

Non-Executive Report of the:  <b>Council</b>  5 <sup>th</sup> December 2016	 <b>TOWER HAMLETS</b>
<b>Report of:</b> Graham White, Interim Service Head, Legal Services and Deputy Monitoring Officer	<b>Classification:</b> Unrestricted
<b>Proposed Revised Licensing Code of Conduct</b>	

<b>Originating Officer(s)</b>	Paul Greeno, Senior Corporate and Governance Lawyer
<b>Wards affected</b>	All wards

### Summary

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

### Recommendations:

Council is recommended to:

1. Adopt the revised Licensing Code of Conduct.

## **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 Appendix 1 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, the 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) Members 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 The revised Code has gone to the Licensing Committee who made no observations but the Procedure Rules in Appendix A and Appendix B of the revised Code have been adopted by the Licensing Committee.
- 3.12 The revised Code has gone to the Standards Advisory Committee who made certain suggestions and changes were made as follows:

- In paragraph 2.3 the word “man” has been replaced with the word “people”. This was as a result of an observation that could a more gender neutral term be used.
- In paragraph 5.8 the words “at the start of the meeting and, in any event,” have been added. This was to reinforce that declarations of interests should be made at the start of meetings.
- Also in paragraph 5.8 the words “provided that the personal interest is not 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 (see 5.9 below)” have been added at the end of that paragraph. This was as it was felt that they could be additional clarification.
- In paragraph 9.1 the words “does not sit well with the quasi-judicial nature of a Licensing Committee” have been deleted and the words “can cause the perception of bias or predetermination especially” inserted in their stead. Further the words “Being lobbied in advance is therefore incompatible with this high standard” have been deleted from the end of the paragraph. It was felt that part of a councillors’ role was to receive representations on matters of concern and that this role potentially conflicted with the Code. The following additional changes were also made to paragraph 9 as a result of this change as follows:
  - Paragraph 9.2 the word “Therefore” has been deleted and replaced with the words “To avoid such perception,”.
  - Paragraph 9.2(a) the word “objector” has been inserted and the word “only” deleted.
  - Paragraph 9.3 the word “in” has been deleted and replaced with the words “If the Councillor does discuss the case then in”.
  - Paragraph 9.3 the words “As stated in 9.2(c) above, the Councillor must keep an adequate written record of the discussion so as to enable the Member to disclose the fact and nature of such an approach at any relevant meeting of the Licensing Committee” inserted at the end of the paragraph.
  - Paragraph 9.5 the words “As stated in 9.2(c) above, the Councillor must keep an adequate written record of the discussion so as to enable the Member to disclose the fact and nature of such an approach at any relevant meeting of the Licensing Committee” inserted at the end of the paragraph.

3.13 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 from this report, although the revision to the Code of Conduct should reduce the likelihood of successful appeals against decisions made by the Committee and the associated cost of those appeals.

## **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, Councillors 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 lead 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 reduce assist reduce crime and disorder.

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### **Linked Reports, Appendices and Background Documents**

#### **Linked Report**

- NONE

#### **Appendices**

- Table 1 - Changed sections and reason for change
- Appendix 1 - Current Licensing Code of Conduct
- Appendix 2 – Proposed 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
<b>Licencing Code</b>	1. Introduction 2. Legal Background 3. Before the hearing 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 4.2 Conduct at the Hearing 5. Councillors who are not on the committee 6. Record Keeping	1. Introduction 2. Human rights Act 3. Quasi-Judicial Hearings 6. Training for Councillors 7. Application by Councillor or Officer 9. Lobbying 10. Pre-hearing Discussions 13. Conduct of the Hearing 14. Councillors who are not on the committee 17. Record Keeping	4.1 Interests	4. Predisposition, Predetermination or Bias 5. Interests 8. Application by the Council (or where the Council is the landowner) 11. Site Visits 12. Relationship between members and officers 15. Making the Decision 16. Appeals 18. Procedure Notes

# **APPENDIX 1**

## 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 2**

### 5.3 Licensing Code of Conduct

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## 1. INTRODUCTION

- 1.1** The Licensing Code of Conduct 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 Conduct is in addition to the Code of Conduct for Members adopted under the provisions of the Localism Act 2011. Councillors should follow the requirements of the Code of Conduct for Members and apply this Code in light of that 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 in addition to the Code of Conduct for Members should be read in conjunction with the Member/Officer Protocol. If a Councillor does not abide by the Code then that Councillor may put the Council at risk of proceedings on the legality or maladministration of the related decision and the Councillor may be at risk of either being named in a report to the Standards Advisory Committee or Council. A failure to abide by the Code is also likely to be a breach of the Code of Conduct for Members and which could result in a complaint being made to the Monitoring Officer.
- 1.5** **If a Councillor has any doubts about the application of this Code to their own circumstances they should seek advice early, from the Monitoring Officer and preferably well before any meeting takes place.**

## 2. HUMAN RIGHTS ACT

- 2.1** The Human Rights Act 1998, which came into full effect on 2<sup>nd</sup> 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.
- 2.2** 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 people. The Licensing Committee's decisions on most licensing functions are subject to independent tribunals, usually the Magistrates' Court, 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** Specifically 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 Councillor 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** As to predetermination, this is a legal concept and is used in situations where a decision maker either has, or appears to have, a closed mind. That is s/he has made up his/her mind in advance of proper consideration of an issue and the merits of an application. Section 25 of the 2011 Act does not amount to the abolition of the concept of predetermination however, as 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 a predetermined view 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 where it might appear to a fair and informed observer that there was a real possibility of bias, or where a Councillor has predetermined the matter by closing his/her mind to the merits of the decision.
- 4.3** Councillors 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 Councillor hearing the evidence and arguments on both sides. A Councillor 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.
- 4.4** **Any licensing decision made by a Councillor who can be shown to have approached the decision with a closed mind will expose the council to the risk of legal challenge.**
- 4.5** 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).
- 4.6** 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.
- 4.7** Councillors should note that, unless they have a disclosable pecuniary interest or a significant personal interest (see section 5 below), they will not appear to be predetermined through-
- listening or receiving viewpoints from residents or other interested parties;
  - making comments to residents, interested parties, other Councillors or appropriate officers, provided they do not consist of or amount to prejudging the issue and the Councillor makes clear that they are keeping an open mind;
  - seeking information through appropriate channels; or
  - being a vehicle for the expression of opinion or speaking at the meeting as a Ward Councillor, provided the Councillor explains their actions at the start of the meeting or item and makes it clear that, having expressed the opinion or ward/ local view, they have not committed themselves to vote in accordance with those views and will make up their own mind having heard all the facts and listened to the debate.

#### 4.8 The following advice applies:

- Councillors must not make up their mind, or appear to have made 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 of the Councillor hearing evidence and arguments on both sides. This includes deciding or discussing how to vote on any application at any sort of political group meeting, or lobby any other Councillor to do so. If a Councillor has an interest in a local lobby group or charity or pressure group they may appear predetermined by their actions and/or statements made in the past. The Councillor should take advice from the Legal Adviser to the Licensing Committee on how to deal with this.
- It must be noted that if a Councillor is predetermined then taking part in the decision will put the Council at risk of a finding of maladministration and of legal proceedings on the grounds of there being a danger of bias or predetermination or, a failure to take into account all of the factors enabling the proposal to be considered on its merits.
- A Councillor may appear pre-determined where the Council is the landowner, developer or applicant and the Councillor has acted as, or could be perceived as being, a chief advocate for the proposal. This would arise where that through the Councillor's significant personal involvement in preparing or advocating the proposal the Councillor will be, or perceived by the public as being, no longer able to act impartially or to determine the proposal purely on its licensing merits.
- Councillors should recognise that in being a Councillor of a political group they are allowed to be predisposed in relation to licensing policies of the Council or to licensing policies of the Councillor's political party, providing that predisposition does not give rise to a public perception that the Councillor has, due to his/ her political membership, predetermined a particular matter.
- When considering a licensing application, Councillors must:
  - act fairly and openly;
  - approach each application with an open mind; carefully weigh up all relevant issues; and
  - determine each item on its own licensing merits
- And Councillors must not:
  - take into account irrelevant issues;
  - behave in a manner that may give rise to a public perception that s/he may have predetermined the item; and
  - behave in such a manner which may give rise to a public perception that s/he may have been unduly influenced in reaching a decision.

## 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 Code of Conduct for Members. 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. Any changes to those interests must similarly be notified within 28 days of the Councillor becoming aware of such changes.

- 5.4** 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 immediate 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 must also be given to other non-DPI personal interests that are either registrable as required by the Code of Conduct for Members 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 at the start of the meeting and, in any event, before the matter is discussed or as soon as it 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 or voting provided that the personal interest is not 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 (see 5.9 below).
- 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; acting as an agent for a person pursuing a licensing matter with the Council; 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 must not participate in the discussion on the application and must leave the room immediately 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 Councillor will have the same right. Once the Councillor has exercised that right then the Councillor 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 Councillor 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. Councillors should remember, however, that their overriding duty is to the licensing objectives and not to the residents and businesses within their ward. Councillors 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.
- 5.12** More information on what constitutes an 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 Legal Services are available to give advice if required.

## **6. TRAINING OF COUNCILLORS**

- 6.1** As 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 Councillor fails to participate in the compulsory elements of the training this may result in that Councillor being asked to stand down as a Councillor of the 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 COUNCILLOR 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. For the avoidance of doubt, the term Councillor or an officer includes any former Councillors or officers. In such cases, it is vital to ensure that such application is handled in a way that gives no grounds for accusations or favouritism. Accordingly the matter will be dealt with as follows-
- (a) On receipt of such an application, a copy of the application will be referred to the Corporate Director.
  - (b) The Corporate Director 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.

- (c) If a Councillor or an officer submit their own proposal to the Council which they serve, they must take no part in its processing or the decision making process.
- (d) The Councillor making the application would almost certainly have a DPI and should not address the Committee as the applicant but should appoint an independent agent to represent his/her views.
- (e) Councillors of the Licensing Committee must consider whether the nature of any relationship with the person (either a Member or an officer) making the application requires that they make a declaration of interest and if necessary also withdraw from the meeting.
- (f) In respect of former Councillors or former officers the above requirements shall apply for a period of three (3) years following their departure from the Council.

## **8. APPLICATION BY THE COUNCIL (OR WHERE THE COUNCIL IS THE LANDOWNER)**

- 8.1** Councillors may need to determine an application submitted by the Council for the Council's own land or in respect of land where the Council is the landowner. It is perfectly legitimate for such applications to be submitted to and determined by the Licensing Authority. Applications should be treated with the same transparency and impartiality as those of other applicants so as not to give rise to suspicions of impropriety.
- 8.2** If a Councillor has been heavily committed or involved in an area of policy/issue relating to such an application (e.g. as a Cabinet Member), then that Councillor must consider whether they have an interest which should be disclosed. In such circumstances, the Councillor should seek advice from the Legal Adviser to the Licensing Committee.

## **9. LOBBYING**

- 9.1** Councillors may be approached or lobbied by an applicant, agent or objector about a particular licensing application. This can happen prior to an application being made or at any time after the application is made. Whilst lobbying is a normal and perfectly proper part of the political process, it can cause the perception of bias or predetermination especially 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.
- 9.2** To avoid such perception, if a Member is approached then s/he should:
  - (a) inform such applicant or agent or interested party/ objector that such approach should 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.
- 9.3** If the Councillor does discuss the case then 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 detrimental. As stated in 9.2(c) above, the Councillor must keep an adequate written record of the discussion so as to enable the Member to disclose the fact and nature of such an approach at any relevant meeting of the Licensing Committee.

- 9.4** If a Councillor who is not a Councillor of the Licensing Committee is contacted by an applicant, objector or interested party then that Councillor 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 a Councillor wishes to make their own representations about a matter they should likewise make those representations to the appropriate Licensing officer.
- 9.5** When attending a public meeting at which a licensing issue is raised, a Councillor 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. As stated in 9.2(c) above, the Councillor must keep an adequate written record of the discussion so as to enable the Member to disclose the fact and nature of such an approach at any relevant meeting of the Licensing Committee.
- 9.6** Correspondence received by any Councillor (whether on the Licensing Committee or not), should be passed without delay to the Corporate Director 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.
- 9.7** Councillors should not accept gifts or hospitality from any person involved in or affected by licensing application. If a degree of hospitality is entirely unavoidable, then the Councillor must comply with the provisions in the Code of Conduct for Members on Gifts and Hospitality.
- 9.8** Councillors should not become a member of, lead or represent a national charity or local organisation whose primary purpose is to lobby to promote or oppose licensing applications. If a Councillor does then it is likely to appear to a fair and informed observer that there is a real possibility of bias and that Councillor will be required to withdraw from the debate and decision on that matter.
- 9.9** Councillors must also not lobby fellow Councillors regarding their concerns or views nor attempt to persuade them that they should decide how to vote in advance of the meeting at which any licensing decision is to be taken.

## **10. PRE HEARING DISCUSSIONS**

- 10.1** 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.
- 10.2** 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.

## **11. SITE VISITS**

- 11.1** 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 Councillors in matters relating to the context of the application or revocation, the characteristics of the premises and the surrounding area. Councillors should avoid

expressing opinions during site visits to any person present, including other Members. Councillors can, of course, rely upon their own local knowledge.

- 11.2** During site visits, Councillors of the Licensing Committee shall not engage individually in discussion with applicants or objectors.
- 11.3** On site visits applicants, agents, objectors or other interested parties shall only be permitted to point out to Councillors 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.
- 11.4** A Councillor 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 Councillor provides these at least one week prior to the relevant meeting, a site visit will not proceed.

- 11.5** If any Councillor 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. Councillors 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 Councillor is unable to attend an official site visit that has been arranged, a site visit by an individual Councillor may be carried out provided that the Councillor is accompanied by a licensing officer.

## **12. RELATIONSHIP BETWEEN COUNCILLORS AND OFFICERS**

- 12.1** Councillors of the Licensing Committee shall not attempt in any way to influence the terms of the officers' report upon any application.
- 12.2** Any criticism by Councillors 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 and/ or the Monitoring Officer and not to the Officer handling the application.
- 12.3** If any officer feels or suspects that pressure is being exerted upon him/ her by any Councillor of the Council in relation to any particular application, s/he shall forthwith notify the matter in writing to the Monitoring Officer.
- 12.4** 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.
- 12.5** 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.

### **13. CONDUCT AT THE HEARING**

- 13.1** 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.
- 13.2** Councillors of the Licensing Committee shall refrain from personal abuse and party-political considerations shall play no part in the Committee's deliberations. Councillors 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.
- 13.3** When questioning witnesses at a meeting of a Licensing Committee, Councillors shall ensure that their questions relate only to licensing considerations relevant to the particular application.
- 13.4** Councillors must ensure that they hear the evidence and arguments for and against the application, in accordance with the rules of natural justice. Councillors 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.
- 13.5** If a Councillor 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 Councillor 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
- 13.6** 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.
- 13.7** In considering objections/ representations Councillors are advised that if such are founded on a demonstrable misunderstanding of the true factual position, or otherwise indicate no more than an uninformed reaction to a proposal then they carry no weight whatever and must be ignored. Further Councillors 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.
- 13.8** Also in considering the application, it may well be that hearsay evidence is presented. Councillors 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 Councillors 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 Councillors, who must make an assessment of its weight and credibility.
- 13.9** When new matters are raised as objections by any person at a hearing, the Licensing Committee is not obliged to hear them. However, if Councillors 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).

#### **14. 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.
- 14.2** 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.
- 14.3** 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..
- 14.4** 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.

#### **15. MAKING THE DECISION**

- 15.1** The decision whether or not to grant a licensing application is a decision for the Councillors of the Licensing Committee only. The assessment of the weight and credibility of evidence is also for Councillors alone to decide.
- 15.2** Councillors 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.
- 15.3** In accordance with regulations, Councillors 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
- 15.4** Councillors 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.

- 15.5** Written notice of the decision together with Councillors' reasons will always be given and such notice will set out any rights of appeal against the decision.
- 15.6** Councillors 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 Councillors 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 Councillors have a duty to ensure that they have regard to all the relevant matters before them and only those matters.
- 15.7** Councillors 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. Councillors must not make unreasonable decisions that no other reasonable licensing authority would arrive at, having regard to the legal principle of "Wednesbury reasonableness".
- 15.8** In considering applications, Councillors 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.
- 15.9** Councillors 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 Councillors 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.

## **16. APPEALS**

- 16.1** 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.
- 16.2** An appeal must be lodged within a prescribed time of receiving written notification of the decision.
- 16.3** 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. Councillors 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.
- 16.4** Taking this factor into account along with the real risk of costs against the Council, Councillors 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.

## **17. RECORD KEEPING**

- 17.1** 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.

**18. PROCEDURE NOTES**

- 18.1** 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.
- 18.2** 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**

<b>Date Last Reviewed:</b>	<b>14<sup>th</sup> June 2016</b>
<b>Approved By:</b>	<b>Licensing Committee</b>
<b>Date Approved:</b>	<b>14<sup>th</sup> June 2016</b>
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<b>Document Owner:</b>	<b>Paul Greeno</b>
<b>Post Holder:</b>	<b>Senior Corporate and Governance Lawyer</b>
<b>Date of Next Scheduled Review:</b>	<b>31<sup>st</sup> March 2017</b>

## **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**

<b>Date Last Reviewed:</b>	<b>22<sup>nd</sup> September 2016</b>
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<b>Post Holder:</b>	<b>Senior Corporate and Governance Lawyer</b>
<b>Date of Next Scheduled Review:</b>	<b>31<sup>st</sup> March 2017</b>

## **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.
- 3.5 If a party considers that any time limit is not sufficient then they should address the Licensing Committee and which will determine accordingly.
- 3.6 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.
- 3.7 If the Licensing Committee adjourns the hearing it should specify the date, time and place to which the hearing has been adjourned.
- 3.8 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.
- 3.9 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.

- 3.10 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.
- 3.11 The Legal Adviser to the Licensing Committee will then give any relevant legal advice that the Licensing Committee need to take into consideration.
- 3.12 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.
- 3.13 The application is to be presented within any time limit that has been set.
- 3.14 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.
- 3.15 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.
- 3.20 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.
- 3.21 The Legal Adviser to the Licensing Committee may ask questions for the purpose of clarifying points for the Licensing Committee.
- 3.22 Petitions will be considered but Members should proceed with caution when relying upon petitions used as evidence due to the structure and wording used.
- 3.23 The Chair will intervene at any stage of the hearing to prevent repetitious or irrelevant points being raised.

- 3.24 The objectors (or their representative) will then be permitted to “Sum Up”.
- 3.25 The applicant (or their representative) will then be permitted to “Sum Up”.
- 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 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.

**DO'S AND DO NOT'S****1. Councillors must:**

- (a) Attend compulsory training sessions;
- (b) Be open minded and impartial;
- (c) Declare any actual interest;
- (d) Listen to the arguments for and against;
- (e) Carefully weigh up all relevant issues;
- (f) Ask questions that relate only to licensing considerations relevant to the particular application;
- (g) Make decisions on merit and on licensing considerations only;
- (h) Respect the impartiality and integrity of the Council's officers;
- (i) Report any lobbying from applicants, agents, objectors or any other Councillor;
- (j) Promote and support the highest standards of conduct; and
- (k) Promote equality and not discriminate unlawfully against any person, and treat all people with respect.

**2. Councillors must not:**

- (a) Be biased or give the impression of being biased;
- (b) Improperly confer an advantage or disadvantage on any person nor seek to do so;
- (c) Act to gain a financial or other benefit for themselves, their family, friends or close associates;
- (d) Place themselves under a financial or other obligation to any individual or organisation that might seek to influence the performance of their duties as a member (e.g. by accepting gifts or hospitality from any person involved in or affected by a licensing application);
- (e) Place themselves in a position where their integrity might reasonably be questioned;
- (f) Participate in a meeting where they have a DPI;
- (g) Participate in a meeting where they have an interest which does or could be reasonably considered as giving rise to bias; and
- (h) Express opinions during any site visit to any person present, including other Members.