


Non-Executive Report of the: Licensing Committee 14 th June 2016	
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.