

Part 4 – Licensing & Safety Sub-Committee Procedure Rules

LICENSING AND SAFETY SUB-COMMITTEE PROCEDURE RULES

1. Composition

The Licensing and Safety Sub-Committee shall comprise of 5 to 6 Members, decided by the Strategic Licensing Committee. Substitutes, as decided by the Committee, are permitted

2. Number of Meetings

The Licensing and Safety Sub-Committee shall meet every 4 weeks, or as and when necessary.

3. Quorum

The Quorum for the Licensing and Safety Sub-Committee shall be three.

4. Role and Function

The Licensing and Safety Sub-Committee shall be responsible for considering those functions conferred on the Council in part B of Schedule 1 of The Local Authorities (Functions and Responsibilities) (England) Regulations 2000 relating to licensing and registrations (excluding Commons Registration), part C including functions in relation to Health and Safety at Work but limited to those set out in Annex A, and functions in relation to the power to make a closing order with respect to take away food shops under s4 (Local Government Miscellaneous Provisions) Act 1982.

5. Bias and Predetermination

Bias is an attitude of mind that prevents the decision maker from making an objective determination of the issues that he/she has to resolve. There is no need for proof of actual potential bias for there to be a “procedural impropriety”. It is sufficient that there is an appearance of bias. The test for bias is ‘whether a fair-minded informed observer, having considered the facts would conclude that there was a real possibility of bias’.

Where the decision to be made is quasi-judicial, as at the Licensing and Safety Sub-Committee, the key issue to ensure the legality of the decision is the ‘public perception of a probability of unconscious bias’. Members should therefore avoid participating as a member of the Licensing and Safety Sub-Committee where previous voting or statements of belief may alter that objective impression conveyed.

A member should not reach a final conclusion before he/she comes to take a decision on an issue. A member’s statements and activities should not create the impression that his/her views on a matter are fixed, and that he/she will not fairly consider the evidence or arguments presented to him/her, when he/she is making a decision.

‘Bias’ also includes the situation where it is felt that the decision maker has predetermined the case based on his/her own prejudices. An obvious

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example is where the impression is clearly given to, for example, members of the public or a lobbyist, beyond conveying a mere disposition, that ‘the member or authority will approach the matter with a closed mind and without impartial consideration of all relevant issues’.

A member must make a disclosure of his/her position regarding the possibility of political or structural bias, in advance, to the Licensing and Safety Sub-Committee which will consult with its Legal Advisor to decide if the member can participate in the decision-making.

6. Pre-Application/Pre-Decision Discussions

Whilst discussions between the licence applicant and the Team Manager (Transactional Management) prior to the submission of an application, or prior to a decision being made are often helpful to both parties, the Licensing Authority must ensure it is not open to accusations or appearance of bias. It must therefore ensure that such advice and assistance is clearly identified as being such and is not any type of ‘predetermination’.

Licensing and Safety Sub-Committee members should ensure that they DO NOT take part in any pre-application/pre-decision discussions and that applicants are referred to the Team Manager (Transactional Management).

7. Role of the Team Manager (Transactional Management)

- (a) That the Team Manager (Transactional Management) and those officers in posts above this level with line management responsibility use delegated powers to investigate and take any such action as the officer considers appropriate, including refusal of new licence applications, refusal to renew existing licences and revocation and suspension of existing licences, in relation to any matter concerning a hackney carriage or a private hire drivers licence or a vehicle licence or any matter concerning a private hire operator licence.
- (b) That where the officer referred to in paragraph 7 (a) above uses the delegated powers referred to in the said paragraph then the procedures set out in **Annex B** shall be followed.
- (c) When a matter is to be referred to the Licensing and Safety Sub-Committee, the officer referred to in paragraph 7 (a) above shall make recommendations to the Committee. A report shall be prepared by the officer summarising the application. Details of any representations received shall be included, together with, where it is appropriate to do so, the officer’s comments setting out how the representations relate to relevant legislation and current licensing policy and conditions.

8. Decision Making

Reasons for decisions made must be clearly documented so that any subsequent accusations of bias etc. can be defended. Decisions must be made according to the relevant legislation, policy and conditions.

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9. Site Inspection

Site inspections by Licensing and Safety Sub-Committee members are generally unnecessary and can put the members and the Licensing Authority at risk of accusations of bias. If a site inspection is required then the reasons will need to be set out to justify the visit.

10. Application of Council Procedure Rules

Council Procedure Rule 33.2 (Application to Cabinet, Committees and Sub-Committees) shall take effect subject to these Procedure Rules.

11. The guidance notes for the holding of hearings in respect of licensing matters are attached at Annex A.

12. The matters of procedure for licensing officers are attached at Annex B.

PROPOSED PROCEDURE RULES

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ANNEX A - PROCEDURE GUIDANCE NOTES FOR MEMBERS

1. Apologies for absence.
2. Minutes to be confirmed and signed.
3. Public Question Time.
4. Declaration of any interests by members.
5. Consideration of non-exempt agenda items (if any).
6. The Sub-Committee to resolve that in accordance with the provisions of Schedule 12A, Local Government Act 1072 and Paragraph 10.4(1) of the Council's Access to Information Procedure Rules, the public and press be excluded during consideration of the following items.

STEPS FOR EACH CASE

7. Chairman to confirm that the applicant is happy to represent him/herself, if they have no representative present, prior to the case being heard.
8. Chairman to request Team Manager (Transactional Management) or their appointed representative to present the case and call witnesses (if any).
9. Questions may be asked of the Team Manager (Transactional Management) or their appointed representative and any witness called in the following order:
 - (i) Applicant
 - (ii) Members of the Committee
 - (iii) Legal Advisor
10. Chairman to request the Applicant to present their case to the Committee and call witnesses (if any).
11. Questions may be asked of the Applicant and any witness called in the following order:
 - (i) Team Manager (Transactional Management) or their appointed representative
 - (ii) Members of the Committee
 - (iii) Legal Advisor
12. Chairman to request the Team Manager (Transactional Management) or their appointed representative to sum up.
13. Chairman to request the Applicant to sum up.
14. The Committee will determine the application in private. The Legal Advisor will remain in the room to provide advice as required.
15. The meeting will be reconvened for the decision to be announced.

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16. Chairman to advise the applicant of the appeals procedure if their application is refused.

ANNEX B - MATTERS OF PROCEDURE FOR THE LICENSING DECISION MAKER

1. The officer deciding a matter will be making a quasi-judicial decision. There is a right of appeal to a court.
2. The officer making the decision shall carry out the delegated powers in consultation with a legal advisor, the Council's safeguarding lead officers for Adult and Children's Services and an appropriate officer from West Mercia Police. The officer may consult with any other officer of the Council or a representative from any other relevant external agency or organisation as the officer deciding the matter considers is appropriate.
3. The officer must of course act fairly. With the exception of circumstances where immediate suspension is held to be the appropriate course of action, the licence holder shall be informed of the case against them and be given an opportunity to make representations before any decision is made. Where immediate suspension is applicable, the licence holder shall be informed after the decision has been made but will nonetheless be given an opportunity to make representations.
4. It is open to the local authority to allow only written representations and this is how the officer deciding the matter shall deal with each case unless the officer considers the circumstances also warrant an oral hearing. The officer shall write to the relevant licence holder stating the case against them. The correspondence shall set out all relevant information and give to the licence holder a reasonable time (usually 10 working days) to reply in writing with their representations.
5. Following receipt of the licence holder's representations, or upon expiration of the time limit for replies, the officer shall, unless it is necessary to seek further information as a result of the representations already received, make a decision taking all relevant matters into account.
6. Where the officer considers it is necessary or appropriate, a case shall be referred to the Licensing and Safety Sub-Committee for consideration and decision.