

## **PART 7 – MEMBERS LICENSING CODE OF GOOD PRACTICE**

### **1. Introduction**

- 1.1 This Code of Good Practice (the licensing code) gives advice to members who:
- Are members of the Licensing and Safety Committee and who sit on hearing panels or sub committees
  - Wish to attend or address the Committee, a sub committee or a hearing panel on any licensing issue.
  - Are involved outside the Committee on licensing applications or other licensing matters – including informal occasions such as meetings with officers or public and consultative meetings.
  - Are involved in applications for licences under the Licensing Act 2003, the Gambling Act 2005 or any other licensing legislation.
- 1.2 A key aim of the licensing code is to ensure that there are no grounds for suggesting that a licensing decision has been biased, partial or is not well founded in any way. Members must make these decisions openly, impartially with sound judgement and for justifiable reasons.
- 1.3 This is particularly important, as licensing applications will be subject to close scrutiny both because applicants may be seeking to maximise the business potential of their premises and because the quality of the environment in which local residents and the wider community live and work may be detrimentally affected through inappropriate applications.
- 1.4 The Human Rights Act 1998 has implications for the licensing system and has created enhanced requirements for procedural fairness, transparency and accountability in decision making.
- 1.5 The licensing code is intended to minimise the prospect of legal or other challenge to decisions. Non-compliance without good reason could be taken into account in investigations into possible maladministration or may have implications for the standing of Councillors and the Council as a whole.

### **2. Relationship with the members' code of conduct**

- 2.1 The members' code of conduct must always be complied with and the rules in that code must be applied before considering the licensing code.
- 2.2 The licensing code is not intended to form a part of the adopted members' code of conduct but is a separate document, which is both supportive of the members' code and the source of expanded guidance in the particular area of licensing.

2.3 To distinguish it from the members' code, this document is referred to as the licensing code.

### **3. Making representations to Licensing Hearing Panels**

3.1 This licensing code deals with all licensing matters, but there are particular rules as to who can be heard at a Licensing Hearing Panel.

3.2 In accordance with s13(3) and 18 of the Licensing Act 2003 (as amended) *any* Medway Councillor can make representations in relation to an application to Medway Council for the grant of a premises licence and such representations will (if they met the other requirements of s18 of the 2003 Act) be treated as relevant representations for the purposes of the Act. In accordance with section 51 *any* Medway Councillor may (in accordance with the conditions set out in Regulations) apply for a review of a premises licence where Medway Council is the licensing authority.

3.3 A Member is therefore permitted to speak at a Licensing Hearing Panel in three situations:

- (i) where the Member is personally interested in an application and has submitted a relevant representation (e.g. where he or she lives or is involved in a business in the vicinity of the premises)
- (ii) where the Member has specifically been asked by another interested party (e.g. a local resident) to represent him or her
- (iii) where the Member is exercising his or her rights as a member of the Council to make a representation (but (i) or (ii) do not apply).

It is helpful for Members when making representations to identify to officers which of the above categories they fall into.

3.4 Members need to consider carefully whether they have a personal or a prejudicial interest in an application before the Licensing Hearing Panel in any of the above situations. DCMS Guidance issued under s182 of the Licensing Act 2003 (section 8) provides some advice on this subject. General guidance on personal and prejudicial interests is given in paragraph 4 below. It is likely that a Member will have a prejudicial interest where he or she has made a representation in circumstances set out in paragraph 3.3(i) above. It is less clear in cases where representations have been made as set out in paragraphs 3.3(ii) or 3.3 (iii) and members should consider all the relevant circumstances in such cases when making a decision.

3.5 Where a Member has made a representation on an application or has called for a review of a licence in any of the circumstances set out in paragraph 3.2 it is very likely that he or she will have fettered his or her discretion (see paragraph 5) and so should not sit on the Licensing Hearing Panel dealing with that application or review. To avoid any accusations of bias and/or

having to cancel meetings because of Member interests, Members should not sit on Licensing Hearing Panels to determine applications in their own wards.

#### **4. Declaration of interests**

- 4.1 The members' code places requirements on Councillors on the registration and declaration of their interests and participation in the business of the Council in light of those interests. These requirements must be followed scrupulously and Councillors should review their situation regularly. Whilst the Standards Board and Medway's Standards Committee produces guidance and advice can be sought from the Monitoring Officer, ultimate responsibility for compliance rests with individual Councillors.
- 4.2 In general, as matters considered at the Committee or a hearing panel relate to approvals, consents, licences, permissions or registrations a Councillor will have prejudicial interest in a matter under consideration at the Committee if he or she has a personal interest and a member of the public with knowledge of the relevant facts would reasonably regard that interest as so significant that it is likely to prejudice the Councillor's judgement of the public interest. . The list of personal interests is set out in paragraph 8(1) of the members' code
- 4.3 A Councillor can have a personal and prejudicial interest in a licensing application, which affects them, their employer, a member of their family or a person with whom they have a close association. Examples include but not be limited to
- applications from existing or proposed licensed premises or increased licensing hours or an intensification of use in close proximity to a property owned/occupied by the Councillor, his or her employer, a member of his or her family or a person with whom the Councillor has a close association.
  - The member or a member of his or her family or a person with whom the member has a close association regularly visits the premises or is a member of any club, organisation or team which uses the premises as their base.
  - applications made by a member or or his or her employer, or a member of his or her family or a person with whom the Councillor has a close association.
- 4.4 Other than as set out below (in relation to Licensing Hearing Panels only) if a Councillor has a prejudicial interest in an application then they
- must not sit on a Committee or otherwise take part in the business of the Committee when that application/premises is discussed.

- must leave the room when that item is being discussed and must not participate in or give the appearance of trying to participate in the making of a decision.
- must not represent ward or local views – they need to get another member to do so instead.
- must not lobby members who will be hearing the application – correspondence should be sent to officers.
- must not get involved in processing the licensing application.
- must not seek any preferential treatment. This includes using their position to discuss a proposal with officers when other members of the public would not have the same opportunity to do so.

As the quorum for licensing panels is three members, members will be expected to closely scrutinise the application they are nominated to sit on to ensure that they do not have a prejudicial interest in any of the matters they are due to hear.

- 4.5 In relation to licensing hearing panels only (which are the only licensing forums in which members of the public have a right to speak) the rules regarding attendance if the Councillor has a prejudicial interest are amended as follows:
- If a Councillor has a prejudicial interest in the matter being discussed he or she must declare it as soon as the interest becomes apparent to him or her (at the beginning of the meeting if possible).
  - If members of the public are allowed to make representations, give evidence or answer questions about the matter, by statutory right or otherwise, the Councillor may also attend the meeting for that purpose.
  - The Councillor must immediately leave the meeting once he or she has finished making representations, giving evidence or answering questions (or earlier if the meeting decides that the Councillor has finished). The Councillor cannot remain during any deliberation on the matter or during the vote.
- 4.6 A prejudicial interest should also be declared at informal meetings or discussions including those held with officers and other Councillors.
- 4.7 Whilst having a prejudicial interest does not prevent a Councillor from seeking to explain a proposal in which they have such an interest to an appropriate officer, the members' code and case law does mean there are greater limitations on Councillors than on a member of the public.

4.8 A personal interest must be declared as soon as a Councillor becomes aware of it. This should wherever possible be at the start of a meeting. A personal interest in itself does not prevent a member from speaking and voting. Good practice dictates that members with a personal interest in an application should wherever possible not sit on a hearing panel which will be deciding that application – although there will be less restrictions on participating in the full Committee. Where a Councillor does not have a prejudicial interest and his or her personal interest arises solely from membership of, or position of control or management on, any other body to which the Councillor was appointed by the Council or any other body exercising functions of a public nature, the personal interest need only be declared if the Councillor speaks on the matter.

## 5. **Fettering discretion**

5.1 If a Councillor has taken a firm view on a licensing matter, or appears to have made up their mind before the formal consideration of an application, that Councillor is said to have fettered their discretion.

5.2 If a member who has fettered their discretion takes part in the decision that will put the Council at risk of a finding of maladministration. It could also lead to legal proceedings on grounds of there being a danger of bias or predetermination or a failure to take into account all factors enabling the proposal to be considered on its merits.

5.3 There is acceptance that a member may consider matters in several capacities as different factors may apply to different decisions. However given the size of licensing panels and the proportionately greater influence an individual member will have, members who sit on a planning Committee which deals with granting (or refusing) a planning application for new premises are advised not to sit on a hearing panel which considers the subsequent application for a licence under the Licensing Act 2003 or the Gambling Act 2005.

5.4 Areas, which need particular attention, are set out below.

### Membership of a parish Council

5.6 Where a parish Council makes representations on a planning application, then a member who is also a member of that Council should not sit on a hearing panel. It goes without saying that a member should not become involved at a Medway level in applications for licences made by the parish Council on which they serve.

5.7 Even where a parish Councillor who is also a Medway Councillor has fettered their discretion they will have the same right as any other member to address the Committee providing they do not have a prejudicial interest.

- 5.8 Membership of parish Council constitutes a personal interest where the Licensing Committee considers an issue where that parish has been involved and this must be declared in the usual way.

#### Lobbying by Councillors

- 5.9 If you lead, represent or are a member of a group whose primary purpose is to lobby to promote or oppose a licensing application you will have fettered your discretion. Depending on your involvement you will probably also have a prejudicial interest.
- 5.10 The position in 5.9 is distinct from membership of general interest groups, which reflect a Councillor's area of interest, eg CAMRA, a church group or a body supporting live music. However the member will have as a minimum a personal interest where that body has made representations on an application and should not sit on the hearing panel but can make representations set out above. The member will also have fettered their discretion if they have participated in making those representations and may also, depending on the level of involvement, have a prejudicial interest.
- 5.11 Councillors should not excessively lobby other Councillors regarding their views on licensing applications. Nor should they outside of the hearing panels try to persuade other Councillors how to vote.
- 5.12 Councillors should not decide or discuss how to vote on licensing applications at political group meetings or lobby other members to do so. Political group meetings should never dictate how members should vote on licensing applications.

#### Lobbying of Councillors

- 5.13 Lobbying is a normal and perfectly proper part of the political process. Those who may be promoting or affected by a licensing application will often seek to influence it through an approach to their elected ward Councillor, another Councillor or a member of the Licensing Committee. However such lobbying can, where a member subsequently sits on a hearing panel which will determine the application, lead to the integrity and impartiality of a Councillor being called into question, which can in turn affect the validity of a licensing decision.
- 5.14 A Councillor who wishes to participate in the determination of a licensing application should explain to persons lobbying or attempting to lobby that whilst they can listen to what is said it would prejudice their impartiality and ability to participate in the decision if they give a firm statement of how they intend to vote or express strong sympathies with a point of view in advance of the meeting. For the avoidance of doubt a Councillor will not have fettered their discretion
- by just listening to viewpoints from residents or interested parties

- making comments which fall short of prejudging the issue
  - seeking information through appropriate channels
  - asking questions at the hearing which reflect issues raised.
- 5.15 When a Councillor participates in a licensing hearing panel/decision their overriding duty is to the community as a whole. As decisions need to be taken impartially a Councillor should not improperly favour or appear to improperly favour or disadvantage any person, company, group or locality.
- 5.16 In addition to the requirement to declare the interests of any person from whom the Councillor has received a gift or hospitality with an estimated value of at least £25, Councillors should not accept gifts or hospitality from any person involved in or affected by a licensing application. It is advisable to let the Monitoring Officer know if you feel you have been exposed to excessive lobbying or offers of gifts or hospitality linked to a licensing application.
- 5.17 It is good practice for Councillors to
- forward copies of lobbying correspondence to the Monitoring Officer
  - comply with guidance on lobbying or attending presentations or discussions set out in section 5 of the licensing code.

## 6. **Contact with applicants and objectors**

- 6.1 Councillors should refer those who approach for assistance on procedural or technical licensing matters to relevant officers.
- 6.2 Councillors who wish to consider a licensing application should not agree to formal or informal meetings with applicants, or groups of objectors. Unlike in the case of planning applications it is considered that members who will be considering an application should not attend presentations on e.g. a major new licensing proposal even if it is part of a wider presentation organised by officers.

## 7. **Site inspections**

- 7.1 Site inspections should only be made in accordance with any agreed procedure. It is important to remember that they are a formal part of the licensing hearing process. The presumption is that site inspections will usually take place where there is an application for new premises. The visit may be made either prior to the hearing or at the conclusion of the evidence. Members must all attend and be accompanied by an officer. Inspections made prior to the hearing will primarily be intended to apprise members of conditions in the vicinity of the premises and will usually be conducted in the absence of the applicant and objector(s). Inspections following the conclusion of the evidence will primarily be used to clarify matters raised at the hearing and the applicant and objector(s) will be invited to attend.

- 7.2 No hospitality should be accepted at site inspections.
- 7.3 Councillors should endeavour to keep together as a group and not engage individually in discussions with any applicants, objectors or third parties who may be present.
- 7.4 Councillors taking part in the licensing decision must not express views to anyone present. If this happens it will usually lead to a cessation of the process and a rehearing by a new panel.
- 7.5 It is acceptable to ask officers at the site inspection questions to seek clarification on matters relevant to the site inspection.
- 7.6 The site inspection should be properly recorded and reported back to the hearing panel.
- 7.7 Councillors who wish to determine an application should not enter a site subject to a licensing proposal other than as part of an official inspection even in response to an invitation.

## **8. Contact with officers**

- 8.1 General guidance is given in the protocol on member/employee relations in the constitution and that is not repeated here.
- 8.2 Members should not put pressure on officers to put forward a particular recommendation. However this does not prevent a Councillor asking questions or submitting views to a relevant officer.
- 8.3 Officers must act in accordance with the employee code of conduct and any relevant professional codes of conduct which may on occasion mean that they take a view, which will be at odds with the views, opinions or decisions of the Committee or its members.

## **9. Licensing applications by Councillors and officers and Council applications**

- 9.1 Proposals to the Council by serving and former Councillors and officers and their close friends and relatives can easily give rise to suspicions of impropriety. So can proposals for a Council's own applications.
- 9.2 It is perfectly legitimate for such proposals to be submitted. However, it is vital to ensure that they are handled in such a way that gives no grounds for accusations of favouritism.
- 9.3 Recent decisions by the adjudication panel on standards issues make it very difficult for members who have a professional qualification to act in presenting cases in that capacity for applicants or to act as professional witnesses in hearings.

9.4 Councillors and officers who submit their own proposal should notify the Monitoring Officer of the proposal and play no part in its processing or determination (other than as set out in paragraph 4.5 above) and avoid contact, whether direct or indirect with members of the Committee concerning the application.

## 10. **Decision making**

10.1 Councillors making licensing decisions must

- come to meetings with an open mind and demonstrate they are open minded
- not vote or take part in the meeting's discussions on a proposal unless present to hear the entire case
- come to a decision only after due consideration of all information reasonably required upon which to base such a decision
- request further information if it is felt there is insufficient information before the Committee to reach a decision.

## 11. **Training**

11.1 Councillors should not participate in decision making meetings dealing with licensing matters unless they have attended any prescribed training.

