



PROBITY IN LICENSING AND ENFORCEMENT

CODE OF PRACTICE

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A guide to the protocol and procedures to be followed by Officers and MemberCouncillors involved in making decisions on Licensing applications and other Licensing matters

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Introduction

Gloucester City Council's Licensing and Enforcement Committee operates in a quasi-judicial way in determining ~~contentious~~ licensing applications, policy issues and related matters that are not determined under delegated powers by the. ~~Most applications are free of objection and are determined under powers delegated to the~~ Head of Place. This Code is written having regard to the Council's commitment to the principles of good enforcement, particularly openness and consistency, that are included within the national Enforcement Concordat.

~~The Committee deals with major and contentious applications and most policy and policy guideline issues.~~ Applications are referred for MemberCouncillors' consideration where they are contentious and/or objections have been lodged by statutory consultees, residents, other third parties or where officers have reservations about the appropriateness of an application or the suitability of an applicant. Hackney Carriage and Private Hire disciplinary matters are also dealt with by the Committee in accordance with the provisions of the Council's adopted General Conditions for Hackney Carriage and Private Hire Licensing.

The decisions that the Committee makes are significant and weighty. ~~The Committee operates, for the most part, under its extensive delegated powers and it, rather than any other part of the Council, actually makes the decisions.~~ The decisions can have a considerable effect on the value of premises or other capital assets, on the amenities of people living near licensed premises and on the lives of applicants. ~~Furthermore, if the Committee makes a wrong or irrational decision this may mean that the Council risks will face~~ substantial costs if there is a successful appeal against ~~the a~~ decision or if ~~the a~~ decision is the subject of a legal challenge from an aggrieved third party.

Some licensing legislation specifies procedures to be followed but, in all cases, human rights and natural justice considerations dictate that the Committee adheres to the following principles in that decisions **must**:

- be made on the individual merits of a case;
- have regard to all relevant national and local guidance;
- be made impartially and in good faith;
- be made by the body that receives all the relevant information and evidence;
- relate to the issue or question placed before the Committee;
- be based only on consideration of relevant and material matters;
- be rational and reasoned;
- be made in a way that does not give rise to public suspicion or mistrust.

The purpose of this local Code of Practice is to set out in detail how MemberCouncillors should act and the procedures which should be followed to ensure that MemberCouncillors not only act in a fair and proper manner but are also seen to do so.

This Code has been prepared with a particular emphasis on MemberCouncillors who serve on the Council's Licensing and Enforcement Committee, but its content is also relevant to all other MemberCouncillors and also to Officers.

The City Council, along with all other local authorities, has adopted a local Code of Conduct, which specifies the obligations imposed on MemberCouncillors and defines how disclosable and other interests should be managed. pecuniary and non-pecuniary interests and how these will affect the way a MemberCouncillor behaves. ~~That Code of Conduct, which every Member has signed up to, is the statutory base to which this Code of Practice is added. This In some areas this Code of Practice supports and in some cases extends the will extend, or go further than the~~ local Code of Conduct. In the case of a conflict between the two the Code of Conduct will take precedence.

It is possible that breaches of this Code of Practice could be considered to be a breach of the Code of Conduct.

This Code of Practice is part of the Council's Constitution and can be viewed on-line at www.gloucester.gov.uk

Notes

1. All references to the Licensing and Enforcement Committee include any sub-committee of the Licensing and Enforcement Committee as appropriate.
2. All references to the applicant refer to the applicant (which includes a person calling for a review of a licence), the licensee or the applicant's or licensee's representative as appropriate.

PART ONE: CONDUCT OF COUNCILLORS AND OFFICERS

A. Voting and Impartiality

1. ***Licensing and Enforcement Committee ~~Member~~Councillors must vote in the best interests of the City as a whole and must not vote on the basis of local ward interests that may be contrary to a balanced licensing assessment in the light of wider policies and guidance.***

The over-riding duty of a Committee ~~Member is~~Member is to the whole community, rather than just the people living in their Ward. This is a fundamental principle of the local democratic system.

2. ***~~Member~~Members of the Licensing and Enforcement Committee must not declare which way they intend to vote in advance of the consideration of an application by the Committee.***

This can be a difficult issue for ~~Member~~Councillors as they may be exposed to pressure from residents, or the media, to express a particular viewpoint. However, it is essential that ~~Member~~Councillors are measured and circumspect in the comments they make. If a ~~Member~~Councillor declares which way they intend to vote they may be considered to have predetermined the matter it would, in effect, be pre-judging the application without having considered all of the relevant information. This could expose the Council to the possibility of legal challenge or a charge of maladministration. ~~Member~~Councillors can have a view but they must not make their minds up until they have read the relevant Committee reports and heard the evidence, and arguments, on both sides.

3. ***If a ~~Member~~Councillor of the Licensing and Enforcement Committee declares OUTRIGHT support for or opposition to a proposal before the matter has been put before the Committee, the ~~Member~~Councillor must make an open declaration of their views to the Committee and take no part in the voting or debate on that particular item.***

This rule follows on from item 2 above. It does not mean that ~~Member~~Councillors cannot make a comment or reflect local concerns about a proposal before the Licensing and Enforcement Committee considers it. However, the view or comment must not pre-determine or be seen to pre-determine the way that ~~Member~~Councillor will vote.

4. ***Licensing and Enforcement Committee ~~Member~~Members who are also ~~member~~members of the County Council or the Parish Council must exercise particular care in reconciling their two roles.***

This rule would apply in the case of a ~~Member~~Councillor(s) holding office in both the City Council and the County Council or Quedgeley ~~Town—Parish~~ Council. Such ~~Member~~Councillor(s) may find that they are expected to express a view at the County Council or ~~Town~~Parish Council meeting or vote on whether or not the ~~Council~~Parish should object or comment on a proposal from a County or ~~Town~~Parish point of view. In such circumstances ~~Member~~Councillors are advised to abstain from both the debate and voting at the County or Parish Council. This is not inconsistency, but the consequence of having to fulfil two totally separate roles. If a ~~Member~~Councillor does declare his or her outright support or opposition to a licensing proposal at a County or ~~Town Council~~Parish Meeting, or elsewhere, they must

make an open declaration to the City Council's the Licensing and Enforcement Committee to that effect and take no part in the voting and debate and on that item, ~~and leave the meeting.~~

5. Licensing and Enforcement Committee MemberCouncillors should not organise support for or against a Licensing application and should not lobby other Councillors.

~~Committee Members should not place themselves in a position where they may give the impression that they had made up their mind before hearing the evidence. Each Member should make up his or her own mind on the evidence and facts presented to the Committee (See Section G on lobbying). With regard to other Members it could give the impression that they were seeking to influence Committee Members (see section G on lobbying).~~

6. Licensing and Enforcement Committee MemberCouncillors must not favour or show bias for or against any particular person, company or group, or any particular site or locality in respect of licensing matters.

~~They should also not put themselves in a position where they may appear to do so.~~

7. Confidentiality

It will be unusual for licensing applications or other matters to be treated as confidential items with the exclusion of the press and public, but it may occur.

The grounds why this may occur are set down in the Local Government Act 1972 and the Council's Constitution and are most likely to be in relation to the conduct of legal proceedings, or disclosure of personal details.

Information which is of a confidential nature may also be provided to MemberCouncillors outside Committee.

MemberCouncillors are expected to treat the information as confidential and are referred to the Code of Conduct which indicates that a breach of this confidentiality may be a breach of the Code of Conduct and result in a complaint to the Monitoring Officer and/or the Audit and Governance Committee.

B. Gifts and Hospitality

1. Councillors and Officers must abide by the Council's requirement in respect of Gifts and Hospitality as set out in the Code of Conduct for MemberCouncillors and the Officer Code of Conduct which are part of this Council's Constitution.

The policy on gifts and hospitality is contained in the Council's Constitution and MemberCouncillors and officers must be extremely careful in this respect to ensure no question of bias can be raised. The general rule is that no gifts should be accepted, and only modest hospitality connected with the work concerned should be accepted.

C. Independence and Impartiality of Licensing Officers

1. MemberCouncillors or other Officers within the Council must not instruct Licensing Officers to make or not to make a particular recommendation on a licensing application.

Licensing Officers are trained to deal with licensing issues and will be aware of Government advice, case law etc., and will put forward a professional recommendation. Other officers will help inform that recommendation.

2. Officers must always act impartially and advise the Council of their professional opinion.

The City Council's Licensing Officers must always act impartially and give advice based upon a professional assessment of the individual merits of each case, taking into account all relevant policies, guidance and other relevant material considerations. If they do not, or even if it appears that they do not, the integrity of the licensing process is severely compromised. Where an appeal has been made against a decision made against officer recommendation officers will always present the Council's case to the best of their ability.

D. Declarations of Interest

1. ***MemberCouncillors must always declare their interests in accordance with the Council's Code of Conduct.***

The Code of MemberCouncillors Conduct is contained in the Council's Constitution and must be read in conjunction with this Licensing Code of ~~Practice~~ Conduct (Probity in Licensing).

~~Registerable interests must be registered and all other~~All interests must be ~~declared~~disclosed at the start of the meeting or when such interests become apparent, and an agenda item to prompt this on this is included for every meeting. Declared interests will be noted in the Minutes of the Meeting.

Depending on the nature of the interest (disclosable pecuniary interest or other interests), ~~non-disclosable pecuniary interest or personal interest~~, the MemberCouncillor may not be allowed to participate in the discussion or vote on the matter unless a dispensation has been granted. ~~They must also not seek to improperly influence any decision on that matter.~~

NB: Failure to register/disclose a Disclosable Pecuniary Interest is a criminal offence.

The test MemberCouncillors should apply is not whether they themselves think they have an interest but whether others, knowing the relevant facts, would think they have. If a MemberCouncillor has any doubt advice can be taken, but if that doubt still remains it is best that an interest be declared. However, the responsibility for declaring an interest must lie on the MemberCouncillor.

~~There will, however, be times when it only becomes apparent during the meeting that there is a declarable interest. Then the interest must be declared as soon as the Member becomes aware of it, even if it is during discussions on that particular item. The duty is on each Member to declare interests and these will be noted in the Committee minutes.~~

The Monitoring Officer should be informed of any declarable interests which should also be registered in the Register of MemberCouncillors' Interests.

E. Involvement of Councillors with Applicants

1. ***MemberMembers of the Licensing and Enforcement Committee should not act as agents or submit licensing applications for other parties or voluntary bodies.***

Any close involvement, or even perception of close involvement, can compromise the integrity of the licensing process. A MemberCouncillor acting as a licensing agent could give rise to suspicion that the MemberCouncillor was not impartial or may influence other MemberCouncillors in the decision-making process.

2. ***Any MemberCouncillor who is a Licensing advisor or similar agent will not be appointed to the Licensing and Enforcement Committee.***

Where MemberCouncillors need to submit licensing applications on their own behalf, or on behalf of their employer as part of their job, they must declare an interest and take no part in the processing of the application or in the decision-making process. Decisions on any proposals submitted by or relating to premises / land / vehicle(s) etc owned or controlled by serving MemberCouncillors ~~sahh should only~~ be determined by the Licensing and Enforcement Committee and not by Officers. The Committee alone should determine an application

submitted by a MemberCouncillor's employer, irrespective of whether the MemberCouncillor is involved in the application, its preparation or submission.

F. Council Licensing Applications

1. ***Proposals to licence the Council's own land or premises must be dealt with ~~the same as all other applications~~ only on their own merits.***

The Council's own proposals, or those of others on Council owned premises/ land, must be dealt with on exactly the same basis as applications submitted by any other applicant. MemberCouncillors must not have any regard to any other benefit, financial or otherwise, which may accrue to the Council as a result of any particular decision on a licensing proposal.

All licensing applications, irrespective of the applicant, must be considered and dealt with on the merits of the application, not any extraneous gain or loss that might accrue to the council.

2. **Other proposals that may have an impact on a council landholding or application/proposal must be dealt with strictly on their licensing merits.**

Local authorities are often landowners. They may operate licensed premises and may submit their own applications, or third parties may submit applications for new licensed premises on land or premises due to be sold to them by the council. Furthermore, situations may arise where a licensing proposal may have an impact on the prospects and value of a council landholding or premises. These circumstances present special challenges to ensure that the licensing system operates, and is seen to operate, fairly.

G. Lobbying of Councillors and Formal Submission of Information

1. ***Any lobbying of MemberCouncillors must not raise a ~~be dealt with carefully to minimise the perception of influence~~***

This is a complex area and one that requires special care. Lobbying is an attempt to influence a MemberCouncillor's view in writing or verbally in order to achieve a particular decision by applicants, agents, objectors or other Councillors. It is a normal part of the political process but where MemberCouncillors are making statutory decisions, such as licensing decisions, it can result in decisions being made improperly.

MemberCouncillors should treat lobbying with care and should ensure that "unofficial" views, promises or documents do not unduly influence them. MemberCouncillors should advise lobbyists to present their views in writing to the licensing case officer in order that they can be formally considered in a balanced way at the Committee meeting. Alternatively, MemberCouncillors may choose to pass on the views and or submissions of lobbyists to the officer but should make clear that they are not giving their own views, as this is a matter for formal consideration by the Licensing and Enforcement Committee.

Licensing decisions must be rational and be made strictly on the basis of the relevant facts, guidance and policies relating to each case. MemberCouncillors must not only act in a way that is fair to all parties but must be seen to do so. ~~In particular Members must not prejudge proposals before they have read the officer's reports and considered all the evidence.~~

Lobbying can be particularly problematical if MemberCouncillors are given information or assurances by applicants that do not form part of their formal application and are, therefore, unenforceable. Problems can also arise if MemberCouncillors are given information by objectors which may be misleading, untrue or irrelevant. Officers face particular difficulties if they are unaware of submissions by applicants and objectors and are therefore unable to consider them and advise the Committee about them.

This would cause particular problems if the Committee based a refusal on those matters which officers had not had an opportunity to consider and comment upon.

Circulation of unofficial papers at a Committee meeting also constitutes lobbying.

2. *Licensing applications must be determined on the basis of the documents and information that have been formally submitted and where all parties have had a proper opportunity to consider them.*

Only submissions from applicants, agents or objectors, which are formally received by licensing officers, can properly be taken into account in making a decision. The Committee could be materially misled if MemberCouncillors or other parties circulate 'unofficial' documents or introduce new information on behalf of an applicant or objector, or express what they believed to be an applicant's intention, if this did not form part of the application documents and correspondence. In all circumstances, copies of any letters, documents or correspondence should be given to the licensing officer to consider and comment on. Where fresh information comes to light after a Committee report has been finalised and circulated it may only be tabled with the Chair's consent.

H. Political Decisions on Licensing Applications

1. *Decisions on licensing applications or the establishment of "party lines" cannot be made in political group meetings prior to a committee meeting.*

Decisions on licensing applications must be made on the individual merits of each case with adherence to the other principles that are set out in this guide. The establishment of a party whip or "party lines" made in political group meetings prior to a committee meeting would be wholly inappropriate.

The view of the Ombudsman is that 'the use of political whips at group meetings is contrary to the National Code and amounts to maladministration'. It could also give rise to a legal challenge of any decision by Judicial Review.

I. Application by Councillors, Officers or their relatives or friends

1. These applications must be dealt with, and be seen to be dealt with, openly, fairly and without any bias. Accordingly, despite the scheme of delegation to officers to decide certain applications, all such applications will be reported to Committee.

J. The Role of Ward MemberCouncillors

1. Being a ward MemberCouncillor does not in itself constitute an interest in an application or create a risk of apparent bias. Providing the ward MemberCouncillor does not have a Disclosable Pecuniary Interest or any Other Interest in applications before the Committee or providing there is nothing to indicate any risk of bias or predetermination, a ward MemberCouncillor's local knowledge may ~~in fact give an~~ additional insight to an application and its implications on the licensing objectives. Ward MemberCouncillors may use their local knowledge to ask relevant questions and clarify facts.
2. The right of ward MemberCouncillors to speak at Committee meetings may be constrained by statute. For example, under the Licensing Act 2003 ward MemberCouncillors may only speak if they have lodged a written relevant representation within the prescribed period of time and/or to represent their constituents. In the absence of any specific rules, ward MemberCouncillors may be invited to address the Committee at the Chair's discretion.
3. The role of ward MemberCouncillors is, therefore, different from that of those MemberCouncillors making the decision, in that ward MemberCouncillors can engage with

their constituents and make representations to the Committee on their behalf. It is for this reason, and to safeguard MemberCouncillors, that the restriction identified in Paragraph 2 above has been made.

4. The views of ward MemberCouncillors do carry weight with their colleagues who make the decisions. Ward MemberCouncillors should not become too closely identified with special interest groups and be careful to avoid pressure by applicants, objectors or supporters. There may be occasions where ward MemberCouncillors are invited to attend meetings (for example, a formal meeting called by an applicant or objector) where it would be prudent for a MemberCouncillor to also invite an officer to be present.

PART TWO: THE DECISION MAKING PROCESS

A. Pre-Application Discussions and Negotiations on submitted applications

1. *Councillors should not, themselves, seek to advise applicants or agents about the likely acceptability of licensing proposals.*

Pre application discussions should always be undertaken by the Council's officers to ensure that advice is given professionally, comprehensively and in a way that is clearly removed from the political forum. Licensing and Enforcement Committee ~~Member~~Councillors should advise prospective applicants to contact the appropriate officer for advice on both merits and procedures. If ~~Member~~Councillors, whether or not they sit on the Licensing and Enforcement Committee, do give an indication of their initial reaction to a proposal they must make clear that any proposals will need to be formally considered by officers and/or the Licensing and Enforcement Committee. They should also make clear that officers and/or the Licensing and Enforcement Committee could only make a final decision after a full and formal consideration of the proposal.

Similarly, ~~Member~~Councillors should not normally be involved in negotiations and discussions about submitted applications. There may be exceptional circumstances in respect of major or contentious applications where there may be merit in ~~Member~~Councillor involvement to explain a particular local viewpoint or issue. However, such discussions should take place only where at least one officer is present. The officer(s) will make a written record of any such meetings held and will place a copy on the application/premises file. Such a record will constitute a Background Paper for the purposes of the Freedom of Information Act 2000 and may be inspected by any interested person.

The fact that Committee ~~Member~~Member(s) have discussed any such proposal with the applicant or objectors must be made clear when the application is before the Committee for determination. Under no circumstances should ~~Member~~Councillors put pressure on Officers to make, or change, any recommendations on an application.

2. *Officers role in processing licensing applications*

The Council employs professional Officers whose job is to deal with the applications received, ensure the necessary publicity requirements are dealt with, negotiate with the applicant and/or their agents, and then report to Committee with their recommendations.

The officers do have pre-application discussions which will try to assist applicants to submit applications in accordance with Council policies and to assist with the smooth processing of the application.

The officers will always put forward their professional view to Committee and be available to answer ~~Member~~Councillors' questions.

B. Reports to Committee

1. *Officers will provide written reports for all matters to be considered by the Licensing and Enforcement Committee (with the exception of matters of urgency) or when Committee has requested verbal updates on ongoing matters).*

There will be occasions when a decision of Committee will be required which arises~~matters arise~~ after the Committee papers have been prepared and sent out, ~~but a decision of Committee will be required~~. If possible, a written report will be tabled, or if this is not possible the ~~relevant officer~~Public Protection Manager will provide a detailed verbal report on the issue, explaining why it is urgent and providing recommendations. This shall be minuted.

~~Member~~Councillors are also permitted to raise matters of urgency under the Local Government Act 1972. However, if they do intend to do this the Licensing Officers should be informed prior to the meeting of the nature and content of the matter. Officers will attempt to answer any

questions but depending on the length of notice of the matter of urgency this may not be possible at that meeting.

Any matters of urgency can only be raised with the agreement of the Chair of the Licensing and Enforcement Committee who must give minuted reasons as to why it is considered to be an urgent item.

2. ***Officer reports to the Licensing and Enforcement Committee will be accurate and will, subject to statutory requirements, comprehensively cover all relevant: i) policies, guidance, considerations and issues; ii) information about the application/case; and, iii) the views of consultees and objectors.***
3. ***In all cases applicants/licensees will be given the opportunity of providing written material for inclusion in the report. Where they rely upon case law they will be required to give advance notice of the case(s) in question.***
4. ***Each committee report will include a clear recommendation.***

~~————~~ Except in exceptional circumstances where, at the time of circulation of the report, negotiations are still ongoing or an essential consultation or other response/information is awaited, Officers will give a clear ~~of a~~ recommendation, and this will be minuted.

If the report is not by the Head of Place the reason for this will be included in the report.

5. ***MemberCouncillors must read and carefully consider the content of the circulated report before the meeting and they must have regard to its contents in reaching their decisions.***

Written reports have always been a cornerstone of probity in the Council's system for committee determination of licensing matters. In the context of planning malpractice, the Audit Commission and others have made it clear that written reports are essential, and the same principles should apply to the Council's licensing functions.

C. The Committee Hearing

1. ***The Council's Standing Orders will apply to the conduct of business.***
2. ***Applicant/Licensees will be invited to attend the committee and be represented if they so choose, they will be sent a copy of the report about their application/case.***

If they do not attend the Committee can proceed to determine the matter ~~deal with their item~~ in their absence on the basis of the written report and the procedure as set out below.

3. Committee Procedure

- Chair introduces the item on the Agenda, briefly stating what it is about and inviting applicant/licensee/representative(s) to come forward to be seated. Where exempt information under the Local Government Act 1972 (as amended) is included in the report it will be written and circulated as a confidential item. In such cases the Chair will offer the licensee/representative(s) the opportunity of a public hearing and the press and public will only be excluded once a preference for a confidential hearing has been expressed. The press and public will generally be excluded from all meetings considering sensitive matters, such as hackney carriage and private hire enforcement cases, but the decisions from such meetings will be announced in public and published on the Council's website.
- The report author or other appropriate Officer presents the report to the Committee, outlining the key issues and background to the recommendation(s). This must be done in a maximum of 10 minutes unless the Chair expressly approves otherwise. MemberCouncillors and the applicant/licensee will have the opportunity of asking the Officer questions.

- In appropriate cases, objectors will be given the opportunity to make representations through their appointed spokesperson, this must be done in a maximum of 10 minutes unless the Chair expressly approves otherwise. The applicant/licensee, **MemberCouncillors** and, if appropriate Officers, will have the opportunity of asking the spokesperson questions.
- The applicant/licensee (or their representative) will present their application / case and, if they choose, put forward witnesses. This must be done in a maximum of 10 minutes unless the Chair expressly approves otherwise. The applicant/licensee may be asked questions by **MemberCouncillors** and in some cases by officers and representatives of statutory bodies who are licensing consultees, e.g. the Police.
- The Chair will then invite responses from Officers and if appropriate the representatives of statutory bodies. The applicant/licensee (or their representative) and **MemberCouncillors** are to be given the opportunity to ask questions.
- The applicant/licensee (or their representative) will be given the final right of reply.
- The Committee **MemberCouncillors** debate the application and reach their decision. In cases involving disciplinary matters the applicant/licensee/representative, witnesses, Officers (except the Committee Clerk and Committee's Solicitor/Legal Advisor) and representatives of statutory bodies will be asked by the Chair to leave the room whilst the Committee deliberates. The Committee Clerk and the Committee's Solicitor/Legal Advisor will remain with the Committee **MemberCouncillors** to record the proceedings and to advise on the law and legality of decisions.
- When the Committee has reached a decision, all parties will be invited to re-enter the room before **the decision #** is announced.
- The decision will be confirmed in writing, giving reason(s) for the decision, and details of any appeal rights. The decision notice/letter will be sent as soon as practicable after the meeting and any statutory timescales will be followed.
- The following good practice rules assist the smooth operation of the Committee and promote probity:
 1. The meeting will be conducted without any undue formality.
 2. **MemberCouncillors** should not report new information that they may have been given by applicants or third parties which has not been submitted to Officers for formal consideration and comment (see rule on lobbying in Part 1 section G).
 3. **MemberCouncillors** should seek any necessary clarification from Officers on any key issues before the meeting as this enables full replies to be given.
 4. **MemberCouncillors** should not introduce any non-licensing matters to the debate.
 5. **MemberCouncillors** should not speak at length on items where they are in full agreement with the Officer report.
 6. At the discretion of the Chair of the Committee a Ward Councillor(s) may be allowed to speak at Committee to express their own views or those of their constituents

D. The Committee's Decisions

1. **Where *MemberCouncillors* propose to make a decision contrary to the Officer recommendation clear licensing reasons must be put forward established and these must be seconded and minuted.**

The **MemberCouncillor**(s) proposing the decision contrary to the report recommendations must give clear reasons for their proposal before any vote is taken. Their reasons must be relevant and material considerations.

- 2. The Chair will allow all the concerned parties an opportunity to address the Committee before a vote is taken (in accordance with the procedure outlined above).***

Decisions must be reasoned, rational and in accordance with the facts of the case and have regard to the provisions of all relevant policies and guidance. However, decision-making requires assessment and judgement of the weight to be attached to policies and guidance issues which, no matter how current, will never provide an answer for all, or even most, applications. Any decision made by the Licensing and Enforcement Committee which is contrary to the provisions of existing policy or guidance must be clearly justified and recorded.

E. Deferrals and Committee Site Visits

- 1. Where MemberCouncillors propose to defer consideration of an application, they must set out clear reasons for doing so and these will be minuted.***
- 2. All site inspections whether involving MemberCouncillors individually, or collectively, will be conducted in a strictly fact-finding way and there shall be no on site debate about the merits of the proposal, or any negotiations, or discussions with applicant, agents or residents.***

A proposal to defer any application must be valid and defensible. Justification for deferring a decision might be to ensure that all the proper consultation procedures have been followed, or to secure amendments, without which the application would have to be refused. The reason for deferring for a site visit must be clearly set out by the proposer and recorded in the Minutes. Political expediency such as deferring a contentious application until after Elections is never an acceptable course of action.

F. Public Attendance at Committee Meetings

- 1. Most Licensing applications on the Committee agenda will be considered in public session.***

Open public debate is a fundamental prerequisite of probity in the Licensing system. However where exempt information under the Local Government Act 1972 (as amended) is included in a report it will be circulated as a confidential item and, subject to the applicant/licensee's right to a public hearing such items will be considered with press and public excluded.

Any person in attendance at the Licensing and Enforcement Committee meetings is entitled to make use of the Public Question Time and Petitions and Deputations agenda items to speak. Applicants, licensees or their agents will only be allowed to speak or make representations during consideration of their particular agenda item in accordance with (Part Two) Section C above.

Any memberCouncillor of the public who disrupts the meeting in any way will not be allowed to remain in the room.

- 2. Great care should be taken by MemberCouncillors mingling or speaking to applicants or objectors.***

MemberMembers of the Committee should be extremely careful in meeting with and talking to applicants or objectors either before or after the meeting. This could give the impression that MemberCouncillors had either prejudged a particular application, or had supported a particular view without looking at, and taking into account all the facts presented by the Officers.

PART THREE: ADMINISTRATIVE MATTERS

A. MemberCouncillor Training

MemberCouncillors who are exercising powers to grant or refuse applications are exercising a quasi-judicial function, in an area where there is a large amount of Government advice and Law. MemberCouncillors must ensure they are adequately trained to carry out the task. Accordingly, any MemberCouncillor who is on the Licensing and Enforcement Committee must take part in training organised before the first meeting of the Committee or within 3 months after being nominated to serve on the Committee, whichever is the later. If they do not, or cannot, they must step down. All MemberCouncillors (including substitute MemberCouncillors) who sit on the Licensing and Enforcement Committee must attend refresher training at least once every 3 years. Any MemberCouncillor of the Licensing and Enforcement Committee who has not undergone refresher training in accordance with this Code of Practice will not be permitted to vote on any licensing applications. Accurate records of MemberCouncillor training will be kept by Licensing Officers.

MemberCouncillors will be given regular updates to keep them informed of important changes in legislation, procedures or practices either verbally, at meetings, or as briefing notes.

B. Record Keeping

Officers will ensure that Licensing application records contain sufficient information so that the reason for the ultimate decision can be understood by anyone who reads a file / record without a detailed knowledge of the application.

C. Complaints

Any complaints received in writing about the way in which a Licensing application or other licensing matter have been dealt with in terms of procedures or fairness, will be investigated under the Council's Complaints Procedure. The fact that someone may disagree with the decision the Council has reached is not a complaint which will necessitate investigation as such, although officers will endeavour to explain the reasons for the Council's decision in any particular case.

Where any complaint about a Council decision made contrary to the Officer's recommendation is received, a copy will be forwarded to the Chair of the Committee.

Complaints can also be made to the Local Government Ombudsman regarding administrative maladministration, or the Monitoring Officer regarding breaches of the Code of Conduct.

D. Further Advice

This Code deals with the main issues of probity and conduct but cannot be expected to cover all eventualities that may arise. If MemberCouncillors are in any doubt about any probity related issues they are advised to contact the Licensing Officer or One Legal.