

LICENSING PROTOCOL FOR MEMBERS AND OFFICERS

Introduction

1. The aim of this Licensing Protocol is to ensure that in the licensing process there are no grounds for suggesting that a decision has been biased, partial or not well founded in any way.

2. In this Licensing Protocol wherever references are made to the Council's "Licensing Committees", this includes the Licensing and Appeals Committee and the Licensing Sub-Committee. No member should be appointed to the Licensing Committees unless they have agreed to take part in training in licensing matters, including the operation of this Licensing Protocol. No member appointed to a Licensing Committee should participate in the business of the Licensing Committee until they have attended training in licensing matters.

3. In this Licensing Protocol, the expression "licensing matter" means any Licensing application, existing licence or licensing policy issue, within the City of Manchester or which materially affects the City and includes Licensing enforcement. This Licensing Protocol sets out the practices and procedures that members and officers of the Council should follow whenever they are involved in licensing matters in order to comply with the Code of Conduct for Members (as adopted by the Council on 11 July 2012) ('the Code') and the Employee Code of Conduct, respectively.

4. The sections of this Licensing Protocol relating to the declaration of interests also apply to members who are not members of the Licensing Committee. In making written representations to Licensing Committee all members must serve only the public interest and should never seek to improperly confer an advantage or disadvantage on any person.

5. Licensing decisions affect people's daily lives and the private interests of individuals and companies. The role of the licensing system is to regulate the granting of licences but also their use. Accordingly licensing decisions must be seen to be impartial and properly justified. The licensing system can only operate effectively if there is trust among the various stakeholders: the public, applicants, members and officers.

6. Failure to abide by this Licensing Protocol may place the Council at risk of proceedings concerning the legality or maladministration of the related decision.

Role and conduct of members and officers

7. Members and officers have different but complementary roles. Both serve the public but members are accountable to the electorate and officers accountable to the Council as a whole.

8. The role of members of the Licensing Committees is to make licensing decisions openly, impartially with sound judgement and for justifiable reasons.

9. Although members may take into account the views of others they should not discriminate in favour of any particular group or individual or put themselves in a position where they appear to do so.

10. Members are advised to treat with extreme caution any offer, gift, favour or hospitality that is made to a member personally. Members are referred to the Code and to the Gifts and Hospitality Guidance for Members.

11. All officers are expected to follow the Council's own Code of Conduct for Employees, or any statutory code which may come into force or be adopted by the Council.

Declaration of disclosable pecuniary interests

12. Part 2 of the Code incorporates the provisions in the Localism Act 2011 concerning the disclosure of pecuniary interests.

13. A "Disclosable Pecuniary Interest" is fully defined in the Code and includes, in relation to both members and their partners:

- Employment, office trade, profession or vocation
- Sponsorship
- Contracts
- Land
- Licences
- Corporate tenancies
- Securities

14. It is a criminal offence, if a Member without reasonable excuse:

- a. fails to notify the Monitoring Officer of any disclosable pecuniary interest within 28 days of election
- b. fails to declare a disclosable pecuniary interest at a meeting if it is not on the register
- c. fails to notify the Monitoring Officer within 28 days of a disclosable pecuniary interest that is not on the register that s/he has disclosed to a meeting
- d. participates in any discussion or vote on a matter in which s/he has a disclosable pecuniary interest
- e. knowingly or recklessly provides false or misleading information relating to disclosable pecuniary interests in notifying the Monitoring Officer or in disclosing such interest to a meeting.

15. Part 2 of the Code also advises members that, if they are present at a meeting and have a disclosable pecuniary interest in any matter to be considered at that meeting:

- Members must disclose the interest to the meeting whether or not it is registered

- Members must not participate in any discussion of the matter or in any vote taken on the matter at the meeting and must withdraw from the room of the meeting whilst the matter is being considered.

Members with a disclosable pecuniary interest in a licensing matter may apply to the Monitoring Officer for a dispensation to make representations, answer questions or give evidence relating to the relevant licensing matter at a meeting, provided that the public are also allowed to attend the meeting for the same reason. Members must declare their interest at any meeting which they attend with a dispensation and must make it clear that their representations are made in a personal capacity rather than in their role as a councillor.

Declaration of personal interests

16. Part 3 of the Code states that, in addition to disclosable pecuniary interests, members must also register other personal interests defined in the Code.

17. Subject to the circumstances outlined in the Code, where members have a personal interest in any business of the Council and attend meetings such as Licensing Committee at which the business is considered, they must disclose the existence and nature of that interest at the meeting.

Declaration of prejudicial interests

18. A member with a personal interest in any business of the Council also has a prejudicial interest if a member of the public, with knowledge of the relevant facts, would reasonably regard the interest as so significant that it is likely to prejudice the member's judgement of the public interest. A full definition of 'prejudicial interest' appears in Part 3 of the Code.

19. A member with a prejudicial interest must disclose the interest to the meeting and must withdraw from the room where the meeting is held unless s/he is making representations, answering questions or giving evidence relating to the relevant licensing matter provided that the public are also allowed to attend the meeting for the same reason. The member must leave the room immediately after making representations, answering questions or giving evidence and must not participate in any discussion of the matter at the meeting or in any vote taken on the matter at the meeting.

Bias and predetermination

20. The law on bias and predetermination may apply at times when the member concerned does not have a disclosable pecuniary interest or a personal or prejudicial interest as defined by the Code.

21. Predetermination is a principle developed by the courts which has established that a decision taken by a public body is unlawful if the decision maker approaches the decision with a closed mind.

22. Section 25 of the Localism Act 2011 applies when a Court has to consider whether a decision has been validly made. It provides that a “decision taker” is not to be regarded as having a closed mind just because the decision taker had previously done anything that directly or indirectly indicated what view the decision-maker took or would or might take in relation to a matter that was relevant to the decision. The use of the qualifying words ‘just because’ in Section 25 indicates that some decisions will still be invalid by reason of predetermination notwithstanding the enactment of the section, because all the circumstances surrounding the decision have to be taken into account. Regardless of any predisposition of members to determine an application in accordance with their political views and policies, the members of Licensing Committees must approach decision making with an open mind, must listen to the evidence and arguments on both sides and must make decisions with regard to material licensing considerations. Members should not have, or appear to have, a closed mind on a licensing application prior to its full consideration at Licensing Committee.

23. Where bias or predetermination or a risk of the perception of bias or predetermination arises, a member of Licensing Committee who has, or appears to have, a closed mind about a licensing matter in advance of Committee should not participate in the decision making part of the meeting. Members may, in their representative capacity, address the Committee on the licensing merits of the application for the same period of time as any member of the public with a right to speak. Members should declare that they cannot participate in the decision taking as a result of having a closed mind in advance of the meeting and withdraw as soon as they have addressed the Committee.

Lobbying of and by members

24. Lobbying is a necessary and legitimate element of the political and democratic process. The time for individual members of the Licensing Committees to make a decision on a proposal is at the committee meeting when all the relevant information is available and has been properly considered. Members should not close their minds or give the appearance of having closed their minds, particularly in relation to an external interest or lobby group, prior to the Licensing Committee meeting. Members who commit themselves in advance to a fixed view as to how the proposal should be determined should withdraw from the room in which the meeting is held and not participate when the Committee is discussing or voting on the application. They may, in their representative capacity, address the Committee on the licensing merits of the application (see paragraph 24 above).

(Note: Where a matter is discussed and then deferred from one meeting to another, members may continue to take part in the decision at the second meeting, even if they have expressed views at the first meeting. Members should always keep an open mind and take into account new information presented at the second meeting when they vote)

25. Members are free to listen to a point of view about a particular proposal and to provide procedural advice, (e.g. by referring the person to a particular officer). They should be careful however to reserve their own final judgement on the matter until the Licensing Committee meeting.

27. Members should not circulate unofficial papers not previously considered by officers at Licensing Committee meetings.

28. Members should not use mobile telephones or hand held devices during the Licensing Committee meeting to discuss the progress of the application with any other person.

Membership of lobbying groups

29. If a member is in a position of general control or management of an organisation that has made representations on a particular licensing matter then s/he he is likely to have a personal interest under the Code. Such membership may also give rise to a perception of bias or predetermination (see paragraph 24 above).

30. Whether membership constitutes a prejudicial interest will depend on the individual case. Where their lobby group has expressed a public view on a matter, members must consider whether a member of the public with knowledge of the relevant facts would reasonably regard the member's judgement of the public interest as prejudiced. In deciding whether they have a prejudicial interest, members should consider:

- the nature of the application
- the nature of their involvement with the organisation
- the publicly expressed views of the organisation
- what the member has said or done in relation to issues relevant to the application

31. A personal interest may also be prejudicial where it relates to the determining of any licensing application in relation to any persons or bodies described in paragraph 12.3 in Part 3 of the Code (see paragraph 19 above)

Complaints and record keeping

32. Any complaints made about the licensing process should be recorded accurately, and would normally be dealt with in accordance with the Council's established Complaints Procedure, unless it is a complaint which is appropriate to be dealt with as a Standards or Conduct issue, in which case it should be reported to the Council's Monitoring Officer in the first instance.

Breach of the Members' code

33. Breaches of the Code and/or this Licensing Protocol by members should be reported to the Monitoring Officer.