to receive representations or debate issues;

Selecting Site Visits

- (i) visits will take place if voted for by a majority of the Licensing Sub-Committee;
- (ii) site visits will only take place where the Sub-Committee believes that there is a clear substantial benefit to be gained and the hearing will be adjourned;

Procedures on Site Visits

- (i) the site will be inspected from the viewpoint of both applicant(s) and other persons making representations;
- (ii) where applicant(s) and/or other persons making representations are present, the Chairman may invite them to point out matters or features which are relevant to the matter being considered but will first advise them that it is not the function of the visit to receive representations or debate issues.

Decision Making

- (i) No decision will be taken on site.

8. REGULAR REVIEW OF DECISIONS

- Councillors should visit a sample of implemented licensing decisions to assess the quality of the decisions. Such a review should improve the quality and consistency of decision-making, thereby strengthening public confidence, and can help with reviews of licensing policy.
- Such a review will be undertaken at least annually. It should include examples from a broad range of categories. The Licensing Committee should formally consider the review and decide whether it gives rise to the need to review any policies or practices.

9. COMPLAINTS AND RECORD KEEPING

- Whatever procedures a Council operates, it is likely that complaints will be made. However, the adoption of this local code should reduce the occasions on which complaints are justified. It should also provide less reason for people to complain in the first place.
- The Council already has a fully developed local complaints system.
- So that complaints may be fully investigated (and in any case as a matter of general good practice) record keeping should be complete and accurate. Omissions and inaccuracies could, in themselves, cause a complaint or undermine the Council's case. Every licensing application file should contain an accurate account of events throughout its life. It should be possible for someone not involved with that application to understand what the decision was and how and why it was reached. Particular care needs to be taken with applications determined under Officers' delegated powers. Such decisions should be as well documented and recorded as those taken by the Licensing Committee. These principles apply equally to enforcement. Monitoring should be undertaken regularly.