

# **Local Code of Good Practice – Members and Employees Involved in the Licensing Process**

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## 1. Introduction

- 1.1 The Council has a variety of duties to undertake in relation to permits, consents and licences set out within legislation, some of which have been in effect for centuries. This sets down rules by which certain activities can only be lawfully carried out if a formal permission has been issued. This process is necessary to ensure that appropriate checks are made and any necessary conditions imposed on the activity in order to preserve the amenity of an area, minimise inconvenience to the public and ensure fairness and equality of opportunity. There may also be a need to enquire into the background of an applicant, assess their suitability for the matter under consideration and, in some cases, their honesty. This is because the public must have confidence in the robustness of such processes and be sure that the Council's corporate responsibility is being satisfactorily discharged.
- 1.2 Every member of the public will at some time encounter a service or business which has been required to obtain an appropriate permission for its activities. Licensing decisions will therefore impact frequently upon the daily lives of private individuals. It is therefore essential that licensing decisions be taken openly and impartially. The licensing process must leave no grounds for suggesting that a decision has been partial, biased or not well founded in any way.
- 1.3 On the passing of the Licensing Act in 2003, it was decided by Parliament that decisions in relation to alcohol, entertainment and late night refreshment licensing would best be left to elected members who would be accountable to the local electorate. An elected member is required to take forward concerns, drive change, participate in community and action groups and make decisions for the community as a whole. As the Standards Board for England noted in 2004, these roles and responsibilities can often conflict and there needs to be a balance between representation and ensuring that the authority can even-handedly decide matters on their merits. Not only that but it must be seen doing so by maintaining public confidence in the fairness and impartiality of the licensing decision-making process.
- 1.4 The purpose of this Local Code is to provide clarity in the way in which members and employees of the Council (or 'officers') will deal with licensing matters and to set the standard of conduct that other parties to the process are entitled to expect of the Council. Whilst this Local Code deals primarily with the determination of licensing applications under the Licensing Act 2003, the principles it endorses must be taken into account when considering how other licensing and registration activities are to be dealt with, how local policies are considered and followed, how applicants are dealt with during the process and what involvement members can have with such matters prior to their determination.
- 1.5 In this Local Code, 'member' includes all elected members of the Council.
- 1.6 This Local Code is intended to ensure that the licensing process is characterised by open and transparent decision making. Adherence to the Local Code will help to protect the Council against allegations of maladministration, legal challenges to its decisions and applications for costs based on the grounds of such decisions being unlawful. The Local Code is based on three main principles:
  - (a) Decision-makers must **not** favour unfairly (or appear to favour unfairly) any individual or group.

- (b) Decision-makers must **not** make decisions in advance of being presented with all the relevant facts.
- (c) Members and employees have different but complementary roles in consequence of which a successful relationship must be based upon mutual trust and respect for the positions of each other.

## **2. Relationship with the Council's Codes of Conduct**

- 2.1 This Local Code is concerned with the integrity of the licensing process and maintaining public confidence in the licensing system. Whilst there is a degree of overlap with the Council's Codes of Conduct for Members and Employees, this Local Code of Good Practice also imposes additional obligations in the specific context of licensing and control.
- 2.2 Failure to follow this Local Code may be taken into account in investigations into possible maladministration and may result in allegations that a member or employee has breached the Council's Codes of Conduct (and a member being referred to the Monitoring Officer for investigation or an employee being subject to disciplinary action).

## **3. Application of This Local Code**

- 3.1 This Local Code applies to both members and employees who become involved in licensing issues. It applies to all licensing decisions (whether taken at Council, Committee, Sub-Committee or by employees under delegated powers).
- 3.2 The Local Code also applies to site visits, meetings, forums and all other formal and informal contacts between members, employees, applicants, agents, objectors, legal advisors and other members of the public involved in the licensing process. Whilst this Local Code primarily addresses the determination of licensing applications its underlying principles must also be applied to the processes up to that stage and subsequent enforcement issues.
- 3.3 When determining whether there has been a breach of this Local Code the standard to be applied will be that of the reasonable member of the public with knowledge of the relevant facts and the standard of proof will be that of the balance of probabilities.

## **4. The Roles and Conduct of Members and Employees**

- 4.1 Members and employees have different but complementary roles. These are explored in detail in the Council's Local Protocol on Member and Officer Relations contained in Part 5 of the Council's Constitution. The guidance contained in that Protocol is relevant to the licensing process.
- 4.2 Both members and employees are subject to formal Codes of Conduct adopted by Torbay Council and set out in the Constitution. These cover issues central to the preservation of an ethical approach to Council business. In particular, members must register and declare pecuniary and non-pecuniary interests and employees must register and declare personal interests in accordance with the Employee Code of Conduct. However, the Codes also govern relationships between members, employees and the public and these provisions will impact on the way in which

members and employees participate in the licensing process. Of particular relevance to members and employees involved in licensing decisions is the requirement that they;

**‘must not in his/her official capacity, or any other circumstances, use his/her position as a member/employee improperly to confer on or secure for him/herself or any other person, an advantage or disadvantage’**

- 4.3 The licensing system involves the consideration of proposals which often impact greatly upon wider public interest. Much is often at stake in this process and opposing views are frequently very strongly held by those involved. Whilst members and employees need to listen to these views, if they are involved in the **determination** of a licensing matter, they must **not** unfairly favour (or appear to unfairly favour) any person, body or organisation, or any group or locality, nor put themselves in a position where they **appear** to do so. **Members or employees who do not feel that they can act in this way must ensure that they do not take part in the determination of a licensing matter.**
- 4.5 It is wholly unacceptable for any member or employee ever to receive (or seek) any gift or hospitality as part of the licensing process. It exposes the recipient to the most serious allegations of impropriety and may result in criminal charges for corruption (punishable on conviction by a long prison term and/or heavy fine and/or referral to the Monitoring Officer).
- 4.6 The functions of employees are:
- (a) To carry out the administrative tasks associated with licensing applications and enquiries, to negotiate, where appropriate (and in accordance with this Local Code), with consultees, applicants, respondents, those who have made representations and their agents.
  - (b) To prepare a comprehensive and balanced report indicating the background and relevant issues arising from the application. Where Licensing Act 2003 applications are concerned, details will, in particular, include matters relating to the promotion of the licensing objectives but, in order to retain the required position of neutrality, no recommendation will be made. In respect of other licensing matters, the report may include a clear recommendation which will be determined by a Licensing Committee or (Sub-Committee).
  - (c) To determine licensing matters as authorised by the Council’s Scheme of Delegation and in accordance with licensing law and policies and fulfil any duties, other than determinations, provided for within that Scheme.
  - (d) To advise and assist members and the general public in respect of any queries falling within the function of the Licensing Section.
- 4.7 In carrying out these responsibilities, employees will:-
- (a) Provide impartial guidance to all parties including applicants, respondents, objectors, consultees and members and provide professional advice to the Council.
  - (b) Ensure, so far as possible, that all information necessary to make a decision

has been obtained, evaluated and properly taken into account (when making a decision or formulating a recommendation) and (if applicable) properly reported to the decision making person or body.

## 5. Registration and Declaration of Interests

- 5.1 The Council's Codes of Conduct for Members and Employees (set out in Part 5 of the Constitution) require certain interests to be registered and declared. These requirements **must** be followed scrupulously, by Members and Employees when dealing with Licensing matters.
- 5.2 Where a member has a pecuniary interest or an employee has a personal interest in a licensing matter, he/she may attend a meeting, but only for the purpose of making representations, provided that the public are also allowed to attend the meeting for the same purpose. In the case of a member, having made his/her representations he/she must withdraw from the meeting room and can not vote on the matter.
- 5.3 Where an application is made under the Licensing Act 2003 in respect of which a member or an officer can be considered to live "in the vicinity" of the premises, the member or officer will be entitled to raise, on a personal basis, a representation.. Representations will then be dealt with in accordance with the Licensing Hearing Regulations.
- 5.4 If a member is a member of an outside body that is making (or supporting or objecting to) a licensing application it is very likely that the member will have a declarable non-pecuniary interest and quite likely that the member will have a pecuniary interest that will preclude he/she from taking part in the matter or even being in the room when the Committee (or Sub-Committee) consider the matter. In these circumstances it is strongly recommended that members seek advice from the Monitoring Officer.
- 5.5 It will **not** normally be appropriate for a member who is a Council representative on an outside body to decide on a licensing matter affecting that body if they are a director or trustee of the outside body. This is because those roles involve some obligation to act in the best interests of the outside body and may create an inherent conflict with the member's role as a councillor. In the case of bodies such as trusts, the obligation to act in the best interests of the trust is a legal one and overrides duties as a Councillor. If in doubt, the advice of the Monitoring Officer should be sought on this issue.
- 5.6 Where a member who is a Council representative on an outside body (in whatever capacity, not just as a director or trustee) has taken a firm view on a licensing matter, either in meetings of the outside body or otherwise, they may be open to an accusation of predetermination and must **not** vote on the matter at any Council meeting. This is discussed more fully in part 6 below. Failure to follow this advice may result in a licensing decision being challenged in the courts.

## 6. Licensing Applications by Members and Employees

- 6.1 Any councillor or employee involved in the licensing process who makes an application (or who has any other councillor pecuniary interest or employee personal

interest in an application) shall:

- (a) Promptly inform the Divisional Director for Community and Customer Services who shall ensure that a written record of such interest is placed on the application file.
- (b) Take no part in the processing or determination of the application.
- (c) If in any doubt as to the nature of any interest, take advice from the Monitoring Officer in relation to the matter.

(This does not preclude members or employees from exercising their right to make written representations as a private individual following the requirements set out in paragraph 5 and 6 of this Local Code.)

- 6.2 The Divisional Director for Community and Customer Services will ensure that all applications in which an officer involved in the licensing process has a personal interest are determined by a Committee (or Sub-Committee) and not under powers delegated to officers.
- 6.3 Applications by officers or by their friends or relatives (as defined in the Employee Code of Conduct) will not be determined under powers delegated to officers. The Divisional Director for Community and Customer Services may decide that this procedure will apply to any other employee of the Council on a case by case basis. The paramount consideration in exercising this discretion will be to maximise public confidence in the impartiality of the licensing process.
- 6.4 Where a member has a pecuniary interest or employee has a personal interest in a licensing matter, the Council's Codes of Conduct also require that they must not seek ***improperly*** to influence a decision about a matter.
- 6.5 It is important to emphasise that *improperly* does not imply that a member or employee is to be precluded from seeking to explain and justify their proposal to a Licensing Officer (whether over the phone, face to face or in writing) in advance of consideration of the matter by Committee (or Sub-Committee).
- 6.6 References to the right to appear and speak at hearings and meetings, or to nominate others as representatives, will be relevant only where the legal procedures allow such attendance and participation.

## 7. Lobbying Of and By Members

- 7.1 If members are to undertake fully their constituency roles, it is inevitable that they will be subject to lobbying on licensing matters. **Lobbying is a normal and perfectly proper part of the political process.** Local concerns about licensing developments and proposals need to be adequately aired as part of the licensing process. **However, a member must not lobby or act as advocate for (or against) a licensing proposal and vote on the determination of the matter.** Members must comply with the guidance in relation to pre-determination as set out in part 4 of this Local Code.
- 7.2 Members may organise support for or against a licensing application or lobby other members. However, whilst they may be able, following the submission of a relevant

representation, speak at the Committee (or Sub-Committee) meeting when the application is determined they must not preside at the Committee that determines the matter.

- 7.3 When being lobbied, members in general, but members of the Licensing Committee in particular, must take care about expressing an opinion that may be taken as indicating that they have already made up their mind on the issue before they have considered all relevant matters at Committee (or Sub-Committee). In such circumstances it is preferable for a member to restrict their comments to procedural advice and to encourage the lobbyist to make a representation to the Licensing Authority in order that their opinions can be considered as part of the decision-making process, if they can be considered to be relevant under the legislation.
- 7.4 Where the Monitoring Officer (or his/her representative at Committee) reasonably believes that a member has prejudiced his/her position by expressing a conclusive view on an application before its determination by the Committee (or Sub-Committee), he/she will advise the member that it would be inappropriate for the member to vote on the application.
- 7.5 If a member is approached in their role as ward councillor by a third party, neighbour, potential objector or supporter and they will preside over that application then the Member must direct such persons to officers of the Licensing Authority and not express opinions which may be taken as indicating that they have already made up their minds on an issue before they have heard all the evidence and arguments at Committee (or Sub-Committee). Where a Member believes it is more suitable to represent their constituents, the Member must withdraw from determining the matter.
- 7.6 Members are encouraged where practicable (and particularly if the application is obviously highly contentious) to keep a dated written record of lobbying and the response given. Appendix 1 contains a form designed for this purpose. In accordance with this Local Code it will be considered to be good practice for members to hand in any completed form prior to the relevant Committee (or Sub-Committee) meeting. All completed records must be submitted to the Head of Governance.

## **8. Employees' Discussions and Negotiations with Applicants**

- 8.1 It is recognised that employees undertake differing, but complementary, tasks which may overlap. Legislation, and in particular the Licensing Act 2003, requires that a distinction be drawn between the duties of the Council as Local Authority and, separately, as a Licensing Authority. Consequently, those involved with the administration of applications will be required to adopt a position of neutrality where this is required. Other employees may be acting as statutory consultees in these matters and providing representations to be considered when the matter is determined. The way in which discussions and negotiations are conducted will be affected by the type of application and matter under consideration. Pre-application meetings and informal discussions between employees, potential applicants and responsible authorities are an unavoidable and integral part of the licensing process.
- 8.2 In any discussions on licensing issues, the position of the employee concerned will always be made clear at the outset. This will be either that:-

the discussion and any views expressed are based on the employee's professional judgement but will not bind the Council to any particular decision. This is because, by the nature of such meetings, not all the relevant information will be to hand and consultations with interested parties will not normally have taken place;

or

the intention of the discussion will be to assist the formulation of an application which addresses the appropriate licensing objectives, so reducing the likelihood of a representation being provided and, consequently, consideration of the matter at a hearing.

- 8.3 Advice given will be consistent and based on the legislation, relevant guidance, local licensing policies and any other material licensing considerations. Every effort will be made to ensure consistent interpretation of licensing policies by different employees. It will be made clear, however, when the employee is providing a personal view or interpretation rather than qualified legal advice which should be confirmed by the enquirer from an independent source.

## 9. The Decision-Making Process - General

- 9.1 In determining applications pursuant to the Licensing Act 2003 and the Gambling Act 2005, the Licensing Committee or Sub-Committee will follow the procedure laid down in the Hearing Regulations – Licensing Act 2003 (Hearings) Regulations 2005.
- 9.2 When determining licensing matters members and employees must approach each application with an open mind and carefully weigh up material licensing considerations, particularly with reference to the local Statement of Licensing Policy and statutory guidance. They must disregard all considerations that cannot lawfully be taken into account.
- 9.3 No group of members (for example, from the same political group, or from the same ward) and no informal meeting of a particular group on a Committee (or Sub-Committee) will be used to decide how members shall vote in a Committee (or Sub-Committee) determining an application. **It is unlawful for a licensing decision to be subjected to the discipline of the political whip and to do so would also constitute maladministration.**
- 9.4 Members with a pecuniary or non-pecuniary interest and employees with a personal interest in an application must declare the interest in accordance with the Council's Codes of Conduct for Members and Employees and this Local Code.
- 9.5 Members and officers will address one another during the debate in a proper manner and through the Chairman/woman. Members shall respect the impartiality and integrity of officers.
- 9.6 Senior Legal and Licensing Officers shall always attend meetings of the Licensing Committee (or Sub-Committee) to ensure that procedures have been properly followed and licensing issues properly addressed.
- 9.7 In discussing and determining a licensing application, members will confine themselves to the licensing merits of the case and the reasons for making a final decision shall be clear and reasoned based.



- 9.8 On occasions the Licensing Committee (or Sub-Committee) will disagree with the officer's recommendation, where one has been made. Licensing Committees (or Sub-Committees) are entitled to reach their own decisions by attaching different weight to the various licensing criteria which are relevant to the application. However, the same strict legal requirements have to be met, as the reasoning in the officer's report will no longer apply.
- 9.9 Where a member proposes to recommend approval contrary to an officer's recommendation of refusal, the Chairman/woman will give the Licensing Officer an opportunity to respond to that recommendation and to discuss any appropriate conditions. The officer may request further time in order that appropriate consideration can be given to the proposed recommendations.
- 9.10 Before any matter is put to the vote any member of the Committee (or Sub-Committee) may request the Chairman/woman to ask the clerk to read to the meeting the full text of the proposal to be voted upon.

## **10. Decision Making – Delegation to Employees**

- 10.1 The Council's Scheme of Delegation specifies clearly the categories of applications that may be determined by officers; those that will be referred to the Licensing Committee (or Sub-Committee).

## **11. Public Speaking At Licensing Committees (Or Sub-Committees)**

- 11.1 Members of the public are entitled to speak at meetings of the Licensing Committee, apart from when the Licensing Committee (or Sub-Committee) are considering matters pursuant to the Licensing Act 2003. For applications under the Licensing Act 2003 'relevant persons' can make written representations, these representations must be valid and submitted to the Licensing Authority within the prescribed consultation period (for further detail refer to the Licensing Act 2003 (Hearings) Regulations 2005).
- 11.2 For a representation to be relevant it must:
- relate to the effect of the grant of the licence on the promotion of the licensing objectives and be submitted within the prescribed consultation period;
  - be made by a relevant person, within the prescribed consultation period;
  - not have been withdrawn
  - not be 'frivolous or vexatious' or, in the case of a review, 'repetitious' if made by an interested party; or
  - if it concerns the premises supervisor be made by a chief officer of police and include a statement explaining the reasons for the objection.
- 11.3 On receipt of relevant written representations, a hearing is required and notices are sent to the applicant, as well as those making representations, requiring them to return a second notice, within five days advising the Licensing Authority whether or not they will be attending the hearing which will determine the application.

- 11.4 If a notice is not received from interested parties, relevant authorities or the applicant it is at the discretion of the Committee/Sub-Committee to allow that person to speak at the hearing.

**12. Committee Site Visits**

- 12.1 Where the Licensing Authority determines that a site visit is deemed necessary, the Licensing Authority will make the relevant arrangements.

**13. Review of Decisions**

- 13.1 The Licensing Committee will regularly review, at least annually, details of decisions made under the Licensing Act 2003, including those made under Delegated Powers, to maintain an overview of the general situation, the purpose is to improve the quality of decisions.

**14. Training in the Licensing Process for Members**

- 14.1 All members of the Council on being elected must undertake initial licensing training. Members of the Council may be given refresher training when changes are made to licensing law or procedure.
- 14.2 Members who have not undertaken the relevant licensing training shall not be permitted to be a member of or substitute for other members on the Licensing Committee (or Sub-Committee).
- 14.3 Any failure to comply with the core licensing training requirements may be referred to the Monitoring Officer in accordance with the Code of Conduct for Members and to the appropriate Group Leader.

**Licensing Attendance Note**

Licensing application type:
Premises and address :
Enquiry from:
Nature of Representations:
Response Given:
Member:
Date: