

LICENSING COMMITTEE

Tuesday, 14 June 2016 at 5.30 p.m.

The Council Chamber, 1st Floor, Town Hall, Mulberry Place, 5 Clove
Crescent, London, E14 2BG

The meeting is open to the public to attend.

<u>Members:</u>	Ward Represented
Chair: Councillor Rajib Ahmed	Lansbury;
Vice-Chair:	
Councillor Khaled Uddin Ahmed	Bromley North;
Councillor Amina Ali	Bow East;
Councillor Mahbub Alam	St Dunstan's;
Councillor Shah Alam	Mile End;
Councillor Amy Whitelock Gibbs	Bethnal Green;
Councillor Peter Golds	Island Gardens;
Councillor Dave Chesterton	Blackwall & Cubitt Town;
Councillor Suluk Ahmed	Spitalfields & Banglatown;
Councillor Denise Jones	St Katharine's & Wapping;
Councillor Harun Miah	Shadwell;
Councillor Md. Maium Miah	Canary Wharf;
Councillor Joshua Peck	Bow West;
Councillor Candida Ronald	Blackwall & Cubitt Town;
Councillor Vacancy	

[The quorum for this body is 3 Members]

Contact for further enquiries:

Antonella Burgio, Democratic Services,
1st Floor, Town Hall, Mulberry Place, 5 Clove Crescent, E14 2BG
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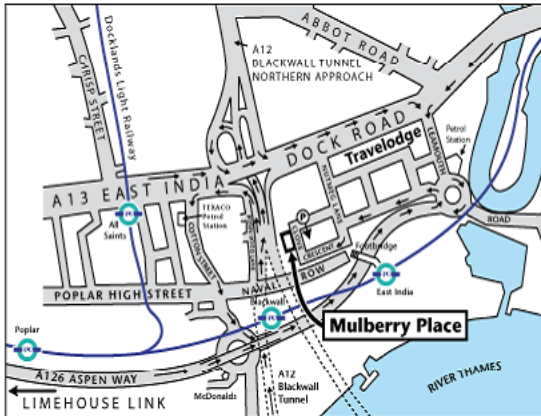
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APOLOGIES FOR ABSENCE

1. TO APPOINT A VICE-CHAIR FOR THE MUNICIPAL YEAR

2. DECLARATIONS OF DISCLOSABLE PECUNIARY INTEREST (Pages 1 - 4)

To note any declarations of interest made by Members, including those restricting Members from voting on the questions detailed in Section 106 of the Local Government Finance Act, 1992. See attached note from the Monitoring Officer.

	PAGE NUMBER	WARD(S) AFFECTED
3. MINUTES OF THE PREVIOUS MEETING(S)		
	5 - 8	
To confirm the minutes of the meeting of the Licensing Committee held on 8th March 2016 as an accurate record of the proceedings.		
4. ITEMS FOR CONSIDERATION		
4 .1 Licensing Committee, Terms of Reference, Membership, and Quorum	9 - 16	
4 .2 Establishment of Licensing Sub Committees, Terms of Reference & Schedule of Dates	17 - 38	
4 .3 Proposed Rules of Procedure Governing Applications for Premises Licences and other permissions under the Licensing Act 2003 and Rules of Procedure Governing Applications for Sex Establishment Licences	39 - 52	
4 .4 Proposed Revised Licensing Code of Conduct	53 - 92	
4 .5 Update in relation to Prosecutions and Appeals- Quarter 4 2015/2016	93 - 98	
4 .6 London Local Authorities Act 1991 - Application to increase licence fee for the London Tattoo Convention 2016	99 - 106	
5. ANY OTHER BUSINESS THAT THE CHAIR CONSIDERS URGENT		

Next Meeting of the Licensing Committee

Tuesday, 13 September 2016 at 7.00 p.m. to be held in The Council Chamber, 1st Floor, Town Hall, Mulberry Place, 5 Clove Crescent, London, E14 2BG

Agenda Item 2

DECLARATIONS OF INTERESTS - NOTE FROM THE MONITORING OFFICER

This note is for guidance only. For further details please consult the Members' Code of Conduct at Part 5.1 of the Council's Constitution.

Please note that the question of whether a Member has an interest in any matter, and whether or not that interest is a Disclosable Pecuniary Interest, is for that Member to decide. Advice is available from officers as listed below but they cannot make the decision for the Member. If in doubt as to the nature of an interest it is advisable to seek advice **prior** to attending a meeting.

Interests and Disclosable Pecuniary Interests (DPIs)

You have an interest in any business of the authority where that business relates to or is likely to affect any of the persons, bodies or matters listed in section 4.1 (a) of the Code of Conduct; and might reasonably be regarded as affecting the well-being or financial position of yourself, a member of your family or a person with whom you have a close association, to a greater extent than the majority of other council tax payers, ratepayers or inhabitants of the ward affected.

You must notify the Monitoring Officer in writing of any such interest, for inclusion in the Register of Members' Interests which is available for public inspection and on the Council's Website.

Once you have recorded an interest in the Register, you are not then required to declare that interest at each meeting where the business is discussed, unless the interest is a Disclosable Pecuniary Interest (DPI).

A DPI is defined in Regulations as a pecuniary interest of any of the descriptions listed at **Appendix A** overleaf. Please note that a Member's DPIs include his/her own relevant interests and also those of his/her spouse or civil partner; or a person with whom the Member is living as husband and wife; or a person with whom the Member is living as if they were civil partners; if the Member is aware that that other person has the interest.

Effect of a Disclosable Pecuniary Interest on participation at meetings

Where you have a DPI in any business of the Council you must, unless you have obtained a dispensation from the authority's Monitoring Officer following consideration by the Dispensations Sub-Committee of the Standards Advisory Committee:-

- not seek to improperly influence a decision about that business; and
- not exercise executive functions in relation to that business.

If you are present at a meeting where that business is discussed, you must:-

- Disclose to the meeting the existence and nature of the interest at the start of the meeting or when the interest becomes apparent, if later; and
- Leave the room (including any public viewing area) for the duration of consideration and decision on the item and not seek to influence the debate or decision

When declaring a DPI, Members should specify the nature of the interest and the agenda item to which the interest relates. This procedure is designed to assist the public's understanding of the meeting and to enable a full record to be made in the minutes of the meeting.

Where you have a DPI in any business of the authority which is not included in the Member's register of interests and you attend a meeting of the authority at which the business is considered, in addition to disclosing the interest to that meeting, you must also within 28 days notify the Monitoring Officer of the interest for inclusion in the Register.

Further advice

For further advice please contact:-

Melanie Clay, Corporate Director of Law, Probity & Governance & Monitoring Officer,
Telephone Number: 020 7364 4800

APPENDIX A: Definition of a Disclosable Pecuniary Interest

(Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012, Reg 2 and Schedule)

Subject	Prescribed description
Employment, office, trade, profession or vacation	Any employment, office, trade, profession or vocation carried on for profit or gain.
Sponsorship	<p>Any payment or provision of any other financial benefit (other than from the relevant authority) made or provided within the relevant period in respect of any expenses incurred by the Member in carrying out duties as a member, or towards the election expenses of the Member.</p> <p>This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992.</p>
Contracts	<p>Any contract which is made between the relevant person (or a body in which the relevant person has a beneficial interest) and the relevant authority—</p> <p>(a) under which goods or services are to be provided or works are to be executed; and</p> <p>(b) which has not been fully discharged.</p>
Land	Any beneficial interest in land which is within the area of the relevant authority.
Licences	Any licence (alone or jointly with others) to occupy land in the area of the relevant authority for a month or longer.
Corporate tenancies	<p>Any tenancy where (to the Member's knowledge)—</p> <p>(a) the landlord is the relevant authority; and</p> <p>(b) the tenant is a body in which the relevant person has a beneficial interest.</p>
Securities	<p>Any beneficial interest in securities of a body where—</p> <p>(a) that body (to the Member's knowledge) has a place of business or land in the area of the relevant authority; and</p> <p>(b) either—</p> <p>(i) the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or</p> <p>(ii) if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which the relevant person has a beneficial interest exceeds one hundredth of the total issued share capital of that class.</p>

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LONDON BOROUGH OF TOWER HAMLETS

MINUTES OF THE LICENSING COMMITTEE

HELD AT 6.30 P.M. ON TUESDAY, 8 MARCH 2016

**C1, 1ST FLOOR, TOWN HALL, MULBERRY PLACE, 5 CLOVE CRESCENT,
LONDON, E14 2BG**

Members Present:

Councillor Khales Uddin Ahmed (Chair)
Councillor Peter Golds (Vice-Chair)
Councillor Rajib Ahmed
Councillor Shah Alam
Councillor Muhammad Ansar Mustaqim
Councillor Joshua Peck
Councillor Candida Ronald

Apologies

Councillor Mahbub Alam
Councillor Gulam Kibria Choudhury
Councillor Amy Whitelock Gibbs
Councillor Clare Harrison
Councillor Denise Jones
Councillor Md. Maium Miah
Councillor Rachael Saunders

Officers Present:

Agnes Adrien	– (Team Leader, Enforcement & Litigation, Legal Services, Chief Executive's)
Tom Lewis	– (Team Leader - Licensing Services)
David Tolley	– (Head of Consumer and Business Regulations Service, Safer Communities, Communities Localities & Culture)
Simmi Yesmin	– (Senior Committee Officer, Democratic Services)

1. DECLARATIONS OF DISCLOSABLE PECUNIARY INTEREST

There were no declarations of disclosable pecuniary interests.

2. MINUTES OF THE PREVIOUS MEETING(S)

RESOLVED

That the minutes of the Licensing Committee meeting held on 8th December 2015 were confirmed and agreed as a correct record.

3. ITEMS FOR CONSIDERATION**3.1 Late Night Levy Proposals**

Mr David Tolley, Head of Consumer and Business Regulations introduced the report and explained that the Police Reform and Social Responsibility Act 2011 had introduced an adoptive provision whereby Local Authorities may impose a late night levy on businesses that sell alcohol between midnight and 06.00am. It was noted that the Council could decide what times the levy would operate provided it was between midnight and 06:00am and the same time each night.

Mr Tolley explained that the purpose of the Levy was to assist Council and the Police to manage and improve the night time economy. Mr Tolley stated that the additional income raised from the levy would need to be spent on managing the night time economy and would need to be split between the Metropolitan Police and the Council on a 70:30 percentage basis. It was further noted that the money could be used for a range of things and can be given to other agencies who can assist in the reduction of crime and disorder or improve the night time economy.

To enable the levy to be introduced across the Borough a consultation of businesses and other interested groups that may be affected by the introduction of the levy would need to be carried out. If it was to be introduced, the levy would apply to any licensed premises that sold alcohol and operated within the set times of the levy and would apply to licensed premises with on and off sales of alcohol. The Council does not have the power to limit the levy to certain parts of the Borough, therefore if introduced the levy would apply borough wide.

Mr Tolley explained the benefits of the proposed levy for the Council and that the money accumulated would be used for cleaning streets, enforcement action, preventing public nuisance and fund Anti-Social Behaviour reduction programmes.

It was noted that set exemptions would apply to hotels, cinemas, bingo halls, theatres, community halls etc. and there would be discounts to those signed up to the 'best bar none' programme.

In response to questions from Members the following was noted;

- That the consultation process started on 17th February 2016 and would be for a period of three months.
- That the fees would be set according to the size of the premises.

- That the fees for the levy would be an addition to the annual licence fees and would be included as part of the licence fee.
- That the fees were set by Government.
- That the London Borough of Camden had adopted the levy but there were no actual results/reviews/evidence of success etc. as it has not been operating for a year.
- The methods used for the consultation process was noted.
- Concerns were raised about the neighbouring borough Hackney and it was noted that the Council had been contacted and Officers were awaiting comments.

RESOLVED

That the report be noted.

3.2 Update in relation to Prosecutions and Appeals - Quarter 3 2015/2016

Ms Agnes Adrien, Enforcement & Litigation Team Leader briefly introduced the regular noting report which detailed licensing related prosecutions and appeals for Quarter 3 2015/2016 (October to December 2015).

It was noted that there had been no prosecutions issued in Quarter 3 and that there had been two appeals which were both settled without costs incurred to the Council.

Following a short discussion, Members raised concerns as to why appeals were being settled, having Members worked hard at hearings and when there had been substantial evidence provided to justify the decisions they had made.

Ms Adrien explained that in the case of the two appeals there had been an oversight relating to these particular applications and the Chair and the Members of the Sub Committee were not consulted before settling the appeals. Ms Adrien assured Members this would not happen again and in future Members would be consulted during any appeal process.

Members welcomed the report, and noted the results of the prosecution and appeals detailed in the report.

RESOLVED

That the report be noted.


4. ANY OTHER BUSINESS THAT THE CHAIR CONSIDERS URGENT

The Chair and Vice-Chair of the Licensing Committee extended their thanks to the Committee Clerk, Officers and Members of the Licensing Committee for their hard work and commitment over the past year.

The meeting ended at 7.15 p.m.

Chair, Councillor Khaled Uddin Ahmed
Licensing Committee

Agenda Item 4.1

Non-Executive Report of the: Licensing Committee 14 June 2016	 TOWER HAMLETS
Report of: Matthew Mannion, Committee Services Manager, Democratic Services	Classification: Unrestricted
Licensing Committee, Terms of Reference, Membership, and Quorum	

Originating Officer(s)	Antonella Burgio, Committee Officer
Wards affected	All wards

Summary

This report sets out the Terms of Reference, Membership, and Quorum of the Licensing Committee and the Schedule of Dates for the Municipal Year 2016/2017 for Members' information.

Recommendations:

The Licensing Committee is recommended to:

1. Note its Terms of Reference, Membership, and Quorum as set out in Appendices 1 and 2 to this report.

1. REASONS FOR THE DECISIONS

- 1.1 This report is for the information of the Committee and no specific decisions are required.

2. ALTERNATIVE OPTIONS

- 2.1 Not applicable to noting reports.

3. DETAILS OF REPORT

- 3.1 At the Annual Meeting of the Full Council held on 24th June 2015, Council re-established the Licensing Committee and delegated to this body, a range of duties and responsibilities relating to the licensing function in accordance with relevant legislation.
- 3.2 It is traditional that following the Annual Meeting of the Full Council at the start of the Municipal Year, at which various committees are established, that those committees note their terms of reference for the forthcoming Municipal Year.
- 3.3 Council, on 24th June 2015, agreed a schedule of dates for Committees/Panels for the Municipal Year 2015/2016. The dates agreed for the Licensing Committee are as follows:-
- 14 June 2016
 - 13 September 2016
 - 13 December 2016
 - 21 March 2017
- 3.4 It may be necessary to convene additional meetings of the Committee should urgent business arise. Officers will keep the position under review and consult with the Chair and Members as appropriate.
- 3.5 Meetings of the Licensing Committee are scheduled to take place at 7.00pm in the Town Hall, Mulberry Place in accordance with the programme of meetings. However for several years, meetings of the Licensing Sub Committee have started at 6.30pm as Members had previously expressed concern that a starting time of 7.00 pm did not always allow sufficient time for reports and applications to be considered in one evening, particularly if there were a number of items to consider. Experience has shown that a 6.30 p.m. start time for meetings has achieved the best compromise in giving all parties reasonable time to attend and allow potentially long meetings to end at a reasonable time.

4. COMMENTS OF THE CHIEF FINANCE OFFICER

4.1 There are no immediate finance implications arising out of this report.

5. LEGAL COMMENTS

5.1 The information provided for the Committee to note is in line with the Council's Constitution and the resolutions made by Full Council on 24th June 2015.

6. ONE TOWER HAMLETS CONSIDERATIONS

6.1 In drawing up the schedule of dates, consideration was given to avoiding school holiday dates and known dates of religious holidays and other important dates where at all possible.

7. BEST VALUE (BV) IMPLICATIONS

7.1 There are no specific Best Value implications arising from this noting report.

8. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT

8.1 There are no specific sustainability implications arising from this noting report

9. RISK MANAGEMENT IMPLICATIONS

9.1 There are no specific risk management implications arising from this noting report.

10. CRIME AND DISORDER REDUCTION IMPLICATIONS

10.1 There are no specific crime and disorder implications arising from this report.

Linked Reports, Appendices and Background Documents

Linked Report

- None

Appendices

- Appendix 1 – Terms of Reference
- Appendix 2 - Membership of the Licensing Committee

Local Government Act, 1972 Section 100D (As amended)

List of “Background Papers” used in the preparation of this report

List any background documents not already in the public domain including officer contact information.

- None

Officer contact details for documents:

- N/A

APPENDIX 1

Licensing Committee – Terms of Reference (Extract from the Council’s Constitution)


Membership: Fifteen Members of the Council.	
Functions	Delegation of Functions
<p>1. To consider and determine applications for the grant or variation of the following:</p> <ul style="list-style-type: none"> a) Premises Licenses, Personal Licences, Temporary Events Notices and Club Premises Certificates pursuant to the Licensing Act 2003 where relevant representations have been received; b) Special treatment licenses in respect of premises within the borough where objections have been received; c) Gaming permits, as defined by Schedule 9 (6) of the Gaming Act 1968, where objections have been received; d) Small lotteries registration, where objections have been received; e) Competitive bidding licenses, where objections have been received; f) Pools promotion registration, where objections have been received. g) Granting “hypnotism waivers” in accordance with Council policy. h) Any other application which the Corporate Director, Environment and Culture considers should be referred to the Committee for determination <p>2. To consider and determine applications for revocation and/or review of any licences which fall to be determined by the Committee in accordance with paragraph 1 a) to h) above</p> <p>3. To resolve not to issue a casino premises licence pursuant to section 166 Gambling Act 2005.</p> <p>4. To determine fees and charges for the issue, approval, consent, license, permit or other registration for functions for which the Committee has responsibility.</p> <p>5. To determine all aspects of licensing policy/procedure (excluding the determination of the Council’s Statement of Licensing Policy) and miscellaneous licensing matters, including the creation of Sub Committees for the purposes of the Licensing Act 2003.</p> <p>6. To consider the Council’s statement of licensing policy.</p>	<p>The Corporate Director, Communities, Localities and Culture (or any officer authorised by her/him) has the authority to consider and determine any applications for licenses not specifically reserved to the Licensing Committee by these terms of reference and all applications for licences where no objections have been received.</p>
Quorum: Three Members of the Committee	

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MEMBERSHIP OF THE LICENSING COMMITTEE 2016/17

LICENSING COMMITTEE (Fifteen Members of the Council) (No Deputies permitted)		
<i>Labour Group (8)</i>	<i>Tower Hamlets First Group (6)</i>	<i>Conservative Group (1)</i>
Cllr Rajib Ahmed (Chair) Councillor Khales Uddin Ahmed Councillor Amina Ali Councillor Dave Chesterton Councillor Denise Jones Councillor Joshua Peck Councillor Candida Ronald Councillor Amy Whitelock Gibbs	Councillor Shah Alam Councillor Suluk Ahmed Councillor Mahbub Alam Councillor Harun Miah Councillor Maium Miah Councillor Ansar Mustaquim (TBA via proper officer delegation)	Cllr Peter Golds

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Non-Executive Report of the: Licensing Committee 14 June 2016	
Report of: Melanie Clay, Corporate Director, Law, Probity & Governance	Classification: Unrestricted
Establishment of Licensing Sub Committees, Terms of Reference & Schedule of Dates	

Originating Officer(s)	Antonella Burgio, Senior Committee Officer
Wards affected	All wards

Summary

The purpose of this report is to establish Licensing Sub Committees, appoint their membership and to note the proposed Terms of Reference, Schedule of Dates and Rules of Procedure.

Recommendations:

The Licensing Committee is recommended to:

1. Consider and note the contents of the report and;
 - i. resolve that the functions in respect of determination of applications where representations have been made be discharged by Sub Committees established by the Licensing Committee;
 - ii. determine how many Sub Committees to establish;
 - iii. determine, if so wished, how many Sub Committee Chairs to appoint
 - iv. determine whether to appoint membership of the Sub Committees

2. Note the Licensing Sub Committee's Terms of Reference, Schedule of Dates and Rules of Procedure attached as Appendices 1, 2 and 3 of the report.

1. REASONS FOR THE DECISIONS

- 1.1 This report is for the information of the Committee and no specific decisions are required.

2. ALTERNATIVE OPTIONS

- 2.1 Not applicable to noting reports.

3. DETAILS OF REPORT

- 3.1 In accordance with the Licensing Act 2003, Full Council at its meeting held on 18th May 2016 agreed that the Licensing Committee would consist of 15 Members and noted that the Committee would exercise its powers to appoint Sub Committees with the power to consider and determine Licensing applications. It was also noted that, under the Licensing Act 2003, proportionality rules are not applicable to Licensing Sub Committees.
- 3.2 The Licensing Act 2003 allows a Sub Committee to consist of three Members with the quorum also being three; it is not therefore possible to consider increasing the membership beyond that number. This also means that it is imperative that Members attend meetings as arranged and that the Committee needs to give careful consideration to the number of Sub Committees to establish so as to allow the greatest degree of Member participation, whilst sharing the workload.
- 3.3 It is entirely within the remit of the Licensing Committee to determine the number and operation of its Sub Committees. The previous Licensing Committee decided that all Members of the Licensing Committee would serve on its Sub Committees and elected to appoint eight Members of the Committee to act as Sub Committee Chairs: the Chair, Vice Chair and six other Members.
- 3.4 As stated above, proportionality rules do not apply to the Sub Committees and this, together with what is proposed, means that a Sub Committee could be formed with one named Chair and any other two Members. This would allow considerable flexibility and ensure that workloads could be distributed amongst the membership. Where possible, and in line with Licensing Guidance, Members would not be asked to consider applications for premises within their Ward, thus ensuring an open and transparent decision making process. Alternatively, the Committee may wish to consider making fixed appointments to an agreed number of Sub Committees.
- 3.5 Members should also be aware that the 2003 Act provides that where it is not possible to determine an application within one hearing, hearings must continue on consecutive days. Whilst it is unlikely that this scenario will occur with any frequency, officers will ensure that the possibility of this occurring will

be taken into account when establishing Member availability. In addition, Members will be asked to indicate if they are available for daytime meetings as it may be possible to hold a number of meetings during the day and thus reducing the number of meetings that would need to be scheduled during the evening.

- 3.6 Council has approved a schedule of dates for Licensing Sub Committees, and whilst it will be necessary to look to these dates in the first instance, whether or not they can be utilised will depend on member availability and the period of time within which an application will have to be considered. Officers will advise as to the current position regarding the number of applications received and the likely impact of this, at the meeting.
- 3.7 Members are also asked to note the proposed Terms of Reference attached as Appendix 1, the Schedules of Dates for the Licensing Sub Committee meetings attached as Appendix 2 and the Rules of Procedure attached as Appendix 3, to this report.

4. COMMENTS OF THE CHIEF FINANCE OFFICER

- 4.1 No material financial implications, such as additional Allowances, are proposed as a result of introducing Sub-Committees. Any minor incidental expenditure that may arise will be contained within the existing Directorate of Law, Probity & Governance budget.

5. LEGAL COMMENTS

- 5.1 Section 6 of the Licensing Act 2003 (“the 2003 Act”) provides that each licensing authority must establish a Licensing Committee consisting of at least ten, but not more than fifteen, members of the authority.
- 5.2 The overwhelming majority of contested licence applications will be heard by Licensing Sub Committees. Pursuant to section 9(1) of 2003 Act, a Licensing Committee may establish one or more sub-committees consisting of three members of the committee. Section 10 of the 2003 Act then allows for the Licensing Committee to arrange for its functions relating to contested hearings to be delegated to the sub committees. In order that the Council can deal with the potential large number of contested applications it will be preferable if the Licensing Committee does delegate this function. Further, due to the nature of the hearing Regulations, Sub Committees will be better able to consider applications much more quickly than the main Licensing Committee.
- 5.3 The delegation of functions not only applies to licensing authority functions under the 2003 Act but also to licensing authority functions under the Gambling Act 2005 (“the 2005 Act”). Section 154(1) of the 2005 Act provides that licensing authority functions under that part of the 2005 Act (that is part 8) are delegated to a Licensing Committee of the licensing authority established under section 6 of the 2003 Act. Section 154(3) of the 2005 Act provides that

section 10 of the 2003 Act applies in relation to functions delegated to the Licensing Committee by virtue of section 154(1) of the 2005 Act.

- 5.4 As the Sub Committee is appointed pursuant to the powers in Section 9 of the Licensing Act 2003, then it is not classed as an advisory or an ordinary Committee/Sub Committee of the Council. Further, as the Sub Committee does not fall within one of the other named categories of bodies for the purposes of section 15 to and schedule 1 of the Local Government and Housing Act 1989 then the Sub Committees do not have to reflect the political make up of the Council and therefore the proportionality principles do not apply.
- 5.5 Finally, as to the Licensing Committee, section 9(3) of the Licensing Act 2003 gives power to the Licensing Committee, subject to any Regulations made by Government, that the Committee may regulate its own procedure and that of its Sub Committees.

6. ONE TOWER HAMLETS CONSIDERATIONS

- 6.1 In drawing up the schedule of dates, consideration was given to avoiding school holiday dates and known dates of religious holidays and other important dates where at all possible.

7. BEST VALUE (BV) IMPLICATIONS

- 7.1 There are no specific Best Value implications arising from this noting report.

8. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT

- 8.1 There are no specific sustainability implications arising from this noting report

9. RISK MANAGEMENT IMPLICATIONS

- 9.1 There are no specific risk management implications arising from this noting report.

10. CRIME AND DISORDER REDUCTION IMPLICATIONS

- 10.1 There are no specific crime and disorder implications arising from this report.

Linked Reports, Appendices and Background Documents

Linked Report

- None

Appendices

- Appendix 1 – Terms of Reference
- Appendix 2 – Schedule of Dates for the Licensing Sub Committees
- Appendix 3 – Rules of Procedure

Local Government Act, 1972 Section 100D (As amended)

List of “Background Papers” used in the preparation of this report

List any background documents not already in the public domain including officer contact information.

- None

Officer contact details for documents:

- N/A

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LICENSING SUB COMMITTEE

Terms of Reference

1. The Licensing Sub Committee will consist of 3 Members of the Licensing Committee and the quorum of the Sub Committee shall be 3 Members.
2. The Sub Committee(s) shall consider applications submitted in accordance with the requirements of the Licensing Act 2003, including:
 - i) Determination of applications for a premises licence where representations have been made (Section 18(3) of the Licensing Act 2003)
 - ii) Determination of applications for provisional statements where representations have been made (Section 31(3) of the Licensing Act 2003)
 - iii) Determination of applications to vary a premises licence where representations have been made (Section 35(3) of the Licensing Act 2003)
 - iv) Determination of applications to vary a premises licence to specify an individual as premises supervisor following police objection (Section 39(3) of the Licensing Act 2003)
 - v) Determination of applications for transfer of a premises licence following police objection (Section 44(5) of the Licensing Act 2003)
 - vi) Consideration of police objection made to interim authority notice (Section 48(3) of the Licensing Act 2003)
 - vii) Determination of applications for a review of a premises licence (Section 52(2) of the Licensing Act 2003)
 - viii) Determination of interim steps pending summary review (Section 53A(2)(a) or 53B Licensing Act 2003)
 - ix) Determination of applications for club premises certificate where representations have been made (Section 72(3) of the Licensing Act 2003)
 - x) Determination of applications to vary a club premises certificate where representations have been made (Section 85(3) of the Licensing Act 2003)

- xi) Determination of applications for review of a club premises certificate (Section 88(3) of the Licensing Act 2003)
- xii) Determination of counter notice following objection to a temporary event notice (Section 105(2) of the Licensing Act 2003)
- xiii) Determination of applications for grant of a personal licence following police objection (Section 120(7) of the Licensing Act 2003)
- xiv) Determination of applications for the renewal of a personal licence following police objection (Section 121(6) of the Licensing Act 2003)
- xv) Determination of personal licence where convictions come to light after the grant or renewal of the personal licence (Section 124(4) of the Licensing Act 2003)
- xvi) Determination of the review of a premises licence following a closure order (Section 167(5) of the Licensing Act 2003)

SCHEDULE OF DATES 2016 - 2017

LICENSING SUB COMMITTEE(S)

2016	2017
Thursday 16 June	Tuesday 17 January
Tuesday 05 July	Tuesday 31 January
Tuesday 19 July	Tuesday 14 February
Tuesday 02 August	Tuesday 28 February
Tuesday 30 August	Tuesday 14 March
Thursday 15 September	Tuesday 28 March
Tuesday 27 September	Tuesday 11 April
Tuesday 04 October	Tuesday 25 April
Tuesday 25 October	Monday 08 May
Tuesday 08 November	Monday 22 May (provisional)
Tuesday 22 November	
Tuesday 06 December	
Tuesday 20 December	

Meetings are scheduled to take place at 6.30pm in the Town Hall, Mulberry Place, in accordance with the programme of meetings except where indicated above.

It may be necessary to convene additional meetings of the Committee should urgent business arise. Officers will keep the position under review and consult with the Chair and Members as appropriate.

TOWER HAMLETS



LICENSING COMMITTEE

**RULES OF PROCEDURE
GOVERNING APPLICATIONS FOR
PREMISES LICENCES
AND OTHER PERMISSIONS
UNDER THE LICENSING ACT 2003**

1. Interpretation

- 1.1 These Procedures describe the way in which hearings will be conducted under the Licensing Act 2003, as set out in the Licensing Act 2003 (Hearings) Regulations 2005 (as amended). The Procedures take into account the Licensing Act (Premises Licences and Club Premises Certificates) Regulations 2005. The Procedures also include the time limits within which a hearing must commence (see Appendix A) and will be used by the Licensing Committee and Licensing Sub-Committee when conducting hearings.
- 1.2 The Hearings Regulations provide (Regulation 21) that a Licensing Authority shall, subject to the provisions of those Regulations, determine for itself the procedure to be followed at a hearing.
- 1.3 These Procedures, therefore, set out the way in which Licensing Sub-Committee Meetings will be conducted under the Licensing Act 2003, following the requirements of the Hearings Regulations. Wherever appropriate they have included the procedures followed successfully when determining licence applications under previous legislation.
- 1.4 Proceedings will not be rendered void only as the result of failure to comply with any provision of the Hearings Regulations (Regulation 31) save that in any case of such an irregularity, the Licensing Committee or Licensing Sub-committee shall, if it considers that any person may have been prejudiced as a result of the irregularity, take such steps as it thinks fit to cure the irregularity before reaching its determination (Regulation 32).

2. Composition of Sub-Committee

- 2.1 The Sub-Committee will consist of three members and no business shall be transacted unless three members of the Licensing Committee are present and able to form a properly constituted Licensing Sub-Committee. In such cases the Chair shall have a second or casting vote.

3. Timescales

- 3.1 Subject to regulation 13, the Licensing Committee or Licensing Sub-committee may extend a time limit provided for in these Regulations for a specified period where it considers this to be necessary in the public interest.
- 3.2 Most hearings must take place within 20 working days from the last date for representations to be made with the following exceptions:

Within 10 working days from the last date for the police to object to:

- conversion of an existing licence;
 - conversion of an existing club certificate;
 - an application for a personal licence by an existing justices licence holder;
- and

Within 10 working days from the date the Licensing Authority receives the notice for a review of the premises licence following a closure order.

Within 7 working days from the last date for the police to object to:

- a temporary event notice.

Within 5 working days from the last date for the police to object to:

- an interim authority notice (Note: the police must give notice of their objection within 48 hours of being given a copy of the notice).

Note: Where a hearing is likely to take longer than one day, the Authority must arrange for the hearing to take place on consecutive days.

3.3 Timescale for notice of hearings to be given

In most cases, the Authority shall give notice of a hearing no later than 10 working days before the first day on which the hearing is to be held. The following are exceptions to that rule:

At least five working days notice must be given to the parties of the date of a hearing for determination of:

- conversion of an existing licence
- conversion of an existing club certificate
- application for a personal licence by the holder of a justices licence
- review of a premises licence following a closure order
- section 53C (review of premises licence following review notice)

At least two days notice must be given to the parties to a hearing for determination of:

- police objection to an interim authority notice
- police objection to a temporary event notice

3.4 Persons who must be notified of a hearing

The persons who must be notified of a hearing are set out below as a summary:

- any applicant for any licence or certificate or a temporary event notice.
- any person who has made relevant representations about an application for a licence or for review of a licence (note for any representations deemed frivolous, vexatious or repetitious under Section 18(7)(c) or similar sections of the Licensing Act 2003 the objector must be notified of

the Authority's decision as soon as possible and in any event before any hearing).

- Any police officer who has given notice of objection to:
 - a person specified as a Designated Premises Supervisor
 - an interim authority
 - transfer of a premises licence
 - a temporary event notice
 - a personal licence

- Any holder of a premises licence or club premises certificate where:
 - application is made for review

Note: Anyone given notice of a hearing is a party and that is how that expression is used in these Rules of Procedure. Information to be provided in a notice of hearing

3.5 The information that must be included in a notice of hearing includes:

- The procedure to be followed at the hearing;
- The right of the party to attend and to be assisted or represented by any person whether legally qualified or not;
- The ability to give further information in support of their application where the Authority has sought clarification;
- The right to question any other party if given permission by the Authority;
- The right to address the Authority;
- Notice of any particular points on which the Authority will want clarification at the hearing;
- The consequences if a party does not attend or is not represented at the hearing;
- For certain hearings particular documents must accompany the notice which is sent to parties informing them of the hearing. Reference must be made to Schedule 3 of the Hearings Regulations for this purpose.

3.6 Failure of Parties to Attend the Hearing

If a party has informed the Authority that they will not be attending or be represented at the hearing, it may proceed in their absence.

If a party does not give notice that they will not be attending but fails to attend and is not represented, the Authority may either:

- a) adjourn the hearing if it considers it to be necessary in the public interest
or
- b) hold the hearing in the party's absence

If the Authority holds the hearing in the absence of a party, it will consider at the hearing the application, representation or notice given by the party.

If the Authority adjourns the hearing to a specified date it must forthwith the parties of the date, time and place to which the hearing has been adjourned.

Note: Transition hearings cannot be adjourned to a date beyond the date that which causes an application to deemed as determined by default.

4. Procedure at the Hearing

4.1 The usual order of proceedings will be as set out below. The Sub-Committee will allow the parties an equal maximum time period in which to give further information in support of their application, representation or response. Where the Authority has given notice that it will seek clarification on that point at the hearing or where permission has been given to call any further persons to give supporting evidence, the Sub-Committee may allow the parties to question any other party and to address the Licensing Sub-Committee. The Sub-Committee will seek, in all cases, to avoid repetition of points (whether included in written material or otherwise), irrelevancy, or any abuse of the procedure.

At the beginning of the hearing the procedure to be followed will be explained to the parties. The hearing will, so far as is possible, take the form of a discussion, led by the Sub-Committee. Cross-examination will not be permitted unless the Sub-Committee considers it necessary.

- i) The Chair will begin by explaining how the proceedings will be conducted, and indicate any time limits that may apply to the parties to the application.
- ii) The report will be briefly introduced by an Officer of the Licensing Section summarising the application.
- iii) The Sub-Committee will then consider any requests by a party for any other person to be heard at the hearing in accordance with the Regulations. Permission will not be unreasonably withheld provided proper notice has been given.
- iv) A summary of the nature and extent of the application by the applicant or their representative. This should be brief, avoid repetition of material already available to the Committee in the Officer's report or otherwise, and include any reasons why an exception should be made to the Council's Licensing Policy, where appropriate. The submission may be followed by the evidence of any person who has been given permission by the Committee to give supporting evidence on behalf of the applicant.

- v) A summary of the reasons for making representations about the application by any interested party. This should be brief and avoid any repetition of information already made available to the Committee either in the Officer's report or otherwise. That will be followed by the evidence of any person who has been given permission by the Panel to give supporting evidence on behalf of the objectors.
- vi) A summary of the reasons for making representations by or on behalf of any Responsible Authority. This should be brief and avoid any repetition of information already made available to the Licensing Sub-Committee either in the Officer's report or otherwise. That will be followed by the evidence of any person who has been given permission by the Panel to give supporting evidence on behalf of the Responsible Authority.
- vii) Members of the Sub-Committee may ask any questions of any party or other person appearing at the hearing.

4.2 The following requirements of the Hearing Regulations will also be followed by the Licensing Sub-Committee:

- a) The Sub-Committee will be guided by legal principles in determining whether evidence is relevant and fairly admissible. In particular, hearsay evidence may be admitted before the Sub-Committee but consideration will always be given to the degree of weight, if any, to be attached to such evidence in all the relevant circumstances.
- b) The Sub-Committee may impose a time limit on the oral representations to be made by any party. In considering whether to do so, and in considering the length of any such time limit, the Sub-Committee will take into account the importance of ensuring that all parties receive a fair hearing, and the importance of ensuring that all applications are determined expeditiously and without undue delay.
- c) In considering the time limits referred to in (b) above, regard must be had to the requirement to allow each party an equal amount of time.

4.3 When considering any representations or notice made by a party, the Authority may take into account documentary or other information produced by a party in support of their application, representation or notice, either:

- a) before the hearing, or
- b) with the consent of all other parties, by the Sub-Committee at the hearing

The Authority will disregard any information given by a party, or any other person appearing at the hearing, which is not relevant to:

- a) their application, representation or notice; and

- b) the promotion of the licensing objectives or the crime prevention objective where notice has been given by the police.

4.4 All hearings shall take place in public save that:

- a) The Licensing Sub-Committee may exclude the public from all or part of a hearing where it considers that, on balance, it is in the public interest to do so.
- b) The parties and any person representing them may be excluded in the same way as another member of the public
- c) The Licensing Sub-Committee may require any person attending the hearing who in their opinion is behaving in a disruptive manner to leave the hearing and may:
 - refuse to permit the person to return; or
 - allow them to return only on such conditions as the authority may specify.

4.5 Any person so excluded may, before the end of the hearing, submit to the Authority in writing, any information which, they would have been entitled to give orally had they not been required to leave. Where there are a number of items on the agenda, the adjournment of that item for a short period, whilst another item is heard, may allow this process to be carried out effectively.

5. Determination of Application – Time Limits

5.1 The Licensing Sub-Committee must make its determination at the conclusion of the hearing where the application is for:

- a) Conversion or variation of an existing licence during transition
- b) Conversion or variation of an existing club certificate during transition
- c) A review of a premises licence following a closure order
- d) A personal licence by the holder of a justices licence
- e) A counter notice following police objection to a temporary event notice
- f) section 53B (interim steps pending review)
- g) section 53C (review of premises licence following review notice)

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

5.3 Where a hearing has been dispensed with because all of the parties have agreed that a hearing is unnecessary (and the Authority has agreed, giving notice to the parties in writing), then the Authority must make its determination within 10 working days beginning with the day the authority gives such notices to the parties. The Team Leader (Licensing) shall be authorised to make the determination on behalf of the Authority.

6. Record of Proceedings

- 6.1 The Authority must arrange for a record to be taken of the hearing in a permanent and intelligible form and for that record to be kept for six years from the date of determination. Where an appeal is brought against a determination by the Authority, the record must be kept for six years from the date of disposal of the appeal.

7. Irregularities

- 7.1 Proceedings will not be rendered void only as the result of failure to comply with any provision of the Hearings Regulations.
- 7.2 Clerical mistakes in any document recording a determination of the Authority, or errors arising in such a document as the result of an accidental slip or omission, may be corrected by the Authority.

8. Notices

- 8.1 In accordance with the Regulations, any notices must be given in writing. Such a notice may be sent electronically, providing:
- a) it can be accessed by the recipient in a legible form;
 - b) it is capable of being reproduced as a document for future reference;
 - c) the recipient has agreed in advance to receive it in such form;
 - d) a copy is sent in documentary form forthwith to the recipient.

9. Appeals

- 9.1 Either those who have made an application or those who have made representations on an application may appeal to the Magistrates Court.

Note: An appeal must be commenced within twenty one days beginning with the day on which the appellant was notified by the Licensing Authority of their decision.

APPENDIX A

Application Type	Period of Time within which Hearing to be Held (after reps have closed)	Notice Period of Hearing	Notice Sent To	Attendee Reply Form Back In
Section 18 (3)(a) (determination of application for premises licence)	20 working days	10 working days	Applicant; People who have made representations	5 working days
Section 35(3)(a) (determination of application to vary premises licence).	20 working days	10 working days	Applicant; People who have made representations	5 working days
Section 39(3)(a) (determination of application to vary premises licence to specify individual as premises supervisor).	20 working days	10 working days	Applicant (premises holder); Chief Officer of Police who has given notice; The proposed premises supervisor	5 working days
Section 44(5)(a) (determination of application for transfer of premises licence).	20 working days	10 working days	Applicant; Chief Officer of Police who has given Notice; The present holder of the premises licence	5 working days
Section 52(2) (determination of application for review of premises licence).	20 working days	10 working days	The holder of the premises licence in respect of which the application applies; People who have made representations; Applicant	5 working days
Section 120(7)(a) (determination of application for grant of personal licence).	20 working days	10 working days	Applicant; Chief Officer of Police who has given Notice	5 working days

Application Type	Period of Time within which Hearing to be Held (after reps have closed)	Notice Period of Hearing	Notice Sent To	Attendee Reply Form Back In
Section 121(6)(a) (determination of application for the renewal of personal licence).	20 working days	10 working days	Applicant; Chief Officer of Police who has given Notice	5 working days
Section 124(4)(a) (convictions coming to light after grant or renewal of personal licence).	20 working days	10 working days	The holder of the licence; Chief Officer of Police who has given Notice	5 working days
Paragraph 26(3)(a) of Schedule 8 (determination of application by holder of a justices' licence for grant of personal licence).	10 working days	5 working days	Applicant; Chief Officer of Police who has given Notice	2 working days
Section 31(3)(a) (determination of application for a provisional statement).	20 working days	10 working days	Applicant; People who have made representations	5 working days
Section 48(3)(a) (cancellation of interim authority notice following police objection).	5 working days	2 working days	The person who has given Notice; Chief Officer of Police who has given Notice	1 working day
Section 72(3)(a) (determination of application for club premises certificate).	20 working days	10 working days	Applicant (club); People who have made representations	5 working days
Section 85(3) (determination of application to vary club premises certificate).	20 working days	10 working days	Applicant (club); People who have made representations	5 working days
Section 88(2) (determination of application for review of club premises certificate).	20 working days	10 working days	Club that holds club premises certificate; People who have made representations; Applicant	5 working days


Application Type	Period of Time within which Hearing to be Held (after reps have closed)	Notice Period of Hearing	Notice Sent To	Attendee Reply Form Back In
Section 105(2)(a) (counter notice following police objection to temporary event notice)	7 working days	2 working days	The premises user; Chief Officer who has given Notice	1 working day
Section 167(5)(a) (review of premises licence following closure order).	10 working days	5 working days	The holder of the premises licence; People who have made representations	2 working days
Paragraph 4(3)(a) of Schedule 8 (determination of application for conversion of existing licence).	10 working days	5 working days	Applicant; Chief Officer of Police who has given Notice	2 working days
Paragraph 16(3)(a) of Schedule 8 (determination of application for conversion of existing club certificate).	10 working days	5 working days	Applicant (club) Chief Officer who has given Notice	2 working days

APPENDIX B

Regulation 8

Action Following receipt of notice of hearing

1. A party shall give to the authority within the period of time provided for in the following provisions of this regulation 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.
2. In a case where a party wishes any other person (other than the person he intends to represent him at the hearing) to appear at the hearing, the notice referred to in paragraph (1) shall contain a request for permission for such other person to appear 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 authority in relation to the application, representations or notice of the party making the request.
3. In the case of a hearing under:
 - (a) section 48(3)(a) (cancellation of interim authority notice following objection), or
 - (b) section 105(2)(a) (counter notice following objection to temporary event notice),the party shall give the notice no later than one working day before the day or the first day on which the hearing is to be held.
4. In the case of a hearing under:
 - (a) section 167(5)(a) (review of premises licence following closure order),
 - (b) paragraph 4(3)(a) of Schedule 8 (determination of application for conversion of existing licence),
 - (c) paragraph 16(3)(a) of Schedule 8 (determination of application for conversion of existing club certificate), or
 - (d) paragraph 26(3)(a) of Schedule 8 (determination of application by holder of justices' licence for grant of personal licence),the party shall give the notice no later than two working days before the day or the first day on which the hearing is to be held.
5. In any other case, the party shall give the notice no later than five working days before the day or the first day on which the hearing is to be held.

Non-Executive Report of the: Licensing Committee 14 th June 2016	 TOWER HAMLETS
Report of: Melanie Clay, Corporate Director, Law Probity and Governance	Classification: Unrestricted
Proposed Rules of Procedure Governing Applications for Premises Licences and other permissions under the Licensing Act 2003 and Rules of Procedure Governing Applications for Sex Establishment Licences	

Originating Officer(s)	Paul Greeno
Wards affected	All wards

Summary

Pursuant to section 9(3) of the Licensing Act 2003, the Licensing Committee may regulate its own procedure and that of its Sub-Committees.

Where the Committee is considering other applications, e.g. sex establishment licences pursuant to section 3 of and schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982, it is also appropriate for the Licensing Committee to have a procedure that it uses in determining such applications.

Recommendations:

The Licensing Committee is recommended to:

1. Note that there has been prepared a revised Licensing Code of Conduct (the subject of a separate report before Members) and that that revised Code of Conduct incorporates Rules of Procedure Governing Applications for Premises Licences and other permissions under the Licensing Act 2003 and Rules of Procedure Governing Applications for Sex Establishment Licences under Section 2 of and Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 (as amended) respectively;
2. Note that pursuant to Part 1 Paragraph 4.02 of the Constitution the adoption and amendment of the revised Licensing Code of Conduct is a matter for full Council;
3. Note that in advance of Full Council adopting a revised Code of Conduct that Members can adopt their own Rules of Procedure; and
4. Adopt the Rules of Procedure Governing Applications for Premises Licences and other permissions under the Licensing Act 2003 (see Appendix 1); and
5. Adopt the Rules of Procedure Governing Applications for Sex Establishment Licences under Section 2 of and Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 (as amended) (see Appendix 2).

1. REASONS FOR THE DECISIONS

- 1.1 The Licensing Committee (or its sub-committees) can consider a variety of different types of applications. The overwhelming number of such applications relate to Premises Licences and other permissions under the Licensing Act 2003. There are also a number of applications for Sex Establishment Licences under Section 2 of and Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 (as amended).
- 1.2 As these two (2) areas comprise, for all intents and purposes, the applications that the Committee (or its sub-committees) consider each year then it is important that there are up-to-date Rule of Procedure Governing such applications.

2. ALTERNATIVE OPTIONS

- 2.1 Not to adopt these revised Rules of Procedure.

3. DETAILS OF REPORT

- 3.1 The Licensing Committee either itself or through its Sub-Committees can consider a variety of different types of applications. Almost all of the applications are for Premises Licences and other permissions under the Licensing Act 2003 and which are considered by Sub-Committees of the Licensing Committee. There are, however, now a number of applications for Sex Establishment Licences under Section 2 of and Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 (as amended) and which are considered by the Licensing Committee.
- 3.2 In considering such applications, there should be a prescribed procedure setting out the way in which hearings will be conducted before the Committee and/ or sub-committees. As the proceedings before the Committee are quasi-judicial and the rules of natural justice apply, it is important that there are such set procedures so that all parties who come before a hearing of a committee know how the hearing will be conducted. The Rules are designed to guarantee due process and assisting to ensure that licensing decisions are taken in a fair consistent and open manner; and that Councillors making such decisions are, and are perceived as being, accountable for those decisions.
- 3.3 For applications considered pursuant to the Licensing Act 2003 then the rules of procedure are subject to the provisions of the Licensing Act 2003 (Hearings) Regulations 2005 (the 'Regulations') and, where appropriate, the provisions of the Regulations have been incorporated into the proposed Rules in Appendix 1. For example, no cross-examination by parties of other parties is automatically permitted. This is not the case however in Sex Establishment Licence applications and therefore the proposed Rules specifically allow for cross-examination.

3.4 The Licensing Committee does have existing Rules of Procedure Governing Applications for Premises Licences and other permissions under the Licensing Act 2003 and which are published in the Agenda for Licensing Sub-committees. It is proposed that those Rules be replaced with the Rules at Appendix 1. These revised Rules are more concentrated on the procedure at the hearing.

3.5 As to the Rules of Procedure Governing Applications for Sex Establishment Licences under Section 2 of and Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 (as amended) (see Appendix 2), during the initial applications for Licences there was an *ad hoc* set of procedures. Applications for renewal of licences will soon be due and a formal set of Rules of Procedure should be adopted and in place for any hearings.

4. COMMENTS OF THE CHIEF FINANCE OFFICER

4.1 There are no financial implications arising out of this report.

5. LEGAL COMMENTS

5.1 Any legal implications are addressed in the body of the report.

6. ONE TOWER HAMLETS CONSIDERATIONS

6.1 The proposed Rules are designed to ensure that licensing hearings are fair to all parties and which should help to achieve the objectives of equality and personal responsibility inherent in One Tower Hamlets.

7. BEST VALUE (BV) IMPLICATIONS

7.1 The report does not propose any direct expenditure. Rather, it is concerned with ensuring that licensing hearings comply with the rules of natural justice.

8. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT

8.1 There are no such implications arising out of this report.

9. RISK MANAGEMENT IMPLICATIONS

9.1 The adoption of Rules of Procedure Governing hearings will help ensure that licensing hearings comply with the rules of natural justice.

10. CRIME AND DISORDER REDUCTION IMPLICATIONS

10.1 There are no immediate crime and disorder implications arising out of this report.

Linked Reports, Appendices and Background Documents

Linked Report

- NONE

Appendices

- 1 – Proposed Rules of Procedure Governing Applications for Premises Licences and other permissions under the Licensing Act 2003.
- 2 – Proposed Rules of Procedure Governing Applications for Sex Establishment Licences under Section 2 of and Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 (as amended)

Local Government Act, 1972 Section 100D (As amended)

List of “Background Papers” used in the preparation of this report

List any background documents not already in the public domain including officer contact information.

- NONE

Officer contact details for documents:

- N/A

TOWER HAMLETS



LICENSING COMMITTEE

**RULES OF PROCEDURE
GOVERNING APPLICATIONS FOR
PREMISES LICENCES
AND OTHER PERMISSIONS
UNDER THE LICENSING ACT 2003**

1. Interpretation

- 1.1 These Procedures describe the way in which hearings will be conducted under the Licensing Act 2003, as set out in the Licensing Act 2003 (Hearings) Regulations 2005 (as amended) ('the Hearings Regulations'). The Procedures take into account the Licensing Act (Premises Licences and Club Premises Certificates) Regulations 2005.
- 1.2 Except where otherwise stated, references in this Code are to the Licensing Committee and its Sub-committees and the expression 'Licensing Committee' should be interpreted accordingly.
- 1.3 The Hearings Regulations provide (Regulation 21) that a Licensing Authority shall, subject to the provisions of those Regulations, determine for itself the procedure to be followed at a hearing.
- 1.4 These Procedures, therefore, set out the way in which Licensing Committee Meetings will be conducted under the Licensing Act 2003, following the requirements of the Hearings Regulations.
- 1.5 Proceedings will not be rendered void only as the result of failure to comply with any provision of the Hearings Regulations (Regulation 31) save that in any case of such an irregularity, the Licensing Committee shall, if it considers that any person may have been prejudiced as a result of the irregularity, take such steps as it thinks fit to cure the irregularity before reaching its determination (Regulation 32).

2. Composition of Sub-Committee

- 2.1 The Sub-Committee will consist of three (3) members and no business shall be transacted unless three (3) members of the Licensing Committee are present and able to form a properly constituted Licensing Sub-Committee. In such cases the Chair shall have a second or casting vote.

3. Procedure

- 3.1 The hearing shall take place in public save that the Licensing Committee may exclude the public from all or part of a hearing where it considers that, on balance, it is in the public interest to do so. The parties and any person representing them may be excluded in the same way as another member of the public. Any person so excluded may, before the end of the hearing, submit to the Licensing Committee in writing, any information which, they would have been entitled to give orally had they not been required to leave. Where there are a number of items on the agenda, the adjournment of that item for a short period, whilst another item is heard, may allow this process to be carried out effectively.
- 3.2 The Chair will begin by asking the parties to identify themselves and confirm whether or not they are represented.

- 3.3 The Licensing Committee should always satisfy itself that sufficient notice of the hearing has been given to all parties and if not satisfied, then the Licensing Committee should take such steps as it thinks fit to deal with that issue before reaching its determination and this could include adjourning that application to a later date.
- 3.4 The Licensing Committee will then consider any requests by a party for any other person to be heard at the hearing in accordance with the Regulations. Permission will not be unreasonably withheld provided proper notice has been given.
- 3.5 The Chair will then explain how the proceedings will be conducted, and indicate any time limits that may apply to the parties to the application. In setting time limits, the Licensing Committee will take into account the importance of ensuring that all parties receive a fair hearing, and the importance of ensuring that all applications are determined expeditiously and without undue delay. Further the Licensing Committee must have regard to the requirement to allow each party an equal amount of time.
- 3.6 If a party considers that any time limit is not sufficient then they should address the Licensing Committee and which will determine accordingly.
- 3.7 If any party has informed the Authority that they will not be attending or be represented at the hearing or any party does not give notice that they will not be attending but fails to attend and is not represented, the Licensing Committee may proceed in their absence or adjourn the hearing if it considers it to be necessary in the public interest. An adjournment will not be considered where due to the operation of the Hearing Regulations it would not be possible to adjourn.
- 3.8 If the Licensing Committee adjourns the hearing to a specified date it must specify the date, time and place to which the hearing has been adjourned and why it is considered necessary in the public interest.
- 3.9 If the Licensing Committee holds the hearing in the absence of a party, it will consider at the hearing the application, representation or notice given by that party.
- 3.10 The Chair will invite an Officer of the Licensing Section to present the report by briefly summarising the application and the number and type of the representations as set out in the papers circulated. The Officer will also advise of any discussions held with the parties; any amendments made to the application; any representations withdrawn; and any agreed conditions that the Licensing Committee is being asked to consider. The Officer shall not give any opinion on the application or ask the Committee to make an inference based on such an opinion.
- 3.11 Members of the Licensing Committee can then ask questions of clarification of the Licensing Officer or seek legal advice from the Legal Adviser to the

Licensing Committee if they require in respect of matters raised during the presentation by the Licensing Officer.

- 3.12 The Legal Adviser to the Licensing Committee will then give any relevant legal advice that the Licensing Committee need to take into consideration.
- 3.13 The Chair will then ask the applicant or their representative, if present, to present a summary of the nature and extent of the application. This should be brief, avoid repetition of material already available to the Licensing Committee in the Officer's report or otherwise, and include any reasons why an exception should be made to the Council's Licensing Policy, where appropriate, and respond to the written representations received. The submission may be followed by the evidence of any person who has been given permission by the Committee to give supporting evidence on behalf of the applicant or who has made a representation in favour of the application.
- 3.14 The application is to be presented within the time limit that has been set.
- 3.15 Where an applicant is unrepresented and having difficulty in presenting their application then the Legal Adviser to the Licensing Committee may ask questions of the applicant so that the relevant points are addressed and clarified for the Licensing Committee.
- 3.16 Members of the Licensing Committee may ask questions of the person presenting the case after their address as well as any other person who has spoken in support of the application. Members can also ask questions of the applicant as well as any other person present for the applicant who they consider can assist.
- 3.17 The Legal Adviser to the Licensing Committee may ask questions for the purpose of clarifying points for the Licensing Committee.
- 3.18 The Chair will then ask the persons who have made representations against the application to address the Licensing Committee within the time limit that has been set. They should not repeat what is already set out in their representations or notice or raise new matters. In their address they should provide clarification on any points previously requested by the Council. The submission may be followed by the evidence of any person who has been given permission by the Committee to give supporting evidence.
- 3.19 Members of the Licensing Committee may then ask questions of the persons making representations against the application and any other person who has spoken in support of such representation. Members can also ask questions of any other person present who they consider can assist.
- 3.20 The Legal Adviser to the Licensing Committee may ask questions for the purpose of clarifying points for the Licensing Committee.
- 3.21 Petitions will be treated as representations provided they meet the requirements for relevant representations set out in the Licensing Act 2003.

Members should proceed with caution when relying upon petitions used as evidence due to the structure and wording used.

- 3.22 The Licensing Committee will disregard any information given by a party, or any other person appearing at the hearing, which is not relevant to:
- a) their application, representation or notice; and
 - b) the promotion of the licensing objectives or the crime prevention objective where notice has been given by the police
- 3.23 The Chair will intervene at any stage of the hearing to prevent repetitious or irrelevant points being raised.
- 3.24 Cross examination of any party or any other person allowed to appear will not be allowed unless specifically permitted by the Chair.
- 3.25 There is no right for any party to sum up but they may be permitted to do at the discretion of the Chair and within time limits prescribed by the Chair.
- 3.26 The Licensing Committee will consider its decision in private save that the Legal Adviser and Democratic Services Officer will remain with them.
- 3.27 The Licensing Committee will normally return to open session to announce its decision but in cases where the prescribed time limit allows for a later determination and it is appropriate to determine the matter within that time then the Chair will advise the parties present that the decision will not be announced then but that the determination will take place within the prescribed time limit and that written notification will be dispatched to all parties advising them of the determination.

4. Exclusions

- 4.1 In addition to any exclusion under paragraph 3.1 above, The Licensing Committee may require any person attending the hearing who in their opinion is behaving in a disruptive manner to leave the hearing and may refuse to permit the person to return; or allow them to return only on such conditions as Licensing Committee may specify.
- 4.2 Any person so excluded may, before the end of the hearing, submit to the Authority in writing, any information which, they would have been entitled to give orally had they not been required to leave.

TOWER HAMLETS



LICENSING COMMITTEE

RULES OF PROCEDURE

GOVERNING APPLICATIONS FOR

SEX ESTABLISHMENT LICENCES

**UNDER SECTION 2 OF AND SCHEDULE 3 TO
THE LOCAL GOVERNMENT (MISCELLANEOUS
PROVISIONS) ACT 1982**

1. Interpretation

- 1.1 These Procedures describe the way in which hearings will be conducted under section 2 of and schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 as amended.

2. Composition of the Licensing Committee

- 2.1 The Licensing Committee will consist of fifteen (15) members and no business shall be transacted unless at least three (3) members of the Licensing Committee are present and able to form a properly constituted Licensing Committee. The Chair shall have a second or casting vote.

3. Procedure

- 3.1 The hearing shall take place in public save that the Licensing Committee may exclude the public from all or part of a hearing where it considers that, on balance, it is in the public interest to do so. The parties and any person representing them may be excluded in the same way as another member of the public. Any person so excluded may, before the end of the hearing, submit to the Licensing Committee in writing, any information which, they would have been entitled to give orally had they not been required to leave. Where there are a number of items on the agenda, the adjournment of that item for a short period, whilst another item is heard, may allow this process to be carried out effectively.
- 3.2 The Chair will begin by asking the parties to identify themselves and confirm whether or not they are represented.
- 3.3 The Licensing Committee should always satisfy itself that sufficient notice of the hearing has been given to all parties and if not satisfied, then the Licensing Committee should take such steps as it thinks fit to deal with that issue before reaching its determination and this could include adjourning that application to a later date.
- 3.4 The Chair will explain how the proceedings will be conducted, and indicate any time limits that will be imposed on the parties. In setting time limits, the Licensing Committee will take into account the importance of ensuring that all parties receive a fair hearing, and the importance of ensuring that all applications are determined expeditiously and without undue delay. Further the Licensing Committee should allow each party an equal amount of time.
- 3.6 If a party considers that any time limit is not sufficient then they should address the Licensing Committee and which will determine accordingly.
- 3.7 If any party has informed the Authority that they will not be attending or be represented at the hearing or any party does not give notice that they will not be attending but fails to attend and is not represented, the Licensing Committee may proceed in their absence or adjourn the hearing.


- 3.8 If the Licensing Committee adjourns the hearing it should specify the date, time and place to which the hearing has been adjourned.
- 3.9 If the Licensing Committee holds the hearing in the absence of a party, it will consider at the hearing the application or objection given by that party.
- 3.10 The Chair will invite an Officer of the Licensing Section to present the report by briefly summarising the application and the number and type of the representations as set out in the papers circulated. The Officer will also advise of any discussions held with the parties; any amendments made to the application; any objections withdrawn; and any agreed conditions that the Licensing Committee is being asked to consider. The Officer shall not give any opinion on the application or ask the Committee to make an inference based on such an opinion.
- 3.11 Members of the Licensing Committee can then ask questions of clarification of the Licensing Officer or seek legal advice from the Legal Adviser to the Licensing Committee if they require in respect of matters raised during the presentation by the Licensing Officer.
- 3.12 The Legal Adviser to the Licensing Committee will then give any relevant legal advice that the Licensing Committee need to take into consideration.
- 3.13 The Chair will then ask the applicant or their representative, if present, to state their case. This should avoid repetition of material already available to the Licensing Committee in the Officer's report or otherwise, and include any reasons why an exception should be made to the Sex Establishment Licensing Policy, where appropriate; address, where appropriate, the matters stated in the Sex Establishment Licensing Policy that the Licensing Committee will take into account when considering applications; and respond to the written objections received. The submission may be followed by the evidence of any person who is giving supporting evidence on behalf of the applicant or who has made a representation in favour of the application.
- 3.14 The application is to be presented within any time limit that has been set.
- 3.15 Where an applicant is unrepresented and having difficulty in presenting their application then the Legal Adviser to the Licensing Committee may ask questions of the applicant so that the relevant points are addressed and clarified for the Licensing Committee.
- 3.16 The objectors (or their representative) will be invited to question the applicant.
- 3.16 Members of the Licensing Committee may ask questions of the applicant and/or their representative as well as any other person who has spoken in support of the application. Members can also ask questions of any other person present for the applicant who they consider can assist.
- 3.17 The Legal Adviser to the Licensing Committee may ask questions for the purpose of clarifying points for the Licensing Committee.

- 3.18 The Chair will then ask objectors against the application to state their case within any time limit that has been set. The objectors should not repeat what is already set out in their objections. In stating their case, the objectors should provide clarification on any points previously requested by the Council. The submission may be followed by the evidence of any person who is giving supporting evidence.
- 3.19 The applicant (or their representative) will be invited to question the objectors.
- 3.19 Members of the Licensing Committee may then ask questions of the objectors and any other person who has spoken given evidence in support. Members can also ask questions of any other person present who they consider can assist.
- 3.20 The Legal Adviser to the Licensing Committee may ask questions for the purpose of clarifying points for the Licensing Committee.
- 3.21 Petitions will be considered but Members should proceed with caution when relying upon petitions used as evidence due to the structure and wording used.
- 3.22 The Chair will intervene at any stage of the hearing to prevent repetitious or irrelevant points being raised.
- 3.23 The objectors (or their representative) will then be permitted to “Sum Up”.
- 3.24 The applicant (or their representative) will then be permitted to “Sum Up”.
- 3.25 The Licensing Committee will consider its decision in private save that the Legal Adviser and Democratic Services Officer will remain with them.
- 3.26 The Licensing Committee will normally return to open session to announce its decision but where they consider it appropriate for the determination to be given at a later time then the Chair will advise the parties present that the decision will not be announced then but that the determination will take place later and that written notification will be dispatched to all parties advising them of the determination.

4. Exclusions

- 4.1 In addition to any exclusion under paragraph 3.1 above, The Licensing Committee may require any person attending the hearing who in their opinion is behaving in a disruptive manner to leave the hearing and may refuse to permit the person to return; or allow them to return only on such conditions as Licensing Committee may specify.
- 4.2 Any person so excluded may, before the end of the hearing, submit to the Authority in writing, any information which, they would have been entitled to give orally had they not been required to leave.

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Non-Executive Report of the: Licensing Committee 14 th June 2016	
Report of: Melanie Clay, Corporate Director, Law Probity and Governance	Classification: Unrestricted
Proposed Revised Licensing Code of Conduct	

Originating Officer(s)	Paul Greeno
Wards affected	All wards

Summary

This report advises of a proposed revised Licensing Code of Conduct at Part 5.3 of the Tower Hamlets Constitution.

Recommendations:

The Licensing Committee is recommended to:

1. Note the revised Licensing Code of Conduct in Appendix 1 of the report;
2. Note that as a Member Code of Conduct then pursuant to the Terms of Reference to the Standards Advisory Committee that the revised Licensing Code of Conduct will have to go to that Committee for consideration so that they can advise Council on the adoption or revision of the Code;
3. Note that the revised Code will also go to General Purposes Committee for consideration;
4. Note that pursuant to Part 1 Paragraph 4.02 of the Constitution the adoption and amendment of the revised Licensing Code of Conduct is a matter for Council; and
5. Comment generally on the revised Licensing Code of Conduct so that these comments can be reflected when the revised Code goes to Standards Advisory Committee, General Purposes Committee and then Council.

1. REASONS FOR THE DECISIONS

- 1.1 Pursuant to the Local Government Act 2000 ('the 2000 Act') as the Council is operating Executive arrangements then it must have a Constitution and also ensure that this Constitution is kept up-to-date. Pursuant to Part 2 Article 15 of the Constitution it is a Monitoring Officer role to review the Constitution.
- 1.2 The Licensing Code of Conduct is an important Constitutional document as it is part of the Council's ethical framework and is in addition to the Councillors' Code of Conduct adopted under the provisions of the Localism Act 2011.
- 1.3 As the work of the Licensing Committee is quasi-judicial and therefore there are a higher set of standards on Councillors who are involved in the decision-making process. The provisions of the revised Licensing Code are designed to better assist Councillors when determining such applications.

2. ALTERNATIVE OPTIONS

- 2.1 The Council can decide not to adopt a revised Policy.

3. DETAILS OF REPORT

- 3.1 Pursuant to the Local Government Act 2000 ('the 2000 Act') as the Council is operating Executive arrangements then it must have a Constitution and also ensure that this Constitution is kept up-to-date. Pursuant to Part 2 Article 15 of the Constitution it is a Monitoring Officer role to review the Constitution.
- 3.2 The Licensing Code of Conduct is an important Constitutional document as it is part of the Council's ethical framework and is in addition to the Councillors' Code of Conduct adopted under the provisions of the Localism Act 2011.
- 3.3 Whilst most decisions taken by Councillors are administrative in nature, the work of the Licensing Committee is different in that its proceedings are quasi-judicial and the rules of natural justice apply. This imposes a new and higher set of standards on those Councillors who are involved in the decision-making process. The provisions of the revised Licensing Code are designed to ensure that licensing decisions are taken on proper licensing grounds; in a fair consistent and open manner; and that Councillors making such decisions are, and are perceived as being, accountable for those decisions.
- 3.4 The Code is also designed to assist Councillors in dealing with and recording approaches from applicants, licensees and objectors and is intended to ensure that the integrity of the decision-making process is preserved.
- 3.5 Annex A contains the existing Code of Conduct for Licencing and Annex B contains the revised Code.

- 3.6 Reasons for suggesting changes to the current Code of Conduct fall into 4 categories:
- (i) Changes that bring the Code up to date in terms of legislative context, the organisational structure of the council and/or current terminology;
 - (ii) Improvements to achieve better consistency with other documents in terms of content and style and structure;
 - (iii) The addition of information/explanation to aide understanding;
 - (iv) Material changes to the Code that will require members and/or officers to conduct themselves differently than under the existing Code
- 3.7 Changes relating to (i) and (ii) above have been made to all sections of the document and, as they are not material, have not been singled out.
- 3.8 Changes to sections relating to categories (iii) and (iv) above are identified in Table 1 for each code as it was felt that these changes in particular should be brought to members attention.
- 3.9 The revised Code has been referred to Dave Tolley, Head of Environmental Health and Trading Standards, and within whose area Licensing sits and he has confirmed that he has no issues with it. He raised a separate issue regarding Member training and it is intended that if the revised Code is introduced that it would be presented to Members of the Licensing Committee along with a briefing as to the revised Code.
- 3.10 The revised Code was also presented to the Governance Review Working Group and the following observations were made:
- (i) Members queried whether information could be given more succinctly and a bulleted point A4 sheet of dos and don'ts will be introduced along with any revised Code that is approved;
 - (ii) Members wanted more information about relationship with applicants and information relevant to this in paragraphs 5, 8, 9 and 10 of the revised Code; and
 - (iii) Councillor Golds considered the addition on site visits was useful and advised of a site visit on a Licensing application last year and which was very useful in relation to the determination of the application.
- 3.11 For information, Members are also advised that, in addition to this Code, all the Codes/ Protocols in Part 5 of the Constitution are being reviewed.

4. COMMENTS OF THE CHIEF FINANCE OFFICER

- 4.1 There are no financial implications arising out of this report.

5. LEGAL COMMENTS

- 5.1 Any legal implications are addressed in the body of the report.

6. ONE TOWER HAMLETS CONSIDERATIONS

- 6.1 The provisions of the revised Licensing Code are designed to ensure that licensing decisions are taken on proper licensing grounds; in a fair consistent and open manner; and that Councillors making such decisions are, and are perceived as being, accountable for those decisions. The Code is also designed to assist Councillors in dealing with and recording approaches from applicants, licensees and objectors and is intended to ensure that the integrity of the decision-making process is preserved. In implementing the Code, Members will ensure that decisions are taken for Licensing reasons only and should help to achieve the objectives of equality and personal responsibility inherent in One Tower Hamlets.

7. BEST VALUE (BV) IMPLICATIONS

- 7.1 The report does not propose any direct expenditure. Rather, it is concerned with ensuring that licensing decisions are taken on proper licensing grounds; in a fair consistent and open manner; and that Councillors making such decisions are, and are perceived as being, accountable for those decisions. Whilst this might not to fewer appeals, the implementation of the Code should result in a much decreased chance of success on such appeals and which should reduce cost implications for the Council on any such appeals.

8. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT

- 8.1 The provisions of the revised Licensing Code are designed to ensure that licensing decisions are taken on proper licensing grounds; in a fair consistent and open manner; and that Councillors making such decisions are, and are perceived as being, accountable for those decisions. It is not considered that there are any environmental implications if this revised Code is ultimately adopted.

9. RISK MANAGEMENT IMPLICATIONS

- 9.1 This proposed revision of the Licensing Code of Conduct is designed to ensure that licensing decisions are taken on proper licensing grounds; in a fair consistent and open manner; and that Councillors making such decisions are, and are perceived as being, accountable for those decisions. The overall aim is therefore to reduce risk.

10. CRIME AND DISORDER REDUCTION IMPLICATIONS

- 10.1 In considering Licensing applications, the Council has to have regard to Crime and Disorder and by ensuring that licensing decisions are taken on proper licensing grounds this should assist reduce crime and disorder.
-

Linked Reports, Appendices and Background Documents

Linked Report

- NONE

Appendices

- Table 1 - Changed sections and reason for change
- A - Current Licensing Code of Conduct
- B - Revised Licensing Code of Conduct.

Local Government Act, 1972 Section 100D (As amended)

List of “Background Papers” used in the preparation of this report

List any background documents not already in the public domain including officer contact information.

- NONE

Officer contact details for documents:

- N/A

Table 1: Changed sections and reason for change

	Changes to improve quality/clarity of information or explanation		Additional/ Material changes to the Code affecting members and / or officers	
	Current Version Annex 1	Proposed New Version Annex 2	Current Version Annex 1	Proposed New Version Annex 2
Licencing Code	<ul style="list-style-type: none"> 1. Introduction 2. Legal Background 3. Before the hearing <ul style="list-style-type: none"> 3.1 Training for Councillors 3.2 Application by a councillor or officer 3.3 Lobbying 3.5 Discussions before the hearing 4. At the Hearing <ul style="list-style-type: none"> 4.2 Conduct at the Hearing 5. Councillors who are not on the committee 6. Record Keeping 	<ul style="list-style-type: none"> 1. Introduction 3. Human rights Act 4. Quasi-Judicial Hearings 2. Training for Councillors 7. Application by Councillor or Officer 8. Lobbying 9. Pre-hearing Discussions 12. Conduct of the Hearing 13. Councillors who are not on the committee 16. Record Keeping 	<ul style="list-style-type: none"> 4.1 Interests 	<ul style="list-style-type: none"> 5. Predisposition, Predetermination or Bias 6. Interests 10 Site Visits 11 Relationship between members and officers 14 Making the Decision 15 Appeals 17 Procedure Notes

APPENDIX A

5.3 Licensing Code of Conduct

CONTENTS

Section	Subject
1	Introduction
2	Legal Background
3	Before the Hearing
4	At the Hearing
5	Councillors who are not on the Committee
6	Complaints and Record Keeping

1. INTRODUCTION

- 1.1** Most decisions taken by Councillors are administrative in nature. The work of the Licensing Committee is different in that its proceedings are quasi judicial and the rules of natural justice apply. This imposes a new and higher set of standards on those Councillors who are involved in the decision-making process. Failure to abide by these standards may render the Council or individual Councillors open to challenge either through the courts or the Monitoring Officer/Standards Advisory Committee.
- 1.2** This Code provides a set of guidelines for Councillors on the standards which apply to the Licensing Committee. It is part of the Council's ethical framework and should be read in conjunction with the Members' Code of Conduct and the Member/Officer Protocol.

2. LEGAL BACKGROUND

2.1 Human Rights Act

- 2.1.1** The Human Rights Act 1998, which came into full effect on 2 October 2000, incorporated the key articles of the European Convention on Human Rights into domestic law. The Convention guarantees certain basic human rights. As far as possible legislation (including the licensing laws) must be interpreted in such a way as to conform with Convention rights. Decisions on licensing issues are actions of a public authority and so must be compatible with Convention rights.
- 2.1.2** Members of the Committee need to be aware of the rights contained in the Convention when making decisions and in particular:

- **Article 6: *Right to a fair trial***
In the determination of a person's 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: *Right to respect for family and private life***
Everyone has a right to respect for his or her private life, and his or her home and correspondence.

- **Article 1: *of the First Protocol: Protocol of property***
Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his or her possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

- **Article 14: *Prohibition of discrimination***
The enjoyment of the rights and freedoms in the Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

2.1.3 Articles 6 and 14 are absolute but most Convention rights are not and in respect of those Articles there are circumstances when an interference with a person's rights is permitted, although any interference with the rights must be proportionate and go no further than is necessary.

2.2 Quasi-Judicial Hearings

2.2.1 A quasi-judicial hearing is one:

- which affects a person's livelihood;
- which involves disciplinary action; or
- which affects property

2.2.2 These hearings are subject to the rules of natural justice. Properly applied, the rules of natural justice will ensure that the requirements of the

Convention that a hearing is both “fair” and presided over by an “independent and impartial tribunal” are met.

- 2.2.3** There are two principles underlying the rules of natural justice. First, all parties must be given a chance to put their case under conditions which do not put one party at a substantial disadvantage to the other party. All parties should be given sufficient notice of the hearing, the applicant should have disclosure of the nature of the objections as well as knowing who is objecting and there should be a right to question witnesses.
- 2.2.4** Second, a person who has an interest in an application must be disqualified from considering it. The Licensing Committee must be impartial – not only must there be no actual bias but there must be no perception of bias.
- 2.2.5** The procedure rules which govern hearings of the Licensing Committee reflect the requirements of the Human Rights Act and the rules of natural justice. To avoid any allegations of bias or perceived bias, Councillors sitting on the Licensing Committee must strictly observe those procedure rules.

3. BEFORE THE HEARING

3.1 Training of Councillors

- 3.1.1** Because the technical and propriety issues associated with licensing are not straightforward, it is the Council’s policy to arrange training on the work of the Licensing Committee for all Councillors who sit on the Committee. Councillors must undertake the training (i) before participating in a meeting of the Committee and (ii) annually while they remain a member of the Committee. For a Member who has previously undertaken the full training and is re-appointed to the Committee for a further year without a break, only a refresher session is required. Other Councillors are free to attend the training in order to gain an understanding of licensing issues.

3.2 Application by a Councillor or Officer

- 3.2.1** The Licensing Committee may need to determine an application submitted by a Councillor or an officer, or by a company or individual with which a Councillor or officer has an interest or relationship. On receipt, the Corporate Director Communities, Localities and Culture will pass a copy of the application to the Monitoring Officer who will satisfy himself/herself that the application can be, and is being, processed and determined without suspicion or impropriety.

3.3 Lobbying

3.3.1 Councillors may be approached or lobbied by an applicant, agent or objector about a particular licensing application. Lobbying is a normal and perfectly proper part of the political process but it does not sit well with the quasi judicial nature of a Licensing Committee when a Councillor must enter the meeting with an open mind and make an impartial determination on the relative merits of all the evidence presented at the hearing. **Being lobbied in advance is incompatible with this high standard.**

3.3.2 If a member is approached s/he should advise the lobbyist to address any comments or concerns to the Corporate Director Communities, Localities and Culture. In no circumstances should a Councillor give an indication of voting intentions or otherwise enter into an unconditional commitment to oppose or support the application. To do so without all relevant information and views would be unfair and prejudicial. A Councillor who feels that s/he has been exposed to undue or persistent lobbying should advise the Monitoring Officer.

3.3.3 When attending a public meeting at which a licensing issue is raised, a member of the Licensing Committee should take great care to maintain an impartial role and not express a conclusive view on any pre-application proposals or submitted application.

3.3.4 Correspondence received by any member of the Council (whether on the Licensing Committee or not), should be passed without delay to the Corporate Director Communities, Localities and Culture so that all relevant views can be made available to those Councillors or officers responsible for determining the application. A reply by a Councillor should, as a rule, simply note the contents of the correspondence and advise that it has been passed to officers.

3.5 Discussions before the Hearing

3.5.1 Pre-application discussions – discussion between a potential applicant and representatives of the Council may be of considerable benefit to both parties. Similarly, a meeting between the Council and potential objectors may also be beneficial. However, it would be easy for such discussions to become or be seen (especially by objectors) to become part of a lobbying process. In the circumstances, pre-application discussions should be avoided by members of the Licensing Committee.

3.5.2 Post-application discussions – a Councillor should not approach an applicant for a licence in an effort to secure changes to the application. Such an approach would inevitably give rise to allegations of partiality or bias.

3.5.3 Generally, any contact with applicants should be conducted with and through officers and should always be reported to the Licensing Committee. Requests to a Councillor for a meeting should be passed to the Corporate Director, Communities, Localities and Culture.

3.6 Use of the Party Whip

3.6.1 The use of a party political whip is inconsistent with the rules of natural justice and should be avoided by Councillors sitting on the Licensing Committee.

4. AT THE HEARING

4.1 Interests

4.1.1 In order to avoid allegations of bias it is important that Councillors are scrupulous in declaring interests at the hearing.

4.1.2 A personal interest in a matter arises if a Councillor anticipates that a decision on it might reasonably be regarded as affecting (to a greater extent than other council tax payers, ratepayers or residents of the Council's area) the well-being or financial position of the Councillor, a relative or a friend or

- the employment or business carried out by those persons, or in which they might be investors (above a certain level)
- any of the bodies with which the Councillor is associated, and which the Councillor will have registered in the register of interests.

4.1.3 When a member considers that s/he has a personal interest, they must declare it at the start of the meeting or as soon as the interest becomes apparent. The full nature of the interest must be declared. The declaration and disclosure of a personal interest does not usually debar a Councillor from participation in the discussion.

4.1.4 A personal interest becomes a prejudicial interest when a member of the public, with knowledge of the relevant facts, would reasonably regard the interest as so significant that it is likely to prejudice the Councillor's judgement of the public interest. Working closely with an applicant or a group of objectors to achieve a certain outcome, lobbying other Councillors on the Committee or generally declaring voting intentions ahead of the meeting would usually indicate that a Councillor on the Committee has a prejudicial interest.

- 4.1.5 A Councillor with a prejudicial interest cannot participate in the discussion on the application and must leave the room when the discussion on the item begins or as soon as the interest becomes apparent. S/he cannot seek to influence the decision.
- 4.1.6 Being a member for the ward in which particular premises are situated is not necessarily declarable and as a general rule members of the Committee may deliberate on matters affecting their wards provided they do so with an open mind. To underline the openness of proceedings, the Licensing Committee agenda papers show which ward each member represents.
- 4.1.7 More information on what constitutes a personal or prejudicial interest as well as the obligation on Councillors to register their interests is contained in the Code of Conduct for Members set out in Part 5.1 of the Constitution. The ultimate responsibility for fulfilling these requirements rests with individual Councillors but the Council's Monitoring Officer or the Service Head, Democratic Services are available to give advice if required.

4.2 Conduct at the Hearing

- 4.2.1 The essence of the rules of natural justice are that Councillors not only act fairly but are also seen to act fairly. Councillors must follow agreed procedures at all times and should only ask questions at the appropriate points in the procedure. At no time should a Councillor express a view which could be seen as pre-judging the outcome. During the course of the hearing Councillors should not discuss (or appear to discuss) aspects of the case with the applicant, an objector, their respective advisers or any member of the public nor should they accept letters or documents from anyone other than the Clerk.
- 4.2.2 Again, to ensure compliance with the rules of natural justice, Councillors on the Committee must ensure that they hear the evidence and arguments for and against the application. If a Member arrives late for a meeting, s/he will not be able to participate in any item or application already under discussion. Similarly, if a Member has to leave the meeting for any length of time, s/he will not be able to participate in the deliberation or vote on the item or application under discussion at the time of their absence. If a Councillor needs to leave the room, s/he should ask the Chair for a short adjournment.

5. COUNCILLORS WHO ARE NOT ON THE COMMITTEE

- 5.1 A Councillor who is not a member of the Committee may speak at the meeting, with the agreement of the Chair, as an advocate for either the applicant or the objectors. A Councillor wishing to speak should submit a written statement within the consultation period. The applicant has the right to see any objections in advance.

S/he also has a right of reply. The Council will only entertain late objections in exceptional circumstances.

- 5.2** Councillors addressing the Committee should disclose any interests they may have, including the fact that they have been in touch with the applicant, the objectors or their respective agents and whether they are speaking on behalf of any of those people at the meeting.
- 5.3** A Councillor who is not on the Committee but who is at one of its meetings should normally sit apart from the Committee to demonstrate that they are not taking part in the discussion, consideration or vote. S/he should not communicate with Councillors on the Committee or pass papers or documents to them before or during the meeting. They may not attend briefings or accompany the Committee if it retires to deliberate in private.
- 5.4** A Councillor who has submitted an application or who otherwise has an interest in the application, should not attend the meeting at all but should arrange to be represented by others.
- 5.5** Councillors who are opposed in principle to any category of application or form of public entertainment, either in their own ward or borough-wide, should not seek nomination to the Committee.

6. RECORD KEEPING

- 6.1** In order that licensing procedures are undertaken properly and that any complaints can be fully investigated, record keeping will be complete and accurate. Every licensing application file will contain an accurate account of events throughout its life, particularly the outcomes of meetings, significant telephone conversations and any declarations of interests by Members.
- 6.2** The same principles of good record keeping will be observed in relation to all enforcement and licensing matters. Monitoring of record keeping will be undertaken regularly by the Head of Trading Standards and Environmental Health (Commercial) and the Team Leader (Licensing) in the Communities, Localities & Culture Directorate.

APPENDIX B

5.3 Licensing Code of Conduct

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1. INTRODUCTION

- 1.1** The Licensing Code of Practice has been adopted by Tower Hamlets Council to regulate the performance of its licensing functions that fall within the Terms of Reference for the Licensing Committee. Its major objectives are to guide Councillors and officers of the Council in dealing with licensing related matters and to inform potential licensees and the public generally of the standards adopted by the Council in the exercise of its licensing functions. Except where otherwise stated, references in this Code are to the Licensing Committee and its Sub-Committees and the expression “Licensing Committee” should be interpreted accordingly.

- 1.2** The Licensing Code of Practice is in addition to the Councillors' Code of Conduct adopted under the provisions of the Localism Act 2011. Councillors should follow the requirements of the Councillors' Code and apply this Code in light of the Councillors' Code. Whilst most decisions taken by Councillors are administrative in nature, the work of the Licensing Committee is different in that its proceedings are quasi-judicial and the rules of natural justice apply. This imposes a new and higher set of standards on those Councillors who are involved in the decision-making process.
- 1.3** The provisions of this code are designed to ensure that licensing decisions are taken on proper licensing grounds, in a fair consistent and open manner and that Councillors making such decisions are, and are perceived as being, accountable for those decisions. The Code is also designed to assist Councillors in dealing with and recording approaches from applicants, licensees and objectors and is intended to ensure that the integrity of the decision-making process is preserved.
- 1.4** This Code is part of the Council's ethical framework and should be read in conjunction with the Councillors' Code of Conduct and the Member/Officer Protocol. If a Member does not abide by the Code then the Member may put the Council at risk of proceedings on the legality or maladministration of the related decision and the Member may be at risk of either being named in a report to the Standards Committee or Council. A failure to abide by the Code is also likely to be a breach of the Councillors' Code of Conduct and which could result in a complaint being made to the Monitoring Officer

3. HUMAN RIGHTS ACT

- 3.1** The Human Rights Act 1998, which came into full effect on 2nd October 2000, incorporated the key articles of the European Convention on Human Rights into domestic law. The Convention guarantees certain basic human rights. As far as possible legislation (including the licensing laws) must be interpreted in such a way as to conform to Convention rights. Decisions on licensing issues are actions of a public authority and so must be compatible with Convention rights.
- 3.2** Councillors of the Committee need to be aware of the rights contained in the Convention when making decisions and in particular:

Article 6: Right to a fair trial

In the determination of a person's 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: Right to respect for family and private life

1. Everyone has a right to respect for his or her private life, and his or her home and correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

Article 1: of the First Protocol: Protocol of property

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his or her possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

Article 14: Prohibition of discrimination

The enjoyment of the rights and freedoms in the Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

- 2.3** Article 6 is an 'absolute' right and cannot be interfered with. This means that these rights can never be detracted from because it is considered to be fundamental to the rights of man. The Licensing Committee's decisions on most licensing functions are subject to independent tribunals, usually the Magistrates' or Crown Courts, so satisfying the provisions of Article 6. The Licensing Committee must however conduct a fair hearing in accordance with the rules of natural justice.
- 2.4** Article 8 and Article 1 of the First Protocol are both qualified rights and the Council can interfere with these provided that such interference had a clear legal basis. In therefore deciding whether to interfere with this right, Councillors should consider the matter within the framework of a 'fair balance' test. This requires that a balance be struck between the protection of the right of property and the general interests of the community. An interference with a person's rights must be proportionate and go no further than is necessary.

- 2.5** As to Article 1 of the First Protocol, an existing licence is a possession under this Article and therefore if a person does not currently hold a licence then it will not apply. Article 1 of the First Protocol also has relevance in respect of any third parties objecting to a licensing application, because of their right to the enjoyment of their property.
- 2.6** As to Article 14, whilst this is also an ‘absolute’ right it does not create an independent right as it only operates to prevent discrimination in the exercise of other convention rights. If there is discrimination however in respect of a particular protected right then there is no need to show a violation of the article giving such right for there to be a breach of Article 14. All it is necessary to show is that there has been discrimination. Accordingly, in exercising its Licensing Functions, the Council must not treat persons differently where such persons are placed in an analogous situation.

3. QUASI-JUDICIAL HEARINGS

3.1 A quasi-judicial hearing is one:

- which affects a person’s livelihood;
- which involves disciplinary action; or
- which affects property

3.2 These hearings are subject to the rules of natural justice. Properly applied, the rules of natural justice will ensure that the requirements of the Convention that a hearing is both “fair” and presided over by an “independent and impartial tribunal” are met.

3.3 There are two principles underlying the rules of natural justice. First, all parties must be given a chance to put their case under conditions which do not put one party at a substantial disadvantage to the other party. All parties should be given sufficient notice of the hearing and the applicant should have disclosure of the nature of the objections/ representations as well as knowing who is objecting/ making a representation so that they can prepare a response to the points raised in such objections/ representations.

3.4 The rules of natural justice could also include asking questions of other parties. In respect of ‘Alcohol and Entertainment Licensing’ however, the Licensing Act 2003 (Hearings) Regulations 2005 (‘the 2005 Regulations’) provide that the hearing should take the form of a discussion led by the authority and cross-examination should not be permitted unless the Licensing Committee considers that cross-examination is required for it to consider the representations, application or notice as the case may require.

3.5 As to sufficient notice of the hearing, in respect of ‘Alcohol and Entertainment Licensing’, the 2005 Regulations also address this point as they specify the **period of time within**

which a hearing must be commenced; the minimum time before the hearing that notice should be given; persons to whom notice of hearing is to be given; and the documents to accompany notice of hearing. The 2005 Regulations do provide that a failure to comply with the Regulations does not of itself render the proceedings void but where there is such an irregularity, the authority shall, if it considers that any person may have been prejudiced as a result of the irregularity, take such steps as it thinks fit to cure the irregularity before reaching its determination.

- 3.6** The Licensing Committee should always satisfy itself that sufficient notice of the hearing has been given to all parties and if not satisfied, then the Licensing Committee should take such steps as it thinks fit to deal with that issue before reaching its determination and this could include adjourning that application to a later date.
- 3.7** Second, a person who has an interest in an application must be disqualified from considering it. The Licensing Committee must be impartial – not only must there be no actual bias but there must be no perception of bias.
- 3.8** The procedure rules which govern hearings of the Licensing Committee reflect the requirements of the Human Rights Act and the rules of natural justice. To avoid any allegations of bias or perceived bias, Councillors sitting on the Licensing Committee must strictly observe those procedure rules.
- 3.9** The use of a party political whip is inconsistent with the rules of natural justice and must be avoided by Councillors sitting on the Licensing Committee.

4. PREDISPOSITION, PREDETERMINATION OR BIAS

- 4.1** Section 25 of the Localism Act 2011 ('the 2011 Act') provides that a Councillor should not be regarded as having a closed mind simply because they previously did or said something that, directly or indirectly, indicated what view they might take in relation to any particular matter. This reflects the common law position that a Member may be predisposed on a matter before it comes to Committee, provided they remain open to listening to all the arguments and changing their mind in light of all the information presented at the meeting. Nevertheless, a Councillor in this position will always be judged against an objective test of whether the reasonable onlooker, with knowledge of the relevant facts, would consider that the Councillor was biased.
- 4.2** Section 25 of the 2011 Act does not amount to the abolition of the concept of predetermination however. No one should decide a case where they are not impartial or seen to be impartial. Critically, Councillors need to avoid any appearance of bias or of having predetermined their views before taking a decision. Indeed, Councillors should not take a decision on a matter when they are actually biased in favour or against the application, or when it might appear to a fair and informed observer that there was a real

possibility of bias, or where a Member has predetermined the matter by closing their minds to the merits of the decision before they come to it.

- 4.3** A Member of the Licensing Committee must not make up their mind on how they will vote on any licensing matter prior to formal consideration of the matter at the meeting of the Licensing Committee and the Member hearing the evidence and arguments on both sides. A Member should not make comments on Licensing policy or procedures, or make any commitment in advance as to how they intend to vote on a matter, which might indicate that they have closed their mind. Any licensing decision made by a Member who can be shown to have approached the decision with a closed mind will expose the council to the risk of legal challenge.
- 4.4** Clearly expressing an intention to vote in a particular way before a meeting (predetermination) is different from where a Councillor makes it clear they are willing to listen to all the considerations presented at the committee before deciding on how to vote (predisposition).
- 4.5** If a Councillor considers that s/he does have a bias or cannot be impartial then they should withdraw from being a Member of the Licensing Committee for that application.

5. INTERESTS

- 5.1** In order to avoid allegations of bias it is important that Councillors are scrupulous in declaring interests at the hearing.
- 5.2** There are three (3) categories of interests, namely:
- Disclosable pecuniary interests (DPIs);
 - Other registerable interests; and
 - Non registerable interests
- 5.3** Chapter 7 of the 2011 Act places requirements on councillors regarding the registration and disclosure of their pecuniary interests ('DPI') and the consequences for a councillor taking part in consideration of an issue in the light of those interests. The definitions of DPI taken from the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 are set out in paragraph 5.1 of the Councillors' Code of Conduct. A councillor must provide the monitoring officer with written details of relevant interests within 28 days of their election or appointment to office. These interests can be either an interest of the Member or an interest (of which the Member is aware) of a spouse, civil partner or a person that the Member is living with as a spouse or civil partner.
- 5.4** Any changes to those interests must similarly be notified within 28 days of the Councillor becoming aware of such changes. A failure to register or declare a DPI or the provision of

false or misleading information on registration, or participation in discussion or voting in a meeting on a matter in which a Councillor has a DPI, are criminal offences.

- 5.5** A DPI relating to an item under discussion requires the withdrawal of the Councillor from the Licensing Committee. In certain circumstances, a dispensation can be sought from the Monitoring Officer to take part in that particular item of business and which could arise where the Councillor is the applicant or has made a representation for or against the application.
- 5.6** Having regard to the rules of natural justice and the requirement that a Councillor who has an interest in an application must be disqualified from considering it, then consideration need also be given to other non-DPI personal interests that are either registrable as required by Paragraph 4.1(a) of the Councillors' Code of Conduct or are personal interests that do not require registration.
- 5.7** A personal interest in a matter arises if a Councillor anticipates that a decision on it might reasonably be regarded as affecting (to a greater extent than other council tax payers, ratepayers or residents of the Council's area) the well-being or financial position of the Councillor, a relative or a friend or
- the employment or business carried out by those persons, or in which they might be investors (above a certain level)
 - any of the bodies with which the Councillor is associated, and which the Councillor will have registered in the register of interests.
- 5.8** If a Councillor has a personal interest in any licensing application or other matter before the Licensing Committee then the Member shall, if present, disclose the existence and nature of the interest before the matter is discussed or as soon as it becomes apparent. The full nature of the interest must be declared. If, in accordance with paragraph 9 of the Councillors' Code of Conduct, the interest is 'sensitive', the Member must disclose to the meeting that he/she has an interest that is sensitive but need not disclose the nature of the interest or any other sensitive information. The declaration and disclosure of a personal interest does not usually debar a Councillor from participation in the discussion or voting.
- 5.9** The position is different however where a member of the public, with knowledge of the relevant facts, would reasonably regard the personal interest as so significant that there is a real possibility of bias or predetermination and which is likely to prejudice the Councillor's judgement of the public interest. Examples of this are working closely with an applicant or a group of objectors to achieve a certain outcome; lobbying other Councillors on the Committee; or generally declaring voting intentions ahead of the meeting etc.
- 5.10** A Councillor with a personal interest which might appear to a fair and informed observer that there was a real possibility of bias cannot participate in the discussion on the application and must leave the room when the discussion on the item begins or as soon as

the interest becomes apparent. S/he cannot seek to influence the decision, save that if a member of the public has the right to attend the meeting, make representations, answer questions, or give evidence, then a Member will have the same right. Once the Member has exercised that right then the Member must withdraw from the room for the rest of that item and play no further part in the discussion or vote.

- 5.11** Being a Member for the ward in which particular premises are situated is not necessarily declarable and as a general rule Councillors of the Committee may deliberate on matters affecting their wards provided they do so with an open mind. Members should remember, however, that their overriding duty is to the licensing objectives and not to the residents and businesses within their ward. Members have a duty to make decisions impartially, and should not improperly favour, or appear to improperly favour, any person, company, group or locality. If a Member feels that they cannot do this then the Member must leave the room when the discussion on the item begins or as soon as the interest becomes apparent.
- 5.12** More information on what constitutes an interest as well as the obligation on Councillors to register their interests is contained in Sections 4 and 5 of the Code of Conduct for Members set out in Part 5.1 of the Constitution. The ultimate responsibility for fulfilling these requirements rests with individual Councillors but the Council's Monitoring Officer or the Service Head Legal Services are available to give advice if required.

6. TRAINING OF COUNCILLORS

- 6.1** Because the technical and propriety issues associated with licensing are not straightforward, Councillors on the Licensing Committee must participate in a programme of training on the licensing system and related matters agreed by and organised by officers. The programme will consist of compulsory and discretionary elements. The aim of the training is to assist Members in carrying out their role properly and effectively. If a Member of the Licensing Committee fails to participate in compulsory elements of the training this may result in that Member being asked to stand down as a Member of Licensing Committee.
- 6.2** Councillors should be aware that training is particularly important for Councillors who are new to the Licensing Committee and for Councillors who have not attended training in the recent past. Other Councillors are free to attend the training in order to gain an understanding of licensing issues.
- 6.3** Where a Member has a genuine difficulty in attending any particular training session officers will try when practicable to accommodate a request for an individual or repeat session.

7. APPLICATION BY A MEMBER OR OFFICER

7.1 The Licensing Committee may need to determine an application submitted by a Councillor or an officer, or by a company or individual with which a Councillor or officer has an interest or relationship. On receipt of such an application, the Corporate Director Communities, Localities and Culture will pass a copy of the application to the Monitoring Officer who will satisfy himself/ herself that the application can be, and is being, processed and determined without suspicion or impropriety.

8. LOBBYING

8.1 Councillors may be approached or lobbied by an applicant, agent or objector about a particular licensing application. Lobbying is a normal and perfectly proper part of the political process but it does not sit well with the quasi-judicial nature of a Licensing Committee when a Member must enter the meeting with an open mind and make an impartial determination on the relative merits of all the evidence presented at the hearing. **Being lobbied in advance is incompatible with this high standard.**

8.2 Therefore if a Member is approached then s/he should:

- (a) inform such applicant or agent or interested party that such approach should only be made to officers or to elected Councillors who are not Councillors of the Licensing Committee;
- (b) forthwith notify in writing to the Monitoring Officer the fact that such an approach has been made, identifying the application, the nature of the approach, by whom it was made, and the action taken by the Member concerned; and
- (c) keep an adequate written record so as to enable the Member to disclose the fact and nature of such an approach at any relevant meeting of the Licensing Committee.

8.3 In no circumstances should a Member give an indication of voting intentions or otherwise enter into an unconditional commitment to oppose or support the application. To do so without all relevant information and views would be unfair and detrimental.

8.4 If an elected Member who is not a Member of the Licensing Committee is contacted by an applicant, objector or interested party then that Member can discuss the issues raised by their constituent with the appropriate licensing officer and may forward any representations or evidence to that officer, who will, provided it is lawful, include the relevant information in the report to the Licensing Committee. If an elected Member wishes to make their own representations about a matter they should likewise make those representations to the appropriate Licensing officer.

- 8.5** When attending a public meeting at which a licensing issue is raised, a Member of the Licensing Committee should take great care to maintain an impartial role and not express a conclusive view on any pre-application proposals or submitted application.
- 8.6** Correspondence received by any Member of the Council (whether on the Licensing Committee or not), should be passed without delay to the Corporate Director Communities, Localities and Culture so that all relevant views can be made available to those Councillors or officers responsible for determining the application. A reply by a Councillor should, as a rule, simply note the contents of the correspondence and advise that it has been passed to officers.
- 8.7** Members should not accept gifts or hospitality from any person involved in or affected by a licensing application. If a degree of hospitality is entirely unavoidable, then the Member must comply with the provisions in the Members Code of Conduct on Gifts and Hospitality

9 PRE HEARING DISCUSSIONS

- 9.1** Discussions between a potential applicant and representatives of the Council may be of considerable benefit to both parties. Similarly, a meeting between the Council and potential objectors may also be beneficial. However, it would be easy for such discussions to become or be seen (especially by objectors) to become part of a lobbying process. In the circumstances, pre-application discussions should be avoided by Councillors of the Licensing Committee.
- 9.2** Generally, any contact with applicants and/ or objectors should only be conducted with and through officers and should always be reported to the Licensing Committee. Requests to a Councillor for a meeting should be passed to the Corporate Director, Communities, Localities and Culture.

10. SITE VISITS

- 10.1** If a site visit takes place, its purpose is to gain information relating to the premises which are the subject of the licensing application or revocation to be considered by the Licensing Committee. A site visit may also assist Members in matters relating to the context of the application or revocation, the characteristics of the premises and the surrounding area. Members should avoid expressing opinions during site visits to any person present, including other Members. Members can, of course, rely upon their own local knowledge.
- 10.2** During site visits, Members of the Licensing Committee shall not engage individually in discussion with applicants or objectors.
- 10.3** On site visits applicants, agents, objectors or other interested parties shall only be permitted to point out to Members features to look at either on the premises or in the vicinity, which are relevant to the application. No discussion will take place on the merits of the application or revocation.
- 10.4** A Member of a Licensing Committee may request a site visit, prior to the meeting of the Committee, in which case their name shall be recorded. They shall provide and a record be kept of:
- (i) their reason for the request; and
 - (ii) whether or not they have been approached concerning the application and if so, by whom

and unless the Member provides these at least one week prior to the relevant meeting, the site visit will not proceed.

- 10.5** If any Member of the Licensing Committee wishes to informally view an application's site then that viewing must only take place if it can be done from a public place. Members of the Licensing Committee shall not enter any premises which are the subject of a licensing application or known by them to be likely to become such in order to meet the agent, applicant, licensee or other interested party, save in the course of a formal accompanied site visit. In exceptional circumstances such as where a Member is unable to attend the official site visit that has been arranged, a site visit by an individual Member may be carried out provided that the Member is accompanied by a licensing officer.

11. RELATIONSHIP BETWEEN MEMBERS AND OFFICERS

- 11.1** Members of the Licensing Committee shall not attempt in any way to influence the terms of the officers' report upon any application.
- 11.2** Any criticism by Members of the Licensing Committee or an officer in relation to the handing of any licence application should be made in writing to the Corporate Director, Localities Community and Culture and/ or the Monitoring Officer and not to the Officer handling the application.
- 11.3** If any officer feels or suspects that pressure is being exerted upon him/ her by any Member of the Council in relation to any particular application, s/he shall forthwith notify the matter in writing to the Monitoring Officer.
- 11.4** If any officer of the Council who is involved in dealing with any licensing application has had any involvement with an applicant, agent or interested party, whether or not in connection with the particular application being determined, which could possibly lead an observer with knowledge of all the relevant facts to suppose that there might be any possibility that the involvement could affect the officer's judgement in any way, then that officer shall declare this interest in the public register held by the Monitoring Officer and take no part. This public register is to be available for inspection at the Licensing Committee meeting.
- 11.5** No officer of the Council shall engage in any paid work for any licensing matter for which Tower Hamlets is the Licensing Authority other than on behalf of the Council.

12. CONDUCT AT THE HEARING

- 12.1** The essence of the rules of natural justice is that Councillors not only act fairly but are also seen to act fairly. Councillors must follow agreed procedures at all times and should only ask questions at the appropriate points in the procedure. At no time should a Councillor express a view which could be seen as pre-judging the outcome. During the course of the hearing Councillors should not discuss (or appear to discuss) aspects of the case with the applicant, an objector, their respective advisers or any member of the public nor should they accept letters or documents from anyone other than an officer from Democratic Services or the Legal Advisor to the Committee.
- 12.2** Members of the Licensing Committee shall refrain from personal abuse and party-political considerations shall play no part in the committee's deliberations. Members shall be respectful to the Chair and to each other and to officers and Members of the public including applicants, their agents and objectors and shall not bully any person.
- 12.3** When questioning witnesses at a meeting of a Licensing Committee, Members shall ensure that their questions relate only to licensing considerations relevant to the particular application.

- 12.4** The Licensing Committee must ensure that they hear the evidence and arguments for and against the application, in accordance with the rules of natural justice. The Committee must ensure that both the applicant and the objectors receive a fair hearing. Applicants must have the opportunity in advance of the hearing to prepare their case in answer to the objectors/ interested parties/ responsible authorities.
- 12.5** If a Member of the Licensing Committee arrives late for a meeting, s/he will not be able to participate in any item or application already under discussion. Similarly, if a Member has to leave the meeting for any length of time, s/he will not be able to participate in the deliberation or vote on the item or application under discussion at the time of their absence. If a Councillor needs to leave the room, s/he should ask the Chair for a short adjournment
- 12.6** It is permissible for the Chair of the meeting to curtail statements of parties or witnesses, if they are merely repeating matters which have already been given in evidence.
- 12.6** In considering objections/ representations Members are advised that if such are founded on a demonstrable misunderstanding of the true factual position, or otherwise indicate no more than an uninformed “gut reaction” to a proposal then they carry no weight whatever and must be ignored. Further Members are advised that the mere number of objections irrespective of their content can never be a good reason for refusing an application. What matters are the grounds on which such are based.
- 12.7** Also in considering the application, it may well be that hearsay evidence is presented. Members are advised that the strict rules of evidence do not apply in licensing applications and therefore hearsay is admissible. Indeed, hearsay might by its source, nature and inherent probability carry a greater degree of credibility than first hand evidence. What must be discounted, however, are gossip, speculation and unsubstantiated innuendo. In considering hearsay evidence, it should only be accepted where it can fairly be regarded as reliable although Members must give the other side a fair opportunity of commenting on it and contradicting it. Ultimately, hearsay evidence must be treated with great reservation by Members, who must make an assessment of its weight and credibility.
- 12.8** When new matters are raised as objections by any person at a hearing, the Committee is not obliged to hear them. However, if Members feel that the new matter raised by the objector should be considered, but the applicant needs further time to consider his/her response then the applicant should be offered an adjournment of the meeting (either for a short period during the meeting itself or if necessary to a new date). (This paragraph does not apply to ‘Alcohol and Entertainment Licensing’ under the Licensing Act 2003 or ‘Gambling Licensing’ under the Gambling Act 2005, as new objections cannot be raised at the hearing).

13. COUNCILLORS WHO ARE NOT ON THE COMMITTEE

- 13.1** A Councillor who is not a Member of the Committee may speak at the meeting, with the agreement of the Chair, as an advocate for either the applicant or the objectors. A Councillor wishing to speak should submit a written statement within the relevant consultation period. The applicant has the right to see any objections in advance. S/he also has a right of reply.
- 13.2** Councillors addressing the Committee should disclose any interests they may have, including the fact that they have been in touch with the applicant, the objectors or their respective agents and whether they are speaking on behalf of any of those people at the meeting.
- 13.3** A Councillor who is not on the Committee but who is at one of its meetings should normally sit apart from the Committee to demonstrate that they are not taking part in the discussion, consideration or vote. S/he should not communicate with Councillors on the Committee or pass papers or documents to them before or during the meeting. They may not attend briefings or accompany the Committee if it retires to deliberate in private..
- 13.4** Councillors who are opposed in principle to any category of application or form of public entertainment, either in their own ward or borough-wide, should not seek nomination to the Committee.

14. MAKING THE DECISION

- 14.1** The decision whether or not to grant a licensing application is a decision for the Members of the Licensing Committee only. The assessment of the weight and credibility of evidence is also for Committee Members alone to decide.
- 14.2** Members shall retire to decide the matter in closed session. The Legal Officer and Democratic Services Officer present at the meeting will retire with them. During such closed session, the Legal Officer will only provide advice on legal issues relating to the application and will assist in the drafting of any proposed conditions to ensure that they are legally enforceable.
- 14.3** In accordance with regulations, Members considering applications relating to 'Alcohol and Entertainment Licensing' under the Licensing Act 2003 or 'Gambling Licensing' under the Gambling Act 2005 should disregard any information provided by any party which is not relevant to;
- a) their application, representations or notice (as applicable); and
 - b) the promotion of the licensing objectives or the crime prevention objective where notice has been given by the Police

- 14.4** The Licensing Committee will normally return to open session to announce its decision and give reasons for the same but in cases where the prescribed time limit allows for a later determination and it is appropriate to determine the matter within that time then the Chair will advise the parties present that the decision will not be announced then but that the determination will take place within the prescribed time limit and that written notification will be dispatched to all parties advising them of the determination.
- 14.5** Written notice of the decision together with Members' reasons will always be given and such notice will set out any rights of appeal against the decision.
- 14.6** Members own knowledge of the circumstances surrounding an application is valid provided that they are put to the applicant for a response. In reaching their decision Members must have regard to the evidence presented at the hearing, both the documents circulated in advance and the oral evidence. The decision must be based on the evidence alone and Members have a duty to ensure that they have regard to all the relevant matters before them and only those matters.
- 14.7** Members considering an application have a duty to determine it only on the facts before them relating to that individual case and not decide it as a matter of general policy. Members must not make unreasonable decisions that no other reasonable licensing authority would arrive at, having regard to the legal principle of "Wednesbury reasonableness".
- 14.8** In considering applications, Members must also have due regard to any Council Policy (e.g. the Council's Statement of Licensing Policy) and any statutory guidance (e.g. Licensing Guidance issued under section 182 of the Licensing Act 2003). Any departure from such should be justified and based on the facts before them.
- 14.8** Members should be aware that an unreasonable decision taking into account the above criteria is unlikely to be sustained on appeal. In this instance, the authority foregoes the opportunity to attach terms and conditions to a licence and will likely have to pay costs. The role of officers is to point this out and advise Members as to the potential risk of losing an appeal and being required to pay the other parties costs as a consequence. This needs to be balanced with the Council's fiduciary duty towards the local taxpayer in terms of the Council being a public body spending public money.

15. APPEALS

- 15.1** The Licensing Committee's decision is not a final one and applicants (and in certain cases interested parties and responsible authorities) have the right to appeal to the Magistrates Court and beyond in certain cases.
- 15.2** An appeal must be lodged within a prescribed time of receiving written notification of the decision.

- 15.3** On such appeals the hearing takes on an increasingly formalised nature, based solely on the evidence given. The Council will only be able to sustain its defence if it can substantiate its grant or refusal of a licence by relevant admissible evidence. Members who consider basing the grant or refusal of a licence on their personal knowledge should be prepared to testify to the relevant facts in any appeal proceedings.
- 15.4** Taking this factor into account along with the real risk of costs against the Council, Members must be wary of relying on any matters which could not readily be proved in evidence. Essentially, for Committee decisions to “stand up” on appeal and to avoid costs being awarded against the Authority, decisions to grant or refuse licences or impose conditions must be justified.

16. RECORD KEEPING

- 16.1** In order that licensing procedures are undertaken properly and that any complaints can be fully investigated, record keeping will be complete and accurate. Every licensing application file will contain an accurate account of events throughout its life, particularly the outcomes of meetings, significant telephone conversations and any declarations of interests by Councillors. Records will be kept in accordance with the Council’s Information Governance Framework and, specifically, the Council’s Records Management Policy.

17. PROCEDURE NOTES

- 17.1** Appendix A to this Code of Conduct sets out the Rules of Procedure Governing Applications for Premises Licences and other permissions under the Licensing Act 2003.
- 17.2** Appendix B to this Code of Conduct sets out the Rules of Procedure Governing Applications for Sex Establishment Licences under Section 2 of and Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 (as amended)

TOWER HAMLETS



LICENSING COMMITTEE

**RULES OF PROCEDURE
GOVERNING APPLICATIONS FOR
PREMISES LICENCES
AND OTHER PERMISSIONS
UNDER THE LICENSING ACT 2003**

1. Interpretation

- 1.1 These Procedures describe the way in which hearings will be conducted under the Licensing Act 2003, as set out in the Licensing Act 2003 (Hearings) Regulations 2005 (as amended) ('the Hearings Regulations'). The Procedures take into account the Licensing Act (Premises Licences and Club Premises Certificates) Regulations 2005.
- 1.2 Except where otherwise stated, references in this Code are to the Licensing Committee and its Sub-Committees and the expression 'Licensing Committee' should be interpreted accordingly.
- 1.3 The Hearings Regulations provide (Regulation 21) that a Licensing Authority shall, subject to the provisions of those Regulations, determine for itself the procedure to be followed at a hearing.
- 1.4 These Procedures, therefore, set out the way in which Licensing Committee Meetings will be conducted under the Licensing Act 2003, following the requirements of the Hearings Regulations.
- 1.5 Proceedings will not be rendered void only as the result of failure to comply with any provision of the Hearings Regulations (Regulation 31) save that in any case of such an irregularity, the Licensing Committee shall, if it considers that any person may have been prejudiced as a result of the irregularity, take such steps as it thinks fit to cure the irregularity before reaching its determination (Regulation 32).

2. Composition of Sub-Committee

- 2.1 The Sub-Committee will consist of three (3) Members and no business shall be transacted unless three (3) Members of the Licensing Committee are present and able to form a properly constituted Licensing Sub-Committee. In such cases the Chair shall have a second or casting vote.

3. Procedure

- 3.1 The hearing shall take place in public save that the Licensing Committee may exclude the public from all or part of a hearing where it considers that, on balance, it is in the public interest to do so. The parties and any person representing them may be excluded in the same way as another member of the public. Any person so excluded may, before the end of the hearing, submit to the Licensing Committee in writing, any information which, they would have been entitled to give orally had they not been required to leave. Where there are a number of items on the agenda, the adjournment of that item for a short period, whilst another item is heard, may allow this process to be carried out effectively.
- 3.2 The Chair will begin by asking the parties to identify themselves and confirm whether or not they are represented.
- 3.3 The Licensing Committee should always satisfy itself that sufficient notice of the hearing has been given to all parties and if not satisfied, then the Licensing Committee should take such

steps as it thinks fit to deal with that issue before reaching its determination and this could include adjourning that application to a later date.

- 3.4 The Licensing Committee will then consider any requests by a party for any other person to be heard at the hearing in accordance with the Regulations. Permission will not be unreasonably withheld provided proper notice has been given.
- 3.5 The Chair will then explain how the proceedings will be conducted, and indicate any time limits that may apply to the parties to the application. In setting time limits, the Licensing Committee will take into account the importance of ensuring that all parties receive a fair hearing, and the importance of ensuring that all applications are determined expeditiously and without undue delay. Further the Licensing Committee must have regard to the requirement to allow each party an equal amount of time.
- 3.6 If a party considers that any time limit is not sufficient then they should address the Licensing Committee and which will determine accordingly.
- 3.7 If any party has informed the Authority that they will not be attending or be represented at the hearing or any party does not give notice that they will not be attending but fails to attend and is not represented, the Licensing Committee may proceed in their absence or adjourn the hearing if it considers it to be necessary in the public interest. An adjournment will not be considered where due to the operation of the Hearing Regulations it would not be possible to adjourn.
- 3.8 If the Licensing Committee adjourns the hearing to a specified date it must specify the date, time and place to which the hearing has been adjourned and why it is considered necessary in the public interest.
- 3.9 If the Licensing Committee holds the hearing in the absence of a party, it will consider at the hearing the application, representation or notice given by that party.
- 3.10 The Chair will invite an Officer of the Licensing Section to present the report by briefly summarising the application and the number and type of the representations as set out in the papers circulated. The Officer will also advise of any discussions held with the parties; any amendments made to the application; any representations withdrawn; and any agreed conditions that the Licensing Committee is being asked to consider. The Officer shall not give any opinion on the application or ask the Committee to make an inference based on such an opinion.
- 3.11 Members of the Licensing Committee can then ask questions of clarification of the Licensing Officer or seek legal advice from the Legal Adviser to the Licensing Committee if they require in respect of matters raised during the presentation by the Licensing Officer.
- 3.12 The Legal Adviser to the Licensing Committee will then give any relevant legal advice that the Licensing Committee need to take into consideration.
- 3.13 The Chair will then ask the applicant or their representative, if present, to present a summary of the nature and extent of the application. This should be brief, avoid repetition of material already available to the Licensing Committee in the Officer's report or otherwise,

and include any reasons why an exception should be made to the Council's Licensing Policy, where appropriate, and respond to the written representations received. The submission may be followed by the evidence of any person who has been given permission by the Committee to give supporting evidence on behalf of the applicant or who has made a representation in favour of the application.

- 3.14 The application is to be presented within the time limit that has been set.
- 3.15 Where an applicant is unrepresented and having difficulty in presenting their application then the Legal Adviser to the Licensing Committee may ask questions of the applicant so that the relevant points are addressed and clarified for the Licensing Committee.
- 3.16 Members of the Licensing Committee may ask questions of the person presenting the case after their address as well as any other person who has spoken in support of the application. Members can also ask questions of the applicant as well as any other person present for the applicant who they consider can assist.
- 3.17 The Legal Adviser to the Licensing Committee may ask questions for the purpose of clarifying points for the Licensing Committee.
- 3.18 The Chair will then ask the persons who have made representations against the application to address the Licensing Committee within the time limit that has been set. They should not repeat what is already set out in their representations or notice or raise new matters. In their address they should provide clarification on any points previously requested by the Council. The submission may be followed by the evidence of any person who has been given permission by the Committee to give supporting evidence.
- 3.19 Members of the Licensing Committee may then ask questions of the persons making representations against the application and any other person who has spoken in support of such representation. Members can also ask questions of any other person present who they consider can assist.
- 3.20 The Legal Adviser to the Licensing Committee may ask questions for the purpose of clarifying points for the Licensing Committee.
- 3.21 Petitions will be treated as representations provided they meet the requirements for relevant representations set out in the Licensing Act 2003. Members should proceed with caution when relying upon petitions used as evidence due to the structure and wording used.
- 3.22 The Licensing Committee will disregard any information given by a party, or any other person appearing at the hearing, which is not relevant to:
 - a) their application, representation or notice; and
 - b) the promotion of the licensing objectives or the crime prevention objective where notice has been given by the police

- 3.23 The Chair will intervene at any stage of the hearing to prevent repetitious or irrelevant points being raised.
- 3.24 Cross examination of any party or any other person allowed to appear will not be allowed unless specifically permitted by the Chair.
- 3.25 There is no right for any party to sum up but they may be permitted to do at the discretion of the Chair and within time limits prescribed by the Chair.
- 3.26 The Licensing Committee will consider its decision in private save that the Legal Adviser and Democratic Services Officer will remain with them.
- 3.27 The Licensing Committee will normally return to open session to announce its decision but in cases where the prescribed time limit allows for a later determination and it is appropriate to determine the matter within that time then the Chair will advise the parties present that the decision will not be announced then but that the determination will take place within the prescribed time limit and that written notification will be dispatched to all parties advising them of the determination.

4. Exclusions

- 4.1 In addition to any exclusion under paragraph 3.1 above, The Licensing Committee may require any person attending the hearing who in their opinion is behaving in a disruptive manner to leave the hearing and may refuse to permit the person to return; or allow them to return only on such conditions as Licensing Committee may specify.
- 4.2 Any person so excluded may, before the end of the hearing, submit to the Authority in writing, any information which, they would have been entitled to give orally had they not been required to leave.

TOWER HAMLETS



LICENSING COMMITTEE

**RULES OF PROCEDURE
GOVERNING APPLICATIONS FOR
SEX ESTABLISHMENT LICENCES
UNDER SECTION 2 OF AND SCHEDULE 3 TO
THE LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1982**

1. Interpretation

- 1.1 These Procedures describe the way in which hearings will be conducted under section 2 of and schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 as amended.

2. Composition of the Licensing Committee

- 2.1 The Licensing Committee will consist of fifteen (15) Members and no business shall be transacted unless at least three (3) Members of the Licensing Committee are present and able to form a properly constituted Licensing Committee. The Chair shall have a second or casting vote.

3. Procedure


- 3.1 The hearing shall take place in public save that the Licensing Committee may exclude the public from all or part of a hearing where it considers that, on balance, it is in the public interest to do so. The parties and any person representing them may be excluded in the same way as another member of the public. Any person so excluded may, before the end of the hearing, submit to the Licensing Committee in writing, any information which, they would have been entitled to give orally had they not been required to leave. Where there are a number of items on the agenda, the adjournment of that item for a short period, whilst another item is heard, may allow this process to be carried out effectively.
- 3.2 The Chair will begin by asking the parties to identify themselves and confirm whether or not they are represented.
- 3.3 The Licensing Committee should always satisfy itself that sufficient notice of the hearing has been given to all parties and if not satisfied, then the Licensing Committee should take such steps as it thinks fit to deal with that issue before reaching its determination and this could include adjourning that application to a later date.
- 3.4 The Chair will explain how the proceedings will be conducted, and indicate any time limits that will be imposed on the parties. In setting time limits, the Licensing Committee will take into account the importance of ensuring that all parties receive a fair hearing, and the importance of ensuring that all applications are determined expeditiously and without undue delay. Further the Licensing Committee should allow each party an equal amount of time.
- 3.6 If a party considers that any time limit is not sufficient then they should address the Licensing Committee and which will determine accordingly.
- 3.7 If any party has informed the Authority that they will not be attending or be represented at the hearing or any party does not give notice that they will not be attending but fails to attend and is not represented, the Licensing Committee may proceed in their absence or adjourn the hearing.
- 3.8 If the Licensing Committee adjourns the hearing it should specify the date, time and place to which the hearing has been adjourned.

- 3.9 If the Licensing Committee holds the hearing in the absence of a party, it will consider at the hearing the application or objection given by that party.
- 3.10 The Chair will invite an Officer of the Licensing Section to present the report by briefly summarising the application and the number and type of the representations as set out in the papers circulated. The Officer will also advise of any discussions held with the parties; any amendments made to the application; any objections withdrawn; and any agreed conditions that the Licensing Committee is being asked to consider. The Officer shall not give any opinion on the application or ask the Committee to make an inference based on such an opinion.
- 3.11 Members of the Licensing Committee can then ask questions of clarification of the Licensing Officer or seek legal advice from the Legal Adviser to the Licensing Committee if they require in respect of matters raised during the presentation by the Licensing Officer.
- 3.12 The Legal Adviser to the Licensing Committee will then give any relevant legal advice that the Licensing Committee need to take into consideration.
- 3.13 The Chair will then ask the applicant or their representative, if present, to state their case. This should avoid repetition of material already available to the Licensing Committee in the Officer's report or otherwise, and include any reasons why an exception should be made to the Sex Establishment Licensing Policy, where appropriate; address, where appropriate, the matters stated in the Sex Establishment Licensing Policy that the Licensing Committee will take into account when considering applications; and respond to the written objections received. The submission may be followed by the evidence of any person who is giving supporting evidence on behalf of the applicant or who has made a representation in favour of the application.
- 3.14 The application is to be presented within any time limit that has been set.
- 3.15 Where an applicant is unrepresented and having difficulty in presenting their application then the Legal Adviser to the Licensing Committee may ask questions of the applicant so that the relevant points are addressed and clarified for the Licensing Committee.
- 3.16 The objectors (or their representative) will be invited to question the applicant.
- 3.16 Members of the Licensing Committee may ask questions of the applicant and/ or their representative as well as any other person who has spoken in support of the application. Members can also ask questions of any other person present for the applicant who they consider can assist.
- 3.17 The Legal Adviser to the Licensing Committee may ask questions for the purpose of clarifying points for the Licensing Committee.
- 3.18 The Chair will then ask objectors against the application to state their case within any time limit that has been set. The objectors should not repeat what is already set out in their objections. In stating their case, the objectors should provide clarification on any points previously requested by the Council. The submission may be followed by the evidence of any person who is giving supporting evidence.

- 3.19 The applicant (or their representative) will be invited to question the objectors.
- 3.19 Members of the Licensing Committee may then ask questions of the objectors and any other person who has spoken given evidence in support. Members can also ask questions of any other person present who they consider can assist.
- 3.20 The Legal Adviser to the Licensing Committee may ask questions for the purpose of clarifying points for the Licensing Committee.
- 3.21 Petitions will be considered but Members should proceed with caution when relying upon petitions used as evidence due to the structure and wording used.
- 3.22 The Chair will intervene at any stage of the hearing to prevent repetitious or irrelevant points being raised.
- 3.23 The objectors (or their representative) will then be permitted to “Sum Up”.
- 3.24 The applicant (or their representative) will then be permitted to “Sum Up”.
- 3.25 The Licensing Committee will consider its decision in private save that the Legal Adviser and Democratic Services Officer will remain with them.
- 3.26 The Licensing Committee will normally return to open session to announce its decision but where they consider it appropriate for the determination to be given at a later time then the Chair will advise the parties present that the decision will not be announced then but that the determination will take place later and that written notification will be dispatched to all parties advising them of the determination.

4. Exclusions

- 4.1 In addition to any exclusion under paragraph 3.1 above, The Licensing Committee may require any person attending the hearing who in their opinion is behaving in a disruptive manner to leave the hearing and may refuse to permit the person to return; or allow them to return only on such conditions as Licensing Committee may specify.
- 4.2 Any person so excluded may, before the end of the hearing, submit to the Authority in writing, any information which, they would have been entitled to give orally had they not been required to leave.

Non-Executive Report of the: Licensing Committee June 2016	
Report of: Service Head - Legal Services	Classification: [Unrestricted]
Update in relation to Prosecutions and Appeals- Quarter 4 2015/2016	

Originating Officer(s)	Agnes Adrien, Team Leader – Enforcement & Litigation
Wards affected	All wards

Summary

- 1.1 At its meeting on 4th June 2013, the Licensing Committee requested that regular reports should be prepared for the Licensing Committee giving details of licensing enforcement activity and specifically as to outcomes of prosecutions and appeals.
- 1.2 This report provides details of completed licensing related prosecutions and appeals for Quarter 4 2015/2016 (January to March 2016).

Recommendations:

The Licensing Committee is recommended to:

- 1. Consider and comment upon the information provided in the report.

1. REASONS FOR THE DECISIONS

- 1.1 This report is for the information of the Committee and no specific decisions are required.

2. ALTERNATIVE OPTIONS

- 2.1 N/A

3. DETAILS OF REPORT

- 3.1 The London Borough of Tower Hamlets is a Licensing Authority and amongst its functions it is required to ensure compliance with conditions imposed on Premises Licences; take action against unlicensed premises; and act as a respondent on Appeals against decisions of the Licensing Sub-committee in respect of applications that come before it.

3.2 Where the Licensing Authority takes enforcement action to ensure compliance with conditions etc. then it does so in accordance with the Council's Enforcement Policy. The Enforcement Policy provides that the Council's approach to enforcement is founded on firm but fair regulation, around the principles of:

- raising awareness of the law and its requirements
- proportionality in applying the law and securing compliance
- consistency of approach
- transparency about the actions of the Council and its officers
- targeting of enforcement action.

3.3 Further, as a Licensing Authority the Council has a duty under section 4 of the Licensing Act 2003 to carry out its Licensing functions with a view to promoting the Licensing Objectives and in carrying out such functions must also have regard to its own statement of licensing policy and the Licensing Guidance issued pursuant to section 182 of the Licensing Act 2003.

Prosecutions

3.4 In Quarter 4, 2015/2016, no prosecutions were issued.

Appeals

3.4 During quarter 4, 2015/2016, three (3) appeals were concluded.

The outcome of the appeals are set out below:

No	Outcome
1	Appeal against the decision of LBTH licensing sub-committee in respect of a review of the premises licence triggered by the Metropolitan Police – Case involved two linked premises. Premises next to each other – owned by brothers. Consent Order agreed. Matter settled on 14.01.16. Conditions agreed were: SIA Door Staff Fri-Sat 9pm-Close (2) CCTV installed (3) incident log book kept. No order as to costs – each party to bear own costs.
3	The Licensee lodged an appeal to the Magistrates' Court against a decision of the Licencing Committee to refuse a new License for a Sexual Entertainment Venue (SEV). Appeal allowed due to changes that the premises licence holder has made since the decision was made to not renew the SEV licence. No order for costs – each party to bear own costs.
3	Appeal against decision of LBTH Licensing Authority on an application for a review of a premises licence under section 52 of the licensing Act 2003 - Appeal dismissed on 3 rd February 2016 on application by LBTH, as Appellant failed to comply with any of the case management directions. Full costs awarded in the sum of £3,158.50

4. COMMENTS OF THE CHIEF FINANCE OFFICER

- 4.1 This report describes the Council's licensing enforcement activity and the outcomes of prosecutions and appeals for Quarter 4 2015/2016.
- 4.2 There are no financial implications arising from the recommendations in this report.

5. LEGAL COMMENTS

- 5.1 Any legal implications are addressed in the body of the report.

6. ONE TOWER HAMLETS CONSIDERATIONS

- 6.1 Enforcement action that complies with the five principles expressed in the Council's enforcement policy should help to achieve the objectives of equality and personal responsibility inherent in One Tower Hamlets.
- 6.2 The enforcement policy should enhance Council efforts to align its enforcement action with its overall objectives disclosed in the Community Plan and other key documents such as the local area agreement and the Local Development Framework. For example, one of the key Community Plan themes is A Great Place to Live. Within this theme there are objectives such as reducing graffiti and litter. The enforcement policy makes clear the need to target enforcement action towards such perceived problems. At the same time, the enforcement policy should discourage enforcement action that is inconsistent with the Council's objectives.
- 6.3 The exercise of the Council's various enforcement functions consistent with the enforcement policy and its principles should also help achieve the following key Community Plan themes-
- A Safe and Cohesive Community. This means a safer place where feel safer, get on better together and difference is not seen as a threat but a core strength of the borough.
 - A Great Place to Live. This reflects the aspiration that Tower Hamlets will be a place where people live in quality affordable housing, located in clean and safe neighbourhoods served by well-connected and easy to access services and community facilities.
 - A Prosperous Community. This encompasses the objective that Tower Hamlets will be a place where everyone, regardless of their background and circumstances, has the aspiration and opportunity to achieve their full potential.
- 6.4 An equality analysis was conducted prior to approval of the revised enforcement policy by Cabinet on 3 October 2012. A further equality analysis was done on 16th September 2011 in relation to touting prosecutions. It is

recognised that Enforcement action may lead to indirect discrimination in limited circumstances but prior to taking any proceedings, an assessment as to whether the case meets the two stages in the Code for Crown Prosecutors is undertaken so that there is both a realistic prospect of a conviction and that it is in the public interest to prosecute. Further, proceedings are kept under review once initiated.

7. BEST VALUE (BV) IMPLICATIONS

7.1 There are no specific best value implications arising from this noting report

8. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT

8.1 The enforcement policy seeks to target the Council's enforcement action in accordance with the Community Plan. The Community Plan contains the Council's sustainable community strategy for promoting or improving the economic, social and environmental well-being of Tower Hamlets and contributing to the achievement of sustainable development in the United Kingdom. To the extent that the enforcement policy aligns enforcement action with the Community Plan it will tend to promote sustainable action for a greener environment. [

9. RISK MANAGEMENT IMPLICATIONS

9.1 Enforcement action carries with it a variety of inherent risks, including the potential for allegations of over- or under-enforcement, discrimination, adverse costs orders and damage to the Council's reputation. It is considered that proper adherence to the Council's policies, the Licensing Objectives, the Council's Statement of Licensing Policy and the section 182 guidance will ensure that risks are properly managed. .

10. CRIME AND DISORDER REDUCTION IMPLICATIONS

10.1 One (1) of the four (4) Licensing Objectives is Crime and Disorder and enforcement promotes that Licensing Objective. Enforcement will also play its part in helping to drive down crime and which in turn will reduce fear of crime and ASB levels helping to promote a healthier, happier and more cohesive community. This will have efficiency benefits for adult social care and public health costs by keeping people healthier and more active for longer.

Linked Reports, Appendices and Background Documents

Linked Report

- None

Appendices

- None


Local Government Act, 1972 Section 100D (As amended)
List of “Background Papers” used in the preparation of this report

- None

Officer contact details for documents: Agnes Adrien 0207 364 4972

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Agenda Item 4.6

Non-Executive Report of the: Licensing Committee 14 June 2016	 TOWER HAMLETS
Report of: David Tolley – Head of Environmental Health and Trading Standards	Classification: Unrestricted
London Local Authorities Act 1991 - Application to increase licence fee for the London Tattoo Convention 2016	

Originating Officer(s)	Tom Lewis - Team Leader- Licensing and Safety Team
Wards affected	St Katherine's & Wapping

Summary

- 1.1 The Tattoo Convention is a 3 day event which has taken place in Tobacco Dock for the last 8 years. It involves around 300 Tattooists from all over the world providing tattoos to members of the public over the 3 days. A Special Treatment licence is required for each operator. Therefore an increase in the licensing fee is requested so that Officers can carry out the relevant checks, inspections, and if needed, corrective actions for each operator to ensure that the event is safe and the risk associated with blood borne viruses are managed.
- 1.2 The convention will take place on 23rd, 24th and 25th September 2016 and Officers will be liaising with the organiser to assess their plans and risk assessments leading up to the event.

Recommendations:

The Licensing Committee is recommended to:

1. Agree that the application fee for a massage and special treatment licence for the 2016 London Tattoo Convention be set at £2872.

1. REASONS FOR THE DECISIONS

1.1 Reasons for increasing the licence fee:-

- Fees are set on a cost recovery basis. There is a need to review costs to ensure that fees continue to cover the costs of processing the applications including the costs of administration, pre-event checks and verification for each of the estimated 300 Operators. Officers carry out review and audits of the overall Event Management Plan and the individual risk assessments for each Operator and provide advice and guidance to the Event Organiser and Operators.
- The venue capacity for Tobacco Dock is 3000 persons so for the 3 day event there is an increased risk of the spread of infection due to the popularity of the event and volume of visitors undergoing some sort of skin piercing activity. As a result there is a cost adjustment required to cover the increased cost of enforcement of the licence conditions and associated risk management for Event Organiser and Operators throughout the event.
- If the fee increase is not agreed then the Council could seek to Licence each individual tattooist but this would be an inefficient way to proceed.

1.2 Following an approach to hold the London Tattoo Convention at Tobacco Dock from the 23rd September 2016 to 25th September 2016 a decision of the Licensing Committee is required to increase the standard Massage and Special Treatment Licence fee from £322, (1 applicant), to £2872, (around 300 applicants).

2. ALTERNATIVE OPTIONS

2.1 N/A

3. BACKGROUND

3.1 The Policy Strategy Committee on the 13th October 1992 adopted the provisions of the London Local Authorities Act 1991 relating to Special Treatment premises. Section 10(1) allows the Local Authority to make regulations prescribing standard conditions applicable to all classes of its special treatment licences. Appendix 1 sets out the calculation used to determine the fee.

3.2 The Act enables a system of licensing by borough councils to be applied to establishments used for Special Treatments. Such establishments are defined as

premises used, intended to be used or represented as being used, for gain or reward, and for the reception or treatment of persons requiring massage, manicure, acupuncture, tattooing, cosmetic piercing, chiropody, light electric or other Special Treatments of a like kind, or vapour, sauna or other baths, and where the special treatment is not carried out by or under the supervision of a medical practitioner or a bona fide member of a body of health practitioners.

- 3.3 The purpose of the legislation is to allow controls to be applied to such premises through enforceable terms and conditions relating to public order, safety, cleanliness, hygiene and the qualifications of staff. Applications for licences must be made in the manner prescribed by the Council.
- 3.4 No premises shall be used as an establishment for Special Treatment without holding a Special Treatment Licence, and in accordance with any conditions attached to such a Licence. Further an applicant for the grant, renewal or transfer of a license shall pay such a reasonable fee as determined by the Council.

4. **BODY OF REPORT**

- 4.1 A special treatment licence application has been made to hold an international Tattoo Convention in Tobacco Dock.
- 4.2 A Special Treatment Licence will be required to hold the event and which will enable conditions to be placed along with health and safety standards to be imposed.
- 4.3 The Convention will attract around 300 tattooists from various countries, who will be offering tattoos to members of the public, mainly by appointment. The Convention is held over three days and will be opened for about 10 hours a day on the 23rd and 24th and 8.5 hours on the 25th September 2016.
- 4.4 The capacity of the venue is approximately 3000 persons. The event will also have commercial stalls, art shows, entertainment and exhibitions of artwork.
- 4.5 Food outlets will be located in two separate areas within the venue and there will be a food production area in the car park.
- 4.6 This is the twelfth time that the applicant has hosted this event. It is the ninth time the event will be held at Tobacco Dock.
- 4.7 It has been estimated that the Council's time commitment for determining the licence and monitoring the event will be 62.5 hours to include pre planning and post event meetings and advice, administration and vetting the paperwork and hours of attending and monitoring the event. This equates to a total cost of £2872. This is required due to the high-risk nature of the event in controlling

blood borne diseases, the control of clinical waste and the general public safety at the event.

5. COMMENTS OF THE CHIEF FINANCIAL OFFICER

- 5.1 This report seeks approval to recover the administrative and enforcement costs associated with the proposed Tattoo Convention to be held at Tobacco Dock. This will increase the current Tattoo licence fee from £322 to £2,872 for the sole purpose of recovering the Council's costs associated with the convention. As a comparison the Tattoo licence fee in 2015/16 was £319 this was increased to £2,866 to cover the cost of the convention. The total charge will be credited to the Environmental Health Budget to offset the additional costs incurred.

6. LEGAL COMMENTS

- 6.1 This report is seeking to have the Licensing Committee set the application fee for a massage and special treatment licence for the London Tattoo Convention at £2872.
- 6.2 Special treatments licences are granted in accordance with Part II of the London Local Authorities Act 1991 (as amended). Section 7(6) of the Act provides that an applicant for the grant, renewal, or transfer of a licence shall pay such a reasonable fee as determined by the Council.
- 6.3 Pursuant to its terms of reference, a function of the Licensing Committee is "to determine fees and charges for the issue, approval, consent, license, permit or other registration for functions for which the Committee has responsibility and whilst the council has determined standard fees, such standard fee is not reasonable based upon the time commitment required for officers to properly process the application, monitor the event and the event clear up, and provide advice both during and after the event. Based on these reasons, it is considered that the increase of the fee for this application is reasonable in all the circumstances.
- 6.4 Members are also advised that the London Tattoo Convention has become an annual event within Tower Hamlets and an exceptional increase in the fee for its special treatment licence has been approved for previous events. The estimate of the costs incurred for this particular application is considered a realistic estimate based on previous experience.
- 6.5 Before taking the decision to increase the fee, the Council must have due regard to the need to eliminate unlawful conduct under the Equality Act 2010, the need to advance equality of opportunity and the need to foster good relations between persons who share a protected characteristic and those who do not.

7. **ONE TOWER HAMLETS CONSIDERATIONS**

7.1 N/A

8. **SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT**

8.1 N/A

9. **RISK MANAGEMENT IMPLICATIONS**

9.1 The licence fee proposed covers the council's cost of full and proper licence functions in relation to this event. The licensing regime seeks to secure protection for the public. The level of licence fee will enable Environmental Health to scrutinise the event and to control the event through the imposition of licence conditions ensuring that all relevant costs are covered. If the recommendation is not agreed then the Council would be effectively subsidising the event as it would not be recovering its costs in respect of these duties. This might then be considered a grant in which case the matter may then need to be referred to the DCLG Commissioners.

10. **CRIME AND DISORDER REDUCTION IMPLICATIONS**

10.1 The enforcement of licence conditions should contribute to a well-run and orderly event event.

11. **EFFICIENCY STATEMENT**

11.1 By agreeing to a single fee for the event rather than pursuing and licensing each individual tattooist administrative efficiencies can be gained that maximise use of officer time in respect of the oversight of the event.

Brief description of “background papers”

**Name and telephone number of holder
and address where background papers
are open to inspection**

NONE

N/A

12. **APPENDICES**

12.1 Appendix 1 - Calculation to show how costs have been determined.

13. **REFERENCES**

The National Archive on behalf of Her Majesty’s Government,
‘London Local Authorities Act 1991’ accessed on 14/03/2016, Time15:17
at <http://www.legislation.gov.uk/ukla/1991/13/contents/enacted>

Appendix 1

Tattoo Convention 2016 - Massage and Special Treatment Licence Fee

It is estimated that there will be around 300 tattooists operating at the tattoo convention over the 3 days. The cost of administration of the Licensing process is estimated at:

Cost of Training and consistency	£ 293
Management and Policy Development	£ 190
Licensing Committee and Policy	£ 242
IT Support and development	£ 190
Enforcement Officer (s) time	£1914
Administration costs	£ 43
TOTAL	£2872

Process	Officer 1	Officer 2	Administration Officer
Rates	(Officer 1 Hourly rate £31.95)	(Officer 2 Hourly rate £28.22)	(Officer Hourly rate £21.60)
Receipt of application, dealing with the fee			1 hour
Application Review Organisers procedural documentation and food outlets HACCP documentation.	20 hours (Officer 1)		
Pre Event planning Meetings / post event debrief	5 hours (Officer 1)		
Consultation – (Emergency Service)	1 hour (Officer 1)		
	Day 1		

Inspection (over 3 days)	11hrs (Officer 1) Day 2 9.5 hours (Officer 1) Day 3 4hours (Officer 1)	5 hrs (Officer 2)	
Officer Administration	3 hours (Officer 1)		
Issue Licence	1 hour (Officer 1)		
Inform consultees	1hour (Officer 1)		
Administration of licence			1 hour
Total Hours and Cost	(55.5 hours @ £31.95) Total £1773.22	(5 hours @ £28.22) Total £141.10	(2 hours @ £21.60) Total £43.20

Total of Enforcement and Administrative officers costs £1,957.52