

PART 7 - MEMBERS LICENSING CODE OF GOOD PRACTICE

1. Introduction

- 1.1 This code of good practice (the Licensing Code) gives advice to Councillors 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. Councillors 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 the grant of inappropriate licences.
- 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 This 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 a breach of the Members' Code or possible maladministration or may have implications for the standing of Councillors and the Council as a whole.
- 1.6 Most licensing applications heard by Councillors will be determined by a hearing panel or by a sub-committee of the main Licensing and Safety Committee. It should be borne in mind that, given the small numbers of Councillors on such hearing panels or sub-committee, the scrutiny of any interests held by Councillors making those decisions will be greater.

2. Relationship with the Members' code of conduct

- 2.1 The Members' code of conduct (“the Members’ Code”) 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 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. Disclosable Pecuniary Interests

- 3.1 The Localism Act 2011 places requirements on Councillors to notify the Monitoring Officer of or to disclose at committee Disclosable Pecuniary Interests (DPI) and prohibits participation in the business of the Council where a Councillor has such an interest. The current list of DPIs is set out in Schedule One to the Members’ Code.
- 3.2 The requirement to notify the Monitoring Officer of a DPI applies not only to a Councillor’s own interests but also to those of the Councillor’s husband/wife/civil partner or a person with whom the Councillor is living as husband/wife or as if they were civil partners, if the Councillor is aware that that person has the interest. In this Licensing Code such a person is referred to as a “relevant person”.
- 3.3 Failure to so notify/disclose a DPI in the circumstances required by the Localism Act 2011 is a criminal offence. Therefore the requirements as to notification, disclosure and participation must be followed scrupulously and Councillors should review their situation regularly. Whilst advice can be sought from the Monitoring Officer, ultimate responsibility for compliance rests with individual Councillors.
- 3.4 A Councillor may have a DPI in relation to a licensing matter in a number of circumstances affecting them or a relevant person. Examples include, but are not limited to;
 - An application for a premises licence for premises owned or leased by the Councillor or a relevant person;
 - An application for a premises licence for a premises close to property owned by the Councillor or a relevant person, in particular where the grant of a licence could affect the Councillor’s pecuniary interest in that property (e.g. by affecting the value of the property);
 - An application for a review of a premises licence made by the Councillor’s or a relevant person’s employer.

- 3.5 Unless a Councillor has received a dispensation from Medway Council, he or she must not participate in a discussion or vote on any application in which he or she or a relevant person has a DPI.
- 3.6 The Members' Code of Conduct requires the disclosure at a meeting of a DPI even if the interest already appears on the register. Councillors need to be cautious about pending notifications (where the Monitoring Officer has been notified but the register has not yet been updated). There is an ongoing legal obligation to disclose at meetings until the register has been updated and therefore the Councillor should disclose at the meeting. In any event, Councillors may voluntarily declare a DPI or other interest at a meeting, even where there is no legal obligation to do so.
- 3.7 The Members' Code requires Councillors to withdraw from the room at a meeting during a discussion and vote upon an issue in which they have a DPI. Failure to comply with this requirement will not be a criminal offence but will be a breach of the Members' Code.
- 3.8 Where a Councillor who is due to sit on a hearing panel or sub-committee has a DPI or an Other Significant Interest (OSI) in a matter to be determined at that hearing panel or sub-committee, he or she should notify the Democratic Services team as soon as he or she receives the committee papers so that a substitute member can be organised. This is particularly important as such sub-committees and hearing panels have a small membership.
- 3.9 There are no longer any exemptions allowing Councillors who have a DPI or OSI to speak where a member of the public would be allowed to speak. Therefore where a Councillor has a DPI or OSI (either him/herself or through a relevant person) he or she may not participate in the debate or vote on a licensing matter and must withdraw from the room. This applies whether or not the Councillor is wishing to speak as a member of the committee, as a ward councillor or as a private individual (there are additional restrictions on speaking in a Licensing Hearing Panel which are set out in paragraphs 5.4 and 5.5 below). Where a Councillor who wishes to make representations has a DPI or an OSI in an application to be considered at a hearing panel or a sub-committee he or she may appoint a representative to attend on his behalf. If a Councillor with a DPI or an OSI wishes to attend personally in order to make representations, he or she must obtain a dispensation prior to the meeting.
- 3.10 Therefore if a Councillor has a DPI or and OSI in a matter being considered at a Committee, Sub-Committee or Hearing Panel (either his or her own interest or through an interest of a relevant person) he or she **must**
- Declare the interest verbally at the meeting as soon as he or she becomes aware of it
 - If it is declared at the meeting under the requirement above, ensure that the Monitoring Officer is notified of the interest within 28 days of the meeting, for purposes of registration on the Register of Member Interests as applicable

- Withdraw from the room and not participate in or give the appearance of participating in the debate or the vote
- Not be present in the room to represent ward/ objectors/ supporters/ personal views

4. Predetermination, Bias and Other Significant Interests

- 4.1 Councillors must also be aware of and act within the rules on predetermination and bias. Avoidance of bias or predetermination is a principle of natural justice which has evolved through the courts, although s25 of the Localism Act 2011 is also relevant. Even if a Councillor does not have a DPI or is not acting in breach of the Members' Code he or she may cause a decision to be invalid if he or she participates while predetermined or biased. The rules regarding predetermination and bias are likely to be more strictly applied where the Council is making "quasi-judicial" decisions, such as the determination of a licensing application, than in the case of other decisions to be made by the Council.
- 4.2 The basic legal position is that a Councillor should not take part in making a decision on a licensing matter if he or she is **biased** or has **predetermined** the matter. Councillors should bring an unbiased, properly directed mind to the consideration of any matters before them at Committee. This does not mean that Councillors are not entitled to have and to express opinions about general licensing matters, or licensing cases. However, they must approach, and must be seen to approach, matters before them with an open mind.
- 4.3 In this respect a distinction is to be drawn between those Councillors who are making the decision (i.e. speaking and voting as part of the hearing panel or sub-committee) and those Councillors seeking merely to influence the decision (e.g. making representations on behalf of an objector). The prohibition in respect of predetermination or bias only affects those actually making the decision. A Councillor who is not a member of a hearing panel or sub-committee who has predetermined or who is biased may still make representations at a hearing panel or sub-committee (provided that he or she does not also have a DPI or OSI in the matter).
- 4.4 A Councillor will have an OSI in a matter being considered at a meeting where their interest is closely aligned to the business of the agenda item and where the business affects the financial position or well being of the following to a greater extent than most inhabitants of the area affected by the decision:
- i) the Councillor;
 - ii) a member of the Councillor's family or friends or any person with whom the Councillor has a [close association](#);
 - iii) any person or body from whom a Councillor has accepted or received any [gifts or hospitality](#) as specified in [Schedule Two to the Member's](#)

Code;

- iv) any outside body or group specified in [Schedule Two](#) of the Members' Code of which the Councillor is a member or in a position of general control or management (as relevant).

And where a member of the public with knowledge of the relevant facts would reasonably think that the interest is so significant that it would be likely to prejudice the Councillor's judgement of the public interest.

- 4.5 Unless a dispensation has been granted a Councillor who has an Other Significant Interest must disclose this at the meeting, not take part in the discussion or vote and must leave the meeting room.

PREDETERMINATION

- 4.6 The law also makes a distinction between *predetermination*, which rules out participation in decision-making and *predisposition*, which does not. A Councillor is entitled to have and to express views on local matters, both general licensing matters and more specific applications. These views may indicate that a Councillor has a predisposition towards a particular policy or viewpoint. This is perfectly acceptable and a Councillor with a predisposition may take part in decision-making.
- 4.7 A predisposition will move on to becoming predetermination if, in relation to any matter before the Committee, a Councillor has taken a stance which indicates that he or she has finally closed his or her mind on the matter and that nothing that he or she hears at Committee will alter his or her position.
- 4.8 Section 25 of the Localism Act 2011 expressly provides that a Councillor shall not be taken to have had a closed mind just because he or she has previously done anything that directly or indirectly indicated what view he or she took, or would or might take, in relation to a matter. Therefore a Councillor will not have predetermined merely because he or she has made statements about a licensing matter in the past. However, this does not mean that a Councillor is free to say or do *anything* and still participate in the debate and vote. If by his or her actions and words the Councillor makes it clear that he or she will be voting a certain way no matter what information is presented at the Hearing Panel or Sub-Committee, then he or she will have predetermined and should not take part in the decision making.
- 4.9 There is acceptance that a Councillor may legitimately consider matters in several capacities as different factors may apply to different decisions. Where premises require both a licence and planning permission Councillors may be asked to sit on both the Planning Committee and a Hearing Panel. Premises which are sexual entertainment venues are likely to need both a licence under the Licensing Act 2003 and a licence under the Local Government (Miscellaneous Provisions) Act 1982 and again Councillors may be asked to sit on both Hearing Panels. While the statutory regimes in such cases are different, often the factors to be taken in to account can be similar. In these

circumstances, Councillors should carefully consider whether anything they have done or said in making the earlier decision would demonstrate a pre-determination of the second decision. If that is the case, the Councillor should not take part in the decision making at the second committee, sub-committee or Hearing Panel.

BIAS/CONFLICT OF INTEREST

- 4.10 A Councillor should not be party to decisions in which he is actually biased or gives the appearance of being biased, to the reasonable observer. The test for the appearance of bias is whether a fair minded and informed observer, having considered the facts, would conclude that there was a possibility that the decision maker was biased. This can also be described as having a conflict of interest.
- 4.11 Bias may arise by virtue of a Councillor being closely connected with a person who has a vested interest in the application – either the applicant or an objector. This may result from a personal connection, such as an applicant being a relative or friend, or result from the Councillor promoting a particular viewpoint (e.g. by being part of a lobby group). The role of the Hearing Panels and Sub-Committee is to consider applications in accordance with the legislation and to balance the interests of persons with competing views and this may not be possible where a Councillor is closely connected with a particular party.
- 4.12 In addition, circumstances which raise the possibility of bias may also lead to an accusation of a breach of the Members' Code, as the Members' Code states that Councillors must act solely in the public interest and should never improperly confer an advantage or disadvantage on any person or act to gain financial or other material benefits for themselves, their family, friends or close associates. Where this might occur, Councillors should not take part in the decision-making.

Particular Committees

5. Making representations to Licensing Hearing Panels

- 5.1 This Licensing Code deals with all licensing matters, but there are particular rules as to who can be heard at a Licensing Hearing Panel (which determines applications under the Licensing Act 2003 and the Gambling Act 2005).
- 5.2 In accordance with s18 of the Licensing Act 2003 (as amended) *any person* can now make representations in relation to an application to Medway Council for the grant of a premises licence and such representations will (if they meet 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 person* may now (in accordance with the conditions set out in Regulations) apply for a review of a premises licence under the Licensing Act 2003 where Medway Council is the licensing authority.

- 5.3 The provisions of the Gambling Act 2005 are more prescriptive. Only Responsible Authorities and Interested Parties (as defined in the Gambling Act 2005) are able to make representations.
- 5.4 Only “parties” – i.e. the applicant and any persons who have made relevant representations (under the Licensing Act 2003 or the Gambling Act 2005 as applicable) are permitted to speak at a Licensing Hearing Panel, although any party may be assisted or represented by another person.
- 5.5 A Councillor may only therefore speak at a Licensing Hearing Panel in two circumstances:
- (i) where the Councillor has himself or herself submitted a relevant representation and is therefore a party;
 - (ii) where the Councillor has specifically been asked by a party (i.e. the applicant or a person who has made a relevant representation) to represent him or her.

It is helpful for Councillors when making representations to identify to officers which of the above categories they fall into. However, in considering whether to attend a Licensing Hearing Panel in either of the above capacities, Councillors should remember that they will not be able to appear (either on their own behalf or as a representative) if they have an OSI or if they have a DPI and do not have a dispensation.

- 5.6 Where a Councillor has made a representation on an application or has called for a review of a licence it is very likely that he or she will have pre-determined the application or would be seen to be biased 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 or postpone meetings because of Councillor interests, Councillors should not sit on Licensing Hearing Panels to determine applications in their own wards.

6. Making representations to 1982 Act Hearing Panels

- 6.1 The requirements of the Local Government (Miscellaneous Provisions) Act 1982 with regard to the making of representations on applications for sex establishment licences are less detailed than those of the Licensing Act 2003 or the Gambling Act 2005. The 1982 Act does not make specific provision for objectors to be heard at a Hearing Panel, but it is the Council’s policy to permit objectors to be heard. Therefore as above, a Councillor may address the Hearing Panel either having made an objection himself or herself, or as a representative of an objector if requested to do so by the objector. The guidance in paragraphs 5.4 and 5.5 above therefore apply equally to 1982 Act Hearing Panels.

7. Making representations at Licensing Sub-Committee

- 7.1 The Licensing Sub-Committee hears appeals on taxi matters and other licensing matters not covered by the Licensing Hearing Panel or the 1982 Act Hearing Panel. In most of the matters dealt with by the Licensing Sub-Committee members of the public do not have rights to make representations and the Sub-Committee will be making a decision after having heard the Licensing officers and the applicant. If a Councillor wishes to make representations to the Licensing Sub-Committee he or she should contact the Licensing team for advice on whether this is possible having regard to the type of application upon which the Councillor wishes to make a representation.

Specific Areas of Guidance

8. Membership of Parish Council

- 8.1 Where a Parish Council makes representations on a licensing application, then a Councillor who is also a member of that Parish Council should not sit on a hearing panel or licensing sub-committee determining that application. It goes without saying that a Councillor should not become involved at a Medway level in applications for licences made by the Parish Council on which they serve.
- 8.2 Even where a Parish Councillor who is also a Medway Councillor is not able to sit on the hearing panel/sub-committee he or she will have the same right as any other Councillor to address the Panel/Committee (as set out above) provided they do not have a DPI or OSI.

9. Lobbying by Councillors

- 9.1 Councillors can, of course, lobby and campaign on particular developments, but they should recognise that this may remove them from the decision making process.
- 9.2 If a Councillor leads, represents or is a member of a group whose primary purpose is to lobby to promote or oppose the grant of a particular licence, he or she will be considered to have predetermined an application for that licence.
- 9.3 The position in 9.2 is distinct from membership of general interest groups, which reflect a Councillor's area of interest, e.g. the Licensed Victuallers Association, CAMRA, associations supporting live music. If that organisation has made representations on an application, but the Councillor has not been involved in preparing those representations, he or she will not have predetermined merely due to that membership.
- 9.4 Where a Councillor is in a position of general control or management of a body which has as one of its principal purposes the influence of public opinion

or policy then this could also give rise to an Other Significant Interest which would prevent a Councillor from speaking or voting on the matter.

9.5 Councillors should not excessively lobby other Councillors regarding their views on licensing applications, nor should they, outside of the Hearing Panel or Sub-Committee, try to persuade other Councillors how to vote.

9.6 Councillors should not decide or discuss how to vote on licensing applications at political group meetings or lobby other Councillors to do so. Political group meetings should never dictate how Councillors vote on licensing applications.

10. Representations from Councillors at the consultation stage

10.1 Councillors who wish to take part in the debate and vote at a Hearing Panel or Sub-Committee should refrain from making representations as part of the consultation process, as this may imply predetermination.

11. Lobbying of Councillors

11.1 Lobbying is a normal and perfectly proper part of the political process. Those who may be promoting or affected by a licensing decision will often be seeking to influence it through an approach to their elected ward Councillor, another Councillor or a member of the Hearing Panel/Sub-Committee. However lobbying can, where a Councillor is a member of the Hearing Panel or Sub-Committee which will determine the application, lead to the integrity and impartiality of a Councillor being called into question. This can in turn affect the validity of a licensing decision.

11.2 A Councillor who wishes to participate in the determination of a licensing application should explain to persons lobbying or attempting to lobby that it would prejudice their impartiality and ability to participate in the decision if they discuss how he or she intends to vote or expresses sympathies with a point of view in advance of the meeting. For the avoidance of doubt a Councillor will not have predetermined

- by just listening to viewpoints from residents or interested parties;
- by making comments which fall short of prejudging the issue;
- by seeking information through appropriate channels;
- by asking questions at the Hearing Panel/Sub-Committee which reflect the issues raised.

11.3 When a Councillor participates in making a licensing decision, his or her overriding duty is to the community as a whole and not just people in his or her ward. As decisions need to be taken impartially a Councillor should not improperly favour or appear to improperly favour any person, company, group or locality. To do so is likely to be a breach of the Members' Code.

11.4 In addition to the requirement set out in the Members' Code to declare any gift or hospitality with an estimated value of at least £100, 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. If you have personally received written representations on a licensing application you should forward copies of these to the Licensing and Local Land Charges Manager as soon as possible, as there are strict time limits for the receipt of representations in most licensing matters.

12. Contact with applicants, developers and objectors

- 12.1 Councillors should refer those who approach for assistance on procedural or technical licensing matters to relevant officers in the Licensing team.
- 12.2 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 Councillors 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.

13. Policy formulation by the Council

- 13.1 Individual licensing applications are generally dealt with by the Hearing Panels and the Licensing Sub-Committee. The Licensing & Safety Committee has the role of considering and formulating policy and recommending the adoption of the same to Council.
- 13.2 Councillors may take part in both policy formulation and determining licensing applications. However, when attending meetings on policy formation Councillors should follow the guidance on pre-determination if they wish to take part in subsequent decisions on licensing applications. This will be particularly relevant where the policy being formulated is site specific.

14. Site/Vehicle inspections

- 14.1 In exceptional cases Councillors may not be able to appreciate points being put to them at a hearing without a site inspection (for example on an application for a sexual entertainment venue licence where representations have been made about the nature of the vicinity and Councillors are not familiar with the particular vicinity and it cannot be explained adequately at the hearing). Where, prior to committee, officers identify that photographs of the site and/or vicinity would be helpful they will include these in committee papers. Where, on receipt of the agenda, a Councillor identifies that a view of the site/vicinity would be helpful and no photographs have been included he or she should contact the Licensing team in sufficient time prior to the committee to arrange for photographs to be available at the committee (these will need to be provided to the parties *prior* to committee). In the majority of cases this may avoid any unnecessary delay which would be caused by a site inspection. Site inspections may only be held with the agreement of the

landowner.

- 14.2 In matter relating to taxis, Councillors may need to undertake a vehicle inspection.
- 14.3 It is important to remember that a site/vehicle inspection is a formal part of the licensing hearing process. The visit may be made either prior to the hearing or at the conclusion of the evidence. All members of the Hearing Panel/Sub-Committee must all attend and will be accompanied by an officer. Inspections made prior to the hearing will primarily be intended to appraise Councillors 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, but not to make any further representations to the members of the Panel/Sub-Committee. Vehicle inspections will normally be made during the hearing process and are intended to appraise Councillors of the condition of a vehicle, where appropriate to the application/appeal. The applicant and the Licensing Officer(s) will be asked to attend, and may point out matters relevant to the condition of the vehicle but not make any further representations.
- 14.4 Where a site inspection is held the following conditions must be complied with:
 - 14.4.1 No hospitality should be accepted at site inspections.
 - 14.4.2 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.
 - 14.4.3 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/sub-committee.
 - 14.4.4 It is acceptable to ask officers at the site inspection questions to seek clarification on matters relevant to the site inspection.
 - 14.4.5 The site inspection should be properly recorded as part of the hearing panel/sub-committee's proceedings.
 - 14.4.6 All Councillors should remember the purpose of the site inspection and should refrain from making comments not relevant to the application to be considered by the Hearing Panel/ Sub-Committee. A site inspection is not a general public meeting and Councillors should not treat it as such.
 - 14.4.7 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.
- 14.5 Councillors should comply with paragraphs 14.4.1-14.4.6 when undertaking a vehicle inspection.

15. Contact with Officers

- 15.1 General guidance is given in the protocol on member/employee relations in the constitution and that is not repeated here.
- 15.2 Councillors 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.
- 15.3 Officers must act in accordance with the employee code of conduct and any relevant professional codes of conduct, for example the Institute of Licensing's rules for professional conduct. As a result licensing officers may on occasion take a view which could be at odds with the views, opinions or decisions of the Committee or its members.

16. Licensing applications by Councillors and officers and Council applications

- 16.1 Proposals to the Council by serving and former Councillors and officers and members of their family or persons with whom they have a close association can easily give rise to suspicions of impropriety, if not handled transparently. So indeed can applications made on behalf of the Council.
- 16.2 Councillors (and officers involved in the licensing process) who submit applications in a personal capacity should notify the Assistant Director, Legal and Governance and play no part in its processing or determination and should avoid contact, whether direct or indirect with members of the relevant Hearing Panel or Sub-Committee concerning the application. Failure by a Councillor to comply with these principles could be a breach of the Members' Code.
- 16.3 It is perfectly legitimate for such applications 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. Councillors should carefully consider using agents to submit and take forward their own applications. Without a dispensation Councillors will not be able to attend a Hearing Panel or Sub-Committee dealing with their own application, as they will have a DPI in that matter. If they wish to make representations at the Hearing Panel or Sub-Committee they should apply for a dispensation or appoint a representative to make representations on their behalf.
- 16.4 Serving Councillors and officers should avoid acting as agents for people pursuing a licensing applications and where they do so should play no part in the decision making process for that proposal.
- 16.5 Councillors considering an application must of course consider whether the nature of any relationship with the Councillor submitting the licensing application could lead to an accusation of bias. Mere membership of the

same political group is unlikely to lead to an appearance of bias, but a close friendship could as this is likely to be an OSI.

17. Decision making

17.1 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 (including being present at any site inspection)
- come to a decision only after due consideration of all information reasonably required upon which to base such a decision
- make the licensing decision in accordance with the requirements of the relevant licensing legislation, having regard to relevant guidance and policy
- request further information if it is felt there is insufficient information before the Committee to reach a decision.

18. Training

18.1 Councillors should not participate in decision making meetings dealing with licensing matters unless they have attended any training prescribed by the Monitoring Officer.

